

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

DAMIAN ORLOWSKI, et al.,)	
Plaintiffs, on behalf of themselves and)	
all others similarly situated,)	
v.)	No. 11-cv-1396-SHL-cgc
LARRY BATES, et al.,)	
Defendants.)	

**ORDER GRANTING PLAINTIFFS’ RENEWED MOTION FOR FINAL
JUDGMENT**

On November 18, 2015, the Court granted in part Plaintiffs’ Motion for Summary Judgment (ECF No. 438) as to their breach of contract claim against First American Monetary Consultants, Inc. (“FAMC”). (ECF No. 543.) Thereafter, on September 19, 2016, the Court granted Plaintiffs’ Motion for Partial Summary Judgment as to the damages flowing from that breach of contract claim. (ECF No. 669.) Plaintiffs first filed a Motion for Entry of Judgment Pursuant to Federal Rule of Civil Procedure 54 on July 21, 2016. (ECF No. 637.) However, Plaintiffs withdrew the Motion after the Court expressed concern that the Motion may be premature because of the similarity of the underlying aggregate facts supporting the numerous claims in this case and the possibility that damages may be inextricably woven together. (See ECF No. 696.) At that time, Plaintiffs agreed to further research the issues to decide whether final judgment was nonetheless warranted. (Id.)

Before the Court is Plaintiffs’ Renewed Fed. R. Civ. P. Rule 54 Motion for Final Judgment and Costs as to the Breach of Contract Claims Against First American Monetary Consultants, Inc. (ECF No. 719), filed December 6, 2016. In support of the requested relief, Plaintiffs argue that “finalizing the judgment against FAMC comports with . . . Rule 54(b)’s

objective of preventing piecemeal judgments or appeals, when delay would be unduly harsh or unjust.” (*Id.* at 7.) No Defendant has responded to the Motion. For the following reasons, the Court finds the Motion well-taken, and it is accordingly **GRANTED**.

Rule 54(b) provides that, “[w]hen an action presents more than one claim for relief . . . or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay.” Thus, the inquiry is two-fold. First, the Court must determine whether entering final judgment in this instance would result in a final resolution of at least one “claim” or all of the rights and liabilities of at least one party. Second, the Court must determine whether there exists “no just reason for delay.”

Here, there can be no question that granting Plaintiffs’ Motion would result in the final determination of the rights and liabilities of a single party to this action—FAMC. Indeed, in open court and at the time of filing this renewed Motion, Plaintiffs voluntarily dismissed all of their remaining claims against FAMC. (*See* ECF No. 723.)

Thus, the inquiry turns to whether there exists just reason for delaying the final adjudication of the breach of contract claim. In making this determination, courts are required to weigh the equities involved as well as the interest of efficient judicial administration. *See Curtiss-Wright Corp. v. General Elec. Co.*, 446 U.S. 1, 8 (1980). The Sixth Circuit has identified a nonexhaustive list of factors to consider when making this determination: “(1) the relationship between the adjudicated and unadjudicated claims; (2) the possibility that the need for review might or might not be mooted by future developments in the district court; (3) the possibility that the reviewing court might be obliged to consider the same issue a second time; (4) the presence or absence of a claim or counterclaim which could result in set-off against the judgment sought

to be made final; (5) miscellaneous factors such as delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense and the like.” Lowery v. Federal Exp. Corp., 426 F.3d 817, 821-22 (6th Cir. 2005) (internal citation omitted).

The Court finds that, weighing the above-listed factors, there is no just cause for delay. While there may be some factual overlap between the breach of contract claim against Defendant FAMC and the remaining, unadjudicated claims, the remaining claims sound exclusively in tort law, civil RICO and the law governing fiduciary duties. Thus, the remaining claims require individualized proof against each of the individual Defendants, as opposed to the breach of contract claim, which relied solely on the existence and breach of legally enforceable agreements between Defendant FAMC and Plaintiffs. The relationship between these claims does not present any compelling reason to delay the final adjudication of the breach of contract claim.

Moreover, and for much the same reason, the Court finds that there is little likelihood that future developments before this Court might moot an appeal of the breach of contract claim. In the November 18, 2015, Order Granting Summary Judgment, the Court found an absence of a genuine dispute as to the material facts underlying the breach of contract claim, and that claim should not be affected by the outcome of Plaintiffs’ remaining claims, which, again, rely on individualized proof against the individual Defendants.

The Court also finds that there is little likelihood that it should be obliged to hear the issue of FAMC’s breach of contract again on a later occasion. In addition to voluntarily dismissing all remaining claims against Defendant FAMC, Plaintiffs have voluntarily dismissed their breach of contract claims against the individual Defendants. (See ECF Nos. 722, 733.) Thus, breach of contract ceases to present a live legal issue in this case. Moreover, the Receiver,

who represents the interests of FAMC in this matter, did not oppose Plaintiffs motion for summary judgment, and the deadline to file a motion to reconsider has since passed.

Further, the Court is unaware of any claims or counterclaims raised by the Defendants that might result in a setoff against the damages awarded to Plaintiffs as a result of Defendant FAMC's breach of contract. Indeed, there are no active counterclaims at this time. The Court also finds that entering a final judgment as to the breach of contract claim against Defendant FAMC serves the interests of justice. With judgment as to this claim made final, the Receiver, who continues to incur expenses that will likely be paid, at least in part, from the assets of Defendant FAMC, will be allowed to begin liquidating the assets of the Receivership for the benefit of Plaintiffs. The Court finds that Plaintiffs will be prejudiced by continuing to delay this final adjudication.

Finally, the Court previously expressed concern over the extent to which damages flowing from the adjudicated and unadjudicated claims are interconnected. Responding to the Court's concern, Plaintiffs state that they will not seek duplicative damages at trial. (ECF No. 721 at 7.) Instead, they argue that the damages flowing from the breach of contract represent the entirety of the compensatory damages in this matter. (Id.) They contend that the only questions regarding damages remaining to be determined at trial are the extent to which any individual Defendant may be held jointly and severally liable for the amount of the compensatory damages and whether any Defendant may be liable for treble or statutory damages. (Id.) The Court agrees with Plaintiffs and finds that any possible connection between the damages in this matter should not preclude a final determination as to Defendant FAMC's liability for breach of contract.

For these reasons, the Motion is **GRANTED**. The Court finds that there exists no just reason to delay the final adjudication of the breach of contract claim against Defendant FAMC, and final judgment shall be entered pursuant to Rule 54(b) against Defendant FAMC for breach of contract in the amount of \$25,289,612.98.

IT IS SO ORDERED, this 31st day of July, 2017.

s/ Sheryl H. Lipman
SHERYL H. LIPMAN
UNITED STATES DISTRICT JUDGE