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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CONSUMER FINANCIAL, PROTECTION BUREAU, et al.,	:	17-CV-890 (LAP)
Plaintiffs,	:	Order
v.	:	
RD LEGAL FUNDING, LLC, et al.,	:	
Defendants.	:	

Loretta A. Preska, Senior United States District Judge:

In response to the Consumer Financial Protection Bureau's ("CFPB") request for entry of a final judgment against it pursuant to Rule 54(b) following the June 21, 2018 Order dismissing the CFPB's claims in this case, (ECF No. 92), the Court concludes that entry of such judgment is warranted. The Court also denies Defendants' (collectively, the "RD Legal Parties") request for certification of the New York Attorney General's claims that were upheld in the June 21, 2018 Order for interlocutory appeal pursuant to 28 U.S.C. § 1292(b). Finally, to avoid prejudicing the parties, the RD Legal Parties' request to stay the proceedings in this case pending the Court of Appeals' resolution of the CFPB's anticipated appeal of this Court's June 21, 2018 Order is granted.

Rule 54(b) permits a district court to certify a final judgment where "(1) there are multiple claims or parties, (2) at

least one of the claims or the rights and liability of at least one party has been finally determined, and (3) 'there is no just reason for delay.'" Grand River Enters. Six Nations, Ltd. v. Pryor, 425 F.3d 158, 164-65 (2d Cir. 2005) (quoting Fed. R. Civ. P. 54(b)). As the CFPB notes, each of these requirements is satisfied here. This action involved two plaintiffs (the Bureau and the Attorney General of the State of New York), and the Court's Opinion and Order of June 21, 2018 finally resolved the CFPB's claims. (See ECF No. 80 at 103) ("the CFPB's claims are dismissed"). As to the third requirement, the Court has taken into account the parties' letters on entry of a final judgment under Rule 54(b), (see ECF Nos. 86, 90, 94, 95, 96), and concludes that there is no just reason for delay — both the equities to the parties and the Court's interest in sound judicial administration and efficiency weigh heavily in favor of entering a final judgment. See Curtiss-Wright Corp. v. General Elec. Co., 446 U.S. 1, 8 (1980) ("[I]n deciding whether there are no just reasons to delay the appeal of individual final judgments . . . , a district court must take into account judicial administrative interests as well as the equities involved."). Accordingly, the CFPB's request for final judgment under Rule 54(b) is granted.

Regarding the RD Legal Parties' request that the Court certify the claims that were not dismissed in the Court's June

21, 2018 Order for interlocutory appeal under 28 U.S.C. § 1292(b), this request is denied. Section 1292(b) provides for the appeal of an interlocutory order when the Court is "of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b).

The controlling question of law as to the Court's subject matter jurisdiction, and thus as to the order dismissing the CFPB, relates to the constitutionality of the CFPB's structure. As evidenced by the Court of Appeals for the District of Columbia's decision in PHH Corp. v. CFPB, 881 F.3d 75 (D.C. Cir. 2018), there is substantial ground for difference of opinion on that issue. Assuming that the CFPB proceeds with its stated intention of appealing this Court's June 21, 2018 Order dismissing its claims against the RD Legal Parties, the final disposition of that appeal alone will "materially advance the ultimate termination of the litigation" because it will bring certainty to the parties in their litigation of the federal issues presented.

The same cannot be said for the state law issues. By and large, they are well-settled. At this junction, therefore, the Court denies the RD Legal Parties' request for certification of

the claims that remain in this case following the Court's June 21, 2018 Order for interlocutory appeal.

The Court also grants the RD Legal Parties' request to stay the proceedings in this case pending the outcome of the CFPB's appeal of the June 21, 2018 Order to the Court of Appeals. A stay will avoid the possibility of prejudice to the parties and will mitigate the expense and practical difficulties Defendants would face if tasked with defending two overlapping trials at once.

Conclusion

For the foregoing reasons, (1) the CFPB's request for entry of final judgment against it under Rule 54(b) is granted, (ECF No. 92), (2) the RD Legal Parties' request for certification of the New York Attorney General's claims that were not dismissed in the June 21, 2018 Order for interlocutory appeal under 28 U.S.C. § 1292(b) is denied, (ECF Nos. 86, 90, 94, 95, 96), and (3) the RD Legal Parties' request to stay the case during the pendency of the CFPB's appeal of the June 21, 2018 Order to the Court of Appeals is granted.

Counsel shall confer and propose a form of judgment.

SO ORDERED.

Dated: New York, New York
August 23, 2018

Loretta A. Preska

LORETTA A. PRESKA
Senior United States District Judge