

No. 26-4487

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ROUND VALLEY INDIAN TRIBES, et al.
Plaintiffs – Appellants,

v.

SHERIFF MATTHEW KENDALL, et al.,
Defendants - Appellees,

On Appeal from the United States District Court
for the Northern District of California
Hon. Magistrate Judge Robert M. Illman, Presiding
United States District Court No. 25-cv-03736 RMI

MOTION TO DISMISS APPEAL FOR LACK OF JURISDICTION

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I.

INTRODUCTION

Plaintiffs have filed a Notice of Appeal from a district court order granting, in part, Defendants', County of Mendocino and Sheriff Matthew Kendall's, Motion to Dismiss the First Amended Complaint ("MTD Order"). Because the district court improperly certified a non-final order for immediate appeal under Federal Rule of Civil Procedure 54(b) ("Rule 54 Order"), this Court should dismiss this Appeal because it lacks appellate jurisdiction.

The MTD Order dismissed only two claims in a multi-party civil rights action arising from a single series of law enforcement operations conducted on the Round Valley Indian Reservation in July 2024. The remaining claims, as well as two new claims that are nearly identical to those dismissed, continue to be litigated in the district court. The current claims arise from the identical searches, the identical warrant applications, the identical officers, and the identical factual allegations that underlie the dismissed claims. The MTD Order itself turned on its interpretation of those same facts, including the purpose of the searches, the statutes Defendants were allegedly enforcing, and the warrant materials attached to the complaint. The legal and factual overlap is not merely substantial – it is pervasive.

Additionally, the Rule 54 Order did not finally resolve the litigation between the parties. Appellees remain active litigants on multiple surviving claims arising from the same events. Meanwhile, Plaintiffs have filed a Second Amended Complaint (“SAC”) that re-invents the certified claims, restates the claims remaining after the MTD Order, and continues to rely upon the same July 2024 searches, the same warrant materials, and the same underlying dispute concerning Defendants' authority to conduct the searches. Immediate appellate review therefore cannot resolve a discrete segment of the litigation. Instead, it fragments a single controversy into multiple appeals involving overlapping parties, overlapping evidence, and overlapping legal issues. For these reasons, the appeal should be dismissed.

II.

LEGAL STANDARDS

This Court has an obligation to consider its own jurisdiction upon motion of a party. *Henderson ex rel. Henderson v. Shinseki*, 562 US 428, 434, 131 S.Ct. 1197, 1202 (2011). “This is so even in the context of an interlocutory appeal.” *Poulos v. Caesars World, Inc.*, 379 F3d 654, 662 (9th Cir. 2004).

Rule 54(b) permits entry of judgment "as to one or more, but fewer than all, claims or parties" only where the district court first determines that it has entered a final judgment disposing of an entire claim or party and then expressly finds that

there is "no just reason for delay." Fed. R. Civ. P. 54(b). Because the Rule represents an exception to the historic federal policy against piecemeal appeals, the Ninth Circuit has repeatedly instructed that it must be employed sparingly and only in the unusual case. *Morrison-Knudsen Co. v. Archer*, 655 F.2d 962, 965 (1981), *Frank Briscoe Co. v. Morrison-Knudsen Co.*, 776 F.2d 1414, 1416 (9th Cir. 1985), and *Wood v. GCC Bend, LLC*, 422 F.3d 873, 878-80 (9th Cir. 2005). The moving party must demonstrate that there is a "seriously important reason" to enter final judgment, or why the relief is "necessary to avoid a harsh and unjust result." *See Wood*, supra 422 F.3d at 879; *see also Morrison-Knudsen*, supra 655 F.2d at 965.

This Court must "scrutinize the district court's evaluation" of Rule 54(b)'s requirements to ensure that certification does not undermine the final judgment rule by permitting piecemeal appeals. *Curtiss-Wright Corp. v. General Elec. Co.*, 446 U.S. 1, 10, (1980); *Jewel v. National Security Agency*, 810 F.3d 622, 628 (9th Cir. 2015). Where the certification fails to satisfy Rule 54(b), the appropriate remedy is to reverse the certification and dismiss the appeal for lack of jurisdiction. *Wood*, supra 422 F.3d at 882; *Jewel*, supra 810 F.3d at 631.

III.

FACTUAL AND PROCEDURAL BACKGROUND

This action arises from a coordinated law enforcement operation conducted on the Round Valley Indian Reservation on July 22 and 23, 2024. Plaintiffs allege that officers from multiple law enforcement agencies entered tribal land, executed search warrants, destroyed cannabis plants, and conducted searches in violation of federal and state law. The entire lawsuit—both the claims dismissed by the district court and those that remain pending—arises from this single course of conduct.

Plaintiffs' First Amended Complaint (“FAC”) asserted claims against the Mendocino Defendants as well as against the County of Humboldt, its Sheriff and one if its Deputies, and against the California Highway Patrol and its Commissioner arising from the July 2024 operation. [DKT 35] Plaintiffs alleged that Defendants lacked authority to conduct the searches because the operation constituted enforcement of state and local civil or regulatory laws on the Reservation rather than enforcement of criminal law authorized by 11 U.S.C. § 1162 (“PL 280”). Plaintiffs further alleged that Defendants violated the Fourth Amendment, the California Constitution, the Bane Act, California negligence law, and the Equal Protection Clause through the manner in which the searches were planned and executed. Each claim arose from the same searches, warrants, participating agencies and officers, and conduct.

The First Claim sought declaratory relief that PL 280 did not authorize Defendants to enforce California's civil or regulatory cannabis laws on the Reservation. The Second Claim alleged that Defendants unlawfully interfered with the Tribe's inherent sovereign authority by conducting the July 2024 operations. The remaining claims sought damages and other relief arising from the July 2024 searches and seizures. Every claim depended upon the factual circumstances surrounding the searches and Defendants' asserted authority to conduct them. The Mendocino Defendants and Commissioner Duryee moved to dismiss the FAC. The Humboldt Defendants did not file a motion to dismiss and rather answered the FAC.

On January 29, 2026, the district court granted the motions in part and denied them in part in the MTD Order. [DKT 64] The court dismissed with prejudice the First and Second Claims against Defendants¹ after concluding that Plaintiffs failed to state a claim under their PL 280 and tribal sovereignty theories.

¹ In the Rule 54 Order, the district court “clarified” that the MTD Order dismissed Claims One and Two as to *all* Defendants, including Humboldt Defendants, despite those Defendants not moving to dismiss those claims. A motion made by one of multiple defendants is not a motion by which all the defendants are controlled. *Mantin v. Broadcast Music, Inc.*, 248 F.2d 530 (9th Cir. 1957). More to the point, “[T]he moving defendants, obviously, had no standing to seek dismissal of the action as to the nonmoving defendants.” *Id.* at 531 Thus, the certified claims have not been “ultimately disposed of” as to the Humboldt Defendants. For this reason alone, the certification is improper.

Notably, the court also dismissed “any elements” of the Second through Seventh Claims “that rely on the contention that the underlying searches were illegal because Defendants lacked enforcement jurisdiction.” [DKT 64 at p. 21:12-14.] At the same time, the court denied dismissal of the Third through Seventh Claims, leaving substantial portions of the case pending for discovery and further proceedings. In reaching its dismissal decision, the district court analyzed the nature of the July 2024 enforcement operation, the search warrants, Plaintiffs' factual allegations regarding the purpose of the searches, and the statutory authority under which Defendants allegedly acted. The court concluded that the challenged operation constituted criminal law enforcement rather than enforcement of civil or regulatory laws.

Following the MTD Order, Plaintiffs filed the SAC. [DKT 71] Rather than narrowing the issues remaining before the district court, the SAC expanded the factual allegations concerning the July 2024 operation and continued to assert jurisdictional, constitutional and state-law claims arising from those same events. Specifically, Plaintiffs realleged their PL 280 claims this time alleging in greater detail that Defendants were carrying out County nuisance-abatement and regulatory enforcement activities rather than criminal law enforcement in conducting the searches and seizures occurring during the July 2024 operation. The surviving claims all arise from that single law enforcement operation and continue

to depend upon many of the same factual issues that formed the basis for the dismissed PL 280 claims.

Following the filing of the SAC, Plaintiffs moved for entry of partial final judgment under Federal Rule of Civil Procedure 54(b) as to the dismissal of the First and Second Claims. Defendants opposed certification, arguing that the dismissal order did not dispose of separate claims, that the dismissed and surviving claims were factually and legally intertwined, that immediate appeal would create piecemeal litigation, and that the First and Second Claims had not been fully resolved as to all defendants. Nevertheless, on June 16, 2026, the district court issued the Rule 54 Order and entered judgment that same day. [DKT 84, 85] Plaintiffs thereafter filed a Notice of Appeal seeking immediate review of the dismissal of the certified claims. [DKT 86] Because the Rule 54(b) certification does not satisfy the requirements of Rule 54(b), this Court lacks jurisdiction over the appeal.

IV.

ARGUMENT

A. The District Court Effectively Certified a Legal Theory Rather Than a Separate Claim

Rule 54(b) was designed to promote efficient judicial administration—not to authorize interlocutory review whenever one legal issue has been decided. Yet that is precisely what occurred here. The district court effectively certified for immediate appeal its legal determination concerning PL 280 under one theory while leaving for trial the application of PL 280 under a different theory and also leaving for trial the constitutional and state-law claims that depend upon the same searches, the same evidence, and many of the same legal and factual determinations on which the dismissed claims depend. Allowing the appeal to proceed would require this Court to become familiar with the same factual record now and almost certainly again following final judgment. This is precisely the result the Supreme Court and this Court have repeatedly condemned.

Rule 54(b) authorizes certification only of an "individual claim." Fed. R. Civ. P. 54(b). It does not authorize interlocutory review of a district court's resolution of a discrete legal issue that continues to govern the remaining litigation. *See Curtiss-Wright Corp.*, supra 446 U.S. at 7 and *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 436 (1956); *see also Wood*, supra 422 F.3d at 879-81

[rejecting certification where the certified ruling remained intertwined with claims awaiting trial]. “[T]he guiding principle is that “[a] similarity of legal or factual issues will weigh heavily against entry of judgment under [Rule 54(b)]” *Wood*, supra 422 F.3d at 882 citing *Morrison-Knudsen Co.*, supra 655 F.2d at 965. The district court characterized its MTD Order as dismissing the First and Second Claims for Relief. However, the substance of the Order demonstrates that a legal ruling concerning the scope of PL 280 – not a separate and independent claim within the meaning of Rule 54(b) -- was what was actually certified.

The certified claims alleged that Defendants lacked authority under PL 280 to conduct the July 2024 enforcement operation on the Round Valley Indian Reservation because the operation constituted enforcement of civil or regulatory laws rather than criminal laws. The district court rejected that legal theory, concluding that the conduct alleged involved enforcement of California's criminal cannabis laws. Bewilderingly, the new First and Second Claims in the SAC being litigated, allege that Defendants lacked authority under PL 280 to conduct the July 2024 operation because the operation constituted enforcement of County regulatory laws rather than criminal laws.² In other words, the only difference

² Mendocino Defendants moved to dismiss the First and Second Claims in the SAC as improper given the dismissal of the PL 280 claims in the FAC; however, the motion was denied.

between the certified claims and the currently pending First and Second Claims is that Plaintiffs now allege the actions of Defendants were taken pursuant to a specific County regulatory scheme rather than just alleging that the actions were regulatory generally.

Further, in reaching its conclusions in the MTD Order, the court necessarily interpreted the warrant materials, examined the factual allegations concerning the searches, determined the nature of the statutes Defendants sought to enforce, and concluded that the challenged operation constituted criminal enforcement. Those determinations were not confined to the certified claims. They necessarily affect the remaining claims, all of which arise from the same searches and challenge the legality of the same conduct, and most certainly affect the new First and Second Claims under PL 280 in the SAC. Only the Fourteenth Amendment equal protection claim involves events occurring after the July 2024 operations.

The Rule 54 Order itself confirms this point. Rather than stating that only the First and Second Claims had been dismissed, the district court expressly acknowledged that its MTD Order had dismissed "two claims from the FAC, *as well as any elements of the other claims that relied on the dismissed claims.*"

[DKT 84 p. 5:19-20 (emphasis added).] The district court also acknowledged that the dismissed claims "influence the remaining claims because the viability *of the dismissed legal theory* determines the scope of the lawsuit and whether Plaintiffs

can bring certain elements of other claims.” *Id* at p. 7:10-12 (emphasis added).

Those statements are impossible to reconcile with Rule 54(b)'s requirement that the certified judgment dispose of a distinct separate claim.

If the dismissal was of a “legal theory” and simultaneously eliminated "elements" of claims that remain pending, then the legal ruling *necessarily* continues to operate within those surviving claims. This is especially true with regard to the new PL 280 claims that simply re-address regulatory vs. criminal jurisdiction of the Defendants in more detail than had been pled previously. The district court thus did not separate an independent controversy from the remainder of the case. It resolved one legal issue that continues to define the scope of the litigation below. This Court has repeatedly warned against precisely this type of certification.

In *Jewel*, the district court certified for immediate appeal its dismissal of a Fourth Amendment claim, while other constitutional and statutory claims arising from the same surveillance program remained pending. *Jewel*, supra 810 F.3d at 628-31. Although the district court treated the Fourth Amendment issue as independently reviewable, this Court disagreed, holding that certification was improper because the certified issue remained intertwined with the unresolved claims and immediate review would require duplicative consideration of the same factual record.

Specifically, this Court found that the unresolved claims relied “on overlapping elements of the same allegedly illegal government actions” and that the “legal right to relief stems largely from the same set of facts and would give rise to successive appeals that would turn largely on identical, and interrelated, facts.” *Id.* at 629-30 and *Wood*, supra 422 F.3d at 880. This Court further noted as problematic that only three of the five plaintiffs pursued the Fourth Amendment motion for summary judgment. “A final complication is that not all of the parties are included in this appeal, nor does this appeal resolve all of the...claims”. *Jewel*, supra at 630; *see also Spiegel v. Trustees of Tufts Coll.*, 843 F.2d 38, 44 (1st Cir. 1988) [“It will be a rare case where Rule 54(b) can appropriately be applied when the contestants on appeal remain, simultaneously, contestants below.”]. The certification here suffers from identical problems. Any legal right to relief stems *solely* from the same set of facts and the same allegedly illegal government actions. Further, claims remain pending against Appellees and Defendants, California Highway Patrol and Sean Duryee were not included in the appeal. Thus, not all parties are included in this appeal nor have all claims against Appellees been resolved.

Likewise, in *Wood*, the Ninth Circuit rejected Rule 54(b) certification because the certified constructive-discharge ruling was merely one theory arising from the same employment dispute that underlay the remaining discrimination

claims. *Wood*, supra 422 F.3d at 879-82. In doing so, the Court first noted that "plainly, sound judicial administration does not require that Rule 54(b) requests be granted routinely" further stating that the Court should "particularly scrutinize a district judge's rule 54(b) certification . . . to 'pre-vent piecemeal appeals in cases which should be reviewed only as single units.'" *Id. Wood*, supra 422 F.3d at 879 quoting *Curtiss-Wright*, 446 U.S. at 10; see also *McIntyre v. United States*, 789 F.2d 1408, 1410 (9th Cir. 1986).

The Court then reversed the certification because "while the adjudicated claim for wrongful constructive discharge under state law may be distinct in the sense that it is an individual claim, it is not truly separable from Wood's other claims" and the practical effect of certifying the constructive discharge issues in this case is to deconstruct her age discrimination action so as to allow piecemeal appeals with respect to the same set of facts. *Wood*, supra 422 F.3d at 879-880. The same defect exists here. The issue Plaintiffs seek to appeal in this case is not independent of the remaining litigation. It is the district court's legal determination that PL 280 authorized the challenged law enforcement activity. But that legal determination continues to permeate the remaining claims because those claims challenge the constitutionality and legality of the very same searches and involve application of PL 280 to identical facts under a new theory. Whether Defendants were enforcing criminal law or regulatory law, what authority they possessed

under PL 280, what purpose motivated the searches, what information supported the warrants, and what conduct officers actually undertook are all questions that remain central to the litigation. The certified ruling therefore cannot be divorced from the claims still pending in the district court.

This conclusion is reinforced by the SAC. Rather than narrowing the factual issues, the SAC expands the allegations concerning the same July 2024 searches and continues to assert constitutional and state-law claims arising from those events. The operative controversy remains exactly the same: whether Defendants lawfully conducted the searches on the Reservation. The district court's PL 280 ruling represents only one component of that broader controversy.

Rule 54(b) does not authorize certification simply because one legal question has been decided. If it did, interlocutory appeals would become commonplace whenever a district court resolved an important legal issue before trial. The Supreme Court and the Ninth Circuit have repeatedly rejected that approach because it would undermine the final judgment rule and invite piecemeal appellate review. Here, the district court effectively certified its resolution of one legal theory while leaving the factual controversy and the remaining legal claims for trial. That is not the certification of a separate claim contemplated by Rule 54(b), and it cannot support appellate jurisdiction.

B. The District Court's Own Findings in its Rule 54 Order Demonstrate That Rule 54(b) Certification Was Improper

The district court's own Rule 54 Order [DKT 84] demonstrates why certification cannot stand. Although the court ultimately concluded that the dismissed claims were "severable," its findings establish that the dismissed claims are intertwined with the remaining litigation, that the viability of the remaining claims depends on the dismissed legal theory, and that the appeal will affect the litigation still pending in the district court. Those findings compel the opposite conclusion under Rule 54(b).

First, as discussed above, the district court acknowledged that its MTD Order did not merely dispose of the First and Second Claims. Rather, it expressly recognized that the Order also dismissed those *elements* of the remaining claims which relied on the dismissed claims. *Id.* at p.3:13-17. The court reiterated this point when discussing finality, explaining that the prior order foreclosed portions of Plaintiffs' § 1983 claim, negligence claim, and other surviving causes of action because those claims incorporated the same PL 280 theory. *Id.* at p. 3:21-24. That finding alone demonstrates that the certified judgment did not finally dispose of an independent claim. Instead, it resolved a legal theory embedded within multiple remaining causes of action. Rule 54(b), however, authorizes certification only of a final judgment on an entire claim—not an interlocutory ruling eliminating one

theory supporting portions of other claims. *See Curtiss-Wright Corp.*, supra 446 U.S. at 7–8.

The district court likewise recognized that the dismissed legal theory continues to influence the remaining litigation. The court expressly stated that "the viability of the dismissed legal theory determines the scope of the lawsuit and whether Plaintiffs can bring certain elements of other claims." *Id.* at p. 7:11-12. The court further observed that the "basic dispute at the heart of this case" concerns "what laws Defendants are allowed to enforce on the Tribe's reservation," and acknowledged that the outcome of the dismissed legal theory will "significantly alter" both the relief Plaintiffs may seek and "the legal and factual arguments they can make in their remaining constitutional and tort claims." *Id.* at p. 7:12-17. Those findings are fundamentally incompatible with Rule 54(b).

If the certified issues determine the scope of the remaining claims and significantly affect the legal and factual issues to be litigated below, then the certified claims cannot reasonably be characterized as separate from the claims remaining before the district court. As the Ninth Circuit explained in *Jewel*, certification is improper where the certified issues remain intertwined with claims still pending because immediate review will only prolong the litigation and require successive appellate review of overlapping issues.

The district court also justified certification because, in its view, delaying appellate review could require reconsideration of claims if Plaintiffs ultimately prevailed on appeal. Specifically, the court reasoned that if the dismissed claims were revived after final judgment, "some of the resolved claims will be remanded for reconsideration," and "the analysis and resolution of the new claims may change or become moot." *Id.* at p. 7:19-22. That rationale turns Rule 54(b) on its head. The possibility that reversal would alter the remaining litigation is not a reason to certify; it is evidence that the claims are not sufficiently separable for interlocutory review. Rule 54(b) exists to avoid precisely this circumstance—piecemeal appeals in which an appellate decision reshapes litigation that remains pending below. *See Wood*, supra 422 F.3d at 880–81. By acknowledging that the dismissed legal theory will affect the remaining claims and that appellate reversal may require the district court to revisit subsequent rulings, the district court effectively recognized that the certified and remaining claims are legally intertwined.

The court further concluded that "the dismissed claims are severable from the remaining issues, but they influence the remaining claims." *Id.* at p. 7:10-12. That statement encapsulates the issue. Claims that "influence the remaining claims," determine "the scope of the lawsuit," and significantly alter the legal and factual arguments available on the surviving causes of action are not the type of

discrete claims contemplated by Rule 54(b). Rather, they are intertwined components of a single controversy that should be reviewed together after entry of a final judgment.

Finally, the district court's own description of the case confirms the extent of the overlap. It acknowledged that the FAC contained eight causes of action while the SAC contains twelve causes of action and that “some of the claims are premised on conduct surrounding obtaining and executing the search warrants at issue” while some of the claims arise from the aftermath of those searches. *Id.* at p. 3 FN2. Far from resolving a discrete portion of the litigation, the Rule 54(b) order permits an interlocutory appeal in the midst of an expanding case involving overlapping parties, overlapping facts, and overlapping legal issues.

In short, the district court's own findings demonstrate that the certified legal theory permeates surviving claims, determines the scope of the remaining litigation, and may require reconsideration of subsequent rulings. Under *Curtiss-Wright*, *Wood*, and *Jewel*, those findings compel the conclusion that certification was improper and that this Court lacks jurisdiction over the appeal.

C. The Second Amended Complaint Confirms That the Certified Issues Are Inextricably Intertwined With the Claims Remaining in the District Court

The procedural posture of this case after entry of the Rule 54(b) certification further demonstrates why immediate appellate review is improper. Rather than narrowing the issues remaining before the district court, Plaintiffs' SAC expands the factual allegations supporting the surviving constitutional and state-law claims and further intertwines those claims with the legal issues Plaintiffs now seek to appeal. [DKT 71]

The SAC does not describe a new course of conduct or identify a separate factual controversy. Instead, it continues to challenge the same July 22–23, 2024 law enforcement operation, the same searches of Reservation property, the same search warrants, the same participating officers, and the same alleged exercise of authority under PL 280. The operative facts remain unchanged. Plaintiffs simply elaborate upon those facts in substantially greater detail. Indeed, the SAC devotes extensive new allegations to explaining why Defendants allegedly lacked authority under PL 280 because the challenged operation constituted enforcement of County civil and regulatory ordinances rather than California criminal law. Plaintiffs allege that deputies were carrying out a County nuisance-abatement program, inspecting water systems, evaluating cultivation sites, conducting environmental compliance

inspections, and enforcing County regulatory ordinances governing cannabis cultivation. They further allege that these activities demonstrate the operation was regulatory in nature and therefore exceeded California's authority under PL 280.

Those allegations are not confined to the certified claims. Rather, they form factual predicate for the surviving claims. Each of those claims continues to depend upon the same fundamental factual questions that the certified claims did:

- What authority did Defendants possess to conduct the searches?
- What laws were Defendants attempting to enforce?
- What role did the search warrants play in the operation?
- What actions did officers actually take during the searches?
- What governmental objectives motivated the operation?

Those are precisely the questions Plaintiffs ask this Court to resolve in the present appeal. They are equally the questions that will remain central to discovery, summary judgment, and trial on the surviving claims.

The SAC therefore confirms that the PL 280 issue is not a discrete legal controversy capable of immediate appellate resolution. It is instead one component of the broader factual dispute concerning the legality of Defendants' conduct during the July 2024 operations. Plaintiffs themselves have chosen to incorporate those allegations throughout the remaining claims, making clear that the district court's PL 280 ruling continues to shape the litigation below. This is precisely the

circumstance the Ninth Circuit found dispositive in *Jewel*. In *Jewel*, although one constitutional claim had been dismissed, the Court concluded that Rule 54(b) certification was improper because the certified issue remained intertwined with unresolved claims arising from the same government conduct. *Jewel*, supra 810 F.3d at 629-31. The Court emphasized that an interlocutory appeal would require it to become familiar with a factual record that would almost certainly return following final judgment. *Id.* The same concern is even more pronounced here.

Nor does the filing of the SAC lessen the likelihood of successive appeals -- it increases that likelihood. In entering the MTD Order, the district court relied on facts that remain to be litigated – especially facts relating to the warrant affidavits, the officers' purpose, and whether they were enforcing criminal versus regulatory law. By expanding the factual allegations concerning Defendants' asserted authority under PL 280, the nature of the searches, the purpose of the warrants, and the County's alleged regulatory enforcement program, Plaintiffs have further integrated the dismissed legal theory into the surviving causes of action. Any appeal following final judgment will necessarily require this Court to revisit the same evidence, the same witnesses, the same warrant materials, and many of the same legal determinations implicated by the present appeal.

Rule 54(b) exists to avoid precisely this duplication. The Ninth Circuit has repeatedly explained that the central inquiry is whether certification will require

the Court of Appeals to consider successive appeals with the same factual record. The SAC answers that question affirmatively. Rather than demonstrating that the dismissed claims have become isolated from the remaining litigation, it confirms that they have become even more deeply intertwined. Immediate appellate review therefore frustrates, rather than advances, the purposes of Rule 54(b).

D. The District Court Abused its Discretion by Giving Insufficient Weight to the Ninth Circuit's Judicial-Administration Concerns

The reasoning behind the sparse use of Rule 54 certification is that this Court would be required to relearn the same set of facts if and when the case returned to that court on appeal from the district court's final judgment over-burdening an already over-burdened docket. As the Ninth Circuit explained in *Wood*:

The greater the overlap the greater the chance that this court will have to revisit the same facts-spun only slightly differently-in a successive appeal. The caseload of this court is already huge. More than fifteen thousand appeals were filed in the last year. We cannot afford the luxury of reviewing the same set of facts in a routine case more than once without a seriously important reason. *Wood*, supra 422 F.3d at 882.

The district court gave little weight to these concerns in entering its Rule 54 Order. As discussed above, certification here did not "streamline the ensuing litigation." *Jewel*, 810 F.3d at 628. The parties to the certified claims are also parties to the surviving claims. Hence, with this appeal, the parties will litigate this matter simultaneously in both the trial and appellate courts. "This circumstance alone counsels hesitation in the use of Rule 54(b)." *Spiegel*, supra 843 F.2d at 44; *see also Brunswick Corp. v. Sheridan*, 582 F.2d 175, 183 (2d Cir. 1978).

Additionally, the similarity of either legal or factual issues (or both) militates strongly against invocation of Rule 54(b). *See Solomon v. Aetna Life Ins. Co.*, 782 F.2d 58 at 62 (6th Cir. 1986); *Morrison-Knudsen*, supra 655 F.2d at 965; *Spiegel*, supra 843 F.2d at 45. As discussed above, the adjudicated and pending claims here arise from the identical set of facts and identical transactions; thus, there is an identity of facts and a near identity to legal issues. This "weigh[s] **heavily** against entry of judgment." *Gregorian v. Izvestia*, 871 F.2d 1515, 1519 (9th Cir. 1989) [emphasis added].

Here, the district court gave insufficient weight to the very considerations that the Supreme Court and this Court have identified as paramount under Rule 54(b). The resulting certification invites precisely the successive review of overlapping facts and issues that Rule 54(b) was designed to prevent. Accordingly, the certification constitutes an abuse of discretion and should be vacated.

V.

CONCLUSION

For all the foregoing reasons, County of Mendocino and Sheriff Matthew Kendall respectfully request the certification be vacated and the appeal dismissed for lack of jurisdiction.

DATED: August 5, 2026

Respectfully submitted,
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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure, Rule 27(d)(2)(A), the undersigned certifies that the accompanying brief:

- (1) Has been prepared using 14-point Times New Roman typeface;
- (2) Is double-spaced (except headings and footnotes);
- (3) Is proportionally spaced; and
- (4) Contains 5,178 words, exclusive of the tables of contents, table of authorities, signature lines, certificates of counsel, and the proof of service.

/s/ Denise Lynch Rocawich
Denise Lynch Rocawich

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on August 5, 2026 .

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Wendy Gardea
Wendy A. Gardea
