

No. 26-4487

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROUND VALLEY INDIAN TRIBES, et al.

Appellants/Plaintiffs,

v.

SHERIFF MATTHEW KENDALL, et al.,

Appellees/Defendants.

On Appeal from the United States District Court
for the Northern District of California
No. 25-cv-03736-RMI

Hon. Robert M. Illman, United States Magistrate Judge

APPELLANTS' OPPOSITION TO APPELLEES' COUNTY OF
MENDOCINO AND SHERIFF MATTHEW KENDALL'S MOTION
TO DISMISS APPEAL FOR LACK OF JURISDICTION

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INTRODUCTION

Appellees County of Mendocino and Sheriff Matthew Kendall (“Mendocino Appellees”) ask this Court in their Motion to Dismiss Appeal for Lack of Jurisdiction (Dkt. 7.1) (“Motion”) to vacate a Rule 54(b) certification that the district court granted only after full briefing, in a detailed order making express findings on finality, severability, judicial efficiency, and the equities. Under *Curtiss-Wright Corp. v. General Electric Co.*, 446 U.S. 1, 10 (1980), those findings are reviewed only for abuse of discretion, with substantial deference to the district court’s weighing of the relevant factors. Nothing in the Motion approaches that showing.

Nor does the Motion offer anything the district court has not already considered. Its arguments, that the dismissal was not final as to the non-moving Humboldt County Defendants, that the certified and pending claims are intertwined under *Wood v. GCC Bend, LLC*, 422 F. 3d 873 (9th Cir. 2005) (“*Wood*”) and *Jewel v. Nat’l Sec. Agency*, 810 F. 3d 622 (9th Cir. 2015) (“*Jewel*”), and that simultaneous litigation in two forums would prejudice Appellees, were asserted in Appellees’ opposition to certification below and rejected in the district court’s express findings. Dkt. 69 at 5-10; Dkt. 84 at 4-7. The Motion renews those objections before this Court but fails to explain why the district court’s resolution of them was clearly unreasonable.

The certified claims present a discrete, purely legal question decided on the

pleadings: whether California’s cannabis Health and Safety Code provisions are “criminal/prohibitory” or “civil/regulatory” for purposes of 28 U.S.C. § 1360 (“Public Law 280”). *See California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987)(“*Cabazon*”). No factual record exists or is needed; this Court would review the dismissal de novo on the face of the First Amended Complaint and its attachments. *Jewel*, at 628. And the district court has twice found in written orders that no question resolved by the dismissal is implicated in any claim still pending below. There is accordingly no risk that this Court will confront the certified question a second time, which is the concern at the heart of the authorities on which the Motion relies.

The Motion’s central factual premise, that the claims now pending in the district court are “nearly identical” to the certified claims, was raised by the Appellees in the district court and rejected the same day as the certification. The district court held that although the new claims carry similar titles, “the legal and factual questions are completely different, the new and old claims cannot be considered duplicates of each other,” and that the new claims have “essentially no overlap with the legal issue resolved” by the dismissal. Dkt. 83 at 8 & n.4. The Motion does not disclose these findings to this Court.

Nor does the Motion mention that this Court has already exercised appellate jurisdiction in this exact posture. In *Cabazon Band of Mission Indians v. County of*

Riverside, 783 F.2d 900 (9th Cir. 1986), *aff’d*, 480 U.S. 202 (1987), the district court entered judgment under Rule 54(b) on the dispositive PL 280 question while other issues remained below, and this Court accepted the certification and decided the merits—in the very decision that became the Supreme Court’s controlling PL 280 precedent. The foundational case in this area of law reached this Court by the same procedural route that the Motion now describes as jurisdictionally impermissible.

Finally, only the Mendocino County Appellees seek dismissal. The Humboldt County Appellees, whose supposed procedural interests supply the Motion’s lead footnote, have appeared in this Court and have not joined the Motion.

For all of these reasons, as more fully shown below the Motion should be denied. In the alternative, the jurisdictional question should be referred to the merits panel with briefing to proceed.

LEGAL STANDARD

Rule 54(b) “permits district courts to authorize immediate appeal of dispositive rulings on separate claims in a civil action raising multiple claims,” and “aimed to augment, not diminish, appeal opportunity.” *Gelboim v. Bank of Am. Corp.*, 574 U.S. 405, 409-410 (2015); *Jewel v. NSA*, 810 F.3d 622, 628 (9th Cir. 2015) (quoting *Gelboim*).

When an action presents more than one claim for relief, whether as a claim, counterclaim, crossclaim, or third-party claim, 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 if the court determines that there is no just reason for delay. Fed. R. Civ. P. 54(b); *see also Bates v. Bankers Life & Cas. Co.*, 848 F.3d 1236, 1238 (9th Cir. 2017) (per curiam). Certification involves two determinations: that the court has rendered a “final judgment” that is “an ultimate disposition of an individual claim entered in the course of a multiple claims action,” and that “there is no just reason for delay.” *Curtiss-Wright*, 446 U.S. at 7-8 (quoting *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 436 (1956)) (“*Sears*”). In making the second determination, the district court weighs “judicial administrative interests as well as the equities involved,” *id.* at 8, considering the interrelationship of the certified and remaining claims and equitable factors such as prejudice and delay. *Wood v. GCC Bend, LLC*, 422 F.3d 873, 878 (9th Cir. 2005); *Jewel*, 810 F.3d at 628.

On review, this Court closely examines the interrelationship of the claims to prevent piecemeal appeals, but “the discretionary judgment of the district court should be given substantial deference,” and its assessment of the equities stands unless “clearly unreasonable.” *Curtiss-Wright*, 446 U.S. at 10; *see AmerisourceBergen Corp. v. Dialysis West, Inc.*, 465 F.3d 946, 949 (9th Cir. 2006); *Noel v. Hall*, 568 F.3d 743, 747 (9th Cir. 2009). “The present trend is toward greater deference to a district court’s decision to certify under Rule 54(b),” *Texaco, Inc. v. Ponsoldt*, 939 F.2d 794, 798 (9th Cir. 1991), and this Court’s most recent decisions

state the standard simply as abuse of discretion. *Pakootas v. Teck Cominco Metals, Ltd.*, 905 F.3d 565, 576 (9th Cir. 2018); *see also Int’l Longshore & Warehouse Union v. ICTSI Oregon, Inc.*, 863 F.3d 1178, 1186 (9th Cir. 2017); *James v. Price Stern Sloan, Inc.*, 283 F.3d 1064, 1067 n.6 (9th Cir. 2002) (“great deference”). Under any formulation, the juridical inquiry is the same: whether immediate review would require this Court to decide the same issues more than once.

ARGUMENT

I. THE JUDGMENT IS A FINAL ADJUDICATION OF INDIVIDUAL CLAIMS, NOT OF A “LEGAL THEORY”.

Appellants (“Indians”) First and Second Causes of Action (“Claims One and Two”) were cognizable claims for relief in every sense that matters under Rule 54(b). Each rested on a distinct legal source—the jurisdictional limits of 28 U.S.C. § 1360(a), and the Tribe’s inherent sovereignty—and each sought relief no other claim in the case sought: a declaration that Appellees (collectively “Counties”) cannot enforce the State’s cannabis laws on the Reservation and an injunction against future enforcement operations premised on those provisions. Both were dismissed with prejudice in their entirety. Nothing about them remains for adjudication in any court. That is the “ultimate disposition of an individual claim” that *Sears* and *Curtiss-Wright* require. 351 U.S. at 436; 446 U.S. at 7.

The Motion’s contrary characterization that the district court certified only a “legal theory” proves too much. Every dismissed claim can be redescribed as a

“theory” of the broader dispute; if that relabeling defeated certification, Rule 54(b) could never be applied to partial dismissals. This Court’s decisions contradict that position. Certified claims need not be “separate from and independent of” the claims that remain, *Sheehan v. Atlanta Int’l Ins. Co.*, 812 F.2d 465, 468 (9th Cir. 1987), and this Court has upheld certification of judgments that left the certified parties as active litigants on other claims. *See Pakootas*, 905 F.3d at 574-75 (upholding certification of a judgment on a claim that did not terminate the litigation between the parties); *Continental Airlines, Inc. v. Goodyear Tire & Rubber Co.*, 819 F.2d 1519, 1525 (9th Cir. 1987) (upholding certification although the judgments “eliminated none of the parties and left open potentially full recovery” in both of the appellant’s areas of loss, where the district court “efficiently separated the legal from the factual questions”). Indeed, this case is stronger than *Continental Airlines* on the very factor the court emphasized: there, certification was proper in part because the judgments “completely extinguished the liability of the tire companies as to the airplane damage claim,” *id.*; here, the Judgment completely extinguished two entire claims, with prejudice, as to every defendant. In *Curtiss-Wright*, the certified contract claim and the counterclaims remaining below arose from the parties’ performance of the same series of contracts. *Curtiss-Wright*, 446 U.S. at 3-4. What Rule 54(b) requires is a final disposition of a claim—and the with prejudice dismissal of Claims One and Two, together with the district court’s express confirmation that those claims “are

not operative for any Defendant,” is exactly that. Dkt. 84 at 4.

The Motion’s reliance on the dismissal of “elements of other claims” inverts the significance of that ruling. The district court excised from the remaining claims every element that depended on the dismissed jurisdictional theory so that nothing of that theory would remain in the case. That is what this Court’s cases describe: an important or controlling legal issue that cuts across and either eliminates or at least curtails several claims, the circumstance in which certification is appropriate in a complex case. *Wood*, 422 F.3d at 881. The completeness of the severance supports certification; it does not defeat it.

II. THE CERTIFIED CLAIMS ARE SEVERABLE AND NO APPEAL WILL PRESENT THIS COURT WITH DUPLICATE ISSUES.

The Motion’s invoked “guiding principle” that similar legal or factual issues weigh against certification is intended solely to prevent this Court from having to revisit the same facts in successive appeals. *Wood*, 422 F.3d at 882. That risk is absent here for a simple structural reason: the certified ruling was entered on the pleadings. This Court’s review will be de novo, confined to the First Amended Complaint and its attachments, and directed to a single question of statutory characterization—whether California’s cannabis laws are criminal/prohibitory or civil/regulatory under *Cabazon*. There is no evidentiary record to master once, let alone twice. Further, “the proper role of the court of appeals is not to reweigh the equities or reassess the facts but to make sure that the conclusions derived from those

weightings and assessments are juridically sound and supported by the record.” *Curtiss-Wright*, 446 U.S. at 10. The Motion’s list of assertedly overlapping “factual questions,” including what authority the Counties possessed, what purposes motivated the searches, what officers did, describes discovery in the district court yet to occur, not anything that will be before this Court on review of a Rule 12(b)(6) dismissal.

Curtiss-Wright presented that structure: the facts supporting most claims and counterclaims were contested, but the certified issue turned solely on the legal effect of a release clause. 446 U.S. at 3-4. The Supreme Court upheld certification of that purely legal claim while fact-disputed claims and counterclaims arising from the parties’ performance of the same series of contracts remained pending below. *Id.* The judgment certified here (“Judgment”) is more clearly severable, because it rests on a single question of statutory characterization, resolved on the pleadings, that the district court has twice found is not implicated in any claim that remains. The Counties’ own Rule 56(d) showing below confirms where the factual work in this case lies: the discovery they identified as necessary, including the location of the Indians’ properties, the scope of the warrants, what property was seized or destroyed, and who was present at the searches, pertains entirely to the claims that remain, and none of it bears on the certified question. Dkt. 65 at 2.

The district court found as much, in findings entitled to deference under

Curtiss-Wright and *Pakootas*. In the certification order, it found that the dismissed claims present “almost a purely legal question”; that “[n]one of the new claims in the Second Amended Complaint are related to, dependent on, or tied to the dismissed claims in any way”; that none of the pending theories “involve the question of whether the Counties could enforce California’s statutory cannabis limitations on the reservation, or any question about whether a code section is criminal or regulatory in nature”; and that “[a]ny appeals related to the claims currently pending before the court will not present the court of appeals with duplicate legal or factual issues.” Dkt. 84 at 6-7.

The Motion’s central premise is that the pending claims are “nearly identical” to the certified claims, differing only in detail. Mot. at 5. The Counties made that argument to the district court, in a motion to strike the new claims as unauthorized repleadings of the dismissed ones—and lost, in a written order issued the same day as the certification:

Even though the new claims fall under the identical titles of PL 280 jurisdiction and tribal sovereignty, the legal and factual questions are completely different, and the new and old claims cannot be considered duplicates of each other.

Dkt. 83 at 8. The district court explained that the dismissal “was concerned with the status of California state cannabis laws,” while “the new claims are predicated on factual questions concerning Defendants’ motives, the procedure for obtaining the search warrants, the scope of the warrants, and the execution of the

warrants; the PL 280 legal questions require different analysis and rely on separate, established caselaw.” *Id.* The new claims have “essentially no overlap with the legal issue resolved by the court that formed the basis for dismissal in the prior order,” *id.* at 8 n.4, and allowing them to proceed “would not reopen previously resolved questions, as the only resolved issue in this case is the question of whether state cannabis laws may be enforced on Indian country in California under PL 280, which is not implicated in the new claims.” *Id.* at 9. The certification was thus entered by a district judge who had, that same day, analyzed in detail the relationship between the certified and pending claims. The Motion asks this Court to accept a characterization of that relationship that the district court has expressly and repeatedly rejected—and the Motion nowhere acknowledges those rulings.

This Court has already accepted a Rule 54(b) certification in materially indistinguishable circumstances. In *Cabazon Band of Mission Indians v. County of Riverside*, 783 F.2d 900, 902 (9th Cir. 1986), the district court entered judgment under Rule 54(b) on the dispositive PL 280 question while other issues remained pending, and this Court took jurisdiction and decided the merits. A dispositive PL 280 characterization ruling, certified for immediate review while fact-intensive claims arising from the same underlying dispute continue below, is not an affront to the final-judgment rule in this Circuit, rather, it is how the leading case in this field was decided. The Counties argued *Cabazon’s* procedural history before the district

court in their motion. Dkt. 67 at 8-9. The only response offered below was the Humboldt County Appellees' observation that certification in *Cabazon* followed summary judgment rather than dismissal, which is immaterial: a dismissal with prejudice is no less final than a summary judgment. The Motion, though it briefs PL 280 at length, does not address *Cabazon*'s procedural history at all.

The Motion's principal authorities involved the opposite structure. In *Wood*, a "routine" single-plaintiff employment case, the certified constructive-discharge ruling was one theory of the same age discrimination dispute destined for trial on the same facts, so successive appeals would have required this Court to review "the same set of facts . . . spun only slightly differently." *Wood*, 422 F.3d at 878, 882. *Wood* itself distinguished the complex case presenting "an important or controlling legal issue that cuts across . . . a number of claims," which is this case. *Id.* at 881. In *Jewel*, the certified Fourth Amendment ruling and the retained statutory claims rested on "overlapping elements of the same allegedly illegal government actions," so successive appeals "would turn largely on identical, and interrelated, facts," part of an extensive evidentiary record concerning the same surveillance. *Jewel*, 810 F.3d at 629-30. Here, by contrast, the certified question requires no facts at all, and the district court has found that no pending claim implicates it. *Jewel*'s further concern that not all parties and claims were aligned in the appeal is likewise absent, and the Motion's assertion that "not all parties are included in this appeal" is simply wrong:

the certified claims were dismissed as to every plaintiff and every defendant; Commissioner Duryee is before this Court as an Appellee on the Judgment; and the California Highway Patrol was dismissed from the action by stipulation long before the Judgment and is not a party at all. Dkt. 17. Every party to the certified claims is a party to this appeal.

Finally, that the certified and pending claims arise from the same July 2024 operations does not make them inseparable. A claim may be separate under Rule 54(b) “even if [it] arises out of the same transaction and occurrence” or it shares “some facts common to all [its] theories of recovery”; the question is whether each requires proof the other does not. *Pakootas*, 905 F.3d at 575; *see CMAX, Inc. v. Drewry Photocolor Corp.*, 295 F.2d 695, 697 (9th Cir. 1961) (a Rule 54(b) “claim” is at minimum “a set of facts giving rise to legal rights in the claimant”); *Cont’l Airlines*, 819 F.2d at 1525 (certification upheld where the district court “efficiently separated the legal from the factual questions” arising from a single transaction); *Texaco*, 939 F.2d at 798 (certification upheld even though remaining claims “require[d] proof of the same facts involved in the dismissed claims”). The certified claims require no factual showing whatever; the pending claims turn entirely on facts, including warrant procurement, purpose, scope, and execution, that have no bearing on whether a state statute is criminal or regulatory. Under this Court’s pragmatic approach, that is complete separability.

III. THE DISTRICT COURT’S FINDINGS SUPPORT CERTIFICATION; THE MOTION READS THEM BACKWARDS.

The Motion builds its argument on a clipped quotation: that the dismissed claims “influence the remaining claims.” Mot. at 14-15, 20-21. Restored to context, the passage finds the dismissed claims “severable from the remaining issues” and explains that their influence on the scope of the case is why immediate review serves judicial efficiency, because it “will prevent the possibility that this case will be fully litigated under a framework that is later reversed,” with claims “remanded for reconsideration” and rulings rendered “moot.” Dkt. 84 at 7. *Curtiss-Wright* expressly endorses exactly this weighing: the district court properly considers whether early appellate resolution will simplify proceedings or facilitate settlement of the remaining claims. *Curtiss-Wright*, 446 U.S. at 8 & n.2.

The Motion’s logic, that certification is improper whenever reversal would alter the remaining litigation, would repeal Rule 54(b) as applied to dismissals. A reversal that changed nothing below would be an advisory opinion; the fact that the certified ruling matters to the case is why there is no just reason for delay, not a reason to forbid review. The relevant inquiry under *Curtiss-Wright*, *Wood* and *Morrison-Knudsen Co. v. Archer*, 655 F.2d 962, 965 (9th Cir. 1981) is duplication of appellate effort—whether this Court will be required to decide the same issues or relearn the same record more than once. The Counties’ opposition below stated that consideration correctly: whether “an appellate court would have to decide the same

issue more than once.” Dkt. 69 at 2-3 (citing *Curtiss-Wright*, 446 U.S. at 8). The district court applied that test and found no duplication. The Motion instead counts overlapping background facts, which *Sheehan* and *Pakootas* foreclose, and gives no reason to disturb that finding.

IV. THE JUDGMENT FINALLY DISPOSED OF CLAIMS ONE AND TWO AS TO ALL DEFENDANTS/APPELLEES.

The Motion’s footnote argument that the certified claims were never “ultimately disposed of” as to the Humboldt County Appellees because they did not move to dismiss fails at every step. *See* Motion at 9 n.1. Notably, the Humboldt County Appellees themselves have appeared in this Court and have not joined the Motion; the Mendocino County Appellees advance the argument on behalf of parties who have not made it. Below, all Appellees pressed the same theme as prejudice, arguing that the Humboldt County Appellees “would not be parties on the appeal” and would be bound by rulings made in their absence. Dkt. 69 at 10. Events have answered that concern: the Judgment encompasses the Humboldt County Appellees, they are Appellees in this Court, they have appeared and they seek nothing.

First, a district court may dismiss claims sua sponte as to non-moving defendants who are similarly situated to moving defendants where the same legal defect defeats the claim. *Omar v. Sea-Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir. 1987); *Abagninin v. AMVAC Chem. Corp.*, 545 F.3d 733, 742-43 (9th Cir. 2008). The dismissed claims failed on a legal holding that PL 280 confers enforcement

jurisdiction that the district court found “applied identically to the Humboldt and Mendocino Defendants.” Dkt. 84 at 4. *Mantin v. Broadcast Music, Inc.*, 248 F.2d 530 (9th Cir. 1957), on which the Motion relies, protects the Indians from having their claims extinguished without notice and an opportunity to be heard. Here the Indians themselves moved for entry of judgment below on Claims One and Two as to all defendants, after the legal issue was fully litigated; the Humboldt County Appellees briefed the question in opposing certification; and the district court resolved any ambiguity in its order before entering judgment: Claims One and Two “are not operative for any Defendant.” Dkt. 84 at 4.

Second, the argument would not matter even if it were correct. Rule 54(b) authorizes entry of final judgment “as to one or more, but fewer than all, claims or parties.” Fed. R. Civ. P. 54(b); *see Noel*, 568 F.3d at 747; *Cont’l Airlines*, 819 F.2d at 1524-25. If the certified claims were somehow unresolved as to the Humboldt County Appellees—they are not—the Judgment would remain proper as to the Mendocino County Appellees, and the Motion’s conclusion that “the certification is improper” “for this reason alone” would still be wrong on the face of the Rule. *See* Motion at 9 n.1.

V. THERE IS NO JUST REASON FOR DELAY.

The district court weighed judicial-administration interests and the equities and made express findings on both. Those findings were not clearly unreasonable;

they were plainly correct.

As to efficiency, absent immediate review, this multi-party case will be litigated to judgment, including discovery, dispositive motions, and trial, under a jurisdictional framework that, if erroneous, would require the parties and the district court to do much of that work again. The district court found it “possible (if not likely)” that resolved claims would be remanded for reconsideration and that rulings on the pending claims could be mooted if the dismissed theory were revived only after final judgment. Dkt. 84 at 7. This Court has repeatedly sustained certification on exactly that ground. *Cont'l Airlines*, 819 F.2d at 1525 (certification “narrowed the issues” and “shortened any subsequent trial by months”); *Texaco*, 939 F.2d at 798 (immediate review appropriate where it “will streamline the ensuing litigation”). Because the certified question is purely legal and fully briefed below, its resolution requires no waiting for a factual record—there will never be a better time to decide it.

As to the equities, the dismissed claims are the Indians’ only vehicle for prospective relief against enforcement operations premised on state cannabis law. The district court found that “[t]he possibility that there is an ongoing injury to the [Round Valley] Tribes and its members because of the plaintiffs’ repeated enforcement actions are unlawful is serious,” and that delay of “these issues” of “tribal sovereignty and jurisdiction” “is not justified.” Dkt. 84 at 8. Meanwhile, the

law of the case forecloses the Indians from advancing the dismissed theory in the district court in any form. Dkt. 83 at 15 n.8. Without this appeal, tribal members remain subject to enforcement operations under a disputed jurisdictional ruling that cannot be tested anywhere for years. Against this, the Motion offers only the burden of litigating simultaneously in the trial and appellate courts, what the district court described as proceeding “on two levels.” Dkt. 84 at 8. That circumstance is inherent in every Rule 54(b) judgment entered while other claims continue; if it defeated certification, the Rule’s authorization of judgment on “fewer than all” claims would be a dead letter. This Court has accordingly affirmed certifications where the case continued below between the same parties. *See Cont’l Airlines*, 819 F.2d at 1525; *Pakootas*, 905 F.3d at 575-76. The district court expressly weighed this asserted prejudice and found it “does not justify delay in this case,” and the burden is in any event within the Counties’ control: as the court noted, “Defendants may seek a stay of this case during the appeal.” Dkt. 84 at 8.

The Appellees’ remaining authorities are out-of-circuit decisions that cannot bear the weight the Motion places on them. *Spiegel v. Trustees of Tufts College*, 843 F.2d 38, 44 (1st Cir. 1988), observed that it “will be a rare case” in which Rule 54(b) applies while “the contestants on appeal remain, simultaneously, contestants below,” but this Court has affirmed these types of certifications, *see Cont’l Airlines*, 819 F.2d at 1525; *Pakootas*, 905 F.3d at 575-76, and *Spiegel’s* own formulation concedes that

rare cases exist. A complex, multi-party action presenting a discrete and controlling question of federal Indian law, in which the claims for prospective relief have been extinguished while enforcement operations allegedly continue, is such a case.

Brunswick Corp. v. Sheridan, 582 F.2d 175, 183 (2d Cir. 1978), condemns an intertwinement that is absent here. There, the certified antitrust counterclaim “ultimately depended on the interpretation of the contract clause on which the claim rested,” a question awaiting a second jury after a mistrial, so any appellate decision “would be hypothetical and advisory,” and a jury finding on the pending claim “could moot most of the appealed counterclaim issues.” *Id.* at 183-85. *Brunswick* itself distinguished cases “where decision on the appealed claim in no way turned on the result of the pending claim.” *Id.* at 185. This is such a case: the certified question was resolved on the pleadings, depends on no fact to be found below, and cannot be mooted by any ruling on the remaining claims. *Brunswick* also demanded that the certified claim be “separable from and independent of the remaining claims,” *id.* at 182, which is a requirement this Court has expressly declined to impose. *Sheehan*, 812 F.2d at 468.

Finally, *Solomon v. Aetna Life Ins. Co.*, 782 F.2d 58, 62 (6th Cir. 1986), applies the same similarity-of-issues emphasis that this Court’s cases reject as a standalone bar. *See Sheehan*, 812 F.2d at 468.

The important issues raised make this appeal the antithesis of the “routine

case” *Wood* warned against. *Wood*, 422 F.3d at 882-83. The certified question is whether California’s comprehensive cannabis legalization and licensing regime remains “criminal/prohibitory” under *Cabazon*, which governs the scope of state and county power on tribal lands throughout California and is generating divergent answers elsewhere. *See State v. Thompson*, No. A25-0527, 2026 Minn. App. LEXIS 42, at *11-15 (Minn. Ct. App. Feb. 2, 2026) (holding Minnesota’s cannabis-possession statutes civil/regulatory under *Cabazon* in light of the State’s general legalization). A recurring, unsettled, and controlling question of federal Indian law, dispositive of claims for prospective relief against ongoing enforcement, is a “seriously important reason” for immediate review if anything is. *Wood*, 422 F.3d at 882-83.

VI. IN THE ALTERNATIVE THE MOTION SHOULD BE REFERRED TO THE MERITS PANEL.

If the Court concludes that the jurisdictional question warrants plenary consideration, the appropriate course is not dismissal but referral of the Motion to the merits panel, with briefing to proceed. The jurisdictional analysis here is intertwined with an accurate understanding of the district court's orders and the relationship among the claims—matters best evaluated on a full record with complete briefing. Deferring the Motion would impose no prejudice on Appellees, who remain free to renew their arguments in their answering brief.

CONCLUSION

The district court entered a reasoned, well-supported Rule 54(b) certification of a discrete and controlling question of federal law, on findings the Motion cannot show to be clearly unreasonable—and largely does not acknowledge. The Motion to Dismiss should be denied. In the alternative, the Motion should be referred to the merits panel for consideration with the merits of the appeal.

Dated: August 17, 2026

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I am the attorney or self-represented party. This brief contains 4,746 words, including 0 words manually counted in any visual images, and excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6). I certify that this brief complies with the word limit of Cir. R. 32-1.

Dated: August 17, 2026

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CERTIFICATE OF SERVICE

I am employed in the County of Mendocino, State of California. I am over the age of 18 years and not a party to the within action; my business address is that of Law Offices of Rapport & Marston, an Association of Sole Practitioners, 405 West Perkins Street, Ukiah, California 95482.

I hereby certify that I electronically filed the foregoing document(s):

**APPELLANTS' OPPOSITION TO APPELLEES' COUNTY OF
MENDOCINO AND SHERIFF MATTHEW KENDALL'S MOTION
TO DISMISS APPEAL FOR LACK OF JURISDICTION**

with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the Appellate Electronic Filing system on August 17, 2026, which generated and transmitted a notice of electronic filing to Appellate Electronic Filing system registrants.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct; executed on August 17, 2026, at Ukiah, California.

/s/ *Ericka Duncan*
ERICKA DUNCAN