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13 Additional Counsel On Signature Pages

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 (SAN FRANCISCO DIVISION)

17  
18 IN RE: CATHODE RAY TUBE (CRT)  
19 ANTITRUST LITIGATION

Case No. 07-5944 JST  
MDL No. 1917

20 This Document Relates to:

21 *P.C. Richard & Son Long Island Corp., et al.*  
22 *v. Hitachi, Ltd., et al.*, No. 12-cv-02648;

23 *P.C. Richard & Son Long Island Corp., et al.*  
24 *v. Technicolor SA, et al.*, No. 13-cv-05725.

**DEFENDANTS' OPPOSITION TO  
MOTION OF PLAINTIFF MARTA  
COOPERATIVE OF AMERICA FOR  
RULE 54(b) CERTIFICATION OF  
FINAL JUDGMENT AS TO MARTA  
ORAL ARGUMENT REQUESTED**

Date: September 29, 2016

Time: 2:00 p.m.

Before: Hon. Jon S. Tigar

1 **I. INTRODUCTION**

2 The Defendants oppose MARTA Cooperative of America's Motion for Rule 54(b)  
3 Certification of Final Judgment as to MARTA because it is premature. There are seven (7)  
4 remaining summary judgment motions that pertain to MARTA, each of which, if granted,  
5 would have an effect on the damages at issue in MARTA's claim. *See* ECF Nos. 2976, 2981,  
6 2984, 3001, 3008, 3032, and 3040. Though MARTA only seeks certification of final  
7 judgment as to the Court's August 4, 2016 order holding that MARTA lacks standing to  
8 pursue its federal antitrust claim (ECF No. 4742, at 25-31), MARTA's claim should not be  
9 certified for appeal until the scope of MARTA's potential damages are determined.  
10 Knowing the scope of potential damages at issue in the MARTA action is critical to the  
11 Defendants, both in determining their strategy in litigating MARTA's intended appeal and in  
12 gauging the value of any potential settlements. Accordingly, until the pending summary-  
13 judgment motions relevant to MARTA are decided, there is a just reason to delay entering  
14 final judgment as to MARTA.

15 **II. ARGUMENT**

16 The Court must make two determinations in assessing MARTA's request for Rule  
17 54(b) certification. *First*, the Court must determine whether MARTA's motion concerns a  
18 final judgment. *Second*, if the Court determines that the judgment is final, the Court must  
19 determine whether any "just reason for delay" exists. *Curtiss-Wright Corp. v. Gen. Elec.*  
20 *Co.*, 446 U.S. 1, 7-8 (1980).

21 As to the first determination, the Defendants agree with MARTA that the Court's  
22 August 4, 2016 order granting summary judgment against MARTA is a final judgment. *See*  
23 ECF No. 4793, at 5 ("MARTA Mot.") (stating that the Court's order is the ultimate  
24 disposition of MARTA's claim). As to the second determination, the parties disagree. In the  
25 Defendants' view, the seven pending summary-judgment motions regarding MARTA do  
26 create a just reason to delay entering final judgment.

27 As the Supreme Court has held, "in deciding whether there are no just reasons to  
28 delay the appeal of individual final judgments . . . a district court must take into account

1 judicial administrative interests as well as the equities involved.” *Curtiss-Wright*, 446 U.S. at  
 2 8. MARTA asserts that “there are no judicial administrative interests that preclude the entry  
 3 of final judgment as to MARTA.” MARTA Mot., at 6. MARTA is wrong. It overlooks a  
 4 judicial-administrative interest that is critical to the Rule 54(b) analysis. Specifically, in  
 5 gauging whether to issue final judgment pursuant to Rule 54(b), this Court must, “in the  
 6 interest of sound judicial administration,” serve as a “dispatcher,” using its “sound judicial  
 7 discretion . . . to determine the ‘appropriate time’ when each final decision in a multiple  
 8 claims action is ready for appeal.” *Curtis-Wright*, 446 U.S. at 8 (quoting *Sears, Roebuck &*  
 9 *Co. v. Mackey*, 351 U.S. 427, 435, 437 (1956)).

10 Now is *not* the appropriate time for the Court to issue final judgment as to MARTA  
 11 because there are seven remaining summary judgment motions that pertain to MARTA, each  
 12 contesting the amount of damages subject to MARTA’s claim. Until MARTA’s damages  
 13 claim can be determined, the Court should not enter final judgment as to MARTA. *See Kerr-*  
 14 *Mcgee Chem. Corp. v. Lefton Iron & Metal Co.*, 570 F.3d 856, 857 (7th Cir. Ill. 2009)  
 15 (holding a court may not certify an issue for appeal while the amount of damages remains  
 16 unresolved); *Trustees of Chicago Truck Drivers, etc. v. Central Transport, Inc.*, 935 F.2d  
 17 114, 116 (7th Cir. Ill. 1991) (“[Rule 54(b)] allows immediate appeal of separate disputes  
 18 comprised within a larger litigation. It does not, however, allow appeal when damages have  
 19 been partially but not completely determined, or when the district court will revisit the  
 20 issues.”).

21 A weighing of relevant equities further confirms that there is a just cause to delay  
 22 entry of final judgment as to MARTA. The Defendants do not oppose the equities that  
 23 MARTA identifies and weighs in its motion (MARTA Mot., at 8-9), but highlight the critical  
 24 equity considerations that MARTA overlooks. Granting MARTA’s motion now, and  
 25 entering final judgment as to MARTA pursuant to Rule 54(b), would create the inequitable  
 26 situation where the Defendants are forced to litigate an appeal without knowing their  
 27 damages exposure as to MARTA’s claim. Such information is critical for the Defendants in  
 28 setting their litigation strategies, as well as in gauging the value of any potential settlements.

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1 The inequity of that situation is further underlined by placing MARTA’s request in  
2 the context of this long-running case. *See Curtis-Wright*, 446 U.S. at 12-13 (holding that a  
3 district court is charged with the discretion to assess requests for Rule 54(b) certification  
4 because it is “the one most likely to be familiar with the case and with any justifiable  
5 reasons for delay” (quoting *Sears*, 351 U.S. at 437)). The Defendants filed all their  
6 summary judgment motions against MARTA (and the other Plaintiffs) on the same day  
7 (November 7, 2014), the fact that the Court issued its order on MARTA’s standing in  
8 advance of its order on the other pending summary judgment motions should not allow  
9 MARTA to proceed on appeal before those other summary judgment motions are decided.

10 If the Court denies MARTA’s present motion, MARTA could still seek Rule 54(b)  
11 certification of final judgment after the Court issues decisions on the seven pending summary  
12 judgment motions. *See Bennett v. Pippin*, 74 F.3d 578, 587 (5th Cir. 1996) (holding that a  
13 dismissed party is able to rely on its dismissal until notified otherwise). Importantly, if  
14 MARTA seeks certification for final judgment after the other summary judgment motions are  
15 decided, it could still seek certification based only on the Court’s August 4, 2016 order. *See*  
16 *Edwards v. Prime Inc.*, 602 F.3d 1276, 1288 (11th Cir. 2010) (“Appellate jurisdiction over an  
17 appeal from an interlocutory decision certified under Rule 54(b) is limited to the rulings or  
18 orders certified by the district court”); *see also United Indus., Inc. v. Eimco Process Equip.*  
19 *Co.*, 61 F.3d 445, 448 (5th Cir. 1995) (“We lack appellate jurisdiction over the two rulings  
20 not referenced by court’s certification. In an interlocutory appeal certified by the district  
21 court under . . . Rule 54(b), we have no jurisdiction to consider orders of the district court  
22 outside the scope of certification.”); *S.H. v. Edwards*, 886 F.2d 292, 293 (11th Cir. 1989) (*en*  
23 *banc*) (“This case is before the court on a very limited certificate issued by the district court  
24 under Rule 54(b) . . . . This ruling is not to be interpreted as involving anything other than the  
25 one issue presented.”).

26 Further, waiting to seek Rule 54(b) certification of final judgment until after the Court  
27 issues decisions on the seven remaining summary judgment motions would not necessarily  
28 preclude MARTA from re-joining its co-plaintiffs at trial in its remand jurisdiction. If the

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1 Court denies MARTA’s present motion, MARTA could still move for Rule 54(b)  
2 certification after all relevant summary judgment decisions have been issued, but before  
3 moving for remand. Moreover, in light of the numerous obstacles that may prevent MARTA  
4 from re-joining its co-plaintiffs at trial, including the unlikelihood that MARTA will succeed  
5 on appeal, the extended and uncertain timeframe for the Ninth Circuit to issue a decision on  
6 that appeal, and the uncertain timeframe as to when trial would be set in MARTA’s remand  
7 jurisdiction, the Eastern District of New York, it is unlikely that deferring entry of final  
8 judgment until after the remaining summary judgment motions are resolved will be what  
9 prevents MARTA from re-joining it co-plaintiffs. *See* MARTA Mot., at 7-8 (describing the  
10 timeframe for the Ninth Circuit to issue a decision after receiving a notice of appeal, and the  
11 logistics of setting a trial date in the Eastern District of New York).

12 For these reasons, MARTA’s request for certification of final judgment pursuant to  
13 Rule 54(b) should be denied.

14 Respectfully submitted,  
15 Dated: September 6, 2016 **WHITE & CASE** LLP

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**ATTESTATION**

I, Lucius B. Lau, am the ECF user whose ID and password are being used to file the above Defendants' Opposition To Motion Of Plaintiff MARTA Cooperative Of America For Rule 54(b) Certification Of Final Judgment As To MARTA. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that each listed counsel above has concurred in this filing.

/s/ Lucius B. Lau  
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**CERTIFICATE OF SERVICE**

On September 6, 2016, I caused a copy of the “DEFENDANTS’ OPPOSITION TO MOTION OF PLAINTIFF MARTA COOPERATIVE OF AMERICA FOR RULE 54(b) CERTIFICATION OF FINAL JUDGMENT AS TO MARTA” to be electronically filed via the Court’s Electronic Case Filing System, which constitutes service in this action pursuant to the Court’s order of September 29, 2008.

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