IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT WHEELING

Patricia S. Hoskins and Mary Jako,
Clarence Rulong,
William R. Standiford and Linda Standiford, and
Lewis A. Aston and Cathy Aston,
individually and as the representatives
of The Class of All Similarly
Situated Individuals,

Plaintiffs,

v.

CIVIL ACTION NO. 5:12-CV-78
Honorable John Preston Bailey

AB Resources, LLC, a Delaware
Limited Liability Company,

Defendant.

MEMORANDUM ORDER

Came the plaintiffs in this putative class action, jointly with the defendant AB Resources, LLC, and moved this Court to express its willingness to grant their joint motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b) for the limited purpose of considering the parties' joint motion for conditional certification of a settlement class and preliminary approval of a class action settlement. The Court may consider this motion by virtue of an order entered by the Fourth Circuit on December 18, 2013, which lifted a stay of the proceedings in this Court for the limited purpose of consideration of the joint motion for relief from judgment pursuant to Rule 60(b).

The Rule 60(b) motion was made under authority from *Fobian v. Storage Technology Corp.,* 164 F.3d 887 (4th Cir. 1999). In *Fobian,* the Fourth Circuit outlined the procedure for a district court's consideration of a Rule 60(b) motion for relief from judgment when an appeal from that judgment is pending:

> In sum, when a Rule 60(b) motion is filed while a judgment is on appeal, the district court has jurisdiction to entertain the motion, and should do so promptly. If the district court determines that the motion is meritless, as experience demonstrates is often the case, the court should deny the motion forthwith; any appeal from the denial can be consolidated with the appeal from the underlying order. *If the district court is inclined to grant the motion, it should issue a short memorandum so stating. The movant can then request a limited remand from this court for that purpose.* By saving judicial resources and avoiding expense and delay, this procedure accords with the overarching mandate in the Federal Rules of Civil Procedure that the rules "shall be construed to secure the just, speedy, and inexpensive determination of every action." Fed.R.Civ.P. 1; *see Ferrell v. Trailmobile, Inc.*, 223 F.2d 697, 699 (5th Cir.1955).

Fobian, 164 F.3d at 891.

While this Court previously entered a remand order on October 17, 2012, that order is currently on appeal in the Fourth Circuit. Following a status conference in this Court to discuss the pending Rule 60(b) motion held on January 23, 2014, the plaintiffs conceded that taking into account the allegations of the complaint as a whole, their good faith settlement demands, and the ultimate total settlement value of the case including the release of claims, the amount in controversy exceeds $5,000,000.00, exclusive of interest and costs. The Court understands that the issue of subject matter jurisdiction rests in the Fourth Circuit and that this Court's acceptance of jurisdiction for the limited purpose of granting relief from judgment to determine whether the parties' class action settlement should be approved would "preserve[] judicial resources and eliminate[] unnecessary expense and delay, and therefore is surely in 'aid of the appeal.'" *Fobian,* 164 F.3d at 890. With these principles in mind, this Court affirmatively states that it is inclined to grant the joint motion for relief from judgment and further to consider the joint motion for conditional certification of a settlement class and preliminary approval of a class action settlement in the event that the Fourth Circuit determines that this Court may

properly exercise jurisdiction over this matter and the Fourth Circuit remands the action for that purpose.

The Clerk is hereby directed to transmit copies of this memorandum order to the Clerk of the Fourth Circuit and to counsel of record herein.

Dated 2-26-2014

JOHN PRESTON BAILEY
CHIEF UNITED STATES DISTRICT JUDGE

Submitted this _____ day of February, 2014.

/s/Karen Kahle
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