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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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|------------------------------|---|-----------------------------------|
| GLOBAL ACQUISITIONS NETWORK, |) | Case No. CV 12-08758 DDP (CWx) |
| a Wyoming corporation; SHAWN |) | |
| CORNEILLE, an individual, |) | ORDER DENYING MOTION FOR ENTRY OF |
| |) | JUDGMENT PURSUANT TO RULE 54(b) |
| Plaintiffs, |) | |
| |) | [Docket No. 75] |
| v. |) | |
| |) | |
| BANK OF AMERICA CORPORATION, |) | |
| a Delaware corporation; |) | |
| ORIANA CAPITAL PARTNERS,LLC, |) | |
| a Connecticut limited |) | |
| liability company; ZANCO, a |) | |
| company of unknown business |) | |
| form, HLB FINANCIAL, LLC, a |) | |
| company of unknown form; W/C |) | |
| INVESTMETN HOLDINGS INC., a |) | |
| Florida corporatin; |) | |
| DEXTER |) | |
| CHAPPELL, an individual; |) | |
| VALERIE CHAPPELL, an |) | |
| individual; JON LEARY, an |) | |
| individual; GLEN McINERNEY |) | |
| also known as LARRY BENNETT, |) | |
| an individual; CHRISTOPHER |) | |
| RAY ZANCO, an individual; |) | |
| BERNARD WOODSON, an |) | |
| individual, |) | |
| |) | |
| Defendants. |) | |
| |) | |
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1 **I. Background**

2 Plaintiffs have sued Bank of America, Oriana Capital Partners,
3 LLC, Dexter Chappell, and Jon Lear. (See generally First Amended
4 Complaint ("FAC").) Plaintiffs asserted seven causes of action
5 against Bank of America: negligence, breach of fiduciary duty,
6 fraudulent inducement, fraud, intentional misrepresentation,
7 negligent misrepresentation, and conspiracy. All of these seven
8 causes of action are also asserted against Jon Leary, Dexter
9 Chappell, and Oriana Capital Partners, LLC. (FAC ¶¶ 91-98, 99-109,
10 115-151.)

11 The factual allegations in this action are presented at length
12 in the court's Order Granting Defendants' Motion to Dismiss With
13 Leave to Amend Certain Claims (the "Order"), dated February 19,
14 2013. Because the basic allegations of the FAC are identical, the
15 court will not recite them again. The Court dismissed the FAC's
16 claims against Bank of America on June 6, 2013. Plaintiffs have
17 attempted to appeal that order. In order to continue with their
18 appeal, Plaintiffs state, this Court would need to enter final
19 judgment on Plaintiffs' case against Bank of America. Presently
20 before the Court is Plaintiffs' Motion for Entry of Separate
21 Judgment ("Motion").

22 **II. Legal Standard**

23 "When an action presents more than one claim for relief ...
24 the court may direct entry of a final judgment as to one or more,
25 but fewer than all, claims or parties only if the court expressly
26 determines that there is no just reason for delay." Fed.R.Civ.P.
27 54(b). A district court has discretion when deciding whether to
28

1 enter judgment under Rule 54(b). See Curtiss-Wright Corp. v. Gen.
2 Elec. Co., 446 U.S. 1, 8 (1980).

3 A district court must first determine that there "is a
4 decision upon a cognizable claim for relief, and it must be 'final'
5 in the sense that it is 'an ultimate disposition of an individual
6 claim entered in the course of a multiple claims action.'" Id. at
7 7 (quoting Sears, Roebuck & Co. v. Mackey, 351 U.S. 427, 436
8 (1956)). Next, "the district court must go on to determine whether
9 there is any just reason for delay." Id. at 8. In making this
10 determination, a district court should "consider such factors as
11 whether the claims under review were separable from the others
12 remaining to be adjudicated and whether the nature of the claims
13 already determined was such that no appellate court would have to
14 decide the same issues more than once even if there were subsequent
15 appeals." Id.

16 "Whether a final decision on a claim is ready for appeal is a
17 different inquiry from the equities involved, for consideration of
18 judicial administrative interests is necessary to assure that
19 application of the Rule effectively preserves the historic federal
20 policy against piecemeal appeals." Wood v. GCC Bend, LLC, 422 F.3d
21 873, 878 (9th Cir. (2005) (internal quotation marks and citations
22 omitted).

23 **III. Analysis**

24 Because Plaintiffs' claims against Bank of America are not
25 separable from Plaintiffs' other claims, a separate judgment is
26 improper in this case. The Court must consider judicial resources
27 in deciding whether to enter a separate judgment, and the more
28 factual issues overlap between the parties, the more likely a

1 separate judgment is to be inappropriate. Wood, 422 F.3d at 882.

2 As the Ninth Circuit stated:

3 The greater the overlap the greater the chance that this
4 court will have to revisit the same facts-spun only
5 slightly differently-in a successive appeal. The
6 caseload of this court is already huge. More than
7 fifteen thousand appeals were filed in the last year. We
8 cannot afford the luxury of reviewing the same set of
9 facts in a routine case more than once without a
10 seriously important reason.

11 Id. Here the factual overlap is substantial. Several other
12 remaining parties were also sued under the same claims as Bank of
13 America. The FAC's allegations indicate a substantial amount of
14 factual overlap between Plaintiffs' claims against Bank of America
15 and other Defendants, as the following except from the FAC
16 exemplifies:

17 "As alleged above, BOA [Bank of America] Bank
18 Officer/John Doe I, assured Plaintiffs in the 28 February
19 9, 2012 telephone conference call that: (1) Defendants
20 OCP [Oriana Capital Partners] and Dexter Chappell had
21 more than sufficient funds available in their respective
22 bank accounts with BOA to fund and pay themselves the NRL
23 Plaintiffs were seeking; and (2) Defendants OCP and
24 Dexter Chappell had been involved with and had experience
25 in similar past CMO transactions. BOA Bank Officer/John
26 Doe 1 knew or should have known Plaintiffs would
27 reasonably rely on the assurances given by him, and based
28 on them, would entrust the custody and control of the GAN
29 [Global Acquisition Network] CMOs [Collateralized
30 Mortgage Obligations] to Defendants OCP, Dexter Chappell
31 and [Jon] Leary. However, BOA Bank Officer/John Doe 1
32 negligently made these representations and assurances,
33 since Defendants OCP and Dexter Chappell breached the
34 NRLA, failed to timely fund and pay the NRL to
35 Plaintiffs, and failed to timely return the GAN CMOs to
36 Plaintiffs, after Defendants breached the NRLA and
37 Plaintiffs demanded the return of the GAN CMOs."

38 (FAC ¶ 94.) The factual overlap between the claims against Bank of
39 American and other Defendants suggests that this Motion should be
40 denied.

1 It is of no moment that the clerk has entered default against
2 several of Bank of America's co-defendants and that "Plaintiffs'
3 [sic] reasonably believe that given the past evasive conduct, and
4 responsiveness of this Defendant, Dexter Chappell will not respond
5 to the [FAC]." (Reply Brief at 2 (citing no evidence.) Plaintiffs
6 do not know what Defendant Chappell will do, and the Court has not
7 entered a final judgment against the defaulting Defendants.

8 Finally, Plaintiffs \$450 appellate filing fee, which
9 Plaintiffs claim will be lost if this Motion is denied, is not a
10 reason to grant this motion. If Plaintiffs did not want to risk
11 forfeiting their fee, they should have filed the instant Motion
12 before appealing.

13 **IV. Conclusion**

14 For the reasons stated above, the Court DENIES the Motion.

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16 IT IS SO ORDERED.

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19 Dated: September 13, 2013


DEAN D. PREGERSON
United States District Judge

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