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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

DAIRY AMERICA, INC.,

CASE NO. CV F 07-0537 LJO SMS

Plaintiff,

**ORDER ON PLAINTIFF'S MOTION FOR
ENTRY OF FINAL JUDGMENT**

vs.

(Doc. 115.)

NEW YORK MARINE AND GENERAL
INSURANCE COMPANY, et. al,

Defendants.

_____ /

This Court's June 11, 2009 Summary Judgment Decision ("decision") granted defendants New York Marine and General Insurance Company ("NY Marine") and Crump Insurance Services dba Southern Marine & Aviation Underwriters, Inc. ("Southern Marine") summary judgment on plaintiff Dairy America, Inc.'s ("Dairy America's") breach of insurance contract claim. The decision directed the clerk to enter judgment in favor of NY Marine and Southern Marine and against Dairy America. On June 11, 2009, the clerk entered a judgment ("judgment") **"IN ACCORDANCE WITH THE COURT'S ORDER OF 6/11/09."** (Uppercase and bold in original.)

On September 24, 2009, Dairy American filed its motion for entry of F.R.Civ.P. 54(b) final judgment as to the decision. This Court surmises that Dairy America misconstrues the judgment as not final since neither the decision nor judgment expressly indicated there was no just reason to delay entry of judgment for appeal. *See* F.R.Civ.P. 54(b). To the extent there is any question, the judgment is final under F.R.Civ.P. 54(b) as to Dairy America, NY Marine and Southern Marine because the decision

1 disposed of all claims among those parties. Entry of the judgment itself indicated “there is no just reason
2 for delay” to enter judgment for appeal. As such, this Court DENIES as moot Dairy America’s motion
3 in that the June 11, 2009 judgment is final for F.R.Civ.P. 54(b) purposes and this Court found no just
4 reason to delay appeal of the judgment. This Court VACATES the October 27, 2009 hearing on Dairy
5 America’s motion for entry of final judgment, and NY Marine and Southern Marine need to respond to
6 Dairy America’s motion.

7 IT IS SO ORDERED.

8 **Dated: September 25, 2009**

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE

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