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4 UNITED STATES DISTRICT COURT
5 EASTERN DISTRICT OF CALIFORNIA
6 FRESNO DIVISION

7 MARY AMARAL, JOE AMARAL and
8 DANNY AMARAL,

9 Plaintiffs,

10 v.

11 WACHOVIA MORTGAGE, FSB;
12 CARRINGTON MORTGAGE
13 SERVICES, LLC; and DOES 1-50,
14 inclusive,

15 Defendants.

CASE NO. 09-CV-00937 OWW-GSA

**ORDER ON DEFENDANTS
CARRINGTON MORTGAGE
SERVICES, LLC AND WACHOVIA
MORTGAGE, FSB'S MOTIONS TO
DISMISS, WACHOVIA'S MOTION
TO STRIKE, AND PLAINTIFFS'
MOTION TO FILE SECOND
AMENDED COMPLAINT**

16 On November 15, 2010, defendant Carrington Mortgage Services, LLC
17 ("Carrington"), and Wachovia Mortgage, FSB's ("Wachovia") motions to dismiss the first
18 amended complaint, Wachovia's motion to strike, and Plaintiffs Mary Amaral, Joe
19 Amaral and Danny Amaral's motion to file a second amended complaint came on
20 regularly for hearing before the Honorable Oliver W. Wanger.

21 The Court, having read and considered the parties' various motions, the
22 requests for judicial notice, all opposition and reply papers:

23 **IT IS THEREFORE ORDERED THAT:**

24 1.) The Court finds that the First Amended Complaint fails to allege facts
25 sufficient to support a causal link between Carrington's alleged failure to provide notice
26 and Plaintiffs' alleged damages. Accordingly, Plaintiffs' RESPA claim against Defendant
27 Carrington is DISMISSED WITH PREJUDICE;

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DISMISS, WACHOVIA'S MOTION TO STRIKE,
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2.) The Court finds that the First Amended Complaint fails to allege that Plaintiffs suffered damages as a result of Carrington or Wachovia's alleged statutory violation. Accordingly, Plaintiffs' claims under California Civil Code section 2937 against Defendants Carrington and Wachovia are **DISMISSED WITH PREJUDICE**;

3.) The Court finds that the fraud and conversion claims in the First Amended Complaint are preempted by HOLA. Accordingly, Plaintiffs' fraud and conversion claims against Wachovia are **DISMISSED WITH PREJUDICE**;

4.) The Court finds that Plaintiffs' proposed state law claims against Wachovia are preempted by HOLA and amendment to add such claims would be futile. The Court further finds Plaintiffs' motion to amend to include Fremont Reorganizing Corporation as a defendant under Plaintiffs' RESPA and California Civil Code Section 2937 claims would be futile. Plaintiffs' motion to amend the First Amended Complaint is **GRANTED** with respect to MTC and Vasquez only and **DENIED** with respect to all other requests. Plaintiffs must comply with Federal Rule of Civil Procedure 9(b) where applicable;

5.) Wachovia's motion to strike is **DENIED AS MOOT**; and

6.) Plaintiffs shall file an amended complaint on or before February 22, 2011. Defendants shall file a response within ten (10) days of service of the amended complaint.

IT IS SO ORDERED.

DATED: March 1, 2011

/s/ OLIVER W. WANGER
UNITED STATES DISTRICT JUDGE