

1 UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF CALIFORNIA  
3

4 MARY AMARAL, et al.,  
5 Plaintiffs,  
6 v.  
7 WACHOVIA MORTGAGE  
8 CORPORATION, et al.,  
9 Defendants.

1:09-cv-00937 OWW GSA  
ORDER RE STATUS OF APPEAL  
AND CLAIMS AGAINST  
REMAINING DEFENDANT

10 This is a mortgage fraud case concerning Plaintiffs'  
11 residence located in Lemoore, California. This case,  
12 originally filed in Kings County Superior Court, was removed  
13 to the Eastern District of California on October 1, 2009.  
14 Doc. 2. The original complaint named as Defendants Wachovia  
15 Mortgage Corporation ("Wachovia"), Carrington Mortgage  
16 Services LLC ("Carrington"), and Does 1-50. Doc. 24. After  
17 an initial round of dispositive motions, the complaint was  
18 dismissed with leave to amend. Docs. 43 & 60.

19 Plaintiffs' first amended complaint, again naming  
20 Wachovia and Carrington, Doc. 73, was challenged by a second  
21 round of dispositive motions. All claims against Wachovia  
22 and Carrington were dismissed with prejudice. Doc. 110.  
23 However, Plaintiffs were granted leave to amend to include  
24 claims against additional Defendants, "MTC and Vasquez." *Id.*  
25 at 12.

26 Plaintiffs' second amended complaint ("SAC"), filed  
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1 February 22, 2011, asserts claims of fraud and conversion  
2 against Heather Vasquez. Doc. 115. Ms. Vasquez was served  
3 on May 4, 2011, Doc. 129, but never responded to the SAC.  
4 Default was entered against her June 17, 2011. Doc. 134.  
5 Since then, Plaintiffs have taken no steps to secure default  
6 judgment or otherwise proceed against Ms. Vasquez.  
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8 On March 9, 2011, Plaintiffs filed a notice of appeal  
9 from the order dismissing with prejudice all claims against  
10 Carrington and Wachovia. Doc. 120. That appeal has not yet  
11 been processed. Judgment has not yet been entered in favor  
12 of Wachovia or Carrington because claims are still pending  
13 against Ms. Vasquez. Federal Rule of Civil Procedure 54(b)  
14 prohibits entry of judgment against "one or more, but fewer  
15 than all, claims or parties" unless the "court expressly  
16 determines that there is no just reason for delay." The  
17 power to make such a determination "is largely discretionary,  
18 to be exercised in light of judicial administrative interests  
19 as well as the equities involved, and giving due weight to  
20 the historic federal policy against piecemeal appeals."  
21 *Reiter v. Cooper*, 507 U.S. 258, 265 (1993) (internal  
22 citations and quotations omitted). Rule 54(b) should be  
23 applied using a "pragmatic approach focusing on severability  
24 and efficient judicial administration." *Continental*  
25 *Airlines, Inc. v. Goodyear Tire & Rubber Co.*, 819 F.2d 1519,  
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1 1525 (9th Cir. 1987). Certification under Rule 54(b) may be  
2 appropriate where the matters disposed of are "sufficiently  
3 severable factually and legally from the remaining matters,"  
4 and could "completely extinguish [ ] ... liability." *Id.*

5 Here, the interests of judicial efficiency do not favor a  
6 separate appeal. Default has been entered against the  
7 remaining defendant. Pursuing default judgment or otherwise  
8 proceed with the remaining claims against Ms. Vasquez should  
9 not be an overly time-consuming process. Under the  
10 circumstances, efficient judicial administration calls for  
11 resolution of the entire case before an appeal is permitted.

12 Plaintiffs must take appropriate action to prosecute the  
13 remaining claims against Ms. Vasquez within thirty (30) days  
14 of service of this order. Failure to do so will result in  
15 dismissal for lack of prosecution. Due to the pending  
16 retirement of the assigned district judge, the parties will  
17 shortly receive notice of reassignment of this case. That  
18 notice shall not alter the deadline set herein.

19 SO ORDERED

20 Dated: September 22, 2011

21 /s/ Oliver W. Wanger  
22 United States District Judge  
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