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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

PATRICIA A. SIGALA,  
Plaintiff,  
v.  
CARMAX AUTO SUPERSTORES, LLC,  
Defendant.

Case No. 1:14 -cv-01451-SAB  
ORDER DENYING PLAINTIFF’S MOTION  
TO VACATE THE JUDGMENT DUE TO  
LACK OF JURISDICTION AND  
VACATING SEPTEMBER 16, 2015  
HEARING  
(ECF No. 45, 46)

Plaintiff Patricia A. Sigala filed this action on August 7, 2014 in the Superior Court of California, County of Fresno against Defendant CarMax Auto Superstores California LLC (hereafter “CarMax”). Defendant removed the action to the Eastern District on September 17, 2014. (ECF No. 1.) Defendant filed several motions to dismiss which were granted. On January 30, 2015, judgment was entered in favor of Defendant CarMax Auto Superstores, LLC. (ECF No. 30.) Plaintiff filed a notice of appeal on February 25, 2015 which was processed to the Ninth Circuit. (ECF Nos. 33, 34.)

On June 29, 2015, Plaintiff filed a motion for an indicative ruling which was denied on July 31, 2015. (ECF Nos. 41, 44.) On this same date, Plaintiff filed motion to vacate the judgment. (ECF No. 45.) On August 3, 2015, Plaintiff filed an ex-parte application for an order shortening time to hear the motion. (ECF No. 46.)

As an appeal is pending with respect to the judgment in this action, this Court lacks

1 jurisdiction to consider Plaintiff's motion to vacate the judgment. "The filing of a notice of  
2 appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals  
3 and divests the district court of its control over those aspects of the case involved in the appeal."  
4 Griggs v. Provident Consumer Disc. Co., 459 U.S. 56, 58 (1982). This rule of exclusive  
5 appellate jurisdiction is not absolute. Masalosalo by Masalosalo v. Stonewall Ins. Co., 718 F.2d  
6 955, 956 (9th Cir. 1983). For example, the Ninth Circuit has held that the district court retains  
7 jurisdiction to decide motions for attorney fees or modification of preliminary injunctions while  
8 an appeal is proceeding. Natural Res. Def. Council, Inc. v. Southwest Marine Inc., 242 F.3d  
9 1163, 1166 (9th Cir. 2001); Masalosalo, 718 F.2d at 956.

10 The purpose of the rule is to avoid confusion and the inefficiency of having two courts  
11 consider the same issues simultaneously. Masalosalo, 718 F.2d at 956. Although the Court  
12 retains jurisdiction over ancillary matters and can issue orders to preserve the status quo in the  
13 action, it cannot adjudicate anew the merits or materially alter the status of the case while it is on  
14 appeal. Natural Res. Def. Council, Inc., 242 F.3d at 1166.

15 In this instance, Plaintiff is seeking an order vacating the judgment in this action while an  
16 appeal of the judgment is pending before the Ninth Circuit. For this reason, this Court lacks  
17 jurisdiction over the pending motion.

18 Accordingly, Plaintiff's motion to vacate the judgment is DENIED for lack of  
19 jurisdiction; and Plaintiff's ex-parte motion for an order shortening time is DENIED as moot.  
20 The hearing set for September 16, 2015, at 10:00 a.m. in Courtroom 9 is VACATED and the  
21 parties shall not appear at that time.

22 IT IS SO ORDERED.

23 Dated: August 3, 2015

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26 UNITED STATES MAGISTRATE JUDGE  
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