

DEC 16 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

and

MARVIN G. CALHOUN, DBA
Calhoun's Hawthorne Gardens, LLC,

Intervenor - Appellant,

v.

CAPITAL PACIFIC BANK and
CERTAIN HG TICS,

Intervenors - Appellees,

and

SUNWEST MGMT, INC.; et al.,

Defendants.

No. 09-36003

D.C. No. 6:09-cv-06056-HO

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Michael R. Hogan, District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and THOMAS, Circuit Judges.

Intervenor Marvin G. Calhoun, dba Calhoun's Hawthorne Gardens, LLC, appeals pro se from the district court's order directing him to execute a settlement agreement in accordance with a prior settlement between Calhoun and other parties. We dismiss for lack of appellate jurisdiction.

We have "jurisdiction of appeals from all final decisions of the district courts . . ." under 28 U.S.C. § 1291. The record indicates that the order appealed from is not a final order, rather, the underlying action is in mediation and judgment has not been entered. Moreover, the district court did not certify the matter for immediate appeal. *See* F. R. Civ. P. 54(b). In the absence of such an order, "any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties." *Id.*; *see Chacon v. Babcock*, 640 F.2d 221, 222 (9th Cir. 1981).

All pending motions are denied as moot.

DISMISSED.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

