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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>B. SPAIN,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p>v.</p> <p>EMC MORTGAGE CORPORATION, Affecting Interstate Commerce; et al.,</p> <p style="text-align: center;">Defendants - Appellees.</p>

No. 10-17559

D.C. No. 2:07-cv-00308-RCB

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Robert C. Broomfield, District Judge, Presiding

Submitted November 13, 2012**

Before: CANBY, TROTT, and W. FLETCHER, Circuit Judges.

B. Spain appeals pro se from the district court’s order imposing a pre-filing restriction on him as a vexatious litigant. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *De Long v. Hennessey*, 912 F.2d

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

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

1144, 1146 (9th Cir. 1990). We affirm in part and dismiss in part.

The district court did not abuse its discretion by entering a pre-filing order against Spain after giving him notice and an opportunity to be heard, developing an adequate record for review, making findings regarding Spain's frivolous and harassing litigation history, and tailoring the restriction narrowly. *See id.* at 1147-48 (explaining factors for entry of pre-filing order).

We lack jurisdiction to review the district court's judgment dismissing Spain's action because Spain failed to file a timely notice of appeal from that decision. *See Fed. R. App. P. 4(a)(1), (4)* (notice of appeal must be filed within thirty days of order disposing of timely post-judgment tolling motion).

Accordingly, we dismiss that portion of the appeal.

Defendants' request for attorney's fees is denied without prejudice to a separately filed motion on the issue. *See Fed. R. App. P. 38.*

AFFIRMED in part; DISMISSED in part.