

1 certificate of appealability, and judgment was entered the same day. (Doc. Nos. 47, 48). As of
2 the date of this Order, the Clerk of Court has not processed the Notice of Appeal.

3 A magistrate judge’s findings and recommendations are not an appealable final order
4 absent consent from the parties under 28 U.S.C. § 636(c). *See Serine v. Peterson*, 989 F.2d 371,
5 372-73 (9th Cir. 1993). However, the Supreme Court has “has defined the circumstances under
6 which a premature appeal qualifies as a timely appeal” under Fed. R. App. P. 4(a)(2) as it “was
7 intended to protect the unskilled litigant who files a notice of appeal from a decision that he
8 reasonably but mistakenly believes to be a final judgment, while failing to file a notice of appeal
9 from the actual final judgment.” *Kennedy v. Applause, Inc.*, 90 F.3d 1477, 1482-83 (9th Cir.
10 1996) (citing *FirsTier Mortgage Co. v. Investors Mortgage Ins. Co.*, 498 U.S. 269, 276 (1991)
11 (“In our view, Rule 4(a)(2) permits a notice of appeal from a nonfinal decision to operate as a
12 notice of appeal from the final judgment only when a district court announces a decision that
13 *would be* appealable if immediately followed by the entry of judgment.”)).

14 Here, Petitioner filed the Notice of Appeal prematurely, as it was submitted before the
15 magistrate’s Findings and Recommendations were adopted by the Court. (Doc. No. 46).
16 However, the Notice of Appeal indicates Petitioner was appealing the “entry of judgment”
17 entered on June 29, 2022— the date the Findings and Recommendations were issued. (Doc. No.
18 44, 46). In light of Plaintiff’s pro se status, the Court presumes he is an unskilled litigant who
19 filed the Notice of Appeal under the “mistaken belief” that the Findings and Recommendations
20 were an appealable final judgment. *See Boag v. MacDougall*, 454 U.S. 364, 365 (1982)
21 (instructing federal courts to liberally construe the “inartful pleading[s]” of pro se litigants).

22 Whether Petitioner’s Notice of Appeal was filed prematurely or falls within the ambit of
23 Fed. R. App. P. 4(a)(2) is properly for the Court of Appeals. Thus, the Court will direct the Clerk
24 of Court to process the appeal and forward Petitioner’s motion to proceed on appeal to the Ninth
25 Circuit for handling as they deem appropriate.

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27 Accordingly, it is **ORDERED**:

28 The Clerk of Court shall process the Notice of Appeal (Doc. No. 46) and forward

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Petitioner’s Motion to Proceed *In Forma Pauperis* (Doc. No. 45) to the Ninth Circuit and terminate the Motion from the Court’s docket.

Dated: January 17, 2023


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE