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28IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GRACE MILES,

No. C-08-4375 MMC

Appellant,

**ORDER RE: NOTICE OF APPEAL**

v.

ROYCE MAKISHIMA, et al.,

Appellees.  

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On November 21, 2008 appellant Grace Miles (“Miles”) filed a notice of appeal, in which she purports to appeal two orders entered by the Court on October 22, 2008. As only one order was entered by the Court in the instant action on said date, an order denying Miles’s “Corrected Request for Direct Appeal Certification,” the Court construes the notice of appeal, as applied to the instant action,<sup>1</sup> as pertaining only to such order.<sup>2</sup>

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<sup>1</sup>By separate order filed concurrently herewith, the Court has addressed the notice of appeal as it applies to a related action, No. 08-4091 MMC.

<sup>2</sup>In light of the denial of certification, the deadline for Miles to file her opening brief in the instant action remained as initially set, November 6, 2008. In the related case, No. C-08-4091 MMC, the Court granted Miles an extension to December 5, 2008, to file her opening brief in that action. Although Miles did not request an extension in the instant action, such omission may have been inadvertent. Accordingly, the deadline by which Miles shall serve and file her opening brief in the instant action is extended to December 5, 2008. Defendants shall serve and file their brief no later than twenty days after service of Miles’s brief. Miles shall serve and file her reply brief no later than ten days after service of defendants’ brief.

1           “Where the deficiency in a notice of appeal, by reason of untimeliness, lack of  
2 essential recitals, or references to a non-appealable order, is clear to the district court, it  
3 may disregard the purported notice of appeal and proceed with the case, knowing that it  
4 has not been deprived of jurisdiction.” Ruby v. Sec’y of the U.S. Navy, 365 F.2d 385, 389  
5 (9th Cir. 1966). Here, Miles purports to appeal from an order that clearly is non-  
6 appealable. See Evans v. Woodford, No. 07-16195, 2007 WL 2709981, at \*1 (9th Cir.  
7 Sept. 13, 2007) (holding order denying motion to certify prior order for interlocutory appeal  
8 not appealable); see also Oppenheimer v. L.A. County Flood Control Dist., 453 F.2d 895,  
9 895 (9th Cir. 1972) (holding interlocutory orders not appealable unless certified for appeal  
10 by district judge).

11           Accordingly, Miles shall file her opening brief no later than December 5, 2008.

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13           **IT IS SO ORDERED.**

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15           Dated: December 2, 2008

  
MAXINE M. CHESNEY  
United States District Judge

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