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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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8 VEANA G. SILVA-PEARSON,

No. C 11-01491 SI

9 Plaintiff,

**ORDER CONSTRUING PLAINTIFF'S
AUGUST 12, 2011 LETTER AS NOTICE
OF APPEAL**

10 v.

11 BAC HOME LOANS SERVICING, LP, et al.,

12 Defendants.
13 _____/

14 On July 5, 2011 this Court granted defendant BAC Home Loan Servicing's motion to dismiss
15 this case. The Court found, that as a matter of law, plaintiff could not maintain her action asserting BAC
16 breached plaintiff's loan modification agreement where plaintiff's own evidence demonstrated that she
17 did not make the modification payments on time and in the correct amounts. *See* Docket No. 27.
18 Judgment was entered and copies of the Court's order and judgment were mailed to Ms. Pearson on July
19 7, 2011. Docket Nos. 27 & 28 (Attachment 1, proofs of service).

20 On August 12, 2011, the Court received a letter from Ms. Pearson, asserting that she did not
21 receive notice of the Court's order and judgment until July 26, 2011. Ms. Pearson requested that the
22 court "give me an appeal on your ruling and give me my day in court." Docket No. 31 at 2.

23 The Court found good cause and construed Ms. Pearson's letter as a request to extend her time
24 to file a notice of appeal, and gave Ms. Pearson additional time to file her notice of appeal. *See* Docket
25 No. 32.¹ On September 9, 2011, Ms. Pearson again wrote the Court seeking additional time to file a
26 notice of appeal in light of significant medical conditions and hospitalizations. Docket No. 33.

27 _____
28 ¹ To the extent the August 12, 2011, pleading could be construed as a motion for
reconsideration, that motion was DENIED. *Id.*

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The Court finds that it is appropriate to construe Ms. Pearson's August 12, 2011 pleading – Docket No. 31 – as a request for an extension of time to file a notice of appeal *and* her actual notice of appeal. Therefore, the Court holds that Ms. Pearson filed her notice of appeal on August 12, 2011.

The clerk shall process Ms. Pearson's notice of appeal as if timely filed on August 12, 2011.

Unless Ms. Pearson moves for and is granted permission to pursue her appeal *in forma pauperis* (*see* Federal Rule of Appellate Procedure 24(a), requiring motion and affidavit to be filed in District Court), Ms. Pearson will have to pay the \$455.00 filing fee for her appeal to the Ninth Circuit. Ms. Pearson is warned that if she does not pay the filing fee, her appeal will be dismissed.

IT IS SO ORDERED.

Dated: September 9, 2011



SUSAN ILLSTON
United States District Judge