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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

RUBY ROBERTS,

Plaintiff and Appellant,

v.

WELLS FARGO, N.A. et al.,

Defendants and Respondents.

B260885

(Los Angeles County
Super. Ct. No. YC068903)

APPEAL from a judgment of the Superior Court of Los Angeles County, Stuart M. Rice, Judge. Dismissed.

Stephen R. Golden & Associates and Timothy L. McCandless for Plaintiff and Appellant.

Anglin Flewelling Rasmussen Campbell & Trytten, Robert Collings Little and Robert A. Bailey for Defendants and Respondents.

Plaintiff, Ruby Roberts, purports to appeal from an August 11, 2014 demurrer dismissal. On April 7, 2015, it came to our attention that the notice of appeal may not have been timely filed. We have a duty to raise issues concerning our own jurisdiction on our own motion. (*Jennings v. Marralle* (1994) 8 Cal.4th 121, 126; *Olson v. Cory* (1983) 35 Cal.3d 390, 398.) As a result, we issued an order to show cause re: dismissal of the appeal. The responses to the order to show cause contained allegations concerning service of the notice of entry of judgment. Thus, we assigned a referee, the Honorable Stuart M. Rice, to make findings on the issue of when the notice of entry of judgment was served. (See *Ebensteiner Co., Inc. v. Chadmar Group* (2006) 143 Cal.App.4th 1174, 1178; *Glasser v. Glasser* (1998) 64 Cal.App.4th 1004, 1008-1009.) We have reviewed Judge Rice's report filed June 8, 2015, and order dismissal of the appeal.

The evidence indicates the notice of appeal was filed more than 60 days after service of the notice of entry of judgment thereby violating California Rules of Court, rule 8.104(a)(1)(B). (*Filipescu v. California Housing Finance Agency* (1995) 41 Cal.App.4th 738, 740-741; *Casado v. Sedgwick, Detert, Moran & Arnold* (1994) 22 Cal.App.4th 1284, 1285-1286.) In response to the order to show cause, plaintiff's counsel asserted, but not under oath, that the notice of entry of judgment was only served via e-mail. The proof of service attached to the notice of entry of judgment indicates the document was served via the United States Postal Service. Judge Rice found that the notice of entry was served as set forth in the under oath proof of service. We adopt Judge Rice's comprehensive findings. Hence, the appeal must be dismissed. (*Adoption of Alexander S.* (1988) 44 Cal.3d 857, 862-864; *Hollister Convalescent Hosp. Inc. v. Rico* (1975) 15 Cal.3d 660, 674.)

The appeal is dismissed. Defendant, Wells Fargo Bank, N.A., shall recover its costs incurred on appeal from plaintiff, Ruby Roberts.

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TURNER, P. J.

We concur:

KRIEGLER, J.

KIRSCHNER, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.