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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

JORGE ARMANDO DIAZ,)	No. CV-F-08-912 OWW/SMS
)	
)	ORDER PURSUANT TO NINTH
)	CIRCUIT REMAND GRANTING
Plaintiff,)	PLAINTIFF'S MOTION FOR
)	EXTENSION OF TIME TO FILE
vs.)	NOTICE OF APPEAL AND
)	DIRECTING CLERK OF COURT TO
)	SERVE ORDER ON THE NINTH
K.W. PROUTY, et al.,)	CIRCUIT
)	
)	
Defendants.)	
)	
)	

The Ninth Circuit remanded this action so that the Court may rule on Plaintiff's motion for extension of time to file a notice of appeal from the Judgment entered against him on May 13, 2009.

A notice of appeal in a civil action must be filed with the District Court within 30 days after the judgment is entered. Rule 4(a)(1)(A), Federal Rules of Appellate Procedure. A motion for extension of time to file the notice of appeal must be filed within 30 days after the time prescribed in Rule 4(a)(1)(A) expires. Rule 4(a)(5)(A)(i). In addition, the party requesting

1 leave to file a late notice of appeal must show excusable neglect
2 or good cause for the failure to file a timely notice of appeal.
3 Rule 4(a)(5)(A)(ii).

4 Plaintiff's motion for leave to file a late notice of appeal
5 was filed on June 26, 2009, within the 30 day period set forth in
6 Rule (4)(a)(5)(A)(i). In his declaration dated June 20, 2009,
7 Plaintiff avers:

8 7. Since March 9, 2009, I have been on
9 lockdown with no access to the prison law
10 library. The southern hispanics are on
11 lockdown indefinitely until further notice,
which effects me. I have to try and get
assistance from other prisoners to get copies
and other essentials for me.

12 The Court has verified Plaintiff's averment with the Watch
13 Commander at Kern Valley State Prison. The Court concludes that
14 Plaintiff has shown excusable neglect and/or good cause for his
15 failure to timely file the notice of appeal.

16 Plaintiff's motion for leave to file a late notice of appeal
17 is GRANTED.

18 The Clerk of the Court is directed to serve a copy of this
19 Order on the Ninth Circuit Court of Appeals, Case No. 09-16352.

20 IT IS SO ORDERED.

21 Dated: September 2, 2009

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE