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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
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11 JESUS NABARETTE ANGUIANO,

12 Petitioner,

13 v.

14 SCOTT FRAUENHEIM,

15 Respondent.

Case No. 1:14-cv-01779-SAB-HC

ORDER DENYING PETITIONER'S  
MOTION FOR ORDER TO FILE/ACCEPT  
LATE SUBMISSION OF NOTICE OF  
APPEAL

(ECF No. 15)

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17 Petitioner is a state prisoner who was represented by counsel during the instant federal  
18 habeas corpus proceeding. Petitioner consented to the jurisdiction of a United States magistrate  
19 judge to conduct all proceedings in the instant case pursuant to 28 U.S.C. § 636(c). (ECF No. 4).  
20 On February 9, 2016, the Court denied the petition and entered judgment. (ECF Nos. 13, 14).

21 On April 29, 2016, Petitioner filed the instant motion, requesting to file a late notice of  
22 appeal. (ECF No. 15). Petitioner alleges he never received notification from the Court that his  
23 petition had been denied and judgment had been entered. (Id. at 1).<sup>1</sup> Petitioner declares that he  
24 first learned of the Court's denial of his federal habeas petition through a letter from his attorney,  
25 which Petitioner received on or about April 5, 2016. (Id. at 3).

26 The time for filing a notice of appeal is 30 days after entry of the judgment or order  
27 appealed from, Fed. R. App. P. 4(a)(1)(A), which is in the instant case was March 10, 2016.

28 <sup>1</sup> Page numbers refer to the ECF page numbers stamped at the top of the page.

1 However, the Court may reopen the time to file an appeal for a period of 14 days if:

2 (A) the court finds that the moving party did not receive notice  
3 under Federal Rule of Civil Procedure 77(d) of the entry of the  
4 judgment or order sought to be appealed within 21 days after  
5 entry;

6 (B) the motion is filed within 180 days after the judgment or order  
7 is entered or within 14 days after the moving party receives  
8 notice under Federal Rule of Civil Procedure 77(d) of the  
9 entry, whichever is earlier; and

10 (C) the court finds that no party would be prejudiced.

11 Fed. R. App. P. 4(a)(6).

12 Here, because Petitioner was represented by counsel at the time, the Court served notice  
13 of the judgment and order denying the petition on Petitioner's counsel by electronic means on  
14 the same day the judgment and order were entered. Such service is in compliance with Rules  
15 77(d) and 5(b) of the Federal Rules of Civil Procedure. Therefore, the Court cannot reopen the  
16 time to file an appeal under Rule 4(a)(6) of the Federal Rules of Appellate Procedure.

17 Accordingly, the Court HEREBY DENIES Petitioner's motion for an order to file a late  
18 notice of appeal.

19 IT IS SO ORDERED.

20 Dated: May 3, 2016

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23 UNITED STATES MAGISTRATE JUDGE  
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