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

ROGER ARDEN ELSETH; PATRICIA)	
ANN ELSETH; and ALLEN ELSETH, by)	2:08-cv-02890-GEB-KJM
his guardian ad litem, ROGER)	
ARDEN ELSETH and PATRICIA ANN)	
ELSETH,)	<u>ORDER GRANTING PLAINTIFFS'</u>
)	<u>MOTION FOR RECONSIDERATION*</u>
Plaintiffs,)	
)	
v.)	
)	
DAVID GORDON, Superintendent)	
Sacramento County Department of)	
Education, individually; Deputy)	
Probation Officer JEFF ELORDUY,)	
individually; DR. RICHARD)	
SAXTON, M.D., individually,)	
)	
Defendants.)	
_____)	

Plaintiffs move for reconsideration of the Court's November 22, 2010, "Order Granting Motion for Summary Adjudication" under Federal Rule of Civil Procedure ("Rule") 60(b). In essence, Plaintiffs argue Defendants Verne Speirs, Ronald Tam and Jeff Elorduy ("Defendants")'s summary adjudication motion should be reconsidered based on "mistake, inadvertance [sic] or excusable neglect" due to Plaintiffs' counsel's "mistaken belief that [an opposition] had been properly filed." (Pls.' Mot. 1:16-19.) Defendants counter, *inter alia*, that Plaintiffs' motion should be denied because they "fail to set forth a permissible basis for

* This matter is deemed suitable for decision without oral argument. E.D. Cal. R. 230(g).

1 relief under [Rule] 60(b)." (Defs.' Opp'n 5:22.) For the reasons stated
2 below, Plaintiffs' reconsideration motion is GRANTED.

3 "Rule 60(b) provides that a court 'may relieve a party or its
4 legal representative from a final judgment, order, or proceeding' on the
5 basis of 'mistake, inadvertence, surprise, or excusable neglect.'" Ahanchian v. Xenon Pictures, Inc., 624 F.3d 1253, 1260 (9th Cir. 2010)
6 (citing Fed. R. Civ. P. 60(b)). "Excusable neglect encompasses
7 situations in which the failure to comply with a filing deadline is
8 attributable to negligence, and includes omissions caused by
9 carelessness." Lemoge v. U.S., 587 F.3d 1188, 1192 (9th Cir. 2009)
10 (quotations omitted). "The determination of whether neglect is excusable
11 is at bottom an equitable one, taking account of all relevant
12 circumstances surrounding the party's omission." Id. (quotation
13 omitted).
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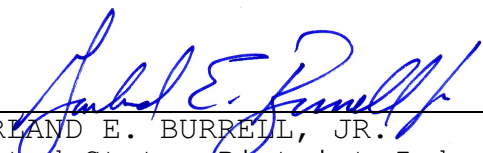
15 To determine whether a party's failure to meet a
16 deadline constitutes "excusable neglect," courts
17 must apply a four-factor equitable test, examining:
18 (1) the danger of prejudice to the opposing party;
19 (2) the length of the delay and its potential
20 impact on the proceedings; (3) the reason for the
21 delay; and (4) whether the movant acted in good
22 faith.

23 Ahanchian v. Xenon Pictures, Inc., 624 F.3d at 1261 (citations omitted).

24 Plaintiffs' counsel declares that he timely prepared an
25 opposition to Defendants' summary adjudication motion, and "sent a copy
26 of [the Opposition] . . . to the client prior to filing." (Mot. 2:5-6;
27 3:17-25, ECF Nos. 116-6, 116-7.) He further declares that he had
28 difficulties filing the documents electronically "so he called on the
Help desk" for assistance. Id. at 3:26-28. Plaintiffs' counsel further
declares he is "at a loss as to what happened to the opposition papers."
Id. at 4:3-4.

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2 The four factors weigh in favor of granting Plaintiffs'
3 reconsideration motion. Plaintiffs did not delay in seeking relief from
4 the order; the order granting summary adjudication was filed on November
5 22, 2010, and Plaintiffs filed their reconsideration motion on December
6 1, 2010. Nothing in the record indicates Plaintiffs' counsel acted in
7 bad faith, or that Defendants would be prejudiced if the motion is
8 granted. See Bateman v. U.S. Postal Service, 231 F.3d, 1220, 1225 (9th
9 Cir. 2000) (holding losing a quick victory on summary judgment and
10 rescheduling the trial date should defendants lose the summary judgment
11 motion on its merits "is insufficient to justify denial of relief under
12 Rule 60(b)(1)"). Therefore, Plaintiffs' Rule 60(b) motion for relief is
13 GRANTED. The Court's November 22, 2010 Order (ECF No. 114) is rescinded,
14 and Defendants' motion for summary adjudication is rescheduled for
15 hearing to commence at 9:00 a.m. on February 22, 2011. Any opposition
16 shall be filed no later than February 8, 2011. Any reply shall be filed
17 no later than February 15, 2011.

18 Dated: February 1, 2011

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21 _____
22 GARLAND E. BURRELL, JR.
23 United States District Judge
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