

1 Petitioner filed a Motion for Extension of Time to file his
2 appeal. ECF No. 17. The motion remained pending as the appeal
3 was processed to the Ninth Circuit. ECF No. 19. On November 29,
4 2017, the Ninth Circuit remanded the matter to this Court for the
5 limited purpose of allowing the Court to rule on Petitioner's
6 Motion for Extension of Time. Remand Order, ECF No. 22.

7 Under Federal Rule of Appellate Procedure 4, the district
8 court may reopen the time to file an appeal for a period of 14
9 days after the date when its order to reopen is entered. The
10 district court may only do so if (A) the court finds that the
11 moving party did not receive notice under Fed. R. Civ. P. 77(d)
12 of the entry of the judgment or order sought to be appealed
13 within 21 days after entry, (B) the motion is filed within 180
14 days after the judgment or order is entered or within 14 days
15 after the moving party receives notice under Fed. R. Civ. P.
16 77(d) of the entry, and (C) the court finds that no party would
17 be prejudiced. Fed. R. App. P. 4(a)(6).

18 The Court finds the above criteria have been met in this
19 case. First, Petitioner's motion and the docket in this case show
20 that Petitioner did not receive notice of the entry of judgment.
21 See Mot. at 1 ("Prisoner never received notice of magistrate
22 judge's 'Report and Recommendations' or the court's final
23 order[.]"); ECF Docket, July 10, 2017 ("Mail Returned as
24 Undeliverable, Not in Custody."). Second, the motion was filed
25 within 180 days after judgment was entered. Third, given the
26 nature of this case, there is no prejudice to Respondent.

27 Although motions under Rule 4(a)(6) are typically subject to
28 the local rules regarding notice, the Court finds that departure

1 from those rules is appropriate under the circumstances. Nunley
2 v. City of L.A., 52 F.3d 792 (1995) (“[W]e hold that notice in
3 accordance with the local rules is required under Rule 4(a)(6),
4 However, a district judge has broad discretion to depart
5 from local rules, including the service requirements, where it
6 makes sense to do so and substantial rights are not at stake.”).
7 This case involves a habeas petition which was summarily
8 dismissed for failure to exhaust state remedies. The motion does
9 not affect the rights and interests of a private party apart from
10 Petitioner.

11 For the reasons set forth above, the Court GRANTS
12 Petitioner’s Motion for Extension of Time. As stated in the
13 Remand Order, Petitioner need not file a new notice of appeal.
14 The clerk is directed to serve a copy of this decision on the
15 Ninth Circuit.

16 IT IS SO ORDERED.

17 Dated: November 29, 2017

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19 JOHN A. MENDEZ,
20 UNITED STATES DISTRICT JUDGE
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