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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE GUADARRAMA,
Plaintiff,
v.
C. RANDY LEWIS, et al.,
Defendants.

No. 2:16-cv-2671 JAM KJN P

ORDER

Plaintiff is a state prisoner, proceeding without counsel. On June 4, 2019, the district court granted defendants’ motions to dismiss. (ECF No. 75.) On June 11, 2019, judgment was entered. (ECF No. 76).

Pending before the court is plaintiff’s motion for extension of time to file an appeal and requesting appointment of counsel. (ECF No. 79.) Plaintiff’s motion was filed on July 15, 2019, and signed on June 27, 2019. (Id.)

An appeal “from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by Rule 4.” Fed. R. App. P. 3(a)(1). The notice of appeal “must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.” Fed. R. App. P. 4(a)(1)(A). However, the district court may extend the time to file a notice of appeal if “a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires,” and “shows excusable neglect or good cause.” Fed. R. App. P.

1 4(a)(5)(A).

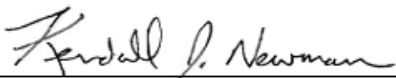
2 Here, plaintiff alleges that he did not receive the June 4, 2019 order issued by the district
3 court until June 26, 2019. Plaintiff asserts he did not timely receive his copy of the June 4, 2019
4 order due to his transfer and delayed receipt of his legal property. Moreover, plaintiff filed his
5 notice of appeal no later than 30 days after the time for filing an appeal expired. Thus, good
6 cause exists to grant plaintiff an extension of time in which to appeal the June 4, 2019 order, and
7 the undersigned finds that plaintiff's notice of appeal was timely-filed. Plaintiff's appeal was
8 previously processed to the appellate court. Therefore, the Clerk of the Court is directed to send a
9 copy of this order to the Court of Appeals for the Ninth Circuit, Case No. 19-16604.

10 In light of the district court's order granting defendants' motion to dismiss, the
11 undersigned finds the appointment of counsel is not warranted.

12 Good cause appearing, IT IS HEREBY ORDERED that:

- 13 1. Plaintiff's motion for an extension of time (ECF No. 79), construed as a request for
14 extension of time in which to file an appeal, is granted;
- 15 2. Plaintiff's notice of appeal (ECF No. 80) is deemed timely-filed;
- 16 3. Plaintiff's motion for appointment of counsel (ECF No. 79) is denied; and
- 17 4. The Clerk of the Court is directed to serve a copy of this order on the United States
18 Court of Appeals for the Ninth Circuit, Case No. 19-16604.

19 Dated: October 29, 2019

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21 _____
22 KENDALL J. NEWMAN
23 UNITED STATES MAGISTRATE JUDGE

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