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4 IN THE UNITED STATES DISTRICT COURT  
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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7 YVONNE ZIVANIC, ) Case No. 10-737 SC  
8 )  
9 Plaintiff, ) ORDER DENYING PLAINTIFF'S  
10 v. ) MOTION FOR RELIEF UNDER  
11 ) RULE 60(b)  
12 WASHINGTON MUTUAL BANK, N.A.; ERIC )  
13 DIPPEL; LISA DIPPEL; JPMORGAN )  
14 CHASE BANK, N.A.; DEUTSCHE BANK )  
15 NATIONAL TRUST COMPANY; QUALITY )  
16 LOAN SERVICE CORPORATION; and DOES )  
17 1-50, inclusive, )  
18 )  
19 Defendants. )  
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29 On February 26, 2010, Defendants JP Morgan Chase Bank, N.A.,  
30 and Deutsche Bank National Trust Company (collectively,  
31 "Defendants") filed a motion to dismiss. ECF No. 4. On June 9,  
32 2010, the Court issued a nineteen-page order granting in part and  
33 denying in part the motion to dismiss. ECF No. 20 ("June 9, 2010  
34 Order"). The order concluded by stating that "Plaintiff Yvonne  
35 Zivanic shall submit an amended complaint within thirty (30) days  
36 from the date of this Order. Failure to do so will result in  
37 dismissal of her case in its entirety." Id. at 19. Plaintiff  
38 Yvonne Zivanic ("Plaintiff") failed to file an amended complaint  
39 within thirty days, or thereafter. On July 27, 2010, the Court  
40 dismissed Plaintiff's case. ECF No. 22 ("July 27, 2010 Order").

41 Presently before the Court is Plaintiff's Motion for Relief

1 Under Rule 60(b). ECF No. 24 ("Mot."). Plaintiff seeks to set  
2 aside the order dismissing her case. Id. Defendants opposed the  
3 motion. ECF No. 25 ("Opp'n"). For the reasons stated herein, the  
4 Court DENIES Plaintiff's Motion for Relief.

5 Under Federal Rule of Civil Procedure 60(b)(1), a district  
6 court may grant relief from a judgment or order on the grounds of  
7 "mistake, inadvertence, surprise, or excusable neglect." The  
8 determination of whether neglect is excusable is "at bottom an  
9 equitable one, taking account of all relevant circumstances  
10 surrounding the party's omission." Pioneer Inv. Servs. Co. v.  
11 Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 395 (1993)  
12 ("Pioneer"). District courts consider: "(1) the danger of  
13 prejudice to the opposing party; (2) the length of the delay and  
14 its potential impact on the proceedings; (3) the reason for the  
15 delay; and (4) whether the movant acted in good faith." Bateman v.  
16 U.S. Postal Serv., 231 F.3d 1220, 1223-24 (9th Cir. 2000) (citing  
17 Pioneer, 507 U.S. at 395).

18 Here, Plaintiff's attorney admits that he was negligent in  
19 handling Plaintiff's case. Henriouille Decl. ¶ 10.<sup>1</sup> He declares  
20 that he and other members of his office "have become overwhelmed by  
21 the pressure of the workload especially as the volume of  
22 foreclosures has increased during the past five or six months."  
23 Id. ¶ 6. He states that the pressure of other cases, including  
24 both foreclosure and family law cases, have delayed until now his  
25 effort to obtain relief under Rule 60(b)(1). Id. ¶ 8.

26 However, an attorney's press of business by itself is

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28 <sup>1</sup> Stevan Henriouille ("Henriouille"), partner of the Law Office of Uy  
& Henriouille, filed a declaration in support of the motion. ECF  
No. 24-2.

1 generally no excuse. See Pioneer, 507 U.S. at 396 ("In assessing  
2 the culpability of . . . counsel, we give little weight to the fact  
3 that counsel was experiencing upheaval in his law practice . . .  
4 ."). As a general rule, parties are bound by the actions of their  
5 attorneys, and attorney error or attorney malpractice does not  
6 constitute excusable neglect under Rule 60(b)(1). Casey v.  
7 Albertson's Inc., 362 F.3d 1254, 1260 (9th Cir. 2004).

8 The Court's June 9, 2010 Order could not have been clearer in  
9 requiring an amended complaint to be filed within thirty days. The  
10 error here was not a failure to appreciate the consequences of an  
11 ambiguous rule, but a failure to read the concluding lines of the  
12 Court's order explaining to Plaintiff and her counsel the next step  
13 to be taken as a result of the Court's ruling on Defendants' motion  
14 to dismiss. The Court dismissed Plaintiff's case almost three  
15 weeks after her deadline to file an amended complaint expired.  
16 While the negligence of Plaintiff's attorney may provide the basis  
17 for a malpractice action, it does not constitute excusable neglect.

18 Furthermore, Plaintiff's attorney waited for three months,  
19 until October 27, 2010, before filing the present motion to set  
20 aside the order dismissing Plaintiff's case. The Court finds that  
21 Defendants would be prejudiced if the Court were to re-open a  
22 foreclosure case that was dismissed in July. While there is no  
23 evidence of bad faith on Plaintiff's part, having considered the  
24 reasons for the delay, the danger of prejudice to Defendants, and  
25 the length of the delay, the Court DENIES Plaintiff Yvonne  
26 Zivanic's Motion for Relief Under Rule 60(b).

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The Law Office of Uy & Henriouille shall mail a copy of this Order directly to Yvonne Zivanic, and file a Proof of Service with the Court no later than five (5) days from the date of this Order.

IT IS SO ORDERED.

Dated: December 2, 2010

  
UNITED STATES DISTRICT JUDGE