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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
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11 TIM KRONZER,)
12 Plaintiff(s),)
13 v.)
14 GARY HINTZ, and DOES 1-10,)
15 Defendant(s).)
16 _____)

No. C10-1270 BZ

**ORDER GRANTING PLAINTIFF'S
ADMINISTRATIVE MOTION TO
EXTEND THE TIME TO FILE AN
APPEAL**

17 Plaintiff's administrative motion (Docket No. 102)
18 requesting an extension of time to file an appeal is **GRANTED**.
19 Under Federal Rule of Appellate Procedure 4(a)(5)(A), the
20 Court may extend the time for filing an appeal if the
21 appellant seeks such an extension within 30 days after the
22 deadline and shows that there was excusable neglect¹ or good
23 cause for not timely appealing. To determine whether to grant
24 an extension, courts consider the following factors: (1) the
25 danger of prejudice to the nonmoving party, (2) the length of
26 _____

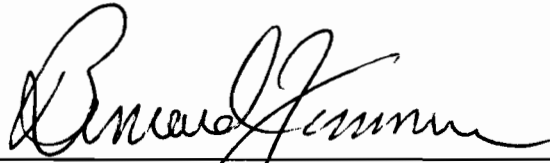
27 ¹ Excusable neglect "encompasses both simple, faultless
28 omissions to act and, more commonly, omissions caused by
carelessness." Pioneer Inv. Services Co. v. Brunswick
Associates Ltd. P'ship, 507 U.S. 380 (1993).

1 delay and its potential impact on judicial proceedings, (3)
2 the reason for the delay, including whether it was within the
3 reasonable control of the movant, and (4) whether the moving
4 party's conduct was in good faith. Pincay v. Andrews, 389
5 F.3d 853, 855 (9th Cir. 2004).

6 Here, plaintiff's administrative motion for an extension
7 of time was timely filed. Defendant has not opposed this
8 motion and there is no indication that the one-day delay in
9 filing the notice of appeal would cause defendant undue
10 prejudice. The reason for the delay was not plaintiff's
11 fault, but was caused by his counsel failing to realize that
12 there were 31 days in the month of May. See Marx v. Loral
13 Corp., 87 F.3d 1049, 1053 (9th Cir. 1996) (the attorney's
14 carelessness in failing to realize August had 31 days did not
15 rise to the level of inexcusable neglect). As plaintiff has
16 made a substantial effort to be timely under the circumstances
17 and there is no evidence of bad faith, the Court finds that
18 this constitutes excusable neglect. Pincay, 804 F.2d at 856
19 (holding that there was no evidence of bad faith when the
20 Federal Rule was misread allowing for 30 extra days).

21 Accordingly, **IT IS ORDERED** that plaintiff's administrative
22 motion is **GRANTED** and his time to file an appeal is extended
23 to **July 20, 2011**.

24 Dated: July 5, 2011



25
26 Bernard Zimmerman
United States Magistrate Judge

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