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2
3 IN THE UNITED STATES DISTRICT COURT
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA
5

6 PHILIP L. STIMAC,

No. C 10-02216 SI

7 Plaintiff,

**ORDER RE: PLAINTIFF'S MOTION TO
EXTEND TIME TO FILE NOTICE OF
APPEAL**

8 v.

9 JOSEPH RUSSONIELLO, ET AL.,

10 Defendant.
11 _____/

12 On August 25, 2010, the Court issued an order granting defendants' motion to dismiss and
13 denying plaintiff's motion to strike, which concluded by stating that "All other pending motions are
14 terminated." Doc. 42. The Court entered judgment the same day. Doc. 43. On September 29, 2010,
15 the Court issued an order denying plaintiff's petition for an order of mandamus and denying plaintiff's
16 motion for Rule 11 sanctions. Doc. 46. Plaintiff's petition and motion had been pending when the
17 Court entered judgment in the case. On October 29, 2010, plaintiff filed this motion to extend time to
18 file a notice of appeal.

19 In a case such as this, where an officer of the United States is a party, plaintiff had 60 days to
20 file a notice of appeal. Fed. R. App. P. 4(a)(1)(B). In this case, that was Monday, October 25, 2010.
21 A district court is permitted to extend the time to file a notice of appeal if a party so moves no later than
22 30 days after the time prescribed expires. Fed. R. App. P. 4(a)(5)(A)(I). In this case, the motion needed
23 to be filed by November 24, 2010, which it was. Where the motion is filed after the time prescribed to
24 file a notice of appeal, notice must be given to the other parties in accordance with local rules. Fed. R.
25 App. P. 4(a)(5)(B). Here, plaintiff served a copy of his motion on defendants. *See* Doc. 48 at 3 (Proof
26 of Service). No extension may exceed 30 days after the prescribed time or 15 days after the date when
27 the order granting the motion is entered, whichever is later. Fed. R. App. P. 4(a)(5)(C). In this case, that
28 is November 24, 2010.

1 Where a motion to extend time is filed after the notice of appeal would otherwise be due, the
2 Court may grant the motion if the moving party can show “excusable neglect.” *See Mendez v. Knowles*,
3 556 F.3d 755, 764 (9th Cir. 2009) (explaining that a court may only grant a motion for “good cause” if
4 it was filed before the expiration of the time to file a notice of appeal). In evaluating whether neglect
5 is excusable, a district court must consider the four factors established by the Supreme Court in *Pioneer*
6 *Investment Services Co. v. Brunswick Associates Limited Partnership*, 507 U.S. 380 (1993): “(1) the
7 danger of prejudice to the non-moving party, (2) the length of delay and its potential impact on judicial
8 proceedings, (3) the reason for the delay, including whether it was within the reasonable control of the
9 movant, and (4) whether the moving party’s conduct was in good faith.” *Pincay v. Andrews*, 389 F.3d
10 853, 855 (9th Cir. 2004) (en banc) (citing *Pioneer*, 507 U.S. at 395). “[E]xcusable neglect’ . . . is not
11 limited to situations where the failure to timely file is due to circumstances beyond the control of the
12 filer.” *Pioneer*, 507 U.S. at 391. The Ninth Circuit has “declined to give primary weight to any one of
13 the *Pioneer* factors, concluding that ‘the weighing of *Pioneer*’s equitable factors’ must be left ‘to the
14 discretion of the district court in every case.’” *Mendez*, 556 F.3d at 765 (quoting *Pincay*, 389 F.3d at
15 860).

16 Here, the Court issued an order after judgment, regarding a motion that was purportedly vacated,
17 and regarding a petition that was not specifically addressed in the judgment. Plaintiff is proceeding pro
18 se in this matter. Therefore, factor three weighs in favor of granting plaintiff’s motion. Moreover, the
19 case itself has only been moving through the federal court system since May of 2010, and the Court is
20 not concerned that a slight extension of time for plaintiff to file an appeal will have a negative impact
21 on the judicial proceedings or will otherwise prejudice defendants. Therefore, plaintiff’s motion is
22 GRANTED. (Doc. 48.) Plaintiff has until **November 24, 2010** to file a notice of appeal in this case.

23
24 **IT IS SO ORDERED.**

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26 Dated: November 1, 2010

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SUSAN ILLSTON
United States District Judge