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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 SHAWN JAMES ALLEN WOODALL,
12 Plaintiff,
13 vs.
14 ROBERT HERNANDEZ, et al.,
15 Defendant.

CASE NO. 08cv1132 BTM (RBB)

**ORDER GRANTING MOTION TO
REOPEN TIME**

16 On July 9, 2009, Petitioner Shawn James Allen Woodhall filed a Motion to Reopen
17 Time to File an Appeal. Petitioner argues that because he did not receive timely notice of
18 the Court's March 24, 2009 order and March 25, 2009 entry of judgment, the Court should
19 reopen time to file an appeal pursuant to Federal Rule of Civil Procedure 4(a)(6). On August
20 11, 2009, Respondent, the California Attorney General, filed Opposition to Petitioner's Motion
21 to Reopen Time.

22 Under Rule 4(a)(6), a district court may reopen time to file an appeal if: (A) the court
23 finds that the moving party did not receive notice under Rule 77(d) of entry of judgment or
24 the order sought to be appealed within 21 days after entry; (B) the motion is filed within 180
25 days after the judgment or order is entered or within 7 days after the moving party receives
26 notice under Rule 77(d), whichever is earlier; and (C) the court finds that no party would be
27 prejudiced.

28 Here, Petitioner did not receive notice pursuant to Rule 77(d) within 21 days after
entry of judgment or the order sought to be appealed. Although Petitioner promptly notified

1 the Court of his changes of address, the Court's first three attempts to provide notice of the
2 order and judgment were returned undeliverable [Docket Nos. 22, 25, 27]. Petitioner claims
3 that he finally received notice of the order and judgment on June 21, 2009, over 21 but under
4 180 days after the order and judgment were entered. Petitioner filed his notice of appeal on
5 June 24, 2009, within 7 days of receiving notice of the order and judgment.

6 Respondent contends that the Court may not construe Petitioner's notice of appeal
7 as a motion to reopen time. Therefore, because Petitioner did not file this Motion to Reopen
8 Time until July 9, 2009, Respondent argues that the Motion was not timely filed under
9 4(a)(6). The Ninth Circuit has not addressed whether a district court may construe a habeas
10 petitioner's notice of appeal as a motion to reopen time under Rule 4(a)(6) where the
11 petitioner filed his notice of appeal within seven days of notice of entry of judgment or the
12 order sought to be appealed. As Respondent points out, "[t]he procedures set forth in Rule
13 4 are strictly construed, there is no exception for prisoners proceeding pro se or for habeas
14 actions." Malone v. Avenenti, 850 F.2d 569, 572 (9th Cir. 1988). Nonetheless, this Court
15 agrees with the reasoning of the Eleventh Circuit in allowing district courts to construe a
16 notice of appeal as a motion to reopen time where the notice of appeal was filed within the
17 seven day time period set forth in Rule 4(a)(6)(B). First, as the Eleventh Circuit explained,
18 the Rule 4(a)(6) provisions for extension of time are more liberal than those governed by the
19 Rule 4(a)(5) excusable neglect standard. Sanders v. United States, 113 F.3d 184, 187 (11th
20 Cir. 1997). Second, where a pro se petitioner does not receive notice of the judgment he
21 seeks to appeal through no fault of his own, justice suggests that he should have the
22 opportunity to pursue his appeal. Id. Third, pro se pleadings are held to a less stringent
23 standard and should be read generously, "however inartfully pleaded." Davis v. Silva, 511
24 F.3d 1005, 1009 n. 4 (9th Cir. 2008) (quoting Haines v. Kerner, 404 U.S. 519, 520 (1972)
25 (per curiam)). Thus, the Court construes Petitioner's notice of appeal as a timely motion to
26 reopen time to appeal under Rule 4(a)(6). See Ogden v. San Juan County, 32 F.3d 452, 454
27 (10th Cir. 1994) (construing notice of appeal as a motion to reopen time under Rule 4(a)(6));
28 see also United States v. Smith, 235 Fed. Appx. 58, *1 (4th Cir. 2007) (same).

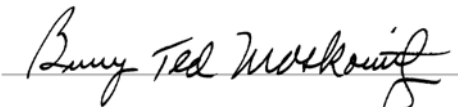
1 The Court notes that the Court of Appeals construed the Petitioner's change of
2 address form filed on June 15, 2009, as a motion to reopen the time to appeal and remanded
3 the matter to this Court. Utilizing this date also allows the Court to reopen time under Rule
4 4(a)(6).

5 Respondent does not argue that he will suffer prejudice should the Court grant
6 Petitioner's motion to reopen time. The Court finds, therefore, that Petitioner has satisfied
7 the requirements of Rule 4(a)(6) to reopen time to file his appeal.

8 The Court **GRANTS** Petitioner's Motion to Reopen Time to File an Appeal. The Clerk
9 is directed to forthwith refile a copy of the notice of appeal that the Petitioner filed in this
10 Court on June 24, 2009. Such refiled copy shall constitute the filing under this Order. The
11 Clerk shall serve a copy of this order on the Clerk of the Court of Appeals of the Ninth Circuit.

12 **IT IS SO ORDERED.**

13 DATED: August 28, 2009

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15 Honorable Barry Ted Moskowitz
16 United States District Judge
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