

1 good cause extend the time . . . with or without motion or notice if the court acts, or
2 if a request is made, before the original time or its extension expires.” Fed. R. Civ. P.
3 6(b)(1)(A). “Once the time has expired, a noticed motion for relief, based on a
4 showing of excusable neglect, is required.” *Gurvey v. Legend Films, Inc.*, No. 09-cv-
5 942, 2012 WL 4061773, at *5 (S.D. Cal. Sept.14, 2012) (Battaglia, J.) (citing Fed. R.
6 Civ. P. 6(b)(1)(B)).

7 The Ninth Circuit has held that, for purposes of Rule 6(b), “excusable neglect”
8 must be judged by the standard set forth in *Pioneer Investment Services Co. v.*
9 *Brunswick Associates Ltd. Partnership*, 507 U.S. 380 (1993). See *Briones v. Riviera*
10 *Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997) (citing *Comm. for Idaho’s High*
11 *Desert, Inc. v. Yost*, 92 F.3d 814, 825 n.4 (9th Cir. 1996)) (“[T]his court [has] held
12 that the Supreme Court’s analysis of ‘excusable’ neglect in Pioneer is applicable to
13 Rule 6(b)[.]”). Under *Pioneer*, a “determination of whether neglect is excusable is an
14 equitable one that depends on at least four factors: (1) the danger of prejudice to the
15 opposing party; (2) the length of the delay and its potential impact on the proceedings;
16 (3) the reason for the delay; and (4) whether the movant acted in good faith.” *Bateman*
17 *v. U.S. Postal Serv.*, 231 F.3d 1220, 1223-24 (9th Cir. 2000) (citing *Pioneer*, 507
18 U.S. at 395).

19 Supported by evidence and through no fault of his own, Mr. Grady
20 demonstrates that he did not receive this Court’s judgment until August 16, 2016.
21 Upon receiving notice of the judgment, he promptly filed this request on August 24,
22 2016. Weighing the *Pioneer* factors, the circumstances heavily favor finding that the
23 delay was the result of excusable neglect. See *Bateman*, 231 F.3d at 1223-24.
24 Therefore, the Court **GRANTS** Mr. Grady’s request for an extension of time to file
25 a motion for reconsideration. Mr. Grady may file a motion for reconsideration under
26 Rule 59(e) within **30 days** after being served with this order. This order does not
27 apply to a motion for reconsideration under Rule 60(b) as the time to file has not yet
28 lapsed. See Fed. R. Civ. P. 60(c)(1).

1 **II. Extension of Time To File Notice of Appeal**

2 Federal Rule of Appellate Procedure 4(a)(1)(A) requires that a notice of appeal
3 be filed by the appealing party “within 30 days after entry of judgment or order
4 appealed from.” Rule 4(a)(5) permits the district court to extend the time to file a
5 notice of appeal if: (1) “a party so moves no later than 30 days after the time
6 prescribed by this Rule 4(a) expires”; and (2) “regardless of whether its motion is
7 filed before or during the 30 days after the time prescribed by this Rule 4(a) expires,
8 that party shows excusable neglect or good cause.” Fed. R. App. P. 4(a)(5)(A). “No
9 extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14
10 days after the date when the order granting the motion is entered, whichever is later.”
11 Fed. R. App. P. 4(a)(5)(C).

12 Under Rule 4(a)(6), an appealing party may also move to reopen the time to
13 file an appeal. “The district court may reopen the time to file an appeal for a period
14 of 14 days after the date when its order to reopen is entered, but only if all of the
15 following conditions are satisfied: (A) the court finds that the moving party did not
16 receive notice under Federal Rule of Civil Procedure 77 (d) of the entry of the
17 judgment or order sought to be appealed within 21 days after entry; (B) the motion
18 is filed within 180 days after the judgment or order is entered or within 14 days after
19 the moving party receives notice under Federal Rule of Civil Procedure 77 (d) of the
20 entry, whichever is earlier; and (C) the court finds that no party would be prejudiced.”
21 Fed. R. App. P. 4(a)(6).

22 Unfortunately, under both Rule 4(a)(5) and 4(a)(6), the Court is not permitted
23 to grant relief to Mr. Grady in his pursuit of a potential appeal. Admittedly through
24 no fault of his own, Mr. Grady cannot satisfy the timing requirements under Rule
25 4(a)(5)(A)(i) or Rule 4(a)(6)(B). Under Rule 4(a)(5)(A)(i), Mr. Grady must have
26 requested the extension of time on or before April 11, 2016, but he ultimately did not
27 do so until August 24, 2016. And under Rule 4(a)(6)(B), Mr. Grady must have
28 requested reopening the time for appeal on or before August 9, 2016, which is 180

1 days after entry of judgment. If the Court uses the later date under Rule 4(a)(6)(B)—
2 14 days after Mr. Grady received notice of entry of judgment—he would have been
3 allowed to request reopening the time for appeal by August 30, 2016, but the rule
4 explicitly requires that the Court use the earlier of the two dates.


5 Federal Rule of Civil Procedure 77(d)(2) explicitly states that “[l]ack of notice
6 of the entry [of judgment] does not affect the time for appeal or relieve—or authorize
7 the court to relieve—a party for failing to appeal within the time allowed, except as
8 allowed by Federal Rule of Appellate Procedure 4(a).” Because Mr. Grady
9 unfortunately cannot satisfy the timing requirements under either Rule 4(a)(5) or
10 Rule 4(a)(6), the Court **DENIES** his request for an extension of time to file a notice
11 of appeal. That said, Mr. Grady should note that Federal Rule of Appellate Procedure
12 4(a)(4)(A) states that if a party timely files in the district court a motion to alter or
13 amend the judgment under Rule 59, “the time to file an appeal runs for all parties
14 from the entry of the order disposing of the last such remaining motion[.]”

15
16 **III. Conclusion & Order**

17 In light of the foregoing, the Court **GRANTS IN PART** and **DENIES IN**
18 **PART** Mr. Grady’s motion. Mr. Grady may file a motion for reconsideration within
19 **30 days** of receiving this order, but the Court cannot grant any relief regarding his
20 request for an extension of time to file a potential notice of appeal.

21 **IT IS SO ORDERED.**

22
23 **DATED: September 6, 2016**

24 
25 **Hon. Cynthia Bashant**
26 **United States District Judge**