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4 **UNITED STATES DISTRICT COURT**  
5 **DISTRICT OF NEVADA**  
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7 CHRISTOPHER A. JONES,

8 Plaintiff,

9 vs.

10 DWIGHT NEVEN, *et al.*,

11 Defendants.  
12

Case No. 2:07-cv-01088-JCM-GWF

**ORDER**

Motion to Extend (#167)

13 This matter is before the Court on Plaintiff Christopher A. Jones' Motion to File a Late  
14 Reply (#167), filed May 25, 2011.

15 **BACKGROUND**

16 Plaintiff filed a motion for sanctions on April 18, 2011. (#146). On May 9, 2011,  
17 Defendant MacArthur filed his response to the motion for sanctions. (#158). Sixteen days later,  
18 Plaintiff filed the present request for leave to file his reply to Defendant's opposition to the  
19 motion for sanctions. (#167). Under the Local Rules, a party has seven (7) days to file a reply  
20 after an opposition is filed to a motion and Plaintiff's deadline to respond expired on May 19,  
21 2011.<sup>1</sup>

22 Plaintiff argues that his untimeliness in filing a reply to Defendant's opposition is due to  
23 procedural issues at Ely State Prison, which prevented him from filing the reply until after the  
24 established deadline.

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28 <sup>1</sup> While the deadline to file a reply under the Local Rules is seven (7) days, a replying party is accorded an additional three (3) days to respond by Fed.R.Civ.P. 6(d). Therefore, the total time to respond to a motion in the District of Nevada amounts to ten (10) days.

1 **DISCUSSION**

2 Pursuant to Fed.R.Civ.P. 6(b) and LR 6, a motion for an extension of time filed after the  
3 expiration of the specified period shall not be granted unless the moving party demonstrates good  
4 cause for an extension and that the failure to act prior to the deadline was the result of excusable  
5 neglect. Based on procedural issues at Ely State Prison that delayed Plaintiff’s filing of the reply,  
6 the Court finds that there is good cause to extend Plaintiff’s deadline to file his reply to  
7 Defendant’s opposition to the motion for sanctions.

8 In addition, the Court finds that Plaintiff has demonstrated that the failure to act prior to  
9 the deadline is due to excusable neglect. In *Pioneer Investment Services Company v. Brunswick*  
10 *Associates Limited Partnership*, 507 U.S. 380, 113 S.Ct. 1489 (1993), the U.S. Supreme Court  
11 created a four-part test for determining whether a late filing is a result of excusable neglect.<sup>2</sup>  
12 Thus, in determining whether Plaintiff’s delay is excusable here, the court looks to the following  
13 factors: (1) the danger of prejudice to Defendant; (2) the length of delay and its potential impact  
14 on judicial proceedings; (3) the reason for the delay, including whether it was within the  
15 reasonable control of Plaintiff; and (4) whether Plaintiff’s conduct was in good faith. See *Pincay*  
16 *v. Andrews*, 389 F.3d 853, 855 (9<sup>th</sup> Cir. 2004) (citing *Pioneer*, 507 U.S. at 395). In considering  
17 these factors, the Court finds that Plaintiff has demonstrated excusable neglect led to the late  
18 filing of his reply and the Court will grant the extension.

19 As a result, the Court finds that Plaintiff’s reply to Defendant’s opposition to the motion  
20 for sanctions attached to the present motion (#167 at 2-50) is timely. Accordingly,

21 **IT IS HEREBY ORDERED** that Plaintiff Christopher A. Jones’ Motion to File a Late  
22 Reply (#167) is **granted**.

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26 <sup>2</sup> Although the Court in *Pioneer* considered the meaning of “excusable neglect” under  
27 Federal Rule of Bankruptcy Procedure 905(b)(1), the Court also reviewed the various contexts in  
28 which the federal rules of procedure use the term and indicated that the same test applies in all  
contexts. *Pincay v. Andrews*, 389 F.3d 853, 855 (9<sup>th</sup> Cir.2004).

