

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ROMAN OCHOA,

16-cv-2852 (JGK)

PLAINTIFF,

MEMORANDUM OPINION  
AND ORDER

- AGAINST -

WILLIAM BRATTON ET AL.,

DEFENDANTS.

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JOHN G. KOELTL, District Judge:

On January 2, 2018, the plaintiff filed a motion for an extension of time to file his notice of appeal from the Court's Memorandum Opinion and Order dated November 28, 2017, dismissing the plaintiff's case. Dkt. Nos. 78, 76.

By letter dated January 18, 2018, the Government represented that, pursuant to Federal Rule of Appellate Procedure 4(a)(1)(B), the plaintiff has sixty days from the date of the Court's Memorandum Opinion and Order to file his notice of appeal because the plaintiff named as defendants officers of the United States in their official capacities. Dkt. No. 79. The Government calculated this deadline to run on February 2, 2018.

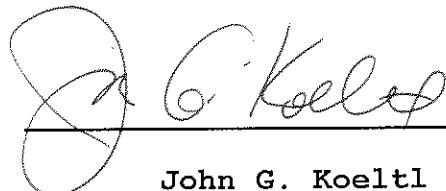
However, because the plaintiff's motion for an extension of time to file his notice of appeal is the "functional equivalent" of what is required of a notice of appeal, the Court construes the plaintiff's motion as a notice of appeal. See Brandaid

Marketing Corp. v. Biss, No. 08-0941-cv, 2009 WL 742077, \*1 (2d Cir. March 23, 2009) (quoting Smith v. Barry, 502 U.S. 244, 248 (1992)).

The Clerk is therefore ordered to docket the plaintiff's motion for an extension of time to file his notice of appeal as the plaintiff's notice of appeal.

SO ORDERED.

Dated:       New York, New York  
              January 23, 2018

  
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John G. Koeltl  
United States District Judge