



Appeal as a motion to reopen the time for appeal pursuant to Federal Rule of Appellate Procedure 4(a)(6) and directed this Court to consider it as such. (Id.)

Under Federal Rule of Appellate Procedure 4(a)(6), a “district court may reopen the time to file an appeal” so long as: (1) the party seeking to reopen the time to appeal did not receive notice “of the entry of the judgment or order sought to be appealed within 21 days after entry”; (2) “the motion is filed within 180 days after the judgment or order is entered” or within 14 days after the movant receives notice, whichever is earlier; and (3) “the court finds that no party would be prejudiced.” Fed. R. App. P. 4(a)(6).

Plaintiff has consistently maintained, both in filings to the Court of Appeals and in this Court, that he never received the Court’s November 16, 2017 order dismissing this action. (Doc. Nos. 7, 10). In the absence of any evidence to the contrary, and in light of Plaintiff’s otherwise prompt and diligent activity in this lawsuit, the Court finds Plaintiff’s averments credible. Moreover, Plaintiff’s Motion to Reopen was filed within 180 days of the Order of Dismissal, and the reopening of the time for appeal will not prejudice any party, particularly as the Defendants have never been served in this action. Because Plaintiff has satisfied all three conditions of Rule 4(a)(6), his Motion to Reopen will be granted. Plaintiff will have 14 days from the date of this Order in which to file an appeal, if he so desires. See Fed. R. App. P. 4(a)(6) (“The district may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered” if all conditions of Rule 4(a)(6) are satisfied).

Plaintiff’s second pending motion seeks leave to amend his Complaint to increase his damage request from \$500,000.00 to \$2,000,000.00. (See Doc. No. 11). As Plaintiff’s Complaint has already been dismissed with prejudice, his motion to amend that Complaint must be denied.

IT IS SO ORDERED.

July 27, 2018

s/ Cathy Bissoon  
Cathy Bissoon  
United States District Judge

cc (via First-Class U.S. Mail):

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