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2
3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION
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8 In re:)
9 KAREN CHRISTIANSEN,) Case No. 05-20050-B-7
10 Debtor.)
11)
12 GORDON HUMPHREY and JOHN REIKE,)
13 Plaintiffs) Adv. No. 05-2187-B
14 vs.)
15 KAREN CHRISTIANSEN,) Docket Control No. WKB-5
16 Defendant.) Date: March 6, 2007
17) Time: 9:30 a.m.

18 On or after the calendar set forth above, the court issued
19 the following ruling. The official record of the ruling is
appended to the minutes of the hearing.

20 Because the ruling constitutes a "reasoned explanation" of
21 the court's decision under the E-Government Act of 2002 (the
"Act"), a copy of the ruling is hereby posted on the court's
22 Internet site, www.caeb.uscourts.gov, in a text-searchable
23 format, as required by the Act. However, this posting does not
constitute the official record, which is always the ruling
appended to the minutes of the hearing.

24 **DISPOSITION AFTER ORAL ARGUMENT**

25 This matter came on for initial hearing on February 6, 2007. The
26 court requested further briefing and ordered that simultaneous briefs
27 be filed on or before February 20, 2007. Plaintiff Gordon Humphrey
28 timely filed supplemental briefing. Defendant filed supplemental

1 briefing one day late, on February 21, 2007. The court notes that
2 plaintiff John Rieke has not appeared on any matter in this adversary
3 proceeding since the filing of Defendant's motion to set aside her
4 default and default judgment on June 19, 2006. This matter came on
5 for final hearing on March 6, 2007, at 9:30 a.m. Appearances are
6 noted on the record. The following constitutes the court's findings
7 of fact and conclusions of law pursuant to Federal Rule of Bankruptcy
8 Procedure 7052.

9 The motion is denied.

10 Defendant and debtor Karen Christiansen ("Defendant") moves for
11 an extension of time for filing her notice of appeal from the court's
12 denial of her motion to set aside the clerk's default and default
13 judgment entered against her in this adversary proceeding. Defendant
14 moves pursuant to Federal Rule of Bankruptcy Procedure 8002(c) which
15 provides in relevant part:

16
17 A request to extend the time for filing a notice of
18 appeal must be made by written motion filed before the
19 time for filing a notice of appeal has expired, except
20 that such a motion filed not later than 20 days after the
21 expiration of the time for filing a notice of appeal may
22 be granted upon a showing of excusable neglect. An
23 extension of time for filing a notice of appeal may not
24 exceed 20 days from the expiration of the time for filing
25 a notice of appeal otherwise prescribed by this rule or
26 10 days from the date entry of the order granting the
27 motion, whichever is later.

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2 Fed. R. Bankr. P. 8002(c)(2) (2005).

3 In this case Defendant filed her motion for extension of time on
4 January 8, 2007, ten days after expiration of the ten-day period for
5 filing a timely notice of appeal pursuant to Federal Rule of
6 Bankruptcy Rule 8002(a). Defendant must therefore show that her
7 failure to file a timely notice of appeal was due to excusable
8 neglect.

9 Determining whether excusable neglect exists in this case
10 requires an equitable determination that takes account of all relevant
11 circumstances surrounding Defendant's failure to file a timely notice
12 of appeal. To assist this determination, courts have developed
13 factors to be assessed and weighed, including the four factors
14 enumerated by the United States Supreme Court in Pioneer Investment
15 Services Co. v. Brunswick Associates Ltd. Partnership, 507 U.S. 380
16 (1993). Those four factors are: (1) the danger of prejudice to the
17 non-moving party, (2) the length of delay and its potential impact on
18 judicial proceedings, (3) the reason for the delay, including whether
19 it was within the reasonable control of the movant, and (4) whether
20 the moving party's conduct was in good faith. Id. at 395. These four
21 factors were originally announced by the Bankruptcy Appellate Panel
22 for the Ninth Circuit in In re Dix, 95 B.R. 134, 138 (9th Cir. BAP
23 1988). The Supreme Court held that a fifth "Dix factor," whether
24 clients should be penalized for their counsel's mistake or neglect,
25 should not be considered in the analysis. See Pioneer, 507 U.S. at
26 396-97 ("[T]he proper focus is upon whether the neglect of respondents
27 and their counsel was excusable.").

1 In addition, post-Pioneer Ninth Circuit authority provides the
2 court with additional factors to aid in assessing an attorney's
3 negligent failure to timely file a notice of appeal, including whether
4 the lawyer had otherwise been diligent, the propensity of the other
5 side to capitalize on petty mistakes, the quality of representation of
6 the lawyers during the course of the litigation's history, and the
7 likelihood of injustice if the appeal is not allowed. Pincay v.
8 Andrews, 389 F.3d 853, 859 (9th Cir. 2004).

9
10 The factors set forth by the Supreme Court and the Ninth
11 Circuit need not be weighed equally. In the context of a
12 case in which the moving party has failed to file a timely
13 notice of appeal, the court agrees with the Judge
14 Kozinski's analysis in his dissent in Pincay that the third
15 Pioneer factor - the reason for the delay and whether it was
16 within movant's control - should be weighed more heavily
17 than the other three factors. As Judge Kozinski put it,

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19 Factors one, two, and four will almost always cut one
20 way: Delays are seldom long, so prejudice is typically
21 minimal. Bad-faith delay is rare, given that we're only
22 dealing with neglect. . . . Most of the work, then, is
23 done by factor three, which may balance out any findings
24 under the other factors. . . .

25
26 Pincay, 389 F.3d at 861 (Kozinski, J., dissenting). In addition, the
27 Supreme Court in Pioneer assigned particular importance to the good
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1 faith of the moving party, holding that any indication of bad faith is
2 grounds for finding neglect inexcusable. See Pioneer, 507 U.S. at 398
3 ("To be sure, were there . . . any indication at all of bad faith, we
4 could not say that the Bankruptcy Court abused its discretion in
5 declining to find the neglect to be 'excusable.'").

6 Judge Kozinski's analysis correctly anticipates the manner in
7 which the excusable neglect standard would be rendered meaningless in
8 the context of a motion brought under Bankruptcy Rule 8002(c) if the
9 factors were weighed equally. The operation of the twenty-day
10 deadline imposed by Bankruptcy Rule 8002(c) will almost always lead to
11 a conclusion that the delay is short and prejudice is minimal.
12 Further, given the infrequency of a finding of bad faith, the reason
13 for the delay must assume particular prominence in the excusable
14 neglect analysis in order to avoid creating a de facto rule that a
15 delay caused for virtually any reason could never be considered
16 inexcusable neglect where the other three Pioneer factors weighed in
17 favor of the movant.

18 That certain factors may be weighed more heavily in the context
19 of certain cases should not be construed as an invitation to create
20 categorical rules that dispense with full consideration of all
21 relevant circumstances. Both Pioneer and Pincay counsel against the
22 adoption of any rigid, per se rule. See Pincay, 389 F.3d at 858-59,
23 860 ("There should . . . be no rigid legal rule against late filings
24 attributable to any particular type of negligence."). Accordingly,
25 the court applies each of the factors described above to the facts of
26 this case.

27 (1) The danger of prejudice to the non-moving party. In this
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1 case, Defendant filed her application for extension of time to file
2 her notice of appeal ten days after the deadline for a timely filing
3 had passed. This is a relatively short period of time. Humphrey's
4 argument that he would be prejudiced is not persuasive. Humphrey
5 would suffer little tangible harm other than costs of litigating the
6 appeal if Defendant were allowed an extension of time to file an
7 appeal. The court finds this factor weighs in favor of Defendant.

8 (2) The length of delay and its potential impact on judicial
9 proceedings. Again, as noted in its analysis of the first factor, the
10 length of delay here is relatively short. Defendant's motion for an
11 extension of time falls within the time limits set by Bankruptcy Rule
12 8002(c). The proceedings of this court and the appellate court would
13 not be adversely impacted by granting the Defendant an extension of
14 time. The court finds this factor weighs in favor of Defendant.

15 (3) The reason for the delay, including whether it was within the
16 reasonable control of the movant. In this case, more than one reason
17 contributed to the Defendant's delay in filing a notice of appeal.
18 The court took the motion to set aside the default judgment under
19 submission on December 12, 2006. On December 14, 2006, the court
20 entered on the record a disposition after oral argument denying the
21 motion and stating that a civil minute order would be issued. (Dkt.
22 No. 46). The order denying Defendant's motion to set aside the
23 default judgment was entered on December 19, 2006 (Dkt. No. 47) (the
24 "December 19, 2006 Order").

25 Laura Blevins, the paralegal employed by Defendant's counsel who
26 was responsible for calendaring litigation matters for Defendant's
27 counsel's firm, stated in her declaration (Dkt. No. 54) (the "Blevins
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1 Decl.") that during the later part of the week of December 18, 2006,
2 Defendant's counsel asked her to check the court's PACER system to see
3 if the court's order had been entered. On Wednesday, December 20,
4 2006, Defendant's counsel left the office for an arbitration in
5 another case and did not return for the remainder of the week. "On or
6 about" Thursday, December 21, 2006, Ms. Blevins checked the court's
7 PACER system but could not gain access due a high volume of demand on
8 the system. Blevins Decl., ¶ 7. Ms. Blevins does not state how many
9 times she attempted to access the court's PACER system on December 21,
10 2006, nor does she state whether she attempted to access the court's
11 PACER system on December 22, 2006. The court takes judicial notice
12 that its PACER system is accessible 24 hours per day, seven days per
13 week, 365 days per year. The only exceptions to that availability
14 occur when the system is overloaded with inquiries, when its hardware
15 malfunctions and between the hours of 10:00 p.m. to 1:00 a.m. Monday
16 through Friday when the system backs up its information (during this
17 back-up period, the system may be accessed, but images may not be
18 viewed). No evidence has been presented to indicate that the system
19 encountered any problem other than an overload period on December 21,
20 2006. Therefore, the court concludes that Ms. Blevins made one
21 attempt to access the court's PACER system on December 21, 2006, and
22 made no attempt to access the court's PACER system on December 22,
23 2006.

24 Counsel's law office closed at Noon on Friday, December 22, 2007,
25 due to the upcoming Christmas holiday, and was scheduled to remain
26 closed until January 2, 2007. However, Ms. Blevins was scheduled to
27 work from December 27, 2006 until Noon on December 29, 2006 to
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1 complete a back-log of work and wrap up some matters before the end of
2 the year. On December 27, 2007, Ms. Blevins again checked the PACER
3 system and was able to access the docket for this adversary
4 proceeding. She saw that an order denying a motion to reconsider had
5 been entered on the docket. She initially experienced difficulty in
6 retrieving an image of that order, which was the December 19, 2007
7 Order, but was eventually able to retrieve an image of it later the
8 same day. At this time she realized that the order on the motion to
9 reconsider was related to Defendant's motion to set aside her default.
10 She then contacted Defendant's counsel to inform him that the court
11 had denied the motion. She did not tell him that the order had been
12 entered on December 19th, nor did the attorney inquire as to the date
13 the order had been entered. Defendant's counsel informed the
14 paralegal that he would discuss whether to appeal with Defendant and
15 instructed the paralegal to prepare Defendant's file in case she
16 wished to appeal.

17 Following this conversation, Ms. Blevins undertook to determine
18 the deadline for filing a notice of appeal. She states that she is
19 most familiar with California state rules for filing deadlines, and
20 her usual practice when encountering an unfamiliar rule is to research
21 the rule or consult an attorney. Blevins Decl., ¶ 2. In this case,
22 Ms. Blevins apparently found Bankruptcy Rule 8002 on the internet, but
23 she did not consult a supervising attorney. Blevins Decl., ¶ 10. She
24 incorrectly interpreted the ten-day time limit set forth in Rule
25 8002(a) to mean that ten court days were allowed for the timely filing
26 of a notice of appeal, rather than ten calendar days. Although
27 Defendant's memorandum of points and authorities and the supporting
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1 declarations do not state it explicitly, Ms. Blevins's
2 misinterpretation of the rule caused her to calculate a date for
3 timely filing after December 29, 2006, the last date a timely notice
4 of appeal could be filed pursuant to Rule 8002(a). As a result, the
5 ten-day period for timely filing notice of appeal passed unnoticed.

6 The error was not discovered until January 4, 2007, when another
7 attorney reviewed the order and informed Defendant's lead counsel of
8 the miscalculation of the appeal period. Defendant's counsel then
9 filed this motion on January 8, 2007 seeking an extension of the time
10 deadline for filing a timely notice of appeal.

11 Determining the reasons for the delay does not end this inquiry.
12 The court must also determine whether the reasons for delay were
13 within Defendant's reasonable control. On the record presented, it is
14 clear that Defendant's counsel made no attempt before December 21,
15 2006, to ascertain whether the court had ruled on the motion to set
16 aside Defendant's default. If such an attempt had been made,
17 Defendant's counsel could have discovered the court's disposition
18 after oral argument as early as December 14th.

19 The inaccessibility of the court's PACER system when Ms. Blevins
20 attempted to access it on December 21, 2006, was not within
21 Defendant's control, and it did cause some delay by preventing
22 defendant's counsel from reading the docket entry or the December 19,
23 2006 Order at the time that she attempted to access PACER on that day.
24 However, many other factors contributed to delaying the discovery of
25 the December 19, 2006 Order until December 27, 2006. Ms. Blevins
26 attempted to access PACER only once on December 21, 2006, when she
27 received a message advising her to try again later. She did not

1 attempt to access PACER on the morning of December 22, 2006.
2 Defendant's counsel closed his office from Noon on December 22, 2006
3 through January 1, 2007, and did not to have any staff on hand until
4 December 27, 2006. Because of all of these reasons, no attempt to
5 access PACER after Ms. Blevins' single attempt on December 21, 2006
6 was made until December 27, 2006.

7 On December 27, 2006, Ms. Blevins was able to retrieve a copy of
8 the December 19, 2006 Order. Assuming without deciding that the
9 docket entry on the December 19, 2006 Order may have created some
10 ambiguity because the docket referred to it as an order on a motion to
11 reconsider, any delay caused by such ambiguity had little overall
12 effect on the delay in filing a notice of appeal because Ms. Blevins
13 was able to retrieve an image of the December 19, 2006 Order later on
14 the same day. The reasons for the delay between December 21, 2006 and
15 December 27, 2006 were therefore within Defendant's control.

16 Similarly, the reasons for the delay after the time Ms. Blevins
17 obtained an image of the December 19, 2006 Order on December 27, 2006,
18 with more than two days remaining to file a timely notice of appeal,
19 were squarely within counsel's control. First, Defendant's counsel
20 failed to inquire on December 27, 2006, as to the date the order had
21 been entered, even though the matter had been taken under submission
22 on December 12, 2006, and an order on the matter could have been
23 entered on any following court day. Second, Defendant's counsel
24 failed to interpret Bankruptcy Rule 8002(a) properly, interpreting the
25 rule to mean ten court days rather than ten calendar days.

26 Ultimately, in light of the facts set forth above, the court
27 finds that the reasons for the delay were almost entirely within the
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1 reasonable control of Defendant. The delay was almost entirely due to
2 the negligence of Defendant's counsel. His actions, whether they were
3 accomplished by him or through his directions (or lack thereof) to his
4 staff show a carelessness in attending to this case and a lack of
5 adequate oversight and training of his staff regarding the specifics
6 of bankruptcy procedure, particularly on the subject of filing an
7 appeal. Despite the technical difficulties counsel's staff
8 experienced in the December 21, 2006 attempt to access PACER, it is
9 clear that as of December 27, 2006, Defendant's counsel was aware of
10 the entry of the December 19, 2006 Order and aware of its contents.
11 Defendant's counsel then had more than two days within which to file a
12 notice of appeal or apply for an extension of time to file such
13 notice, but failed to do so.

14 "A lawyer's failure to read an applicable rule is one of the
15 least compelling excuses that can be offered." Pincay, 389 F.3d at
16 859. To the extent that Defendant argues that the error in
17 interpreting Bankruptcy Rule 8002(a) was due to the mistake of a
18 paralegal rather than the supervising attorney, the argument is not
19 persuasive. Delegation of the task of keeping track of deadlines may
20 be necessary in the modern world of legal practice, but "the
21 responsibility for . . . error falls on the attorney regardless of
22 whether the error was made by an attorney or a paralegal." Pincay,
23 389 F.3d 856 (citing Model Rules of Prof'l Conduct R. 5.5 cmt. 2
24 (2002)). Defendant's argument that "most attorneys, including
25 experienced bankruptcy counsel would scoff at the suggestion that [the
26 time for filing] a notice of appeal from a final order of the
27 bankruptcy court is 10 calendar days from the date the order is
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1 entered on the court's docket" (Dkt. No. 52 at 5) is also not
2 persuasive. Defendant has presented no evidence in support of this
3 argument, and it is contrary to the court's experience. The ten-day
4 deadline in Rule 8002(a) is clearly set forth, is not ambiguous, and
5 has been in effect in its present form since Bankruptcy Rule 8002 went
6 into effect in 1987. It is well-understood by most, if not all,
7 bankruptcy practitioners. See In re Rebel Rents, 326 B.R. 791, 806
8 (Bankr. C.D. Cal. 2005) (describing the ten-day limitation in
9 Bankruptcy Rule 8002(a) as "crystal clear").

10 The court finds that this factor weighs in favor of Plaintiffs.

11 (4) Whether the moving party's conduct was in good faith. As
12 part of its analysis of whether Defendant's conduct was in good faith,
13 the court also considers the other factors the Pincay court deemed
14 relevant to a determination of excusable neglect: whether the lawyer
15 had otherwise been diligent, the propensity of the other side to
16 capitalize on petty mistakes, the quality of representation of the
17 lawyers, and the likelihood of injustice if the appeal was not
18 allowed. In doing so, this court, like the Pincay court, takes into
19 consideration the history of the litigation in this adversary
20 proceeding. See Pincay, 389 F.3d at 859 (considering the
21 aforementioned factors in the context of a fifteen-year period of
22 litigation in the case).

23 The delay that led to this motion is the latest event in an
24 adversary proceeding that has been marred by long and unnecessary
25 delays. Plaintiffs filed the complaint commencing this adversary
26 proceeding on May 16, 2005. Defendant did not answer the complaint.
27 The court entered Defendant's default on July 7, 2005 and Plaintiffs
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1 obtained a default judgment on August 17, 2005. The adversary
2 proceeding was closed on August 29, 2005. According to Defendant's
3 declaration, during June and July, 2005, she sought assistance from
4 two attorneys but did not employ them because she could not afford
5 their fees. In October, 2005, she consulted co-counsel Alan Smith,
6 who helped her find attorney William Brewer in December, 2005.
7 According to Defendant, Mr. Brewer began representing her on December
8 9, 2005, slightly more than three months after the court closed the
9 adversary proceeding. (Dkt. No. 79 at 5).

10 This account of Defendant's search for qualified counsel provides
11 substantially more information than was previously provided to the
12 court on the motion to set aside the default. In its previous ruling
13 on Defendant's motion to set aside, the court found that she
14 sufficiently explained her delay in obtaining counsel through
15 December, 2005, as her mother had passed away in September, 2005, and
16 the surge in bankruptcy filings surrounding the effective date of the
17 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005
18 ("BAPCPA") in October, 2005, arguably would have made finding
19 qualified counsel difficult. However, the court in its previous
20 ruling found that Defendant's motion to set aside her default was not
21 filed within a reasonable time where there was no explanation of the
22 delay in filing during the period from December, 2005, to June 19,
23 2006, 364 days after entry of judgment against her. The court found
24 that Defendant's statements that she attempted to find other counsel
25 before hiring current counsel (Dkt. No. 34 at 9; Dkt. No. 23 at 11)
26 were insufficient to explain her failure to file the motion to set
27 aside sooner, as Defendant had provided no evidence showing how many
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1 other lawyers she had consulted or exactly how long each had taken
2 before declining to represent her. Defendant's only stated reason for
3 failing to obtain counsel prior before hiring current counsel was that
4 she could not afford to pay attorney's fees. (Dkt. No. 34 at 9; Dkt.
5 No. 23 at 11).

6 Defendant's account of her search for counsel in support of this
7 motion is more detailed, but the new facts which have come to light do
8 not make her filing of the motion to set aside on June 19, 2006 appear
9 any more reasonable. The court does not revisit its previous ruling
10 in light of Defendant's evidence now presented in support of this
11 motion. However, the court finds for purposes of the present motion,
12 in analyzing the history of this adversary proceeding, that the
13 failure to file the motion to set aside earlier than June 19, 2006 was
14 unreasonable. First, it is now clear that following the close of the
15 adversary proceeding, Defendant had met with only two attorneys who
16 had declined to represent her, and by October 2005 was being assisted
17 by co-counsel Smith in locating an attorney. The attorney located by
18 co-counsel Smith, Mr. Brewer, agreed to represent Defendant in
19 December, 2005. Then, according to Defendant, between December, 2005,
20 and June, 2006, her present counsel spent more than six months
21 investigating and collecting information relating to Defendant's
22 claims in order to determine whether she would be successful in
23 defending Plaintiffs's cause of action before counsel felt it was
24 appropriate to file the motion to set aside. The court understands an
25 attorney's desire to investigate the merit of a potential client's
26 claims before agreeing to representation and his duty to do so before
27 advocating the client's position to the court. However, the court
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1 finds that here Defendant waited more than six months after acquiring
2 counsel in order to obtain the maximum delay possible under Federal
3 Rule of Civil Procedure 60(b)(1). It was simply not necessary to
4 investigate and research this case for more than six months before
5 filing a motion to set aside Defendant's default, even in light of the
6 alleged complexity of the case.

7 Furthermore, a party seeking to set aside a default or default
8 judgment need not, prior to the filing the motion to set aside,
9 investigate and prepare his case so thoroughly that he could
10 immediately prove his case at trial if the motion were granted. "To
11 justify vacating the default judgment . . . [defendant] had to present
12 the district court with specific facts that would constitute a
13 defense. . . . A 'mere general denial without facts to support it' is
14 not enough to justify vacating a default or default judgment."
15 Franchise Holding II, LLC v. Huntington Rests. Group, Inc., 375 F.3d
16 922, 926 (quoting Madsen v. Bumb, 419 F.2d 4, 6 (9th Cir. 1969)).
17 However, the burden of setting forth a meritorious defense "is not
18 extraordinarily heavy." TCI Group Life Ins. Plan v. Knoebber, 244
19 F.3d 691, 700 (9th Cir. 2004) (citing In re Stone, 588 F.2d 1316, 1319
20 n.2 (10th Cir. 1978)). A movant need only demonstrate facts or law
21 showing the trial court that a "a sufficient defense is assertible."
22 Id.

23 Defendant's delaying tactics continued after the filing of the
24 motion to set aside. The motion to set aside Defendant's default and
25 the default judgment was filed on June 19, 2006. The motion was filed
26 without a notice of hearing or any indication of a hearing date and
27 time on the papers that were filed. The motion languished on the
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1 docket for two months without a hearing date until Defendant filed a
2 notice of hearing on August 14, 2006 in another adversary proceeding,
3 number 05-02152 (Weber v. Christiansen), setting for hearing on
4 September 12, 2006 Defendant's motion to set aside filed in that
5 adversary proceeding and her motion to set aside filed in this
6 adversary proceeding. But the matter did not appear on the September
7 12, 2006 calendar. Even though the absence of the matter from the
8 September 12, 2006 calendar would have been apparent within a few days
9 after August 14, 2006 to anyone who checked the "Court Calendars" link
10 on the court website, it was not until two weeks after the September
11 12, 2006 calendar date, on September 26, 2006, that Defendant filed an
12 amended notice re-setting the hearing. Pursuant to the September 26,
13 2006 amended notice, the motion to set aside was finally brought
14 before the court on October 24, 2006, more than four months after it
15 was filed. Motions filed in adversary proceedings require 28 days
16 notice. LBR 9014-1(f)(2)(i). Defendant's motion could easily have
17 been set on the court's July 25, 2006 law and motion calendar.
18 However, due to Defendant's failure to attend diligently to this case
19 or follow the local rules of practice for this court, the motion was
20 only brought before the court three months later.

21 The pattern of delay by Defendant that has emerged during this
22 adversary proceeding shows that Defendant delayed the relief from
23 default issue as long as possible. In contrast, there is no evidence
24 in the record of this case showing Plaintiffs's propensity to
25 capitalize on Defendant's errors or mistakes. Defendant argues that
26 Plaintiff Humphrey makes frivolous arguments, such as opposing
27 Defendant's motion to set aside and opposing Defendant's motion to
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1 extend the time for filing an appeal. The court does not find
2 Plaintiff's positions on these matters to be frivolous. Considering
3 these factors, the court finds that Defendant has not acted in good
4 faith in bringing the present motion. This factor weighs heavily in
5 favor of Plaintiffs.

6 Finally, Defendant argues that if her appeal is not allowed,
7 significant injustice will result. However, the court can find no
8 injustice that would result from not allowing Defendant to timely file
9 a notice of appeal greater than that which occurs in any other case in
10 which a party is barred from litigating the merits of her case due to
11 a failure to participate in the management of the case and failure to
12 seek relief from default within a reasonable amount of time.

13 In conclusion, the court finds that the facts do not show
14 cognizable prejudice that would be inflicted on Plaintiffs by granting
15 this motion. The court also finds that the delay between the
16 expiration of the deadline for timely filing a notice of appeal and
17 the filing of this motion was relatively short. The court finds,
18 however, that the other two factors cut against Defendant. The delay
19 was within Defendant's reasonable control and the pattern of delay
20 shown by Defendant over the history of this adversary proceeding shows
21 that Defendant's conduct has not been in good faith. The same pattern
22 of delay has prevented a just and efficient resolution of this
23 adversary proceeding.

24 As noted in the court's discussion of the applicable standard for
25 the excusable neglect analysis, the latter factors figure more
26 prominently in the context of this case and weigh heavily against the
27 granting of this motion. The court balances the totality of the
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1 Pioneer factors in favor of Plaintiffs and finds that Defendant has
2 not carried her burden of establishing that her failure to timely file
3 a notice of appeal was the result of excusable neglect. Accordingly,
4 Defendant's motion for an extension of time to a file a notice of
5 appeal in this adversary proceeding pursuant to Bankruptcy Rule
6 8002(c)(2) is denied.

7 The court will issue a minute order.