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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 VERN WEBER,)
13 Plaintiff) Adv. No. 05-2152-B
14 vs.)
15 KAREN CHRISTIANSEN,) Docket Control No. WKB-4
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
format, as required by the Act. However, this posting does not
23 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 timely filed
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1 supplemental briefing. Defendant filed supplemental briefing one day
2 late, on February 21, 2007. The matter came on for final hearing on
3 March 6, 2007, at 9:30 a.m. Appearances are noted on the record. The
4 following constitutes the court's findings of fact and conclusions of
5 law pursuant to Federal Rule of Bankruptcy Procedure 7052.

6 The motion is denied.

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

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

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

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

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

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

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

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

20
21 Pincay, 389 F.3d at 861 (Kozinski, J., dissenting). In
22 addition, the Supreme Court in Pioneer assigned particular importance
23 to the good faith of the moving party, holding that any indication of
24 bad faith is grounds for finding neglect inexcusable. See Pioneer,
25 507 U.S. at 398 ("To be sure, were there . . . any indication at all
26 of bad faith, we could not say that the Bankruptcy Court abused its
27 discretion in declining to find the neglect to be 'excusable.'").

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

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

22 (1) The danger of prejudice to the non-moving party. In this
23 case, Defendant filed her application for extension of time to file
24 her notice of appeal ten days after the deadline for a timely filing
25 had passed. This is a relatively short period of time. Plaintiff's
26 argument that he would be prejudiced because he has a motion in aid of
27 execution pending in El Dorado Superior Court is not persuasive.

1 Plaintiff would suffer little tangible harm other than costs of
2 litigating the appeal if Defendant were allowed an extension of time
3 to file an appeal. The court finds this factor weighs in favor of
4 Defendant.

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

12 (3) The reason for the delay, including whether it was within
13 the reasonable control of the movant. In this case, more than one
14 reason contributed to the Defendant's delay in filing a notice of
15 appeal. The court took the motion to set aside the default judgment
16 under submission on December 12, 2006. On December 14, 2006, the
17 court entered on the record a disposition after oral argument denying
18 the motion and stating that a civil minute order would be issued.
19 (Dkt. No. 34). The order denying Defendant's motion to set aside the
20 default judgment was entered on December 19, 2006 (Dkt. No. 35) (the
21 "December 19, 2006 Order").

22 Laura Blevins, the paralegal employed by Defendant's counsel who
23 was responsible for calendaring litigation matters for Defendant's
24 counsel's firm, stated in her declaration (Dkt. No. 42) (the "Blevins
25 Decl.") that during the later part of the week of December 18, 2006,
26 Defendant's counsel asked her to check the court's PACER system to see
27 if the court's order had been entered. On Wednesday, December 20,
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1 2006, Defendant's counsel left the office for an arbitration in
2 another case and did not return for the remainder of the week. "On or
3 about" Thursday, December 21, 2006, Ms. Blevins checked the court's
4 PACER system but could not gain access due a high volume of demand on
5 the system. Blevins Decl., ¶ 7. Ms. Blevins does not state how many
6 times she attempted to access the court's PACER system on December 21,
7 2006, nor does she state whether she attempted to access the court's
8 PACER system on December 22, 2006. The court takes judicial notice
9 that its PACER system is accessible 24 hours per day, seven days per
10 week, 365 days per year. The only exceptions to that availability
11 occur when the system is overloaded with inquiries, when its hardware
12 malfunctions and between the hours of 10:00 p.m. to 1:00 a.m. Monday
13 through Friday when the system backs up its information (during this
14 back-up period, the system may be accessed, but images may not be
15 viewed). No evidence has been presented to indicate that the system
16 encountered any problem other than an overload period on December 21,
17 2006. Therefore, the court concludes that Ms. Blevins made one
18 attempt to access the court's PACER system on December 21, 2006, and
19 made no attempt to access the court's PACER system on December 22,
20 2006.

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

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

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

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

16 The inaccessibility of the court's PACER system when Ms. Blevins
17 attempted to access it on December 21, 2006, was not within
18 Defendant's control, and it did cause some delay by preventing
19 Defendant's counsel from reading the docket entry or the December 19,
20 2006 Order at the time that she attempted to access PACER on that day.
21 However, many other factors contributed to delaying the discovery of
22 the December 19, 2006 Order until December 27, 2006. Ms. Blevins
23 attempted to access PACER only once on December 21, 2006, when she
24 received a message advising her to try again later. She did not
25 attempt to access PACER on the morning of December 22, 2006.
26 Defendant's counsel closed his office from Noon on December 22, 2006
27 through January 1, 2007, and did not to have any staff on hand until
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1 December 27, 2006. Because of all of these reasons, no attempt to
2 access PACER after Ms. Blevins' single attempt on December 21, 2006
3 was made until December 27, 2006.

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

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

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

11 "A lawyer's failure to read an applicable rule is one of the
12 least compelling excuses that can be offered." Pincay, 389 F.3d at
13 859. To the extent that Defendant argues that the error in
14 interpreting Bankruptcy Rule 8002(a) was due to the mistake of a
15 paralegal rather than the supervising attorney, the argument is not
16 persuasive. Delegation of the task of keeping track of deadlines may
17 be necessary in the modern world of legal practice, but "the
18 responsibility for . . . error falls on the attorney regardless of
19 whether the error was made by an attorney or a paralegal." Pincay,
20 389 F.3d 856 (citing Model Rules of Prof'l Conduct R. 5.5 cmt. 2
21 (2002)). Defendant's argument that "most attorneys, including
22 experienced bankruptcy counsel would scoff at the suggestion that [the
23 time for filing] a notice of appeal from a final order of the
24 bankruptcy court is 10 calendar days from the date the order is
25 entered on the court's docket" (Dkt. No. 40 at 5) is also not
26 persuasive. Defendant has presented no evidence in support of this
27 argument, and it is contrary to the court's experience. The ten-day
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1 deadline in Rule 8002(a) is clearly set forth, is not ambiguous, and
2 has been in effect in its present form since Bankruptcy Rule 8002 went
3 into effect in 1987. It is well-understood by most, if not all,
4 bankruptcy practitioners. See In re Rebel Rents, 326 B.R. 791, 806
5 (Bankr. C.D. Cal. 2005) (describing the ten-day limitation in
6 Bankruptcy Rule 8002(a) as "crystal clear").

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8 The court finds that this factor weighs in favor of
9 Plaintiff.

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

22 The delay that led to this motion is the latest event in an
23 adversary proceeding that has been marred by long and unnecessary
24 delays. Plaintiff filed the complaint commencing this adversary
25 proceeding on April 19, 2005. Defendant answered the complaint, but
26 failed to serve a copy of her answer on Plaintiff. When Defendant
27 failed to appear at a status conference on June 2, 2005, Judge McKeag,

1 who then presided in Department B, struck Defendant's answer and
2 entered her default. Plaintiff obtained a default judgment on June
3 20, 2005, and on July 1, 2005, the adversary proceeding was closed.
4 According to Defendant's declaration, during June and July, 2005, she
5 sought assistance from two attorneys but did not employ them because
6 she could not afford their fees. In October, 2005, she consulted co-
7 counsel Alan Smith, who helped her find attorney William Brewer in
8 December, 2005. According to Defendant, Mr. Brewer began representing
9 her on December 9, 2005, slightly more than five months after the
10 court closed the adversary proceeding. (Dkt. No. 61 at 5).

11 This account of Defendant's search for qualified counsel
12 provides substantially more information than was previously provided
13 to the court on the motion to set aside the default. In its previous
14 ruling on Defendant's motion to set aside, the court found that she
15 sufficiently explained her delay in obtaining counsel through
16 December, 2005, as her mother had passed away in September, 2005, and
17 the surge in bankruptcy filings surrounding the effective date of the
18 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005
19 ("BAPCPA") in October, 2005, arguably would have made finding
20 qualified counsel difficult. However, the court in its previous
21 ruling found that Defendant's motion to set aside her default was not
22 filed within a reasonable time where there was no explanation of the
23 delay in filing during the period from December, 2005, to June 19,
24 2006, 364 days after entry of judgment against her. The court found
25 that Defendant's statement that she "met with several attorneys, who
26 would review her documents for weeks at a time then decide not to take
27 her case before finally finding an attorney who would help her" (Dkt.

1 No. 30 at 4) was insufficient to explain her failure to file the
2 motion to set aside sooner, as Defendant had provided no evidence
3 showing how many other lawyers she had consulted or exactly how long
4 each had taken before declining to represent her.

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

6 Furthermore, a party seeking to set aside a default or default
7 judgment need not, prior to the filing the motion to set aside,
8 investigate and prepare his case so thoroughly that he could
9 immediately prove his case at trial if the motion were granted. "To
10 justify vacating the default judgment . . . [defendant] had to present
11 the district court with specific facts that would constitute a
12 defense. . . . A 'mere general denial without facts to support it' is
13 not enough to justify vacating a default or default judgment."

14 Franchise Holding II, LLC v. Huntington Rests. Group, Inc., 375 F.3d
15 922, 926 (quoting Madsen v. Bumb, 419 F.2d 4, 6 (9th Cir. 1969)).

16 However, the burden of setting forth a meritorious defense "is not
17 extraordinarily heavy." TCI Group Life Ins. Plan v. Knoebber, 244
18 F.3d 691, 700 (9th Cir. 2004) (citing In re Stone, 588 F.2d 1316, 1319
19 n.2 (10th Cir. 1978). A movant need only demonstrate facts or law
20 showing the trial court that a "a sufficient defense is assertible."

21 Id.

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

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

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

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

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

3 The court will issue a minute order.

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