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NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PATRICIA HARDING
MORRISON,
Plaintiff-Appellant,

v.

QUEST DIAGNOSTICS INC.;
et al.,
Defendants-Appellees.

No. 21-15277

D.C. No. 2:14-cv-01207-
RFB-BNW

MEMORANDUM*

(Filed Dec. 21, 2021)

Appeal from the United States District Court
for the District of Nevada
Richard F. Boulware II, District Judge, Presiding
Submitted December 14, 2021**

Before: WALLACE, CLIFTON, and HURWITZ, Circuit
Judges.

Patricia Harding Morrison appeals pro se from the district court's order denying her post-judgment motion to reopen her diversity action. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *Sch. Dist. No. 1J, Multnomah County, Or. v.*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2).*

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ACandS, Inc., 5 F.3d 1255, 1262 (9th Cir. 1993). We affirm.

The district court did not abuse its discretion in denying Morrison's motion to reopen the action because the motion was filed more than one year after entry of judgment. *See* Fed. R. Civ. P. 60(c)(1); *Nevitt v. United States*, 886 F.2d 1187, 1188 (9th Cir. 1989) (motion for relief from judgment based on newly discovered evidence must be made within one year after judgment was entered).

We do not consider Morrison's contentions regarding the district court's denial of her prior post judgment motions because Morrison failed to file a timely notice of appeal of these post-judgment orders. *See* Fed. R. App. P. 4(a)(1)(A) (notice of appeal must be filed within 30 days from judgment).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Morrison's supplemented motion for injunctive relief (Docket Entry Nos. 28 and 29) is denied.

AFFIRMED.

UNITED STATES COURT OF APPEALS
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PATRICIA HARDING
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Defendants-Appellees.

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District of Nevada,

Las Vegas

ORDER

(Filed Jun. 21, 2021)

Before: Lisa B. Fitzgerald, Appellate Commissioner.

On June 9, 2021, this court stayed appellate proceedings pending a ruling on appellant's February 26, 2021 motion in the district court. On June 14, 2021, the district court entered an order on the February 26, 2021 motion, granting an extension of time to appeal pursuant to Federal Rule of Appellate Procedure 4(a)(5). The stay order filed June 9, 2021, is therefore lifted. This appeal from the district court's January 12, 2021 post-judgment order will proceed based on the February 16, 2021 notice of appeal.

The February 18, 2021 order to show cause is discharged. Appellant's motion to file a brief and motion to file an errata with respect to the February 18, 2021 order to show cause are therefore unnecessary (Docket Entry Nos. 3, 5).

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The opening brief is due July 21, 2021. The answering brief is due August 20, 2021. The optional reply brief is due within 21 days after service of the opening brief.

Because appellant is proceeding without counsel, appellant is not required to file excerpts of record. See 9th Cir. R. 30-1.3. Unless appellant files excerpts of record, appellees “must file Supplemental Excerpts of Record that contain all of the documents that are cited in the pro se opening brief or otherwise required by Rule 30-1.4, as well as the documents that are cited in the answering brief.” *See id.*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

MORRISON,
Plaintiff,

v.
QUEST DIAGNOSTICS
INCORPORATED, et al.
Defendants.

Case No. 2:14-cv-01207-
RFB-BNW

ORDER

(Filed Jun. 14, 2021)

I. INTRODUCTION

Before the Court is *pro se* Plaintiff Patricia Morrison's Notice of Errata, seeking an extension of time to appeal. ECF No. 340. This Court grants Plaintiff's request for the reasons below.

II. BACKGROUND

On January 12, 2021, the Court issued an Order informing Plaintiff that it will no longer entertain additional filings and instructing the Clerk of the Court to not accept any filings from Plaintiff. ECF No. 335. On February 16, 2021, Plaintiff filed a Notice of Appeal. ECF No. 336. On February 23, 2021, Plaintiff filed a Motion to Correct Filing Date regarding the Notice of Appeal. ECF No. 339. On February 26, 2021, Plaintiff filed a Notice of Errata acknowledging that the filing date on the Court's docket is correct, and that the Notice of Appeal was not delivered to the Court until

February 16, 2021. ECF No. 340. The Notice of Errata also seeks an extension of time to file the notice of appeal. *Id.* On June 9, 2021 the Ninth Circuit remanded Plaintiff's appeal for the limited purpose of allowing the Court to consider Plaintiffs request for an extension of time to appeal. ECF No. 345.

III. LEGAL STANDARD

"Federal Rule of Appellate Procedure 4(a)(1)(A) requires a party in a civil case to file a notice of appeal with the district court clerk 'within 30 days after the judgment or order appealed from is entered.'" Los Altos El Granada Inv'rs v. City of Capitola, 583 F.3d 674, 682 (9th Cir. 2009) (citing Fed. R. App. P. 4(a)(1)(A)). However, the moving party must move for the extension "no later than thirty days after the time prescribed by Rule 4(a) expires." Fed. R. App. P. 4(a)(5)(A). The moving party must also show "excusable neglect or good cause." *Id.* The excusable neglect standard applies when the motion for an extension of time is filed after the initial thirty-day window to file a notice of appeal expires. Oregon v. Champion Int'l Corp., 680 F.2d 1300, 1301 (9th Cir. 1982).

The Ninth Circuit considers four factors identified by the Supreme Court in Pioneer Investment Services Co. v. Brunswick Associates Ltd., 507 U.S. 380 (1993) when determining if excusable neglect exists: (1) the danger of prejudice to the nonmoving party; (2) the length of delay and its potential impact on judicial proceedings; (3) the reason for the delay, including

whether it was in the moving party's reasonable control; and (4) if the moving party's conduct was in good faith. Los Altos El Granada Inv'rs, 583 F.3d at 683 (citing Pioneer Investment Services Co. and Pincay v. Andrews, 389 F.3d 853, 855 (9th Cir. 2004) (en banc)). A court considers "all relevant circumstances surrounding the party's [failure to timely appeal]." Pioneer Inv. Servs. Co., 507 U.S. at 395.

IV. DISCUSSION

The Court finds that Plaintiff has demonstrated excusable neglect for failing to timely file her notice of appeal. Here, Plaintiff filed a notice of appeal and request for an extension of time to appeal after the 30-day deadline, February 12, 2021. In her request for extension of time to appeal, Plaintiff argues the delays in postage due to COVID-19 and the February 2021 polar vortex constitute excusable neglect. Plaintiff mailed the notice of appeal via priority overnight Federal Express ("Fedex") on February 11, 2021. The polar vortex storm caused Fedex to temporarily suspend its services, and instead prioritized shipments of the COVID-19 vaccine. Due to the temporary suspension of services and re-prioritization of packages, Plaintiff's notice of appeal was not filed until four days after the deadline, February 16, 2021. In considering all the circumstances causing the delay, the Court finds that Plaintiff demonstrated excusable neglect for failing to timely file the notice of appeal. Therefore, the Court grants Plaintiff's extension of time to file an appeal.

V. CONCLUSION

IT IS ORDERED that Plaintiff Morrison's Notice of Errata requesting an extension of time to appeal (ECF No. 340) is GRANTED.

IT IS FURTHER ORDERED that Plaintiff Morrison's Motion to Correct Filing Date (ECF No. 339) is DENIED as moot.

IT IS FURTHER ORDERED that the Clerk of the Court provide a copy of this order to the United States Court of Appeals for the Ninth Circuit.

DATED this day of June 14, 2021.

/s/ Richard F. Boulware

RICHARD F. BOULWARE, II
UNITED STATES
DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
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District of Nevada,

Las Vegas

ORDER

(Filed Mar. 30, 2022)

Before: WALLACE, CLIFTON, and HURWITZ, Circuit
Judges.

The panel has voted to deny the petition for panel
rehearing.

The full court has been advised of the petition for
rehearing en banc and no judge has requested a vote
on whether to rehear the matter en banc. *See* Fed. R.
App. P. 35.

Morrison's petition for panel rehearing and peti-
tion for rehearing en banc (Docket Entry No. 31) are
denied.

No further filings will be entertained in this closed
case.
