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8 **UNITED STATES BANKRUPTCY COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10 **SAN FERNANDO VALLEY DIVISION**

11  
12 In re:

13 Ateco Inc

14  
15  
16 Debtor(s).

Case No.: 1:10-bk-22623-MT

CHAPTER 11

**MEMORANDUM OF DECISION RE  
REMAND FROM THE DISTRICT COURT  
FOR THE LIMITED DETERMINATION OF  
EXCUSABLE NEGLIGENCE UNDER FED. R.  
BANKR. P. 8002(d)(1)(B)**

[No hearing required]

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19 On April 9, 2014, the Court issued its Memorandum of Decision re Trial on (1) Validity of  
20 Lien; and (2) Disallowance of Claim (the "Trial Memorandum"), finding after a full trial on the  
21 merits that John Hebb ("Hebb") was not a creditor of Debtor's bankruptcy estate (bankr. doc. no.  
22 356). An Order Sustaining Debtor's Objection to Hebb's Claim was entered on the bankruptcy  
23 docket (no. 357), and a Partial Judgment in favor of Debtor was entered on the adversary  
24 docket (no. 115).

25 On April 25, 2014, at 12:02 a.m., Hebb filed a Motion for New Trial (the "New Trial  
26 Motion"). Under Fed. R. Bankr. P. 9023, a motion for a new trial must be filed no later than 14  
27 days after entry of judgment. A timely motion for a new trial will toll the time for appeal until "the  
28 entry of the order disposing of the last such motion outstanding." Fed. R. Bankr. P.  
8002(b)(1)(C). Hebb's New Trial Motion was filed 15 days after judgment was entered, and thus

1 did not toll the appeal deadline. Nevertheless, on May 6, 2014, Hebb filed a Notice of Appeal to  
2 the U.S. District Court (bankr. doc. no. 380).

3 On May 7, 2014, Hebb filed a Motion to Deem New Trial Motion Timely Filed (the  
4 “Timeliness Motion”), in which he argued that he could not file his New Trial Motion on time  
5 using the recommended internet browser due to CM/ECF technical failures (bankr. doc. no.  
6 384). On that same day, Hebb also filed a Motion to Extend Time to Appeal under Rule 8002(c)  
7 (the “Motion to Extend”). The Court entered an order granting the Timeliness Motion on May 9,  
8 2014 because the New Trial Motion “was late by solely a few minutes and, as such, there is no  
9 prejudice to Debtor.” [bankr. doc. no. 395 at 2.] The Court then denied the Motion to Extend as  
10 moot.

11 Reviewing the appeal, the District Court explained that “a court may not enlarge the time  
12 for taking action under Rule[] . . . 9023 [which governs timing for a new trial motion].” Fed. R.  
13 Bankr. P. 9006(b)(2). Accordingly, the District Court found that the Court lacked authority to  
14 deem Hebb’s New Trial Motion timely filed, even if it found there was sufficient justification for  
15 doing so. See In re Se. Bank Corp., 97 F.3d 476, 478 (11th Cir. 1996) (citing 9006(b)(2) to  
16 conclude that “the bankruptcy court was without jurisdiction to grant [a] motion for rehearing”  
17 when the motion was untimely filed under Rule 9023); see also In re Harper, 489 B.R. 251, 260  
18 (Bankr. N.D. Ga. 2013) (declining to accept late filing barred by rule 9006 even though the filing  
19 was “two minutes and forty-four seconds late” due to a computer error). As Hebb’s New Trial  
20 Motion was untimely, it could not toll the time for appeal, and Hebb’s May 6, 2014 Notice of  
21 Appeal was also untimely.

22 Bankruptcy courts have discretion to grant extensions for appeal “within 21 days after”  
23 the time for appeal has expired upon a party’s motion and showing of excusable neglect. Fed.  
24 R. Bankr. P. 8002(d)(1)(B). Hebb’s motion for extension of time under Rule 8002(c)(2) is timely  
25 in that it was filed within 21 days after expiration of the April 24, 2014 deadline to file a notice of  
26 appeal. The District Court remanded the matter for the limited purpose determining whether  
27 Hebb has met his burden of establishing “excusable neglect.”  
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1 Standard

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3 Fed. R. Bankr.P. 8002(a) provides that, subject to certain exceptions not applicable  
4 here, a notice of appeal must be filed with the bankruptcy clerk within fourteen (14) days after  
5 the entry of judgment.

6 Rule 8002(d) provides for an extension of the fourteen (14) day appeal period as follows:

7  
8 (1) When the Time May be Extended. Except as provided in subdivision (d)(2),  
9 *the bankruptcy court may extend the time to file a notice of appeal* upon a party's  
10 motion that is filed:

11 (A) within the time prescribed by this rule; or

12 (B) *within 21 days after that time, if the party shows excusable neglect.*

13 ...

14 (3) Time Limits on an Extension. No extension of time may exceed 21 days after  
15 the time prescribed by this rule, or 14 days after the order granting the motion to  
16 extend time is entered, whichever is later.

17 Fed. R. Bankr.P. 8002 (emphasis added).

18 Under Rule 8002(d)(1)(B), the Plaintiffs carry the burden of proving that the failure to file  
19 a timely appeal was the product of "excusable neglect." See, e.g., In re Boyce, 2009 WL  
20 4060093, at \*1 (Bankr.E.D.Pa. Nov. 18, 2009); *accord* In re AMF Bowling Worldwide, Inc., 520  
21 B.R. 185, 196 (Bankr.E.D.Va.2014).

22 The Supreme Court definitively construed Rule 9006(b)(1) in Pioneer Inv. Servs. Co. v.  
23 Brunswick Associates Ltd. P'ship, 507 U.S. 380, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993).  
24 Pioneer informs the application of excusable neglect in every court rule in which that term is  
25 used. The Ninth Circuit specifically has held that the Pioneer standard for Rule 9006(b)(1) is  
26 used in applying Rule 8002(d)(1)(B). See Picany v. Andrews, 389 F.3d 853 (9th Cir. 2004) (en  
27 banc); In re Zilog, 450 F.3d 996 (9th Cir. 2006).

28 To determine whether a party's failure to meet a deadline constitutes "excusable  
neglect," courts must apply a four-factor equitable test, examining: (1) the danger of prejudice to  
the opposing party; (2) the length of the delay and its potential impact on the proceedings; (3)

1 the reason for the delay; and (4) whether the movant acted in good faith. Ahanchian v. Xenon  
2 Pictures, Inc., 624 F.3d 1253, 1261 (9th Cir. 2010) citing, Pioneer, 507 U.S. at 395. See also  
3 Briones v. Riviera Hotel & Casino, 116 F.3d 379, 381 (9th Cir.1997) (adopting the Pioneer test  
4 for consideration of Rule 60(b) motions).

5 Pioneer requires that the issue of excusable neglect be determined in the context of the  
6 particular case. Pincay, 389 F.3d at 859 (stating that the “question is whether there [is] enough  
7 in the context of [the] case to bring a determination of excusable neglect within the ... court's  
8 discretion”). The burden of presenting facts demonstrating excusable neglect is on the movant.  
9 Key Bar Investments v. Cahn, 188 B.R. 627, 631 (B.A.P. 9th Cir. 1995); In re Pac. Gas & Elec.  
10 Co., 311 B.R. 84, 89 (Bankr.N.D.Cal.2004).

11 Because Pioneer's four factors are non-exclusive, the court is permitted to take “account  
12 of all relevant circumstances surrounding the party's omission” in making an equitable  
13 determination. Pioneer, 507 U.S. at 395; see Briones, 116 F.3d at 382 n. 2 (noting that “we will  
14 ordinarily examine all of the circumstances involved rather than holding that any single  
15 circumstance in isolation compels a particular result regardless of other factors”). Pioneer  
16 mandated a balancing test for divining excusable neglect, but Pioneer did not assign the weight  
17 to be accorded by the court to each of its non-exclusive factors in making an equitable  
18 determination. See Pincay, 389 F.3d at 860 (stating that “we leave the weighing of Pioneer's  
19 equitable factors to the discretion of the ... court in every case”); Lowry v. McDonnell Douglas  
20 Corp., 211 F.3d 457, 463 (8th Cir.2000) (stating that “[t]he four Pioneer factors do not carry  
21 equal weight”), cert. denied, 531 U.S. 929, 121 S.Ct. 309, 148 L.Ed.2d 248 (2000).

22 Given the policy favoring finality of bankruptcy orders, acceleration of appeals, and the  
23 like, which underlies the time periods and requirements of Rule 8002, however, the equitable  
24 standard adopted by Pioneer should, in this context, be rigorously applied so that excusable  
25 neglect is only infrequently found. 10-8002 Collier on Bankruptcy ¶ 8002.13 (16th Ed.).

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1 Analysis

2 *The danger of prejudice to the opposing party*

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4 According to Hebb, there is no perceivable prejudice to Debtor. Hebb bases this  
5 contention on the Court proceeding with the bankruptcy case *i.e.* setting dates for approval of  
6 the disclosure statement and plan confirmation, and the appeal of this Court's ruling that, among  
7 other things, Hebb waived whatever right to arbitration he may have had though his delays in  
8 this and the state court case. See Memorandum re Whether This Case Should be Dismissed,  
9 bankr. doc. no. 175. Hebb believes that there is no prejudice to Debtor because "the  
10 bankruptcy court ... will no doubt continue to so proceed despite this appeal as well."

11 In examining the totality of the circumstances, Hebb's argument focuses on a tree while  
12 ignoring the thick, procedural forest in which he is standing. Debtor's reorganization was  
13 delayed for years due to Hebb's inability (or unwillingness) to follow directions from the Court or  
14 the procedures required by the Rules. The Court has described the details of Hebb's lack of  
15 attention to deadlines and procedural rules in the six memoranda issued in this case and the  
16 related adversary proceeding. While Hebb cannot be faulted for the initial delay caused by  
17 Debtor's bankruptcy, Hebb is responsible for his post-petition dilatory conduct. Relevant  
18 circumstances to be taken into consideration in the context of a Motion to Extend "may include  
19 the procedural context in which the extension is sought." Dix v. Johnson (In re Dix), 95 B.R.  
20 134, 137 (9th Cir. BAP 1988). Thus, a detailed recitation of the delays caused by Hebb in this  
21 case is warranted.<sup>1</sup>

22 Hebb began his involvement with this bankruptcy by asserting a claim against Debtor  
23 and insisting that he had an enforceable pre-petition right to have the dispute resolved in  
24 arbitration. Hebb did not, however, file his Motion for Relief from Stay to proceed with the  
25 arbitration in state court until March 2, 2011, five months after the bankruptcy commenced.  
26 Although Debtor filed an objection to his claim, Hebb failed to respond to the objection. Instead,  
27 Hebb filed an appeal with the Bankruptcy Appellate Panel for the Ninth Circuit (the "B.A.P")  
28 requesting, that this Court be ordered to lift the automatic stay to proceed immediately to

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<sup>1</sup> The Court has exercised its discretion to take judicial notice of the documents filed in the bankruptcy and  
adversary proceeding pursuant to FRE 201, as made applicable to bankruptcy proceedings by FRBP  
9017. See O'Rourke v. Seaboard Sur. Co. (In re E.R. Fegert, Inc.), 887 F.2d 955, 957-58 (9th Cir. 1989).

1 arbitration. On June 23, 2011, the B.A.P. remanded Hebb's appeal for this Court to enter an  
2 Order granting or denying Hebb's Motion for Relief from Stay.

3 On July 26, 2011, the Court granted Hebb's Motion for Relief from Stay as requested.  
4 Hebb then never properly submitted an order as required of the prevailing party by Local  
5 Bankruptcy Rule 9021-1(1).<sup>2</sup> Between the Court's July 26, 2011 ruling granting relief from stay  
6 and the January 10, 2012 notice from the B.A.P. stating that no order had been entered (bankr.  
7 doc. no. 136), Hebb never contacted chambers or filed anything to inquire as to why an order  
8 had not been entered. Had an inquiry been made, the fact that no order was ever lodged and  
9 entered would have been discovered and easily addressed. The Court ultimately entered its  
10 own Order granting Relief from Stay on January 17, 2012, after receiving the Notice of B.A.P.  
11 Remand on January 10, 2012 (bankr. doc. no. 138).

12 Hebb then failed to appear at a status conference held by this Court on September 14,  
13 2011. Hebb also failed to appear at the February 16, 2012 hearing on an order to show cause  
14 why chapter 11 case and adversary proceeding should not be dismissed. In the interim, Hebb  
15 filed a Motion to Reopen the State Court Action for the apparent purpose of compelling  
16 arbitration. Again, instead of moving ahead to bring the attorney fee dispute to a quick  
17 resolution, Hebb orally withdrew the motion at the state court hearing on April 18, 2012 despite  
18 the Superior Court's offer to either set the case for trial or send it to arbitration. Hebb's inaction  
19 once again delayed resolution of the one dispute holding up the progress of the entire  
20 bankruptcy. Hebb did not formally request that this Court compel arbitration until March 12,  
21 2012; although Hebb did request this Court's assistance in selecting an arbitrator in response to  
22 Debtor's status report (the "Preliminary Response"). Hebb's request in the Preliminary  
23 Response was made approximately four months after the Court granted Hebb's Motion for  
24 Relief from Stay, and Hebb's March 12, 2012 request came nearly eight months later.

25 In preparation for the continued hearings on November 9, 2011, Debtor filed a status  
26 report indicating that the State Court held a status conference in the State Court Action on  
27 September 14, 2011, wherein the case was dismissed as a result of Hebb's failure to appear at  
28 the State Court status conference, and Debtor renewed its request to go forward with its Motion  
for Summary Judgment. In the Preliminary Response, filed November 8, 2011, Hebb indicated

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<sup>2</sup> Although Hebb argued that he did submit an order, it was at the very least never done properly, and, in any case, Hebb never followed through to make sure he obtained an entered order.

1 that the State Court had coordinated with his office when it dismissed the case and ruled that  
2 there was nothing left for the State Court to do after this Court ruled on the relief from stay  
3 motion. Neither party produced a transcript. At the continued hearings on November 9, 2011,  
4 the Court informed the parties that it needed the minute order and the record of the State Court  
5 because of the conflicting statements as to the reason for dismissal of the State Court action.  
6 The Court set a deadline of December 1, 2011 for Hebb to submit the State Court record, and  
7 continued the hearings to January 18, 2012 at 1:00 p.m. Again, Hebb completely ignored the  
8 deadline set by the Court and, on December 6, 2011, Hebb filed a declaration and certified copy  
9 of the State Court minute order from September 14, 2011.

10 Given the lack of progress in the Chapter 11 case, the Court issued an Order to Show  
11 Cause why the chapter 11 case should not be dismissed for cause, and the adversary  
12 dismissed as moot and set the hearing thereon for February 16, 2012 at 1:00 p.m., when the  
13 Court was holding other hearings for this case. Plaintiff and Defendant were required to file any  
14 responses in writing no later than February 9, 2012. Responses were filed by both parties on  
15 February 9, 2012; Hebb, in typical fashion, filed an additional late pleading on February 13,  
16 2012. All pleadings submitted by both sides, whether timely filed or not, and the entire record  
17 were carefully considered by the Court in preparation for the order to show cause hearing. At  
18 the hearing on February 16, 2012, Hebb did not appear at 1:00 p.m. The hearing commenced at  
19 1:03 p.m. Hebb made a phone call to chambers at 1:08 p.m., after the hearing had commenced  
20 and was nearly over, stating that he would be 10 to 15 minutes late. The court and Debtor's  
21 counsel had sorted through all issues, the Court had ruled, and already provided dates for the  
22 scheduling order when Hebb walked in to the back of the courtroom at 1:14 p.m.

23 As noted above, the case had been delayed many months due to Hebb's failure to  
24 appear at the State Court hearing. The hearing on the OSC was also not the only bankruptcy  
25 hearing where Hebb arrived late. On July 26, 2011, Hebb called the chambers to say he would  
26 be late for the 10:00 am hearing, and the court and counsel waited until 10:14 a.m. for him to  
27 arrive, even though no other matters were on calendar. See Hr'gTr., July 26, 2011, 1:20 (bankr.  
28 doc. no. 111). At that hearing, Hebb displayed his disdain for the Court-ordered briefing  
schedule and Rules by raising new matters that were not noticed or calendared for that day, and  
improperly serving opposing counsel with his papers as he brought it up in court.

1 Hebb's lackadaisical approach to the case delayed the Court's consideration of Debtor's  
2 Motion for Summary Judgment, filed on May 5, 2011. Despite no stay being in effect, Hebb  
3 ignored his duty to respond to the May 5 Motion for Summary Judgment while an appeal was  
4 pending and while he was supposed to have been pursuing his claim through arbitration. On  
5 June 27, 2012, the Court issued a Memorandum resolving the party's dispute over case  
6 dismissal. In an effort to cease procedural litigation and finally get to the merits, the Court gave  
7 Hebb an extension and a new time to respond to the Motion for Summary Judgment, over  
8 Debtor's objection. Memorandum of Decision re Order Vacating Order to Show Cause, bankr.  
9 doc. no. 154, 10:5-10. Debtor's additional briefing was due July 18, 2012, Hebb's opposition  
10 was due August 1, 2012, and Debtor's reply was due August 15, 2012. Id.

11 On July 17, 2012, Debtor refiled the Motion for Summary Judgment (the "MSJ," bankr.  
12 doc. no. 182). Hebb timely filed an Opposition and Statement of Genuine Issues on August 1,  
13 2012. Hebb's Opposition was all of two pages (including the caption page) and a two page  
14 declaration. See Opposition to MSJ, bankr. doc. no 187. On August 15, 2012, *fifteen days after*  
15 *the extended deadline*, Hebb filed a Supplemental Opposition (bankr. doc. no. 197) and Cross  
16 Motion for Summary Judgment (bankr. doc. no. 198). On August 16, 2012, Hebb filed a  
17 Supplemental Statement of Genuine Issues of Material Facts (bankr. doc. no. 199). As it was  
18 clear to the Court that Hebb had filed a cursory response to ensure timeliness and then filed  
19 unauthorized, untimely supplemental pleadings that proved to be his substantive opposition to  
20 the MSJ, the Court struck Hebb's Supplemental Opposition, Supplemental Statement of  
21 Genuine Issues of Material Facts, and Cross Motion for Summary Judgment.

22 The tortured history of delays continued after the Court issued its ruling granting partial  
23 summary judgment finding that any secured claim Hebb had was satisfied pre-petition.  
24 Memorandum of Decision re Motion for Summary Judgment, bankr. doc. no. 221. The Court set  
25 a briefing schedule for a supplemental motion for summary judgment related to Hebb's alleged  
26 unsecured claim. See Order Continuing Hearing and Setting Briefing Schedule, bankr. doc. no.  
27 222. Debtor filed its Supplemental Motion for Summary Judgment on December 18, 2012, as  
28 ordered by the Court. Hebb, again, failed to respond and did not file his cross-motion for  
summary judgment. Hebb did, however, file an untimely motion to dismiss the bankruptcy. At  
the scheduled hearing on the Supplemental MSJ on March 15, 2013, the Court denied Hebb's  
motion to dismiss and the Supplemental MSJ, finding that there were genuine issues of material

1 fact that required a trial. In one last hopeful attempt to resolve these issues, the parties agreed  
2 to mediation (with some convincing of the Court).

3           Thereafter, the Court held several hearings with the parties to help them craft a pre-trial  
4 order. On June 24, 2013, the parties informed the Court that they had scheduled the mediation  
5 with a Court-approved mediator, and the Court continued the status conference to July 30,  
6 2013.

7           Meanwhile, the B.A.P. affirmed this Court's ruling that there would be no arbitration on  
8 July 15, 2013,<sup>3</sup> although this Court and the B.A.P. made it clear long before then that trial was  
9 not stayed. On July 30, 2013, the Court held a pre-trial conference to integrate unilateral  
10 proposed pre-trial orders submitted by both parties. At the July 30, 2013 hearing, Hebb  
11 indicated that he intended to appeal the B.A.P. Ruling and orally requested a stay of the  
12 forthcoming trial pending the appeal. Pre-trial Conference. Hr'g Tr., 11:5-19 (ad.pro. doc. no.  
13 80). Hebb then stated that, if the Court were to deny his request for a stay, he would seek a stay  
14 of the trial pending appeal from the United States Court of Appeals for the Ninth Circuit (the  
15 "Ninth Circuit"). Id. The Court denied Hebb's oral request for stay pending appeal. Id. at 11:17-  
16 19. The Court then set forth dates for pre-trial briefing, exchange of exhibit books, and the entry  
17 of the pre-trial order, which were later included in the Pre-Trial Scheduling Order entered on  
18 August 2, 2013 (the "Scheduling Order," ad.pro. doc. no. 73). Among other dates, the  
19 Scheduling Order required the parties to exchange hard copies of exhibit books by August 30,  
20 2013 and specified that the Local Bankruptcy Rules applied to the proceeding. Id. The next  
21 episode of this saga further demonstrates Hebb's complete disregard for this Court's orders and  
22 his opposing counsel.

23           Thereafter, on August 14, 2013, Hebb filed a Notice of Appeal of the B.A.P. Ruling to the  
24 Ninth Circuit (case no 13-60097). On August 26, 2013, a mere four days before the exhibit book  
25 exchange deadline and nearly a month after disclosing his intention to do so, Hebb filed an  
26 "Emergency Motion to Stay Lower Court Action" (the "Emergency Stay Motion," Ninth Circuit  
27 case no. 13-60097, doc. no. 4). In the 1663 page Emergency Stay Motion, Hebb made the  
28 following argument, among others, in the section entitled "DETAILS BEHIND REASON FOR  
STAY REQUEST":

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<sup>3</sup> The "B.A.P. Ruling," ad. doc. no. 78.

1           The second deadline, for much more onerous arbitration inconsistent work and  
2           expense throughout the week of 8/26/13 in the production of multiple copies of  
3           exhibit books, all made expressly subject to the Local Bankruptcy Rules by the  
4           Pre-Trial Scheduling Order is Friday 8/30/13.

5           ...  
6           To avoid extensive preparation costs, efforts and time involved in meeting the  
7           next of several future deadlines, namely the prior preparation to meet the next  
8           deadline of 5pm Friday 8/30/13, wholly undercutting the parties' mandated and  
9           protected rights and benefits under both the FAA and CAA, creditor appellant  
10          requests a response on this stay request by or before Wednesday morning  
11          8/28/13, or as soon thereafter as possible for the Court.

12          Emergency Stay Motion, 4:15-19; 5:1-6 (emphasis in original).

13           On August 29, 2013, the Ninth Circuit denied the Emergency Stay Motion and confirmed  
14          that “[t]he briefing schedule previously established shall remain in effect.”<sup>4</sup> It was clear from  
15          Hebb’s entreaties in the Emergency Motion that he was attempting to “avoid extensive  
16          preparation costs, efforts and time.” Emergency Stay Motion, 4:15-19; 5:1-6. Such admissions,  
17          not made to this Court, led the Court to draw the reasonable inference that Hebb had not yet  
18          begun expending said costs and effort to compile the voluminous exhibit books when he was  
19          required to under the Pretrial Orders – exhibits that, by Hebb’s own admissions, contain  
20          somewhere around 10,000 pages. In the end, these mistakes were made because Hebb, once  
21          again, left a critical task to the very last minute when he had years to gather the evidence that  
22          would prove his claim, and ample direction by the Court on how to properly compile the exhibit  
23          books in accordance with the Local Bankruptcy Rules.

24           The prejudice to Debtor grew as the delay continued. Debtor filed an objection to Hebb’s  
25          claim, and a plan and disclosure statement, in March 2011 as well. Debtor then filed a motion  
26          for summary judgment in May 2011 in an attempt to get the principal issue in the case decided.  
27          Debtor alleged that it had found debtor-in-possession financing which would allow it to get its  
28          business going once again now that its patent rights have been resolved, but Debtor asserted  
                that the dispute with Hebb kept the financing from being released. Debtor had been stranded in  
                chapter 11 for three years and eleven months, unable to reorganize due to Hebb’s unresolved  
                claim, before it was finally able to confirm a plan on September 24, 2014. Order Confirming  
                Debtor’s Chapter 11 Plan, bankr. doc. no. 460.

<sup>4</sup> Order Denying Emergency Stay Motion, Ninth Circuit case no. 13-60097, doc. no. 8.

1 Debtor's purgatorial stay in this Court, however, was not yet over. Debtor moved for a  
2 final decree and to close the case. Motion for Entry of Final Decree, bankr. doc. no. 468.  
3 Debtor was not able to obtain a final decree and move on because of the pending appeal at the  
4 Ninth Circuit. Fed. R. Bankr. P 3022 requires that the case to be fully administered before a  
5 final decree is entered. Although the plan has been consummated, and everything is ready for  
6 a final decree, until all motions, contested matters and adversaries are finally resolved, the  
7 administration of the case is not complete. See 1991 Adv. Comm Note to FRBP 3022; Omega  
8 Optical Inc., 476 B.R. 157 (Bankr. E.D. Pa. 2012); 11 USC 350(a). If Hebb is permitted to  
9 continue with this untimely appeal as well, Debtor will be unduly prejudiced because it will be  
10 liable for quarterly fees to the United States Trustee until a final decree can be issued. 28  
11 U.S.C. § 1930(a)(6). Debtor will also continue to pay its attorney to monitor the case and do all  
12 required reporting to the United States Trustee. See In Re Rebel Rents, 326 B.R. 791  
13 (Bankr.C.D.Cal. 2005).

14 Had Hebb properly pursued arbitration after shutting down a speedy resolution of this  
15 issue in bankruptcy court, Debtor could have proceeded expeditiously with its reorganization, or  
16 the case could have been converted to Chapter 7, or dismissed. No matter the outcome, it was  
17 Hebb's total lack of attention to deadlines, professional courtesy, and respect for this Court's  
18 orders that resulted in extreme prejudice to the Debtor and delayed its reorganization. The  
19 Court weighs this Pioneer factor heavily in favor of denying the motion.

20 *The length of the delay and its potential impact on the proceedings*

21 Hebb's Motion was filed nine days after expiration of the appeals deadline, on May 7,  
22 2014. The motion was timely under Rule 8002(c)(2). The delay was not significant, and Hebb'  
23 action in seeking an extension does not, in and of itself, adversely affect judicial proceedings. It  
24 is, however, "important for the court to determine whether granting an extension would unduly  
25 delay the administration of the bankruptcy case," given "the unique context of bankruptcy  
26 proceedings." Nugent v. Betacom of Phoenix, Inc. (In re Betacom of Phoenix, Inc.), 250 B.R.  
27 376, 381 n. 6 (9th Cir. BAP 2000).

28 The court takes judicial notice of the fact that Debtor filed its voluntary petition for  
reorganization on October 5, 2010, and confirmed its plan of reorganization on September 24,  
2014. One adversary complaint, one partially consolidated objection to claim, three appeals,

1 and one trial occurred before Debtor was able to confirm a plan. All, but one appeal, has been  
2 resolved. There are no other pending adversary proceedings. Indeed, there has been no  
3 substantive activity in this bankruptcy since confirmation, except the ongoing litigation by Hebb  
4 against Debtor. Debtor is ready to exit bankruptcy and “to function as any other business entity,  
5 under its own power in its usual ways of conducting business, without judicial restraint or  
6 interference, complying with all applicable laws and its agreements.” Barber v. Bettendorf Bank,  
7 N.A. (In re Pearson Indus., Inc.), 152 B.R. 546, 557 (Bankr.C.D.Ill.1993). Instead, Debtor  
8 continues to remain a reorganized debtor in an active bankruptcy because it cannot be issued a  
9 final decree until all appeals have been resolved.

9 The Ninth Circuit recognizes that strict enforcement of the 10–day appeal period under  
10 Rule 8002(a) “is justified by the ‘peculiar demands of a bankruptcy proceeding,’ primarily the  
11 need for expedient administration of the [b]ankruptcy estate aided by certain finality of orders  
12 issued by the [c]ourt in the course of administration.” In re Rebel Rents, 326 B.R. at 805,  
13 quoting Galt v. Jericho–Britton (In re Nucorp Energy, Inc.), 812 F.2d 582, 584 (9th Cir.1987);  
14 see Betacom, 250 B.R. at 381 n. 6. The abbreviated time constraints for filing a notice of appeal  
15 in bankruptcy which are jurisdictional in nature serve to “[assure] prompt appellate review, often  
16 important to the administration of a case under the Code.” Advisory Committee Note (1983).  
17 They also provide a definite point, in the absence of a notice of appeal, that litigation will come  
18 to an end. As outlined above, the sluggish administration of this case was the result of Hebb’s  
19 failure to follow deadlines and instructions. Given the policy favoring the finality of bankruptcy  
20 orders, acceleration of appeals, the context of the dispute between the parties, and the  
21 advanced stage of Debtor's reorganization, the court weighs this Pioneer factor in favor of  
22 denial.

21 *The reason for the delay*

23 Hebb details the steps he took to get the New Trial Motion timely filed in his declaration  
24 in support of the Motion to Extend (the “Declaration”). In the Declaration, Hebb states that he  
25 “scheduled the evening of 4/23/14 to complete and electronically file a motion for new trial in this  
26 matter -- a full day prior to what I understood to be the 4/24/14 deadline for such motion.”  
27 Declaration, 9:10-13. Waiting until the day before something is due to complete a time sensitive  
28 task has been Hebb’s overarching problem since his involvement in this case. As excruciatingly  
detailed above, Hebb regularly appeared late at hearings, filed untimely pleadings, failed to

1 timely lodge orders, failed to abide by (extended) deadlines, and failed to follow clearly  
2 explained pre-trial procedures.

3 While the ostensible reason for the delay may have been issues with the transcript, as  
4 Hebb described in the Declaration, the real reason for the delay was that Hebb did not even  
5 bother to review the transcript prior to the day before the deadline ran. Had Hebb not waited  
6 until the day before to begin reviewing the file in preparation for his motion, he would have  
7 discovered the issues with the transcript in sufficient time to obtain the corrected transcript and  
8 timely file the New Trial Motion, or in time to file a timely motion for extension of the appeals  
9 deadline. Once again, Hebb blames everything and everyone for his failure to timely file  
10 pleadings, while ignoring the role his own procrastination played. The court weighs this Pioneer  
11 factor in favor of denial.

12 *Whether the movant acted in good faith*

13 There is no evidence that Hebb acted with bad faith in filing the Motion to Extend. The  
14 Declaration describes his efforts to get the New Trial Motion timely filed. While Hebb's efforts  
15 may have been too little, too late, the Court cannot attribute bad faith in the context of this  
16 Motion. Debtor did argue in opposition to the New Trial Motion, however, that Hebb's conduct in  
17 this case and the "incompetent manner" in which the New Trial Motion was brought  
18 demonstrates that Hebb brought these post-judgment motions to retaliate against Debtor by  
19 making it spend more money to defend itself against "baseless appeals." Debtor's Opposition to  
20 Motion for New Trial, 12:13-22 (bankr. doc. no. 377). Given that there are two different  
21 interpretations of the procedural history of this case, the Court weighs this factor neutrally.

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1 The Court balances the totality of the Pioneer factors in favor of denial, and finds that  
2 Hebb has not satisfied his burden to establish that his failure to timely file a notice of appeal was  
3 the result of excusable neglect. Thus, Hebb's Motion to Extend under FRBP 8002(c)(2) is  
4 denied.

5 The Court will enter a separate order consistent with this ruling.

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24 Date: April 14, 2015

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26 Maureen A. Tighe  
27 United States Bankruptcy Judge  
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