

JUN 16 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EDWARD ALVARADO; JOHN
AZZAM; CHARLOTTE BOSWELL;
TANDA BROWN; BERTHA DUENAS,

Plaintiffs,

CHARLES GIBBS; JANICE LEWIS;
MARIA MUNOZ; KEVIN NEELY;
LORE PAOGOFIE; DYRONN
THEODORE; LASONIA WALKER;
CHRISTOPHER WILKERSON,

Plaintiffs,

and

PERNELL EVANS,

Plaintiff - Appellant,

v.

FEDERAL EXPRESS CORPORATION, a
Delaware corporation, DBA Fedex
Express,

Defendant - Appellee.

No. 08-16545

D.C. No. 3:04-cv-00098-SI

MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Appeal from the United States District Court
for the Northern District of California
Susan Illston, District Judge, Presiding

Argued and Submitted May 12, 2010
San Francisco, California

Before: REINHARDT, W. FLETCHER and N.R. SMITH, Circuit Judges.

Plaintiff Pernell Evans appeals the denial of his motion for extension of time to file a notice of appeal. We have jurisdiction pursuant to 28 U.S.C. § 1291.

The district court may extend the time to file a notice of appeal if a party moves within 30 days after expiration of the appeal period and “shows excusable neglect or good cause.” Fed. R. App. P. 4(a)(5)(A). In *Lemoge v. United States*, 587 F.3d 1188, 1192, 1194-96 (9th Cir. 2009), we held that a district court making an excusable neglect determination abused its discretion when it failed, *inter alia*, to consider each of the four explicit *Pioneer* factors as well as the prejudice the moving party would suffer if its motion was denied. Because we decided *Lemoge* after the district court’s decision in this case, we vacate and remand to allow that court to reconsider in light of *Lemoge*.

VACATED AND REMANDED.