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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LANCE WILLIAMS,

Plaintiff,

v.

KERKFOOT, *et al.*,

Defendants.

Case No. CV 14-07583-GW(KK)

MEMORANDUM AND ORDER  
GRANTING MOTION TO REOPEN  
THE TIME TO APPEAL

Plaintiff Lance Williams (“Plaintiff”), a California state prisoner proceeding *pro se*, submits his August 6, 2015 Motion to Reopen the Time to Appeal<sup>1</sup> (“Motion”), dated July 31, 2015. Plaintiff alleges he did not receive timely notice of the entry of judgment from which he seeks to appeal. Pursuant to Federal Rule of Appellate Procedure 4(a)(6), the Court grants the Motion.

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<sup>1</sup> The Court construes Plaintiff’s notice of appeal as a motion to reopen the time to appeal. Dkt. 24 ; United States v. Withers, 638 F.3d 1055, 1061 (9th Cir. 2011) (holding “we must construe a *pro se* appellant’s notice of appeal as a motion to reopen the time for filing an appeal when he alleges that he did not receive timely notice of the entry of the order or judgment from which he seeks to appeal”).

1 I.

2 **BACKGROUND**

3 On November 12, 2014, Plaintiff filed a civil rights complaint (“Complaint”)  
4 pursuant to 42 U.S.C. § 1983 against Defendants Deputy Kerkfoot, Sheriff Lee Baca,  
5 John Doe 1 Seargent [sic] Sheriff, John Doe 2 Sheriff Captain, and L.A. County  
6 (“Defendants”). ECF Docket No. (“Dkt.”) 7 at 1-4. On May 15, 2015, the Court found  
7 the action untimely and dismissed the Complaint with prejudice. Dkt. 21. Judgment was  
8 entered on May 18, 2015. Dkt. 22.

9 On August 6, 2015, the instant Motion, dated July 31, 2015, was filed. Dkt. 24;  
10 Mot. 1-12<sup>2</sup>. The Motion requests the Court reopen the time to appeal. Mot. 1. Plaintiff  
11 alleges he “did not receive notification of judgment order dated 5-15-15 until 7-29-15  
12 when it was brought to him [in] institution legal mail and he signed for it.” Id. Plaintiff  
13 submits a letter he sent to the Court Clerk dated July 15, 2015, in which he states: “last  
14 thing I received from Court was Doc 18 Final Report and Recommendation issued by  
15 Magistrate Judge Kenly Kiya Kato then Doc 19 Notice and Discrepancy and Order dated  
16 1/23/15.” Id. at 3. Plaintiff’s letter further states: “I’m just writing court to made [sic]  
17 sure I have not missed any documents filed and forwarded to me since I have been  
18 illegally placed in administrative segregation and transferred and due to issues with mail  
19 being tampered with at Solano institution.” Id. Plaintiff also provides an envelope  
20 returned to the Court as undeliverable, showing errors in the name and CDC number to  
21 which the envelope was addressed. Id. at 7; Dkt. 23. In addition, Plaintiff provides an  
22 Administrative Segregation Unit Placement Notice stating he was “being removed from  
23 the General Population, and placed in the Administrative Segregation Unit” on April 24,  
24 2015. Mot. 10.

25 On September 17, 2015, the Ninth Circuit Court of Appeals issued an order  
26 referring Plaintiff’s appeal to this Court for the limited purpose of ruling on Plaintiff’s

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28 <sup>2</sup> The Court refers to the Motion’s pages as if they were consecutively paginated.

1 Motion. Dkt. 26.

## 2 II.

### 3 DISCUSSION

#### 4 **A. Legal Standard**

5 Under Federal Rule of Appellate Procedure 4(a)(6), the district court may reopen  
6 the time to file an appeal for a period of fourteen days after the date an order to reopen is  
7 entered, if three conditions exist: (1) the court finds the moving party did not receive  
8 notice of the entry of the judgment sought to be appealed within twenty-one days after  
9 entry; (2) the motion is filed within fourteen days after the moving party receives notice  
10 of the entry; and (3) the court finds no party would be prejudiced. Fed. R. App. P.  
11 4(a)(6).

12 Prejudice “means some adverse consequence other than the cost of having to  
13 oppose the appeal and encounter the risk of reversal, consequences that are present in  
14 every appeal.” Id. Advisory Committee’s note to 1991 Amendment.

#### 15 **B. Application**

16 Here, the Court reopens the time to file an appeal because: (1) Plaintiff did not  
17 receive timely notice of entry of the Judgment; (2) Plaintiff’s Motion was timely filed;  
18 and (3) reopening the time to file an appeal would not cause prejudice to any party. Fed.  
19 R. App. P. 4(a)(6).

##### 20 **1. Plaintiff Did Not Receive Notice Of Entry Of The Judgment Within** 21 **Twenty-One Days After the Entry**

22 The Court entered Judgment on May 18, 2015. Dkt. 22. Plaintiff states he  
23 received the Judgment seventy-two days later on July 29, 2015. Dkt. 24 at 1; Mot. 1.  
24 The envelope returned to the Court as undeliverable and Administrative Segregation  
25 Unit Placement Notice support Plaintiff’s statement he received the Judgment seventy-  
26 two days after its entry. Mot. 7, 10. Therefore, the Court finds Plaintiff did not receive  
27 notice of entry of the Judgment within twenty-one days of the entry. Fed. R. App. P.  
28 4(a)(6)(A).

