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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANTHONEY LYNCH
Plaintiff,
v.
WARDEN OF PLEASANT VALLEY
STATE PRISON, et al.,
Defendants.

Case No.: 1:09-cv-02097-AWI-MJS (PC)
**ORDER DENYING MOTION TO REOPEN
TIME TO FILE APPEAL**
(ECF No. 60)
**CLERK OF COURT TO SERVE A COPY
OF THIS ORDER ON THE NINTH
CIRCUIT COURT OF APPEALS**

Plaintiff Anthony Lynch is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

Plaintiff initiated this action on December 2, 2009. (ECF No. 1.) The case was dismissed on February 27, 2015 for failure to state a claim. (ECF No. 58.) Judgement was entered that day. (ECF No. 59.)

On August 17, 2015, 173 days after judgment was entered, Plaintiff filed a motion for an extension of time to file a notice of appeal. (ECF No. 60.) The Court construed Plaintiff's filing as both a motion for an extension of time and a notice of appeal. The motion to extend time was denied as untimely. (ECF No. 61.) The appeal was transmitted to the Ninth Circuit Court of Appeals.

On November 15, 2015, the Ninth Circuit Court of Appeals remanded Plaintiff's appeal to the district court for the limited purpose of determining whether Plaintiff's

1 August 17, 2015 motion included a timely motion to reopen the time to file a notice of
2 appeal under Federal Rule of Appellate Procedure 4(a)(6) and if so, to rule on said
3 motion. In so doing, the Circuit Court noted that, according to the district court docket,
4 the February 27, 2015 judgment was not sent to Plaintiff until July 14, 2015.

5 Pursuant to Federal Rule of Appellate Procedure 4(a)(1)(A), a notice of appeal
6 must be filed with the district clerk within thirty days after the entry of judgment or the
7 order appealed from. However, a district court may reopen the time to file an appeal if
8 the court finds the moving party did not receive notice of the entry of judgment within
9 twenty-one days after entry *and* the motion to reopen time to file an appeal is filed within
10 one hundred eighty days after the judgement is entered or within fourteen days after the
11 moving party receives notice of the entry of judgment, whichever is earlier. Fed. R. App.
12 P. 4(a)(6)(A) and (B).

13 Construing Plaintiff's motion as seeking to reopen the time to file an appeal, on
14 November 8, 2016, the Court issued an order for Plaintiff to show cause why his motion
15 to reopen time to file an appeal should not be denied as untimely. (ECF No. 64.) The
16 Court noted that while it was true Plaintiff did not receive notice of the entry of judgment
17 until months after it was entered, Plaintiff failed to file his motion to reopen time within
18 fourteen days of his receipt of the entry of judgment, as Plaintiff's August 17, 2015
19 motion was mailed on August 11, 2015, twenty-eight days after the notice of entry of
20 judgment was served on Plaintiff's institution. (ECF No. 60 at 5.)

21 Plaintiff was given twenty-one days to respond. The twenty-one day period
22 elapsed and Plaintiff did not file a response, nor did he seek an extension of time in
23 which to do so. Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion to reopen
24 the time to file an appeal (ECF No. 60) is DENIED as untimely.
25 IT IS SO ORDERED.

26 Dated: December 13, 2016

/s/ Michael J. Seng
27 UNITED STATES MAGISTRATE JUDGE
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