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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 DEMETRIUS TERRELL FREEMAN,

12 Plaintiff,

13 vs.

14 A. MARTIN, et al.,

15 Defendants.  
16

1:14-cv-00575-LJO-GSA-PC  
Appeal Case No. 15-15452

**FINDINGS OF FACT BY DISTRICT COURT**

**ORDER FOR CLERK TO SERVE THESE FINDINGS ON THE CLERK FOR THE NINTH CIRCUIT COURT OF APPEALS**

17 These findings are submitted to the Clerk of the Ninth Circuit Court of Appeals in  
18 response to the Ninth Circuit’s directive. On March 3, 2017, the Ninth Circuit issued an order  
19 remanding this case to the district court for the limited purpose of determining the date that  
20 Appellant, Demetrius Terrell Freeman,<sup>1</sup> delivered his notice of appeal to prison authorities for  
21 mailing. (ECF No. 25.) The court was directed to forward its finding to the Clerk of the Ninth  
22 Circuit Court of Appeals. (*Id.*)

23 **I. BACKGROUND**

24 On April 21, 2014, Demetrius Derrell Freeman, a federal prisoner proceeding *pro se*,  
25 filed case number 1:14-cv-00575-LJO-GSA-PC, Freeman v. Martin, at the United States  
26 District Court for the Eastern District of California. (Complaint, ECF No. 1.) On October 31,  
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<sup>1</sup> Demetrius Terrell Freeman is referred to as “Plaintiff” in his district court case and “Appellant” in his appeal.

1 2014, the court dismissed the case for Plaintiff's failure to prosecute. (ECF No. 12.) On March  
2 10, 2015, Plaintiff filed a notice of appeal, which was forwarded to the Ninth Circuit and  
3 assigned case number 15-15452. (ECF No. 19-21.)

4 On March 3, 2017, the Ninth Circuit remanded the case to the district court. (ECF No.  
5 25.)

6 **II. PLAINTIFF'S APRIL 29, 2017, DECLARATION**

7 To determine the date at issue, the court issued an order on March 27, 2017, requiring  
8 Plaintiff to file a declaration under penalty of perjury, describing in detail the process he claims  
9 he followed when submitting his notice of appeal for mailing at the institution where he was  
10 incarcerated at the time. (ECF No. 27.) The court set forth ten questions for Plaintiff to  
11 address in the declaration. (Id.) On May 3, 2017, Plaintiff filed the declaration, which he dated  
12 April 29, 2017, and signed under penalty of perjury. (ECF No. 30.) Plaintiff provided the  
13 following responses to the court's ten questions:

14 (1) When and how did you find out your case had been dismissed? Where were you  
15 housed at the time? What was your reaction?

16 **Plaintiff:** I found out my case was dismissed while in transit to USP Pollock. I  
17 was housed in the transit center in Oklahoma City, Oklahoma.

18 (2) When did you write the notice of appeal? Did anyone help you write it? If so, who?  
19 Did you deliver it for mailing on that same day?

20 **Plaintiff:** I wrote the notice of appeal in late October 2014, and made mention of it  
21 in a motion filed in February, either document 16 or 17. The notice of  
22 appeal was referred to as a "motion," of this I am almost certain. (The  
23 notice of appeal was written in late October.)

24 (3) When did you submit the notice of appeal for mailing? Give the date, time of day, day  
25 of the week, whether it was a holiday, and any other description of the day.

26 **Plaintiff:** I submitted the notice of appeal November 1st, 2014, a Saturday.

27 (4) How did you submit the mail at the institution? If to a staff member or other person,  
28 give the title and name. If you don't know the name, give a description of the person.

1 Was there any conversation by you or others at the time? Describe. Where were you  
2 when you submitted the mail?

3 **Plaintiff:** I submitted the notice of appeal for mailing by having it placed in the  
4 institution's "internal mail system" in C-3 housing unit, pursuant to Fed  
5 R. App. P. 4(a)(1)(A).

6 (5) If you did not submit the notice of appeal to a staff member or other person, where and  
7 how did you deliver it for mailing? Was anyone else present when you delivered it?  
8 Did anyone know you were going to deliver the mail? Who? What were the  
9 circumstances?

10 **Plaintiff:** Same response as answer 4 verbatim.

11 (6) What type of envelope did you use? Was the envelope sealed when you delivered it?  
12 Was postage affixed? Did you send the notice of appeal by certified mail?

13 **Plaintiff:** I used a plain white envelope. Inmates are not allowed to seal envelopes  
14 unless in front of staff. I do not recall if the envelope was sealed.

15 (7) Was the mail opened, scanned, or inspected in your presence? By who? Were you  
16 given a receipt of any kind?

17 **Plaintiff:** The notice of appeal was not scanned, inspected, or opened in my  
18 presence. There is no receipt system at USP Pollock. Therefore, I was  
19 not given a receipt.

20 (8) What is your general experience with the outgoing mail at USP Pollock? Is it promptly  
21 mailed out? Any problems or delays you have noticed? Who was working in the  
22 mailroom at the time you mailed the notice of appeal? Identify by name or description.  
23 How long does it usually take for outgoing mail to be delivered to the recipient after it  
24 is delivered at the institution for mailing?

25 **Plaintiff:** My general experience with the outgoing mail at USP Pollock is a  
26 NIGHTMARE! Armenda Boteler is a pathological liar, which covered  
27 up the actions of C/O Taffi. (Mailroom worker which tampered with my  
28

1 CERTIFIED legal mail.) C/O Taffi tampered with my certified mail by  
2 switching the receipt, and even opened it once it was sealed.

3 I never received a return receipt because it was in his handwriting, not  
4 mine, and the number was factually different. I filled out receipt number  
5 7015 3015 0000 6923 2519. C/O Taffi switched it to 7015 3010 0000  
6 6923 2526. Upon being lied to I wrote the Attorney General (Lynch),  
7 and this is when Armenda Boteler began to conspire to cover up C/O  
8 Taffi's actions.

9 Armenda Boteler is a bold face [sic] LIAR, alleging a perfect mailroom  
10 over the span of 5 YEARS. I believe the above FACTS should jog her  
11 selective amnesia.

12 Furthermore, C/O Taffi was removed from the mailroom at USP Pollock,  
13 and sent to the FCI to pack boxes for the multiple problems he caused, as  
14 stated by Armenda Boteler.

15 Armenda Boteler's declaration constitutes PERJURY. Is it a wonder  
16 half my property NEVER arrived here. Loretta Lynch and Susan  
17 Corcoran are my witnesses.

18 The mailroom at USP Pollock aside, the mail in Pollock, LA, runs  
19 terribly. The mail is often 3 to 4 weeks late, as in looking at the  
20 postmark.

21 I have another witness. I was placed on the out count while addressing  
22 the spoken of certified mail issue. I spoke directly with Armenda  
23 Boteler. Camera footage and the LT's office outcount log will attest to  
24 this.

25 The certified mail in question went out March 24, 2016. The time period  
26 in question would have been within a week of that date.

27 (9) Were there any safety or security issues at the institution at the time you delivered the  
28 mail? Was the institution on lockdown? If so, for what reason and for how long? Was

1 there any other reason the outgoing mail would have been delayed? Do you remember  
2 anything else about that day?

3 **Plaintiff:** As stated herein I do not recall if the institution was on lockdown. It was  
4 on lockdown upon my arrival. Came off lockdown, and went back on  
5 lockdown shortly thereafter. There were multiple lockdowns from  
6 October throughout December.

7 (10) Describe in detail any other circumstances you remember about delivering the notice of  
8 appeal for mailing? If you have any evidence supporting your declaration, submit the  
9 evidence to the court with the declaration. If you have any witnesses to support your  
10 account of what happened, give their names, titles, I.D. numbers, descriptions? What  
11 could they testify to? You are required to submit any evidence you have or that is  
12 available to you, including declarations of witnesses, prison records, and other  
13 documentary evidence.

14 **Plaintiff:** I am almost certain I was in cell 301, in unit C-3 when I gave the Unit  
15 officer the notice of appeal to be deposited in the institution's "internal  
16 mail system," on November 1, 2014. (ECF No. 30 at 3 ¶10.)

17 This issue pertains to the clerk of court. I sent the court a criminal  
18 complaint, This court, requesting to submit a criminal complaint against  
19 C/O A. Martin and several others. The clerks office stamped the  
20 criminal complaint and sent it back twice. The clerks office stamped it  
21 on the reverse side, and even forwarded it to the Inspector General once.

22 IT WAS NEVER DOCKETED! And I definitely have a copy. An  
23 original was sent to the appeals court as evidence in an ex parte motion.  
24 As I do not have the appeal docket sheet thanks to Armenda Boteler's  
25 overseeing of the mailroom. The time frame would be within 5  
26 documents of the appellate court asking whether or not I would like pro  
27 bono counsel.

28 Integrity is the ability to remain truthful when your actions cannot be

1                   seen. To the best of my knowledge, as I am being ORDERED to recall  
2                   events from 3 YEARS ago with specifics, without the necessary  
3                   documentation. I seriously believe I was in unit C-3 cell 301, and  
4                   submitted the notice of appeal to the unit officer.

5                   **Witnesses**

- 6                   1)     Loretta Lynch (prior attorney general)  
7                   2)     Susan Corcoran (ACLU-Boston)  
8                   3)     Camera footage around March 27, 2016  
9                   4)     LT's office out count around the week of March 27, 2016  
10                  5)     Appellate Court – Ex Parte Motion (criminal complaint)

11 **III.    PLAINTIFF'S MARCH 26, 2015, DECLARATION**

12                  On March 17, 2015, in appeal case number 15-15452, Freeman v. Martin, the Ninth  
13                  Circuit issued an order requiring Appellant, Demetrius Terrell Freeman, to file a declaration or  
14                  notarized statement attesting to the date on which the notice of appeal was deposited in the  
15                  institution's internal mail system and whether first class postage was prepaid, or otherwise  
16                  show cause why the appeal should not be dismissed for lack of jurisdiction. (Appeal DktEntry  
17                  No. 3.) On March 26, 2015, Appellant filed a declaration styled as a letter, dated March 19,  
18                  2015, attesting that he mailed the notice of appeal no later than November 1, 2014, by placing it  
19                  in the institutional mail system with first class postage affixed. (Appeal DktEntry No. 4 at 1.)

20                  Plaintiff stated, in part:

21                  [U]pon notice of dismissal of civil action 14-cv-00575-LJO-GSA, I did place in  
22                  the institution mail system a Notice of Appeal for the above noted civil case,  
23                  within 4 days of receiving the notice of dismissal, with first class postage  
24                  affixed. Plaintiff declares that he mailed the Notice of appeal no later than  
25                  November 1st, 2014. Plaintiff has not listed an exact date as he does not wish to  
26                  deceive the Court unintentionally. The first available mailing day Plaintiff did  
27                  mail the notice of appeal. (Plaintiff asserts the above, about no specific date  
28                  because FBOP wide no mail goes out on Friday, Saturday or Sunday. Any mail  
29                  deposited in the institutional system after Thursday will not leave the prison  
30                  until the following Monday.)

(Appeal DktEntry No. 4 at 1.)

Even so, Plaintiff never received the Court's findings and recommendations, as he was in SHU and or transit from early August until October 17, 2014 . . . Also,

1 even though Plaintiff was unaware of “MAIL RETURNED” docket entry dated  
2 10/17/14, Plaintiff did comply, by sending the Court a change of address notice  
3 prior to 12/26/14. Plaintiff has been compliant with court rules, and his case  
4 should be reinstated.

5 (Id. at 2-3.)

## 6 **V. DISCUSSION**

### 7 **A. Plaintiff’s May 3, 2017, Declaration**

8 (1) Regarding Plaintiff’s May 3, 2017, response to the district court’s  
9 question #1, Plaintiff declares that he discovered that his case was dismissed when he was in  
10 transit to USP-Pollock, while he was housed at the transit center in Oklahoma City, Oklahoma.  
11 (ECF No. 30 at 1 ¶1.) Given the evidence before the court, this is not possible, as Plaintiff  
12 arrived at USP-Pollock on October 17, 2014,<sup>2</sup> more than ten days before his case was dismissed  
13 on October 31, 2014. Therefore, Plaintiff could not have discovered that his case was  
14 dismissed when he was in transit to USP-Pollack.

15 (2) Regarding Plaintiff’s response to question #2, Plaintiff declares that he  
16 prepared his notice of appeal in late October 2014, and submitted it to the prison for mailing on  
17 Saturday, November 1, 2014. (ECF No. 30 at 1 ¶¶2, 3.) Given the evidence before the court,  
18 this is highly improbable. Plaintiff could not have known about the dismissal of his case in late  
19 October. The case was dismissed on Friday, October 31, 2014, on the same date the dismissal  
20 order was mailed to Plaintiff at USP-Beaumont. (ECF No. 12.) This was after Plaintiff had  
21 been transferred from USP-Beaumont and arrived at USP-Pollock on October 17, 2014. Even  
22 if the court had mailed the order directly to USP-Pollock, where Plaintiff was housed at the  
23 time, he could not have received it until after the weekend, until Monday, November 3, 2014, at  
24 the earliest. Under these facts, Plaintiff could not have prepared his appeal in late October  
25 2014 and submitted it for mailing on November 1, 2014.

### 26 **B. Plaintiff’s March 19, 2015, Declaration**

27 Plaintiff declares in his March 19, 2015, declaration, received by the 9th Circuit on  
28 March 26, 2015, that he mailed the notice of appeal no later than November 1, 2014, or on “the

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<sup>2</sup> See Plaintiff’s affidavit filed on March 21, 2016, in appeal case no. 15-15452 at the Ninth Circuit. (Appeal DktEntry No. 16 at 2.)

1 first available mailing day.” (Appeal DktEntry No. 4 at 1.) This is also implausible because, as  
2 discussed above, Plaintiff could not have known about the dismissal of his case in late October  
3 2014.

4 In reviewing the district court’s record, it shows that Plaintiff’s case was not dismissed  
5 until October 31, 2014. (ECF No. 12.) Because Plaintiff had not updated his address with the  
6 court to show his new address at USP-Pollock, the court served Plaintiff with the dismissal  
7 order at USP-Beaumont on October 31, 2014. (Court Record.)

8 On December 10, 2014, Plaintiff notified the court of his new address at USP-Pollock  
9 and filed a motion for a scheduling conference. (ECF No. 14.) There is no evidence in the  
10 Plaintiff’s motion that he was aware that his case had already been dismissed weeks earlier. In  
11 the motion, Plaintiff focuses on his assertion that the court refused to accept a criminal  
12 complaint he had submitted and states, “As of yet, no action has been taken in the civil case  
13 [and] Plaintiff’s next course of action will be to contact his congressman, and the attorney  
14 general.” (ECF No. 14 at 1.) He refers to the court’s order of May 1, 2014, which granted him  
15 leave to proceed in forma pauperis, as his last contact with the court, stating, “My last contact  
16 with the Court stated in summary that the in forma pauperis, or payments need to be taken care  
17 of.” (*Id.*) Plaintiff makes no mention of the dismissal of his case. From these statements, and  
18 the absence of any evidence that Plaintiff was aware that his case had been dismissed, the court  
19 infers that by late November 2014, Plaintiff had not yet received a copy of the dismissal order.

20 On December 15, 2014, the court re-served the dismissal order on Plaintiff at his new  
21 address at USP-Pollock. (ECF No. 16.) Subsequently, Plaintiff filed a motion on February 6,  
22 2015, in which it appears that Plaintiff was aware that his case had been dismissed. (ECF No.  
23 17.) Significantly, Plaintiff did not file an appeal at this time. In the motion, Plaintiff asserts  
24 that he “mailed a previous motion to the Court in response to failure to litigate claims,” and  
25 argues that his case “should not be dismissed.” (ECF No. 17.) Thus, it appears that Plaintiff  
26 first discovered that his case had been dismissed sometime between December 15, 2014, and  
27 February 3, 2015, the date Plaintiff signed the February 6, 2015, motion.

28 Turning to both of Plaintiff’s declarations, the possibility that it could have taken four



1 months, from November 2014 until March 2015, for the court to receive and file Plaintiff's  
2 notice of appeal is not likely. The United States Postal Service estimates that it takes four  
3 business days for mail to travel from Pollock, Louisiana, to Fresno, California.  
4 <https://www.ups.com/maps/results> (last visited May 10, 2017). Delays can be expected in the  
5 prison setting, and Plaintiff has asserted that the mail in Pollock is often received 3 to 4 weeks  
6 later than the postmark. (ECF No. 30 at 3.) However, four months for mail delivery from  
7 Louisiana to California is, again, not likely. There is no evidence except Plaintiff's self-serving  
8 declarations to support the contention that Plaintiff mailed his notice of appeal in November  
9 2014.

10 Weighing the evidence before the court, it appears that Plaintiff submitted his notice of  
11 appeal for mailing at USP-Pollock no more than four weeks before the date it was actually filed  
12 at the district court, on March 10, 2015. Therefore, the court finds that Plaintiff submitted his  
13 notice of appeal for mailing at USP-Pollock no earlier than February 9, 2015.

14 The Clerk is directed to serve these findings on the Clerk of the Ninth Circuit Court of  
15 Appeals.

16  
17 IT IS SO ORDERED.

18 Dated: May 19, 2017

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE