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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

IN RE:)	No.: 1:17-mc-00064-SAB
)	APPEAL NO.: 18-70459
MICHAEL FRIES,)	ORDER REGARDING RESPONSE BY
)	SUPERVISING DEPUTY ATTORNEY GENERAL
)	ORDER DIRECTING CLERK OF COURT TO
)	OPEN NEW CASE AND DOCKET FILINGS
)	
)	
)	

On December 14, 2017, the Court issued an order in this matter regarding Plaintiff Michael Fries’ assertions of continued difficulties in e-filing his complaint through the electronic case filing system at Kern Valley State Prison (“KVSP”) in Delano, California. The Court directed the Clerk of the Court to send Plaintiff’s complaint and application for leave to proceed in forma pauperis at issue in this matter to R. Tinsley, the Library Technical Assistant at KVSP. The Court then directed the Library Technical Assistant to submit Plaintiff’s complaint and application for filing to the United States District Court for the Eastern District of California, Fresno Division, pursuant to the applicable e-filing procedures. (ECF No. 9.)

On December 15, 2017, the Clerk of the Court mailed the complaint and application to proceed in forma pauperis to the Library Technical Assistant at KVSP as directed, and a copy of the Court’s order was served on Plaintiff and the Supervising Deputy Attorney General. (*Id.*)

1 The Court was then informed that Plaintiff filed a petition for writ of mandamus in the United
2 States Court of Appeals for the Ninth Circuit, asserting that his case has not been opened. The Clerk of
3 the United States District Court for the Eastern District of California also does not have records of
4 Plaintiff's case being opened in this Court. Consequently, on May 7, 2018, the Court directed the
5 Supervising Deputy Attorney General in charge of the e-service program to respond to these issues.
6 (ECF No. 11.)

7 On May 9, 2018, the Court received a response by special appearance, with a declaration in
8 support. (ECF No. 12.) The Office of the Attorney General responds that upon inquiry, it was
9 informed that R. Tinsley, the Library Technical Assistant at KVSP, retired on October 4, 2017.
10 Further, although there was a process in place to handle correspondence directed to R. Tinsley, there is
11 not record or recollection of the receipt of the mail sent by the Clerk of the Court.

12 Earlier in this case, the Office of the Attorney General relied upon a declaration submitted by
13 R. Tinsley dated October 4, 2017, the same date of Tinsley's retirement. (ECF No. 3-1.) Despite
14 immediate service through CM/ECF of the Court's December 14, 2017 order directing the e-filing of
15 Plaintiff's case, (ECF No. 9), the Court was not advised of any issues, nor was any relief sought from
16 the Court's order. Also, it appears that the order remains uncompiled with, and Plaintiff's case has not
17 yet been opened.

18 The Court finds it appropriate to order immediate relief here, and will respectfully direct the
19 Clerk of Court to open Plaintiff's case.

20 Accordingly, it is HEREBY ORDERED that:

21 1. The Clerk of Court is directed to open a new matter and file Plaintiff's complaint, (ECF
22 No. 1, at pp. 8-33), and his application for leave to proceed in forma pauperes, (ECF No. 1, at pp. 41-
23 46) in that matter. Plaintiff's complaint and application shall be filed as of August 17, 2017, the date
24 that his materials were provided to prison officials for mailing according to the proof of service filed.
25 *See Anthony v. Cambra*, 236 F.3d 568, 574-75 (9th Cir. 2000) (under the "mailbox rule," a pleading
26 filed by a pro se prisoner is deemed filed as of the date the prisoner delivered it to prison authorities
27 for mailing); (ECF No. 1, at p. 33);

28 2. A copy of this order shall be filed in that new case matter; and

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3. The Clerk of the Court is further directed to serve a copy of this order on the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit in Appeal No. 18-70459.

IT IS SO ORDERED.

Dated: May 11, 2018


UNITED STATES MAGISTRATE JUDGE