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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID WILSON,

Plaintiff,

No. 2:07-cv-1192 GEB DAD (PC)

vs.

JAMES TILTON, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. § 1983. Judgment was entered in this action on February 15, 2012. On April 5, 2012, plaintiff filed a notice of appeal, which was processed to the United States Court of Appeals for the Ninth Circuit (court of appeals) on April 10, 2012. By order filed June 18, 2012, the court of appeals remanded the matter for the limited purpose of allowing this court to rule on a statement contained in plaintiff’s April 5, 2012 notice of appeal which the court of appeals construed as “a timely request to reopen the time to appeal pursuant to Federal Rule of Appellate Procedure 4(a)(6).” Order filed June 18, 2012, at 1.

By order filed June 22, 2012, defendants were granted a period of ten days in which to file a response to plaintiff’s request. On June 29, 2012, defendants filed a response in which they state that “[b]ased on a review of Wilson’s recent history of movement and transfer to

1 various CDCR facilities, it is possible that he makes a valid claim that he did not receive timely
2 notice of the judgment entered in this case.” Defendants’ Response, filed June 29, 2012, at 1-2.
3 Defendants represent that they therefore have no objection to reopening the time for appeal in
4 this matter.

5 Rule 4(a)(6) of the Federal Rules of Appellate Procedure provides:

6 (6) Reopening the Time to File an Appeal. The district court may
7 reopen the time to file an appeal for a period of 14 days after the
8 date when its order to reopen is entered, but only if all the
9 following conditions are satisfied:

10 (A) the court finds that the moving party did not receive notice
11 under Federal Rule of Civil Procedure 77 (d) of the entry of the
12 judgment or order sought to be appealed within 21 days after entry;

13 (B) the motion is filed within 180 days after the judgment or order
14 is entered or within 14 days after the moving party receives notice
15 under Federal Rule of Civil Procedure 77 (d) of the entry,
16 whichever is earlier; and

17 (C) the court finds that no party would be prejudiced.

18 Fed. R. App. P. 4(a)(6). In view of defendants’ representations in their response, and good cause
19 appearing, the court finds all three conditions to reopening the time for appeal satisfied in this
20 case.

21 Accordingly, IT IS HEREBY ORDERED that:

- 22 1. Plaintiff’s April 5, 2012 request to reopen the time to appeal is granted; and
23 2. The Clerk of the Court is directed to serve a copy of this order on the United

24 States Court of Appeals for the Ninth Circuit.

25 Dated: September 19, 2012

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GARLAND E. BURRELL, JR.
Senior United States District Judge