

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

DAVID GENE LANCASTER,
Plaintiff.
v.
DR. PUNG, et al.,
Defendants.

) No. C 09-3230 MMC (PR)

) **ORDER GRANTING MOTION**
) **FOR RELIEF FROM**
) **JUDGMENT; DIRECTING**
) **CLERK TO REOPEN ACTION**

) **(Docket No. 5)**

On July 15, 2009, plaintiff, a California prisoner incarcerated at the Correctional Training Facility at Soledad and proceeding pro se, filed the above-titled civil rights action pursuant to 42 U.S.C. § 1983. That same date, the Court notified plaintiff in writing that the action was deficient due to plaintiff’s failure to pay the requisite filing fee or, instead, to submit a completed court-approved in forma pauperis (“IFP”) application. Plaintiff was further advised that his failure to pay the filing fee or, alternatively, to file a completed IFP application, within thirty days, would result in dismissal of the action. Along with said notice, plaintiff was sent a copy of the court-approved prisoner’s IFP application, instructions for completing it, and a return envelope. The notice and other items were sent to plaintiff at the most recent address provided by plaintiff to the court, specifically, the address on his complaint.

When more than thirty days had passed since the deficiency notice was sent to plaintiff and he had not filed an IFP application, paid the filing fee or otherwise

United States District Court
For the Northern District of California

1 communicated with the court, the Court, by order filed August 26, 2009, dismissed the action
2 without prejudice and entered judgment accordingly. A copy of the order was sent to
3 plaintiff at the same address to which the deficiency notice had been sent, specifically, the
4 address on plaintiff's complaint.

5 Plaintiff now moves for relief from the Court's order of dismissal on the ground that
6 he never received the deficiency notice. In support of his motion, plaintiff has attached
7 thereto a copy of prison records of plaintiff's incoming and outgoing legal mail during the
8 relevant time period. According to the incoming mail log, plaintiff received no mail from the
9 Northern District between July 8 and August 30, 2009.

10 Good cause appearing, plaintiff's motion is GRANTED and the order of dismissal is
11 hereby VACATED.


12 The Clerk of the Court is DIRECTED to reopen the instant action.

13 Pursuant to 28 U.S.C. § 1915A, the Court will screen plaintiff's complaint by separate
14 order.¹

15 This order terminates Docket No. 5.

16 IT IS SO ORDERED.

17 DATED: August 3, 2010


MAXINE M. CHESNEY
United States District Judge

20

21

22

23

24

25

26

27

28

¹Plaintiff also has filed a completed application to proceed IFP. The Court has granted plaintiff's application by separate order filed concurrently herewith.