

United States District Court
For the Northern District of California

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E-FILED on 10/05/09

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JAMAR EVANS,
Plaintiff,
v.
UNKNOWN NAMES OF DEPARTMENT
CORRECTION OFFICERS,
Defendants.

No. C-03-05420 RMW
ORDER GRANTING PLAINTIFF'S MOTION
FOR RELIEF FROM JUDGMENT
[Re Docket No. 164]

Plaintiff Jamar Evans ("Evans"), proceeding *pro se* in this action, moves a second time for relief from this court's order granting defendant County of Santa Clara's (Department of Corrections) ("County") motion for summary judgment and judgment thereon. Both were entered on September 11, 2008. The County has represented to the court that it relies on its previous opposition to Evans' first motion for relief from judgment. For the reasons stated below, the court grants the motion.

Evans moved once before for relief from judgment, and the court denied his request on April 28, 2009, finding that Evans had not offered any evidence to support a finding of mistake or excusable neglect under Federal Rule of Civil Procedure 60(b)(1). Order Denying Relief from Judgment Without Prejudice (Docket No. 163) 3-5. In that order, the court stated that Evans should

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1 make a "sufficient showing of mistake, inadvertence or excusable neglect including a sworn affidavit
2 or declaration explaining that he did not receive notice of the motion, how frequently he checked his
3 mail in February 2008, what attempts he made to contact the County or court in 2008 and any other
4 facts he has justifying relief."


5 With his renewed motion, Evans submits a declaration stating that he checked his mail two or
6 three times a week in 2008, and never received the County's motion for summary judgment. Decl.
7 of Jamar Evans In Support of Renewed Motion for Relief 1. Evans also states that he contacted the
8 County four times in 2008, and received no notice of the County's motion for summary judgment. *Id.*
9 Evans states that he cannot explain the unusual circumstances of his not receiving the motion. *Id.*

10 The court is hesitant to grant the requested relief because Evans' explanation relies on facts
11 that cannot otherwise be confirmed or refuted. Nonetheless, because Evans has made a showing of
12 excusable neglect, the court grants his motion for relief from judgment. Further, Evans has
13 generally been responsive to court obligations.

14 **III. ORDER**

15 For the reasons stated above, the court grants Evans' motion for relief from judgment. The
16 order granting summary judgment to the County and the accompanying judgment in the County's
17 favor are hereby vacated. Evans shall file an opposition to the County's motion for summary
18 judgment (Docket No. 136) by November 6, 2009. Any reply will be submitted by November 13,
19 2009. The court will then set a hearing date, if necessary.

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21 DATED: 10/05/09



RONALD M. WHYTE
United States District Judge

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1 **Notice of this document has been sent to:**

2 **Plaintiff:**

3 Jamar James Evans
4 P. O. Box 25
5 Atwater, CA 95301
6 209-358-8909

7 **Counsel for Defendants:**

8 Neysa A. Fligor neysa.fligor@cco.sccgov.org

9 Counsel are responsible for distributing copies of this document to co-counsel that have not
10 registered for e-filing under the court's CM/ECF program.

11 **Dated:** 10/05/09

JAS
Chambers of Judge Whyte

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