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

DOUGLAS HYSELL,	CASE NO. 1:10-cv-00192-SMS PC
Plaintiff,	ORDER DENYING MOTION TO REMAND, WITHOUT PREJUDICE
v.	(Doc. 6)
JAMES YATES, et al.,	
Defendants.	

On February 22, 2010, Plaintiff filed a notice stating that following receipt of Defendants' notice of removal, he filed an amended complaint in state court removing his federal claims. Plaintiff seeks remand of this action to state court.

Plaintiff's action in filing an amended complaint in state court does not defeat federal jurisdiction because the case was removed to this court prior to Plaintiff's action. See Libhart v. Santa Monica Dairy Co., 592 F.2d 1062, 1065 (9th Cir. 1979) (existence of federal jurisdiction determined by the complaint at the time of removal). Plaintiff is not precluded from filing an amended complaint in this action, Fed. R. Civ. P. 15(a), but he has not done so and any filings submitted to the state court have no effect on these proceedings.

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1 Plaintiff's motion to remand, filed February 22, 2010, is HEREBY DENIED, without  
2 prejudice.

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4 IT IS SO ORDERED.

5 **Dated: February 24, 2010**

**/s/ Sandra M. Snyder**  
UNITED STATES MAGISTRATE JUDGE