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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

CARL R. LOVE,

Plaintiff,

v.

JAMES A YATES, et al.,

Defendants.

CASE NO. 1:10-cv-02304-BAM PC

ORDER DENYING PLAINTIFF’S MOTION FOR  
STAY OF PROCEEDINGS

(ECF No. 45)

Plaintiff Carl R. Love (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On March 6, 2012, the Court issued an order dismissing certain claims and defendants and ordering Plaintiff to provide information within thirty days to identify the Doe Defendant. (ECF No. 38.) On March 21, 2012, Plaintiff filed a motion for reconsideration, which was denied on March 22, 2012. (ECF Nos. 39, 40.) Plaintiff filed a notice of appeal on March 28, 2012, appealing the order dismissing certain claims and defendants. (ECF No. 41.) On March 29, 2012, Plaintiff filed a motion seeking to stay this action pending resolution of his appeal. (ECF No. 44.)

“When a Notice of Appeal is defective in that it refers to a non-appealable interlocutory order, it does not transfer jurisdiction to the appellate court, and so the ordinary rule that the district court cannot act until the mandate has issued on the appeal does not apply.” Nascimento v. Dummer, 508 F.3d 905, 908 (9th Cir. 2007). The order Plaintiff is appealing is not immediately appealable. See State of California on Behalf of California Dep’t of Toxic Substances Control v. Campbell, 38 F.3d 772, 776-77 (9th Cir. 1998) (“an order that adjudicates less than all claims” is not a final

1 decision”); Branson v. City of Los Angeles, 912 F.2d 334, 335 (9th Cir. 1990) (order dismissing  
2 claim not immediately appealable because it “may be fully and effectively reviewed after final  
3 judgment”).

4 Accordingly, Plaintiff’s motion for a stay is HEREBY DENIED.

5 IT IS SO ORDERED.

6 **Dated: March 30, 2012**

**/s/ Barbara A. McAuliffe**  
UNITED STATES MAGISTRATE JUDGE

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