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

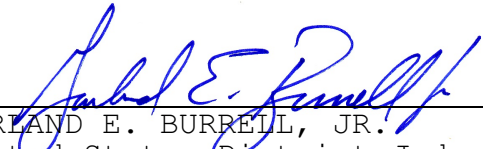
JOSEPH EDWARD MARTY,)	
)	2:10-cv-0555-GEB-DAD
Plaintiff,)	
)	
v.)	<u>ORDER</u>
)	
WELLS FARGO BANK, et al.,)	
)	
Defendants.)	
_____)	

Pro se Plaintiff Joseph Edward Marty filed a "Motion for Stay of Judgment and Orders" on September 16, 2011. (Motion for Stay, ECF No. 53.) "Plaintiff moves that the court overturn (judges) Burrell judgment and orders and grant Plaintiff the relief and damages outlined in his complaint." Id. ¶ 5. Plaintiff argues there is new evidence which entitles him to relief. Id. ¶¶ 1-5. Therefore, Plaintiff's motion is actually a motion for relief from the Court's Order filed May 10, 2011, which dismissed Plaintiff's case with prejudice, under Federal Rule of Civil Procedure ("Rule") 60(b)(2).

However, Plaintiff filed a notice of appeal on May 20, 2011 and that appeal is currently pending before the United States Court of Appeals for the Ninth Circuit. (ECF Nos. 48-49.) This Court lacks jurisdiction over Plaintiff's motion since, "filing a notice of appeal

1 . . . divests the district court of jurisdiction over the matters
2 appealed." Kern Oil & Refining Co. v. Tenneco Oil Co., 840 F.2d 730, 734
3 (9th Cir. 1988). Therefore, Plaintiff's motion is DENIED for lack of
4 jurisdiction.

5 Dated: September 20, 2011

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9 GARLAND E. BURRELL, JR.
10 United States District Judge
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