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

DUANE REED MOORE, SR.,  
Plaintiff,  
v.  
ROBERT W. FOX, et al.,  
Defendants.

No. 2:16-CV-2641-MCE-DMC

ORDER

Plaintiff, a prisoner proceeding with retained counsel, brings this civil rights action pursuant to 42 U.S.C. § 1983.

On August 19, 2019, the District Judge dismissed this case without prejudice for lack of prosecution and failure to comply with court rules and orders. See ECF No. 14. The Court thereafter denied Plaintiff’s motion for relief from judgment. See ECF No. 17. Plaintiff then filed an appeal of the District Judge’s dismissal order and final judgment. See ECF No. 26. On March 23, 2020, the Ninth Circuit Court of Appeals granted Plaintiff’s motion for voluntary dismissal of his appeal. See ECF No. 29. On July 20, 2020, the District Judge issued an order denying Plaintiff’s motion to remove then-retained counsel, to continue all proceedings, and for relief from judgment. See ECF No. 31. Plaintiff thereafter filed a second appeal. See ECF No. 32.

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1                   On June 25, 2021, the appellate court issued an unpublished memorandum  
2 disposition reversing the District Judge’s order denying Plaintiff’s motion for relief from  
3 judgment. See ECF No. 35. In doing so, the Ninth Circuit stated:

4                   The district court denied Moore’s second and third requests for  
5 reconsideration. However, Moore demonstrated in these motions that he  
6 experienced attorney abandonment, which can “constitute the  
7 extraordinary circumstances necessary to justify relief under Rule  
8 60(b)(6).” *Foley v. Biter*, 793 F.3d 998, 1002 (9th Cir. 2015). We  
9 therefore remand to the district court to provide Moore with an  
10 opportunity to notify the court as to whether he is proceeding pro se or  
11 substituting in another attorney, and an opportunity to serve defendants.

12                   We do not consider the district court’s order dismissing Moore’s  
13 action for failure to comply with a court order or its order denying  
14 Moore’s first motion for reconsideration because Moore did not timely  
15 appeal from those orders. *See* Fed. R. App. P. 4(a) (notice of appeal must  
16 be filed within 30 days of the entry of judgment or the denial of certain  
17 post-judgment motions); *Tillman v. Ass’n of Apartment Owners of Ewa*  
18 *Apartments*, 234 F.3d 1087, 1089 (9th Cir. 2000) (“The court of appeals  
19 lacks jurisdiction to decide an appeal if the notice of appeal is not timely  
20 filed.”).

21                   ECF No. 35.

22                   The Ninth Circuit’s mandate remanding the matter was filed on July 19, 2021. See ECF No. 36.

23                   On August 4, 2021, Plaintiff filed a pro se document entitled “Plaintiff’s  
24 Notification of Replacement of Counsel and Intention to Proceed In Propria Personal in Order to  
25 Serve the Named Defendants in This Action.” ECF No. 37. On January 3, 2022, the District  
26 Judge issued a minute order referring Plaintiff’s pro se filing at ECF No. 37 to the undersigned  
27 for decision. See ECF No. 39. The District Judge also referred the matter to the undersigned for  
28 all pre-trial scheduling. See id.

                  In his notice, which has been referred to the undersigned for consideration,  
Plaintiff states that he relieves current counsel, intends to retain replacement counsel, and wishes  
to proceed pro se in the meantime. See ECF No. 37. Good cause appearing therefor, and  
following the Ninth Circuit’s decision as well as the District Judge’s referral, the Court will  
relieve current counsel and order that this matter be redesignated a pro se prisoner civil rights  
action. Plaintiff will also be afforded time to retain replacement counsel.

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Accordingly, IT IS HEREBY ORDERED that:

1. Current retained counsel, Paul Richard Martin, Esq., is relieved;
2. On Plaintiff's request, ECF No. 37, Plaintiff shall proceed pro se;
3. The Clerk of the Court is directed to redesignate this action as a pro se prisoner civil rights action;
4. This matter is stayed for 60 days to allow Plaintiff to retain replacement counsel; and
5. Plaintiff shall file a status report within 60 days of the date of this order regarding replacement counsel.

Dated: February 11, 2022

  
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DENNIS M. COTA  
UNITED STATES MAGISTRATE JUDGE