UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

DeWAYNE THOMPSON, Plaintiff, v. P. KUPPINGER, et al., Defendants.	No. 2:23-cv-00463-DJC-EFB (PC) ORDER

Plaintiff is a California state prisoner pursuing this action under 42 U.S.C. §1983. On March 23, 2026, the court denied plaintiff's motion for summary judgment and granted summary adjudication of all of plaintiff's claims in favor of defendants with the exception of Claim 4 regarding excessive force by defendants Pohovich and Lujan. ECF No. 58. In doing so, the court adopted the magistrate judge's findings and recommendations after consideration of plaintiff's objections thereto. ECF Nos. 53, 55. Plaintiff has filed a motion to certify certain issues resolved by the March 23rd order for interlocutory appeal and to stay the case. ECF No. 60.

Under 28 U.S.C.S. § 1292(b),

> When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation,

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> he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: Provided, however, That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

The court's ruling on the motions for summary judgment is not an "otherwise appealable" interlocutory order. *Id.* § 1292(a). The court finds that plaintiff's request does not concern a question of law "as to which there is substantial ground for difference of opinion." Rather, plaintiff disagrees with the application of the law to the facts presented by the parties in moving for summary judgment. Plaintiff may seek appellate review of the court's summary judgment ruling following final judgment in this action.

For these reasons, the Court DENIES plaintiff's request for certification (ECF No. 60).

IT IS SO ORDERED.

Dated: **April 22, 2026**

Hon. Daniel J. Calabretta
UNITED STATES DISTRICT JUDGE