1         2         3         4         5         6         7         8         UNITED STATES DISTRICT COURT         9         EASTERN DISTRICT OF CALIFORNIA         10         11         WILSON GORRELL,         12         Plaintiff,         13         v.         14         THOMAS SNEATH, et al.,         15         Defendants.	
2 3 4 5 6 7 8 <b>UNITED STATES DISTRICT COURT</b> 9 <b>EASTERN DISTRICT OF CALIFORNIA</b> 10 11 WILSON GORRELL, Case No.: 1:12-cv-0554 - JLT 12 Plaintiff, ORDER DIRECTING THE CLERK TO FORWARD PLAINTIFF'S THIRD NOT 13 v. DISTRICT OF CALIFORNIA 14 15 Defendants. (Doc. 112)	
3       4         4       5         6       7         7       8         9       EASTERN DISTRICT OF CALIFORNIA         10       11         11       WILSON GORRELL,         12       Plaintiff,         13       v.         14       THOMAS SNEATH, et al.,         15       Defendants.	
<ul> <li>4</li> <li>5</li> <li>6</li> <li>7</li> <li>8 UNITED STATES DISTRICT COURT</li> <li>9 EASTERN DISTRICT OF CALIFORNIA</li> <li>10</li> <li>11 WILSON GORRELL, ) Case No.: 1:12-cv-0554 - JLT</li> <li>12 Plaintiff, ) ORDER DIRECTING THE CLERK TO</li> <li>13 v. ) INTERLOCUTORY APPEAL TO THE TO</li> <li>14 THOMAS SNEATH, et al., ) CIRCUIT</li> <li>15 Defendants. ) (Doc. 112)</li> </ul>	
5         6         7         8       UNITED STATES DISTRICT COURT         9       EASTERN DISTRICT OF CALIFORNIA         10         11       WILSON GORRELL,       ) Case No.: 1:12-cv-0554 - JLT         12       Plaintiff,       ) ORDER DIRECTING THE CLERK TO         13       v.       ) INTERLOCUTORY APPEAL TO THE 1         14       THOMAS SNEATH, et al.,       )         15       Defendants.       )	
<ul> <li>6</li> <li>7</li> <li>8 UNITED STATES DISTRICT COURT</li> <li>9 EASTERN DISTRICT OF CALIFORNIA</li> <li>10</li> <li>11 WILSON GORRELL, ) Case No.: 1:12-cv-0554 - JLT</li> <li>12 Plaintiff, ) ORDER DIRECTING THE CLERK TO</li> <li>13 v. ) INTERLOCUTORY APPEAL TO THE INTERLOC</li></ul>	
<ul> <li>7</li> <li>8 UNITED STATES DISTRICT COURT</li> <li>9 EASTERN DISTRICT OF CALIFORNIA</li> <li>10</li> <li>11 WILSON GORRELL, ) Case No.: 1:12-cv-0554 - JLT</li> <li>12 Plaintiff, ) ORDER DIRECTING THE CLERK TO</li> <li>13 v. ) FORWARD PLAINTIFF'S THIRD NOT</li> <li>14 THOMAS SNEATH, et al., ) CIRCUIT</li> <li>15 Defendants. ) (Doc. 112)</li> </ul>	
8       UNITED STATES DISTRICT COURT         9       EASTERN DISTRICT OF CALIFORNIA         10       OF Case No.: 1:12-cv-0554 - JLT         11       WILSON GORRELL,       ORDER DIRECTING THE CLERK TO         12       Plaintiff,       ORDER DIRECTING THE CLERK TO         13       v.       INTERLOCUTORY APPEAL TO THE DISTRICT OF CALIFORNIA         14       THOMAS SNEATH, et al.,       ORDER DIRECTING THE CLERK TO         15       Defendants.       ODOC. 112)	
9       EASTERN DISTRICT OF CALIFORNIA         10       11         11       WILSON GORRELL,       )         12       Plaintiff,       )         13       v.       )         14       THOMAS SNEATH, et al.,       )         15       Defendants.       )	
10         11       WILSON GORRELL,         12       Plaintiff,         13       v.         14       THOMAS SNEATH, et al.,         15       Defendants.           10           10           10       11           12     Plaintiff,       13     v.            (Doc. 112)	
11WILSON GORRELL,)Case No.: 1:12-cv-0554 - JLT12Plaintiff,)ORDER DIRECTING THE CLERK TO13v.)FORWARD PLAINTIFF'S THIRD NOT14THOMAS SNEATH, et al.,)CIRCUIT15Defendants.)(Doc. 112)	
12Plaintiff,)ORDER DIRECTING THE CLERK TO13v.)FORWARD PLAINTIFF'S THIRD NOT14THOMAS SNEATH, et al.,)INTERLOCUTORY APPEAL TO THE I15Defendants.)(Doc. 112)	
13v.)FORWARD PLAINTIFF'S THIRD NOT INTERLOCUTORY APPEAL TO THE I CIRCUIT14THOMAS SNEATH, et al., Defendants.)(Doc. 112)	
13v.)INTERLOCUTORY APPEAL TO THE 114THOMAS SNEATH, et al.,)CIRCUIT15Defendants.)(Doc. 112)	
14     IHOMAS SNEATH, et al.,       15     Defendants.       )     (Doc. 112)	
)	
16	
17 Plaintiff filed a third "Notice of Interlocutory Appeal" on September 25, 2013. (Doe	c. 112).
18 Plaintiff seeks appellate review of the Court's orders (1) denying as moot his motion for juc	icial notice
19 (Doc. 102) and (2) denying his motion for hair analysis toxicological testing and administra	tion of a
20 polygraph examination (Doc. 103). For the following reasons, the Court directs the Clerk o	f Court to
21 not forward Plaintiff's third "Notice of Interlocutory Appeal" to the Ninth Circuit.	
22 I. Interlocutory Appeals	
23 The general rule is that an appellate court should not review a district court ruling un	ntil after
24 entry of a final judgment. <i>Coopers &amp; Lybrand v. Livesay</i> , 437 U.S. 463, 474 (1978); <i>In re C</i>	ement
25 Antitrust Litig., 673 F.2d 1020, 1026 (9th Cir. 1982). The Supreme Court explained that the	e "policy
26 against piece meal appeals promotes judicial efficiency and hastens the ultimate termina	tion of
27 litigation." United States v. Nixon, 418 U.S. 683, 690 (1974) (citation omitted). Thus, inter	locutory
28 appeals are highly disfavored. <i>Id.</i> Nevertheless, the Supreme Court has recognized exception	

1	appeals of decisions, which allow the Circuit courts "to hear interlocutory appeals of orders that (1)
2	conclusively determine a disputed opinion, (2) resolve an important issue completely separate from the
3	merits of the action, and (3) are effectively unreviewable on appeal from a final judgment." United
4	States v. Zone, 403 F.3d 1101, 1106 (9th Cir. 2005) (citations and quotation marks omitted).
5	Certification of interlocutory appeals is governed by 28 U.S.C. § 1292(b), which provides:
6	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 [1] a controlling question of
7	law [2] as to which there is substantial ground for difference of opinion and [3] that an immediate appeal from the order may materially advance the ultimate termination of the
8	
9	Thus, a party seeking appeal under §1292(b) "must first obtain the consent of the trial judge." Coopers
10	& Lybrand v. Livesay, 437 U.S. 463, 474 (1978). The Supreme Court explained "th[e] screening
11	procedure serves the dual purpose of ensuring that such review will be confined to appropriate cases
12	and avoiding time-consuming jurisdictional determinations in the court of appeals." Id.
13	The party seeking appeal bears the burden of showing "exceptional circumstances justify a
14	departure from the basic policy of postponing appellate review until after the entry of final judgment."
15	Coopers & Lybrand, 437 U.S. at 475. Previously, this Court explained: "[I]t is generally accepted that
16	'questions of fact, questions as to how agreed-upon law should be applied to particular facts, or
17	questions regarding the manner in which the trial judge exercised his or her discretion may not be
18	properly certified for interlocutory review." Meeker v. Belridge Water Storage Dist., 2007 U.S. Dist.
19	LEXIS 22673, at *16 (E.D. Cal. March 13, 2007) (quoting 2. Fed. Proc., L. Ed., § 3:210).
20	II. Discussion and Analysis
21	As an initial matter, Plaintiff may not obtain certification for an interlocutory appeal simply by
22	filing a notice, which he has now done three times in this action. Volpicelli v. Palmer, 2012 U.S. Dist.
23	LEXIS 148531, at *4 (Dist. Nev. Oct. 16, 2012). Rather, to obtain this relief, Plaintiff "instead must
24	file a motion complying with the requirements of Rule 7 of the Federal Rules of Civil Procedure." Id.
25	Nevertheless, even if Plaintiff filed a motion for certification, he has not satisfied the requirements for
26	an interlocutory appeal.

The issues addressed by the Court in its orders denying Plaintiff's request for judicial notice and
denying his motion for toxicological and polygraph testing do not "involv[e] a controlling question of

law." The Ninth Circuit explained that an issue is "controlling" if "resolution of the issue on appeal could materially affect the outcome of litigation in the district court." *In re Cement Antitrust Litigation*, 673 F.2d 1020, 1026 (1982). The issues identified by Plaintiff fail to meet this standard.

A final decision "is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Catlin v. United States*, 324 U.S. 229, 233 (1945). As explained by the Ninth Circuit, "[d]iscovery decisions are generally not final judgments that may be appealed under 28 U.S.C. § 1291." *United States v. Zone*, 403 F.3d 1101, 1106 (9th Cir. 2005) *Catlin*, 324 U.S. at 233. Here, Plaintiff does not assert the Court erred, but simply seeks review of its decisions. (*See* Doc. 112). However, even if Plaintiff disagrees with the Court, his disagreement is not sufficient demonstrate a "substantial ground for difference." *Mateo v. M/S KISO*, 805 F. Supp. 792, 800 (N.D. Cal. 1992).

Finally, the timing of Plaintiff's "Notice of Interlocutory Appeal" demonstrates an appeal is not 11 likely to speed the termination of the litigation. The trial in this action is scheduled to begin on 12 December 10, 2013. (Doc. 32 at 1). Granting a request for interlocutory appeal shortly before trial is 13 unwise, because review at this juncture would delay the completion of the case. See, e.g., Shurance v. 14 Planning Control Int'l Inc., 839 F.2d 1347, 1348 (9th Cir. 1988) (considering the fact that the trial was 15 16 scheduled to take place in five months as a reason to deny a petition for leave to appeal under §1292); Baranski v. Serhant, 602 F.Supp. 33, 36 (D.C. Ill. 1985) ("Delay is a particularly strong ground for 17 denying appeal if certification is sought from a ruling made shortly before trial"). 18

III. Conclusion and Order

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Because Plaintiff's third "Notice of Interlocutory Appeal" fails to meet the standards for
interlocutory appeal, IT IS HEREBY ORDERED that the Clerk of Court not forward the "Notice of
Interlocutory Appeal" (Doc. 112) to the Ninth Circuit Court of Appeals.

24 IT IS SO ORDERED.

Dated: September 27, 2013

/s/ Jennifer L. Thurston UNITED STATES MAGISTRATE JUDGE