

1 alternatively, for certification of an interlocutory appeal from
2 that portion of the Order pursuant to 28 U.S.C. § 1292(b).
3 Conversely, plaintiff moves for certification of interlocutory
4 appeal from that portion of the Order denying plaintiff's renewed
5 motion for judgment as a matter of law.

6 I. Motion for Reconsideration

7 "Federal Rule[] of Civil Procedure 60(b) provides a
8 procedure whereby, in appropriate cases, a party may be relieved
9 of a final judgment." Liljeberg v. Health Servs. Acquisition
10 Corp., 486 U.S. 847, 863 (1988). Under Rule 60(b)(1), the court
11 may relieve a party from a final judgment based on "mistake,
12 inadvertence, surprise, or excusable neglect." Fed. R. Civ. P.
13 60(b). Although "[t]he Rule does not particularize the factors
14 that justify relief, [the Supreme Court has] previously noted
15 that it provides courts with authority adequate to enable them to
16 vacate judgments whenever such action is appropriate to
17 accomplish justice, while also cautioning that it should only be
18 applied in extraordinary circumstances." Liljeberg, 486 U.S. at
19 863-64.

20 Having considered defendant's motion for
21 reconsideration, the court is not persuaded that it made an error
22 of law or fact. Defendant does not advance a single argument in
23 his motion for reconsideration that the court did not carefully
24 consider before reaching its decision. The court remains firmly
25 convinced that its decision to grant a new trial was correct for
26 the reasons discussed in the March 9, 2016 Order. Accordingly,
27 the court will deny defendant's motion for reconsideration.
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1 II. Motion for Interlocutory Appeal

2 Under 28 U.S.C. § 1292(b), a district court may certify
3 for appeal an interlocutory order which is not otherwise
4 appealable if the district court is "of the opinion that such
5 order [1] involves a controlling question of law as to which [2]
6 there is substantial ground for difference of opinion and that
7 [3] an immediate appeal from the order may materially advance the
8 ultimate outcome of the litigation." 28 U.S.C. § 1292(b). A
9 question of law is controlling if "resolution of the issue on
10 appeal could materially affect the outcome of litigation in the
11 district court" and it is not collateral to the major issues of
12 the case. In re Cement Antitrust Litig., 673 F.2d 1020, 1026
13 (9th Cir. 1982). Section 1292(b) "is to be used only in
14 extraordinary cases where decision of an interlocutory appeal
15 might avoid protracted and expensive litigation." U.S. Rubber
16 Co. v. Wright, 359 F.2d 784, 785 (9th Cir. 1966).

17 In considering the post-trial motions, the court gave
18 serious consideration to granting plaintiff's renewed motion for
19 a directed verdict. As the court discussed at length in its
20 March 9, 2016 Order, it is difficult to understand how the jury
21 could have found that a reasonable officer would have perceived
22 plaintiff as posing an imminent threat necessitating the use of
23 deadly force under the circumstances of this case. (See Mar. 9,
24 2016 Order at 10:8-16:14 (Docket No. 108).) Despite the paucity
25 of evidence supporting the verdict, the court recognized that
26 reasonableness is peculiarly a factual inquiry that should be
27 examined by a jury which reflects the conscience of the
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1 community. Out of deference to the jury's proper role as the
2 trier of fact, and under the narrow inquiry governing a Rule 50
3 motion, the court felt obliged to deny plaintiff's motion for a
4 renewed judgment as a matter of law.


5 However, as discussed in the March 9, 2016 Order, the
6 inquiry governing a motion for new trial is not as deferential
7 and the court has the duty to weigh the evidence and ensure that
8 a miscarriage of justice did not occur. (See id. at 17:6-18:11.)
9 The court could not in good conscience ignore the scarcity of
10 evidence when coupled with the jury's consideration of
11 inadmissible character evidence that the Ninth Circuit has held
12 can constitute reversible error. (See id. at 18:12-23:16.) For
13 these reasons, the court has no doubt that a miscarriage of
14 justice occurred and that plaintiff is accordingly entitled to a
15 new trial.

16 Despite the court's effort to consider each motion
17 independently and under the appropriate standard, different
18 judges on appeal could easily conclude that the court was too
19 deferential to the jury in denying plaintiff's Rule 50 motion.
20 Conversely, different judges on appeal might disagree with this
21 court's decision to grant a new trial. If the judges on appeal
22 disagree with either decision, reversal would be dispositive of
23 the entire case and prevent a second trial. Resolution of these
24 controlling questions of law at this time would undoubtedly
25 advance the outcome of the litigation and could prevent the
26 court, potential jurors, and parties from expending significant
27 time and resources on an unnecessary second trial. Accordingly,
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1 the court will grant both parties' motions for certification of
2 the court's March 9, 2016 Order for interlocutory appeal.

3 IT IS THEREFORE ORDERED that (1) defendant's motion for
4 reconsideration of the court's March 9, 2016 Order be, and the
5 same hereby is, DENIED; (2) defendant's motion for certification
6 for interlocutory appeal of the court's grant of a new trial be,
7 and the same hereby is, GRANTED; and (3) plaintiff's motion for
8 certification for interlocutory appeal of the court's denial of
9 his renewed motion for judgment as a matter of law be, and the
10 same hereby is, GRANTED.

11 Dated: May 2, 2016

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13 WILLIAM B. SHUBB
14 UNITED STATES DISTRICT JUDGE