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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEENAN WILKINS,
Plaintiff,
v.
PAUL GONZALES, et al.,
Defendants.

No. 2: 16-cv-0347 KJM KJN P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s motion for certification of an interlocutory appeal. (ECF No. 35.) For the reasons stated herein, the undersigned recommends that this motion be denied.

On March 31, 2017, the Honorable Kimberly J. Mueller adopted the August 12, 2016 and November 9, 2016 findings and recommendations addressing the claims raised in the second amended complaint and denying plaintiff’s motion for leave to file a third amended complaint. (ECF No. 33.) Judge Mueller ordered that all claims in the second amended complaint, except for the retaliation claims against defendants Swarthout, Chaiken, Jones, Vasquez, Hurtz, Couch, Gonzales and Pulley, and the Eighth Amendment claim against defendant Jones, were dismissed.

In the pending motion, plaintiff requests that the court certify Judge Mueller’s March 31, 2017 order for interlocutory appeal. Judge Mueller’s order is not subject to interlocutory appeal


1 without an order finding that the March 31, 2017 order “involves a controlling question of law as
2 to which there is substantial ground for difference of opinion and that an immediate appeal from
3 the order may materially advance the ultimate termination of the litigation.” 28 U.S.C. § 1292(b).

4 The undersigned recommends that plaintiff’s motion for an order certifying the March 31,
5 2017 order for interlocutory appeal be denied. Judge Mueller’s order does not involve a
6 controlling of law as to which there is substantial ground for difference of opinion. Additionally,
7 an immediate appeal from the March 31, 2017 order will not materially advance the ultimate
8 termination of this litigation.

9 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff’s motion for certification
10 of an interlocutory appeal (ECF No. 35) be denied.

11 These findings and recommendations are submitted to the United States District Judge
12 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
13 after being served with these findings and recommendations, plaintiff may file written objections
14 with the court and serve a copy on all parties. Such a document should be captioned
15 “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that
16 failure to file objections within the specified time may waive the right to appeal the District
17 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

18 Dated: April 18, 2017

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21 KENDALL J. NEWMAN
22 UNITED STATES MAGISTRATE JUDGE

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