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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

ANGEL KEITH TOSCANO, JR., et al.,  
Plaintiffs,  
v.  
CITY OF FRESNO, et al.,  
Defendants.

Case No. 1:13-cv-01987-SAB  
ORDER STAYING ACTION

On July 24, 2015, this Court entered an order granting in part and denying in part Defendants’ motion for summary judgment. (ECF No. 54.) The Court denied summary judgment with respect to Plaintiffs’ Section 1983 claims against Defendant Lyon and granted summary judgment with respect to Plaintiffs’ Section 1983 claims against Defendant City of Fresno. In denying the motion for summary judgment with respect to Defendant Lyon, the Court found that Defendant Lyon was not entitled to qualified immunity. Currently a jury trial on the remaining claims is set for February 16, 2016. (ECF No. 41.)

On July 31, 2015, Defendant Lyon filed a notice of appeal of the order on the motion for summary judgment. (ECF No. 55.) On September 16, 2015, Plaintiffs filed a motion to dismiss the appeal for lack of jurisdiction in the United States Court of Appeals for the Ninth Circuit. On September 21, 2015, Defendant Lyon filed an opposition to the motion to dismiss. On September 28, 2015, Plaintiffs filed a reply to Defendant Lyon’s opposition.

On September 22, 2015, the Moreno Plaintiffs filed in this Court before the undersigned a

1 petition to certify Defendant Lyon's appeal as frivolous. (ECF No. 64.) On September 23, 2015,  
2 Defendant Lyon filed an opposition. (ECF No. 65.) On September 24, 2015, the Henson  
3 Plaintiffs joined the Moreno Plaintiffs' petition to certify the appeal as frivolous. (ECF No. 67.)  
4 On September 30, 2015, Plaintiffs replied to Defendant Lyon's opposition. (ECF No. 68.) After  
5 a hearing, on October 19, 2015, the Court granted Plaintiffs' petition to certify Defendant Lyon's  
6 appeal as frivolous. (ECF No. 70.)

7 Subsequently, on October 20, 2015, Defendant Lyon filed a motion to stay the lower  
8 court action in the United States Court of Appeals for the Ninth Circuit. On October 27, 2015,  
9 Plaintiffs filed an opposition.

10 On November 18, 2015, the United States Court of Appeals for the Ninth Circuit entered  
11 an order denying without prejudice Plaintiffs' motion to dismiss the appeal for lack of  
12 jurisdiction and granting Defendant Lyon's motion to stay the district court proceedings pending  
13 the appeal. Pursuant to the United States Court of Appeals for the Ninth Circuit's order, the  
14 Court will stay the district court proceedings and all pending dates will be vacated.

15 Accordingly, IT IS HEREBY ORDERED that:

- 16 1. Pursuant to the United States Court of Appeals for the Ninth Circuit's order, the  
17 district court proceedings are STAYED pending the appeal;
- 18 2. All pending dates in the district court proceedings are VACATED; and
- 19 3. The parties shall file a joint status report advising the Court of the status of the Court  
20 of Appeals case no later than February 5, 2016.

21 IT IS SO ORDERED.

22 Dated: November 19, 2015

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25 UNITED STATES MAGISTRATE JUDGE  
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