

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

NOEL LEMUS, ADOLFO LEMUS.

No. 1:15-cv-00359-MCE-EPG

**Plaintiffs,**

v.

## ORDER

COUNTY OF MERCED, MERCED  
COUNTY SHERIFF'S DEPARTMENT,  
PAUL BARILE,

## Defendants.

In their Second Amended Complaint (“SAC”), Plaintiff Adolfo Lemus and Noel Lemus allege violations of their federal civil rights pursuant to 42 U.S.C. § 1983 by Defendant County of Merced (“County”) and Defendant Officer Paul Barile (“Officer Barile”). By Memorandum and Order filed May 19, 2016 (ECF No. 29) the Court found, inter alia, that Officer Barile was not entitled to qualified immunity for the actions he took in entering and searching Plaintiff Adolfo Lemus’ residence without a warrant.

On June 16, 2016, Officer Barile filed an interlocutory appeal with the Ninth Circuit Court of Appeals with respect to the Court's rejection of his qualified immunity claim. Presently before the Court is Defendant County's Motion to Bifurcate and Stay the present action pending a decision on that appeal. ECF No. 46. Plaintiffs have filed a Statement of Non-Opposition with respect to the County's request. ECF No. 47.

1 Moreover, Officer Barile has joined in the request, stating that imposition of a stay would  
2 assist in resolving the matter through mediation. ECF No. 48. For the reasons set forth  
3 below, Defendant County's Motion is GRANTED as to its stay request, but DENIED with  
4 regard to bifurcation of these proceedings.

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6 **BACKGROUND<sup>1</sup>**

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8 This case arises from an incident that occurred on March 8, 2013, during a social  
9 gathering at the residence of Plaintiff Adolfo Lemus ("Adolfo") in Merced, California.  
10 The Merced County Sheriff's Department was dispatched to investigate a noise and  
11 gunshot complaint at or near Adolfo's residence. Officer Barile, a Merced County  
12 Sheriff's Officer employed by the County, responded to that complaint.

13 When Officer Barile arrived, he gained access to Adolfo's residence by climbing  
14 over a gated entrance at the front of the property and entering the residence. After  
15 making contact with Adolfo, Officer Barile began searching the residence. During that  
16 search, he encountered the locked door of a bedroom where Plaintiff Noel Lemus  
17 ("Noel") was sleeping. Officer Barile applied force to gain entry to the bedroom,  
18 awakening Noel. According to Noel, as he attempted to comply with Officer Barile's  
19 command to get on the ground, Officer Barile forcibly kicked him in the back. Noel  
20 impacted the ground, resulting in personal injury. Noel was subsequently placed in  
21 handcuffs and taken out of Adolfo's home.

22 Plaintiffs claim that the entry and search of Adolfo's property and dwelling were  
23 made without a warrant, without probable cause, consent, or invitation, and were not  
24 subject to any privilege. SAC, ¶ 60. They allege that Officer Barile's conduct

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<sup>1</sup> The following statement of facts is based on the allegations in Plaintiffs' SAC (ECF No. 24).

1 consequently violated their constitutional rights. In addition, Plaintiffs contend that  
2 Officer Barile restrained Noel in violation of his Fourth Amendment rights. Id. at 57,  
3 p. 11.<sup>2</sup>

4 According to Plaintiffs, these purported constitutional violations were made  
5 possible because the County has a policy and custom of permitting “sergeant shopping,”  
6 a practice that permits officers to search for a superior to approve questionable and/or  
7 improper conduct even in the face of another sergeant recommending otherwise.  
8 Plaintiffs claim this policy and custom has created a system where an officer feels safe in  
9 overstepping the bounds of the law. More specifically, if an officer meets resistance from  
10 one supervising sergeant, he need only “shop” for another who is more likely to approve  
11 the particular police tactics involved. According to Plaintiffs, “[t]his knowledge and power  
12 was a moving force behind the constitutional violations” they suffered. Id. at 66.

13 Plaintiffs further allege that the County is liable for Plaintiffs’ injuries because—  
14 despite being told by retired Sgt. Mike Harris (“Harris”), the sergeant who responded to  
15 the scene, that Officer Barile could not pursue charges against Noel under the  
16 circumstances—Barile overstepped that recommendation and sought consent to do so  
17 from Captain Jones, the patrol operations commander. Plaintiffs allege that Captain  
18 Jones, a final policymaking authority in this regard, ratified the decision of Officer Barile  
19 by reading and reviewing his report, and recommending that criminal charges for  
20 negligent discharge of a firearm be pursued against Noel.

21 Specifically, the SAC reports Harris as stating that Officer Barile was known to  
22 “embellish” reports and would frequently write long reports to cover his actions when  
23 those actions were subject to question. Id. at 50, p. 8. Harris claims that higher ranking  
24 officers within the organization reviewed and authorized these reports even though they  
25 knew they were used to cover questionable arrests. Id. According to the SAC, Harris

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27 <sup>2</sup> The Court notes that the allegations contained in the SAC are mis-numbered, with ¶ 59 on  
page 10 followed by ¶ 47. The references in this Memorandum and Order are to the paragraph numbers  
28 as utilized in the SAC, except that where the same paragraph number is used twice, the paragraph  
designation will be followed by the page number of the SAC where it appears.

1 also indicated that Officer Barile had sergeant shopped in the past and that the practice  
2 was tolerated by department supervisors and managers. Id.

3 As indicated above, irrespective of whether Officer Barile's actions in writing up  
4 reports and recommending charges were somehow condoned and/or ratified by the de  
5 facto policies of the Merced County Sheriff's Department, Officer Barile contends that he  
6 was entitled to qualified immunity with respect to his actions in searching Adolfo's  
7 residence and taking Noel into custody in the first place. He has filed an interlocutory  
8 appeal with the Ninth Circuit challenging this Court's denial of his qualified immunity  
9 claim. Through the present motion, the County seeks to stay the proceedings against it,  
10 arguing that if Officer Barile is successful in invoking qualified immunity by way of his  
11 appeal, there will be no underlying constitutional violation. According to the County,  
12 without such an underlying violation it necessarily cannot face so-called Monell liability,  
13 which makes a municipal entity like the County liable for a constitutional violation if the  
14 violation was facilitated by the County's own policy or custom. The County also appears  
15 to argue that even if Officer Barile's qualified immunity argument fails, its participation in  
16 this lawsuit should be bifurcated so as to require Plaintiffs to establish Officer Barile's  
17 own culpability at trial before any potential liability by the County for such culpability is  
18 assessed.

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20 **STANDARD**

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22 A court may stay proceedings pending before it where interests of judicial  
23 economy make a stay appropriate. Landis v. North Am. Co., 299 U.S. 248, 254 (1936).  
24 This power stems from the court's inherent ability to control the disposition of cases on  
25 its docket. Fernandez v. Obesity Research Inst., LLC., 2013 WL 4587005 at \*6 (E.D.  
26 Cal. Aug. 28, 2013). A stay can be indicated where resolution of another case "may  
27 have a substantial impact" on the pending matter. Doyle v. OneWest Bank, N.A., 2015  
28 WL 4605776 at \*3 (C.D. Cal. May 21, 2015). In determining the propriety of such a stay,

1 courts look to issues of judicial economy and the prejudice to either party that may result  
2 if the stay is granted or denied. CMAX, Inc. v. Hall, 300 F.2d 265, 268 (9th Cir. 1962).  
3 Whether to issue a stay in this regard is a decision necessarily relegated to the court's  
4 discretion. Nken v. Holder, 556 U.S. 418, 433-34 (2009).

5 Bifurcation of proceedings is also a matter subject to the court's discretion.  
6 Danjaq LLC v. Sony Corp., 263 F.3d 942, 961 (9th Cir. 2001). Under Federal Rule of  
7 Civil Procedure 42(b), “[f]or convenience, to avoid prejudice, or to expedite and  
8 economize, the court may order a separate trial of one or more separate issues, claims,  
9 crossclaims, counterclaims, or third-party claims.”

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## **ANALYSIS**

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13 The County points out that the first step in determining whether a defendant is  
14 entitled to qualified immunity is to determine whether or not a constitutional violation has  
15 occurred. If such a violation has occurred, then the court must next determine whether  
16 the right violated was “clearly established” at the time of the defendant’s alleged  
17 misconduct. Saucier v. Katz, 533 U.S. 194, 201 (2001). While a municipal entity can be  
18 liable under 42 U.S.C. § 1983 if the governmental unit itself supported the violation  
19 through its own policy or custom (Monell v. Dept. of Social Servs., 436 U.S. 658, 691-94  
20 (1978)), the County argues that it cannot be liable under Monell based on the actions of  
21 its officer if there was no constitutional harm occasioned by the officer’s conduct. City of  
22 Los Angeles v. Heller, 475 U.S. 796, 799 (1986) (“If a person has suffered no  
23 constitutional injury at the hands of the individual police officer” any alleged authorization  
24 by the department “is quite beside the point.”).

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Reasoning that any liability on the County’s part is therefore derivative of, and  
flows from, an underlying constitutional injury, the County claims that its alleged role in  
this matter should be bifurcated and stayed pending disposition of whether qualified

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1 immunity on Officer Barile's part precludes a constitutional injury to Plaintiffs in the first  
2 place.

3 With respect to the propriety of a stay, all parties appear to be in agreement that  
4 this entire case, and not just the County of Merced's potential Monell liability, should be  
5 stayed pending both the disposition of Officer Barile's appeal and potential mediation in  
6 the Ninth Circuit. The Court agrees that should the Ninth Circuit determine that qualified  
7 immunity indeed applies to Officer Barile's actions in this matter, any derivative Monell  
8 claim on the County's part could be completely foreclosed. Consequently, a stay  
9 suspending further discovery and activity in this matter, until such time as an appellate  
10 decision is forthcoming, is proper to conserve the time and resources of both the parties  
11 and this Court.

12 The County's request for bifurcation, however, seems to be predicated on a two-  
13 fold argument. First, the County maintains that Plaintiffs' claims addressing the County's  
14 involvement, but not necessarily the claims related to Defendant Officer Barile, be  
15 stayed. Additionally, the County makes a second and broader claim that—should Officer  
16 Barile's appeal fail and the denial of qualified immunity be affirmed—Officer Barile's  
17 liability should be determined first at any eventual trial. The County's first request is for  
18 all intents and purposes moot given the Court's decision to stay the entire action pending  
19 Officer Barile's appeal. The County's second request, to bifurcate the County's  
20 involvement in this matter at trial from the adjudication of Officer Barile's liability, is,  
21 however, another matter. The Court does not believe that judicial economy will be  
22 served in bifurcating this case should it go to trial, and accordingly denies that request.

23

24 **CONCLUSION**

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26 For all the foregoing reasons, the County of Merced's Motion to Bifurcate and  
27 Stay (ECF No. 46) is (1) GRANTED with respect to the County's stay request;  
28 (2) DENIED as moot with regard to the County additional request that the matter be

1 bifurcated so as to permit a stay as to the County's involvement, only; and (3) DENIED  
2 with respect to any additional claim by the County that trial of this matter be bifurcated so  
3 as to adjudicate any claims against Officer Barile first before proceeding to the County's  
4 potential liability for misconduct on Officer Barile's part.

5 IT IS SO ORDERED.

6 Dated: June 20, 2017

  
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