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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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ROBERT MANN, SR.; VERN MURPHY-  
MANN; and DEBORAH MANN,  
  
                          Plaintiffs,  
  
          v.  
  
CITY OF SACRAMENTO; SACRAMENTO  
POLICE DEPARTMENT; SAMUEL D.  
SOMERS, JR.; JOHN C. TENNIS; and  
RANDY R. LOZOYA,  
  
                          Defendants.

No. 2:17-cv-01201 WBS DB

ORDER RE: DEFENDANTS' MOTION  
TO STAY

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On February 24, the court denied defendants Tennis and Lozoya's (the "Officer defendants") motion to dismiss plaintiff's § 1983 claim for loss of intimate association rights under the First Amendment. (Docket No. 98.) Because the court's order involved a denial of the Officer defendants' request for qualified immunity, the Officer defendants appealed the court's order on March 11, 2021. (Docket No. 99.)

Defendants City of Sacramento, Sacramento Police

1 Department, and Samuel D. Somers (the "City defendants") now move  
2 to stay proceedings pending the Officers' interlocutory appeal.  
3 ((Mot. to Stay (Docket No. 103).)

4 A federal court can stay a proceeding pending the  
5 outcome of an interlocutory appeal. See Nken v. Holder, 556 U.S.  
6 418, 421 (2009). The power to stay proceedings "is incidental to  
7 the power inherent in every court to control the disposition of  
8 the cases on its docket with economy of time and effort for  
9 itself, for counsel, and for litigants." Landis v. N. Am. Co.,  
10 299 U.S. 248, 254 (1936). The Supreme Court has instructed  
11 district courts to consider four factors when determining whether  
12 a stay is appropriate: "(1) whether the stay applicant has made a  
13 strong showing that he is likely to succeed on the merits; (2)  
14 whether the applicant will be irreparably injured absent a stay;  
15 (3) whether issuance of the stay will substantially injure the  
16 other parties interested in the proceeding; and (4) where the  
17 public interest lies." Nken, 556 U.S. at 434.

18 Here, while it is unclear exactly how the Ninth Circuit  
19 will rule on the Officer defendants' appeal, plaintiffs' Monell  
20 claim against the City should remain viable regardless of how the  
21 court rules on the Officer defendants' qualified immunity. See  
22 Horton v. City of Santa Maria, 915 F.3d 592, 603 (9th Cir. 2019)  
23 ("A municipality may be liable if an individual officer is  
24 exonerated on the basis of the defense of qualified immunity,  
25 because even if an officer is entitled to immunity a  
26 constitutional violation might still have occurred.").

27 Plaintiffs represent that they seek the contents of an  
28 Internal Affairs report ("IA Report") prepared by the City of


1 Sacramento after the shooting of Joseph in 2016. That  
2 information will be relevant to plaintiffs' Monell claim, and the  
3 court sees no reason why turning it over to plaintiffs now would  
4 prejudice defendants. Plaintiffs also represent that they wish  
5 to take depositions, including those of the Officer defendants.  
6 Allowing those depositions to be taken now, before resolution of  
7 the pending appeal, could create the need to take some  
8 depositions again after the Ninth Circuit's decision.

9 Accordingly, considering all of the Nken factors,  
10 defendants' motion to stay discovery pending appeal (Docket No.  
11 103) is DENIED to the limited extent that plaintiffs seek the  
12 contents of the City's IA Report. To the extent that defendants  
13 seek to take depositions, they shall make application to the  
14 assigned magistrate judge, setting forth the witnesses they seek  
15 to depose and the nature of the testimony they expect to elicit.  
16 Pending resolution of defendants' appeal, no depositions may be  
17 taken without advance approval of the assigned magistrate judge.

18 Upon resolution of the Officer defendants' pending  
19 appeal, counsel shall file a joint status report within ten days  
20 of the issuance of the Ninth Circuit's mandate.

21 IT IS SO ORDERED.

22 Dated: May 4, 2021

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24 WILLIAM B. SHUBB  
25 UNITED STATES DISTRICT JUDGE  
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