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28UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

HUMBERTO MARTINEZ, et al.,  
Plaintiffs,  
v.  
CITY OF PITTSBURG, et al.,  
Defendants.

Case No. [17-cv-04246-RS](#)**ORDER GRANTING MOTION TO  
STAY AND DENYING MOTION TO  
CERTIFY APPEAL AS FRIVOLOUS****I. INTRODUCTION**

This action arises from the death of Humberto Martinez during an arrest by the City of Pittsburg Police Department (“PPD”). Martinez’s family members subsequently filed suit, both individually and on behalf of the decedent, against the City of Pittsburg; Chief of Police Brian Addington, in both his individual and official capacities; several PPD officers;<sup>1</sup> and Does 1-10 (collectively, the “Pittsburg Defendants” or “Defendants”). The complaint alleges violations of the First, Fourth, and Fourteenth Amendments and advances state law claims for negligence, battery, and violation of the Bane Act, Cal. Civ. Code § 52.1.

On March 8, 2019, the Pittsburg Defendants’ motion for summary judgment was granted with respect to the First and Fourteenth Amendment theories for relief. The summary judgement motion was denied with respect to Plaintiffs’ state law claims and their Fourth Amendment claim

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<sup>1</sup> The defendant officers are Patrick Berhan, Jonathan Elmore, Willie Glasper, Ernesto Mejia, Gabriel Palma, and Jason Waite.

1 for excessive use of force. Defendants timely filed a Notice of Appeal challenging the denial of  
2 qualified immunity with respect to the six defendant officers’ alleged use of excessive force.  
3 Plaintiffs now move to certify that appeal as frivolous so that all claims may proceed to trial.  
4 Defendants oppose this motion and seek to stay the entire proceeding pending appellate review of  
5 the denial of qualified immunity. For the reasons set forth below, the motion to stay is granted and  
6 the motion to certify the appeal as frivolous is denied.

7 **II. BACKGROUND**

8 The factual background of this case is set forth in the Order Granting in Part and Denying  
9 in Part Defendants’ Motion for Summary Judgment, issued on March 8, 2019, and need not be  
10 revisited here.

11 **III. DISCUSSION**

12 **A. Motion to Certify Qualified Immunity Appeal as Frivolous**

13 In general, a district court’s denial of qualified immunity is immediately appealable.  
14 *Mitchell v. Forsyth*, 472 U.S. 511, 528 (1985). Such an appeal normally “divests the district court  
15 of jurisdiction to proceed with trial” on the issues involved in the appeal. *Chuman v. Wright*, 960  
16 F.2d 104, 105 (9th Cir. 1992). Under appropriate circumstances, however, a district court may  
17 certify an appeal as frivolous and proceed to trial. *Padgett v. Wright*, 587 F.3d 983, 985 (9th Cir.  
18 2009) (per curiam). A “frivolous qualified immunity claim is one that is unfounded, ‘so baseless  
19 that it does not invoke appellate jurisdiction.’” *Marks v. Clarke*, 102 F.3d 1012, 1017 n.8 (9th Cir.  
20 1996) (quoting *Apostol v. Gallion*, 870 F.2d 1335, 1339 (7th Cir. 1989)).

21 Plaintiffs advance three arguments why Defendants’ appeal should be certified as  
22 frivolous: (1) because a municipality such as the City of Pittsburg can never benefit from qualified  
23 immunity, (2) because the defendant officers’ appeal rests upon disputed issues of fact, and (3)  
24 because there can be no reasonable dispute that the defendant officers violated clearly established  
25 law. The first argument is easily dispatched. The Defendants’ Notice of Appeal clearly states that  
26 the basis of the appeal is denial of qualified immunity for the six defendant police officers—not  
27 the City of Pittsburg. Therefore, the fact that a municipality cannot receive qualified immunity is  
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1 irrelevant. Plaintiffs’ second argument is similarly unavailing. The Pittsburg Defendants challenge  
2 whether, *viewing the evidence in the light most favorable to Plaintiffs*, the officers’ conduct  
3 violated clearly established law. The mere presence of disputed facts—without more—does not  
4 render such an appeal frivolous. *See Isayeva v. Sacramento Sheriff’s Dep’t*, 872 F.3d 938, 945 (9th  
5 Cir. 2017); *Ames v. King Cty.*, 846 F.3d 340, 347 (9th Cir. 2017).

6 Plaintiffs third argument fails as well. While the issue of qualified immunity does not  
7 present a particularly close question in this case, Defendants’ arguments cannot be fairly described  
8 as “baseless” or wholly without merit. *Marks*, 102 F.3d at 1017. Defendants intend to challenge  
9 the treatment of all six officers as integral participants, arguing that each officer was entitled to a  
10 separate qualified immunity analysis. They candidly admit, however, that the strength of each  
11 defendant officers’ qualified immunity defense varies depending on each officer’s degree of  
12 involvement in the struggle. Although it appears unlikely Defendants will prevail on appeal, their  
13 legal arguments are substantial enough to justify interlocutory review. Accordingly, the motion to  
14 certify Defendants’ appeal as frivolous is denied. Plaintiffs’ fourth amendment claim against the  
15 six defendant officers is therefore automatically stayed pending interlocutory review. The question  
16 whether to stay the remaining claims in this action, however, requires a separate analysis.

17 **B. Motion to Stay**

18 As previously discussed, the Pittsburg Defendants seek to stay all claims in this action, not  
19 just those that are currently on appeal. The power to stay is “incidental to the power inherent in  
20 every court to control the disposition of the cases on its docket.” *Mann v. City of Sacramento*, Civ.  
21 No. 17-1201, 2018 U.S. Dist. LEXIS 9077, at \*1-2 ( E.D. Cal. 2018) (quoting *Landis v. N. Am.*  
22 *Co.*, 299 U.S. 248, 254 (1936). Moreover, the decision whether to grant a stay is “an exercise of  
23 judicial discretion,” and depends “upon the circumstances of the particular case.” *Nken v. Holder*,  
24 556 U.S. 418, 433 (2009) (quotation omitted). In determining whether to stay a pending  
25 proceeding, courts weigh all relevant “competing interests.” *Lockyer v. Mirant Corp.*, 398 F.3d  
26 1098, 1110 (9th Cir. 2005). Among these interests are “the possible damage which may result  
27 from the granting of a stay, the hardship or inequity which a party may suffer in being required to  
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1 go forward, and the orderly course of justice measured in terms of the simplifying or complicating  
2 of issues, proof, and questions of law which could be expected to result from a stay.” *Id.*

3 The circumstances of this action favor a stay of all claims, not only those pending before  
4 the Ninth Circuit. Declining to stay this action would mean that the six defendant officers would  
5 likely have to defend two separate trials related to the exact same conduct. This would clearly  
6 prejudice the defendant officers and result in a tremendous waste of judicial resources.  
7 Furthermore, given the substantial overlap between the claims in this action, proceeding with two  
8 separate trials could result in conflicting jury verdicts. While it is true that staying this case will  
9 delay to some extent the resolution of Plaintiffs’ claims, this interest is ultimately outweighed by  
10 the likely waste of judicial resources and prejudice to Defendants of trying these highly  
11 interrelated claims separately. Therefore, as an exercise of discretion, the motion to stay is hereby  
12 granted.

13 **IV. CONCLUSION**

14 For the reasons discussed above, this action is hereby stayed pending appellate review of  
15 the denial of qualified immunity. The parties shall submit joint status updates every six months for  
16 the duration of the appeal and shall submit an additional update within 10 days of the Ninth  
17 Circuit’s resolution of this matter.

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19 **IT IS SO ORDERED.**

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21 Dated: April 4, 2019

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24 RICHARD SEEBORG  
25 United States District Judge

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