IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

ADALBERTO FLORES-HARO et al.,

Plaintiffs,

v.

STEPHEN SLADE et al.,

Defendants.

Case No. 3:12-cv-01616-MO

OPINION AND ORDER

MOSMAN, J.,

At issue is whether I regard the appeals taken in this case as frivolous and whether to grant the Defendants' motion to stay [216]. I find that the appeals, taken as a whole, are not frivolous and I GRANT the motion to stay.

If the only appeal were from my ruling on qualified immunity, it would be a close question whether this is a proper interlocutory appeal or whether it is a frivolous appeal which would not divest me of jurisdiction. Certainly, taking the facts in the light most favorable to Plaintiff, there is little doubt that qualified immunity is inappropriate. However, the scope of the appeal includes my rulings on qualified immunity, the *Heck* doctrine, and the state law battery claim. Collectively, they present several close questions. In particular, reasonable minds can differ on my interpretation of the *Heck* doctrine. For that reason, the appeal is not a frivolous one. Taking them collectively makes sense in this case. Qualified immunity, issue preclusion, and *Heck* all have the common goal of avoiding trial. Indeed, much of the value of the *Heck* doctrine—comity, federalism, and avoidance of parallel litigation—is lost if there is a trial. Due to this common goal, I believe that it makes sense to combine the issues and to look at them together in interlocutory review. The factors of 28 U. S. C. § 1292(b) are met in that this appeal

presents a controlling question of law as to which there is substantial ground for difference of opinion, and an immediate appeal may materially advance the ultimate termination of the litigation.

DATED this 25 day of January, 2016.

/s/ Michael W. Mosman
MICHAEL W. MOSMAN
United States District Judge