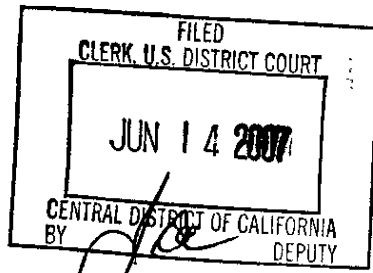


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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

AUGUSTA MILLENDER, BRENDA  
MILLENDER, WILLIAM JOHNSON,

Plaintiffs,

v.

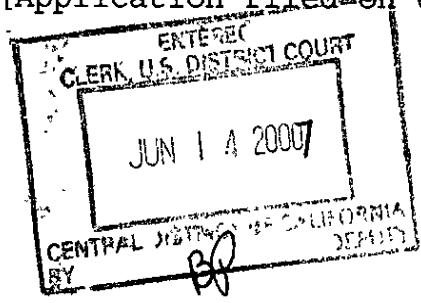
COUNTY OF LOS ANGELES, ET  
AL.,

Defendants.

Case No. CV 05-2298 DDP (RZx)

**ORDER GRANTING DEFENDANTS' EX  
PARTE APPLICATION FOR STAY OF  
TRIAL PENDING APPEAL**

[Application filed on 6/8/07]



*S*

This matter comes before the Court on Defendants' ex parte application for an order staying the trial proceedings pending disposition of their appeal of this Court's March 19, 2007 Order denying in part their motion for summary judgment on the grounds of qualified immunity.

The Ninth Circuit has set forth rules governing whether a district court should stay trial proceedings pending an appeal of an order denying qualified immunity. If this Court finds that the Defendants' claim of qualified immunity is frivolous or has been waived, the Court may certify, in writing, that Defendants have forfeited their right to pretrial appeal, and may proceed with

1 trial. Chuman v. Wright, 960 F.2d 104, 105 (9th Cir. 1992).  
2 the absence of such certification, however, the Court is  
3 automatically divested of jurisdiction to proceed with trial  
4 pending appeal. Id.

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5 Defendants argue that their appeal is a nonfrivolous  
6 disagreement this the Court's ruling on qualified immunity as to  
7 the overbreadth of the warrant issue. The Court's partial denial  
8 of qualified immunity turned on its finding that the warrant  
9 affidavit was overbroad. Although the Court stands by its analysis  
10 of the overbreadth issue, it recognizes that Defendants'  
11 disagreement with the Court's finding is nonfrivolous. If the  
12 Ninth Circuit disagrees with the Court's finding of overbreadth, it  
13 would likely reverse the Court's denial of qualified immunity.

14 Plaintiffs' opposition does not address whether Defendants'  
15 appeal is frivolous or has been waived. Instead, it argues that if  
16 the Court grants Defendants' application because it agrees that  
17 "there should only be one trial on all issues," the Court should  
18 reconsider its denial of Plaintiffs' application for certification  
19 of issues for interlocutory appeal. However, the standard the  
20 Court must use to decide Defendants' application is significantly  
21 more lenient than the standard used to decide motions for  
22 certification of issues for interlocutory appeal - here, if the  
23 Court finds the Defendants' appeal is not frivolous, it is actually  
24 divested of jurisdiction to proceed with trial. Moreover, as the  
25 Court noted in its order denying Plaintiffs' motion, the Court  
26 cannot justify certifying a question for interlocutory appeal that  
27 it would not otherwise certify simply because Defendants' have  
28 appealed the Court's denial of qualified immunity. (See March 25,

1 2007 Order Denying Plaintiffs' Application for Order for  
2 Certification of Order for Interlocutory Appeal at 13.)

3 Accordingly, because the Court does not find that Defendants'  
4 appeal is frivolous or has been waived, the Court lacks  
5 jurisdiction to proceed with the trial. Therefore, the Court  
6 grants Defendants' ex parte application and hereby stays all trial  
7 proceedings pending Defendants' appeal.

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9 IT IS SO ORDERED.

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Dated: 6-14-07



DEAN D. PREGERSON  
United States District Judge

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