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10  
11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 EDGAR VARGAS-ARZATE,

14 Plaintiffs,

15 vs.

16 CITY OF SANTA ANA, a  
17 municipality; CHIEF CARLOS  
18 ROJAS, an individual; and DOES 1  
19 through 20, inclusive,

20 Defendants.

Case No.: SACV15-0572 DOC (JCGx)

**NOTICE OF MOTION AND  
MOTION FOR STAY OF ENTIRE  
ACTION PENDING CONCLUSION  
OF FEDERAL GRAND JURY  
PROCEEDINGS; MEMORANDUM  
OF POINTS AND AUTHORITIES  
IN SUPPORT THEREOF**

Date: July 20, 2015

Time: 8:30 a.m.

Courtroom: 9D

Discovery Cut-Off: Not set

Final Pre-Trial Conf.: Not set

Trial: Not set

21 PLEASE TAKE NOTICE that on July 20, 2015, at 8:30 a.m., or as soon  
22 thereafter as counsel may be heard in Courtroom 9D of the United States District  
23 Court, Central District, located at 411 W. Fourth Street, Santa Ana, California,  
24 Defendant City of Santa Ana, a public entity, will and hereby do move this court  
25 for a limited stay of this action until such time as the federal grand jury has  
26 concluded its inquiry into the incident that underlies this lawsuit.

27 This motion is made following a meet and confer of counsel that took place  
28 on June 16, 2015, pursuant to Central District Local Rule 7-3.

1           This motion is based on this notice of motion, the memorandum of points  
2 and authorities attached hereto, the pleadings and records on file with this Court,  
3 and on such oral and documentary evidence as may be presented at the hearing of  
4 this Motion.

5

6 DATED: June 19, 2015

CARPENTER, ROTHANS & DUMONT

7

/s/

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By: \_\_\_\_\_

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Steven J. Rothans

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Jill Williams

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Attorneys for Defendant,

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City of Santa Ana, a public entity

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

This civil action arises out of an incident involving Plaintiff Edgar Vargas-Arzate and various Santa Ana Police Department (“SAPD”) officers. The First Amended Complaint alleges that on June 20, 2014, Defendant SAPD Officers Hermans, Carranza, Herter, Booker Aparicio, and Lim “confronted” the plaintiff and “commenced a brutal beating of plaintiff’s person by administering countless closed fist punches, knees and kicks to his head and body, by delivering numerous blows to his lower body with a baton, by plowing into his neck as he lay defenselessly on the ground, and by discharging several cycles from a Taser gun.” First Am. Compl. ¶ 23. Portions of the officers’ encounter with the plaintiff were captured on a nearby home owner’s surveillance camera.

Presently, we are informed that there are ongoing federal grand jury proceedings investigating the incident and the officers’ use of force during the incident. As with any grand jury proceeding, the grand jury is tasked with determining whether criminal charges should be brought against any individual due to his or her conduct during the incident. When the individual defendants appear in this case – the individuals who are the subject of the grand jury inquiry – they will be served with discovery and any discovery responses provided by the individual defendants could be used against them in a criminal proceeding. Furthermore, any deposition testimony that the individual defendants give could be used against them in a criminal proceeding. This places the defendants in a “Catch-22” situation because they will be forced to choose between exercising their Constitutionally protected Fifth Amendment rights to protect their liberty interest vis-à-vis a potential criminal action – which would, in turn, be used as a sword against them in this civil action – or endangering their liberty interest and waiving their Fifth Amendment rights so that they can actively participate in discovery in this civil litigation. Furthermore, this quandary creates a conflict of

1 interest for the City, as it would be placed in the situation of defending against an  
2 action about which its employees refuse to speak. Finally, allowing discovery in  
3 this civil litigation to proceed concurrent with a grand jury inquiry imposes  
4 substantial prejudice on the defendants and creates a situation where civil  
5 discovery could interfere with an ongoing criminal investigation.

6 Accordingly, the defendants request that the Court stay this civil action  
7 pending the conclusion of the grand jury proceedings.

## 8 **II. STATEMENT OF LAW**

### 9 **A. A Limited Stay Should Be Issued To Protect The Integrity Of An** 10 **Ongoing Criminal Investigation And Related Grand Jury** 11 **Proceedings.**

12 To protect ongoing criminal investigations from being subject to disclosure  
13 and discovery, federal courts routinely employ a doctrine of federal common law  
14 that has become known as the law enforcement privilege. In re Sealing & Non-  
15 Disclosure of Pen/Trap/2703(d) Orders, 562 F.Supp.2d 876, 885 (S.D. Tex. 2008)  
16 (“In certain contexts, a qualified ‘law enforcement privilege’ to protect  
17 government files related to an ongoing investigation has been recognized by a  
18 majority of circuits.”) (emphasis added, internal citations omitted); Sec. & Exch.  
19 Comm’n v. Gowrish, C 09-05883 SI, 2010 WL 1929498 (N.D. Cal. 2010) (“The  
20 purpose of the law enforcement privilege is ‘to prevent disclosure of law  
21 enforcement techniques and procedures, to preserve the confidentiality of sources,  
22 to protect witness and law enforcement personnel, to safeguard the privacy of  
23 individuals involved in an investigation, and otherwise to prevent interference with  
24 an investigation.’”), *citing* In re Dep’t of Inv. of City of N.Y., 856 F.2d 481, 484  
25 (2d Cir. 1988).

26 The law enforcement privilege has a rich history and previously manifested  
27 itself in different forms. A summary of the privilege was provided by the Court in  
28 United States District Court for the District of New Jersey in G-69 v. Degnan, 130

1 F.R.D. 326 (D.N.J. 1990):

2           The inspection of files maintained by law enforcement  
3           authorities defending a civil rights claim is, of course,  
4           controlled by federal law. [Citations]. **The claim for such a**  
5           **privilege is somewhat stronger** with respect to protecting  
6           evaluative opinions as contrasted with facts [citation], **with**  
7           **respect to protecting ongoing investigations as contrasted**  
8           **with closed files** [citation], **with respect to protecting**  
9           **decisions to prosecute as contrasted with decisions not to**  
10          **prosecute** [citations], with respect to protecting confidential  
11          informant identities as contrasted with names of incidental  
12          witnesses [citations], and with respect to protecting confidential  
13          law enforcement methods and tactics as contrasted with simple  
14          interview materials [citations].

15 G-69 v. Degnan, 130 F.R.D. at 332 (emphasis added). As noted above, the  
16 purpose of the privilege is “to prevent disclosure of law enforcement techniques  
17 and procedures, to preserve the confidentiality of sources, to protect witness and  
18 law enforcement personnel, to safeguard the privacy of individuals involved in an  
19 investigation, and otherwise to prevent interference with an investigation.” United  
20 States v. Myerson, 856 F.2d 481, 483–84 (2d Cir.1988) (emphasis added). “[T]he  
21 party asserting the law enforcement privilege bears the burden of showing that the  
22 privilege applies . . . .” Dinler v. City of New York, 607 F.3d 923, 944 (2d Cir.  
23 2010). “To meet this burden, the party asserting the law enforcement privilege  
24 must show that the [discovery sought] contain[s] information that the law  
25 enforcement privilege is intended to protect.” *Id.* Once a court has determined the  
26 law enforcement privilege applies, there is a “strong presumption against lifting  
27 the privilege”. *Id.* at 945.

28



1 Here, there is an ongoing criminal investigation and related grand jury  
2 proceedings inquiring into the incident that underlies this lawsuit. This pending  
3 investigation directly implicates the weighty policy considerations that were the  
4 genesis of the federal common law privilege, i.e.: (1) safeguarding the privacy of  
5 individuals involved in the investigation; (2) protecting the integrity of the  
6 investigation by preventing interference while it is ongoing; (3) preserving the  
7 confidentiality of sources in an ongoing criminal proceeding; and (4) protecting  
8 and safeguarding the integrity of the decision to either prosecute or not prosecute  
9 the case (which raises issues of comity and potential federal interference in  
10 ongoing state investigations).

11 With the criminal investigation still ongoing, civil discovery would  
12 jeopardize the investigation, and, hence, the imposition of a stay of this civil case  
13 is warranted for a number of reasons. First, a stay eliminates the need to invoke  
14 the law enforcement privilege concerning the discovery of certain investigative  
15 materials, as there is an issue of confidentiality of sources. Permitting unrestricted  
16 disclosure of investigative files could endanger witnesses and chill the ability of  
17 the investigative agency to obtain candid statements from persons otherwise  
18 reluctant to become involved. Second, a limited stay serves the public interest in  
19 allowing the federal criminal process to reach a conclusion without fear of  
20 interference from discovery in a civil lawsuit. Third, a limited stay would reduce  
21 the cost of litigation and avoid waste of judicial resources by avoiding what would  
22 otherwise be imminent discovery motions on this issue.

23 **B. Separate From The Law Enforcement Privilege, In Weighing The**  
24 **Keating Factors, The Court Should Stay This Action Pending**  
25 **Completion Of The Grand Jury Proceedings.**

26 A court may use its discretion to determine whether to stay civil proceedings  
27 when the interests of justice require this action. United States v. Kordel, 397 U.S.  
28 1, 12 n. 27 (1970). In the Ninth Circuit, a multi-factor test articulated in Keating

1 v. Office of Thrift Supervision, 45 F.3d 322 (9th Cir. 1995) is used to determine  
2 “whether to stay civil proceedings in the face of a parallel criminal proceeding.”<sup>1</sup>

3 In determining whether a stay is warranted, a district court should consider:

4 **The extent to which the defendant’s Fifth Amendment**  
5 **rights are implicated.** In addition, the decisionmaker should  
6 generally consider the following factors: (1) the interest of the  
7 plaintiffs in proceeding expeditiously with this litigation or any  
8 particular aspect of it, and the potential prejudice to plaintiffs of  
9 a delay; (2) **the burden which any particular aspect of the**  
10 **proceedings may impose on defendants;** (3) the convenience  
11 of the court in the management of its cases, and the efficient  
12 use of judicial resources; (4) the interests of persons not parties  
13 to the civil litigation; and (5) the interest of the public in the  
14 pending civil and criminal litigation.

15 Id. at 324-25 (internal citations omitted, emphasis added).

16 There are no published cases in the Ninth Circuit involving a general fact  
17 pattern similar to what is present here. However, out-of-circuit authority that  
18 utilizes the same multi-factored approach provides guidance, along with basic  
19 principles derived from Ninth Circuit jurisprudence.

20 For example, in Chagolla v. City of Chicago, 529 F.Supp.2d 941(N.D. Ill.  
21 2008), the plaintiff alleged that he was outside the front door of his apartment on  
22 the near northwest side of Chicago when eight police officers appeared and, after  
23 threatening him at gunpoint, entered and ransacked his apartment, stealing money  
24 that he kept there. Chagolla further contended that the officers took him into  
25 custody and drove him in a police car to a parking lot, where they left him in the

26 \_\_\_\_\_  
27 <sup>1</sup> The factors utilized in assessing a generalized motion to stay were originally  
28 embraced in Federal Savings & Loan Insurance Corporation v. Molinaro, 889 F.2d  
899 (9th Cir. 1989), but were expressly extended to the criminal context by  
Keating.

1 car with the heat turned on. Id. Chagolla alleged that the officers made false  
2 statements that caused him to be charged with a crime and, as a result, he was  
3 detained in custody pending trial for over seven months. Id. at 943. A few months  
4 later, three of the officers, defendants Finnigan, Herrera, and Hopkins were  
5 charged criminally with engaging in acts similar to those alleged by Chagolla.  
6 After county prosecutors dropped the charges against Chagolla, he filed a civil  
7 action against the officers. Thereafter, a Cook County grand jury indicted the  
8 defendant officers for armed violence, residential burglary, theft, and other  
9 offenses in connection with their actions against Chagolla. Id. Each of the  
10 defendant officers moved to stay proceedings in Chagolla’s civil case pending the  
11 resolution of all state and federal criminal proceedings and investigations  
12 involving them. Id. at 944. The district court was particularly concerned with the  
13 dilemma confronted here, where “**it is not at all rare for a person faced with**  
14 **criminal charges or a pending investigation to invoke the privilege even**  
15 **though he may have done nothing wrong, out of an abundance of caution**  
16 **prompted by a careful criminal defense lawyer.”** Id. at 947. The court noted  
17 that the problem was not merely speculative:

18 Four of the individual defendants are under indictment on  
19 criminal charges related directly to the matters involved in the  
20 present case, and there are ongoing criminal investigations  
21 regarding the on-the-job conduct of all of the individual  
22 defendants. Under the circumstances, there is no question that  
23 each of the individual defendants could legitimately claim his  
24 or her Fifth Amendment privilege against self-incrimination if  
25 required to answer the complaint or discovery requests in the  
26 present case.

27 Id. at 944-45. To resolve this problem, and the adverse impact it creates on the full  
28 exercise of one’s constitutional rights, the court utilized factors nearly identical to

1 those outlined by the Ninth Circuit in Keating to determine the applicability of a  
2 stay:

3 A court may, however, stay parallel civil litigation in these  
4 circumstances if the interests of justice require it.

5 Determination of whether to grant a stay due to parallel  
6 criminal litigation involves balancing the interests of the  
7 plaintiff, the defendants, and the public. The factors considered  
8 include the following non-exclusive list: whether the civil and  
9 criminal matters involve the same subject; whether the  
10 governmental entity that has initiated the criminal case or  
11 investigation is also a party in the civil case; the posture of the  
12 criminal proceeding; the effect of granting or denying a stay on  
13 the public interest; the interest of the civil-case plaintiff in  
14 proceeding expeditiously, and the potential prejudice the  
15 plaintiff may suffer from a delay; and the burden that any  
16 particular aspect of the civil case may impose on defendants if a  
17 stay is denied.

18 Chagolla, 529 F.Supp.2d at 945.

19 Several of these factors weigh heavily in favor of a stay in this action. With  
20 respect to the relationship between the criminal and civil cases, the Court in  
21 Chagolla recognized that, “[t]he close relationship between the civil and criminal  
22 matters weighs in favor of a stay.” Id. at 945-46. Similarly, in this situation, there  
23 can be no dispute that the pending grand jury proceedings and related criminal  
24 investigation involve the very same set of facts alleged in this lawsuit. Another  
25 factor that mandates imposition of a stay is the public interest at stake in ensuring  
26 that a criminal investigation is not tainted by parallel civil proceedings:

27 ///

28 ///

1 The public has an interest in the prompt disposition of civil  
2 litigation, an interest that has been enacted into positive law via  
3 the Civil Justice Reform Act of 1990. See 28 U.S.C. §§ 471-82.  
4 A stay quite obviously will impair that interest. On the other  
5 hand, **the public has an interest in ensuring that the criminal**  
6 **process can proceed untainted by civil litigation. The**  
7 **possibility that the orderly progress of the criminal cases**  
8 **and investigations-particularly those involving the exact**  
9 **same incidents at issue in the present case-will be hindered**  
10 **by issues that could arise from ongoing civil discovery is**  
11 **significant enough to be worthy of consideration.**

12 Chagolla, 529 F.Supp.2d at 946-47 (emphasis added). This reasoning equally  
13 applicable in this case where, as noted above, a limited stay will safeguard the  
14 integrity of the pending criminal investigation.

15 Finally, the Court must consider the prejudice to the defendants that will  
16 result if civil discovery is allowed to proceed in the face of a pending criminal  
17 investigation. The Chagolla court analyzed this factor at length:

18 Any individual defendant who is forced to respond to discovery  
19 will be faced with the choice of whether to claim or waive the  
20 privilege against self-incrimination. As the Court has  
21 suggested, the likelihood is overwhelming that each of the  
22 defendants faced with that choice will claim the privilege and  
23 thereby face the risk that Chagolla will use the privilege  
24 invocation to help prove the defendant's liability. Though the  
25 law allows this, the question of whether it is fair does not yield  
26 the same answer in every case. **In the Court's experience, it**  
27 **is not at all rare for a person faced with criminal charges or**  
28 **a pending investigation to invoke the privilege even though**

1           **he may have done nothing wrong, out of an abundance of**  
2           **caution prompted by a careful criminal defense lawyer.**  
3           **Though a person who claims the privilege in such**  
4           **circumstances and then has it used against him in a parallel**  
5           **civil case ordinarily is given the chance to explain his**  
6           **invocation of the privilege, the finer points of risk-aversion**  
7           **as it relates to criminal defense practice easily can be lost on**  
8           **lay jurors. A civil defendant in this situation who is**  
9           **effectively backed into a corner in which he has no viable**  
10           **choice but to claim the privilege is forced to face a**  
11           **significant risk of unfair prejudice that may be virtually**  
12           **impossible to remedy.**

13           This is, in the Court’s view, a factor weighing in favor of a stay.  
14 Id. at 947 (emphasis added). Indeed, it is well-recognized that “**there is a strong**  
15 **case in favor of a stay after a grand jury returns a criminal indictment and**  
16 **where there is a large degree of overlap between the facts involved in both**  
17 **cases.”** ESG Capital Partners LP v. Stratos, 22 F.Supp.3d 1042, 1045 (C.D. Cal.  
18 2014), *citing* Molinaro, 889 F.2d at 903; Sec. & Exch. Comm’n v. Dresser Indus.,  
19 628 F.2d 1368, 1375–76 (D.C.Cir.1980); Chao v. Fleming, 498 F.Supp.2d 1034,  
20 1037 (W.D.Mich.2007); McCormick v. Rexroth, No. C 09–4188 JF, 2010 WL  
21 934242, at \*2 (N.D.Cal. Mar. 15, 2010).

22           These very same significant concerns weigh heavily in favor of a stay in this  
23 civil case. Written discovery will inevitably be propounded on the individual  
24 defendant officers and, unquestionably, the plaintiff will want to depose the  
25 individual defendant officers. Should any of the individual defendant officers or  
26 any other yet to be named defendant be forced to choose between exercising and  
27 waiving their Fifth Amendment rights, the harm to the defendants would be great.  
28 If the defendants exercise their Fifth Amendment rights, the plaintiff could use that

1 exercise as a sword against the officers. However, if the officers waive their Fifth  
2 Amendment rights, they no longer have that Constitutional shield should any  
3 criminal charges be brought against them. Moreover, a trier of fact could draw  
4 adverse inferences from any officer’s invocation of his Fifth Amendment rights  
5 and any other defendant could also lose the benefit of the officers’ testimony and  
6 also suffer an adverse inference, should any other defendant invoke their Fifth  
7 Amendment rights. As such, the defendants’ rights would be guarded by the Court  
8 through the proposed stay.

9 Recognizing this same quandary, the Court in Chagolla came up with a  
10 prudential compromise – the same resolution as the defendants seek here – and  
11 ordered that it would exercise “its discretion to stay further proceedings in the case  
12 as to the individual defendants . . . initially, for a period of four months. At that  
13 time, the Court will reevaluate the matter based on submission by the parties  
14 regarding any developments that might warrant terminating the stay or modifying  
15 it to permit the case to proceed (in its entirety or otherwise) as to some or all of the  
16 individual defendants.” Id. at 948.

17 A California Court of Appeal reached the same conclusion as the Court in  
18 Chagolla, relying exclusively on federal law in the process. In Pacers, Inc. v.  
19 Superior Court, 162 Cal.App.3d 686 (1984), the court held that:

20 Where, as here, a defendant’s silence is constitutionally  
21 guaranteed, the court should weigh the parties’ competing  
22 interests with a view toward accommodating the interests of  
23 both parties, if possible. An order staying discovery until  
24 expiration of the criminal statute of limitations would allow real  
25 parties to prepare their lawsuit while alleviating petitioners’  
26 difficult choice between defending either the civil or criminal  
27 case. [Citation]. ¶ This remedy is in accord with federal  
28 practice where it has been consistently held that when both civil



1 and criminal proceedings arise out of the same or related  
2 transactions, an objecting party is generally entitled to a stay of  
3 discovery in the civil action until disposition of the criminal  
4 matter. [Citations]. The rationale of the federal cases is based  
5 on Fifth Amendment principles as well as the inherent  
6 unfairness of compelling disclosure of a criminal defendant's  
7 evidence and defenses before trial. Under these circumstances,  
8 the prosecution should not be able to obtain, through the  
9 medium of the civil proceedings, information to which it was  
10 not entitled under the criminal discovery rules. [Citation].  
11 Here, although petitioners are not criminal defendants, they are  
12 nevertheless threatened with criminal prosecution. To allow  
13 the prosecutors to monitor the civil proceedings hoping to  
14 obtain incriminating testimony from petitioners through civil  
15 discovery would not only undermine the Fifth Amendment  
16 privilege but would also violate concepts of fundamental  
17 fairness.

18 Pacers, 162 Cal.App.3d at 690; see also Keating, *supra*, 45 F.3d 322, 326 (9th Cir.  
19 1995) ("In highly publicized cases . . . judicial and quasi-judicial decisionmakers  
20 need to be especially careful that undue consideration is not given a proceeding's  
21 impact on the public. Governmental entities are frequently aware of the need to  
22 reassure the public that they are taking prompt action in response to a crisis. In  
23 such high visibility situations, it is especially necessary to guard the rights of  
24 defendants, and concern for the public deterrence value of an enforcement  
25 proceeding must not be allowed to override the individual defendant's due process  
26 rights.").

27 This same conclusion was reached by the United States Claims Court in St.  
28 Paul Fire & Marine Insurance Company v. United States, 24 Cl.Ct. 513 (1991).



1 There, the plaintiff had been under investigation by the United States Army  
2 Criminal Investigation Division, although no charges had been filed as of the time  
3 of the motion. Despite this, the court found that:

4 In instances where it is patently clear that the issues in both  
5 proceedings are “related” as well as “substantially similar,” it is  
6 equally apparent that there will be a substantial, if not a total,  
7 overlap of witnesses and documentary evidence. In addition,  
8 where a stay is not obtained in a civil proceeding pending the  
9 completion of a criminal trial (or investigation), the primary  
10 hardship to the litigants will generally arise from the  
11 considerably narrower scope of discovery allowed in the  
12 criminal case. Concomitantly, the reason why courts attempt to  
13 avoid concurrent civil and criminal suits is that “the broader  
14 discovery permissible in civil cases should not be used to  
15 compromise parallel criminal proceedings” (particularly, in the  
16 instance where the parallel criminal investigation may be said  
17 to ‘churn over the same evidentiary material.’ Accordingly,  
18 ‘where such a compromising situation is considered likely, the  
19 public’s interest in law enforcement surfaces and mandates that  
20 criminal proceedings be given priority over the concurrent civil  
21 proceedings.’

22 St. Paul Fire & Marine Ins., 24 Cl. Ct. at 516.

23 The City submits that the case for a stay is even greater in this action that it  
24 was in Chagolla, Pacers and St. Paul’s Fire. It is not expected that the grand jury  
25 inquiry will last longer than an additional four or five months. Thus, depending on  
26 the outcome of the grand jury proceedings, the Fifth Amendment quandary may no  
27 longer be an issue and the civil lawsuit can resume. As the Chagolla court noted, it  
28 is not at all rare for a person “pending investigation to invoke the privilege even

1 though he may have done nothing wrong, out of an abundance of caution”. In this  
2 scenario, where the investigation is not indefinite and where the Court can re-visit  
3 the progress of the investigation by way of a status conference, the defendants  
4 submit that a stay is appropriate. See Jones v. City of Indianapolis, 216 F.R.D.  
5 440, 451 (S.D. Ind. 2003) (“As to Plaintiff’s interest in proceeding expeditiously,  
6 Plaintiff does not demonstrate irreparable harm or prejudice if the Court grants a  
7 limited stay. . . . If a limited stay is not granted, the Court finds that Defendants  
8 would be faced with an unnecessary dilemma: surrender their Fifth Amendment  
9 rights against self-incrimination, or not testify and risk the possibility of adverse  
10 inferences being taken from the assertion of these Fifth Amendment rights, or  
11 possibly even civil sanctions and/or the entry of a default judgment. A limited stay  
12 of discovery will eliminate this quandary.”).

13 **C. Potential Conflicts Of Interest Support Imposition Of A Stay,**  
14 **And The Outcome Of The Grand Jury Proceedings May Resolve**  
15 **The Conflict.**

16 As further justification for imposition of a limited stay of this case is the  
17 possible elimination of potential conflicts of interest, and sparing a public entity  
18 what may be an extreme and unnecessary expense in the form of separate conflict  
19 for each of the individual defendants. Not only does this potential conflict come at  
20 a great expense to the public entity, numerous attorneys, each representing a  
21 different party, greatly complicate civil proceedings and oftentimes strain judicial  
22 resources. Imposing a stay to avoid a potential conflict of interest was recently  
23 confronted by the United States District Court for the Southern District of New  
24 York in Muniz v. City of New York, 12 CIV. 719 TPG, 2012 WL 3104898  
25 (S.D.N.Y. July 17, 2012), which arose out of alleged misconduct by New York  
26 Department of Corrections officers. In seeking a stay, the department argued that  
27 the results of its internal investigation “may dictate whether corporation counsel  
28 can represent the [individual] defendants. Pursuant to N.Y. Gen. Mun. L. § 50–k,

1 corporation counsel may only represent the [individual] defendants if it determines  
2 that they were acting within the scope of their public employment, in the discharge  
3 of their duties, and in accordance with the rules and regulations of their employing  
4 agency.” Id. at \*1. The department argued that imposing a stay until the  
5 conclusion of its internal investigation could avoid a potential conflict of interest  
6 situation if the individual defendant employees were found to be acting within the  
7 course and scope of their employment. The Court agreed with the department and  
8 ordered a limited stay on proceedings as to the individual defendants. Id.

9 Here, under the California Government Code indemnity and defense  
10 provisions involving public employees, there may be potential conflicts of interest  
11 created by a defendant who exercises his constitutional rights and its impact on  
12 vicarious liability on state law claims. See CAL. GOVT. CODE §§ 825, 995.2;  
13 Stewart v. City of Pismo Beach, 35 Cal.App.4th 1600, 1605 (1995) (“Section  
14 995.2, subdivision (c) appears to have been intended to allow a public entity to  
15 withdraw from the defense of an employee in conflict of interest situations because  
16 it is unreasonable to require a public entity to finance litigation directed against  
17 it.”); Laws v. County of San Diego, 219 Cal.App.3d 189, 199-200 (1990). Where,  
18 as here, a brief, limited stay of likely only four or five months alleviates this choice  
19 and the corresponding expense in a time of shrinking budgets, this factor supports  
20 the public interest in favor of a stay.

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1 **III. CONCLUSION**

2 Based on the foregoing, the City of Santa Ana requests that the Court issue  
3 an order staying this civil action pending the conclusion of the grand jury  
4 proceedings.

5  
6 DATED: June 19, 2015

CARPENTER, ROTHANS & DUMONT

7 /s/

8 By: \_\_\_\_\_

9 Steven J. Rothans  
10 Jill Williams  
11 Attorneys for Defendant,  
12 City of Santa Ana, a public entity  
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