



1 Womack and Sergeant Gonzalez, but that the parties report back to the Court of the  
2 status of the Federal criminal investigation by July 12, 2013, and either request  
3 further stay, or propose a new trial and related dates. As described below, after the  
4 parties engaged in extensive document production, the Defendants have requested  
5 a demand by the Plaintiff, which Plaintiff has provided, and the parties have agreed  
6 to engage in mediation. At the present time, the parties are in the process of setting  
7 a mediation session in late April / early May of 2013 in front of the Hon. Enrique  
8 Romero.

9 **I. Procedural Background**

10 Plaintiff filed the instant case on March 27, 2012. Based on Plaintiff's  
11 counsel's trial schedule, the Court set the trial for October 8, 2013. During the  
12 week of September 10, 2012, Defendants' counsel advised Plaintiff's counsel that  
13 Defendants Deputy Zunggeemoge, Deputy Ayala, Deputy Luviano, Deputy  
14 Womack and Sergeant Gonzalez were either subjects and/or targets of a Federal  
15 criminal Grand Jury investigation within the Central District of California  
16 reflecting the conduct which is the subject of the instant lawsuit – the alleged  
17 beating of Plaintiff in a Los Angeles Sheriff's Department deputy break room on  
18 February 26, 2011, and the initiation of allegedly false criminal charges against  
19 Plaintiff in the Los Angeles Superior Court for conduct which occurred on that  
20 date.

21 At that time, Plaintiff's counsel was of the understanding that this Federal  
22 investigation would be resolved in 2012. Consequently, on September 25, 2012,  
23 based on Defendants' counsel's representation that Defendants Deputy  
24 Zunggeemoge, Deputy Ayala, Deputy Luviano, Deputy Womack and Sergeant  
25 Gonzalez would invoke their Fifth Amendment Right against self incrimination,  
26 both at deposition and in any written responses to interrogatories or requests for  
27 admissions, the parties agreed to informally stay such discovery, but proceed with  
28 further document production. Plaintiff has produced 343 pages of documents and

1 Defendants produced 3327 pages of documents as of this filing.

2 On November 7, 2012, Defendants' counsel, after having reviewed the  
3 discovery, requested a formal demand from Plaintiff to settle the litigation. On  
4 January 9, 2013, after Plaintiff engaged a psychiatrist to assess Plaintiff's  
5 psychiatric condition, Plaintiff provided Defendants counsel with Plaintiff's  
6 Demand. In response, Defendants' counsel has requested that Plaintiff perform an  
7 Independent Medical Examination, which has not yet occurred.

8 On March 14, 2013,<sup>1</sup> Plaintiff's counsel spoke to Defendants' counsel about  
9 the status of the Federal Grand Jury criminal investigation against Defendants  
10 Deputy Zunggeemoge, Deputy Ayala, Deputy Luviano, Deputy Womack and  
11 Sergeant Gonzalez. Defendants' counsel contacted Defendants criminal counsel,  
12 who advised him that the Federal Grand Jury criminal investigation was ongoing.  
13 Consequently, the parties agreed to propose to the Court the instant stipulation, and  
14 proceed to mediation before the Hon. Enrique Romero. The parties have contacted  
15 Judge Romero and are in the process of arranging a mediation session during the  
16 last week of April or early May 2013.

## 17 **II. Legal Support**

18 Federal courts may stay civil proceedings pending the outcome of a related  
19 criminal prosecution in "the interests of justice." *United States v. Kordel*, 397 U.S.  
20 1, 12, n. 27 (1970); *Degen v. United States*, 517 U.S. 820, 827 (1996) (stating that a  
21 trial court's inherent authority to manage discovery in a civil suit includes the  
22 ability to manage the impact of a criminal proceeding to avoid interference with a  
23 related civil case); *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324 (9th  
24 Cir. 1995) (holding that a court may decide in its discretion to stay civil

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26 <sup>1</sup> Since January 15, 2013, Plaintiff's counsel has been engaged in trial in  
27 *People of the State of California v. Oscar Hernandez, et al.*, BA 376025 - a  
28 complex prosecution of six city council members of the City of Bell for  
misappropriation of government funds - for which the jury has been deliberating  
for 16 days.

1 proceedings "when the interests of justice seem to require such an action"); *Federal*  
2 *Savs. and Loan Ins. Corp. v. Molinaro*, 889 F.2d 899 (9th Cir. 1989) (stating that a  
3 trial court has discretion to stay proceedings where necessary).

4 The Fifth Circuit in *Campbell v. Eastland*, 307 F.2d 478 (5th Cir. 1962),  
5 *cert. denied*, 371U.S. 955 (1963) set forth the policy considerations supporting the  
6 deferral of civil discovery pending the trial of a criminal proceeding as follows:

7 The very fact that there is a clear distinction between civil and criminal  
8 actions requires a government policy determination of priority: which case  
9 should be tried first. Administrative policy gives priority to the public  
10 interest in law enforcement. This seems so necessary and wise that a trial  
11 judge should give substantial weight to it in balancing the policy against the  
12 right of a civil litigant to a reasonably prompt determination of his civil  
13 claims or liabilities.

14 In *Molinaro*, the Ninth Circuit enumerated at least five factors for courts to  
15 consider in deciding whether a stay is appropriate:

16 A court must decide whether to stay civil proceedings in the face of parallel  
17 criminal proceedings in light of the particular circumstances and competing  
18 interests involved in the case. [*SEC v. Dresser Indus.*, 628 F.2d [1368] at  
19 1375. Obviously a court should consider the extent to which the defendant's  
20 fifth amendment rights are implicated. *Id.* at 1375-76. Other factors a court  
21 should consider will vary according to the case itself, but generally will  
22 include:

23 ( 1) the interest of the plaintiffs in proceeding expeditiously with this  
24 litigation or any particular aspect of it, and the potential prejudice to  
25 plaintiffs of a delay; (2) the burden which any particular aspect of the  
26 proceedings may impose on defendants; (3) the convenience of the court in  
27 the management of its cases, and the efficient use of judicial resources; ( 4)  
28 the interests of persons not parties to the civil litigation; and (5) the interest  
of the public in the pending civil and criminal litigation.

889 F.2d at 903-04.

22 In the instant case, both the Plaintiff and the Defendants are in agreement  
23 that the stay should proceed at least until July 12, 2013. Defendants' counsel has  
24 advised Plaintiff's counsel that he will instruct the Defendants involved in the  
25 incident which is the subject of this lawsuit – Defendants Deputy Zunggemoge,  
26 Deputy Ayala, Deputy Luviano, Deputy Womack and Sergeant Gonzalez – to  
27 invoke their Fifth Amendment Right against self incrimination, both at deposition  
28 and in any written responses to interrogatories or requests for admissions. Further,

1 the United States Attorney’s Office advised Plaintiff’s counsel that it would  
2 intervene and move the Court for a stay if Defendants should notice the deposition  
3 of Plaintiff’s witnesses, to prevent any undue advantage prior to any criminal  
4 proceeding. Plaintiff’s counsel agrees with the position of the government as to  
5 any one-sided discovery against Plaintiff’s witnesses, including Plaintiff himself.

6 Moreover, the parties are engaged in productive settlement discussions,  
7 initiated by the Defendants, and will be engaging the services of an experienced  
8 mediator in the near future. Therefore, in order to preserve the parties resources, as  
9 well as those of the Court, it is in the best interest all parties involved to stay the  
10 instant proceeding with the hope that the parties can reach a satisfactory settlement.

11 Finally, the parties propose that they file a joint report with the Court on July  
12 12, 2013, apprising the Court of the status of the settlement discussions and the  
13 pending Federal criminal proceedings, and either request a further stay or propose  
14 new trial and related dates pursuant to this Court’s local rule.

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