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Jutta Chambers, Garrett Poinier, Ronald Feola,
9 *Ramona Walls, Angela Walter, Christopher Worley,*
and Janette R. Reyes-Speer
10

11 UNITED STATES DISTRICT COURT
12 DISTRICT OF NEVADA

13 ANTHONY MITCHELL, LINDA
14 MITCHELL, and MICHAEL MITCHELL

15 Plaintiffs,

16 v.

17 CITY OF HENDERSON, NEVADA; JUTTA
CHAMBERS, individually and in her official
18 capacity as Chief of the Henderson Police
Department, GARRETT POINIER, RONALD
19 FEOLA, RAMONA WALLS, ANGELA
WALKER, and CHRISTOPHER WORLEY,
20 individually and in their official capacities as
Henderson police officers; CITY OF NORTH
LAS VEGAS, NEVADA; JOSEPH
21 CHRONISTER, individually and in his official
capacity as Chief of the North Las Vegas
22 Police Department; MICHAEL WALLER,
DREW ALBERS, DAVID CAWTHORN,
23 ERIC ROCKWELL, AND /F/N/U SNYDER,
individually and in their official capacities as
24 North Las Vegas police officers; JANETTE R.
REYES-SPEER; DOE individuals 1-40, jointly
25 and severally; and ROE CORPORATIONS 1-
40 jointly and severally,
26

27 Defendants.
28

Case No.: 2:13-cv-01154-APG-CWH

**JOINT MOTION TO STAY
DISCOVERY; AFFIDAVIT AND
CERTIFICATION OF TAMARA
BEATTY PETERSON, ESQ. IN
SUPPORT THEREOF**

(Second Request)

Defendants City of Henderson, Nevada, Jutta Chambers, Garrett Poinier, Ronald Feola, Ramona Walls, Angela Walter, Christopher Worley, and Janette R. Reyes-Speer (collectively the "Henderson Defendants"), by and through their attorneys of record, the law firm of Brownstein Hyatt Farber Schreck, LLP, Plaintiffs Anthony Mitchell, Linda Mitchell and Michael Mitchell (collectively the "Plaintiffs"), by and through their attorneys of record, the law firm of Cofer, Geller & Durham, LLC, and Defendants City of North Las Vegas, Joseph Chronister, Sergeant Michael Waller, Drew Albers, David Cawthorn, Eric Rockwell and Travis Snyder (collectively the "NLV Defendants"), by and through their counsel, the law firm of Lewis Brisbois Bisgaard & Smith, hereby file this Joint Motion to Stay Discovery and Affidavit and Certification of Tamara Beatty Peterson In Support Thereof.

This Motion is based on Rule 26 of the Federal Rules of Civil Procedure, the following Memorandum of Points and Authorities, the previously-filed Motion to Dismiss First Amended Complaint, and the Affidavit and Certification of Tamara Beatty Peterson, Esq.

DATED this 17th day of March, 2014.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: /s/ Tamara Beatty Peterson

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Jutta Chambers, Garrett Poinier, Ronald Feola,
Ramona Walls, Angela Walter, Christopher Worley,
and Janette R. Reyes-Speer*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On December 17, 2013, the parties initiated discussions regarding a stipulation to extend
4 discovery deadlines. (*See* Affidavit and Certification of Tamara Beatty Peterson, Esq.
5 [hereinafter "Peterson Aff."], ¶ 3, filed concurrently herewith.) On December 19 and 20, 2013,
6 counsel for Henderson Defendants sent to all parties a draft of the Stipulation and (Proposed)
7 Order to Extend Time to Hold Fed. R. Civ. P. 26(f) and Local Rule 26-1 Discovery Conference
8 and Stipulated Discovery Plan and Scheduling Order ("Stipulation and (Proposed) Order"). (*See*
9 *id.* at ¶¶ 4-5; *see also* Dkt. 24.) All parties approved the draft and Henderson Defendants filed the
10 Stipulation and (Proposed) Order on behalf of all parties on December 20, 2013. (*See id.*)
11 Among other things, the parties stipulated that "it is in the best interest of all parties to await the
12 Court's ruling on the [Henderson Defendants'] Motion to Dismiss [First Amended Complaint]
13 prior to setting discovery deadlines and incurring the time and expense of disclosing documents
14 in the event that the Court dismisses the action in whole or in part." (Dkt. 24 at ¶ 5.)

15 To date, the Court has not approved the parties' Stipulation and (Proposed) Order, and
16 meanwhile the parties' agreed-upon deadline to submit a stipulated discovery plan and scheduling
17 order (March 12, 2014) has passed. (*See id.* at ¶6.) Therefore, the parties file the present Joint
18 Motion to Stay Discovery to request a limited stay until the Court rules on the Motion to Dismiss
19 First Amended Complaint ("Motion to Dismiss"), with the belief and understanding that all
20 parties to this litigation agree that the pending Motion to Dismiss is comprehensive and further
21 agree that it would be inefficient to begin discovery at this time in light of the complexity of the
22 constitutional claims against multiple defendants.

23 **II. FACTUAL BACKGROUND**

24 Plaintiffs filed the initial Complaint in this action on July 1, 2013. (Dkt. 1.) Plaintiffs
25 then filed the First Amended Complaint ("FAC") on October 14, 2013, and served all defendants
26 on October 21, 2013. (Dkt. 3, 13.) Plaintiffs' 266-paragraph FAC alleges twenty-two claims,
27 including constitutional violations under 42 U.S.C. §§ 1983 and 1988, the First, Third, Fourth,
28 Fifth and Fourteenth Amendments to the United States Constitution, and other violations under

1 the laws of the State of Nevada arising from the police response to a domestic violence dispute on
2 July 10, 2011. (Dkt. 3 at ¶¶ 19-20.) The Henderson Defendants filed a timely Motion to Dismiss
3 (joined by all Defendants) on November 12, 2013. (Dkt. 17.) The Motion to Dismiss seeks
4 dismissal of Plaintiffs' First Amended Complaint on the following grounds, among others:

5 First, the Henderson Defendants sought dismissal on grounds that Henderson Defendants
6 are entitled to either absolute, qualified, or discretionary immunity; (*Id.* at 34:1–35:4, 36:3–37:17,
7 39:2–40:5);

8 Second, the Henderson Defendants sought dismissal on the basis that Plaintiffs failed to
9 plead how Henderson Defendants' purported violation of Plaintiffs' constitutional rights was the
10 product of a custom, practice, or policy of the City of Henderson for Section 1983 purposes; (*Id.*
11 at 16:5–18:10); and,

12 Third, the Henderson Defendants sought dismissal on the basis that Plaintiffs failed to
13 state claims upon which relief can be granted. (*See generally Id.*)

14 Pursuant to Local Rule 26-1(d), the plaintiffs shall initiate "the Fed. R. Civ. P. 26(f)
15 meeting within thirty (30) days after the first defendant answers or otherwise appears." As noted
16 above, on November 12, 2013, the Henderson Defendants filed their Motion to Dismiss (Dkt. 17),
17 which made the deadline to hold the Fed. R. Civ. P. 26(f) meeting December 12, 2013.

18 Furthermore, pursuant to Local Rule 26-1(d), "the parties shall submit a stipulated
19 discovery plan and scheduling order" fourteen days after the mandatory Fed. R. Civ. P. 26(f)
20 conference, which made the deadline for submission of the stipulated discovery plan and
21 scheduling order due on or before December 27, 2013.

22 The Henderson Defendants' Motion to Dismiss (Dkt. 17) seeks to, among other things,
23 dismiss this action in its entirety. Additionally, all remaining defendants filed a joinder (Dkt. 23)
24 on December 12, 2013. Plaintiffs filed their Opposition (Dkt. 31) on February 26, 2014; and the
25 Henderson Defendants filed their Reply (Dkt. 35) on March 7, 2014, to which the NLV
26 Defendants joined (Dkt. 36) on March 10, 2014.

27 As the Motion to Dismiss is comprehensive and it will be inefficient to begin discovery
28 while it is pending, the parties initially stipulated and agreed to postpone that Local Rule 26-1

1 Discovery Conference and Stipulated Discovery Plan and Scheduling Order. On December 20,
2 2013, the Henderson Defendants, on behalf of all parties, filed a Stipulation and (Proposed) Order
3 to Extend Time (Dkt. 24.) As the proposed order was never entered, the parties now jointly seek
4 to stay discovery.

5 **III. ARGUMENT**

6 **A. Standards Governing Discovery Stay Requests.**

7 Federal district courts have "wide discretion in controlling discovery." *Little v. City of*
8 *Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). In exercising this discretion, a district court may stay
9 discovery based on the filing of a motion that is "potentially dispositive of the entire case."
10 *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 601 (D. Nev. 2011). A stay of discovery is
11 particularly appropriate where, as is the case here, a pending motion to dismiss raises threshold
12 issues of immunity, jurisdiction, or venue. *See Twin City Fire Ins. Co. v. Employers Ins. of*
13 *Wausau*, 124 F.R.D. 652, 653 (D. Nev. 1989) ("[A] pending Motion to Dismiss is not ordinarily a
14 situation that in and of itself would warrant a stay of discovery. Common examples of such
15 situations, however, occur when jurisdiction, venue or immunity are preliminary issues."); *Little*,
16 863 F.2d at 685 (upholding the district court's stay of discovery until the issue of immunity was
17 decided and noting that "[t]he stay furthers the goal of efficiency for the court and litigants");
18 *Ministerio Roca Solida v. U.S. Dep't of Fish & Wildlife*, 288 F.R.D. 500, 507 (D. Nev. 2013)
19 ("Qualified immunity is an immunity from suit rather than a mere defense to liability, and the
20 Supreme Court repeatedly ha[s] stressed the importance of resolving immunity questions at the
21 earliest possible stage in litigation.") (internal quotations omitted).

22 Consistent with this well-settled principle, courts in this district have granted motions to
23 stay discovery pending resolution of motions to dismiss based on the defendant's immunity and
24 other such preliminary issues. *Ministerio Roca Solida*, 288 F.R.D. at 507 (stating that threshold
25 immunity issues should be decided before the parties engage in discovery) ; *Tradebay*, 278
26 F.R.D. at 602, 608) (staying discovery based on the filing of a motion to dismiss challenging
27 subject matter jurisdiction and the motion was "potentially dispositive of the entire case").
28

1 B. The Henderson Defendants' Motion To Dismiss Raises The Preliminary Issue
2 Of Immunity And Can Be Decided Without Discovery.

3 Courts in the District of Nevada recognize that it is within this Court's discretion to stay
4 discovery, including the requirement to file a Discovery Plan and Scheduling Order, when (1)
5 there is a motion to dismiss pending that raises questions of immunity, jurisdiction, or venue, and
6 (2) discovery is not required before the motion to dismiss can be decided. *See Turner*
7 *Broadcasting Sys. v. Tracinda Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997) (holding that
8 "[w]hether to grant a stay is within the discretion of the Court..." (citing *Munoz-Santana v. INS.*,
9 742 F.2d 561, 562 (9th Cir. 1984); *see also Ministerio Roca Solida*, 288 F.R.D. at 506
10 ("discovery should be stayed while dispositive motions are pending only when there are no
11 factual issues in need of further immediate exploration, and the issues before the Court are purely
12 questions of law...") (internal quotations omitted).

13 Here, the Henderson Defendants' Motion to Dismiss is potentially dispositive and raises
14 the issue of immunity. Moreover, this Court's supplemental jurisdiction over state law claims
15 may be questioned if all federal claims are dismissed pursuant to the Motion to Dismiss. Finally,
16 the parties' agreement to the proposed stay is confirmation that discovery is unnecessary to decide
17 at least some of the issues raised in the Motion to Dismiss. (*See* Dkt. 24.) As such, it is within
18 the Court's power to grant a stay of discovery at this time.

19 C. It Would Be Burdensome To Have Discovery Begin Since The Parties Have
20 Agreed To Stay Discovery.

21 Because the parties have agreed to a stay, it follows that it would be burdensome and
22 unfair to have the parties bear the burden and expense of time-consuming and costly discovery.
23 Indeed, Rule 1 of the Federal Rules of Civil Procedure provides that the federal rules of practice
24 should be "construed and administered to secure the just, speedy, and *inexpensive* determination
25 of every action and proceeding." (Emphasis added). Thus, staying discovery in this case is
26 consistent with the spirit and intent of the Federal Rules of Civil Procedure.

27 ...

28 ...

IV. CONCLUSION

Based on the foregoing, the parties, and each of them, respectfully request that the Court stay discovery pending the resolution of the Motion to Dismiss First Amended Complaint.

DATED: March 17, 2014

DATED: March 17, 2014

By: /s/ Tamara Beatty Peterson

By: /s/ Frank H. Cofer

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DATED: March 17, 2014

By: /s/ Robert W. Freeman, Jr.

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Michael Waller, Drew Albers, David
Cawthorn, Eric Rockwell and Travis
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CERTIFICATE OF SERVICE

Pursuant to Fed.R.Civ.P.5(b), and Section IV of District of Nevada Electronic Filing Procedures, I certify that I am an employee of BROWNSTEIN HYATT FARBER SCHRECK, LLP, and that the foregoing **JOINT MOTION TO STAY DISCOVERY; AFFIDAVIT OF TAMARA BEATTY PETERSON, ESQ. IN SUPPORT THEREOF** was served via electronic service on the date and to the addresses shown below:

BENJAMIN C. DURHAM, ESQ.
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FRANK H. COFER, III, ESQ.
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Attorneys for Defendants City of North Las Vegas, Joseph Chronister, Sergeant Michael Waller, Drew Albers, David Cawthorn, Eric Rockwell and Travis Snyder

DATED this 17th day of March, 2014.

/s/ Erin Parcels
an employee of Brownstein Hyatt Farber Schreck, LLP

AFFIDAVIT AND CERTIFICATION OF TAMARA BEATTY PETERSON, ESQ.

State of Nevada)
 : ss
County of Clark)

TAMARA BEATTY PETERSON, ESQ., having been sworn under the penalty of perjury,
deposes as follows:

1. I am a shareholder at the law firm of Brownstein Hyatt Farber Schreck LLP,
attorneys of record for Defendants City of Henderson, Nevada, Jutta Chambers, Garrett Poinier,
Ronald Feola, Ramona Walls, Angela Walter, Christopher Worley, and Janette R. Reyes-Speer
(collectively the "Henderson Defendants"), in the above captioned action. I make this Affidavit
and Certification in support of the Joint Motion To Stay Discovery.

2. I have personal knowledge of the subject matter of this Affidavit and, if called as a
witness about this subject matter, I could and would testify competently thereto.

3. On December 17, 2013, I telephoned and emailed Frank Cofer, Esq., counsel for
Plaintiffs, to discuss a stipulation to extend discovery deadlines.

4. On December 19, 2013, I sent to Plaintiffs' Counsel, Frank Cofer, Esq. a draft of
the Stipulation and (Proposed) Order to Extend Time to Hold Fed. R. Civ. P. 26(f) and Local Rule
26-1 Discovery Conference and Stipulated Discovery Plan and Scheduling Order ("Stipulation
and (Proposed) Order") (Dkt. 24). Mr. Cofer approved the draft the same day.

5. On December 20, 2013, I sent to Robert Freeman, Esq., counsel for remaining
Defendants, a draft of the Stipulation and (Proposed) Order (Dkt. 24). Mr. Freeman approved the
draft the same day.

6. On December 20, 2013, I filed the Stipulation and (Proposed) Order on behalf of
all parties. (Dkt. 24.)

7. On March 11, 2014 and March 14, 2014 pursuant to Local Rule 26-7(b) and Rule
26(c)(1), I certify that I conferred in good faith with all counsel regarding staying discovery and
regarding a motion to stay discovery. Counsel, including counsel for Plaintiffs, agreed that a stay
of discovery was necessary and appropriate pending the Court's decision on the Motion to

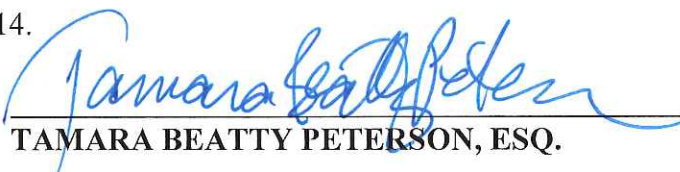
1 Dismiss First Amended Complaint. The parties agreed to file this joint motion seeking such
2 relief.

3 8. All parties to this litigation agree that the pending Motion to Dismiss is
4 comprehensive and further agree that it would be inefficient to begin discovery at this time.

5 9. I declare under the penalty of perjury that the foregoing is true and correct to the
6 best of my knowledge.

7 FURTHER YOUR AFFIANT SAYETH NAUGHT.

8 DATED this 17th day of March, 2014.

9 
10 TAMARA BEATTY PETERSON, ESQ.

11 Subscribed and sworn before me
12 this 17th day of March, 2014.

13 
14 NOTARY PUBLIC

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16 016164\0012\10953005.4

