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11 **IN THE UNITED STATES DISTRICT COURT**  
12 **IN AND FOR THE DISTRICT OF ARIZONA**

13 Johnny Wheatcroft and Anya Chapman, as  
14 husband and wife, and on behalf of minors J.  
15 W. and B. W.,

16 Plaintiffs,

17 v.

18 City of Glendale, a municipal entity; Matt  
19 Schneider, in his official and individual  
20 capacities; Mark Lindsey, in his official and  
21 individual capacities; and Michael Fernandez,  
22 in his official and individual capacities;

23 Defendants.

Case No.: 2:18-cv-02347-MTL

**RESPONSE IN OPPOSITION TO  
DEFENDANTS' MOTION TO STAY  
THE DEPOSITION OF  
MATTHEW SCHNEIDER**

**Oral argument requested.**

24 Plaintiffs Johnny Wheatcroft and Anya Chapman, individually, and on behalf of minors  
25 J.W. and B.W. (collectively, "Plaintiffs"), respond in opposition to the Motion to Stay Defendant  
26 Schneider's deposition. As established below, there are no criminal charges pending and the mere  
chance that criminal charges may potentially be brought at some unknown time in the future does  
not warrant a stay and does not operate to preclude discovery, such as a deposition of a party, in  
a civil matter. Further, a review of the factors to be considered when faced with a motion to stay  
civil proceedings confirm denial of Defendants' Motion to Stay is warranted. Therefore, Plaintiffs  
respectfully request Defendants' Motion to Stay be denied.

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## I. INTRODUCTION

Plaintiffs have been trying to take Defendant Matthew Schneider’s deposition since February of 2019. Defendant Schneider has continuously delayed the deposition for a variety of reasons, including failing to provide dates of availability, not being available on the scheduled date of his deposition, cancelling due to delays in obtaining a separate attorney to represent him personally, and taking a leave of absence from work. Plaintiffs have issued 8 separate notices of deposition in trying to take his deposition. The depositions were cancelled by defense counsel, with most of the depositions cancelled just a few days before the scheduled deposition date. Now, just days before his deposition scheduled for December 20, Defendants filed this Motion to Stay in yet another attempt to prevent Plaintiff from taking his deposition.

To date, no criminal charges are pending against Defendant Schneider, and it is unknown whether any criminal charges will potentially be brought at any time in the future. In other words:

- Defendant Schneider has not been indicted;
- There is no indication if or when Defendant Schneider will be indicted;
- It is possible the FBI investigation could continue for years;
- If criminal charges are filed, Defendant Schneider’s Fifth Amendment rights could be implicated for an even longer period of time;
- The present action has been pending for approximately one and half years;
- Defendant Schneider is effectively requesting the Court to, potentially years in the future, reopen discovery and again modify the deadlines in this matter. Such a stay would disrupt the Court’s calendar by indefinitely postponing trial.

In addition, in this matter and without invoking any 5<sup>th</sup> Amendment privilege, Defendant Schneider signed verifications with regard to Defendants’ MIDP responses and Defendants’ responses to interrogatories, certifying the contents of those documents were true and accurate based on his knowledge, information, and belief.

**II. LEGAL ARGUMENT**

As a global matter, “[t]he Constitution does not ordinarily require a stay of civil proceedings pending the outcome of criminal proceedings.” *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324 (9th Cir. 1995). *See also Federal Sav. & Loan Ins. Corp. v. Molinaro*, 889 F.2d 899, 902 (9th Cir.1989)(“While a district court may stay civil proceedings pending the outcome of parallel criminal proceedings, such action is not required by the Constitution.”). *See also Marshall v. Galvanoni*, No. 217CV00820KJMCKD, 2019 WL 2552167, at p. 1 (E.D. Cal. June 20, 2019), which states:

A party has no constitutional right to a stay of civil proceedings during the pendency of a criminal investigation or prosecution, nor does the Constitution protect a party from being forced to choose between the consequences of asserting or waiving his Fifth Amendment rights in the civil proceedings. *Baxter v. Palmigiano*, 425 U.S. 308, 318–19 (1976); *Fed. Sav. & Loan Ins. Corp. v. Molinaro*, 889 F.2d 899, 902 (9th Cir. 1989).

Generally, the lack of pending criminal proceedings warrants denial of a motion to stay civil proceedings, as a stay would not be reasonable or necessary. *See Elgamal v. Johnson*, No. CV-13-867-PHX-GMS, 2014 WL 345632, at p.5 (D. Ariz. Jan. 30, 2014)(“Here, there is no parallel criminal prosecution to warrant staying these civil cases to protect a defendant’s constitutional rights. Staying these consolidated cases is neither reasonable nor necessary.”). *See also S.E.C. v. Glob. Express Capital Real Estate Inv. Fund, I, LLC*, 289 F. App’x 183, 191 (9th Cir. 2008)(“In light of the fact that no criminal charges had been filed against Farris at the time she moved for a stay (nor were criminal charges ever filed), this conclusion [denying a stay] was appropriate.”)

**A. FACTORS TO CONSIDER WITH REGARD TO A MOTION TO STAY**

A district court is not required to stay civil proceedings pending resolution of parallel criminal proceedings, nor is a stay required by the Constitution. *See Fed. Sav. & Loan Ins. Corp. v. Molinaro*, 889 F.2d 899, 902 (9th Cir. 1989)(“While a district court may stay civil proceedings pending the outcome of parallel criminal proceedings, such action is not required by the

1 Constitution.”).

2 In *Fed. Sav. & Loan Ins. Corp. v. Molinaro*, 889 F.2d 899, 903 (9th Cir. 1989), the Ninth  
3 Circuit Court of Appeals set forth the factors to consider when evaluating a request to stay civil  
4 proceedings in light of a separate criminal proceedings as follows:

5 The decision whether to stay civil proceedings in the face of a parallel criminal  
6 proceeding should be made “in light of the particular circumstances and competing  
7 interests involved in the case.” *Molinaro*, 889 F.2d at 902. **This means the  
8 decisionmaker should consider “the extent to which the defendant’s fifth  
9 amendment rights are implicated.”** *Id.* **In addition, the decisionmaker should  
10 generally consider the following factors: (1) the interest of the plaintiffs in  
11 proceeding expeditiously with this litigation or any particular aspect of it, and  
12 the potential prejudice to plaintiffs of a delay; (2) the burden which any  
13 particular aspect of the proceedings may impose on defendants; (3) the  
14 convenience of the court in the management of its cases, and the efficient use  
15 of judicial resources; (4) the interests of persons not parties to the civil  
16 litigation; and (5) the interest of the public in the pending civil and criminal  
17 litigation.** *Id.* at 903.

18 *Fed. Sav. & Loan Ins. Corp. v. Molinaro*, 889 F.2d 899, 903 (9th Cir. 1989)(emphasis added),  
19 citing *United States v. Kordel*, 397 U.S. 1, 11–12 (1970). See also *Keating v. Office of Thrift*  
20 *Supervision*, 45 F.3d 322, 324-25 (9th Cir. 1995); *Elgamal v. Johnson*, No. CV-13-867-PHX-  
21 GMS, 2014 WL 345632, at p. 4 (D. Ariz. Jan. 30, 2014); and *Arries v. Univ. OB/GYN, LLC*, No.  
22 CV 10-08219-PCT-NVW, 2012 WL 896355, at \*3 (D. Ariz. Mar. 16, 2012).

23 The following addresses these factors.

24 **1. The Extent to Which the Defendant’s Fifth Amendment Rights are Implicated.**

25 “Implication of Fifth Amendment rights is only one of the factors to consider.” *Fernandez*  
26 *v. City of Phoenix*, No. CV 11-02001-PHX-FJM, 2012 WL 1936111, at p.1 (D. Ariz. May 29,  
2012), citing *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324–25 (9th Cir. 1995). A  
claim that Defendant Schneider may be forced to a Fifth Amendment privilege in this civil  
proceeding is unpersuasive. See *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 325 (9th  
Cir. 1995)(“Keating also contends that the OTS proceeding should have been stayed until after  
the conclusion of the criminal trials because the pending trials forced him to assert his Fifth

1 Amendment privilege in the OTS proceeding. His argument is unpersuasive.”).

2 Here, Defendant Schneider signed verifications with regard to Defendants’ MIDP  
3 responses and Defendants’ responses to interrogatories and certified those documents were based  
4 on his knowledge, information, and belief. Defendant Schneider did not assert any 5th  
5 Amendment protection, but certified the information contained in those documents was true and  
6 accurate. Such conduct, along with the lack of any criminal charges, makes it difficult to establish  
7 the potential burden, if any, on Defendant Schneider. *See Fed. Sav. & Loan Ins. Corp. v.*  
8 *Molinaro*, 889 F.2d 899, 903 (9th Cir. 1989)

9 **The court did not expressly deal with the burden on Molinaro, but it noted that**  
10 **no related criminal indictments were pending against Molinaro at the time of**  
11 **its ruling.** As for his fifth amendment privilege assertions, Molinaro had already  
12 given a partial deposition to FSLIC attorneys which provided the basis of support  
13 for FSLIC's summary judgment motion. Moreover, nothing prevented Molinaro  
14 from responding to FSLIC's motion with information that did not tend to incriminate  
15 him. **Under these circumstances, any burden on Molinaro’s fifth amendment**  
16 **privilege was negligible.**

14 **The case for staying civil proceedings is “a far weaker one” when “[n]o**  
15 **indictment has been returned[, and] no Fifth Amendment privilege is**  
16 **threatened.”** *Dresser Indus.*, 628 F.2d at 1376. **The possibility that criminal**  
17 **indictments would be brought against Molinaro may have made responding to**  
18 **civil charges more difficult for him, but the court did not abuse its discretion**  
19 **by deciding that this difficulty did not outweigh the other interests involved.**  
Under the circumstances presented to the district court when the motion was made,  
the court did not abuse its discretion by denying Molinaro's motion for a stay.

18 *Fed. Sav. & Loan Ins. Corp. v. Molinaro*, 889 F.2d 899, 903 (9th Cir. 1989).

19 Through the Motion to Stay, Defendant Schneider is seeking to prevent Plaintiffs from  
20 taking his deposition as to any information, regardless as to whether the deposition questions seek  
21 information subject to a 5<sup>th</sup> Amendment protection or not. In other words, Defendants are  
22 preventing Plaintiffs from obtaining information regardless of whether such information is subject  
23 5<sup>th</sup> Amendment protections.

24 Plaintiffs do not dispute that Defendant Schneider can choose to assert 5<sup>th</sup> Amendment  
25 protections as to deposition questions that implicate his rights under the 5<sup>th</sup> Amendment.  
26

1 However, a general blanket assertion of the Fifth Amendment privilege is not permitted in civil  
2 cases. Rather, the party is required to appear and assert the privilege only to those questions that  
3 may implicate 5<sup>th</sup> Amendment protections. *See Admiral Ins. Co. v. U.S. Dist. Court for Dist. of*  
4 *Arizona*, 881 F.2d 1486, 1489, 1490 (9th Cir. 1989)(“the district court failed to require the  
5 witnesses to appear at deposition and to make a particularized showing of entitlement to the fifth  
6 amendment privilege” . . . “we do not condone the approach adopted by the district court.  
7 Specifically, we do not approve of the district court's willingness to excuse Gardner from  
8 appearing at deposition or the assumption that Gardner could and would make a showing of  
9 entitlement to the fifth amendment privilege when asked specific questions.”). *See also Doe ex*  
10 *rel. Rudy-Glanzer v. Glanzer*, 232 F.3d 1258, 1263 (9th Cir. 2000)(“The only way the privilege  
11 can be asserted is on a question-by-question basis, and thus as to each question asked, the party  
12 has to decide whether or not to raise his Fifth Amendment right.”) and *Baker v. Limber*, 647 F.2d  
13 912, 917 (9th Cir. 1981)(“In the first deposition, conducted on June 7, 1978, appellant stated his  
14 name for the record, but refused to answer any further questions, including those directed to his  
15 address, telephone number and educational and professional background. A danger of  
16 incrimination is not evident from the implications of the questions, nor did appellant provide any  
17 basis for believing that a responsive answer or an explanation for his refusal would raise such a  
18 danger.”).

19 Thus, Defendant Schneider can respond to deposition questions, but assert 5<sup>th</sup> Amendment  
20 protections as to those matters that would implicate his rights under the 5<sup>th</sup> Amendment. Though  
21 invocation of a defendant's Fifth Amendment privilege demands consideration, it is still  
22 permissible to allow a parallel civil case to proceed, even if the trier of fact draws adverse  
23 inferences from a defendant's invocation of his Fifth Amendment rights. *See Keating*, 45 F.3d at  
24 326, citing *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976). *See also Erus Builders LLC v. Volt*  
25 *Solar Sys. Inc.*, No. CV-14-02686-PHX-JZB, 2017 WL 1508255, at \*2 (D. Ariz. Apr. 27,  
26

1 2017)(“Thus, it is permissible to conduct a civil proceeding at the same time as a related criminal  
2 proceeding, even if that necessitates the invocation of the Fifth Amendment privilege.”) and  
3 *Marshall v. Galvanoni*, No. 217CV00820KJMCKD, 2019 WL 2552167, at p. 3 (E.D. Cal. June  
4 20, 2019)(“At this stage, the most the court can conclude is that there is a possible threat of  
5 criminal action. That threat alone, weighed against the other Keating factors discussed below,  
6 does not tip the scale in defendants’ favor.”).

7 **2. The Interest of the Plaintiffs in Proceeding Expeditiously with this Litigation**  
8 **or any Particular Aspect of it, and the Potential Prejudice to Plaintiffs of a**  
9 **Delay.**

10 At this time, Defendant Schneider has not been indicted; there is no indication if or when  
11 Defendant Schneider will be indicted; it is possible the FBI investigation could continue for years;  
12 if criminal charges are filed, Defendant Schneider’s Fifth Amendment rights may be implicated  
13 for an even longer period of time; the present action has been pending for approximately one and  
14 half years; Defendant Schneider is effectively requesting the Court to, potentially years in the  
15 future, reopen discovery and again modify the deadlines in this matter; and a stay in this matter  
16 would disrupt the Court’s calendar by indefinitely postponing trial. Considering these factors,  
17 both Plaintiffs’ and the Court’s interest weigh heavily against granting a stay. *See Erus Builders*  
18 *LLC v. Volt Solar Sys. Inc.*, No. CV-14-02686-PHX-JZB, 2017 WL 1508255, at p. 3 (D. Ariz.  
19 Apr. 27, 2017) stated:

20 However, *even assuming that Mr. Adler’s Fifth Amendment rights are*  
21 ***implicated in this case to some extent, Defendants’ and the Court’s interests***  
22 ***weigh heavily against granting a stay.*** As Plaintiff concedes, ***Mr. Adler has not***  
23 ***been indicted*** as a result of the ongoing SEC investigation. And, ***there is no***  
24 ***indication if or when Mr. Adler will be indicted.*** It is possible the SEC  
25 investigation could continue for years, and, ***if criminal charges are filed, Mr.***  
26 ***Adler’s Fifth Amendment rights would be implicated for an even longer period***  
***of time.*** The present action has been pending for approximately two and half years,  
discovery has long since closed, and the dispositive motion deadline has passed.  
Therefore, ***Plaintiff is effectively requesting the Court to, potentially years in***  
***the future, reopen discovery and again modify the deadlines in this matter.***  
***Such a stay would disrupt the Court’s calendar by indefinitely postponing trial.***  
[Emphasis added.]

1 *See also Blue Cross & Blue Shield of Alabama v. Unity Outpatient Surgery Ctr., Inc.*, 490 F.3d  
2 718, 724 (9th Cir. 2007)(“We agree with the majority position that lengthy and indefinite stays  
3 place a plaintiff effectively out of court.”).

4 In addition, Plaintiffs’ interest may be compromised since the witnesses’ memories may  
5 fade over the course of the delay, and witnesses might be unavailable following the termination  
6 of the criminal proceedings, if any are even commenced at some point in the future. *See Erus*  
7 *Builders LLC v. Volt Solar Sys. Inc.*, No. CV-14-02686-PHX-JZB, 2017 WL 1508255, at p. 4 (D.  
8 Ariz. Apr. 27, 2017)(“Likewise, witnesses’ memories can fade over the course of the delay, and  
9 witnesses might not be available following the termination of the criminal proceedings. [citation  
10 omitted]. Thus, because Plaintiff requests an indefinite stay of this case that would cause  
11 Defendants prejudice, and hinder the Court’s ability to manage its docket, these factors weigh  
12 heavily against granting Plaintiff’s request for a stay.”)

13 Further, staying the civil proceedings denies the Plaintiffs the reasonably expeditious  
14 resolution of their claims, may exacerbate their damages, and delays the public’s interest in the  
15 exposure of the alleged governmental misconduct of Defendant City of Glendale’s police  
16 department and its officers, including Defendant Schneider. *See Elgamal v. Johnson*, No. CV-13-  
17 867-PHX-GMS, 2014 WL 345632, at p. 5 (D. Ariz. Jan. 30, 2014)(“Moreover, staying these  
18 consolidated cases denies the Plaintiffs the reasonably expeditious resolution of their claims; may  
19 exacerbate their damages, if liability exists; and delays the public’s interest in the exposure of the  
20 alleged governmental misconduct of USCIS immigration officers.”).

21 Plaintiffs’ interests would be further burdened and prejudiced given their deadline to  
22 disclose expert witnesses and opinions, not just to claims against Defendant Schneider, but also  
23 the claims against the other defendants. By indefinitely delaying this matter, the deadline to  
24 disclose expert opinions would similarly need to be indefinitely delayed or, if forced to provide  
25 opinions, such opinions may be limited and subject to criticism. Indeed, Defendants will likely  
26

1 attempt to impeach any experts if information is withheld from the experts or if the experts change  
2 their opinions after receiving such information at some unknown point in the future.

3 Finally, Plaintiffs' interests are impaired in obtaining discoverable information to support  
4 their *Monell*-based claim, which is generally based on Defendant City of Glendale's liability  
5 policies, procedures, and practices, including those related to Defendant Schneider.

6 Thus, there is a substantial burden and high risk of prejudice a stay would have against the  
7 Plaintiffs' interests in proceeding expeditiously with this litigation.

8 **3. The Burden any Particular Aspect of the Proceedings may Impose on**  
9 **Defendants.**

10 Any burden on Defendants would be self-imposed, and it not only impacts Plaintiffs'  
11 interests, but also the interests of other Defendants, including Defendants City of Glendale, Mark  
12 Lindsey, and Michael Fernandez. In other words, a stay as to Defendant Schneider would delay  
13 litigation as to the remaining defendants. For example, Plaintiffs have asserted a *Monell* claim  
14 against Defendant City of Glendale, which requires, among other things, to show Defendant  
15 Glendale authorized, condoned, or otherwise employed policies or practices that deprive persons  
16 of their rights. Despite discovery requests, Defendant Glendale has refused to provide emails and  
17 body cam videos regarding Officer Schneider's conduct that would assist Plaintiffs in obtaining  
18 additional evidence to support their *Monell* claim.<sup>1</sup> While Plaintiffs intend to question Defendant  
19 Schneider in deposition regarding the information sought, Defendants have delayed and  
20 obstructed Plaintiffs' attempts to take Defendant Schneider's deposition on eight (8) separate  
21 occasions. Thus, Defendants have cut-off any available means for Plaintiffs to obtain the  
22 information to provide support for their other claims in the lawsuit. Further, by refusing to provide  
23 the information and preventing Schneider's deposition, Plaintiffs' experts are limited to the  
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25 <sup>1</sup> Plaintiffs are in the process of determining the full nature of all the information Defendants  
26 have refused to produce and anticipate judicial intervention should Defendants continue to  
refuse to provide the requested information.

1 information upon which to formulate their opinions. Thus, a stay would further impede and delay  
2 the claims against the other Defendants in this lawsuit.

3 Any party to a lawsuit may be subject to a deposition, including Defendant Schneider.  
4 Thus, a deposition is not unique, so as to constitute a burden on Defendants. Indeed, depositions  
5 are a common and authorized discovery device under the Federal Rules of Civil Procedures.  
6 Further, as established above, Defendant Schneider can respond to deposition questions, but assert  
7 5<sup>th</sup> Amendment protections as to those matters that would implicate his rights under the 5<sup>th</sup>  
8 Amendment.

9 **4. The Convenience of the Court in the Management of its Cases, and the Efficient**  
10 **Use of Judicial Resources.**

11 Plaintiffs have been trying to take Defendant Schneider's deposition since February of  
12 2019. So far, Defendant Schneider canceled or changed the date for his deposition eight (8) times,  
13 which has impaired Plaintiffs' prosecution of this matter. As a result, the Scheduling Order has  
14 been amended on two separate occasions.

15 The Court had an interest in clearing its docket, and a stay of proceedings leads to an  
16 inefficient use of the Court's resources. *See Fed. Sav. & Loan Ins. Corp. v. Molinaro*, 889 F.2d  
17 899, 903 (9th Cir. 1989)("the court had an interest in clearing its docket"), *S.E.C. v. Glob. Express*  
18 *Capital Real Estate Inv. Fund, I, LLC*, 289 F. App'x 183, 191 (9th Cir. 2008)("The magistrate  
19 judge correctly balanced Farris's Fifth Amendment interests against the other factors and  
20 reasoned that a stay of the proceedings would be prejudicial to the SEC, frustrate the work  
21 of the receiver, and lead to an inefficient use of the court's resources. In light of the fact that  
22 no criminal charges had been filed against Farris at the time she moved for a stay (nor were  
23 criminal charges ever filed), this conclusion was appropriate."), and *Keating v. Office of Thrift*  
24 *Supervision*, 45 F.3d 322, 326 (9th Cir. 1995)("In contrast to Keating's interests, which were not  
25 overly burdened by proceeding with the hearing, the public's interest in a speedy resolution of the  
26 controversy and the OTS' concern for efficient administration would have been unnecessarily

1 **impaired had the proceeding been stayed”**)(emphasis added).

2 Further, a stay would disrupt the Court’s calendar as Defendant is requesting the Court to,  
3 potentially years in the future, reopen discovery and again modify the deadlines in this matter to  
4 allow discovery at some unknown point in the future. *See Erus Builders LLC v. Volt Solar Sys.*  
5 *Inc.*, No. CV-14-02686-PHX-JZB, 2017 WL 1508255, at p. 3 (D. Ariz. Apr. 27,  
6 2017)(“Therefore, Plaintiff is effectively requesting the Court to, potentially years in the future,  
7 reopen discovery and again modify the deadlines in this matter. Such a stay would disrupt the  
8 Court’s calendar by indefinitely postponing trial.”).

9 Thus, a stay would be contrary to, and actually disrupt, the Court’s management of this  
10 case and the efficient use of judicial resources.

#### 11 **5. Interests of Persons and Public in the Pending Civil and Criminal Litigation.**

12 Other non-party persons and the public has an interest in the expeditious litigation of this  
13 matter. *See Keating v. Office of Thrift Supervision*, 45 F.3d 322, 326 (9th Cir. 1995), which states:

14 In contrast to Keating’s interests, which were not overly burdened by proceeding  
15 with the hearing, **the public’s interest in a speedy resolution of the controversy**  
16 **and the OTS’ concern for efficient administration would have been**  
17 **unnecessarily impaired had the proceeding been stayed. Moreover, in light of**  
18 **the inordinate amount of media attention given to the case, any delay would**  
19 **have been detrimental to public confidence in the enforcement scheme for**  
20 **thrift institutions.** [Emphasis added].

21 *See also Melendres v. Maricopa Cty.*, No. 07-CV-02513-PHX-GMSM, 2009 WL 2515618, at \*5  
22 (D. Ariz. Aug. 13, 2009), which states:

23 The parties do not discuss the interests of the public. However, **the Court notes**  
24 **that the public has a strong interest not only in the resolution of litigation, see**  
25 ***Wyatt ex rel. Rawlins v. Sawyer*, 190 F.R.D. 685, 692 (M.D.Ala.1999) (“[T]he**  
26 **public’s primary interests in this matter [include] ensuring that the parties continue**  
**to make progress toward resolution of this case ....”), but also in making sure that**  
**such resolution is expeditious, see *Digital Equip. Corp. v. Currie Enters.*, 142**  
**F.R.D. 8, 14 (D.Mass.1991) (“The public has an interest in ... the prompt resolution**  
**of civil cases....”). A stay of the kind proposed here would compromise these**  
**interests. Thus, this factor weighs against the granting of a stay.** [Emphasis  
added.]

#### 26 **B. SUMMARY OF FACTORS**

1 None of the factors weigh heavily in favor of Defendant Schneider's request for a stay.  
2 Rather, a balance of the factors overwhelmingly supports denial of Defendants' request to stay  
3 this matter. See *S.E.C. v. Glob. Express Capital Real Estate Inv. Fund, I, LLC*, 289 F. App'x  
4 183, 191 (9th Cir. 2008)("The magistrate judge correctly balanced Farris's Fifth Amendment  
5 interests against the other factors and reasoned that a stay of the proceedings would be prejudicial  
6 to the SEC, frustrate the work of the receiver, and lead to an inefficient use of the court's resources.  
7 In light of the fact that no criminal charges had been filed against Farris at the time she moved for  
8 a stay (nor were criminal charges ever filed), this conclusion was appropriate."), *Arries v. Univ.*  
9 *OB/GYN, LLC*, No. CV 10-08219-PCT-NVW, 2012 WL 896355, at \*3 (D. Ariz. Mar. 16,  
10 2012)("Upon weighing the prejudice that a stay would impose on Defendants against the burden  
11 to be imposed on Mrs. Arries by proceeding with this case, the Court concludes that this case  
12 should not be stayed pending the outcome of the criminal proceeding"), and *Fed. Sav. & Loan*  
13 *Ins. Corp. v. Molinaro*, 889 F.2d 899, 903 (9th Cir. 1989), which states:

14 The case for staying civil proceedings is "a far weaker one" when "[n]o indictment  
15 has been returned[, and] no Fifth Amendment privilege is threatened." *Dresser*  
16 *Indus.*, 628 F.2d at 1376. The possibility that criminal indictments would be brought  
17 against Molinaro may have made responding to civil charges more difficult for him,  
18 but the court did not abuse its discretion by deciding that this difficulty did not  
19 outweigh the other interests involved. Under the circumstances presented to the  
20 district court when the motion was made, the court did not abuse its discretion by  
21 denying Molinaro's motion for a stay.

22 In sum, a stay is not warranted given the following:

- 23 • Defendant Schneider has not been indicted; there is no indication if or when Defendant  
24 Schneider will be indicted; and it is possible the FBI investigation and any potential  
25 prosecution could continue for years;
- 26 • Defendant Schneider has repeatedly avoided, impeded, and obstructed Plaintiffs'  
attempts to engage in discovery authorized by the Federal Rules of Civil Procedures.
- Defendant Schneider can respond to questions that do not implicate his 5<sup>th</sup> Amendment  
rights, and he can assert the 5<sup>th</sup> Amendment as to those questions would implicate any  
such rights.
- Plaintiffs' interest are detrimentally impacted as the witnesses' memories may fade over  
the course of the delay; witnesses may be unavailable following the termination of the

1 criminal proceedings, if any are even commenced at some point in the future; Plaintiffs’  
2 reasonably expeditious resolution of their claims would be vitiated; and delay may  
3 exacerbate their damages.

- 4 • A stay would further impede and delay Plaintiffs’ claims against the other Defendants  
5 in this lawsuit by preventing discovery relating those other claims.
- 6 • The present action has been pending for approximately one and half years; the Court  
7 had an interest in clearing its docket; a stay of proceedings leads to an inefficient use of  
8 the Court’s resources; and a stay would disrupt the Court’s calendar as Defendant is  
9 requesting the Court to, potentially years in the future, reopen discovery and again  
10 modify the deadlines in this matter to allow discovery at some unknown point in the  
11 future.

12 **III. CONCLUSION**

13 For the reasons set forth herein, Plaintiffs respectfully request Defendants’ Motion to Stay  
14 the Deposition of Matthew Schneider be denied.

15 RESPECTFULLY SUBMITTED this 20th day of December, 2019.

16 ATTORNEYS FOR FREEDOM

17 By: /s/ Jody L. Broaddus  
18 Jody L. Broaddus, Esq.  
19 Marc J. Victor, Esq.  
20 *Attorneys for Plaintiffs*

21 **CERTIFICATE OF SERVICE**

22 I hereby certify that on this 20th day of December, 2019, I electronically transmitted the  
23 foregoing to the Clerk’s office using the CM/ECF system for filing and transmittal of a Notice of  
24 Electronic filing to the following registrants, and a copy was also sent by first class mail to:

25 Joseph J. Popolizio  
26 Justin M. Ackerman  
JONES, SKELTON & HOCHULI, P.L.C.  
40 North Central Avenue, Suite 2700  
Phoenix, Arizona 85004

By: /s/ Alexandria Thompson