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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 HAROLD WRIGHT, JR. and SYDNI
9 WRIGHT, husband and wife,

10 Plaintiffs,

11 v.

12 PIERCE COUNTY, a municipal
13 corporation; et al.,

14 Defendants.

CASE NO. C11-5154BHS

ORDER DENYING
PLAINTIFFS' MOTION TO
REMAND AND GRANTING
DEFENDANTS' MOTION TO
STAY

15 This matter comes before the Court on Plaintiffs' motion for remand (Dkt. 10) and
16 Defendants' motion for stay of proceedings pending resolution of a criminal case (Dkt.
17 7). The Court has considered the pleadings filed in support of and in opposition to the
18 motions and the remainder of the file and hereby denies the motion to remand and grants
19 the motion to stay for the reasons stated herein.

20 **I. PROCEDURAL HISTORY**

21 On March 9, 2011, Defendants moved to stay proceedings in this case pending
22 resolution of Plaintiff Harold Wright's parallel criminal case. Dkt. 7. On March 21, 2011,
23 Plaintiffs responded in opposition to the motion for stay. Dkt. 13. On March 25, 2011,
24 Defendants replied.

25 On March 10, 2011, Plaintiffs moved to remand this case to state court. Dkt. 10.
26 On March 21, 2011, Defendants responded in opposition to the motion for remand. Dkt.
27 12. On March 25, 2011, Plaintiffs replied.

1 **II. FACTUAL BACKGROUND**

2 Plaintiff Harold Wright (“Wright”) is a former employee of the Tacoma School
3 District, most recently principal of Baker Middle School. Complaint (Dkt. 1) ¶ 2.1. On or
4 about January 30, 2004, Wright came in contact with a former pupil of his, Sarah Failey
5 (“Failey”). *See, e.g., id.* ¶¶ 2.3, 2.5. The two ended up at a house party on the same night.
6 *See id.* ¶ 2.10. Following the events that occurred on or about January 30, 2004, Wright
7 was charged and later convicted of rape in the second degree. *Id.* ¶ 2.46. The Washington
8 State Court of Appeals overturned Wright’s conviction. *Id.*

9 Following the reversal, Wright and his wife filed the instant action in state court.
10 *See* Dkt. 1 (removal documents). Plaintiffs allege the following causes of action: (1) 1441
11 U.S.C. 1983, civil rights violations; (2) 42 U.S.C. 1981, civil rights violations; (3)
12 negligent training; (4) negligent retention; (5) outrage and intentional infliction of
13 emotional distress; (6) abuse of process; and (7) spoliation of evidence.
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15 On February 24, 2011, Defendants removed pursuant to this court’s federal
16 question jurisdiction under 28 U.S.C. § 1331. Dkt. 1 (removal made pursuant to 28 U.S.C.
17 §§ 1331 and 1441(b)).

18 Additionally, it is undisputed that Wright’s criminal proceeding was set for retrial
19 on March 14, 2011. Wright also concedes that his civil case and criminal case are parallel
20 and, should he be convicted in the retrial, “many of his civil claims would be rendered
21 moot.” Dkt. 13 at 5, 9.

22 **III. DISCUSSION**

23 **A. Plaintiffs’ Motion to Remand**

24 “Any civil action of which the district courts have original jurisdiction founded on
25 a claim or right arising under the Constitution, treaties or other laws of the United States
26 *shall be removable* without regard to the citizenship or residence of the parties.” 28
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1 U.S.C. § 1441(b) (emphasis added). Because Plaintiffs allege at least one federal claim,
2 the Court has original jurisdiction over this matter.

3 Therefore, Plaintiffs’ motion for remand is denied.

4 **B. Defendants’ Motion to Stay**

5 Defendants move to stay this civil proceeding pending the end of Wright’s parallel
6 criminal proceeding.

7 In such cases, Fifth Amendment concerns due to overlap in issues in the criminal
8 and civil case may be sufficient to warrant a stay. *Chao v. Fleming*, 498 F. Supp. 2d 1034,
9 1037 (W.D. Mich.2007). Some courts have gone so far as to recognize the extent of the
10 overlap as the “most important factor.” *See id.* at 1039. Additionally district courts
11 generally consider the following factors when determining whether to stay a civil matter
12 in the face of a parallel criminal matter:

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14 (1) the extent to which the issues in the criminal case overlap with those in
15 the civil case; (2) the status of the criminal case, including whether the
16 defendants have been indicted; (3) the private interest of the plaintiffs in
17 proceeding expeditiously with the civil litigation; (4) the private interests
18 of, and the burden on, the defendant; (5) the interests of the courts; and (6)
19 the public interest.

17 *Javier H. V. Garcia-Botello*, 218 F.R.D. 72, 74 (W.D.N.Y. 2003) (citing *Sidari v. Orleans*
18 *County*, 180 F.R.D. 226, 228 (W.D.N.Y. 1997)); *Trustees of the Plumbers and Pipefitters*
19 *Nat’l Pension Fund v. Transworld Mech.*, 886 F. Supp. 1134, 1139 (S.D.N.Y.1995);
20 *Twenty First Century Corp. v. LaBianca*, 801 F. Supp. 1007, 1010 (E.D.N.Y. 1992). In
21 the instant case, each of these factors weighs strongly in favor of granting a stay.
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23 **1. Wright’s Fifth Amendment Rights**

24 Here, while Plaintiffs argue that Wright ostensibly waived his Fifth Amendment
25 right when he testified in his previous criminal proceeding, the Court disagrees with such
26 claim. It appears that any waiver of Wright’s Fifth Amendment right extends only to his
27 testimony given during cross-examination in the prior criminal trial, which was, of
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1 course, limited to the scope of his direct testimony. *See State v. Epefanio*, 156 Wn. App.
2 378, 388 (2010).

3 Moreover, any attempt by Defendants in this civil action to depose Wright will
4 implicate his Fifth Amendment rights. If discovery moves forward, Wright will be faced
5 with the difficult choice between asserting his right against self-incrimination, thereby
6 inviting prejudice in the civil case, or waiving those rights. *Jones v. Conte*, 2005 WL
7 1287017, at *1 (N.D. Cal. Apr. 19, 2005) (quoting *Javier H. v. Garcia-Botello*, 218
8 F.R.D. 72, 75 (W.D.N.Y. 2003)). Here, since the simultaneous civil and criminal
9 proceedings involve the same or closely related facts, Fifth Amendment concerns weigh
10 in favor of granting a stay. *See United States v. Booth*, 2010 WL 315543 (E.D. Cal. Jan.
11 19, 2010) (Ishii, J.) (staying a civil case completely until resolution of the parallel
12 criminal case); *Taylor, Bean & Whitaker Mortg. Corp. v. Triduanum Financial, Inc.*,
13 2009 WL 2136986, at *2 (E.D. Cal. Jul. 15, 2009) (Damrell, J.) (granting a six-month
14 stay of all proceedings in a civil fraud case when a parallel criminal case was ongoing
15 because “[b]oth the civil and criminal cases arise from the alleged scheme to defraud . . .
16 [, and as] such, the pending civil litigation may substantially implicate defendants’ Fifth
17 Amendment rights against self-incrimination, create unnecessary complexities with
18 respect to discovery, expose defendants’ strategy or theories with respect to the criminal
19 case, or otherwise prejudice the pending criminal proceedings.”); *Acacia Corporate*
20 *Management, LLC v. United States*, 2009 WL 1531099 (E.D. Cal. May 28, 2009) (Ishii,
21 J.) (granting stay of civil action until the resolution of the parallel criminal case); *S.E.C. v.*
22 *Schroeder*, 2008 WL 152227 (N.D. Cal. Jan. 15, 2008) (postponing the deposition of the
23 defendant in a civil action for four months because there was an ongoing criminal
24 investigation that might implicate him, even though no criminal charges had even been
25 brought against him); *Rodriguez v. Summit Mortg. Realty, Inc.*, 2007 WL 2029323 (N.D.
26 Cal. July 11, 2007) (continuing a stay of civil proceedings for seven months or until the
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1 criminal trial was complete, whichever came first, because of Fifth Amendment concerns,
2 and stating that “[w]hile the court and the public generally have an interest in the
3 expeditious resolution of litigation, under the circumstances presented here, the court
4 concludes that, on balance, the interests of justice require an extension of the stay of these
5 proceedings); *see also McCormick v. Rexroth*, 2010 WL 934242 (N.D. Cal. Mar. 15,
6 2010); *S.E.C. v. Nicholas*, 569 F. Supp. 2d 1065 (C.D. Cal. 2008); *Souza v. Schiltgen*,
7 1996 WL 241824 (N.D. Cal. May 6, 1996); *Bureerong v. Uvawas*, 167 F.R.D. 83 (C.D.
8 Cal. 1996).

9 **2. Other Factors**

10 Here, Plaintiffs concede that this civil action and Wright’s criminal action are
11 parallel. Plaintiffs also concede that, depending on the outcome of the parallel criminal
12 trial, many of their causes of action may be mooted. It would make little sense to permit
13 this case to continue when many of the issues could be mooted by the criminal case, and
14 it makes equally little sense to bifurcate these issues. These facts, coupled with the Fifth
15 Amendment concerns identified above, are alone sufficient to warrant a stay in this case.
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17 Another factor in favor of staying this case is judicial economy. the Court’s docket
18 would be better served by staying this case pending the outcome of the criminal trial. The
19 potential is high for unnecessary complexity, overlapping issues, duplicative rulings, and
20 conflict between the rulings of this Court and that of the criminal court and staying the
21 matter will be a more prudent and efficient management of resources.

22 On balance, to the extent the parties’ respective interests and the public’s interest
23 weigh in favor of denying a stay, such interests are insufficient to overcome the need to
24 stay this matter for the reasons discussed above.
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IV. ORDER

Therefore, it is hereby **ORDERED** that

- (1) Plaintiffs' motion for remand is **DENIED**;
- (2) Defendants' motion to stay is **GRANTED**, and the stay will remain in effect until the parallel criminal action ends; and
- (3) Defendants are directed to **FILE** a written status report every six months to apprise the court of the proceedings in the criminal case, beginning on October 1, 2011.

DATED this 4th day of April, 2011.



BENJAMIN H. SETTLE
United States District Judge