

DISTRICT COURT, LARIMER COUNTY, COLORADO

201 La Porte Avenue  
Suite 100  
Fort Collins, CO 80521  
(970) 498-6100

CALEB HERNANDEZ,

Plaintiff ,

v.

CITY OF LOVELAND and ELIZABETH ANDERSON in her official capacity as Director of Parks and Recreation for the City of Loveland.

Defendants.

Ashley Hernandez-Schlagel, Reg. No. 43914

J. Andrew Nathan, Reg. No. 3295

NATHAN DUMM & MAYER P.C.

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Attorneys for Defendants

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CASE NUMBER: 2016CV30886

**▲ COURT USE ONLY ▲**

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Div.: Ctrm: 3C

**UNOPPOSED MOTION FOR STAY AND FOR LEAVE TO CONDUCT LIMITED  
DISCOVERY FOR THE PURPOSES OF DETERMINING SOVEREIGN IMMUNITY  
PURSUANT TO C.R.S. § 24-10-108**

Defendants, the City of Loveland and Elizabeth Anderson, by and through their attorneys, Nathan Dumm & Mayer P.C., hereby respectfully move this Court for a stay of proceedings and for leave to conduct limited discovery for purposes of determining sovereign immunity pursuant to C.R.S. § 24-10-108, and as grounds therefore, Defendants state as follows:

## **CERTIFICATION PURSUANT TO C.R.C.P. 121 §1-15(8)**

The undersigned certifies that she conferred with Plaintiff's counsel regarding the relief requested herein and that Plaintiff does not object.

1. Plaintiff's Complaint, filed on September 29, 2016 and later served on Defendants on October 12, 2016, asserts one tort claim against Defendants, which Defendants contend may be barred by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*<sup>1</sup>

2. Specifically, C.R.S. § 24-10-108 provides, in pertinent part, as follows:

If a public entity raises the issue of sovereign immunity prior to or after the commencement of discovery, the Court shall suspend discovery, except any discovery necessary to decide the issue of sovereign immunity, and shall decide such issue on motion. The Court's decision on such motion shall be a final judgment and shall be subject to interlocutory appeal.

3. Defendants have raised the issue of sovereign immunity as an affirmative defense in their Answer and Jury Demand filed on November 2, 2016.

4. As provided under C.R.S. § 24-10-108, Defendants respectfully request that this Court stay the case and the requirements set forth under C.R.C.P. 16 and 26, so that the parties may conduct limited discovery on the issue of sovereign immunity. Thereafter, Defendants may submit a Motion to Dismiss to this Court, if warranted.

5. Defendants seek to conduct limited discovery as to how the incident in question occurred, issues related to notice, the existence of a dangerous condition, and other similar issues, all of which are relevant to an analysis under the Colorado Governmental Immunity Act.

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<sup>1</sup> Defendants do not hereby waive any assertion related to the validity of Plaintiff's tort claim for negligence.

6. Therefore, Defendants respectfully request a stay of 90 days<sup>2</sup> from the date of an order from this Court within which limited discovery on the issue of sovereign immunity may be conducted.

7. Pursuant to C.R.C.P. 121 §1-11, a copy of this Motion has been sent to the Defendants.

WHEREFORE, Defendants respectfully request that this Court order a stay of 90 days in these proceedings, including the requirements of C.R.C.P. 16 and 26, pursuant to C.R.S. § 24-10-108, within which Defendants may conduct limited discovery on issues pertinent to governmental immunity, as well as any other and further relief this Court deems just and proper.

Respectfully submitted,

NATHAN DUMM & MAYER P.C.

/s/ Ashley Hernandez-Schlagel  
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<sup>2</sup> At this time Defendants believe 90 days is sufficient to conduct the limited discovery necessary; however, Defendants reserve the right to request an additional amount of time if needed given the upcoming holiday season and scheduling.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 7th day of November, 2016, a true and correct copy of the foregoing **UNOPPOSED MOTION FOR STAY AND FOR LEAVE TO CONDUCT LIMITED DISCOVERY FOR THE PURPOSES OF DETERMINING SOVEREIGN IMMUNITY PURSUANT TO C.R.S. § 24-10-108** was served via the State of Colorado's ICCES e-filing system upon each of the following:.

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*/s/ Kaitlyn Barr*

Kaitlyn Barr, paralegal