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**IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

JEFFREY D. GASTON,

Plaintiff,

v.

JASON HALL, an individual; NATALIE
HALL, an individual; GEORGE
SCHLIESSER, an individual; WOODCRAFT
MILL & CABINET, INC., a Utah corporation;
and BLUFFDALE CITY, a municipality of the
State of Utah,

Defendants.

**REPLY MEMORANDUM IN SUPPORT OF
MOTION TO STAY CASE PENDING
RESOLUTION OF RELATED CRIMINAL
PROCEEDINGS**

Case No: 230905528

Judge Chelsea Koch

Defendants Jason Hall, Natalie Hall, and Woodcraft Mill & Cabinet, Inc. (collectively, the “**Hall Parties**”), through counsel, and pursuant to Rule 7(e) of the Utah Rules of Civil Procedure, submit this Reply Memorandum in Support of the Motion to Stay Case Pending Resolution of Related Criminal Proceedings.

STATEMENT OF RELEVANT FACTS¹

1. Since the filing of the Hall Parties' opening brief, the criminal trial was rescheduled. The criminal court granted a continuance from May to June because an expert witness was unavailable for the May trial dates. Additionally, the trial dates in May conflicted with the graduation ceremonies for two of the attorneys' children.

2. The criminal trial is now scheduled for June 19–21 and 27–28, 2024, with the Final Pretrial Conference being set for June 3.

3. Neither the State nor Mr. Hall have requested a continuance of those dates.

ARGUMENT

The Hall Parties and Mr. Gaston agree that the Court's ruling on the Motion to Stay is governed by the following six factors:

- (i) the extent to which issues in the criminal case overlap with those presented in the civil case;
- (ii) the status of the case, including whether the defendant has been indicted;
- (iii) the private interests of the plaintiff in proceeding expeditiously versus the prejudice to plaintiff caused by the delay;
- (iv) the private interests of, and burden on, the defendant;
- (v) the interests of the Court, and
- (vi) the public's interest.

In re CFS-Related Sec. Fraud Litig., 256 F. Supp. 2d 1227, 1236–37 (N.D. Oklahoma 2003).

In his Memorandum in Opposition, Mr. Gaston appears to acknowledge that the first two factors weigh in favor of granting the stay because there is near-complete overlap between the

¹ In his Statement of Facts, Plaintiff notes instances in which the criminal court has continued or cancelled certain hearings and the trial. As a threshold matter, the fact that the criminal court has previously exercised its discretion to manage its docket, including ordering continuances, is not proof that the current June trial will not proceed as planned. The Hall Parties do not anticipate another continuance of the trial date. Additionally, a cursory recitation of docket entries does not provide context to explain why those continuances were warranted. There were instances when continuances were prudent due to illness, pending motions, and expert availability, among other reasons. Those circumstances do not warrant denying the Hall Parties' request for a brief stay to allow the criminal trial to conclude in late June.

criminal and civil cases and because Mr. Hall has already been criminally indicted for the same conduct underlying this civil case. Although Mr. Gaston disputes the remaining factors, the balance of the equities suggests that the Court should exercise its discretionary powers and grant the request to stay the case until a verdict has been reached and judgment entered in the State’s criminal case against Mr. Hall. A brief stay is the remedy that can best preserve the respective interests of all parties to this litigation. It will aid the “just, speedy, and inexpensive” resolution of this matter by clarifying the outstanding legal issues requiring adjudication or encouraging settlement. *See* Utah R. Civ. P. 1.

I. Overlap of Issues in Criminal and Civil Cases

It is undisputed that significant overlap exists between the issues in the criminal trial against Mr. Hall, individually, and the issues in this civil matter against the Hall Parties, collectively. *See* Motion to Stay at 3; Memorandum in Opposition at 5. Indeed, the facts alleged against Mr. Hall are nearly identical in both cases. In the criminal case, the State charged Mr. Hall with one count of threatening elected officials; one count of stalking; and one count of threats to influence official or public action. The Information includes a Declaration of Probable Cause explaining that the alleged victim Mr. Gaston—Plaintiff in this case—received a series of insulting communications and packages between March and November 2021. The Probable Cause Statement also describes a purported physical altercation between Mr. Gaston and Mr. Hall at the Bluffdale Old West Days Celebration—the same altercation alleged in the Second Amended Complaint (the “Complaint”).

Plaintiff’s civil claims against the Hall Parties for battery, assault, false light, intentional infliction of emotional distress, and civil conspiracy all stem from the same events. *See* Complaint ¶¶ 217–70. Even though Plaintiff’s Complaint now alleges facts regarding “separate occurrences outside the scope of the criminal proceeding,” those new allegations against the Hall Parties’ all

derive from their respective responses to the same underlying allegations the Mr. Hall sent “threatening” communications and packages to Mr. Gaston. *See* Opposition at 5. None of the new allegations are wholly unrelated to the charged criminal conduct; rather, they describe how various Defendants reacted to those events.

What is clear is that Mr. Hall is the “central figure” in both cases. *See In re CFS*, 256 F. Supp. 2d at 1237 (weighing the first factor in favor of granting a stay because the defendant was a central figure the civil and criminal cases). But he is not alone. Although some Defendants in this case have not been criminally charged, they have been linked to Mr. Hall’s criminal case. Consequently, both cases will likely use the same exhibits and witnesses, including the Hall Parties, Mr. Schliesser, and employees of Bluffdale City. *See id.* The Court should thus find that this factor weighs in favor of granting the stay.

II. Status of the Criminal Case

The second factor weighs in favor of granting a stay because the State of Utah has already indicted Mr. Hall on criminal charges based on the same facts as alleged in the civil case. Courts have held that “[a] stay of a civil case is most appropriate where a party to the civil case has already been indicted for the same conduct.” *Trustees of Plumbers & Pipefitters Nat. Pension Fund v. Transworld Mech., Inc.*, 886 F. Supp. 1134, 1139 (S.D.N.Y. 1995); *see also Volmar Distribs., Inc. v. New York Post Co.*, 152 F.R.D. 36, 39 (S.D.N.Y. 1993) (“[T]he strongest case for granting a stay is where a party under criminal indictment is required to defend a civil proceeding involving the same matter.”)

When analyzing the status of the criminal case, “the issue of whether a defendant has been indicted is material.” *In re CFS*, 256 F. Supp. 2d at 1237. The corresponding analysis centers on whether the criminal case is “(1) in the investigation stage, with no indictment; (2) pending indictment with a set trial date; or (3) where the defendant has pled guilty and is awaiting

sentencing.” *Id.* The rationale behind this inquiry is that “the likelihood that a defendant may make incriminating statements is greatest after an indictment has issued,” and “the prejudice to the plaintiffs in the civil case is reduced since the criminal case will likely be quickly resolved due to Speedy Trial Act considerations.” *Transworld Mech., Inc.*, 886 F. Supp. at 1139 (noting that the “weight of authority in [the Second Circuit] indicates that courts will stay a civil proceeding when the criminal investigation has ripened into an indictment”).

Here, it is also undisputed that Mr. Hall was indicted in June 2022 and that his criminal trial is scheduled for June 19–21 and 27–28. In *Transworld*, the court held that a stay of the civil matter would not “unreasonably prolong” the civil case where defense counsel had advised it that the criminal case would be completed by the end of that year. *Id.* at 1140. Mr. Hall’s criminal case will be resolved sooner than that. In less than four months, the criminal matter will be resolved and the Parties to this action can proceed with this case under the timeline established for Tier 3 matters under Rule 26 of the Utah Rules of Civil Procedure.

III. Interests of the Plaintiff

Plaintiff has failed to show that he has proceeded expeditiously in this matter or that his ability to do so would be impaired by the brief stay that Mr. Hall now requests. A review of the docket in this case demonstrates that Plaintiff himself has delayed this case by at least 8 months. Plaintiff filed his Complaint and First Amended Complaint in July 2023. Dkt. 1, 3. Nearly five months later, in December 2023, Plaintiff filed a Second Amended Complaint. Dkt. 11. Plaintiff then waited for more than a month before he served the Second Amended Complaint on the Hall Parties. This timeline—which is more fully described in the opening brief—demonstrates that Plaintiff has not acted in an expeditious manner that supports his newly raised concerns about evidence preservation. *See* Motion ¶¶ 1–8.

Mr. Gaston argues against his self-imposed delay by alleging that he proceeded in the “most economical and judicially efficient manner.” Opposition at 7. In support, he references the fact that he had to wait to file a Second Amended Complaint so he could comply with the 60-day period after he filed a notice of claim with Bluffdale City under the Governmental Immunity Act of Utah. See Utah Code § 63G-7-401(8)(b)(ii)(B). As a Bluffdale City councilman, however, Mr. Gaston should be aware of the requirements to file a notice of claim with a governmental entity as well as the statutory waiting period. He is not an unsophisticated litigant in that regard. Even if Plaintiff claims ignorance of that rule until after filing the First Amended Complaint, he waited 137 days to file the Second Amended Complaint (more than twice the waiting period) and an additional 37 to serve it. The fact that Mr. Gaston has now opposed the Motion to Stay in and of itself is not proof that he has invoked his private interest in proceeding expeditiously.

Notwithstanding the foregoing, the stay that the Hall Parties request is so brief that there is no risk that it would impair Plaintiff’s interest in proceeding expeditiously. The rationale behind proceeding expeditiously is to avoid the loss of evidence. See *Trustees of Plumbers and Pipefitters Nat. Pension Fund v. Transworld Mechanical, Inc.*, 886 F. Supp. 1134, 1140 (S.D.N.Y.1995). Those concerns are not present here despite Plaintiff’s protestations to the contrary.

As a threshold matter, there is no foundation or prior finding that anyone has destroyed evidence or that there is an ongoing risk of additional destruction. Even if the Court determines there is a risk, there is a remedy. Rule 37 of the Utah Rules of Civil Procedure grants this Court discretion to impose sanctions, including negative inferences, if a party “destroys, conceals, alters, tampers with or fails to preserve a document, tangible item, electronic data or other evidence in violation of a duty.” Utah R. Civ. P. 37(b), (e). Mr. Gaston repeatedly argued in his Opposition that he sees a “potential benefit” of negative inferences. Opposition at 7. That would be a remedy

this Court could impose if it is demonstrated that any party has contributed to the destruction of evidence despite notice of the litigation. It is more appropriate for courts to apply such inferences when a party engages in such sanctionable conduct. It is quite another to allow adverse parties to file parallel litigation, so they can gain an unfair advantage that arises when a defendant is forced to choose “between waiving their Fifth Amendment rights or effectively forfeiting the civil case.” *Transworld Mech., Inc.*, 886 F. Supp. at 1140. Plaintiff does not have a “right” to negative inferences and certainly not at the expense of constitutional privileges.

Additionally, there is no increased risk that the witnesses in this case will forget relevant facts if the Court grants a brief stay between now and the beginning of July. This is not a case like *Tibbs v. Vaugh* where the case had languished for more than four years. *See* No. 2:08CV787, 2012 WL 4480360, at *3 (D. Utah Sept. 28, 2012). Any risk of that happening is further mitigated by the fact that many of the same individuals that are defendants or witnesses in this case will be witnesses in the criminal trial. Those individuals will offer sworn testimony in that case, which will serve as a record of their statements. If anything, Mr. Gaston may have the advantage of being able to use that testimony while deposing or cross-examining witnesses here. That testimony can shape his questions or serve to impeach those witnesses. This factor weighs in favor of granting the Motion.

IV. Interests of Defendant Mr. Hall

A brief stay of this case is the best way to preserve all the Parties’ respective interests. “A stay is one of several procedures available to the district court to balance the interest of the other parties in moving forward with the litigation against the interests of a defendant asserting Fifth Amendment rights who faces the choice of being prejudiced in the civil litigation if those rights are asserted or prejudiced in the criminal litigation if those rights are waived.” *In re CFS-Related Sec. Fraud Litig.*, 256 F. Supp. 2d at 1236.

Mr. Hall would be harmed if the Court allows discovery to proceed in this case. As an alleged victim to the criminal proceedings, Mr. Gaston has access to the State's discovery. He would be able to use that discovery to depose Mr. Hall and other Hall Parties not only to garner an unfair advantage here but also to expose Mr. Hall's defense strategy to the State before trial. Even if the prosecution itself cannot use the broad scope of civil discovery to obtain information for use in the criminal prosecution, Mr. Gaston can do so on the State's behalf. Given the tenor of both cases to date, it is probable that will occur, thereby prejudicing Mr. Hall on both fronts.

Mr. Hall is prepared to vigorously defend himself in both the civil and criminal matters. Unlike the defendant in *Tibbs*, Mr. Hall has not previously waived his Fifth Amendment rights against self-incrimination by testifying at a related trial or by being deposed in this case. *See* 2012 WL 4480360, at *3. That privilege should be protected until the criminal proceedings are resolved later this summer. Thereafter, the Parties to this case will be able to engage in full and fair discovery, which will contribute to the just resolution of this civil case. Mr. Hall should not be figuratively handcuffed in defending against this case simply because there are unproven criminal charges that are pending.

V. Interest of the Court

Judicial efficiency also weighs in favor of granting Mr. Hall's requested stay. "This is not an instance where criminal prosecution is merely conjectural; defendants have been indicted and will face trial within [four] months." *Trustees of Plumbers & Pipefitters Nat. Pension Fund v. Transworld Mech., Inc.*, 886 F. Supp. 1134, 1140 (S.D.N.Y. 1995). This is a shorter delay than in *Transworld* where trial was six months away. The brevity of the requested stay does not conflict with the Court's interest in resolving the civil litigation in an expeditious manner.

Moreover, in the criminal case, the State must meet a higher burden of proof to convict Mr. Hall of the charged crimes. The outcome of those criminal proceedings may inform the Parties

here as to their probability of success on any alleged claims or defenses. That information could increase the possibility of a settlement or a narrowing of the issues to resolve here. It is therefore in the Court's interest to grant the stay.

VI. Interest of the Public

Finally, for the same reasons explained above, the brief nature of the requested stay does not thwart the public's interest in the prompt resolution of civil and criminal cases. *See Digital Equip. Corp. v. Currie Enters.*, 142 F.R.D. 8, 14 (D. Mass. 1991). The fact that the prosecution has not joined in this motion does not mean that this factor weighs in favor of denying the stay. Plaintiff has sought to make the prosecution's decision to join the motion to stay a dispositive factor in determining whether to grant a stay. The factors articulated above do not include this requirement. There is less need for the prosecution to weigh in on this motion because Mr. Hall's assets are not the subject of either case.

CONCLUSION

The Court should enter an ordering staying the civil case pending the outcome of the criminal trial.

DATED this 7th day of March, 2024.

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/s/ Jordan E. Westgate

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of March, 2024, I caused a copy of the foregoing to be served on all counsel of record via the Court's Electronic Filing System.

/s/ Shelby Irvin