IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

v.

Case No. 50 2009 CA 040800XXXXMBAG

BRADLEY J. EDWARDS, et al.,

JUDGE HAFELE

Defendants/Counter-Plaintiff.
_____/

PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S MOTION FOR TEMPORARY STAY OF PROCEEDINGS

Plaintiff/Counter-Defendant Jeffrey Epstein ("Epstein"), by and through undersigned counsel hereby respectfully moves this Honorable Court to temporarily stay the above-captioned proceedings pending the outcome of a related quasi-criminal matter, *Doe v. United States*, No. 08-cv-80736-KAM (S.D. Fla.) (the "*Doe* Case"), brought by Defendant/Counter-Plaintiff Bradley J. Edwards ("Edwards") on behalf of two civil claimants in the United States District Court for the Southern District of Florida. Mr. Edwards should not be permitted to pursue this monetary damage lawsuit against Mr. Epstein, in which he is seeking large punitive damages amounts on behalf of himself, while contemporaneously pursuing a federal lawsuit in which Edwards's articulated and ultimate aim is the invalidation of a Non-Prosecution Agreement, thereby requiring Mr. Epstein to assert his Fifth Amendment privilege against self-incrimination and forego affirmative testimony that would be pivotal in his defense against this ongoing civil litigation.[1]

In the *Doe* Case, claimants are seeking to rescind Mr. Epstein's non-prosecution agreement with the United States Attorney for the Southern District of Florida ("NPA"). If successful, the claimants and Mr. Edwards will seek to expose Mr. Epstein to comprehensive criminal liability in the Southern District of Florida for alleged acts occurring from 2001 through

[1] Mr. Epstein, having withdrawn his claims against Edwards is, at this stage of the proceedings, a *de facto* defendant answering Mr. Edwards' counterclaims.

2007. Mr. Edwards's efforts at prosecuting both his own and his clients' claims against Mr. Epstein have already required Mr. Epstein to assert his Fifth Amendment privilege against self-incrimination in different matters also involving attorney Edwards; most recently in, *Guiffre v. Maxwell*, No. 15-cv-07433-RWS (S.D.N.Y.), *see infra*, where Mr. Epstein was a witness, not a party. If a stay is not granted, Mr. Epstein will likewise need to assert his Fifth Amendment privilege in the instant proceeding. Mr. Edward's efforts at rescinding the NPA have effectively put Mr. Epstein between the proverbial rock and a hard place. Mr. Epstein's assertion of his Fifth Amendment privilege will impair his ability to present a defense to the alleged claims against him in this pending civil case – claims that as currently advanced by Mr. Edwards, and as illustrated in both his witness and exhibit lists in this case, are claims he contends substantially overlap the subject matter of the NPA and predictably will require Mr. Epstein to either assert his constitutional privilege or instead testify to matters squarely within the heartland of the protections conferred by the challenged NPA; issues that Epstein submits have no bearing on this litigation, but that Edwards clearly intends to make the crux of his case. For Mr. Epstein to claim the privilege and instead waive it in order to present his defenses, could potentially expose him to criminal prosecution; particularly if Mr. Edwards succeeds in his efforts to invalidate the NPA. Mr. Edwards should not be allowed to use the *Doe* Case, and Mr. Epstein's resulting and reasonable apprehension of the potential for comprehensive criminal exposure in the Southern District of Florida to his advantage as he pursues monetary and punitive damages for his personal benefit against Mr. Epstein; especially at a time when Mr. Epstein cannot fully defend himself due to Mr. Edwards's prosecution of the *Doe* Case. As a result, Mr. Epstein respectfully requests this Honorable Court to temporarily stay the above-captioned matter pending the resolution of the *Doe* Case.

I. BACKGROUND

For nearly a decade, Mr. Edwards, both as an attorney for alleged victims and as a claimant himself, has been making claims against Mr. Epstein, with the express intent and desire for Mr. Epstein to be criminally prosecuted. *See Doe v. United States*, No. 08-cv-80736-KAM

(S.D. Fla.); Victim's Reply to Government's Response to Emergency Petition for Enforcement of Crime Victim's Rights Act (Doc. 9) at 2, 10-11; Jane Doe #1 and Jane Doe #2's Response to Government's Sealed Motion to Dismiss for Lack of Subject Matter Jurisdiction (Doc. 127) at 1-2, 5, 7, 14, 15-16. Both Mr. Edwards and Mr. Paul Cassell, his co-counsel in the *Doe* Case, during sworn deposition testimony and in their pleadings, have unequivocally stated that causing a criminal prosecution of Mr. Epstein is a primary objective of their pending litigation in *Doe v United States*. Mr. Edwards is himself suing Mr. Epstein for malicious prosecution in the instant case, and is seeking to hold Mr. Epstein financially liable to Mr. Edwards by, among other ways, portraying Mr. Epstein as someone culpable of numerous federal criminal offenses involving sexual misconduct with minor females, several of whom Mr. Edwards intends to call as witnesses in his case-in-chief. *See* Fifth Amended and Supplemental Witness List of Counter-Plaintiff Bradley J Edwards filed on July 21, 2017. Mr. Edwards has also represented three litigants in civil cases against Mr. Epstein involving claims based on such allegations of sexual misconduct and in related matters,[2] while also actively working to invalidate Mr. Epstein's NPA and have Mr. Epstein prosecuted for the very same conduct.

On September 24, 2007, Mr. Epstein and the United States Attorney's Office for the Southern District of Florida entered into a NPA covering five separate categories of alleged offenses relating to allegations of misconduct with minor females between 2001 and September 2007 for which the federal government was investigating Mr. Epstein: (1) violations of conspiracy to violate 18 U.S.C. §2422(b), (2) violations of conspiracy to violate 18 U.S.C. §2423(b), (3) violations of 18 U.S.C. §§2422(b), (4) violations of 2423(b), and (5) violations of 1591(a)(1). NPA at 1-2. The NPA also encompassed offenses such as money laundering that were investigated by the United States Attorney's Office. As such, the efforts to invalidate the NPA also impact and impair Mr. Epstein's ability to respond to questions about finances, net worth, financial, and monetary transactions. In accordance with the terms of the NPA, Mr.

[2] *See e.g., Guiffre v. Maxwell*, No. 15-cv-07433-RWS (S.D.N.Y.); *Jane Doe II v. Epstein*, No. 09-cv-80469-KAM (S.D. Fla.); *L.M. v. Epstein,* No. 09-cv-81092-KAM (S.D. Fla.); *Jane Doe et. al. v. Epstein,* No. 08-cv-80119-KAM (S.D. Fla.).

Epstein pled guilty to two discrete state offenses under § 796.07 and 796.03 of the *Florida Statutes*. *See Id.* at 3. On July 7, 2008 – one week after Mr. Epstein entered his state pleas of guilty – attorney Edwards, on behalf of Jane Doe, brought a petition before the District Court for the Southern District of Florida seeking to enforce Jane Doe's rights pursuant to the Crime Victim's Rights Act, 18 U.S.C. § 3771 ("CVRA"). *See Doe* Case, Dkt. 1. The petitioners in the *Doe* Case argued that the Government violated their rights to notice and consultation under the CVRA, and as a result they are now seeking to vacate the NPA. *See Doe* Case, Dkt 189 at 1; *Doe v. United States*, 950 F. Supp. 2d 1262, 1264 (S.D. Fla. 2013). Considering the petitioners' claims, the court held that rescission of the NPA is a potential remedy: "the CVRA is properly interpreted to authorize the rescission or 're-opening' of a prosecutorial agreement - including a non-prosecution arrangement - reached in violation of a prosecutor's conferral obligations under the statute." *Id.* at 7. While the NPA has been in effect for nearly ten years, there is a risk that Mr. Edwards may ultimately succeed in his efforts to rescind the NPA and seek to expose Mr. Epstein to potential criminal liability in the Southern District of Florida. *See* FIGHT TO REOPEN TEEN SEX CASE AGAINST JEFF EPSTEIN MAY SET PRECEDENT, MYPALMBEACHPOST, http://www.mypalmbeachpost.com/news/crime--law/fight-reopen-teen-sex-case-against-jeff-epstein-may-set-precedent/hxt8lQgkABEc59vrbz8teK/ (last visited Aug 27, 2017), attached hereto as Exhibit 1.

II. MR. EPSTEIN HAS A VALID FIFTH AMENDMENT PRIVILEGE

It is well established that the Fifth Amendment privilege against self-incrimination "can be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory." *Kastigar v. United States*, 406 U.S. 441, 444 (1972). To support an invocation of the Fifth Amendment privilege, future prosecution need not be probable: it need only be possible. *See, e.g., Convertino v. U.S. Dep't of Justice*, 795 F.3d 587, 594 (6th Cir. 2015); *In re Corrugated Container Antitrust Litig.*, 661 F.2d 1145, 1150 (7th Cir. 1981), *affd sub nom. Pillsbury Co. v. Conboy*, 459 U.S. 248 (1983). The protection of the Fifth Amendment extends "not only [to] statements that are themselves evidence of criminal violations, but also [to] 'those

[statements] which would furnish a link in the chain of evidence needed to prosecute the claimant for a federal crime." *Rajah v. Mukasey*, 544 F.3d 427, 441 (2d Cir. 2008), *quoting United States v. Hubbell*, 530 U.S. 27, 38 (2000). *See, e.g., United States v. Greenfield*, 2016 WL 4073250 at *5 (2d Cir. Aug. 1, 2016) ("the Fifth Amendment privilege has been found to extend not only to answers that are directly incriminatory but also to those that, while not themselves inculpatory, would furnish a link in the chain of evidence needed to prosecute the claimant.") (internal quotation marks omitted). In assessing the validity of an assertion of Fifth Amendment privilege, the Court must look to all of the circumstances of the case and "be governed as much by personal perceptions of the peculiarities of the case as by the facts actually in evidence." *SEC v. Militano*, 1991 WL 270116, at *3 (S.D. N.Y. Dec. 9, 1991) (*quoting Hoffman v. United States*, 341 U. S. 479, 486 (1951). A witness may be compelled to answer only "if it clearly appears he is mistaken as to the justification for the privilege or is advancing his claim as a subterfuge." *Camelot Group, Ltd. v. W. A. Krueger Co.*, 486 F. Supp. 1221, 1225 (S.D.N.Y. 1980); *Hoffman*, 341 U.S. 486-87 ("To sustain the privilege, it need only be evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result."); *see also Raass v. Borgia*, 644 So. 2d 121, 122 (Fla. Dist. Ct. App. 1994) (following *Hoffman* to preclude discovery concerning defendant dentist's chemical dependency); *Appel v. Bard*, 154 So. 3d 1227, 1229 (Fla. Dist. Ct. App. 2015); *O'Neal v. Sun Bank, N.A.*, 754 So. 2d 170, 171 (Fla. Dist. Ct. App. 2000) ("The privilege may be invoked in a civil action during a discovery proceeding if the civil litigant has reasonable grounds to believe that direct answers to deposition or interrogatory would furnish a link in the chain of evidence needed to prove a crime against him.") (*citing Hoffman*).

Mr. Epstein's potential assertion of his Fifth Amendment privilege in the instant case is more than amply justified by a well-founded fear of prosecution – prosecution that Mr. Edwards has been seeking in the *Doe* Case for almost a decade. Any statements made by Mr. Epstein as to matters relating to allegations of abuse or relating to Mr. Epstein's monetary and financial

transactions and/or his financial assets and resources could provide the impetus for possible future prosecution based on such alleged conduct or, at minimum, a link in the chain that could be exploited to develop additional evidence against him for crimes including those that are within the scope of the NPA. In a previous matter, *Guiffre v. Maxwell*, No. 15-cv-07433-RWS (S.D.N.Y.), where the unsealed record reflects Mr. Epstein asserted his Fifth Amendment privilege, motions to compel were brought, and Mr. Epstein was not required to testify based on his assertion of the Fifth Amendment privilege, *see* Dkt. 449 and 483. ***As a non-party, Mr. Epstein suffered no prejudice from his principled and upheld assertion of the Fifth Amendment in that matter; by contrast, however, in this matter, the prejudice from the potential finding of adverse inferences against a Party asserting the Fifth Amendment in a civil proceeding and from being foreclosed from pursuing affirmative defenses that rely upon his testimony will be immense.***

While it is Mr. Epstein's position that he has a valid privilege to topics extending beyond the subject matter of the NPA (which is venue specific and does not preclude prosecution in other districts),[3] the risk of any invalidation of the NPA creates more comprehensive Fifth Amendment concerns, carries the most significant risk of criminal prosecution, and requires the broadest invocation of the Fifth Amendment as to predictable subjects in the pending civil litigation. Thus, while Mr. Edwards's efforts to impair Mr. Epstein's NPA are ongoing and vigorous (the *Doe v United States* litigation has been ongoing for over nine years, with well over a hundred pages of recent filings in support of Mr. Edward's request for partial Summary Judgment), Mr. Epstein has a Fifth Amendment privilege that he must assert to abate a significant risk that if Mr. Edwards is successful and the NPA is invalidated and criminal charges are thereafter returned in the Southern District of Florida, that Mr. Epstein will not have

[3] The Government has argued in *Doe v United States*, 08-cv-80736-KAM, Dkt. 205-2 at 9-13, that, by its express terms, the NPA binds only the United States Attorney's Office for the Southern District of Florida, is venue and subject matter specific, and does not, accordingly, preclude prosecution in any other district nor prosecution for offenses that were not within the statutes specifically enumerated in the NPA or the subject of the joint investigation of the Federal Bureau of Investigation and the U.S. Attorney's Office in the Southern District of Florida. NPA at 2-3.

waived his principled Fifth Amendment rights regarding the subject matter of such a potential prosecution and will not have testified without immunity in a manner that may be used to further any potential future criminal prosecution. Such risks that are directly derivative of Mr. Edward's litigation in the *Doe* case can only be reduced if Mr. Edwards withdraws the remedy of invalidating the NPA, which is but one of many remedies he is seeking in his *Doe* Case petition, or upon the court ruling and denying his request to invalidate the NPA, or upon this Honorable Court granting the request for a stay until after the *Doe* case concludes.

III. THIS HONORABLE COURT SHOULD TEMPORARILY STAY PROCEEDINGS PENDING THE OUTCOME OF THE *DOE* CASE

Trial courts have long had the discretion to manage their dockets and stay proceedings when circumstances require it. *See United States v. Kordel*, 397 U.S. 1, 12 n. 27 (1970) (noting that courts "have deferred civil proceedings pending the completion of parallel criminal prosecutions when the interests of justice seemed to require such action"); *Landis v. North Am. Co.*, 299 U.S. 248, 254-55 (1936) ("the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with the economy of time and effort for itself, for counsel, and for litigants"); *Texaco, Inc. v. Borda*, 383 F.2d 607, 608 (3d Cir. 1967) (affirming stay in civil case pending determination of parallel criminal Case proceeding). While there is no constitutional right to a stay of civil proceedings pending resolution of a related criminal proceeding, circumstances such as the ones *sub judice* frequently warrant a stay. *See, e.g., Afro-Lecon, Inc. v. United States*, 820 F. 2d 1198, 1204 (Fed. Cir. 1987) ("it has long been the practice to 'freeze' civil proceedings when a criminal prosecution involving the same facts is warming up or under way"); *Texaco*, 383 F. 2d at 608 (affirming stay); *Brock v. Tolkow*, 109 F.R.D. 116 (E.D.N.Y. 1985) (Fact that indictment had not yet been returned did not preclude stay of discovery in civil action pending outcome of criminal action which might be brought against defendants as result of Justice Department investigation); *Kashi v. Gratsos*, 790 F.2d 1050, 1057 (2d Cir. 1986) (No abuse of discretion where "District court granted [] motion [to stay] and delayed the trial until the U.S. Attorney's office announced that it had declined prosecution.").

Courts commonly stay civil cases "where a party under criminal indictment is also required to defend a civil suit involving the same matter…[because] denying a stay may undermine a party's Fifth Amendment privilege against self-incrimination… or may otherwise prejudice the criminal case." *Am. Express Bus. Fin. Corp. v. RW Prof'l Leasing Servs. Corp.*, 225 F. Supp. 2d 263, 265 (E.D.N.Y. 2002). Given the risks inherent if the NPA is invalidated in the *Doe* litigation, Mr. Epstein's position is comparable.

In considering whether a stay is warranted this Court should consider the following six factors: "1) the extent to which the issues in the criminal case overlap with those presented in the civil case; 2) the status of the case, including whether the defendants have been indicted; 3) the private interests of the plaintiffs in proceeding expeditiously weighed against the prejudice to plaintiffs caused by the delay; 4) the private interests of and burden on the defendants; 5) the interests of the courts; and 6) the public interest." *Louis Vuitton Malletier S.A. v. LY USA, Inc.*, 676 F. 3d 83, 99 (2d Cir. 2012) (*citing to Trustees of Plumbers & Pipefitters Nat'l Pension Fund v. Transworld Mechanical, Inc.*, 886 F.Supp. 1134, 1138 (S.D.N.Y. 1995) (ordering stay of civil proceedings)); *Square 1 Bank v. Lo*, No. 12-CV-05595-JSC, 2014 WL 7206874, at *5 (N.D. Cal. Dec. 17, 2014) (granting stay pending Defendant's sentencing); *Volmar Distributors, Inc. v. New York Post Co.*, 152 F.R.D. 36, 39 (S.D.N.Y. 1993) (granting stay); *Walsh Sec., Inc. v. Cristo Prop. Mgmt., Ltd.*, 7 F. Supp. 2d 523 (D.N.J. 1998) (stay warranted by similarity of issues in civil and criminal proceedings, serious Fifth Amendment concerns about self-incrimination if civil trial continued, absence of prejudice to mortgagee from delay, burden on defendants without stay, and public interest in favor of stay); *Colombo v. Bd. of Educ. for the Clifton Sch. Dist.*, 2011 WL 5416058, at *1 (D.N.J. Nov. 4, 2011) (stay "pending the resolution of the criminal charges" granted); *S.E.C. v. Nicholas*, 569 F. Supp. 2d 1065 (C.D. Cal. 2008) (complete stay of civil enforcement action by Securities and Exchange Commission in favor of parallel criminal actions was warranted as being in best interest of justice; criminal case was of primary importance to public, defendants and the court, discovery in civil action would almost certainly cause delay in criminal action, specter of parties and witnesses likely to invoke their Fifth

Amendment rights would render civil discovery largely one-sided, and civil and criminal cases were inextricably intertwined and could not reasonably proceed independent of each other).

Florida courts have similarly followed national precedent allowing the defendants to stay civil proceedings when their Fifth Amendment privilege against self-incrimination is implicated: *Klein v. Royale Grp., Ltd.*, 524 So. 2d 1061, 1062 (Fla. Dist. Ct. App. 1988) (affirming eight month stay of civil proceedings based on defendants' assertion of their Fifth Amendment rights); *McCreery v. Fernandez*, 882 So. 2d 498, 498 (Fla. Dist. Ct. App. 2004) (denial of "motion for continuance of the trial in the civil case … pending felony charges [which] will require [defendant] to invoke his Fifth Amendment privilege against self-incrimination" "may well have been a departure from the essential requirements of law."); *Kanji v. Valli*, 621 So. 2d 750, 751 (Fla. Dist. Ct. App. 1993) (Defendant "sought, and received, two orders abating and staying the proceedings pending the outcome of potential criminal charges based on the same acts giving rise to the civil litigation," third applications denied based on defendant's response to "requests for admissions," requiring "question-by-question objection detailing the Fifth Amendment objection in regard to each challenged question."). As further set forth herein, application of the six factors warrants a stay of the instant case pending the outcome of the *Doe* Case.

1. <u>The issues in the potential criminal and civil cases overlap.</u>

Overlap between the issues in parallel civil and criminal proceedings is the most important factor in deciding whether to stay civil proceedings. *Walsh*, 7 F. Supp. 2d at 527 (*citing and quoting* Milton Pollack, Parallel Civil and Criminal Proceedings, 129 F.R.D. 201, 203 (1989)). "[P]erfect symmetry" between criminal and civil proceedings is not, however, required to stay a civil case pending the resolution of a criminal case. *See Peterson v. Matlock*, 2011 WL 5416571, *4 (D.N.J. Nov. 7, 2011) (granting stay despite lack of complete overlap in issues). Rather, greater overlap between the issues strengthens the case for a stay because greater overlap increases the risk of self-incrimination. *Trustees*, 886 F. Supp. at 1138. Here, overlap between the issues in this case and the criminal case is substantial and the risks to Mr. Epstein

are significant if the case is not stayed. If the petitioners in the *Doe* Case undo Mr. Epstein's NPA, he is at risk of being criminally prosecuted for allegations of: (1) violations of conspiracy to violate 18 U.S.C. §2422(b); (2) violations of conspiracy to violate 18 U.S.C. §2423(b); (3) violations of 18 U.S.C. §§2422(b); (4) violations of 2423(b); and (5) violations of 1591(a)(1), stemming from conduct alleged to have occurred over the span of many years. Additionally, Mr. Epstein would also be at risk of potential prosecution for allegations of money laundering and other related offenses that were also encompassed by the United States Attorney's Office investigation. Indeed, in the *Doe* case Mr. Edwards alleged that Mr. Epstein "repeatedly sexually assaulted more than forty (40) young girls on numerous occasions," and that Southern District of Florida prosecutors had prepared a draft indictment of Mr. Epstein, which is strongly indicative of the charges Mr. Epstein may face if Mr. Edwards successfully rescinds the NPA. *See* Plaintiffs'' Statement of Undisputed Facts, *Doe v. United States*, No. 08-cv-80736-K.AM, Doc. 291-15, at 1-2, 5, and 11.

In the instant case, Mr. Edwards has marked as witnesses not any witnesses to establish a malicious prosecution claim, but rather witnesses such as Alexandra Hall, who was a central witness in the Government's criminal investigation of Mr. Epstein, one of the two Jane Does from *Doe v United States,* as well as Ms. Giuffre, aka Virginia Roberts, who was the litigant in *Giuffre v Maxwell* where Mr. Epstein's Fifth Amendment assertion as a witness was upheld, *see* Fifth Amended and Supplemental Witness List of Defendant/Counter-Plaintiff Bradley J Edwards. By identifying just these three witnesses – each a person who will clearly claim, based on their prior testimony and on their allegations in the *Doe* Case itself, that Mr. Epstein violated federal criminal statutes in his relationship with them – Mr. Edwards, himself, is asserting into this litigation the overlap between this case and the criminal case, showing that the overlap weighs in favor of a stay. Mr. Edwards has also identified a large number of exhibits that relate to the underlying criminal investigation of Mr. Epstein. These exhibits and testimony regarding the allegations that Mr. Epstein engaged in criminal conduct, including those which are squarely within the core of the NPA protections, are the subject of Mr. Epstein's Omnibus Motion in

Limine, filed on September 25, 2017. Absent this Honorable Court granting Epstein's Omnibus Motion in *Limine* in all respects, there is a striking and encompassing overlap of issues that strongly favors the requested stay. Further, Mr. Epstein's potential criminal exposure for money laundering charges at the threat of Mr. Edwards impairs his ability to respond to questions relevant to Mr. Edwards' request for punitive damages, including questions about finances, net worth, financial, and monetary transactions, *see infra* at 14-15.

Support for a stay of civil proceedings is strongest after a criminal indictment has been handed down. *Walsh*, 7 F. Supp. 2d at 527. It is at this point that the possible harm of self-incrimination is greatest. However, lack of pending criminal charges does not extinguish the risk of self-incrimination, especially when the potential for criminal charges is "warming" up. *Afro-Lecon, Inc.*, 820 F. 2d at 1204; *see also Brock*, 109 F.R.D. 116; *Kashi*, 790 F.2d 1050. As detailed above, Mr. Edwards and his clients have been working towards Mr. Epstein's criminal prosecution for nearly a decade. It is solely a result of their efforts that Mr. Epstein is now at significant risk of losing his NPA and finding himself facing further criminal prosecution. The potential of a further criminal prosecution of Mr. Epstein is real, not speculative, *See Doe* Case, Dkt 189; *Doe,* 950 F. Supp. 2d 1262, and thus this factor should weigh heavily in his favor. Further, neither the Government nor the public are prejudiced by the stay (as ordinarily they would be if a criminal prosecution is delayed despite speedy trial interests that the Government protects and that are designed to serve the public, *see* 18 U.S.C. § 3161 *et seq*.). Here, the Government opposes any invalidation of the NPA in the *Doe v United States* proceedings and has no interest on behalf of itself or the public in speedy civil litigation.

2. The Plaintiff's interest in proceeding expeditiously is outweighed by the risk of harm to Mr. Epstein.

The third factor considers a plaintiff's interest in proceeding expeditiously against the prejudice caused by the delay. A plaintiff must come forward with more than speculative assertions of prejudice or claims of spoliation due to the requested delay of their monetary litigation to avoid a stay. *See Government Employees Ins. Co. v. Zuberi*, 2015 WL 5823025, *7 (D.N.J. Oct. 1, 2015) (declining to infer that defendants would destroy evidence or dissipate

assets). Neither the hypothetical risk of loss of evidence due to the passage of time nor any other argument to advance the civil proceeding at a time when Mr. Epstein cannot fully defend himself are sufficient justifications to outweigh Mr. Epstein's interests in protecting his constitutional rights and obtaining a stay. *Id.* The prejudice to plaintiff caused by a stay of this case will be minimal and is a direct result of the plaintiff's own actions; Edwards's attempts to rescind the NPA. Clearly, Mr. Edwards' prosecutorial goals and Mr. Epstein's well-founded fear of the possibility of future allegations in criminal prosecutions are the reason for a need to stay these proceedings. ***Mr. Edwards should not be allowed to attack, through the CVRA litigation that he himself delayed for years to pursue monetary damages for his individual clients, see Doe Case, Dkt. 189 at 5; Doe, 950 F. Supp. 2d at 1265–66, and now argue that a stay would cause an undue delay in litigating his own claims.*** The plaintiff seeks money damages for acts that have already occurred. Plaintiff's monetary interests are fully protected by the ability to recover pre-judgment interest, *Walsh*, 7 F. Supp. 2d at 528, and Mr. Edwards faces no risk of Mr. Epstein avoiding any unfavorable judgment. *See Government Employees Ins. Co.*, 2015 WL 582302 at *7; *c.f. also Citibank, N.A. v. Hakim*, 1993 WL 481335, at *2 (S.D.N.Y. 1993)). Mr. Edwards' damage claims would suffer no prejudice due to a delay given that he enjoys a successful life as a lawyer but, more importantly, because he is the architect of the current tension between the pending civil litigation he has brought and Mr. Epstein's principled Fifth Amendment rights which are at their quintessence when he will be asked about the subject matter that is currently within the immunity provisions of the NPA.

3. The burdens on Mr. Epstein warrant a stay.

Here, the burdens on Mr. Epstein of litigating in a civil forum are significant. Notably, "the Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them: the Amendment does not preclude the inference where the privilege is claimed by a party to a civil cause." *Baxter v. Palmigiano*, 425 U.S. 308, 318-19 (1976). Mr. Epstein should not be compelled to choose between waiving his Fifth Amendment rights and defending himself in the civil lawsuit or

asserting the privilege and risking an adverse inference in a monetary civil case. Even were the plaintiff Edwards, through counsel, to agree (which they have not) that no adverse inference should arise from Mr. Epstein's assertion of his Fifth Amendment rights – a position contrary to his current position where he is fully intending to seek adverse inferences from Fifth Amendment assertions[4] – Mr. Epstein would nevertheless suffer the consequences of being unable to advance affirmative defenses to the civil allegations thus absent a stay his ability to defend himself will be deeply jeopardized. Currently pending before this Court are the parties' Motions for Summary Judgment and Mr. Edwards's Motion to Compel Mr. Epstein's responses to discovery requests. Mr. Edwards, through his counsel, has refused Mr. Epstein's offer to stipulate to his net worth as evidenced by portions of his tax returns. *See* Email September 2, 2017 Email from Jack Scarola, attached hereto as Exhibit 2. Instead, Mr. Edwards is attempting to force Mr. Epstein to stipulate to an uncorroborated, overinflated net worth figure or for Mr. Epstein to waive his Fifth Amendment rights and respond to discovery requests for additional net worth information. Likewise, Mr. Edwards is attempting to preclude Mr. Epstein from defending against the pending claims including asking this Court, as a result of Mr. Epstein's assertion of his Fifth Amendment rights, to strike his affidavit in support of his summary judgement request.[5] Given that the NPA protects against charges which would require, as an essential element, proof of monetary and financial transactions and resources, Mr. Epstein's

[4] Indeed, Mr. Edwards has been actively pursuing an adverse inference as a result of Mr. Epstein's assertion of his Fifth Amendment rights:

> MR. SCAROLA: … He faces potential criminal liability. We are not trying to overrule the Fifth Amendment privilege. But I want to overrule all the other privileges, I want them eliminated, so that when we are before a jury the single privilege that has been asserted is a Fifth Amendment privilege, and, as I have explained to the Court before, ***it's our position that that will enable us to draw adverse inferences from those assertions and argue those adverse inferences before the jury.***

Epstein v. Rothstein, Edwards, et al., No. 50-2009-CA-040800-AG, 04/22/2013 Tr., at 10, ¶¶ 14-25. (emphasis added).

[5] At the September 6, 2017 status conference, Mr. Edwards's attorney asked this Court to strike Mr. Epstein's affidavit and renewed his requests to compel Mr. Epstein's answer to interrogatories and document production requests. *Epstein v. Rothstein, Edwards, et al.*, No. 50-2009-CA-040800-AG, 09/06/17 Tr., at 13-15.

responses to questions concerning his finances could lead to potential criminal exposure – exposure due solely to Mr. Edwards's efforts to rescind the NPA. *See Parallel Proceedings*, 129 F.R.D. at 205-06 (noting that courts in civil matters can exclude evidence withheld by party on Fifth Amendment grounds). Temporarily staying the proceedings in this case avoids placing Mr. Epstein in the untenable position of either waiving his rights and exposing himself to criminal liability or foregoing a full defense to the instant allegations.

4. The interests of the court support a stay.

The convenience of the Court in the management of its cases and efficient use of judicial resources support a limited stay pending the resolution of the *Doe* Case. "[E]xpeditious resolution of cases is, as a general matter, preferable to delay of the Court's docket." *S.E.C. v. Alexander*, No. 10-CV-04535-LHK, 2010 WL 5388000, at *5 (N.D. Cal. Dec. 22, 2010). However, a number of courts have concluded that staying a related civil proceeding *in its early stages "may prove more efficient in the long run" in part because the "stay will allow civil discovery to proceed unobstructed by concerns regarding self-incrimination." Id. (internal quotation marks and citation omitted).* Mr. Edwards has identified Mr. Epstein as a witness he intends to depose and call, *see* Fifth Amended and Supplemental Witness List of Counter-Plaintiff Edwards at 1. Assuming Mr. Epstein were to assert the Fifth Amendment, there would be complex litigation over when an answer would warrant an adverse inference. Assuming he answered some, but not all questions, inevitable litigation will occur regarding waiver and the legitimacy of upholding his Fifth Amendment while not striking the answers that will likely require the parties to bring question-by-question challenges to the Court's attention for resolution. The Court would thus be forced to decide "a constant stream of privilege issues." *Walsh*, 7 F. Supp. 2d at 528-29. Staying the proceedings until the resolution of the *Doe* Case will potentially avoid many of these objections and allow Mr. Epstein to consider his privilege objections on a subject-by-subject basis.

5. The public interest supports a stay.

The final factor balances the public's interest, if any, in achieving expeditious resolution of the civil proceeding versus the harm to defendants if a stay is denied. Here, there is no compelling public interest that justifies denial of a stay. This case is not brought by a government agency or in a *parens patriae* capacity. *See United States v. Certain Real Property*, 751 F. Supp. 1060, 1062 (E.D.N.Y. 1989) (distinguishing between enforcement action brought to enforce consumer protection or other statutes and less impactful civil matters). Likewise, this is a not a securities matter or drug labeling case, where the operation of a market or labeling of a drug is at issue. *Cf. Parallel Proceedings*, 129 F.R.D. at 205. This is a private civil action and the plaintiff seeks only money damages. There is no ongoing injury that plaintiff seeks to cure on behalf of the public. Pursuing monetary damage claims are not in the public interest. Furthermore, the public has an interest in "ensuring that the criminal process is not subverted" by ongoing civil cases. *Douglas v. United States,* 2006 WL 2038375, at * 6 (N.D. Cal. July 17, 2006) (internal citation omitted). Indeed, courts have reasoned that where there are parallel criminal and civil proceedings, "the criminal case is of primary importance to the public," whereas the civil case, which will result only in monetary damages, "is not of an equally pressing nature." *Alexander,* 2010 WL 5388000 at *6 (citations omitted). Thus, this factor, too, supports Mr. Epstein's request for a stay of civil proceedings until the *Doe* Case is fully resolved.

IV. CONCLUSION

Based on all of the foregoing, Mr. Epstein hereby respectfully requests this Honorable Court to temporarily stay the above-captioned proceedings pending the outcome of the *Doe* Case.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via E-Serve to all Counsel on the attached list, this 4th of October, 2017.

/s/ Jack Goldberger, Esq.
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