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18 UNITED STATES DISTRICT COURT  
 19 CENTRAL DISTRICT OF CALIFORNIA

20 ASHLEY JUDD, an individual,

21 Plaintiff,

22 v.

23 HARVEY WEINSTEIN, an individual,

24 Defendant.

25 CASE NO. 18-cv-05724-PSG (FFMx)

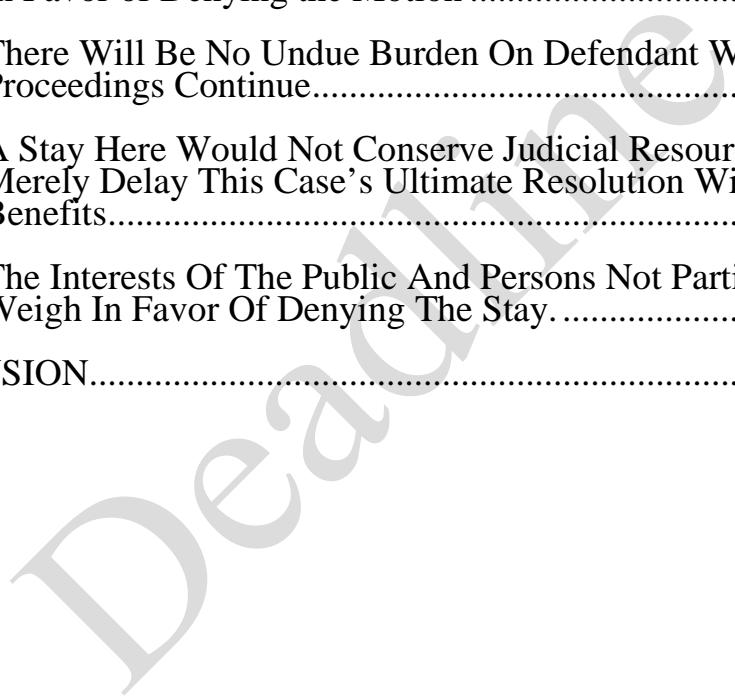
26 **PLAINTIFF'S OPPOSITION TO  
 27 DEFENDANT'S MOTION TO STAY**

28 **Hearing:**

Date: March 4, 2019  
 Time: 1:30 P.M.  
 Place: 350 West 1st Street,  
 Courtroom 6A, 6th Floor  
 Los Angeles, CA 90012  
 Judge: Hon. Philip S. Gutierrez

**TABLE OF CONTENTS**

	<u>Page</u>
1	
2 I. INTRODUCTION.....	1
3 II. BACKGROUND.....	3
4     A. The Civil Case.....	3
5     B. The New York Criminal Case and Other Criminal Investigations.....	5
6 III. ARGUMENT.....	5
7     A. Weinstein’s Fifth Amendment Rights Are Not Implicated Because	
8         Ms. Judd’s Case Involves Vastly Different Alleged Conduct From	
9         His Criminal Case .....	7
10     B. Ms. Judd’s Interest In Litigating This Case Expeditiously Weighs	
11         In Favor of Denying the Motion .....	11
12     C. There Will Be No Undue Burden On Defendant Weinstein If These	
13         Proceedings Continue.....	12
14     D. A Stay Here Would Not Conserve Judicial Resources, But Rather	
15         Merely Delay This Case’s Ultimate Resolution Without Any	
16         Benefits.....	14
17     E. The Interests Of The Public And Persons Not Parties To This Case	
18         Weigh In Favor Of Denying The Stay.....	15
19 IV. CONCLUSION.....	17
20	
21	
22	
23	
24	
25	
26	
27	
28	



**TABLE OF AUTHORITIES**

Page(s)

**Cases**

1

2

3

4 *AIG Prop. Cas. Co. v. Cosby,*  
2016 WL 6662733 (C.D. Cal. July 15, 2016) ..... 7, 14

5 *Am. Express Bus. Fin. Corp. v. RW Prof'l Leasing Servs. Corp.,*  
225 F. Supp. 2d 263 (E.D.N.Y. 2002) ..... 13

6

7 *Baxter v. Palmigiano,*  
425 U.S. 308 (1976)..... 6

8

9 *Blue Cross & Blue Shield of Ala. v. Unity Outpatient Surgery Ctr., Inc.,*  
490 F.3d 718 (9th Cir. 2007) ..... 12

10

11 *Canosa v. Ziff, et al.,*  
S.D.N.Y. Case No. 1:18-cv-04115-PAE (filed Oct. 27, 2018) ..... 1, 8

12

13 *Clinton v. Jones,*  
520 U.S. 681 (1997)..... 6

14

15 *Continental Ins. v. Cota,*  
2008 WL 4298372 (N.D. Cal. Sept. 19, 2008)..... 9

16

17 *Crawford & Sons, Ltd. v. Besser,*  
298 F. Supp. 2d 317 (E.D.N.Y. 2004)..... 9, 16

18

19 *Doe v. City of San Diego,*  
2012 WL 6115663 (S.D. Cal. Dec. 10, 2012) ..... 6, 11, 12, 14, 17

20

21 *ESG Capital Partners LP v. Stratos,*  
22 F. Supp. 3d 1042 (C.D. Cal. 2014) ..... 5, 10, 14

22

23 *Fed. Sav. & Loan Ins. Corp. v. Molinaro,*  
889 F.2d 899 (9th Cir. 1989) ..... 14

24

25 *Green v. Cosby,*  
177 F. Supp. 3d 673 (D. Mass. 2016)..... 9, 16

26

27 *Huett v. Weinstein Co., et al.,*  
C.D. Cal. Case No. 2:18-cv-06012-SVW (MRW) (filed Nov. 28, 2018)..... 1, 8

28 *Huth v. Cosby,*  
BC 565560 (Cal. Sup. Ct. Mar. 30, 2016)..... 9

**TABLE OF AUTHORITIES**  
(continued)

	<u>Page(s)</u>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

<i>Hymes v. Bliss</i> , 2018 WL 3240991 (N.D. Cal. July 3, 2018) .....	10, 15
<i>Hymes v. Bliss</i> , 2018 WL 6079443 (N.D. Cal. Nov. 21, 2018) .....	10
<i>In re Ivan F. Boesky Sec. Litig.</i> , 128 F.R.D. 47 (S.D.N.Y. 1989) .....	16
<i>Jones v. Conte</i> , 2005 WL 1287017 (N.D. Cal. Apr. 19, 2015) .....	9
<i>Keating v. Office of Thrift Supervision</i> , 45 F.3d 322 (9th Cir. 1995) .....	2, 5, 6, 10, 16
<i>Louis Vuitton Malletier S.A. v. LY USA, Inc.</i> , 676 F.3d 83 (2d Cir. 2012) .....	8, 9
<i>Maloney v. Gordon</i> , 328 F. Supp. 2d 508 (D. Del. 2004) .....	15
<i>McCormick v. Rexroth</i> , 2010 WL 934242 (N.D. Cal. Mar. 15, 2010) .....	9, 11
<i>Mendez v. City of Gardena</i> , 2014 WL 12802931 (C.D. Cal. May 30, 2014) .....	14
<i>Nken v. Holder</i> , 556 U.S. 418 (2009) .....	5
<i>In re Packaged Seafood Products Antitrust Litig.</i> , 2018 WL 5792694 (S.D. Cal. Nov. 5, 2018) .....	15
<i>Raisman v. United States Olympic Comm.</i> , 2019 WL 95928 (N.D. Cal. Jan. 3, 2019) .....	16, 17
<i>Roberts v. Brown</i> , 2014 WL 3503094 (C.D. Cal. July 14, 2014) .....	7, 10
<i>S.E.C. v. Alexander</i> , 2010 WL 5388000 (N.D. Cal. Dec. 22, 2010) .....	11

**TABLE OF AUTHORITIES**  
(continued)

Page(s)

1

2

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4     2015 WL 9591482 (C.D. Cal. Dec. 29, 2015)..... 10, 14, 15

5 *Thissel v. Murphy,*

6     2017 WL 6945402 (N.D. Cal. Apr. 4, 2017)..... 7

7 *Trs. of the Plumbers & Pipefitters Nat’l Pension Fund v. Transworld*

8 *Mech.,*

9     886 F. Supp. 1134 (S.D.N.Y. 1995) ..... 9

10 *United Techs. Corp., Hamilton Standard Div. v. Dean,*

11     906 F. Supp. 27 (D. Mass. 1995)..... 13

12 *Volmar Distributors, Inc. v. New York Post Co.,*

13     152 F.R.D. 36 (S.D.N.Y. 1993)..... 13

**Statutes**

14 Cal. Evid. Code § 913 ..... 2

15 Penal Law § 130.5(1)..... 5

16 Penal Law § 130.15(2)..... 5

17 Penal Law §130.25(1)..... 5

18 Penal Law § 130.35(1)..... 5

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## I. INTRODUCTION

1  
2 Defendant Weinstein seeks to stay Ashley Judd’s lawsuit against him using a  
3 cookie-cutter brief that is almost identical to stay motions he previously filed in at least  
4 two other cases. This wholesale cut-and-paste seems to originate from a filing in a  
5 case where the plaintiff alleges that Weinstein sexually assaulted her over the course of  
6 five years. *Canosa v. Ziff, et al.*, S.D.N.Y. Case No. 1:18-cv-04115-PAE, Dkt. 126  
7 (filed Oct. 27, 2018). He filed the virtually identical brief in a separate lawsuit in this  
8 District where the plaintiff also alleges that Weinstein sexually assaulted her. *Huett v.*  
9 *Weinstein Co., et al.*, C.D. Cal. Case No. 2:18-cv-06012-SVW (MRW), Dkt. 41-1  
10 (filed Nov. 28, 2018). That might explain why Weinstein’s motion here incorrectly  
11 claims that Ms. Judd’s case “involves the same conduct for which Weinstein was  
12 indicted.” Mot. at 3. The entire premise of Weinstein’s motion—that this case and his  
13 criminal case “involve the same subject matter, *i.e.*, allegations of rape and sexual  
14 assault” (*id.* at 7)—is wrong.

15 Weinstein is charged in New York with rape and criminal sexual acts.  
16 By contrast, Ms. Judd alleges that Weinstein falsely and maliciously claimed that she  
17 was a “nightmare to work with” and that his film company had a “bad experience”  
18 working with her. Ms. Judd further alleges that these malicious and false statements  
19 caused her to lose out on a role in *The Lord of the Rings*. Weinstein’s malice arose  
20 from Ms. Judd’s rejection of his advances, but that does not make the facts or law at  
21 issue here similar to those in his rape prosecution. As Ms. Judd has alleged from the  
22 beginning of her lawsuit more than nine months ago, “this case is about business, and  
23 the central harm is economic.” Dkt. 26 at 3. It is Weinstein’s burden to justify what  
24 courts have called the “extraordinary remedy” of a stay. He has failed to do so.

25 Even if Ms. Judd might pose questions to Weinstein about his blacklisting of  
26 other actors that he would otherwise have to answer—despite his repeated and  
27 longstanding efforts to avoid them—he can invoke his Fifth Amendment right against  
28 self-incrimination on a question-by-question basis. The Ninth Circuit has expressly

1 held that it is “permissible to conduct a civil proceeding at the same time as a related  
2 criminal proceeding, even if that necessitates invocation of the Fifth Amendment  
3 privilege.” *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 325-26 (9th Cir.  
4 1995). To the extent that subjects him to any adverse inference, the Ninth Circuit ruled  
5 that to be permissible in a parallel civil proceeding as well. *Id.* In California state  
6 court, where Ms. Judd originally filed her suit, no adverse inference is permitted.  
7 Cal. Evid. Code § 913. *Weinstein* chose to remove this case to federal court and  
8 thereby subject himself to a potential adverse inference resulting from his refusal to  
9 answer questions.

10 The “particular circumstances” that help guide the inquiry of whether to stay  
11 civil litigation in the face of a parallel criminal proceeding reveal many other choices  
12 Weinstein has made that counsel against a stay. Weinstein’s former counsel stood on  
13 the courthouse steps in New York after his arraignment and proclaimed that  
14 “Mr. Weinstein did not invent the casting couch in Hollywood.” Weinstein himself,  
15 again after he was indicted, contacted a columnist with a purported “world exclusive”  
16 involving two other accusers and was quoted in a published article as saying,  
17 “Yes, I did offer [women] acting jobs in exchange for sex, but so did and still does  
18 everyone.”<sup>1</sup> He apparently did not see any overlap between his criminal allegations  
19 and what his criminal counsel called the “bad behavior” that is “not on trial” in his  
20 criminal prosecution.

21 Any stay of this case will allow Weinstein to continue the practices he has  
22 reportedly used to great effect over the past several decades. That includes formal  
23 litigation practice—as recently as December 2018, Weinstein sought permission from  
24 a Delaware bankruptcy court to use emails from The Weinstein Company “in all civil  
25 matters.” It also includes more covert behavior. Whether through use of non-

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26  
27 <sup>1</sup> The section of the article was later removed because the columnist said he  
28 “may have misrepresented Harvey’s conversation with me.” Declaration of  
Michael Dore (“Dore Decl.”) Exh. A (emphasis added).

1 disclosure agreements or former Mossad officers, Weinstein reportedly has gone to  
2 great lengths to suppress allegations against him. *See* Dore Decl. Exh. F. And he has  
3 continued even post-indictment to try to smear his accusers, whether through purported  
4 “world exclusives” or through photos of himself smiling with accusers that he has  
5 stockpiled and now seeks to leverage in an extra-judicial press offensive. Just two  
6 months ago, a Weinstein proxy apparently peddled another such photograph to the  
7 Daily Mail, which published it and quoted a “source” saying Weinstein is “hopeful  
8 this photo will help clear his name.” Weinstein’s representatives, the apparent  
9 “source,” cited other purported evidence that Weinstein has, but that he refuses to  
10 produce in discovery.<sup>2</sup> In short, Weinstein is “litigating” this case whether or not there  
11 is a court stay.

12 Ms. Judd will be sensitive to the scheduling of Weinstein’s criminal trial.  
13 But there is no reason why he cannot testify under oath about, among other things,  
14 what he said to filmmakers Peter Jackson and Fran Walsh about Ms. Judd. Weinstein  
15 makes no effort to show how even questions about Weinstein conditioning work on  
16 sex would result in evidence that could be admitted in his criminal trial for rape and  
17 criminal sexual acts. The fact is, they would not. Even if that were a possibility,  
18 Weinstein could assert his Fifth Amendment privilege over questions related to that  
19 discrete issue in the case. Weinstein has given no legitimate reason to freeze the case  
20 indefinitely. Accordingly, his motion to stay should be denied.

## 21 II. BACKGROUND

### 22 A. The Civil Case

23 Plaintiff Ashley Judd first filed her Complaint against Harvey Weinstein on  
24 April 30, 2018 in the California Superior Court for the County of Los Angeles.  
25 The Complaint alleged claims against Weinstein for (1) defamation at common law  
26 and pursuant to California Civil Code section 46, (2) sexual harassment in professional  
27

28 <sup>2</sup> *See* Dore Decl. Exhs. C & D.



1 relationships pursuant to California Civil Code §§ 51.9 and 52, (3) intentional  
2 interference with prospective economic advantage, and (4) unfair competition under  
3 California Business and Professions Code §§ 17200 *et seq.* On June 28, 2018,  
4 Weinstein removed this action pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 to the  
5 United States District Court for the Central District of California. Dkt. 1.

6 On July 17, 2018, Defendant Weinstein filed a Motion to Dismiss, contesting all  
7 four of Ms. Judd’s causes of action. Dkt. 11-1. After a hearing, the Court denied  
8 Weinstein’s motion as to three of the four causes of action. *See id.* The Court granted  
9 Weinstein’s motion as to the claim of sexual harassment in professional relationships  
10 under California Civil Code § 51.9.

11 On October 19, 2018, Ms. Judd filed her First Amended Complaint (“FAC”).  
12 Pursuant to this Court’s order granting Ms. Judd leave to amend, the FAC included  
13 additional allegations relevant to Ms. Judd’s claim of sexual harassment in  
14 professional relationships under California Civil Code § 51.9. *See, e.g.,* FAC ¶¶ 24,  
15 25, 29, 64. Weinstein again moved to dismiss Ms. Judd’s second cause of action for  
16 sexual harassment on November 12, 2018. *See* Mot. at 1. This Court granted that  
17 Motion and dismissed the § 51.9 claim on January 9, 2019. Dkt. 51.

18 To this point, Weinstein has refused to respond to discovery. After Ms. Judd  
19 propounded her first set of written discovery requests in October 2018, Weinstein  
20 sought a stay of discovery until he filed his answer to Ms. Judd’s first amended  
21 complaint. *See* Dkt. 41 (Order Denying Weinstein Motion for Protective Order);  
22 Dkt. 35-1 (Joint Stipulation). Magistrate Judge Frederick F. Mumm, assigned to  
23 preside over discovery matters in this case, denied Weinstein’s motion on December  
24 13, 2018, ruling that “defendant has not made any showing justifying any delay in  
25 these proceedings.” Dkt. 41 at 1.

1 Almost one month later, on January 7, 2019, Weinstein filed the instant motion  
2 to stay Ms. Judd’s case, more than seven months after he was indicted in New York for  
3 rape and a “criminal sexual act.”<sup>3</sup>

4 **B. The New York Criminal Case and Other Criminal Investigations**

5 Weinstein was arrested in New York on May 25, 2018 and formally indicted  
6 five days later. On July 2, 2018, a superseding indictment was filed by the New York  
7 District Attorney’s Office charging Defendant with additional crimes.<sup>4</sup> Those charges  
8 are not based on any of the conduct Weinstein engaged in against Ms. Judd, and she is  
9 not the complaining witness. On January 17, 2019, lead counsel in Weinstein’s  
10 criminal proceedings filed a notice of withdrawal. RJN, Ex. A. Weinstein claims he is  
11 also currently under criminal investigation by federal and California officials. Mot. at  
12 1. Ms. Judd is not the complaining witness in any of those purported investigations  
13 either.

14 **III. ARGUMENT**

15 A stay of civil proceedings is an “extraordinary remedy,” *ESG Capital Partners*  
16 *LP v. Stratos*, 22 F. Supp. 3d 1042, 1045 (C.D. Cal. 2014), and “[t]he party requesting  
17 a stay bears the burden of showing that the circumstances justify an exercise of that  
18 discretion,” *Nken v. Holder*, 556 U.S. 418, 433-34 (2009).

19 The mere prospect that a Defendant may invoke the Fifth Amendment is not  
20 nearly enough to justify its imposition. *Keating v. Office of Thrift Supervision*, 45 F.3d  
21 322, 325-26 (9th Cir. 1995) (holding that it is “permissible to conduct a civil  
22 proceeding at the same time as a related criminal proceeding”). The Constitution thus

23  
24 <sup>3</sup> Specifically, Criminal Sexual Act in the First Degree, in violation of Penal Law §  
25 130.50(1), Rape in the First Degree, in violation of Penal Law § 130.35(1), and  
26 Rape in the Third Degree, in violation of Penal Law §130.25(1). Brafman Decl.  
27 ¶ 4.

28 <sup>4</sup> Specifically, the crimes of Predatory Sexual Assault (Penal Law § 130.15(2))  
(Counts One and Three), Criminal Sexual Act in the First Degree (Penal Law §  
130.5(1)) (Counts Two and Six), Rape in the First Degree (Penal Law § 130.35(1))  
(Count Four), and Rape in the Third Degree (Penal Law § 130.25(1)) (Count Five).  
Brafman Decl. ¶ 4.

1 allows this Court “to conduct a civil proceeding at the same time as a related criminal  
2 proceeding, even if that necessitates invocation of the Fifth Amendment privilege.” *Id.*  
3 at 325-26. Indeed, not only are parallel proceedings permissible, “but it is even  
4 permissible for the trier of fact to draw adverse inferences from the invocation of the  
5 Fifth Amendment in a civil proceeding.” *Id.* (citing *Baxter v. Palmigiano*, 425 U.S.  
6 308, 318 (1976)). Ultimately, simultaneous civil and criminal proceedings are  
7 unobjectionable absent “*substantial prejudice* to the rights of the parties.” *Keating*, 45  
8 F.3d at 324 (emphasis added).

9 Courts assess six factors in determining whether the “extraordinary remedy” of a  
10 stay of all proceedings should be granted, due to pending criminal proceedings:

11 [(1)] the extent to which the defendant's fifth amendment rights  
12 are implicated; ([2]) the interest of the plaintiffs in proceeding  
13 expeditiously with this litigation or any particular aspect of it,  
14 and the potential prejudice to plaintiffs of a delay; ([3]) the  
15 burden which any particular aspect of the proceedings may  
16 impose on defendants; ([4]) the convenience of the court in the  
17 management of its cases, and the efficient use of judicial  
18 resources; ([5]) the interests of persons not parties to the civil  
19 litigation; and ([6]) the interest of the public in the pending civil  
20 and criminal litigation.

21 *Keating*, 45 F.3d at 325. None of these factors favors a stay, and Defendant—who  
22 bears the burden “of establishing its need,” *Doe v. City of San Diego*, 2012 WL  
23 6115663, at \*1 (S.D. Cal. Dec. 10, 2012) (citing *Clinton v. Jones*, 520 U.S. 681, 708  
24 (1997))—fails to show otherwise.

1    **A.    Weinstein’s Fifth Amendment Rights Are Not Implicated Because**  
 2           **Ms. Judd’s Case Involves Vastly Different Alleged Conduct From His**  
 3           **Criminal Case**

4           Weinstein complains that he does not want to have to “assert[] his right against  
 5 self-incrimination, thereby inviting prejudice in the civil case ....” Mot. at 7; *see also*  
 6 Mot. at 4, 10. But that choice does not justify granting a motion to stay; in fact, it  
 7 demonstrates that parallel (or, more accurately here, simultaneous) criminal and civil  
 8 proceedings are contemplated under the law.

9           Parallel civil and criminal proceedings where a defendant may have to exercise  
 10 his Fifth Amendment right against self-incrimination does not—without more—  
 11 “compel a stay pending the outcome of a related criminal case.” *Roberts v. Brown*,  
 12 2014 WL 3503094, at \*2 (C.D. Cal. July 14, 2014); *accord Keating*, 45 F.3d at 326.  
 13 Having to “choose between invoking the[] Fifth Amendment. . . , or waiving the[]  
 14 privilege[] in pursuit of civil relief but to the detriment of the[] criminal defense,” is  
 15 “precisely the sort of dilemma Keating deemed ‘permissible.’” *Thissel v. Murphy*,  
 16 2017 WL 6945402, at \*2 (N.D. Cal. Apr. 4, 2017). As courts in this circuit have long  
 17 held, defendants “must articulate something more than the existence of this  
 18 fundamental dilemma in order to show substantial prejudice entitling them to a stay.”  
 19 *Id.*

20           To establish that his Fifth Amendment rights will be prejudiced, Weinstein must  
 21 show a ***significant factual overlap*** between the cases. *E.g.*, *AIG Prop. Cas. Co. v.*  
 22 *Cosby*, 2016 WL 6662733, at \*8 (C.D. Cal. July 15, 2016) (observing that courts find  
 23 “a defendant’s Fifth Amendment rights implicated where there is significant factual  
 24 overlap” and denying a stay pending resolution of the criminal case which  
 25 “involve[ed] a completely different set of facts). Weinstein has not met this burden.

26           He claims without attaching the indictment or citing Ms. Judd’s complaint that  
 27 “Plaintiff’s allegations of sexual misconduct parallel the allegations of sexual  
 28 misconduct in the New York County District Attorney’s Office ....” Mot. at 1.

1 Likewise, Weinstein contends without any support that “this matter involves the same  
2 conduct for which Weinstein was indicted” (Mot. at 3) and even that “the civil and  
3 criminal actions involve the same subject matter, *i.e.*, allegations of rape and sexual  
4 assault” (Mot. at 7). *See also* Mot. at 7 (stating that the allegations “here” and in the  
5 criminal action “involve the same subject matter”); *id.* (“Here, the Criminal Actions  
6 and the civil case ... all stem from the same underlying alleged conduct: sexual  
7 misconduct.”); Mot. at 9 (“Plaintiff’s allegations involve the same type of conduct at  
8 issue in the Criminal Actions”).

9 It appears that Weinstein has merely copied these arguments (and, indeed,  
10 almost his entire brief) from a motion to stay he filed in other cases that actually do  
11 involve allegations of sexual misconduct. *See Canosa v. Ziff, et al.*, S.D.N.Y. Case  
12 No. 1:18-cv-04115-PAE, Dkt. 126 (filed Oct. 27, 2018); *Huett v. Weinstein Co., et al.*,  
13 C.D. Cal. Case No. 2:18-cv-06012-SVW (MRW), Dkt. 41-1 (filed Nov. 28, 2018).  
14 Whatever the reason Weinstein claims without citation that Ms. Judd’s allegations  
15 mirror those in his criminal case, he is just plain wrong. Ms. Judd’s First Amended  
16 Complaint makes very clear that the core of this case is “the false and malicious  
17 statements [Weinstein] made regarding Ms. Judd’s professionalism as an actor to the  
18 creative team behind the blockbuster film trilogy *The Lord of the Rings* ... and several  
19 international hits that followed.” Dkt. 26 at 2. Of course Ms. Judd alleges that  
20 Weinstein threatened to and did professionally retaliate against Ms. Judd and other  
21 women who resisted his sexual advances. But that portion of the case is separate from  
22 any alleged sexual violence committed by Weinstein at issue in his criminal case, and  
23 it is a narrow portion of Ms. Judd’s case in any event. *See* FAC at 3 (“[T]his case is  
24 about business, and the central harm is economic.”).

25 Weinstein’s motion to stay does not just misstate what is at issue in Ms. Judd’s  
26 case. It also uses wholly inapposite out-of-district authorities to knock down the straw  
27 man of his own making. Weinstein relies on cases that address situations where civil  
28

1 and criminal cases were “essentially the same,”<sup>5</sup> sprang “from the same nucleus of  
 2 facts,”<sup>6</sup> involved the “same conduct,”<sup>7</sup> involved “the same subject matter,”<sup>8</sup> “both  
 3 involve sexual assaults,”<sup>9</sup> and had “unique factual similarities.”<sup>10</sup> The situation here is  
 4 vastly different. Cases addressing identical, or even substantially overlapping,  
 5 allegations in parallel civil and criminal proceedings simply do not apply. *See, e.g.,*  
 6 *Mot.* at 6 (citing *Jones v. Conte*, 2005 WL 1287017, at \*1 (N.D. Cal. Apr. 19, 2015),  
 7 where “[b]oth the civil and criminal cases arise from defendant’s alleged involvement  
 8 in the distribution of performance-enhancing drugs”); *Mot.* at 7 (citing *Crawford &*  
 9 *Sons, Ltd. v. Besser*, 298 F. Supp. 2d 317, 319 (E.D.N.Y. 2004), where both cases  
 10 arose from “the same underlying events”).

11 Notably, none of the cases Weinstein cites requires the extraordinary remedy he  
 12 requests here. For example, Weinstein repeatedly cites dicta in *Louis Vuitton Malletier*  
 13 *S.A. v. LY USA, Inc.*, 676 F.3d 83 (2d Cir. 2012) to argue that a stay is necessary to  
 14 protect him from making a difficult choice that may result in “manifestly unjust”  
 15 consequences. *See Mot.* at 4, 6, 7, 9. But what the Second Circuit actually held in

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16  
 17 <sup>5</sup> *McCormick v. Rexroth*, 2010 WL 934242, at \*2 (N.D. Cal. Mar. 15, 2010)  
 18 (involving civil and criminal cases arising from a single physical altercation  
 between plaintiff and defendant) (quoted in *Mot.* at 8).

19 <sup>6</sup> *Continental Ins. v. Cota*, 2008 WL 4298372, at \*2 (N.D. Cal. Sept. 19, 2008)  
 20 (involving civil and criminal cases involving a cargo ship’s collision with the  
 San Francisco Bay Bridge and the resulting oil spill) (quoted in *Mot.* at 8).

21 <sup>7</sup> *Trs. of the Plumbers & Pipefitters Nat’l Pension Fund v. Transworld Mech.*, 886 F.  
 22 Supp. 1134, 1139 (S.D.N.Y. 1995) (both cases involved alleged violations of the  
 same contract, a “collective bargaining agreement” between defendant-employers  
 23 and the union-plaintiffs, as well as the same specific alleged “fail[ure] to make  
 contributions to union pension funds and fail[ure] to pay union assessments”) (quoted in *Mot.* at 6).

24 <sup>8</sup> *Louis Vuitton Malletier S.A. v. LY USA, Inc.*, 676 F.3d 83, 101 (2d Cir. 2012)  
 25 (quoted in *Mot.* at 6).

26 <sup>9</sup> *Huth v. Cosby*, BC 565560 (Cal. Sup. Ct. Mar. 30, 2016) (involving criminal and  
 civil cases that “both involve sexual assaults”) (quoted in *Mot.* at 9).

27 <sup>10</sup> *Green v. Cosby*, 177 F. Supp. 3d 673, 680 (D. Mass. 2016) (involving criminal  
 28 charge for sexual assault and civil defamation claim related to statements about  
 “similar” sexual assaults) (quoted in *Mot.* at 9).

1 *Louis Vuitton* is that even where the defendant had been indicted, the criminal trial was  
2 imminent, parallel proceedings presented a risk “that any testimony . . . offered in the  
3 civil proceeding would be used against [defendant] in the course of the criminal  
4 prosecution,” and the civil case was not needed to protect the public’s interests—the  
5 district court was still well within its discretion to deny the stay. *Louis Vuitton*, 676  
6 F.3d at 101, 104. Indeed, the court observed: “the Constitution rarely, if ever, *requires*  
7 [a] stay.” *Id.* at 98 (emphasis in original); *see also ESG Capital Partners LP v.*  
8 *Stratos*, 22 F. Supp. 3d 1042, 1046 (C.D. Cal. 2014) (denying a stay even where  
9 defendant was indicted); *Sec. & Exch. Comm’n v. Braslau*, 2015 WL 9591482, at \*3  
10 (C.D. Cal. Dec. 29, 2015) (same); *Hymes v. Bliss*, 2018 WL 3240991, at \*3 (N.D. Cal.  
11 July 3, 2018) (denying a stay where the conduct at issue in the criminal cases did not  
12 involve plaintiff and plaintiff’s civil case concerned a different incident that occurred  
13 at a different time).

14 Cases involving limited or no overlapping allegations are far more relevant to  
15 the analysis here than what Weinstein offers. Those cases seemingly uniformly reject  
16 defendants’ efforts to stay the civil litigation. *See, e.g., Keating*, 45 F.3d at 325-26  
17 (upholding refusal to grant stay notwithstanding the “remaining overlap between the  
18 [administrative] and criminal proceedings.”); *Roberts v. Brown*, 2014 WL 3503094, at  
19 \*1 (C.D. Cal. July 14, 2014) (denying motion to stay where “the only overlap between  
20 this action and the criminal cases is the gang-activity allegations”). As the court  
21 recently held in *Hymes v. Bliss*, 2018 WL 6079443 (N.D. Cal. Nov. 21, 2018), because  
22 “the two cases do not implicate the same ‘nucleus of facts’” a stay was not warranted.  
23 *Id.* at \*3. There, it was not enough that the two cases involved similar allegations of a  
24 type of wrongdoing (excessive force) against a type of victim (prison inmates) by the  
25 same defendants (prison guards) to justify a stay. 2018 WL 6079443 at \*3. That the  
26 criminal and civil cases against Weinstein concern different allegations of a type of  
27 wrongdoing against different women, years apart, even more clearly shows that the  
28 defendant has not carried his burden.

1 At bottom, the *facts* underlying the allegations in the criminal and civil cases are  
 2 not sufficiently similar. That alone is enough to warrant denying the stay. But even if  
 3 Weinstein’s Fifth Amendment rights are implicated, he has not met his burden to show  
 4 how his rights cannot be protected on a question-by-question basis.

5 **B. Ms. Judd’s Interest In Litigating This Case Expeditiously Weighs In Favor**  
 6 **of Denying the Motion**

7 Weinstein acknowledges that, like all civil plaintiffs, “[Ms. Judd] has a  
 8 legitimate interest in the expeditious resolution of her case.” Mot. at 10. Particularly  
 9 where, as here, an extended period of time has already passed since the relevant events,  
 10 the danger of prejudice to the plaintiff if a stay is granted is even more pronounced.  
 11 *See, e.g., S.E.C. v. Alexander*, 2010 WL 5388000, at \*4 (N.D. Cal. Dec. 22, 2010)  
 12 (observing that fading memories are a particular concern where the relevant events  
 13 happened four years earlier); *Doe v. City of San Diego*, 2012 WL 6115663, at \*3  
 14 (S.D. Cal. Dec. 10, 2012) (“Given the amount of time that has transpired since the  
 15 incident occurred, as well as the fact that discovery has not yet begun, the ... Plaintiff  
 16 would suffer if the case is stayed.”). Similarly, because many the relevant events  
 17 alleged in Ms. Judd’s complaint occurred far more than two years ago—indeed, many  
 18 occurred over two decades ago—this factor weighs in favor of denying the stay.

19 Weinstein’s only counterargument on this point is that because Ms. Judd did not  
 20 file her complaint until 2018, but her claims “arise out of an alleged incident that  
 21 occurred in late 1996 or early 1997,” this delay “refutes any argument that [she]  
 22 desire[s] to litigate . . . in an expeditious manner.” Mot. at 10. But the only reason  
 23 Ms. Judd did not file her claim earlier is because Weinstein retaliated against her  
 24 *in secret*. She did not know until Mr. Jackson revealed that Weinstein had made  
 25 malicious and false statements “in confidence” that Weinstein had used his power and  
 26 influence to significantly damage her career. *See* FAC ¶¶ 35, 59. She has since been  
 27 expeditiously pursuing her claims, and any unnecessary delay will prejudice her case.

28



1 This prejudice cannot be adequately mitigated. In cases where the civil and  
 2 criminal case involve much of the same witnesses and evidence, “[t]he active criminal  
 3 case may help keep witnesses’ memories fresh, preserve the testimony of witnesses  
 4 who later become unavailable, and ensure the retention of important evidence and  
 5 documents.” *S.E.C. v. Alexander*, 2010 WL 5388000, at \*4 (N.D. Cal. Dec. 22, 2010);  
 6 *see also McCormick v. Rexroth*, 2010 WL 934242, at \*3 (N.D. Cal. Mar. 15, 2010)  
 7 (“[T]he fact that the witnesses for the two proceedings are likely to include many of  
 8 the same people providing much of the same testimony should reduce the danger that  
 9 any testimony will be lost as a result of the stay.”). Not so here. As Weinstein  
 10 concedes, Ms. Judd is not a complaining witness in any of the criminal matters, Mot. at  
 11 3; nor has Weinstein alleged that his defamatory statements concerning and  
 12 professional retaliation against Ms. Judd are potentially relevant to any of his criminal  
 13 proceedings.

14 The Ninth Circuit has recognized that “[d]elay inherently increases the risk that  
 15 witnesses’ memories will fade and evidence will become stale.” *See Blue Cross &*  
 16 *Blue Shield of Ala. v. Unity Outpatient Surgery Ctr., Inc.*, 490 F.3d 718, 724 (9th Cir.  
 17 2007); *see id.* (“[Indefinite] stays create a danger of denying justice by delay.”  
 18 (citations omitted)). As witnesses’ memories potentially fade, Mr. Judd’s case suffers  
 19 and the prejudice cannot be sufficiently mitigated.

20 **C. There Will Be No Undue Burden On Defendant Weinstein If These**  
 21 **Proceedings Continue**

22 Weinstein next argues that the prejudice to him outweighs any prejudice to  
 23 Ms. Judd. In support of this contention, he rehashes the argument that the issues in the  
 24 cases are “closely intertwined.” Mot. at 10. But his motion is devoid of any  
 25 contention that each defense he could assert—to the defamation, economic  
 26 interference, and unfair competition claims—would implicate his Fifth Amendment  
 27 rights. *See Doe*, 2012 WL 6115663, at \*4 (declining to stay case where defendants  
 28 had a litany of defenses that did not involve particular acts of individual defendant who

1 intended to assert his Fifth Amendment rights). And none of the cases he cites helps to  
 2 advance his argument as each concerns civil and criminal proceedings that arise out of  
 3 the same underlying events.<sup>11</sup>

4 Here again, Weinstein’s actions and statements to the press belie his arguments  
 5 before this Court. Weinstein urges this Court to find that only he will be prejudiced if  
 6 the case proceeds. But he omits any mention of the efforts he has taken at opposing  
 7 Ms. Judd’s claims—while simultaneously requesting that all civil litigation halt.  
 8 Weinstein has successfully moved in Delaware bankruptcy court for approval to use  
 9 e-mails from The Weinstein Company “in all civil matters.” Dore Decl. Exh. E.  
 10 He has also leaked photographs of he and Ms. Judd to the press. *See* FAC ¶ 44. As  
 11 recently as December 2018, Weinstein’s “representatives” touted a photo of Weinstein  
 12 and Ms. Judd to a reporter at the Daily Mail in an effort to “clear his name” and  
 13 “prove” that Weinstein and Ms. Judd “remained on friendly terms.” Dore Decl. Exhs.  
 14 C & D. The article cited other purported “evidence” that Weinstein apparently has but  
 15 refuses to produce. *Id.* Weinstein has also, after his indictment, sought out a member  
 16 of the media to provide a “world exclusive” about two other accusers (and been quoted  
 17 saying he “offer[ed] women acting jobs in exchange for sex”). Dore Decl. Exh. B.  
 18 A stay would allow Weinstein to continue litigating this case in the shadows, while  
 19  
 20

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21 <sup>11</sup> Weinstein cites no cases decided in the Ninth Circuit and under the test set forth in  
 22 *Keating*. Mot. at 10. As described above, the decisions he does cite involve civil  
 23 and criminal cases arising from the same underlying events, thus resulting in an  
 24 overlap of issues. *See, supra; see, e.g., Volmar Distributors, Inc. v. New York Post*  
 25 *Co.*, 152 F.R.D. 36, 38 (S.D.N.Y. 1993) (finding a stay was appropriate because  
 26 both cases arose from “the same acquisition of newspaper distribution routes” and  
 27 thus “due the overlapping issues in the criminal and civil trials, the criminal justice  
 28 system will help safeguard the evidence”) (cited in Mot. at 10); *United Techs.*  
*Corp., Hamilton Standard Div. v. Dean*, 906 F. Supp. 27, 27 (D. Mass. 1995)  
 (finding a stay was appropriate even though the civil and criminal cases are not  
 “entirely parallel” because they both arose from the defendant’s alleged  
 embezzlement of funds from plaintiff) (cited in Mot. at 10); *Am. Express Bus. Fin.*  
*Corp. v. RW Prof'l Leasing Servs. Corp.*, 225 F. Supp. 2d 263, 264-65 (E.D.N.Y.  
 2002) (finding a stay appropriate where both cases arise from defendant’s allegedly  
 improper administration of equipment leases) (cited in Mot. at 10).

1 denying Ms. Judd the opportunity to obtain evidence from, among others, Weinstein  
2 himself and the many women he has silenced with non-disclosure agreements.

3 In any event, even if parallel proceedings would implicate Weinstein's Fifth  
4 Amendment rights (they would not), if less drastic means than a stay can protect a  
5 defendants' rights, a stay is not warranted. In *Securities & Exchange Commission v.*  
6 *Braslau*, 2015 WL 9591482 (C.D. Cal. Dec. 29, 2015), for example, the court held that  
7 "there is no question that [defendant's] Fifth Amendment rights are implicated by  
8 allowing this case to proceed . . . , as both cases involve almost identical facts." *Id.* at  
9 \*2. But "there are remedies short of an indefinite stay that could serve to protect  
10 [defendant]." *Id.* at \*3. As the court noted in *ESG Capital Partners LP v. Stratos*, 22  
11 F. Supp. 3d 1042 (C.D. Cal. 2014), "a stay is not warranted where a defendant's Fifth  
12 Amendment rights can be protected through less drastic means, such as asserting the  
13 privilege on a question-by-question basis." *Id.* at 1045-46 (internal quotations  
14 omitted); *Mendez v. City of Gardena*, 2014 WL 12802931, at \*4 (C.D. Cal. May 30,  
15 2014) (same). Weinstein has failed to argue, let alone show, that he could not protect  
16 his rights by asserting his Fifth Amendment privilege with respect to any particular  
17 deposition question or discovery request that he legitimately believed to pose a risk of  
18 self-incrimination.

19 **D. A Stay Here Would Not Conserve Judicial Resources, But Rather Merely**  
20 **Delay This Case's Ultimate Resolution Without Any Benefits**

21 The court also has an interest in expeditious resolution of cases. *Hymes v. Bliss*,  
22 2018 WL 3240991, at \*4 (N.D. Cal. July 3, 2018). And "[a] complete stay . . . directly  
23 and negatively impact[s] this goal." *Doe*, 2012 WL 6115663, at \*4. Courts therefore  
24 typically find that this factor weighs against "granting a stay, because 'the court has an  
25 interest in clearing its docket.'" *Sec. & Exch. Comm'n v. Braslau*, 2015 WL 9591482,  
26 at \*4 (C.D. Cal. Dec. 29, 2015), quoting *Fed. Sav. & Loan Ins. Corp. v. Molinaro*, 889  
27 F.2d 899, 903 (9th Cir. 1989); accord, e.g., *AIG Prop. Cas. Co. v. Cosby*, 2016 WL  
28 6662733, at \*8 (C.D. Cal. July 15, 2016).

1 Weinstein correctly concedes that granting his motion will pose a “delay to the  
 2 Court.” Mot. at 11. “Even a “limited . . . stay will postpone the completion of fact  
 3 discovery . . . , and cause delays to all future pretrial events.” *In re Packaged Seafood*  
 4 *Products Antitrust Litig.*, No. 15-MD-2670 JLS (MDD), 2018 WL 5792694, at \*3  
 5 (S.D. Cal. Nov. 5, 2018). He nonetheless contends that this delay “may be better for  
 6 judicial efficiency,” Mot. at 11, because he has brought this motion at an early stage in  
 7 the proceedings, and because granting the motion would help the court avoid making  
 8 rulings regarding discovery disputes or avoid rulings entirely if the parties settle, see  
 9 *id.* (citing *Maloney v. Gordon*, 328 F. Supp. 2d 508, 513 (D. Del. 2004)). But these  
 10 general appeals—“without concrete evidence of how [a] stay[] . . . will streamline civil  
 11 discovery, *Hymes*, 2018 WL 3240991, at \*4—fail to provide any measurable basis for  
 12 how the criminal action would actually streamline the case. For example, Weinstein  
 13 does not argue that a resolution in the criminal case will be dispositive of any issues in  
 14 the civil case. Nor does Weinstein provide examples of civil witnesses that may not  
 15 need to testify here if they give sworn testimony in the criminal case. *Hymes*, 2018  
 16 WL 3240991, at \*4 (holding that the convenience-of-the-court factor weighs in favor  
 17 of denying a stay “because both parties will presumably still seek depositions  
 18 regarding the . . . incident at issue”).

19 Weinstein’s unfounded claim that pausing this case will somehow result in  
 20 judicial efficiency is thus entirely speculative and not credible. And as explained  
 21 above, that Weinstein’s lead criminal counsel recently withdrew increases the  
 22 likelihood the criminal trial will be continued. Weinstein’s request for an indefinite  
 23 stay simply will not help this Court “in clearing its docket.” *Braslau*, 2015 WL  
 24 9591482, at \*4. This factor too militates in favor of denying a stay.

25 **E. The Interests Of The Public And Persons Not Parties To This Case Weigh**  
 26 **In Favor Of Denying The Stay.**

27 On the remaining factor—interest of the public—Weinstein can do no better  
 28 than an appeal to the general theory that the public has an interest in criminal law

1 enforcement.<sup>12</sup> In support of this argument, he quotes *Green v. Cosby*, 177 F. Supp. 3d  
 2 673 (D. Mass. 2016): “the public interest in unimpeded criminal law enforcement  
 3 outweighs the civil interests here.” *Id.* at 681. Tellingly, he omits any mention of  
 4 what the civil interests are *here*, in this case.

5 Among other relief, Ms. Judd seeks an injunction requiring Weinstein to cease  
 6 engaging in the tortious conduct underlying her suit. *See* FAC at 28. Stopping  
 7 Weinstein from interfering with other actors’ ability to earn a living, and stopping him  
 8 from maliciously defaming women who reject his advances, would affect many more  
 9 people than just Ms. Judd. Moreover, as the court explained in *Raisman v. United*  
 10 *States Olympic Comm.*, 2019 WL 95928 (N.D. Cal. Jan. 3, 2019), “the public has a  
 11 strong interest in resolution of Plaintiff’s allegations that [defendants] concealed  
 12 systematic [sexual] abuse.” *Id.* at \*3. The public here has a strong interest in seeing a  
 13 resolution to Ms. Judd’s case—that is, a case that highlights what Weinstein has been  
 14 quoted as saying is a systemic professional abuse in Hollywood. In any event,  
 15 Weinstein also neglects to address how proceeding with civil discovery or even with  
 16 trial will impede law enforcement’s efficient administration of the criminal case.

17 Perhaps recognizing the number of non-parties who not only were affected by  
 18 his actions in the first instance, but who may now be affected by a stay of this  
 19 litigation, Weinstein ignores the interests of persons not parties to this case. Ms. Judd  
 20 has alleged that there are other women whose careers Weinstein targeted because they

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21  
 22 <sup>12</sup> To begin with, Weinstein cites no cases decided in the Ninth Circuit. *Mot.* at 11.  
 23 He instead cites *In re Ivan F. Boesky Sec. Litig.*, 128 F.R.D. 47 (S.D.N.Y. 1989)—a  
 24 case decided over five years before the Ninth Circuit’s seminal decision in *Keating*,  
 25 which set forth the test for granting a stay where there are parallel proceedings—to  
 26 argue “the public interest in the criminal case is entitled to precedence over the civil  
 27 litigant.” But this generic statement cannot possibly bolster his argument. Taking  
 28 this rule at face value, without a fact-specific inquiry, would cause this factor to  
 favor a stay in every case rendering the remaining *Keating* factors superfluous,  
 contrary to binding case law. *See Keating*, 45 F.3d at 324 (setting forth factors  
 courts should consider). Weinstein also cites *Crawford & Sons, Ltd. v. Besser*, 298  
 F. Supp. 2d 317 (E.D.N.Y. 2004), but there, the “cases ar[o]se from the same  
 underlying events” and the plaintiff did not even oppose the motion to stay. *Id.* at  
 319.

1 resisted his advances. There may be many more. Those women, and many other  
2 people whose careers were adversely affected by Weinstein’s actions, have an interest  
3 in seeing this case move forward. *See Doe v. City of San Diego*, 2012 WL 6115663, at  
4 \*5 (S.D. Cal. Dec. 10, 2012) (denying request for stay in a case involving alleged  
5 sexual abuse, and observing that other victims, as well as their co-workers and others  
6 had their “lives are on hold while they await [] trial”); *see also Raisman*, 2019 WL  
7 95928, at \*3 (observing in a case involving sexual abuse that third parties have an  
8 interest in “moving on”). Because these “witnesses and alleged victims have a keen  
9 interest in the expeditious resolution of th[e] case,” this factor militates in favor of  
10 denying the motion. *Id.*

11 **IV. CONCLUSION**

12 Each relevant factor suggests that a stay is simply not warranted in this action.  
13 Delaying this action will cause prejudice to Ms. Judd, non-parties, the court system,  
14 and public. Weinstein’s motion—accompanied with little-to-no evidence for the  
15 claims he makes—is simply another attempt by Weinstein to avoid answering for his  
16 past behavior. Mr. Judd deserves her day in court and Weinstein’s motion to stay  
17 should be denied.

18 DATED: February 8, 2019

19 GIBSON, DUNN & CRUTCHER LLP

20  
21  
22 By: /s/ Theodore J. Boutrous, Jr.

23 Theodore J. Boutrous, Jr.

24 Attorneys for Plaintiff Ashley Judd