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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

WESTERN ALLIANCE BANK, an
Arizona corporation,

Plaintiff,

v.

RICHARD JEFFERSON, an
individual man,

Defendant.

Case No. 2:14-CV-00761-JWS

**THIRD-PARTY DEFENDANTS'
RESPONSE TO JEFFERSON'S
MOTION TO STAY CIVIL
ACTION**

(Oral Argument Requested)

RICHARD JEFFERSON, an
individual man,

Counterclaimant,

v.

WESTERN ALLIANCE BANK, an
Arizona corporation,

Counterdefendant.

1 RICHARD JEFFERSON, an
2 individual man,
3
4 Third-Party Plaintiff,
5
6 v.
7
8 THEODORE KRITZA, a married
9 man, and MICHELLE LEE
10 KRITZA, a married woman,
11
12 Third-Party Defendants.
13

14 Federal courts only grant stays sought by the government or targets of the
15 criminal investigation – in other words, the parties to the criminal proceeding. In
16 seeking to stay this action, defendant Richard Jefferson fails to cite any case to the
17 contrary. Protecting Fifth Amendment rights is the typical motivator of a target
18 who seeks to stay civil proceedings. Before being served in this case, third-party
19 defendant Theodore Kritza participated in two FBI interviews. He also participated
20 in a seven-hour deposition in this case. For those reasons, even though Kritza is
21 the only party with practical standing to seek a stay, undersigned counsel could not
22 certify a stay motion on Kritza's behalf under Rule 11. Certainly, Jefferson has no
23 basis to seek a stay based on an FBI investigation that does not target him.

24 As detailed below, three factors motivate Jefferson's stay request. First,
25 discovery has revealed that this is a case about Jefferson's unwillingness to take
26 responsibility for his profligate spending. In 2008, Jefferson agreed to loan Kritza
27 \$2 million to be repaid in August 2016. Jefferson is merely using Kritza as an
28 instrument to justify Jefferson's overspending. Second, Jefferson and his counsel
apparently believed that the FBI would be acting as their unpaid forensic
accounting expert to make their civil case. To that end, Jefferson has done nothing
to develop his case and has obstructed both Alliance's and Kritza's discovery
efforts. Finally, it appears that Jefferson is using the motion to stay to conduct a
media hit-and-run where he could publicly discredit Kritza and leave him without

1 a means to defend himself. Days after Jefferson filed the motion to stay, dozens of
2 media outlets media worldwide reported on the claims made in Jefferson's motion.
3 Kritza should have the opportunity to clear his good name.

4 The pending motion is this case's second contested motion. The Court
5 denied the first motion – Jefferson's motion for a more definite statement – and
6 posited: "Whether Jefferson is genuinely confused about the documents or his
7 lawyers are engaged in a pettifogging effort to slow resolution of the dispute, the
8 court cannot determine." (Doc. 13.) The motion to stay conclusively answers the
9 Court's question. In fact, pettifoggery best describes the motion to stay. With the
10 discovery period 90% complete, Jefferson seeks an indefinite stay of these
11 proceedings in deference to an FBI investigation that has been dormant since last
12 summer. Even though the dormant FBI investigation predates this case, Jefferson
13 never sought a stay and agreed to the current discovery schedule. The motion to
14 stay must be denied.

15 **I. FACTUAL BACKGROUND**

16 **A. 2004-2010: Jefferson Spends Millions and Agrees to Fund** 17 **Kritza's Business.**

18 Richard Jefferson has had a largely successful professional basketball
19 career. He has played for nearly fifteen years and was a member of the 2004
20 United States Olympic team. (Dep. of R. Jefferson, attached as Ex. A, at 110:14-
21 17, 145:9-146:6, 147:12-148:2.) In 2004, Jefferson signed a six year, \$76 million
22 contract. (*Id.* at 145:16-25.) During the years under that contract, Jefferson spent
23 prodigiously. He purchased several expensive cars. (*See id.* at 160:12-162:14;
24 178:5-180:7.) He had a multimillion dollar residence in San Diego and spent
25 approximately \$500,000 on renovations. (*See id.* at 164:10-165:9.) He made a \$3.5
26 million donation to the University of Arizona. (*Id.* at 46:6-13; *see also Tucson*
27 *Citizen* article dated Dec. 9, 2008, attached as Ex. B.) He walked away from a
28 large earnest money deposit on a New York apartment. (Jefferson Dep., Ex. A, at

162:15-163:9.) He lost \$300,000 on a wedding that did not take place. (*Id.* at 162:15-164:6.) Jefferson also lost about \$1.4 million investing into an Internet business that provided live streaming of music concerts. (*Id.* at 163:10-164:9.) These losses are in addition to the hundreds of thousands of dollars Jefferson spent annually on personal expenses. (Decl. of Todd Feltus, attached as Ex. F, at ¶¶ 5-6 & Ex. 2.)

During this timeframe, Jefferson also agreed to help Kritza fund a business, Stratosphere Management, LLC, that would provide concierge services for athletes. (Dep. of T. Kritza, attached as Ex. C, at 46:6-49:5.) Jefferson initially loaned Kritza \$500,000 for the business. (*Id.*; see also July 29, 2007 Promissory Note, attached as Ex. Z.) In the summer of 2008, Jefferson agreed to loan Stratosphere Management up to \$2 million for various ventures, and he executed a promissory note to that effect. (Emails between R. Jefferson and T. Kritza, attached as Ex. D; August 21, 2008 Promissory Note, attached as Ex. E.) The loan was made payable in August 2016. (Ex. E, at KRI000032.)

In accordance with the agreement, Stratosphere Management drew on this note after 2008. (Kritza Dep., Ex. C, at 50:14-55:1.) The information related to those transactions was disclosed to Jefferson. (*Id.* at 55:2-56:25.) As part of his role as Jefferson's manager, Kritza provided year-end books that detailed all of Jefferson's financial transactions, including all of his bank statements. (*Id.* at 39:12-44:17, 55:2-56:25; Jefferson Dep., Ex. A, at 65:8-67:2.) This information included the monies that Stratosphere Management borrowed. (*Id.*; see also Feltus Decl., Ex. F, at ¶ 7 & Ex. 3.)

B. 2011: Jefferson's Salary Cut Forced Him To Confront His Spendthrift Ways

For the 2010-11 season, Jefferson opted out of the last year of his contract and signed a contract that would pay him less than \$10 million per year – a one-third paycut from his earlier contract. (Jefferson Dep., Ex. A, at 147:12-148:2.) In

late 2011, the NBA lockout resulted in additional income loss to Jefferson. (*Id.* at 132:23-137:22.) During the lockout, Jefferson sought to take more control over his finances. (*Id.* at 132:23-139:14, 157:14-158:10.) He believed that he had not accumulated the assets that he should have and changed his management team. (*Id.* at 132:14-134:5, 137:14-150:6, 155:5-161:21, 296:20-297:3.)

In the summer of 2012, Jefferson retained a forensic accountant to review his financial statements. (*Id.* at 166:6-167:18.) A few months later, Jefferson retained counsel to further look into his financial situation. (Emails between B. Saalfeld and T. Kritza, attached as Ex. W.) During this time, Kritza fully cooperated with Jefferson. He provided Jefferson's new team with all of the financial information that he had. (*See id.*; *see also* Ex. A, at 157:25-159:11.) He worked with Jefferson in transitioning Kritza's business manager duties. (*Id.*) Jefferson's new management team also obtained the financial records that Alliance had, including all banking and loan information.

C. 2012-2013: Jefferson's New Financial Team Reaches No Conclusion and Jefferson Enters into a Forbearance Agreement with Alliance.

During the course of 2012 and 2013, Jefferson's team apparently never came to any conclusion as to whether Kritza took money from Jefferson, or how much. (Jefferson Dep., Ex. A, at 168:11-170:15.) No such analysis has been produced in this litigation. (Feltus Decl., Ex. F, at ¶ 8.) While Jefferson's team dithered, Alliance approached Jefferson about repayment of the \$500,000 line of credit. Through counsel, Jefferson refused to repay the line of credit claiming that a fraud had been perpetrated against him. (Letter from B. Saalfeld to W. Forsythe, attached as Ex. G.) Alliance agreed to a brief forbearance, but required Jefferson to acknowledge the loan. (Letter from W. Forsythe to B. Saalfeld, attached as Ex. H.) Again, with the advice of counsel, Jefferson did so. (*Id.*)

When Jefferson acknowledged the Alliance loan, he reached an agreement with Kritza – and Jefferson’s former agent, Todd Eley – on how the line of credit would be repaid. Even though Kritza had no obligation to repay Jefferson until August 2016, he agreed to pay Jefferson \$102,000. (Letter of Intent and correspondence between T. Kritza and R. Jefferson, attached as Ex. I.) Eley agreed to forgo nearly \$400,000 in agent fees due to him to cover the remaining line of credit balance. (*See id.*; *see also* Jefferson Dep., Ex. A, at 96:8-100:23.) Jefferson accepted the proposed benefits and took Kritza’s money. (*Id.* at 96:8-100:23, 190:24-191:1; Jefferson’s Responses to Kritza’s Discovery Requests, attached as Ex. J, at 6.) But Jefferson still refused to repay the line of credit.

D. Late 2013 to Summer 2014: Jefferson Initiates the FBI Investigation.

In late 2013, Jefferson approached the FBI to investigate Kritza. (Jefferson Dep., Ex. A, at 186:9-187:24.) The FBI recorded a conversation between Jefferson and Kritza that took place in early 2014. Kritza and Jefferson have divergent views of what Kritza said in that conversation. Jefferson claims that Kritza confessed to forging Jefferson’s signature on the loan documents. (*Id.* at 69:24-72:13.) Kritza testified that he made no such confession and that the FBI’s questions concerned a portion of the tape recording in which Kritza merely said, “I did what I had to do . . . to get done what needed to get done.” (Kritza Dep., Ex. C, at 103:11-105:5.)

Consistent with his cooperation with Jefferson’s financial team, Kritza fully cooperated with the FBI. In the spring or early summer of 2014, Kritza participated in two FBI interviews. (*Id.* at 100:13-105:5.) During this time period, the FBI also interviewed Alliance employee Gina McRostie and Eley. (*Id.* at 103:6-10; Dep. of T. Eley, attached as Ex. K, at 78:14-79:2, 138:1-141:15.) Since last July, there has been no other documented activity by the FBI. But Jefferson’s counsel has claimed since that time that an indictment will be forthcoming. (Feltus Decl., Ex. F, at ¶ 9.)

E. Procedural Background of this Action.

After Jefferson failed to live up to the terms of the forbearance agreement, Alliance initiated this action to recover the approximately \$450,000 due under the line of credit. On March 14, 2014, Alliance served Jefferson with its complaint. (Doc. 1, at 2; Doc. 1-7.) Even though the FBI had already recorded the phone conversation between Jefferson and Kritza at that time, Jefferson did not seek a stay of the lawsuit. Instead he filed a motion for more definite statement. (Doc. 5.) On May 15, 2014, the Court denied the motion, finding that “there is nothing vague or unclear about the complaint.” (Doc. 13.)

Jefferson did not respond to that order by requesting a stay based on the FBI investigation. Instead, Jefferson upped the ante – asserting a counterclaim against Alliance and a third-party complaint against Kritza. (Docs. 14, 16.) On June 23, 2014 – before Kritza appeared in this action – Jefferson’s counsel participated in a Rule 26(f) scheduling conference with Alliance’s counsel. (Doc. 22 at 2.) Jefferson agreed to a discovery schedule that provided for discovery to proceed until April 10, 2014. (*Id.* at 4-5.) Although Jefferson’s separate statements dominate aspects of the Rule 26(f) report, Jefferson never asserts that the action should be stayed in deference to the FBI investigation. (*See* Doc. 22.)

F. Status of Discovery.

Jefferson now asserts his stay request “because a significant amount of discovery remains.” (Doc. 76 at 3:15-17.)¹ Yet he provides no specifics on what remains other than a “continued deposition of Jefferson, and other percipient witnesses.” (*Id.*) (Jefferson is silent on the status of non-percipient witnesses.)

There are six pending depositions – including Jefferson’s continued deposition – that were scheduled to proceed before the April 10, 2015 discovery

¹ For consistency and ease of reference, the pinpoint citations for Doc. 76 will reference Jefferson’s page numbers on the Motion for Stay, not the page numbers imposed by the ECF system.

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cut-off. Three of these depositions have been noticed and confirmed to go before April 10: Alliance's 30(b)(6) representative on March 27; Joel Keyser on March 30; and William Flynn on April 9. (Am. 30(b)(6) Dep. Notice for Alliance, attached as Ex. L; Subpoena for J. Keyser, attached as Ex. M; Dep. Notice for W. Flynn, attached as Ex. N.) The other three depositions were originally noticed for March 26 (Richard Murnick); March 27 (James Tucciarone); and April 7 (Jefferson). (Dep. Subpoenas for R. Murnick and J. Tucciarone, attached as Ex. O; Notice of R. Jefferson's Continued Dep., attached as Ex. P.) The parties are currently working through scheduling conflicts that may require these three depositions to occur in late April. (See Correspondence, attached as Ex. Q.) If necessary, the parties can file a stipulated motion seeking an extension of the discovery cut-off for the limited purpose of completing these depositions. (Doc. 26, 5-6.) The parties are on the ten-yard line for completing discovery. Jefferson does not explain the purpose in stopping now.

Jefferson also claims that "[a]ll parties seek the immediate production of the documents and investigative recordings from the government's pending investigation." (Doc. 76, at 8.) But Jefferson has his communications with the government and refuses to produce them. (R. Jefferson's Second Supp. Disclosure Statement (2/27/15), attached as Ex. T, at 3, 25-26; Letter from M. Eskay to B. Saalfeld (2/27/15), attached as Ex. U, at 7.) The FBI likely has the recording of the phone conversation between Jefferson and Kritza. Jefferson claims to have sought the recording. (Doc. 76, at 6; Doc. 76-1, ¶ 3.) Kritza has submitted a FOIA request to obtain the recording and may seek judicial assistance in the event that the FBI refuses to provide it. (See FOIA Request and related correspondence, attached as Ex. V.) But this discrete discovery issue does not necessitate staying this action.

Consistent with his pattern of not taking responsibility for his own actions, Jefferson expected that the FBI would conduct his civil litigation discovery for

1 him. When Jefferson was asked about what his team concluded on what Kritza
2 owed him, he responded:

3 Q. So what's been going on in the last three years while you have
4 had forensic accountants looking at it?

5 A. Waiting on the FBI to come back with what they -- what they
6 found.

7 (Jefferson Dep., Ex. A, at 189:19 to 190:14.) According to Jefferson, he has staked
8 his entire case on waiting for the FBI:

9 Q. Well, let me ask you this. Discovery is disclosing on this case
10 on April 10th.

11 A. Uh-huh.

12 Q. We haven't even seen a damage number for you, so if the FBI
13 doesn't do anything and we find ourselves going to trial at the
14 end of this year or the first of next year, what are you going to
15 ask the jury for?

16 A. I don't know.

17 (*Id.* at 190:15-190:23.) But Jefferson has not disclosed that the FBI will compute
18 his damages. (R. Jefferson's Initial Disclosure Statement (7/14/14), attached as
19 Ex. R; R. Jefferson's First Supp. Disclosure Statement (10/14/14), attached as Ex.
20 S; Ex. T.)

21 This is consistent with the pettifoggery engaged in by Jefferson's counsel in
22 the discovery process. In October 2014, Kritza sent written discovery to Jefferson.
23 (Doc. 49, 52, 55.) Jefferson responded with nonsensical objections and
24 nonresponsive answers. (*See* Ex. J.) The true extent of the documents in
25 Jefferson's possession is unknown, obscured by boilerplate objections. *See id.*; *see*
26 *also* Ex. U, at 2-6.² Although undersigned counsel has repeatedly approached

27 ² Jefferson's objections include blanket privilege objections (without a
28 privilege log), blanket assertions of privilege and confidentiality (despite the
court ordered protective order in place), and blanket objections that the requests
are "vague, ambiguous, overly broad or unduly burdensome, lack reasonable
particularity, and seek irrelevant information or information not reasonably
calculated to lead to the discovery of admissible evidence." *See* Exs. J, U.

1 Jefferson's counsel about the boilerplate objections, Jefferson's discovery
2 responses still contain the same general objections. (Email from T. Feltus to B.
3 Saalfeld (11/24/14), attached as Ex. X; Ex. U.) Similarly, Jefferson disclosed
4 "correspondence by and between Jefferson and Kritza" as documents he has and
5 may use to support his claims, but Jefferson has produced fewer than six emails
6 with Kritza from their decade-long professional relationship. (*See* Ex. T, at 24;
7 Feltus Decl. at ¶ 10.)

8 As of the end of January, Jefferson had produced less than 400 pages of
9 documents. (Feltus Decl., Ex. F, at ¶¶ 3-4 & Ex. 1.) The vast majority of these
10 documents are reproductions of documents produced by Alliance and Kritza. (*Id.*
11 at ¶ 11; *see also* Ex. T, at 24:17-21.) Jefferson waited until the week of his
12 February 13, 2015 deposition to produce another 2,000 pages. (Ex. F, at Ex. 1; Ex.
13 U, at 1-2.) This production was a complete reproduction of documents previously
14 produced by Kritza. (Ex. T, at 24:22-23.) In his deposition, Jefferson was unable to
15 identify anything that he has done to gather documents. (*See* Ex. A, at 91:12-
16 93:23, 171:6-172:20.) He further confirmed that he has not searched for his
17 emails. (*Id.* at 173:1-175:3.)

18 The conduct does not stop at documents. Jefferson's handwriting expert
19 could not reach any conclusion because Jefferson provided insufficient
20 handwriting samples. (R. Jefferson's Expert Witness Disclosure, attached as Ex. Y,
21 at Ex. 1, p. 7.) And Jefferson has failed to disclose a damages computation. Kritza
22 has separately moved for summary judgment for this failure. (Doc. 81.)

23 **G. Media Coverage Following the Filing of the Motion to Stay.**

24 The other underlying motivation for Jefferson's stay motion is to instigate
25 media coverage of the case to smear Kritza. Within days of the filing of
26 Jefferson's motion for stay, dozens of international news outlets, including
27 *TMZ.com*, the *New York Post*, *The Sporting News* and *Fox Sports* have published
28

1 stories directly regurgitating the content of Jefferson's motion.³ These websites
 2 accuse Kritza of "robbing" and "jacking" Jefferson and include statements like, "It
 3 would be interesting to see if Jefferson gets his money back or if Kritza has
 4 already spent it all."⁴ Before this frenzy of articles, there was virtually no media
 5 coverage of this case. Staying the case would allow Jefferson to conduct a hit-and-
 6 run without giving Kritza the chance to clear his good name.

7 II. LEGAL ARGUMENT.

8 A. Because Jefferson Is Not a Criminal Defendant and There is No 9 Pending Indictment, A Stay is Inappropriate.

10 Jefferson's motion for stay contorts *Keating v. Office of Thrift Supervision*,
 11 45 F.3d 322 (9th Cir. 1995), far beyond its intended application. None of the
 12 authorities relied upon by Jefferson even consider a stay by a claimant in a civil
 13 action who is a non-party to the criminal action. Jefferson is not facing criminal
 14 prosecution. Accordingly, the vast majority of the authority in Jefferson's motion
 15 is inapplicable. The premise behind staying a civil proceeding is to protect a
 16 criminal defendant from having to choose between waiving his Fifth Amendment
 17 right and defending himself in the civil suit or asserting the privilege and likely

18
 19 ³ See, e.g. "Undercover Richard Jefferson teams with FBI to find stolen
 20 \$2M," New York Post, <http://nypost.com/2015/03/15/undercover-richard-jefferson-teams-with-fbi-to-find-stolen-2m/> (3/15/15); "NBA's Richard Jefferson: I
 21 got jacked for \$2 Million . . . FBI on the Case," TMZ.com, [http://www.tMZ.com/2015/03/15/nbas-richard-jefferson-i-got-jacked-for-2-](http://www.tMZ.com/2015/03/15/nbas-richard-jefferson-i-got-jacked-for-2-million-fbi-on-the-case/)
 22 [million-fbi-on-the-case/](http://www.tMZ.com/2015/03/15/nbas-richard-jefferson-i-got-jacked-for-2-million-fbi-on-the-case/) (3/15/15); "Richard Jefferson recorded call for FBI, gets
 23 confession," Fox Sports, [http://www.foxsports.com/nba/story/dallas-mavericks-](http://www.foxsports.com/nba/story/dallas-mavericks-fbi-richard-jefferson-031815)
 24 [fbi-richard-jefferson-031815](http://www.foxsports.com/nba/story/dallas-mavericks-fbi-richard-jefferson-031815) (3/18/15); "How NBA star went 'undercover' to help
 25 FBI nail his business manager for 'stealing \$2 million from him,'" Daily Mail, [http://www.dailymail.co.uk/news/article-2996232/NBA-s-Richard-Jefferson-goes-](http://www.dailymail.co.uk/news/article-2996232/NBA-s-Richard-Jefferson-goes-undercover-help-FBI-2million-Mavericks-star-s-business-manager-allegedly-stole.html)
 26 [undercover-help-FBI-2million-Mavericks-star-s-business-manager-allegedly-](http://www.dailymail.co.uk/news/article-2996232/NBA-s-Richard-Jefferson-goes-undercover-help-FBI-2million-Mavericks-star-s-business-manager-allegedly-stole.html)
 27 [stole.html](http://www.dailymail.co.uk/news/article-2996232/NBA-s-Richard-Jefferson-goes-undercover-help-FBI-2million-Mavericks-star-s-business-manager-allegedly-stole.html) (3/15/15).

28 ⁴ See "Mavs Richard Jefferson's Ex-Business Manager Robbed Him of \$2
 Million," [http://blacksportsonline.com/home/2015/03/mavs-richard-jeffersons-ex-](http://blacksportsonline.com/home/2015/03/mavs-richard-jeffersons-ex-business-manager-robbed-him-of-2-million/)
[business-manager-robbed-him-of-2-million/](http://blacksportsonline.com/home/2015/03/mavs-richard-jeffersons-ex-business-manager-robbed-him-of-2-million/) (3/15/15).

losing the civil action. *See Fed. Sav. & Loan Ins. Corp. v. Molinaro*, 889 F.2d 899, 902 (9th Cir. 1989). As a claimant in this action, Jefferson does not get to invoke a dormant FBI investigation to avoid meeting his civil discovery obligations.

The Ninth Circuit does not require a stay of civil proceedings in deference to related criminal proceedings: “While a district court may stay civil proceedings pending the outcome of parallel criminal proceedings, such action is not required by the Constitution.” *Id.* A stay requires a showing of substantial prejudice: “In the absence of substantial prejudice to the rights of the parties involved, simultaneous parallel civil and criminal proceedings are unobjectionable under our jurisprudence.” *Keating*, 45 F.3d at 324.

A stay for the duration of a criminal proceeding is inappropriate unless the criminal action is likely to impact the rights of a civil defendant. To that end, the Ninth Circuit urges district courts to weigh two criteria: (1) “the extent to which the defendant’s Fifth Amendment rights are implicated”; and (2) whether the defendant has been indicted. *See Molinaro*, 889 F.2d at 902. In the absence of an indictment or implication of Fifth Amendment rights, “the case for staying civil proceedings is ‘a far weaker one.’” *Id.* at 903 (quoting *Sec. & Exch. Comm’n v. Dresser Indus., Inc.*, 628 F.2d 1368, 1376 (D.C. Cir. 1980)).

For obvious reasons, Jefferson’s motion ignores these criteria. He is not a defendant in a criminal proceeding. Jefferson’s attempt to invoke Kritza’s “Fifth Amendment dilemma” is preposterous. (*See* Doc. 76, at 7:18-21, 10:2-5.) Kritza has not invoked the Fifth Amendment in this case. Instead, Kritza has appeared at a deposition, answered numerous discovery requests, and produced thousands of pages of documents, including all of his relevant emails. (*See* Ex. C; *see also* Decl. of T. Feltus, Ex. F, at Ex. 1.) No Fifth Amendment dilemma exists.

Jefferson effectively concedes that the lack of an indictment undermines his stay request. (*See* Doc. 76, at 6:28-7:3.) If a stay motion was inappropriate several months ago, it is inappropriate today. Nothing has changed, except that the

1 impending discovery cut-off and counsel's complete lack of preparation for trial
2 has forced Jefferson's hand. (*Id.* at 1:22-2:3, 6:28-7:3.) Indeed, by waiting until the
3 eve of the discovery cut-off, laches bars Jefferson's stay request. *See Sotomayor v.*
4 *Burns*, 199 Ariz. 81, 83, 13 P.3d 1198, 1200 (2000) ("Laches will generally bar a
5 claim when the delay is unreasonable and results in prejudice to the opposing
6 party."). Jefferson's inexplicable delay in filing this motion for over a year is
7 unreasonable. Kritza has been prejudiced by Jefferson's delaying because he has
8 incurred tens of thousands in legal fees fighting Jefferson's discovery violations
9 and participating in this suit in good faith. Laches would apply even if an
10 indictment came down tomorrow. The request for a stay lacks an objective good-
11 faith basis and should be denied.

12 **B. The remaining *Keating* criteria do not support Jefferson's**
13 **request for a stay.**

14 *Keating* lists five other factors the Court should weigh when evaluating
15 *Keating*, 45 F.3d at 324-25; *Molinaro*, 889 F.2d at 902-03. None of these factors
16 favor a stay. Kritza discusses these factors below.

17 1. The prejudice to Alliance and the Kritzas outweighs any
18 prejudice to Jefferson.

19 The first two factors weigh the respective burdens on the parties. The
20 prejudice posed to the remaining parties in this action by an indefinite stay of this
21 case (or discovery) is substantial. Alliance and Kritza have an interest in the
22 speedy resolution of this suit. *See* Fed R. Civ. P. 1; *ESG Capital Partners LP v.*
23 *Stratos*, 22 F.Supp. 3d 1042, 1046 (C.D. Cal. 2014). They have participated in the
24 discovery process in good faith, have developed their defenses and claims, and are
25 ready to proceed with this suit. Staying this case for months or years on the remote
26 chance that there *may* be a criminal proceeding that *could possibly* yield relevant
27 evidence is unacceptable. Any further delay in this case, which involves the
28 execution of a line of credit originally obtained over a decade ago, could result in

1 substantial prejudice to Alliance and Kritza, such as loss of witnesses and witness
2 knowledge. *See Sanrio, Inc. v. Ronnie Home Textile Inc.*, No. 2:14-CV-06369-
3 RSWL, 2015 WL 1062035, at *3 (C.D. Cal. Mar. 10, 2015).

4 The prejudice to Kritza is further heightened by the present media frenzy,
5 presumably generated by Jefferson. The Ninth Circuit has previously considered
6 the “inordinate amount of media attention given to the case” when denying a stay
7 of civil litigation. *See Keating*, 45 F.3d at 326. Allowing Jefferson to suspend this
8 case strips Kritza of his only opportunity to clear his name.

9 In contrast, Jefferson concedes that he will suffer no prejudice. He merely
10 has “concerns” that supposedly outweigh any prejudice to Alliance. (Doc. 76, at
11 9:14-20.) Of course, Jefferson’s “concern” is that he unreasonably relied on the
12 FBI to make his case. Jefferson merely speculates that FBI investigation will
13 resolve “commonalities” among the proceedings. (Doc. 76, at 8:10-17.) It is not
14 clear what adjudicative power that Jefferson believes the FBI possesses. Any FBI
15 investigation will not adjudicate Jefferson’s contractual obligations with Alliance
16 or Kritza. In sum, Jefferson fails to demonstrate how he will be better off if this
17 Court enters a stay, let alone any prejudice to him if a stay is not granted.

18 2. The court’s interest in resolving this litigation weighs against
19 entry of a stay.

20 This factor does not favor granting a stay, because “the court has an interest
21 in clearing its docket.” *Molinaro*, 889 F.2d at 903. An indefinite stay of this civil
22 suit—perhaps for years—would clog this Court’s docket unnecessarily. Further,
23 without even an indictment pending it is difficult to imagine how to determine
24 when the stay could be lifted. It is unlikely that the FBI will announce the
25 completion of its investigation if it results in no indictment.

26 3. There are no non-parties with an interest in this litigation.

27 There are no persons not parties to this action that would be affected by the
28 outcome of this litigation or the entry of a stay.

4. The public interest in the pending civil litigation weighs against entry of a stay.

In arguing that the public interest weighs in favor of a stay, Jefferson references two cases urging that the public has an interest in the “criminal process” and “integrity of the criminal case.” (*See* Doc. 76, at 10:16-20.) But as discussed above, there is no criminal case pending. Jefferson cites no case law establishing a viable public interest in an uncompleted FBI investigation.

In contrast, the media spectacle surrounding Jefferson’s motion for stay demonstrates the public interest in the resolution of this civil suit. *See Keating*, 45 F.3d at 326. The public also has a vested interest in (1) the efforts of a local bank to collect on a defaulted line of credit; (2) ascertaining the veracity of Jefferson’s accusations against Kritza.

C. Jefferson’s stay request is a delay tactic to avoid the discovery and disclosure rules.

Jefferson elected to file the Third-Party Complaint. Like every civil claimant, he is bound by the disclosure and discovery requirements of the Federal Rules of Civil Procedure. Presumably, “the victim of a fraudulent scheme” would take every opportunity to establish his claims against the party that defrauded him. Instead, Jefferson has obfuscated the discovery process at every turn and will not (or cannot) disclose the amount of his damages and the basic facts and evidence underlying his claims.⁵ Jefferson’s discovery misconduct and failure to prosecute his civil claims led to this stay request.

Over a year into this case, Jefferson still has not disclosed a complete damages computation. He has failed to provide communications he has had with the FBI. He has failed to produce communications with Kritza. Instead, Jefferson has hidden behind a series of boilerplate objections. As the Ninth Circuit noted,

⁵ These issues are discussed in greater depth in the Kritzas’ concurrently-filed Motion for Summary Judgment.

boilerplate objections are insufficient even for purposes of asserting privilege. *Burlington Northern & Santa Fe Ry. Co. v. United States District Court*, 408 F.3d 1142, 1149-50 (9th Cir. 2005). But while Jefferson is unwilling to participate in discovery, he has no issue representing to the Court (for the benefit of TMZ's reporting) that Kritza "misappropriated" the line of credit funds for "his own personal and unauthorized use." (See Doc. 76, at 2:21-22.)

Jefferson seeks this stay for the sole purpose of delay. He hopes that if he delays long enough, the FBI will make this case for him. In Jefferson's own words, he hopes to eventually "gain access to inculpatory evidence" to find Kritza civilly liable. (See Doc. 76, at 8:13-17.) Jefferson cites no law that would support his plea to indefinitely suspend a civil suit—initiated by him—in the hopes that a criminal investigation will yield the evidence he needs to support his claims.

D. Arizona's Victim's Bill of Rights is inapplicable to this litigation.

Finally, Jefferson asserts that Arizona's Victim's Bill of Rights supports a stay of this case. (Doc. 76, at 5-6.) But the Victim's Bill of Rights is a protective framework imposed at the state level by the Arizona Constitution and Arizona statutory law. See Ariz. Const. Art. 2 § 2.1, see also A.R.S. § 13-4401 *et seq.* Through this framework, the victim of a crime prosecuted through Arizona's courts can avoid certain harassment during the criminal action. *Id.* This framework has no application to a federal criminal investigation. See *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938).

The Victim's Bill of Rights is designed to protect victims "throughout the criminal justice process." Ariz. Const. Art. II § 2.1(A)(1). Without any pending criminal case, the Victim's Bill of Rights is not even triggered. In any event, the Victim's Bill of Rights has never been construed to indefinitely stay civil discovery. In *State v. Lee*, touted by Jefferson as supporting his stay request, the Arizona Court of Appeals held only that "victims retain their constitutional right to refuse to be deposed by the defense in a civil proceeding." 226 Ariz. 234, 235, 245

1 P.3d 919, 920 (Ct. App. 2011). At most, Jefferson might have the right to decline
2 to be deposed by Kritza. But Jefferson waived these rights. He has already been
3 deposed by Kritza's counsel and did not invoke the Victim's Bill of Rights.
4 Jefferson also did not invoke the Victim's Bill of Rights in his multitude of
5 boilerplate discovery objections. But none of this matters because the Arizona
6 Constitution does not allow a crime victim to shut down a federal civil lawsuit that
7 he instigated for the duration of an FBI investigation.

8 CONCLUSION

9 For the reasons set forth in this Response, the Court should deny Jefferson's
10 request to stay this litigation or to stay the discovery phase of this litigation.

11 DATED this 23rd day of March, 2015.

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CERTIFICATE OF SERVICE

I certify that on March 23, 2015, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following:

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