

1 JOHN B. BULGOZDY (Cal. Bar No. 219897)
Email: bulgozdyj@sec.gov
2 DAVID J. VAN HAVERMAAT (Cal. Bar No. 175761)
Email: vanhavermaatd@sec.gov
3 GARY Y. LEUNG (Cal. Bar No. 302928)
Email: leungg@sec.gov

4 Attorneys for Plaintiff
5 Securities and Exchange Commission
Michele Wein Layne, Regional Director
6 John W. Berry, Associate Regional Director
Amy J. Longo, Regional Trial Counsel
7 444 S. Flower Street, Suite 900
Los Angeles, California 90071
8 Telephone: (323) 965-3998
Facsimile: (213) 443-1904

9
10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12
13 **SECURITIES AND EXCHANGE**
14 **COMMISSION,**

15 Plaintiff,

16 vs.

17 **TOTAL WEALTH MANAGEMENT, INC.**
18 **and JACOB KEITH COOPER,**

19 Defendants.

Case No. 15-cv-226 BAS (DHB)

**PLAINTIFF SECURITIES AND
EXCHANGE COMMISSION'S
OPPOSITION TO DEFENDANT
JACOB COOPER'S MOTION TO
STAY**

Date: N/A
Time: N/A
Ctrm.: 4B
Judge: Hon. Cynthia Bashant

**NO ORAL ARGUMENT UNLESS
REQUESTED BY THE COURT**

TABLE OF CONTENTS

1

2 I. INTRODUCTION 1

3 II. FACTS 2

4 A. The SEC’s Civil Enforcement Action..... 2

5 1. The SEC’s enforcement action is focused on conduct that is not

6 at issue in the criminal proceeding 2

7 2. Procedural history of this civil enforcement action..... 3

8 B. The State Criminal Proceedings..... 6

9 III. LEGAL ARGUMENT..... 7

10 A. A Defendant In A Civil Action Is Not Entitled To A Stay Of

11 Discovery Even When Criminal Charges Have Been Filed 7

12 B. Under Ninth Circuit Law, Defendant Is Not Entitled To A Stay Of

13 Discovery..... 8

14 1. A stay will substantially prejudice the SEC..... 9

15 2. Cooper will not be unfairly burdened if these proceedings

16 continue 10

17 3. Judicial economy does not warrant a stay 11

18 4. A stay is contrary to the interests of the defrauded investors 12

19 5. The public interest weighs against a stay..... 12

20 IV. CONCLUSION..... 13

21

22

23

24

25

26

27

28

TABLE OF AUTHORITIES

CASES

Baxter v. Palmigiano,
425 U.S. 308, 96 S. Ct. 1551, 47 L. Ed. 2d 810 (1976)8

FSLIC v. Molinaro,
889 F.2d 899 (9th Cir. 1989)7, 8, 9, 10, 11, 12

FTC v. J.K. Publications, Inc.,
99 F. Supp. 2d 1176 (C.D. Cal. 2000)9

Keating v. OTS,
45 F.3d 322 (9th Cir. 1995)7, 8, 12, 13

SEC v. Dresser Industries, Inc.,
628 F.2d 1368 (D.C. Cir. 1980).....7

Standard Sanitary Mfg.Co. v. United States,
226 U.S. 20, 33 S. Ct. 9 (1912)7

US v. Kordel,
397 U.S. 1, 90 S. Ct. 763,25 L. Ed. 2d 1 (1970)7

FEDERAL STATUTES

Investment Advisers Act of 1940

Section 206(1)
[15 U.S.C. § 80b-6(1)]3

Section 206(2)
[15 U.S.C. § 80b-6(2)]3

Section 206(4)
[15 U.S.C. § 80b-6(4)]3

FEDERAL REGULATIONS

Rule 206(4)-8
[17 C.F.R. § 275.206(4)-8]3

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

1 **I. INTRODUCTION**

2 Plaintiff Securities and Exchange Commission (“SEC”) opposes the motion of
3 Defendant Jacob Cooper for an indeterminate stay of this civil enforcement action,
4 which was filed in February 2015 and is nearing resolution on an unopposed motion
5 for summary judgment. Cooper seeks a stay because of a state court criminal case
6 filed against him in March 2017, and asserts that his Fifth Amendment privilege will
7 be burdened if this case is not stayed. Cooper’s reason for a stay ignores that Cooper
8 has already testified three times, at length, about his involvement with Defendant
9 Total Wealth Management, Inc. (“Total Wealth”) and waived the privilege as to that
10 testimony: (1) in 2012, Cooper testified during the SEC’s confidential, non-public
11 investigation; (2) in 2015, Cooper testified extensively at the public administrative
12 trial on the SEC’s claims that he misled his advisory clients when he failed to
13 disclose he was receiving millions of dollars in so-called “revenue sharing fees” from
14 certain investment funds in return for giving them his clients’ money; and (3) in
15 2017, Cooper testified at his deposition in this proceeding. Thus, Cooper’s argument
16 that proceeding with this case burdens his Fifth Amendment privilege lacks merit in
17 the context of his extensive testimony concerning his management of Total Wealth.

18 Moreover, considerations of judicial economy, the interests of the defrauded
19 investors, and the public interest all weigh in favor of not staying this proceeding.
20 Cooper has not substantively contested the SEC’s allegations in this case since the
21 case was filed in February 2015. Cooper stipulated to entry of a Temporary
22 Restraining Order against him (Dkt. Nos. 4 and 5) and did not oppose entry of a
23 Preliminary Injunction. (Dkt. Nos. 7 & 8.) Cooper did not file a timely opposition to
24 the SEC’s motion for summary judgment. (Dkt. Nos. 151, 152.) After the hearing
25 date had passed, Cooper asked for additional time to oppose the SEC’s motion, which
26 request the Court granted. (Dkt. Nos. 158, 160.) Even after being given additional
27 time, Cooper failed to file any opposition on the merits. (Dkt. No. 172.) Even with
28 the pending state criminal case, Cooper could have contested this action. Cooper

1 could have submitted evidence from his deposition or his prior testimony in
2 opposition to the SEC’s summary judgment motion, or could have submitted other
3 evidence which would not tend to incriminate him. Cooper chose not to meet the
4 merits of the SEC’s summary judgment motion, which is ripe for resolution. Instead,
5 at the very last minute, Cooper now asserts that the criminal information filed in
6 March 2017 warrants a stay of this action. The Court should reject Cooper’s
7 transparent effort to stall the final determination of the merits of this case after the
8 SEC has expended substantial resources to move the case forward and it is ripe for
9 final resolution.

10 The Ninth Circuit gives the Court discretion when determining Cooper’s
11 motion for a stay. Under applicable Ninth Circuit precedent, the Court should
12 exercise its discretion to move this case to completion, and reject Cooper’s request to
13 delay indefinitely the final resolution of this matter.

14 **II. FACTS**

15 **A. The SEC’s Civil Enforcement Action**

16 **1. The SEC’s enforcement action is focused on conduct that is**
17 **not at issue in the criminal proceeding**

18 The SEC’s enforcement action is tightly focused, and arose out of Cooper’s
19 fraud in attempting to settle a separate SEC administrative proceeding. While the
20 administrative proceeding broadly alleged Cooper and others had engaged in a
21 variety of fraud in the operation of Total Wealth, in contrast this civil enforcement
22 action narrowly focuses on Cooper’s breaches of fiduciary duty in misappropriating
23 investor funds to pay a proposed settlement of the SEC’s administrative proceedings
24 and charging investors inflated and unexplained “administrative fees.”

25 The SEC’s Complaint alleges that after the administrative proceeding was
26 filed, “Cooper and Total Wealth took their clients’ funds to pay a proposed settlement
27 with the SEC. In addition, Cooper and Total Wealth are continuing to take
28 substantial funds from client accounts, under the guise of ‘administrative fees,’

1 without proving any meaningful explanation or accounting to clients.” (Dkt. No. at ¶
2 3.) The SEC alleges that Cooper’s conduct violated the investment adviser fraud
3 provisions of the federal securities laws and Cooper breached his fiduciary duties to
4 investors. (*Id.* ¶ 4.) The Complaint alleges that Cooper violated Sections 206(1) and
5 (2) of the Investment Advisers Act of 1940, 15 U.S.C. §§ 80b-6(1) and (2), which
6 prohibits an investment adviser from employing devices, schemes, or artifices to
7 defraud clients or prospective clients, or engaging in transactions, practices, or
8 courses of business which operate as a fraud or deceit upon clients or prospective
9 clients. (*Id.*, ¶¶ 40-42 (First Claim for Relief).) The Complaint further alleges that
10 Cooper violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, 15
11 U.S.C. § 80b-6(4) and 17 C.F.R. § 275.206(4)-8, which prohibits an investment
12 adviser in a pooled investment vehicle from making untrue statements of material fact
13 or omitting material facts, to any investor or prospective investor in a pooled
14 investment vehicle, or engaging in acts, practices, or courses of business that are
15 fraudulent, deceptive, or manipulative with respect to any investor or prospective
16 investor in a pooled vehicle. (*Id.* ¶¶ 43-45 (Second Claim for Relief).)

17 While Cooper contends that the SEC’s allegations in this matter and the San
18 Diego District Attorney’s allegations are “so similar,” (Def’t. P&A at iii), in fact the
19 SEC’s allegations in this case focus on a narrow set of facts relating to the settlement
20 of the administrative proceedings and misuse of investor funds to pay legal fees. The
21 criminal charges appear to focus on different conduct by Cooper, more closely
22 aligned with the allegations in the SEC’s administrative proceeding, which has
23 concluded. (*See* Dkt. No. 151-7 (Initial Decision in the Administrative Proceeding).)¹

24 **2. Procedural history of this civil enforcement action**

25 The SEC filed this civil enforcement action on February 4, 2015, and sought
26

27 ¹ The SEC declared the Initial Decision final, and Cooper then appealed the matter to
28 the Ninth Circuit, where the appeal is pending.

1 emergency relief based on Defendant Jacob Cooper's misappropriation of investor
2 funds to pay his legal fees and fund a settlement with the SEC concerning a separate
3 administrative proceeding instituted on April 15, 2014. (Dkt. No. 1.) On the same
4 day, Cooper stipulated to entry of a Temporary Restraining Order and related Orders,
5 including appointment of a temporary receiver over Defendant Total Wealth
6 Management. (Dkt. Nos. 4 & 5.) Cooper did not oppose entry of a Preliminary
7 Injunction and Appointment of a Permanent Receiver over Total Wealth. (Dkt. Nos.
8 7 & 8.)

9 On September 8, 2015, the Court entered its Scheduling Order. (Dkt. No. 49.)
10 The Scheduling Order provided that discovery could commence and set the case for
11 trial on December 6, 2016. (Dkt. No. 49.)

12 At around this time, Cooper had difficulties with his counsel, Vince Brown.
13 Although Mr. Brown remains Cooper's counsel of record and has never moved to
14 withdraw his appearance in the case, Mr. Brown has not appeared at a hearing for
15 Cooper since June 3, 2015. Since that time, Cooper's issues with representation have
16 effectively delayed the resolution of this proceeding by just over a year from the
17 Court's original Scheduling Order. If that Scheduling Order had remained in place,
18 this case would have been either settled or tried and resolved in December 2016.
19 Instead, Cooper's purported issues with representation effectively put off the
20 resolution of this case until December 2017.

21 Cooper never replaced Mr. Brown as his counsel of record in the intervening
22 18 month period.² In November 2015, at Cooper's request, the Court partially
23 vacated the Scheduling Order to allow Cooper time to find a new attorney. (Dkt. No.
24 59.) On December 21, 2015, Cooper was represented by new attorneys at a
25 telephonic status conference. (Dkt. No. 62.) The new counsel wanted a Court order
26

27 ² Although several other sets of attorneys have represented Cooper at various times in
28 various capacities, Mr. Brown remains counsel of record.

1 that their fee payment was not subject to disgorgement, and a series of motions were
2 filed, denied without prejudice, withdrawn, and re-filed on this issue in late 2015 into
3 mid-2016. (*See, e.g.*, Dkt. Nos. 66, 69, 78, 88, 89.) The litigation over payment of
4 Cooper's new attorney delayed discovery and other proceedings in this matter. (*See,*
5 *e.g.*, Dkt. No. 59 (Order Partially Vacating Scheduling Order); Dkt. No. 96 (Joint
6 Motion to Stay Scheduling Order; Dkt. No. 98 (Order Temporarily Staying
7 Scheduling Order).)

8 In July 2016, the SEC moved to have this case placed back on the active
9 schedule. (Dkt. No. 103.) On August 4, 2016, the Court issued its Scheduling Order
10 Regulating Discovery and Other Pre-Trial Proceedings, which set a discovery
11 deadline of May 12, 2017, and a trial date of December 12, 2017. (Dkt. No. 110.)
12 Thus, Cooper's issues with his counsel effectively delayed the trial in this matter by
13 one year.

14 On March 7, 2017, the SEC took Cooper's deposition in this proceeding. (*See*
15 Dkt. No. 151-3.) Cooper was represented by counsel at his deposition and elected to
16 testify at length. Cooper did not invoke his Fifth Amendment privilege in response to
17 any questions.

18 On June 9, 2017, the SEC filed its motion for summary judgment against
19 Cooper, and noticed it for hearing on July 24, 2017. (Dkt. No. 151.) Cooper's
20 opposition was due on July 10, 2017, and he failed to file any opposition to the
21 motion. (Dkt. No. 152.) On July 25, 2017 – the day after the motion for summary
22 judgment was noticed for hearing – Cooper filed a motion to continue the hearing and
23 for leave to file an opposition. (Dkt. No. 158.) Cooper based his request for
24 additional time on the shortcomings of attorney Vince Brown, even though Mr.
25 Brown had not appeared in this matter on Cooper's behalf in over a year. (*Id.*) The
26 Court granted the motion in part, and gave Cooper until August 23, 2017 to file his
27 opposition. (Dkt. No. 160.)

28 On August 23, 2017, rather than filing an opposition to the SEC's summary

1 judgment motion, Cooper filed *pro se* a motion to stay the proceedings. (Dkt. No.
2 165.) On the next day, attorney John D. Kirby filed a withdrawal of the motion to
3 stay. (Dkt. No. 170.) On August 28, 2017, the SEC filed another Notice of Non-
4 Opposition to the pending motion for summary judgment. (Dkt. No. 171.) On the
5 same day, Cooper's attorney re-filed a motion to stay (Dkt. No. 173), which is
6 virtually identical to Cooper's *pro se* motion to stay which was withdrawn.

7 Thus, the SEC's summary judgment motion is ripe for resolution, and has not
8 been opposed by Cooper.

9 **B. The State Criminal Proceedings**

10 The San Diego District Attorney filed an Information charging Cooper and two
11 other individuals with a variety of crimes arising from their solicitation of investors
12 for Total Wealth. (Dkt. No. 173-2.) Cooper is charged with 18 counts, including
13 Conspiracy to Commit a Crime (Count 1); False Statement in Connection with Sale
14 of a Security (Counts 2, 4, 5, 6, 7, 8, 13, 14, 15, 16); Fraud in Connection with the
15 Offer, Purchase, Sale of a Security (Count 3); Using False Statements in the Sale of a
16 Security (Counts 9, 10, 11); Theft from Elder/Dependent Adult (Over \$950) (Counts
17 12, 17); and Use of Device/Scheme/Artifice to Defraud in Connection With the Offer,
18 Purchase, and Sale of any Security (Count 18.)

19 The overt acts alleged in Count 1 of the criminal Information do not include the
20 fraud that is part of the SEC's current civil enforcement action pending in this Court.
21 The overt acts identified in the criminal Information involve accepting fees from
22 funds in return for placing investor money in the funds, (*see* Dkt. No. 173-2 (overt act
23 2), and failing to disclose the receipt of fees from funds in return for placing investor
24 monies in the funds (*id.* (overt act 3)).³ The overt acts also include that Cooper
25 represented he had a master's degree in financial planning, and Cooper represented

26
27 ³ These matters were the subject of the SEC's administrative proceeding, which was
28 resolved at the agency level, and is now on appeal to the Ninth Circuit. (*See* Dkt. No.
151-7.)

1 he had a college degree. (*Id.* (overt acts 4 and 5).) Other overt acts include that
2 Cooper and others represented that Cooper would actively manage the investors'
3 accounts, and that investor money would be placed in the Peet's Coffee Company.
4 (*Id.* (overt acts 6 and 7).) Finally, the overt acts include that Cooper represented to an
5 investor that his investments were liquid. (*Id.* (overt act 8.)

6 Thus, the overt acts and other criminal conduct charged in the Information are
7 substantively different from the conduct that is the subject of the SEC's action
8 pending before the Court.

9 **III. LEGAL ARGUMENT**

10 **A. A Defendant In A Civil Action Is Not Entitled To A Stay Of** 11 **Discovery Even When Criminal Charges Have Been Filed**

12 The Supreme Court has held that a defendant is not entitled to a stay of civil
13 litigation because criminal charges are pending against him. It is well established that
14 parallel civil and criminal proceedings can be brought and pursued against the same
15 defendant "simultaneously or successively." *See Standard Sanitary Mfg.Co. v.*
16 *United States*, 226 U.S. 20, 52, 33 S. Ct. 9, 16 (1912). "In the absence of substantial
17 prejudice to the rights of the parties involved, such parallel proceedings are
18 unobjectionable." *SEC v. Dresser Industries, Inc.*, 628 F.2d 1368, 1374 (D.C. Cir.
19 1980). *See generally US v. Kordel*, 397 U.S. 1, 90 S. Ct. 763, 25 L. Ed. 2d 1 (1970).
20 "The Constitution does not ordinarily require a stay of civil proceedings pending the
21 outcome of criminal proceedings." *Keating v. OTS*, 45 F.3d 322, 324 (9th Cir. 1995).
22 *Accord FSLIC v. Molinaro*, 889 F.2d 899, 902 (9th Cir. 1989).

23 In *Keating*, the Ninth Circuit rejected Charles Keating's argument that
24 overlapping civil and criminal proceedings entitled him to a stay of the civil
25 proceedings. In affirming an administrative law judge's refusal to stay the Office of
26 Thrift Supervision's civil case against Keating, the Ninth Circuit ruled that "[a]
27 defendant has no absolute right not to be forced to choose between testifying in a
28 civil matter and asserting his Fifth Amendment privilege. Not only is it permissible

1 to conduct a civil proceeding at the same time as a related criminal proceeding, even
2 if that necessitates invocation of the Fifth Amendment privilege, but it is even
3 permissible for the trier of fact to draw adverse inferences from the invocation of the
4 Fifth Amendment in a civil proceeding.” *Keating*, 45 F.3d at 326 (citing *Baxter v.*
5 *Palmigiano*, 425 U.S. 308, 318, 96 S. Ct. 1551, 1557, 47 L. Ed. 2d 810 (1976)).

6 In *FSLIC v. Molinaro*, defendant argued that the FBI was investigating the
7 same activities that caused the FSLIC to file a civil action against him. The Ninth
8 Circuit upheld the district court’s denial of Molinaro’s motion to stay the civil
9 proceeding, holding that while “a district court may stay civil proceedings pending
10 the outcome of parallel criminal proceedings, such action is not required by the
11 Constitution” and the decision to stay should be made “in light of the particular
12 circumstances and competing interests involved in the case.” *Molinaro*, 889 F.2d at
13 902 (citations omitted).

14 **B. Under Ninth Circuit Law, Defendant Is Not Entitled To A Stay Of**
15 **Discovery**

16 In *Keating* and *Molinaro*, the Ninth Circuit identified the factors that generally
17 should be considered when a stay is requested because of a parallel criminal
18 proceeding:

19 (1) interest of the plaintiff in proceeding with the litigation or any particular
20 aspect of it, and the potential prejudice to the plaintiff of a delay;

21 (2) burden which any particular aspect of the proceedings may impose on
22 defendants;

23 (3) convenience of the court in the management of its cases, and the efficient
24 use of judicial resources;

25 (4) interests of persons not parties to the civil litigation; and

26 (5) interests of the public in the pending civil and criminal litigation.

27 *Keating*, 45 F.3d at 324-25; *Molinaro*, 889 F.2d at 903 (citations omitted).

28

1 **1. A stay will substantially prejudice the SEC**

2 The SEC has a strong and legally cognizable interest in timely pursuing its
3 civil action to obtain a judgment of permanent injunction against defendant Cooper,
4 obtain an order that ill-gotten gains be disgorged, and seek the imposition of civil
5 penalties to punish Cooper for his violations of the federal securities laws. *See*
6 *Molinaro*, 889 F.2d at 903; *FTC v. J.K. Publications, Inc.*, 99 F. Supp. 2d 1176, 1197
7 (C.D. Cal. 2000) (recognizing government agencies’ strong interest in avoiding delay
8 in civil enforcement proceedings).

9 Cooper has already managed to delay the resolution of this case by over a year
10 from the original trial date. Despite this, the case is now ready for resolution on the
11 SEC’s motion for summary judgment.

12 Cooper argues that a stay will not prejudice the SEC on the grounds that
13 success in the criminal proceeding will “bolster” the SEC’s case, and the SEC can
14 “receive its day in court once the criminal matter is resolved” at some indeterminate
15 point in the future. (Deft. P&A at 5.) In fact, the SEC does not need evidence from
16 the criminal case to “bolster” its case. The SEC’s summary judgment motion is
17 supported with factual and expert evidence that establishes its right to relief.
18 Moreover, the SEC’s motion is ripe for adjudication now, and an indeterminate delay
19 will prejudice the SEC, which has worked to move its case to conclusion despite
20 Cooper’s efforts to delay the outcome of this case.

21 The SEC has a compelling interest in proceeding expeditiously to protect the
22 investing public through injunctive relief. Indeed, Cooper stipulated to entry of the
23 TRO and did not oppose entry of the Preliminary Injunction. Thus, at the initial
24 stages of the case, Cooper did nothing to oppose the SEC’s allegations and evidence.
25 In response to the SEC’s pending motion for summary judgment, Cooper filed no
26 opposition. Thus, Cooper has not contested the substance of the SEC’s allegations at
27 any stage in this proceeding.

1 In view of his lack of any substantive opposition at any point in these
2 proceedings, simply putting off the final resolution for some indeterminate period
3 would unfairly prejudice the SEC.

4 **2. Cooper will not be unfairly burdened if these proceedings**
5 **continue**

6 Cooper claims that his “pleadings and discovery will be available for use in the
7 criminal matter, in violation of their [sic] Fifth Amendment rights.” (Def’t. P&A at
8 4.) Cooper also hypothesizes that the SEC “have or will contact the prosecuting
9 agency in an effort to apply extra pressure against Defendant to resolve the instant
10 case.” (*Id.*)

11 On the latter point, the SEC has not and will not seek to have the San Diego
12 District Attorney put pressure on Cooper to settle this SEC matter. This argument is
13 based on pure speculation and deserves no weight or consideration.

14 On the issue of Cooper’s Fifth Amendment privilege, Cooper has already
15 testified extensively concerning his operation of Total Wealth. On December 12,
16 2012, Cooper provided testimony during the SEC’s confidential, non-public
17 investigation. (*See* Dkt. Nos. 3-16, 151-2.) Cooper publicly testified at length during
18 the administrative hearing held beginning on March 30 through April 2, 2015. (*See*
19 Dkt. No. 151-7.) Finally, Cooper testified at length at his deposition in this
20 proceeding on March 7, 2017. (*See* Dkt. No. 151-3.) Cooper has waived his
21 privilege with regard to the testimony he has provided. Indeed, Cooper does not
22 explain how, in view of his extensive sworn statements concerning Total Wealth, the
23 resolution of this matter implicates his Fifth Amendment privilege in any specific
24 way.

25 Cooper’s situation is similar to the defendant’s situation in *Molinaro*. In that
26 case, the defendant asserted that allowing a summary judgment motion in a civil
27 proceeding to go forward would burden his Fifth Amendment privilege because of a
28 parallel criminal proceeding. The Ninth Circuit found that argument lacked merit

1 because Molinaro had already given a partial deposition to the FSLIC attorneys
2 which provided the basis of support for the FSLIC's summary judgment motion.
3 *Molinaro*, 889 F.2d at 903. In addition, the Ninth Circuit found that nothing
4 prevented Molinaro from responding to the FSLIC's motion with information that did
5 not tend to incriminate him. *Id.* Thus, the Ninth Circuit concluded that under such
6 circumstances, "any burden on Molinaro's fifth amendment privilege was
7 negligible." *Id.*

8 Similarly, here the SEC's summary judgment motion is fully briefed and
9 supported, in part, by deposition testimony provided by Cooper in this proceeding.
10 To the extent Cooper believes any of his deposition testimony creates a genuine issue
11 of material fact, he could have cited his own testimony to the Court in an opposition.
12 Cooper could also have responded with factual information that did not tend to
13 incriminate him, as the Ninth Circuit recognized in *Molinaro*. Under all of these
14 circumstances, any burden on Cooper's Fifth Amendment privilege is negligible.
15 *Molinaro*, 899 F.2d at 903.

16 **3. Judicial economy does not warrant a stay**

17 Considerations of judicial economy do not warrant a stay, because the
18 allegations in the state criminal proceeding involve different conduct than is at issue
19 here. Cooper attempts to conflate the two with unsubstantiated claims about
20 statements made by the District Attorney about evidence at trial. (Def't. P&A at ii-
21 iii.) Unsupported claims about what may be added to the criminal case or evidence
22 that may be offered at the criminal trial is simply that – speculation. This Court has
23 available to it the criminal Information, which does not include the conduct that is the
24 subject of the SEC's civil enforcement action pending in this Court.

25 Moreover, there is nothing to suggest that the resolution of the criminal
26 proceeding will have any effect, one way or the other, on the SEC's allegations in this
27 matter. Given the difference in the facts at issue, resolution of the state criminal
28 proceedings will likely have no impact on this case. On the other hand, the SEC's

1 case has been pending in this Court since February 2015, and Cooper has not offered
2 any substantive defense to the allegations. The SEC has expended substantial
3 resources to move this case to conclusion, including retention of an expert and
4 preparation of an expert report, and filing of a well-supported motion for summary
5 judgment. Judicial economy supports reaching a resolution of the claims against
6 Cooper in this proceeding.

7 **4. A stay is contrary to the interests of the defrauded investors**

8 The law recognizes and protects the interests of defrauded investors in prompt
9 recovery of disgorgement and disfavors stays that delay such potential recoveries.
10 *See Molinaro*, 889 F.2d at 903 (victims' interest in prompt recovery weighs heavily
11 against request for stay). Here, the Receiver has found little in the way of assets to be
12 used to compensate the investors who have been defrauded by Cooper. The investors
13 may gain some comfort by this Court's determination concerning Cooper's
14 culpability and fraud. Forcing the investors to wait even longer while Cooper's state
15 court criminal proceeding is pending denies the defrauded investors what justice this
16 Court can provide. The interests of the defrauded investors weigh heavily against a
17 stay.

18 **5. The public interest weighs against a stay**

19 The public interest does not favor a stay. The SEC brought this civil
20 enforcement action in the public interest. The SEC, which is statutorily charged with
21 the enforcement of the federal securities laws in the public interest, has a strong
22 interest in the timely prosecution and resolution of civil enforcement proceedings. A
23 stay would run counter to the public's compelling interest in the fair, efficient,
24 effective, and swift enforcement of the federal securities laws. *See Keating*, 45 F.3d
25 at 325 (recognizing public interest favors timely resolution of civil action and weighs
26 against stay); *Molinaro*, 889 F.2d at 903 (same). Indeed, in *Keating*, the Ninth
27 Circuit held that the public's interest in "a speedy resolution of the controversy"
28 outweighed Keating's asserted interest in avoiding reliance upon his Fifth

1 Amendment rights, and that the compelling public “concern for efficient
2 administration would [be] unnecessarily impaired” by the imposition of a stay.
3 *Keating*, 45 F.3d at 325.

4 In this case, given that there is little burden on Cooper’s Fifth Amendment
5 rights in view of his extensive prior testimony and the posture of the case, the public
6 interest in a speedy resolution weighs strongly in favor of denying Cooper’s motion.

7 **IV. CONCLUSION**

8 For the foregoing reasons, Cooper’s motion for a stay should be denied in all
9 respects.

10
11 Dated: September 12, 2017

Respectfully submitted,

12
13 /s/ John B. Bulgozdy

14 John B. Bulgozdy
15 David J. Van Havermaat
16 Gary Y. Leung
17 Attorneys for Plaintiff
18 Securities and Exchange Commission
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is:

U.S. SECURITIES AND EXCHANGE COMMISSION,
400 S. Flower Street, Suite 900, Los Angeles, California 90071
Telephone No. (323) 965-3998; Facsimile No. (213) 443-1904.

On September 12, 2017, I caused to be served the document entitled **PLAINTIFF SECURITIES AND EXCHANGE COMMISSION’S OPPOSITION TO DEFENDANT JACOB COOPER’S MOTION TO STAY** on all the parties to this action addressed as stated on the attached service list:

OFFICE MAIL: By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency’s practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

PERSONAL DEPOSIT IN MAIL: By placing in sealed envelope(s), which I personally deposited with the U.S. Postal Service. Each such envelope was deposited with the U.S. Postal Service at Los Angeles, California, with first class postage thereon fully prepaid.

EXPRESS U.S. MAIL: Each such envelope was deposited in a facility regularly maintained at the U.S. Postal Service for receipt of Express Mail at Los Angeles, California, with Express Mail postage paid.

HAND DELIVERY: I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.

UNITED PARCEL SERVICE: By placing in sealed envelope(s) designated by United Parcel Service (“UPS”) with delivery fees paid or provided for, which I deposited in a facility regularly maintained by UPS or delivered to a UPS courier, at Los Angeles, California.

ELECTRONIC MAIL: By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

E-FILING: By causing the document to be electronically filed via the Court’s CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.

FAX: By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

I declare under penalty of perjury that the foregoing is true and correct.

Date: September 12, 2017

/s/ John B. Bulgozdy

John B. Bulgozdy

1 ***SEC v. Total Wealth Management, Inc., et al.***
2 **United States District Court – Southern District of California**
3 **Case No. 3:15-cv-226-BAS-DHB**

4 **SERVICE LIST**

5 Vincent J. Brown, Esq. (**served ECF only**)
6 1174 Oakmont Lane
7 Provo, UT 84604
8 ***Attorney for Defendant Jacob Keith Cooper***

9 John D. Kirby, Esq. (**served by ECF only**)
10 The Executive Complex
11 1010 Second Avenue, Suite 2400
12 San Diego, CA 92101
13 ***Attorney for Defendant Jacob Keith Cooper***

14 Joshua del Castillo, Esq. (**served by ECF only**)
15 David Zaro, Esq.
16 Allen Matkins Leck Gamble Mallory & Natsis LLP
17 865 S. Figueroa Street, Suite 2800
18 Los Angeles, CA 90017-2543
19 Email: jdelcastillo@allenmatkins.com
20 Email: dzaro@allenmatkins.com
21 ***Attorneys for Thomas Seaman, Receiver for Defendant Total Wealth***
22 ***Management, Inc.***