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**STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES**

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11 STATE BAR COURT

12 HEARING DEPARTMENT - LOS ANGELES

14 In the Matter of:) CASE NO. SBC-23-O-30029
15)
16 JOHN CHARLES EASTMAN,) STATE BAR'S OPPOSITION TO
17 State Bar No. 193726,) RESPONDENT'S MOTION FOR
18) ABATEMENT
19 An Attorney of the State Bar)
20)
21)
22)
23)
24)
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26)

21 **I. INTRODUCTION**

22 The State Bar hereby opposes respondent's Motion for Abatement ("Motion") and
23 his alternative request for a three-month stay of the proceedings.¹

24 Respondent is in the same situation now as when he previously decided to proceed
25 with trial. Respondent has not been charged with a crime, he has not received a target letter,

26 _____
27 ¹ The State Bar does not oppose respondent's contemporaneously filed Request for Judicial
28 Notice of the August 1, 2023, Trump indictment.

1 and none of the Trump indictment’s allegations regarding respondent’s conduct and
2 potential status as a co-conspirator has changed his status in a material way, particularly
3 given the finding by a district court in March 2022 (prior to respondent’s election to proceed
4 with trial) that it was more likely than not respondent conspired with Trump to violate 18
5 U.S.C. § 371. As at the beginning of trial, it remains speculative whether criminal charges
6 will be brought against respondent, and there is no time frame for the filing of any such
7 charges, much less the resolution of any such charges. Respondent claims that his likelihood
8 of being charged has increased since the Trump indictment, but this claim is pure
9 speculation, unsupported by any evidence. Indeed, the Special Counsel’s decision to charge
10 Trump but include respondent only as an unnamed, uncharged co-conspirator, might be
11 interpreted as suggesting that respondent is less likely to be charged. At the least, the failure
12 to include respondent in the Trump indictment leaves it uncertain whether, or when,
13 respondent might be subject to criminal charges.

14 Respondent has known since at least December 2021 that he faced potential criminal
15 exposure from his conduct related to the 2020 presidential election, but he decided to
16 proceed with his State Bar trial without moving for abatement. On December 9, 2021,
17 respondent asserted his Fifth Amendment right to not answer questions when he was
18 deposed by the Select Committee to Investigate the January 6th Attack on the United States
19 Capitol (“January 6 Committee”). (Dec. 9, 2021 Select Committee Deposition of John
20 Eastman (“Eastman Depo.”), available at [https://www.govinfo.gov/app/details/GPO-J6-](https://www.govinfo.gov/app/details/GPO-J6-TRANSCRIPT-CTRL0000034608/)
21 [TRANSCRIPT-CTRL0000034608/](https://www.govinfo.gov/app/details/GPO-J6-TRANSCRIPT-CTRL0000034608/).) On March 28, 2022, a district court concluded “it is
22 more likely than not that President Trump and Dr. Eastman dishonestly conspired to
23 obstruct the Joint Session of Congress on January 6, 2021,” in violation of 18 U.S.C. § 371.
24 (State Bar Exh. 301 at 36, 40, 44.) On August 31, 2022, respondent asserted his Fifth
25 Amendment right to not answer questions when he appeared before a Fulton County Special
26 Grand Jury in Georgia related to allegations of election interference in that state. (2022
27 Statement on John Eastman Appearance Before Fulton County Special Grand Jury,

1 Burnham & Gorokhov Legal Blog (Aug. 31, 2022), available at
2 [https://www.burnhamgorokhov.com/statement-on-john-eastman-august-31-appearance-](https://www.burnhamgorokhov.com/statement-on-john-eastman-august-31-appearance-before-fulton-county-special-grand-jury/)
3 [before-fulton-county-special-grand-jury/](https://www.burnhamgorokhov.com/statement-on-john-eastman-august-31-appearance-before-fulton-county-special-grand-jury/) (“Burnham Blog”).) On December 20, 2022, the
4 January 6 Committee referred respondent to the Department of Justice for criminal
5 prosecution under 18 U.S.C. § 1512(c) (corruptly obstructing an official proceeding) and 18
6 U.S.C. § 371 (conspiring to defraud the United States). (State Bar Exh. 165, pp. 124-143
7 (pp. 98-117 of Report).)

8 Respondent considered moving for abatement at the beginning of the State Bar
9 proceedings, but intentionally chose not to do so. At the Initial Status Conference on
10 February 27, 2023, respondent’s counsel raised the issue of abatement with the court, and
11 stated that they had been discussing abatement of the State Bar case “for a long long time.”
12 However, respondent decided not to move for abatement and to proceed with the trial, with
13 full knowledge of the pending investigations by the Department of Justice and the Georgia
14 grand jury.

15 Now, having heard six days of evidence against him, including testimony from Greg
16 Jacob, Dr. Justin Grimmer, and four state election officials, and after being confronted with
17 evidence demonstrating the absence of support for his frivolous and false claims of fraud
18 and a stolen election, respondent seeks to use the Trump indictment as an excuse to delay
19 the rest of his trial. This is nothing more than an opportunistic attempt to delay the decision
20 in respondent’s State Bar case, as his situation with regard to potential criminal charges is
21 the same today as when the trial started.

22 Respondent seeks to delay the rest of his trial until “resolution of the ongoing federal
23 criminal investigation” into the alleged conspiracy between Trump and his co-conspirators.
24 It may be several years until that investigation and any subsequent criminal case is resolved,
25 as respondent has not been charged, and the statute of limitations for the offenses in the
26 Trump indictment is at least five years. (18 USC § 3282.) The State Bar and the public
27

1 interest in resolving this case would be highly prejudiced by delaying the completion of trial
2 and decision by several years.

3 In the alternative, respondent requests a stay of three months, “to allow for an
4 updated assessment of the scope of the ongoing investigation” and “the likelihood that
5 formal charges will be brought against Respondent.” Respondent provides no reason to
6 believe that he will be charged in three months, or that the likelihood of charges will be
7 clearer in three months. To the contrary, media reports suggest that the Special Counsel may
8 intend to proceed against Trump without co-defendants, possibly in an effort to complete
9 Trump’s trial before the 2024 election. Respondent’s request for an arbitrary three-month
10 delay to wait-and-see what happens is unsupported by any evidence or justification that
11 clarity on his status as a potential criminal defendant will be forthcoming in that period of
12 time.

13 For all these reasons, the court should deny respondent’s Motion in its entirety.

14 **II. RELEVANT FACTS**

15 **A. Respondent Has Been on Notice of Potential Criminal Charges Since At 16 Least 2021**

17 On December 9, 2021, the January 6 Committee deposed respondent concerning his
18 role in the events leading up to the January 6, 2021 attack on the United States Capitol.

19 Respondent invoked his privilege against self-incrimination in response to all of the
20 questions. As grounds, respondents’ counsel stated:

21 there is no need to reveal privileged information to establish Dr. Eastman's basis for
22 Fifth Amendment protection. One need only look to the public record to understand
23 why claiming the Fifth Amendment is a necessity forced upon Dr. Eastman. I have
24 detailed on pages 8 and 9 of my letter, which is now a part of the record, examples of
25 statements from committee members and other voices of influence which made clear
26 that Dr. Eastman has a legitimate fear of criminal prosecution.

27 (Eastman Depo. at 6:7-13.)

28 On March 28, 2022, a district court considering whether the crime-fraud exception
applied to certain documents respondent claimed were privileged concluded “it is more

1 likely than not that President Trump and Dr. Eastman dishonestly conspired to obstruct the
2 Joint Session of Congress on January 6, 2021,” in violation of 18 U.S.C. § 371. (State Bar
3 Exh. 301 at 36, 40, 44.) The court explained:

4 President Trump and Dr. Eastman participated in numerous overt acts in furtherance
5 of their shared plan...President Trump’s acts to strong-arm Vice President Pence
6 into following the plan included meeting with and calling the Vice President and
7 berating him in a speech to thousands outside the Capitol. Dr. Eastman joined for
8 one of those meetings, spent hours attempting to convince the Vice President’s
9 counsel to support the plan, and gave his own speech at the Ellipse “demanding” the
10 Vice President “stand up” and enact his plan. Based on the evidence, the Court finds
11 that it is more likely than not that President Trump and Dr. Eastman dishonestly
12 conspired to obstruct the Joint Session of Congress on January 6, 2021.

13 (*Id.* at 39-40.) Ultimately, the court ordered respondent to disclose nine documents pursuant
14 to the crime-fraud exception. (*Id.* and State Bar Exh. 302 at 4, 13-17.)

15 On August 31, 2022, respondent appeared before a Fulton County, Georgia, Special
16 Grand Jury. According to a public statement issued by respondent’s counsel, “In his
17 appearance before the Fulton County Special Grand Jury, we advised our client John
18 Eastman to assert attorney client privilege and the constitutional right to remain silent where
19 appropriate.” (Burnham Blog.)

20 On November 18, 2022, U.S. Attorney General Merrick Garland appointed Jack
21 Smith as Special Counsel to oversee the investigation into whether any person or entity
22 interfered with the transfer of power following the 2020 presidential election or with the
23 certification of Electoral College votes, as well as the investigation into classified
24 documents and other records seized from Trump’s Mar-a-Lago estate. (*Special Counsel for
25 Trump Investigations*, NY Times (Nov. 18, 2022), available at
26 <https://www.nytimes.com/live/2022/11/18/us/trump-garland-special-counsel>.)

27 On December 20, 2022, during its final public hearing, the January 6 Committee
28 described respondent’s role in the events leading up to the January 6, 2021 attack on the

1 Capitol and referred respondent to the Department of Justice for criminal prosecution under
2 18 U.S.C. § 1512(c), which makes it unlawful for anyone to corruptly obstruct, influence, or
3 impede any official proceeding of the United States government, and 18 U.S.C. § 371,
4 which makes it unlawful to conspire to defraud the United States. (Dec 20, 2022 January 6
5 Select Committee Final Public Hearing Transcript at 58:01-1:00:54, available at
6 [https://www.rev.com/blog/transcripts/january-6-select-committee-final-public-hearing-](https://www.rev.com/blog/transcripts/january-6-select-committee-final-public-hearing-transcript)
7 [transcript.](https://www.rev.com/blog/transcripts/january-6-select-committee-final-public-hearing-transcript) *See also* State Bar Exh. 165, pp. 124-143 (pp. 98-117 of Report).) As the
8 Committee explained during the public hearing and at greater length in its written final
9 report:

11 Former President Trump did not engage in a plan to defraud the United States acting
12 alone. He entered into agreements, formal and informal with several other
13 individuals who assisted him with his criminal objectives. Our report describes in
14 detail the actions of numerous co-conspirators who agreed with and participated in
15 Trump's plan to impair, obstruct and defeat the certification of President Biden's
16 electoral victory.

15 (*Id. See also* “Chapter 5, A Coup in Search of a Legal Theory,” State Bar Exh. 165 pp. 453-
16 495.)

17 On January 26, 2023, the State Bar filed its Notice of Disciplinary Charges (“NDC”)
18 against respondent. Count One of the NDC alleges that respondent violated Business and
19 Professions Code section 6068(a) by, among other things, engaging in a conspiracy to “plan,
20 promote, execute, and assist Trump in executing a strategy for Trump to overturn the
21 legitimate results of the election by obstructing the count of electoral votes of certain states,
22 which strategy respondent knew, or was grossly negligent in not knowing, was not
23 supported by either the facts or law[;]” and, further, by “participat[ing] in numerous overt
24 acts in furtherance of a shared plan with Trump and others to pressure Pence to, without
25 legal or factual support, reject the electoral votes of certain states or delay the electoral

1 count, and thereby dishonestly conspired to obstruct the Joint Session of Congress on
2 January 6, 2021, in violation of 18 U.S.C. § 371.” (NDC ¶¶ 7, 32.)

3 On February 15, 2023, respondent filed an Answer to the NDC. (State Bar Exh. 9.)
4 Respondent raised abatement as his 15th Affirmative Defense and the Fifth Amendment as
5 his 16th Affirmative Defense, citing his right against self-incrimination. In his Answer,
6 respondent stated “an order staying discovery until expiration of the criminal statute of
7 limitations would allow real parties to prepare their lawsuit while alleviating petitioners’
8 difficult choice between defending either the civil or criminal case.” (*Id.* at p. 111 (p. 110 of
9 Answer).)

10 **B. Respondent Decided to Proceed with Trial and Testify Without Asserting**
11 **the Fifth Amendment Knowing He Faced Potential Criminal Charges**

12 On February 27, 2023, at the Initial Status Conference, respondent’s counsel raised
13 the issue of abatement, stating that they had been discussing abatement “for a long, long
14 time.” (Audio recording of February 27, 2023 status conference.) In response, the court
15 pointed respondent’s counsel to rule 5.50 of the Rules of Procedure and stated that
16 respondent would need to file a motion if he believed there were grounds for abatement.
17 Following the Initial Status Conference, the parties exchanged discovery, conducted seven
18 depositions of the parties’ experts, prepared and exchanged exhibits, filed a joint pretrial
19 statement, and filed multiple pretrial motions. At no time prior to trial, however, did
20 respondent move for abatement.

21 Trial commenced on June 20, 2023, and continued on June 21, 22, 23, 29, and 30.²
22 During these trial days, the State Bar presented seven witnesses, including respondent.
23 During his examination, respondent offered testimony on a wide range of topics and never
24 invoked his privilege against self-incrimination.

25 _____
26 ² Trial was cancelled on June 27 and 28 due to illness of respondent’s counsel. Trial is scheduled
27 to resume in two weeks, on August 22, 2023.

1 One of the topics covered in respondent’s examination, contrary to respondent’s
2 assertion otherwise (*see* Motion fn.2), was respondent’s confirmation that he participated in
3 efforts to gather alternate slates of Trump electors. Respondent claims in his Motion that he
4 did not waive his Fifth Amendment privilege regarding his efforts to recruit alternate
5 electors, which were central to Trump’s strategy to overturn the results of the 2020 election.
6 On June 20, however, the State Bar questioned respondent at length about his participation
7 in a call with Republican National Committee (“RNC”) Chairwoman Ronna McDaniel
8 concerning the RNC’s involvement in gathering alternate Trump electors. During that
9 questioning, respondent confirmed that gathering contingent electors was “part of the work I
10 was doing” and further confirmed that he believed that it was important for contingent
11 electors to meet and vote on December 14. (June 20 Transcript at I-160:10-161:14; I-162:2-
12 6; I-166:7-14; I-169:7-25). On June 23, the State Bar again questioned respondent about his
13 involvement in gathering alternate Trump electors. (June 23 Transcript at IV-29:12-32:8.)
14 During questioning on this topic, respondent never invoked his privilege against self-
15 incrimination. Instead, respondent and his counsel objected on grounds of attorney-client
16 privilege. Those objections are addressed fully in respondent’s pending Motion in Limine
17 No. 7, and the State Bar’s opposition thereto. Respondent did not raise any Fifth
18 Amendment concerns in his Motion in Limine No. 7.

19 **C. Respondent Has Not Been Indicted or Received a Target Letter**

20 On July 18, 2023, after former President Trump announced that he had received a
21 target letter from Special Counsel Jack Smith, the Washington Post and other news agencies
22 reported that respondent’s attorneys announced that respondent had not received a target
23 letter. (Jacqueline Alemany, *John Eastman has not received a target letter, per his lawyer*,
24 Washington Post (July 18, 2023), available at
25 [https://www.washingtonpost.com/nation/2023/07/18/trump-target-letter-jan-6-jack-smith-
26 classified-documents-case/#link-QTD7V6X4BZBURKYGH6ANDQ5KRM](https://www.washingtonpost.com/nation/2023/07/18/trump-target-letter-jan-6-jack-smith-classified-documents-case/#link-QTD7V6X4BZBURKYGH6ANDQ5KRM).) In an emailed
27 statement to the press, respondent’s attorney stated, “Our client has received no target letter,
28

1 and we don't expect one since raising concerns about illegality in the conduct of an election
2 is not now and has never been sanctionable." (*Id.*) Respondent does not state in the Motion
3 or attached declaration that his status has changed, *i.e.*, that he has now received a target
4 letter or any other communication from the Special Counsel's office indicating that he is
5 likely to be indicted.

6 On August 1, 2023, Special Counsel Jack Smith obtained an indictment against
7 Trump for perpetrating: (1) a conspiracy to defraud the United States by using dishonesty,
8 fraud, and deceit to impair, obstruct, and defeat the lawful federal government function by
9 which the results of the presidential election are collected, counted, and certified by the
10 federal government, in violation of violation of 18 U.S.C. § 371, (2) a conspiracy to
11 corruptly obstruct and impede the January 6 congressional proceeding at which the collected
12 results of the presidential election are counted and certified, in violation of 18 U.S.C. §
13 1512(k), and (3) a conspiracy against the right to vote and to have one's vote counted, in
14 violation of 18 U.S.C. § 241.

15 The indictment states that Trump enlisted co-conspirators to assist him in his
16 criminal efforts to overturn the legitimate results of the 2020 presidential election and retain
17 power. The indictment does not charge or name these co-conspirators. The description of
18 unnamed and uncharged "Co-Conspirator 2," however, makes clear that this is respondent.
19 (*See* Indictment at ¶ 8.) The indictment's description of the conspiracy and the role of "Co-
20 Conspirator 2" in that conspiracy (Indictment at ¶¶ 18, 21(c), 30, 38, 56, 89, 91-95, 103,
21 122.) largely tracks the descriptions of respondent's conduct laid out by the January 6
22 Committee (State Bar Exh. 165, Chapter 5.), the district court in its ruling on the crime-
23 fraud exception (State Bar Exh. 301-302), and the State Bar in the NDC in this case.

24 None of the unnamed co-conspirators have been charged, and the Trump indictment
25 does not state whether the government will seek charges against them, nor does it indicate
26 when any charging decisions would occur.

1 **D. While the State Bar Case Has Been Pending, Respondent Has Given**
2 **Extensive Public Interviews Regarding His Conduct Alleged in the NDC**

3 Since the NDC was filed on January 26, 2023, respondent has spoken extensively in
4 public interviews regarding his conduct alleged in the NDC, and he has continued to make
5 the same misrepresentations that the election was “stolen” through voter fraud. For example,
6 respondent gave a lengthy interview with Tom Klingenstein, the Chairman of the Claremont
7 Institute, which was published on YouTube in three parts on June 21, July 21, and August 2,
8 2023.³ In the interview, which is over 100 minutes long, respondent claimed that the 2020
9 presidential election was “stolen,” and he made numerous specific claims of outcome-
10 determinative voter fraud, including claims that 200,000 fraudulent votes were counted in
11 Pennsylvania and that ballots in the State Farm Arena in Georgia were fraudulently
12 processed multiple times. Respondent gave a lengthy explanation of his conversations with
13 Vice President Pence and Greg Jacob, and he explained the basis for his theory that Pence
14 could delay the certification of electoral votes on January 6. Needless to say, during these
15 interviews, respondent never asserted the Fifth Amendment.

16 Respondent’s public statements while the State Bar case has been pending are
17 relevant for two reasons. First, respondent’s willingness to speak at length in public about
18 his conduct, when he knows he faces possible criminal charges related to this conduct,
19 indicates that he is not concerned about incriminating himself by speaking about these
20 topics, and his motion for abatement is intended solely to delay the proceedings. Second,
21 respondent’s continuing misrepresentations regarding voter fraud and a “stolen” election
22 indicate that the public interest would be served by timely resolution of his State Bar
23 disciplinary case.

24 _____
25 ³ The interviews are available on YouTube:
26 Part I, <https://www.youtube.com/watch?v=8rARmn9Dafs>
27 Part II, <https://www.youtube.com/watch?v=UFi2HGkmZHc>
28 Part III, https://www.youtube.com/watch?v=hK8il7p_BoI
The videos do not state the date of the interview, but respondent made references to the NDC during the interview.

1 **III. APPLICABLE STANDARD**

2 Rule 5.50 of the Rules of Procedure of the State Bar permits consideration of any
3 relevant factor in determining whether to grant a motion for abatement, including “the need
4 to dispose of the proceeding at the earliest time.” (*In the Matter of Seltzer* (Review Dept.
5 2013) 5 Cal. State Bar Ct. Rptr. 263, 267.) In *In the Matter of Seltzer*, the Hearing
6 Department denied the respondent’s motion for abatement, which she filed one month
7 before trial was set to begin. (*Id.*) On review, the Review Department concluded “the
8 hearing judge did not abuse her discretion by proceeding with the trial in light of the State
9 Bar’s interest in protecting the public, safeguarding the integrity of the legal system and
10 maintaining public confidence in the legal profession.” (*Id.* at 267. *See also Fuller v.*
11 *Superior Ct.* (2001) 87 Cal. App. 4th 299, 307–08 [trial court did not abuse its discretion by
12 refusing to stay civil proceedings until the criminal statute of limitations expired three years
13 later; “A delay of three years not only flies in the face of the policies behind Government
14 Code section 68607 and the Standards of Judicial Administration, but also exposes both
15 sides of the litigation to the risk of diminished memory and lost records.”].)

16 **IV. ARGUMENT**

17 **A. Respondent’s Abatement Request Is Untimely and an Opportunistic**
18 **Attempt to Delay the Trial**

19 If respondent is concerned about testifying in the State Bar case while there is a
20 possibility of criminal prosecution related to the same conduct, he should have moved for
21 abatement when the State Bar case was initiated, and certainly before the trial started.
22 Respondent’s request for relief is untimely. (*See Agric. Extension Club of Nevada Cnty. v.*
23 *M. Hirsch & Son* (1919) 39 Cal. App. 433, 435 (“since dilatory pleas are not favored in law,
24 it has been uniformly held that the objection is one which must be taken advantage of at the
25 earliest opportunity presented to the defendant or else it is waived.”); *Color-Vue, Inc. v.*
26

1 *Abrams* (1996) 44 Cal. App. 4th 1599, 1605 (Once a plea in abatement is waived “the court
2 will be rarely justified in permitting the defense to be made later.”)

3 Respondent raised the possibility of seeking abatement in his February 15, 2023
4 Answer to the NDC and at the Initial Status Conference on February 27, 2023. At that time,
5 respondent had ample notice of the possibility of criminal charges against him related to the
6 conduct alleged in the NDC, including by virtue of a district court’s crime-fraud rulings and
7 the January 6 Committee’s criminal referral to the Department of Justice.⁴ Nonetheless,
8 respondent intentionally chose not to move for abatement, but instead to proceed with trial.
9

10 Now, having heard much of the evidence against him, respondent moves for
11 abatement mid-trial, when he is in essentially the same situation as he was in February 2023:
12 there is a possibility that he will be charged with crimes related to this conduct, but he has
13 not been charged, the likelihood of his being charged is unknown, and the time frame for
14 any charging decision is similarly unknown. The Trump indictment does not meaningfully
15 alter respondent’s position. In the criminal investigation, he remains, just as he did prior to
16 trial, an uncharged co-conspirator. Given this, and the extensive evidence already presented
17 to support the NDC’s charges—from Greg Jacob, Dr. Justin Grimmer, the four state
18 officials, and respondent’s own admissions regarding his claims of fraud—respondent’s
19 motion for abatement is simply an opportunistic attempt to use the Trump indictment to
20 indefinitely delay the balance of his trial.
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26 ⁴ In his Motion, respondent admits he was concerned about the likelihood of potential
27 criminal action against him even before the Indictment. (Motion at 3:7-10.)
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1 **B. The Civil Stay Cases Cited by Respondent Support Denial of His Request**
2 **for Abatement**

3 In his Motion, respondent cites several federal civil cases where district courts have
4 granted stays, (*see* Motion at 9-10), but none of those cases involved a stay application in
5 the midst of an ongoing trial. Rather, they involved matters in the early stages of litigation,
6 often before discovery, where the prejudice to the court and opposing party is comparatively
7 less. (*See, e.g., Walsh Securities, Inc. v. Cristo Prop. Mgmt., Ltd.* (D.N.J. 1998) 7 F. Supp.
8 2d 523, 527 [staying case before “interrogatory and deposition discovery”]; *Ellis v.*
9 *Kirkman*, No. 9:19-cv-2163-RMG-MGB (D.S.C. Oct. 16, 2020) 2020 WL 6587062, at *3
10 [staying discovery before “deposition stage of this litigation”]; *SEC v. Mutuals.com, Inc.*,
11 No. 3:03-CV-2912 (N.D. Tex. July 20, 2004) 2004 WL 1629929, at *1 [government motion
12 to intervene and stay discovery “was filed before discovery commenced”]; *Waste Mgmt. of*
13 *La., LLC v. River Birch, Inc.*, No. 11-2405 (E.D. La. Feb. 15, 2012) 2012 WL 520660, at *2
14 [stay sought before entry of scheduling order]; *United States v. Certain Real Property &*
15 *Premises* (E.D.N.Y. 1989) 751 F. Supp. 1060, 1061 [defendants sought stay before
16 answering complaint or interrogatories].)

17 Moreover, as these cases make clear, “the fact that a defendant has not been indicted
18 generally weighs against a stay and may, by itself, provide a sufficient basis for denying a
19 stay.” (*Chao v. Fleming* (W.D. Mich. 2007) 498 F.Supp.2d 1034, 1038 [granting a pre-trial
20 stay where court concluded, based on AUSA’s statements, “that an indictment...is but ‘an
21 eventuality’”].) Here, in contrast to the cases cited by respondent, trial is well underway, and
22 respondent has not been indicted or received a target letter. Thus, the court should reject
23 respondent’s untimely attempt to delay the trial.
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1 The other factors considered in determining the question of whether a civil proceeding
2 should be stayed pending the disposition of a parallel criminal proceeding also strongly weigh
3 against abatement. (*See Avant! Corp. v. Superior Ct.* (2000) 79 Cal. App. 4th 876, 885, citing
4 *Keating v. Office of Thrift Supervision* (9th Cir. 1995) 45 F.3d 322, 324 [“In the absence of
5 substantial prejudice to the rights of the parties involved, simultaneous parallel civil and criminal
6 proceedings are unobjectionable under our jurisprudence.”].)

7
8 First, the State Bar would be highly prejudiced by delaying the completion of trial
9 and a decision in this case for what could be several years. The court should not be put in
10 the position of having to decide this case years from now based on evidence it heard in
11 2023. Moreover, delaying the further presentation of evidence risks loss of evidence,
12 including the inability of witnesses to recall specific facts, changes to key State Bar or
13 court personnel, and unavailability of witnesses. (*See also* rule 5.50(B)(5) [court may
14 consider as relevant factor extent to which “evidence may become unavailable because of
15 any delay”].)

16
17 Second, given the serious nature of the charges in this case, public protection
18 strongly favors timely completion of the trial. The purpose of the attorney discipline system
19 is to protect the public, promote confidence in the legal system, and maintain high
20 professional standards. (*In re Grant* (2014) 58 Cal. 4th 469, 475–76.) The State Bar has
21 presented extensive evidence to support the NDC’s charges that respondent engaged in acts
22 of dishonesty and moral turpitude in matters concerning the peaceful transition of power in
23 2020. Respondent disputes these charges, and continues to claim, both in court and in public
24 statements, that the 2020 election was stolen through fraud and that his actions to support
25 efforts to reject the 2020 election results were justified and valid. The public interest weighs
26

1 strongly in interest of resolving these competing positions as quickly as possible, and so
2 against abatement.

3 Third, the court has an interest in managing its cases efficiently and timely
4 completion of trials. (*See Avant! Corp. v. Superior Ct.* (2000) 79 Cal. App. 4th 876, 887–89
5 (2000) [“denial of the stay motion promotes the convenience of the court in the
6 management of its cases”].) The court has already committed extensive resources to this
7 matter. Among other things, it has presided over six days of trial, considered and ruled on
8 five motions in limine, and scheduled additional days for the trial to continue. The court’s
9 interest in efficient management of its cases and timely completion of proceedings once
10 they are underway weights strongly against the requested midtrial abatement. As the *Avant!*
11 court noted, “convenience of the courts is best served when motions to stay proceedings are
12 discouraged.” (*Id.*, quoting *U.S. v. Private Sanitation Industry Ass’n*, (E.D.N.Y. 1992) 811
13 F.Supp. 802, 808.)

16 Fourth, in contrast to the substantial prejudice to the State Bar and public interest in
17 timely completion of the trial that will result from abatement, respondent cannot identify
18 any substantial prejudice to his own interests that will result from denying abatement.
19 Respondent chose to proceed with this trial without moving for abatement despite being
20 aware of the potential for criminal charges. Similarly, respondent chose to testify without
21 asserting the Fifth Amendment, thus subjecting himself to compelled testimony as to all
22 issues relevant to topics on which he has testified so far. (*People v. Saddler* (1979) 24 Cal.
23 3d 671, 679 [“a defendant who takes the stand and testifies in his behalf waives his Fifth
24 Amendment privilege and his state constitutional privilege to the extent of the scope of
25 relevant cross-examination”], citing *Johnson v. United States* (1943) 318 U.S. 189, 195 [“a
26

1 defendant's voluntary offer of testimony upon any fact is a waiver as to all other relevant
2 facts, because of the necessary connection between all."].)⁵ Respondent remains in
3 essentially the same position now as when he made these original choices – criminal
4 charges against him remain a possibility, but he has not been charged and whether he will
5 be charged and the time frame for when any criminal charges may be filed against him
6 remain entirely speculative. Declining to abate a trial that respondent elected to begin under
7 similar circumstances will cause respondent no substantial prejudice.
8

9 Given the balancing of all the relevant factors, respondent has failed to demonstrate
10 that either abatement or a stay of trial is warranted.

11 **V. CONCLUSION**

12 For the foregoing reasons, the court should deny the Motion.
13
14

15 Respectfully submitted,

16 THE STATE BAR OF CALIFORNIA
17 OFFICE OF CHIEF TRIAL COUNSEL

18
19 DATED: August 10, 2023

18
19 By: 
20 Duncan Carling
21 Supervising Attorney

22
23
24
25
26 ⁵ Respondent's citation to *Pacers* for the proposition that "his silence is constitutionally
27 guaranteed" (Motion at 7-9) ignores that he has already waived his Fifth Amendment privilege
28 related to all topics on which he has already offered testimony in this proceeding, in which he
made an informed decision to testify while having ample notice of potential criminal charges.

DECLARATION OF SERVICE

CASE NUMBER(s): SBC-23-O-30029

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017, genelle.deluca-suarez@calbar.ca.gov, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

STATE BAR'S OPPOSITION TO RESPONDENT'S MOTION FOR ABATEMENT

[] By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))

[] By U.S. Certified Mail: (CCP §§ 1013 and 1013(a)) - in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles.

[] By Overnight Delivery: (CCP §§ 1013(c) and 1013(d)) - I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ('UPS').

[] By Fax Transmission: (CCP §§ 1013(e) and 1013(f)) Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.

[X] By Electronic Service: (CCP § 1010.6 and Rules of Proc. of State Bar, rule 5.26.2) Based on rule 5.26.2, a court order, or an agreement of the parties to accept service by electronic transmission, I caused the above-named document(s) to be transmitted by electronic means to the person(s) at the electronic address(es) listed below. If there is a signature on the document(s), I am the signer of the document(s), I am the agent of, or I am serving the document(s) at the direction of, the signer of the document(s). I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[] (for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: (see below)

[] (for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article at Los Angeles, addressed to: (see below) No.:

[] (for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS, Tracking addressed to: (see below) No.:

Table with 4 columns: Person Served, Business Address, Fax Number, and Courtesy Copy to:.

[] via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ('UPS'). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

DATED: August 10, 2023

SIGNED: Genelle De Luca-Suarez Genelle De Luca-Suarez Declarant