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COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

SUPERIOR COURT
C.A. No. 2483CV00692

PAUL O'KEEFE, AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF
JOHN JOSEPH O'KEEFE III; PAUL
O'KEEFE, INDIVIDUALLY; JOHN
O'KEEFE II; MARGARET O'KEEFE; and
MARGARET O'KEEFE AS
GRANDPARENT / GUARDIAN OF
KAYLEY FURBUSH;

Plaintiffs,

v.

C&C HOSPITALITY, LLC d/b/a C.F.
MCCARTHY'S; G&S HOSPITALITY, LLC
d/b/a C.F. MCCARTHY'S; WATERFALL
BAR & GRILL, LTD d/b/a WATERFALL
BAR & GRILL; and KAREN READ;

Defendants.

**DEFENDANTS C&C HOSPITALITY, LLC D/B/A C.F. MCCARTHY'S AND
G&S HOSPITALITY, LLC D/B/A C.F. MCCARTHY'S MEMORANDUM OF LAW IN
SUPPORT OF THEIR MOTION TO STAY AND JOINING IN THE DEFENDANT
WATERFALL BAR & GRILL, LTD'S MOTION TO STAY**

The Defendants C&C Hospitality, LLC d/b/a C.F. McCarthy's and G&S Hospitality, LLC d/b/a C.F. McCarthy's (collectively, "C.F. McCarthy's") respectfully submit this Memorandum of Law in support of their joining in the Motion to Stay filed by the Codefendant Waterfall Bar & Grill, LTD d/b/a Waterfall Bar & Grill ("Waterfall") and for an Order staying this action during the pendency of the criminal case captioned as *Commonwealth v. Karen Read*, Docket No. 2282CR00117 (the "Criminal Action").

FACTUAL BACKGROUND

C.F. McCarthy incorporates by reference the factual background and arguments raised in Waterfall's Motion to Stay and accompanying Memorandum of Law as if fully stated herein. For purposes of this Motion, C.F. McCarthy's also provides the following brief additional background.

This is a wrongful death action (the "Civil Action") arising from the death of Boston Police Officer John J. O'Keefe III ("O'Keefe") on January 29, 2022. In their Complaint, Plaintiffs allege that C.F. McCarthy's negligently served Ms. Karen Read alcoholic beverages during the evening prior to O'Keefe's death and while she was purportedly showing signs of intoxication. As a result, Plaintiffs' Complaint asserts claims against C.F. McCarthy's for wrongful death (Count I) and for common law negligent infliction of emotional distress (Counts IV, V, & VI), all of which are denied by C.F. McCarthy's.

As is widely known at this juncture, the Norfolk County District Attorney's Office indicted Ms. Read over the death of O'Keefe on charges of second-degree murder, manslaughter while operating under the influence of alcohol, and leaving the scene of a collision resulting in death. *See* Docket No. 2282CR00117, Doc No. 1. Ms. Read pled not guilty to these indictments in the Criminal Action. A trial commenced in the Norfolk Superior Court on April 16, 2024 and, ultimately, the Court declared a mistrial. A second jury trial in the Criminal Action is scheduled to commence on January 27, 2025.

Returning to the Civil Action, C.F. McCarthy's filed its Answer to the Plaintiffs' Complaint and jury demand on September 20, 2024. Subsequently, Ms. Read filed a Motion to Stay Civil Proceedings Pending Resolution of Criminal Trial, which is scheduled for argument before this Court later this month. *See* Docket No. 2483CV00692, Doc No. 17 et seq. On October 3, 2024, counsel for Waterfall served on the parties pursuant to Superior Court Rule 9A its own Motion to

Stay Case Pending Resolution of Related Criminal Matter. Like Ms. Read's motion, Waterfall's briefing cites judicial economy considerations given the overlap between the Civil Action and the Criminal Action.

For the reasons articulated by Waterfall in addition to those set forth herein, C.F. McCarthy's respectfully maintains that a stay of the Civil Action is warranted given the present circumstances of both the Criminal and Civil Actions.

ARGUMENT

"[A] motion to stay proceedings is ordinarily a matter addressed to the sound discretion of the trial judge." *Travenol Labs., Inc. v. Zotal, Ltd.*, 394 Mass. 95, 97 (1985). "The pendency of a parallel or related criminal proceeding can constitute such a reason" for granting a stay. *Microfinancial, Inc. v. Premier Holidays Int'l, Inc.*, 385 F.3d 72, 77 (1st Cir. 2004). "In making a stay determination, a court should balance the interests of the parties, the court, and the public." *Green v. Cosby*, 177 F. Supp. 3d 673, 678 (D. Mass. 2016) (citation & quotations omitted). "The touchstone, of course, is that a district court's discretionary power to stay civil proceedings in deference to parallel criminal proceedings should be invoked when the interests of justice counsel in favor of such a course." *Id.*, quoting *Microfinancial Inc.*, *supra*. Additionally:

[t]he rights of the parties in the civil action are to be considered equal, and the court must balance any prejudice to the other civil litigants that might result from granting the stay, against the potential harm to the party claiming the privilege from having to choose between defending the civil action and protecting himself from providing evidence that might be used against him in the criminal prosecution.

J & G Foods, Inc. v. Eaton, No. WOCV201002460C, 2012 WL 4049225, at *1 (Mass. Super. July 12, 2012).

As discussed by Waterfall, the Court should consider the following factors “on a motion to stay a civil action due to the pendency of a criminal matter that involves the same underlying conduct that is involved in the civil case[:]” (1) the overlap of issues; (2) the status of criminal case; and (3) private and public interests. *Precision Testing Labs., Inc. v. Preventive Med. Assocs., Inc.*, No. 2011-SUCV-01197F, 2012 WL 6123592 (Mass. Super. Jan. 20, 2012). For the reasons set forth herein and in Waterfall’s Memorandum of Law, these factors weigh heavily in favor of a stay. Indeed, the Massachusetts Appeals Court has noted that “in the event of parallel criminal and civil cases, the civil action often will at least partially be stayed until the criminal case has concluded.” *M.K. v. D.B.*, 102 Mass. App. Ct. 183, 190 (2023).

First, the Criminal Action and the Civil Action clearly overlap even upon a cursory review of the Plaintiffs’ Complaint here. In the Criminal Action, Karen Read was indicted for second-degree murder of John O’Keefe; vehicular manslaughter – OUI liquor; and leaving the scene of personal injury and death. Similarly, in the Civil Action, the Plaintiffs assert causes of action against C.F. McCarthy’s, Waterfall and Karen Read for the wrongful death of John O’Keefe. With regard to the wrongful death cause of action against C.F. McCarthy’s, the Complaint alleges that C.F. McCarthy’s “negligently served alcohol to an intoxicated person, namely defendant Read” and that “[C.F. McCarthy’s] knew or should have known that defendant Read was intoxicated at relevant times of service on January 28, 2022.” Thus, while C.F. McCarthy’s denies said allegations, the issues in the Criminal Action and the Civil Action nonetheless extensively overlap as they both concern the death of O’Keefe, whether Karen Read was (or was not) intoxicated on January 28, 2022, and whether such alleged intoxication did or did not cause O’Keefe’s death.

Second, the Criminal Action is unquestionably both procedurally and factually far more developed than the Civil Action as it is scheduled for its second trial on January 27, 2025. As

discussed by Waterfall, the instant Civil Action was just filed, is in its infancy, and, even with a relatively brief stay, the parties will have well over a year to complete discovery and engage in motion practice. A stay will not have any prejudicial impact upon the trajectory of this action, particularly where no scheduling order is in place. Indeed, the Criminal Action will conclude while the Civil Action remains in the early stages of litigation, and with more than sufficient time to allow the parties to engage in discovery and any motion practice.

Third, the public and private interests also weigh in favor of a stay. Resolution of the Criminal Action, one way or the other, may very well narrow or otherwise impact some of the issues, costs to the parties, and litigation strategies in the Civil Action. *See Precision Testing Laboratories, Inc.*, 2012 WL 6123592 (Mass. Super. Jan. 20, 2012) (“the resolution of the criminal matter may assist with the resolution of the civil matter. This factor favors the stay.”). Thus, a brief stay will serve judicial economy and will conserve the parties’ time and resources. Moreover, a brief stay will not result in any prejudice to the Plaintiffs because, and as noted above, they will still have an extended period of time to prosecute their claims in the Civil Action upon the resolution of the Criminal Action.

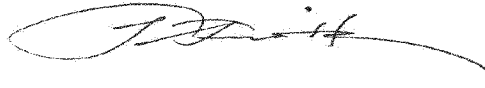
CONCLUSION

For these reasons as well as those set forth in Waterfall’s Motion to Stay and accompanying Memorandum of Law, C.F. McCarthy’s respectfully requests that its Motion to Stay and Waterfall’s Motion to Stay be **ALLOWED**.

Respectfully submitted,

C&C HOSPITALITY, LLC d/b/a C.F.
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d/b/a C.F. MCCARTHY'S

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Dated: October 16, 2024

CERTIFICATE OF SERVICE

I, Tamara Smith Holtslag, hereby certify that on October 16, 2024, I caused the within document to be served via electronic mail to the following counsel of record:

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