

respond to Plaintiff's post-judgment interrogatories (ECF No. 184). On June 28, 2017, Defendants filed a *Motion for New Trial or, in the Alternative, Remittitur* (the "New Trial Motion"; ECF No. 172) pursuant to Fed. R. Civ. P. 59. On July 10, 2017, Plaintiff filed his *Application for Writ of Execution on Financial Institution* (the "Greer Application"; ECF No. 174) and *Application for Writ of Execution of Financial Institution* (the "Yeshiva Application"; ECF No. 176) (together with the Greer Application, the "Applications"). On July 31, 2017, Plaintiff filed his *Memorandum in Opposition of Defendant's Motion for New Trial or, in the Alternative, Remittitur* (ECF No. 185).

On August 1, 2017, Plaintiff filed its *Motion for Order Directing Clerk to Issue Writs of Execution* (the "Motion for Order"), seeking the Court to direct the clerk to issue writs of execution pursuant to the Applications on grounds that the pending New Trial Motion should not stay or affect the enforcement of the Judgment. On August 3, 2017, Plaintiff filed his *Motion to Take Deposition from Daniel Greer* (the "Motion for Deposition").

On August 7, 2017, this Court entered its Show Cause Order relating to Plaintiff's Motion for Order and Motion for Deposition. Plaintiff has also served nine (9) subpoenas on various financial institutions seeking the production of documents concerning Defendants' banking activity (the "Bank Subpoenas").

In addition to the proceedings currently pending before this Court, Plaintiff commenced four foreclosure actions against Defendants in Connecticut Superior Court (the "Foreclosure Actions") related to four pieces of property: the residence of Greer, and three pieces of property owned by the Yeshiva. Defendants' Motions for Extension of Time to Plead until September 25, 2017 are currently pending in each of the Foreclosure Actions. Further, the State of Connecticut has commenced a criminal proceeding against Greer in the Connecticut Superior Court, New

Haven GA 23 styled *State of Connecticut v. Greer*, Docket No. N23N-CR17-0177934-S (the “Criminal Matter”).

**II. DEFENDANTS’ RESPONSE TO COURT’S ORDER TO SHOW CAUSE:
A PROPOSED PLAN OF ACTION FOR POST-JUDGMENT DISCOVERY**

Plaintiff’s Motion for Order asserts that, despite the pendency of Defendants’ New Trial Motion, executions should issue with respect to the Judgment as fourteen days have passed since its entry and Defendants have paid nothing towards the same. With respect to satisfying the Judgment, Defendants are willing to facilitate the liquidation and turnover of non-exempt assets through the Foreclosure Actions and enter into a monthly payment order (the “Payment Order”) consistent with Connecticut law so as to ensure Plaintiff receives what he is entitled to under Connecticut law while respecting the rights of Defendants. Thus, while Defendants do not object to the merits of Plaintiff’s Motion for Order, Defendants assert that collection activity should proceed in a way that takes into account the pending Criminal Matter, Defendants’ New Trial Motion, and applicable law. Not only would the following course of action minimize costs for the Plaintiff, it would allow Plaintiff to collect faster and without extended legal proceedings.

Post-Judgment Executions: The Court should enter a Payment Order permitting Greer to pay a reasonable monthly installment in lieu of Plaintiff serving executions. Once Defendants provide their responses to Plaintiff’s post-judgment interrogatories on August 28, 2017, the Payment Order amount that would be due from Greer will be evident. Any executions should be stayed absent further order from the Court so long as Defendants abide by the Payment Order, as the Payment Order shall encompass amounts Plaintiff is statutorily entitled to receive.

Third-Party Actions: To the extent Plaintiff believes third-party actions are appropriate, he may bring them. However, Defendants believe that upon reasonable investigation, Plaintiff should conclude that no such actions exist.

Bank Subpoenas: Defendants are not objecting to the Bank Subpoenas issued by Plaintiff to certain financial institutions, *provided that* only information regarding the two judgment-debtor account holders is provided.¹ To the extent that Plaintiff is seeking account information unrelated to Defendants, Defendants (or the relevant account holder) reserves the right to object to the disclosure. Regardless, any information received by Plaintiff must be kept private and not released to the public in accordance with the Standing Protective Order [ECF No. 4] entered in this case, as well as federal laws protecting financial information from public disclosure. *See* Fed. R. Civ. P. 26(c)(1)(A).

Pursuant to Paragraph 2 of the Standing Protective Order, all financial documents relating to Greer produced by financial institutions pursuant to the Bank Subpoenas should be marked “CONFIDENTIAL” as said documents relate to “information implicating an individual’s legitimate expectation of privacy” as set forth in Paragraph 3(c). Further, in accordance with Paragraph 5 of the Standing Protective Order, said information shall not be used or disclosed for any purpose other than litigation of this action and may only be disclosed to parties to this action. Additionally, Plaintiff should provide copies of any documents received from the banking institutions to Defendants upon receipt. Lastly, as set forth below in more detail, Defendants’ request that financial information be also be deemed “confidential – attorneys eyes only” to ensure no confidential information is “accidentally” leaked to the public.

¹ On August 21, 2017, Defendants learned that a bank subpoenaed by Plaintiff provided account information concerning non-debtors to Plaintiff. This information should be immediately purged and protocols put in place to ensure such disclosures do not happen again.

Post-Judgment Examination of Daniel Greer: Plaintiff seeks to depose Greer by oral examination in order to investigate the assets of Greer and the Yeshiva. Defendants do not object to the Motion for Deposition in principle, provided that the subject matter is limited to post-judgment and collection related matters. *See* Fed. R. Civ. P. 26(c)(1)(D) and (F). In addition, an appropriate protective order should enter to ensure the transcript of the deposition does not become public.

Entry of a protective order is particularly important given the pendency of the Criminal Matter. It would be both unfair and inappropriate for Greer to agree to sit for a deposition only to have his deposition testimony used against him in other proceedings or to invoke waiver of a Fifth Amendment privilege. It is well settled that the privilege against self-incrimination may be asserted in connection with civil litigation. *Camelot Group, Ltd. v. W.A. Krueger Co.*, 486 F. Supp. 1221 (S.D.N.Y. 1980) (*citing Kastigar v. United States*, 406 U.S. 441, 444 (1972)). In order to assert the Fifth Amendment privilege, a witness must have “reasonable cause to apprehend danger from a direct answer.” *Hoffman v. United States*, 341 U.S. 479, 486 (1951); *Camelot Group*, 486 F. Supp. At 1226. Courts construe the privilege broadly – it is not required that criminal charges actually be pending, and most courts do not require criminal prosecution to be probable, but only possible. *State v. Williams*, 200 Conn. 310, 319 (1986) (*citing In re Folding Carton Antitrust Litigation*, 609 F.2d 867 (7th Cir. 1979)); *In re Master Key Litigation*, 507 F.2d 292, 293 (9th Cir. 1974).

Accordingly, here, where criminal charges *are* in fact pending, Greer is entitled to assert his Fifth Amendment privilege in response to Plaintiff’s deposition questions. Accordingly, Defendants request that the Court not grant Plaintiff’s Motion for Deposition until after the Criminal Matter has been resolved, unless an appropriate protective order is put in place.

Contemporaneously with this Response, the undersigned has sent a proposed protective order to Plaintiff's counsel.

Defendants further submit that, pursuant to Fed. R. Civ. P. 26(c), the scope of the examination should be narrowly limited to the relevant subject matter: the Defendants' assets and related financial activity within the relevant time frame. Plaintiff should *not* be permitted to inquire into factual issues relating in any way to liability as to which Greer retains a valid Fifth Amendment privilege. Likewise, Plaintiff should *not* be permitted to engage in a fishing expedition as to the assets of entities against which he does not hold judgments (e.g. the corporate entities that were initially named as defendants in the instant case but were dropped from the case by Plaintiff shortly before trial). As noted, if Plaintiff believes he has valid claims against third-party entities, he may bring such claims separately.

Defendants believe that, if a deposition is to proceed, it is very important to establish clear limitations in advance as to the permissible scope of inquiry, and that establishing appropriate limits in advance will help eliminate the need for future intervention by the Court. Toward that end, if a deposition is to proceed, Defendants respectfully request a conference with the Court prior to such deposition in order to address such issues.

Request for Entry of Protective Order: Defendants request that the Court enter a protective order pursuant to Fed. R. Civ. P. 26(c) prohibiting: (a) the disclosure of Defendants' financial information to anyone other than attorneys (or their agents, such as an accountant) for Plaintiff so that third parties cannot access Defendants' private information; and (b) the use of Defendants' financial information or deposition testimony outside the context of post-judgment discovery in this specific litigation. This information constitutes private financial information

and should be treated as such under Rule 26(c) of Federal Rules of Civil Procedure and the Standing Protective Order in this case.

Fed. R. Civ. P. 26 provides that “[t]he court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, undue burden or expense.” Fed. R. Civ. P. 26(c)(1). “Good cause” is established by showing that a “clearly defined, specific and serious injury” will occur in the absence of a protective order. *DaCosta v. City of Danbury*, 298 F.R.D. 38, 38 (D. Conn. 2014). Here, a protective order limiting the disclosure of Defendants’ private financial information is necessary to prevent Plaintiff from providing Defendants’ private financial information to third-parties for purposes of harassment. *Sullivan v. StratMar Systems, Inc.*, 276 F.R.D. 17 (D. Conn. 2011) (parties ordered to submit joint motion for protective order limiting disclosure of sensitive financial information in order to protect against any possible misuse or sabotage); *Bonin v. World Umpires Ass’n*, 204 F.R.D. 67, 70 (E.D. Pa. 2001) (court entered protective order limiting disclosure and use of any financial information produced and not otherwise in public domain from an independent source on grounds that Fed. R. Civ. P. 26(c) permits court to make “any order which justice requires to protect” respondent from annoyance and oppression.); *State Farm Mut. Auto. Ins. Co. v. Physiomatrix, Inc.*, 2013 WL 10572229, at *3 (E.D. Mich. Aug. 13, 2013) (“...sensitive financial information should not be routinely disclosed in discovery, at least not without an adequate protective order.”) Plaintiff should not be permitted to reveal, leak, or otherwise disclose Defendants’ private financial information for any purpose. The undersigned believes the parties will be able to agree to mutually agreeable terms for a protective order.

III. CONCLUSION

For the above stated reasons Defendants submit that they have set forth the legally appropriate process by which post-judgment collection should occur.

RESPECTFULLY SUBMITTED,
DEFENDANTS,

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CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below a copy of the foregoing was served by CMECF and/or mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

Date: August 21, 2017

/s/ Jeffrey M. Sklarz