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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 James L Gagan,

10 Plaintiff,

11 v.

12 Victor E Sharar, et al.,

13 Defendants.  
14

No. CV-99-01427-PHX-RCB

**ORDER**

15 There are two closely related motions pending before the court. The first is  
16 defendant Monroe's motion for a stay (Doc. 505),<sup>1</sup> which includes a request for judicial  
17 notice. The second is a "Motion to Quash Subpoena" by Gary Hirth, a non-party who is  
18 appearing *pro se* (Doc. 514). Plaintiff Gagan did not respond to the first motion, but he  
19 did respond to the second and opposes it (Doc. 512). For the reasons set forth below, the  
20 court hereby **GRANTS both** motions (Docs. 505 and 514).

21 **Background**

22 In 1994, in the United States District Court of the Northern District of Indiana,  
23 plaintiff Gagan obtained judgment for over \$1.6 million dollars against defendant  
24 Monroe, among others ("the Indiana judgment"). On March 28, 1995, a Certification for  
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27 <sup>1</sup> W. Lance Webb, LaJunta Daniels, Kimberley Sullivan, Adam Salene, Turtle  
28 Communications, Inc. and Latekidi Group, LLC expressly join in this motion to stay. Notice of Joinder  
(Doc. 506). These individuals and entities identify themselves as defendants, but that is not entirely  
accurate. While they are all defendants in the related action of Gagan v. Monroe, No. CV-13-1113-PHX-  
RCB, none are defendants in this action, although Ms. Sullivan is a garnishee herein.

1 Registration in Another District was filed in this United States District Court (“the  
2 Arizona registered judgment”). Since then, plaintiff Gagan has engaged in extensive  
3 efforts to enforce and collect upon the Arizona registered judgment here and elsewhere.  
4 As part of those efforts, on November 1, 2013, plaintiff Gagan’s attorney issued to Mr.  
5 Hirth, a non-party, a subpoena to produce documents, etc. See Mot. (Doc. 514) at 4.  
6 Mr. Hirth was to produce those documents on November 18, 2013, at the law offices of  
7 plaintiff Gagan’s attorney. See id. at 4.

8         Rather than complying with that subpoena, on November 15, 2013, Mr. Hirth e-  
9 mailed to the court and to plaintiff’s counsel his motion to quash the subpoena, which has  
10 been filed. In his motion to quash, Mr. Hirth notes that also pending before the court is  
11 defendant Monroe’s motion for a stay. In that motion, defendant Monroe is seeking a  
12 stay of “all other proceedings in this case, including discovery, collection and other  
13 actions, until such time as the Motion to Dismiss . . . is litigated and resolved[.]” Mot.  
14 (Doc. 505) at 1:17-19. Mr. Hirth asserts that the court should grant his motion to quash  
15 because it encompasses the relief which defendant Monroe seeks in his motion to stay.  
16 Additionally, Mr. Hirth relies upon the pendency of defendant Monroe’s motion to  
17 dismiss for lack of subject matter jurisdiction. (Doc. 494) In light of the foregoing, Mr.  
18 Hirth requests that the court quash the November 1, 2013 subpoena “without prejudice at  
19 least until the . . . Motion to Dismiss is ruled upon.” Mot. (Doc. 514) at 1:16-17.

20         Evidently believing that defendant Monroe will not prevail on his motion to  
21 dismiss, plaintiff Gagan asserts that “there is no good basis to stay the [Hirth] subpoena.”  
22 Resp. (Doc. 512) at 1:21. In opposing Hirth’s motion to quash, the plaintiff notes that  
23 Mr. Hirth is not claiming any hardship in having to respond to the outstanding subpoena.  
24 Plaintiff Gagan further notes that no party is challenging the validity of the Indiana  
25 judgment, as opposed to that of the Arizona registered judgment.

26         Defendant Monroe, arguing that the court has broad discretion to stay discovery  
27 while a dispositive motion is pending, is seeking a stay of “all other proceedings in this  
28 case, including discovery, collection and other actions, until such time as the Motion to

1 Dismiss . . . is . . . resolved.” Mot. (Doc. 505) at 17-19. Plaintiff Gagan is not opposing  
2 this particular motion.

### 3 Discussion

#### 4 I. Request for Judicial Notice

5 Defendant Monroe includes in his motion to stay a request for judicial notice  
6 (“RJN”) pursuant to Fed.R.Evid. 201. The defendant broadly requests that this court take  
7 judicial notice of “relevant documents . . . filed in this case and with the Maricopa  
8 County Recorder’s office[,]” pertaining to the fundamental issue on his pending motion  
9 to dismiss: “whether plaintiff strictly adhered to the Arizona statutory procedures for  
10 renewal of his Indiana judgment.” Mot. (Doc. 505) at 3: 8-9. The court assumes by the  
11 plaintiff’s silence that he acquiesces in this request.

12 In any event, the court may properly take judicial notice of the foregoing  
13 documents. Rule 201 allows a court to take judicial notice of “a fact that is not subject  
14 to reasonable dispute because it . . . can be accurately and readily determined from  
15 sources whose accuracy cannot reasonably be questioned.” Fed.R.Evid. 201(b)(2). The  
16 documents mentioned by defendant Monroe, comprised of court filings in this and other  
17 closely related cases, as well as other matters of public record, constitute such facts. See  
18 Fidelity Nat. Financial, Inc. v. Friedman, 939 F.Supp.2d 974, 977 (D.Ariz. 2013) (“[T]he  
19 sources of the parties’ RJNs are all court filings in this or several closely related actions.  
20 Because these filings are all matters of public record, they are properly the subject of  
21 judicial notice.” See, e.g., Terenkian v. Republic of Iraq, 694 F.3d 1122, 1137 n. 8 (9<sup>th</sup>  
22 Cir. 2012) (citation omitted) (granting RJNs “of certain pleadings and court filings in the  
23 New York litigation submitted” by the parties); Reyn's Pasta Bella, LLC v. Visa USA,  
24 Inc., 442 F.3d 741, 746 n. 6 (9<sup>th</sup> Cir. 2006) (“court filings and other matters of public  
25 record” were “readily verifiable and, therefore, the proper subject of judicial notice[ ]”);  
26 Kourtis v. Cameron, 419 F.3d 989, 994 n. 2 (9<sup>th</sup> Cir. 2005) (citation omitted) (“court  
27 records from related proceedings can be taken into account without converting a motion  
28 to dismiss into a summary judgment motion[ ]”), *overruled on other grounds*, Taylor v.

1 Sturgell, 553 U.S. 880, 128 S.Ct. 2161, 171 L.Ed.2d 155 (2008)). Therefore, the court  
2 will take judicial notice of the documents as defendant Monroe requests.

3 **II. Stay**

4 LRCiv 7.2(c) gives the opposing party 14 days after service in which to serve and  
5 file any responsive memorandum. Moreover, a party's failure to file and serve the  
6 required answering memoranda "may be deemed a consent to the . . . granting of the  
7 motion[.]" See LRCiv 7.2(i). Defendant Monroe filed and served his motion to stay  
8 upon plaintiff Gagan on November 11, 2013. Doc. 505 (Notice of Electronic Filing).  
9 Calculating the time in accordance with Fed.R.Civ.P. 6(d),<sup>2</sup> plaintiff Gagan had until  
10 November 28, 2013, by which to file and serve his response to defendant Monroe's  
11 motion to stay. Plaintiff Gagan did not file a response, timely or otherwise. The court  
12 deems that failure to be his consent to the granting of defendant Monroe's motion for a  
13 stay.

14 **III. Quash the Subpoena**

15 Plainly, it would be inconsistent to grant defendant Monroe's motion to stay (as  
16 the court has), while at the same time denying Mr. Hirth's motion to quash. Thus, for the  
17 sake of consistency and because plaintiff Gagan offers no sound basis for denying this  
18 motion to quash, the court **GRANTS** Mr. Hirth's motion in that regard.

19 As set forth above, the court **HEREBY ORDERS** that:

20 (1) "Defendant James Monroe's Request for Stay" (Doc. 505) is **GRANTED** in its  
21 entirety; and all proceeding in this matter are stayed, including but not limited to  
22 discovery, writs, subpoenas, depositions, and execution on the underlying judgment in  
23 this case, until further Order of this Court; and

24 **IT IS FURTHER ORDERED** that:


25 (2) the "Motion to Quash Subpoena" by Gary Hirth (Doc. 514) is **GRANTED**;  
26 and the November 1, 2013, subpoena issued by attorney David Bray (Doc. 514 at 4-6) is

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28 <sup>2</sup> That Rule provides, *inter alia*, that three "days are added after the period would otherwise  
expire under Rule 6(a)[]" if service is done by electronic means. Fed.R.Civ.6(d).

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quashed without prejudice pending resolution of the defense motion to dismiss (Doc. 494).

DATED this 27th day of December, 2013.

  
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Robert C. Broomfield  
Senior United States District Judge