

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

MICHAEL IOANE, et al,

Plaintiffs

v.

KENT SPJUTE, et al,

Defendants

CASE NO. 1:07-CV-0620 AWI GSA

**ORDER RE: MOTION TO STAY
PROCEEDINGS AND REQUEST FOR
JUDICIAL NOTICE**

(Docs. 254, 266, 275, and 276)

The current Plaintiffs are Michael Ioane Sr. and Shelly Ioane who lived at 1521 Fruitland Ave., Atwater, CA. They are a married couple involved in tax disputes with United States. Current Defendants Kent Spjute, Jean Nole, Jeff Hodges, Brian Applegate, and Michelle Casarez are Internal Revenue Service agents ("Federal Agents"). Based on the affidavit of Kent Spjute, the United States was able to obtain a search warrant for Plaintiffs' residence. The search was carried out by the Federal Agents on June 8, 2006. This search forms the basis for the claims in this suit.

Michael Ioane Sr. and Shelly Ioane filed suit on April 20, 2007 and a First Amended Complaint shortly thereafter. Docs. 1 and 39. The case was stayed pending resolution of a criminal case against Michael Ioane Sr. for tax fraud conspiracy, based in part on the evidence seized during the search. Crim. Case. No. 09-0142 LJO. Michael Ioane Sr. was convicted on October 3, 2011 after a jury trial. He appealed the conviction, but it was affirmed. In the meantime, the stay was lifted in this case. Doc. 107. Plaintiffs opposed the lifting of the stay. Doc. 103.

Since that time, Plaintiffs have made two motions to stay (Docs. 129 and 148) which were both denied (Docs. 138 and 158). This present motion (Michael Ioane Sr.'s motion and Shelly Ioane's joinder) is the third attempt at reversing that decision. Docs. 254 and 266. Plaintiffs also

1 ask for judicial notice of certain filings in the Michael Ioane Sr.'s criminal case relating to his
2 habeas petition. Doc. 275 and 276. Those filings will be considered: in his criminal case, Michael
3 Ioane Sr. has filed a 28 U.S.C. § 2255 habeas petition, a motion for authorization to hire an expert
4 witness, and a request for bail pending the outcome of his habeas petition. Crim. Case No. 09-
5 0142, Docs. 271, 274, and 275. In the present motion, Plaintiffs ask that "this Court Stay the
6 instant matter until there is a ruling on the §3143 Motion for Bond in the criminal matter....There
7 is a great burden being placed on Plaintiff Ioane right now. As an inmate, the Plaintiff does not
8 have access to unhindered research; he does not have access to speak with his co-Plaintiffs freely
9 or at will; he does not have the ability to produce documents that the Defendants are requesting in
10 discovery in a timely fashion; he was prejudicially denied the right to be deposed with the
11 other Plaintiffs present; the Plaintiff has a great burden being placed on him by the proceedings
12 continuing on their current course without the Stay Order." Doc. 254, Michael Ioane Sr. Brief, 2
13 and 5-6.

14 As Magistrate Judge Austin has already made clear in a prior order, the court has analyzed
15 the arguments in favor of and against a stay under the standard set out by Keating v. Office of
16 Thrift Supervision, 45 F.3d 322, 325 (9th Cir. 1995) and found that a stay is not warranted. Doc.
17 138, December 17, 2012 Order, 3:4-13. The specific issue of Michael Ioane Sr.'s incarceration
18 was also considered and found insufficient: "Plaintiffs have not provided any legal authority to
19 suggest that a stay is more appropriate where a party with an interest in the proceedings is
20 incarcerated and thus at a disadvantage with regard to participation in the proceedings....This
21 factor, in the circumstances present here, weighs against the imposition of a stay of these
22 proceedings." Doc. 138, Dec. 17, 2012 Order, 4:12-14. Plaintiffs have not shown any
23 circumstance that changes the analysis.

24 The request for judicial notice is GRANTED. The request for a stay is DENIED.

25 IT IS SO ORDERED.

26 Dated: January 13, 2015

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28 SENIOR DISTRICT JUDGE