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5 **UNITED STATES DISTRICT COURT**  
6 **EASTERN DISTRICT OF CALIFORNIA**  
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8 **MICHAEL IOANE, et al,**

9 **Plaintiffs**

10 **v.**

11 **KENT SPJUTE, et al,**

12 **Defendants**  
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**CASE NO. 1:07-CV-0620 AWI GSA**

**ORDER RE: MOTION TO STAY  
PROCEEDINGS**

**(Doc. 322)**

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

21 Michael Ioane Sr. and Shelly Ioane filed suit on April 20, 2007 and a First Amended  
22 Complaint shortly thereafter. Docs. 1 and 39. On the motion of the Defendants, the case was  
23 stayed pending resolution of a criminal case against Michael Ioane Sr. for tax fraud conspiracy,  
24 based in part on the evidence seized during the search. Crim. Case. No. 09-0142 LJO. Michael  
25 Ioane Sr. was convicted on October 3, 2011 after a jury trial. He appealed the conviction, but it  
26 was affirmed. In the meantime, the stay was lifted in this case. Doc. 107. Plaintiffs opposed the  
27 lifting of the stay. Doc. 103. Since that time, Plaintiffs have made three motions to stay (Docs.  
28 129, 148, and 254) which were denied (Docs. 138, 158, and 280). This present motion is the yet

1 another attempt at reversing that decision. Plaintiffs seek a stay, or alternatively, to be permitted to  
2 dismiss the suit without prejudice. Doc. 322.

3 Plaintiffs argue a stay is justified as “The Bureau of Prisons has refused reasonable  
4 accommodations to allow Plaintiff to participate in court hearings, make telephone calls to counsel  
5 and interview experts for designation.” Doc. 322, Plaintiff Brief, at 1. Defendants oppose the  
6 motion. Doc. 330. As Magistrate Judge Austin has already made clear in a prior order, the court  
7 has analyzed the arguments in favor of and against a stay under the standard set out by Keating v.  
8 Office of Thrift Supervision, 45 F.3d 322, 325 (9th Cir. 1995) and found that a stay is not  
9 warranted. Doc. 138, December 17, 2012 Order, 3:4-13. The specific issue of Michael Ioane Sr.’s  
10 incarceration was also considered and found insufficient: “Plaintiffs have not provided any legal  
11 authority to suggest that a stay is more appropriate where a party with an interest in the  
12 proceedings is incarcerated and thus at a disadvantage with regard to participation in the  
13 proceedings....This factor, in the circumstances present here, weighs against the imposition of a  
14 stay of these proceedings.” Doc. 138, Dec. 17, 2012 Order, 4:12-14. Plaintiffs have not shown  
15 any circumstance that changes the analysis.

16 In this motion, Plaintiff attached a response from Taft Correctional Institution (where  
17 Michael Ioane is being held) which states “concerning the possibility of purchasing additional  
18 phone time for legal purposes....[you need] documentation from the court(s) to indicate you are  
19 needed on the phone for legal purposes such as hearings, motions, etc., otherwise, your request  
20 will not be considered. Additionally, we will not consider additional minutes for the purposes of  
21 calling paralegals, Co-defendants, or witnesses.” Doc. 322, Ex. A. While being incarcerated does  
22 make the logistics of prosecuting this case much more difficult for Michael Ioane, it is not a  
23 sufficient reason for stay or dismissal without prejudice. Taft has cooperated in the past to make  
24 Michael Ioane available for hearings and reaffirms that commitment in the response provided by  
25 Plaintiffs. As for general preparation in civil cases, prisoners can not force correctional facilities  
26 to provide phone time for that purpose; instead, they may have to resort to other means of  
27 communication (mail and visits). See Bellamy v. McMickens, 692 F. Supp. 205, 214 (S.D.N.Y.  
28 1988); Pino v. Dalsheim, 558 F. Supp. 673, 675 (S.D.N.Y. 1983).

1 The request for a stay or dismissal without prejudice is DENIED.

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3 IT IS SO ORDERED.

4 Dated: August 6, 2015

  
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5 SENIOR DISTRICT JUDGE

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