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

ACACIA CORPORATE MANAGEMENT, )	1:07-cv-01129 AWI GSA
LLC, <i>et al.</i> , )	
Plaintiffs, )	<b>ORDER REGARDING PLAINTIFFS'</b>
v. )	<b>MOTION TO STAY</b>
UNITED STATES OF AMERICA, )	(Document 162)
Defendant. )	

**INTRODUCTION<sup>1</sup>**

***Relevant Procedural Background***

On November 15 2012, Plaintiffs Acacia Corporate Management, LLC, and Michael S. Ioane Sr. filed a Motion to Stay this matter. (Doc. 162.)

On November 21, 2012, the Government filed its opposition to the motion. (Doc. 165.)

On December 7, 2012, the undersigned issued a minute order, vacating the hearing on the motion and taking the matter under submission pursuant to Local Rule 230(g). (Doc. 166.) For the reasons that follow, the motion will be denied.<sup>2</sup>

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<sup>1</sup>The Court omits a recitation of facts as the facts are well known to all parties.

<sup>2</sup>Plaintiffs' reply to the Government's opposition was stricken as untimely. (*See* Docs. 168 & 169.)



1 *Braunskill*, 481 U.S. 770, 776, 107 S.Ct. 2113, 95 L.Ed.2d 724 (1987). Nonetheless, “[s]ince the  
2 traditional stay factors contemplate individualized judgments in each case, the formula cannot be  
3 reduced to a set of rigid rules.” *Hilton*, 481 U.S. at 777, 107 S.Ct. 2113, 95 L.Ed.2d 724.

4 In *Keating v. Office of Thrift Supervision*, 45 F.3d 322 (9th Cir. 1994), the Ninth Circuit  
5 stated that, in addition to considering a defendant’s Fifth Amendment rights, courts should  
6 consider the following factors when determining whether to impose a stay of civil proceedings  
7 pending the outcome of criminal proceedings:

8 (1) the interest of the plaintiffs in proceeding expeditiously with this  
9 litigation or any particular aspect of it, and the potential prejudice to plaintiffs of a  
10 delay; (2) the burden which any particular aspect of the proceedings may impose  
11 on defendants; (3) the convenience of the court in the management of its cases,  
and the efficient use of judicial resources; (4) the interests of persons not parties to  
the civil litigation; and (5) the interest of the public in the pending civil and  
criminal litigation.

12 *Keating*, at 325, quoting *Federal Sav. & Loan Ins. Corp. v. Molinaro*, 889 F.2d 899, 902 (9th  
13 Cir. 1989).

#### 14 ***Analysis***

#### 15 **Ioane’s Fifth Amendment Rights**

16 Plaintiffs’ motion could be interpreted to argue that, in the absence of a stay of these  
17 proceedings, Ioane Sr.’s Fifth Amendment rights will be implicated. (*See* Doc. 162 at 5-6.)

18 The Fifth Amendment provides that no person “shall be compelled in any criminal case to  
19 be a witness against himself.” As it relates to this action, the docket<sup>4</sup> in the Court’s case number  
20 1:09-cr-00142-LJO reveals that Michael Scott Ioane was convicted in this Court of conspiracy  
21 (18 U.S.C. § 371) and Presenting False or Fictitious Instrument or Document Purporting to be  
22 Actual Security of the United States, Aiding and Abetting (18 U.S.C. § 514(a)(2) & (2)) and was  
23 sentenced to a total of 108 months in prison. (*See* 09-cr-259, Docs. 194 & 196.) The amended  
24 judgment was filed February 14, 2012. (*See* 09-cr-259, Doc. 196.) Further, according to the  
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26 <sup>4</sup>A “court may take judicial notice of its own records in other cases, as well as the records of an inferior  
27 court in other cases.” *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980); *accord In re Korean Air Lines,*  
28 *Co., Ltd.*, 642 F.3d 685, 689 n.1 (9th Cir. 2011); *United States v. Howard*, 381 F.3d 873, 876 n.1 (9th Cir. 2004).  
Further, it is unnecessary to take judicial documents already in the record. *see e.g. Lew v. Bank Nat Ass’n*, 2012 WL  
1029227, \* n. 1 (N.D. Ca. Mar. 26, 2012).

1 Ninth Circuit Court of Appeals’ docket in *Unites States of America v. Ioane*, Docket Number 12-  
2 10068, indicates the appeal is fully briefed and is pending decision. (*See also* Doc. 162-5, ¶ 5.)

3 As noted by the Government, Ioane has already testified in his own defense in the  
4 criminal proceedings “regarding many of the events in question in this matter” and has already  
5 given depositions “three times in a related matter in August 2012, including twice as the  
6 designated witness for Acacia and for Mariposa . . . . Ioane did not invoke his rights under the  
7 Fifth Amendment in those depositions.” (Doc. 165 at 4-5.) Coupled with the fact that evidence  
8 will not be taken by the Ninth Circuit in the now-pending appeal, this Court finds that Ioane’s  
9 Fifth Amendment rights are no longer implicated for purposes of this proceeding.

10 Therefore, this factor weighs against the imposition of a stay of these proceedings.

#### 11 **Plaintiffs’ Interest in Proceeding**

12 Plaintiffs do not address this factor specifically, although they do indicate that due to  
13 Ioane’s incarceration his participation in this proceeding will be difficult. (Doc. 162 at 5.)  
14 However, Plaintiffs have not provided any legal authority to suggest that a stay is more  
15 appropriate where a party with an interest in the proceedings is incarcerated and thus at a  
16 disadvantage with regard to participation in the proceedings.

17 This factor, in the circumstances present here, weighs against the imposition of a stay of  
18 these proceedings.

#### 19 **Burden on Defendants**

20 The Government has not expressly addressed this factor in its opposition to Plaintiffs’  
21 motion, however, it has noted that this Court has previously determined that a lifting of the  
22 previously-imposed stay was proper and “that the circumstances militated against continuing  
23 [that] stay.” (Doc. 165 at 5.)

24 This factor also weighs against the imposition of a stay of these proceedings.

#### 25 **Convenience and Efficiency**

26 Plaintiffs argue that it would be in this Court’s interest to stay this matter pending the  
27 outcome of Ioane’s criminal appeal because this matter involves the same issues. (Doc. 162 at 2-  
28 3, 5.) Relatedly, Plaintiffs contend that because “it is likely that the appeal will be granted

1 resulting in a complete dismissal of charges against Ioane or a new trial for Ioane,” the Court  
2 should stay the matter “at the very least until the appeal is resolved.” (Doc. 162 at 6.)

3 The Court notes that Plaintiffs have misconstrued the Ninth Circuit Court of Appeals’  
4 Order of March 20, 2012. Despite their assertions based upon their interpretation of that Order,  
5 the appellate court’s order merely found that Ioane had met the standard for establishing a right  
6 to bail pending appeal, to wit: he established by clear and convincing evidence that he was not  
7 likely to flee or pose a danger to others, and that he had established that his appeal “raises a  
8 ‘substantial question’ of law or fact that is ‘fairly debatable,’ and that ‘if that substantial question  
9 is determined favorably to [him] on appeal, that decision is likely to result in reversal or an order  
10 for a new trial . . .” *Unites States of America v. Ioane*, Docket Number 12-10068, Entry Number  
11 11. Thus, the Ninth Circuit has not indicated that Ioane is likely to prevail on appeal. Instead, it  
12 simply held that he had established his right to bail pending the outcome of his appeal. The  
13 Ninth Circuit did not comment on the merits of the issues raised in the appeal, rather it simply  
14 stated that those issues present a “‘substantial question’” of law or fact that “‘if’ proven could  
15 result in reversal or remand for retrial.

16 Further, parallel proceedings are those occurring simultaneously, meaning the criminal  
17 *trial* proceedings are occurring simultaneous with the *civil trial* proceedings. The undersigned  
18 finds that criminal *appeal* and *civil trial* proceedings do not occur simultaneous to or parallel  
19 with one another. *See Keating v. Office of Thrift Supervision*, 45 F.3d at 324, *citing Securities &*  
20 *Exchange Comm’n v. Dresser Indus.*, 628 F.2d 1368, 1374 (D.C. Cir.), *cert. denied*, 449 U.S.  
21 993, 101 S.Ct. 529, 66 L.Ed.2d 289 (1980).

22 For purposes of convenience and efficiency, this Court’s heavy caseload would only  
23 benefit from resolution of this action as it has been pending for more than five years; Plaintiffs’  
24 complaint was filed on August 3, 2007. (Doc. 1.) Additionally, fact discovery in this matter is  
25 set to conclude February 1, 2013, and a jury trial is to commence July 16, 2013. (Doc. 134.)  
26 These facts also weigh against a stay of these proceedings.

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