

1 case, subject to limited exceptions for the resolution of motions currently pending before
2 the Court.

3 4 **BACKGROUND**

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6 Plaintiff Paskenta Band of Nomlaki Indians (the “Tribe”) employed Ines Crosby,
7 John Crosby, Leslie Lohse, and Larry Lohse in executive positions for more than a
8 decade. Plaintiffs allege that Defendants used their positions to embezzle millions of
9 dollars from the Tribe and its principal business entity, the Paskenta Enterprises
10 Corporation (“PEC”). Plaintiffs allege the Defendants stole this money by, among other
11 things, withdrawing large sums from Plaintiffs’ bank accounts for their personal use and
12 by having the Tribe invest in two unauthorized retirement plans for the Defendants’
13 personal benefit. Plaintiffs allege the Employee Defendants kept their activities hidden
14 from Plaintiffs by such means as harassment, intimidation, and cyber-attacks on the
15 Tribe’s computers. On January 5, 2017, three of the Defendants—Ines Crosby, John
16 Crosby, and Leslie Lohse—were indicted for various crimes premised on the same
17 alleged scheme of misappropriating the Tribe’s funds.

18 19 **STANDARD**

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21 While a district court may stay civil proceedings pending the outcome of parallel
22 criminal proceedings, such action is not required by the Constitution. Fed. Sav. & Loan
23 Ins. Corp. v. Molinaro, 889 F.2d 899, 902 (9th Cir. 1989); Sec. & Exch. Comm’n v.
24 Dresser Indus., Inc., 628 F.2d 1368, 1375 (D.C. Cir. 1980). The Ninth Circuit has held
25 that “in the absence of substantial prejudice to the rights of the parties involved,
26 simultaneous parallel civil and criminal proceedings are unobjectionable under our
27 jurisprudence.” Keating v. Office of Thrift Supervision, 45 F.3d 322, 324–25 (9th Cir.
28 1995) (quoting Dresser, 628 F.2d at 1374). Nevertheless, a court may decide in its

1 discretion to stay civil proceedings “when the interests of justice seem to require such
2 action.” Id. (quoting United States v. Kordel, 397 U.S. 1, 12 n.27 (1970)).

3 When deciding whether to stay civil proceedings, courts should consider “the
4 particular circumstances and competing interests involved in the case.” Id. (quoting
5 Molinaro, 889 F.2d at 902). The Ninth Circuit has instructed the court to consider “the
6 extent to which the defendant's Fifth Amendment rights are implicated.” Id. (quoting
7 Molinaro, 889 F.2d at 902).

8 Additionally, courts

9 should generally consider the following factors: (1) the
10 interest of the plaintiffs in proceeding expeditiously with this
11 litigation or any particular aspect of it, and the potential
12 prejudice to plaintiffs of a delay; (2) the burden which any
13 particular aspect of the proceedings may impose on
14 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.

15 Id. at 324–25 (citing Molinaro, 889 F.2d at 903).

17 DISCUSSION

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19 Defendants argue their Fifth Amendment rights are “undoubtedly implicated” in
20 the civil case because “John Crosby, Ines Crosby, and Leslie Lohse were indicted for
21 the exact same conduct as is alleged in the civil suit.” Defs.’ Mot. to Stay, at 6.

22 Plaintiffs, for their part, “recognize certain factual similarities between the [c]ivil [a]ction
23 and the [c]riminal [a]ction” and therefore “agree to stay the [c]ivil [a]ction subject to
24 several limited carve-outs.” Pls.’ Opp’n to Mot. to Stay, at 1. That is, Plaintiffs do not
25 oppose generally staying the civil case, but want to maintain the ability to pursue certain
26 aspects of the civil case while the criminal case is pending. Plaintiffs would like the
27 following matters to be exempt from any stay of the civil case:

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1 (1) Completion of the briefing and hearing on Plaintiffs'
2 Motion for Reconsideration of the Order Denying Plaintiffs'
3 Motion for a Preliminary Injunction; (2) In the event that the
4 Court does not grant Plaintiffs' Reconsideration motion,
5 conduct any other briefing or discovery necessary should the
6 Court of Appeals remand Plaintiffs' appeal of the Court's
7 order Denying Preliminary Injunction; (3) Pursuit of discovery
8 against the RICO Ringleaders regarding their income,
9 financial information, and sizeable gifts, etc. to other during
10 the relevant period; (4) Pursuit of discovery against the RICO
11 Ringleaders into their disposition of moneys and assets taken
12 from the Tribe; and (5) Certification for appeal of the Court's
13 dismissal of Plaintiffs' claims against the Defendants in the
14 civil action.

15 Id. at 1–2 (citations omitted). Defendants, in turn, object only to “carve-outs” (3) and (4),
16 which would permit ongoing discovery. See Defs.’ Reply, ECF No. 376, at 1–2. Given
17 that the parties are in general accord that a stay should issue and the scope of stay, the
18 Court only address the two contested proposed carve-outs.²

19 As an initial matter, the Court must determine whether a stay is appropriate in the
20 first place, before turning to exceptions to that stay. Due to the overlap between the
21 allegations in both the civil action and the indictment, the Court finds that proceeding in
22 the civil action would likely implicate Defendants’ Fifth Amendment rights in a significant
23 manner. Indeed, “[t]he strongest case for deferring civil proceedings until after
24 completion of criminal proceedings is where a party under indictment for a serious
25 offense is required to defend a civil or administrative action involving the same matter.”
26 In re Zinnel, No. 2:12-cv-00249-MCE, 2013 WL 1284339, at *3 (E.D. Cal. Mar. 28, 2013)
27 (citing Dresser, 628 F.2d at 1375–76). The heart of the allegations in the civil action is
28 that Defendants defrauded the Tribe, misappropriating millions of the Tribe’s dollars.
The indictment concerns portions of the same alleged scheme, and specific allegations
often overlap. Compare, e.g., Third Amended Complaint (“TAC”), ECF No. 212, ¶ 454,
with Indictment, Crosby, No. 2:17-cr-00006-MCE, ECF No. 1, ¶¶ 22–24, 27, 29 (both

² The Court notes that since the filing of the instant Motion and the related moving papers, the Court entered judgment pursuant to Rule 54(b) on the claims referenced in Plaintiffs’ fifth carve-out. ECF No. 378. The dismissed defendants have moved for attorney fees, and those motions are set for hearing on May 18, 2017. ECF Nos. 382, 384, 388, 413. The Court construes these motions for attorney fees as falling within the ambit of Plaintiff’s fifth carve-out.

1 alleging that Defendants took identical amounts on the same days: \$74,826.50 on
2 May 24, 2012; \$119,131.00 on June 7, 2012; \$81,558 on July 20, 2012; \$34,100.55 on
3 August 2, 2012; and \$39,691.00 on September 14, 2012). Furthermore, the TAC’s
4 allegations sweep broader than the indictment, such that evidence obtained in
5 pursuance of the civil action “might be used to prove that [Defendants] intended to
6 commit the fraudulent acts alleged in the indictment, or had a plan to conceal
7 fraudulently obtained assets.” In re SK Foods, L.P., Civ. No. S-10-1492 LKK, 2010 WL
8 5136189, at *7 (E.D. Cal. Dec. 10, 2010).

9 Aside from the implication of Defendants’ Fifth Amendment rights, the factors
10 identified in Keating also counsel a stay. First, judicial resources will be conserved by
11 staying that case—after resolution of the criminal case, “common issues of fact will be
12 resolved and subsequent civil discovery will proceed unobstructed by concerns
13 regarding self-incrimination.” Taylor, Bean & Whitaker Mortg. Corp. v. Triduanum Fin.,
14 Inc., No. CIV. 2:09-cv-0954 FCD EFB, 2009 WL 2136989, at *4 (E.D. Cal. July 15, 2009)
15 (quoting Jones v. Conte, No. C 045312S1, 2005 WL 1287017, at *2 (N.D. Cal. Apr. 19,
16 2005)). Second, there is no indication that a stay would affect the interest of non-parties
17 or be contrary to the public interest. Finally, as analyzed in more depth below
18 concerning Plaintiffs’ proposed carve-outs, Plaintiffs have not shown that they would
19 suffer prejudice absent a stay that would outweigh the burden on Defendants’ Fifth
20 Amendment rights.

21 Turning now to the contested carve-outs to the stay, Plaintiffs’ proposed
22 exceptions for continued discovery are so large that they would directly undermine the
23 main purpose of staying the civil proceeding—protection of Defendants’ Fifth
24 Amendment rights. Any discovery “regarding [Defendants’] income, financial
25 information, and sizeable gifts, etc. to others” or concerning the “disposition of moneys
26 and assets taken from the Tribe” directly implicates the Fifth Amendment concerns
27 identified above. If such a broad exception for continued discovery was implemented, it
28 is not clear why a stay should issue at all.

1 Plaintiffs desire these carve-outs in order to “address very real prejudices
2 Plaintiffs will suffer should the Court grant the . . . stay . . . , absent any freeze on their
3 assets.” Pls.’ Opp’n, at 2. In essence, Plaintiffs attempt to re-litigate the denial of the
4 preliminary injunction through their opposition to the Motion to Stay. First, this is
5 unnecessary as Plaintiffs have already filed a motion for reconsideration,³ which will be
6 unaffected by the stay. Briefing has already been completed by both parties, and the
7 motion is submitted. Second, Plaintiffs’ proposed discovery carve-out seems to be
8 designed to keep discovery into Defendants’ finances open long enough to obtain
9 sufficient evidence to freeze their assets. The Court will not tailor a stay to be so results-
10 oriented.

11 Despite overlap between the allegations against Defendants—misappropriation of
12 funds—and the discovery that Plaintiffs want to exempt from the stay—where those
13 allegedly misappropriated funds are—Plaintiffs claim that allowing such discovery would
14 not implicate Defendants’ Fifth Amendment rights. This is because they “are not seeking
15 liability[-]focused information and document[s]” but rather “only . . . evidence of
16 purchases sales, transactions and other events where the RICO Ringleaders spent or
17 used Tribal moneys.” Pls.’ Opp’n, at 10. This is, to say the least, a perplexing argument.
18 It is beyond the Court how it would be possible to distinguish between which information
19 is liability-focused and which is not. At the heart of the matter is how Defendants used
20 Plaintiffs’ funds while they held leadership positions within the Tribe. The information
21 Plaintiffs seek—Defendants’ finances and financial transactions—squarely addresses
22 liability for the alleged misuse of Plaintiffs’ funds.

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25 ³ Plaintiffs originally filed a Motion for Preliminary Injunction requesting an asset freeze on
26 June 29, 2015, ECF No. 72, which was denied, ECF No. 102. That denial was appealed to the Ninth
27 Circuit, which reversed and remanded “for further findings of fact and conclusions of law to permit
28 meaningful review” and directed the Court to “explain, on an individualized basis, why the evidence does
or does not show a likelihood of dissipation” of Defendants’ assets. USCA Mem., ECF No. 343, at 3–4.
The Court did so, laying out in more detail the basis for its denial of preliminary injunction. ECF No. 360.
Plaintiffs have both moved for reconsideration of that new order, ECF No. 366, and appealed to the Ninth
Circuit, ECF No. 365.

1 **CONCLUSION**

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3 For the reasons above, Defendants' Motion to Stay, ECF No. 351, is GRANTED,
4 and this action IS HEREBY STAYED pending the resolution of criminal proceedings
5 against Defendants, subject to three exceptions: (1) the pending Motion for
6 Reconsideration, ECF No. 366; (2) any briefing necessary in light of the disposition of
7 Plaintiffs' appeal of the denial of a preliminary injunction; and (3) the pending Motions for
8 Attorney Fees, ECF Nos. 382, 384, 388. Not later than ninety (90) days following the
9 date this Memorandum and Order is electronically filed, and every ninety days thereafter
10 until the stay is lifted, the parties are directed to file a Joint Status Report advising the
11 Court as to the status of the criminal action.

12 IT IS SO ORDERED.

13 Dated: April 19, 2017

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15 MORRISON C. ENGLAND, JR.
16 UNITED STATES DISTRICT JUDGE
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