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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FEDERAL SOLUTIONS GROUP,
Plaintiff,
v.
H2L1-CSC,
Defendant.

Case No. [4:17-cv-05433-KAW](#)

**ORDER DENYING PLAINTIFF'S
MOTION TO STAY THE ENTIRE
ACTION OR, IN THE ALTERNATIVE,
TO CONTINUE TRIAL AND
DISCOVERY DEADLINES**

Re: Dkt. No. 47

On March 28, 2019, Plaintiff Federal Solutions Group, Inc. filed a motion to stay the entire action or, in the alternative, to continue trial and discovery deadlines.

Upon review of the moving papers, the Court finds this matter suitable for resolution without oral argument pursuant to Civil Local Rule 7-1(b), and, for the reasons set forth below, DENIES Plaintiff's motion to stay.

I. BACKGROUND

On September 19, 2017, Plaintiff Federal Solutions Group, Inc. ("FSG") filed a complaint against Defendant H2L1-CSC, JV ("H2L1") for breach of contract and unjust enrichment and quantum meruit arising out of a construction project ("Project") through the United States Army Corps of Engineers, located at Fort Hunter Liggett in Monterey County, California. Defendant was the Project's prime contractor, and Plaintiff was a subcontractor. H2L1 terminated FSG from the Project, allegedly for cause, which FSG denies was proper. FSG instituted this action to recover damages it incurred due to H2L1's conduct, including, but not limited to, H2L1's allegedly wrongful termination of FSG from the Project.

On January 18, 2018, the Court issued the case management scheduling order, which set a trial date of April 1, 2019. (Dkt. No. 25.) On October 4, 2018, the Court adopted a joint stipulation

1 to continue the trial date to December 16, 2019, which was sought, in part, because the parties
2 were still meeting and conferring on discovery, including the production of documents. (Dkt. Nos.
3 33 & 34.)

4 On November 7, 2018, a criminal complaint was filed against FSG’s sole shareholder,
5 Selina Singh, and key personnel, Manjinder Paul Singh and Kabir Singh, pertaining to alleged
6 workers compensation insurance fraud. (Pl.’s Mot., Dkt. No. 47 at 3, 7.) On March 18, 2019,
7 Defendant H2L1 served a second set of document requests on Plaintiff, seeking copies of all
8 criminal complaints filed against Selina Singh, Manjinder Paul Singh, and Kabir Singh from
9 January 1, 2014 to present. (Req. for Produc. of Docs., Decl. of John A. Castro, “Castrol Decl.,”
10 Dkt. No. 47-1 ¶ 5, Ex. A at 6.) Defendant also sought documents regarding Plaintiff’s workers’
11 compensation policy that was in effect during the relevant time period. (Req. for Produc. of Docs.
12 at 4.)

13 On May 1, 2019, Plaintiff filed a motion to stay the case or, in the alternative, to continue
14 trial and discovery deadlines in light of the parallel criminal proceeding. (Pl.’s Mot., Dkt. No. 47.)
15 On May 15, 2019, Defendant filed an opposition. (Def.’s Opp’n, Dkt. No. 53.) On May 22, 2019,
16 Plaintiff filed a reply. (Pl.’s Reply, Dkt. No. 54.)

17 **II. LEGAL STANDARD**

18 “[T]he power to stay proceedings is incidental to the power inherent in every court to
19 control the disposition of the causes on its docket with economy of time and effort for itself, for
20 counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). Whether to stay
21 proceedings is entrusted to the discretion of the district court. *See id.* at 254-55. In deciding
22 whether to stay proceedings pending resolution of another action, a district court must weigh
23 various competing interests, including the possible damage which may result from granting a stay,
24 the hardship a party may suffer if the case is allowed to go forward, and “the orderly course of
25 justice measured in terms of the simplifying or complicating of issues, proof, and questions of law
26 which could be expected to result from a stay.” *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th
27 Cir. 2005).

28 The United States Constitution does not require a stay of a civil proceeding pending the

1 outcome of a criminal proceeding. *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324 (9th
2 Cir. 1995). In the absence of substantial prejudice to the rights of the parties involved, parallel
3 civil and criminal cases may proceed simultaneously. *Id.* at 324. Nevertheless, a court may
4 exercise its discretion to stay the civil proceeding when the interest of justice so requires. *Id.* This
5 decision should be made in consideration of the particular circumstances and competing interests
6 involved, including the extent to which the criminal defendant's Fifth Amendment rights are
7 implicated. *Id.* (citing *Federal Sav. & Loan Ins. Corp. v. Molinaro*, 889 F.2d 899, 902 (9th Cir.
8 1989).) In addition, depending on the facts of the case, the court may also consider the following
9 factors:

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

18 *Keating*, 45 F.3d at 325 (citing *Molinaro*, 889 F.2d at 903) (“*Keating factors*”).

19 The burden is on the movant to show that a stay is appropriate. *See Clinton v. Jones*, 520
20 U.S. 681, 708 (1997).

21 **III. DISCUSSION**

22 In making the motion, Plaintiff requests that the court stay the instant case pending the
23 resolution of the parallel criminal proceeding. (Pl.’s Mot. at 2.) Plaintiff argues that the instant
24 case and the parallel criminal proceeding overlap, and, because of that overlap, a stay is required
25 due to the Fifth Amendment privileges of the individual defendants in the criminal proceeding. *Id.*

26 **A. FSG does not enjoy Fifth Amendment protections, but the individuals do.**

27 The first step is to consider the extent to which the defendant's Fifth Amendment rights are
28 implicated. *Keating*, 45 F.3d at 324. Generally, artificial entities, such as corporations, do not
enjoy Fifth Amendment protections. *Braswell v. United States*, 487 U.S. 99, 102 (1988). For that
reason, no privilege can be asserted by the custodian of corporate records, regardless of the
corporation's size, because any claim by the agent is tantamount to a claim of privilege by the
corporation, which possesses no such privilege. *Id.* at 108, 110. There are no circumstances under

1 which a records custodian may resist a subpoena for an entity's records on Fifth Amendment
2 grounds. *In re Twelve Grand Jury Subpoenas*, 908 F.3d 525, 531 (9th Cir. 2018).

3 Here, Plaintiff claims that the Fifth Amendment warrants a stay, because Defendant has
4 requested to take the depositions of three of Plaintiff's employees, all of whom are named
5 defendants in the parallel criminal proceeding. (Pl.'s Mot. at 6.) Thus, while Plaintiff as a
6 corporation may not have Fifth Amendment protections, the individual defendants do. *Id.* As a
7 result, if discovery moves forward, Plaintiff contends that its employees will have to choose
8 between invoking their individual rights against self-incrimination or waiving those rights, which
9 could adversely affect the civil case. *Id.* at 7.

10 In support of this argument, Plaintiff relies on *Clifford v. Trump*, 2018 U.S. Dist. LEXIS
11 122521, at *10 (C.D. Cal. Apr. 27, 2018), where the court held that, so long as the evidence is
12 testimonial in nature and is potentially incriminating toward the speaker, not the corporation, the
13 Fifth Amendment privilege applies. (Pl.'s Mot. at 6.) While true, the case also explicitly states that
14 "[a] stay of an action is not necessary where a defendant's fifth amendment rights can be
15 protected through less drastic means, such as asserting the privilege on a question-by-question
16 basis and implementing protective orders." *Id.* at *7 (quoting *Doe v. City of San Diego*, 2012 U.S.
17 Dist. LEXIS 174773, at *2 (S.D. Cal. Dec. 10, 2012)).

18 Similarly, in opposition, Defendant argues that there are safeguards in place for Plaintiff's
19 employees and shareholder, such as asserting their Fifth Amendment privilege at deposition.
20 (Def.'s Opp'n at 5.) The Court agrees. Indeed, a deponent is not permitted to invoke their right
21 against self-incrimination prophylactically. Privileges, like objections, may only be asserted in
22 response to a question. Therefore, the possibility of questions seeking to elicit incriminating
23 testimony at a deposition does not necessitate a stay when there is minimal factual overlap. *See*
24 discussion, *infra*, Part III.B.

25 **B. Minimal factual overlap**

26 Fifth Amendment concerns may be sufficient to warrant a stay when simultaneous civil
27 and criminal proceedings involve "the same or closely related facts." *Ebay, Inc. v. Dig. Point*
28 *Sols., Inc.*, 2010 U.S. Dist. LEXIS 23253, at *8 (N.D. Cal. Feb. 25, 2010). This is not the situation

1 here. The instant case involves breach of contract, while the pending criminal proceeding relates
2 to alleged workers' compensation fraud. (Pl.'s Mot. at 7.) Plaintiff argues that they do overlap
3 because the time frame of the matters being investigated include the contract between Plaintiff and
4 Defendant. (Pl.'s Mot. at 7). In support of its contention, Plaintiff points to Defendant's request
5 for the criminal complaints filed against Selina Singh, Manjinder Paul Singh, and Kabir Singh. *Id.*
6 Defendant also requested a copy of Defendant's worker's compensation policy for the project,
7 which Plaintiff argues clearly illustrates that the pending criminal proceeding heavily overlaps
8 with relevant facts and issues in the case at bar, and that Defendant intends to investigate factual
9 issues that are central to the criminal proceeding. *Id.* at 7-8.

10 In opposition, Defendant argues that Plaintiff's position has been that the criminal
11 complaints are irrelevant, and that it has refused to produce them in response to the document
12 requests. (Def.'s Opp'n at 5.) Defendant also points out that FSG has not produced any admissible
13 evidence to show that the facts overlap. *Id.* at 6.

14 The Court agrees on both counts. The instant case does not turn on whether Plaintiff
15 committed workers' compensation fraud. Rather, it will depend on whether there was a breach of
16 contract. Indeed, any potential overlap is due to Defendant's document requests, to which Plaintiff
17 appears to have correctly objected. Moreover, as discussed above, the individual, criminal
18 defendants may invoke their right against self-incrimination in response to specific deposition
19 questions, which is far less drastic than an indefinite stay in the litigation. *See* discussion, *supra*,
20 Part III.A.

21 Accordingly, the minimal overlap regarding the time frame does not weigh in favor of a
22 stay, and, even if it did, Plaintiff has failed to carry its burden to show that a stay is appropriate.
23 As a result, the Court need not address the remaining *Keating* factors.

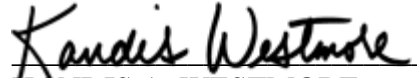
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1 **IV. CONCLUSION**

2 In light of the foregoing, Plaintiff's motion for stay is DENIED. As previously conveyed,
3 the Court will address the potential continuance of case deadlines at the next case management
4 conference.

5 IT IS SO ORDERED.

6 Dated: June 19, 2019

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8 KANDIS A. WESTMORE
9 United States Magistrate Judge
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