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3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
5

6 **CISCO SYSTEMS, INC., ET AL.,**

7 Plaintiffs,

8 vs.

9 **ZAHID HASSAN SHEIKH, ET AL.,**

10 Defendants.

CASE NO. 4:18-cv-07602-YGR

**ORDER: (1) DENYING MOTION TO STAY
CIVIL PROCEEDINGS UNTIL EXPIRATION
OF STATUTE OF LIMITATIONS;
(2) RELIEVING IN-PART PARTIES FROM
SUMMARY JUDGMENT PRE-FILING
CONFERENCE REQUIREMENT**

11 **ADVANCED DIGITAL SOLUTIONS
INTERNATIONAL, INC.,**

12 Third- Party Plaintiff,

13 vs.

14 **RAHI SYSTEMS, INC., ET AL.,**

15 Third-Party Defendants.
16

Re: Dkt. Nos. 108, 111, 114

17 The Court is in receipt of the motion to stay civil proceedings until the expiration of the
18 statute of limitations. (Dkt. No. 108.) For the reasons set forth below, the motion is **DENIED**.

19 The Court's analysis is guided by the test set forth in *Keating v. Office of Thrift*
20 *Supervision*, 45 F.3d 322 (9th Cir. 1995). There, the Ninth Circuit found:

21 The Constitution does not ordinarily require a stay of civil
22 proceedings pending the outcome of criminal proceedings. *Federal*
23 *Sav. & Loan Ins. Corp. v. Molinaro*, 889 F.2d 899, 902 (9th Cir.1989);
24 *Securities & Exchange Comm'n v. Dresser Indus.*, 628 F.2d 1368,
25 1375 (D.C.Cir.), *cert. denied*, 449 U.S. 993, 101 S.Ct. 529, 66
26 L.Ed.2d 289 (1980). "In the absence of substantial prejudice to the
27 rights of the parties involved, [simultaneous] parallel [civil and
28 criminal] proceedings are unobjectionable under our jurisprudence."
Dresser, 628 F.2d at 1374. "Nevertheless, a court may decide in its
discretion to stay civil proceedings ... 'when the interests of justice
seem [] to require such action.'" *Id.* at 1375 (quoting *United States*
v. Kordel, 397 U.S. 1, 12 n. 27, 90 S.Ct. 763, 769 n. 27, 25 L.Ed.2d 1
(1970)).

1 The decision whether to stay civil proceedings in the face of a parallel
2 criminal proceeding should be made “in light of the particular
3 circumstances and competing interests involved in the case.”
4 *Molinaro*, 889 F.2d at 902. This means the decisionmaker should
5 consider “the extent to which the defendant’s fifth amendment rights
6 are implicated.” *Id.* In addition, the decisionmaker should generally
7 consider the following factors: (1) the interest of the plaintiffs in
8 proceeding expeditiously with this litigation or any particular aspect
9 of it, and the potential prejudice to plaintiffs of a delay; (2) the burden
10 which any particular aspect of the proceedings may impose on
11 defendants; (3) the convenience of the court in the management of its
12 cases, and the efficient use of judicial resources; (4) the interests of
13 persons not parties to the civil litigation; and (5) the interest of the
14 public in the pending civil and criminal litigation. *Id.* at 903.

15 *Keating*, 45 F.3d at 324-25.

16 Here, the Court finds insufficient justification for staying the litigation. First, case law is
17 replete with examples of the need to resolve cases expeditiously. Trials can be significantly
18 impacted by a delay from the underlying events as memories fade. Second, given the close of
19 discovery (with a narrowly defined exception), the benefit of a stay is not commensurate with
20 other circumstances where parallel litigation, whether prosecutorial or not, has a present,
21 identifiable impact absent a stay. Here, those individuals who had concerns, exercised their Fifth
22 Amendment rights. The case will have to proceed without such testimony. Third, the Court and
23 the public benefit from resolution of civil matters through the judicial system. In order to manage
24 the never-ending filing of civil actions, judges must keep cases on track for resolution either by
25 way of settlement or trial. Further, stays of an undefined period are disfavored. Delaying
26 resolution on the theoretical possibility of criminal prosecution does not serve the public or the
27 public’s interest. Accordingly, the motion is **DENIED**.

28 Additionally, based upon the Court’s review of the pre-filing letters submitted by the
parties (Dkt. Nos. 111, 114), no pre-filing conference is required for third-party defendants’
anticipated motion for summary judgment. Thus, the parties are **RELIEVED** in-part from the
summary judgment pre-filing conference. Any other party seeking to file a motion for summary
judgment is reminded to first request permission to do so through a pre-filing letter.

The parties are further reminded of the requirement to file separate statements of fact in the
format set forth in paragraph 9(c) of this Court’s Standing Order, including the requirement that
counsel attest that the evidence cited for each fact or dispute fairly and accurately supports the fact

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or dispute.

As previewed for the parties at the case management conference, the Court considers summary judgment a tool to be used prudently, when there are no disputed issues of material fact. To the extent there are triable issues of material fact, summary judgment will be denied with a succinct denial order, without extensive commentary, so that the determination is left wholly for the trier of fact.

This Order terminates Docket Number 108.

IT IS SO ORDERED.

Dated: April 17, 2020


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE