

1 GLR Defendants, Plaintiffs bring the Instant Action against the Santa Cruz County Bank (the
2 “Bank”) as a result of the alleged conduct of its former Vice President, Chuck Maffia. The GLR
3 Defendants are also the subject of an SEC civil enforcement action (the “SEC Action”) that is
4 similarly before this Court as a result of GLR Defendants’ alleged misconduct. See SEC v. GLR
5 Capital Mgmt., LLC, No. 12-02663 (N.D. Cal. filed May 24, 2012). The Bank is not, however, a
6 defendant in either the SEC Action or the Criminal Action.

7 In all three actions, all of which the Court related,¹ the GLR Defendants stand accused of
8 misrepresenting the performance and strategy of their investment fund, the GLR Growth Fund, as
9 well as concealing their fraud through a Ponzi scheme. See Compl. ¶¶ 1-4; SEC Action Compl.
10 ¶¶ 1-3; Criminal Action Indictment (“Indict.”) ¶¶ 14-21. In total, the GLR Defendants are alleged
11 to have raised over \$60 million dollars as part of their alleged scheme. See Indict. ¶ 19; SEC
12 Action Compl. ¶ 1. Approximately \$5.1 million of which is alleged to have originated with
13 Plaintiffs of the Instant Action. See Compl. ¶ 2.

14 In the Instant Action, Plaintiffs raise five claims. Two of the causes of action—conspiracy
15 to commit fraud and violations of Section 12(a)(2) of the Securities Act, 15 U.S.C. § 771(a)(2)—
16 are brought against both the GLR Defendants and the Bank. See Compl. ¶¶ 86-94, 114-126. The
17 remaining three causes of action—aiding and abetting fraud, aiding and abetting breach of
18 fiduciary duty, and negligent misrepresentation—are brought only against the Bank. See *id.* ¶¶ 70-
19 85, 95-117. The GLR Defendants have each filed Answers invoking the Fifth Amendment for
20 nearly every assertion in the Complaint. See ECF Nos. 10-11, 14.

21 On February 13, 2013, the Court stayed the SEC Action for six months pursuant to a
22 stipulation between the GLR Defendants and the SEC. See SEC Action, ECF No. 73. On June 10,
23 2013, the GLR Defendants filed a Motion for a Stay in the Instant Action for six months from the
24 entry of the Court’s Order. See Mot. Stay (“Mot.”), ECF No. 34. After the Instant Action was
25 reassigned to the undersigned judge on June 14, 2013, see ECF No. 39, the GLR Defendants re-

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27 ¹ See Order Relating Bridges v. Geringer to the SEC Action, ECF No. 38; see also SEC Action,
28 ECF No. 53 (relating the Criminal Action to the SEC Action), ECF No. 97 (relating the SEC
Action to the Instant Action).

1 filed their Motion for Stay, see ECF No. 42. Both Plaintiffs and the Bank filed oppositions. See
2 Bank Opp'n, ECF No. 44; Pl.'s Opp'n, ECF No. 46.

3 **II. LEGAL STANDARD**

4 The Constitution does not ordinarily require a stay of civil proceedings pending the
5 outcome of parallel criminal proceedings. See *Fed. Sav. & Loan Ins. Corp. v. Molinaro*, 889 F.2d
6 899, 902 (9th Cir. 1989). "In the absence of substantial prejudice to the rights of the parties
7 involved, such parallel proceedings are unobjectionable under our jurisprudence." *SEC v. Dresser*
8 *Indus., Inc.*, 628 F.2d 1368, 1374 (D.C. Cir. 1980). Nonetheless, a court may exercise its
9 discretion to stay civil proceedings when the interests of justice seem to require such action. See
10 *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324 (9th Cir. 1995).

11 "A court must decide whether to stay civil proceedings in the face of parallel proceedings in
12 light of the particular circumstances and competing interests involved in the case." *Molinaro*, 889
13 F.2d at 902 (citation omitted). In determining whether to stay civil proceedings, a court should
14 first consider "the extent to which the defendant's Fifth Amendment rights are implicated."
15 *Keating*, 45 F.3d at 324 (quoting *Molinaro*, 889 F.2d at 902). However, "[a] defendant has no
16 absolute right not to be forced to choose between testifying in a civil matter and asserting his Fifth
17 Amendment privilege." *Keating*, 45 F. 3d at 326. Thus while the extent to which a defendant's
18 Fifth Amendment rights are implicated is a "significant factor" to be considered, it is "only one
19 consideration to be weighed against others." *Id.* (citation omitted).

20 Additional factors that a court should generally consider when deciding whether to stay a
21 civil proceeding in the face of parallel proceedings include:

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

28 *Keating*, 45 F.3d at 325.

1 Nonetheless, other than cases involving bad faith or malice on the part of the government,
2 “the strongest case for deferring civil proceedings until after completion of criminal proceedings is
3 where a party under indictment for a serious offense is required to defend a civil or administrative
4 action involving the same matter.” Dresser, 628 F.2d at 1375-76. In such a case, allowing the
5 civil action to proceed may undermine the defendant’s Fifth Amendment privilege, expand
6 criminal discovery beyond the limits of Federal Rule of Criminal Procedure 16(b), expose the
7 defense strategy to the prosecution before the criminal trial, or cause other prejudice. Id. at 1376.
8 Accordingly, where the civil proceeding wholly or substantially overlaps with the criminal
9 proceeding, a court may be justified in staying the civil case, deferring civil discovery, or taking
10 other protective measures. Id.

11 **III. DISCUSSION**

12 The GLR Defendants request a stay in the Instant Action due to pending discovery and
13 litigation in the Criminal Action, and to align with the stay in the SEC Action. See Mot., ECF No.
14 34, at 2; ECF No. 42, at 2. Plaintiffs oppose this motion, contending that the Court is not required
15 to stay a civil case that is parallel to a criminal action, and that Plaintiffs will suffer prejudice if the
16 action is stayed because they “need immediate discovery to identify and trace Defendants’ assets.”
17 See Pl.s’ Opp’n at 5. Additionally, Plaintiffs argue that this action must proceed expeditiously
18 because a number of the plaintiffs lost substantial sums of money and are over 65 years of age. Id.
19 Defendant Santa Cruz County Bank opposes this motion as well because “[t]he pendency of this
20 civil action does not rise to the level of a deprivation of due process as to [the GLR Defendants],
21 and the GLR Defendants’ rights may be protected pending resolution of the Criminal Action
22 against them by assertion of the Fifth Amendment in this civil action.” Bank Opp’n at 1. The
23 Bank further argues that a stay is not warranted in the interests of judicial economy because the
24 Bank’s Motion to Dismiss may be dispositive of some of Plaintiffs’ claims, and the issues to be
25 resolved in the instant case are distinguishable from the issues in the SEC and Criminal Actions.
26 See id. at 5.

1 Broadly speaking, the Court has the following three options: (1) allow the case to proceed
2 in its entirety as requested by Plaintiffs and the Bank; (2) stay the matter entirely for six months as
3 requested by the GLR Defendants; or (3) allow the case to proceed in part as the case relates to the
4 Bank. For the reasons set forth below, the Court finds that, to preserve the GLR Defendants' Fifth
5 Amendment rights and in the interests of judicial economy for all parties to this action as well as
6 the Court, the Instant Action should be stayed in its entirety for six months. However, the Court
7 will permit limited discovery on a case-by-case basis subject to certain restrictions. See *infra* Part
8 III.D.

9 **A. The Court's Order in SEC v. Alexander**

10 At the outset, the Court notes that it addressed a similar motion to stay in *SEC v. Alexander*,
11 No. 10-04535, 2010 WL 5388000 (N.D. Cal. Dec. 22, 2010), in which the defendants were also the
12 subject of a civil enforcement action by the SEC and a parallel criminal proceeding for their role in
13 an alleged scheme to defraud investors. After weighing the interests presented by a particular
14 defendant's assertion of his Fifth Amendment privilege and other Keating factors, the Court
15 concluded that a stay was warranted. See *id.* at *7.²

16 In determining that the Alexander civil enforcement action should be stayed, the Court
17 emphasized the fact that a stay was unlikely to seriously prejudice the interests of the SEC, non-
18 party investors, and the public. First, the Court noted that ongoing SEC and criminal investigations
19 "alleviated concerns that investors might be further harmed . . . by defendants." *Id.* Second, the
20 Court found that "the public interest [was] largely served by the parallel criminal proceeding[,] and
21 the significant overlap between the civil and criminal proceedings mitigate[d] concerns that
22 evidence might become unavailable while the case is stayed." *Id.* Furthermore, the Court found
23 that "the burden on [Swanson, one of the defendants] [wa]s serious and not easily avoided. His
24 Fifth Amendment rights appear to be implicated by nearly every aspect of the civil proceeding."

25 ² The Bank characterizes Alexander as having only stayed the case as to one defendant (Swanson).
26 See Bank Opp'n at 4. However, when another defendant in that case, Alexander, filed her own
27 motion to stay, the Court denied it as moot, reasoning that it had already "stay[ed] all discovery,
28 including the Answers and initial disclosures of all Defendants." Alexander, No. 10-04535 (N.D.
Cal. Dec. 29, 2010) (order denying as moot motion to stay).

1 Indeed, without granting the motion to stay, the defendant “[would have been] forced to choose
2 between preserving his privilege against self-incrimination, thereby subjecting himself to a one-
3 sided discovery process and adverse inferences drawn from his invocation of the Fifth Amendment,
4 and waiving the privilege in order to mount a vigorous defense in the civil case.” Id. Accordingly,
5 the Court concluded that a stay was warranted.³

6 **B. Staying the Case to the Extent it Involves the GLR Defendants**

7 The reasoning that motivated this Court in Alexander applies with nearly equal force in this
8 case. Though any concerns about the government expanding discovery in a parallel civil action
9 beyond the scope of what is permissible under Federal Rule of Criminal Procedure 16(b) are not
10 present in this particular case because the government is not party to the Instant Action, Fifth
11 Amendment concerns, considered together with the Keating factors, weigh in favor of staying the
12 case.

13 Given the substantial overlap between the Criminal Action and the Instant Action, the GLR
14 Defendants find themselves in the same position as the defendants in Alexander: “choos[ing]
15 between preserving [their] privilege against self-incrimination, thereby subjecting [themselves] to a
16 one-sided discovery process and adverse inferences drawn from [their] invocation of the Fifth
17 Amendment, and waiving the privilege in order to mount a vigorous defense in the civil case.”
18 Alexander, 2010 WL 5388000, at *7. Forcing the GLR Defendants to make such a choice
19 impinges on their Fifth Amendment rights.

20 None of the other Keating factors to be considered outweigh preserving the GLR
21 Defendants’ Fifth Amendment rights. As in Alexander, the criminal and SEC investigations
22 prevent the GLR Defendants from causing further harm. Additionally, the public interest and the
23 interests of individuals who both are and are not parties to this litigation—including other potential
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26 ³ The Court did permit limited discovery where there was a risk of losing evidence, for instance in
27 taking depositions of elderly or seriously ill witnesses. Alexander, 2010 WL 5388000, at *7.
28 Discovery was allowed to proceed if good cause was shown or by stipulation of the parties on a
case-by-case basis. Id.

1 victims of the GLR Defendants’ alleged crimes—are served by the SEC and Criminal Actions.
2 Moreover, the interest of judicial economy, as explained *infra* Part III.C, favors staying the case.

3 Accordingly, the Court finds that this Instant Action should not proceed to the extent it
4 involves the GLR Defendants.

5 **C. Staying the Case In Its Entirety, Including as to the Bank**

6 Given that the Court finds that the Instant Action should not proceed to the extent it
7 involves the GLR Defendants, this case cannot, at minimum, proceed beyond deciding the Bank’s
8 Motion to Dismiss. All five of Plaintiffs’ claims in this case pertain to the Bank, and resolution of
9 each claim will require an inquiry into the allegations against the GLR Defendants. For instance,
10 the Court cannot determine if the Bank aided and abetted the GLR Defendants without establishing
11 what the GLR Defendants did. Proceeding beyond deciding the Motion to Dismiss would
12 therefore implicate the GLR Defendants’ Fifth Amendment rights.

13 Whether to proceed in deciding the Bank’s Motion to Dismiss is a closer question.
14 Considering the relevant factors, the interest of judicial economy tips the balance in favor of
15 staying this case in its entirety. On the one hand, the Fifth Amendment rights of the GLR
16 Defendants would not be implicated as the Court’s analysis would be confined to the Complaint.
17 Additionally, the Bank “wants to have this case promptly resolved on its Motion to Dismiss,” Bank
18 Opp’n at 3, as do the Plaintiffs, if possible. On the other hand, the case cannot, as previously
19 discussed, move beyond deciding the Bank’s pending Motion to Dismiss. For the reasons set forth
20 below, deciding the Bank’s Motion to Dismiss at this time is not a good use of the parties’ or the
21 Court’s resources.

22 First and foremost, resolution of the Criminal Action will likely impact the substance of the
23 Instant Action. Information uncovered in the Criminal Action may narrow or expand the scope of
24 the claims and defenses in the Instant Action, may cause Plaintiffs to amend their complaint to
25 allege new or different factual allegations and claims, and may cause the Bank to amend its Motion
26 to Dismiss. Thus, proceeding with the Bank’s Motion to Dismiss at this time may create
27 unnecessary rounds of motion practice.

1 Moreover, if the Court were to deny the Bank’s pending Motion to Dismiss, the case would
2 then be stayed. If the Court were to grant the Motion to Dismiss, it would likely be dismissed
3 without prejudice, so that Plaintiffs could then amend their complaint in order to cure any
4 deficiencies. Once the Plaintiffs amended their complaint, the Bank might file another motion to
5 dismiss, as is common practice for civil defendants. If the subsequent motion to dismiss was
6 denied, the case would be stayed pending resolution of the Criminal Action, barring changed
7 circumstances. Only if the subsequent motion to dismiss were granted with prejudice, would the
8 Bank be free from this litigation. However, this would likely happen—if at all—many months into
9 the future, and almost certainly beyond the six-month stay the Court issues here. Moreover, as
10 discussed above, information uncovered in the Criminal Action may well impact the substance of
11 the complaint and the subsequent motion to dismiss in the instant case, so proceeding now is
12 improvident.

13 Additionally, the Bank presents no reason why staying the case in its entirety would cause it
14 to experience significant prejudice. Rather, the Bank would merely need to wait until the stay is
15 lifted to bring all of its motions and raise its defenses with the benefit of information uncovered in
16 the Criminal Action.

17 Given that: (1) the resolution of the Criminal Action may facilitate a more efficient
18 resolution of the Instant Action, (2) proceeding now may create unnecessary rounds of motion
19 practice, and (3) the final resolution of Plaintiffs’ claims against the Bank is likely well over six
20 months away even if this Court were to rule on the pending Motion to Dismiss in the Bank’s favor,
21 the Court finds that the Instant Action should be stayed in its entirety for the next six months. The
22 Court therefore GRANTS the GLR Defendants’ Motion to Stay.

23 **D. Mitigating Potential Prejudice**

24 The Court agrees with both Plaintiffs and the Bank that the passage of time may imperil
25 evidence gathering, especially with regard to elderly witnesses. See Pl.s’ Opp’n at 5-6 (describing
26 Plaintiffs older than 65 and their need for this case to proceed); Bank Opp’n at 3-4 (noting that
27 evidence related to Plaintiffs’ allegations of oral misrepresentations are particularly time-sensitive

1 due to reliance on witnesses' memories). In Alexander, this Court found that "delay associated
2 with a stay may affect the availability of witnesses and documents or the quality of testimony." Id.,
3 2010 WL 5388000, at *4 (citing Dresser, 628 F.2d at 1377). Thus, as mentioned supra, Part III.A,
4 the Court permitted limited discovery where there was a risk of losing evidence, for instance in
5 taking depositions of elderly or seriously ill witnesses. Id. at *7. Discovery was allowed to
6 proceed if good cause was shown or by stipulation of the parties on a case-by-case basis. Id.

7 As in Alexander, the Court will permit discovery in the Instant Action on a case-by-case
8 basis pursuant to joint stipulation of the parties or where good cause is shown.

9 **IV. CONCLUSION**

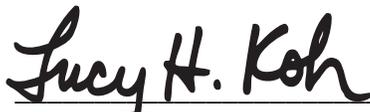
10 For the foregoing reasons, the Court GRANTS GLR Defendants' Motion to Stay the Instant
11 Action for six months. Discovery, however, may proceed on a case-by-case basis pursuant to joint
12 stipulation of the parties or where good cause is shown. In addition, the parties may file a joint
13 status report with the Court should any material changes occur that, from the perspective of the
14 parties, warrant lifting the stay. Further, the parties shall file a joint status report six months after
15 the issuance of this Order detailing whether the parties believe that the stay should be continued or
16 lifted.

17 The Bank has also moved to dismiss the Complaint as it pertains to claims made against the
18 Bank. ECF No. 25. That motion is currently pending and a hearing on the motion is set for July
19 25, 2013. In light of this Order, the Court hereby DENIES without prejudice Defendant Santa
20 Cruz County Bank's Motion to Dismiss and VACATES the July 25, 2013 hearing.

21 The Clerk shall administratively close the file.

22 **IT IS SO ORDERED.**

23
24 Dated: July 24, 2013

25 
26 LUCY H. KOH
27 United States District Judge