

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, EX REL  
CHRISTOPHER KAES, et al.,

Plaintiffs,

v.

DOGWOOD CREEK CONSTRUCTION,  
LLC, et al.,

Defendants.

Case No. 12-cv-02887-HRL

**ORDER GRANTING IN PART AND  
DENYING IN PART MOTION TO  
APPEAR BY TELEPHONE**

**ORDER DENYING MOTION TO STAY  
FURTHER PROCEEDINGS**

**ORDER DENYING MOTION TO HOLD  
SETTLEMENT CONFERENCE IN  
CAMERA**

Re: Dkt. Nos. 20, 21, 22

The United States declined to intervene in this case on March 30, 2015. Dkt. No. 15. Plaintiffs Kaes Enterprises, LLC and Christopher Kaes did not serve any defendants or consent to magistrate jurisdiction during the following five months. The court set a status conference for September 15, 2015 and ordered submission of a status report by September 10, 2015. Dkt. No. 18.

Plaintiffs consented to magistrate jurisdiction and filed a motion to allow their lawyers to appear by telephone at the status conference. Dkt. Nos. 19, 20. Plaintiffs also filed a declaration by lawyer Bruce P. Babbitt in support of the motion to appear by telephone; this declaration includes a request to hold the status conference in camera and to seal records of the conference “for reasons that will be explained at the status conference.” Dkt. No. 21. Finally, Plaintiffs filed a status report, which requests that the court stay further proceedings until November 1, 2015. Dkt. No. 22. Mr. Kaes requests the stay because of medical issues, uncertainty about whether he has the “resources and ability” to prosecute the case, and a desire to “hopefully obtain some of the investigation materials generated by the United States and the Office of the Inspector General

United States District Court  
Northern District of California

1 during their investigation” of this case. Dkt. No. 22.

2 The court construes the request to hold the conference in camera and the request to stay as  
3 motions; the court now resolves the three motions before the court.

4 **Motion to Hold In-Camera Conference and Seal Records of Conference**

5 Plaintiffs declined to state any justification for holding the status conference in camera and  
6 then sealing the record of the conference. Plaintiffs instead base their request entirely on “reasons  
7 that will be explained at the status conference.” Dkt. No. 21. The court denies Plaintiffs’ request  
8 because Plaintiffs have not provided any fact or law to justify it.

9 **Motion to Appear by Telephone**

10 The motion to appear by telephone does not clearly state why good cause might exist to  
11 permit a telephonic appearance. Still, the court notes that pro-hac-vice lead counsel Bruce P.  
12 Babbitt would likely need to travel from Seattle, Washington to San Jose, California to appear in  
13 person. The court finds good cause to permit Mr. Babbitt to appear by telephone. The court finds  
14 no good cause, however, to permit local co-counsel Weldon S. Wood to appear by telephone.

15 **Motion to Stay Further Proceedings**

16 Courts have discretion to stay proceedings to prevent “substantial hardship or inequity  
17 which a party may suffer” without the stay. *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir.  
18 1962). The party that requests a stay has the burden to show the necessity of the stay. *Clinton v.*  
19 *Jones*, 520 U.S. 681, 708 (1997). Mr. Kaes has asked the court to stay further proceedings, in  
20 essence, so he can evaluate whether he has the wherewithal to prosecute this case. As well, Mr.  
21 Kaes hopes the United States will eventually provide him with information helpful to his claims.  
22 The court finds Mr. Kaes would not suffer substantial hardship or inequity in the absence of a stay  
23 because he has already had more than five months to decide whether to prosecute this case and to  
24 request information from the United States.

25 **Conclusion**

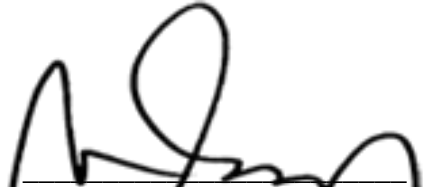
26 The court therefore denies the request to hold the status conference in camera and seal  
27 records of the conference, grants Bruce P. Babbitt leave to appear at the status conference by  
28 telephone, denies Weldon S. Wood leave to appear at the status conference by telephone, and

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

denies the motion to stay further proceedings. The status conference remains scheduled for September 15, 2015.

**IT IS SO ORDERED.**

Dated: 9/10/2015



---

HOWARD R. LLOYD  
United States Magistrate Judge