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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

JOSE ANTONIO RAMOS,
Plaintiff,
v.
CAPITAL ONE, N.A., et al.,
Defendants.

Case No. 17-cv-00435-BLF

ORDER DENYING MOTION TO STAY
[Re: ECF 5]

Before the Court is Defendants’ motion seeking a stay of this action until the California Court of Appeal reaches its decision in *Ron Kempton, et al. v. Capital One Financial Corporation*, No. 37-2014-00023795-CU-MC-NC (Cal. Super. Ct.) *sub nom. Dalia Rojas v. HSBC Card Services Inc., et al.*, No. D071442 (Cal. App. Ct. filed Nov. 18, 2016) (the “*Rojas* case”). Mot., ECF 5, Joinder to Mot., ECF 22. Plaintiff Jose Antonio Ramos (“Plaintiff”) opposes the motion, claiming that Defendants did not meet their burden of showing that a stay is warranted. Opp’n., ECF 18. Pursuant to Civ. L.R. 7-1(b), the Court finds Defendants’ motion to stay suitable for submission without oral argument and hereby VACATES the hearing scheduled for July 27, 2017. As set forth below, the Court finds that the Defendants’ requested stay is not justified and hereby DENIES the motion.

I. BACKGROUND

Plaintiff alleges the following facts in his complaint. Compl., Ex A. to Notice of Removal, ECF 1. Plaintiff is a California resident whose wife was employed by Defendants HSBC Card Services Inc. (“Card Services”) at an HSBC Technology & Services (USA) Inc. (collectively, “HSBC”) facility in Salinas, California, from March 2009 to May 2012. Compl. ¶¶ 7, 28. As of May 1, 2012, Defendant Capital One Financial Corporation (“Capital One”) acquired certain

1 assets of HSBC, including the Salinas facility. Plaintiff's wife thereafter was employed by Capital
2 One from May 1, 2012 through October 2013. *Id.* ¶ 29.

3 Plaintiff alleges that during the relevant time period, he had "numerous personal telephone
4 communications" with Defendants' employees, including his wife. *Id.* ¶¶ 30-32. According to
5 Plaintiff, Defendants intentionally recorded the conversations without his consent or knowledge.
6 *Id.* ¶¶ 32-33.

7 Plaintiff filed a complaint in Monterey County Superior Court asserting that Defendants
8 violated the California Invasion of Privacy Act. Compl.; Cal. Penal Code §§ 632, 632.7. HSBC
9 removed the case to this Court. Notice of Removal. Defendants then filed a motion to dismiss
10 and a motion to stay the case. ECF 5, 7. The Court now addresses Defendants' motion to stay.

11 **II. LEGAL STANDARD**

12 "Granting a motion to stay is within the sound discretion of the Court." *Fuller v. Amerigas*
13 *Propane, Inc.*, No. 09-2493, 2009 WL 2390358, at *1 (N.D. Cal. Aug. 3, 2009). The power to
14 stay is "incidental to the power inherent in every court to control the disposition of the causes on
15 its docket with economy of time and effort for itself, for counsel, and for litigants." *Id.* (quoting
16 *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1360 (C.D. Cal. 1997) (quoting *Landis v. N. Am.*
17 *Co.*, 299 U.S. 248, 254 (1936) (internal quotation marks omitted)).

18 "In considering whether a stay is appropriate, the Court weighs three factors: [1] the
19 possible damage which may result from the granting of a stay, [2] the hardship or inequity which a
20 party may suffer in being required to go forward, and [3] the orderly course of justice measured in
21 terms of the simplifying or complicating of issues, proof, and questions of law which could be
22 expected to result from a stay." *See Gustavson v. Mars, Inc.*, Case No. 13-cv-04537-LHK, 2014
23 WL 6986421, at *2 (N.D. Cal. Dec. 10, 2014) (internal quotation marks and citation omitted)
24 (brackets in original). These factors are drawn from the Supreme Court's decision in *Landis v.*
25 *North American Co.*, 299 U.S. 248 (1936). *Id.* "If there is even a fair possibility that a stay will
26 work damage to someone else, the stay may be inappropriate absent a showing by the moving
27 party of hardship or inequity." *Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d
28 1059, 1066 (9th Cir. 2007) (internal quotation marks omitted) (citing *Landis*, 299 U.S. at 255).

1 In addition, the “proponent of a stay bears the burden of establishing its need.” *Clinton v.*
2 *Jones*, 520 U.S. 681, 708 (1997) (citing *Landis*, 299 U.S. at 255). If there is “even a fair
3 possibility” of harm to the opposing party, the moving party “must make out a clear case of
4 hardship or inequity in being required to go forward.” *Landis*, 299 U.S. at 255.

5 **III. DISCUSSION**

6 Defendants contend that a stay of the present case pending resolution of the *Rojas* case on
7 appeal will conserve judicial resources without prejudice to Plaintiff. A denial of stay would
8 cause hardship to the parties when they have to expend time and resources litigating this case.
9 Plaintiff argues that Defendants have made an insufficient showing to warrant a stay. Before
10 turning to the merits of these arguments, the Court addresses HSBC’s request for judicial notice.

11 **A. Judicial Notice**

12 HSBC has requested judicial notice of six documents filed in the *Rojas* case, attached to
13 the request as Exhibits A through H: (A) HSBC’s motion for summary judgment; (B) plaintiff
14 *Rojas*’ opposition to the summary judgment motion; (C) HSBC’s reply in support of the motion
15 for summary judgment; (D) order granting HSBC’s motion for summary judgment; (E) excerpts of
16 the certified reporter’s transcript for the November 4, 2016 hearing; (F) the notice of appeal., (G)
17 Notice regarding fee for record on appeal; and (H) Order denying motion to stay in *Nicklaus Lal v.*
18 *Capital One N.A., et al.*, No. 5:16-cv-06674-BLF (N.D. Cal.) (the “Lal Stay Order”). RJN, ECF 6.

19 Judicial notice is appropriate with respect to all these exhibits because they are documents
20 publicly filed with the San Diego County Superior Court and this Court. *See Mir v. Little Co. of*
21 *Mary Hosp.*, 844 F.2d 646, 649 (9th Cir. 1988) (court may take judicial notice of matters of public
22 record). Plaintiff opposed the request for judicial notice because the documents have no “direct
23 relation to the matters at issue.” Opp’n 6-7. Courts “may take notice of proceedings in other
24 courts, both within and without the federal judicial system, if those proceedings have a direct
25 relation to matters at issue.” *U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*,
26 971 F.2d 244, 248 (9th Cir. 1992). The Court finds that the facts of the *Rojas* case and *Nicklaus*
27 *Lal v. Capital One N.A., et al.*, No. 5:16-cv-06674-BLF (N.D. Cal. filed Nov. 17, 2016) (the “Lal
28 case”) are very similar. In the *Rojas* case, the *Lal* case, and the case here, the plaintiffs assert the

1 same causes of action arising from similar allegations concerning recording of telephone
2 conversation by the defendants. Accordingly, the documents have a “direct relation to the matters
3 at issue.” *See* Mot. 3-5.

4 Plaintiff also argues that the documents to be noticed contain disputed facts and arguments
5 so the Court may not take judicial notice of them to prove the truth of the contents. Opp’n 7-8.
6 However, Plaintiff’s objection to the Court taking judicial notice of the documents filed in other
7 proceedings is misguided. The Court does not take judicial notice of the legal reasoning or
8 disputed facts contained therein, but rather the existence of such allegations and arguments. Reply
9 8-9; *Lee v. City of Los Angeles*, 250 F.3d 668, 690 (9th Cir. 2001) (permitting a court to take
10 judicial notice of another court’s opinion, but not the truth of the facts recited therein). Plaintiff
11 does not dispute the authenticity of the documents, either. As such, the request for judicial notice
12 is GRANTED with respect to all the exhibits attached to HSBC’s request.

13 **B. Possible Prejudice from Granting Stay**

14 The Court turns to the first *Landis* factor: possible prejudice that could arise from granting
15 the stay. Defendants argue that a stay will not damage Plaintiff given that the allegations relate to
16 calls made between 2009 and 2012, made over four to seven years ago. Mot. 7. According to
17 Defendants, Plaintiff has not alleged any ongoing violations, confirming that a stay of causes of
18 actions that are already stale would not incur any additional damages. *Id.*; Reply 2. Defendants
19 also contend that oral argument in *Rojas* likely will occur by the end of the year given the briefing
20 schedule. Reply 2-3. Plaintiff contends that if a stay were to be granted, evidence could be lost or
21 destroyed, witness memories could fade, and witnesses might become unavailable. Opp’n 3.
22 Plaintiff further argues that a stay should not be instituted because of the strong public policy
23 favoring expeditious resolution of litigation. *Id.* at 4.

24 Given that Plaintiff’s allegations were based on events that occurred more than four to
25 seven years ago, additional damage from granting a stay should be relatively small in comparison
26 to damage from the pre-existing delay. However, the Court finds that with passing time, there
27 remains a risk of lost and destroyed evidence, as well as fading witness memories. Although
28 Defendants predict that oral argument will be scheduled by the end of this year based on the

1 appellate briefing schedule, it is not certain that this prediction will come to fruition. As such, the
2 parties may need to wait for the state court appellate decision for an indefinite amount of time,
3 which is a concern of this Court. The Court thus finds that a stay pending the state appellate court
4 decision could prejudice Plaintiff.

5 **C. Possible Hardship or Inequity from Denying Stay**

6 The Court next considers the possible harm that could arise from going forward. *CMAX*,
7 300 F.2d at 268. Defendants argue that denial of the stay would force it to devote significant legal
8 expense to the present action, which may be rendered unnecessary by the appellate decision in the
9 *Rojas* case. Mot. 6; Reply 4-5. In addition, Defendants contend that litigating this case and the
10 *Lal* case simultaneously adds to their hardship. Reply 5. Plaintiff contends that Defendants’
11 speculative argument on irreparable harm does not justify a stay. Opp’n 4-5.

12 Aside from conclusory assertions, Defendants have not provided any detail as to why
13 simultaneous litigation of this case and the *Lal* case that have substantial overlap in their factual
14 and legal issues would cause a significant burden relative to litigating only the *Lal* action.
15 Defendants also similarly proffer no support for their argument that the “vast majority of the
16 burden” will be placed on them as opposed to Plaintiff. Mot. 8. A denial of stay would require
17 both parties to expend significant resources to litigation. Recognizing the potential burden for
18 both parties, the potential hardship from denying the stay weighs slightly in favor of granting it.
19 *See, e.g., Google Inc. v. Creative Labs, Inc.*, No. 16-02628-JST, 2016 WL 6947564, at *2 (N.D.
20 Cal. Nov. 28, 2016) (noting that there could be “potential duplication of discovery” between the
21 ITC investigation and federal proceedings and ultimately finding the “hardship” factor to be
22 largely neutral).

23 **A. Orderly Course of Justice**

24 The Court now addresses the third, and last, of the *Landis* factors—whether a stay will
25 complicate or simplify the issues before it. According to Defendants, the claims dismissed by the
26 trial court in the *Rojas* case are identical to the claims asserted here. Mot. 8-9; Reply 6.
27 Defendants argue that because the order granting their summary judgment is on appeal and
28 addressed the same issues in this case, the appellate decision will be important in defining and

1 determining the issues presented here. Mot. 8-9. In opposition to this motion for stay, Plaintiff
2 argues that the *Rojas* case has no bearing on this action because Plaintiff is not a party to the *Rojas*
3 case. Opp'n 5. Plaintiff also contends that even if Defendants did not "intentionally" record the
4 telephone conversations implicated in the *Rojas* case, this Court could still find that Plaintiff's
5 telephone conversations were "intentionally" recorded. *Id.*

6 The plaintiff in *Rojas* alleges that when her daughter and her friends, HSBC employees,
7 called her using their work phones, her personal telephone communications with them were
8 recorded without her consent. RJN, Ex. B 1, 3-4. In granting summary judgment to HSBC, the
9 trial court found that the plaintiffs in the *Rojas* case had failed to establish a triable issue of
10 material fact as to Defendants' intent to record the phone conversations in violation of the
11 California Invasion of Privacy Act. *Id.*, Ex. D. Specifically, the court found no triable issue of
12 material fact on whether Defendants recorded the phone calls "with the purpose or desire of
13 recording a confidential conversation, or with the knowledge to a substantial certainty that his use
14 of the equipment will result in the recordation of a confidential conversation," and on whether
15 Defendants "intentionally recorded" a communication involving a cell phone or cordless phone.
16 *Id.*

17 Based on Plaintiff's complaint and the exhibits discussed above, it is clear that the *Rojas*
18 case and the present action share many similarities. However, it is less clear that an appellate
19 decision from the *Rojas* case would affect this case. In interpreting state law, federal courts are
20 not necessarily bound by intermediate appellate court decisions, unless "there is no convincing
21 evidence that the state supreme court would decide differently." *Vestar Dev. II, LLC v. Gen.*
22 *Dynamics Corp.*, 249 F.3d 958, 960 (9th Cir. 2001). Moreover, given the Court's schedule, it is
23 likely that this case will not be tried before the state appellate court reaches its decision.
24 Accordingly, the Court finds that this third factor weighs only slightly in favor of granting a stay.


25 **IV. ORDER**

26 In light of the above, the Court finds that Defendants fail to meet the burden of establishing
27 the need for a stay. Given that the stay may last into the indefinite future, the Court finds that
28 there is possible prejudice to Plaintiff in granting this stay. Although a stay might lessen the

1 hardship on both parties and could potentially simplify issues in the case, these factors weigh only
2 slightly in favor of granting the stay and do not outweigh the possible prejudice to Plaintiff.
3 For the foregoing reasons, the Court DENIES Defendants' motion to stay until the California
4 Court of Appeal's decision in the *Rojas* case.

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Dated: March 7, 2017


BETH LABSON FREEMAN
United States District Judge