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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SABINE SCHUDEL and RAMON TOLEDO,
Plaintiffs,
v.
SEARCHGUY.COM, INC., et al.,
Defendants.

Case No. 07cv695-BEN (BLM)

**ORDER DENYING DEFENDANT THOMAS
BIBIYAN'S EX PARTE APPLI CATION TO
STAY JUDGMENT-DEBTOR
EXAMI NATION**

[ECF No. 182]

On April 17, 2007, Plaintiffs filed a complaint against Defendants Thomas Bibiyan ("Bibiyan") and several of Bibiyan's business entities ("Entity Defendants") for, *inter alia*, securities fraud and breach of contract. ECF No. 1. On August 9, 2010, District Judge Roger T. Benitez issued an order granting default judgment against Bibiyan and the Entity Defendants, and awarding Plaintiffs approximately \$12 million in damages and attorney fees.¹ ECF Nos. 143 and 150. Bibiyan and the Entity Defendants failed to satisfy the judgment and Bibiyan subsequently was ordered to appear for a judgment-debtor examination on October 9, 2013 before Magistrate Judge Bernard G. Skomal. ECF No. 177. Bibiyan failed to appear on October 9, 2013 and instead filed an *ex parte* application to stay the examination. ECF No. 182. Bibiyan argues that a criminal

¹ Judge Benitez's ruling was based in part on Bibiyan's "ongoing and willful refusal to comply with Court orders and a complete disregard for local rules despite prior sanctions and numerous warnings that his failure to comply could result in the entry of default against him" and the Entity Defendants' failure to retain counsel. ECF No. 143 at 3; ECF No. 150 at 4.

1 proceeding is currently pending against him related to the service of process of the judgment-
2 debtor examination. Id. at 4. Specifically, Bibiyan states that the process server claims she was
3 assaulted by Bibiyan and that the case has been forwarded to the Los Angeles County District
4 Attorney. Id. Consequently, Bibiyan requests that the Court stay the examination until the
5 criminal proceeding is resolved. Id. Bibiyan also contends Plaintiffs' document requests for the
6 examination are overbroad and unduly burdensome, and requests that the Court issue a
7 protective order limiting the scope of Plaintiffs' requests. Id. at 8. Plaintiffs filed an opposition
8 on October 9, 2013. ECF No. 183. Plaintiffs argue that Bibiyan's contention that there is an
9 "impending" criminal proceeding against him is erroneous and speculative. Id. Plaintiffs also
10 argue that Bibiyan's request for a protective order is untimely, and that Plaintiffs' document
11 requests are proper. Id. This dispute was subsequently referred to the undersigned judge and
12 the Court took the matter under submission pursuant to Civ.LR 7.1(d). Having reviewed Bibiyan's
13 *ex parte* application and Plaintiffs' opposition, the Court **DENIES** the application for the reasons
14 set forth below.

15 DISCUSSION

16 The Constitution does not ordinarily require a stay of civil proceedings pending the
17 outcome of parallel criminal proceedings. See Fed. Sav. & Loan Corp. v. Molinaro, 889 F.2d 899,
18 902 (9th Cir. 1989). "In the absence of substantial prejudice to the rights of the parties involved,
19 simultaneous parallel civil and criminal proceedings are unobjectionable under our jurisprudence."
20 Keating v. Office of Thrift Supervision, 45 F.3d 322, 324-25 (9th Cir. 1995) (quoting Sec. & Exch.
21 Comm'n v. Dresser Indus., 628 F.2d 1368, 1385 (D.C. Cir.), cert. denied, 449 U.S. 993 (1980)).
22 Nonetheless, a Court may in its discretion decide to stay civil proceedings "when the interests of
23 justice seem to require such action." Id. In deciding to stay civil proceedings, courts should
24 consider "the particular circumstances and competing interests in the case[s]," including "the
25 extent to which the defendant's Fifth Amendment rights are implicated." Id. In addition, courts
26 should consider the following factors:

27 (1) the interest of the plaintiffs in proceeding expeditiously with this litigation or any
28 particular aspect of it, and the potential to plaintiffs of a delay; (2) the burden which any
particular aspect of the proceedings may impose on defendants; (3) the convenience of
the court in the management of its cases, and the efficient use of judicial resources; (4)

1 the interests of persons not parties to the civil litigation; and (5) the interests of the public
2 in the pending civil and criminal litigation.

3 Id. at 325 (citing Molinaro, 889 F.2d at 903).

4 As an initial matter, there appears to be no pending or impending criminal proceeding
5 against Bibiyan related to the service of process of the judgment-debtor examination. ECF No.
6 183 at 12-13, Decl. Geoffrey Brethen. In support of Plaintiffs' opposition, Plaintiff's counsel
7 submitted a declaration stating that he called the Los Angeles County District Attorney's Office
8 and was advised that no criminal charges have been brought against Bibiyan. Id. Moreover,
9 Bibiyan's counsel acknowledges in his declaration that any case involving the service of process
10 on Bibiyan was merely "forwarded for further review to the City Attorney's Office" and that "it
11 takes approximately two to three (2-3) months for the City Attorney to reach any kind of
12 decision." ECF No. 182 at 12; Decl. Hamid Soleimanian. The possibility that a criminal case *might*
13 ensue against Bibiyan does not justify continuing the judgment-debtor examination.

14 Furthermore, even if there was a pending criminal case against Bibiyan, staying the
15 judgment-debtor examination still would be inappropriate under the five-factor test set forth in
16 Keating. First, default judgment was entered against Bibiyan over three years ago. Bibiyan has
17 failed to make any payments toward the judgment and Plaintiffs will be prejudiced by any further
18 delay in enforcing the judgment. Second, Bibiyan's argument that his Fifth Amendment right
19 against self incrimination would be violated if he is forced to appear at the judgment-debtor
20 examination is meritless because Plaintiffs have agreed not to ask Bibiyan any questions relating
21 to the service of process incident. Third, staying the examination would be an inefficient use of
22 judicial resources. There is no pending criminal case and whether any charges will be filed
23 against Bibiyan is speculative. Fourth, there do not appear to be any nonparties that have an
24 interest in the litigation. Fifth, the facts underlying the service of process incident are unrelated
25 to the instant litigation. Accordingly, the Court **DENIES** Bibiyan's request to stay the judgment-
26 debtor examination.

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1 Bibiyan alternatively requests that the Court issue a protective order narrowing the scope
2 of Plaintiffs' document requests on the grounds that they are overbroad and unduly burdensome.
3 ECF No. 182 at 8. Specifically, Bibiyan argues that Plaintiffs' request for bank account records
4 from the past seven years is "overreaching in time" and moves the Court to limit the requests to
5 documents from the past one year. Id. Bibiyan further argues that he should be precluded from
6 producing documents from financial institutions which he "no longer uses." Id. The Court is not
7 persuaded by Bibiyan's argument. Bibiyan provides no factual or legal basis for limiting Plaintiffs'
8 requests to one year. This case was filed six years ago and relates to conduct occurring in 2006.
9 See ECF No. 1 at 12. Hence, Plaintiffs' requests seeking documents from the past seven years
10 are appropriate. Moreover, Plaintiffs' document requests for old or inactive bank account records
11 are appropriate because Plaintiffs are trying to determine whether Bibiyan has transferred or
12 improperly disposed of any assets.

13 In light of Bibiyan's recalcitrance and flagrant disregard of the Court's prior orders,
14 Bibiyan's instant *ex parte* application appears to be nothing more than a calculated effort to
15 further protract this case and evade Plaintiffs from collecting the judgment. As Plaintiffs point
16 out, Bibiyan filed his application at the "eleventh-hour" and also failed to meet and confer with
17 Plaintiffs' counsel in violation of Chamber's rules. Accordingly, Bibiyan is **ORDERED** to appear
18 for a judgment-debtor examination on **November 6, 2013** at **10:00 a.m.** in **Courtroom 1D**
19 before Magistrate Judge Bernard G. Skomal, located at **940 Front Street, San Diego, 92101.**
20 Bibiyan is further **ORDERED** to produce all of the documents identified in Plaintiffs' original
21 subpoena. See ECF No. 180. Failure to appear at the judgment-debtor examination could result
22 in the imposition of sanctions and/or the judgment-debtor being held in contempt of court.

23 **IT IS SO ORDERED.**

24
25 DATED: October 28, 2013

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27 BARBARA L. MAJOR
28 United States Magistrate Judge