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6 UNITED STATES DISTRICT COURT
7 SOUTHERN DISTRICT OF CALIFORNIA
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9 KAROUN DAIRIES, INC., a
10 California corporation,

11 Plaintiff,

12 v.

13 KARLACTI, INC., a Delaware
14 corporation, *et al.*,

15 Defendants.
16

Civil No. 08cv1521 AJB (WVG)

**ORDER GRANTING MOTION
TO STAY TRIAL PROCEEDINGS
PENDING DECISION BY THE
NINTH CIRCUIT COURT OF
APPEAL IN A RELATED CASE
AND REQUIRING THE PARTIES
TO SUBMIT A JOINT STATUS
REPORT IN 60 DAYS**

(Doc. No. 261)

17 Before the Court is Defendants' Motion to Stay Trial Proceedings Pending a
18 Related Decision by the Ninth Circuit Court of Appeal. (Doc. No. 261.) For the reasons
19 set forth below, Defendants' motion is GRANTED, and this action is hereby STAYED
20 pending the Ninth Circuit's decision.

21 **PROCEDURAL BACKGROUND**¹

22 On November 24, 2011, Plaintiff sought leave to file a Third Amended Complaint
23 in order to add a new claim for breach of an alleged oral contract, among other things.²
24 With regard to the proposed breach of oral contract claim, Plaintiff claimed Defendant
25 Ara Baghdassarian ("Ara") had breached an oral agreement with his brother Anto
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27 ¹ A more detailed, factual background of this case may be found in the Court's
28 previous order denying Plaintiff's Motion for Reconsideration. (Doc. No. 234 at 2-6.)

² Doc. No. 83.

1 Baghdassarian (“Anto”) in addition to breaching a written agreement already raised as a
2 claim in this action. On June 24, 2011, the Court denied Plaintiff’s request to add a
3 breach of oral contract claim in this matter.³ (Doc. No. 208.)

4 Five months after this Court’s ruling, Anto filed a breach of oral contract claim
5 based on similar facts against Ara in the Superior Court of the State of California for the
6 County of Los Angeles, North Central Division on November 14, 2011.⁴ Ara subse-
7 quently removed the case to the Central District of California (the “Central District”) and
8 filed a Notice of Pendency of Other Proceedings.⁵ Ara then moved to dismiss the

11 ³ Defendants attached a Request for Judicial Notice (“RJN”) to their Motion for a
12 Stay. (Doc. No. 261-2.) Defendants seek judicial notice of the following: (1) a
13 transcript from this Court’s June 24, 2011 hearing on Plaintiff’s Motion to File a Third
14 Amended Complaint; (2) a notice of removal filed by Ara in the related case in the
15 Central District; (3) a notice of pendency of other actions filed by Ara in the related case
16 in the Central District; (4) a motion to dismiss or, alternatively, a motion to transfer filed
17 by Ara in the related case in the Central District; (5) the Central District’s February 16,
18 2012 order denying Anto’s motion to remand the related case; (6) the Central District’s
19 February 16, 2012 order granting Ara’s motion to dismiss the related case with
20 prejudice; (7) Anto’s opening brief appealing the Central District’s ruling before the
21 Ninth Circuit; (8) Ara’s response brief in the appeal before the Ninth Circuit; (9) Anto’s
22 reply brief in the appeal before the Ninth Circuit; and (10) a transcript from the Central
23 District’s February 6, 2012 hearing regarding Anto’s breach of contract claim. These
24 items were attached as Exhibits A-J to Defendants’ Motion to Stay. Plaintiffs have not
25 objected to Defendants’ request for judicial notice of these items.

19 As an initial matter, the June 24, 2011 and February 6, 2011 hearing transcripts
20 from this Court and the Central District respectively are not determinative of any of the
21 issues raised by Defendants’ motion; nor are the transcripts necessary to the Court’s
22 resolution of the motion. Accordingly, the Court declines to take judicial notice of the
23 transcripts in Exhibits A and J.

22 Because the remaining documents are matters of public record and relevant to the
23 Court’s decision herein, the Court takes judicial notice of the existence of the remaining
24 documents, but not the truth of the disputed matters asserted by the parties therein. *See*
25 *Fed. R. Evid. 201(b)(2)* (stating that the court may take notice of facts that are “not
26 subject to reasonable dispute in that [they are] . . . capable of accurate and ready
27 determination by resort to sources whose accuracy cannot be reasonably questioned.”);
28 *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006)
(finding that matters that are part of the public record may be judicially noticed); *Lee v.*
City of L.A., 250 F.3d 668, 689 (9th Cir. 2001) (taking judicial notice of the existence of
the documents, but not the truth of disputed matters asserted therein).

27 ⁴ RJN, Ex. B, Notice of Removal & attached Complaint in *Antranik*
28 *Baghdassarian v. Ara Baghdassarian*.

⁵ RJN, Ex. C, Notice of Pendency.

1 Central District action, or in the alternative, to transfer it to the Southern District.⁶ Anto
2 moved to remand the case to state court. On February 16, 2012, the Central District: (1)
3 denied Anto's motion for remand, finding diversity jurisdiction under 28 U.S.C. § 1332;⁷
4 and (2) granted Ara's motion to dismiss with prejudice, holding Anto's breach of oral
5 contract claim time-barred.⁸ The Central District ruled that Anto's "claim for breach of
6 oral contract is clearly barred" by the statute of limitations as Anto became aware of the
7 "alleged breach of the Oral Agreement in 2006 when [Ara's] counsel notified him that
8 [Ara] intended to apply for the Karoun trademark."⁹

9 On August 20, 2012, Anto appealed the Central District's ruling regarding the oral
10 contract claim's statute of limitations and the denial of the motion to remand to the Ninth
11 Circuit Court of Appeal.¹⁰ On October 3, 2012, Ara filed his responsive brief, arguing
12 that: (a) the district court properly exercised diversity jurisdiction; (b) removal was
13 proper; (c) the court also has federal question jurisdiction; (d) Anto's duplicative lawsuit
14 in the Central District is barred because it violates the rule against claim splitting; (e) the
15 Central District correctly dismissed Anto's complaint because his claim was barred by
16 the statute of limitations; (f) the dismissal was also proper because the alleged oral
17 agreement is void against California's law and public policy prohibiting restraint of
18 trade; and (g) dismissal was proper because the alleged oral agreement is invalid under
19 Lebanese law because it does not comply with Lebanon's statute of frauds.¹¹ On
20 November 5, 2012, Anto filed his reply.¹² Anto and Ara are currently awaiting the Ninth
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22 ⁶ RJN, Ex. D, Ara's Central District Motion to Dismiss.

23 ⁷ RJN, Ex. E, Central District Minute Order Denying Anto's Motion to Remand.

24 ⁸ RJN, Ex. F, Central District Minute Order Granting Ara's Motion to Dismiss.

25 ⁹ RJN, Ex. F at 159.

26 ¹⁰ RJN, Ex. G, Anto's Opening Brief.

27 ¹¹ RJN, Ex. H, Ara's Responsive Brief.

28 ¹² RJN, Ex. I, Anto's Reply Brief.

1 Circuit's decision in *Antranik Baghdassarian v. Ara Baghdassarian*, 11-cv-10385
2 SVW(JCx) (C.D. Cal. 2012), *appeal docketed*, No. 12-55458 (9th Cir. Mar. 9, 2012).

3 On June 28, 2013, Ara and the other Defendants in this action filed the instant
4 Motion to Stay Trial Proceedings Pending a Related Decision by the Ninth Circuit Court
5 of Appeal regarding the alleged oral contract between Anto and Ara.¹³ Plaintiff filed an
6 opposition to Defendants' motion on July 12, 2013.¹⁴ On July 19, 2013, Defendants filed
7 their reply.¹⁵

8 LEGAL STANDARD

9 A court's power to stay proceedings is incidental to its inherent power to control
10 the disposition of its cases in the interests of efficiency and fairness to the court, counsel,
11 and litigants. *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936); *see also Clinton v.*
12 *Jones*, 520 U.S. 681, 706-07 (1997); *Single Chip Sys. Corp. v. Intermec IP Corp.*, 495 F.
13 Supp. 2d 1052, 1057 (S.D. Cal. 2007). For the sake of judicial economy, such a stay
14 may be granted pending the outcome of other legal proceedings related to the case.
15 *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863-64 (9th Cir. 1979). Such
16 discretion is appropriately used when the resolution of another matter will have a direct
17 impact on the issues before the court, substantially simplifying issues presented.
18 *Mediterranean Enters. v. Ssangyong Corp.*, 708 F.2d 1458 (9th Cir. Cal. 1983); *San*
19 *Diego Padres Baseball P'ship v. United States*, 2001 WL 710601, at *1 (S.D. Cal. May
20 10, 2001).

21 The district court's determination of whether a stay is appropriate, "must weigh
22 competing interests and maintain an even balance." *Landis*, 299 U.S. at 254-55. The
23 Ninth Circuit has noted that these competing interests include:

24 the possible damage which may result from the granting of a
25 stay, the hardship or inequity which a party may suffer in being
required to go forward, and the orderly course of justice mea-

26 ¹³ Doc. No. 261.

27 ¹⁴ Doc. No. 271.

28 ¹⁵ Doc. No. 289.

1 Ara here. As a result, Ara has already been required to litigate the same issue in two
2 forums simultaneously, resulting in a much greater expense of time and resources than
3 ordinarily required. It would cause further prejudice to Defendants if litigation contin-
4 ued in this action and the Ninth Circuit subsequently issued a decision that would require
5 relitigation of this case in accordance with its ruling. Contrary to Plaintiff's assertion, it
6 does not appear Defendants are seeking to avoid trial or needlessly drag out litigation.
7 Rather, it appears the Ninth Circuit will consider issues that will also need to be consid-
8 ered by the Court in this case. Thus, it would result in prejudice to both parties if the
9 decision reached by the Ninth Circuit required additional expense and effort in this case
10 by virtue of the case proceeding forward without awaiting its decision.

11 **II. Prejudice to Non-Moving Party by Granting Stay**

12 In contrast, Plaintiff argues a stay of trial for an indefinite amount of time would
13 result in prejudice to Plaintiff. Specifically, Plaintiff asserts that any further delay of trial
14 allows witnesses to grow older and their memories to fade, hampers Plaintiff's business
15 activities, and increases expenses by litigating in an inconsistent fashion.

16 As support for this argument, Plaintiff relies upon *Murray v. City of Carlsbad* for
17 the proposition that the potential delay of trial and the corresponding consequences to
18 Plaintiff outweigh the potential efficiency and expense saved by Defendants and the
19 Court.¹⁶ In *Murray*, the court did find delay of trial constituted damage to the non-
20 moving party, such that the moving party needed to make a clear case of hardship or
21 inequity in being required to proceed with trial.¹⁷ However, when the court denied the
22 stay pending a decision by the Ninth Circuit in *Murray*, the court found the legal issues
23 raised by the plaintiff's claims in the Ninth Circuit case were "separate and distinct from
24 the legal issues" raised in the case before the court.¹⁸ Accordingly, the moving party had

26 ¹⁶ (Pl. Resp. 21-22 (Doc. No. 271)(citing *Murray v. City of Carlsbad*, 2010 WL
27 4822744, at *1 (S.D. Cal. Nov. 22, 2010)).)

28 ¹⁷ *Murray v. City of Carlsbad*, 2010 WL 4822744, at *1 (S.D. Cal. Nov. 22, 2010).

¹⁸ *Id.*

1 not satisfied its burden. In stark contrast to the situation in *Murray*, the issues raised in
2 the Ninth Circuit case are not “separate and distinct” from the issues raised here. As
3 noted above, the Ninth Circuit’s decision may have a direct impact on the proceedings in
4 this case. Accordingly, it would be inequitable to Defendants and a hardship upon both
5 parties to require further litigation of this issue here before the Ninth Circuit issues its
6 ruling.

7 Plaintiff also relies upon *Palomar Medical Center v. Sebelius* as support for
8 imposing an enhanced burden on Defendants in seeking a stay of an undetermined
9 duration at this late stage of the case.¹⁹ In that case, the court noted the moving party had
10 an enhanced burden to justify the stay where the stay requested was indefinite and denied
11 a stay pending a decision in a related case.²⁰ However, the facts in *Palomar Medical*
12 *Center* are also distinguishable from this case. First, the court in *Palomar Medical*
13 *Center* observed that the related case “was just recently filed and its conclusion un-
14 known.” Second, the moving party in that case had “waited almost eight months before
15 filing” the motion for a stay. In this instance, the time frame is less uncertain as the
16 Ninth Circuit has not only accepted the appeal, but Anto filed his reply in November
17 2012, thereby completing the briefing on the issue. There is no reason to expect these
18 proceedings will not be concluded within a reasonable time.²¹ Additionally, there is no
19 evidence Defendants unreasonably delayed filing their request for a stay in this case.
20 Rather, Defendants have kept this Court informed regarding the status of the related case
21 in the Central District and its subsequent appeal to the Ninth Circuit.

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23 ¹⁹ *Palomar Medical Center v. Sebelius*, 2010 WL 2985839, at *1 (S.D. Cal. July
24 28, 2010).

25 ²⁰ *Palomar Medical Center v. Sebelius*, 2010 WL 2985839, at *1 (S.D. Cal. July
26 28, 2010).

27 ²¹ Plaintiff argues Ara’s failure to request an expedited hearing schedule before the
28 Ninth Circuit can lead to only one conclusion: Ara failed to do so in order “to delay the
trial of this long-pending case indefinitely and for as long as possible.” (Pl. Resp. 17.)
The Court declines to make this inference as there are any number of reasons a party
might choose not to request an expedited hearing schedule that have absolutely nothing
to do with intentionally delaying a related case.

1 Even with an enhanced burden based on the indefinite time period of the requested
2 stay, the Court finds Defendants have made a persuasive case for hardship or inequity for
3 the Defendants if the stay is not granted. In fact, Defendants have made a persuasive
4 case for hardship or inequity on behalf of all those involved – the litigants, the witnesses,
5 the jury members, and the Court – if a stay is denied. There is a distinct possibility that
6 the Ninth Circuit’s ruling will impact the resolution of issues in this case. As discussed
7 above, moving forward with trial without awaiting the Ninth Circuit’s ruling on these
8 issues would result in significant expenditures of time and resources by the parties to
9 litigate issues that may ultimately be invalidated.

10 In light of this potential hardship for both parties and non-parties, the Court is not
11 persuaded by Plaintiff’s argument that any delay of trial allows witnesses to grow older
12 and their memories to fade, hampers Plaintiff’s business activities, and increases
13 expenses by litigating in an inconsistent fashion. The generalized risks cited by Plaintiff
14 are not unique to the situation here. The Court's determination of whether a stay is
15 appropriate, "must weigh competing interests and maintain an even balance." *Landis*,
16 299 U.S. at 254-55. Even taking into account the damage to Plaintiff from delaying trial,
17 the Court finds that the potential prejudice to the parties if the trial moves forward
18 outweighs the potential prejudice to Plaintiff if a stay is granted.

19 **III. Judicial Economy**

20 Similarly, a stay serves the Court’s interest in judicial economy. Staying proceed-
21 ings pending the Ninth Circuit’s decision could simplify and clarify the issues presented
22 for the Court’s consideration in the parties’ *Daubert* motions and motions in limine as
23 well as the issues to be presented to the jury at trial. Under these circumstances, the
24 Court finds significant value in temporarily staying proceedings to wait for any insight
25 provided in the Ninth Circuit’s opinion. It makes little sense to address the complicated
26 issues of Lebanese contract law raised in the parties’ *Daubert* motions, and likely to be
27 raised in the parties’ motions in limine, while these issues are simultaneously being
28 considered by the Ninth Circuit. In all likelihood, the Ninth Circuit’s consideration of

1 the oral contract will substantially aid the resolution of the present action by narrowing
2 and simplifying the issues and facts presented before for the jury and Court.

3 Furthermore, the Court echoes Defendants' concern that moving forward with trial
4 prior to a decision being reached by the Ninth Circuit could result in inconsistent rulings.
5 It appears many of the issues raised before the Ninth Circuit would also be raised before
6 this Court with regard to the parties' *Daubert* motions and motions in limine. If this
7 Court or the jury reaches conclusions contrary to those reached by the Ninth Circuit, it
8 would result in significant confusion and would likely extend litigation in order to
9 address the inconsistent decisions. As a result, inconsistent rulings would waste judicial
10 time and resources as well as impose further hardship and inequity to the parties.

11 Based on these considerations, the Court concludes a stay serves the interest of
12 judicial economy. Overall, it appears the issues before the Ninth Circuit may have a
13 direct impact on the issues currently before this Court, and the prejudice to the parties in
14 moving forward without the benefit of the Ninth Circuit's decision outweighs the
15 damage to Plaintiff of further delaying trial in this matter. Therefore, a stay is warranted
16 under the circumstances.

17 CONCLUSION

18 For the reasons set forth above, the Court GRANTS Defendants' Motion to Stay
19 Trial Proceedings. It is further ORDERED as follows:

- 20 1. This case is STAYED pending a decision by the Ninth Circuit in the related
21 case, *Antranik Baghdassarian v. Ara Baghdassarian*, 11-cv-10385
22 SVW(JCx) (C.D. Cal. 2012), *appeal docketed*, No. 12-55458 (9th Cir.
23 Mar. 9, 2012);
- 24 2. As a result, the parties' pending *Daubert* Motions and accompanying
25 Motions to Seal are hereby taken off calender.²² These motions will be reset
26 once the stay has been lifted.

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28 ²² (Doc. Nos. 253, 256, 257, 258, 259, 262, 263, 264, 265, and 268.)

3. The parties must submit a joint status report in 60 days to inform the Court of the status of the Ninth Circuit case.

DATED: September 3, 2013