SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 04/02/24 TIME: 1:30 P.M. DEPT: A CASE NO: CV1402511

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: Q. ROARY

PLAINTIFF: VOLPE COMPANY, INC. vs. DEFENDANT: SAUSAL CORPORATION (COMPLEX)	

NATURE OF PROCEEDINGS: MOTION – MODIFY JUDGMENT

RULING

The motion of plaintiff Volpe Company, Inc. to correct or modify judgment and/or motion for reconsideration regarding prompt payment penalties/interest pursuant to Code of Civil Procedure sections 634, 663 and 1008 is **DENIED**.

With respect to the motion brought pursuant to section 663, section 663a, subdivision (b) states:

> Except as otherwise provided in Section 12a, the power of the court to rule on a motion to set aside and vacate a judgment shall expire 75 days from the mailing of notice of entry of judgment by the clerk of the court pursuant to Section 664.5, or 75 days after service upon the moving party by any party of written notice of entry of the judgment, whichever is earlier, or if that notice has not been given, 75 days after the filing of the first notice of intention to move to set aside and vacate the judgment. If that motion is not determined within the 75-day period, or within that period as extended, the effect shall be a denial of the motion without further order of the court. …

Plaintiff filed its first notice of intention to move to set aside and vacate the judgment on December 27, 2023. The 75-day period has passed. "… This time limit, like that governing a ruling on a motion for a new trial, is jurisdictional…" (*Burch* v. *CertainTeed Corp.* (2019) 34 Cal.App.5th 341, 347.)

With respect to section 634, even if that section allows for a motion separate and apart from a motion under section 663 that would not be untimely, the Statement of Decision resolved the issues of prejudgment interest and prompt payment penalties and is not ambiguous with respect to either of those matters.

Plaintiff cannot obtain relief under section 1008 even if it is correct that the court erred in connection with the prompt payment penalty calculation and/or the denial of prejudgment interest. "A court may reconsider its order granting or denying a motion and may even reconsider or alter its judgment so long as judgment has not yet been entered. Once judgment has been entered, however, the court may not reconsider it and loses its unrestricted power to change the judgment. It may correct judicial error only through certain limited procedures such as motions for new trial and motions to vacate the judgment." (*Passavanti* v. *Williams* (1990) 225 Cal.App.3d 1602, 1606, citations omitted; see also *APRI Ins. Co.* v. *Superior Court* (1999) 76 Cal.App.4th 176, 181, and *Ramon* v. *Aerospace Corp.* (1996) (1996) 50 Cal.App.4th 1233, 1236.)

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for April, 2024 is as follows:
https://www.zoomgov.com/j/1602925171?pwd=NUdsaVlabHNrNjZGZjFsVjVSTUVqQT09
Meeting ID: 160 292 5171
Passcode: 868745

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: https://www.marin.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 04/02/24 TIME: 1:30 P.M. DEPT: A CASE NO: CV1900655

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: Q. ROARY

PLAINTIFF: MELODI ZARET and DEFENDANT: CHARLES JOSEPH FLYNN, JR., ET AL	

NATURE OF PROCEEDINGS: MOTION – LEAVE TO FILED THIRD AMENDED COMPLAINT

RULING

Plaintiff Melodi Zaret's ("Plaintiff") motion for leave to file her proposed Third Amended Complaint ("TAC") is **DENIED**.

Background

This case arises out of Plaintiff's investment in a fund (the "Flynn Fund") managed and operated by Defendant Charles Flynn ("Flynn"). Plaintiff accuses Defendants, and particularly Flynn, of using the Flynn Fund as a vehicle to perpetrate a fraudulent scheme against Plaintiff and other investors. Among other allegations, Plaintiff accuses Defendants of refusing to provide an accounting of her investment, refusing to permit her to withdraw her investment, failing to make regular distributions of interest to investors, and failing to deliver on promises regarding investment income. (See Second Amended Complaint ("SAC"), ¶¶ 13-15, 38.)

In October 2023, Defendants filed a motion for summary adjudication. Among many other issues, Defendants sought a determination that Plaintiff's fraud claim was time-barred. (See Def.'s Not. of Mot. & Mot. for Summary Adjudication,[1] p. 2.) In an effort to invoke the discovery rule to toll the statute of limitations, Plaintiff relied on a laundry list of misrepresentations allegedly made by Flynn at unspecified times, but not pleaded in the SAC (the operative complaint). (See Pltf.'s Opp. to Def.'s Mot. for Summary Adjudication, p. 16.) The Court granted summary adjudication to Defendants on this issue, noting that Plaintiff was not permitted to rely on unpleaded allegations to defeat summary adjudication and that if she wanted to pursue any claim based on these facts, she would need to file an amended complaint.

[1] The Court takes judicial notice of Defendants' Notice of Motion & Motion for Summary Adjudication (Oct. 9, 2023), Plaintiff's Opposition to Defendants' Motion for Summary Adjudication (Dec. 19, 2023), and Plaintiff's Response to Defendants' Separate Statement of Undisputed Fact (Dec. 19, 2023). (Evid. Code, § 452, subd. (d); *Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 752.)

(Coll Dec., Ex. B, p. 4.) Plaintiff's negligent misrepresentation claim was based on the same unpleaded facts and so was also disposed of at summary adjudication on statute of limitation grounds. (*Id.*, p. 6.)

Defendants also sought a determination that Plaintiff's claim under the Consumer Legal Remedies Act ("CLRA") (Civ. Code, § 1770 *et seq.*) was time-barred. (See Def.'s Not. of Mot. & Mot. for Summary Adjudication, p. 2.) Plaintiff again sought to extend the statute of limitations by pointing to facts that were not explicitly set forth in the SAC. (Coll Dec., Ex. B, p. 8; see also Pltf.'s Resp. to Def.'s Sep. Stmt. of Undisputed Fact, No. 97 [enumerating factual bases for CLRA claim].) The Court determined that some of the bases for CLRA liability Plaintiff pointed to in her opposition loosely tracked the facts of the CLRA claim as pleaded and so were appropriately considered at summary adjudication. (Coll Dec., Ex. B, p. 8.) The Court accordingly denied summary adjudication on this issue. (*Ibid.*)

The Court granted summary adjudication as to Plaintiff's breach of contract claim, determining that Plaintiff did not have sufficient evidence to support the damages element. (Coll Dec., Ex. B, p. 12.)

The effect of the Court's summary adjudication order was to dispose of Plaintiff's claims for fraud, negligent misrepresentation, conversion, and breach of contract, leaving her claims for an accounting and declaratory relief, violation of the CLRA, elder abuse (Welf. & Inst. Code, § 15610.30 *et seq.*), breach of the implied covenant of good faith and fair dealing, and violation of the Unfair Competition Law ("UCL") (Bus. & Prof. Code, § 17200 *et seq.*) intact. (See generally Coll Dec., Ex. B [Jan. 16, 2024 Order].)

Plaintiff now requests leave to amend her complaint "to add allegations of concealment to the fraud causes of action[2] and the CLRA cause of action and to add a new cause of action for breach of contract concerning Defendants' denial through non-response of Plaintiff's January 2024 request to withdraw her capital contribution from the Flynn Fund." (Sturdevant Dec., ¶ 4.) The proposed TAC also adds a new cause of action for concealment, which relies on the same facts as the amended fraud, negligent misrepresentation, and CLRA claims. (Sturdevant Reply Dec., Ex. A, ¶¶ 49-55.) Plaintiff admits that one purpose of the proposed amendments is to bring the unpleaded facts Plaintiff unsuccessfully relied upon in opposition to summary adjudication into the case. (Sturdevant Dec., ¶ 6; Memorandum, p. 2.)

Legal Standard

Under Code of Civil Procedure section 473, subdivision (a)(1), the Court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding. As judicial policy favors resolution of all disputed matters in the same lawsuit, courts liberally permit amendments of the pleadings. (*Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 939.) "If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion. [Citations]." (*Morgan v. Superior Court* (1959) 172 Cal.App.2d 527, 530; see also Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial

[2] "[T]he fraud causes of action" apparently refers to Plaintiff's fraud and negligent misrepresentation claims.

(The Rutter Group 2022) ¶ 6:639.) Generally, courts allow the amendment and then let the parties test the legal sufficiency in other appropriate proceedings such as a demurrer. (See *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048; *Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 760; see also Weil & Brown, *supra*, at ¶ 6:644.)

However, "even if a good amendment is proposed in proper form, unwarranted delay in presenting it may – of itself – be a valid reason for denial." (*Roemer v. Retail Credit Co.* (1975) 44 Cal.App.3d 926, 939-40; see also *Record v. Reason* (1999) 73 Cal.App.4th 472, 486-87 [affirming denial of leave to amend where party "had knowledge of the circumstances on which he based the amended complaint . . . almost three years before he sought leave to amend"].) A court does not abuse its discretion by denying amendment due to the movant's long and inadequately explained delay in seeking leave. (See *Le Mere v. Los Angeles Unified School Dist.* (2019) 35 Cal.App.5th 237, 245; see also *Hulsey v. Koehler* (1990) 218 Cal.App.3d 1150, 1159 [no abuse of discretion where trial court denied leave to amend answer, having "impliedly found an unreasonable lack of diligence in the belated assertion" of the defense to be added].)

A party requesting leave to amend must comply with California Rules of Court, rule 3.1324 ("Rule 3.1324"). Compliance is satisfied by including a copy of the proposed amended pleading; detailing what changes will be made from the previous pleading by stating what allegations are to be deleted or added as compared to the previous pleading, including page, paragraph and line number; and attaching a declaration by plaintiff's counsel as to: (1) the effect of the amendment, (2) why the amendment is necessary and proper, (3) when the facts giving rise to the amended allegations were discovered, and (4) why the request was not made earlier.

Discussion

To satisfy Rule 3.1324's requirement that a movant "detail[] what changes will be made . . . by stating what allegations are to be deleted or added as compared to the previous pleading, including page, paragraph and line number[,]" Plaintiff submitted a redline of the proposed TAC. Plaintiff's initial moving papers contained a defective version of this redline that did not identify many of the amendments Plaintiff is requesting to make. Plaintiff submitted a revised version with her Reply (see Sturdevant Reply Dec., ¶¶ 4-5 & Ex. A) and the Court considers that version in deciding this motion.

<u>New Fraud/Negligent Misrepresentation/CLRA Allegations and New Concealment Claim</u>

The new allegations set forth in connection with the proposed TAC's fraud, negligent misrepresentation, CLRA, and concealment claims consist of the unpleaded facts Plaintiff unsuccessfully relied upon in opposition to Defendant's motion for summary adjudication. (Compare Pltf.'s Opp. to Def.'s Mot. for Summary Adjudication, p. 16 and Pltf.'s Resp. to Def.'s Sep. Stmt. of Undisputed Fact, No. 97 to Sturdevant Reply Dec., Ex. A, ¶¶ 45-48 [fraud claim], 49-55 [concealment claim], 59-62 [negligent misrepresentation claim], 74-80 [CLRA claim].) Plaintiff requests these amendments to correct the defects the Court identified in its summary adjudication order. (Sturdevant Dec., ¶ 6.) But those unpleaded facts were not "discovered" when the Court issued its summary adjudication order. Plaintiff's counsel's declaration states that these facts have been "known by the parties for many months." (Sturdevant Dec., ¶ 7.) Elsewhere in the moving papers, Plaintiff states that "the parties have been fully aware of the incidents of concealment since . . . early 2023" (Reply, p. 7) and that they were explored in Flynn's depositions, which occurred in 2022. (Sturdevant Dec., ¶ 7; Coll Dec., ¶ 4.) In other

words, Plaintiff has known about these facts for years. She has not offered any explanation for not seeking leave to amend sooner.

Accordingly, the Court denies the motion as to these amendments because they are untimely. (*Roemer, supra*, 44 Cal.App.3d 926, 939-40.)

New Breach of Contract Claim

Plaintiff's breach of contract claim, as originally pleaded in the SAC, alleged breaches of numerous provisions of the Flynn/MMB Mortgage Fund LLC Operating Agreement, including Sections 7.2 and 7.3. Those sections allegedly "specify that investor members of the FLYNN FUND may withdraw all or a portion of their Capital Account by giving written notice." (Coll Dec., Ex. A, ¶ 75(j).) The SAC asserted that Plaintiff requested withdrawal in July 2015, but Defendants never returned her money. (*Ibid.*) The Court granted Defendants' motion for summary adjudication as to Plaintiff's breach of contract claim, reasoning that Plaintiff's factually devoid discovery responses had shifted the burden of production to Plaintiff and she had not offered competent evidence that she could satisfy the damages element. (Coll Dec., Ex. B, p. 12.)

The proposed TAC's new breach of contract cause of action alleges that on January 18, 2024 – two days after the Court disposed of Plaintiff's breach of contract claim at summary adjudication – Plaintiff again requested withdrawal, and Defendants ignored her request in violation of the Operating Agreement. (Sturdevant Reply Dec., Ex. A, ¶¶ 97-101.)

Plaintiff argues that Defendants cannot be prejudiced by this addition because they are not entitled to conduct discovery on the new claim. She reasons that "[d]iscovery concerning the denial of plaintiff's first formal request to withdraw her capital contribution from the Flynn Fund in July, 2015 has already occurred." (Memorandum, p. 5.) This does not follow. The alleged July 2015 breach of the Operating Agreement was a different breach of contract based on different events occurring nearly a decade ago. Like all of the breaches of contract alleged in the SAC, it is no longer at issue in this case, having been disposed of at summary adjudication. If Plaintiff adds new claims to this case, Defendants are entitled to conduct discovery on them. Discovery in this case has closed and trial is set to begin on June 20, 2024. Asserting this claim now would require reopening discovery, would cost Defendants time and money on new discovery efforts and dispositive motions practice, and may require a trial continuance. (See *P&D Consultants, Inc. v. City of Carlsbad* (2010) 190 Cal.App.4th 1332, 1345 [trial court did not abuse discretion by denying leave to amend complaint where the "amendment would require additional discovery and perhaps result in a demurrer or other pretrial motion, and [movant] offered no explanation for the delay [in seeking leave].) Discovery on this claim is particularly critical given that Defendants previously disposed of Plaintiff's breach of contract claim by showing through Plaintiff's discovery responses that she did not have sufficient evidence to support it.

In fact, this amendment would be futile without further discovery. The Court has already ruled that Plaintiff does not presently have sufficient evidence of her breach of contract allegations, including any breach of Sections 7.2 and 7.3. (Coll Dec., Ex. B, pp. 11-12.) It is unclear how Plaintiff intends to support the proposed TAC's breach of contract claim without permitting additional discovery, because any evidence she offers to support it must necessarily be new and must be disclosed to Defendants so that they can prepare a defense.

Moreover, it is clear that Plaintiff requested withdrawal on January 18, 2024 knowing that Defendants would not respond in a way that satisfied her in a misguided effort to revive the breach of contract claim the Court dismissed two days earlier. Plaintiff could have done the same thing at any time, and an infinite number of times, since this case began, and presumably would have received the same response, which leads the Court to question whether this claim can be considered timely.

Perhaps more critically, the new breach of contract allegations smack of gamesmanship. If the Court were to permit this claim, it would be giving Plaintiff permission to draw the case out indefinitely by repeatedly asserting a "new" breach of contract claim. Plaintiff's failure to allege a "new" breach of Sections 7.2 and 7.3 earlier was "no failure at all, but a conscious strategic decision" to rest on the SAC's breach of contract allegations until those were dismissed on the merits. (*Green v. Rancho Santa Margarita Mortgage Co.* (1994) 28 Cal.App.4th 686, 693.) A court does not abuse its discretion by denying leave to amend under these circumstances. (*Ibid.*; see also *Melican v. Regents of the University of California* (2007) 151 Cal.App.4th 168, 176 [amendments designed to allow plaintiff to "present a 'moving target'" are "patently unfair"].)

Accordingly, the Court denies the motion for leave to file the proposed TAC.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 04/02/24 TIME: 1:30 P.M. DEPT: A CASE NO: CV2201507

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: Q. ROARY

PLAINTIFF: DONNIE MARQUEZ, ET AL and DEFENDANT: PEET'S COFFEE	

NATURE OF PROCEEDINGS: MOTION – COMPEL

RULING

Plaintiffs Donnie Marquez, Marika Fleeger, and Shalon Jones' ("Plaintiffs") motion to compel is **GRANTED**. (Code Civ. Proc., §§ 2025.480, subd. (a); 2025.230.) Within 10 days of this order, Defendant Peet's Coffee ("Defendant") shall identify a person or persons most knowledgeable to be deposed on Defendant's behalf as to Topic No. 9 of the September 19, 2023 Notice of the Taking of the Deposition of Peet's Coffee.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 04/02/24 TIME: 1:30 P.M. DEPT: A CASE NO: CV2300027

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: Q. ROARY

PLAINTIFF: BROOK BASTON and DEFENDANT: USERZOOM TECHNOLOGIES, INC., MARCO COROLLA	

NATURE OF PROCEEDINGS: MOTION – PRO HAC VICE

RULING

The unopposed application to admit Michael J. Woodson as Counsel Pro Hac Vice for Defendants UserZoom Technologies, Inc. and Marco Crolla is **GRANTED.** (Calif. Rules of Court, rule 9.40.)

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 04/02/24 TIME: 1:30 P.M. DEPT: A CASE NO: CV0000350

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: Q. ROARY

PLAINTIFF: SARAH ELLISON vs. DEFENDANT: MARIN HEALTH MEDICAL CENTER, ET AL	

NATURE OF PROCEEDINGS: MOTION – PROTECTIVE ORDER

RULING

Defendant Zhe Chen's ("Defendant") Motion for Protective Order Staying Discovery and Trial is **DENIED without prejudice**.

Background

Plaintiff Sarah Ellison ("Plaintiff") alleges that she consulted Defendant's place of work for a pelvic ultrasound in August of 2022. She asserts that Defendant was the technician who performed the ultrasound. She contends that Defendant used this opportunity to sexually abuse her. Plaintiff filed a Complaint for Negligence, Medical Malpractice, Battery, Intentional Misrepresentation, and Reckless Misconduct against Defendant, the hospital, the healthcare district, and the supervising doctor on July 12, 2023.

Legal Standard

A court may stay an action (or discovery in that action) until disposition of any pending criminal proceedings or until the statute of limitations has run on criminal prosecution, so that the defendant can no longer claim a 5th Amendment privilege. (*See Pacers, Inc. v. Superior Court (Needham)* (1984) 162 Cal.App.3d 686, 689.) However, such a stay is discretionary and defendant has no right to a blanket stay on 5th Amendment grounds. (*See Klein v. Superior Court (Thomas)* (1988) 198 Cal.App.3d 894, 905; *Avant! Corp. v. Superior Court (Nequist)* (2000) 79 Cal.App.4th 876, 885.) A stay is not favored where the statute of limitations on criminal prosecution has years to run. (*Fuller v. Superior Court (IPC Int'l Corp.)* (2001) 87 Cal.App.4th 299, 309.)

Keating v. Office of Thrift Supervision (9th Cir. 1995) 45 F.3d 322, 324 (as cited by *Avant! Corp. v. Superior Court (Nequist), supra,* 79 Cal.App.4th 876) sets forth the appropriate criteria the court should use in exercising its discretion. In *Keating,* the court stated that the decision whether to stay civil proceedings in the face of a parallel criminal proceeding should be made considering the circumstances and competing interests involved in the case.

This means the decision-maker should consider the extent to which the defendant's 5th Amendment rights are implicated. In addition, the court should generally consider (1) the interests of plaintiff in proceeding expeditiously, and consequent prejudice in any delay; (2) the burden which any aspect of the proceeding may place on the defendant; (3) the convenience of the court and efficient management of resources; (4) interests of persons not parties to the litigation; and (5) the interest of the public.

Discussion

With his motion, Defendant seeks a protective order staying "this action" so that he need not choose between defending himself or invoking his 5th Amendment right against self-incrimination. Defendant's moving papers are silent on the length of the applicable statute of limitations, and as such his motion appears to seek an indefinite stay.[1]

Here, Defendant's 5th Amendment rights are clearly implicated. The same facts underlying Plaintiff's lawsuit (that Defendant sexually assaulted her during her ultrasound examination) form the basis for a criminal investigation against him. Although no charges have been filed, neither has the District Attorney confirmed that he will not be charged.

On the other hand, Plaintiff clearly has an interest in the case proceeding expeditiously. An indefinite stay weighs against the efficient administration of justice and exposes both sides of the litigation to the risk of diminished witness memory and lost records.

Moreover, once a stay occurred, the status quo would prevail. There would be no reason to lift the stay as long as criminal charges could still be filed. Rarely do prosecutors commit to an official declination, that is, formally announcing a decision not to prosecute a defendant. Even if they do, such a decision is not necessarily binding. Consequently, a defendant would have a continuing fear of prosecution and a stay would need to remain in place until the statute of limitations had expired. Defendant's moving papers do not identify a controlling limitations period and thus in effect appear to request an indefinite stay. Plaintiff contends that there is no statute of limitation for a criminal sexual battery charge and the threat of prosecution could therefore continue indefinitely. In his Reply, Defendant responds by to reducing his request to a three-year stay that applies only to him.

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[1] Although Defendant's Reply states that Plaintiff has misinterpreted his motion and he is not seeking a stay of the entire action, it does appear to the Court that his motion indeed requests such a stay of the entire "action." (See Mot. p. 1:26-27.)

Even a three-year stay would be contrary to the convenience of the court and the public interest in trial delay reduction. Moreover, staying the case as to Defendant Chen only would require Plaintiff to engage in piecemeal litigation, increasing the cost and running the risk of inconsistent rulings, or it could effectively result in a stay of all proceedings.

To the extent the Reply asks the Court to fashion some "proactive remedy" limiting discovery against Defendant Chen, the request is premature and certainly over-broad. A witness under threat of criminal prosecution "may not invoke a blanket privilege against self-incrimination with respect to [all discovery]. The trial court must be given the opportunity to determine whether particular questions posed in [discovery] would elicit answers that 'support a conviction' or that 'furnish a link in the chain of evidence needed to prosecute the witness' [citation], and which may thus be subject to constitutional protection." (*Fuller, supra*, 87 Cal.App.4th at 308.)

As the California Supreme Court stated in *People v. Coleman,* (1975) 13 Cal.3d 867, 885, quoting a federal decision: '[T]he fact that a man is indicted cannot give him a blank check to block all civil litigation on the same or related underlying subject matter. Justice is meted out in both civil and criminal litigation.... The court, in its sound discretion, must assess and balance the nature and substantiality of the injustices claimed on either side.' "

Based on the foregoing, the Court finds that the interests of justice support allowing this action to move forward. A blanket stay of discovery as to Defendant Chen is unwarranted under the current circumstances. However, this ruling is made without prejudice should Defendant wish to address specific discovery requests as they arise, or to seek a continuance of the trial date once it is set and approaching.

The motion is therefore denied without prejudice.

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