

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JANET JENKINS, for herself and as :
next friend of ISABELLA MILLER- :
JENKINS, a/k/a ISABELLA MILLER, :

Plaintiffs, :

v. :

Case No. 2:12-cv-184

KENNETH L. MILLER, LISA ANN MILLER :
f/k/a LISA MILLER-JENKINS, TIMOTHY :
D. MILLER, RESPONSE UNLIMITED, :
INC., PHILIP ZODHIATES, :
individually and as an :
agent for RESPONSE UNLIMITED, INC., :
VICTORIA HYDEN, f/k/a VICTORIA :
ZODHIATES, individually and as an :
agent for RESPONSE UNLIMITED, :
INC., LINDA M. WALL, :

Defendants. :

MEMORANDUM AND ORDER RE: MOTION TO STAY

Plaintiff Janet Jenkins, for herself and as next friend of her daughter Isabella Miller-Jenkins, has brought suit against several individuals and organizations alleging that they kidnapped and conspired to kidnap Isabella. Defendant Philip Zodhiates has been indicted in the United States District Court for the Western District of New York for his alleged involvement in the kidnapping. Defendant Response Unlimited, Inc. ("RUL"), which is owned by Mr. Zodhiates, is also likely the subject of investigation. In light of Mr. Zodhiates' parallel criminal case, Zodhiates, his daughter Victoria Hyden, and RUL ("Defendants") have moved to stay this case until that case's conclusion.

While Plaintiffs allow that a stay may be appropriate, the parties disagree about whether certain documents subpoenaed by prosecutors in the Western District of New York, which documents are also responsive to Plaintiffs' discovery requests in this case, should be produced subject to a protective order. For reasons set forth below, the motion to stay is **granted**, but the Court sees no need for a protective order with regard to the documents in question.

I. Motion to Stay

In evaluating the appropriateness of staying a civil action while a parallel criminal action is pending, district courts usually consider the following six factors:

1) the extent to which the issues in the criminal case overlap with those presented in the civil case; 2) the status of the criminal case, including whether the defendants have been indicted; 3) the private interests of the plaintiffs in proceeding expeditiously weighed against the prejudice to plaintiffs caused by the delay; 4) the private interests of and burden on the defendants; 5) the interests of the courts; and 6) the public interest.

Trs. of Plumbers & Pipefitters Nat'l Pension Fund v. Transworld Mech., Inc., 886 F. Supp. 1134, 1139 (S.D.N.Y. 1995) (cited in *Louis Vuitton Malletier S.A. v. LY USA, Inc.*, 676 F.3d 83, 99 (2d Cir. 2012)). Although this balancing test is not a "mechanical device[] for churning out correct results," it may serve as a "rough guide for the district court as it exercises its discretion." *Louis Vuitton*, 676 F.3d at 99. Ultimately, the

court must engage in a "studied judgment as to whether the civil action should be stayed based on the particular facts before it and the extent to which such a stay would work a hardship, inequity, or injustice to a party, the public or the court." *Id.*

The factors listed above favor the imposition of a stay. The overlap between the criminal and civil cases is plain. Mr. Zodhiates has been indicted, and the parties report that his case is headed for trial in the summer of 2015. Furthermore, although a stay will delay the instant case, Fifth Amendment concerns merit significant weight. *See, e.g., Vomar Distrib. v. New York Post Co.*, 152 F.R.D. 36, 40 (S.D.N.Y. 1993). Representations by counsel at the hearing on the motion stay suggested that in addition to Mr. Zodhiates, RUL is also likely a target of investigation. While the Court acknowledges Ms. Jenkins's desire to proceed, that desire must be balanced against the danger of prejudice to criminal and potential criminal defendants. Avoiding such prejudice is in the interests of the Defendants here, the public, and the Court.

The Court previously denied Defendants' request for a protective order. That denial was prior to Mr. Zodhiates's indictment, and before the Court was aware that others may also be the targets of criminal investigation(s). To now allow discovery under the relatively liberal rules of civil procedure, as opposed to the more restrictive rules and procedures governing

criminal matters, poses a danger of fundamental unfairness to Mr. Zodhiates and his co-defendants in the criminal case. The motion to stay is therefore **granted**.

II. Protective Order

The parties have been unable to reach agreement with regard to a protective order covering forthcoming discovery. At issue are documents that were subpoenaed by the government in Mr. Zodhiates's criminal case and also sought by Plaintiffs' counsel.¹ Defendants have agreed to produce those documents to Plaintiffs subject to a protective order that would prohibit disclosure beyond this case. Ms. Jenkins submits that she cannot agree to such an order, as she anticipates being interviewed by the government and/or called as a witness in the criminal matter. In the course of her conversations/testimony, Ms. Jenkins might discuss, or be compelled to testify about, information that she obtained from the documents in question.

A party seeking a protective order must show good cause. *Dove v. Atlantic Capital Corp.*, 963 F.2d 15, 19 (2d Cir. 1992); Fed. R. Civ. P. 26(c)(1). Defendants submit that good cause is present here because a party should not be allowed to use discovery for purposes outside the lawsuit. They further suggest that such discovery might be used to generate prejudicial

¹ RUL and Mr. Zodhiates moved to quash the most recent grand jury subpoena, but Defendants report that the motion to quash was denied.

publicity, thereby impacting Mr. Zoghiates's right to a fair trial.

When Defendants first pursued a stay or protective order in this case, a primary concern was Ms. Jenkins sharing information with the government for use in the criminal case. As discussed above, such a practice would be potentially unfair, as the civil discovery rules are more liberal than those governing a criminal case. However, the documents now in question have already been (or will soon be) produced to the government. Therefore, the government would have nothing to gain, and no prejudice would ensue, if Ms. Jenkins were to share that information. Furthermore, while Defendants have questions about potential publicity arising out of the documents' disclosure, this Court simply cannot impose an order that would prevent Ms. Jenkins from speaking to prosecutors about documents in their possession. The request for a protective order is therefore denied.

III. Conclusion

For the reasons set forth above, RUL shall produce to Plaintiffs those documents provided to prosecutors in the Western District of New York that are responsive to Plaintiffs' pending discovery requests. Production of all other documents and information responsive to Plaintiffs' outstanding discovery requests, and all other proceedings in this matter, shall be **stayed** until further order of this Court. Defendants' motion to

stay (ECF No. 172) is thus **granted**, with the exception of the specified document production. The parties shall inform the Court of the status Mr. Zodiates's criminal case within 14 days of the conclusion of the trial, a guilty plea, or dismissal of the charges in that case.

DATED at Burlington, in the District of Vermont, this 6th day of April, 2015.

/s/ William K. Sessions III
William K. Sessions III
District Court Judge