

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

In re:

Case No. 18-19121-RAM

1 GLOBAL CAPITAL LLC, *et al.*,
Debtors.

Chapter 11
Jointly Administered

SARAH FOSTER, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

Adv. Pro No. 18-1438-RAM

CARL RUDERMAN,
Defendant.

**PLAINTIFF’S COMBINED RESPONSE TO RUDERMAN’S MOTION TO EXTEND
STAY OF ADVERSARY PROCEEDING [D.E. 197]**

AND

**REPLY TO RUDERMAN’ OPPOSITION TO
MOTION TO SET BRIEFING SCHEDULE REGARDING
CLASS MOTION FOR FINAL SUMMARY JUDGMENT AND RESPONSE
IN OPPOSITION TO RUDERMAN’S MOTION TO DISMISS [ECF No. 198]**

Plaintiff, Sarah Foster, on behalf of herself and all members of the certified Class, hereby provides her combined response to Defendant Carl Ruderman’s (“**Defendant**” or “**Ruderman**”) Motion to Extend Stay of Adversary Proceeding [ECF No. 197] (“**Stay Motion**”) and reply to Ruderman’s response in opposition to Plaintiffs’ Motion to Set Briefing Schedule Regarding Class Motion for Final Summary Judgment and Response in Opposition to Ruderman’s Motion to Dismiss [ECF No. 198]. For the following reasons, the Court should set a schedule to adjudicate Plaintiff’s Motion for Summary (“**Motion for Summary Judgment**”). [ECF No. 127] and deny the Stay Motion.

A. The Court Should Set the Motion for Summary Judgment for Hearing in September 2022.

It has been almost *two and a half years* since the Class filed the Motion for Summary Judgment. While Ruderman attempts to recount the procedural history since then, the difference today is the U.S. Department of Justice no longer seeks to stay Ruderman's efforts to take third party discovery. Ruderman knew the abatement was coming to an end. Instead of issuing the discovery he supposedly needs, he continues to tread water by seeking another stay. The time has come for Ruderman to submit his defense to the Class's Motion for Summary Judgment.

The abatement expired on May 23, 2022. Three days later, Class Counsel informed Ruderman's counsel that the Class would seek a briefing schedule on the Motion for Summary Judgment. Now, over two months later, Ruderman has provided his formal response: the summary judgment motion should stay on ice because he supposedly needs discovery on whether he was a "control person." This from a person who has already entered a \$49 million consent decree with the SEC for the same alleged violations of the federal securities laws.

The Court should reject Ruderman's "need for discovery" arguments, and grant Class's request to set a briefing schedule concerning Plaintiffs' Motion for Summary Judgment. In the *two months* since the abatement ended in May 2022, Ruderman has done *absolutely nothing* to pursue the discovery he claims he needs. Ruderman has not attempted to set a *single* witness for deposition or served a *single* discovery request on *anyone*. Ruderman's arguments about his need for discovery strain credulity.

The Court will conduct a hearing on this Motion on August 25, 2022—over three months from the date the abatement ended. In those three months, Ruderman could have deposed all five of the witnesses he claims are integral to his defense of summary judgment. And Ruderman could have done so without jeopardizing his Fifth Amendment right against

self-incrimination. The Plaintiff has not set Ruderman for deposition or served him with any interrogatories or requests for admission. Ruderman cannot incriminate himself when no one is asking him any questions.

In short, in the two months since the abatement ended, Ruderman elected to take *zero* discovery. *See, e.g., In re Cochrane*, 307 B.R. 302, 304 (Bankr. M.D. Fla. 2004) (denying request to delay summary judgment where defendant “has had ample opportunity for discovery”). Without explicitly saying so, Ruderman’s request to delay is analogous to a motion under Federal Rule of Civil Procedure 56(f) and Federal Rule of Bankruptcy Procedure 7056, which provide that if a party opposing a properly supported motion for summary judgment requires more discovery, he must provide an affidavit showing a specified reason why he cannot present facts to justify his opposition. Yet Ruderman has met none of the requirements of the Rule. *See e.g., Robinson v. Adventist Health Sys.*, No. 06–13828, 2007 WL 4374408, *1–2 (11th Cir. Dec.17, 2007) (stating that “a party opposing summary judgment must provide the court with an affidavit justifying the need for additional discovery” and holding that it was not an abuse of discretion to deny a Rule 56(f) motion because the plaintiff did not file an affidavit); *Bevan v. Purling*, 243 Fed. Appx. 458, 463–64 (11th Cir.2007) (“Pursuant to Rule 56(f), a party opposing summary judgment must provide the court with an affidavit justifying the need for additional discovery.”).

B. The Court Should Deny the Stay Motion.

Ruderman’s stay motion makes three arguments, none of which should persuade this Court to abate this action any longer.

First, Ruderman argues that he must choose between invoking his Fifth amendment rights and certain loss. But this is wrong. Ruderman is not required to testify, and the Plaintiff will not rely at summary judgment on his prior invocation of the Fifth Amendment. *See U.S.A.*

v. Lot 5, 23 F.3d 359, 364 (11th Cir. 1994) (“The court may deny a stay as long as the privilege’s invocation does not compel an adverse judgment against the claimant.”). In *Lot 5*, the 11th Circuit affirmed denial of the stay where the “Claimant provided *no explanation* as to why she did not use the testimony of other parties to substantiate her defense.” *Lot 5* at 364 (emphasis added). Ruderman suggests that he *can* use the testimony of other parties to substantiate his defense, so there is certainly no reason he cannot oppose the Motion for Summary Judgment without incriminating himself. *See Pellegrino v. Wengert*, 147 F. Supp. 3d 1379, 1382 (S.D. Fla. 2015) (Bloom, J.) (“Defendants have failed to show, at this stage of the proceedings, why they cannot substantiate their defense by using testimony of other parties, expert testimony, or other evidence”).

Second, Ruderman claims the Plaintiff will not be prejudiced by more delays. Again, he is wrong because at long last his creditors—many of whom are elderly retirees—are entitled to civil compensation from him.

Third, Ruderman claims he cannot defend unless he can depose his former subordinates. But for two months he has been free to depose them and has done nothing. It will be telling if by the August 25th hearing he will have still done nothing.

CONCLUSION

The Court should not reward Ruderman’s strategy of delay with yet another order abating this action, which will only allow Ruderman to continue to shield his assets. Plaintiff respectfully requests that the Court proceed with setting a briefing schedule for the Class Motion for Final Summary Judgment [ECF No. 127], and for such other relief as this Court deems just and proper.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Dated: July 28, 2022
Respectfully submitted,

<p>By: <u>s/Michael S. Budwick</u> Michael S. Budwick, Esquire Florida Bar No. 938777 mbudwick@melandbudwick.com Solomon B. Genet, Esquire Florida Bar No. 617911 sgenet@melandbudwick.com MELAND BUDWICK, P.A. 3200 Southeast Financial Center 200 South Biscayne Boulevard Miami, Florida 33131 Telephone: (305) 358-6363 Facsimile: (305) 358-1221</p>	<p>By: <u>s/Adam M. Moskowitz</u> Adam M. Moskowitz, Esq. Fla. Bar No. 984280 Adam@moskowitz-law.com Howard M. Bushman, Esq. Fla. Bar No. 0364230 Howard@moskowitz-law.com Adam A. Schwartzbaum Fla. Bar No. 93014 Adams@moskowitz-law.com The Moskowitz Law Firm, PLLC 2 Alhambra Plaza, Suite 601 Coral Gables, Florida 33134 Telephone: (305) 740-1423 Facsimile: (786) 298-5737</p>
<p>Jeffrey R. Sonn, Esq. Fla. Bar. No. 773514 jsonn@sonnlaw.com Sonn Law Group One Turnberry Place 19495 Biscayne Blvd. Suite 607 Aventura, FL 33180 Tel. 305-912-3000 Fax: 786-485-1501 <i>Attorneys for Plaintiff</i></p>	<p>Francis J. Balint, Jr., Esq. (admitted <i>pro hac vice</i>) fbalint@BFFB.com Bonnett Fairbourn Friedman & Balint, P.C. 7301 N. 16th Street, Suite 102 Phoenix, AZ 85020 Telephone: (602) 274-1100 Facsimile: (602) 274-1199</p>

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on July 28, 2022, a true and correct copy of the foregoing was served via the Court's Notice of Electronic Filing upon the Registered Users listed on the attached **Exhibit 1.**

By: s/Michael S. Budwick
Michael S. Budwick

Mailing Information for Case 18-01438-RAM

Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive email notice/service for this case.

- **Michael S Budwick** mbudwick@melandrussin.com, ltannenbaum@melandrussin.com; mrbnefs@yahoo.com; mbudwick@ecf.courtdrive.com; ltannenbaum@ecf.courtdrive.com; phornia@ecf.courtdrive.com
- **Solomon B Genet** sgenet@melandrussin.com, ltannenbaum@melandrussin.com; mrbnefs@yahoo.com; sgenet@ecf.courtdrive.com; ltannenbaum@ecf.courtdrive.com; phornia@ecf.courtdrive.com
- **Jason Z. Jones** jjones@joneslawpa.com
- **Adam A Schwartzbaum** adams@moskowitz-law.com, dione@moskowitz-law.com; rejane@moskowitz-law.com
- **Charles M Tatelbaum** cmt@trippscott.com, hbb@trippscott.com; cvp@trippscott.com; eservice@trippscott.com
- **Annette Urena Tucker** Annette.Tucker@kaplanzeena.com, cheryl.mingo@kaplanzeena.com, service@kaplanzeena.com, maria.escobales@kaplanzeena.com, elizabeth.salom@kaplanzeena.com