

1 a shareholder derivative complaint in Nevada state court.
2 (Def.'s Mot. Ex. 1 (Docket No. 89-1).) On January 10, 2018, this
3 court denied defendant's Motion to Stay proceedings pending a
4 determination of anticipated personal jurisdictional challenges
5 by the diverse defendants in the Nevada litigation. (Docket Nos.
6 77, 81.) On May 10, 2018 the judge in the Nevada litigation
7 stayed the state litigation pending settlement or trial and entry
8 of a final judgment in the instant case. (Declaration of William
9 Noell ("Noell Decl.") ¶¶ 10-11.) Presently before the court is
10 defendant's Motion to Abstain Hearing the Instant Case in Favor
11 of the Nevada State Court Litigation. (Def.'s Mot. at 1 (Docket
12 No. 89).)

13 The power to stay proceedings "is incidental to the
14 power inherent in every court to control the disposition of the
15 cases on its docket with economy of time and effort for itself,
16 for counsel, and for litigants." Landis v. N. Am. Co., 299 U.S.
17 248, 254 (1936). Here, defendant analyzes the motion to stay
18 within the framework of the Colorado River² doctrine. "The power
19 of courts to control their dockets by staying proceedings exists
20 independently of whether the Colorado River factors weigh in
21 favor of stay." Tech. Licensing Corp. v. Thomson, Inc., 684 F.
22 Supp. 2d 1206, 1208 (E.D. Cal. 2010) (Shubb, J.). Nevertheless,
23 the court considers the Colorado River factors in ruling on the
24 motion.

25 In the Ninth Circuit, "even when a concurrent state
26 _____
denied the motion.

27 ² Colorado River Water Conservation Dist. v. United
28 States, 424 U.S. 800 (1976).

1 proceeding might address issues relevant to a federal action, the
2 rule is that the federal proceeding should go forward." United
3 States v. Rubenstein, 971 F.2d 288, 293-94 (9th Cir. 1992).

4 "Abstention from the exercise of federal jurisdiction is the
5 exception, not the rule," and "[a]bdication of the obligation [of
6 a district court] to decide cases can be justified under th[e]
7 [Colorado River] doctrine only in [] exceptional circumstances."

8 Colorado River, 424 U.S. at 813. The Ninth Circuit "generally
9 require[s] a stay rather than a dismissal." R.R. St. & Co.

10 Transp. Ins. Co., 656 F.3d 966, 979 n. 8 (9th Cir. 2011). In
11 determining whether to stay or dismiss a case pursuant to
12 Colorado River, the court considers eight factors:

13 (1) which court first assumed jurisdiction over any
14 property at stake; (2) the inconvenience of the
15 federal forum; (3) the desire to avoid piecemeal
16 litigation; (4) the order in which the forums obtained
17 jurisdiction; (5) whether federal law or state law
18 provides the rule of decision on the merits; (6)
19 whether the state court proceedings can adequately
20 protect the rights of the federal litigants; (7) the
21 desire to avoid forum shopping; and (8) whether the
22 state court proceedings will resolve all issues before
23 the federal court.

19 Id. at 978-79.

20 Under any standard, the circumstances here weigh
21 against a stay. While this case and the Nevada litigation may
22 involve substantially similar parties and claims which evolve
23 from the same set of events and circumstances, this court does
24 not have full confidence that the parallel state action will end
25 the litigation. See Intel Corp. v. Advanced Micro Devices, Inc.,
26 12 F.3d 908, 913 (9th Cir. 1993) (stating that under the Colorado
27 River doctrine the "existence of a substantial doubt as to
28 whether the state proceedings will resolve the federal action

1 precludes the granting of a stay.”). Moreover, while both cases
2 involve the corporate governance of Rackwise, “the mere
3 possibility of piecemeal litigation does not constitute an
4 exceptional circumstance.” See R.R. St. & Co., 656 F.3d at 979.

5 Defendant argues that this case is largely based on
6 contractual issues that involve the interpretation and
7 application of the laws of the state of Nevada, and thus Nevada
8 is the appropriate jurisdiction to hear this case. (Def.’s Mem.
9 at 4, 11.) While the instant case may involve issues of state
10 law, the “presence of state-law issues may weigh in favor of []
11 [abstention] only in some rare circumstances.” R.R. St. & Co.
12 Inc., 656 F.3d at 980. “Federal courts sitting in diversity are
13 no strangers to applying state substantive law.” LBUBS 2004-ö
14 Stockdale Office Ltd. P’ship v. Moreland, Civ. No. 1:13-294 LJO
15 JLT, 2013 WL 1966566, at *5 (E.D. Cal. May 10, 2013) (denying
16 motion to dismiss or to stay the proceedings on the basis of the
17 Colorado River abstention doctrine even though state law provided
18 the rule of decision on the merits.) Moreover, this court
19 obtained jurisdiction first. It would be inefficient and unwise
20 to grant defendant’s motion given that this court has already
21 held multiple hearings and issued several orders. Additionally,
22 the state court has stayed defendant’s action pending a final
23 resolution of this case.

24 Furthermore, as discussed in the court’s January 1,
25 2018 Order, a stay of this action would result in prejudice to
26 plaintiff, in that it would result in vacating the quickly
27 approaching trial date--now set for August 21, 2018--and prevent
28 plaintiff from proceeding to trial first. The late stage of the

1 litigation also weighs against granting defendant's Motion to
2 Stay. See Jain v. Trimas Corp., Civ. No. 04-889 FCD PAN, 2005 WL
3 2397041, at *3 (E.D. Cal. Sept. 27, 2005) (Damrell, J.) ("Because
4 this case is no longer in its incipient stages, the scales tip
5 heavily in favor of denying plaintiff's motion to stay."); Simon
6 v. Healthways, Inc., Civ. No. 14-8022 BRO JCX, 2016 WL 6595131,
7 at *2 (C.D. Cal. Feb. 1, 2016) (stating the stage of litigation
8 weighed against finding a stay where the discovery deadline
9 passed, and the trial date was roughly three months away).

10 For the foregoing reasons, this case is not the type of
11 "rare," "limited," and "exceptional," case with "only the
12 clearest of justifications" that supports abstention. See Tan v.
13 GrubHub, Inc., 171 F. Supp. 3d 998, 1014 (N.D. Cal. 2016)
14 (quoting R.R. St. & Co., 656 F.3d at 977-78.)

15 IT IS THEREFORE ORDERED that defendant's Motion to
16 Abstain Hearing the Instant Case in Favor of the Nevada State
17 Court Litigation (Docket No. 89) be, and the same hereby is,
18 DENIED.

19 Dated: May 22, 2018



20 **WILLIAM B. SHUBB**
21 **UNITED STATES DISTRICT JUDGE**