

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

R. ANDRE KLEIN, on behalf of himself and  
all other stockholders of APPLE INC.,

Plaintiff,

v.

TIMOTHY D. COOK, WILLIAM V.  
CAMPBELL, MILLARD (“MICKEY”)  
DREXLER, ARTHUR D. LEVINSON,  
ROBERT A. IGER, ANDREA JUNG,  
FRED D. ANDERSON, ESTATE OF  
STEVEN P. JOBS, deceased,

Defendants,

-and-

APPLE INC., a California corporation,

Nominal Defendant.

Case No. [5:14-cv-03634-EJD](#)

**ORDER GRANTING DEFENDANTS’  
MOTION TO STAY; DENYING  
WITHOUT PREJUDICE  
DEFENDANTS’ MOTION TO DISMISS**

Re: Dkt. Nos. 35, 50

Plaintiff R. Andre Klein (“Plaintiff”) commenced the instant shareholder derivative action against Defendants Timothy D. Cook (“Cook”), William V. Campbell (“Campbell”), Millard Drexler (“Drexler”), Arthur D. Levinson (“Levinson”), Robert A. Iger (“Iger”), Andrea Jung (“Jung”), Fred D. Anderson (“Anderson”), and the Estate of Steven P. Jobs (“Jobs”) (collectively, “Defendants”) and Nominal Defendant Apple, Inc. (“Apple”) claiming that Defendants caused Apple to enter into hiring agreements that violated antitrust laws. Presently before the court are Defendants’ motion to stay and motion to dismiss. See Dkt. Nos. 35, 50. The court held a hearing only on Defendants’ motion to stay.

1 Federal jurisdiction arises under 28 U.S.C. § 1331. Having carefully considered the  
2 pleadings in conjunction with the argument presented at the hearing, the court finds the  
3 circumstances presented by this case warrant a stay in favor of related state court proceedings.  
4 Accordingly, Defendants’ motion to stay will be granted and the motion to dismiss will be denied  
5 without prejudice for the reasons explained below.

6 **I. FACTUAL AND PROCEDURAL BACKGROUND**

7 This is a shareholder derivative action brought on Apple’s behalf to recover damages and  
8 seek injunctive relief against Defendants. Dkt. No. 1, Compl. at ¶ 1. Plaintiff alleges that  
9 Defendants caused Apple to enter into agreements with other companies where they agreed not to  
10 recruit each other’s employees. Id. at ¶ 2. These agreements were allegedly anticompetitive and  
11 in violation of antitrust laws. Id. at ¶¶ 4, 13. Plaintiff further alleges that despite an investigation  
12 by the United States Department of Justice into these hiring practices, Apple did not disclose to its  
13 shareholders the details of the investigation nor the subsequent settlement with the Department of  
14 Justice. Id. at ¶ 7.

15 Plaintiff commenced the instant action on August 11, 2014, asserting five claims: (1)  
16 violation of Section 14(a) of the Securities Exchange Act of 1934; (2) breach of fiduciary duty and  
17 aiding and abetting breach of fiduciary duty; (3) gross mismanagement; (4) waste of corporate  
18 assets; and (5) breach of duty of honest services. See Dkt. No. 1. Prior to this action, however,  
19 three related shareholder derivative actions were filed in Santa Clara County Superior Court.  
20 These state actions have been consolidated and are now before Judge Peter H. Kirwan as In re  
21 Apple, Inc. Derivative Litigation, Lead Case No. 1-14-CV-262174 (“State Consolidated Action”).  
22 See Dkt. No. 50, Declaration of Vivi Lee (“Lee Decl.”), Exh. R, Consolidated State Action  
23 Complaint (“State Compl.”).

24 In January 2015, Defendants filed the instant motion to dismiss, and in March 2015, they  
25 filed the instant motion to stay. See Dkt. Nos. 35, 50. These matters have been fully briefed.  
26 After reviewing the parties’ papers, the court found that oral argument only on the motion to stay  
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1 was necessary. See Dkt. No. 57. The hearing was held on May 14, 2015.

2 **II. LEGAL STANDARD**

3 The district court’s “power to stay proceedings is incidental to the power inherent in every  
4 court to control the disposition of the causes on its docket with economy of time and effort for  
5 itself, for counsel, and for litigants.” Landis v. N. Am. Co., 299 U.S. 248, 254 (1936). Using this  
6 power, one case may be stayed in favor of another. Leyva v. Certified Grocers of Cal., Ltd., 593  
7 F.2d 857, 863-64 (9th Cir. 1997) (“A trial court may, with propriety, find it is efficient for its own  
8 docket and the fairest course for the parties to enter a stay of an action before it, pending  
9 resolution of independent proceedings which bear upon the case. This rule applies whether the  
10 separate proceedings are judicial, administrative, or arbitral in character, and does not require that  
11 the issues in such proceedings are necessarily controlling of the action before the court.”).

12 In order to determine whether a Landis stay should be implemented, various interests must  
13 be considered: (1) “the possible damage which may result from the granting of a stay,” (2) “the  
14 hardship or inequity which a party may suffer in being required to go forward,” and (3) “the  
15 orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and  
16 questions of law which could be expected to result from a stay.” CMAX, Inc. v. Hall, 300 F.2d  
17 265, 268 (9th Cir. 1962) (citing Landis, 299 U.S. at 254-55). Whether to grant a stay request is a  
18 matter entrusted to the discretion of the district court. See Landis, 299 U.S. at 254 (“How this can  
19 best be done calls for the exercise of judgment, which must weigh competing interests and  
20 maintain an even balance.”).

21 When weighing the relevant interests, the court must be mindful that “if there is even a fair  
22 possibility that the stay for which he prays will work damage to some one else,” the moving party  
23 “must make out a clear case of hardship or inequity in being required to go forward.” Id. at 255.  
24 Indeed, “[o]nly in rare circumstances will a litigant in one cause be compelled to stand aside while  
25 a litigant in another settles the rule of law that will define the rights of both.” Id. Moreover, the  
26 moving party must cite to something more than the intrinsic inconvenience arising from

1 involvement in litigation. “[B]eing required to defend a suit, without more, does not constitute a  
2 ‘clear case of hardship or inequity’ within the meaning of Landis.” Lockyer v. Mirant Corp., 398  
3 F.3d 1098, 1112 (9th Cir. 2005).

4 **III. DISCUSSION**

5 Plaintiff contends in opposition to Defendants’ motion to stay that the proper standard to  
6 apply is not Landis, but that set forth in Colorado River v. United States, 424 U.S. 800 (1976).  
7 Opp. at 4. Plaintiff argues that under the Colorado River doctrine, district courts have no  
8 discretion to stay a claim that is subject to exclusive federal jurisdiction, such as the Section 14(a)  
9 claim at issue in this action. Id. at 5.

10 As a general rule, “an action in the state court is no bar to proceedings concerning the same  
11 matter in the Federal court having jurisdiction.” Colorado River, 424 U.S. at 817 (internal  
12 quotations omitted). This rule “stems from the virtually unflagging obligation of the federal courts  
13 to exercise the jurisdiction given them.” Id. Colorado River does, however, permit a federal court  
14 to stay an action in favor of a related state court proceeding in exceptional circumstances. Id. at  
15 813; see also Scotts Co. LLC v. Seeds, Inc., 688 F.3d 1154, 1158 (9th Cir. 2012). These  
16 circumstances include situations like this one, where a concurrent state action is pending in which  
17 identical issues are raised. See Holder v. Holder, 305 F.3d 854, 867 (9th Cir. 2002) (“Under  
18 Colorado River, considerations of wise judicial administration, giving regard to conservation of  
19 judicial resources and comprehensive disposition of litigation, may justify a decision by the  
20 district court to stay federal proceedings pending the resolution of concurrent state court  
21 proceedings involving the same matter[.]”) (internal quotations omitted).

22 In any event, the Colorado River abstention is not the doctrine best suited to this case. In  
23 Colorado River, the Supreme Court addressed the issue of concurrent jurisdiction where both the  
24 state court and the federal court had jurisdiction over controversies involving a federal right. See  
25 Colorado River, 424 U.S. at 808-09. Here, there is no dispute that this court has exclusive  
26 jurisdiction over Plaintiff’s Section 14(a) claim, and there is no suggestion that the state court will

1 adjudicate the Section 14(a) claim. Thus, the issue that there is concurrent jurisdiction over the  
2 federal claim is nonexistent. At oral argument, this court made clear that it does not intend to  
3 relinquish jurisdiction over Plaintiff’s federal claim, and will adjudicate that claim when  
4 appropriate.

5 Therefore, pursuant to this court’s inherent power to control its docket, the Landis standard  
6 is appropriate for the instant motion to stay. Each relevant consideration is discussed below.

7 **A. Whether a Stay is Efficient or Will Simplify Issues**

8 The court begins by examining whether entering a stay of this action in favor of the State  
9 Consolidated Action will result in any considerable efficiency or simplification of issues.

10 In their motion, Defendants contend this action and the State Consolidated Action are  
11 similar because Plaintiff seeks to recover the same damages from the same alleged misconduct,  
12 the complaint in both actions are copied nearly verbatim, every defendant in this action has been  
13 or could be named in the State Consolidated Action, and all but the federal claim asserted in this  
14 action has been or could be asserted in the State Consolidated Action. Mot. at 4. The court agrees  
15 these similarities exist. In reviewing Plaintiff’s complaint, significant portions are nearly identical  
16 to the state action complaint, the overwhelming majority of the allegations regarding the Apple  
17 board of directors’ misconduct are the same as in the state action, most of the defendants in this  
18 action are defendants in the state action, and most of the claims in this action are asserted in the  
19 state action.

20 Furthermore, since both this action and the State Consolidated Action are shareholder  
21 derivative actions on behalf of Apple, demand futility is a threshold issue that must be addressed  
22 by both this court and the state court. A shareholder derivative action “permits an individual  
23 shareholder to bring suit to enforce a corporate cause of action against officers, directors, and third  
24 parties.” Rosenbloom v. Pyott, 765 F.3d 1137, 1147 (9th Cir. 2014). “A shareholder seeking to  
25 vindicate the interests of a corporation through a derivative suit must first demand action from the  
26 corporation’s directors or plead with particularity the reasons why such demand would have been  
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1 futile.” Id. at 1148 (quoting In re Silicon Graphics, 183 F.3d 970, 989 (9th Cir. 1999)).  
2 “Although [Federal Rule of Civil Procedure] 23.1 supplies the pleading standard for assessing  
3 allegations of demand futility, the substantive law which determines whether demand is, in fact,  
4 futile is provided by the state of incorporation of the entity on whose behalf the plaintiff is seeking  
5 relief.” Id. Here, Apple’s state of incorporation is California. In California, the demand  
6 requirement under Corporations Code § 800(b)(2) “is similar to the federal rule and requires that  
7 the plaintiff in a shareholder derivative suit allege in the complaint with particularity plaintiff’s  
8 efforts to secure from the board such action as plaintiff desires, or the reasons for not making such  
9 effort, and allege further that plaintiff has either informed the corporation or the board in writing  
10 of the ultimate facts of each cause of action against each defendant or delivered to the corporation  
11 or the board a true copy of the complaint which plaintiff proposes to file.” Bader v. Anderson,  
12 179 Cal. App. 4th 775, 790 (2009).

13 Plaintiff argues that his allegations in this action are different than the demand futility  
14 allegations in the state proceedings. Opp. at 11. This is not so. The allegations that a demand  
15 was not made to the Apple board of directors and that demand would be futile are identical in both  
16 this action and the state action. Compare Compl. at ¶ 145 with State Compl. at ¶ 135. Moreover,  
17 the demand futility allegations against Levinson, Cook, Drexler, and Iger are nearly identical in  
18 both actions. Compare Compl. at ¶¶ 149-50 with State Compl. at ¶¶ 145-46 (Levinson); compare  
19 Compl. at ¶ 151 with State Compl. at ¶ 147 (Cook); compare Compl. at ¶¶ 152-53 with State  
20 Compl. at ¶¶ 143-44 (Drexler); compare Compl. at ¶ 154 with State Compl. at ¶¶ 149-50 (Iger).  
21 While each action contains demand futility allegations against a fifth member of the board, this  
22 does not affect the analysis because in an eight-member board of directors, it is sufficient to allege  
23 demand futility against half of the board.

24 The demand futility issue has already been examined in the State Consolidated Action and  
25 Judge Kirwan found that the plaintiffs had not sufficiently pled demand futility. See Lee Decl.,  
26 Exh. S, Judge Kirwan’s Order. Plaintiffs in the state action were given leave to amend. See id.

1 Given that the state court has already begun to evaluate this threshold issue which relies on state  
2 law, it would be most efficient for the court and the litigants to have the state court resolve the  
3 demand futility issue before proceeding with the instant action.

4 While the court recognizes that the instant action is distinguishable from the state action in  
5 that a federal claim is involved and demand futility is alleged against a different fifth member of  
6 the board, the similarities in the essence and purpose of both actions outweigh these negligible  
7 distinctions. Accordingly, a temporary stay of this action would simplify the issues and promote  
8 the “orderly course of justice.”

9 **B. The Possibility of Damage, Hardship or Inequity**

10 The court now considers the possible damage to Plaintiff in granting a stay, and the  
11 potential hardship or inequity imposed on Defendants in the absence of a stay.

12 As to Plaintiff, he argues that a stay would delay or prevent the prosecution of his Section  
13 14(a) claim. Opp. at 11. This argument is unpersuasive because while a stay would temporarily  
14 delay his prosecution of his federal claim, it would not preclude it altogether since this court  
15 would retain jurisdiction over it. At oral argument, Plaintiff further argued that if a settlement  
16 were to occur in the state action, he would be deprived of a remedy on his Section 14(a) claim  
17 because the settlement would likely release Defendants of all liability. This argument is also  
18 unpersuasive because Plaintiff would face the same conundrum even in the absence of a stay, and  
19 due to the nature of a shareholder derivative action, a settlement reached in the state action would  
20 necessarily also benefit Plaintiff and resolve the interests of Apple—the interests of which  
21 Plaintiff purportedly represents. Lastly, at oral argument, Plaintiff argued that a stay would be  
22 prejudicial because this action provides an opportunity to have his own demand futility allegations  
23 tested. This argument fails because, as stated above, Plaintiff’s demand futility allegations as to  
24 four directors are nearly identical as those alleged in state court.

25 As to Defendants, they argue that litigating both actions would be costly and could result  
26 in conflicting rulings. Mot. at 5-6. Defendants’ burden of simultaneous litigation is not a

1 significant consideration in this analysis. See Lockyer, 398 F.3d at 1112. However, there is merit  
2 in Defendants’ argument regarding conflicting rulings given the overlapping issue of demand  
3 futility in both the federal and state actions.

4 **C. Balancing and Conclusion**

5 On balance, the potential prejudice to Defendants that could result from conflicting rulings  
6 outweighs any slight amount of potential prejudice Plaintiff may suffer from a temporary stay.  
7 This determination, coupled with the simplification of issues that may result from the state court’s  
8 resolution of the demand futility issue, leads the court to conclude that abatement in favor of the  
9 parallel state proceedings is justified. Therefore, Defendants’ motion to stay this action will be  
10 granted.

11 As to the duration of the stay, “a stay should not be granted unless it appears likely the  
12 other proceedings will be concluded within a reasonable time.” Dependable Highway Express,  
13 Inc. v. Navigators Ins. Co., 498 F.3d 1059, 1066 (9th Cir. 2007) (quoting Leyva, 593 F.2d at 864).  
14 Recognizing that there is a general policy favoring stays of short, or at least reasonable duration,  
15 stays should not be indefinite. Id. at 1066-67. In the State Consolidated Action, the parties have  
16 completed one demurrer and plaintiffs are expected to soon file their amended complaint. Since  
17 the demand futility issue is a threshold issue that must be resolved before the action can continue,  
18 it is reasonable to stay this action until Judge Kirwan decides whether or not plaintiffs have  
19 sufficiently pled demand futility. Until such time, reporting requirements will be imposed so that  
20 the state litigation can be monitored by this court and the continuing propriety of this stay can be  
21 evaluated on an ongoing basis.

22 **IV. ORDER**

23 Based on the foregoing, Defendants’ Motion to Stay (Dkt. No. 50) is GRANTED. This  
24 action is STAYED in its entirety until the Santa Clara County Superior Court determines whether  
25 or not plaintiffs in the State Consolidated Action In re Apple, Inc. Derivative Litigation, Case  
26 Number 1-14-CV-262174, can sufficiently plead demand futility, or until further order of this  
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court. The clerk shall ADMINISTRATIVELY CLOSE this file.

Plaintiff and Defendants shall submit a brief Joint Status Report apprising the court of the status of the state court action on August 28, 2015, and continuing every three months thereafter. Furthermore, within 10 days of either (1) a resolution of the state court action through settlement or other informal means, or (2) a final ruling on the demand futility issue in state court, the parties shall file a Joint Notice informing the court of such development and shall request that this matter be reopened and that a Case Management Conference be scheduled.

Defendants' Motion to Dismiss (Dkt. No. 35) is DENIED WITHOUT PREJUDICE to being re-filed and re-noticed when appropriate.

**IT IS SO ORDERED.**

Dated: May 22, 2015

  
EDWARD J. DAVILA  
United States District Judge