

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

FRANK URIARTE, RUDY ALARCON,
LUIS CASILLAS, STEVEN GARCIA,
GERMAN DURAN, GABRIEL
RODRIGUEZ, ISAIAS NAVARRO, and
STEPHEN FRAZIER,

Plaintiffs,

v.

MICHAEL BOSTIC, CITY OF
CALEXICO, RICHARD WARNE, and
GONZALO C. GERARDO,

Defendants.

Case No.: 15cv1606-MMA (PCL)

**ORDER DENYING UNOPPOSED
MOTION TO STAY**

[Doc. No. 62]

Before the Court is Defendants’ motion to stay the proceedings pending resolution of parallel state administrative proceedings initiated by the seven terminated plaintiffs to challenge the propriety of the City of Calexico’s decision to terminate their employment. Doc. No. 62 (“Mtn”). Plaintiffs filed a notice of non-opposition to Defendants’ motion. Doc. No. 63. The Court found the matter suitable for determination on the papers and took the matter under submission pursuant to Civil Local Rule 7.1.d.1. For the reasons set forth below, the Court **DENIES** Defendants’ unopposed motion to stay.

//

1 **BACKGROUND**

2 On November 22, 2016, Plaintiffs Frank Uriarte, Rudy Alarcon, Luis Casillas,
3 Steven Garcia, German Duran, Gabriel Rodriguez, Isaias Navarro, and Stephen Frazier
4 (collectively, “Plaintiffs”) filed the operative Second Amended Complaint (“SAC”)
5 against Defendants Michael Bostic, Richard Warne, Gonzalo C. Gerardo, and the City.¹
6 Doc. No. 39.

7 Plaintiffs are or were police officers employed by Defendant City during the events
8 alleged in the SAC. SAC ¶ 4. At all relevant times, Defendant Bostic was the chief of
9 police for Defendant City and the Calexico police department, and Defendant Warne was
10 the city manager. SAC ¶¶ 6-7. Defendant Gerardo was and is a police lieutenant for the
11 City and the police department. SAC ¶ 8.

12 Prior to November 2014, Plaintiff Alarcon served as the President of the Calexico
13 Police Officer’s Association (“CPOA”), Plaintiff Casillas served as the Vice President of
14 the CPOA, and Plaintiffs Uriarte, Garcia, Duran, and Navarro were members of the
15 CPOA Executive Board. SAC ¶ 13. Plaintiff Frazier was not an Executive Board
16 member, but “was widely known to be closely associated with such leadership and
17 aligned with [the leaders’] views and actions.” *Id.* Plaintiffs and the CPOA were
18 politically active. *Id.* Plaintiffs participated in local elections, endorsed and opposed
19 candidates, and would routinely speak out at City Council Meetings. SAC ¶ 14.

20 Plaintiffs Alarcon, Casillas, Duran, and Rodriguez frequently spoke about public matters,
21 voiced their opinion on matters of public opinion, were interviewed by press and media
22 outlets, engaged in fundraising events, and made radio announcements. *Id.* Plaintiffs
23 used these forums to publically denounce incumbent City Council Member Martiza
24 Hurtado and her election in 2010 and re-election in 2014. *Id.* Prior to the November
25 2014 City Council election, Plaintiffs and the CPOA “actively opposed” the re-election
26

27
28 ¹ Joseph Bielma, who was listed as a plaintiff in the original complaint, and Maritza Hurtado, who was listed as a defendant in the original complaint, are omitted from the operative SAC.

1 of Hurtado and opposed the election of “another.” SAC ¶ 21. Plaintiffs went to City
2 Council meetings in their CPOA shirts, and Plaintiffs Casillas, Alarcon, and Garcia spoke
3 out against Defendant Hurtado’s re-election. *Id.*

4 “Around this same time, Hurtado . . . began to engage in retaliatory actions.” SAC
5 ¶ 23. Plaintiffs allege that Hurtado told Plaintiffs that it was not their place to be
6 involved in collective bargaining negotiations or political campaigns. *Id.* She and other
7 individuals said they were going to “break the union,” “charge” Plaintiffs, and have them
8 terminated. *Id.* They accused CPOA members of being corrupt and of stealing money.
9 *Id.* Hurtado then “employed Bielma to attend a covert meeting at the residence of a
10 criminal suspect that . . . [Plaintiffs] had arrested” SAC ¶ 24. Hurtado allegedly
11 employed Bielma to solicit a complaint from the individual contending that Plaintiffs,
12 specifically CPOA president Plaintiff Alarcon, engaged in excessive force. *Id.* Plaintiffs
13 allege that Hurtado was retaliating against Plaintiffs’ “speech activities outlined in this
14 complaint.” *Id.*

15 Plaintiffs allege that Defendant City subsequently hired an investigator to
16 investigate the Police Department “with the hopes of digging up any dirt” on Plaintiffs
17 that could be used as grounds for terminating employment. SAC ¶ 25. Plaintiffs contend
18 that the investigation was too wide-ranging, and that Plaintiffs were not adequately
19 notified of its scope and nature. *Id.* During the investigation, “the officers were
20 questioned about their protected political activities, clearly demonstrating that these were
21 reasons behind the investigation.” *Id.*

22 In the 2014 election, Hurtado and the other candidate that Plaintiffs opposed were
23 elected to City Council. SAC ¶ 27. By the time of the election, Defendant City had hired
24 Defendant Warne as an interim city manager to “attack[] the CPOA and [Plaintiffs.]”
25 SAC ¶ 28. Defendant Warne was “hand selected by Hurtado.” *Id.* Defendant Warne
26 then fired the chief of police “because he was perceived to be pro-cop, and because he
27 had a positive relationship with the CPOA.” *Id.* Defendant Warne then hired Defendant
28

1 Bostic to be the chief of police. SAC ¶ 29. Defendant Bostic stated that Hurtado and
2 Warne hired him to clean up the Police Department. *Id.*

3 At a November 19, 2014 press conference, Defendant Bostic stated that some City
4 Council members and members of the CPOA have been using city funds and resources to
5 run an “extortion racket.” SAC ¶ 31. He stated that some members of the prior
6 investigation unit of the police department spent thousands of dollars on surveillance
7 equipment. SAC ¶ 33. When questioned, the investigations unit reported to Bostic that
8 they had no current investigations. *Id.* Defendant Bostic stated that the CPOA and
9 Council Members were “using all this equipment to go around tracking, voice recording,
10 taking pictures, trying to get them in compromising positions: Like the Mafioso of New
11 York.” SAC ¶ 34. He stated that they were attempting to clean up the mess caused by
12 the former Chief and former staff. SAC ¶ 33. Plaintiffs allege these statements are false
13 because the CPOA “has never extorted anyone, and has never gone [sic] engaged in any
14 tracking, voice recording, or taking pictures for the purpose of extorting.” SAC ¶ 35.
15 “No members of the CPOA have purchased surveillance equipment after Bostic took
16 office.” *Id.* The officers were working on a multitude of cases and Defendant Bostic
17 knew that. *Id.*

18 Between December 2014 and July 2015, Plaintiffs Uriarte, Alarcon, Casillas,
19 Garcia, Duran, Rodriguez, and Frazier were each allegedly fired for “innocuous, petty
20 mistakes” that “do not justify termination.” SAC ¶ 40. The SAC also states that the
21 excessive force allegation “involving Plaintiff Alarcon” served as the basis for the
22 “alleged termination of various of the Plaintiff[s].” SAC ¶¶ 24, 40. Plaintiff Navarro
23 “has been subject to a retaliatory investigation.” SAC ¶ 52.

24 In July 2015, Bielma, “previously a confidant and supporter of Defendants, . . .
25 blew the whistle to the Department of Justice by making a written complaint of
26 corruption against Bostic and Warne.” SAC ¶ 42. Bielma’s complaint states that
27 Defendants Bostic and Gerardo recommended that an officer named Acuna take over as
28 CPOA President, as Plaintiff Casilla’s employment had been terminated. SAC ¶ 43.

1 Bielma’s complaint states that Defendants Bostic and Gerardo intimidated and coerced
2 Acuna to lie regarding the excessive use of force charges against Plaintiff Alarcon. SAC
3 ¶ 45. Defendants Bostic and Gerardo allegedly believed Acuna was untruthful during the
4 initial investigation regarding the excessive force claims. SAC ¶ 46. Accordingly, they
5 believed they had to fire Acuna because otherwise “Alarcon and the other Plaintiff[s]
6 here, could demonstrate disparate [sic] between firing them and not firing Acuna.” *Id.*
7 “After all, the allegations made against Acuna were similar to the allegations made
8 against the involved Plaintiff[s].” *Id.* According to Bielma, Defendants Bostic and
9 Gerardo conspired to fire Acuna, tell Acuna to request a Skelly hearing before Defendant
10 Bostic, and have Acuna lie during the hearing.² *Id.* Acuna was to say he was previously
11 not truthful during the investigation because he was intimidated “by the prior police
12 administration and the Plaintiff[s].” *Id.* He was supposed to say that he saw Plaintiff
13 Alarcon use excessive force. *Id.* Defendants Bostic and Gerardo told Acuna that doing
14 so would save his job. *Id.* “The allegations in Bielma’s complaint came to happen.”
15 SAC ¶ 50. Acuna was served with termination papers and he requested a Skelly hearing.
16 *Id.* Defendants Gerardo and Bostic have harassed and intimidated Bielma by threatening
17 to prosecute him because they wish to “keep him from disclosing the [information
18 contained in this complaint to the Department of Justice].” SAC ¶ 52.

19 The SAC alleges First Amendment retaliation pursuant to 42 U.S.C. § 1983,
20 violations of the MMBA pursuant to California Government Code sections 3502 and
21 3506, defamation, and false light. *See* SAC. On May 26, 2017, the Court dismissed with
22 prejudice Plaintiffs’ claims premised on violations of the MMBA and struck Plaintiffs’
23 defamation and false light claims. Doc. No. 50 at 16, 29.

24
25
26 ² The term “Skelly hearing” derives from *Skelly v. State Personnel Board*, 539 P.2d 774 (1975), which
27 held that public employees have property interests in their continued employment for due process
28 purposes. *Cason v. San Diego Transit Corp.*, No. 10CV0098-IEG (MDD), 2011 WL 1596315, at *2 n.1
(S.D. Cal. Apr. 25, 2011). “A Skelly hearing is a pre-disciplinary, administrative hearing, during which
a public employee has an opportunity to present his version of relevant events.” *Id.*

1 LEGAL STANDARD

2 Federal courts have a “virtually unflagging obligation . . . to exercise the
3 jurisdiction given them.” *Colo. River Water Conservation Dist. v. United States*, 424
4 U.S. 800, 817 (1976); *see also Smith v. Cent. Ariz. Water Conservation Dist.*, 418 F.3d
5 1028, 1033 (9th Cir. 2005); *Holder v. Holder*, 305 F.3d 854, 867 (9th Cir. 2002).
6 “Generally, as between state and federal courts, the rule is that ‘the pendency of an action
7 in the state court is no bar to proceedings concerning the same matter in the [f]ederal
8 court having jurisdiction’” *Colo. River*, 424 U.S. at 817 (quoting *McClellan v.*
9 *Carland*, 217 U.S. 268, 282 (1910)); *see also Seneca Ins. Co. v. Strange Land Inc.*, 862
10 F.3d 835, 841 (9th Cir. 2017).

11 Nonetheless, federal courts are authorized to dismiss or stay an action “due to the
12 presence of a concurrent state proceeding for reasons of wise judicial administration.”
13 *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 15 (1983) (quoting
14 *Colo. River*, 424 U.S. at 818). In considering whether to do so, the court is tasked with
15 ascertaining “whether there exist ‘exceptional’ circumstances, the ‘clearest of
16 justifications,’ . . . to justify the *surrender* of [federal] jurisdiction.” *Id.* at 25-26
17 (emphasis in original); *see also Intel Corp. v. Advanced Micro Devices, Inc.*, 12 F.3d 908,
18 912 (9th Cir. 1993) (“Only exceptional circumstances justify such a stay, and whether
19 these circumstances exist is determined by weighing a complex of factors.”).

20 Accordingly, the court considers the following factors in determining whether to grant
21 such a stay:

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

27 *R&R St. & Co. v. Transp. Ins. Co.*, 656 F.3d 966, 978-79 (9th Cir. 2011); *see also Seneca*
28 *Ins. Co.*, 862 F.3d at 842. If “there exists a substantial doubt as to whether the state court

1 proceeding will resolve all of the disputed issues in [the federal] case, it is unnecessary
2 for [the court] to weigh the other factors included in the *Colorado River* analysis.” *Intel*
3 *Corp.*, 12 F.3d at 913 n.7. The Ninth Circuit explained that:

4 Under the rules governing the *Colorado River* doctrine, the existence of a
5 substantial doubt as to whether the state proceeding will resolve the federal
6 action precludes the granting of a stay “When a district court decides to
7 . . . stay under *Colorado River*, it presumably concludes that the parallel state-
8 court litigation will be an adequate vehicle for the complete and prompt
9 resolution of the issues between the parties. *If there is any substantial doubt*
10 *as to this*, it would be a serious abuse of discretion to grant the stay or
dismissal at all Thus, the decision to invoke *Colorado River* necessarily
contemplates that the federal court will have nothing further to do in resolving
any substantive part of the case, whether it stays or dismisses.”

11 *Id.* at 913 (internal citations omitted); *see also Smith*, 418 F.3d at 1033 (9th Cir. 2005).

12 Regardless, “the decision whether to [stay] a federal action because of a parallel state-
13 court litigation does not rest on a mechanical checklist, but on a careful balancing of the
14 important factors as they apply in a given case, with the balance heavily weighted in
15 favor of the exercise of jurisdiction.” *Moses H. Cone*, 460 U.S. at 16; *see also Seneca*
16 *Ins. Co.*, 862 F.3d at 842; *Intel Corp.*, 12 F.3d at 912.

17 DISCUSSION

18 The Court finds there to be substantial doubt as to whether the state administrative
19 proceedings will resolve all the issues presented in this federal action. Defendants
20 contend that there are seven state administrative proceedings currently pending, which
21 were initiated by the seven terminated Plaintiffs in this action. Mtn at 2. However, there
22 are eight Plaintiffs listed in the SAC, which necessarily means that at least one Plaintiff’s
23 claims will not be resolved. *See SAC*. Further, the Court is not convinced that the state
24 administrative proceedings will resolve Plaintiffs’ First Amendment retaliation claims
25 pursuant to 42 U.S.C. § 1983. Based on the motion, the Court can determine that
26 Plaintiffs are “challenging the propriety of the City’s decision to terminate” seven of the
27 Plaintiffs in this action and that through these state proceedings, Plaintiffs “have the
28 opportunity to present evidence and argument to an impartial adjudicator with the

1 opportunity to reverse their terminations and recover backpay [sic].” Mtn at 3-4. This
2 potential resolution does not necessarily address the alleged constitutional violations
3 suffered by Plaintiffs. Even further, Defendants concede that four of the seven
4 proceedings have already “rendered decisions” in favor of the City. *Id.* at 2, 5. However,
5 the parties have taken no action to dismiss claims raised by those Plaintiffs in the instant
6 federal action. *See* Docket. Accordingly, “there exists a substantial doubt as to whether
7 the state court proceeding will resolve all of the disputed issues in [the federal] case,
8 [and] it is unnecessary for [the court] to weigh the other factors included in the *Colorado*
9 *River* analysis. *Intel Corp.*, 12 F.3d at 913 n.7.

10 Nonetheless, consideration of the other factors also does not weigh in favor of
11 granting the requested stay. “[T]he dispute does not involve a specific piece of property,”
12 and so the first factor is irrelevant in this case. *See R.R. St. & Co.*, 656 F.3d at 979. The
13 Court assumes that the state administrative proceedings are occurring within the City of
14 Calexico, which is within this judicial district. Thus, the second *Colorado River* factor is
15 also “irrelevant in this case because . . . both the federal and state forums are located in
16 [the same geographic area].” *See id.*

17 Plaintiffs initiated their state proceedings prior to initiating the instant federal
18 action and there has been no showing that exercise of jurisdiction by this court would
19 promote forum shopping. Mtn at 4. Thus, these two factors weigh slightly in favor of the
20 Court granting the requested stay. However, as previously discussed, the Court is not
21 convinced that all the issues in the two actions are the same and there exists a legitimate
22 concern whether the state administrative proceedings are adequate to protect the rights of
23 the litigants in this action. Additionally, federal law provides the rule of decision on the
24 merits of Plaintiffs’ § 1983 claims. Further, while avoiding piecemeal litigation is
25 certainly a desirable goal, “[a] general preference for avoiding piecemeal litigation is
26 insufficient to warrant abstention” and “[a]ny case in which *Colorado River* is implicated
27 will inevitably involve the possibility of ‘conflicting results, piecemeal litigation, and
28 some duplication of judicial efforts,’ which are the ‘unavoidable price of preserving

1 access to . . . federal relief.” *Seneca Ins. Co.*, 862 F.3d at 842 (9th Cir. 2017). These
2 three factors weigh in favor of denying the requested stay.

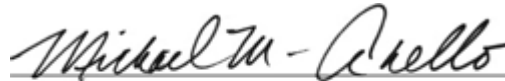
3 In short, after considering all of the relevant factors, this Court is not persuaded
4 that exceptional circumstances and the clearest of justifications have been established
5 justifying the granting of a stay. *See Seneca Ins. Co.*, 862 F.3d at 847.

6 **CONCLUSION**

7 Based on the foregoing, the Court **DENIES** Defendants’ unopposed motion to stay
8 proceedings pending resolution of Plaintiffs’ state administrative proceedings and
9 **ORDERS** the parties to jointly contact Magistrate Judge Peter C. Lewis within five days
10 to schedule a Case Management Conference.

11 **IT IS SO ORDERED.**

12 Dated: December 6, 2017



Hon. Michael M. Anello
United States District Judge