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

CHERYL BROOM, et al.,	
	Plaintiffs,
v.	
INTERACT COMMUNICATIONS, INC.,	
	Defendant.

Case No.: 20-CV-2182 W (AGS)

**ORDER DENYING DEFENDANT'S
MOTION TO DISMISS OR, IN THE
ALTERNATIVE, TO STAY
PLAINTIFFS' CLAIMS [DOC. 5]**

Pending before the Court is a motion to dismiss or, in the alternative, stay this case based upon a previously filed and currently pending Wisconsin state court action, *Interact Communications, Inc. v. Cheryl Broom and Christopher Walker*, La Crosse County Case No. 2020cv000342. [Doc. 5.] Plaintiffs oppose. The Court decides the matters on the papers submitted and without oral argument pursuant to Civil Local Rule 7.1(d)(1). For the reasons that follow, the Court **DENIES** Defendant's motion. Plaintiffs' request for judicial notice of state public records in support of their opposition is **GRANTED**.

1 **I. BACKGROUND**

2 On February 1, 2017, Defendant Interact Communications, Inc. (“Interact”)
3 entered into an employment contract with Plaintiff Cheryll Broom (“Broom”) whereby
4 Broom became the President of Interact and opened an office in California. (*Compl.*
5 [Doc. 1] ¶¶ 6, 8; *Broom Employment Contract* [Doc. 1-2, Ex. A].) The agreement
6 included terms restricting Broom from competing with Interact after termination.
7 (*Compl.* ¶ 7; *Broom Non-Compete Agreement* [Doc. 1-2, Ex. B].) The Broom
8 Employment Contract and Non-Compete Agreement were negotiated and signed in
9 California; Broom’s office was in California; Broom performed all of Broom’s duties in
10 and from California; and Broom was employed by Interact in California. (*Compl.* ¶ 9.)

11 On January 31, 2019, Broom’s husband, Plaintiff Christopher Walker (“Walker”)
12 entered into an employment contract with Interact whereby Walker became the Director
13 of Digital Marketing and Communications for Interact. (*Compl.* ¶ 11; *Walker*
14 *Employment Contract* [Doc. 1-2, Ex. C].) The Walker Employment Contract also
15 included a covenant not to compete. (*Walker Employment Contract* at 31.) The
16 employment contract was negotiated in California and Walker performed substantially all
17 of his duties in and from California. (*Compl.* ¶ 12.)

18 On July 20, 2020, Broom submitted her resignation from Interact. (*Id.* ¶ 8.)
19 Walker submitted his resignation the next day. (*Id.* ¶ 11.)

20 On August 6, 2020, Interact filed a complaint in the State of Wisconsin against
21 Plaintiffs to enforce the covenants not to compete and for breach of the covenant of good
22 faith and fair dealing, breach of fiduciary duty, tortious interference with contract, and
23 civil conspiracy. (*Id.* ¶ 44; *Wisconsin Action* [Doc. 1-2, Ex. D].)

24 On November 6, 2020, Plaintiffs filed this complaint seeking a declaration that the
25 non-compete provisions in their employment contracts are invalid under California
26 Business and Professions Code § 16600 and for breaches of California Labor Code § 925
27 and Business and Professions Code § 17200. Broom also alleges Interact breached her
28 employment contract by failing to provide her an accounting of the outstanding revenues

1 on her sales and for failing to pay her any earned commissions since her resignation. (*Id.*
2 ¶ 18.)

3 On December 3, 2020, Interact filed the instant motion to dismiss or, in the
4 alternative, to stay. (*MTD* [Doc. 5].)

5 6 II. DISCUSSION

7 Interact contends this case should be dismissed or stayed in its entirety based upon
8 the doctrines embodied in *Wilton v. Seven Falls Co.*, 515 U.S. 277 (1995) or,
9 alternatively, *Colorado River Water Conservation District v. United States*, 424 U.S. 800
10 (1976).

11 A. Abstention Under *Wilton* Is Not Appropriate

12 Interact first argues that the Court should dismiss or stay the action under the
13 *Wilton* abstention doctrine. Typically, “it would be uneconomical as well as vexatious
14 for a federal court to proceed in a declaratory judgment suit where another suit is pending
15 in a state court presenting the same issues, not governed by federal law, between the
16 same parties.” *Wilton*, 515 U.S. at 282 (quoting *Brillhart v. Excess Ins. Co. of America*,
17 316 U.S. 491, 495 (1942)). However, if the suit seeks more than merely declaratory relief,
18 the *Wilton* abstention doctrine does not apply. *Snodgrass v. Provident Life & Accident*
19 *Ins. Co.*, 147 F.3d 1163, 1167 (9th Cir. 1998). “To determine whether a suit exclusively
20 seeks declaratory relief, we ask ‘whether there are claims in the case that exist
21 independent of any request for purely declaratory relief, that is, claims that would
22 continue to exist if the request for a declaration simply dropped from the case.’” *Seneca*
23 *Ins. Co., Inc. v. Strange Land, Inc.*, 862 F.3d 835, 840 (9th Cir. 2017) (quoting
24 *Snodgrass*, 147 F.3d at 1167–68); *see also R.R. St. & Co. v. Transp. Ins. Co.*, 656 F.3d
25 966, 976–77 (9th Cir. 2011) (“[I]f the same action contains claims for both monetary and
26 declaratory relief, the district court should not, as a general rule, remand or decline to
27 entertain the claim for declaratory relief.”).

28

1 Interact argues the *Wilton* doctrine applies because “[t]he declaratory relief sought
2 herein by Broom and Walker constitutes the overwhelming basis for this action.” (*MTD*
3 12:8–9.) This is not the test. The test is whether there are “claims that would continue to
4 exist if the request for a declaration simply dropped from the case.” Snodgrass, 147 F.3d
5 at 1168. Plaintiffs’ suit includes claims for breach of contract, breach of California Labor
6 Code § 925, and breach of Business and Professions Code § 17200. The Court has
7 diversity jurisdiction over Plaintiff’s claims, which would still exist without the
8 declaratory judgment claim. Moreover, Plaintiffs “have unfailingly sought damages,
9 bringing [their] suit squarely within the *Colorado River* framework.” Seneca Insurance,
10 862 F.3d at 841. The presence of Plaintiffs’ non-declaratory claims and prayer for
11 damages defeats Interact’s *Wilton* abstention argument.

12
13 B. Abstention Under *Colorado River* Is Not Appropriate

14 Interact next seeks to dismiss or stay this action in favor of the pending Wisconsin
15 state court action based on the *Colorado River* doctrine. Generally, “the pendency of an
16 action in the state court is no bar to proceedings concerning the same matter in the
17 Federal court having jurisdiction” Colo. River Water Conservation Dist. v. United
18 States, 424 U.S. 800, 817 (1976) (internal quotation marks omitted). “[F]ederal courts
19 have a virtually unflagging obligation . . . to exercise the jurisdiction given them,
20 including in cases involving parallel state litigation.” Id. However, in “exceedingly rare
21 circumstances” federal courts may stay a case where a concurrent state action with
22 identical issues is pending. Id.

23 *Colorado River* and subsequent Ninth Circuit opinions have identified eight non-
24 exhaustive factors to be considered on a motion to stay or dismiss under *Colorado River*:

- 25 (1) which court first assumed jurisdiction over any property at stake; (2) the
26 inconvenience of the federal forum; (3) the desire to avoid piecemeal
27 litigation; (4) the order in which the forums obtained jurisdiction; (5)
28 whether federal law or state law provides the rule of decision on the merits;
(6) whether the state court proceedings can adequately protect the rights of

1 the federal litigants; (7) the desire to avoid forum shopping; and (8) whether
2 the state court proceedings will resolve all issues before the federal court.

3 Seneca Ins., 862 F.3d at 841–42 (quoting R.R. Street, 656 F.3d at 979). Factors that are
4 irrelevant to the particular inquiry are disregarded. Id. at 842. “Any doubt as to whether
5 a factor exists should be resolved against a stay, not in favor of one.” Id. (citation
6 omitted).

7 The circumstances surrounding this case are not so exceptional to warrant a stay
8 under *Colorado River*. This case, in large part, is centered in California. Plaintiffs’
9 contracts were negotiated and signed in California; their offices were in California; and
10 they performed all of their duties in and from California. Plaintiffs allege claims based
11 on California law not alleged in the Wisconsin case: unfair competition under Business
12 and Professions Code § 17200 and breach of California Labor Code § 925. California
13 Labor Code § 925 stipulates, “[a]n employer shall not require an employee who primarily
14 resides and works in California, as a condition of employment, to agree to a provision
15 that would . . . [d]eprive the employee of the substantive protection of California law with
16 respect to a controversy arising in California.” Id. Plaintiffs claim Interact has violated
17 this provision by filing in Wisconsin and alleging claims there in direct contravention of
18 California’s laws and strong public policy against covenants not to compete such as those
19 contained in the Broom Non-Compete Agreement and Walker Employment Agreement.
20 This claim, among others, is not alleged in the Wisconsin state court action and therefore
21 will not be protected or resolved by that action.

22 Interact’s arguments of inconvenience and desire to avoid piecemeal litigation are
23 unconvincing. Interact maintains a California office and Plaintiffs allege that 80% of
24 Interact’s clients are in California. Many, if not most, of the relevant witnesses will be in
25 California. Moreover, the only discovery conducted in the Wisconsin case thus far has
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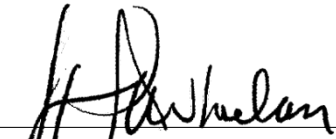
1 been narrowly confined to establishing whether Wisconsin has personal jurisdiction.¹ “A
2 general preference for avoiding piecemeal litigation is insufficient to warrant” a stay
3 under *Colorado River*, instead there must be a showing of special concerns that would
4 make parallel litigation “particularly problematic.” Seneca Ins., 862 F.3d at 842–43. To
5 the extent there are any countervailing concerns here, they are greatly outweighed. The
6 Court thus declines to abstain from exercising jurisdiction over this action.

7
8 **III. CONCLUSION**

9 Based on the foregoing, the Court **DENIES** Interact’s motion to dismiss or, in the
10 alternative, to stay this case. [Doc. 5.]

11 **IT IS SO ORDERED.**

12 Dated: March 1, 2021

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14 
15 Hon. Thomas J. Whelan
United States District Judge

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27 ¹ Plaintiffs raise at least a colorable argument that it does not since the contracts were negotiated in
28 California, their offices were in California, and Plaintiffs had no contact with Wisconsin other than
Interact having its headquarters there.