

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MALIBU MEDIA, LLC, a California Limited Liability Company,	)	CASE NO. CV 16-4715-R
	)	
Plaintiff,	)	ORDER GRANTING DEFENDANTS'
	)	MOTION TO DISMISS
v.	)	
	)	
LIPSCOMB, EISENBERG & BAKER, PL, a Florida Professional Limited Liability Company; MICHAEL K. LIPSCOMB, an individual; and DOES 1 to 100, inclusive,	)	
	)	
Defendants.	)	

Before the Court is Defendants' Motion to Dismiss under the *Colorado River* Doctrine, which was filed on July 22, 2016. (Dkt. No. 12). Having been thoroughly briefed by the parties, this Court took the matter under submission on September 1, 2016.

In certain unique circumstances, a federal court may dismiss a case under the doctrine of abstention. *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 813 (1976). Typically, abstention may be permissible "in cases presenting a federal constitutional issue which might be mooted or presented in a different posture by a state court determination of pertinent

1 state law . . . where there have been presented difficult questions of state law bearing on policy  
 2 problems of substantial public import whose importance transcends the result in the case then at  
 3 bar . . . [or] where, absent bad faith, harassment, or a patently invalid state statute, federal  
 4 jurisdiction has been invoked for the purpose of restraining state criminal proceedings.” *Id.* at  
 5 814-16 (citations omitted) (internal quotation marks omitted). In addition, when a case does not  
 6 fall within any of the traditional abstention categories, a court may look to principles of “(w)ise  
 7 judicial administration, giving regard to conservation of judicial resources and comprehensive  
 8 disposition of litigation,” when confronted with “situations involving the contemporaneous  
 9 exercise of concurrent jurisdictions, either by federal courts or by state and federal courts.” *Id.* at  
 10 817 (citations omitted) (internal quotation marks omitted). *Colorado River* abstention, however, is  
 11 appropriate only in “exceptional circumstances.” *Nakash v. Marciano*, 882 F.2d 1411, 1415 (9th  
 12 Cir. 1989) (citations omitted) (internal quotation marks omitted).

13 The Ninth Circuit uses eight factors when determining whether *Colorado River* abstention  
 14 may be appropriate:

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

22 *R.R. Street & Co. Inc. v. Transp. Ins. Co.*, 656 F.3d 966, 978-79 (9th Cir. 2011). As there is no  
 23 property at stake in this case, and regardless of which forum is selected—Florida state court or the  
 24 Central District of California—some parties will inevitably be inconvenienced, neither of these  
 25 first two factors weigh strongly in favor of, or against, abstention. *See generally Nakash*, 882 F.2d  
 26 at 1415 n. 6 (largely withholding analysis on irrelevant factors). In addition, Plaintiff concedes  
 27 that Florida state court is an adequate forum to entertain the two actions between parties, such that  
 28 the sixth factor is likewise irrelevant. *See id.*; Opposition at 14:5-6.

The third factor, aimed at avoiding piecemeal litigation, weighs in favor of abstention.  
 “[T]he avoidance of piecemeal litigation factor is met, as it was in . . . *Colorado River* itself, only

1 when there is evidence of a strong federal policy that all claims should be tried in the state courts.”  
 2 *United States v. Morros*, 268 F.3d 695 706-07 (9th Cir. 2001). The Supreme Court has previously  
 3 noted that states have “an extremely important interest in maintaining and assuring the  
 4 professional conduct of the attorneys it licenses.” *Middlesex Cty. Ethics Comm. v. Garden State*  
 5 *Bar Ass’n*, 457 U.S. 423, 434 (1982). This case involves issues of alleged misconduct of Florida  
 6 bar certified attorneys, whose business—while national—emanates from their offices in Florida.  
 7 Piecemeal litigation is a real threat to these proceedings and this factor therefore weighs in favor  
 8 of abstention.

9 The fourth factor, examining the order in which the forums obtained jurisdiction, also  
 10 weighs in favor of abstention. “[P]riority should not be measured exclusively by which complaint  
 11 was filed first, but rather in terms of how much progress has been made in the two actions.”  
 12 *Moses H. Cone Mem’l Constr. Corp.*, 460 U.S. 1, 21 (1983). In this case, the Florida state action  
 13 was filed first. In addition, almost *nothing at all* has been done in this federal action, beyond this  
 14 Motion, and a now terminated Ex Parte Application. While Plaintiff argues that the state court  
 15 proceedings are also in their infancy, Plaintiff’s contention that this somehow weighs in favor of  
 16 maintaining this later federal action is not persuasive.

17 The fifth factor, regarding an inquiry into the controlling law, is neutral here. No federal  
 18 law is implicated—at all—in this case. By contrast, Florida rules of professional conduct are  
 19 paramount to this case. While there is a claim brought under California law (Violation of  
 20 Business & Professions Code §§ 17200 et seq.), violations of Florida rules of professional conduct  
 21 for attorneys are the basis of this claim as well. *See Compl.* at 14:1-15:18.

22 The seventh factor, involving the desire to avoid forum shopping, weighs in favor of  
 23 abstention. “To avoid forum shopping, courts may consider the vexatious or reactive nature of  
 24 either the federal or the state litigation.” *Id.* at 981 (citations omitted) (internal quotation marks  
 25 omitted). This lawsuit was filed only weeks after an action was brought by Defendants against the  
 26 Plaintiff in Florida and involves similar issues as those raised before the Florida court. Rather  
 27 than file counterclaims in that court, Plaintiff has instead hauled the Defendants before this Court,  
 28 on the opposite side of the country, at the same time as Defendants were dealing with the Florida

1 state court action. The apparent reactive nature of this case suggests that forum shopping is at  
2 issue, and thus this factor weighs in favor of abstention.

3 The eighth and final factor, involving whether the suits are sufficiently parallel, also  
4 weighs in favor of abstention. “[E]xact parallelism” is not required to satisfy this factor. *Id.* at  
5 982. Rather, the two proceedings need only be “substantially similar.” *Nakash*, 882 F.2d at 1416.  
6 The two proceedings both involve a dispute about the same attorney-client relationship. While  
7 there are some differences between the two lawsuits, the state court proceeding will be able to  
8 adequately address all material claims, issues, arguments, and defenses relevant to the federal  
9 proceeding, such that no “substantial doubt” exists that “the state proceedings will resolve the  
10 federal action.” *See R.R. Street & Co. Inc.*, 656 F.3d at 982. With most relevant factors weighing  
11 in favor of abstention, and no applicable factors weighing against abstention, dismissal of this case  
12 is appropriate.

13 **IT IS HEREBY ORDERED** that Defendants’ Motion to Dismiss under the *Colorado*  
14 *River* Doctrine is GRANTED. (Dkt. No. 12). Accordingly, IT IS FURTHER ORDERED that  
15 Plaintiff’s Ex Parte Application for Leave to File a Sur-Reply is hereby DENIED AS MOOT  
16 (Dckt. No.18).

17 Dated: September 6, 2016.



---

20 MANUEL L. REAL  
21 UNITED STATES DISTRICT JUDGE  
22  
23  
24  
25  
26  
27  
28