

1 **WO**

2
3
4
5
6
7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF ARIZONA**

9
10 Allstate Indemnity Company, Inc., an
Illinois Corporation,

No. CV 10-8158-PHX-DGC

11 Plaintiff,

ORDER

12 vs.

13 Carrie Reidel, a single woman; Caring
14 Presence, L.L.C., an Arizona Limited
Liability Company,

15 Defendants.

16
17 Plaintiff Allstate Indemnity Company, Inc. filed a declaratory action against
18 Defendants Carrie Reidel and Caring Presence, L.L.C.¹ Doc. 1. Defendant Reidel filed a
19 motion to dismiss or stay the case (Doc. 11), which Defendant Caring Presence did not
20 join. The motion has been fully briefed. Docs. 11, 14, 18. For the reasons that follow,
21 the Court will grant the motion and dismiss this action.²

22
23
24 ¹ Although the complaint asserts diversity jurisdiction under 28 U.S.C. § 1332, it
25 does not expressly frame the declaratory relief under the federal Declaratory Judgment
26 Act (“FDJA”), 28 U.S.C. § 2201. Defendant Reidel’s motion to dismiss assumes FDJA
was the basis for Plaintiff’s relief (Doc. 11 at 1), however, and this assumption is
confirmed by Plaintiff’s response (Doc. 14 at 2). The Court will accept the two parties’
stipulation that Plaintiff’s only claim for relief is under the FDJA.

27 ² Defendant Reidel’s request for oral argument is denied because the issues have
28 been fully briefed and oral argument will not aid the Court’s decision. *See* Fed. R. Civ. P.
78(b); *Partridge v. Reich*, 141 F.3d 920, 926 (9th Cir. 1998).

1 A summary of the facts alleged follow. Defendant Reidel was seriously injured by
2 a runaway vehicle that crashed through the wall into Reidel’s work area on the premises
3 of Defendant Caring Presence. Doc. 1. Plaintiff’s action, filed on August 24, 2010,
4 seeks a declaration that Plaintiff is not liable for coverage under a business automobile
5 liability policy issued to Caring Presence. *Id.* Plaintiff also seeks attorney fees and costs.
6 *Id.* at 7. On or about November 12, 2010, Defendant Reidel filed an action in Superior
7 Court of Arizona for Maricopa County against Allstate, Caring Presence, and ten Doe
8 defendants requesting a declaration that she is entitled to coverage under Plaintiff’s
9 policy issued to Caring Presence. Doc. 14-1.

10 On November 19, 2010, Defendant Reidel filed a motion in this Court to dismiss,
11 stay, or remand Plaintiff’s federal declaratory action under the abstention doctrines
12 announced in *Brillhart v. Excess Ins. Co. of Amer.*, 316 U.S. 491 (1942), *Wilton v. Seven*
13 *Falls Co.*, 515 U.S. 277 (1995), and their progeny. Doc. 11. Plaintiff opposes on two
14 grounds, discussed below. Doc. 14.

15 The federal Declaratory Judgment Act (“FDJA”) states that “[i]n a case of actual
16 controversy within its jurisdiction [with noted exceptions] . . . any court of the United
17 States . . . may declare the rights and other legal relations of any interested party seeking
18 such declaration, whether or not further relief is or could be sought.” 28 U.S.C.
19 § 2201(a) (emphasis added).³ In *Wilton*, a diversity case, the United States Supreme
20 Court concluded that the FDJA “created an opportunity, rather than a duty, to grant a new
21 form of relief to qualifying litigants.” 515 U.S. at 288. The Court added that “a district
22 court is authorized, in the sound exercise of its discretion, to stay or to dismiss an action
23 seeking a declaratory judgment before trial or after all arguments have drawn to a close.”
24 *Id.* Factors to consider when exercising discretion to dismiss include the futility of the
25

26
27 ³ Plaintiff’s counsel, in quoting from the FDJA, altered the text of the statute so as
28 to omit the word “may” and instead used the word “to.” Doc. 14 at 5:18. The alteration
omitted a part of the statute that is critical to the issue in this case – namely, the
discretionary nature of the FDJA remedy.

1 action, the existence of parallel proceedings that permit the “ventilation” of the issues,
2 avoiding duplicative litigation, avoiding forum shopping and procedural fencing, and
3 other considerations of “practicality and wise judicial administration.” *Wilton*, 515 U.S.
4 at 288; *Brillhart*, 316 U.S. at 494-95; *Huth v. Hartford Ins. Co. of the Midwest*, 298 F.3d
5 800, 802-04 (9th Cir. 2002) (noting that the *Brillhart* factors are “not necessarily
6 exhaustive”); *Gov’t Employees Ins. Co. v. Dizol*, 133 F.3d 1220, 1225 & n.5 (9th Cir.
7 1998) (en banc); *Chamberlain v. Allstate Ins. Co.*, 931 F.2d 1361, 1367 (9th Cir. 1991)
8 (suggesting that a district court in a FDJA action “must balance concerns of judicial
9 administration, comity, and fairness to the litigants”).

10 Defendant Reidel argues that this Court should dismiss or stay this case because a
11 parallel action exists in State court that addresses the same issues. Doc. 11 at 9-10.
12 Defendant asserts that the Ninth Circuit has typically allowed state courts to resolve
13 matters involving state law between insurers and insureds, citing to *Polido v. State Farm*
14 *Mut. Ins. Co.*, 110 F.3d 1418, 1424 (9th Cir. 1997), and *Employers Reinsurance Corp. v.*
15 *Karussos*, 65 F.3d 796, 799 (9th Cir. 1995). Doc. 11 at 9-10. Plaintiff responds that
16 abstention is the exception not the rule, quoting from *Colorado River Water*
17 *Conservation Dist. v. United States*, 424 U.S. 800, 813 (1976), and that Defendant Reidel
18 offers no exceptional circumstances that warrant abstention. Doc. 14 at 6. Plaintiff also
19 asserts that the *Brillhart* factors do not support abstention because Defendant Reidel has
20 not identified a state law issue of first impression, that Defendant should be discouraged
21 from forum shopping in state court, and that the parallel state-court litigation is
22 Defendant’s own doing after Plaintiff filed its federal declaratory action. Doc. 14 at 8-9.

23 As a threshold matter, *Colorado River*’s “exceptional circumstances” test is not
24 controlling because that case did not involve a declaratory action under FDJA. *Wilton*,
25 515 U.S. at 286 (“Distinct features of the Declaratory Judgment Act, we believe, justify a
26 standard vesting district courts with greater discretion in declaratory judgment actions
27 than that permitted under the ‘exceptional circumstances’ test of *Colorado River* and
28

1 *Moses H. Cone*”); accord *Huth*, 298 F.3d at 804 (“‘Exceptional circumstances,’ however,
2 is not the standard for discretionary jurisdiction under [the FDJA].” (citing *Wilton*, 515
3 U.S. at 286-88)). Therefore, the Court will apply the multi-factor analysis of *Brillhart*,
4 *Wilton*, and their progeny.

5 In this case, there is a parallel proceeding in state court filed by Defendant Reidel
6 on the very issues present in this declaratory action. Plaintiff does not dispute that the
7 issues involve purely state law and that the state court action would dispose of all issues
8 raised by Plaintiff in the present declaratory suit. Although Plaintiff argues that the
9 issues are not matters of first impression (Doc. 14 at 8), Plaintiff cites no support for the
10 proposition that *Brillhart* requires matters of first impression. Moreover, because the
11 state action does not appear to meet the “complete diversity” requirement of § 1332 in its
12 present state, thereby rendering it not removable to federal court, the state and federal
13 proceedings would continue to be parallel if this court were to exert jurisdiction over this
14 suit. Therefore, this factor weighs in favor of Defendant.

15 Contrary to Defendant’s contention, the issues here can be resolved in either state
16 or federal court. To the extent that *Polido* and *Karussos*, cited by Defendant, suggest an
17 insurer should first seek resolution of state law issues in a state court, both cases were
18 decided prior to *Dizol*. *Dizol* clearly notes that “there is no presumption in favor of
19 abstention in declaratory actions generally, nor in insurance coverage cases specifically.”
20 133 F.3d at 1225. Without the benefit of answers from either defendant in this case, this
21 Court cannot conclude that any issues raised by Defendant would presumptively favor
22 state-court resolution.

23 As to forum shopping and duplicate litigation, Defendant Reidel filed the state
24 action after Plaintiff filed the present declaratory suit. Although the Court may conclude
25 Defendant’s state filing is an attempt to preclude resolution of the case in federal court as
26 Plaintiff suggests (Doc. 14 at 8), the Court may just as reasonably conclude that Plaintiff
27 filed the FJDA action to preempt state resolution of the case as Defendant Reidel
28

1 suggests (Doc. 11 at 14). The latter conclusion appears more persuasive to this Court.
2 Plaintiff does not assert affirmative infringement of its rights by any defendant in this
3 case – the action is purely for declaratory relief. Moreover, Defendant asserts, and
4 Plaintiff does not deny, that “[Plaintiff] and its attorneys have yet to provide complete
5 copies of all endorsements and policy documents that are essential to determining the
6 issue of coverage for [Defendant]. [Plaintiff] is holding all the cards here. [Plaintiff] ran
7 to the courthouse in an effort to trump [Defendant] before she was ever dealt a full hand.”
8 Doc. 11 at 14:22-25. Plaintiff argues that Defendant’s state-court complaint is a mirror
9 image of Plaintiff’s federal complaint (Doc. 14 at 8), but the contents of the two
10 documents are clearly not identical. *Compare* Doc. 1 with Doc. 14-1. Finally, the fact
11 that the state-court action was filed approximately 2½ months after the federal action is
12 not dispositive. *See Huth*, 298 F.3d at 804 (noting that in *Wilton* “the Court suggested
13 that the order of filing is legally insignificant when it ruled in favor of a state action filed
14 several weeks after a federal action.” (citing *Wilton*, 515 U.S. at 279-80)). The Court
15 finds that the policy considerations of avoiding forum shopping and duplicate litigation
16 are best fulfilled by dismissing this action and permitting the state court proceedings to
17 continue.

18 From a judicial economy perspective, this Court has not expended significant
19 resources on this action to date. The motion to dismiss is the first and only material
20 motion raised in this action; no answers have yet been filed by either defendant.
21 Therefore, judicial economy would be furthered by permitting the state court to address
22 the claim.

23 On balance, the factors favor resolving this case in state court. The Court will
24 dismiss the declaratory claims against Defendant Reidel. Although Defendant Caring
25 Presence has not joined the motion to dismiss, Plaintiff has not alleged that it has an
26 actual controversy against Caring Presence. Doc. 14 at 5 (“Here, there is a substantial
27 controversy between parties having adverse legal interests, *i.e.*, Allstate and Reidel, of
28

1 sufficient immediacy and reality to warrant the issuance of a declaratory judgment.”).
2 Plaintiff has failed to show that it has standing to allege declaratory claims against
3 Defendant Caring Presence. Therefore, the Court will dismiss the claims. *See Chapman*
4 *v. Pier 1 Imports (U.S.) Inc.*, __ F.3d ____, 2011 WL 43709, *11-12 (9th Cir. Jan. 7,
5 2001) (en banc) (“[f]ederal courts are required sua sponte to examine jurisdictional issues
6 such as standing,” quoting *Bernhardt v. County of Los Angeles*, 279 F.3d 862, 868 (9th
7 Cir. 2002), and holding that the district court should have dismissed claims over which
8 Plaintiff had no standing at the onset).

9 **IT IS ORDERED:**

- 10 1. Defendant Reidel’s motion to dismiss (Doc. 11) is **granted**.
11 2. The declaratory claims against Defendant Caring Presence, L.L.C. are
12 dismissed on standing grounds.
13 3. The Clerk shall terminate this action.

14 Dated this 24th day of February, 2011.

15
16
17 

18
19 _____
20 David G. Campbell
21 United States District Judge
22
23
24
25
26
27
28