

1 have the discretion to determine whether to exercise their
2 jurisdiction to entertain such actions. See Wilton v. Seven Falls
3 Co., 515 U.S. 277, 286-87 1995). In considering this determination,
4 there is a presumption against maintaining a federal declaratory
5 action when parallel proceedings are pending in state court. See
6 Brillhart v. Excess Insurance Co., 316 U.S. 491, 495 (1942)
7 ("Ordinarily it would be uneconomical as well as vexatious for a
8 federal court to proceed in a declaratory judgment suit where
9 another suit is pending in a state court presenting the same issue,
10 not governed by federal law, between the same parties.);
11 Chamberlain v. Allstate Ins. Co., 931 F.2d 1361, 1366-67 (9th Cir.
12 1991) (quoting same). The present case, brought on the basis of
13 diversity jurisdiction, appears to involve the same issue, which
14 solely concerns state law, as Silverstein v. Bio Trust Nutrition
15 LLC, et al., Case No. 13-7343. That case was initially filed in
16 state court, was removed to federal court, and was remanded to
17 California Superior Court on October 17, 2013. (See Case No. 13-
18 7343, DKT No. 12.) As that case is now pending in California
19 Superior Court, it appears that it would be inappropriate for this
20 court to maintain the instant declaratory relief action.

21 The court also notes that Judge Anderson recently remanded
22 Belly Fat Free, LLC v. Bill Silvertein, Case No. 13-3383, a case
23 apparently involving the same set of emails at issue here, in light
24 of the same pending litigation before California Superior Court.
25 (See Case No. 13-3383, DKT No. 23.)

26 ///

27 ///

28 ///

1 Parties are ordered to file with the court an explanation of
2 their positions not exceeding five pages by November 13, 2013.

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

IT IS SO ORDERED.

Dated: November 4, 2013


DEAN D. PREGERSON
United States District Judge