

1 underlying third-party action in state court, (Docket No. 32),
2 and motion to dismiss defendant's declaratory relief
3 counterclaims for failure to state a claim pursuant to Federal
4 Rule of Civil Procedure 12(b)(6), (Docket No. 48).

5 I. Procedural and Factual Background

6 Defendant issued a property and liability insurance
7 policy to plaintiffs providing liability indemnity for covered
8 claims and a duty to defend actions for covered claims. (Compl.
9 ¶¶ 7-9 (Docket No. 1-1).) Pursuant to this policy, defendant
10 agreed to provide plaintiffs with a defense, subject to a
11 reservation of rights, in an underlying state court case brought
12 against them by competitors Fresno RV, Inc. and Clovis RV, Inc.,
13 alleging trade libel, defamation, slander per se, false light,
14 intentional interference with prospective economic relations,
15 negligent interference with prospective economic relations,
16 intentional inference with contract, unfair competition, and
17 negligent hiring. (Id. ¶¶ 10-15); see also Fresno RV, Inc. &
18 Clovis RV, Inc. v. Paul Evert's RV Country, Inc., Paul Evert,
19 Charles E. Curtis, Jr., Jim Crowell, & Aaron Lyon, No. 11-CE-GG-
20 01433 (Fresno Cnty. Superior Ct.).¹ The reservation of rights

21 ¹ The court takes judicial notice of the existence of the
22 complaint filed by Fresno RV, Inc. and Clovis RV, Inc., the
23 tentative statement of decision, the statement of decision, the
24 notice of appeal, the answer to the complaint, and the motion for
25 new trial filed in Fresno County Superior Court in the underlying
26 case of Fresno RV, Inc. & Clovis RV, Inc. v. Paul Evert's RV
27 Country, Inc., Paul Evert, Charles E. Curtis, Jr., Jim Crowell, &
28 Aaron Lyon, No. 11-CE-GG-01433 (Fresno Cnty. Superior Ct.),
because they are matters of public record whose accuracy cannot
reasonably be questioned and the Superior Court proceedings have
a direct relation to the matters at issue in the present action.
See Fed. R. Evid. 201(b) ("The court may judicially notice a fact
that is not subject to reasonable dispute because it: . . . (2)

1 letter stated that there was no coverage for intentionally or
2 inherently harmful acts or punitive damages under California law.
3 (Def.'s Am. Countercl. ¶ 14 (Docket No. 40).) It also cited the
4 insurance policy exclusion for "dishonest, fraudulent, or
5 criminal" acts committed "with intent to cause harm." (Id.)

6 The Superior Court found plaintiffs jointly and
7 severally liable for defamation in the underlying action and
8 awarded compensatory damages of \$500,000 against Paul Evert's RV
9 Country, Inc. and also found that plaintiffs acted with the
10 requisite fraud, oppression, and malice to warrant an award of
11 punitive damages of \$3,000,000 against Paul Evert, \$1,000,000
12 against Charles Curtis, and \$80,000 against Aaron Lyon. (Id.
13 ¶¶ 16-17; Pls.' Mot. to Stay at 4, Ex.3, Fresno Cnty. Superior
14 Ct. Statement of Decision at 28 (Docket No. 32-1).) This
15 judgment is now on appeal.

16 Plaintiffs contend that defendant refused to properly
17 defend them in the underlying state court action by failing to
18 provide independent defense counsel, failing to keep plaintiffs
19 advised of all settlement demands, and allowing a reasonable
20 settlement offer to expire. Plaintiffs allege two causes of

21 can be accurately and readily determined from sources whose
22 accuracy cannot reasonably be questioned."); United States ex
23 rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971
24 F.2d 244, 248 (9th Cir. 1992) (stating that a federal court may
25 take judicial notice of records and "proceedings in other courts,
26 both within and without the federal judicial system, if those
27 proceedings have a direct relation to matters at issue"); Lee v.
28 City of Los Angeles, 250 F.3d 668, 690 (9th Cir. 2001) ("On a
Rule 12(b)(6) motion to dismiss, when a court takes judicial
notice of another court's opinion, it may do so 'not for the
truth of the facts recited therein, but for the existence of the
opinion, which is not subject to reasonable dispute over its
authenticity.'" (citation omitted)).

1 action: (1) breach of written contract, and (2) breach of the
2 implied covenant of good faith and fair dealing. (Notice of
3 Removal Ex. A, Pls.' Compl. ("Compl.") (Docket No. 1-1).)

4 Defendant filed three counterclaims for declaratory
5 relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-
6 2201: (1) defendant will have no obligation to indemnify
7 plaintiffs for any award of punitive damages in the underlying
8 action; (2) defendant will have no obligation to indemnify
9 plaintiffs for the Superior Court's award of compensatory
10 damages; and (3) defendant's funding of the defense of plaintiffs
11 in the underlying action satisfies its duty to defend under the
12 insurance policy. (Def.'s Am. Countercl. at 5.)

13 II. Motion to Stay

14 Plaintiffs seek a stay of both defendant's declaratory
15 relief counterclaims regarding its duty to defend and indemnify
16 as well as a stay of plaintiffs' breach of contract and good
17 faith and fair dealing claims pending resolution of the
18 underlying third-party action in state court. The court has
19 "inherent authority to stay the entire action before it if a stay
20 is 'efficient for its own docket and the fairest course for the
21 parties.'" Trs. of the Eighth Dist. Elec. Pension & Benefits
22 Funds, Civ. No. 1:12-126 WBS, 2012 WL 5273229, at *1 (E.D. Cal.
23 Oct. 22, 2012) (citation omitted); see also Zurich Am. Ins. Co.
24 v. Trans Cal Assocs., Civ. No. 2:10-1957 WBS KJN, 2011 WL
25 6329959, at *3 (E.D. Cal. Dec. 16, 2011).

26 It would not be the fairest course of action to the
27 parties for the court to stay the present action. If the
28 Superior Court judgment is affirmed on appeal, the third-party

1 plaintiffs in the underlying state action may immediately seek to
2 recover their damages. If the court stays the action and waits
3 until the underlying appeal is resolved, defendant could be
4 forced to indemnify the third-party plaintiffs when it has no
5 obligation to do so or defendant could refuse to pay when it in
6 fact has an obligation to indemnify, forcing plaintiffs to bear
7 the costs. It is therefore important for both parties in the
8 present action to resolve the question of indemnity prior to the
9 resolution of the underlying state action. Furthermore, there is
10 little risk of inconsistent factual determinations or prejudice
11 to plaintiffs in the underlying state action because defendant
12 does not seek to establish adverse facts on the issue of fault
13 but rather to assess the legal ramifications of the Superior
14 Court's finding of facts. Accordingly, plaintiffs' motion for a
15 stay will be denied.

16 III. Motion to Dismiss

17 Under the Federal Declaratory Judgment Act, "[i]n a
18 case of actual controversy . . . any court of the United States .
19 . . may declare the rights and other legal relations of any
20 interested party seeking such declaration, whether or not further
21 relief is or could be sought." 28 U.S.C. § 2201(a). Even though
22 both parties cite California case authority, when a claim for
23 declaratory relief is in federal court based on diversity of
24 citizenship "the question whether to exercise federal
25 jurisdiction to resolve the controversy [becomes] a procedural
26 question of federal law" while substantive issues in the
27 declaratory judgment action are resolved under state law. Golden
28 Eagles Ins. Co. v. Travelers Cos., 103 F.3d 750, 752 (9th Cir.

1 1997), overruled on other grounds by Gov't Emps. Ins. Co. v.
2 Dizol, 133 F.3d 1220 (9th Cir. 1998); see also Brosious v. JP
3 Morgan Chase Bank, N.A., Civ. No. 15-00047 KJM DAD, 2015 WL
4 3486953, at *3 (E.D. Cal. June 2, 2015) ("The propriety of
5 granting declaratory relief in federal court is a procedural
6 question governed by federal law, even when the court's
7 jurisdiction is based on diversity of citizenship."). The state
8 and federal standards for declaratory judgment are, however,
9 generally equivalent. Compare 28 U.S.C. § 2201(a), with Cal.
10 Civ. Proc. Code § 1060 ("Any person interested under a written
11 instrument . . . or under a contract . . . may, in cases of
12 actual controversy relating to the legal rights and duties of the
13 respective parties, bring an original action . . . for a
14 declaration of his or her rights and duties. . . . [T]he court
15 may make a binding declaration of these rights or duties, whether
16 or not further relief is or could be claimed at the time.").

17 To determine whether a declaratory judgment is
18 appropriate, the court must (1) "inquire whether there is an
19 actual case or controversy within its jurisdiction" and (2)
20 "decide whether to exercise its jurisdiction by analyzing the
21 factors set out in Brillhart v. Excess Ins. Co., 316 U.S. 491
22 (1942), and its progeny." Principal Life Ins. Co. v. Robinson,
23 394 F.3d 665, 669 (9th Cir. 2005). Under Brillhart, potentially
24 relevant factors include avoiding duplicative litigation,
25 avoiding needless determination of state law issues, and
26 considering whether the declaratory action will serve a useful
27 purpose in clarifying the legal relations at issue. Id. at 672.
28 The court's decision of whether to exercise jurisdiction "is


1 discretionary, for the Declaratory Judgment Act is 'deliberately
2 cast in terms of permissive, rather than mandatory, authority.'" Gov't Emps. Ins. Co. v. Dizol, 133 F.3d 1220, 1223 (9th Cir.
3 1998) (citation omitted).

4
5 Defendant's declaratory relief counterclaims are not
6 merely duplicative of plaintiffs' causes of action, which are
7 grounded in allegations of bad faith and breach of contract
8 rather than the scope of the insurance policy and California
9 coverage exceptions. Further, as discussed above, defendant's
10 declaratory relief counterclaims will serve a useful purpose by
11 determining defendant's duty to indemnify and the scope of its
12 duty to defend before the underlying state court action is
13 resolved and defendant has a possible duty to pay the third-party
14 plaintiffs. Accordingly, plaintiffs' motion to dismiss
15 defendant's counterclaims will also be denied.

16 IT IS THEREFORE ORDERED that plaintiffs' motion to stay
17 the present action pending resolution of the underlying state
18 court action (Docket No. 32) be, and the same hereby is, DENIED.

19 IT IS FURTHER ORDERED that plaintiffs' motion to
20 dismiss (Docket No. 48) be, and the same hereby is, DENIED.

21 Dated: June 14, 2016

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23 WILLIAM B. SHUBB
24 UNITED STATES DISTRICT JUDGE
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