

1
2
3
4
5
6
7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA
9

10 DUSTIN K. ADLER, an individual,)

No. 2:08-cv-01333 JAM EFB

11 Plaintiff,)

ORDER GRANTING MOTION TO
DISMISS

12 v.)
13)

14 RELYNET, INC., a California)
15 Corporation, MICHAEL DICARLO,)
16 an individual, and DOES 1)
through 50, inclusively,)

17 Defendants.)
18)

19 RELYNET, INC., a California)
20 Corporation, MICHAEL DICARLO,)
21 an individual, and DOES 1)
22 through 50, inclusively,)

23 Counterclaimants,)
24)

25 v.)
26)

27 DUSTIN K. ADLER, an individual,)
28)

Counterdefendant.)
)

1 This matter comes before the Court on
2 Plaintiff/Counterdefendant Dustin K. Adler's motion to dismiss
3 pursuant to Rule 12(b)(1) and 12(b)(6) of the Federal Rules of
4 Civil Procedure. Defendants/Counterclaimants Relynet, Inc. and
5 Michael Dicarlo oppose the motion.¹ For the reasons set forth
6 below, Plaintiff/Counterdefendant's motion is GRANTED with
7
8 prejudice.

9 On June 12, 2008, Plaintiff/Counderdefendant Dustin K.
10 Adler ("Adler"), filed this action ("the federal action")
11 against Defendants, RelyNet, Inc. ("RelyNet") and Michael
12 DiCarlo ("DiCarlo") (collectively "Defendants"), alleging
13 infringement of his copyrighted ZeroForum software and fraud
14 with respect to his ownership in RelyNet. (Docket # 1.)
15 Defendants answered the Complaint and also filed counterclaims
16 seeking declaratory relief. (Docket # 9.) Three days after
17 filing the federal action, Adler filed a state court action
18 ("the state action") under California Corporations Code sections
19 709 and 1603 alleging deprivation of his ownership rights in
20 RelyNet. (Defs. Mot. Amend 2:14-17.)
21
22
23

24 On April 9, 2009, this Court granted RelyNet and DiCarlo
25 leave to amend their counterclaims to expand the scope of issues
26

27
28 ¹ Because oral argument will not be of material assistance,
the court orders this matter submitted on the briefs. E.D. Cal.
L.R. 78-230(h).

1 for which they seek declaratory relief. (Docket # 45, 46.) At
2 the time, the Court was informed that a motion to stay the state
3 court action was tentatively granted by the state court. Id.
4 As such, this Court held that in the interest of judicial
5 efficiency and economy, Defendants were permitted to amend their
6 counterclaims to broaden the scope for which they seek
7 declaratory relief to include the subject matter of the state
8 action, namely, a declaration of ownership/control in RelyNet.
9 Id. Specifically, Defendants added paragraphs 24, 25, 26(a),
10 26(c), 26(e), 26(f) and paragraph 4 of the Prayer for Relief.
11 (Docket # 46.) On the same day this Court issued its Order
12 permitting Defendants to amend their counterclaims, the state
13 court reversed its tentative ruling and issued an order denying
14 Defendants' motion to stay the state court claims. (Pl's Mot.,
15 Doc. # 60 at 2:7-10.)

16
17 Subsequent to the state court order, Adler filed the
18 instant motion to dismiss or abate Defendants' declaratory
19 relief counterclaims paragraphs 24, 25, 26(a), 26(c), 26(e),
20 26(f) and paragraph 4 of the Prayer for Relief. (Doc. # 60.) For
21 the reasons stated below, the Plaintiff's Motion to Dismiss is
22 GRANTED with prejudice.

23
24 It is well established that even though jurisdiction may
25 exist under the Declaratory Judgment Act the granting of
26 declaratory judgments is at the discretion of the district
27
28

1 court. See Brillhart v. Excess Ins. Co. of Am., 316 U.S. 491,
2 494 (1942); see also Shell Oil Co. v. Frusetta, 290 F.2d 689,
3 692(9th Cir. 1961). "Ordinarily it would be uneconomical as
4 well as vexatious for a federal court to proceed in a
5 declaratory judgment suit where another suit is pending in a
6 state court presenting the same issues, not governed by federal
7 law, between the same parties." Brillhart, 316 U.S. at 495.
8 "Gratuitous interference with the orderly and comprehensive
9 disposition of state court litigation should be avoided." Id. A
10 court may properly invoke the doctrine of abstention, to stay or
11 dismiss a federal action because of a pending state action
12 "where such action will avoid duplicative litigation, promote
13 sound and economical allocation of judicial resources, and
14 remove any need for this court to resolve issues of state law."
15 See, e.g., Entex Industries, Inc. v. Warner Communications, 487
16 F.Supp. 46, 49 (C.D. Cal 1980).

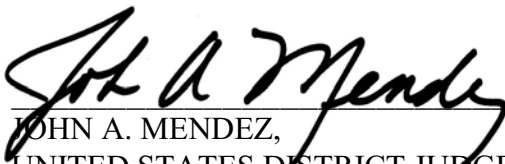
20 Here, Adler's pending state court action presents the same
21 issue of state law as is set forth in Defendants' amended
22 counterclaim for declaratory relief in the federal action.
23 Adler's state court action seeks to determine whether Adler has
24 ownership rights in RelyNet. Paragraphs 24, 25, 26(a), 26(c),
25 26(e), 26(f) and paragraph 4 of the Prayer for Relief of
26 Defendants' amended counterclaim require resolution of the same
27 ownership issue. Since all issues between the parties will be
28

1 effectively determined in the pending state action, this Court
2 may properly refuse to entertain the declaratory judgment action
3 of Defendants/Counterclaimants. Brillhart, 316 U.S. 491 (1942).
4 As such, the Court concludes that the amended declaratory relief
5 issues sought by Defendants can be more properly resolved in the
6 pending state action, and that abstention by this Court through
7 dismissal of this federal action will promote judicial economy,
8 efficiency and administration of justice.
9

10
11 For the reasons stated above, Plaintiff's Motion to Dismiss
12 or Abate paragraphs 24, 25, 26(a), 26(c), 26(e), 26(f) and
13 paragraph 4 of the Prayer for Relief in Defendants' declaratory
14 relief counterclaim is GRANTED with prejudice.
15

16
17 IT IS SO ORDERED.

18 Dated: September 4, 2009


JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE