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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CENTURY SURETY COMPANY, an  
Ohio Corporation,

Plaintiff,

v.

MO FOODS, LLC, a limited  
liability company; MANISH  
PATEL, an individual; TMPM,  
LLC, a limited liability  
company; PRADIP PATEL, an  
individual, NEHA PATEL, an  
individual; SEAN CANILOA, an  
individual; RUBEN MORALES; an  
individual; WAYNE PERARANDA;  
an individual; DEBORAH  
PENARANDA; an individual; and  
PATRICK PENARANDA; an  
individual,

Defendants.

No. 2:13-cv-01387-GEB-EFB

**ORDER DENYING STAY MOTIONS**

Defendants Wayne, Deborah, and Patrick Penaranda ("the Penaranda Defendants") and Defendants Mo Foods, LLC and Manish Patel move for an order staying this declaratory judgment action based on a lawsuit pending in "the Superior Court of the State of California, County of El Dorado, entitled Wayne Pernaranda, et al., Plaintiffs v. Mo's Place, Inc., et al., Case No. SC20130043." (Mot. to Stay 20:3-4, 3:8-9, ECF No. 48.) Defendants argue the state-court lawsuit should be resolved before this

1 federal action proceeds to judgment. Plaintiff Century Surety  
2 Company ("Century Surety") opposes the motion.

3 **I. BACKGROUND**

4 The factual context concerning the motion follows. The  
5 Penaranda Defendants allege in their state-court lawsuit that on  
6 the evening of May 19, 2012, an altercation occurred at a bar  
7 operated by Mo Foods, LLC during which brothers Patrick and Derek  
8 Penaranda suffered injuries. (Pl.'s Opp'n, Decl. of H. Douglas  
9 Galt Ex. 1, First Amend. Compl. ("FAC") ¶¶ 4, 28-43, ECF No. 57-  
10 1.) The Penaranda Defendants allege Derek Penaranda died five  
11 months later as a result of the injuries he sustained. (Id. ¶  
12 49.) The Penaranda Defendants allege in their state lawsuit  
13 against Mo Foods and other defendants claims of assault, battery,  
14 negligence, negligent infliction of emotional distress,  
15 intentional infliction of emotional distress, negligent  
16 hiring/supervision, and wrongful death.

17 When the altercation occurred, Mo Foods, LLC was  
18 insured under a Century Surety general liability policy that  
19 excludes from coverage any

20 'bodily injury' . . . or 'personal . . .  
21 injury' arising out of or resulting from:

22 (a) any actual, threatened or alleged  
23 assault or battery;

24 (b) the failure of any insured or anyone  
25 else for whom an insured is or could be  
26 held legally liable to prevent or  
27 suppress any assault or battery;

28 . . .  
(e) the negligent:

- (i) employment;
- (ii) investigation;
- (iii) supervision;
- (iv) training;
- (v) retention;

of a person for whom any insured is or  
ever was legally responsible and whose

1                   conduct would be excluded by [] (a), (b),  
2                   . . . or (e) above.  
3                   (f) any other cause of action or claim  
4                   arising out of or as a result of [] (a),  
5                   (b), or . . . (e) above.

6 (Compl. ¶ 19.1 (emphasis added).)

7                   Century Surety "assumed [Mo Foods'] defense [in the  
8 state lawsuit] while reserving the right to dispute coverage."  
9 (Id. ¶ 20.) In this federal action Century Surety seeks  
10 reimbursement of hitherto incurred defense expenses and  
11 declaratory relief that Century Surety "has no obligation . . .  
12 to defend" and "no obligation . . . to pay any judgment that  
13 might be entered in the [Penaranda Defendants' state-court]  
14 [l]iability [a]ction." (Id. 6:27-28, 7:2-3.)

## 15                   **II. DISCUSSION**

### 16                   **a. Brillhart Stay Request**

17                   The Penaranda Defendants seek a stay of this federal  
18 lawsuit under Brillhart v. Excess Insurance Co. of America, 316  
19 U.S. 491 (1942), arguing this declaratory judgment action  
20 requires needless determination of state-law issues, is the  
21 product of forum shopping, and shares factual questions with  
22 their state-court liability lawsuit. Century Surety counters that  
23 California law is clear on the enforceability of assault and  
24 battery exclusions in the applicable liability insurance policy,  
25 and its "duty to defend does not depend on adjudicated facts but,  
26 instead on the Penaranda[] [Defendants'] allegations" pled in  
27 their state lawsuit complaint. (Pl.'s Opp'n 8:12-13, 7:24-25.)

28                   The Federal Declaratory Judgment Act authorizes federal  
courts to "declare the rights and other legal relations of any  
interested party seeking such declaration." 28 U.S.C. § 2201(a).

1 "Based on the permissive nature of the Declaratory Judgment Act,  
2 in Brillhart[], the Supreme Court held that a district court has  
3 discretion to dismiss a federal declaratory judgment action when  
4 'the questions in controversy . . . can better be settled in a  
5 pending state court proceeding.'" R.R. St. & Co. v. Transp. Ins.  
6 Co., 656 F.3d 966, 975 (9th Cir. 2011) (alteration in original)  
7 (quoting Brillhart, 316 U.S. at 495). "The Court reaffirmed this  
8 principle in Wilton, holding that a district court may decline to  
9 entertain a federal declaratory judgment action when state court  
10 proceedings 'present[] opportunit[ies] for ventilation of the  
11 same state law issues.'" Id. (quoting Wilton v. Seven Falls Co.,  
12 515 U.S. 277, 289-90 (1995)).

13 "In Brillhart, the Court articulated three factors that  
14 courts should consider when examining the propriety of  
15 entertaining a declaratory judgment action: avoiding 'needless  
16 determination of state law issues'; discouraging 'forum  
17 shopping'; and avoiding 'duplicative litigation.'" Id. (citing  
18 Gov't Emps. Ins. Co. v. Dizol, 133 F.3d 1220, 1224 (9th Cir.  
19 1998) (en banc)). Although the Brillhart factors "are not  
20 exhaustive," they "remain the philosophical touchstone for the  
21 district court." Dizol, 133 F.3d at 1225 n.5, 1225.

22 **1. Avoiding Needless Determinations of State Law**  
23 **Issues**

24 The Penaranda Defendants argue resolution of this  
25 federal action will require needless determination of state law  
26 issues since "[t]here is absolutely no federal law involved."  
27 (Mot. to Stay 8:12.) Century Surety counters: "[T]here is no  
28 pending state court action in which [its] coverage obligations

1 will be adjudicated.” (Pl.’s Opp’n 8:10-12.)

2 “[I]nsurance law [is] an area that Congress has  
3 expressly left to the states through the McCarran-Ferguson Act.  
4 15 U.S.C. §§ 1011-12.” Cont’l Cas. Co. v. Robsac Indus., 947 F.2d  
5 1369, 1371 (9th Cir. 1991), overruled in part on other grounds,  
6 Dizol, 133 F.3d at 1226. Nevertheless, “[t]here is no presumption  
7 in favor of abstention . . . in insurance coverage cases.” Dizol,  
8 133 F.3d at 1225. However, abstention is favored when “[t]he  
9 precise state law issues at stake in [a federal lawsuit] are the  
10 subject of a parallel proceeding in state court.” Robsac, 947  
11 F.2d at 1371.

12 Consideration of the operative complaints in the  
13 respective federal and state lawsuits evinces different state law  
14 issues are litigated. The state-court complaint seeks damages for  
15 alleged tortious conduct, whereas the complaint in this federal  
16 lawsuit seeks a declaration that a liability insurance policy  
17 excludes certain torts from coverage. Therefore, this factor does  
18 not favor staying the action.

## 19 **2. Avoiding Forum Shopping**

20 The Penaranda Defendants argue Plaintiff “could have  
21 chosen to bring a declaratory judgment action in El Dorado County  
22 Superior Court,” where its state lawsuit is pending, but chose to  
23 “file[] the present suit in federal court because it perceived a  
24 tactical advantage in litigating in the federal forum.” (Mot. to  
25 Stay 15:2-3, 15:7-8.)

26 The forum-shopping factor is aimed at “discouraging an  
27 insurer from . . . filing a federal court declaratory action to  
28 see if it might fare better in federal court at the same time the

1 insurer is engaged in a state court action.” Am. Cas. Co. of  
2 Reading, Pa. v. Krieger, 181 F.3d 1113, 1119 (9th Cir. 1999).  
3 However, Century Surety is not engaged in a state-court action  
4 within the evident ambit of this factor. Therefore, this factor  
5 does not weigh in favor of a stay.

### 6 **3. Avoiding Duplicative Litigation**

7 The Penaranda Defendants argue this federal action  
8 “turns on factual questions that are the same or overlap with  
9 those at issue in the underlying state action”—specifically,  
10 “the nature of the alleged claims.” (Mot. to Stay 8:26-7, 10:1.)  
11 Century Surety counters that its “duty to defend does not depend  
12 on adjudicated facts but, instead, on the [Penaranda Defendants’]  
13 allegations” pled in the state lawsuit. (Pl.’s Opp’n 7:24-25.)

14 The duplicative litigation factor favors a stay when  
15 “the federal declaratory suit is virtually the mirror image of  
16 the state suit.” Robsac, 947 F.2d at 1373. This factor involves  
17 consideration of whether “factual questions [in this federal  
18 lawsuit] . . . overlap with those at issue in the underlying  
19 state court litigation.” Emps. Reins. Copr. v. Karussos, 65 F.3d  
20 796, 800 (9th Cir. 1995), overruled in part on other grounds,  
21 Dizol, 133 F.3d at 1226.

22 The issue in this federal action is whether the  
23 liability insurance policy’s assault and battery exclusion  
24 applies to the allegations pled in the Penaranda Defendants’  
25 state-court complaint. This issue does not overlap with the  
26 factual issues in the state-court liability lawsuit. Accordingly,  
27 this factor does not weigh in favor of a stay.

28 Since the three Brillhart factors weigh in favor of

1 allowing the federal action to proceed, the request for a stay  
2 under Brillhart is DENIED.

3 **b. Remaining Stay Argument**

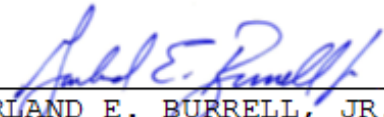
4 The remaining stay arguments are unpersuasive since  
5 they are based on the erroneous conclusion that resolution of the  
6 federal action depends on resolving factual issues in the state  
7 action.

8 **4. CONCLUSION**

9 For the stated reasons, the stay motions are DENIED.

10 Dated: February 21, 2014

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GARIAND E. BURRELL, JR.  
Senior United States District Judge