

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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4
5 UNITED FINANCIAL CASUALTY) 2:16-CV-02098 LEK
6 COMPANY,)
7)
8 Plaintiff,)
9)
10 vs.)
11)
12 J.M.L., a minor, by and)
13 through her guardian ad)
14 litem, Michelle Rogers, et)
15 al.)
16)
17 Defendants.)
18 _____)

**ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANT J.M.L.'S MOTION TO STAY OR
IN THE ALTERNATIVE DISMISS THIS ACTION**

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23 On November 2, 2016, Defendant J.M.L., a minor, by and
24 through her Guardian ad Litem, Michelle Rogers ("J.M.L."), filed
25 a Motion to Stay or in the Alternative Dismiss this Action
26 ("Motion").¹ [Dkt. no. 17.] Plaintiff United Financial Casualty
27 Company ("United Financial") filed its memorandum in opposition
28 on November 21, 2016, and J.M.L. filed her reply on November 29,
29 2016. [Dkt. nos. 22, 25.] On February 23, 2017, this Court
30 issued an entering order reserving ruling on the Motion until all
31 of the defendants were served with the First Amended Complaint
32 for Declaratory Relief ("First Amended Complaint"), [filed
33 2/17/17 (dkt. no. 28),] and had the opportunity to respond to the

34 ¹ The version of the Motion filed on November 2, 2016 was
35 not properly redacted. J.M.L. filed a properly redacted version
36 on November 22, 2016. [Dkt. no. 23.] All references to the
37 Motion refer to the November 22 version.

1 Motion ("2/23/17 EO"). [Dkt. no. 31.] On August 31, 2017,
2 United Financial filed a notice stating that it complied with the
3 2/23/17 EO. [Dkt. no. 61.] On September 6, 2017, J.M.L. filed a
4 supplemental memorandum in support of the Motion ("Supplemental
5 Memorandum"). [Dkt. no. 63.] The Court finds the Motion
6 suitable for disposition without a hearing pursuant to
7 L.R. 230(g) of the Local Rules of the United States District
8 Court for the Eastern District of California ("Local Rules").
9 J.M.L.'s Motion is hereby granted in part and denied in part, for
10 the reasons set forth below.

11 BACKGROUND

12 United Financial filed its original Complaint for
13 Declaratory Relief on September 1, 2016. Jurisdiction over the
14 instant case is based on diversity. [First Amended Complaint at
15 ¶ 1.] United Financial seeks a declaratory judgment regarding
16 the commercial automobile insurance policy it issued to Defendant
17 Manjit Singh, doing business as Top Raman Trucking ("Singh"),
18 policy number 03036852-0 ("the Policy"). [Id. at ¶ 24.] The
19 Policy also has a DMV 67 MCP endorsement, in compliance with Cal.
20 Code Regs. tit. 13, § 220.06(b) ("the Endorsement"). [Id. at
21 ¶ 28.]

22 On March 16, 2015, "Ewell Levy died as a result of a
23 crash while he was driving a 2009 Sterling tractor truck towing
24 two trailers loaded with dirt and gravel" ("the Incident"). [Id.

1 at ¶ 29.] All of the defendants in this case - with the
2 exception of Singh - have filed an action in a California state
3 court related to the Incident (collectively, "the State Court
4 Actions"). The State Court Actions assert either: wrongful
5 death, bodily injury, or property damage claims against Singh; or
6 claims alleging an interest in the Policy or the Endorsement.
7 Singh tendered the defense in the State Court Actions to United
8 Financial, which is defending him pursuant to a reservation of
9 rights to, *inter alia*, deny coverage under the Policy and the
10 Endorsement. [Id. at ¶¶ 30-31.]

11 The First Amended Complaint alleges the following
12 claims: a claim for a declaratory judgment that United Financial
13 has no duty under the Policy to defend Singh in the State Court
14 Actions ("Count I"); a claim for a declaratory judgment that
15 United Financial has no duty under the Policy to indemnify Singh
16 against the claims in the State Court Actions ("Count II"); and a
17 claim for a declaratory judgment that United Financial has no
18 duty under the Endorsement to pay for any legal liability that
19 Singh has for the claims in the State Court Actions
20 ("Count III"). In addition to the declaratory relief, United
21 Financial prays for costs of suit and any other appropriate
22 relief.

23 As of August 26, 2016, four of the initial State Court
24 Actions were pending in the Superior Court in the County of

1 Solano ("Solano Court") - J.M.L. v. Parvinder Kumar Gir, et al.,
2 Case No. FCS-045211 ("J.M.L. v. Gir"); LaToia Levy Johnson, et
3 al. v. Parvinder Kumar Gir, et al., Case No. FCS-047005
4 ("Johnson"); Wesco Insurance Co. v. J.M.L., et al., Case No. FCS-
5 04099 ("Wesco Insurance"); and United Fire & Casualty Co. v. Roby
6 Trucking, Inc., et al., Case No. FCS-047177 ("United Fire").
7 [Motion, Decl. of Thomas C. Knowles in Supp. of Motion ("Knowles
8 Decl."), Exh. A (Notice of Order and Order Relating Cases, of
9 Reassignment, and Notice of Case Management Conference, filed on
10 8/26/16 in the State Court Actions ("Case Management Order")).]
11 As of the date of the Case Management Order, the four Solano
12 Court cases were either directly assigned or transferred to Judge
13 Michael Mattice and a fifth case - Farmers Insurance Exchange v.
14 Roby Trucking, Inc., et al., Case No. MSC-15-01794 ("Farmers
15 Insurance") - was pending in the Superior Court for the County of
16 Contra Costa ("Contra Costa Court"), but was expected to be
17 transferred to the Solano Court by stipulation. The Case
18 Management Order stated that, if Farmers Insurance was
19 transferred to the Solano Court, it would be deemed a related
20 case to those before Judge Mattice. [Id. at 3-4, 8.]

21 The parties were later advised of a sixth case filed in
22 the Contra Costa Court - Rogelio Ramirez-Munoz, et al. v. Roby
23 Truck [sic], RIS Leasing, et al., Case No. C16-00172 ("Ramirez-
24 Munoz"). [Knowles Decl., Exh. B (Joint Case Management Statement

1 in the State Court Actions, dated October 3 and 29, 2016) at 5.²
2 J.M.L. v. Gir and Johnson are wrongful death actions, and Munoz-
3 Ramirez is a personal injury action. [Id. at 10.] United Fire
4 and Farmers Insurance are subrogation actions, and Wesco
5 Insurance "is an interpleader action which will ultimately become
6 a forum in which numerous claimants with varying types of claims
7 (wrongful death, personal injury, structure damage, commercial
8 loss, etc.) to the limited resources, will be contesting shares
9 with one another." [Id.]

10 As of the date of the Supplemental Memorandum, two
11 additional cases had been filed in the Solano Court.³ One of the
12 two new cases "seek[s] to pierce the corporate veil" and the
13 other "seek[s] property damage and business losses for which
14 there was insufficient insurance." [Suppl. Mem. at 2.] One of
15 the Contra Costa Court cases was dismissed and re-filed in the
16 Solano Court. All of the Solano Court cases are pending before
17 Judge Mattice. The one case remaining in the Contra Costa Court
18 had an unopposed motion for transfer to Judge Mattice in the
19 Solano Court. The motion was scheduled for hearing on
20 September 20, 2017. [Id.]

22 ² It is unclear from the Knowles Declaration and Exhibit B
23 whether the Joint Case Management Statement was filed in the
24 State Court Actions.

25 ³ J.M.L. does not identify the new cases.

1 permissive, rather than mandatory, authority."
2 Government Employees Ins. Co. v. Dizol, 133 F.3d
3 1220, 1223 (9th Cir. 1998) (quoting Public Serv.
4 Comm'n of Utah v. Wycoff Co., 344 U.S. 237, 250,
5 73 S. Ct. 236, 97 L. Ed. 291 (1952)). "The Act
6 'gave the federal courts competence to make a
7 declaration of rights; it did not impose a duty to
8 do so.'" Id. (quoting Public Affairs Associates
9 v. Rickover, 369 U.S. 111, 1112, 82 S. Ct. 580, 7
10 L. Ed. 2d 604 (1962)).
11

12 When deciding a motion to stay proceedings in
13 a Declaratory Judgment Act action due to a pending
14 proceeding in state court, the Court must consider
15 the factors set forth in Brillhart v. Excess Ins.
16 Co. of America, 316 U.S. 491, 62 S. Ct. 1173, 86
17 L. Ed. 1620 (1942) and Dizol. The Court
18 (1) should avoid needless determination of state
19 law issues, (2) should discourage litigants from
20 filing declaratory actions as a means of forum
21 shopping, and (3) should avoid duplicative
22 litigation. Dizol, 133 F.3d at 1225. The Court
23 should also consider (4) whether the declaratory
24 action will settle all aspects of the controversy,
25 (5) whether the declaratory action will serve a
26 useful purpose in clarifying the legal relations
27 at issue, (6) whether the declaratory action is
28 being sought merely for the purposes of procedural
29 fencing or to obtain a 'res judicata' advantage,
30 (7) whether the use of a declaratory action will
31 result in entanglement between the federal and
32 state court systems, (8) the convenience of the
33 parties, and (9) the availability and relative
34 convenience of other remedies. Id. at 1225 n.5.
35

36 N.E. Ins. Co. v. Masonmar, Inc., No. 1:13-cv-00364-AWI-SAB, 2013
37 WL 2474682, at *2 (E.D. Cal. June 7, 2013). This district court
38 also uses these factors in the analysis of whether to dismiss a
39 declaratory judgment action in light of pending state court
40 proceedings. See, e.g., Atain Specialty Ins. Co. v. Hernandez,
41 No. 2:13-cv-00530-MCE-KJN, 2014 WL 295202, at *3 (E.D. Cal.
42 Jan. 24, 2014); accord R.R. St. & Co. Inc. v. Transp. Ins. Co.,

1 656 F.3d 966, 975 (9th Cir. 2011) (noting that, in Brillhart,
2 "the Supreme Court held that a district court has discretion to
3 dismiss a federal declaratory judgment action when 'the questions
4 in controversy . . . can better be settled in' a pending state
5 court proceeding" (alteration in R.R. St.) (quoting Brillhart,
6 316 U.S. at 495, 62 S. Ct. 1173)).

7 DISCUSSION

8 I. Brillhart/Dizol Factors

9 This Court begins by examining whether the
10 Brillhart/Dizol factors weigh in favor of or against the exercise
11 of jurisdiction in this case.

12 A. Avoiding Needless Determinations of State Law Issues

13 This district court has stated:

14 This factor relates to unsettled issues of state
15 law, not unsettled issues of fact in the specific
16 action. Cont'l Cas. Co. v. Robsac Indus., 947
17 F.2d 1367, 1371 (9th Cir. 1991), *overruled on*
18 *other grounds by Dizol*, 133 F.3d at 1224-25. A
19 stay is warranted where "[t]he precise state law
20 issues at stake in the present case are the
21 subject of a parallel proceeding in state court."
22 Id.

23
24 James River Ins. Co v. RV Tomlinson Const., Inc., No. CIV.

25 2:13-00140 WBS AC, 2013 WL 1934354, at *2 (E.D. Cal. May 9, 2013)
26 (alteration in James River).

27 The instant case will involve the interpretation of the
28 Motor Carriers of Property Permit Act ("MCPPA"), Cal. Veh. Code,
29 § 34600 *et seq.* The MCPPA requires, subject to certain

1 exceptions, "[e]very motor carrier of property," to maintain
2 "adequate protection against liability imposed by law upon those
3 carriers for the payment of damages in the amount of a combined
4 single limit of not less than seven hundred fifty thousand
5 dollars (\$750,000) on account of bodily injuries to, or death of,
6 one or more persons, or damage to or destruction of, property."
7 Cal. Veh. Code § 34631.5(a)(1). While the issues in this case
8 are state law issues, California insurance law is well
9 established, and the unsettled issues in the case are factual,
10 not legal. Thus, the first Brillhart/Dizol factor weighs against
11 the stay or dismissal of this action.

12 **B. Discouraging Forum Shopping**

13 This district court has stated:

14 The Ninth Circuit has said that Brillhart's
15 forum shopping factor relates to "the 'defensive'
16 or 'reactive' nature of a federal declaratory
17 judgment suit," and such a suit "would justify a
18 court's decision not to exercise jurisdiction."
19 Robsac, 947 F.2d at 1371 (citation and internal
20 quotation marks omitted).

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24 Nothing in the record before the court
25 supports a finding that either party's suit was
26 improperly reactive or defensive: "Federal
27 declaratory judgment suits are routinely filed in
28 anticipation of other litigation. . . . Merely
29 filing a declaratory judgment action in a federal
30 court with jurisdiction to hear it, in
31 anticipation of state court litigation, is not in
32 itself improper anticipatory litigation or
33 otherwise abusive 'forum shopping.'"
34 Sherwin-Williams Co. v. Holmes Cnty., 343 F.3d
35 383, 391 (5th Cir. 2003); see also Dizol, 133 F.3d

1 at 1225 ("We know of no authority for the
2 proposition that an insurer is barred from
3 invoking diversity jurisdiction to bring a
4 declaratory judgment action against an insured on
5 an issue of coverage.") (citation and internal
6 quotation marks omitted); but see Budget
7 Rent-A-Car v. Crawford, 108 F.3d 1075, 1081 (9th
8 Cir. 1997), *overruled in part on other grounds by*
9 Dizol, 133 F.3d 1220 (stating that concerns about
10 forum shopping "are also present when a federal
11 plaintiff seeks declaratory relief in anticipation
12 that a related state court proceeding may be
13 filed").

14
15 Moreover, "[t]iming is only one consideration
16 when deciding whether to entertain a declaratory
17 judgment action, and the Wilton/Brillhart factors
18 sometimes compel a court to decline to entertain
19 an earlier-filed action in favor of a later-filed
20 action." R.R. Street, 656 F.3d at 976. The fact
21 that defendants' state action was filed later
22 similarly does not, without more, show the suit
23 was defensive or reactive.

24
25 Lexington Ins. Co. v. Silva Trucking, Inc., No. 2:14-CV-0015 KJM
26 CKD, 2014 WL 1839076, at *8 (E.D. Cal. May 7, 2014) (some
27 alterations in Silva Trucking). Although there are insurance
28 issues among the issues presented in the State Court Actions,
29 United Financial apparently is not a party in any of the State
30 Court Actions. There is no indication that United Financial is
31 forum shopping in the instant case. Thus, the second
32 Brillhart/Dizol factor weighs against the stay or dismissal of
33 this action.

34 C. Duplicative Litigation

35 A court may dismiss or abstain from a
36 declaratory action when "[a]ll of the issues
37 presented by the declaratory judgment action could
38 be resolved by the state court." Robsac, 947 F.2d

1 at 1372. The federal and state cases do not have
2 to be completely parallel: "an exact or precise
3 identity of the issues between the federal and
4 state action is not required to support dismissal
5 of a declaratory action." Navigators Specialty
6 Ins. Co. v. CHSI of Cal., No. 3:12-cv-1611-GPC-
7 JMA, 2013 WL 435944, at *5 (S.D. Cal. Feb. 4,
8 2013); see also Emps. Reins. Corp. v. Karussos, 65
9 F.3d 796, 800 (9th Cir. 1995), *overruled in part*
10 *on other grounds by Dizol*, 133 F.3d 1220.

11
12 Id. at *9.

13 United Financial emphasizes that it "cannot and never
14 will be a party to" the State Court Actions. [Mem. in Opp. at
15 16.] While the specific coverage issues in the instant case are
16 not presented in the State Court Actions, the third
17 Brillhart/Dizol factor does not ask whether the issues in the
18 federal and state actions are identical. United Financial
19 acknowledges that this case will require comparing the terms of
20 the Policy and the Endorsement with facts related to the
21 Incident. [Id. at 7.] United Financial argues that the facts
22 are undisputed, but this Court disagrees. Because many factual
23 issues about the Incident will be litigated in both the instant
24 case and the State Court Actions, the third Brillhart/Dizol
25 factor weighs in favor of staying or dismissing this action.

26 **D. Other Factors**

27 The fact that this declaratory judgment action will not
28 settle all aspects of the controversy related to the Incident
29 weighs in favor of a stay. As to the fifth factor, this case
30 will clarify the legal relations between United Financial and

1 Singh, but will have little to no effect on the other relevant
2 legal relations related to the Incident. Thus, this factor is
3 neutral, at best. Because United Financial is not a party in the
4 State Court Actions, it would not obtain a res judicata
5 advantage, or other procedural advantage, in the other actions if
6 this case goes forward. However, because the other parties in
7 the State Court Actions are defendants in the instant case, they
8 could use the instant case to obtain such advantages against each
9 other. The sixth Brillhart/Dizol factor is therefore either
10 neutral or weighs in favor of dismissal or a stay.

11 In light of the extent of the State Court Actions and
12 the overlapping issues in both this case and the State Court
13 Actions, allowing this action to go forward will result in
14 entanglement between the federal and state court systems. Thus,
15 the seventh Brillhart/Dizol factor weighs in favor of the stay or
16 dismissal of this action. The convenience of the parties also
17 weighs in favor of a stay because of the coordinated litigation
18 in the State Court Actions, in which United Financial's counsel
19 has had some voluntarily participation. However, the final
20 Brillhart/Dizol factor weighs against the stay or dismissal of
21 this action. Because United Financial is not a party to the
22 State Court Actions, there would not be other remedies available
23 to United Financial if this case is dismissed or stayed.

1 **E. Balancing the Brillhart/Dizol Factors**

2 Some of the factors weigh against dismissal or stay,
3 the majority of the factors either weigh in favor of dismissal or
4 stay or are neutral. "Numerosity is not dispositive," and some
5 factors can be given additional weight if appropriate under the
6 facts of the case. See James River, 2013 WL 1934354, at *4.
7 Having carefully considered the Brillhart/Dizol factors - in
8 particular, the risk of duplicative litigation and the possible
9 use of this case to gain advantages in the State Court Actions,
10 this Court concludes that dismissal or a stay is warranted under
11 the circumstances of this case.

12 **II. Whether Dismissal or a Stay is Appropriate**

13 The Declaratory Judgment Act states that "[i]n a case
14 of actual controversy within its jurisdiction . . . any court of
15 the United States, upon the filing of an appropriate pleading,
16 may declare the rights and other legal relations of any
17 interested party seeking such declaration, whether or not further
18 relief is or could be sought." 28 U.S.C. § 2201(a).

19 For there to be an actual case or
20 controversy, there must be a "substantial
21 controversy, between parties having adverse legal
22 interests, of sufficient immediacy and reality to
23 warrant the issuance of a declaratory judgment,"
24 and the actual controversy between the parties
25 must relate to a claim upon which relief can be
26 granted. MedImmune, Inc. v. Genentech, Inc., 549
27 U.S. 118, 127 (2007) (quotation omitted);
28 Leadsinger, Inc. v. BMG Music Pub., 429 F. Supp.
29 2d [1190, 1193] (C.D. Cal. 2005). The Act's case
30 or controversy requirement is satisfied when the

1 plaintiff has "a real and reasonable apprehension
2 that he will be subject to liability." Societe de
3 Conditionnement en Aluminium v. Hunter Eng'g Co.,
4 Inc., 655 F.2d 938, 944 (9th Cir. 1981). The fact
5 that a defendant's liability may be contingent
6 does not necessarily mean there is no controversy.
7 Progressive Cas. Ins. Co. v. Dalton, No. 12-713,
8 2012 WL 6088313, at *5 [(E.D. Cal. Dec. 6, 2012)].
9 Furthermore, the Act allows the district court to
10 litigate a controversy that would "otherwise . . .
11 only be tried in the future." Societe de
12 Conditionnement, 655 F.2d at 943. Declaratory
13 judgment essentially provides relief for parties
14 who seek to vindicate interests before they are
15 jeopardized or challenged, before a right of
16 action exists or claim accrues. Maryland Cas. Co.
17 v. Hubbard, 22 F. Supp. 697, 699 (S.D. Cal. 1938);
18 Allied Prop. & Cas. Ins. Co. v. Roberts, No.
19 2:11-CV-00740-MCE, 2011 WL 2496039, at *4 (E.D.
20 Cal. June 21, 2011).

21
22 In insurance cases, the Supreme Court has
23 determined that an actual controversy can exist
24 between an insurer and the allegedly injured third
25 party even though that third party is not a party
26 to the insurance contract. Maryland Cas. v.
27 Pacific Coal & Oil Co., 312 U.S. 270, 273-74
28 (1941); see also Westchester Fire Ins. Co. v.
29 Mendez, 585 F.3d 1183, 1189 (9th Cir. 2009). The
30 Ninth Circuit has confirmed in recent decisions
31 that a case or controversy exists where the
32 insurer seeks a declaration regarding its duty to
33 defend and indemnify its insured in a pending suit
34 against the insured by a third-party. Am. States
35 Ins. Co. v. Kearns, 15 F.3d 142, 144 (9th Cir.
36 1994); Aetna Cas. and Sur. Co. v. Merritt, 974
37 F.2d 1196, 1199 (9th Cir. 1992). An insurer's
38 declaratory relief action regarding its duty to
39 defend and indemnify is ripe and justiciable even
40 if the underlying liability action has not
41 proceeded to judgment. Kearns, 15 F.3d at 144.

42
43 Houston Cas. Co. v. Metheny, No. 2:14-cv-01377-KJM-CMK, 2016 WL
44 615651, at *3 (E.D. Cal. Feb. 16, 2016) (some alterations in
45 Metheny). Under this analysis, there is federal subject matter

1 jurisdiction in the instant case because there is an actual case
2 or controversy. Dismissal of the instant case is not necessary,
3 and a stay is appropriate under the circumstances of this case.

4 **CONCLUSION**

5 On the basis of the foregoing, J.M.L.'s Motion to Stay
6 or in the Alternative Dismiss this Action, filed November 22,
7 2016, is HEREBY GRANTED insofar as the case is STAYED pending the
8 resolution of the aforementioned cases pending in the California
9 State Courts. The Motion is DENIED as to J.M.L.'s request to
10 dismiss the case.

11 IT IS SO ORDERED.

12 DATED AT HONOLULU, HAWAII, November 13, 2017.
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22 /s/ Leslie E. Kobayashi
23 Leslie E. Kobayashi
24 United States District Judge
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32 **UNITED FINANCIAL CASUALTY CO. V. J.M.L., ET AL.; CASE NO. 2:16-**
33 **CV-02098 LEK; ORDER GRANTING IN PART AND DENYING IN PART**
34 **DEFENDANT J.M.L.'S MOTION TO STAY OR IN THE ALTERNATIVE DISMISS**
35 **THIS ACTION**