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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

ROBERT FORTUIN,  
  
vs.  
  
GE COMMERCIAL DISTRIBUTION  
FINANCE CORPORATION, et. al.,  
  
Defendant.

CASE NO. 10-CV-896 JLS (CAB)  
  
**ORDER: DENYING PLAINTIFF'S  
MOTION TO REMAND**  
  
(Doc. No. 17)

Presently before the Court is Plaintiff Robert Fortuin's Motion to Remand. (Doc. No. 17.) Defendant GE Commercial Distribution Finance Corporation filed an opposition and Plaintiff filed a reply. (Doc. Nos. 21, 23.) For the reasons set forth below, the Court **DENIES** Plaintiff's Motion to Remand.

**BACKGROUND**

Plaintiff filed a complaint for declaratory relief against Defendant in the San Diego Superior Court. (Doc. No. 1 (NOR), Ex. A (Compl.)) Plaintiff seeks a declaration that he did not enter into a guaranty agreement for a \$250,000 loan made by Defendant to Worldwide Material Distribution. (Compl. ¶¶ 8, 19; NOR ¶ 1.)

Defendant was served on March 30, 2010 and on April 28, 2010 filed a notice of removal to the Southern District of California. (*Id.* ¶¶ 5, 6.) On May 12, 2010, Defendant answered Plaintiff's complaint and filed a counterclaim for breach of contract seeking \$255,482.61 in

1 damages against Plaintiff and Counterclaim Defendants Worldwide Material Distribution, Noel  
2 Guilianotti, and Julian Mullen. (Doc. No. 7.)

3 On May 28, 2010, Plaintiff moved to remand based on abstention principles. (Memo. ISO  
4 Motion ¶ 4.) Defendant filed an opposition and Plaintiff filed a reply. (Doc. Nos. 21, 23.)

### 5 LEGAL STANDARD

6 The Declaratory Judgment Act provides in relevant part: “In a case of actual controversy  
7 within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading,  
8 may declare the rights and other legal relations of any interested party seeking such declaration,  
9 whether or not further relief is or could be sought.” 28 U.S.C. § 2201(a). If an action seeking  
10 declaratory judgment presents an actual case or controversy and fulfills jurisdictional  
11 prerequisites, a district court must make a discretionary determination that entertaining the action  
12 is appropriate. *Gov’t Employees Ins. Co. v. Dizol*, 133 F.3d 1220, 1222–23 (9th Cir. 1998).

13 Though discretionary, “the court must decide whether to exercise its jurisdiction by  
14 analyzing the factors set out in *Brillhart v. Excess Ins. Co.*, 316 U.S. 491 (1942), and its progeny.”  
15 *Principal Life Ins. Co. v. Robinson*, 394 F.3d 665, 669 (9th Cir. 2005). “Essentially, the district  
16 court ‘must balance concerns of judicial administration, comity, and fairness to the litigants.’”  
17 *Am. States Ins. Co. v. Kearns*, 15 F.3d 142, 144 (9th Cir. 1994) (citing *Chamberlain v. Allstate Ins.*  
18 *Co.*, 931 F.2d 1361, 1367 (9th Cir. 1991)). *Brillhart* sets forth a non-exclusive list of factors  
19 advising that a “district court should avoid needless determination of state law issues; it should  
20 discourage litigants from filing declaratory actions as a means of forum shopping; and it should  
21 avoid duplicative litigation.” *Dizol*, 133 F.3d at 1225. A number of other considerations may be  
22 relevant:

23 whether the declaratory action will settle all aspects of the controversy; whether the  
24 declaratory action will serve a useful purpose in clarifying the legal relations at  
25 issue; whether the declaratory action is being sought merely for the purposes of  
26 procedural fencing or to obtain a ‘res judicata’ advantage; or whether the use of a  
27 declaratory action will result in entanglement between the federal and state court  
28 systems. In addition, the district court might also consider the convenience of the  
parties, and the availability and relative convenience of other remedies.

27 *Id.*

28 The Ninth Circuit in *Dizol* outlined the rule that, in general, a court should not remand or

1 decline to entertain a claim for declaratory judgment “when other claims are joined with [the]  
2 action for declaratory relief (e.g., bad faith, breach of contract, breach of fiduciary duty, rescission,  
3 or claims for other monetary relief).” *Id.* (internal citation omitted). “If a federal court is required  
4 to determine major issues of state law because of the existence of non-discretionary claims, the  
5 declaratory action should be retained to avoid piecemeal litigation.” *Id.* at 1225–26 (internal  
6 citation omitted). If the district court has subject matter jurisdiction over the monetary claim alone  
7 and the monetary claim need not necessarily be joined with the declaratory action, the court should  
8 follow the general rule in *Dizol. United Nat’l Ins. Co. v. R&D Latex Corp.*, 242 F.3d 1102, 1113  
9 (9th Cir. 2001). A monetary counterclaim by a defendant in a declaratory action may create  
10 mandatory jurisdiction. *United Nat’l Ins. Co.*, 242 F.3d at 1113 n.12.

## 11 DISCUSSION

12 Plaintiff seeks remand requesting that the Court decline to exercise discretionary  
13 jurisdiction in the instant case. (Memo. ISO Motion ¶¶ 3,5,6,8.) Having examined this question,  
14 the Court finds that retention of jurisdiction is mandatory in this case under *United National* in  
15 light of Defendant’s counterclaim.

16 First, the Court has subject matter jurisdiction over the counterclaim for breach of contract  
17 asserted by Defendant against Plaintiff. *United Nat’l Ins. Co.*, 242 F.3d at 1113. Although  
18 Plaintiff does not challenge the propriety of jurisdiction here, the Court nonetheless independently  
19 examines this issue. (Memo. ISO Motion at 2.) Jurisdiction in this case is based on the parties’  
20 diversity of citizenship. 28 U.S.C. § 1332(a). A corporation is deemed a citizen of its state of  
21 incorporation and the state that hosts its principle place of business, making Defendant a citizen of  
22 Delaware and Illinois . 28 U.S.C. § 1332(c)(1); NOR ¶ 8. Plaintiff, on the other hand, is a citizen  
23 of California. (Compl. ¶ 16.) Further, the amount in controversy is \$255,482.61. (Doc. No. 7 ¶  
24 26a.) Therefore, the Court finds it has subject matter jurisdiction over Defendant’s monetary  
25 counterclaim.

26 Next, the Court must determine whether Defendant’s breach of contract counterclaim must  
27 be brought in the same action as Plaintiff’s claim for declaratory relief, that is, whether the two  
28 claims are “joined” or “independent.” *United Nat’l Ins. Co.*, 242 F.3d at 1113. Here, the

1 monetary claims for breach of contract exist independently of claims for declaratory relief on the  
2 contract and could be brought even if no declaratory action had been brought. *Cf. Snodgrass v.*  
3 *Provident Life and Acc. Ins. Co.*, 147 F.3d 1163, 1167–68 (9th Cir. 1998) (finding that monetary  
4 breach of contract claim was independent of declaratory action); *see also Dizol*, 133 F.3d at 226  
5 n.6 (“Because claims of . . . breach of contract . . . provide an independent basis for federal  
6 diversity jurisdiction, the district court is without discretion to remand or decline to entertain these  
7 causes of action.”) (citation omitted); *Roberts-Obayashi Corp. v. Penn American Ins. Co.*, 2009  
8 WL 5218047, at \*1 (N.D. Cal. 2009) (holding that breach of contract is independent of declaratory  
9 relief and that when both are joined jurisdiction is mandatory).

10 Because Defendant’s action for breach of contract could be sustained in federal court in the  
11 absence of the claim for declaratory relief, the Court must apply the general rule in *Dizol* that  
12 when a claim for declaratory judgment is joined with a claim for breach of contract the Court may  
13 not remand the declaratory action. *United Nat’l Ins. Co.*, 242 F.3d at 1113.

14 Plaintiff, however, contends that it was the overall circumstances present in *United*  
15 *National* which compelled the court to retain jurisdiction rather than the fact that the counterclaim  
16 could be brought independently of the declaratory claim. (Reply at 3.) Plaintiff points to the  
17 conclusion of the declaratory judgment section of the *United National* court which reads:

18 To sum up, we find that Travelers’ reimbursement claim is, in all probability,  
19 sufficiently independent under California law to trigger mandatory federal  
20 jurisdiction. In any event, in view of all the circumstances addressed above, we  
conclude that the district court abused its discretion by remanding the removed  
action to state court.

21 *United Nat’l Ins. Co.*, 242 F.3d at 1113. Plaintiff interprets this language to signify that additional  
22 factors favoring retaining jurisdiction must be present in order to impel mandatory jurisdiction.  
23 (Opp. at 3.)

24 The more compelling reading of this passage is that the Ninth Circuit was providing an  
25 alternative grounds for its reasoning. That is, while the court believed that the counterclaim was  
26 independent of the declaratory relief claim, the overall circumstances of the case provided an  
27 alternative and sufficient grounds for finding that the remand constituted an abuse of discretion.  
28 *See id.* at 1114 (“Accordingly, it appears that under California law, Travelers’ request for

1 reimbursement is independent of the request for declaratory relief.”). This is consistent with  
2 *United National*’s conclusion that an independent counterclaim joined with a declaratory action  
3 creates mandatory federal jurisdiction.

4       Regardless, the relevant rule is unequivocal: “The proper analysis, then, *must be* whether  
5 the claim for monetary relief is independent in the sense that it could be litigated in federal court  
6 even if no declaratory claim had been filed.” *United Nat’l Ins. Co.*, 242 F.3d at 1113. “If it [is  
7 independent], *then* under the ‘general rule’ explained in *Dizol*, the district court abused its  
8 discretion by remanding to state court.” *Id.* (emphasis added). By using the word “must” and the  
9 conditional form, there is little room for doubt that the dispositive factor is whether the joined  
10 monetary claim could be brought independently of the declaratory action. This rule has been  
11 subsequently affirmed, repeated, and applied by numerous courts in the Ninth Circuit and this  
12 Court may not disregard such precedent. *See e.g. Ins. Co. State of Pa. v. The Roman Catholic*  
13 *Archbishop of L.A.*, 227 F. App’x 643, 645 (9th Cir. 2007); *Roberts-Obayashi Corp. v. Penn Am.*  
14 *Ins. Co.*, 2009 WL 5218047, at \*1 (N.D. Cal. 2009); *Truck Ins. Exch. v. Atl. Mut. Ins. Co.*, 2007  
15 WL 2102874, at \*5 (N.D. Cal. 2007); *see also Liberty Surplus Ins. Corp. v. IMR Contractors*  
16 *Corp.*, 2009 WL 1010842, at \*3 (N.D. Cal. 2009) (specifically holding that the discussion of  
17 additional factors does not change the threshold requirements for mandatory jurisdiction).

18       Finally, even if the Court were not obligated to exercise mandatory jurisdiction, it would  
19 exercise its discretion to retain jurisdiction. This case presents an actual case or controversy in the  
20 dispute as to Plaintiff’s liability as guarantor. *See Principal Life Ins. Co. v. Robinson*, 394 F.3d  
21 665, 669 (9th Cir. 2005) (“The requirement that a case or controversy exist under the Declaratory  
22 Judgment Act is “identical to Article III’s constitutional case or controversy requirement.”) (citing  
23 *Kearns*, 15 F.3d at 143); *see also Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240–41 (1937) (a  
24 “controversy must be definite and concrete, touching the legal relations of parties having adverse  
25 legal interests”) (internal citations omitted). Further, a discretionary exercise of jurisdiction is  
26 appropriate under the *Brillhart* factors. *Kearns*, 15 F.3d at 144 (internal citation omitted).

27       Plaintiff has identified only one relevant factor advocating remand aside from the general  
28 observations that “Federal Courts are Courts of **limited jurisdiction**,” and “Plaintiff is still the

1 master of his own claim.” (Memo. ISO Motion at 3 (emphasis in original).) Specifically, Plaintiff  
2 vaguely alleges that Defendant is forum shopping. (Reply at 4.) Plaintiff’s action seeks a  
3 declaration that Plaintiff is not liable as a guarantor to Defendant on the \$250,000 loan. (Compl.  
4 ¶¶ 8, 19; NOR ¶ 1.) That Defendant responded by filing a counterclaim for the value of the loan is  
5 not forum shopping such that the Court could find that the *Brillhart* factors urge remand. This  
6 case presents standard questions of contract formation and contract interpretation, there are no  
7 parallel state court proceedings, and there are no obvious fairness concerns. The circumstances in  
8 this case weigh in favor of exercising jurisdiction: judicial administration and economy favor  
9 litigating the declaratory action and the counterclaim together and the declaratory action would  
10 provide a useful purpose in clarifying the legal relationship between the parties. Most importantly,  
11 there is simply no satisfactory justification presented to deny Defendant access to the federal  
12 forum.

13 Plaintiff relies heavily on *Quackenbush v. Allstate Ins. Co.* for the general assertion that the  
14 Court has discretion to remand this case. 517 U.S. 706 (1996). Plaintiff, however, fails to  
15 articulate any rationale explaining the reasoning by which any of the number of abstention  
16 doctrines discussed in *Quackenbush* are applicable in the instant case. The Supreme Court in  
17 *Quackenbush* explains the general principle underlying the abstention doctrines addressed as  
18 “reflect[ing] a doctrine of abstention appropriate to our federal system, whereby the federal  
19 courts, ‘exercising a wise discretion,’ restrain their authority because of ‘scrupulous regard for the  
20 rightful independence of the state governments’ and for the smooth working of the federal  
21 judiciary.” *Id.* at 1721 (quoting *R.R. Comm’n of Tex. v. Pullman Co.*, 312 U.S. 496, 501 (1941)).  
22 Plaintiff does not allege, and the Court has no reason to believe, that the issues of contract  
23 formation and interpretation presented by the instant case in any way implicate overriding  
24 federalism concerns demanding deference to state courts. Furthermore, Plaintiff argues only that  
25 the Court has authority for discretionary remand not that the Court is required to remand. As  
26 stated above, even if the Court were not required to exercise mandatory jurisdiction, the Court

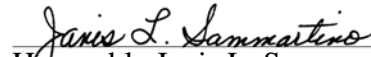
1 would exercise discretionary jurisdiction.<sup>1</sup> As such, Plaintiff's motion to remand must be  
2 **DENIED.**

3 **CONCLUSION**

4 For the reasons stated above, the Court **DENIES** Plaintiff's motion to remand.

5 **IT IS SO ORDERED.**

6  
7 DATED: August 10, 2010

8   
9 Honorable Janis L. Sammartino  
United States District Judge

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<sup>1</sup>Plaintiff's reply changes his original request for outright remand to remand of the declaratory  
27 action and stay of the counterclaim. (Reply at 4.) Though the Court does not wish to encourage using  
28 a reply to change relief requested, the Court notes that for the same reasons stated above, the Court  
would exercise discretionary jurisdiction over the declaratory action. *Cf. Snodgrass*, 147 F.3d at 1167  
(9th Cir. 1998) ("Remanding only the declaratory component of such an action will frequently  
produce piecemeal litigation, a result which the Declaratory Judgment Act was intended to avoid,  
rather than promote.") (internal citations omitted).