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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 THE CITY OF VISTA, a chartered
12 California municipality,

13 Plaintiff,

14 v.

15 GENERAL REINSURANCE
16 CORPORATION,

17 Defendant.

18 GENERAL REINSURANCE
19 CORPORATION,

20 Counter Claimant,

21 v.

22 THE CITY OF VISTA, a chartered
23 California municipality,

24 Counter Defendant.

25 HAYES, Judge:

26 The matter before the Court is the motion to remand filed by Plaintiff City of Vista.
27 (ECF No. 7).

28 **I. BACKGROUND**

Case No.: 17cv2384-WQH-BGS

ORDER

1 On October 25, 2017, Plaintiff City of Vista (“Vista”) filed a complaint in Superior
2 Court of the State of California for the County of San Diego against General Reinsurance
3 Corporation (“GRC”). (ECF No. 1-2). The complaint alleges that Vista is insured under
4 an excess indemnity insurance policy (the “Policy”) issued by GRC. *Id.* The complaint
5 alleges, “Pursuant to its rights, duties, and obligations arising under law and the Policy,
6 Vista is now entitled to indemnity from [GRC], and all other defendants, arising from a
7 workers’ compensation claim brought by Vista’s employee, Frank Soper.” *Id.* at 3.

8 The complaint alleges that Frank Soper, a Vista employee, brought a workers’
9 compensation claim against Vista. The parties settled the underlying workers’
10 compensation action. The complaint alleges that under the Policy, GRC is now required
11 “to indemnify a settlement of Mr. Soper’s permanent, total disability claim” and that GRC
12 has “refused to participate financially any further than they had participated effective and
13 up to October 20, 2015.” *Id.* at 1–2.

14 Vista brings a single cause of action for declaratory relief pursuant to California
15 Code of Civil Procedure section 1060 with a claim for immediate trial setting under
16 California Code of Civil Procedure section 1062.3. Vista “seeks a binding declaration of
17 its rights under the Policy, along with a binding declaration articulating Defendants’ duties”
18 and “a declaration from this court, that Defendants owe Vista a minimum of \$1,030,000.00
19 (exact amount subject to proof at the time of trial) plus interest, plus fees, plus costs.” *Id.*
20 at 5. The complaint alleges that Vista is a municipality in San Diego “properly formed and
21 existing under the laws of the State of California” and that GRC is “a corporation,
22 organized and existing under the laws of the State of Delaware and is authorized to do
23 business within the state of California.” *Id.* at 3.

24 On November 27, 2017, GRC removed the action to this Court pursuant to 28 U.S.C.
25 § 1441(a) on the grounds that this Court has diversity jurisdiction over this action under 28
26 U.S.C. § 1332(a)(1). (ECF No. 1 at 2–3). The notice of removal states that Vista is a
27 municipality organized under California law and located in San Diego County and
28 therefore is a citizen of California. (ECF No. 1 at 2). The notice of removal states that

1 GRC was incorporated in Delaware and has a principal place of business in Connecticut.
2 *Id.* Further, the notice of removal states that the amount in controversy is \$1,030,000 plus
3 interest because Vista seeks a declaration and judgment that it is owed that sum from GRC.
4 *Id.* at 3.

5 On December 14, 2017, GRC filed an answer and counterclaim. (ECF No. 5). GRC
6 brings the following counterclaims: (1) declaratory relief cause of action seeking “a
7 declaration that it is not obligated to indemnify Vista under the Policy for its claimed excess
8 loss” and “a determination that it is entitled to reimbursement of loss and claim expense
9 payments made to Vista in an amount according to proof.”; (2) a cause of action for
10 reimbursement and accounting, and offset; and (3) “breach of contract, including
11 contractual breach of the implied covenant of good faith and fair dealing by Vista.” *Id.* at
12 19–22.

13 On December 26, 2017, Vista filed a motion to remand to state court. (ECF Nos. 7,
14 8). On January 12, 2018, GRC filed a response in opposition. (ECF No. 13). On January
15 22, 2018, Vista filed a reply. (ECF No. 15).

16 **II. CONTENTIONS**

17 Vista moves this Court for an Order remanding this action to state court on the
18 grounds that the Court lacks subject matter jurisdiction. Vista contends that GRC has failed
19 to establish that diversity jurisdiction is proper. Vista contends that the parties in this action
20 are not diverse because GRC does business in California and is therefore a citizen of this
21 state. Vista contends that GRC has a corporate nerve center in all states and that there is
22 “no rational basis for diversity jurisdiction based on the location of certain officers and
23 offices out-of-state, particularly where, as here, [GRC] clearly also conducts business in
24 California.” (ECF No. 7-1 at 5). Vista contends that GRC has waived its right to remove
25 this action because it has “availed itself of a State of California judicial process already”
26 by unsuccessfully seeking to intervene in the underlying workers’ compensation matter
27 before the California Workers’ Compensation Appeal Board. *Id.* at 5–6. Further, Vista
28 contends that “where the relief sought is equitable in nature, a removed matter can and

1 should be remanded.” (ECF No. 7-1 at 2). Vista contends that “[i]nasmuch as [GRC’s]
2 potential counter-claim does not sound in legal damages, either, there is no premise for
3 diversity jurisdiction.” *Id.* at 4.

4 GRC contends that this action was properly removed because this Court has subject
5 matter jurisdiction on diversity grounds. GRC asserts that it is a citizen of Delaware and
6 Connecticut and that the amount in controversy exceeds \$75,000. GRC contends that
7 Vista’s argument that diversity is destroyed because GRC does business in California and
8 has a nerve center in all fifty states has no merit and is contradicted by Supreme Court
9 precedent. GRC contends that the Court’s exercise of jurisdiction is mandatory because
10 this is “an action for common law damages” rather than declaratory relief. (ECF No. 13 at
11 8). GRC contends that the Court “must exercise jurisdiction” over its counterclaim for
12 breach of contract and other damages in the amount of \$691,511.71. GRC contends that
13 Vista has failed to demonstrate that the Court could exercise its discretion to decline
14 jurisdiction, even if this case was primarily for declaratory relief. GRC contends that it has
15 not waived its right to litigate in federal court. GRC asserts that it filed only the notice of
16 removal to this court in the state court action and that its unsuccessful petition to intervene
17 in the underlying workers’ compensation proceeding was not an attempt to litigate
18 coverage issues.

19 III. LEGAL STANDARD

20 “Under 28 U.S.C. § 1441, a defendant may remove an action filed in state court to
21 federal court if the federal court would have original subject matter jurisdiction over the
22 action.” *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1243 (9th Cir. 2009).
23 Federal jurisdiction must exist at the time the complaint is filed and at the time removal is
24 effected. *Strotek Corp. v. Air Transp. Ass’n of Am.*, 300 F.3d 1129, 1131 (9th Cir. 2002).
25 A party can challenge removal based on lack of subject matter jurisdiction through a
26 motion to remand. 28 U.S.C. § 1447. There is a “strong presumption against removal”
27 such that the removing party “always has the burden of establishing that removal is proper.”
28 *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). “The removal statute is strictly

1 construed, and any doubt about the right of removal requires resolution in favor of
2 remand.” *Moore-Thomas*, 553 F.3d at 1244.

3 Under the federal diversity statute, district courts are authorized to exercise original
4 jurisdiction in cases in which the amount in controversy exceeds the sum or value of
5 \$75,000.00 and the parties are citizens of different states. 28 U.S.C. § 1332. Diversity
6 jurisdiction requires complete diversity, meaning every plaintiff must be diverse from
7 every defendant. *Id.*; see also *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996). Pursuant
8 to the statute, “a corporation shall be deemed to be a citizen of every State and foreign state
9 by which it has been incorporated and of the State or foreign state where it has its principal
10 place of business.” 28 U.S.C. § 1332(c). The principal place of business refers to the
11 location “where the corporation’s high level officers direct, control, and coordinate the
12 corporation’s activities.” *Hertz Corp. v. Friend*, 559 U.S. 77, 80–81 (2010). This “nerve
13 center” is typically located at a corporation’s headquarters. *Id.*; see also *3123 SMB LLC v.*
14 *Horn*, 880 F.3d 461, 465 (9th Cir. 2018).

15 **IV. DISCUSSION**

16 **A. Diversity Jurisdiction**

17 GRC removed this case on the basis of diversity jurisdiction and stated in its notice
18 of removal that it was a citizen of Delaware, where it was incorporated, and Connecticut,
19 where its principal place of business is located. Vista challenges GRC’s assertion of
20 diversity jurisdiction and asserts that GRC is a citizen of California because it does business
21 in all states and therefore has a nerve center in states. With respect to California, Vista
22 asserts that GRC is licensed in California to sell insurance and has “purposely availed itself
23 of the premium payment benefits of selling insurance in California.” (ECF No. 7-1 at 4).
24 However, in *Hertz Corp. v. Friend*, the United States Supreme Court stated that a
25 corporation’s principal place of business is a *single* place located where the corporation’s
26 officers, direct, control, and coordinate the corporation’s activities. 559 U.S. at 95; see
27 also *3123 SMB LLC*, 880 F.3d at 469. Further, in adopting the “nerve center” test for
28 determining the citizenship of corporations, the Supreme Court in *Hertz* rejected an

1 approach focused on the location of a corporation’s business activities. *Hertz*, 559 U.S. at
2 95 (“By contrast, a corporation’s general business activities more often lack a single
3 principal place where they take place. . . . If so, it will not be as easy to determine which
4 of these different business locales is the ‘principal’ or most important ‘place.’”).
5 Accordingly, Vista’s argument fails because GRC cannot have a nerve center in all states
6 and cannot be a citizen of a state solely because it conducts business activities in that state.

7 GRC is a citizen of the state in which it was incorporated and the state in which its
8 principal place of business is located. *See* 28 U.S.C. § 1332(c). GRC provides a
9 declaration by Lorraine Coccola, Assistant Vice President at GRC, stating

10 Since at least 1998, GRC has been incorporated under the laws of the state of
11 Delaware. Since 1984, GRC has had its principal place of business in
12 Stamford, Connecticut. GRC’s headquarters are located in Stamford and
13 GRC’s officers, directors, and executives direct, control, and coordinate the
company’s activities from Stamford.

14 (Coccola Decl., ECF No. 13-1 at 1–2). GRC has carried its burden to establish that its
15 principal place of business is in Stamford, Connecticut where its headquarters are located
16 and where GRC officers, “direct, control, and coordinate” GRC’s activities. *See Hertz*,
17 559 U.S. at 93 (“In practice, the [principal place of business] should normally be the place
18 where the corporation maintains its headquarters.”). The record establishes that GRC is a
19 citizen of Delaware and Connecticut. Because Vista is a citizen of California, GRC has
20 satisfied its burden to demonstrate that there is complete diversity among the parties.

21 GRC must also establish that the amount in controversy is greater than \$75,000. “In
22 actions seeking declaratory or injunctive relief, it is well established that the amount in
23 controversy is measured by the value of the object of the litigation.” *Cohn v. Petsmart,*
24 *Inc.*, 281 F.3d 837, 840 (9th Cir. 2002) (citing *Hunt v. Wash. State Apple Adver. Comm’n*,
25 432 U.S. 333, 347 (1977)). In this case, Vista alleges that GRC owes Vista “a minimum
26 of \$1,030,000.00” under the terms of an excess indemnity insurance policy and seeks a
27 declaration and judgment to that effect. (ECF No. 1-2 at 5–6). The Court concludes that
28 the amount in controversy is sufficient to confer diversity jurisdiction.

1 GRC has satisfied its burden to demonstrate that this case meets the complete
2 diversity and amount in controversy requirements for the exercise of the district court’s
3 diversity jurisdiction. *See* 28 U.S.C. § 1332(a).

4 **B. Exercise of Jurisdiction in a Declaratory Relief Action**

5 Generally “[f]ederal courts have a strict duty to exercise the jurisdiction that is
6 conferred upon them by Congress.” *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716
7 (1996). However “federal courts have the power to dismiss or remand cases based on
8 abstention principles . . . where the relief being sought is equitable or otherwise
9 discretionary.” *Id.* at 716. “Under the Declaratory Judgment Act, a district court may
10 decline to exercise jurisdiction over a declaratory action even though subject matter
11 jurisdiction is otherwise proper.” *Snodgrass v. Provident Life and Acc. Inc. Co.*, 147 F.3d
12 1163, 1166 (9th Cir. 1998). “[T]he decision whether to exercise jurisdiction over a
13 declaratory action lies in the sound discretion of the district court.” *Huth v. Hartford Ins.*
14 *Co. of the Midwest*, 298 F.3d 800, 803 (9th Cir. 2002). “If . . . the court . . . is asked to
15 decline to entertain [a declaratory relief action] by a party, then it must explain the basis
16 for its decision on the record.” *Gov’t Employees Ins. Co. v. Dizol*, 133 F.3d 1220, 1221
17 (9th Cir. 1998).

18 When considering whether to exercise jurisdiction over a declaratory relief action
19 and remand a case “[t]he district court should avoid needless determination of state law
20 issues; it should discourage litigants from filing declaratory relief actions as a means of
21 forum-shopping; and it should avoid duplicative litigation.” *Id.* at 1225. “If there are
22 parallel state proceedings involving the same issues and parties pending at the time the
23 federal declaratory action is filed, there is a presumption that the entire suit should be heard
24 in state court.” *Id.* (citing *Chamberlain v. Allstate Ins. Co.*, 931 F.2d 1361, 1366–67 (9th
25 Cir. 1991)).

26 “When other claims are joined with an action for declaratory relief (e.g., bad faith,
27 breach of contract, breach of fiduciary duty, rescission, or claims for other monetary relief),
28 the district court should not as a general rule, remand or decline to entertain the claim for

1 declaratory relief.” *Id.*; *Snodgrass*, 147 F.3d at 1167. “Claims that exist independent of
2 the request for a declaration are not subject to the Declaratory Judgment Act’s discretionary
3 jurisdictional rule Remanding only the declaratory component of such an action will
4 frequently produce piecemeal litigation.” *Snodgrass*, 147 F.3d at 1167; *see also Dizol*, 133
5 F.3d at 1225–26 (“If a federal court is required to determine major issues of state law
6 because of the existence of non-discretionary claims, the declaratory action should be
7 retained to avoid piecemeal litigation.”).

8 The appropriate inquiry for a district court in a Declaratory Judgment Act case
9 is to determine whether there are claims in the case that exist independent of
10 any request for purely declaratory relief, that is, claims that would continue to
exist if the request for a declaration simply dropped from the case.

11 *United Nat’l Ins. Co. v. R&D Latex Corp.*, 242 F.3d 1102, 1112 (9th Cir. 2001). “[T]he
12 district court should consider whether it has subject matter jurisdiction over the monetary
13 claim alone, and if so, whether that claim must be joined with one for declaratory relief.”
14 *Id.* at 1113.

15 In *United National Insurance Company v. R&D Latex Corporation*, the Ninth
16 Circuit Court of Appeals reversed a district court’s order declining to exercise jurisdiction
17 over a declaratory relief claim where subject matter jurisdiction was otherwise proper. In
18 *United National Insurance*, plaintiff, a manufacturer and seller of glue, brought suit against
19 one of its insurers seeking a declaration that it had a duty to defend and indemnify plaintiff
20 in underlying litigation. *Id.* at 1108. The defendant insurance company removed the action
21 to federal court on diversity grounds and shortly thereafter, filed a counterclaim seeking
22 reimbursement for the money it had already spent defending plaintiff in the underlying
23 litigation. *Id.* The district court determined that the “counterclaim did not provide an
24 independent, nondiscretionary basis for jurisdiction but instead was entirely derivative of
25 [plaintiff’s] claim for declaratory relief.” *Id.* at 1109. On appeal, the Court of Appeals
26 determined that under state law, a request for reimbursement is not required to be joined
27 with a claim for declaratory relief. The Court determined that the reimbursement
28

1 counterclaim was independent of the request for declaratory relief and that the district court
2 abused its discretion in declining jurisdiction. *Id.* at 1113–15. Further, the Court stated,
3 “[W]hile [plaintiff] artfully pleaded its state-court complaint as one for declaratory relief
4 alone, one of its causes of action [was] not far removed from a claim for breach of
5 contract.” *Id.* at 1114. The Court concluded that this weighed in favor of accepting
6 jurisdiction in the interest of discouraging litigants from forum-shopping. *Id.* at 1115.

7 In this case, Vista alleges a single claim for declaratory relief and seeks “a binding
8 declaration of its rights under the Policy, along with a binding declaration articulating
9 Defendants’ duties” and “a declaration and judgment from this court, that Defendants owe
10 Vista a minimum of \$1,030,000.00 (exact amount subject to proof at the time of trial), plus
11 interest plus fees, plus costs.” (ECF No. 1-2 at 5). Accepting the claim as pleaded in the
12 Complaint at this stage in the proceedings, Vista has filed an action for solely declaratory
13 relief against GRC. However, GRC filed counterclaims soon after removing the action to
14 this Court. The counterclaims are for (1) declaratory relief; (2) reimbursement and
15 accounting and offset; and (3) breach of contract claim “including contractual breach of
16 the implied covenant of good faith and fair dealing by Vista.” (ECF No. 5 at 19–20). The
17 Court’s jurisdiction over the breach of contract counterclaim is not in dispute and diversity
18 jurisdiction is proper. The Court concludes that the breach of contract counterclaim “exists
19 independent of any request for purely declaratory relief.” *United Nat’l*, 242 F.3d at 1112.
20 Accordingly, the exercise of federal jurisdiction is mandatory in this case due to the
21 existence of a monetary, independent counterclaim.

22 Further, the facts of this case would support the discretionary exercise of jurisdiction
23 over the declaratory action. Based on the record before this Court, there are no current
24 pending state actions related to this matter. *See Dizol*, 133 F.3d at 1225 (“If there are
25 parallel state proceedings involving the same issues and parties pending at the time the
26 federal declaratory action is filed, there is a presumption that the entire suit should be heard
27 in state court.”). The underlying workers’ compensation case involving Vista employee
28 Frank Soper has settled and neither party has asserted that any other state action exists. *See*

1 Exhibit C to Treuer Decl., ECF No. 13-5. In addition, “there is no presumption of
2 abstention in declaratory actions generally, nor in insurance coverage cases specifically.”
3 *Dizol*, 133 F.3d at 1225. Vista’s declaratory relief action includes a request that the Court
4 enter “a declaration from this court, that Defendants owe Vista a minimum of
5 \$1,030,000.00 (exact amount subject to proof at the time of trial) plus interest, plus fees,
6 plus costs.” (ECF No. 1-2 at 5).¹ The Court finds that this also weighs in favor of retaining
7 jurisdiction. *See United Nat’l*, 242 F.3d at 1114 (stating that plaintiff’s “artful pleading”
8 of a declaratory relief action favored the retention of federal jurisdiction because “[f]orum
9 shopping through the filing of declaratory judgment actions is no more appropriate when
10 it favors state over federal jurisdiction than it is when it favors the reverse.”); *Dizol*, 133
11 F.3d at 1225 (“district courts should discourage litigants from filing declaratory actions as
12 a means of forum shopping”). The Court concludes that the exercise of jurisdiction is
13 proper in this case.

14 C. Waiver

15 “[A] defendant ‘may waive the right to remove to federal court where, after it is
16 apparent that the case is removable, the defendant takes actions in state court that manifest
17 [an] intent to have the matter adjudicated there, and to abandon his or her right to a federal
18 forum.’” *Kenny v. Wal-Mart Stores, Inc.*, 881 F.3d 786, 790 (9th Cir. 2018) (citing
19 *Resolution Tr. Corp. v. Bayside Developers*, 43 F.3d at 1240 (9th Cir. 1994)).

20 GRC took no action in this case in state court prior to removing it to this Court. In
21 the mandatory settlement conference scheduled in the underlying workers compensation
22 action before the Workers Compensation Appeals Board (“the Board”), GRC filed a
23 Petition to Intervene in order to “protect against collusion between the City and Soper” and
24 explicitly stated that it did “not ask the court to address its rights and obligations under the
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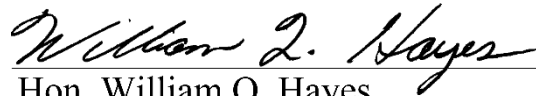
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27 ¹ Vista states, “Of course, money may change hands at the conclusion of Vista’s claim for indemnity under
28 the indemnity insurance policy. However, the instant matter is grounded in equity, not law.” (ECF No.
15 at 4).

1 insurance policy that it issued to the City.” (Exhibit 1 to Todd Decl., ECF No. 8 at 26).
2 GRC also specifically asserted that GRC was not subject to the jurisdiction of the Board.
3 *Id.* at 8–9. In denying the Petition because “no finding or order by the Board would have
4 any force or effect on GRC,” the Administrative Law Judge stated, “This leaves GRC free
5 to exercise its contractual rights in state or federal court.” (Exhibit 2 to Todd Decl., ECF
6 No. 8 at 373–74). GRC has not taken any action in state court manifesting its intent to
7 have the matter adjudicated in that forum and has not waived its right to remove the instant
8 action to this Court.

9 **V. CONCLUSION**

10 IT IS HEREBY ORDERED that the motion to remand filed by Plaintiff City of Vista
11 is DENIED. (ECF No. 7).

12 Dated: April 5, 2018


13 Hon. William Q. Hayes
14 United States District Court
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