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6 UNITED STATES DISTRICT COURT  
7 SOUTHERN DISTRICT OF CALIFORNIA  
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9 STEVEN CASH,

10 Plaintiff,

11 v.

12 AMCO INSURANCE COMPANY dba  
13 ALLIED PROPERTY AND  
14 CASUALTY INSURANCE  
15 COMPANY AFFILIATED WITH  
16 NATIONWIDE INSURANCE; and  
17 Does 1-30, Inclusive,

Defendants.

Case No.: 18-CV-369 JLS (JMA)

**ORDER DENYING PLAINTIFF'S  
MOTION TO REMAND**

(ECF No. 6)

18 Presently before the Court is Plaintiff Steven Cash's Motion to Remand, ("MTN,"  
19 ECF No. 6). Also before the Court is Defendant AMCO Insurance Company's Opposition  
20 to the Motion, ("Opp'n," ECF No. 7), and Plaintiff's Reply in Support of the Motion,  
21 ("Reply," ECF No. 15). Defendant then requested permission to file a sur-reply. The Court  
22 granted the request, and Defendant filed a sur-reply, ("Sur-reply," ECF No. 18). The Court  
23 vacated the hearing on this Motion and took the matter under submission without oral  
24 argument. (ECF No. 14.) Having considered the Parties' arguments and the law, the Court  
25 rules as follows.

26 **BACKGROUND**

27 Plaintiff filed a state court complaint against AMCO Insurance Company alleging  
28 breach of contract. Defendant removed the action to this Court, claiming the Court has

1 diversity jurisdiction over the case. (ECF No. 1.) In his Motion to Remand, Plaintiff states  
2 that his complaint does not raise a federal question, and that this Court should “decline to  
3 exercise jurisdiction” over the case because this case relates to one being adjudicated in  
4 state court. (MTN 1–2.)<sup>1</sup>

### 5 **LEGAL STANDARD**

6 In cases “brought in a State court of which the district courts of the United States  
7 have original jurisdiction,” defendants may remove the action to federal court. 28 U.S.C.  
8 § 1441(a). Section 1441 provides two bases for removal: diversity jurisdiction and subject-  
9 matter jurisdiction. Federal courts have diversity jurisdiction “where the amount in  
10 controversy” exceeds \$75,000, and the parties are of “diverse” state citizenship. 28 U.S.C.  
11 § 1332. Federal courts have federal question jurisdiction over “all civil actions arising  
12 under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.

13 The party invoking the removal statute bears the burden of establishing that federal  
14 subject-matter jurisdiction exists. *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th  
15 Cir. 1988). Moreover, courts “strictly construe the removal statute against removal  
16 jurisdiction.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (citing *Boggs v. Lewis*,  
17 863 F.2d 662, 663 (9th Cir. 1988)); and *Takeda v. Nw. Nat’l Life Ins. Co.*, 765 F.2d 815,  
18 818 (9th Cir. 1985)). Therefore, “[f]ederal jurisdiction must be rejected if there is any  
19 doubt as to the right of removal in the first instance.” *Gaus*, 980 F.2d at 566 (citing *Libhart*  
20 *v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir. 1979)). “[F]ederal courts are  
21 under an independent obligation to examine their own jurisdiction.” *FW/PBS, Inc. v. City*  
22 *of Dallas*, 493 U.S. 215, 231 (1990).

### 23 **ANALYSIS**

24 Plaintiff does not contest that diversity jurisdiction exists over this case. Plaintiff  
25 alleges he is a California resident. (ECF No. 1, at 20.) AMCO is headquartered in Iowa  
26 and “has its corporate headquarters and principal office at 1100 Locus Street, Des Moines,  
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28 <sup>1</sup> Pin citations refer to the CM/ECF page numbers electronically stamped at the top of each page.

1 Iowa, and all of its directors are located in the State of Ohio.” (*Id.* at 3.) Further, Plaintiff  
2 seeks damages of \$77,000. (*Id.* at 22.) Thus, diversity jurisdiction exists over this matter.

3 Plaintiff informs the Court of his pending case in California state court, case number  
4 37-2017-00026341-CU-IC-NC. (*Id.*) Plaintiff states the present case and pending state  
5 court case are “substantially similar.” (Reply 2.) Originally, the named defendant in the  
6 state court case was Allied Property Casualty Insurance. On April 20, 2018, counsel for  
7 all parties stipulated to adding Defendant AMCO Insurance Company and dismissing  
8 Allied Property Casualty Insurance. (*Id.*) The state court case is now brought against  
9 AMCO and other defendants. (*Id.*) The causes of action in the state court case and this  
10 case are the same. (*Id.*)

11 Plaintiff asks the Court to decline to exercise jurisdiction over the present case under  
12 the *Colorado River* doctrine. (Reply 2.) Under the *Colorado River* doctrine, a federal  
13 court may abstain from exercising its jurisdiction in favor of parallel state proceedings  
14 where doing so would serve the interests of “[w]ise judicial administration, giving regard  
15 to the conservation of judicial resources and comprehensive disposition of litigation.”  
16 *Colo. River Water Conservation v. United States*, 424 U.S. 800, 817 (1976). In sum,  
17 Plaintiff requests the Court remand this case, or, in the alternative, stay the case pending  
18 resolution of the state court case. (Reply 2–3.) Defendant objects in various regards.

### 19 ***A. Procedural Arguments***

20 The Court first addresses Defendant’s procedural argument that the Court should  
21 ignore Plaintiff’s argument under the *Colorado River* doctrine because it was first raised  
22 in his Reply brief. Although it is true the argument was not directly raised in Plaintiff’s  
23 opening Motion, Plaintiff was proceeding pro se at the time he filed his Motion and broadly  
24 alleged the Court should abstain from exercising jurisdiction because of another pending  
25 matter. Further, the Court allowed Defendant to file a sur-reply and therefore Defendant  
26 is not prejudiced by the late-raised argument. Thus, the Court will consider the argument  
27 here.

28 Next, Defendant argues this case cannot be remanded on abstention principles

1 because it is one for damages. (Sur-reply 6.) Indeed, in *Quackenbush v. Allstate Insurance*  
2 *Co.*, 517 U.S. 706, 721 (1996), the Supreme Court held that while “federal courts may stay  
3 actions for damages based on abstention principles, . . . those principles [do not] support  
4 the outright dismissal or remand of damages actions.” The Court therefore does not  
5 consider Plaintiff’s request to remand and analyzes the alternative request to stay the case.

### 6 ***B. Colorado River Doctrine***

7 A federal court may decline to exercise its jurisdiction because of parallel state court  
8 litigation only in “exceptional circumstances” and “only the clearest of justifications will  
9 warrant dismissal.” *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1,  
10 14, 16 (1983) (quoting *Colo. River.*, 424 U.S. at 819) (finding there were no exceptional  
11 circumstances justifying the district court’s stay order). To decide whether a particular  
12 case presents the exceptional circumstances that warrant a *Colorado River* stay or  
13 dismissal, the district court must carefully consider “both the obligation to exercise  
14 jurisdiction and the combination of factors counseling against that exercise.” *Colo. River*,  
15 424 U.S. at 818.

16 Drawing from *Colorado River*, *Moses H. Cone* and subsequent Ninth Circuit  
17 cases, [the Ninth Circuit has] recognized eight factors for assessing the  
18 appropriateness of a *Colorado River* stay or dismissal: (1) which court first  
19 assumed jurisdiction over any property at stake; (2) the inconvenience of the  
20 federal forum; (3) the desire to avoid piecemeal litigation; (4) the order in  
21 which the forums obtained jurisdiction; (5) whether federal law or state law  
22 provides the rule of decision on the merits; (6) whether the state court  
proceedings can adequately protect the rights of the federal litigants; (7) the  
desire to avoid forum shopping; and (8) whether the state court proceedings  
will resolve all issues before the federal court.

23 *R&R Street & Co. Inc. v. Transport Ins. Co.*, 656 F.3d 966, 978–79 (9th Cir. 2011) (citing  
24 *Holder v. Holder*, 305 F.3d 854, 870 (9th Cir. 2002)). The Court analyzes these factors.<sup>2</sup>

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27 <sup>2</sup> In doing so, the Court rejects Defendant’s argument that the Court must look at the facts and Parties of  
28 the state court action only at the time the present action was removed. (Sur-reply 5 (citing *Broadway*  
*Grill, Inc. v. Visa Inc.*, 856 F.3d 1274 (9th Cir. 2017)).) A wealth of cases have determined that “whether  
remand is proper must be ascertained on the basis of the pleadings at the time of removal.” *Broadway*

1 As was the case in *R&R Street*, the first two factors “are irrelevant in this case  
2 because the dispute does not involve a specific piece of property, and both the federal and  
3 state forums are located in [San Diego].” 656 F.3d at 979.

4 *1. Piecemeal Litigation*

5 “Piecemeal litigation occurs when different tribunals consider the same issue,  
6 thereby duplicating efforts and possibly reaching different results.” *Am. Int’l*  
7 *Underwriters, (Philippines), Inc. v. Cont’l Ins. Co.*, 843 F.2d 1253, 1258 (9th Cir. 1988).  
8 “The mere possibility of piecemeal litigation does not constitute an exceptional  
9 circumstance.” *R&R Street*, 656 F.3d at 979 (citing *Travelers*, 914 F.2d at 1369). “Instead,  
10 the case must raise a ‘special concern about piecemeal litigation,’ which can be remedied  
11 by staying or dismissing the federal proceeding. *Id.* (quoting *Travelers*, 914 F.2d at 1369).  
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13 Of course, any case where the *Colorado River* doctrine is being considered will  
14 predictably involve possible “conflicting results, piecemeal litigation, and some  
15 duplication of judicial efforts,” which are the “unavoidable price of preserving access  
16 to . . . federal relief.” *Neuchatel Swiss Gen. Ins. Co. v. Lufthansa Airlines*, 925 F.2d 1193,  
17 1195 (9th Cir. 1991) (ellipses in original) (internal quotation marks omitted). “Instead,  
18 there must be exceptional circumstances present that demonstrate that piecemeal litigation  
19 would be particularly problematic.” *Seneca Ins. Co. v. Strange Land, Inc.*, 862 F.3d 835,  
20 842–43 (9th Cir. 2017).

21 Here, Plaintiff broadly alleges that it would be a waste of resources “to litigate  
22 similar issues that are already being litigated in California state court” and “detrimental to  
23 both parties to litigate certain issues” in both cases. (Reply 4–5.) This is true in any  
24 situation with duplicative cases and Plaintiff has not presented any “exceptional  
25 circumstances” that would make the present situation “particularly problematic.” *Seneca*  
26 *Ins. Co.*, 862 F.3d at 842–43. This factor weighs in favor of the Court exercising its

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*Grill*, 856 F.3d at 1277. But, the Court is not analyzing a request to remand, but rather a request to stay,  
and therefore the cases are not applicable. The Court considers the parallel proceedings as they exist now.

1 jurisdiction over this matter.

2           2. *The Order in Which the Forums Obtained Jurisdiction*

3           On July 19, 2017, Plaintiff filed the state court action. On January 16, 2018, Plaintiff  
4 filed the present action, and served AMCO the next day. On April 20, 2018, AMCO was  
5 added to the state court case, and AMCO was served soon afterwards.

6           Defendant focuses on the dates of service, arguing that Plaintiff served it with the  
7 present action before serving with the state court case, and therefore this case has priority.  
8 (Sur-reply 8.) However, the focus under this factor is when the forum “obtained  
9 jurisdiction,” which implies the date of filing is important. Further, “priority should not be  
10 measured exclusively by which complaint was filed first, but rather in terms of how much  
11 progress has been made in the two actions.” *Moses H. Cone*, 460 U.S. at 21.

12           In terms of progress of the state court case, Plaintiff states “the parties have already  
13 undergone written discovery and a site inspection in the California state court case.”  
14 (Reply 5.) Defendant counters that this written discovery involved only Allied, not  
15 AMCO. (Sur-reply 8.) Defendant also states that no depositions have taken place, and no  
16 dispositive motions involving AMCO have been decided by the court. (*Id.* at 9.) Defendant  
17 cites to *Seneca*, where the court concluded that although there “was significant activity in  
18 each case, . . . neither court had resolved any foundational legal claims. As a result, we  
19 agree with the district court’s conclusion that the cases had progressed equivalent amounts,  
20 such that this factor does not weigh in favor of abstention.” 862 F.3d at 843.

21           Here, neither party states that any fundamental legal claims have been determined  
22 in the state court case. And, the fact that discovery has occurred between Plaintiff and  
23 another defendant does not mean that significant activity has occurred there. The present  
24 case has only been active for approximately five months, and the present order is the first  
25 substantive order on the docket. Thus, this factor weighs in favor of the Court exercising  
26 its jurisdiction over this matter.

27           3. *Applicable Law*

28           This case involves the application of California law. While “the presence of federal-

1 law issues must always be a major consideration weighing against surrender [of  
2 jurisdiction],” the “presence of state-law issues may weigh in favor of that surrender” only  
3 “in some rare circumstances.” *Moses H. Cone*, 460 U.S. at 26. This case involves a breach  
4 of contract issue, a “routine issue[] of state law . . . which the district court is fully capable  
5 of deciding.” *Travelers*, 914 F.2d at 1370. Therefore, this factor does not weigh against  
6 the Court’s exercise of jurisdiction.

#### 7 4. *Adequacy of State Court*

8 “A district court may not stay or dismiss the federal proceeding if the state  
9 proceeding cannot adequately protect the rights of the federal litigants. For example, if  
10 there is a possibility that the parties will not be able to raise their claims in the state  
11 proceeding, a stay or dismissal is inappropriate.” *R&R Street*, 656 F.3d at 981.

12 Here, both Parties agree the state court could adequately protect the rights of the  
13 Parties. This factor weighs in favor of the Court declining to exercise its jurisdiction. “Like  
14 source of law, however, this factor ‘is more important when it weighs in favor of federal  
15 jurisdiction.’” *Id.* (quoting *Travelers*, 914 F.2d at 1370).

#### 16 5. *Forum Shopping*

17 The Ninth Circuit has affirmed a *Colorado River* stay or dismissal when it was  
18 readily apparent that the federal plaintiff was engaged in forum shopping. *See Nakash v.*  
19 *Marciano*, 882 F.2d 1411, 1417 (9th Cir. 1989) (noting plaintiff brought claims in federal  
20 court after three and a half years of litigating in state court); *Am. Int’l Underwriters*, 843  
21 F.2d at 1255–56 (finding that after filing in state court, plaintiff brought suit in federal court  
22 to avoid the state court’s unfavorable evidentiary rules).

23 Here, Plaintiff first filed the state court action, then filed the second action also in  
24 state court, which Defendant removed to this Court. Therefore, there is no evidence that  
25 Plaintiff was forum shopping because he did not file in two different forums. Thus, this  
26 factor weighs against the Court exercising its jurisdiction over this matter.

#### 27 6. *Parallel Suits*

28 The final factor “is whether the state court proceeding sufficiently parallels the

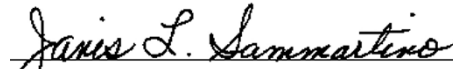
1 federal proceeding.” *R&R Street*, 656 F.3d at 982. “[E]xact parallelism,” is not required;  
2 the two actions must be “substantially similar.” *Nakash*, 882 F.2d at 1416. “[T]he existence  
3 of a substantial doubt as to whether the state proceedings will resolve the federal action  
4 precludes” a *Colorado River* stay or dismissal. *Smith*, 418 F.3d at 1033 (quoting *Intel*  
5 *Corp. v. Advanced Micro Devices, Inc.*, 12 F.3d 908, 913 (9th Cir. 1993)).

6 Plaintiff asserts the state court case “would be an adequate vehicle to resolve” the  
7 present case, and that “[t]here are no issues before the Federal court that cannot be resolved  
8 by the California state court.” (Reply 15.) Defendant responds that this does not constitute  
9 exceptional circumstances. (Sur-reply 10.) The Parties and causes of action are the same  
10 in both cases, thus, the two are substantially similar and there is no indication the state  
11 court proceeding would not resolve all issues.

12 In sum, the factors do not weigh heavily to support either side. Therefore, the facts  
13 here do not present “exceptional circumstances” or “the clearest of justifications” that  
14 would warrant the Court staying this case for the pendency of the state court case. The  
15 Court also has subject matter jurisdiction over this case. The Court **DENIES** Plaintiff’s  
16 Motion to Remand.

17 **IT IS SO ORDERED.**

18 Dated: July 17, 2018

  
19 Hon. Janis L. Sammartino  
20 United States District Judge  
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