

1
2 **GERAGOS & GERAGOS**

3 A PROFESSIONAL CORPORATION
4 LAWYERS
5 HISTORIC ENGINE Co. No. 28
6 644 SOUTH FIGUEROA STREET
7 LOS ANGELES, CALIFORNIA 90017-3411
8 TELEPHONE (213) 625-3900
9 FACSIMILE (213) 232-3255
10 GERAGOS@GERAGOS.COM

11 **MARK J. GERAGOS** SBN 108325
12 **BEN J. MEISELAS** SBN 277412
13 **MATTHEW M. HOESLY** SBN 289593

14 Attorneys for Defendant GERAGOS & GERAGOS, APC

15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 **TRAVELERS CASUALTY**
18 **INSURANCE COMPANY OF**
19 **AMERICA,**

20 Plaintiffs,

21 vs.

22 **GERAGOS & GERAGOS, A**
23 **PROFESSIONAL CORPORATION,**

24 Defendants.

Case No.: 2:20-cv-03619-PSG-E

Hon. Philip S. Gutierrez

25 **NOTICE OF MOTION AND**
26 **MEMORANDUM OF POINTS AND**
27 **AUTHORITIES IN SUPPORT OF**
28 **DEFENDANT GERAGOS &**
GERAGOS, APC'S MOTION TO
DISMISS COMPLAINT, OR IN
THE ALTERNATIVE, TO STAY
PROCEEDINGS

Hearing:

Date: August 3, 2020

Time: 1:30 p.m.

Place: Courtroom 6A,
350 West 1st Street,
Los Angeles, CA 90012

Complaint Filed: April 20, 2020

GERAGOS & GERAGOS, APC.
644 South Figueroa Street
Los Angeles, California 90017-3411

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOTICE OF MOTION

PLEASE TAKE NOTICE that on August 3, 2020 at 1:30 p.m., or as soon thereafter as counsel may be heard, in Courtroom 6A of the above-entitled courthouse, before the Honorable Philip S. Gutierrez, Defendant GERAGOS & GERAGOS, APC (“Defendant”), by and through its attorneys, will respectfully move this Honorable Court for an Order dismissing the Complaint filed on April 20, 2020, or in the alternative, for a stay of the proceedings.

This motion is made pursuant to Rules 7(b), 12(b)(1), and 12(b)(6) of the Federal Rules of Civil Procedure, and is based on this notice of motion, the attached memorandum of points and authorities, the Declaration of Ben Meiselas and exhibits attached hereto, and upon the entire record and files herein and any oral argument presented at the hearing on this matter.

This motion is made following the conference of counsel pursuant to Local Rule 7-3 which took place on May 15 and 20, 2020.

DATED: June 2, 2020

GERAGOS & GERAGOS, APC

By: /s/ Ben Meiselas
MARK J. GERAGOS
BEN J. MEISELAS
MATTHEW M. HOESLY
Attorneys for Defendant
GERAGOS & GERAGOS, APC

GERAGOS & GERAGOS, APC
HISTORIC ENGINE CO. NO. 28
644 SOUTH FIGUEROA STREET
LOS ANGELES, CALIFORNIA 90017-3411

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

TABLE OF AUTHORITIES.....iv-vii

INTRODUCTION..... 1

LEGAL STANDARD..... 1

ARGUMENT..... 2

 I. This Case Raises Unsettled Questions of State Law, from Which this Court
Should Abstain under the Declaratory Judgment Act..... 2

 A. This Court Need Not Make a Determination of State Law..... 4

 B. This Court Should Refrain from Hearing this Case Due to Plaintiff’s
Forum Shopping..... 5

 C. This Court Should Abstain to Avoid Duplicative Litigation..... 7

 D. All Other Factors Weigh in Favor of Abstention..... 8

 II. This Court May Stay the Proceedings Based on Abstention Pursuant to Both
Colorado River and *Younger*..... 9

CONCLUSION..... 12

GERAGOS & GERAGOS, APC
HISTORIC ENGINE CO. NO. 28
644 SOUTH FIGUEROA STREET
LOS ANGELES, CALIFORNIA 90017-3411

GERAGOS & GERAGOS, APC
 HISTORIC ENGINE CO. NO. 28
 644 SOUTH FIGUEROA STREET
 LOS ANGELES, CALIFORNIA 90017-3411

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITES

Page(s)

Cases

Allstate Ins. Co. v. Gillette, C 05–02385 WHA,
 2006 WL 997236 (N.D.Cal. Apr. 17, 2006)8

Allstate Insurance Co. v. Davis,
 430 F.Supp.2d 1112 (D.Haw.2006)4

American Cas. Co. v. Krieger,
 181 F.3d 1113 (9th Cir.1999).....6

AmerisourceBergen Corp. v. Roden,
 495 F.3d 1143 (9th Cir.2007).....11

Bituminous Cas. Corp. v. Kerr Contractors, Inc.,
 2010 WL 2572772 (D.Or. June 22, 2010)8

Brillhart v. Excess Ins. Co. of America,
 316 U.S. 491 (1942).....2

Budget Rent–A–Car v. Crawford,
 108 F.3d 1075 (9th Cir.1997).....6

Chamberlain v. Allstate Ins. Co.,
 931 F.2d 1361 (9th Cir.1991).....2, 8

Cheshire v Coca-Cola Bottling Affiliated, Inc.,
 758 F. Supp. 1098 (D.S.C. 1990).....5

Colorado River Water Conservation Dist. v. United States,
 424 U.S. 800 (1976).....10, 11

Cont'l Cas. Co. v. Robsac Indus.,
 947 F.2d (9th Cir. 1991).....4

Corcoran v. Ardra Ins. Co., Ltd.,
 842 F2d 31 (2nd Cir. 1988).....9

GERAGOS & GERAGOS, APC
 HISTORIC ENGINE CO. NO. 28
 644 SOUTH FIGUEROA STREET
 LOS ANGELES, CALIFORNIA 90017-3411

1 *Courthouse News Serv. v. Planet,*
 750 F.3d 776 (9th Cir. 2014)..... 2

2

3 *Gemini Ins. Co. v. Clever Constr., Inc.,*
 2009 WL 3378593 (D.Haw. Oct. 21, 2009).....4

4

5 *Gov't Employees Ins. Co. v. Dizol,*
 133 F.3d 1220 (9th Cir.1998).....*passim*

6

7 *Gulfstream Aerospace Corp. v. Mayacamas Corp.,*
 485 U.S. 271 (1988).....10

8

9 *Holder v. Holder,*
 305 F.3d 854 (9th Cir.2002).....10

10

11 *Intel Corp. v. Advanced Micro Devices, Inc.,*
 12 F.3d 908 (9th Cir.1993).....10

12

13 *Keown v. Tudor Ins. Co.,*
 621 F.Supp.2d 1025 (D.Haw.2008)4

14

15 *Mitcheson v. Harris,*
 955 F.2d 235 (4th Cir.1992).....4

16

17 *Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp.,*
 460 U.S. 1 (1983).....10

18

19 *Nakash v. Marciano,*
 882 F.2d 1411 (9th Cir.1989).....10

20

21 *Nat'l Chiropractic Mut. Ins. Co. v. Doe,*
 23 F.Supp.2d 1109 (D.Alaska 1998).....4

22

23 *OneBeacon Ins. Co. v. Parker, Kern, Nard & Wenzel, 1:09-cv-00257 AWI GSA,*
 2009 WL 2914203 (E.D.Cal. Sept. 9, 2009).....7

24

25 *Phoenix Assurance PLC v. Marimed Found. for Island Health Care Training,*
 125 F.Supp.2d 1214 (D.Haw.2000)7

26

27 *Porter v. Jones,*
 319 F.3d 483 (9th Cir.2003).....1

28

GERAGOS & GERAGOS, APC
 HISTORIC ENGINE CO. NO. 28
 644 SOUTH FIGUEROA STREET
 LOS ANGELES, CALIFORNIA 90017-3411

1 *Potrero Hills Landfill, Inc. v. Cnty. of Solano,*
 2 657 F.3d 876 (9th Cir.2011)..... 1
 3
 4 *Quackenbush v. Allstate Ins. Co.,*
 5 517 US 706 (1996)..... 9
 6
 7 *R.R. St. & Co. Inc. v. Transp. Ins. Co.,*
 8 656 F.3d 966 (9th Cir. 2011)..... 3
 9
 10 *Railroad Comm'n of Tex. v. Pullman Co.,*
 11 312 US 496 (1941)..... 9
 12
 13 *San Jose Silicon Valley Chamber of Commerce Political Action Committee*
 14 *v. City of San Jose, 546 F.3d 1087 (9th Cir.2008) 11*
 15
 16 *Scotts Co. LLC v. Seeds, Inc.,*
 17 688 F.3d 1154 (9th Cir. 2012)..... 1
 18
 19 *Shyh-Yih Hao v. Wu-Fu Chen, No. 10-CV-00826-LHK,*
 20 2011 WL 941292 (N.D. Cal. Mar. 16, 2011)..... 10, 11
 21
 22 *Stewart Title Co. v. Investors Funding Corp.,*
 23 2010 WL 1904981 (D.Haw. May 11, 2010)..... 7
 24
 25 *Wilton v. Seven Falls Co.,*
 26 515 U.S. 277 (1995)..... 2, 3, 7
 27
 28 *Younger v. Harris,*
 401 U.S. 37 (1971)..... 9

Statutes

28 U.S.C. § 2201(a)..... 2

28 USC § 1447(c)..... 9

Rules

Federal Rule of Civil Procedure 12(b)(1)..... 1, 2

1 Federal Rule of Civil Procedure 12(b)(6).....1, 2

2 **Other Authorities**

3 The Rutter Group, *Prac. Guide Fed. Civ. Proc. Before Trial (Nat Ed.)* Ch. 2D-109

GERAGOS & GERAGOS, APC
HISTORIC ENGINE CO. NO. 28
644 SOUTH FIGUEROA STREET
LOS ANGELES, CALIFORNIA 90017-3411

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTRODUCTION

1
2 Plaintiff Travelers Casualty Insurance Company of America (“Travelers”) asks
3 this Court to declare that it has no obligation under the insurance policy that its
4 insured, Defendant Geragos & Geragos, APC (“Defendant”) has paid for to cover the
5 loss of business income due to the forced closure of the business by order of civil
6 authority. This action was brought against Defendant ten days after Defendant filed an
7 identical lawsuit against Travelers on April 10, 2020 in the Superior Court of
8 California, Los Angeles County (Case No. 20STCV14022). After filing the instant
9 action, Travelers then improperly removed the state court action filed by Defendant to
10 this Court on May 15, 2020, case number 2:20-cv-04414-PSG-E. At the same time,
11 there are current pending state court cases against Travelers which Travelers has not
12 removed. Since Plaintiff has clearly engaged in forum shopping by filing the instant
13 action and removing the parallel action, while leaving other actions in state court, this
14 Court should dismiss the case under the Declaratory Judgement Act, as it raises novel
15 and unsettled questions of state law, or abstain from hearing this action pursuant to the
16 *Colorado River* and *Younger* doctrines.

LEGAL STANDARD

17
18 The Ninth Circuit has not squarely held whether abstention is properly raised
19 under Rule 12(b)(6), Rule 12(b)(1), both, or neither. *Compare, e.g., Porter v.*
20 *Jones*, 319 F.3d 483, 489 (9th Cir.2003) (reviewing the district court's decision to
21 abstain pursuant to a Rule 12(b)(6) motion and noting that “[i]n debating the propriety
22 of abstention, the parties ... rely on the facts alleged in the complaint”), *with Scotts Co.*
23 *LLC v. Seeds, Inc.*, 688 F.3d 1154, 1159–60 (holding, on appeal from a dismissal
24 under Rule 12(b)(1), that the district court abused its discretion in applying *Colorado*
25 *River* abstention), *and Potrero Hills Landfill, Inc. v. Cnty. of Solano*, 657 F.3d 876,
26 881 (9th Cir.2011) (noting that “petitioners intervened ... and moved to dismiss under
27 [Rules] 12(b)(6) and 12(b)(1), or *in the alternative* to abstain from deciding the case”
28 (emphasis added)).

1 In *Courthouse News Service v. Planet*, 750 F.3d 776, 780 (9th Cir. 2014), the
 2 defendant filed a “Motion to Dismiss and Abstain” in the district court which was not
 3 expressly styled as a motion under either Federal Rule of Civil Procedure 12(b)(1) or
 4 Federal Rule of Civil Procedure 12(b)(6). The defendant subsequently argued that it
 5 should be construed as a Rule 12(b)(1) motion, while the plaintiff contended that it
 6 should more properly viewed as a Rule 12(b)(6) motion. *Id.* The Ninth Circuit held
 7 that “this case does not require us to decide which Rule, if either, provides the correct
 8 vehicle for a motion to abstain.” *Courthouse News Serv. v. Planet*, 750 F.3d 776, 780
 9 (9th Cir. 2014). Rather, it explained that whether treated under
 10 Rule 12(b)(6), Rule 12(b)(1), or some other rubric, the abstention issues could be
 11 evaluated assuming the truth of the complaint's alleged facts. *Id.* at 779-80 & 779 n.2.

12 ARGUMENT

13 I. This Case Raises Unsettled Questions of State Law, from Which this 14 Court Should Abstain under the Declaratory Judgment Act.

15 Plaintiff’s complaint for declaratory relief regarding the denial of coverage
 16 from the insurance policy at issue raises significant unsettled questions of state law.
 17 Under the Declaratory Judgment Act, a district court has the “unique and substantial
 18 discretion” to decide whether to issue a declaratory judgment. *Wilton v. Seven Falls*
 19 *Co.*, 515 U.S. 277, 286 (1995). The Declaratory Judgment Act states that “courts *may*
 20 declare the rights and other legal relations of any interested party seeking such
 21 declaration.” 28 U.S.C. § 2201(a) (emphasis added). Therefore, a district court is
 22 under no compulsion to exercise its jurisdiction. *Brillhart v. Excess Ins. Co. of*
 23 *America*, 316 U.S. 491, 494 (1942).

24 In cases where parallel state proceedings exist, “there is a presumption that the
 25 entire suit should be heard in state court.” *Gov't Employees Ins. Co. v. Dizol*, 133 F.3d
 26 1220, 1225 (9th Cir.1998) (en banc) (citing *Chamberlain v. Allstate Ins. Co.*, 931 F.2d
 27 1361, 1366–67 (9th Cir.1991)). Courts should avoid gratuitous interference, as it
 28 would be uneconomical and vexatious for a federal court to proceed with a declaratory

1 judgment action in these situations. *Wilton*, 515 U.S. at 282-83 (citing *Brillhart*, 316
2 U.S. at 495). However, the existence of a pendent state action does not automatically
3 bar a request for federal declaratory relief. *Chamberlain*, 931 F.2d at 1367. Courts
4 consider and balance several factors in determining whether to exercise jurisdiction or
5 to dismiss, remand, or stay the declaratory judgment proceeding including concerns of
6 judicial administration, comity, and fairness to the litigants. *Chamberlain*, 931 F.2d at
7 1367.

8 The Supreme Court has cautioned district courts to (1) avoid needless
9 determination of state law issues; (2) discourage litigants from filing declaratory
10 actions in an attempt to forum shop; and (3) avoid duplicative litigation. *Dizol*, 133
11 F.3d at 1225 (citing *Brillhart*, 316 U.S. at 494); *Chamberlain*, 931 F.2d at 1367. In
12 addition to the *Brillhart* factors, the Ninth Circuit has suggested that district courts
13 should consider the following additional factors:

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

22 *Dizol*, 133 F.3d at 1225 n. 5 (citation omitted).

23 Courts have the power to dismiss, abstain, or remand cases based on the above factors.
24 *See, e.g., R.R. St. & Co. Inc. v. Transp. Ins. Co.*, 656 F.3d 966, 975 (9th Cir. 2011).

25 The United States Western District of Pennsylvania recently addressed a similar
26 issue in a COVID-19 business interruption case. *See United States Dianoia’s Eatery,*
27 *LLC v. Motorists Mutual Ins Co.*, No. 2:20-cv-00706-NBF. (W.D.Pa. May 19, 2020).
28 In exercising its discretion to remand the case back to state court under the
Declaratory Judgment Act, the court held that the plaintiffs’ complaint raised a novel
insurance coverage issue under Pennsylvania law which was better reserved for the

1 state court to resolve. *Id.*

2 Similarly, in Illinois, the Department of Justice intervened in a lawsuit
 3 challenging the coronavirus stay-at-home order.¹ *See Bailey v. Pritzker*, No. 3:20-cv-
 4 474 (S.D. Ill. May 22, 2020). The United States argued that the dispute belonged in
 5 Illinois state court and that Representative Bailey had raised substantial questions as to
 6 whether the Governor’s current response to COVID-19 is lawful. *Id.* Although the
 7 complaint did not raise any federal constitutional claims, the United States argued “[i]t
 8 is up to the Illinois courts to rule on Plaintiff’s claims, which, because of the sweeping
 9 nature of the Orders, may affect millions of lives and raise significant constitutional
 10 concerns in other litigation.” *Id.*

11 **A. This Court Need Not Make a Determination of State Law**

12 “A ‘needless determination of state law’ may involve an ongoing parallel state
 13 proceeding regarding the ‘precise state law issue,’ an area of law Congress expressly
 14 reserved to the states, or a lawsuit with no compelling federal interest (e.g., a diversity
 15 action).” *Keown v. Tudor Ins. Co.*, 621 F.Supp.2d 1025, 1036 (D.Haw.2008).
 16 However, “[t]he concern in this factor is with unsettled issues of state law, not fact-
 17 finding in the specific case.” *Nat’l Chiropractic Mut. Ins. Co. v. Doe*, 23 F.Supp.2d
 18 1109, 1118 (D.Alaska 1998) (citing *Cont’l Cas. Co v. Robsac Indus.*, 947 F.2d at
 19 1371). “When state law is unclear, ‘[a]bsent a strong countervailing federal interest,
 20 the federal court should not elbow its way ... to render what may be an uncertain and
 21 ephemeral interpretation of state law.’ ” *Allstate Insurance Co. v. Davis*, 430
 22 F.Supp.2d 1112, 1120 (D.Haw.2006) (quoting *Mitcheson v. Harris*, 955 F.2d 235, 238
 23 (4th Cir.1992)). “[A] state proceeding [is] parallel to a federal declaratory judgment
 24 action when: (1) the actions arise from the same factual circumstances; (2) there are
 25 overlapping factual questions in the actions; or (3) the same issues are addressed by
 26 both actions.” *Gemini Ins. Co. v. Clever Constr., Inc.*, Civ. No. 09–00290 DAE–

27
 28 ¹ *See* <https://www.justice.gov/opa/pr/department-justice-files-statement-interest-challenging-legality-illinois-governors-sweeping>

1 BMK, 2009 WL 3378593, at *7 (D.Haw. Oct. 21, 2009).

2 Here, there are currently three ongoing parallel state proceedings regarding the
3 same precise state law issue: *837 Foothill Blvd. LLC v. Travelers Indemnity Company*
4 *of Connecticut*, Los Angeles Superior Court Case No. 20STCV13929 (Declaration of
5 Ben Meiselas (hereafter “Meiselas Decl.”) ¶ 2, Exhibit A); *2420 Honolulu Ave. LLC v.*
6 *Travelers Indemnity Company of Connecticut*, Los Angeles Superior Court Case No.
7 20STCV14000 (Meiselas Decl. ¶ 3, Exhibit B); and *Mark J. Geragos v. Travelers*
8 *Indemnity Company of Connecticut*, Los Angeles Superior Court Case No.
9 20STCV14073 (Meiselas Decl. ¶ 4, Exhibit C), which were *not* removed to federal
10 court by Travelers. All of these lawsuits contain essentially the same factual questions
11 and they are all seeking declaratory relief regarding the denial of insurance coverage
12 due to COVID-19. Therefore, this action is parallel to other state court actions and
13 should remain in state court because California courts are uniquely situated to deal
14 with issues involving new areas of state law.

15 In addition, there is no compelling federal interest to have this action heard in
16 federal court. The COVID-19 pandemic is a unique disaster and it affects insurance
17 policies in a way that is not covered by California precedent. This matter therefore
18 raises novel legal questions of state law. In particular, these cases raise important
19 state legal issues regarding the potential shifting of liability by insurance companies.
20 For instance, in this case, Travelers is attempting to shift liability for covered business
21 losses as a result of COVID-19 to the City of Los Angeles. Where a federal court
22 doubts whether to exercise jurisdiction, such doubt must be resolved in favor of state
23 court jurisdiction. *Cheshire v Coca-Cola Bottling Affiliated, Inc.*, 758 F. Supp. 1098,
24 1102 (D.S.C. 1990). Since this action raises novel and important state legal issues, it
25 is better suited to be heard in state court to avoid this Court’s needless determination
26 of state law.

27 **B. This Court Should Refrain from Hearing this Case Due to Plaintiff’s**
28 **Forum Shopping.**

“This factor usually is understood to favor discouraging an insurer from forum

1 shopping, *i.e.*, filing a federal court declaratory action to see if it might fare better in
 2 federal court at the same time the insurer is engaged in a state court action.” *American*
 3 *Cas. Co. v. Krieger*, 181 F.3d 1113, 1119 (9th Cir.1999). “Typically, ‘reactive
 4 declaratory judgment actions’ occur when a party sues in federal court to determine
 5 their liability after the commencement of a state court action.” *Gemini*, 2009 WL
 6 3378593 at *8 (citing *Dizol*, 133 F.3d at 1225). This *Brillhart* factor also weighs in
 7 favor of declining jurisdiction where “a federal plaintiff seeks declaratory relief in
 8 anticipation that a related state court proceeding may be filed.” *Budget Rent–A–Car v.*
 9 *Crawford*, 108 F.3d 1075, 1081 (9th Cir.1997), *overruled in part on other grounds*
 10 *by Dizol*, 133 F.3d at 1227.

11 Here, Travelers is clearly engaging in forum shopping. Defendant filed their
 12 initial complaint against Travelers in state court, *Geragos & Geragos, APC v.*
 13 *Travelers Indemnity Company of Connecticut* in the Los Angeles Superior Court,
 14 Case No. 20STCV14022, (Meiselas Decl. ¶ 5, Exhibit D), which was removed by
 15 Travelers on May 15, 2020 to the United States District Court, Central District of
 16 California, Case No. 2:20-cv-04414-PSG-E. In addition to their removal, Travelers
 17 filed this essentially identical complaint against Defendant for declaratory relief on
 18 April 20, 2020 in the United States District Court, Central District of California.

19 On May 14, 2020, California Insurance Commissioner Ricardo Lara issued a
 20 statement regarding COVID-19 protection for policyholders from Unfair Settlement
 21 Practices.² In the statement, the Department stated that it has been informed that some
 22 insurers are unfairly taking advantage of the COVID-19 crisis, including the backlog
 23 of the civil court system in the state, by failing to make settlement offers with full
 24 knowledge that policyholders are unable to obtain prompt redress in the California
 25 court system. Not only is Travelers compelling Defendant to institute litigation,
 26 Travelers is forcing Defendant to simultaneously litigate in both federal and state

27 ² See [http://www.insurance.ca.gov/0250-insurers/0300-insurers/0200-](http://www.insurance.ca.gov/0250-insurers/0300-insurers/0200-bulletins/bulletin-notices-commiss-opinion/upload/COVID19-UnfairStlmtPHPprotect.pdf)
 28 [bulletins/bulletin-notices-commiss-opinion/upload/COVID19-](http://www.insurance.ca.gov/0250-insurers/0300-insurers/0200-bulletins/bulletin-notices-commiss-opinion/upload/COVID19-UnfairStlmtPHPprotect.pdf)
[UnfairStlmtPHPprotect.pdf](http://www.insurance.ca.gov/0250-insurers/0300-insurers/0200-bulletins/bulletin-notices-commiss-opinion/upload/COVID19-UnfairStlmtPHPprotect.pdf)

1 court, as they have selectively removed this action while not removing three parallel
2 state court cases, as noted above. In short, given the fact that Travelers has engaged in
3 forum shopping, this Court should find that the second *Brillhart* factor weighs in favor
4 of abstention.

5 **C. This Court Should Abstain to Avoid Duplicative Litigation.**

6 There is a presumption to decline jurisdiction “[i]f there are parallel state
7 proceedings involving the same issues and parties pending at the time the federal
8 declaratory action is filed.” *Dizol*, 133 F.3d at 1225. “When ‘another suit involving
9 the same parties and presenting opportunity for ventilation of the same state law issues
10 is pending in state court, a district court might be indulging in gratuitous interference
11 if it permitted the federal declaratory action to proceed.’” *Stewart Title Co. v.*
12 *Investors Funding Corp.*, Civ. No. 09–00455 SOM/KSC, 2010 WL 1904981, at *6
13 (D.Haw. May 11, 2010) (quoting *Wilton*, 515 U.S. at 283). That said, “[t]he pendency
14 of a state court action does not, of itself, require a district court to refuse federal
15 declaratory relief.” *Dizol*, 133 F.3d at 1225. Further, “there is no presumption in favor
16 of abstention in declaratory actions generally, nor in insurance coverage cases
17 specifically.” *Id.*

18 As stated above, there are currently three cases pending in the Superior Court of
19 California, County of Los Angeles involving the same exact factual circumstances and
20 issues raised in this case. There is a high likelihood that if this case remains in federal
21 court, there will be contradictory decisions regarding Mayor Eric Garcetti and
22 Travelers, who are both defendants in the state court cases, as well as the damages to
23 the plaintiffs in those cases. This Court should therefore abstain from this case in
24 order to avoid inconsistent outcomes with the pending state court cases. *See*
25 *OneBeacon Ins. Co. v. Parker, Kern, Nard & Wenzel*, 1:09–cv–00257 AWI GSA,
26 2009 WL 2914203, at *6 (E.D.Cal. Sept. 9, 2009) (“[W]ith the risk of duplicative
27 litigation comes the risk of inconsistent outcomes.”); *see, e.g., Phoenix Assurance*
28 *PLC v. Marimed Found. for Island Health Care Training*, 125 F.Supp.2d 1214, 1222

1 (D.Haw.2000) (finding that avoidance of duplicative litigation favored a stay because
2 the district court would otherwise have to decide many of the same issues to be
3 decided in pending state court litigation). Accordingly, the Court should find that the
4 third *Brillhart* factor weighs in favor of abstention.

5 **D. All Other Factors Weigh in Favor of Abstention**

6 All other factors outlined by the Ninth Circuit in *Dizol* also weigh in favor of
7 abstaining from this federal action. *See Dizol*, 133 F.3d at 1225 n. 5. To begin with,
8 the federal action would not settle all aspects of the controversy. Indeed, even if this
9 Court were to resolve Plaintiff's claims, a number of related issues would remain in
10 the underlying state actions. For instance, while this action would clarify the legal
11 relations between Plaintiff and the defendants in the underlying action, the Court is
12 mindful of "the price of that clarification, which is calculated in terms of 'judicial
13 administration, comity, and fairness to the litigants.'" *Bituminous Cas. Corp. v. Kerr*
14 *Contractors, Inc.*, CV 10-78-MO, 2010 WL 2572772, at *6 (D.Or. June 22, 2010)
15 (quoting *Chamberlain*, 931 F.2d at 1367).

16 Moreover, resolution of the instant action would result in undue "entanglement
17 between the federal and state court systems." *Dizol*, 133 F.3d at 1225 n. 5. All of the
18 issues here are related and identical to issues that will be faced in the state court
19 actions. *See Stewart*, 2010 WL 1904981 at *7; *cf. Allstate Ins. Co. v. Gillette*, C 05-
20 02385 WHA, 2006 WL 997236, at *4 (N.D.Cal. Apr. 17, 2006) (finding that parallel
21 proceedings did not invite undue entanglement because "[t]he issues [were]
22 sufficiently distinct in the two actions so that the courts [would] not be stepping on
23 each other's toes"). Finally, if the instant action were to proceed, Defendant would be
24 inconvenienced by having to litigate in both state and federal court. By contrast,
25 Travelers would not be greatly inconvenienced by abstention because the pending
26 state actions would thereafter clarify the obligations of all parties in the forum best
27 equipped to do so.

GERAGOS & GERAGOS, APC
HISTORIC ENGINE CO. NO. 28
644 SOUTH FIGUEROA STREET
LOS ANGELES, CALIFORNIA 90017-3411

1 **II. This Court May Stay Based on Abstention Pursuant to Both *Colorado***
2 ***River* and *Younger*.**

3 It is well established that a district court may dismiss, stay, or remand a case
4 based on abstention, particularly when it will facilitate the smooth operation of the
5 judiciary or based upon other “prudential reasons.” As explained in a treatise on
6 federal practice:

7 (c) [2:3695] Remand based on abstention: Federal courts may remand an
8 action based on abstention principles. [*Quackenbush v. Allstate Ins. Co.*
9 (1996) 517 US 706, 728; *Corcoran v. Ardra Ins. Co., Ltd.* (2nd Cir.
10 1988) 842 F2d 31] (Abstention is discussed in detail at ¶2:4360 ff.)

11 1) [2:3696] Basis for remand: A remand premised on abstention is not
12 based on a lack of subject matter jurisdiction or on a defect in removal
13 procedure. Thus, the power to remand is not based on the statutory
14 grounds set forth in 28 USC § 1447(c), but rather on the federal court's
15 power to refrain from hearing cases based on “scrupulous regard for the
16 rightful independence of the state governments’ and for the smooth
17 working of the federal judiciary.” [*Quackenbush v. Allstate Ins. Co.,*
18 *supra*, 517 US at 712, 718, 116 S.Ct. at 1718, 1721, quoting *Railroad*
19 *Comm'n of Tex. v. Pullman Co.* (1941) 312 US 496, 500-501, 61 S.Ct.
20 643, 645].

21 (d) [2:3699] Remand for other prudential reasons: It would appear,
22 therefore, that a federal court can remand actions for other prudential
23 reasons not otherwise fitting the “absence of jurisdiction” or “removal
24 defects” categories set forth in the remand statute (28 USC § 1447(c)).

25 The Rutter Group, *Prac. Guide Fed. Civ. Proc. Before Trial (Nat Ed.)* Ch. 2D-10.

26 The Northern District of California recently provided a comprehensive
27 explanation of both *Colorado River* and *Younger*³ abstention that is instructive:

28 Under the *Colorado River* doctrine, a federal court may abstain from
exercising its jurisdiction in favor of parallel state proceedings where
doing so would serve the interests of “[w]ise judicial administration,
giving regard to the conservation of judicial resources and
comprehensive disposition of litigation.” *Colorado River Water*

³ *Younger v. Harris* (1971) 401 U.S. 37.

1 *Conservation Dist. v. United States*, 424 U.S. 800, 818, 96 S.Ct. 1236, 47
2 L.Ed.2d 483 (1976); *Moses H. Cone Mem. Hosp. v. Mercury Constr.*
3 *Corp.*, 460 U.S. 1, 15, 103 S.Ct. 927, 74 L.Ed.2d 765 (1983). “Exact
4 parallelism” between the state and federal actions is not required; it is
5 enough if the two actions are “substantially similar.” *Nakash v.*
6 *Marciano*, 882 F.2d 1411, 1416 (9th Cir.1989). Nonetheless, the Ninth
7 Circuit has emphasized that “the *Colorado River* doctrine is a narrow
8 exception to ‘the virtually unflagging obligation of the federal courts to
9 exercise the jurisdiction given them.’” *Holder v. Holder*, 305 F.3d 854,
10 867 (9th Cir.2002) (quoting *Colorado River*, 424 U.S. at 817).
11 Accordingly, a stay of proceedings pursuant to the *Colorado River*
12 doctrine is appropriate only where “exceptional circumstances” are
13 present. *Id.* Generally, a court determines whether *Colorado River*
14 abstention is appropriate by carefully weighing a number of relevant
15 factors, “with the balance heavily weighted in favor of the exercise of
16 jurisdiction.” *Moses H. Cone*, 460 U.S. at 16. However, the Ninth Circuit
17 has identified a “significant countervailing consideration” that may be
18 dispositive, despite the presence of other factors favoring a stay. *Intel*
19 *Corp. v. Advanced Micro Devices, Inc.*, 12 F.3d 908, 913 (9th Cir.1993).
20 That is, “[u]nder the rules governing the *Colorado River* doctrine, the
21 existence of a substantial doubt as to whether the state proceedings will
22 resolve the federal action precludes the granting of a stay.” *Id.* As the
23 Supreme Court stated in *Moses H. Cone*: When a district court decides to
24 dismiss or stay under *Colorado River*, it presumably concludes that the
25 parallel state-court litigation will be an adequate vehicle for the complete
26 and prompt resolution of the issues between the parties. If there is any
27 substantial doubt as to this, it would be a serious abuse of discretion to
28 grant the stay or dismissal at all. 460 U.S. at 28. Accordingly, a district
court may stay a proceeding pursuant to *Colorado River* only if it has
“full confidence” that the state court proceeding will resolve the federal
litigation. *Intel*, 12 F.3d at 913 (quoting *Gulfstream Aerospace Corp. v.*
Mayacamas Corp., 485 U.S. 271, 277, 108 S.Ct. 1133, 99 L.Ed.2d 296
(1988)).

23 *Shyh-Yih Hao v. Wu-Fu Chen*, No. 10-CV-00826-LHK, 2011 WL 941292, at *10-11
24 (N.D. Cal. Mar. 16, 2011).

25 If this Court abstains from hearing this matter, all of the claims involving
26 Defendant and Travelers will be adjudicated. Abstention will also foreclose the
27 possibility of piecemeal litigation. Accordingly, this Court can, and should, abstain
28 from the matter pursuant to *Colorado River* abstention.

1 The *Younger* abstention doctrine was also discussed by the Northern District of
2 California in *Shyh-Yih Hao*:

3
4 *Younger* abstention is a jurisprudential doctrine rooted in principles of
5 equity, comity, and federalism that limits a federal court's power to
6 enjoin or interfere with state-court litigation. *San Jose Silicon Valley*
7 *Chamber of Commerce Political Action Committee v. City of San Jose*,
8 546 F.3d 1087, 1092 (9th Cir.2008). Under the doctrine articulated in
9 *Younger*, a federal district court must abstain from exercising jurisdiction
10 if four conditions are met: (1) a state-initiated proceeding is ongoing; (2)
11 the proceeding implicates important state interests; (3) the federal
12 plaintiff is not barred from litigating federal issues in the state
13 proceeding; and (4) the federal court action would “enjoin the proceeding
14 or have the practical effect of doing so, i.e., would interfere with the state
15 proceeding in a way that *Younger* disapproves.” *San Jose Silicon Valley*
16 *Chamber of Commerce Political Action Committee v. City of San Jose*,
17 546 F.3d 1087, 1092 (9th Cir.2008); see also *AmerisourceBergen Corp.*
18 *v. Roden*, 495 F.3d 1143, 1148–49 (9th Cir.2007). A court should abstain
19 under *Younger* only when all four requirements are “strictly met.” *Id.* at
20 1148.

21 *Shyh-Yih Hao v. Wu-Fu Chen*, No. 10-CV-00826-LHK, 2011 WL 941292, at *12
22 (N.D. Cal. Mar. 16, 2011).

23 Each *Younger* prong is strictly met here. First, there are three state-initiated
24 proceedings ongoing against Travelers as discussed above. Second, the proceedings
25 in the state court implicate important state interests predicated solely upon state causes
26 of action. Specifically, California has a strong interest in the enforcement of its
27 insurance policies and the fact that the COVID-19 pandemic raises novel unsettled
28 issues of state law. The third prong is inapplicable and may be properly disregarded as
there are no federal issues raised. The fourth prong is met by virtue of the fact that
this case will interfere with the three state court cases by causing piecemeal litigation,
the possibility of inconsistent results, and unnecessary expense for the parties.

Accordingly, the Court should abstain from exercising further jurisdiction in
this matter or grant the alternative relief requested herein.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

For the foregoing reasons, Defendant respectfully request that this Court issue: (1) an order dismissing the action or, (2) an order staying this action pending resolution of the three parallel state cases or, (3) an order granting whatever other relief the Court deems just and appropriate under the circumstances.

DATED: June 2, 2020

GERAGOS & GERAGOS, APC

By: /s/ Ben Meiselas
MARK J. GERAGOS
BEN J. MEISELAS
MATTHEW M. HOESLY
Attorneys for Defendant
GERAGOS & GERAGOS, APC

GERAGOS & GERAGOS, APC
HISTORIC ENGINE CO. NO. 28
644 SOUTH FIGUEROA STREET
LOS ANGELES, CALIFORNIA 90017-3411