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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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PAUL EVERT'S RV COUNTRY,
INC.; PAUL EVERT; and CHARLES
CURTIS,

Plaintiffs,

v.

UNIVERSAL UNDERWRITERS
INSURANCE COMPANY,

Defendant.

CIV. NO. 1:15-00124 WBS SKO

ORDER

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Plaintiffs Paul Evert's RV Country Inc., Paul Evert,
and Charles Curtis initiated this suit against defendant
Universal Underwriters Insurance Company alleging a breach of
defendant's duty to defend. (Docket No. 1.) Presently before
the court is plaintiffs' motion to strike defendant's
counterclaim for declaratory relief as untimely pursuant to

1 Federal Rule of Civil Procedure 12(f) and motion to dismiss
2 defendant's counterclaim for failure to state a claim pursuant to
3 Rule 12(b)(6). (Docket No. 20.)

4 Defendant admits that it improperly filed its
5 counterclaim without first obtaining leave of court and therefore
6 does not oppose plaintiffs' motion to strike. (Def.'s Non-Opp'n
7 at 1 (Docket No. 24).) Defendant has filed a motion for leave to
8 file a new counterclaim, which is set for hearing on April 4,
9 2016. (Docket No. 22.) The court has not yet ruled on that
10 motion.

11 IT IS THEREFORE ORDERED that plaintiffs' motion to
12 strike defendant's counterclaim for declaratory relief be, and
13 the same hereby is, GRANTED. IT IS FURTHER ORDERED that
14 plaintiffs' motion to dismiss be, and the same hereby is, DENIED
15 without prejudice to plaintiffs' right to file their motion to
16 dismiss the new counterclaim if the court grants defendant's
17 motion to file it.

18 Dated: March 10, 2016



19 **WILLIAM B. SHUBB**
20 **UNITED STATES DISTRICT JUDGE**
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