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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

OLGA CIOBAN-LEONTIY,  
Plaintiff,  
v.  
SILVERTHORN RESORT  
ASSOCIATES, LP, a California Limited  
Partnership, WATERWAY  
HOUSEBOAT BUILDERS, a foreign  
corporation, VOLVO PENTA OF THE  
AMERICAS, LLC, a Delaware Limited  
Liability Company, and DOES 1-50,  
inclusive,  
Defendants.

No. 2:17-cv-01626-MCE-DMC

**ORDER**

SILVERTHORN RESORT  
ASSOCIATES, LP, a California Limited  
Partnership,  
Cross-Claimant,  
v.  
DMITRY GAIDUCHIK, MAKSIM  
LEONTIY, VOLVO PENTA OF THE  
AMERICAS, LLC, a Delaware Limited  
Liability Company, and WATERWAY  
HOUSEBOAT BUIDERS, a foreign  
corporation,  
Cross-Defendants.

1 VOLVO PENTA OF THE AMERICAS,  
2 LLC, a Delaware Limited Liability  
Company,

3 Cross-Claimant,

4 v.

5 DMITRY GAIDUCHIK, MAKSIM  
6 LEONTIY, SILVERTHORN RESORT  
ASSOCIATES, LP, a California Limited  
7 Partnership, and WATERWAY  
HOUSEBOAT BUILDERS, a foreign  
8 corporation,

9 Cross-Defendants.

10  
11 Through the present action, Plaintiff Olga Cioban-Leontiy (“Plaintiff”) seeks  
12 damages for personal injuries she sustained after jumping from a houseboat on Lake  
13 Shasta, California. Plaintiff’s Complaint was originally filed in Shasta County Superior  
14 Court on May 10, 2017, and included causes of action for products liability and  
15 negligence. In addition to suing Defendant Silverthorn Resort Associates, LP.  
16 (“Silverthorn”), the marina where the houseboat had been rented, Plaintiff’s Complaint  
17 also originally named Volvo Penta of America (“Volvo”), the manufacturer of the  
18 houseboat’s motor. On August 3, 2017, Volvo removed the case to this Court, citing  
19 federal question jurisdiction under both the Federal Boat Safety Act of 1971, 46 U.S.C.  
20 § 4301, et seq., and the Inland Navigation Rules, 33 U.S.C. § 2701.

21 Following removal to this Court, Plaintiff filed an Amended Complaint (ECF  
22 No. 17) on October 24, 2017 which named Waterway Houseboat Builders, the company  
23 that actually constructed the vessel, as an additional defendant. Silverthorn and Volvo  
24 proceeded to file their own cross-claims for indemnity and contribution, but Waterway  
25 was never served with the Amended Complaint prior to the time Plaintiff voluntarily  
26 dismissed it as a defendant on May 14, 2018. ECF No. 34. Plaintiff then proceeded to  
27 enter into a stipulation with Volvo for dismissal in exchange for a waiver of costs. ECF  
28 No. 43. Under the terms of that stipulation, Plaintiff represented to the Court and to the

1 remaining Defendant, Silverthorn, that it was “no longer pursuing product liability claims  
2 against Volvo Penta and Waterway Houseboat Builders, but rather, is pursuing  
3 Silverthorn under theories that do not involve Volvo Penta or Waterway Houseboat  
4 Builders.” ECF No. 43, p. 2:3-5. Plaintiff thereafter filed a Motion for Good Faith  
5 Settlement as to that settlement (ECF No. 53), which Silverthorn opposed on grounds  
6 that Plaintiff’s Amended Complaint, as currently constituted, continued to contain product  
7 liability claims despite Plaintiff’s apparent stipulation otherwise. At the time of the  
8 hearing on Plaintiff’s Motion on August 16, 2018, the Court ordered the parties to meet  
9 and confer within the next thirty days as to an amended pleading which could resolve  
10 those differences. When Plaintiff declined to file any further amended pleading, the  
11 Court denied the Motion for Good Faith Settlement on November 13, 2018, reasoning  
12 that because Plaintiff’s operative complaint still included products liability claims  
13 implicating Volvo for which indemnity could be asserted, a settlement in exchange only  
14 for a waiver of costs could not be deemed in good faith given the potentially enormous  
15 damages being asserted by Plaintiff. ECF No. 88.

16 Silverthorn now moves for judgment on the pleadings as to Plaintiff’s claims  
17 against it, claiming that it cannot ascertain what factual contentions, if any, Plaintiff  
18 makes against Silverthorn, given the fact that the Amended Complaint includes only  
19 allegations against Silverthorn, Volvo and Waterway jointly.<sup>1</sup> In the absence of both  
20 Volvo and Waterway as Defendants, and given Plaintiff’s assertion that it makes no  
21 products liability claims against either of those parties, Silverthorn contends it cannot  
22 reasonably ascertain just what product liability claims are in fact being asserted against it  
23 at this juncture since the products liability allegations of the Amended Complaint as they  
24 currently stand draw no effective distinction between the respective roles of Silverthorn,  
25 Waterway and Volvo in the circumstances surrounding this lawsuit.

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27 <sup>1</sup> The Court notes that Silverthorn’s Motion originally also contained a request that the matter be  
28 remanded back to state court. By Notice filed November 2, 2018 (ECF No. 85), however, Silverthorn  
withdrew that request and consequently it will not be further considered.

1 Under Federal Rule of Civil Procedure 12(c), “a party may move for judgment on  
2 the pleadings” after the pleadings are closed “but early enough not to delay trial.” A  
3 motion for judgment on the pleadings pursuant to Rule 12(c) challenges the legal  
4 sufficiency of the opposing party's pleadings. See, e.g., Westlands Water Dist. v.  
5 Bureau of Reclamation, 805 F. Supp. 1503, 1506 (E.D. Cal. 1992). Any party may move  
6 for judgment on the pleadings under Rule 12(c) after the pleadings are closed but within  
7 such time as to not delay trial.

8 A motion for judgment on the pleadings should only be granted if “the moving  
9 party clearly establishes on the face of the pleadings that no material issue of fact  
10 remains to be resolved and that it is entitled to judgment as a matter of law.” Hal Roach  
11 Studios, Inc. v. Richard Feiner & Co., Inc., 896 F.2d 1542, 1550 (9th Cir. 1989).  
12 Judgment on the pleadings is also proper when there is either a “lack of cognizable legal  
13 theory” or the “absence of sufficient facts alleged under a cognizable legal theory.”  
14 Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1988). In reviewing a  
15 Rule 12(c) motion, “all factual allegations in the complaint [must be accepted] as true  
16 and construe[d] . . . in the light most favorable to the non-moving party.” Fleming v.  
17 Pickard, 581 F.3d 922, 925 (9th Cir. 2009). Judgment on the pleadings under Rule 12(c)  
18 is warranted “only if it is clear that no relief could be granted under any set of facts that  
19 could be proved consistent with the allegations.” Deveraturda v. Globe Aviation Sec.  
20 Servs., 454 F.3d 1043, 1046 (9th Cir. 2006) (internal citations omitted).

21 Although Rule 12(c) does not mention leave to amend, courts have the discretion  
22 in appropriate cases to grant a Rule 12(c) motion with leave to amend, or to simply grant  
23 dismissal of the action instead of entry of judgment. See Lonberg v. City of Riverside,  
24 300 F. Supp. 2d 942, 945 (C.D. Cal. 2004); Carmen v. S.F. Unified Sch. Dist.,  
25 982 F. Supp. 1396, 1401 (N.D. Cal. 1997).

26 The Court’s review of Plaintiff’s complaint shows virtually no allegations made  
27 specifically against Silverthorn. In her First Cause of Action, for Strict Products Liability,  
28 Plaintiff asserts that Silverthorn, Waterway, and Volvo, “and each of them, failed to

1 manufacture, design, test and assemble the SUBJECT VESSEL and its components  
2 part in such a way so as to protect against the SUBJECT VESSEL's propeller from  
3 coming into contact with people in the water near the rear of the vessel." Pl.'s Am.  
4 Compl, ¶ 13. As such, according to Plaintiff, the houseboat (that was "designed,  
5 manufactured, marketed, sold and otherwise placed in the stream of commerce" by all  
6 three Defendants) was "defective in design, manufacture, fabrication, assembly,  
7 distribution, inspection, service, repair, marketing, and/or modification", with warnings  
8 and instructions, if any, being "defective and inadequate." Id. at ¶ 12. Plaintiff goes on to  
9 allege that the Volvo engine on the vessel "was in a defective state when it left the  
10 possession of [Volvo] without a propeller guard," and that the Volvo engine was also  
11 "defective by virtue of the lack of any design feature and/or warning that would enable  
12 users of the SUBJECT VESSEL to discern and differentiate between the sound of the  
13 engine and the sound of the generator, causing users to mistake the engine for the  
14 generator." Id. at ¶ 14. None of these allegations provide any factual specifics  
15 whatsoever as to Silverthorn.

16 The Second Cause of Action, which Plaintiff entitles "Products-Negligence", in  
17 addition to incorporating the allegations of the first claim, otherwise simply makes the  
18 same generalized allegations of conduct applicable to all three Defendants. Id. at ¶ 22  
19 (Silverthorn, Waterway and Volvo knew, or should have known, that the houseboat was  
20 not "designed, tested, developed, manufactured, fabricated, assembled, distributed,  
21 bought, sold, inspected, serviced, repaired, marketed, warranted, leased, rented,  
22 supplied, modified, and/or provided in a condition that made it safe for its intended  
23 uses"); ¶ 23 (Silverthorn, Waterway and Volvo acted negligently in the same activities  
24 alleged above). These allegations provide no further factual explication as to  
25 Silverthorn's purported role in the circumstances surrounding this lawsuit.


26 Finally, Plaintiff's third and final cause of action, while purporting to be for  
27 negligence and ostensibly asserted against Silverthorn, only, again just incorporates the  
28 allegations of the preceding causes of action by reference and alleges that the

1 houseboat was “unreasonably dangerous,” that it was “designed, manufactured, rented,  
2 leased and sold” by Silverthorn, and that Silverthorn knew of at least one serious injury  
3 in the weeks preceding the subject accident involving a propeller injury. Id. at ¶ 37.  
4 Plaintiff still does not allege how this could have prevented Plaintiff’s injury, or otherwise  
5 describe Silverthorn’s alleged misfeasance.

6 While Plaintiff is not required to provide an abundance of factual detail in order to  
7 state a viable claim for pleadings purposes, the law is nonetheless clear that a “pleading  
8 that offers only “labels and conclusions” or a formulaic recitation of the elements of a  
9 cause of action will not suffice. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Nor can a  
10 complaint survive pleadings scrutiny if it tenders only “naked assertions devoid of further  
11 factual enhancement.” Id. The Court finds that Plaintiff’s Amended Complaint fails to  
12 satisfy these threshold standards. Consequently, Defendant Silverthorn’s Motion for  
13 Judgment on the Pleadings is GRANTED.<sup>2</sup> ECF No. 66. Plaintiff is directed to file an  
14 amended pleading not later than fourteen (14) days following the date this Order is  
15 electronically filed. Failure to do so will result in the matter being dismissed with  
16 prejudice without further notice, and no extensions will be permitted.

17 IT IS SO ORDERED.

18 Dated: February 5, 2019

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20 MORRISON C. ENGLAND, JR.  
21 UNITED STATES DISTRICT JUDGE  
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28 <sup>2</sup> Having determined that oral argument would not be of material assistance, the Court ordered this  
matter submitted on the briefs in accordance with E.D. Local Rule 230(g).