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6 **Attorneys for Defendant/Cross-**
 7 **Claimant/Cross-Defendant**
 8 **SILVERTHORN RESORT**
ASSOCIATES, LP

9 **UNITED STATES DISTRICT COURT**
 10 **EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION**

12 OLGA CIOBAN-LEONTIY,
 13 Plaintiff,

14 vs.

15 SILVERTHORN RESORT
 ASSOCIATES, LP, a California
 16 Limited Partnership, WATERWAY
 HOUSEBOAT BUILDERS, a foreign
 17 corporation, VOLVO PENTA OF THE
 AMERICAS, LLC, a Delaware Limited
 18 Liability Company, and DOES 1
 through 50, inclusive,
 19 Defendants.

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

**ORDER ON STIPULATION TO
 STRIKE PORTIONS AND TO
 CLARIFY PORTIONS OF
 PLAINTIFF’S THIRD AMENDED
 COMPLAINT**

Trial Date: None

21 AND RELATED CROSS-ACTIONS.

23 The Court having reviewed and considered the Parties’ STIPULATION TO
 24 STRIKE AND TO CLARIFY PORTIONS OF PLAINTIFF’S THIRD AMENDED
 25 COMPLAINT, and good cause appearing therefore,

26 IT IS HEREBY ORDERED as follows:

- 27 1. The stipulation of the parties is accepted.

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ANDERSON, MCPHARLIN & CONNERS LLP

LAWYERS

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1 2. The following portions of Plaintiff’s Third Amended Complaint
2 (“TAC”) as identified by the struck through language below are stricken from the
3 TAC:

4 a. ¶ 31, p. 7:14: “was defective in ~~design~~, inspection, service,
5 repair, marketing and/or modification”; and

6 b. ¶46, p. 11:7-9 : “to ~~design, test, develop[,] manufacture,~~
7 ~~fabricate, assemble, distribute,~~ warn, instruct, buy, sell, inspect, service,
8 repair, market, warrant, lease, supply, modify, and/or provide the SUBJECT
9 VESSEL, in a condition that was safe for its intended use.”

10 3. The allegations set out in ¶33, at p. 7:26 – 28:1 that the SUBJECT
11 VESSEL was “generally defective in its marketing, leasing, and visible warnings
12 because it failed to protect foreseeable users of the SUBJECT VESSEL, as well as
13 bystanders, from injurious contact with the vessel’s propeller when in the water in
14 the vicinity of the aft of the vessel and its propeller” are limited to “marketing,
15 leasing, and visible warnings” and shall not be interpreted to raise issues of physical
16 prevention of people coming into contact with the propeller by the use of a propeller
17 guard, ladder interlock devise, or other such instrumentality, and Plaintiff has
18 waived pursuit of such theories against SILVERTHORN.

19 4. SILVERTHORN, having waived its right to challenge the TAC
20 through a motion to dismiss or a motion to strike portions of its allegations, shall;

21 (1) Answer the TAC and file a cross-claim against cross-defendants
22 Dmitry Gaiduchik and Maxim Leontiy only, dropping cross-defendant Volvo
23 Penta of the Americas, LLC, a Delaware Limited Liability Company from its
24 cross-claim; and


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(2) File its answer and cross-claim on or before ten days from the date notice is given by the Court that this stipulation has been accepted and made an order of the Court.

IT IS SO ORDERED.

Dated: June 5, 2019


MORRISON C. ENGLAND, JR
UNITED STATES DISTRICT JUDGE