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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

MARINE GROUP, LLC d.b.a. MARINE  
GROUP BOAT WORKS; and NATIONAL  
UNION FIRE INSURANCE CO. OF  
PITTSBURGH, PENNSYLVANIA.,

Plaintiffs,

v.

MARINE TRAVELIFT, INC.; ALL-LIFT  
SYSTEMS, INC.; OLSEN  
FABRICATION, INC.; EXACTECH, INC.;  
JUST IN TIME CORP.; SOUTHERN  
WEAVING CO.; and DOES 4-20,

Defendants.

EXACTECH, INC.,

Counterclaimant,

v.

MARINE GROUP, LLC d.b.a. MARINE  
GROUP BOAT WORKS; and NATIONAL  
UNION FIRE INSURANCE CO. OF  
PITTSBURGH, PENNSYLVANIA.,

Counterdefendants.

Case No. 10cv00846 BTM (CAB)

**ORDER GRANTING PLAINTIFFS'  
MOTION TO DISMISS DEFENDANT  
EXACTECH'S AMENDED  
COUNTERCLAIMS**

Pending before the Court is Plaintiffs' motion to dismiss the amended counterclaims of Defendant ExacTech, Inc. ("ExacTech"). For the reasons set forth herein, the Court GRANTS Plaintiff's motion (Doc. 112) in its entirety.

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**BACKGROUND**

This lawsuit arises out of a January 19, 2009 accident involving the alleged failure of a boat hoist and boat handling equipment (the “boat lift”) and the resulting fall of a large motor yacht from a suspended state into a concrete sea wall. Plaintiffs (the boat repair facility operating the boat lift at the time of the accident, and its insurance company) claim that the boat hoist and boat handling equipment “were manufactured, designed, supplied, sold, and distributed” by all Defendants (including ExacTech), “and each of them.” (Doc. 75, Amended Complaint, at ¶ 15.) Plaintiffs seek damages, declaratory relief, prejudgment interest, and attorneys’ fees and costs against all Defendants on multiple theories, including negligence, strict products liability, breach of express and implied warranty, and equitable subrogation.

On November 29, 2011, ExacTech filed its amended answer (Doc. 103), which included cross claims against other Defendants and counterclaims against Plaintiffs under three causes of action, respectively entitled “Contributory Negligence/Comparative Fault,” “Bad Faith,” and “Declaratory Relief.”

**DISCUSSION**

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) should be granted only where a plaintiff’s complaint lacks a “cognizable legal theory” or sufficient facts to support a cognizable legal theory. Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1988). When reviewing a motion to dismiss, the allegations of material fact in plaintiff’s complaint are taken as true and construed in the light most favorable to the plaintiff. See Parks Sch. of Bus., Inc. v. Symington, 51 F.3d 1480, 1484 (9th Cir. 1995). Although detailed factual allegations are not required, factual allegations “must be enough to raise a right to relief above the speculative level.” Bell Atlantic v. Twombly, 550 U.S. 544, 555 (2007). “A plaintiff’s obligation to prove the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than

1 labels and conclusions, and a formulaic recitation of the elements of a cause of action will  
2 not do.” Id.

3 All three of ExacTech’s asserted causes of action fail to state a claim upon which relief  
4 can be granted. The Court addresses each in turn.

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6 a. First cause of action: “Contributory Negligence/Comparative Fault”

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8 Exactech claims in its first cause of action that if it is “found liable” and it “is required  
9 to pay damages . . . , [it] is entitled to contribution from Counter-Defendants in an amount  
10 based on [their] comparative fault.” (Doc. 103 at 17.)

11 This cause of action fails to state a claim upon which relief can be granted as to the  
12 counterclaim against Plaintiffs, because it mirrors ExacTech’s affirmative defenses and does  
13 not seek any affirmative relief (i.e., this cause of action cannot exist independently; it is based  
14 entirely upon the claims asserted against ExacTech). See generally Fed. R. Civ. P. 13; see  
15 also Allstate Ins. Co. v. Pira, No. C 11-3511, 2012 WL 1997212, at \*5 (N.D. Cal. June 4,  
16 2012) (“Courts have . . . discretion to dismiss counterclaims under Fed. Rule Civ. Pro. 12(f)  
17 where they are either the ‘mirror image’ of claims in the complaint or redundant of affirmative  
18 defenses.” (citation and quotation marks omitted)).

19 The substance of Exactech’s first cause of action is properly presented as an  
20 affirmative defense pursuant to Rule 8 of the Federal Rules of Civil Procedure. See Fed. R.  
21 Civ. P. 8(c)(1) (enumerating “contributory negligence” as an affirmative defense to be  
22 pleaded pursuant to Rule 8). Thus, the Court dismisses the first cause of action in  
23 Exactech’s counterclaim against Plaintiffs, and shall treat the affirmative defense raised  
24 therein “as though it were correctly designated” as such. See Fed. R. Civ. P. 8(c)(2).

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c. Third cause of action: "Declaratory Relief"

In its third cause of action, ExacTech seeks a declaratory judgment that (a) Plaintiffs are liable in contributory negligence and comparative fault; (b) Plaintiffs are liable for attorneys' fees and costs as a result of their bad faith conduct in filing their complaint; and (c) that the First Amended Complaint, as well as ExacTech's cross claims and counterclaims, "invoke the admiralty jurisdiction of this court . . . and the preemptive application of the general maritime law." (Doc. 103 at 18-19.)

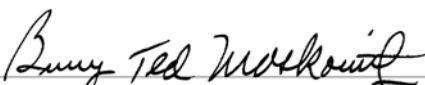
ExacTech's claims for declaratory relief as to (a) and (b) in the preceding paragraph are duplicative of ExacTech's first two causes of action, and the Court accordingly dismisses them. With regard to ExacTech's third request for declaratory relief, the choice of law applicable to a particular claim or case is not the proper subject matter for a declaratory judgment, and the Court dismisses the third request as well. See Calderon v. Ashmus, 523 U.S. 740, 749 (1998) (holding that declaratory judgment is appropriate only where it would "completely resolve" a concrete controversy, and not where it would merely "carve out one issue in the dispute for separate adjudication").

**CONCLUSION**

For the reasons set forth above, the Court DISMISSES each of ExacTech's counterclaims.

**IT IS SO ORDERED.**

DATED: July 6, 2012

  
BARRY TED MOSKOWITZ, Chief Judge  
United States District Court