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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BLUE DOLPHIN CHARTERS, LTD.,

Plaintiff,

v.

KNIGHT & CARVER YACHTCENTER,
INC.,

Defendant.

Civil No. 11-cv-565-L(WVG)

**ORDER GRANTING MOTION TO
DISMISS WITHOUT LEAVE TO
AMEND [DOC. 20]**

This action arises from Plaintiff Blue Dolphin Charters, LTD's allegation that the underwing of a catamaran constructed by Defendant Knight & Carver Yachtcenter, Inc. was defective and not built to comply with applicable regulations. Defendant now moves to dismiss the Amended Complaint, which asserts a single cause of action for fraud. Plaintiff opposes.

The Court found this motion suitable for determination on the papers submitted and without oral argument. See Civ. L.R. 7.1(d.1). (Doc. 21.) For the following reasons, the Court **GRANTS WITHOUT LEAVE TO AMEND** Defendant's motion to dismiss.

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1 **I. BACKGROUND**

2 Plaintiff offers sightseeing, scuba diving, and snorkel tours to tourists from its two sailing
3 catamarans off of the Na Pali Coast in the Hawaiian Island of Kauai. (Am. Compl. ¶ 6 [Doc.
4 19].) Defendant is a full-service marine facility that specializes in the repair and refit of
5 “megayachts,” and advertises itself as a “premier luxury yacht builder” with “an experienced
6 staff of master craftsmen in all marine trades, as well as on-site marine engineering professionals
7 and naval architects.” (*Id.* ¶ 7.)

8 In 1998, “[P]laintiff commissioned [Defendant] to co-design, construct, and equip a 62' x
9 25' catamaran sailing vessel that was in full compliance with all applicable Coast Guard
10 regulations under 46 Code of Federal Regulations (‘CFR’), Subchapter T-Small Passenger
11 Vessels (Under 200 Gross Tons).” (Am. Compl. ¶ 9.) Plaintiff alleges that Defendant “had the
12 legal duty under federal regulation to meet these requirements.” (*Id.* ¶ 12.)

13 On or about December 8, 1999, Plaintiff took possession of the catamaran, which was
14 commissioned as the *Blue Dolphin II*, and transported it to Kauai. (Am. Compl. ¶ 13.)

15 Leading up to and during 2010, Plaintiff learned of “an alarming number of demastings of
16 sailing vessels in the Hawaiian Islands resulting in injuries and/or deaths to passengers.” (Am.
17 Compl. ¶ 14.) As a result, the United States Coast Guard began inspecting sailing vessels in
18 Hawaii. (*Id.*) In anticipation of the inspection, Plaintiff retained a marine surveyor to pre-
19 inspect its vessels, including the *Blue Dolphin II*. (*Id.*)

20 On or about April 10, 2010, the marine surveyor discovered that “the underwing beneath
21 the *Blue Dolphin II*’s mast step was flexing and causing her entire sail rig to move in a
22 dangerous manner.” (Am. Compl. ¶ 15.) To investigate the problem, Plaintiff alleges that “the
23 *Blue Dolphin II*’s mast was removed by crane whereupon it was discovered that the underwing
24 did not comply with the structural design requirements outlined in Title 46 CFR Subchapter T.”
25 (*Id.*) As a result, Plaintiff alleges that the catamaran was taken out of service and that it will be
26 forced to make over \$160,000.00 in repairs. (*Id.* ¶ 16.) It also adds that “[d]ue to the latency of
27 the defect, [Plaintiff] was blamelessly ignorant of its rights and could not have discovered the
28 facts giving rise to the claims set forth herein until the vessel was dismantled and inspected.”

1 (*Id.* ¶ 17.)

2 On March 22, 2011, Plaintiff filed a complaint in this Court asserting six causes of action:
3 (1) breach of contract; (2) fraud; (3) negligence; (4) negligent interference with prospective
4 business advantage; (5) negligent misrepresentation; and (6) breach of warranty. On May 31,
5 2011, Defendant moved to dismiss Plaintiff’s First (breach of contract), Second (fraud), Fourth
6 (negligent interference with prospective business advantage), and Sixth (breach of warranty)
7 Causes of Action. (Doc. 6.) The Court granted the motion, but gave Defendant leave to amend
8 its complaint. (Doc. 14.)

9 On December 8, 2011, Plaintiff filed an Amended Complaint asserting a single cause of
10 action for fraud. (Doc. 19.) Defendant now moves to dismiss the Amended Complaint. (Doc.
11 20.) Plaintiff opposes. (Doc. 22.)

12

13 **II. LEGAL STANDARD**

14 The court must dismiss a cause of action for failure to state a claim upon which relief can
15 be granted. Fed. R. Civ. P. 12(b)(6). A motion to dismiss under Rule 12(b)(6) tests the legal
16 sufficiency of the complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). The court
17 must accept all allegations of material fact as true and construe them in light most favorable to
18 the nonmoving party. *Cedars-Sanai Med. Ctr. v. Nat’l League of Postmasters of U.S.*, 497 F.3d
19 972, 975 (9th Cir. 2007). Material allegations, even if doubtful in fact, are assumed to be true.
20 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). However, the court need not “necessarily
21 assume the truth of legal conclusions merely because they are cast in the form of factual
22 allegations.” *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003)
23 (internal quotation marks omitted). In fact, the court does not need to accept any legal
24 conclusions as true. *Ashcroft v. Iqbal*, 556 U.S. 662, —, 129 S. Ct. 1937, 1949 (2009)

25 “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed
26 factual allegations, a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement to relief’
27 requires more than labels and conclusions, and a formulaic recitation of the elements of a cause
28 of action will not do.” *Twombly*, 550 U.S. at 555 (internal citations omitted). Instead, the

1 allegations in the complaint “must be enough to raise a right to relief above the speculative
2 level.” *Id.* “To survive a motion to dismiss, a complaint must contain sufficient factual matter,
3 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 129 S. Ct. at
4 1949 (citing *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff
5 pleads factual content that allows the court to draw the reasonable inference that the defendant is
6 liable for the misconduct alleged.” *Id.* “The plausibility standard is not akin to a ‘probability
7 requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.”
8 *Id.* A complaint may be dismissed as a matter of law either for lack of a cognizable legal theory
9 or for insufficient facts under a cognizable theory. *Robertson v. Dean Witter Reynolds, Inc.*, 749
10 F.2d 530, 534 (9th Cir. 1984).

11 Generally, courts may not consider material outside the complaint when ruling on a
12 motion to dismiss. *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n.19
13 (9th Cir. 1990). However, documents specifically identified in the complaint whose authenticity
14 is not questioned by parties may also be considered. *Fecht v. Price Co.*, 70 F.3d 1078, 1080 n.1
15 (9th Cir. 1995) (superceded by statutes on other grounds). Moreover, the court may consider the
16 full text of those documents, even when the complaint quotes only selected portions. *Id.* It may
17 also consider material properly subject to judicial notice without converting the motion into one
18 for summary judgment. *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994).

19 20 **III. DISCUSSION**

21 The economic loss rule “prevent[s] the law of contract and the law of tort from dissolving
22 one into the other.” *Robinson Helicopter Co., Inc. v. Dana Corp.*, 34 Cal. 4th 979, 988 (2004)
23 (internal quotations marks omitted). The rule generally bars tort actions for contract breaches,
24 thereby limiting contracting parties to contract damages. *Aas v. Super. Ct.*, 24 Cal. 4th 627, 643
25 (2000). It precludes recovery for “purely economic loss due to disappointed expectations,”
26 unless the plaintiff “can demonstrate harm above and beyond a broken contractual promise.”
27 *Robinson Helicopter*, 34 Cal. 4th at 988. In other words, “[a] person may not ordinarily recover
28 in tort for the breach of duties that merely restate contractual obligations.” *Aas*, 24 Cal. 4th at

1 643. “[C]onduct amounting to a breach of contract becomes tortious only when it also violates a
2 duty independent of the contract arising from principles of tort law.” *Robinson Helicopter*, 34
3 Cal. 4th at 989.

4 In this case, there is no harm above and beyond a broken contractual promise. Plaintiff
5 argues that Defendant committed fraud “when it represented to the plaintiff that the Blue
6 Dolphin was built according to Coast Guard regulations and the design specifications.” (Pl.’s
7 Opp’n 5:7–10 [Doc. 22].) However, these are duties that arise from the construction agreement
8 between the parties. That agreement required Defendant to “co-design, construct and equip a 62’
9 x 25’ catamaran sailing vessel that was *in full compliance with all applicable Coast Guard*
10 *regulations . . .*” (Am. Compl. ¶ 9 (emphasis added); *see also* Vessel Construction Agreement
11 ¶ 2 [Doc. 1-1].) Thus, Defendant’s failure to meet these requirements does not violate a duty
12 independent of the contract. *See Robinson Helicopter*, 34 Cal. 4th at 989.

13 Plaintiff also argues that its circumstances in this case are the same as those in *Robinson*
14 *Helicopter*, and in particular, Defendant’s conduct is “virtually indistinguishable.” (Pl.’s Opp’n
15 4:16, 5:6–7 [Doc. 22].) But Plaintiff is mistaken. In *Robinson Helicopter*, a helicopter
16 manufacturer purchased sprag clutches manufactured by the defendant to use in its helicopters.
17 *Robinson Helicopter*, 34 Cal. 4th at 985. As required by the Federal Aviation Administration
18 (“FAA”), the defendant issued a certificate with each delivery affirming that the sprag clutches
19 were ground to a particular level of hardness, described as “50/55 Rockwell.” *Id.* This
20 arrangement continued for over twelve years before the defendant delivered sprag clutches at a
21 different level of hardness—“61/63 Rockwell”—while continuing to issue written certificates
22 that the sprag clutches were 50/55 Rockwell. *Id.* at 985-86. Eventually, the California Supreme
23 Court concluded that the economic loss rule did not bar the helicopter manufacturer’s fraud and
24 intentional misrepresentation claims with respect to the defendant’s provision of false
25 certificates of conformance. *Id.* at 988.

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1 Unlike this case, *Robinson Helicopter* involved a non-contractual duty—the defendant’s
2 duty to provide certificates as required by the FAA. *Robinson Helicopter*, 34 Cal. 4th at 985.
3 The defendant also made unequivocal affirmative misrepresentations twelve years after entering
4 into the contractual relationship. *Id.* at 986. Here, Defendant did not make such unequivocal
5 affirmative misrepresentations. Plaintiff alleges that Defendant “stated . . . that the vessel was
6 being built according to all applicable Coast Guard Regulations of Title 46 CFR, Sub-Chapter T,
7 that it met the required hull structural inspections, that it had obtained the Certificate of
8 Inspection properly, and that the vessel met all professional industry standards in all respects,”
9 and that these representations were false. (Am. Compl. ¶ 19–20.) However, it appears after an
10 inspection by a marine inspector assigned by the Officer in Charge, Marine Inspection
11 (“OCMI”), as required by 46 C.F.R. § 176.400(b), Defendant successfully obtained certification.
12 And this certification is issued by the U.S. Coast Guard, and not by Defendant. *See* 46 C.F.R. §
13 176.105. Further departing from the circumstances of *Robinson Helicopter*, these
14 representations were made in the weeks leading up to Plaintiff taking possession of the
15 catamaran and not after. Simply put, the factual circumstances in *Robinson Helicopter* differ
16 from those here.

17 Finally, damages available under tort theories do not include economic loss, such as
18 “damages for inadequate value, costs of repair and replacement of the defective product[,] or
19 consequent loss of profits—without any claim of personal injury or damages to other property.”
20 *Jimenez v. Super. Ct.*, 29 Cal. 4th 473, 482 (2002). But here, Plaintiff seeks costs of repair,
21 damages for loss of use and lost profits, consequential and incidental damages, as well as
22 exemplary and punitive damages. (Am. Compl. 7.) Aside from the exemplary and punitive
23 damages, Plaintiff only claims economic loss for a defective product.

24 In sum, this case does not involve tortious conduct separate from the breach itself. *See*
25 *Robinson Helicopter*, 34 Cal. 4th at 990. Therefore, Plaintiff’s cause of action for fraud is
26 barred by the economic loss rule.

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1 **IV. CONCLUSION & ORDER**

2 In light of the foregoing, the Court **GRANTS WITHOUT LEAVE TO AMEND**
3 Defendant's motion to dismiss. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d
4 1034, 1041 (9th Cir. 2011) (“[A] district court may dismiss without leave where . . . amendment
5 would be futile.”). (Doc. 20.)

6 **IT IS SO ORDERED.**

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8 DATED: April 6, 2012

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11 M. James Lorenz
12 United States District Court Judge

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HON. WILLIAM V. GALLO
UNITED STATES MAGISTRATE JUDGE

ALL PARTIES/COUNSEL