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

In re Complaint and Petition of the United States of America in a Cause for Exoneration from or Limitation of Liability with Respect to DHS-CBP Vessel M382901 (M901) Re the Collision with an Unnamed Panga Smuggling Vessel on or about June 18, 2015.

CASE NO. 15cv2626 JM(NLS)  
ORDER DENYING MOTION TO DISMISS

Hector Lopez-Garcia and Luis Lopez-Garcia (“Claimants”) move to dismiss the Complaint in this Exoneration From or Limitation of Liability Admiralty Action. Plaintiff the United States of America opposes the motion. Claimants did not file a reply to the opposition filed by the United States. While additional claimants Diego Hernandez-Infante and Graciela Lopez Franco filed answers to the Complaint, (ECF 10, 12), they did not respond to the motion to dismiss. Pursuant to Local Rule 7.1(d)(1), the court finds the matters presented appropriate for resolution without oral argument. For the reasons set forth below, the court denies the motion.

**BACKGROUND**

On November 23, 2015, the United States commenced this admiralty action for exoneration from or limitation of liability. The United States is the owner of a 38 foot SAFE boat built by SAFE Boats International, LLC and identified as public vessel

1 “M901.” At the time of the incident at issue, the M901 was operated by the U. S.  
2 Customs and Border Protection (“CBP”).

3 On June 17, 2015, a “Panga” type vessel with multiple persons on board was  
4 observed by aircraft off the coast of Baja California, Republic of Mexico. On June 18,  
5 2015, the Panga entered United States territorial waters and, in the early morning hours,  
6 the M901 approached the vessel. (Compl. ¶¶7-9). The Panga, 30 feet in length,  
7 transported 20 foreign nationals without legal status to enter the United States. The  
8 vessel allegedly enter the United States with the express purpose and intent of entering  
9 the United States illegally and by stealth. (Compl. ¶11).

10 Once the CBP Agents on board the M901 obtained visual contact of the  
11 smuggling vessel, the crew activated the blue law enforcement lights, sounded the  
12 siren, activated the spotlight, and verbally ordered the Panga to stop, in both Spanish  
13 and English. Instead of stopping, the Panga accelerated and allegedly engaged in  
14 evasive and dangerous turns. The crew on the M901 fired flares into the air and  
15 attempted to disable the Panga’s engines. The Panga did not stop and struck the right  
16 side of the M901. The Panga sank and CBP Agents rescued 19 of the 20 occupants of  
17 the Panga. One of the illegal immigrants died and several were injured.

18 The United States represents that it has not been named as a party to any lawsuit  
19 resulting from the incident. However, three separate Bivens actions related to the  
20 incident have been filed against individual crew members of the M901: Estate of  
21 Graciela Lopez Franco, et al. v. Hunter, et al., Case No. 15cv1857 JM(RBB),  
22 Hernandez-Infante v. Hunter, et al., Case No. 15cv1986 JM(RBB), and Hector Manuel  
23 Lopez Garcia, et al. v. Hunter, et al., Case No. 15cv2846 JM(RBB). In the event the  
24 United States is adjudged liable with respect to any claim filed against it, Plaintiff seeks  
25 to limit its liability to the value of the M901, an amount that does not exceed \$400,000.

26 On December 3, 2015, the court granted the Government’s motion for Notice and  
27 Publication pursuant to the Supplemental Rules for Certain Admiralty and Maritime  
28 Claims. In response to the notice, claimants in all three Bivens actions filed answers

1 to the Complaint.

2 Claimants now move to dismiss the action for lack of admiralty subject matter  
3 jurisdiction.

## 4 DISCUSSION

### 5 Legal Standards

6 At the outset, the court notes that Claimants do not identify the procedural  
7 mechanism for bringing the present motion. The court notes that whether Claimants  
8 seek dismissal under either Federal Rule of Civil Procedure 12(b)(1) (dismissal for lack  
9 of subject matter jurisdiction) or Rule 12(b)(6) (dismissal for failure to state a claim),  
10 the present motion is not well-founded.

11 Federal Rule of Civil Procedure 12(b)(6) dismissal is proper only in  
12 "extraordinary" cases. United States v. Redwood City, 640 F.2d 963, 966 (9th Cir.  
13 1981). Courts should grant 12(b)(6) relief only where a plaintiff's complaint lacks a  
14 "cognizable legal theory" or sufficient facts to support a cognizable legal theory.  
15 Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1990). Courts should  
16 dismiss a complaint for failure to state a claim when the factual allegations are  
17 insufficient "to raise a right to relief above the speculative level." Bell Atlantic Corp.  
18 v. Twombly, 550 U.S. 544, 555 (2007) (the complaint's allegations must "plausibly  
19 suggest[]" that the pleader is entitled to relief); Ashcroft v. Iqbal, 556 U.S. 662 (2009)  
20 (under Rule 8(a), well-pleaded facts must do more than permit the court to infer the  
21 mere possibility of misconduct). "The plausibility standard is not akin to a 'probability  
22 requirement,' but it asks for more than a sheer possibility that a defendant has acted  
23 unlawfully." Id. at 678. Thus, "threadbare recitals of the elements of a cause of action,  
24 supported by mere conclusory statements, do not suffice." Id. The defect must appear  
25 on the face of the complaint itself. Thus, courts may not consider extraneous material  
26 in testing its legal adequacy. Levine v. Diamantheset, Inc., 950 F.2d 1478, 1482 (9th  
27 Cir. 1991). The courts may, however, consider material properly submitted as part of  
28 the complaint. Hal Roach Studios, Inc. v. Richard Feiner and Co., 896 F.2d 1542, 1555

1 n.19 (9th Cir. 1989).

2 Finally, courts must construe the complaint in the light most favorable to the  
3 plaintiff. Concha v. London, 62 F.3d 1493, 1500 (9th Cir. 1995), cert. dismissed, 116  
4 S. Ct. 1710 (1996). Accordingly, courts must accept as true all material allegations in  
5 the complaint, as well as reasonable inferences to be drawn from them. Holden v.  
6 Hagopian, 978 F.2d 1115, 1118 (9th Cir. 1992). However, conclusory allegations of  
7 law and unwarranted inferences are insufficient to defeat a Rule 12(b)(6) motion. In  
8 Re Syntex Corp. Sec. Litig., 95 F.3d 922, 926 (9th Cir. 1996).

### 9 **The Motion**

10 Claimants contend that the only remedy for their injuries is an in personam  
11 Bivens action against the crew members of the M901, and not an admiralty action  
12 because neither the Public Vessels Act, 76 U.S.C. §31101 et seq. (“PVA”), nor the  
13 Suits in Admiralty Act, 46 U.S.C. §30901 et seq. (“SIAA”), provides a remedy. In  
14 other words, Claimants conclude that their motion to dismiss must be granted because  
15 Claimants “cannot sue the United States Government or the Agents in Admiralty[.]  
16 Claimants’ only remedy lies in Federal Court, in personam, under diversity  
17 jurisdiction.” (Motion at p.5:25-28). This argument is not persuasive.


18 Notably, Claimants’ contention that the court lacks admiralty jurisdiction is  
19 simply not correct. Federal courts have admiralty jurisdiction over tort claims where  
20 the tort occurred on navigable waters and there is a nexus or significant relationship to  
21 traditional maritime activity. See Executive Jet Aviation, Inc. v. City of Cleveland, 409  
22 U.S. 249, 268 (1972); Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513  
23 U.S. 527 (1995). Here, there is no doubt that the Pacific Ocean is a navigable water  
24 and that transporting passengers over the ocean shows a substantial relationship to  
25 traditional maritime activity. Furthermore, the collision at issue presents a potential  
26 disruptive impact on maritime commerce. See Foremost Ins. Co. v. Richardson, 457  
27 U.S. 688, 675 (1982) (“collision between two pleasure boats on navigable waters has  
28

1 a significant relationship with maritime commerce”).<sup>1</sup>

2 In sum, as the court indisputably possesses admiralty jurisdiction over the  
3 underlying incident, the motion to dismiss for lack of admiralty jurisdiction is denied.

4 **IT IS SO ORDERED.**

5 DATED: April 26, 2016

6   
7 Hon. Jeffrey T. Miller  
United States District Judge

8 cc: All parties

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27 <sup>1</sup> While Claimants repeatedly and erroneously argue that the PVA and the SIAA  
28 do not provide a remedy for their injuries, the court directs Claimants’ attention to 46  
U.S.C. §§31102(a), 31103, and 31106.