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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CERTAIN UNDERWRITERS AT
LLOYDS SUBSCRIBING TO POLICY
NO. 0801Q16413M13,

Plaintiff,

v.

TRANSPORT CONTINENTAL, INC.,
AND TRANSPORT CONTINENTAL
LOGISTICS,

Defendants.

Case No.: 3:16-CV-02739-AJB-DHB

ORDER:

**(1) DENYING DEFENDANTS’
MOTION TO DISMISS; AND
(Doc. No. 26)**

**(2) GRANTING DEFENDANTS’
UNOPPOSED MOTION TO
WITHDRAW AS COUNSEL OF
RECORD
(Doc. No. 29)**

Presently before the Court are two motions: Defendants Transport Continental, Inc., and Transport Continental Logistics’ (collectively referred to as “Defendants”) motion to dismiss and their motion to withdraw as counsel of record. (Doc. Nos. 26, 29.) Upon review of the parties’ arguments in support and opposition of the motions, the Court finds the motions suitable for determination on the papers and without oral argument pursuant to Civil Local Rule 7.1.d.1. Accordingly, the motion hearing set for June 29, 2017, at 2:00 p.m. in Courtroom 4A is vacated. As set forth more fully below, Defendants’ motion to

1 dismiss is **DENIED** and their motion to withdraw as attorney is **GRANTED**.

2 **BACKGROUND**¹

3 Plaintiff Certain Underwriters at Lloyds Subscribing to Policy No. 0801Q16413M13
4 (“Plaintiff”) is a group of insurance syndicates associated with Lloyds of London, which
5 are citizens of the United Kingdom. (Doc. No. 1 ¶ 1.) Specifically, Plaintiff was the first
6 party cargo insurer of the cargo that is the subject of this action. (*Id.*) Defendants are
7 corporations that are citizens of Texas, which are engaged in business as motor truck
8 carriers, bailees for hire, and logistics providers within the United States. (*Id.* ¶ 2.)

9 The instant matter centers on the transport of a laser cutting machine (the “Cargo”).
10 (*Id.* ¶ 4.) On or about October 30, 2014, Defendants agreed orally and in writing to provide
11 a transportation trailer to carry the Cargo from Queretaro, Mexico, to Chickasha,
12 Oklahoma. (*Id.*) The contract was made in San Diego and stated that the Cargo was to be
13 delivered in the same condition as when it was received. (*Id.*)

14 However, in breach of the foregoing contract, Defendants allegedly delivered the
15 Cargo to its final destination severely damaged, with a total loss amount of \$275,000. (*Id.*
16 ¶ 5.) As a result, Plaintiff was obligated to indemnify the owner of the Cargo for the entire
17 amount of the loss. (*Id.*)

18 Plaintiff filed its Complaint on November 4, 2016, alleging breach of contract,
19 negligence, and bailment. (*See generally* Doc. No. 1.) On December 12, 2016, Defendants
20 filed a motion to dismiss, or, in the alternative, to transfer venue, (Doc. No. 6), which was
21 denied on March 20, 2017. (Doc. No. 23.) Subsequently, Defendants filed the present
22 motion, its motion to dismiss on April 17, 2017. (Doc. No. 26.) On May 1, 2017, one of
23 Defendants’ counsel, Brittany Shaw, filed a motion to withdraw as counsel of record. (Doc.
24 No. 29.)

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27 ¹ The following facts are taken from the Complaint and construed as true for the limited
28 purpose of resolving the instant motion. *See Brown v. Elec. Arts, Inc.*, 724 F.3d 1235, 1247
(9th Cir. 2013).

1 **LEGAL STANDARD**

2 A. Motion to Dismiss

3 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of a plaintiff's
4 complaint and allows a court to dismiss a complaint upon a finding that the plaintiff has
5 failed to state a claim upon which relief may be granted. *See Navarro v. Block*, 250 F.3d
6 729, 732 (9th Cir. 2001). “[A] court may dismiss a complaint as a matter of law for (1) lack
7 of a cognizable legal theory or (2) insufficient facts under a cognizable legal claim.”
8 *SmileCare Dental Grp. v. Delta Dental Plan of Cal.*, 88 F.3d 780, 783 (9th Cir. 1996)
9 (internal quotation marks and citation omitted). However, a complaint will survive a
10 motion to dismiss if it contains “enough facts to state a claim to relief that is plausible on
11 its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In making this
12 determination, a court reviews the contents of the complaint, accepting all factual
13 allegations as true, and drawing all reasonable inferences in favor of the nonmoving party.
14 *Cedars-Sinai Med. Ctr. v. Nat’l League of Postmasters of U.S.*, 497 F.3d 972, 975 (9th Cir.
15 2007).

16 Notwithstanding this deference, the reviewing court need not accept “legal
17 conclusions” as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). It is also improper for a
18 court to assume “the [plaintiff] can prove facts that [he or she] has not alleged.” *Associated*
19 *Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526
20 (1983).

21 B. Motion to Withdraw as Counsel

22 “An attorney may not withdraw as counsel except by leave of court, and the decision
23 to grant or deny counsel’s motion to withdraw is committed to the discretion of the trial
24 court.” *Beard v. Shuttermart of Cal., Inc.*, Case No. 07CV594 WQH (NLS), 2008 WL
25 410694, at *2 (S.D. Cal. Feb. 13, 2008) (internal quotation marks and citation omitted);
26 *see also* CivLR 83.3(f)(3). “In ruling on a motion to withdraw as counsel, courts consider:
27 (1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may cause to other
28 litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the

1 degree to which withdrawal will delay the resolution of the case.” *Leatt Corp. v. Innovative*
2 *Safety Tech., LLC*, No. 09-CV-1301-IEG (POR), 2010 WL 444708, at *1 (S.D. Cal. Feb.
3 2, 2010) (citation omitted).

4 DISCUSSION

5 A. Plaintiff’s Objections

6 As an initial matter, the Court will first turn to Plaintiff’s objections filed with its
7 opposition to Defendants’ motion to dismiss. (Doc. No. 28-1.) Plaintiff objects to (1)
8 Defendants’ allegation that the Cargo was being transported by a Mexican carrier; (2)
9 Defendants’ allegation that the Cargo was damaged in Mexico; and (3) Exhibit A to
10 Defendants’ motion to dismiss. (*Id.* at 2–4.) In support of its objections, Plaintiff argues
11 that Defendants are using extrinsic evidence outside of the Complaint, that the allegations
12 lack foundation, and that the statements are irrelevant and inadmissible. (*Id.*)

13 Here, the contentions that the Cargo was damaged in Mexico and was being
14 transported by a Mexican carrier do not appear within the four corners of Plaintiff’s
15 Complaint. (*See generally* Doc. No. 1.) Accordingly, in ruling on Defendants’ motion to
16 dismiss, the Court declines to consider these allegations in coming to its holding. *See*
17 *Parrino v. FHP, Inc.*, 146 F.3d 699, 706 n.4 (9th Cir. 1998) *superseded by statute on other*
18 *grounds in Mcmanus v. Mcmanus Fin. Consultants, Inc.*, 552 F. App’x 713 (9th Cir. 2014)
19 (noting that “where a defendant attaches extrinsic evidence to a Rule 12(b)(6) motion, the
20 court ordinarily must convert that motion into one for summary judgment under Rule 56
21 to give the plaintiff an opportunity to respond”); *see also Saldate v. Wilshire Credit Corp.*,
22 686 F. Supp. 2d 1051, 1058 (E.D. Cal. 2010) (“[A] court generally cannot consider material
23 outside the complaint.”); *Gerritsen v. Warner Bros. Entm’t Inc.*, 112 F. Supp. 3d 1104,
24 1118 (C.D. Cal. 2015) (“In deciding a Rule 12(b)(6) motion, the court generally looks only
25 to the face of the complaint and documents attached thereto.” (citation omitted)).

26 In regards to Exhibit A attached to Defendants’ motion to dismiss, Plaintiff argues
27 that the exhibit lacks foundation and that the statement is irrelevant and inadmissible. (Doc.
28 No. 28-1 at 3.) Defendants retort that Exhibit A, which is a copy of the TCI Bill of Lading,

1 should be considered as it is expressly referenced in the Complaint and is central to
2 Plaintiff's claims. (Doc. No. 31 at 4.) The Court agrees with Defendants. Here, Plaintiff
3 does expressly reference the bill of lading in its Complaint. (Doc. No. 1 ¶ 4.) Moreover,
4 the Court finds the bill of lading, which serves as a receipt of the shipment of the Cargo, to
5 be a key part of Plaintiff's Complaint. Accordingly, as this document is incorporated by
6 reference, Plaintiff's objection to Exhibit A is **DENIED**. *See United States v. Ritchie*, 342
7 F.3d 903, 908 (9th Cir. 2003) ("A court may, however, consider certain materials—
8 documents attached to the complaint, documents incorporated by reference in the
9 complaint, or matters of judicial notice—without converting the motion to dismiss into a
10 motion for summary judgment."); *see also Tellabs, Inc. v. Makor Issues & Rights, Ltd.*,
11 551 U.S. 308, 322 (2007) (a court may consider "other sources courts ordinarily examine
12 when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated
13 into the complaint by reference, and matters of which a court may take judicial notice.").

14 Accordingly, the Court **GRANTS IN PART** and **DENIES IN PART** Plaintiff's
15 objections.

16 B. Merits of Defendants' Motion to Dismiss

17 Defendants argue that Plaintiff's Complaint should be dismissed for two reasons: (1)
18 Plaintiff has failed to state a claim because Mexican law applies to its claims; and (2)
19 Plaintiff's claims governed by the Carmack amendment do not apply to claims for Cargo
20 damaged south of the border. (Doc. No. 26-1 at 4–10.) The Court will analyze both of
21 Defendants' arguments together as its analysis is related.

22 "Typically, a court can only consider what's in the complaint when it is deciding a
23 Rule 12(b)(6) motion to dismiss a complaint." *Hsu v. Puma Biotechnology, Inc.*, 213 F.
24 Supp. 3d 1275, 1279 (C.D. Cal. 2016) (citation omitted); *see also In re Rigel Pharm., Inc.*
25 *Sec. Litig.*, 697 F.3d 869, 875 (9th Cir. 2012) (challenges to a dismissal for failure to state
26 a claim is "generally limited to the face of the complaint, materials incorporated into the
27 complaint by reference, and matters of which we may take judicial notice").
28

1 Unfortunately for Defendants, their motion to dismiss is premised on the allegation
2 that the Cargo was damaged in Mexico. (Doc. No. 26-1 at 4–9.) However, as discussed
3 *infra* p. 4, Plaintiff’s Complaint never pled where the Cargo was allegedly damaged and
4 thus Plaintiff’s objection to the use of this allegation was granted. Accordingly, as both of
5 Defendants’ main contentions are premised on extrinsic evidence on which this Court
6 cannot take into consideration, its arguments collapse upon themselves. Based on this,
7 Defendants’ motion to dismiss is **DENIED**.² *See Hal Roach Studios, Inc. v. Richard Feiner*
8 *& Co., Inc.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990) *superseded by statute on other*
9 *grounds by Blue Dolphin Charters, Ltd. v. Knight & Carver Yachtcenter, Inc.*, Civil No.
10 11-cv-565-L (WVG), 2012 WL 1185945 (S.D. Cal. Apr. 9, 2012) (noting that a district
11 court generally only considers the material submitted as part of the complaint in ruling on
12 a Rule 12(b)(6) motion); *see also Lee v. City of Los Angeles*, 250 F.3d 668, 688–89 (9th
13 Cir. 2001) *overruled on other grounds by Martinez v. Cnty. of Santa Clara*, Case No. 16-
14 CV-05626-LHK, 2017 WL 2180985 (N.D. Cal. May 18, 2017) (noting that a court may
15 only consider extrinsic evidence by converting a motion to dismiss into a motion for
16 summary judgment); *Gumataotao v. Director of Dept. of Revenue and Taxation*, 236 F.3d
17 1077, 1082–83 (9th Cir. 2001) (holding that the district court was not required to consider
18 evidence outside of the pleadings when ruling on a motion to dismiss).

19 C. Motion to Withdraw as Counsel

20 The Court now turns to Defendants’ motion to withdraw as counsel of record. (Doc.
21 No. 29.) On May 17, 2017, Plaintiff filed a statement of non-opposition to Defendants’
22 motion to withdraw. (Doc. No. 35.)

23 Under the Civil Local Rules, “[a] notice of motion to withdraw as attorney of record
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26 ² Based on this, the Court need not reach the parties’ arguments on whether the Carmack
27 amendment preempts all state and common law claims to recover for cargo damages in the
28 United States, (Doc. No. 26-1 at 8; Doc. No. 28 at 9), or whether California’s three-step
governmental interest analysis to choice of law questions deems that Mexican law should
or should not apply. (Doc. No. 26-1 at 4-6; Doc. No. 28 at 4-6.)

1 must be served on the adverse party and on the moving attorney’s client.” CivLR
2 83.3(f)(3)(a). In addition “a declaration pertaining to such service must be filed.” *Id.* at
3 83.3(f)(3)(b).

4 In support of this motion, Ms. Shaw³ contends that her withdrawal will not prejudice
5 the rights of Defendants as Eric L. Zalud and Virginia Price will remain as counsel. (Doc.
6 No. 29 at 2.) No further reasons for Ms. Shaw’s withdrawal is provided. Moreover, the
7 Court notes that a declaration of service was not filed along with this motion. However,
8 finding that withdrawal by Ms. Shaw will not prejudice Defendants and that this motion is
9 unopposed, the Court within its discretion **GRANTS** Ms. Shaw’s motion to withdraw as
10 counsel of record for Defendants. *See Myers v. City of Madera*, No. 1:10-cv-01398 AWI
11 JLT, 2011 WL 2473270, at *1 (E.D. Cal. June 21, 2011) (“The decision to grant withdrawal
12 is within the discretion of the Court and leave ‘may be granted subject to such appropriate
13 conditions as the Court deems fit.’” (citation omitted)).

14 **CONCLUSION**

15 Based on the foregoing, Defendants’ motion to dismiss Plaintiff’s Complaint is
16 **DENIED** and its motion to withdraw as counsel of record is **GRANTED**.

17
18 **IT IS SO ORDERED.**

19
20 Dated: May 31, 2017

21 
22 Hon. Anthony J. Battaglia
23 United States District Judge
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³ Ms. Shaw is currently one of four attorneys representing Defendants.