

**FILED**

MAY 22 2018

CLERK, U S DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY *RA* DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

IN RE SEAN MORGAN, *as owner of a  
2014 Axis Wake A24 for Exoneration or  
Limitation of Liability,*  
Petitioner.

Case No.: 3:18-cv-00092-BEN-BGS  
**ORDER DENYING MOTION TO  
DISMISS**

On January 16, 2018, Sean Morgan (“Petitioner”), owner of a 2014 Axis Wake A24 (the “subject vessel”), filed a Petition for the Exoneration from or Limitation of Liability. (Docket No. 1.) Claimant Bobby Duck moves to dismiss the action, arguing the Court lacks subject matter jurisdiction or, alternatively, that the Petition fails to state a claim. (Docket No. 2.) The motion is fully briefed. For the reasons that follow, the motion is **DENIED**.

**BACKGROUND AND PROCEDURAL HISTORY<sup>1</sup>**

During the morning of August 21, 2016, Petitioner’s friends, including Claimant, Brandon Cant (“Cant”), and “a woman named ‘Jen,’” “took the subject vessel for a

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<sup>1</sup> The following overview of the relevant facts are drawn from the allegations of Morgan’s Petition. (Docket No. 1, “Pet.”) The Court is not making factual findings.

1 joyride on the Colorado River while spending time at [Petitioner's] river house," which is  
2 located in Yuma, Arizona. (Pet. ¶ 4.) Petitioner was in California at the time and was not  
3 aware that the subject vessel was being operated. Two hours after the "joyride" began,  
4 while Cant was operating the subject vessel, Cant "hit a sandbar . . . which ejected Bobby  
5 Duck from the vessel into the Colorado River allegedly causing him harm." (*Id.* ¶ 5.)

6 On March 7, 2017, Claimant filed a lawsuit in the California Superior Court  
7 against Cant and Petitioner for the injuries he sustained from the August 21, 2016  
8 accident.<sup>2</sup> Prior to filing the Petition in this Court, Petitioner had initiated an identical  
9 action in the U.S. District Court for the District of Arizona.<sup>3</sup> On January 16, 2018,  
10 Petitioner refiled his Petition in this Court, invoking admiralty jurisdiction pursuant to 28  
11 U.S.C. § 1331 and seeking exoneration from or limitation of liability to the \$59,369.84  
12 value of the subject vessel under the Limitation of Liability Act, 46 U.S.C. § 30501 *et*  
13 *seq.* Petitioner also asks for an injunction against further prosecution of the state court  
14 action as to him. On February 6, 2018, Claimant filed the instant motion to dismiss for  
15 lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1)  
16 and for failure to state a claim under Rule 12(b)(6).<sup>4</sup>

## 17 LEGAL STANDARD

### 18 1. Rule 12(b)(1)

19 "It is a fundamental principle that federal courts are courts of limited jurisdiction."  
20 *Stock W., Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225  
21 (9th Cir. 1989) (quoting *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374,  
22 (1978)). Under Rule 12(b)(1), a party can move a court to dismiss an action for lack of  
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25 <sup>2</sup> *Duck v. Morgan, et al.*, Case No. 37-2017-00008139-CU-PO-CTL. (Pet., Ex. B.)

26 <sup>3</sup> *In re Complaint of Sean Morgan*, Case No. 17-cv-00929-DLR. On June 15,  
27 2017, the Honorable Douglas L. Rayes dismissed the action without prejudice pursuant to  
28 the parties' stipulation that it be refiled in the appropriate district. (Pet., Ex. C.)

<sup>4</sup> Unless otherwise stated, the Court's references to Rules in this Order are to the  
Federal Rules of Civil Procedure.

1 subject matter jurisdiction. Fed. R. Civ. Proc. 12(b)(1). In such a motion, the party  
2 asserting jurisdiction bears the burden to establish jurisdiction. *See Kokkonen v.*  
3 *Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994) (“It is to be presumed that a  
4 cause lies outside [federal court] jurisdiction . . . and the burden of establishing the  
5 contrary rests upon the party asserting jurisdiction.”) (internal citations omitted).

6 A Rule 12(b)(1) jurisdictional attack may be facial or factual. *White v. Lee*, 227  
7 F.3d 1214, 1242 (9th Cir. 2000). A facial attack asserts that the allegations contained in a  
8 complaint are insufficient on their face to invoke federal jurisdiction. *See Safe Air v.*  
9 *Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). A Rule 12(b)(1) motion will be granted if,  
10 on the face of the complaint, and when considered in its entirety, the complaint fails to  
11 allege facts sufficient to establish subject matter jurisdiction. *Id.*

12 In contrast, a factual attack is one that “relie[s] on extrinsic evidence and [does] not  
13 assert lack of subject matter jurisdiction solely on the basis of the pleadings.” *Id.*  
14 (quoting *Morrison v. Amway Corp.*, 323 F.3d 920, 924 n.5 (11th Cir. 2003)). “In  
15 resolving a factual attack on jurisdiction, the district court may review evidence beyond  
16 the complaint without converting the motion to dismiss into a motion for summary  
17 judgment.” *Id.* (citing *Savage v. Glendale Union High Sch.*, 343 F.3d 1036, 1039 n.2  
18 (9th Cir. 2003)). Additionally, the court need not assume the truth of the plaintiff’s  
19 allegations, and “once the moving party has converted the motion to dismiss into a  
20 factual motion by presenting affidavits or other evidence properly brought before the  
21 court, the party opposing the motion must furnish affidavits or other evidence necessary  
22 to satisfy its burden of establishing subject matter jurisdiction.” *Id.* (quoting *Savage*, 343  
23 F.3d at 1039 n.2.).

## 24 **2. Rule 12(b)(6)**

25 Under Federal Rule of Civil Procedure 12(b)(6), a court may dismiss a complaint  
26 if, taking all factual allegations as true, the complaint fails to state a plausible claim for  
27 relief on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v.*  
28 *Twombly*, 550 U.S. 544, 556-57 (2007). Dismissal is appropriate if the complaint fails to

1 state enough facts to raise a reasonable expectation that discovery will reveal evidence of  
2 the matter complained of, or if the complaint lacks a cognizable legal theory under which  
3 relief may be granted. *Twombly*, 550 U.S. at 556.

### 4 **3. Limitation of Liability Act**

5 The Limitation of Liability Act (“the Act”) “provides a procedure in admiralty  
6 whereby vessel owners can limit their liability for maritime damages to the value of the  
7 vessel.” *Seven Resorts, Inc. v. Cantlen*, 57 F.3d 771, 772 (9th Cir. 1995). The Act  
8 authorizes district courts “to determine whether a shipowner’s liability should be limited  
9 when that liability may be predicated on an act that was not within the shipowner’s  
10 ‘privity or knowledge.’” *Joyce v. Joyce*, 975 F.2d 379, 383 (7th Cir. 1992).

## 11 **DISCUSSION**

### 12 **1. Motion to Dismiss for Lack of Subject Matter Jurisdiction**

13 Claimant’s motion to dismiss for lack of subject matter jurisdiction presents a  
14 factual attack because it is premised on extrinsic evidence, namely his own state court  
15 action, which Petitioner attached to his Petition. In short, Claimant argues this Court  
16 lacks subject matter jurisdiction because his state court complaint alleges a negligent  
17 entrustment claim against Petitioner, which renders Petitioner ineligible for relief under  
18 the Act. To support his position, Claimant relies on *Joyce v. Joyce*, a Seventh Circuit  
19 case, which affirmed the district court’s sua sponte dismissal for lack of subject matter  
20 jurisdiction after concluding the Act did not apply to the potential claimant’s sole claim  
21 for negligent entrustment against the shipowner. 975 F.2d 379, 381-82 (7th Cir. 1992).<sup>5</sup>

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24 <sup>5</sup> The Seventh Circuit explained:

25 When we turn to an examination of the law of negligent  
26 entrustment, it becomes evident that, if a shipowner knows  
27 enough to be liable for negligent entrustment, he knows too  
28 much to be eligible for limited liability under the Act. . . .  
[R]egardless of the resolution of the choice of law issue, the  
essential thrust of the tort of negligent entrustment is that a

1 Petitioner argues *Joyce* is distinguishable because unlike the shipowner in *Joyce*,  
2 who only faced a single claim for negligent entrustment, Claimant's state court action  
3 asserts numerous theories of negligence against him, including vicarious liability, which  
4 does not require knowledge or privity (and is therefore a claim covered by the Act). The  
5 Court agrees with Petitioner that *Joyce* is distinguishable for this reason alone.

6 In addition, *Joyce* is not persuasive because it relies on an assumption that the Act  
7 provides an independent basis for federal jurisdiction. *See id.*, 975 F.2d at 383 n.3 ("as  
8 we understand its holding, the district court simply held that, assuming arguendo that one  
9 of these statutes normally would support jurisdiction, the claim asserted here, limitation  
10 of liability for negligent entrustment, is so insubstantial on its face as to warrant a  
11 dismissal on the ground of lack of jurisdiction.") (citations omitted). But after *Joyce* was  
12 decided, the Ninth Circuit decided *Seven Resorts*, concluding that the Act does not create  
13 an independent basis for federal jurisdiction. *Id.*, 57 F.3d at 772-73; *see also In re*

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16 shipowner can be held liable for negligent entrustment only if  
17 he knows or has reason to know that the person being entrusted  
18 is incapable of operating the vessel safely.

19 ...  
20 Given the nature of the tort of negligent entrustment, it is clear  
21 that the [the Act] affords no protection to William. If William  
22 knew or had reason to know that Ivkovich should not have been  
23 entrusted with the boat, he not only committed the tort of  
24 negligent entrustment but also had either knowledge or  
25 constructive knowledge sufficient to place him beyond the  
26 protection of [the Act]. On the other hand, if William did not  
27 entrust the boat to Ivkovich under circumstances in which he  
28 knew or should have known of Ivkovich's inability, he will  
incur no liability for negligent entrustment and, consequently,  
has no need of the Act's protection. In either case, the district  
court could not do anything to affect either party and was  
correct to dismiss the suit for lack of subject matter jurisdiction.

*Joyce*, 975 F.2d at 385.

1 *Complaint of Pac. Whale Found.*, No. CIV. 10-00650-SOM, 2011 WL 1134312, at \*2  
2 (D. Haw. Mar. 24, 2011) (“a court exercising jurisdiction over a complaint filed under  
3 [the Act] must have independent admiralty jurisdiction over the underlying claim against  
4 the shipowner.”) (citing same). Thus *Joyce* does not support Claimant’s argument that  
5 this Court lacks subject matter jurisdiction over this action merely because Claimant’s  
6 state court action asserts a negligent entrustment claim against Petitioner.

7 Here, Petitioner asserts admiralty jurisdiction exists pursuant to 28 U.S.C. § 1333  
8 because he brings a maritime claim within the meaning of Rule 9(h). (Pet. ¶ 1.)  
9 Although Claimant’s motion does not challenged the existence of admiralty jurisdiction,  
10 the Court has an independent duty to examine its own jurisdiction. *Leventhal v. Vista*  
11 *Unified Sch. Dist.*, 973 F. Supp. 951, 956 (S.D. Cal. 1997) (citing *FW/PBS, Inc. v. City of*  
12 *Dallas*, 493 U.S. 215, 229 (1990).

13 A federal district court has original jurisdiction over admiralty claims. *In re*  
14 *Mission Bay Jet Sports, LLC*, 570 F.3d 1124, 1126 (9th Cir. 2009) (citing U.S. Const. art.  
15 III, § 2, cl. 1). Under 28 U.S.C. § 1333(1), a plaintiff may file claims “related to  
16 maritime contracts and maritime torts.” *Id.* at 1126. To invoke admiralty jurisdiction  
17 over a tort claim, a party “must satisfy both a location test and a connection test.” *Id.*  
18 (quoting *Gruver v. Lesman Fisheries Inc.*, 489 F.3d 978, 982 (9th Cir. 2007)).

19 First, the “locality” or “situs” test asks whether the tort occurred over navigable  
20 waters. *Taghadomi v. United States*, 401 F.3d 1080, 1084 (9th Cir. 2005) (citations  
21 omitted). The Court finds the Petition satisfies the locality test because the claim arises  
22 out of an alleged tort that occurred on the Colorado River, which has previously been  
23 deemed navigable water for purposes of admiralty jurisdiction. *State of Arizona v. State*  
24 *of California*, 298 U.S. 558, 569 (1936) (“The Colorado river is a navigable stream of the  
25 United States.”). Second, the “nexus” or “relationship” test asks whether the actions  
26 giving rise to the tort bears “a significant relationship to traditional maritime activity.”  
27 *Id.* (quoting *Exec. Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249, 268 (1972)). The  
28 Petition also satisfies the nexus test because it alleges Petitioner faces potential liability

1 for tort claims arising out of injuries sustained by a passenger on the subject vessel, while  
2 it was on navigable waters.

3 As a result, the Court finds it has subject matter jurisdiction over Petitioner's  
4 action, and therefore Claimant's motion to dismiss on this ground is **DENIED**.

5 **2. Motion to Dismiss for Failure to State a Claim**

6 To establish entitlement to limitation of liability under the Act, a shipowner must  
7 plausibly allege the loss occurred without the shipowner's "privity or knowledge."  
8 *Waterman S. S. Corp. v. Gay Cottons*, 414 F.2d 724, 731 (9th Cir. 1969) ("The  
9 Shipowner is entitled to limitation of liability [under the Act] if it can show that the lack  
10 of due diligence is not within its 'privity or knowledge.'"). Claimant argues, without  
11 citation to authority, that the Court must accept the allegations of *his own state court*  
12 *complaint* as true, *i.e.*, that Petitioner had "privity or knowledge" of the tortious acts  
13 (which would render Petitioner ineligible to seek relief under the Act). (Mot. at p. 6.)  
14 This is not the standard in a Rule 12(b)(6) motion to dismiss, which instead requires the  
15 Court accept as true the facts alleged in *Petitioner's* Petition. *Twombly*, 550 U.S. at 556.

16 As discussed in the factual background above, Petitioner alleges he was not present  
17 at the August 21, 2016 accident that allegedly resulted in Claimant's injuries, and was not  
18 aware the subject vessel was being used. Accepting these factual allegations as true, the  
19 Court finds the allegations of the Petition sufficient to avoid dismissal. Accordingly,  
20 Claimant's motion to dismiss for failure to state a claim is also **DENIED**.

21 **CONCLUSION**

22 For the reasons stated above, Claimant's motion to dismiss for lack of subject  
23 matter jurisdiction and failure to state a claim are **DENIED**.

24 **IT IS SO ORDERED.**

25  
26 Dated: May 24, 2018

27   
28 HON. ROGER T. BENITEZ  
United States District Judge