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

**PETER MOSES GUTIERREZ JR. ET AL.**

Plaintiffs on behalf of themselves and  
all others similarly situated,

**vs.**

**AMPLIFY ENERGY CORP. et al.,**

Defendants/Third-Party Plaintiffs.

**Case No. SA CV 21-01628-DOC-JDE**

**ORDER DENYING DEFENDANT'S  
MOTION TO DISMISS [298][466]**

1 Before the Court are Defendant Marine Exchange of Los Angeles-Long Beach Harbor  
2 d/b/a Marine Exchange of Southern California’s (“Defendant” or “Marine Exchange”) Motions  
3 to Dismiss. Motion to Dismiss First Amended Third-Party Complaint (“First Motion” or “First  
4 Mot.”) (Dkt 298); Motion to Dismiss Second Amended Third Party Complaint and Complaint  
5 in Intervention (“Second Motion” or “Second Mot.”) (Dkt. 466). The Court heard oral  
6 arguments on August 25, 2022, and on December 5, 2022. (Dkts. 376, 626). For the reasons  
7 described below, the Court DENIES Defendant’s Motions.

## 8 9 **I. BACKGROUND**

10 On January 25, 2021, two vessels—the *MSC Danit* and the *M/V Beijing*—allegedly  
11 struck and damaged Amplify Energy Corporation’s (“Amplify”) pipeline (the “Pipeline”) off  
12 the coast of California, resulting in substantial physical damage to the Pipeline and an oil spill  
13 into the San Pedro Bay. *See* Second Amended Third-Party Complaint (“Amplify SAC”) (Dkt.  
14 455) ¶¶ 103–178.

### 15 **A. Procedural History**

16 On October 4, 2022, Plaintiff Intervenors Markel International Insurance Company, Ltd.  
17 as issuers of Policy Nos. JCL102718 and JUMB102340 (“Markel”), Ascot Underwriting Inc. as  
18 issuer of Policy No. EL20KM423Q5X (“Ascot”), and Certain Insurers at Lloyd’s of London  
19 and London Company Markets Subscribing to Policy No. B0180ME2001399 (“Lloyd’s”)  
20 (collectively, “Subrogated Insurers”) filed their Complaint in Intervention. Complaint in  
21 Intervention (“Intervenor Complaint”) (Dkt. 453). The next day, on October 5, 2022,  
22 Defendants/Third-Party Plaintiffs Beta Operating Company, LLC, Amplify Energy Corp., San  
23 Pedro Bay Pipeline Company (collectively, “Amplify”) filed their Second Amended Third-  
24 Party Complaint. Amplify SAC (Dkt. 455). Both the Intervenor Complaint and the Amplify  
25 SAC were brought—in part—against Defendant Marine Exchange. *See* Intervenor Compl.;  
26 Amplify SAC.

27 Marine Exchange moved to dismiss a previous version of these complaints on July 6,  
28 2022. First Motion (Dkt. 298). Pursuant to the parties’ stipulation, the Court allowed Plaintiffs

1 to amend their complaints without mooted any pending motions to dismiss. (Dkt. 452). The  
2 Court further allowed Defendants to assert new defenses against the newly amended  
3 complaints. *Id.* Accordingly, Marine Exchange filed a second Motion to Dismiss on October  
4 12, 2022. Second Motion (Dkt. 466). These Motions seek to dismiss both the Amplify SAC and  
5 the Intervenor Complaint. *See* Second Mot. at 1.

## 6 7 **II. LEGAL STANDARD**

8 Under Federal Rule of Civil Procedure 12(b)(6), a complaint must be dismissed when a  
9 plaintiff's allegations fail to set forth a set of facts that, if true, would entitle the complainant to  
10 relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,  
11 555 (2007) (holding that a claim must be facially plausible in order to survive a motion to  
12 dismiss). The pleadings must raise the right to relief beyond the speculative level; a plaintiff  
13 must provide "more than labels and conclusions, and a formulaic recitation of the elements of a  
14 cause of action will not do." *Twombly*, 550 U.S. at 555 (citing *Papasan v. Allain*, 478 U.S. 265,  
15 286 (1986)). On a motion to dismiss, a court accepts as true a plaintiff's well-pleaded factual  
16 allegations and construes all factual inferences in the light most favorable to the plaintiff. *See*  
17 *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). A court is  
18 not required to accept as true legal conclusions couched as factual allegations. *Iqbal*, 556 U.S.  
19 at 678.

20 In evaluating a Rule 12(b)(6) motion, review is ordinarily limited to the contents of the  
21 complaint and material properly submitted with the complaint. *Van Buskirk v. Cable News*  
22 *Network, Inc.*, 284 F.3d 977, 980 (9th Cir. 2002); *Hal Roach Studios, Inc. v. Richard Feiner &*  
23 *Co., Inc.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990). Under the incorporation by reference  
24 doctrine, the court may also consider documents "whose contents are alleged in a complaint  
25 and whose authenticity no party questions, but which are not physically attached to the  
26 pleading." *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994), *overruled on other grounds by*  
27 *Galbraith v. County of Santa Clara*, 307 F.3d 1119, 1121 (9th Cir. 2002). The court may treat  
28 such a document as "part of the complaint, and thus may assume that its contents are true for

1 purposes of a motion to dismiss under Rule 12(b)(6).” *United States v. Ritchie*, 342 F.3d 903,  
2 908 (9th Cir. 2003).

3 When a motion to dismiss is granted, the court must decide whether to grant leave to  
4 amend. The Ninth Circuit has a liberal policy favoring amendments, and thus leave to amend  
5 should be freely granted. *See, e.g., DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th  
6 Cir. 1992). However, a court need not grant leave to amend when permitting a plaintiff to  
7 amend would be an exercise in futility. *See, e.g., Rutman Wine Co. v. E. & J. Gallo Winery*, 829  
8 F.2d 729, 738 (9th Cir. 1987) (“Denial of leave to amend is not an abuse of discretion where  
9 the pleadings before the court demonstrate that further amendment would be futile.”).

### 10 11 **III. DISCUSSION**

12 Marine Exchange moves to dismiss both the Amplify SAC and the Intervenor Complaint  
13 on the following grounds: (1) Marine Exchange is an agent of the United States and thus cannot  
14 be sued in Admiralty; and (2) Amplify and the Subrogated Insurers failed to join a required  
15 party, the United States Coast Guard. *See generally* First Motion, Second Motion. The Court  
16 addresses each argument in turn.

#### 17 **A. AGENT OF THE UNITED STATES**

18 Marine Exchange and Amplify agree that “no action can be brought in admiralty against  
19 an agent of the United States.” First Motion at 4; *see also* Opposition (“First Opp.”) (Dkt. 341)  
20 at 2.

21 The main dispute is whether Marine Exchange is an agent of the United States Coast  
22 Guard. “[I]n order to find that a charterer is an agent of the United States, 1) the United States  
23 must exercise significant control over the charterer's activities—either day to day control or  
24 overall control and direction of the mission, and 2) the charterer must be engaged in conducting  
25 the business of the United States. *Dearborn v. Mar Ship Operations, Inc.*, 113 F.3d 995, 97–98  
26 (9th Cir. 1997).

1           **1. Control Over the Charterer’s Activities**

2           Marine Exchange argues that it operates Vessel Traffic Services (“VTS”) in conjunction  
3 with the Coast Guard, and that the legal authorization and responsibility to operate the VTS  
4 rests with the Coast Guard. First Mot. at 3. Marine Exchange contends that an agency  
5 relationship exists because they operate a vessel traffic service “in cooperation with, and  
6 subject to the supervision of, the United States Coast Guard.” *Id.* at 4.

7           In its Second Amended Complaint, Amplify alleges that Marine Exchange “has its own  
8 board of directors, including a representative from an affiliate of Mediterranean Shipping  
9 Company, S.A.,” a separate party to this litigation. First Opp. at 5, SAC ¶ 21. Further, Amplify  
10 alleges that under California’s Harbors and Navigation Code, Marine Exchange “act[s] as an  
11 agent of each vessel” which “shall defend, indemnify, and hold harmless the marine exchange  
12 and its officers, directors, employees, and representatives from any and all claims.” SAC ¶ 22,  
13 *see also* Cal. Harb. & Nav. Code § 448.5(a), (c).

14           Amplify argues that the vessels indemnification of Marine Exchange is another  
15 indication that Marine Exchange is an agent of the vessels, and not the Coast Guard. First Opp.  
16 at 8. In return, Marine Exchange argues that while it may be an agent of the vessels, “an agent  
17 can act for two different principals.” Reply (“First Reply”) (Dkt. 352) at 3.

18           The Court finds that, at this stage in the proceedings, Amplify has plausibly alleged that  
19 the Coast Guard does not exercise significant control over Marine Exchange’s activities. On its  
20 face, Amplify’s Second Amended Complaint alleges that Marine Exchange is an entity  
21 independent of the United States Coast Guard. SAC ¶ 21. Though Marine Exchange argues that  
22 it operates under the Coast Guard’s supervision, without “operational control [by] the  
23 government . . . limited oversight by the United States” does not show an agency relationship.  
24 *Servis v. Hiller Sys. Inc.*, 54 F.3d 203, 208 (4th Cir. 1995) (“a primary factor in determining  
25 agency status is the degree of operational control exercised by the United States”). Amplify’s  
26 allegations regarding Marine Exchange’s separate board of directors and Marine Exchange’s  
27 indemnification by the vessels set forth a factual inference that Marine Exchange enjoys  
28

1 considerable independence, and that Marine Exchange is not an agent of the United States  
2 Coast Guard.<sup>1</sup>

3 **2. Business of the United States**

4 Having found above that Amplify has plausibly alleged that Marine Exchange is not an  
5 agent of the United States Coast Guard, the Court does not reach the question of whether the  
6 Marine Exchange is engaged in conducting the business of the United States.

7 **B. FAILURE TO JOIN A REQUIRED PARTY**

8 Marine Exchanges' Second Motion to Dismiss focuses on Amplify's alleged failure to  
9 join the United States Coast Guard. *See generally* Second Mot. In particular, Marine Exchange  
10 argues that Amplify's request for injunctive relief would require rewriting the standard  
11 operating procedures for Vessel Traffic Service ("VTS"), which "Marine Exchange has no  
12 ability by itself to rewrite." Second Mot. at 4–6. Marine Exchange argues that this relief must  
13 come from the Coast Guard, and that failure to join the Coast Guard would prejudice the public  
14 because changes to these operating procedures would impact entities in all 12 VTS areas across  
15 the country. *Id.* at 8.

16 Amplify argues in opposition that its requested relief does not necessarily implicate  
17 nationwide VTS procedures. Opposition ("Second Opp.") (Dkt. 486) at 6. Amplify submits that  
18 it only "seeks injunctive relief as to Marine Exchange's actions in the San Pedro Bay," which  
19 "does not implicate nationwide VTS procedures." *Id.*

20 As a preliminary matter, the Coast Guard has not claimed an interest relating to the  
21 subject of the instant action, and is therefore not a required party under Rule 19(a)(1)(A).  
22 Accordingly, the dispute is whether the Court can "accord complete relief among existing  
23 parties" without the joinder of the Coast Guard, under Rule 19(a)(1)(B).

24 The Court finds that it can accord complete relief among the parties without joinder of  
25 the Coast Guard. The requested remedies do not necessarily conflict with Marine Exchange's  
26 responsibilities under any standard operating procedures for the Vehicle Traffic Services.  
27 Amplify's requested injunctive relief would require Marine Exchange to:

28 \_\_\_\_\_  
<sup>1</sup> The Court makes no explicit finding as to whether Marine Exchange is indemnified by any other parties in this case.

- 1 (1) alert Amplify and any other owners of undersea property of any and all
- 2 potential anchor-dragging incidents in the area surrounding their undersea
- 3 property within 24 hours of the incident and
- 4 (2) not allow vessels to anchor in the anchorages located immediately
- 5 adjacent to the Pipeline when heavy weather is likely;

6 SAC ¶ 476(g). Marine Exchange argues that a ruling granting this relief would create  
7 “inconsistent obligations,” because Amplify “asks this Court to rewrite the NSOP, IOP and  
8 HSP — but not for everyone, just for Marine Exchange.” Second Mot. at 9. The Court  
9 disagrees.

10 Marine Exchange has not clearly identified any “inconsistent obligations,” and does not  
11 cite a particular area of the operating procedures that Amplify’s requested relief conflicts with.  
12 At best, Marine Exchange states that the Harbor Safety Plan encompasses all vessel traffic  
13 within each harbor, and includes elements “including anchorages, communication systems, and  
14 procedures for routing vessels during emergencies that impact navigation.” Second Mot. at 6,  
15 Cal. Govt. Code § 8760.23.1(c).

16 The Court could accord complete relief by tailoring Amplify’s requested injunctive  
17 remedies in a manner consistent with the obligations set forth by the various operating  
18 procedures for the Vehicle Traffic Services. Second Opp. at 7–8. Marine Exchange raises the  
19 well-taken concern that any injunctive relief imposing an inconsistent standard of care would  
20 be prejudicial. Second Mot. at 9. However, with the Court’s supervision, any injunctive relief  
21 against Marine Exchange here would not impose an inconsistent standard of care — simply a  
22 heightened one.

1 **IV. DISPOSITION**

2 For the foregoing reasons, the Court **DENIES** Marine Exchange’s Motions to Dismiss  
3 (Dkts. 298, 466) as to Amplify’s Second Amended Complaint and as to the Subrogated  
4 Insurers’ Complaint in Intervention.

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DATED: February 6, 2023



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DAVID O. CARTER  
UNITED STATES DISTRICT JUDGE