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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ACCELERANT SPECIALTY  
INSURANCE COMPANY,  
  
v.  
KKS MARINE II, LLC,  
  
Plaintiff,  
  
Defendant.

Case No.: 24-cv-00214-AJB-AHG  
  
**ORDER GRANTING PLAINTIFF’S  
MOTION TO STRIKE DEFENDANT’S  
JURY TRIAL DEMAND**  
  
**(Doc. No. 11)**

Presently pending before the Court is Plaintiff Accelerant Specialty Insurance Co.’s motion to strike Defendant KKS Marine II, LLC’s jury trial demand. (Doc. No. 11.) KKS filed an opposition to the motion, (Doc. No. 15), to which Plaintiff replied, (Doc. No. 19). Pursuant to Civil Local Rule 7.1.d.1, the Court finds the instant matter suitable for determination on the papers and without oral argument. For the reasons stated herein, the Court **GRANTS** the motion to strike KKS’s jury trial demand.

**I. BACKGROUND**

Plaintiff issued an insurance policy covering KKS’s yacht, named the Life Doesn’t Suck (“Vessel”). (Complaint (“Compl.”), Doc. No. 1, ¶¶ 5, 9.) In May 2023, the Vessel’s port engine overheated, and KKS filed an insurance claim with Plaintiff. (*Id.* ¶¶ 8, 15.) Plaintiff ultimately denied KKS’s insurance recovery claim. (*Id.* ¶ 22.)

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1 On January 31, 2024, the same day Plaintiff denied KKS’s insurance claim, Plaintiff  
2 filed its Complaint, seeking Declaratory Judgment on three counts asserting various  
3 breaches and lack of coverage under the insurance policy at issue. (*See generally id.*)  
4 Plaintiff alleges the case is an admiralty and maritime case within the meaning of Federal  
5 Rules of Civil Procedure 9(h) and 38(e), and this Court has subject matter jurisdiction  
6 pursuant to 28 U.S.C. § 1333.

7 On March 25, 2024, KKS filed its Answer and two Counterclaims, alleging Plaintiff  
8 improperly denied coverage under the insurance policy at issue. (*See Doc. No. 9.*) In its  
9 Answer, KKS “admits the Court has subject matter jurisdiction over this action pursuant  
10 to 28 U.S.C. § 1333.” (*Id.*, Answer ¶ 2.) Moreover, KKS asserts “[t]his Court has  
11 supplemental jurisdiction over Defendant’s counterclaims pursuant to 28 U.S.C.  
12 § 1367(a).” (*Id.*, Counterclaim ¶ 4.) KKS requests monetary damages and that its first  
13 counterclaim for breach of contract against Plaintiff be tried to a jury. (*Id.*, Prayer for Relief  
14 ¶ A.)

15 Plaintiff filed this motion to strike KKS’s demand for trial by jury, arguing Plaintiff  
16 elected to proceed in admiralty and there is no right to a jury in an action brought under  
17 admiralty or maritime jurisdiction. (Doc. No. 11.)

## 18 **II. DISCUSSION**

19 Plaintiff argues that because this case was brought in admiralty, KKS has no right to  
20 a jury trial. (Doc. No. 11.) KKS counters that even though Plaintiff elected to proceed in  
21 admiralty, an independent, non-admiralty jurisdictional basis exists, entitling it to a jury  
22 trial. (Doc. No. 15 at 6.) Specifically, KKS asserts that its counterclaim for breach of  
23 contract is “one that could traditionally have been brought at common law” and this Court  
24 has an independent basis for jurisdiction over that claim based on diversity jurisdiction.  
25 (*Id.* (quoting *Craig v. Atl. Richfield Co.*, 19 F.3d 472, 476 (9th Cir. 1994)).)

26 District courts have original jurisdiction over “[a]ny civil case of admiralty or  
27 maritime jurisdiction, saving to suitors in all cases all other remedies to which they are  
28 otherwise entitled.” 28 U.S.C. § 1333(1). The “saving to suitors” clause leaves state courts

1 “competent” to adjudicate maritime causes of action for in personam proceedings and  
2 allows plaintiffs to bring an action at law in federal district court, provided that the  
3 requirements for diversity jurisdiction under 28 U.S.C. § 1332 are met. *Ghotra by Ghotra*  
4 *v. Bandila Shipping, Inc.*, 113 F.3d 1050, 1054 (9th Cir. 1997). A plaintiff seeking to bring  
5 in personam maritime claims thus has three options: file a suit in federal court under federal  
6 admiralty jurisdiction, in federal court under diversity jurisdiction if the parties are diverse  
7 and the amount in controversy is satisfied, or in state court. *Id.* Although the difference  
8 between these options “is mostly procedural,” the “greatest significance is that there is no  
9 right to jury trial if general admiralty jurisdiction is invoked, while it is preserved for claims  
10 based in diversity or brought in state court.” *Id.* (citing Fed. R. Civ. P. 38). Where both  
11 admiralty and non-admiralty federal jurisdiction exist, a pleader may designate a claim as  
12 an admiralty claim under Federal Rule of Civil Procedure 9(h) to inform the court that the  
13 pleader elects to proceed within the court’s admiralty jurisdiction.

14 There is a “lack of consensus” among federal courts as to whether a defendant  
15 bringing compulsory legal counterclaims in response to a plaintiff’s admiralty claim is  
16 entitled to a jury trial. *Great Lakes Ins. SE v. Andersson*, 525 F. Supp. 3d 205, 207 (D.  
17 Mass. 2021). Under Ninth Circuit precedent, “where a federal court has an independent  
18 basis of jurisdiction over cases involving admiralty claims, *such as diversity of citizenship*,  
19 both the defendant and plaintiff have a right to demand a jury trial under the Seventh  
20 Amendment *so long as the suit is one that could traditionally have been brought ‘at*  
21 *common law’ . . .*”). *Craig*, 19 F.3d at 476 (emphases added).

22 Here, Plaintiff asserted subject matter jurisdiction only under this Court’s admiralty  
23 jurisdiction, 28 U.S.C. § 1333(1). (Compl. ¶ 2.) Plaintiff did not assert any other basis for  
24 federal subject matter jurisdiction and made a Rule 9(h) election indicating its intent to  
25 proceed under admiralty despite independent bases of jurisdiction over its claims. (*Id.*)  
26 Although courts have found that independent jurisdiction exists where a party has asserted  
27 diversity jurisdiction, KKS has not done so here. *Cf. Ghotra by Ghotra*, 113 F.3d at 1058  
28 (“Ghotras clearly asserted diversity as the jurisdictional basis for the in personam claims

1 in each of their Complaints.’). For that reason, KKS’s reliance on *Wilmington Trust v. U.S.*  
2 *District Court for the District of Hawaii*, 934 F.2d 1026, 1027–28 (9th Cir. 1991), where  
3 the defendant asserted “[i]ndependent jurisdictional grounds” for each counterclaim, is  
4 misplaced. KKS’s reliance on *Clear Spring Property & Casualty Co. v. Arch Nemesis,*  
5 *LLC*, No. 22-CV-2435-DDC-TJJ, 2023 WL 6200198, at \*9 (D. Kan. Sept. 22, 2023);  
6 *Sphere Drake Insurance PLC v. J. Shree Corp.*, 184 FRD 258, 261 (S.D.N.Y. 1999); and  
7 *Canal Barge Co. v. Commonwealth Edison Co.*, No. 98 C 0509, 2002 WL 206054, at \*3  
8 (N.D. Ill. Feb. 11, 2002), fail for the same reasons. Moreover, while the court in *Craig* did  
9 not elaborate on whether any party in that case pled diversity jurisdiction, the court noted  
10 that the issue had previously been ruled on. 19 F.3d at 476.

11 KKS further asserts it was not required to plead diversity jurisdiction in its  
12 counterclaims because the question is whether the court “has an independent basis for  
13 jurisdiction.” (Doc. No. 15 at 7–8 (quoting *Craig*, 19 F.3d at 476).) KKS relies on *Huerta*  
14 *v. Akima Facilities Management. LLC*, No. 16-CV-00434-KAW, 2017 WL 5479467, at \*4  
15 (N.D. Cal. Nov. 15, 2017), which is not binding on this Court, in support of this argument.  
16 (*Id.*) In *Huerta*, the plaintiff requested the court to decline exercising supplemental  
17 jurisdiction over state law claims. *Id.* at \*1. The plaintiff asserted federal question  
18 jurisdiction based on the Federal Tort Claims Act and did not raise diversity jurisdiction.  
19 *Id.* However, the parties identified the basis of jurisdiction as diversity jurisdiction in two  
20 separate joint case management statements. *Id.* at \*2–\*3. The *Huerta* court noted that  
21 “[d]espite these repeated acknowledgments that diversity jurisdiction exists, Plaintiff now  
22 argues that because he did not explicitly plead diversity jurisdiction, diversity jurisdiction  
23 does not exist.” *Id.* at \*3. The court went on to state that “[a]s applied in the instant case,  
24 the fact that Plaintiff did not affirmatively assert diversity jurisdiction in his complaint does  
25 not mean that diversity jurisdiction does not exist; the actual existence of diversity  
26 jurisdiction is not dependent on compliance with the procedural requirements.” *Id.* at \*4  
27 (emphasis added). The Court finds *Huerta* distinguishable, as the court in *Huerta* decided  
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1 separate issues, and Plaintiff here has never identified diversity jurisdiction as the basis for  
2 jurisdiction.

3 Given that KKS has alleged no independent jurisdictional grounds for its  
4 counterclaims, its demand for jury trial “does not defeat plaintiff’s election to proceed in  
5 admiralty with a bench trial.” *Albany Ins. Co. v. Gerald Jones*, 1996 A.M.C. 2456, 2456  
6 (D. Alaska 1996).

### 7 **III. LEAVE TO AMEND**

8 Finally, KKS requests leave to amend its Answer and Counterclaims pursuant to  
9 Federal Rule of Civil Procedure 15(a), should the Court find in favor of Plaintiff. (Doc.  
10 No. 15 at 8 n.2.) Plaintiff does not respond in reply. (*See generally* Doc. No. 19.)

11 Rule 15 of the Federal Rules of Civil Procedure mandates that leave to amend “be  
12 freely given when justice so requires.” Fed. R. Civ. P. 15(a). “This policy is to be applied  
13 with extreme liberality.” *Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th  
14 Cir. 2003) (per curiam) (quoting *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708,  
15 712 (9th Cir. 2001)). The Supreme Court has identified several factors district courts should  
16 consider when deciding whether to grant leave to amend: “undue delay, bad faith or  
17 dilatory motive on the part of the movant, repeated failure to cure deficiencies by  
18 amendments previously allowed undue prejudice to the opposing party by virtue of  
19 allowance of the amendment, [and] futility of amendment.” *Foman v. Davis*, 371 U.S. 178,  
20 182 (1962); *see also Smith v. Pac. Props. Dev. Corp.*, 358 F.3d 1097, 1101 (9th Cir. 2004).  
21 “Not all of the [*Foman*] factors merit equal weight. As this circuit and others have held, it  
22 is the consideration of prejudice to the opposing party that carries the greatest weight.”  
23 *Eminence Cap., LLC*, 316 F.3d at 1052. “The party opposing amendment bears the burden  
24 of showing prejudice.” *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987).  
25 “Absent prejudice, or a strong showing of any of the remaining *Foman* factors, there exists  
26 a presumption under Rule 15(a) in favor of granting leave to amend.” *Eminence Cap., LLC*,  
27 316 F.3d at 1052.

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1 Even though Plaintiff has not opposed KKS's request, and has thus consented, the  
2 Court still considers the *Foman* factors. There is no undue delay because litigation is  
3 currently at a relatively nascent stage. There is also no indication of bad faith or dilatory  
4 motive. Additionally, because discovery is in its early stages, there is no danger of  
5 prejudice. Finally, the proposed amendments do not appear to be futile.


6 Thus, the Court **GRANTS** KKS's request for leave to file a first amended answer  
7 and counterclaims.

8 **IV. CONCLUSION**

9 For the reasons set forth above, the Court **GRANTS** Plaintiff's motion to strike  
10 KKS's demand for a jury trial. (Doc. No. 11.) Should KKS choose to do so, where leave is  
11 granted, it must file an amended Answer and Counterclaims curing the deficiencies noted  
12 herein by **October 21, 2024**.

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14 **IT IS SO ORDERED.**

15 Dated: October 7, 2024

16   
17 Hon. Anthony J. Battaglia  
18 United States District Judge  
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