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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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CITY OF WEST SACRAMENTO,
CALIFORNIA; and PEOPLE OF THE
STATE OF CALIFORNIA,

Plaintiffs,

v.

R AND L BUSINESS MANAGEMENT, a
California corporation, f/k/a
STOCKTON PLATING, INC., d/b/a
CAPITOL PLATING, INC., a/k/a
CAPITOL PLATING, a/k/a CAPITAL
PLATING; CAPITOL PLATING INC., a
dissolved California
corporation; ESTATE OF GUS
MADSACK, DECEASED; ESTATE OF
CHARLES A. SCHOTZ a/k/a SHOTTS,
DECEASED; ESTATE of E. BIRNEY
LELAND, DECEASED; ESTATE OF
FRANK E. ROSEN, DECEASED; ESTATE
OF UNDINE F. ROSEN, DECEASED;
ESTATE of NICK E. SMITH,
DECEASED; RICHARD LELAND, an
individual; SHARON LELAND, an
individual; ESTATE OF LINDA
SCHNEIDER, DECEASED; JUDY GUESS,
an individual; JEFFREY A. LYON,
an individual; GRACE E. LYON, an
individual; THE URBAN FARMBOX
LLC, a suspended California
limited liability company; and
DOES 1-50, inclusive,

No. 2:18-cv-900 WBS EFB

MEMORANDUM AND ORDER RE:
MOTION TO DISMISS

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Defendants.

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This action arises out of soil and groundwater contamination allegedly resulting from the release of hazardous substances at a property once occupied by a metal plating facility. Presently before the court is defendants Richard Leland and Sharon Leland's Motion to Dismiss the Complaint for failure to state a claim upon which relief may be granted pursuant to Federal Rule of Civil Procedure 12(b)(6) ("Rule 12(b)(6)").

I. Factual and Procedural History

Beginning in the 1950s until September 1985, a metal plating business operated continuously on the real property located at 319 3RD Street, West Sacramento, California (the "property"). (Compl. ¶¶ 4, 32 (Docket No. 1).) Defendants Sharon and Richard Leland ("the Lelands") are individuals, former owners, operators, officers, directors, and/or shareholders of Capitol Plating, a metal plating business that operated at the property from 1961 to at least 1985, and current owners, officers, directors, and/or shareholders of R and L Business Management. (Id. ¶ 18.) R and L Business Management is a California corporation and former owner and operator of Capitol Plating and is the successor in interest and the successor in title to Stockton Plating, Inc. which owned and operated Capitol Plating.¹ (Id. ¶ 14.)

¹ Plaintiffs allege that Gus Madack owned and operated

1 On May 2, 1986, the Yolo County Department of Health
2 Services inspected the property and issued a Notice of
3 Noncompliance regarding elevated levels of heavy metals at the
4 site. (Id. ¶ 37.) Since the initial inspection, the site has
5 been tested several times and these tests have confirmed the
6 presence of elevated levels of numerous contaminants in the soil
7 and groundwater at the site. (Id. ¶ 38.)

8 Plaintiffs allege that Capitol Plating is the source of
9 the contaminants and that each defendant caused or contributed to
10 the contamination. (Id. ¶¶ 39, 43.) Plaintiffs further allege
11 that the contamination occurred at the property as the result of
12 numerous spills, leaks, discharges, and disposal of hazardous
13 substances, and during the subsequent removal of the plating
14 equipment and chemical solutions from the property. (Id. ¶¶ 40-
15 41.) Plaintiffs claim that the contamination caused and
16 continues to cause harm to the public health and the environment.
17 (Id. ¶ 44.) Defendants have allegedly known for over three
18 decades about the contamination and have failed and refused to
19 perform or fund an investigation and cleanup of the property.
20 (See id. ¶¶ 46-47.)

21 On April 12, 2018, plaintiffs the City of West
22 Sacramento, California ("the City") and the People of the State
23

24 Capitol Plating from 1950 to the mid-1950s. (Compl. ¶ 11.)
25 Charles Schotz owned and operated the business from the mid-
26 1950's to 1961. (Id. ¶ 12.) Capitol Plating, Inc. owned and
27 operated the business from 1960 to at least 1985. (Id. ¶ 13.)
28 Stockton Plating owned and operated Capitol Plating Inc. from
1961 to at least 1985. (See id. ¶ 12.) R & L Business
Management is the successor-in-interest and successor-in title to
Stockton Plating. (See id.)

1 of California (collectively "plaintiffs") filed a Complaint
2 against defendants, including the Lelands, alleging the
3 following: (1) violation of the Resource Conservation and
4 Recovery Act ("RCRA") § 7002(a), 42 U.S.C. § 6972(a)(1)(B); (2)
5 violation of the Comprehensive Environmental Response,
6 Compensation and Liability Act ("CERCLA") § 107(a), 42 U.S.C. §
7 9607(a); (3) violation of The Gatto Act, California Health &
8 Safety Code §§ 25403-25403.8; (4) violation of The Porter-Cologne
9 Water Quality Control Act, Cal. Water Code § 1304(c); (5) public
10 nuisance; (6) trespass; (7) negligence; (8) ultrahazardous
11 activity; (9) statutory indemnity; and (10) declaratory relief.
12 Plaintiffs seek declaratory relief and costs allegedly incurred
13 in response to soil and ground water contamination at and around
14 the property.

15 II. Legal Standard

16 On a Rule 12(b)(6) motion, the inquiry before the court
17 is whether, accepting the allegations in the complaint as true
18 and drawing all reasonable inferences in the plaintiff's favor,
19 the plaintiff has stated a claim to relief that is plausible on
20 its face. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). "The
21 plausibility standard is not akin to a 'probability requirement,'
22 but it asks for more than a sheer possibility that a defendant
23 has acted unlawfully." Id. "A claim has facial plausibility
24 when the plaintiff pleads factual content that allows the court
25 to draw the reasonable inference that the defendant is liable for
26 the misconduct alleged." Id. Under this standard, "a well-
27 pleaded complaint may proceed even if it strikes a savvy judge
28 that actual proof of those facts is improbable." Bell Atl. Corp.

1 v. Twombly, 550 U.S. 544, 556 (2007).

2 III. Discussion

3 A. Federal Claims

4 1. CERCLA

5 CERCLA is a "comprehensive statute that grants the
6 President broad power to command government agencies and private
7 parties to clean up hazardous waste sites," and permits "a
8 private party [to] recover expenses associated with cleaning up
9 contaminated sites." City of Colton v. Am. Promotional Events,
10 Inc.-W., 614 F.3d 998, 1002 (9th Cir. 2010) (citations omitted).
11 To establish a prima facie case under CERCLA, plaintiffs must
12 demonstrate: (1) the site on which the hazardous substances are
13 contained is a "facility"; (2) a "release" or "threatened
14 release" of any "hazardous substance" from the facility has
15 occurred; (3) such "release" or "threatened release" caused the
16 plaintiffs to incur response costs that were "necessary" and
17 "consistent with the national contingency plan"; and (4) the
18 defendants are within one of four classes of "potentially
19 responsible parties" subject to the liability provisions of §
20 9607(a). See Coppola v. Smith, 19 F. Supp. 3d 960, 969 (E.D.
21 Cal. 2014) (Ishii, J.) (citing City of Colton, 614 F.3d at 1002).

22 One of the four classes of responsible parties is "any
23 person who at the time of disposal of any hazardous substance
24 owned or operated any facility at which such hazardous substances
25 were disposed of." 42 U.S.C. § 9607(a)(2). CERCLA further
26 defines "person" to include "an individual." See Schwarm v.
27 Craighead, 552 F. Supp. 2d 1056, 1072 (E.D. Cal. 2008) (Shubb,
28 J.) (citing 42 U.S.C. § 9601(20)(A), (21)). "Because 'Congress

1 could have limited the statutory definition of 'person' [to
2 exclude corporate shareholders and officers,] but chose not to,'
3 every circuit court that has addressed the issue has held that
4 CERCLA imposes personal liability on shareholders, officers, and
5 directors without requiring a plaintiff to pierce the corporate
6 veil." Id. (citations omitted).

7 Here, the parties do not dispute whether plaintiff has
8 adequacy pled the first three requirements; however, defendants
9 argue that plaintiffs have not alleged sufficient facts to
10 establish direct or personal "owner or operator" liability based
11 on the Lelands own actions.

12 a. Owner Liability

13 Defendants move to dismiss plaintiffs' CERCLA claim
14 because plaintiffs have not shown that defendants were "owners"
15 of the facility.

16 CERCLA defines "owner or operator" as "any person
17 owning or operating such facility" but excludes any "person, who,
18 without participating in the management of a vessel or facility,
19 holds indicia of ownership primarily to protect his security
20 interest in the vessel or facility." 42 U.S.C. § 9601 20(A)(ii).
21 "The property of the corporation is its property, and not that of
22 the stockholders, as owners." Riverside Mkt. Dev. Corp. v. Int'l
23 Bldg. Prod., Inc., 931 F.2d 327, 330 (5th Cir. 1991) (quoting 1
24 C. Keating & G. O'Gradney, Fletcher Cyclopedia of the Law of
25 Private Corporations § 31 at 555 (1990)).

26 Here, plaintiffs assert that the Lelands are liable as
27 owners under CERCLA. Plaintiffs appear to rely on the Lelands'
28 status as shareholders to impose liability on them as owners.

1 (See Compl. ¶ 18.) However, the Lelands' "shareholder status
2 alone is not enough to make them owners for liability purposes
3 under CERCLA." See Robertshaw Controls Co. v. Watts Regulator
4 Co., 807 F. Supp. 144, 150 (D. Me. 1992); see also Riverside, 931
5 931 F.2d at 330 (stating that individual defendant's position as
6 majority shareholder of the corporate entity did not make him an
7 owner, under CERCLA, of the asbestos manufacturing plant, because
8 the plant was purchased by the corporate entity and not by the
9 individual defendant). Thus, to the extent that plaintiffs rely
10 on the defendants' status as shareholders, the court will grant
11 defendants' Motion to Dismiss plaintiffs' CERCLA claim based on
12 "owner" liability.

13 b. Operator Liability

14 Defendants move to dismiss plaintiffs' CERCLA claim
15 because plaintiffs have not shown that defendants were
16 "operators" of the facility.

17 Given the circular definition of "operator" in the
18 statute, the Supreme Court clarified that "under CERCLA, an
19 operator is simply someone who directs the workings of, manages,
20 or conducts the affairs of a facility." United States v.
21 Bestfoods, 524 U.S. 51, 66 (1998). In other words, an operator
22 in the CERCLA context "must manage, direct, or conduct operations
23 specifically related to pollution, that is, operations having to
24 do with the leakage or disposal of hazardous waste, or decisions
25 about compliance with environmental regulations." Id. at 66-67.
26 Furthermore, the Supreme Court has held that "a corporate parent
27 that actively participated in, and exercised control over the
28 operations of the facility itself may be held directly liable in

1 its own right as an operator of the facility.” Id. at 55.
2 Alternatively stated, a parent corporation or individual may be
3 held directly liable as an operator for their own actions. See
4 id. at 65.

5 In determining whether an individual is an “operator”
6 under CERCLA, “[c]ourts have struggled with the level of control
7 necessary to support operator liability, some settling on a
8 narrower ‘actual control’ standard, see United States v. Township
9 of Brighton, 153 F.3d 307, 313-14 (6th Cir. 1996) (requiring
10 affirmative acts from a purported operator), while others have
11 adopted a broader ‘authority to control’ standard, see Nurad Inc.
12 v. William E. Hooper & Sons Co., 966 F.2d 837, 842 (4th Cir.
13 1992) (requiring only the existence of authority to act).” Cal.
14 Dep’t of Toxic Substances Control v. Jim Dobbas, Inc., No. 2:14-
15 595 WBS EFB, 2014 WL 4627248, at *3 (E.D. Cal. Sept. 16, 2014)
16 (alteration in original).

17 Here, plaintiffs allege that the Lelands are
18 individuals, former owners, operators, and/or shareholders of
19 Capitol Plating, and current owners, officers, directors, and/or
20 shareholders of R & L Business Management. (Compl. ¶ 18.)

21 Plaintiffs further allege that:

22 [t]he remaining defendants [including the Lelands] are
23 liable . . . because they each used, handled, stored,
24 treated, transported, and/or disposed of, or arranged
25 for others to do so, or exercised substantial
26 influence and control over the use, handling, storage,
27 transport, and/or disposal of the Contaminants at the
28 Property, and because they each owned and/or operated
the metal plating business . . . at a time when the
Contaminants were disposed of at the Property.

(Id. ¶ 74.) Thus, plaintiffs allege that each defendant is
liable under CERCLA. (Id. ¶ 75.)

1 However, plaintiffs allege no specific facts to
2 demonstrate that the Lelands' "direct[ed] the workings of,
3 manage[d], or conduct[ed] the affairs of a facility," to
4 establish that the Lelands were "operators" of the facility under
5 CERCLA. Furthermore, plaintiffs' conclusory allegation that each
6 defendant is liable as operators under CERCLA is not entitled to a
7 presumption of truth. See Gregory Vill. Partners, L.P. v.
8 Chevron U.S.A., Inc., 805 F. Supp. 2d 888, 897 (N.D. Cal. 2011)
9 (allegation that Chevron was responsible for the releases as a
10 former owner/operator of the facility at the time of the releases
11 pursuant to 42 U.S.C. § 9607(a)(2) was a legal conclusion that
12 was not entitled to a presumption of truth). Thus, regardless
13 of which standard of operator liability applies, plaintiffs have
14 not alleged sufficient facts to hold the Lelands directly liable
15 as operators under CERCLA.

16 Accordingly, the court will grant defendants' Motion to
17 Dismiss plaintiffs' CERCLA claim based on a theory of direct
18 "owner or operator" liability.

19 2. RCRA

20 Defendants also move to dismiss plaintiffs' RCRA claim.
21 "RCRA is a comprehensive environmental statute that governs the
22 treatment, storage, and disposal of solid and hazardous waste."
23 Meghrig v. KFC W., Inc., 516 U.S. 479, 483, (1996). Section
24 6972(a)(1)(B) of the RCRA permits a private party to sue certain
25 responsible persons, including past or present owners or
26 operators, "who ha[ve] contributed or who [are] contributing to
27 the past or present handling, storage, treatment, transportation,
28 or disposal of any solid or hazardous waste which may present an

1 imminent and substantial endangerment to health or the
2 environment.” See id. (quoting 42 U.S.C. § 6972(a)(1)(B)). The
3 “RCRA does not itself define what acts of contribution are
4 sufficient to trigger liability.” Hinds Invs., L.P. v. Angioli,
5 654 F.3d 846, 850 (9th Cir. 2011). However, the Ninth Circuit
6 has held “that to state a claim predicated on RCRA liability for
7 ‘contributing to’ the disposal of hazardous waste, a plaintiff
8 must allege that the defendant had a measure of control over the
9 waste at the time of its disposal or was otherwise actively
10 involved in the waste disposal process.” Id. at 852.

11 Here, plaintiffs allege that defendants are liable
12 under RCRA, 42 U.S.C. § 6972 (a)(1)(B), because:

13 each defendant caused or contributed to the past or
14 present handling, treatment, transportation, or
15 disposal of the Contaminants . . . and because each
16 defendant either released or otherwise discarded, or
17 caused or contributed to the release or discarding of,
18 the Contaminants in the environment. . . or owned and
19 controlled the Property when, and at which, those
20 Contaminants were released or otherwise discarded, but
21 failed to prevent or abate such contamination.

22 (Compl. ¶ 61). Plaintiffs further allege that the contaminants
23 at the site “present or may present imminent and substantial
24 endangerment to human health or the environment.” (Id. ¶ 57.)

25 Plaintiffs’ allegations are conclusory recitations of
26 the elements “devoid of further factual enhancement” and do not
27 sufficiently allege an RCRA claim. See Ingalls v. AMG Demolition
28 & Envntl. Servs., No. 17-cv-2013 AJB MDD, 2018 WL 2086155, at *3
(S.D. Cal. May 4, 2018) (dismissing plaintiffs’ RCRA claim where
plaintiff simply pleads: (1) that all of the defendants
contributed to the generation, handling, storage, treatment,
transportation and disposal of solid waste; (2) that defendants

1 are past and present generators and transporters; (3) that they
2 contributed to the disposal; and (4) that the past and ongoing
3 generation and disposal of the solid waste by defendants may
4 present an imminent and substantial endangerment to the
5 environment). Again, to survive a motion to dismiss,
6 "[t]hreadbare recitals of the elements of a cause of action,
7 supported by mere conclusory statements, do not suffice." Iqbal,
8 556 U.S. at 678. Because plaintiffs' Complaint lacks sufficient
9 facts to hold defendants liable under RCRA, the court will grant
10 defendants' Motion to Dismiss plaintiffs' RCRA claim.

11 B. Indirect Liability: Piercing the Corporate Veil

12 Defendants assert that plaintiffs' Complaint contains
13 only a conclusory recitation of the elements required in order to
14 pierce the corporate veil, and thus claims that rely on this
15 theory should be dismissed.

16 It is a general principle of corporate law that a
17 parent corporation is not liable for the acts of its
18 subsidiaries. See Bestfoods, 524 U.S. at 61. However, "the
19 corporate veil may be pierced and the shareholder held liable for
20 the corporation's conduct when, inter alia, the corporate form
21 would otherwise be misused to accomplish certain wrongful
22 purposes" ² See id. at 62.

23 To pierce the corporate veil, a plaintiff must show:
24 "(1) that there be such unity of interest and ownership that the
25 separate personalities of the corporation and the individual no

26 ² Under CERCLA, "when (but only when) the corporate veil
27 may be pierced, may a parent corporation be charged with
28 derivative CERCLA liability for its subsidiary's actions." See
id. at 63-64.

1 longer exist, and (2) that, if the acts are treated as those of
2 the corporation alone, an inequitable result will follow.”
3 Associated Vendors, Inc. v. Oakland Meat Co., 210 Cal. App. 2d
4 825, 837 (1st Dist. 1962). A court may consider a number of
5 different factors to show “unity of interest,” including the
6 “commingling of funds and other assets . . . the holding out by
7 one entity that it is liable for the debts of the other,
8 identical equitable ownership . . . use of the same offices and
9 employees, and use of one as a mere shell or conduit for the
10 affairs of the other.” Roman Catholic Archbishop v. Superior
11 Court, 15 Cal. App. 3d 405, 411 (1st Dist. 1971) (citing
12 Associated Vendors, 210 Cal. App. 2d at 838-39). “This list is
13 non-exclusive, and California courts have relied on a host of
14 other factors in finding alter ego liability as well.” Gerritsen
15 v. Warner Bros. Entm’t Inc., 116 F. Supp. 3d 1104, 1137 (C.D.
16 Cal. 2015).

17 Here, plaintiff alleges that:

18 each operator defendant . . . was the alter ego of the
19 corporate entity . . . because, inter alia, of their
20 controlling interests in the corporation, their
21 complete dominance and control over the corporation
22 that no separateness or individuality between them and
23 the corporation existed and their failure to follow
and adhere to the formalities required for the
corporation’s existence. Therefore, failure to
“pierce the corporate veil” and hold these individual
defendants liable . . . would result in injustice and
prejudice to the Plaintiffs.

24 (Compl. ¶ 35.) Again, plaintiffs’ allegations are no more than a
25 recitation of the elements, and “[c]onclusory allegations of
26 ‘alter ego’ status are insufficient to state a claim. Rather, a
27 plaintiff must allege specific facts supporting both of the
28 necessary elements.” See Gerritsen, 116 F. Supp. 3d at 1136.

1 Here, plaintiffs do not allege any specific facts supporting
2 their allegation that there was no separateness between the
3 Lelands and the Corporation. Accordingly, the court will grant
4 defendants' Motion to Dismiss plaintiffs' claims that are
5 premised on the application of the corporate veil piercing
6 doctrine.

7 C. State Causes of Action

8 1. The Gatto Act

9 Plaintiffs allege that defendants violated The Gatto
10 Act, California Health & Safety Code §§ 25403-25403.8. The Gatto
11 Act is "the policy successor to the now-repealed Polanco
12 Redevelopment Act . . . and [is] interpreted and implemented
13 consistent with that act." Cal. Health & Safety Code § 25403.8.
14 The Gatto Act permits a local agency to "take any action that the
15 local agency determines is necessary and that is consistent with
16 other state and federal laws to investigate or clean up a release
17 on, under, or from blighted property . . . within the local
18 agency's boundaries due to the presence of hazardous materials"
19 following an environmental assessment. Id. § 25403.1. It
20 further provides that "if a local agency undertakes action to
21 investigate property or clean up . . . a release of hazardous
22 material, the responsible party shall be liable to the local
23 agency for the costs incurred in the action." Id. § 25403.5. A
24 responsible party includes "those described in Section 107(a) of
25 CERCLA," and thus includes "any person who at the time of
26 disposal of any hazardous substance owned or operated any
27 facility at which such hazardous substances were disposed of."
28 See 42 U.S.C. § 9607(a)(2); Cal. Health & Safety Code §§ 25323.5,

1 25403(s). Because the complaint must plausibly plead that
2 defendants owned or operated the facility, for the same reasons
3 that plaintiffs' Complaint does not state a claim for "owner or
4 operator" liability under CERCLA, it fails to state a Gatto Act
5 claim.

6 2. Porter-Cologne Water Quality Control Act

7 California implements the Clean Water Act through the
8 Porter-Cologne [Water Quality Control] Act. San Joaquin River
9 Exch. Contractors Water Auth. v. State Water Res. Control Bd.,
10 183 Cal. App. 4th 1110, 1115 (3d Dist. 2010). The Porter-Cologne
11 Act permits a contribution claim to be brought against "[a]ny
12 person who has discharged or discharges waste . . . or who has
13 caused or permitted, causes or permits, or threatens to cause or
14 permit any waste to be discharged or deposited where it is, or
15 probably will be, discharged into the waters of the state and
16 creates, or threatens to create, a condition of pollution or
17 nuisance." Cal. Water Code § 13304(a). "The Act derives from the
18 common law of nuisance." Wells Fargo Bank, N.A. v. Renz, 795 F.
19 Supp. 2d 898, 918 (N.D. Cal. 2011) (citing City of Modesto
20 Redevelopment Agency v. Superior Court, 119 Cal. App. 4th 28, 37
21 (2004)). "Thus, the relevant question for purposes of liability
22 is whether the defendant created or assisted in the creation of
23 the nuisance." Id. (internal quotations and citation omitted).

24 Again, plaintiffs allege no supporting facts to
25 establish how the Lelands "created or assisted in the creation
26 of" the "pollution" or "nuisance." See id. Instead, plaintiffs
27 allege that "each defendant is liable under Water Code §
28 13304(c)," (Compl. ¶ 102), without any underlying facts regarding

1 each defendants' actions that led to the alleged pollution or
2 nuisance. Accordingly, the court will grant defendants' Motion
3 to Dismiss plaintiffs' Porter-Cologne Act claim.

4 3. Public Nuisance

5 Plaintiffs allege that all defendants are liable for
6 public nuisance. The California Civil Code defines a nuisance as
7 "[a]nything which is injurious to health, including, but not
8 limited to, the illegal sale of controlled substances, or is
9 indecent or offensive to the senses, or an obstruction to the
10 free use of property, so as to interfere with the comfortable
11 enjoyment of life or property." Cal. Civ. Code § 3479. A public
12 nuisance is "one which affects at the same time an entire
13 community or neighborhood, or any considerable number of
14 persons." Id. § 3480. A defendant may be liable for a nuisance
15 under several theories: (1) that the defendant creates or assists
16 in the creation of the nuisance; (2) the defendant unreasonably
17 fails to abate a nuisance when he is in possession of land; or
18 (3) the defendant has a right of possession of land and consents
19 or unreasonably permits a third party to create a nuisance on the
20 land. See Coppola, 935 F. Supp. 2d at 1018-19.

21 Here, plaintiffs allege: (1) that all defendants
22 exercised influence and substantial control over the operations
23 of the metal plating business; (2) that through such influence
24 and control defendants caused the release of the Contaminants
25 into the environment and failed to prevent or abate such
26 contamination; (3) that the contamination was injurious to
27 health, indecent, offensive to the senses, and an obstruction to
28 the free use of the various properties within the site; and (4)

1 that the contamination interfered with the comfortable enjoyment
2 of life and property and unlawfully obstructs the free use of the
3 surface water and groundwater at the site. (See Compl. ¶¶ 107-
4 108.) As previously discussed, plaintiffs' Complaint does not
5 "adequately describe culpable conduct by [the Lelands]." See
6 Coppola, 935 F. Supp. at 1033 (dismissing public nuisance claim
7 where plaintiff alleges that defendant operated a site of
8 contamination and the operation led to the spread of hazardous
9 substances but does not allege facts to indicate the active or
10 knowing generation of the contamination nuisance or any facts to
11 establish that defendant acted unreasonably when it failed to
12 discover and abate the spread of the contamination). Because
13 plaintiffs have not alleged any facts regarding how the Lelands
14 were involved in creating the nuisance, the court will grant
15 defendants' Motion to Dismiss plaintiffs' public nuisance claim.

16 4. Trespass

17 "A trespass is an invasion of the interest in the
18 exclusive possession of land, as by entry upon it." Wilson v.
19 Interlake Steel Co., 32 Cal. 3d 229, 233 (1982). "A plaintiff
20 asserting a claim for trespass must have a possessory interest in
21 the land at issue; mere ownership is not sufficient." Gregory
22 Vill. Partners, L.P., 805 F. Supp. 2d at 902 (citing Dieterich
23 Int'l Truck Sales, Inc. v. J.S. & J. Servs., Inc., 3 Cal. App.
24 4th 1601, 1608-10 (4th Dist. 1992)). A trespass claim may
25 include wrongful entry or invasion by pollutants. See Martin
26 Marietta Corp. v. Ins. Co. of N. Am., 40 Cal. App. 4th 1113, 1132
27 (2d Dist. 1995). Here, plaintiffs allege no facts to establish
28 how the Lelands interfered with their right to possess their

1 property nor any facts describing how the Lelands' actions led to
2 the contaminants entering and remaining on the property.
3 Accordingly, the court will grant defendants' Motion to Dismiss
4 plaintiffs' trespass claim.

5 5. Negligence

6 Plaintiffs allege a negligence cause of action against
7 defendants. "Negligence is the failure to use reasonable care to
8 prevent harm to oneself or to others." Raven H. v. Gamette, 157
9 Cal. App. 4th 1017, 1025 (2d Dist. 2007). "A person is negligent
10 if he or she does something that a reasonably careful person
11 would not do in the same situation or fails to do something that
12 a reasonably careful person would do in the same situation." Id.
13 To state a claim for negligence, a plaintiff must allege: "(1)
14 the defendant owed the plaintiff a duty of care, (2) the
15 defendant breached that duty, and (3) the breach proximately
16 caused the plaintiff's damages or injuries." Alvarez v. BAC Home
17 Loans Servicing, L.P., 228 Cal. App. 4th 941, 944 (1st Dist.
18 2014).

19 Here, plaintiffs allege that all defendants breached
20 various duties by, among other things, failing to exercise due
21 care in handling the contaminants, using the equipment at the
22 property, failing to investigate, and failing to contain the
23 contaminants. (See Compl. ¶¶ 134-156.) However, plaintiffs have
24 alleged no supporting facts to establish why the Lelands owed
25 plaintiffs a duty, how the Lelands breached that duty, or how the
26 Lelands' actions contributed to the contamination. Accordingly,
27 the court will grant defendants' Motion to Dismiss plaintiffs'
28 negligence claim.

1 6. Ultrahazardous Activity

2 Plaintiffs allege a cause of action for strict
3 liability for ultrahazardous activity against the operator
4 defendants only.³

5 "One who carries on an ultrahazardous activity is
6 liable to another whose person, land or chattels the actor should
7 recognize as likely to be harmed by the unpreventable miscarriage
8 of the activity for harm resulting thereto from that which makes
9 the activity ultra-hazardous." Luthringer v. Moore, 31 Cal. 2d
10 489, 498 (1948). "An activity is ultra-hazardous if it (a)
11 necessarily involves a risk of serious harm to the person, land
12 or chattels of others which cannot be eliminated by the exercise
13 of the utmost care and (b) is not a matter of common usage." Id.

14 Here, plaintiffs allege that the operator defendants
15 engaged in the ultrahazardous activity of metal plating. (Compl.
16 ¶ 161.) However, plaintiffs have not pled "factual content that
17 allows the court to draw the reasonable inference that the
18 defendant[s] [are] liable for the misconduct alleged." Iqbal,
19 556 U.S. at 678. Based on plaintiffs' Complaint, the Lelands'
20 role in the metal plating business, and what actions they took
21 that led to the contamination, is unclear. Plaintiffs plead no
22 supporting facts to establish that the Lelands were engaged in an
23 "ultrahazardous activity." Accordingly, the court will grant
24 defendants' Motion to Dismiss plaintiffs' ultrahazardous activity
25 claim.

26 8. Statutory Indemnity

27 _____
28 ³ It is not clear which defendants are "operator
defendants only."

1 Plaintiffs seek statutory indemnity pursuant to the
2 Carpenter-Presley-Tanner Hazardous Substance Account Act, Health
3 & Safety Code 25300 et seq. ("HSAA").

4 "The HSAA is 'California's version of [CERCLA].'"
5 Coppola, 935 F. Supp. 2d at 1011 (quoting Ameron Inter'l Corp. v.
6 Insurance Co. of Pa., 50 Cal. 4th 1370, 1379 (2010)). The HSAA
7 includes a private right of action, and provides, in relevant
8 part, that "[a] person who has incurred response or corrective
9 action costs . . . may seek . . . indemnity from any person who
10 is liable pursuant to this chapter." See Orange Cty. Water Dist.
11 v. Alcoa Glob. Fasteners, Inc., 12 Cal. App. 5th 252, 297 (4th
12 Dist. 2017) (quoting Cal. Health & Safety Code § 25363). "The
13 HSAA expressly incorporates the same liability standards,
14 defenses, and classes of responsible persons as those set forth
15 in CERCLA," and "is generally interpreted consistent with
16 CERCLA." See Coppola, 935 F. Supp. 2d at 1011 (citations
17 omitted). Accordingly, for the same reasons the court dismissed
18 plaintiffs' CERCLA claim, the court will dismiss plaintiffs'
19 request for statutory indemnity pursuant to the HSAA. See id. at
20 1012 (dismissing HSAA cause of action because court dismissed
21 CERCLA cause of action).

22 9. Declaratory Relief

23 Plaintiffs seek a judicial determination of the
24 parties' rights and duties regarding defendants' liability to the
25 City for the harm suffered and costs incurred by the City because
26 of the alleged contamination. (See Compl. ¶ 186.) Plaintiffs
27 causes of action appear to be derivative of the prior causes of
28 action against defendants. Because the court has dismissed all

1 other causes of action, the court will grant defendants' Motion
2 to Dismiss plaintiffs' claim for declaratory relief. See
3 Coppola, 935 F. Supp. 2d at 1035 (dismissing claim for
4 declaratory relief where declaratory relief was derivative of the
5 prior causes of action and each of the other causes of action
6 against the defendant were dismissed).

7 For the forgoing reasons, defendants' Motion to Dismiss
8 the Complaint will be granted. Plaintiffs, seemingly aware that
9 this motion would be granted, have requested leave to amend, and
10 defendants do not argue that granting leave to amend will be
11 futile, will prejudice them, or will cause undue delay. The
12 court will according grant plaintiffs' request for leave to amend
13 the Complaint.

14 IT IS THEREFORE ORDERED that defendants Richard Leland
15 and Sharon Lelands' Motion to Dismiss Plaintiffs' Complaint
16 (Docket No. 10) be, and hereby is, GRANTED.

17 Plaintiffs have twenty days from the date this Order is
18 signed to file a First Amended Complaint, if they can do so
19 consistent with this Order.

20 Dated: June 27, 2018



21 WILLIAM B. SHUBB
22 UNITED STATES DISTRICT JUDGE
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