

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 13 2020

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

GRUPO ALTEX SA DE CV; FREXPORT  
SA DE CV,

Plaintiffs-Appellants,

v.

GOWAN COMPANY; et al.,

Defendants-Appellees.

No. 18-16894

D.C. No. 2:17-cv-03830-GMS

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
G. Murray Snow, District Judge, Presiding

Submitted February 7, 2020\*\*  
Arizona State University, Phoenix, Arizona

Before: TASHIMA, HURWITZ, and MILLER, Circuit Judges.

Grupo Altex S.A. de C.V. and Frexport S.A. de C.V. (collectively, “Plaintiffs”) appeal the dismissal of their complaint against Gowan Company, LLC, Gowan Mexican Holding Company, LLC, and JRJ Partners, LLC (collectively,

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

“Defendants”). We have jurisdiction under 28 U.S.C. § 1291 and affirm.

Defendants’ motion to dismiss included a declaration and documents showing that they were not the parties that caused Plaintiffs’ alleged injuries. *See Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). Despite having the opportunity to submit evidence in response, Plaintiffs expressly chose to rest on their pleadings. Plaintiffs do the same on appeal, but unverified allegations in pleadings do not suffice to rebut contrary evidence. *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014); *Lew v. Kona Hosp.*, 754 F.2d 1420, 1423 (9th Cir. 1985). Plaintiffs also urge that the district court erred in not providing discovery, but because they never sought discovery in the district court, they cannot raise the issue for the first time on appeal. *See Robinson v. Am. Home Mortg. Servicing, Inc. (In re Mortg. Elec. Registration Sys., Inc.)*, 754 F.3d 772, 780 (9th Cir. 2014). On this record, the district court did not err in dismissing the complaint.

**AFFIRMED.**