

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ENNS PONTIAC, BUICK, & GMC
TRUCK, et al.,

Plaintiffs,

v.

ORELIA FLORES, et al.,

Defendants.

1:07-cv-01043-OWW-DLB

MEMORANDUM DECISION REGARDING
MOTION TO AMEND (Doc. 124)

I. INTRODUCTION.

On July 19, 2007, Plaintiffs filed their original complaint in this action. (Doc. 2). Plaintiffs filed a first amended complaint ("FAC") on November 7, 2007. (Doc. 13).

Plaintiffs filed a motion to amend the FAC on February 17, 2011. (Docs. 123, 124). Defendants Mabel Lee, Reedley Dry Cleaning Works, Reedley Steam Laundry, and the Estate of Herbert Lee filed opposition to Plaintiffs' motion on April 4, 2011. (Doc. 128). Defendant the Estate of Sieto Yamaguchi filed opposition on April 4, 2011; Defendant John Pierce also filed opposition to the motion to amend on April 4, 2011. (Docs. 132, 135). Plaintiffs filed replies on April 11, 2011. (Docs. 138, 139, 140).

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II. FACTUAL BACKGROUND.

FAC's Allegations

3 This case concerns the alleged release of various hazardous
4 substances, namely solvents used in the dry cleaning industry, into
5 a groundwater plume underlying part of Reedley, California. The
6 FAC includes two federal claims for (1) recovery of "response"
7 costs under the Comprehensive Environmental Response, Compensation,
8 and Liability Act ("CERCLA") §§ 107(a)(1-4)(B), and (2) declaratory
9 relief under federal law, as well as five additional state law
10 claims for (3) negligence per se, (4) negligence, (5) public and
11 private nuisance, (6) trespass, and (7) equitable indemnity, and
12 (8) declaratory relief under state law.

13 The FAC sets forth the following general background
14 information. Plaintiffs own real property located at 1319 G.
15 Street, Reedley, California ("Plaintiffs' Site"). (FAC ¶2.) Prior
16 to Plaintiffs taking ownership of 1319 G. Street, Mabel and Herbert
17 Lee (the "Lee Defendants") owned and/or operated a dry cleaning
18 business at that location from approximately the 1940s through the
19 1970s. (FAC ¶4.) Herbert Lee is now deceased.

20 Orelia Florez and Sieto Yamaguchi (the "Flores/Yamaguchi"
21 defendants) owned and/or operated real property at 1340 G. Street,
22 Reedley, California, which is across the street from Plaintiff's
23 Site. (FAC ¶¶ 4, 7.). Sieto Yamaguchi is now deceased. Finally,
24 John Pearce ("Pearce") and Patty and Louie Martinez ("Martinez")
25 "each owned and/or operated real property nearby and/or adjacent to
26 the Plaintiffs' Site." (FAC ¶4.) The FAC alleges that the
27 properties either currently or previously owned by these Defendants
28 "caused Plaintiffs and Plaintiffs' Site environmental

1 contamination." (Id.)

2 Plaintiffs allege that Defendants and Defendants' properties
3 "generated disposed of or released ... hazard[ous] substances or
4 wastes that caused contamination and pollution of structures,
5 soils, subsoils, surface water and groundwater at and in the
6 vicinity of the Plaintiffs' Site (both on-site and off-site)
7 through the handling, generation, usage, storage, disposal of
8 and/or release of hazardous substances at, onto and from the
9 Plaintiffs' Site and Defendants' Sites." (FAC ¶5.). The FAC's
10 allegations regarding the nature of the contamination at issue are
11 very generic, alleging that Defendants, beginning in the 1940s,
12 while operating either on Plaintiffs' Site or other sites, released
13 hazardous substances including chlorinated hydrocarbon compounds
14 ("CHCs"). (FAC ¶¶ 37-38.) These CHC releases allegedly caused and
15 contributed to the contamination of soil and groundwater underlying
16 Plaintiffs' Site, Defendants' properties, and surrounding
17 properties. (FAC ¶37.)

18 In the First Claim for Relief, for recovery of response costs
19 under CERCLA §§ 107(a)(1-4)(B), Plaintiffs allege that they "have
20 incurred, and will continue to incur, substantial Response Costs
21 ... to fully characterize the Plaintiffs' Site, including, but not
22 limited to, soil sampling; installation of groundwater monitoring
23 wells; sampling such wells and having all samples analyzed...."
24 (FAC ¶42.) In addition, Plaintiffs anticipate that they will incur
25 additional costs to address existing and future groundwater
26 contamination. (Id.) The FAC specifically alleges that Defendants
27 "caused and continue to cause Plaintiffs to incur Response Costs on
28 their property and for the underlying groundwater." (FAC ¶49.) The

1 FAC contains no further details about the nature of Defendants'
2 releases or contribution to any contamination.

3 **III. LEGAL STANDARD.**

4 Rule 15(a), Federal Rules of Civil Procedure, provides that
5 "leave [to amend] shall be freely given when justice so requires."
6 "The purpose of pleading is 'to facilitate a proper decision on the
7 merits' ... and not erect formal and burdensome impediments to the
8 litigation process. Unless undue prejudice to the opposing party
9 will result, a trial judge should ordinarily permit a party to
10 amend its complaint." *Howey v. United States*, 481 F.2d 1187, 1190
11 (1973). However, "[t]his strong policy toward permitting the
12 amendment of pleadings ... must be tempered with considerations of
13 'undue delay, bad faith or dilatory motive on the part of the
14 movant, repeated failure to cure deficiencies by amendments
15 previously allowed, undue prejudice to the opposing party by virtue
16 of allowance of the amendment, futility of amendment, etc.' *Foman*
17 *v. Davis*, 371 U.S. 178, 182 (1962)." *Schlacter-Jones v. General*
18 *Telephone of California*, 936 F.2d 435, 443 (9th Cir. 1991). "These
19 factors, however, are not of equal weight in that delay, by itself,
20 is insufficient to justify denial of leave to amend." *DCD Programs*,
21 833 F.2d at 186; *see also Jones*, 127 F.3d at 847 n.8.

22 "[I]t is the consideration of prejudice to the opposing party
23 that carries the greatest weight ... Absent prejudice, or a strong
24 showing of any of the remaining Foman factors, there exists a
25 presumption under Rule 15(a) in favor of granting leave to amend."
26 *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th
27 Cir. 2003). "The party opposing leave to amend bears the burden of
28 showing prejudice." *Serpa v. SBC Telecommunications., Inc.*, 318 F.

1 Supp. 2d 865, 870 (N.D.Cal.2004).

2 **Plaintiffs' Proposed Amendments**

3 Plaintiffs seek to amend the complaint in order to (1) join
4 additional parties, including the administrators for the estates of
5 deceased Defendants; (2) correct the spelling of certain
6 Defendants' names; and (3) add a claim pursuant to the Resource
7 Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* ("RCRA").
8 Plaintiffs allege that the necessity for the proposed amendments
9 was revealed during discovery.

10 **IV. DISCUSSION.**

11 **A. Amendment to Add RCRA Claims**

12 RCRA is a comprehensive environmental statute that governs the
13 treatment, storage, and disposal of solid and hazardous waste.
14 *Meghrig v. KFC W., Inc.*, 516 U.S. 479, 483 (1996) (citing *Chicago*
15 *v. Envtr. Def. Fund*, 511 U.S. 328, 331-32 (1994)). Its purpose is
16 to minimize the present and future threat to human health and the
17 environment, not effectuate the clean-up of toxic waste sites or
18 allocate those costs. 42 U.S.C. § 6902(b); *Meghrig*, 516 U.S. at
19 483. RCRA provides for citizen suits to obtain a "mandatory
20 injunction, i.e., one that orders a responsible party to 'take
21 action' by attending to the cleanup and proper disposal of toxic
22 waste, or a prohibitory injunction, i.e., one that 'restrains' a
23 responsible party from further violating RCRA." *Id.* at 484.

24 Citizen suits under RCRA require proof of notice. *E.g.*,
25 *Covington v. Jefferson County*, 358 F.3d 626, 636 (9th Cir. 2004).
26 For suits alleging present violations of RCRA, the plaintiff must
27 provide notice to the relevant parties sixty-days before filing
28 suit. *Id.* (citing 42 U.S.C. § 6972(b) (1) (A)). For actions alleging

1 "contribution" to present or past violations of RCRA, a ninety-day
2 notice is required. *Id.* (citing § 6972(b)(2)(A)). Both notice
3 provisions are jurisdictional: absent compliance with a required
4 notice provision, a district court lacks subject matter
5 jurisdiction to hear the RCRA claims. *Id.* (citing *inter alia Ascon*
6 *Props., Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989)
7 (holding that the ninety-day notice requirement is
8 jurisdictional)). The Supreme Court has held that courts may not
9 take a "flexible or pragmatic" approach to RCRA's notice
10 requirements; if a citizen commences an action under RCRA without
11 complying with the notice requirements embodied in section
12 6972(b)(1), the action must be dismissed. *E.g., Hallstrom v.*
13 *Tillamook County*, 493 U.S. 20, 31 (1989).

14 The EPA has promulgated a regulation detailing the contents of
15 the RCRA notice requirement:

16 Notice regarding an alleged violation of a standard,
17 regulation, condition, requirement, or order (including
18 any provision of an agreement under section 120 of the
19 Act, relating to Federal facilities) which has become
20 effective under this Act shall include sufficient
21 information to allow the recipient to identify the
22 specific standard, regulation, condition, requirement, or
23 order (including any provision of an agreement under
24 section 120 of the Act, relating to Federal facilities)
25 which has allegedly been violated; the activity or
26 failure to act alleged to constitute a violation; the
27 name and address of the site and facility alleged to be
28 in violation, if known; the person or persons responsible
for the alleged violation; the date or dates of the
violation; and the full name, address, and telephone
number of the person giving notice.

40 C.F.R § 374.3(a).

Defendants contend that Plaintiffs have not complied with
RCRA's notice requirements because the notices Plaintiffs provided
do not contain sufficient information to afford Defendants an

1 opportunity to identify the basis for the notices. Specifically,
2 Defendants assail Plaintiffs' notices on the grounds that they do
3 not (1) specify the nature of the activity on the property that
4 allegedly contributed to contamination; (2) identify the hazardous
5 waste released; or (3) provide any dates or a range of dates for
6 the alleged releases. Defendants also contend that the notices
7 were not served in compliance with the applicable regulation.

8 RCRA's notice provision is designed to strike a balance
9 between encouraging citizen enforcement of environmental
10 regulations and avoiding burdening the federal courts with
11 excessive numbers of citizen suits. *Hallstrom*, 493 U.S. at 29.

12 Requiring citizens to comply with notice and delay
13 requirements serves this congressional goal in two ways.
14 First, notice allows Government agencies to take
15 responsibility for enforcing environmental regulations,
16 thus obviating the need for citizen suits. First, notice
17 allows Government agencies to take responsibility for
18 enforcing environmental regulations, thus obviating the
19 need for citizen suits. In many cases, an agency may be
able to compel compliance through administrative action,
thus eliminating the need for any access to the courts.
See 116 Cong. Rec. 33104 (1970) (comments of Sen. Hart).
Second, notice gives the alleged violator "an opportunity
to bring itself into complete compliance with the Act and
thus likewise render unnecessary a citizen suit."

20 *Id.* The legislative objectives identified by the Supreme Court in
21 *Hallstrom* cannot be met if citizen plaintiffs are excused from
22 providing adequate information in the pre-suit notice to enable the
23 recipients of such notices to identify the specific alleged
24 violations. *Friends of the Earth, Inc. v. Gaston Copper Recycling*
25 *Corp.*, 629 F.3d 387, 399 (4th Cir. 2011) (discussing notice

1 requirements under similar provision of the Clean Water Act).¹

2 The key language in RCRA's notice regulation is the phrase
3 "sufficient information to allow the recipient to identify the
4 specific standard, regulation, condition, requirement, or order...
5 which has allegedly been violated." See *San Francisco Baykeeper,*
6 *Inc., v. Tosco Corp.*, 309 F.3d 1153, 1158 (9th Cir. 2002) (noting
7 that similar phrase contained in parallel regulation promulgated
8 under the CWA is the key component of that regulation). Notice is
9 sufficient if it is specific enough "to give the accused company
10 the opportunity to correct the problem." *Id.* (citation omitted).
11 As a general matter, a notice should include information sufficient
12 to permit the recipient to identify dates or a range of dates
13 applicable to the alleged violations. *San Francisco Baykeeper*, 309
14 F.3d at 1158-59; *California Sportfishing Protection Alliance v.*
15 *City of W. Sacramento*, 905 F. Supp. 792, 799 (E.D. Cal. 1995)
16 ("Ideally plaintiff will identify the precise date. But at the
17 least plaintiff should give a range as to date that is reasonably
18 limited.").

19 The notice should also identify the types of pollutants
20 allegedly discharged. See *WaterKeepers N. Cal. v. AG Indus. Mfg.*,
21 375 F.3d 913, 917 (9th Cir. 2004). At a minimum, the notice should
22 identify a suspected source of the alleged problem, such as debris,
23 manufacturing materials, activities, or practices possibly leading
24 to the discharge of contamination. See *id.* at 917-18 n.2. "[T]he
25 recipient of the notice must understand from the notice what the
26

27 ¹ As numerous courts have noted, because of the close similarity between the
28 respective notice regulations applicable to RCRA and CWA, case law construing one
regulation is generally applicable to the other.

1 citizen is alleging." *City of W. Sacramento*, 905 F. Supp. at 799.

2 The boilerplate and conclusory RCRA notices provided by
3 Plaintiffs are insufficient. The notices do not provide any
4 information to enable the recipient to ascertain a range of dates
5 for the alleged violations. The notices do not suggest the
6 mechanism for contamination; to the contrary, the notices say
7 nothing about what operations on the site are alleged to have
8 caused contamination. The notices do not even generally identify
9 the types of contaminants at issue. In short, the notices are
10 devoid of any specific information sufficient to allow the
11 recipient to identify the specific standards, regulations,
12 conditions, requirements, or orders which have allegedly been
13 violated. 40 C.F.R § 374.3(a).

14 Because Plaintiffs notices fail to satisfy statutory notice
15 requirements, permitting amendment to add RCRA claims is futile
16 absent a legally sufficient notice; this reason alone justifies
17 denial of Plaintiffs' motion to Amend the complaint to add RCRA
18 claims.² Plaintiffs' motion to amend to add RCRA claims is DENIED.

19 **B. Amendment to Join Additional Parties**

20 Plaintiffs seek to join five additional individuals as
21 Defendants: Ethel Warnock, Bruce Warnock, Jesse Williams, Reynaldo
22 Betancourt, and Floyd Morse ("New Parties"). Plaintiffs also seek
23 to name the administrators of the estates of two Defendants already
24 named in this action: Sachiko Yamaguchi for the Estate of Sieto
25 Yamaguchi, and Patricia Clothier and Carolyn Whitesides for the
26 Estates of Mabel and Herbert Lee ("Administrator Defendants").

27
28 ² Because Plaintiffs' RCRA notices are deficient, the court does not reach the
parties additional contentions.

1 Plaintiffs also seek to amend the complaint to correct the spelling
2 of the names of two Defendants, John Pearce and Patsy Martinez.
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4 **1. Addition of New Parties**

5 **a. Undue Delay**

6 On May 14, 2010, the court granted the parties' request for a
7 twelve-month extension of all deadlines set forth in the January
8 12, 2009 Scheduling Order. (Doc. 122, Stipulated Amendment to
9 Scheduling Order) ("Stipulation"). It is beyond question that at
10 the time the court granted the parties request to extend all
11 deadlines in May 2010, Plaintiffs knew they needed to amend the
12 complaint to add the New Parties as defendants; each of them was
13 identified by name in the Stipulation.³ Plaintiffs motion does not
14 explain why the New Parties are being added at this late stage in
15 the litigation. See, e.g., *AmerisourceBergen Corp. v. Dialysisist*
16 *West, Inc.*, 465 F.3d 946, 953.n9, 954 (9th Cir. 2006) (finding
17 district court did not abuse discretion in denying motion to amend
18 that did not "allege any newly discovered facts" or explain the
19 plaintiff's delay in filing the motion); *Lockheed Martin Corp. v.*
20 *Network Solutions, Inc.*, 194 F.3d 980, 986 (9th Cir. 1999) (noting
21 that unexplained delay in filing motion weighs against permitting
22 amendment).

23 Joinder will require that the New Parties be given sufficient
24 time to retain counsel, propound discovery, and file dispositive
25 motions, leading to yet another modification of the Scheduling
26 Order. (See Doc. 122). This action has been pending on the

27 ³ In fact, Plaintiffs' motion suggests that they have known of the need to add
28 the New Parties since December of 2008: "all Parties have been aware of Enns'
intent to add **the** additional parties since the first Scheduling Conference held
on December 18, 2008." (Motion to Amend at 5) (emphasis added).

1 court's docket for almost four years. Further delay must be
2 explained.

3 **b. Prejudice**

4 Prejudice to the opposing party is the most critical factor in
5 determining whether to grant leave to amend. *Howey v. U.S.*, 481
6 F.2d 1187, 1190 (9th Cir. 1973). A need to extend the discovery
7 period and therefore delay the proceedings supports a district
8 court's finding of prejudice from a delayed motion to amend the
9 complaint. *E.g., Lockheed Martin Corp.*, 194 F.3d at 986 (citing
10 *Solomon v. North Am. Life & Cas. Ins. Co.*, 151 F.3d 1132, 1139 (9th
11 Cir. 1998) (affirming the district court's denial of motion to
12 amend pleadings filed on the eve of the discovery deadline));
13 *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002)
14 (affirming denial of motion to amend filed shortly before discovery
15 cutoff because "amended pleading would have prejudiced defendant,
16 which would then have had a very limited amount of time to
17 respond"); see also *Goolsby v. Carrasco*, 2010 U.S. Dist. LEXIS
18 111510 * 13 (E.D. Cal. 2010) ("Given the looming discovery
19 deadlines, the Court concludes that these new defendants would be
20 significantly prejudiced by the amendment").

21 The hearing on Plaintiffs' motion is set for April 18, 2011.
22 If Plaintiffs' motion is granted, New Parties will have
23 approximately seven weeks to propound discovery within the
24 currently scheduled deadlines. Even if the discovery deadlines are
25 extended six months, New Parties will be required to accelerate
26 their defense. *AmerisourceBergen*, 465 F.3d at 953 ("Even though
27 eight months of discovery remained, requiring the parties to
28 scramble and attempt to ascertain whether the Procrit purchased by

1 AmerisourceBergen was tainted, would have unfairly imposed
2 potentially high, additional litigation costs").

3 Amendment to add New Parties may cause undue delay and serious
4 prejudice to the nonmovants.

5 **2. Addition of Administrator Defendants**

6 Plaintiffs seek to add the administrators of the estates of
7 deceased Defendants currently named in this action: Sachiko
8 Yamaguchi for the Estate of Sieto Yamaguchi, and Patricia Clothier
9 and Carolyn Whitesides for the Estates of Mabel and Herbert Lee.

10 **a. Lee Defendants**

11 The Lee Defendants contend that amendment to add Patricia
12 Clothier and Carolyn Whitesides as administrators would be futile
13 because (1) they are incapable of satisfying any order for
14 injunctive relief; (2) Mabel Lee's estate contains no assets; and
15 (3) Plaintiffs lack any legal means of compelling either woman to
16 serve in the estate administration they seek. Lee Defendants also
17 contend that Ms. Clothier and Ms. Whitesides will be unduly
18 prejudiced because they are not California residents.

19 Lee Defendants' initial disclosures represent that Mabel Lee
20 is the executrix of Herbert Lee's estate, and that Patricia
21 Clothier is the executrix of Mabel Lee's estate. (Doc. 141, Ex.
22 3). The court's January 14, 2009 scheduling order provides that
23 "Plaintiffs shall name the individual personal representatives for
24 the Estates of all deceased parties who are Defendants in this
25 action." (Doc. 97). Amendment to add Ms. Clothier and Ms.
26 Whitesides as the personal representatives of deceased Defendants
27 is appropriate, as the proposed amended complaint alleges that Ms.
28 Whitesides and Ms. Clothier are the administrators of the Estates

1 of Mabel Lee and Herbert Lee. Defendants have not established that
2 Ms. Whitesides and Ms. Clothier are not the personal
3 representatives of the Lee estates, or that amendment would be
4 futile.

5 Lee Defendants assertion of prejudice is insufficient, as
6 their argument that they would be prejudiced due to the fact that
7 they do not live in California misapprehends the prejudice inquiry
8 applicable under Rule 15. The law requires addition of personal
9 representatives for deceased parties. The prejudice that the Lee
10 Defendants identify is no more than the inconvenience every party
11 suffers when they are sued in a state other than the state of their
12 residence. Such inconvenience does not suffice to foreclose
13 amendment under Rule 15's liberal policy favoring amendments.

14 **b. Yamaguchi Defendants**

15 Yamaguchi Defendants' opposition is directed almost
16 exclusively to the alleged impropriety of naming "the Estate of
17 Sieto Yamaguchi" as a Defendant in this action, however, the Estate
18 of Sieto Yamaguchi is already a named Defendant. Plaintiffs'
19 proposed amended complaint seeks to add Sachiko Yamaguchi as Sieto
20 Yamaguchi's personal representative. This is what the law
21 requires.

22 The only argument advanced with respect to Plaintiffs'
23 proposed amendment to add Sachiko Yamaguchi is the following:

24 in order to sue a decedent's estate for damages exceeding
25 available liability insurance, the claimant must have
26 filed a timely claim in the probate proceedings and join
27 the personal representative in the action. (See Cal.
28 Probate Code §§554, 9390(b)). The statute of limitations
on such a claim is one year from the decedent's death.
(See Cal. Civ. Code § 366.2)...However, by the time the
court hears the [Motion to Amend], it will have been over
four years since Dr. Yamaguchi passed away. Failure to

1 name Dr. Yamaguchi's personal representative within one
2 year of his death is fatal to all claims alleged by
3 Plaintiffs against Dr. Yamaguchi's personal administrator
4 for damages exceeding available liability insurance
5 coverage in this action. Consequently, Plaintiffs'
6 Motion is futile.

7 (Doc. 132, Opposition at 12). Defendants' argument is scattered.

8 Under California law, there are two methods for recovering
9 damages from a deceased tortfeasor:

10 If the decedent's property has been distributed through
11 a probate administration in the probate court, the
12 plaintiff must first file a claim in probate court. See
13 CAL. PROB. CODE § 9351 ("An action may not be commenced
14 against a decedent's personal representative on a cause
15 of action against the decedent unless a claim is first
16 filed as provided in this part and the claim is rejected
17 in whole or in part"); see also *Boyle v. County of Kern*,
18 CV 03-5162 OWW GSA, 2008 U.S. Dist. LEXIS 5592, 2008 WL
19 220413, *7 (E.D. Cal. Jan. 25, 2008) ("Before a creditor
20 may commence a lawsuit against an estate, the creditor
21 must file a claim. . . . Filing a lawsuit against an
22 estate is not the equivalent of filing a probate claim,"
23 citing *Van Ort v. Estate of Stanewich*, 92 F.3d 831, 841
24 (9th Cir. 1996)). Where the decedent's property is
25 distributed without probate, however, the recipients of
the decedent's property are personally liable for his
debt. See CAL. PROB. CODE § 13109 ("A person to whom
payment, delivery, or transfer of the decedent's property
is made under this chapter is personally liable, to the
extent provided in Section 13112, for the unsecured debts
of the decedent. Any such debt may be enforced against
the person in the same manner as it could have been
enforced against the decedent if the decedent had not
died. In any action based upon the debt, the person may
assert any defenses, cross-complaints, or setoffs that
would have been available to the decedent if the decedent
had not died")

26 *Pelayo v. City of Downey*, 570 F. Supp. 2d 1183, 1192 (N.D. Cal.
27 2008). Nothing in the FAC, the proposed amended complaint, or the
28 record establishes that Sieto Yamaguchi's property was distributed
through probate administration in the probate court. Further, the
sections of the California Probate Code cited by Defendants,
sections 550-555, apply "in any case where there is a claim for

1 damages for which the decedent was insured." *Cal. Dep't of Toxic*
2 *Substances Control v. Interstate Non-Ferrous Corp.*, 298 F. Supp. 2d
3 930, 949 (E.D. Cal. 2003). Defendants represent that Sieto
4 Yamaguchi had no such insurance. (Doc. 132, Opposition at 12).
5 The filing of a claim in probate is jurisdictional.

6 **C. Spelling Corrections**

7 Plaintiffs seek to change the spelling of the name of
8 Defendant "John Pierce" to "John Pearce" and of Defendant "Patty
9 Martinez" to "Patsy Martinez." Defendants do not oppose this minor
10 correction.

11 **ORDER**

12 For reasons stated, IT IS ORDERED:

- 13 1) Plaintiffs' Motion to Amend is DENIED with respect to the
14 addition of RCRA claims;
- 15 2) Plaintiffs' Motion to Amend is DENIED with respect to
16 joining Ethel Warnock, Bruce Warnock, Jesse Williams, Reynaldo
17 Betancourt, and Floyd Morse as Defendants;
- 18 3) Plaintiffs' motion to amend is GRANTED with respect to
19 adding the personal representatives of deceased Defendants and
20 with respect to correction of spelling errors;
- 21 4) Plaintiffs shall file an amended complaint within five days
22 of receiving electronic service of this decision;
- 23 5) Defendants shall file responsive pleading within twenty
24 days of receiving electronic service of an amended complaint;
25 and
- 26 6) Plaintiffs shall file a form of order consistent with this
27 decision within five days of receiving electronic service of
28 this decision.

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3 IT IS SO ORDERED.
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7 Dated: April 20, 2011
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/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE