

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ENNS PONTIAC, BUICK & GMC TRUCK, a California Corporation; EARL L. ENNS and ESTHER J. ENNS as Trustees of the 2004 Enns Family Trust; and HAROLD J. ENNS and PATRICIA L. ENNS as Trustees for the Family Trust,

1:07-cv-01043 OWW DLB

MEMORANDUM DECISION AND ORDER  
RE DEFENDANTS' MOTIONS TO  
DISMISS SECOND AMENDED  
COMPLAINT

(DOCS. 160, 163)

**Plaintiffs,**

v.

ORELIA FLORES, an individual;  
SACHIKO YAMAGUCHI, as  
administrator to THE ESTATE OF  
SIETO YAMAGUCHI; THE  
ESTATE OF SIETO YAMAGUCHI,  
deceased; PATRICIA CLOTHIER  
and CAROLYN WHITESIDES, as  
administrators to THE ESTATE OF  
HERBERT LEE; PATRICIA  
CLOTHIER and CAROLYN  
WHITESIDES, as administrators to  
THE ESTATE OF MABEL LEE;  
THE ESTATE OF MABEL LEE,  
deceased; THE ESTATE OF  
HERBERT LEE, deceased;  
REEDLEY STEAM LAUNDRY;  
REEDLEY DRY CLEANING  
WORKS; JOHN PEARCE, an  
individual; PATSY MARTINEZ, an  
individual; LOUIE MARTINEZ, an  
individual.

## Defendants .

## I. INTRODUCTION

Before the court are (1) Defendant Sachiko Yamaguchi as administrator to the Estate of Sieto Yamaguchi's motion to

dismiss Plaintiff's second amended complaint ("SAC") (Doc. 160); and (2) Defendants Patricia Clothier and Carolyn Whitesides as administrators for the Estate of Herbert Lee and the Estate of Mabel Lee (together, the "Lee Administrators"), the Estate of Herbert Lee, the Estate of Mabel Lee, Reedley Steam Laundry, and Reedley Dry Cleaning Works' (collectively, "Lee Defendants") motion to dismiss the SAC (Doc. 163). Plaintiffs filed oppositions to both motions (Docs. 177, 190), to which the Lee Defendants and Sachiko Yamaguchi replied (Docs. 192, 199). The motions were heard June 20, 2011. Plaintiffs filed a supplemental opposition on June 30, 2011 (Doc. 232), to which the Lee Defendants and Sachiko Yamaguchi replied (Docs. 237, 240).

## II. BACKGROUND

This case concerns the alleged release of hazardous solvents used in the dry cleaning industry which created a groundwater plume in Reedley, California. The Second Amended Complaint ("SAC") asserts claims for: (1) recovery of "response" costs under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") §§ 107(a)(1-4)(B); (2) declaratory relief under federal law; (3) negligence per se; (4) negligence; (5) public and private nuisance; (6) trespass; (7) equitable indemnity; and (8) declaratory relief under state law.

Plaintiffs own real property located at 1319 G. Street, Reedley, California ("Property"). Before Plaintiffs gained

1 ownership of the Property, Mabel and Herbert Lee owned and/or  
2 operated a dry cleaning business on the Property from  
3 approximately the 1940s through the 1970s. Herbert Lee died on  
4 September 12, 1993. Mabel Lee died on June 27, 2008.

5 Orelia Florez and Sieto Yamaguchi owned and/or operated a  
6 dry cleaning business at 1340 G. Street, Reedley, California,  
7 across the street from the Property. Sieto Yamaguchi died in  
8 March 2007.

9 On July 19, 2007, Plaintiffs filed a Complaint against  
10 Defendants Orelia Flores, Mabel Lee, Michelle Lua, and Sieto  
11 Yamaguchi. Doc. 2. On November 7, 2007, Plaintiffs filed a First  
12 Amended Complaint ("FAC") (1) substituting Defendant Sieto  
13 Yamaghuchi with Defendant The Estate of Sieto Yamaguchi; (2)  
14 deleting Defendant Michelle Lua; and (3) adding Defendants the  
15 Estate of Herbert Lee, Reedley Steam Laundry, Reedley Dry  
16 Cleaning Works, John Pierce, Patty Martinez, and Louie Martinez.  
17 Doc. 13. A memorandum decision dated April 20, 2011 granted  
18 Plaintiffs' motion to amend the FAC to name the administrators of  
19 the estates of three Defendants: Sachiko Yamaguchi for the Estate  
20 of Sieto Yamaguchi and the Lee Administrators for the Estate of  
21 Mabel Lee and Estate of Herbert Lee. Doc. 146. The SAC was filed  
22 April 25, 2011. Doc. 154.

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26 III. LEGAL STANDARD

27 To survive a Rule 12(b) (6) motion to dismiss, a "complaint  
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1 must contain sufficient factual matter, accepted as true, to  
2 'state a claim to relief that is plausible on its face.'"  
3 *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (quoting *Bell Atl.*  
4 *Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955 (2007)). A  
5 complaint does not need detailed factual allegations, but the  
6 "[f]actual allegations must be enough to raise a right to relief  
7 above the speculative level." *Twombly*, 550 U.S. at 555.

8  
9 In deciding a motion to dismiss, the court should assume the  
10 veracity of "well-pleaded factual allegations," but is "not bound  
11 to accept as true a legal conclusion couched as a factual  
12 allegation." *Iqbal*, 127 S.Ct. at 1950. "Labels and conclusions"  
13 or "a formulaic recitation of the elements of a cause of action  
14 will not do." *Twombly*, 550 U.S. at 555. "'Naked assertion[s]'  
15 devoid of 'further factual enhancement'" are also insufficient.  
16 *Iqbal*, 127 S.Ct. at 1949 (quoting *Twombly*, 550 U.S. at 557).  
17 Instead, the complaint must contain enough facts to state a claim  
18 to relief that is "plausible on its face." *Twombly*, 550 U.S. at  
19 570.

20  
21 A claim has facial plausibility when the complaint's factual  
22 content allows the court to draw the reasonable inference that  
23 the defendant is liable for the alleged misconduct. *Iqbal*, 127  
24 S.Ct. at 1949. "The plausibility standard is not akin to a  
25 'probability requirement,' but it asks for more than a sheer  
26 'possibility that a defendant has acted unlawfully.'" *Id.* (quoting  
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1       *Twombly*, 550 U.S. at 556). "A well-pleaded complaint may proceed  
2 even if it strikes a savvy judge that actual proof of those facts  
3 is improbable, and 'that a recovery is very remote and  
4 unlikely.'" *Twombly*, 550 U.S. at 556 (quoting *Scheuer v. Rhodes*,  
5 416 U.S. 232, 236, 94 S.Ct. 1683 (1974)).  
6

7               The Ninth Circuit summarizes the governing standard as  
8 follows: "In sum, for a complaint to survive a motion to dismiss,  
9 the non-conclusory 'factual content' and reasonable inferences  
10 from that content, must be plausibly suggestive of a claim  
11 entitling the plaintiff to relief." *Moss v. U.S. Secret Serv.*,  
12 572 F.3d 962, 969 (9th Cir. 2009) (quotations omitted).  
13

14               If a district court considers evidence outside the  
15 pleadings, a Rule 12(b) (6) motion to dismiss must be converted to  
16 a Rule 56 motion for summary judgment, and the nonmoving party  
17 must be given an opportunity to respond. *United States v.*  
18 *Ritchie*, 342 F.3d 903, 907 (9th Cir. 2003). "A court may,  
19 however, consider certain materials-documents attached to the  
20 complaint, documents incorporated by reference in the complaint,  
21 or matters of judicial notice-without converting the motion to  
22 dismiss into a motion for summary judgment." *Id.* at 908.  
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24               "When the motion to dismiss is based on the running of the  
25 statute of limitations, it can be granted only if the assertions  
26 in the complaint, read with the required liberality, would not  
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1 permit the plaintiff to prove that the statute was tolled."

2 *Jablon v. Dean Witter & Co.*, 614 F.2d 677, 682 (9th Cir. 1980).

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4 IV. DISCUSSION

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6 A. SACHIKO YAMAGUCHI'S MOTION TO DISMISS

7

8 1. Statute of Limitations

9 Sachiko Yamaguchi moves to dismiss the SAC as untimely under  
10 California Code of Civil Procedure § 366.2(a):

11 If a person against whom an action may be brought on a  
12 liability of the person, whether arising in contract, tort,  
13 or otherwise, and whether accrued or not accrued, dies  
14 before the expiration of the applicable limitations period,  
15 and the cause of action survives, an action may be commenced  
16 within one year after the date of death, and the limitations  
17 period that would have been applicable does not apply.

18 Cal. Code Civ. P. § 366.2(a).

19 Sieto Yamaguchi died in March 2007. The Complaint was filed  
20 against Sieto Yamaguchi on July 19, 2007. The FAC was filed  
21 against the Estate of Sieto Yamaguchi on November 7, 2007. Both  
22 the Complaint and FAC were filed within the one-year period  
23 following Sieto Yamaguchi's death.

24 Under California's survival statute, Plaintiffs' claims  
25 against Sieto Yamaguchi survived his death. "Except as otherwise  
26 provided by statute, a cause of action for or against a person is  
27 not lost by reason of the person's death, but survives subject to  
28 the applicable limitations period." Cal. Code Civ. P. § 377.20.  
California Code of Civil Procedure § 377.40 provides:

Subject to Part 4 (commencing with Section 9000) of Division  
7 of the Probate Code governing creditor claims, a cause of

1 action against a decedent that survives may be asserted  
2 against the decedent's personal representative or, to the  
3 extent provided by statute, against the decedent's successor  
in interest.

4 Cal. Code Civ. P. § 377.40. California Probate Code § 58(a)  
5 defines "personal representative" to include an executor or  
6 administrator. Cal. Prob. Code § 58(a).

7 Sachiko Yamaguchi contends that California Civil Code of  
8 Procedure § 366.2(a) requires commencement of an action against  
9 an estate's personal representative within one year of a  
10 decedent's death. Section 366.2(a), however, is "concerned only  
11 with the time within which an action on a liability of the  
12 decedent may be brought, not with the proper parties in such a  
13 case." 22 Cal. L. Rev. Comm. Reports 895 (1992). The reference to  
14 the decedent's "representatives" was deleted from former Section  
15 353(b). *Id.* Sachiko Yamaguchi's argument reads language into  
16 Section 366.2(a) that is not there. *Burgos v. Tamulonis*, 28  
17 Cal.App.4<sup>th</sup> 757, 762, 33 Cal.Rptr.2d 728 (1994) (holding that  
18 Section 353, the predecessor statute to Section 366.2(a), does  
19 not require commencement of an action against a personal  
20 representative within one year after the date of death). "It is  
21 for the Legislature, not the courts, to include such limiting  
22 provisions in the statute if that is its intent." *Id.*

23 The Complaint was filed against Sieto Yamaguchi on July 19,  
24 2007, approximately four months after his death in March 2007 and  
25 within Cal. Code Civ. P. § 366.2(a)'s one-year statute of  
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1 limitations. The FAC was filed against the estate of Sieto  
2 Yamaguchi in November 2007, eight months after Sieto Yamaguchi's  
3 death. Under California Code of Civil Procedure §§ 377.20,  
4 Plaintiffs' claims against Sieto Yamaguchi survived his death and  
5 may be continued against Sachiko Yamaguchi as the representative  
6 of his estate.  
7

8 Sachiko Yamaguchi further contends that Plaintiffs' claims  
9 are barred because they did not file a creditor's claim against  
10 the Estate of Sieto Yamaguchi, as required by Division 7, Part 4  
11 of the Probate Code. California Code of Civil Procedure § 377.40  
12 provides:

13 *Subject to Part 4 (commencing with Section 9000) of Division  
14 7 of the Probate Code governing creditor claims, a cause of  
15 action against a decedent that survives may be asserted  
16 against the decedent's personal representative or, to the  
extent provided by statute, against the decedent's successor  
in interest.*

17 Cal. Code Civ. P. § 377.40 (emphasis added). Plaintiffs contend  
18 that they were not required to file a creditor's claim because  
19 Sieto Yamaguchi's estate was never probated. Sachiko Yamaguchi  
20 rejoins that Plaintiffs were required to file a creditor's claim,  
21 even though Sieto Yamaguchi's estate was never administered.

23 California's "probate system reflects policy choices and  
24 mechanics worked out over many years in fine detail. With respect  
25 to creditors of the decedent, for example, the probate system  
26 provides notice to creditors, a claims resolution mechanism, and  
27 a process for satisfying allowed claims." CAL. LAW REVISION COMM'N,  
28

1 BACKGROUND STUDY: LIABILITY OF NONPROBATE TRANSFER FOR CREDITOR CLAIMS AND  
2 FAMILY PROTECTIONS, 8 (June 2010) (citing Cal. Prob. Code Division 7,  
3 Part 4, §§ 9000-9399). If an estate is not formally probated, the  
4 time in which creditors must file claims is not subject to the  
5 requirements of Division, Part 4 of the Probate Code. *See In re*  
6 *Estate of Bonanno*, 165 Cal.App.4<sup>th</sup> 7, 21, 80 Cal.Rptr.3d 560  
7 (2008) ("When a surviving spouse receives a decedent's property  
8 without administration, the time in which creditors must file  
9 claims is not fixed."); *see also Embree v. Embree*, 125 Cal.App.4<sup>th</sup>  
10 487, 494, 22 Cal.Rptr.3d 782 (2004) ("If no probate or trust  
11 claims procedure has been initiated . . . the short limitations  
12 periods applicable to claims filed in probate or trust  
13 proceedings do not apply . . ."). "[U]nless administration has  
14 commenced there is neither need nor any practical procedure for  
15 filing a claim." *Clark v. Kerby*, 4 Cal.App.4<sup>th</sup> 1505, 1514, 6  
16 Cal.Rptr.2d 440 (1992).

19 As the memorandum decision dated April 20, 2011 states,  
20 nothing in the FAC, SAC, or the record establishes that Sieto  
21 Yamaguchi's estate was probated or distributed through probate  
22 administration in the probate court and that California Probate  
23 Code Division 7, Part 4 applies to his estate. Doc. 146, 14. At  
24 the June 20, 2011 hearing, the court took judicial notice that  
25 the Estate of Sieto Yamaguchi has not been probated in court.  
26 Plaintiffs were not required to comply with the creditors' claims  
27

1 requirements in Division 7, Part 4 of the Probate Code. It is  
2 assumed Defendants can read and understand the law. They could  
3 have performed a simple search of State probate records to  
4 determine the facts. Their persistence in wasting the court's  
5 time is deplorable.  
6

7 Plaintiffs' lawsuit against Sieto Yamaguchi was timely  
8 filed; survives his death; and may be continued against his  
9 personal representative. California Code of Civil Procedure §  
10 366.2(a) does not bar the SAC's addition of Sachiko Yamaguchi as  
11 the administrator of the Estate of Sieto Yamaguchi. The motion  
12 is DENIED on this ground.  
13

14 2. Relation Back to the Original Complaint

15 Plaintiffs contend that the SAC correctly added Sachiko  
16 Yamaguchi as the administrator to the Estate of Sieto Yamaguchi,  
17 and relates back to the filing date of the original Complaint.  
18

19 "Federal Rule of Civil Procedure 15(c) 'is the only vehicle  
20 through which a plaintiff may amend his complaint, after a  
21 statute of limitation period has run, to accurately name a  
22 defendant who was not correctly named in the pleading before the  
23 limitation period had run.'" *G.F. Co. v. Pan Ocean Shipping Co.,*  
24 *Ltd.*, 23 F.3d 1498, 1501 (9<sup>th</sup> Cir. 1994) (quoting *Korn v. Royal*  
25 *Caribbean Cruise Line, Inc.*, 724 F.2d 1397, 1399 (9<sup>th</sup> Cir. 1984)).  
26 Under Rule 15(c)(1)(C), an amendment to change the name of a  
27 party relates back to the original pleading date if: (1) the  
28

1 amendment asserts a claim or defense that arose out of the  
2 "conduct, transaction, or occurrence" set forth in the original  
3 pleading; (2) within the time period for service of the summons  
4 and complaint, i.e., 120 days after filing, the party to be  
5 brought in "received such notice of the action that it will not  
6 be prejudiced in defending on the merits"; and (3) within the  
7 time period for service of the summons and complaint, i.e., 120  
8 days after filing, the party to be brought in "knew or should  
9 have known that the action would have been brought against it,  
10 but for a mistake concerning the proper party's identity." Fed.  
11 R. Civ. P. 15(c)(1)(C).

12  
13 Under the first Rule 15(c)(1)(C) prong, the original  
14 Complaint and SAC seek recovery for the same "conduct,  
15 transaction, or occurrence," i.e., Sieto Yamaguchi's ownership,  
16 control, inspection, management, and repair of the Property, and  
17 liability for the toxic contamination at, on, around, and under  
18 the Property. Sachiko Yamaguchi was added as the administrator of  
19 the Estate of Sieto Yamaguchi, as contemplated by California Code  
20 of Civil Procedure § 377.40.

21  
22 As to the second requirement, Plaintiffs assert that Sachiko  
23 Yamaguchi was served with the FAC in November 2007, and has been  
24 represented by the same counsel who represent the Estate of Sieto  
25 Yamaguchi. Sachiko Yamaguchi received notice of the Complaint  
26 within 120 days after its filing and would not be prejudiced in  
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1       defending the action on the merits.

2           As to the third factor, Plaintiffs contend that they were  
3       not aware that Sieto Yamaguchi had died when they filed the  
4       original Complaint in July 2007. After learning of his death,  
5       Plaintiffs filed a FAC in November 2007 substituting Defendant  
6       Sieto Yamaguchi with the Estate of Sieto Yamaguchi. Plaintiffs  
7       did not seek to add Sachiko Yamaguchi as the administrator of the  
8       Estate of Sieto Yamaguchi as a party until February 17, 2011.

9  
10          "Rule 15(c)(1)(C)(ii) asks what the prospective *defendant*  
11       knew or should have known during the Rule 4(m) period, not what  
12       the *plaintiff* knew or should have known at the time of filing her  
13       original complaint." *Krupski v. Costa Crociere S.p.A.*, 130 S.Ct.  
14       2485, 2498 (2010). "The only question under Rule 15(c)(1)(C)(ii),  
15       then, is whether [defendant] should have known that, absent some  
16       mistake, the action would have been brought against him." *Id.*  
17       Information in the plaintiff's possession is relevant only if it  
18       bears on the defendant's understanding of whether the plaintiff  
19       made a mistake regarding the proper party's identity. *Id.* at  
20       2493-2494. The Supreme Court explained:  
21  
22

23          We agree that making a deliberate choice to sue one party  
24       instead of another while fully understanding the factual and  
25       legal differences between the two parties is the antithesis  
26       of making a mistake concerning the proper party's identity.  
27       We disagree, however, with respondent's position that any  
28       time a plaintiff is aware of the existence of two parties  
          and chooses to sue the wrong one, the proper defendant could  
          reasonably believe that the plaintiff made no mistake. The  
          reasonableness of the mistake is not itself at issue. As  
          noted, a plaintiff might know that the prospective defendant

1 exists but nonetheless harbor a misunderstanding about his  
2 status or role in the events giving rise to the claim at  
3 issue, and she may mistakenly choose to sue a different  
4 defendant based on that misimpression. That kind of  
deliberate but mistaken choice does not foreclose a finding  
that Rule 15(c)(1)(C)(ii) has been satisfied.

5 *Id.* at 2494.

6 Sachiko Yamaguchi contends that Plaintiff made a fully  
7 informed decision to seek available insurance money by filing the  
8 FAC only against the Estate of Sieto Yamaguchi, and only sought  
9 to add Sachiko Yamaguchi as a party after they discovered that  
10 Sieto Yamaguchi did not have insurance. Except where a decedent  
11 is protected by insurance, "it is proper to name the  
12 representative of the estate rather than the estate because an  
13 estate is not a legal entity." *Blue Ridge Ins. Co. v. Stanewich*,  
14 142 F.3d 1145, 1150 (9<sup>th</sup> Cir. 1998). "[W]hen a complaint is  
15 amended only to identify a party by its proper name, the gravamen  
16 of the complaint remains unaltered, and hence the later pleading  
17 relates back to the earlier pleading." *Burgos v. Tamulonis*, 28  
18 Cal.App.4<sup>th</sup> 757, 763, 33 Cal.Rptr.2d 728 (1994) (quoting  
19 *Barrington v. A.H. Robins Co.*, 39 Cal.3d 146, 154, 216 Cal.Rptr.  
20 405 (1985)). Sachiko Yamaguchi as administrator to the Estate of  
21 Sieto Yamaguchi should have known that Sieto Yamaguchi was not  
22 covered by insurance and that, but for Plaintiffs' mistake, she  
23 was the proper defendant and would have been sued.

24  
25 Sachiko Yamaguchi as administrator to the Estate of Sieto  
26 Yamaguchi's motion to dismiss is DENIED.  
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1                   B.     LEE DEFENDANTS' MOTION TO DISMISS

2                   1.     Estate of Herbert Lee

3                   Herbert Lee died on September 12, 1993. The original  
4                   Complaint was filed July 19, 2007. The FAC adding the Estate of  
5                   Herbert Lee as a Defendant was filed November 7, 2007.

6                   California Code of Civil Procedure § 366.2(a) provides:

7  
8                   If a person against whom an action may be brought on a  
9                   liability of the person, whether arising in contract, tort,  
10                   or otherwise, and whether accrued or not accrued, dies  
11                   before the expiration of the applicable limitations period,  
12                   and the cause of action survives, an action may be commenced  
13                   within one year after the date of death, and the limitations  
14                   period that would have been applicable does not apply.

15                   Cal. Code Civ. P. § 366.2(a) (emphasis added). Except as provided  
16                   in Section 366.2(b), this one-year limitations period for  
17                   commencement of an action "shall not be tolled or extended for  
18                   any reason." Cal. Code Civ. P. § 366.2(b).

19                   The Complaint and FAC were filed almost fourteen years after  
20                   Herbert Lee's death. Plaintiffs do not assert that any exceptions  
21                   toll or extend the Section 366.2(a) one-year limitations period.  
22                   Plaintiffs' claims against the Estate of Herbert Lee are untimely  
23                   under California Code of Civil Procedure § 366.2(a).

24                   The Lee Defendants' motion to dismiss the SAC is GRANTED  
25                   WITH PREJUDICE as to (1) the Estate of Herbert Lee and (2) the  
26                   Lee Administrators as administrators to the Estate of Herbert  
27                   Lee.

28                   ///

1                   2.    Estate of Mabel Lee

2                   a)    Statute of Limitations

3                   Mabel Lee died on June 27, 2008. The Complaint, which named  
4                   Mabel Lee as a Defendant, was filed July 19, 2007, *before* Mabel  
5                   Lee's death. California Code of Civil Procedure § 366.2(a), which  
6                   sets forth the statute of limitations for commencing an action  
7                   *after* a person's death, does not apply. "A pending action or  
8                   proceeding does not abate by the death of a party if the cause of  
9                   action survives." Cal. Code Civ. P. § 377.21. Under Cal. Code of  
10                  Civ. P. § 377.41:

12                  On motion, the court shall allow a pending action or  
13                  proceeding against the decedent that does not abate to be  
14                  continued against the decedent's personal representative or,  
15                  to the extent provided by statute, against the decedent's  
16                  successor in interest, except that the court may not permit  
17                  an action or proceeding to be continued against the personal  
18                  representative unless proof of compliance with Part 4  
19                  (commencing with Section 9000) of Division 7 of the Probate  
20                  Code governing creditor claims is first made.

22                  Cal. Code Civ. P. § 377.41.

24                  As to whether Plaintiffs timely filed creditors' claims in  
25                  accordance with Part 4, Division 7 of California Probate Code,  
26                  nothing in the FAC, SAC, or the record establishes that Mabel  
27                  Lee's estate was distributed through probate administration in  
28                  the probate court, and that California Probate Code Division 7,  
                        Part 4 applies to her estate. At the June 20, 2011 hearing, the  
                        court took judicial notice that the Estate of Mabel Lee was not  
                        probated in court. If an estate is not formally probated, the

1 time in which creditors must file claims is not subject to the  
2 requirements of Division, Part 4 of the Probate Code. *See In re*  
3 *Estate of Bonanno*, 165 Cal.App.4<sup>th</sup> 7, 21, 80 Cal.Rptr.3d 560  
4 (2008).

5 California Code of Civil Procedure § 366.2(a) does not bar  
6 Plaintiffs' claims against the Lee Administrators. The motion is  
7 DENIED on this ground.

8 b) Relation Back to the Original Complaint

9 Plaintiffs contend that the addition of the Lee  
10 Administrators as the administrators for the Estate of Mabel Lee  
11 in the SAC, filed April 25, 2011, relates back to the filing date  
12 of the original Complaint.

13 Under Federal Rule of Civil Procedure 15(c) (1) (C) , an  
14 amendment to change the name of a party relates back to the  
15 original pleading date if: (1) the amendment asserts a claim or  
16 defense that arose out of the "conduct, transaction, or  
17 occurrence" set forth in the original pleading; (2) within the  
18 time period for service of the summons and complaint, i.e., 120  
19 days after filing, the party to be brought in "received such  
20 notice of the action that it will not be prejudiced in defending  
21 on the merits"; and (3) within the time period for service of the  
22 summons and complaint, i.e., 120 days after filing, the party to  
23 be brought in "knew or should have known that the action would  
24 have been brought against it, but for a mistake concerning the  
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1 proper party's identity." Fed. R. Civ. P. 15(c)(1)(C).

2 Under the first Rule 15(c)(1)(C) factor, the original  
3 Complaint and SAC seek recovery on the same "conduct,  
4 transaction, or occurrence," i.e., Mabel Lee's ownership,  
5 control, inspection, management, and repair of 1319 G Street, and  
6 liability for the toxic contamination at, on, around, and under  
7 the property. The Lee Administrators were added as the  
8 administrator of the Estate of Mabel Lee, as contemplated by  
9 California Code of Civil Procedure § 377.41.

10 Under the second factor, Plaintiffs argue that notice can be  
11 imputed where there is a "community of interest" between the  
12 served defendant and the new defendant. *See G.F. Co. v. Pan Ocean*  
13 *Shipping Co., Ltd.*, 23 F.3d 1498, 1501 (9<sup>th</sup> Cir. 1994). Plaintiffs  
14 contend that the Lee Administrators have been on constructive  
15 notice of the lawsuit since at least 2008 because they are  
16 represented by the same counsel as Mabel Lee and the Estate of  
17 Mabel Lee. Because the Lee Administrators are also the Lees'  
18 daughters, there is sufficient "community of interest" between  
19 Mabel Lee, the Estate of Mabel Lee, and the Lee Administrators to  
20 impute notice to the Lee Administrators. *See Palmtree Acquisition*  
21 *Corp. v. Neely*, 2010 WL 3910370, \*3 (N.D. Cal. 2010) (imputing  
22 notice under Rule 15(c)(1)(C) where the original complaint was  
23 served on the individual's stepmother and the parties were  
24 represented by the same law firm). The Lee Defendants' argument  
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1 that Plaintiffs did not plead any facts showing that Lee  
2 Administrators received notice of the Complaint within 120 days  
3 of its filing in July 2007 is unavailing.

4 As to the third factor, Plaintiffs filed the original  
5 complaint against Mabel Lee while she was alive. Plaintiffs  
6 contend that the Lee Administrators knew or should have known  
7 that they would be named in the litigation after Mabel Lee's  
8 death, and that Plaintiffs named the Lee Administrators to the  
9 SAC after diligently researching and identifying them. The Lee  
10 Defendants argue that "Rule 15(c) was intended to protect a  
11 plaintiff who mistakenly names a party and then discovers, after  
12 the relevant statute of limitations has run, the identity of the  
13 proper party." *Kilkenny v. Arco Marine, Inc.*, 800 F.2d 853, 858  
14 (9th Cir. 1986). The Lee Defendants assert that there was no  
15 mistake here because the Lees formally informed Plaintiffs'  
16 counsel of the identities of the representatives for the Estate  
17 of Mabel Lee in February 2009 and Plaintiffs did not attempt to  
18 amend the FAC until December 2010. The Lee Defendants cite  
19 *Kilkenny*:

20 A plaintiff's failure to amend its complaint to add a  
21 defendant after being notified of a mistake concerning the  
22 identity of a proper party therefore may cause the unnamed  
23 party to conclude that it was not named because of strategic  
24 reasons rather than as a result of the plaintiff's mistake..  
25 . . Rule 15(c) was intended to protect a plaintiff who  
26 mistakenly names a party and then discovers, after the  
27 relevant statute of limitations has run, the identity of the  
28 proper party. Rule 15(c) was never intended to assist a  
plaintiff who ignores or fails to respond in a reasonable

1 fashion to notice of a potential party, nor was it intended  
2 to permit a plaintiff to engage in piecemeal litigation.

3 *Id.* at 857-858. The Supreme Court has explained that Rule 15(c)  
4 "mandates relation back once the Rule's requirements are  
5 satisfied; it does not leave the decision whether to grant  
6 relation back to the district court's equitable discretion . . . .  
7 [T]he speed with which a plaintiff moves to amend her complaint  
8 or files an amended complaint after obtaining leave to do so has  
9 no bearing on whether the amended complaint relates back."

10 *Krupski v. Costa Crociere S.p.A.*, 130 S.Ct. 2485, 2496 (2010).

11 Despite Plaintiffs' delay, Rule 15(c) mandates relation back of  
12 the Lee Administrators to the original Complaint.

13 The Lee Defendants' motion to dismiss the SAC is DENIED as  
14 to the Estate of Mabel Lee and the Lee Administrators as the  
15 Administrators of the Estate of Mabel Lee.

16 V. CONCLUSION

17 For the reasons stated:

18 1. Sachiko Yamaguchi's motion to dismiss is DENIED.

19 2. The Lee Defendants' motion to dismiss is GRANTED in part and  
20 DENIED in part as follows:

21 a. GRANTED WITH PREJUDICE as to the Estate of Herbert Lee  
22 and the Administrators of the Estate of Herbert Lee;  
23 and

24 b. DENIED as to the Estate of Mabel Lee and the  
25 Administrators of the Estate of Mabel Lee.

3. Plaintiffs shall submit a proposed form of order consistent with this memorandum decision within five (5) days of electronic service of this memorandum decision.

**SO ORDERED.**

**DATED:** August 29, 2011.

/s/ Oliver W. Wanger

Oliver W. Wanger

**United States District Judge**