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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CHICO SCRAP METAL, INC., a  
California corporation; GEORGE  
W. SCOTT, SR., individually and  
as trustee of GEORGE W. SCOTT,  
SR. REVOCABLE INTER VIVOS TRUST  
DATED SEPTEMBER 25, 1995,

Plaintiffs,

v.

DEBBIE RAPHAEL, in her official  
capacity as Director of  
California Department of Toxic  
Substances Control; LEONARD  
ROBINSON, in his official  
capacity as former Acting  
Director of the California  
Department of Toxic Substances  
Control; RAYMOND LECLERC, in his  
official capacity as the  
Assistant Deputy Director of  
California Department of Toxic  
Substances; DIANE SHERIDAN, in  
her official capacity as an  
employee of California  
Department of Toxic Substances  
Control; NANCY LANCASTER, an  
individual; SAMUEL MARTINEZ, JR,  
an individual; VIVIAN MURAI, an  
individual; STEVEN BECKER, an  
individual; LEONA WINNER, an  
individual; MICHAEL RAMSEY, in  
his official capacity as  
District Attorney of Butte

Case No. 2:11-CV-1201-JAM-CMK  
ORDER GRANTING THE DISTRICT  
ATTORNEY DEFENDANTS' MOTION TO  
DISMISS PLAINTIFFS' AMENDED  
COMPLAINT

1 County; HAROLD THOMAS, an )  
individual; GEORGE BARBER, an )  
2 individual; and DOES 1-20, )  
inclusive, )  
3 )  
Defendants. )  
4 )

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5 This matter comes before the court on Defendants Michael  
6 Ramsey in his official capacity, Harold Thomas in his individual  
7 capacity, and George Barber in his individual capacity's  
8 (collectively "Defendants") Motion to Dismiss First Amended  
9 Complaint Pursuant to Federal Rule of Civil Procedure 12(B)(1) and  
10 (6) (Doc. #31).<sup>1</sup> Plaintiffs Chico Scrap Metal, Inc., and George W.  
11 Scott, Sr., individually and as trustee of the George W. Scott, Sr.  
12 Revocable Inter Vivos Trust Dated September 25, 1995 (collectively  
13 "Plaintiffs") oppose the motion ("Opposition") (Doc. #47).  
14 Defendants filed a reply to Plaintiffs' opposition (Doc. #50).

15  
16 I. FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY

17 This action arises out of state enforcement of hazardous waste  
18 laws against Plaintiffs at four operating scrap metal facilities.  
19 Defendants, all associated with the Butte County District  
20 Attorney's Office, initiated an investigation and then allegedly  
21 acted with the Department of Toxic Substances Control ("DTSC"),  
22 members of which are also defendants in this action, to impose  
23 clean-up requirements on Plaintiffs' four commercial properties.  
24 Plaintiffs bring three causes of action against Defendants in their  
25 First Amended Complaint ("FAC") (Doc. #17). They seek  
26 (1) injunctive relief and (2) damages pursuant to 42 U.S.C. § 1983.

27 \_\_\_\_\_  
28 <sup>1</sup> This motion was determined to be suitable for decision without  
oral argument. E.D. Cal. L.R. 230(g). The hearing was originally  
scheduled for September 21, 2011.

1 Plaintiffs also seek (3) a declaration of the Defendants' legal  
2 right to continue enforcing existing clean-up orders.

3 Beginning in 2007, DTSC working with Defendants investigated  
4 Plaintiffs for various criminal violations related to the operation  
5 of Chico Scrap Metal. Plaintiffs allege that the investigation was  
6 not intended to enforce California hazardous waste laws, but that  
7 the investigation was instead intended to produce revenue for DTSC  
8 and Defendants. Plaintiffs also allege that the motivation for the  
9 investigation was not to protect the public health or enforce the  
10 law because the primary motivation was revenue generation through  
11 the levying of fines and enforcement costs against Plaintiffs.

12 The investigation culminated in Plaintiffs' agreement to  
13 several DTSC consent orders requiring compliance with a DTSC  
14 monitored environmental remediation program. Further, Defendants  
15 filed criminal felony charges against Plaintiffs, leading to  
16 Plaintiffs' pleas of nolo contendere in exchange for a plea  
17 agreement. The plea agreement between Plaintiffs and Defendants  
18 referenced and incorporated the DTSC consent orders, requiring  
19 compliance with them as a term of Plaintiffs' probation.

20 A. Defendants' 2007 Investigation

21 In 2007, Defendants started investigating Plaintiffs'  
22 business. The first sample taken from Plaintiffs' property was  
23 acquired by Defendant Barber and tested by DTSC. Plaintiffs allege  
24 that this sample, which was the basis for Defendants'  
25 investigation, was taken without a proper sampling plan and was  
26 tested improperly by DTSC. Plaintiffs claim that the sample was  
27 obtained through the reckless use of unsound testing methods in  
28 order to yield evidence of waste, which was subsequently

1 mischaracterized as hazardous. Plaintiffs allege the following  
2 improprieties: (1) Defendants had no sampling plan; (2) Defendants  
3 did not apply the proper scrap metal industry exemptions to the  
4 sample; and (3) the testing performed on the samples was done  
5 incorrectly.

6 B. The DTSC Orders and Plaintiffs' Criminal Conviction

7 In 2008, both DTSC and Defendants carried out enforcement  
8 actions against Plaintiffs. After DTSC imposed an "Imminent  
9 Endangerment Order" shutting down one of Plaintiffs' sites,  
10 Plaintiffs agreed to consent orders that permitted DTSC to  
11 investigate and monitor Plaintiffs' businesses. The orders also  
12 required Plaintiffs to pay fees and costs to DTSC.

13 In October, 2008, Plaintiffs pleaded nolo contendere to a  
14 series of misdemeanors in state court pursuant to a plea agreement  
15 with Defendants. Defendants agreed to reduce all charges from  
16 felonies to misdemeanors. Plaintiffs agreed to pay \$181,000 for  
17 investigation and cleanup costs incurred by DTSC up to that point.  
18 Further, Plaintiffs agreed to abide by the terms of the DTSC  
19 orders. Finally, Plaintiffs were fined \$700,000 with \$500,000  
20 suspended pending successful completion of Plaintiffs' probation,  
21 but no term of imprisonment was imposed. While the plea agreement  
22 incorporates the DTSC orders, DTSC was not a party to the plea  
23 agreement.

24 C. Events Leading to the Present Litigation

25 Plaintiffs allege that they began to question to necessity of  
26 DTSC and Defendants' actions for a number of reasons. First,  
27 Plaintiffs hired an independent expert in 2009 who was a former  
28 manager at the DTSC laboratory. That expert allegedly identified

1 various deficiencies in the testing system used by DTSC on samples  
2 taken from Plaintiffs' properties. Then, in 2010 and 2011,  
3 Plaintiffs allege that DTSC investigations at two out of four Chico  
4 Scrap Metal properties determined that no hazardous waste existed.  
5 Plaintiffs claim that DTSC was not willing to modify its orders,  
6 even though Plaintiffs' consultants determined that any problems  
7 that did exist could be managed by existing procedures at the  
8 sites.

9 DTSC subsequently reported to Defendants that Plaintiffs were  
10 no longer complying with the DTSC orders. Rather than any concern  
11 with Plaintiffs' cleanup efforts, the alleged reason for DTSC's  
12 noncompliance report is that Plaintiffs objected to being double-  
13 billed by both DTSC and Defendants for the \$181,000 in costs  
14 preceding the state court conviction.

15 Plaintiffs filed the present lawsuit to challenge the DTSC  
16 consent orders and the actions taken by all defendants leading up  
17 to those orders. Plaintiffs do not plead claims arising from the  
18 plea agreement.

19 Defendants' response to Plaintiffs' allegations is emphatic:  
20 "This action arises out of the civil and criminal proceedings  
21 against Plaintiffs stemming from the finding of hazardous waste at  
22 all four of Plaintiffs' scrap metal sites in Butte County." MTD,  
23 at 1.

## 24 25 II. OPINION

### 26 A. Legal Standard

27 A party may move to dismiss an action for failure to state a  
28 claim upon which relief can be granted pursuant to Federal Rule of

1 Civil Procedure 12(b)(6). In considering a motion to dismiss, the  
2 court must accept the allegations in the complaint as true and draw  
3 all reasonable inferences in favor of the plaintiff. Scheuer v.  
4 Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds by  
5 Davis v. Scherer, 468 U.S. 183 (1984); Cruz v. Beto, 405 U.S. 319,  
6 322 (1972). Assertions that are mere "legal conclusions," however,  
7 are not entitled to the assumption of truth. Ashcroft v. Iqbal,  
8 129 S. Ct. 1937, 1950 (2009) (citing Bell Atl. Corp. v. Twombly,  
9 550 U.S. 544, 555 (2007)). To survive a motion to dismiss, a  
10 plaintiff needs to plead "enough facts to state a claim to relief  
11 that is plausible on its face." Twombly, 550 U.S. at 570.  
12 Dismissal is appropriate where the plaintiff fails to state a claim  
13 supportable by a cognizable legal theory. Balistreri v. Pacifica  
14 Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

15 Upon granting a motion to dismiss for failure to state a  
16 claim, the court has discretion to allow leave to amend the  
17 complaint pursuant to Federal Rule of Civil Procedure 15(a).  
18 "Dismissal with prejudice and without leave to amend is not  
19 appropriate unless it is clear . . . that the complaint could not  
20 be saved by amendment." Eminence Capital, L.L.C. v. Aspeon, Inc.,  
21 316 F.3d 1048, 1052 (9th Cir. 2003).

22 B. Discussion

23 1. Jurisdiction

24 Defendants raise three jurisdictional doctrines in their  
25 motion: the Rooker-Feldman doctrine, Younger abstention, and the  
26 exhaustion requirement established by Heck v. Humphrey. If any of  
27 these doctrines applies to the claims before the Court, the Court  
28 must grant Defendants' motion, or at least stay proceedings pending

1 resolution of the state court action.

2 a) Heck v. Humphrey

3 Defendants argue that Plaintiffs' claims are barred by the  
4 rule set forth in Heck v. Humphrey, 512 U.S. 477 (1994), because  
5 Plaintiffs' success in this suit will call into question the  
6 validity of their state law convictions. MTD, at 5. Plaintiffs  
7 respond that success in this lawsuit does nothing to change the  
8 state law convictions, as the conduct at issue here is distinct  
9 from the state court criminal decisions. Opp., at 8.

10 The Heck rule is simple: "if finding in favor of a § 1983  
11 plaintiff would necessarily imply the invalidity of his conviction  
12 or sentence the complaint must be dismissed." Szajer v. City of  
13 L.A., 632 F.3d 607, 611 (9th Cir. 2011) (quoting Heck, 512 U.S. at  
14 486-87).

15 Defendants offer two cases to support the argument that  
16 Plaintiffs' lawsuit calls into question the validity of Plaintiffs'  
17 state court conviction. First, they rely on Szajer. MTD, at 9.  
18 In Szajer, the plaintiffs were convicted of illegally possessing a  
19 particular weapon in state court based on nolo contendere pleas.  
20 Szajer, 632 F.3d at 609. The only evidence supporting their  
21 convictions was found when the police executed a search warrant at  
22 the plaintiffs' business and home. Id. The plaintiffs did not  
23 contest or question the legality of the searches during the course  
24 of the state proceedings. Id. After entering their pleas, the  
25 plaintiffs filed suit in federal court to recover damages for what  
26 they alleged were illegal searches. Id. at 609-10. The court held  
27 that declaring the search warrant invalid necessarily called into  
28 question the state court conviction because there was no evidence

1 other than that recovered by the police during the execution of the  
2 search warrant to support the charge that they illegally possessed  
3 the weapon. Id. at 612. The Szajer court noted that the  
4 plaintiffs did not provide "any other basis for the discovery of  
5 the assault weapon found in their home, which formed the basis of  
6 the plea conviction." Id.

7 Plaintiffs in this case respond to Szajer by contending that  
8 other evidence can provide a basis for their state court conviction  
9 independently of the DTSC orders and investigation. Opp., at 10.  
10 This information includes admissions of Plaintiff Scott,  
11 observations made by Defendant Barber, and allegations of unsafe  
12 working methods used by Plaintiffs at one of their facilities. Id.

13 Defendants next rely upon Price v. Schwarzenegger, 344 F.  
14 App'x 375 (9th Cir. 2009). In Price, the plaintiff brought a  
15 federal action alleging denial of due process at a parole hearing  
16 and in the imposition of a mandatory parole term. Id. at 375. The  
17 court dismissed the claim challenging the mandatory parole term on  
18 the grounds that the parole term was a statutorily required  
19 consequence of the guilty plea in the prior state court proceeding.  
20 Id. at 376. Since the only way to avoid parole was to invalidate  
21 the plea agreement itself, the court held that Heck barred the  
22 federal court action. Id. Defendants rely on Price on the grounds  
23 that the DTSC orders became a mandatory consequence of their plea  
24 agreement, and, therefore, like Price, Plaintiffs' request to  
25 invalidate the DTSC Order is barred by Heck. Reply, at 4.

26 Plaintiffs respond to Defendants' arguments by claiming that  
27 successfully challenging the DTSC Orders in this federal action  
28 against Defendants will not change the status of their state court

1 convictions. Plaintiffs argue that the state court conviction is  
2 based on their nolo contendere pleas, not the legal validity of the  
3 DTSC orders. Plaintiffs cite two Ninth Circuit cases in support of  
4 their argument that a conviction based on a nolo contendere plea  
5 does not in any way depend on the validity of the evidence  
6 underlying the conviction. Lockett v. Ericson, - F.3d -, 2011 WL  
7 3836467, at \*4 (9th Cir. Aug. 31, 2011) (citing Ove v. Gwinn, 264  
8 F.3d 817, 823 (9th Cir. 2001)). Plaintiffs' argument fails for two  
9 reasons. First, in this case the DTSC orders are not evidence used  
10 to support the plea agreement, they are prospective requirements of  
11 the plea agreement and the state court terms of probation. Second,  
12 permitting Defendants to challenge the DTSC orders in federal court  
13 would effectively invalidate the state court's mandate that  
14 Plaintiffs abide by the terms of those orders. This is exactly the  
15 kind of action barred by Heck, and Lockett's holding is  
16 inapplicable to the facts of the present case.

17 Defendants' position is clearly supported by both Price and  
18 Szajer. In Price, the "mandatory consequence" of the plaintiff's  
19 guilty plea, the term of parole, was deemed inseparable from the  
20 plea agreement. Price, 344 F. App'x. at 376. In this case, the  
21 terms of the DTSC orders are incorporated by reference in the plea  
22 agreement itself and are similarly inseparable. In Price,  
23 invalidating the parole term also invalidated the plea agreement,  
24 and that is the functional effect in this case as well. The DTSC  
25 orders are clearly a mandatory term of Plaintiffs' plea agreement.  
26 Heck, as explained by Szajer and Price, bars Plaintiffs' federal  
27 claims against Defendants.

28 Accordingly, the Court GRANTS Defendants' motion to dismiss on

1 these grounds.

2 a) The Rooker-Feldman Doctrine & Younger  
3 Abstention

4 Having granted dismissal on the basis of Heck v. Humphrey, the  
5 Court need not reach Defendants' motion insofar as it relies on the  
6 Rooker-Feldman doctrine and Younger abstention. The Court also  
7 declines to reach Defendants' argument that Plaintiffs failed to  
8 properly plead an equal protection claim.

9 2. Defendants' Immunity

10 Defendants also seek dismissal claiming that they are immune  
11 from suit. The Court will address each of the three immunities  
12 raised by Defendants and finds, as an alternative ground for  
13 dismissal, that Defendants have qualified immunity in this action.

14 a) Absolute Immunity

15 Defendants argue that they are absolutely immune from suit  
16 because prosecutors enjoy absolute immunity for actions taken as  
17 officers of the court. Plaintiffs respond that there is no  
18 absolute immunity for Defendants' actions because Plaintiffs'  
19 claims stem from two areas where absolute immunity is not  
20 applicable: 1) giving advice to police during an investigation, and  
21 2) making statements to the press.

22 Prosecutors are absolutely immune from liability under Section  
23 1983 for their conduct in initiating a prosecution when the conduct  
24 is intimately associated with the judicial phase of the criminal  
25 process. Burns v. Reed, 500 U.S. 478, 486 (1991) (internal  
26 citations omitted). Absolute prosecutorial immunity only extends  
27 to suits for damages, it does not bar suits for prospective  
28 injunctive relief. Supreme Court of Virginia v. Consumers Union of

1 the United States, Inc., 446 U.S. 719, 736-37 (1980).<sup>2</sup>

2 The Ninth Circuit explained when absolute prosecutorial  
3 immunity is applicable:

4 [T]he actions of a prosecutor are not absolutely  
5 immune merely because they are performed by a  
6 prosecutor. Prosecutorial immunity depends on the  
7 nature of the function performed, not the identity of  
8 the actor who performed it. Prosecutors are entitled  
9 to qualified immunity, rather than absolute immunity,  
10 when they perform administrative functions, or  
11 investigative functions normally performed by a  
12 detective or police officer.

13 Genzler v. Longanbach, 410 F.3d 630, 636 (9th Cir. 2005) (internal  
14 citations omitted). Since absolute immunity only applies when  
15 prosecutors perform functions intimately associated with the  
16 judicial process, it does not apply when prosecutors perform the  
17 same function as police during the early stages of an  
18 investigation, or when prosecutors hold a defamatory press  
19 conference. Id. at 637 (citing Buckley v. Fitzsimmons, 509 U.S.  
20 259, 270 (1993)).

21 Defendants argue that once Defendant Barber collected a sample  
22 from Plaintiffs property and it tested positive for hazardous  
23 waste, probable cause existed and absolute immunity kicked in at  
24 that point. Defendants are incorrect, however, because there is no  
25 bright line rule for when absolute immunity applies. Genzler, 410  
26 F.3d at 637 ("The analysis of whether prosecutorial acts constitute

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27 <sup>2</sup>Only defendants Barber and Thomas are sued for damages in  
28 Plaintiffs' first cause of action. FAC, at 41. Plaintiffs do,  
however, indicate that Defendant Ramsey "ratified" Defendants  
Barber and Thomas's conduct. FAC, at 42. Plaintiffs have not  
clearly stated a claim against Mr. Ramsey, but even if they had, he  
is immune from § 1983 liability because he is a state official and  
not a "person" for § 1983 purposes. Weiner v. San Diego County,  
210 F.3d 1025, 1031 (9th Cir. 2000) (holding that a district  
attorney is a state official when prosecuting a criminal violation  
and is not subject to § 1983 liability).

1 advocacy or police-type investigative work is complicated by the  
2 fact that the Supreme Court has resisted any attempt to draw a  
3 bright-line between the two."). The analysis focuses on the type  
4 of activity performed and its relation to the judicial process.  
5 Id. at 637-38.

6 In this case, Plaintiffs argue that Defendants do not enjoy  
7 absolute immunity for the advice that they provided to DTSC. The  
8 allegation is that Defendant Barber assisted DTSC in investigating  
9 Plaintiffs' assets and the best course of action to take in  
10 assessing DTSC penalties, as distinct from the subsequent criminal  
11 prosecution. *Opp.*, at 16. The problem with Plaintiffs' position,  
12 however, is that they do not indicate how giving advice to DTSC is  
13 necessarily separate from the work Defendants did in preparing  
14 their own criminal prosecution of Plaintiffs. While it is true  
15 that establishing probable cause does not necessarily establish  
16 absolute prosecutorial immunity, in this case Defendants were  
17 engaging in their own prosecution. Plaintiffs do not cite  
18 authority that suggests that sharing resources and recommendations  
19 with a state regulatory agency, DTSC, is grounds upon which  
20 absolute immunity can be denied or waived.

21 The proper inquiry is instead whether or not Defendants'  
22 investigatory work "is of the type normally done by police . . . or  
23 whether an investigation is bound up with the judicial  
24 process . . . ." Genzler, 410 F.3d at 638. In the present case,  
25 Defendants clearly explain that they were working with DTSC in an  
26 investigatory capacity to gather evidence prior to the December 2007  
27 to January 2008 period, when the decision to initiate criminal  
28 prosecution was finally made. *MTD*, at 1. Defendants agree that

1 they spent over 40 hours planning the execution of a search warrant  
2 on Plaintiffs' properties and conducting an asset search on  
3 Plaintiffs. Id. These actions give rise to Plaintiffs' claims, not  
4 the later decision to initiate a criminal prosecution. Considering  
5 that the decision to prosecute either civilly or criminally was not  
6 made until after the execution of the search warrant (MTD, at 1),  
7 Defendants' investigatory efforts were too attenuated from the  
8 judicial process to support absolute immunity.

9 Plaintiffs' complaint alleges that Defendants engaged in  
10 police-like investigatory actions prior to initiating judicial  
11 proceedings. Absolute prosecutorial immunity does not extend to  
12 such actions. Defendant Ramsey has been sued only in his official  
13 capacity for injunctive relief, and absolute immunity does not  
14 limit that claim. FAC, at 42; Supreme Court of Virginia, 446 U.S.  
15 at 736-37. Accordingly, Defendants' motion to dismiss on these  
16 grounds is DENIED.

17 b) Sovereign Immunity

18 Defendants also argue that Plaintiffs' second claim for relief  
19 against Defendant Ramsey in his official capacity is barred by the  
20 11th Amendment to the United States Constitution.

21 Prospective injunctive relief against state officials in their  
22 official capacity is not prohibited by the 11th Amendment. Edelman  
23 v. Jordan, 415 U.S. 651, 664 (1974) (citing Ex parte Young, 209  
24 U.S. 123 (1908)). Retroactive equitable relief which is the  
25 equivalent of requiring a payment made out of the state treasury is  
26 barred by the 11th Amendment, but prospective injunctive relief is  
27 not. Id. at 668-69.

28 In this case, Plaintiffs seek to enjoin enforcement of the

1 DTSC Orders prospectively, which will not require any payment from  
2 the state treasury. The 11th Amendment does not bar this claim.

3 c) Qualified Immunity

4 Defendants finally argue that they are immune from suit in  
5 this instance because of qualified immunity. Plaintiffs respond  
6 that there was no rational basis for Defendants' decision to  
7 investigate Plaintiffs' property for hazardous substances, making  
8 qualified immunity inapplicable.

9 The doctrine of qualified immunity shields public officials  
10 sued in their individual capacity from monetary damages, unless  
11 their conduct violates "clearly established" law that would be  
12 known to a reasonable public officer. Saucier v. Katz, 533 U.S.  
13 194, 199 (2001).

14 The Court must make a two-step inquiry in deciding the issue  
15 of qualified immunity. Saucier, 533 U.S. at 200. First, the court  
16 must determine whether, under the facts alleged, taken in the light  
17 most favorable to the plaintiff, a violation of a constitutional  
18 right occurred. Id. If so, the court must then ask whether the  
19 constitutional right was clearly established at the time of the  
20 violation. Id.

21 Initially, the Supreme Court in Saucier held that these two  
22 inquiries must be decided in rigid order. Saucier, 533 U.S. at  
23 200. That is, a district court had to resolve whether a violation  
24 of a constitutional right occurred before it could evaluate whether  
25 the right was clearly established. Recognizing, however, that  
26 "there are cases in which it is plain that a constitutional right  
27 is not clearly established but far from obvious whether in fact  
28 there is such a right," the Supreme Court recently relaxed the

1 order of analysis. Pearson v. Callahan, 555 U.S. 223, 237 (2009).  
2 In Pearson, the Court held that the Saucier analysis may be  
3 addressed in either order if the second step is clearly dispositive  
4 and can address the matter efficiently. Id. at 241-42.

5 In this case, the parties do not dispute that Plaintiffs'  
6 allegations concern a clearly established constitutional right:  
7 violation of the 14th Amendment's guarantee of equal protection.  
8 The Court is only left with deciding whether or not Plaintiffs  
9 adequately allege an actual violation of that right.

10 Plaintiffs claim that the DTSC investigation, assisted and  
11 encouraged by Defendants, had no rational basis. Opp., at 19.  
12 Plaintiffs allege that DTSC neither produced evidence to support a  
13 rational basis for the investigation of Plaintiffs' properties, nor  
14 did they show that other similarly situated scrap metal facilities  
15 were also investigated. Id. Plaintiffs' claim is that they, as a  
16 class of one, were intentionally treated differently from other  
17 scrap yards. Id. at 20. Defendants respond that the sample  
18 obtained by Defendant Barber from Plaintiffs' property that tested  
19 positive for hazardous waste according to the DTSC provided the  
20 rational basis for the investigation. MTD, at 15. Further,  
21 Defendants argue that merely pointing out that other scrap metal  
22 facilities were not investigated is insufficient to show an equal  
23 protection violation. Id. at 15-16.

24 A valid class of one claim arises where an entity can show  
25 that it has been "intentionally treated differently from others  
26 similarly situated and there is no rational basis for the  
27 difference in treatment." Vill. of Willowbrook v. Olech, 528 U.S.  
28 562, 564 (2000).

1 Plaintiffs did not adequately plead that Defendants violated  
2 their right to equal protection, and the arguments in their briefs  
3 indicate that they may not be able to. Plaintiffs' Opposition, for  
4 example, focuses on DTSC's actions because this suit does not  
5 challenge Plaintiffs' criminal conviction, for which Defendants are  
6 responsible. It was, Plaintiffs allege, DTSC that failed to  
7 properly test materials retrieved from Plaintiffs' properties.  
8 Defendants merely "assisted and encouraged" DTSC. Opp., at 19.  
9 Plaintiffs also argue, in an attempt to overcome the Heck bar  
10 discussed above, that Defendants based their investigation and  
11 prosecution on other evidence including Defendant Barber's  
12 observations and Plaintiff Scott's own admissions. If the DTSC  
13 testing did not provide a rational basis for Defendants'  
14 investigation, then this other information did. Plaintiffs pleaded  
15 their equal protection claim in an attempt to win the Heck battle,  
16 but as a result they lose the war.

17 It is also meaningful that Plaintiffs do not allege that any  
18 other similarly situated scrap metal facility tested positive for  
19 hazardous waste. It is not enough for Plaintiffs to allege that  
20 other scrap metal facilities are not subject to DTSC enforcement  
21 actions. They must also allege that these other scrap metal  
22 facilities tested positive for hazardous waste and despite that,  
23 Defendants chose to only investigate Plaintiffs. "To succeed,  
24 plaintiffs must demonstrate that they were treated differently than  
25 someone who is prima facie identical in all relevant respects[,]"  
26 but they have not done that. Occhionero v. City of Fresno, No.  
27 CV F 05-1184 LJO SMS, 2008 WL 2690431, at \*9 (E.D. Cal. July 3,  
28 2008) (internal quotations omitted).

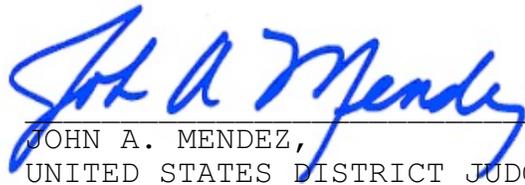
1 The Court finds that Plaintiffs' allegations indicate that  
2 there was a rational basis for Defendants' investigation.  
3 Defendants are alleged to have relied on the DTSC testing and other  
4 independent evidence to support their investigation. Further,  
5 Plaintiffs have not pleaded that any other similarly situated scrap  
6 metal facility was not investigated despite testing positive for  
7 hazardous waste. Accordingly, the motion to dismiss the claims  
8 against Defendants in their individual capacities is also GRANTED  
9 on the alternative grounds that Defendants have qualified immunity  
10 from suit.

11  
12  
13 III. ORDER

14 For all the foregoing reasons, it is hereby ordered that all  
15 of Plaintiffs' claims against Defendants are dismissed with  
16 prejudice.

17  
18 IT IS SO ORDERED.

19 Dated: November 22, 2011

  
\_\_\_\_\_  
JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE