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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 DTSC 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 Debbie  
6 Raphael in her official capacity as Director of the California  
7 Department of Toxic Substances Control ("DTSC"), Leonard Robinson  
8 in his official capacity as former Acting Director of DTSC, Raymond  
9 LeClerc in his official capacity as the Assistant Deputy Director  
10 of DTSC, Diane Sheridan in her official capacity as an employee of  
11 DTSC, Nancy Lancaster in her individual capacity, Samuel Martinez,  
12 Jr. in his individual capacity, Vivian Murai in her individual  
13 capacity, Steven Becker in his individual capacity, and Leona  
14 Winner in her individual capacity's (collectively "Defendants")  
15 Motion to Dismiss Plaintiffs' Amended Complaint ("MTD") (Doc.  
16 #30).<sup>1</sup> Plaintiffs George Scott, Sr. and Chico Scrap Metal, Inc.  
17 (collectively "Plaintiffs") Plaintiffs' oppose the DTSC Defendants'  
18 Motion to Dismiss ("Opposition") (Doc. #46). Defendants filed a  
19 Reply to Opposition to Motion to Dismiss (Doc. #49). For the  
20 reasons set forth below, Defendants' motion is GRANTED.

21  
22 I. FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY

23 This action arises out of state enforcement of hazardous waste  
24 laws against Plaintiffs at four operating scrap metal facilities.  
25 Defendants, all associated with DTSC, initiated an investigation  
26 and then allegedly acted with the Office of the Butte County

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 District Attorney (the "District Attorney"), members of which are  
2 also defendants in this action, to impose clean-up requirements on  
3 Plaintiffs' four commercial properties. Plaintiffs bring three  
4 causes of action against Defendants in their First Amended  
5 Complaint ("FAC") (Doc. #17). They seek (1) injunctive relief and  
6 (2) damages pursuant to 42 U.S.C. § 1983. Plaintiffs also seek  
7 (3) a declaration of the Defendants' legal right to continue  
8 enforcing existing clean-up orders.

9 Beginning in 2007, DTSC, working with the District Attorney,  
10 investigated Plaintiffs for various criminal violations related to  
11 the operation of Chico Scrap Metal. Plaintiffs allege that the  
12 investigation was not intended to enforce California hazardous  
13 waste laws, but that the investigation was instead intended to  
14 produce revenue for DTSC and the Butte County District Attorney's  
15 Office. Plaintiffs also allege that the motivation for the  
16 investigation was not to protect the public health or enforce the  
17 law because the primary motivation was revenue generation through  
18 the levying of fines and enforcement costs against Plaintiffs.

19 Defendants' investigation culminated in Plaintiffs' agreement  
20 to several consent orders requiring compliance with a DTSC  
21 monitored environmental remediation program. Further, the District  
22 Attorney filed criminal felony charges against Plaintiffs, leading  
23 to Plaintiffs' pleas of nolo contendere as part of a plea  
24 agreement. The plea agreement between Plaintiffs and the District  
25 Attorney referenced and incorporated the DTSC consent orders,  
26 requiring compliance with them as a term of Plaintiffs' probation.

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1           A.    Defendants' 2007 Investigation

2           In 2007, Defendants started investigating Plaintiffs'  
3 business. The alleged basis for the investigation was a sample  
4 taken from one of the four sites operated by Plaintiffs.  
5 Plaintiffs claim that the sample was obtained through the reckless  
6 use of unsound testing methods in order to yield evidence of waste,  
7 which was subsequently mischaracterized as hazardous. Plaintiffs  
8 allege the following improprieties: (1) Defendants had no sampling  
9 plan; (2) Defendants did not apply the proper scrap metal industry  
10 exemptions to the sample; and (3) the testing performed on the  
11 samples was done incorrectly.

12           B.    The DTSC Orders and Plaintiffs' Criminal Conviction

13           In 2008, both DTSC and the District Attorney carried out  
14 enforcement actions against Plaintiffs. After DTSC imposed an  
15 "Imminent Endangerment Order" shutting down one of Plaintiffs'  
16 sites, Plaintiffs agreed to consent orders that permitted DTSC to  
17 investigate and monitor Plaintiffs' businesses. The orders also  
18 required Plaintiffs to pay fees and costs to DTSC.

19           In October, 2008, Plaintiffs pleaded nolo contendere to a  
20 series of misdemeanors in state court pursuant to a plea agreement  
21 with the District Attorney. The District Attorney agreed to reduce  
22 all charges from felonies to misdemeanors. Plaintiffs agreed to  
23 pay \$181,000 for investigation and cleanup costs incurred by DTSC  
24 up to that point. Further, Plaintiffs agreed to abide by the terms  
25 of the DTSC orders. Finally, Plaintiffs were fined \$700,000 with  
26 \$500,000 suspended pending successful completion of Plaintiffs'  
27 probation, but no term of imprisonment was imposed. While the plea  
28 agreement incorporates the DTSC orders, DTSC was not a party to the

1 plea agreement.

2 C. Events Leading To the Present Litigation

3 Plaintiffs allege that they began to question the necessity of  
4 the DTSC and District Attorney actions for a number of reasons.  
5 First, Plaintiffs hired an independent expert in 2009, who is a  
6 former manager at the DTSC laboratory. That expert allegedly  
7 identified various deficiencies in the testing system used by DTSC  
8 on samples taken from Plaintiffs' properties. Then, in 2010 and  
9 2011, Plaintiffs allege that DTSC investigations at two out of four  
10 Chico Scrap Metal properties determined that no hazardous waste  
11 existed. Plaintiffs claim that DTSC was not willing to modify its  
12 orders, even though Plaintiffs' consultants determined that any  
13 problems that did exist could be managed by existing procedures at  
14 the sites.

15 Defendants subsequently reported to the District Attorney that  
16 Plaintiffs were no longer complying with the DTSC orders in  
17 violation of their plea agreement. Plaintiffs allege that the  
18 reason for Defendants' noncompliance report, is that Plaintiffs  
19 objected to being double-billed by both DTSC and the District  
20 Attorney for the \$181,000 in costs preceding the state court  
21 conviction. Ongoing proceedings in state court are addressing this  
22 issue.

23 Defendants' response to Plaintiffs' allegations is emphatic:  
24 "This action arises out of the illegal dumping of toxic chemicals  
25 by Plaintiffs in Butte County. Plaintiffs were caught disposing of  
26 highly toxic materials . . . by dumping them in open fields near  
27 the City of Oroville." MTD, at 3.

28

1 II. OPINION

2 A. Legal Standard

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

19 Upon granting a motion to dismiss for failure to state a  
20 claim, the court has discretion to allow leave to amend the  
21 complaint pursuant to Federal Rule of Civil Procedure 15(a).  
22 "Dismissal with prejudice and without leave to amend is not  
23 appropriate unless it is clear . . . that the complaint could not  
24 be saved by amendment." Eminence Capital, L.L.C. v. Aspeon, Inc.,  
25 316 F.3d 1048, 1052 (9th Cir. 2003).

26 B. Discussion

27 Defendants raise three jurisdictional doctrines in their  
28 motion: the Rooker-Feldman doctrine, Younger abstention, and the

1 exhaustion requirement established by Heck v. Humphrey. If any of  
2 these doctrines applies to the claims before the Court, the Court  
3 must grant Defendants' motion, or at least stay proceedings pending  
4 resolution of the state court action. Defendants do not otherwise  
5 challenge the sufficiency of the allegations contained in the First  
6 Amended Complaint.

7 1. Heck v. Humphrey

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

15 The Heck rule is simple: "if finding in favor of a § 1983  
16 plaintiff would necessarily imply the invalidity of his conviction  
17 or sentence the complaint must be dismissed." Szajer v. City of  
18 L.A., 632 F.3d 607, 611 (9th Cir. 2011) (quoting Heck, 512 U.S. at  
19 486-87).

20 Defendants offer two cases to support the argument that  
21 Plaintiffs' lawsuit calls into question the validity of Plaintiffs'  
22 state court conviction. First, they rely on Szajer. Reply, at 6-  
23 7. In Szajer, the plaintiffs were convicted of illegally  
24 possessing a particular weapon in state court based on nolo  
25 contendere pleas. Szajer, 632 F.3d at 609. The only evidence  
26 supporting their convictions was found when the police executed a  
27 search warrant at the plaintiffs' business and home. Id. The  
28 plaintiffs did not contest or question the legality of the searches

1 during the course of the state proceedings. Id. After entering  
2 their pleas, the plaintiffs filed suit in federal court to recover  
3 damages for what they alleged were illegal searches. Id. at 609-  
4 10. The court held that declaring the search warrant invalid  
5 necessarily called into question the state court conviction because  
6 there was no evidence other than that recovered by the police  
7 during the execution of the search warrant to support the charge  
8 that they illegally possessed the weapon. Id. at 612. The Szajer  
9 court noted that the plaintiffs did not provide "any other basis  
10 for the discovery of the assault weapon found in their home, which  
11 formed the basis of the plea conviction." Id.

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

18 Defendants next rely upon Price v. Schwarzenegger, 344 F.  
19 App'x 375 (9th Cir. 2009). In Price, the plaintiff brought a  
20 federal action alleging denial of due process at a parole hearing  
21 and in the imposition of a mandatory parole term. Id. at 375. The  
22 court dismissed the claim challenging the mandatory parole term on  
23 the grounds that the parole term was a statutorily required  
24 consequence of the guilty plea in the prior state court proceeding.  
25 Id. at 376. Since the only way to avoid parole was to invalidate  
26 the plea agreement itself, the court held that Heck barred the  
27 federal court action. Id. Defendants rely on Price on the grounds  
28 that in order to grant Plaintiffs the relief they seek, this Court



1 would have to invalidate the DTSC Orders which are the central  
2 provisions of the pleas agreement and sentencing order. Under  
3 Price, this is not permitted. Reply, at 7.

4 Plaintiffs respond to Defendants' arguments by claiming that  
5 successfully challenging the DTSC Orders in this federal action  
6 against Defendants will not change the status of their state court  
7 convictions. Plaintiffs argue that the state court conviction is  
8 based on their nolo contendere pleas, not the legal validity of the  
9 DTSC orders.

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

24 Defendants' position is clearly supported by both Price and  
25 Szajer. In Price, the "mandatory consequence" of the plaintiff's  
26 guilty plea, the term of parole, was deemed inseparable from the  
27 plea agreement. Price, 344 F. App'x. at 376. In this case, the  
28 terms of the DTSC orders are incorporated by reference in the plea

1 agreement itself and are similarly inseparable. In Price,  
2 invalidating the parole term also invalidated the plea agreement,  
3 and that is the functional effect in this case as well. The DTSC  
4 orders are clearly a mandatory term of Plaintiffs' plea agreement.  
5 Heck, as explained by Szajer and Price, bars Plaintiffs' federal  
6 claims against Defendants.

7 Accordingly, the Court GRANTS Defendants' motion to dismiss on  
8 these grounds.

9 2. The Rooker-Feldman Doctrine & Younger Abstention

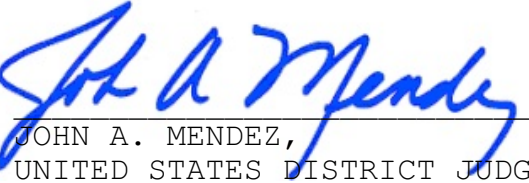
10 Having granted dismissal on the basis of Heck v. Humphrey, the  
11 Court need not reach Defendants' motion insofar as it relies on the  
12 Rooker-Feldman doctrine and Younger abstention.

13  
14 III. ORDER

15 For the foregoing reasons, Plaintiffs' claims against  
16 Defendants are dismissed with prejudice.

17  
18 IT IS SO ORDERED.

19 Dated: November 22, 2011

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22 JOHN A. MENDEZ,  
23 UNITED STATES DISTRICT JUDGE  
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