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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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12 CAROLINA CASUALTY INSURANCE
13 COMPANY,

14 Plaintiff,

15 v.

16 OAHU AIR CONDITIONING
17 SERVICE, INC., dba OAHU AIR
18 CONDITIONING CO.; PACIFIC
19 COMMERCIAL SERVICES, LLC;
20 MATSON NAVIGATION COMPANY,
21 INC.; and DOES 1 through 100,

22 Defendants.

CIV. NO. 2:13-1378 WBS AC

MEMORANDUM AND ORDER RE: MOTION
TO DISMISS; MOTION TO STRIKE

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24 Plaintiff Carolina Casualty Insurance Company brought
25 this action against Oahu Air Conditioning Service, Inc., doing
26 business as Oahu Air Conditioning Co. ("Oahu"), Pacific
27 Commercial Services, LLC ("Pacific"), and Matson Navigation
28 Company, Inc. ("Matson") arising out of a hazardous waste spill
by plaintiff's insured, Smith Transportation Systems, Inc.
("Smith"). Oahu and Pacific ("moving defendants") now move to

1 dismiss plaintiff's First Amended Complaint ("FAC") for failure
2 to state a claim upon which relief can be granted pursuant to
3 Federal Rule of Civil Procedure 12(b)(6), and to strike various
4 other allegations in the First Amended Complaint ("FAC") pursuant
5 to Federal Rule of Civil Procedure 12(f). (Docket No. 16.)

6 I. Factual & Procedural History

7 In October 2010, plaintiff issued an insurance policy
8 to Smith, a transportation company that specializes in
9 transporting hazardous waste to disposal sites. (FAC ¶ 9.) In
10 July 2011, Smith transported a trailer loaded with hazardous
11 material from San Jose, California to a waste disposal site in
12 Sacramento, California. (Id. ¶ 11.) After Smith delivered the
13 trailer, the Sacramento Police Department was called to the
14 disposal site because the trailer was observed emitting white
15 smoke. (Id. ¶ 12.) After several hours, an active fire broke
16 out and completely engulfed the trailer. (Id.) A subsequent
17 investigation revealed that the trailer contained refrigerator
18 waste oil that Oahu had shipped to California for disposal, and
19 that the fire resulted in the release of hazardous vapors and
20 contaminated water runoff into the environment. (Id. ¶ 13.)

21 As a result of this incident, a number of claimants
22 issued Smith notices of violation and demanded that it pay for
23 the cleanup of the hazardous waste spill from the trailer. (Id.
24 ¶ 22.) Pursuant to Smith's insurance policy, which required
25 plaintiff to provide a defense and indemnify Smith from any
26 claims resulting from a hazardous waste spill, plaintiff settled
27 and paid upon numerous claims brought against plaintiff by
28 several claimants, including the City of Sacramento, the County

1 of Sacramento, and Clean Harbor Environmental Services. (Id. ¶¶
2 23-24.) In addition, plaintiff reimbursed Smith for its cleanup
3 expenses and indemnified it against additional personal injury
4 damages. (Id. ¶ 25.)

5 Plaintiff alleges that defendants were involved in the
6 supply, packing, and transportation of the refrigerator waste oil
7 that Smith transported to Sacramento. (Id. ¶¶ 17-21.) As a
8 result, plaintiff and Smith issued a claim and demand to
9 defendants for reimbursement of the payments plaintiff incurred
10 as a result of the hazardous waste spill. (Id. ¶ 26.)

11 Defendants did not pay. (Id.)

12 Plaintiff then brought this action seeking: (1)
13 subrogation pursuant to Section 112(c) of the Comprehensive
14 Environmental Response, Compensation, and Liability Act
15 ("CERCLA"), 42 U.S.C. § 9612(c); (2) contribution pursuant to
16 Section 113(f) of CERCLA, 42 U.S.C. § 9613(f); (3) contribution
17 and/or indemnity pursuant to the Hazardous Substance Account Act
18 ("HSAA"), Cal. Health & Safety Code § 25363; (4) equitable
19 indemnity under California common law; (5) allocation and
20 apportionment of fault under California common law; (6)
21 contribution under California common law; and (7) subrogation
22 under California common law. (Docket No. 7.) Moving defendants
23 now move to dismiss each of these claims for failure to state a
24 claim upon which relief can be granted pursuant to Rule 12(b)(6),
25 to strike plaintiff's references to the "tort of another"
26 doctrine pursuant to Rule 12(f), and to strike allegations
27 related to personal injury or toxic tort claims pursuant to Rule
28 12(f). (Docket No. 16.)

1 II. Motion to Dismiss

2 On a motion to dismiss under Rule 12(b)(6), the court
3 must accept the allegations in the complaint as true and draw all
4 reasonable inferences in favor of the plaintiff. Scheuer v.
5 Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds by
6 Davis v. Scherer, 468 U.S. 183 (1984); Cruz v. Beto, 405 U.S.
7 319, 322 (1972). To survive a motion to dismiss, a plaintiff
8 must plead "only enough facts to state a claim to relief that is
9 plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S.
10 544, 570 (2007). This "plausibility standard," however, "asks
11 for more than a sheer possibility that a defendant has acted
12 unlawfully," and where a complaint pleads facts that are "merely
13 consistent with a defendant's liability," it "stops short of the
14 line between possibility and plausibility." Ashcroft v. Iqbal,
15 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 557).

16 "While a complaint attacked by a Rule 12(b)(6) motion
17 to dismiss does not need detailed factual allegations, a
18 plaintiff's obligation to provide the 'grounds' of his
19 entitle[ment] to relief' requires more than labels and
20 conclusions" Twombly, 550 U.S. at 555 (alteration in
21 original) (citations omitted). "Threadbare recitals of the
22 elements of a cause of action, supported by mere conclusory
23 statements, do not suffice." Iqbal, 556 U.S. at 678; see also
24 Iqbal, 556 U.S. at 679 ("While legal conclusions can provide the
25 framework of a complaint, they must be supported by factual
26 allegations.").

27 A. CERCLA Section 112(c)

28 Section 112(c) of CERCLA provides that "[a]ny person .

1 . . who pays compensation pursuant to this chapter to any
2 claimant for damages or costs resulting from the release of a
3 hazardous substance¹ shall be subrogated to all rights, claims,
4 and causes of action for such damages and costs of removal that
5 the claimant has under this chapter or any other law.” 42 U.S.C.
6 § 9612(c)(2). The Ninth Circuit has construed CERCLA to require
7 that an “insured must first make a claim to . . . a potentially
8 liable party before an insurer can bring a subrogation action
9 under [S]ection 112(c).” Chubb Custom Ins. Co. v. Space
10 Systems/Loral Inc., 710 F.3d 946, 971 (9th Cir. 2013).

11 In Chubb, the plaintiff brought a subrogation claim
12 under Section 112(c) after its insured incurred environmental
13 cleanup costs and submitted an insurance claim. Id. at 957. The
14 district court held, and the Ninth Circuit agreed, that
15 plaintiff’s insured was not a “claimant” under the statute
16 because it had not submitted any claim for reimbursement to the
17 defendants, who plaintiff alleged were potentially responsible
18 parties (“PRPs”). Id. at 965-66. The Ninth Circuit reasoned
19 that requiring a plaintiff’s insured to submit a claim to other
20 PRPs for reimbursement prior to pursuing a subrogation action
21 furthered two of CERCLA’s major policy goals: preventing the

22
23 ¹ Although the term “hazardous substance” expressly
24 excludes petroleum and its derivatives, 42 U.S.C. § 9601(14)(F),
25 the petroleum exclusion does not apply to the refrigerant waste
26 oil that Smith transported. See, e.g., Cose v. Getty Oil Co., 4
27 F.3d 700, 704 (noting that “EPA does not consider materials such
28 as waste oil to which listed CERCLA substances have been added to
be within the petroleum exclusion” (citation omitted)); Mid
Valley Bank v. North Valley Bank, 764 F. Supp. 1377, 1384 (E.D.
Cal. 1991) (Karlton, J.) (noting that “the petroleum exclusion
does not apply to waste oil”).

1 insured from obtaining double recovery from the insurance company
2 and any PRPs; and identifying PRPs so that they, rather than
3 insurance companies, would shoulder the cost of environmental
4 cleanup. Id. at 968-70.

5 Unlike the plaintiff in Chubb, whose insured made no
6 claim for reimbursement from the defendants whatsoever, plaintiff
7 alleges that Smith "made demand and claim upon and against
8 Defendants . . . for payment and reimbursement" of the expenses
9 Smith incurred. (FAC ¶ 26.) Although moving defendants maintain
10 that this allegation is insufficient to show that Smith made a
11 "formal claim," neither Chubb nor the statute supports this
12 conclusion. While Chubb held that the term "claimant" refers to
13 "any person who presents a written demand for reimbursement of
14 monetary costs . . . for a CERCLA violation" to a PRP, it did not
15 specify the precise form that a written claim for reimbursement
16 must take. See 710 F.3d at 959.

17 Nor does 40 C.F.R. § 307.30(a), which governs requests
18 for payment from a PRP, require dismissal. Although that
19 regulation outlines eight specific criteria that a written claim
20 must satisfy, it is inapplicable here because it applies only to
21 written requests to PRPs for reimbursement "before filing a claim
22 against the Fund," rather than written requests for reimbursement
23 before filing a civil action for subrogation pursuant to Section
24 112(c). 40 C.F.R. § 307.30(a). Even if it were applicable to
25 Smith's demands for reimbursement, it does not follow that
26 plaintiff's complaint must specify in exact terms how Smith's
27 demand letter complied with these requirements. See Twombly, 550
28 U.S. at 555 (noting that a complaint "does not need detailed

1 factual allegations" to survive a motion to dismiss). At this
2 stage in the litigation and in the absence of controlling
3 authority showing otherwise, plaintiff's allegation that Smith
4 sent a written demand for reimbursement to defendants suffices to
5 show that Smith is a "claimant" and that plaintiff may therefore
6 seek subrogation under Section 112(c). Accordingly, the court
7 must deny moving defendants' motion to dismiss this claim.

8 B. CERCLA Section 113(f)

9 Section 113(f) of CERCLA provides that "[a]ny person
10 may seek contribution from any other person who is liable or
11 potentially liable under Section 9607(a) of this title, during or
12 following any civil action under section 9606 . . . or under
13 section 9607(a) of this title." 42 U.S.C. § 9613(f)(1). In
14 addition, the statute provides that a "person who has resolved
15 its liability to the United States or a State for some or all of
16 a response action or for some or all of the costs of such an
17 action in an administrative or judicially approved settlement may
18 seek contribution" from a person who is not a party to that
19 settlement.² 42 U.S.C. § 9613(f)(3)(B). The Supreme Court has

20 ² Although neither the Supreme Court nor the Ninth
21 Circuit has explicitly addressed the question of whether CERCLA's
22 use of the term "State" encompasses political subdivisions of a
23 state, at least one judge in this district has held that CERCLA's
24 use of the term "does not exclude municipalities." Unigard Ins.
25 Co. v. City of Lodi, Civ. No. 98-1712 FCD JFM, 1999 WL 33454809,
26 at *5 (E.D. Cal. Mar. 5, 1999). The Supreme Court has likewise
27 held in the context of the Federal Insecticide, Fungicide, &
28 Rodenticide Act that the "exclusion of political subdivisions
cannot be inferred from the express authorization to the
'State[s]' because political subdivisions are components of the
very entities the statute empowers." Wis. Pub. Intervenor v.
Mortier, 501 U.S. 597, 608 (1991). Accordingly, plaintiff's
alleged settlement with the City and/or County of Sacramento is
sufficient to demonstrate that it "resolved its liability to . .

1 held that, in the absence of such a civil action or settlement, a
2 plaintiff may not seek contribution under Section 113(f). Cooper
3 Indus., Inc. v. Aviall Servs., Inc., 543 U.S. 157, 166 (2004).

4 Here, plaintiff alleges that it paid significant sums
5 to several parties who sent letters to Smith demanding
6 reimbursement, including the City of Sacramento, the County of
7 Sacramento, and Clean Harbors Environmental Services. (FAC ¶
8 24.) Moving defendants contend that this allegation is
9 insufficient to state a claim under Section 113 because it does
10 not explicitly allege that these sums were paid in order to
11 settle a civil action under CERCLA. (See Moving Defs.' Reply at
12 6-7 (Docket No. 18).) Even if this were so, plaintiff's
13 allegation permits the reasonable inference that plaintiff paid
14 these sums in order to settle potential CERCLA claims against
15 Smith.³ This inference is particularly justified in light of the
16 Ninth Circuit's observation that that "the receipt of a PRP
17 notice is the effective commencement of a 'suit' necessitating a
18 legal defense." Aetna Cas. & Sur. Co. v. Pintlar Corp., 948 F.2d
19 1507, 1517 (9th Cir. 1991). Because plaintiff has sufficiently
20 . a state" pursuant to Section 113(f).

21 ³ Relying on a PACER search of all federal actions in the
22 Ninth Circuit to which Clean Harbors has been a party, moving
23 defendants also contend that there is no record of any CERCLA-
24 based action between plaintiff and Clean Harbors and that, as a
25 result, plaintiff's allegation that it settled such a claim is
26 implausible. (See Moving Defs.' Reply at 6; Moving Defs.' Req.
27 for Judicial Notice Exs. A-E (Docket No. 18-1).) Even if the
28 court took judicial notice of this search and concluded that
moving defendants were correct, this evidence does not foreclose
the possibility that Smith settled its liability to either the
City or County of Sacramento in a CERCLA action, or that Smith
settled its liability to these parties after the receipt of a PRP
notice but before the commencement of a civil action.

1 alleged that it paid to settle the claims against Smith, it has
2 stated a claim for contribution from other PRPs under Section
3 113(f).⁴

4 Although Oahu concedes that it is a PRP, Pacific
5 contends that it is not a PRP because it is not a "transporter"
6 of hazardous waste as that term is defined by 42 U.S.C. §
7 9607(a)(4). (Moving Defs.' Mem. 14-15.) The court need not
8 resolve this argument because plaintiff has sufficiently alleged
9 that Pacific "arranged for disposal or treatment, or arranged
10 with a transporter for transport for disposal or treatment" of
11 the refrigerator waste oil. 42 U.S.C. § 9607(a)(3). The Supreme
12 Court has clarified that "an entity may qualify as an arranger
13 under § 9607(a)(3) when it takes intentional steps to dispose of
14 a hazardous substance." Burlington N. & Santa Fe Ry. Co. v.
15 United States, 556 U.S. 599, 611 (2009) (citation omitted).

16 Plaintiff relies on the manifest of the waste oil to
17 allege that Pacific "pack[ed] the hazardous refrigerant oil for
18 transport" and directed its transport from Hawaii to California
19 for disposal. (FAC ¶ 18.) Even if Pacific is correct that it is
20 not a "transporter" of the waste oil because it did not select
21 the site for disposal, plaintiff's allegation is sufficient to

22 ⁴ Moving defendants also rely on the Supreme Court's
23 holding in United States v. Atlantic Research Corporation that an
24 insurer cannot seek contribution under Section 107 of CERCLA
25 because "a party [that] pays to satisfy a settlement agreement or
26 a court judgment . . . does not incur its own costs of response"
27 but instead "reimburses other parties for costs that those
28 parties incurred." 551 U.S. 128, 139 (2007). Their reliance is
misplaced because plaintiff does not sue under Section 107, which
"permits recovery of cleanup costs but does not create a right to
contribution," but rather under Section 113(f), which "explicitly
grants PRPs a right to contribution." Id. at 138-39.

1 show that Pacific took steps to "arrange" for the disposal of the
2 waste oil under all but the narrowest readings of Section
3 107(a)(3). Cf. Cadillac Fairview/California, Inc. v. United
4 States, 41 F.3d 562, 565 n.4 (9th Cir. 1994) ("Section 107(a)(3)
5 must be given a 'liberal judicial interpretation . . . consistent
6 with CERCLA's overwhelmingly remedial statutory scheme.'" (citations omitted)). Accordingly, plaintiff has sufficiently
7 alleged that both moving defendants are PRPs, and the court must
8 deny their motion to dismiss plaintiff's Section 113(f) claim.

10 C. The HSAA

11 The HSAA provides that "[a]ny person who has incurred
12 removal or remedial action costs in accordance with this chapter
13 or [CERCLA] may seek contribution or indemnity from any person
14 who is liable pursuant to this chapter" Cal. Health &
15 Safety Code § 25363(e). "Although the HSAA is not identical to
16 CERCLA, the HSAA expressly incorporates the same liability
17 standards, defenses, and classes of responsible persons as those
18 set forth in CERCLA. As such, the HSAA is generally interpreted
19 consistent with CERCLA." Coppola v. Smith, 935 F. Supp. 2d 993,
20 1011 (E.D. Cal. 2013) (Ishii, J.) (citations omitted); accord
21 Castaic Lake Water Agency v. Whittaker Corp., 272 F. Supp. 2d
22 1053, 1084 n.40 (C.D. Cal. 2003) ("HSAA creates a scheme that is
23 identical to CERCLA with respect to who is liable." (citations
24 and internal quotation marks omitted)).

25 Moving defendants contend that because they are not
26 liable under CERCLA, they cannot be liable under the HSAA.
27 (Moving Defs.' Mem. at 15-16.) In fact, the inverse is true:
28 because plaintiffs have stated a claim under CERCLA, they have

1 also stated a claim under the HSAA. See Coppola, 935 F. Supp. 2d
2 at 1011. Accordingly, the court must deny moving defendants'
3 motion to dismiss this claim.⁵

4 D. Preemption of Common-Law Claims

5 "CERCLA does not completely occupy the field of
6 environmental regulation . . . At best, CERCLA may provide a
7 conflict preemption defense to . . . state law claims." ARCO
8 Envtl. Remediation, L.L.C. v. Dep't of Health and Env'tl. Quality
9 of Mont., 213 F.3d 1108, 1114 (9th Cir. 2000). Conflict
10 preemption bars a state-law claim only "where compliance with
11 both the state and federal regulations is a physical
12 impossibility, or when the state law stands as an obstacle to the
13 accomplishment and execution of the full purposes and objectives
14 of Congress." Fireman's Fund Ins. Co. v. City of Lodi, 302 F.3d
15 928, 943 (9th Cir. 2002) (quoting Cal. Fed. Sav. & Loan Ass'n v.
16 Guerra, 479 U.S. 272, 281 (1987)) (internal quotation marks

17 ⁵ Although the court determines that plaintiff has stated
18 a claim under the HSAA, it recognizes that CERCLA's prohibition
19 on double recovery precludes plaintiff from recovering the same
20 costs under its HSAA claim or any of its common-law claims as it
21 may recover under its CERCLA claims. 42 U.S.C. 9614(b); Coppola,
22 935 F. Supp. 2d at 1012 ("CERCLA prohibits a person from
recovering compensation for the same removal costs or damages or
claims pursuant to other state or federal law." (citation
omitted.))

23 Because the court cannot determine at this stage in the
24 litigation whether plaintiff will ultimately prevail on its
25 CERCLA claims, or whether it seeks to recover the same costs
26 under its state-law claims as its CERCLA claims, the court will
27 permit plaintiff to plead both its CERCLA and state-law claims.
28 See Fed. R. Civ. P. 8(d)(3) ("A party may state as many separate
claims . . . as it has, regardless of consistency."); cf. Santa
Clara Valley Water Dist. v. Olin Corp., 655 F. Supp. 2d 1066,
1079-80 (N.D. Cal. 2009) (recognizing authority stating that a
plaintiff in a CERCLA action "is allowed to plead alternative
theories, even if it cannot ultimately seek duplicate recovery.")

1 omitted). Because courts "presume[] that Congress does not
2 cavalierly pre-empt state-law causes of action," preemption
3 analysis "start[s] with the assumption that the historic police
4 powers of the States were not to be superseded . . . unless that
5 was the clear and manifest purpose of Congress." Medtronic, Inc.
6 v. Lohr, 518 U.S. 470, 485 (1996) (citation and internal
7 quotation marks omitted).

8 Moving defendants contend that plaintiff's "state
9 common law remedies . . . are preempted, because they conflict
10 with the remedial and settlement scheme approved by Congress."
11 (Moving Defs.' Mem. at 16:15-17.) On the contrary, Congress has
12 repeatedly clarified that CERCLA does not preempt state-law
13 contribution, indemnity, or subrogation claims. 42 U.S.C. §
14 9614(a) ("Nothing in this chapter shall be construed or
15 interpreted as preempting any State from imposing any additional
16 liability or requirements with respect to the release of
17 hazardous substances within such state."); 42 U.S.C. § 9613(f) (1)
18 ("Nothing in this subsection shall diminish the right of any
19 person to bring an action for contribution in the absence of a
20 civil action under section 9606 . . . or 9607 of this title.");
21 42 U.S.C. § 9612(c) (2) ("Any person . . . who pays compensation
22 pursuant to this chapter to any claimant . . . shall be
23 subrogated to all rights, claims, and causes of action . . . that
24 the claimant has under this chapter or any other law.") (emphasis
25 added). The Ninth Circuit has similarly emphasized that the
26 "plain language" of CERCLA "precludes any finding of preemption
27 as to state law claims for contribution." City of Emeryville v.
28

1 Robinson, 621 F.3d 1251, 1262 (9th Cir. 2010).⁶

2 Fireman's Fund, the only authority from the Ninth
3 Circuit that moving defendants cite, is entirely consistent with
4 this result. There, the court considered whether MERLO, a
5 municipal ordinance passed by the City of Lodi to complement
6 CERCLA and the HSAA, was preempted. 302 F.3d at 147. In so
7 doing, the court invalidated a provision of MERLO "protect[ing]
8 Lodi from contribution claims by other PRPs" because it
9 determined that this provision conflicted with those provisions
10 of CERCLA specifically authorizing contribution claims against
11 other PRPs. Id. But it does not follow from that decision,
12 which invalidated a municipal ordinance limiting contribution
13 claims against the City of Lodi, that CERCLA categorically

14 _____
15 ⁶ Moving defendants also cite several cases from courts
16 within the Ninth Circuit holding that a plaintiff must incur
17 response costs consistent with the National Contingency Plan
18 ("NCP") in order to bring an action under Section 107 of CERCLA.
19 (See Moving Defs.' Reply at 2-4 (citations omitted).) None of
20 those cases hold that failure to comply with the NCP preempts a
21 plaintiff from bringing a state-law claim for contribution,
22 indemnity, or subrogation. Nor do they hold that dismissal on
23 the basis of preemption is appropriate when a plaintiff fails to
24 allege compliance with the NCP in the complaint.

25 Despite plaintiff's insistence to the contrary,
26 Fireman's Fund did not adopt the Seventh Circuit's holding in PMC
27 Inc. v. Sherwin Williams Company, 151 F.3d 610, 618 (7th Cir.
28 1998) that failure to comply with the NCP bars a plaintiff from
bringing a state-law action for contribution. Rather, the Ninth
Circuit noted only that its holding that MERLO's restrictions on
contribution claims were preempted "is not inconsistent with the
reasoning of other circuits that . . . litigants may not invoke
state statutes in order to escape the application of CERCLA[] . .
. ." 302 F.3d at 947 n.15. To the extent that moving defendants
rely on PMC or on Niagara Mohawk Power Corporation v. Chevron
U.S.A., Inc., 596 F.3d 112, 138 (2d Cir. 2010), in support of the
proposition that CERCLA does preempt plaintiff's state-law
claims, City of Emeryville makes clear that those holdings do not
reflect the law of the Ninth Circuit.

1 preempts state-law contribution claims. This conclusion would
2 flout not only the plain language of CERCLA, but the court's
3 holding that MERLO was invalid in part because it "legislatively
4 insulates Lodi from contribution liability under state and
5 federal law." Id. (emphasis added).

6 Moving defendants' contention that plaintiff's common-
7 law claims are preempted is inconsistent both with the
8 presumption against preemption, see Medtronic, 518 U.S. at 485,
9 and, more importantly, with binding Ninth Circuit authority and
10 the text of CERCLA itself. Accordingly, the court must deny
11 moving defendants' motion to dismiss plaintiff's common-law
12 claims for apportionment of fault, contribution, indemnity, and
13 subrogation.

14 III. Motion to Strike

15 Rule 12(f) authorizes the court to strike from the
16 pleadings "any redundant, immaterial, impertinent, or scandalous
17 matter." Fed. R. Civ. P. 12(f). "Motions to strike are
18 generally viewed with disfavor, and will usually be denied unless
19 the allegations in the pleading have no possible relation to the
20 controversy, and may cause prejudice to one of the parties."
21 Champlaie v. BAC Home Loans Servicing, LP, 706 F. Supp. 2d 1029,
22 1039 (E.D. Cal. 2009) (Karlton, J.) (citations omitted). "If the
23 court is in doubt as to whether the challenged matter may raise
24 an issue of fact or law, the motion to strike should be denied,
25 leaving an assessment of the sufficiency of the allegations for
26 adjudication on the merits." Id.

27 Here, moving defendants do not argue that they will be
28 prejudiced by plaintiff's references to the "tort of another"

1 doctrine or to potential liability for personal injury and/or
2 toxic exposure claims. The absence of prejudice is a sufficient
3 reason to deny moving defendants' motion to strike. See, e.g.,
4 N.Y.C. Emps.' Ret. Sys. v. Berry, 667 F. Supp. 2d 1121, 1128
5 (N.D. Cal. 2009) ("Where the moving party cannot adequately
6 demonstrate . . . prejudice, courts frequently deny motions to
7 strike even though the offending matter was literally within one
8 or more of the categories set forth in Rule 12(f)." (citation and
9 internal quotation marks omitted)). The court is also unable to
10 determine at this stage in the litigation that these references
11 "have no logical connection to the controversy at issue." In re
12 UTStarcom, Inc. Sec. Litig., 617 F. Supp. 2d 964, 969 (N.D. Cal.
13 2009); see also Champlaie, 706 F. Supp. 2d at 1039. Accordingly,
14 the court will deny moving defendants' motion to strike.

15 IT IS THEREFORE ORDERED that:

16 (1) moving defendants' motion to dismiss the Complaint
17 be, and the same hereby is, DENIED;

18 (2) moving defendants' motion to strike be, and the
19 same hereby is, DENIED.

20 Dated: January 28, 2014

21 
22 WILLIAM B. SHUBB
23 UNITED STATES DISTRICT JUDGE
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