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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANNA LANCE & DON LANCE,  
Plaintiffs,  
v.  
COMMERCE TRUST COMPANY, et al.,  
Defendants.

No. 2:15-cv-0341-GEB-KJN PS

ORDER

INTRODUCTION

Plaintiffs Anna Lance and Don Lance, who proceed without counsel, initially commenced this action against defendants The Commerce Trust Company and Christopher Blair in the El Dorado County Superior Court.<sup>1</sup> On February 10, 2015, defendants removed the action to this court, invoking the court’s diversity of citizenship jurisdiction.<sup>2</sup> (ECF No. 2.)

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<sup>1</sup> This case proceeds before the undersigned pursuant to E.D. Cal. L.R. 302(c)(21) and 28 U.S.C. § 636(b)(1).

<sup>2</sup> Plaintiffs appear to be residents of South Lake Tahoe, California. Defendant The Commerce Trust Company is a division of Commerce Bank, which is incorporated under the laws of Missouri with its principal place of business in Missouri. Defendant Christopher Blair is a citizen of Kansas. Furthermore, plaintiffs’ complaint seeks compensatory and punitive damages in the amount of \$373,286.00. No motion to remand was filed. As such, based on the present record before the court, it appears that the requirements of diversity of citizenship jurisdiction are satisfied. See 28 U.S.C. § 1332(a).

1 Subsequently, on February 17, 2015, defendants filed the instant motion to dismiss. (ECF  
2 No. 5.) On March 6, 2015, plaintiffs filed an opposition to the motion, and on March 19, 2015,  
3 defendants filed a reply brief. (ECF Nos. 11, 12.) The motion was then submitted without oral  
4 argument on the record and written briefing pursuant to Local Rule 230(g). (ECF No. 13.)

5 After carefully considering the parties' written briefing, the court's record, and the  
6 applicable law, the court grants defendants' motion to dismiss, but with leave to amend.

### 7 BACKGROUND

8 Plaintiffs' original complaint consists of multiple California Judicial Council forms along  
9 with various attachments, including letters, reports, maps, graphs, and charts. (See ECF No. 2 at  
10 7-93.) Although vague and somewhat confusing, plaintiffs' complaint, when liberally construed  
11 by reference to the various attachments, appears to allege that plaintiffs first received notice of  
12 problems with the well water on their property located at 2111 Dunlap Drive in South Lake  
13 Tahoe, California, from plaintiffs' tenants in 1999. The California Regional Water Quality  
14 Control Board ("CRWQCB") for the Lahontan Region then determined that plaintiffs' well was  
15 contaminated with the chemical tetrachloroethylene ("PCE") and was required to be capped off.  
16 Consequently, plaintiffs were forced to obtain an alternative source of water for the property,  
17 perform re-vegetation on the property, and hire an environmental company to make sure that the  
18 ground was not contaminated, all at plaintiffs' own expense. Plaintiffs assert that they lost their  
19 rental income and were not able to use the property until all environmental issues were resolved.

20 The complaint asserts five "general negligence" tort causes of action against defendants:  
21 (1) "environmental law"; (2) "common law" or "nuisance"; (3) "trespass law"; (4) "strict liability  
22 law"; and (5) "water pollution law." Plaintiffs seek, *inter alia*, compensatory and punitive  
23 damages in the amount of \$373,286.00 from defendants.

24 The causes of action themselves contain little in the form of factual allegations, and do not  
25 plead any alleged facts regarding defendants' involvement with the PCE contamination of  
26 plaintiffs' well. However, attached to the complaint is a September 16, 2014 handwritten letter to  
27 plaintiffs from Lisa Dernbach, a geologist with the CRWQCB for the Lahontan Region, which  
28 indicates that a dry cleaning machine from a now-closed dry cleaning business, Lake Tahoe

1 Laundry Works (previously located at 1024 Lake Tahoe Boulevard in the South Y Shopping  
2 Center) had purportedly released PCE into the groundwater in the late 1970s. (See ECF No. 2 at  
3 21-22.) In that letter, Ms. Dernbach states that she believes that it is that same PCE that was  
4 detected in plaintiffs’ domestic well. (Id.) She also purports to name the current and former  
5 owners of the shopping center, indicating that the current owner is “The Commerce Trust  
6 Company, Attn: Christopher Blair, 118 West 47th St., Kansas City, MO 64112.” (Id.)

7 DISCUSSION

8 Defendants move to dismiss plaintiffs’ complaint pursuant to Federal Rule of Civil  
9 Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. Defendants also  
10 move to dismiss defendant Blair from the action pursuant to Federal Rule of Civil Procedure  
11 12(b)(2) for lack of personal jurisdiction.

12 Motion to Dismiss Complaint Pursuant to Rule 12(b)(6)

13 Legal Standard

14 A motion to dismiss brought pursuant to Federal Rule of Civil Procedure 12(b)(6)  
15 challenges the sufficiency of the pleadings set forth in the complaint. Vega v. JPMorgan Chase  
16 Bank, N.A., 654 F. Supp. 2d 1104, 1109 (E.D. Cal. 2009). “To survive a motion to dismiss, a  
17 complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is  
18 plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atl. Corp. v.  
19 Twombly, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads  
20 factual content that allows the court to draw the reasonable inference that the defendant is liable  
21 for the misconduct alleged.” Id.

22 In considering a motion to dismiss for failure to state a claim, the court accepts all of the  
23 facts alleged in the complaint as true and construes them in the light most favorable to the  
24 plaintiff. Corrie v. Caterpillar, Inc., 503 F.3d 974, 977 (9th Cir. 2007). The court is “not,  
25 however, required to accept as true conclusory allegations that are contradicted by documents  
26 referred to in the complaint, and [the court does] not necessarily assume the truth of legal  
27 conclusions merely because they are cast in the form of factual allegations.” Paulsen v. CNF,  
28 Inc., 559 F.3d 1061, 1071 (9th Cir. 2009). The court must construe a *pro se* pleading liberally to

1 determine if it states a claim and, prior to dismissal, tell a plaintiff of deficiencies in her complaint  
2 and give plaintiff an opportunity to cure them if it appears at all possible that the plaintiff can  
3 correct the defect. See Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir. 2000) (en banc).

4 In ruling on a motion to dismiss filed pursuant to Rule 12(b)(6), the court “may generally  
5 consider only allegations contained in the pleadings, exhibits attached to the complaint, and  
6 matters properly subject to judicial notice.” Outdoor Media Group, Inc. v. City of Beaumont, 506  
7 F.3d 895, 899 (9th Cir. 2007). Although the court may not consider a memorandum in opposition  
8 to a defendant’s motion to dismiss to determine the propriety of a Rule 12(b)(6) motion, see  
9 Schneider v. Cal. Dep’t of Corrections, 151 F.3d 1194, 1197 n.1 (9th Cir. 1998), it may consider  
10 allegations raised in opposition papers in deciding whether to grant leave to amend, see, e.g.,  
11 Broam v. Bogan, 320 F.3d 1023, 1026 n.2 (9th Cir. 2003).

#### 12 Analysis

13 As an initial matter, several of the causes of action pled by plaintiffs are not cognizable  
14 claims, but actually represent large, amorphous bodies of law. For example, there is no  
15 cognizable claim for “environmental law”; “common law”; or “water pollution law.” These  
16 general terms do not provide defendants or the court with adequate notice of the legal theories  
17 under which plaintiffs are purportedly proceeding.

18 By contrast, claims for negligence, trespass, nuisance, and strict liability based on an  
19 ultrahazardous activity are at least potentially cognizable claims. However, the primary problem  
20 with plaintiffs’ complaint, even with respect to such potentially cognizable claims, is that  
21 plaintiffs fail to provide sufficient factual allegations from which the court can draw a reasonable  
22 inference that defendants are liable for the misconduct alleged. Plaintiffs allege that their well  
23 was contaminated with PCE, resulting in various forms of damages, but do not provide any  
24 factual allegations reasonably suggesting that *defendants* caused such contamination.

25 To be sure, the documents attached to plaintiffs’ complaint, including the letter by Ms.  
26 Dernbach, indicate that the PCE found in plaintiffs’ well may be traceable to the site of the  
27 former Lake Tahoe Laundry Works in the South Y Shopping Center, and that defendant The

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1 Commerce Trust Company is the present owner of that shopping center.<sup>3</sup> Nevertheless, even  
2 assuming that Ms. Dernbach’s stated belief regarding the origins of the PCE contamination is  
3 sufficiently non-speculative, one of the reports attached to plaintiffs’ complaint also states that  
4 “[t]he discharge history is believed to be from use of a former self-service, dry cleaning machine,  
5 located on the property between approximately 1971 and 1979. Machine was removed from site  
6 many years ago.” (ECF No. 2 at 17.) That report is generally consistent with Ms. Dernbach’s  
7 letter, which indicates that PCE was discharged from the Lake Tahoe Laundry Works dry  
8 cleaning machine in the late 1970s. (*Id.* at 21.) Despite the foregoing, plaintiffs provide no non-  
9 conclusory, factual allegations suggesting that defendants, as the alleged present owners of the  
10 shopping center, owned the shopping center or Lake Tahoe Laundry Works in the 1970s prior to  
11 the offending machine’s removal, or that defendants somehow otherwise caused the PCE  
12 discharge, or that as the alleged current owners they are somehow legally responsible for past  
13 alleged acts. As such, plaintiffs fail to offer any factual allegations showing that defendants  
14 themselves were negligent, caused a trespass onto plaintiffs’ property, caused a form of nuisance,  
15 or engaged in some ultrahazardous activity on which potential strict liability could be premised.

16 In addition to the above-mentioned substantive defects, plaintiffs’ complaint also does not  
17 provide a short and plain statement of plaintiffs’ claims in accordance with Federal Rule of Civil  
18 Procedure 8(a)(2).<sup>4</sup> Plaintiffs’ complaint is approximately 86 pages long, and consists of multiple  
19 California Judicial Council forms<sup>5</sup> along with various attachments, including letters, reports,  
20 maps, graphs, and charts.

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21  
22 <sup>3</sup> Defendant The Commerce Trust Company disputes that it is actually the current owner of that  
23 property. However, the court cannot resolve such a factual dispute on a motion to dismiss, and  
24 must accept the plaintiffs’ allegation in that regard as true for purposes of resolving the motion to  
25 dismiss.

26 <sup>4</sup> Because plaintiffs’ original complaint was filed in state court, the court does not fault plaintiffs  
27 for its failure to comply with federal procedural rules. However, going forward, all of plaintiffs’  
28 pleadings and motions must comply with the Federal Rules of Civil Procedure and this court’s  
Local Rules.

<sup>5</sup> California Judicial Council forms are for use in state court, and should not be used in plaintiffs’  
future pleadings and other filings in federal court.

1 Federal Rule of Civil Procedure 8 requires, in part, that a pleading contain “a short and  
2 plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a).  
3 Thus, the federal rules contemplate brevity. See Fed. R. Civ. P. 84. Claims must be set forth in  
4 short and plain terms, simply, concisely, and directly. See Swierkiewicz v. Sorema N.A., 534  
5 U.S. 506, 514 (2002) (“Rule 8(a) is the starting point of a simplified pleading system, which was  
6 adopted to focus litigation on the merits of a claim.”); Fed. R. Civ. P. 8(d)(1) (“Each allegation  
7 must be simple, concise, and direct.”) In turn, Federal Rule of Civil Procedure 10(b) requires the  
8 use of numbered paragraphs in a complaint. Pursuant to Rule 10(b), each claim should also be set  
9 forth in a separate count (i.e., a different section) of the complaint, with factual allegations  
10 pertaining to each particular claim set forth in the section of the complaint dealing with the  
11 particular claim. In that regard, the use of subheadings for each claim can be helpful in  
12 organizing the complaint.

13 A complaint must not contain lengthy introductions, argument, speeches, explanations,  
14 stories, griping, evidence, summaries, letters, charts, notes, e-mails, and the like. McHenry v.  
15 Renne, 84 F.3d 1172, 1176-78 (9th Cir. 1996) (affirming dismissal of complaint for violation of  
16 Rule 8 after warning). This requirement is because a complaint must only set forth the *alleged*  
17 *facts* in support of a plaintiff’s claims and need not include any documentary evidence, which  
18 may be presented at a later point in the case.<sup>6</sup> Importantly, defendants and the court should be  
19 able to understand plaintiffs’ claims and the facts in support of those claims from reading the  
20 main body of the complaint, and without having to review numerous exhibits to the complaint.

21 In light of the substantive and procedural deficiencies identified above, the court dismisses  
22 plaintiffs’ original complaint, but with leave to amend. Plaintiffs, especially as pro se litigants,  
23 are entitled to notice of such deficiencies and an opportunity to cure them prior to dismissal. If  
24 plaintiffs elect to file an amended complaint, it shall address the deficiencies outlined above, as  
25 well as comply with the following specific requirements:

26 \_\_\_\_\_  
27 <sup>6</sup> For example, if an evidentiary document (such as a letter) contains an important fact, plaintiffs  
28 should attempt to include that fact in the allegations as part of the main body of the complaint,  
instead of attaching the document to the complaint as an exhibit.

- 1 (a) The amended complaint shall be captioned “First Amended Complaint”  
2 (b) The first amended complaint shall use numbered paragraphs  
3 (c) If the first amended complaint asserts more than one claim, it shall set forth the various  
4 claims in separate counts of the complaint (e.g., Count I, Count II, etc.). Although the  
5 first amended complaint may include a general background facts section to orient the  
6 reader, plaintiffs shall also set forth the pertinent factual allegations regarding each  
7 particular claim in the count dealing with that particular claim.  
8 (d) The first amended complaint shall be limited to 25 pages, including any exhibits, with text  
9 utilizing a font size of 12 Times New Roman (or equivalent) and double spacing. Pages  
10 exceeding the 25-page limit will be summarily stricken and will not be considered part of  
11 the first amended complaint. California Judicial Council forms shall not be used.

12 Plaintiffs are informed that the court cannot refer to a prior complaint or filing in order to  
13 make plaintiffs’ first amended complaint complete. Local Rule 220 requires that an amended  
14 complaint be complete in itself without reference to any prior pleading or filing. As a general  
15 rule, an amended complaint supersedes the original complaint, and once the amended complaint  
16 is filed, the original complaint no longer serves any function in the case.

17 Importantly, nothing in this order requires plaintiffs to file an amended complaint. If  
18 plaintiffs determine that they are unable to amend their complaint in compliance with the court’s  
19 order or no longer wish to pursue the action at this time, plaintiffs may alternatively file a notice  
20 of voluntary dismissal of the action without prejudice pursuant to Federal Rule of Civil Procedure  
21 41(a)(1)(A)(i).

22 If plaintiffs elect to proceed with this action in federal court, they are encouraged to  
23 familiarize themselves with the Federal Rules of Civil Procedure and this court’s Local Rules.<sup>7</sup>  
24 Although the court is sympathetic to the difficulties faced by pro se litigants in litigating their  
25 cases in federal court, and liberally construes their pleadings, pro se litigants are expected to  
26 comply with all procedural rules and court orders.

27 \_\_\_\_\_  
28 <sup>7</sup> A copy of the court’s Local Rules can be obtained from the Clerk of Court or on the court’s  
website at <http://www.caed.uscourts.gov/caednew/index.cfm/rules/local-rules/>.

1 Finally, although by no means required to do so, plaintiffs are strongly encouraged to find  
2 an attorney to represent them, particularly given the typical complexity of environmental  
3 contamination cases. Even though the court grants plaintiffs 28 days to file any first amended  
4 complaint, the court will be willing to consider a further, reasonable extension of time if plaintiffs  
5 obtain counsel and counsel needs time to file a first amended complaint. However, any such  
6 extension should be requested prior to the expiration of the 28-day deadline to file a first amended  
7 complaint.

8 Motion to Dismiss Defendant Blair Pursuant to Rule 12(b)(2)

9 In light of the court's dismissal of the entire complaint pursuant to Rule 12(b)(6) with  
10 leave to amend, it is not necessary to consider at this juncture defendants' request to dismiss  
11 defendant Blair for lack of personal jurisdiction pursuant to Rule 12(b)(2). That request is denied  
12 without prejudice as moot.

13 Nevertheless, if plaintiffs elect to name Mr. Blair as a defendant in any first amended  
14 complaint, plaintiffs shall set forth factual allegations clarifying Mr. Blair's individual role in the  
15 alleged PCE contamination, as well as the extent of his activities in California, so as to allow the  
16 court to evaluate whether it may properly exercise personal jurisdiction over Mr. Blair. See  
17 Martinez v. Manheim Central California, 2011 WL 1466684, at \*1 (E.D. Cal. Apr. 18, 2011)  
18 (citing Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)) ("A non-resident defendant may  
19 be subject to the personal jurisdiction of the court where the defendant has either a continuous  
20 and systematic presence in the state (general jurisdiction), or minimum contacts with the forum  
21 state such that the exercise of jurisdiction does not offend traditional notions of fair play and  
22 substantial justice (specific jurisdiction)."); Harris Rutsky & Co. Ins. Servs., Inc. v. Bell &  
23 Clements Ltd., 328 F.3d 1122, 1128-29 (9th Cir. 2003) (noting that a plaintiff generally bears the  
24 burden of establishing the district court's personal jurisdiction over the defendant).

25 CONCLUSION

26 Accordingly, for the reasons outlined above, IT IS HEREBY ORDERED that:

- 27 1. Defendants' motion to dismiss pursuant to Federal Rule of Civil Procedure  
28 12(b)(6) (ECF No. 5) is granted.




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- 2. Plaintiffs' complaint is dismissed, but with leave to amend.
- 3. Within 28 days of this order, plaintiffs shall file either (i) a first amended complaint in compliance with this order or (ii) a notice of voluntary dismissal of the action without prejudice.
- 4. Failure to file either a first amended complaint or a notice of voluntary dismissal by the required deadline may result in dismissal of the action with prejudice pursuant to Federal Rule of Civil Procedure 41(b).
- 5. Defendants shall file a response to any first amended complaint within 28 days of its filing.
- 6. The request to dismiss defendant Blair pursuant to Federal Rule of Civil Procedure 12(b)(2) is denied without prejudice as moot.

IT IS SO ORDERED.

Dated: April 3, 2015

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE