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6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF CALIFORNIA  
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9 MILLER MARITAL DEDUCTION  
10 TRUST, by and through its trustees, Helen  
11 Miller and James Morris; and HELEN  
12 MILLER, an individual,  
13 Plaintiffs,  
14 v.  
15 ESTATE OF MARK B. DUBOIS,  
16 DECEASED, an individual and dba Glo  
17 Dry Cleaning System, et al.,  
18 Defendants.  
19

No. 2:16-cv-01883-SB

**ORDER DENYING  
DEFENDANT'S MOTION TO  
DISMISS**

20 On November 2, 2017, the Court held a telephonic motion hearing on  
21 Defendant Estate of Jack Miller's Motion to Dismiss, ECF No. 39. Bret Stone and  
22 Barry Bryan appeared on behalf of Plaintiffs, and Jon-Erik Magnus and Jodi  
23 Lambert appeared on behalf of Defendant. The Court took the motion under  
24 advisement.

25 Defendant Estate of Jack Miller ("Defendant") requests the Court dismiss  
26 Plaintiffs' Third, Fourth, Fifth, Sixth, Tenth, and Thirteenth Causes of Action; as  
27 well as Plaintiffs' First and Sixth Prayer for Relief alleged in Plaintiffs' First  
28 Amended Complaint for failure to state a claim upon which relief may be granted.

**ORDER DENYING DEFENDANT'S MOTION TO DISMISS ^ 1**

1 After careful consideration of the parties’ briefings and presentation to the Court,  
2 Defendant’s motion is **denied**.

3 **FACTS**

4 From approximately 1970 to 1985, Jack Miller owned the property located  
5 at 6054 Pacific Avenue, Stockton, California (the “Property”). During those years  
6 Mr. Miller leased the Property to Glo Dry Cleaning System; a dry cleaning  
7 business that had been operating on the Property since approximately 1956.<sup>1</sup> This  
8 action stems from the environmental contamination to the Property and the areas  
9 to which the contamination has migrated outside the boundaries of the Property  
10 (collectively, the “Site”), as a result of hazardous chemicals used in the operation  
11 of the dry cleaning business.

12 Upon Mr. Miller’s death, the Miller Marital Deduction Trust (“Miller  
13 Trust”) obtained—and currently holds—ownership of the Property. On August 10,  
14 2016, the Miller Trust, by and through its trustees, Helen Miller and James Morris;  
15 and Helen Miller, as an individual, (“Plaintiffs”) filed this action in defense of  
16 claims made against them by the California Regional Water Quality Control  
17 Board, Central Valley Region, related to the environmental contamination.

18 Of the numerous Defendants named in the Complaint, Plaintiffs included  
19 Defendant to the extent of his estate’s liability insurance assets pursuant to Cal.  
20 Prob. Code §§ 550, et seq. On September 12, 2017 Plaintiffs filed a First Amended  
21 Complaint (“FAC”). ECF No. 34.

22 On October 3, 2017 Defendant filed a motion to dismiss pursuant to Rule  
23 12(b)(6). ECF No. 39. Defendant seeks dismissal of Plaintiffs’ Third, Fourth,  
24 Fifth, Sixth, Tenth, and Thirteenth Causes of Action; as well as Plaintiffs’ First  
25 and Sixth Prayer for Relief.

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28 <sup>1</sup> The estates of those individuals who owned and leased the property to Glo Dry Cleaning System prior to Mr. Miller  
are also named Defendants in this action.

1 In support of its motion, Defendant attached declarations for the following:  
2 (1) Darrell McCarley, a claims adjuster for Allianz Insurance Company; and (2)  
3 Arlene Church, a records management specialist for Zurich American Insurance  
4 Company. Defendant holds insurance policies with both companies. Defendant  
5 also seeks judicial notice of the following documents: (1) Jack Miller's death  
6 certificate; and (2) proof of service of summons of Zurich American Insurance  
7 Company.

### 8 STANDARD

9 On a motion to dismiss, all well-pleaded allegations of material fact are  
10 taken as true and construed in a light most favorable to the non-moving party.  
11 *Wylter Summit P 'ship v. Turner Broadcasting Sys., Inc.*, 135 F.3d 658, 661 (9th  
12 Cir. 1998). Under Rule 12(b)(6), a complaint "should not be dismissed unless it  
13 appears beyond doubt that [the] plaintiff can prove no set of facts in support of his  
14 claim which would entitle him to relief." *Hydranautics v. FilmTec Corp.*, 70 F.3d  
15 533, 535-36 (9th Cir. 1995).

16 Federal Rule of Civil Procedure 8(a)(2) requires that each claim in a  
17 pleading be supported by "a short and plain statement of the claim showing that  
18 the pleader is entitled to relief." To satisfy this requirement, a complaint must  
19 contain sufficient factual content "to state a claim to relief that is plausible on its  
20 face." *Landers v. Quality Commc 'ns, Inc.*, 771 F.3d 638, 641 (9th Cir. 2014)  
21 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim for  
22 relief is plausible on its face "when the plaintiff pleads factual content that allows  
23 the court to draw the reasonable inference that the defendant is liable for the  
24 misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In evaluating  
25 whether a complaint states a plausible claim for relief, courts rely on "judicial  
26 experience and common sense" to determine whether the factual allegations,  
27 which are assumed to be true, "plausibly give rise to an entitlement to relief." *Id.*  
28 at 679.

## DISCUSSION

### Extrinsic Evidence

As a threshold matter, the Court declines to consider Defendant’s extrinsic evidence in ruling on this motion. Generally, a court may not consider material beyond the complaint in ruling on a Rule 12(b)(6) motion. *Intri-Plex Tech., Inc. v. Crest Grp., Inc.*, 499 F.3d 1048, 1052 (9th Cir. 2007). “A court may, however, consider certain materials—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice—without converting the motion to dismiss into a motion for summary judgment.” *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). A court may also consider a document the authenticity of which is not contested, and upon which the plaintiff’s complaint necessarily relies. *Parrino v. FHP, Inc.*, 146 F.3d 699, 706 (9th Cir. 1998), superseded by statute on other grounds.

Defendant requests the Court consider the depositions of Darrell McCarley and Arlene Church. Attached to these declarations are insurance policies issued to Jack Miller. By considering the insurance policies, Defendant argues, Plaintiffs’ Third, Fourth, and Fifth Causes of Action, and First Prayer for Relief fail to state a claim because the insurance policies issued to Jack Miller do not cover injunctive relief.

The Court declines to consider this extrinsic evidence because the extent of Defendant’s liability is not material to the present motion. It is true, Plaintiffs’ claims against Defendant are made pursuant to Cal. Prob. Code §§ 550, et seq. As such, Plaintiffs will bear the burden of proving liability and insurance coverage. *Pelayo v. City of Downey*, 570 F. Supp. 2d 1183, 1197 (C.D. Cal. 2008) (“The California Supreme Court has held that establishing proof of insurance coverage is essential to recovery under [Section 550]”); see also Cal. Prob. Code § 554(a) (“damages sought in an action under this chapter shall be within the limits and coverage of the insurance”). However, the extent of that coverage—i.e., the

1 amount Plaintiffs will be able to recover—is not material to the present motion.  
2 The test on a Rule 12(b)(6) motion is the plausibility of Plaintiffs’ claims against  
3 Defendant, Landers, 771 F.3d at 641, not the extent to which Plaintiff may recover  
4 under those claims.

5 Defendant also requests the Court take judicial notice of Jack Miller’s death  
6 certificate, and the proof of service of summons of Zurich American Insurance  
7 Company. The Court declines to exercise its discretion to consider these  
8 documents. Ritchie, 342 F.3d at 908. Therefore, the Court will rely only on  
9 Plaintiffs’ FAC in ruling on Defendant’s motion.

10 **Motion to Dismiss**

11 Defendant requests the Court dismiss Plaintiffs’ Third, Fourth, Fifth, Sixth,  
12 Tenth, and Thirteenth Causes of Action; as well as Plaintiffs’ First and Sixth  
13 Prayer for Relief alleged in the FAC for failure to state a claim upon which relief  
14 may be granted. While Plaintiffs’ FAC is by no means a perfectly crafted pleading,  
15 it is legally sufficient and will survive Defendant’s challenge. Taking the factual  
16 allegations in the FAC as true, Plaintiffs have stated plausible claims for  
17 abatement of a public nuisance; abatement of a private nuisance; continuing  
18 trespass; negligence; equitable indemnity; waste; preliminary and permanent  
19 injunction; and treble damages.

20 **CONCLUSION**

21 For the reasons set forth above, Defendant’s Motion to Dismiss, ECF No.  
22 39, is denied.

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1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Defendant's Motion to Dismiss, ECF No. 39, is **DENIED.**

3 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter  
4 this Order and provide copies to counsel.

5 **DATED** this 14th day of November 2017.

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9 Stanley A. Bastian  
10 United States District Judge