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NITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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CITY OF WEST SACRAMENTO,
CALIFORNIA; and PEOPLE OF THE
STATE OF CALIFORNIA,

Plaintiffs,

v.

R AND L BUSINESS MANAGEMENT, a
California corporation, f/k/a
STOCKTON PLATING, INC., d/b/a
CAPITOL PLATING, INC., a/k/a
CAPITOL PLATING, a/k/a CAPITAL
PLATING; CAPITOL PLATING INC., a
dissolved California
corporation; ESTATE OF GUS
MADSACK, DECEASED; ESTATE OF
CHARLES A. SCHOTZ a/k/a SHOTTS,
DECEASED; ESTATE of E. BIRNEY
LELAND, DECEASED; ESTATE OF
FRANK E. ROSEN, DECEASED; ESTATE
OF UNDINE F. ROSEN, DECEASED;
ESTATE of NICK E. SMITH,
DECEASED; RICHARD LELAND, an
individual; ESTATE OF LINDA
SCHNEIDER, DECEASED; JUDY GUESS,
an individual; JEFFREY A. LYON,
an individual; GRACE E. LYON, an
individual; THE URBAN FARMBOX
LLC, a suspended California
limited liability company; and
DOES 1-50, inclusive,

Defendants.

No. 2:18-cv-900 WBS EFB

MEMORANDUM AND ORDER RE:
MOTION TO DISMISS

1 The City of West Sacramento, California ("the City")
2 and the People of the State of California (collectively
3 "plaintiffs") initiated this action to address toxic levels of
4 contamination in the environment within the City. Presently
5 before the court is defendant Richard Leland's Motion to Dismiss
6 the First Amended Complaint. (Docket No. 25.)

7 I. Factual and Procedural Background

8 Plaintiffs' original Complaint alleged the following
9 causes of action against Leland: (1) violation of the Resource
10 Conservation and Recovery Act ("RCRA") § 7002(a), 42 U.S.C. §
11 6972(a)(1)(B); (2) violation of the Comprehensive Environmental
12 Response, Compensation and Liability Act ("CERCLA") § 107(a), 42
13 U.S.C. § 9607(a); (3) violation of The Gatto Act, California
14 Health & Safety Code §§ 25403-25403.8; (4) violation of The
15 Porter-Cologne Water Quality Control Act, Cal. Water Code §
16 1304(c); (5) public nuisance; (6) trespass; (7) negligence; (8)
17 ultrahazardous activity; (9) statutory indemnity; and (10)
18 declaratory relief. Plaintiffs also requested declaratory relief
19 and costs allegedly incurred in response to soil and ground water
20 contamination at and around the property.

21 On May 18, 2018, Leland and his wife, who is no longer
22 a party to this case, filed a Motion to Dismiss for failure to
23 state a claim pursuant to Federal Rule of Civil Procedure
24 12(b)(6). (Docket No. 10.) On June 27, 2018, the court granted
25 the Motion in full and provided plaintiffs with twenty days to
26 file an amendment complaint. (Docket No. 18.) Plaintiffs then
27 filed the First Amended Complaint, which contains all of the same
28 causes of action, save for negligence. (First Amended Compl.

1 ("FAC") (Docket No. 19).)

2 II. Discussion

3 A. CERCLA and RCRA Claims

4 Plaintiffs assert two theories to hold Leland
5 individually liable in this action. The first is that Leland is
6 an owner or operator under CERCLA and RCRA such that he is liable
7 for his individual conduct in causing the alleged contamination.
8 The second theory is that the court should pierce the corporate
9 veil and hold Leland individually liable for the purportedly
10 wrongful acts of Stockton Plating, Inc., Capitol Plating, and R
11 and L Business Managements, all of which are California
12 corporations that are also named defendants in this action.

13 1. Owner or Operator Liability

14 Leland moves to dismiss plaintiffs' CERCLA and RCRA
15 claims, arguing that plaintiffs have not shown that Leland was an
16 "operator" of the facility. As the court previously recognized
17 in its June 27, 2018 Order, CERCLA and RCRA liability may be
18 imposed where an officer "actually participated in the operations
19 of the facility" or "actually exercised control over, or was
20 otherwise intimately involved in the operations of, the
21 corporation immediately responsible for the operation of the
22 facility." Levin Metals, Corp. v. Parr-Richmond Terminal Co.,
23 781 F. Supp. 1454, 1456 (N.D. Cal. 1991).

24 In the original Complaint, plaintiffs alleged that
25 Leland was liable because he "used, handled, stored, treated,
26 transported, and/or disposed of, or arranged for others to do so,
27 or exercised substantial influence and control over the use,
28 handling, storage, transport, and/or disposal of the Contaminants

1 at the property.” (Compl. (Docket No. 1) ¶ 73.) In the First
2 Amended Complaint, plaintiffs have added that Leland also
3 “ordered, directed and arranged for the removal and disposal of
4 plating equipment and chemicals.” (FAC ¶ 43.)

5 These new allegations remain too general to withstand a
6 Motion to Dismiss. Plaintiffs have again failed to allege
7 specific facts demonstrating that Leland “direct[ed] the workings
8 of, manage[d], or conduct[ed] the affairs of a facility,” which
9 is necessary to establish that Leland was an “operator” of the
10 facility under CERCLA. See United States v. Bestfoods, 524 U.S.
11 51, 66 (1998) (holding that for purposes of CERCLA, “an operator
12 must manage, direct, or conduct operations specifically related
13 to pollution, that is, operations having to do with the leakage
14 or disposal of hazardous waste, or decisions about compliance
15 with environmental regulations). Plaintiffs have alleged no
16 facts indicating this was the case.

17 Plaintiffs do allege for the first time that Leland
18 personally signed a lease for the property where the
19 contamination occurred. However, this new allegation does not
20 demonstrate that Leland actually participated in the disposal of
21 hazardous wastes or that he “had the authority to control the
22 cause of contamination at the time the hazardous substances were
23 released into the environment.” Kaiser Aluminum & Chemical Corp.
24 v. Catellus Development Corp., 976 F.2d 1338, 1341 (9th Cir.
25 1992). Thus, while plaintiffs’ new allegations may make their
26 Amended Complaint slightly stronger, the CERCLA and RCRA claims
27 must again be dismissed to the extent they rely upon a theory of
28 “owner or operator” liability because the facts remain

1 insufficient to impose this type of liability on Leland.

2 2. Piercing the Corporate Veil

3 Leland asserts, as he did in the prior Motion to
4 Dismiss, that plaintiffs' First Amended Complaint contains only a
5 conclusory recitation of the elements required in order to pierce
6 the corporate veil, and thus plaintiffs' claims that rely on this
7 theory should be dismissed.

8 In support of their veil piercing argument, plaintiffs
9 allege that each defendant, including Leland, "was the alter ego
10 of the corporate entity that operated during their relevant time
11 period at the Property because, inter alia, of their controlling
12 interests in the corporation, their complete dominance and
13 control over the corporation, such that no separateness or
14 individuality between them and the corporation existed." (FAC ¶
15 49.) These allegations are identical to those in the original
16 Complaint, which the court determined was "no more than a
17 recitation of the elements, and '[c]onclusory allegations of
18 'alter ego' status are insufficient to state a claim.'" (Docket
19 No. 18 (citing Gerritsen v. Warner Bros. Entertainment Inc., 116
20 F. Supp. 3d 1104, 1136 (C.D. Cal. 2015).) Again, plaintiffs fail
21 to allege any specific facts supporting their allegation that
22 there was no separateness between Leland and R and L Business
23 Management. Indeed, the only fact that has been added is that R
24 and L Business Management is a closely held corporation.
25 However, the court is unaware of any authority suggesting that
26 Leland would be subject to veil piercing solely because he is a
27 shareholder of a closely held corporation. Accordingly, the
28 court will again grant Leland's Motion to Dismiss plaintiffs'

1 claims that are premised on the application of the corporate veil
2 piercing doctrine.

3 B. State Law Claims

4 Plaintiffs' third through eighth causes of action are
5 all state law claims that, as the court stated in its June 27
6 Order, require plaintiffs to allege facts indicating that Leland
7 owned or operated the facility, or that he created the alleged
8 contamination. As explained above, plaintiffs have failed to
9 allege such facts, and as such all state law claims must be
10 dismissed.

11 C. Declaratory Relief

12 Plaintiffs also request declaratory relief, contending
13 that because they have adequately alleged a CERCLA claim they are
14 entitled to declaratory relief under 42 U.S.C. § 9613(g)(2).
15 However, as discussed above, plaintiffs have not adequately
16 alleged a CERCLA claim, and thus declaratory relief is
17 unavailable. See Coppola v. Smith, 935 F. Supp. 2d 993, 1005
18 (E.D. Cal. 2013) (Ishii, J.).

19 IT IS THEREFORE ORDERED that Leland's Motion to Dismiss
20 Plaintiffs' First Amended Complaint (Docket No. 25) be, and the
21 same hereby is, GRANTED.

22 Plaintiffs have twenty days from the date this Order is
23 signed to file a Second Amended Complaint, if they can do so
24 consistent with this Order.

25 Dated: September 4, 2018



26 **WILLIAM B. SHUBB**
27 **UNITED STATES DISTRICT JUDGE**
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