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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

QUANTUM LABS, INC.,

Plaintiff,

v.

MAXIM INTEGRATED PRODUCTS INC,
et al.,

Defendants.

Case No. 18-cv-07598-BLF

**ORDER GRANTING DEFENDANTS’
MOTION TO DISMISS, WITH LEAVE
TO AMEND IN PART AND WITHOUT
LEAVE TO AMEND IN PART**

[Re: ECF 18]

Plaintiff Quantum Labs, Inc. (“Quantum”) sues Defendants Maxim Integrated Products Inc. (“Maxim”) and Mr. Tunc Doluca, Maxim’s CEO, claiming that Defendants deliberately caused hazardous waste to be released incident to Maxim’s operations at a facility operated by Plaintiff in San Jose, CA. Arising from these allegations, Plaintiff asserts both federal and state causes of action.

Now before the Court is Defendants’ motion to dismiss Plaintiff’s first 10 causes of action for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). The Court heard oral argument on Defendants’ motion on April 17, 2019 (“the Hearing”). For the reasons stated on the record and discussed below, the motion is **GRANTED, WITH LEAVE TO AMEND IN PART AND WITHOUT LEAVE TO AMEND IN PART.**

I. BACKGROUND

On December 17, 2012, Maxim and a third party entered into a “Research and Development Support Services Agreement” (“RDSSA”) that called for the third party “to provide research and development support services [to Maxim] in the field of semiconductor manufacturing technologies.” *See* Compl. ¶¶ 7, 26, ECF 1. Plaintiff operates a facility in San Jose, CA, and is the assignee of the third party’s rights, title, and interest in the RDSSA. *Id.* ¶ 7. Maxim rented laboratory space in Plaintiff’s facility and installed equipment for manufacturing

1 silicon wafers that was “fully functional” by approximately April 2014. *See id.* ¶¶ 7, 16, 35.

2 In June 2014, routine sampling of wastewater discharged from Plaintiff’s facility
3 conducted pursuant to San Jose Water Pollution Control District Self-Monitoring requirements
4 revealed the presence of cobalt. *See Compl.* ¶ 36. In December 2014, Maxim conducted its own
5 sampling for cobalt inside Plaintiff’s facility and discovered cobalt dust at levels “nearly 100 times
6 in excess of [] Maxim’s internal guidelines.” *Id.* ¶ 54. In September 2015, Maxim disclosed to
7 Plaintiff that Maxim’s manufacturing processes called for the use of cobalt. *See id.* ¶¶ 23, 45. In
8 or around January 2016, Maxim had “effectively abandoned the contaminated equipment on
9 Plaintiff’s facility.” *Id.* ¶ 57. In November 2017, Plaintiff tested for the presence of cobalt in its
10 facility, the results of which “showed cobalt contamination several hundred times in excess of
11 permissible concentrations.” *Id.* ¶ 82.

12 According to the complaint, Maxim was required to disclose all chemicals, solvents, and
13 gases to be used incident to Maxim’s manufacturing processes, but “intentionally concealed from
14 Plaintiff that cobalt would be brought on to Plaintiff’s facility.” *See Compl.* ¶¶ 23, 28. Plaintiff
15 alleges that cobalt is a carcinogen under California law that requires heightened and complex
16 disclosures and warnings, “all of which Maxim chose to ignore.” *Id.* ¶¶ 37, 38. Plaintiff filed this
17 action on December 19, 2018, asserting 11 causes of action against Maxim:

- 18 (1) violation of the Comprehensive Environmental Response, Compensation, and Liability
19 Act of 1980 (“CERCLA”), 42 U.S.C. §§ 9601, *et seq.*;
- 20 (2) violation of the Resource Conservation and Recovery Act (“RCRA”),
21 42 U.S.C. § 6972(a)(1)(B);
- 22 (3) fraud—intentional misrepresentation of material facts;
- 23 (4) fraud—intentional concealment of material facts;
- 24 (5) negligence and negligence per se;
- 25 (6) private nuisance;
- 26 (7) waste;
- 27 (8) trespass;
- 28 (9) violation of California Health & Safety Code § 25359.7;
- (10) declaratory relief; and
- (11) breach of contract.

See generally Compl., ECF 1. Claims 1, 3, 4, and 10 are also asserted against Mr. Doluca. *Id.*

1 **II. LEGAL STANDARD**

2 **A. Requests for Judicial Notice**

3 The Court may take judicial notice of documents referenced in the complaint, as well as
4 matters in the public record. *See Lee v. City of L.A.*, 250 F.3d 668, 688–89 (9th Cir. 2001),
5 *overruled on other grounds by Galbraith v. County of Santa Clara*, 307 F.3d 1119, 1125–26 (9th
6 Cir. 2002). In addition, the Court may take judicial notice of matters that are either “generally
7 known within the trial court’s territorial jurisdiction” or “can be accurately and readily determined
8 from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Public
9 records, including judgments and other court documents, are proper subjects of judicial notice.
10 *See, e.g., United States v. Black*, 482 F.3d 1035, 1041 (9th Cir. 2007). However, “[j]ust because
11 the document itself is susceptible to judicial notice does not mean that every assertion of fact
12 within that document is judicially noticeable for its truth.” *Khoja v. Orexigen Therapeutics, Inc.*,
13 899 F.3d 988, 999 (9th Cir. 2018).

14 **B. Rule 12(b)(6)**

15 “To survive a motion to dismiss, a complaint must contain sufficient factual matter,
16 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556
17 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). When
18 considering such a motion, the Court “accept[s] factual allegations in the complaint as true and
19 construe[s] the pleadings in the light most favorable to the nonmoving party.” *Manzarek v. St.*
20 *Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). “Threadbare recitals of the
21 elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*,
22 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555).

23 **III. DISCUSSION**

24 **A. Defendants’ Request for Judicial Notice**

25 Plaintiff’s facility is identified by APN # 23711061 in San Jose, CA. Compl. ¶ 7. The
26 address of Plaintiff’s facility is 2108 B Bering Drive, San Jose, CA 95131. Opp’n at 1, ECF 22.
27 Defendants request judicial notice of (1) certified copies of all grant deeds for APN # 23711061
28 within the last 10 years; (2) an “Official Notice of Inspection” of Plaintiff’s facility dated

1 12/17/2014 and stamped “Received” by the County of Santa Clara Department of Environmental
2 Health on 1/20/2015; and (3) an email from the County Santa Clara Consumer and Environment
3 Protection Agency disseminating the “Official Notice of Inspection.” *See* Request for Judicial
4 Notice at 2, ECF 19; *see also* Exs. G, H, and I to Request for Judicial Notice, ECF 19-1. Plaintiff
5 opposes Defendants’ request as to (2) and (3), arguing that Defendants “use the subject [matter]
6 [of these documents] to impermissibly advance substantive arguments.” *See* Opp’n at 5–6.

7 Defendants’ request for judicial notice of (1) the grant deeds is **GRANTED** because the
8 documents are public documents. *Lee v. City of L.A.*, 250 F.3d 668, 688–89 (9th Cir. 2001).

9 Defendants’ request for judicial notice of (2) the “Official Notice of Inspection” is
10 **GRANTED** because the document is a public document. *Lee*, 250 F.3d at 688–89. However, this
11 grant is limited to existence of the document and the Court does not take judicial notice of
12 assertions of fact within the document. *See Khoja*, 899 F.3d at 999.

13 Defendants’ request for judicial notice of (3) the email disseminating the “Official Notice
14 of Inspection” is **DENIED** because Defendants have failed to show this email constitutes a
15 “matter[] of public record,” rather than a private correspondence. *Lee*, 250 F.3d at 688–89.

16 **B. Defendants’ Motion to Dismiss**

17 Defendants move to dismiss Plaintiff’s first 10 claims¹ under Rule 12(b)(6). *See generally*
18 Motion, ECF 18. In its opposition brief, Plaintiff acknowledges that claims 3 and 4 for fraud,
19 claim 6 for private nuisance, claim 7 for waste, and claim 8 for trespass are insufficiently pled and
20 requests leave to amend. *See* Opp’n at 15–16, 17–18, 20. The Court finds this request warranted.
21 Accordingly, Defendants’ motion to dismiss claims 3, 4, 6, 7, and 8 is GRANTED WITH LEAVE
22 TO AMEND.

23 Turning to the remaining claims, and as discussed at the Hearing, the Court finds multiple
24 deficiencies with Plaintiff’s current pleading. The Court notes that the deficiencies discussed
25 herein are not necessarily comprehensive but are sufficient on their own to preclude the claims
26 from going forward as currently pled.

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28 ¹ It is unclear whether Defendants move to dismiss claim 11 for breach of contract. Defendants
request “dismissal of all claims,” *see* Motion at 3, but do not argue specifically as to claim 11.

1 For one, Defendants raise a valid statute of limitations issue. *See* Motion at 7, 16–17, 20,
2 24. Plaintiff may have been on notice as to the alleged use of cobalt as early as June 2014. *See*
3 Compl. ¶ 36. Moreover, Plaintiff admits that Maxim disclosed in September 2015 that Maxim’s
4 manufacturing processes called for the use of cobalt. *See id.* ¶¶ 23, 45. In its opposition brief,
5 Plaintiff argues that a “tolling agreement” between the parties extends the applicable statutes of
6 limitations. *See* Opp’n at 14. However, as the purported “tolling agreement” is not pled, the
7 Court may not consider its viability or its effect on the claims at issue. Plaintiff may amend to
8 plead facts related to the “tolling agreement” and/or facts to support theories that may revive
9 claims outside the statute of limitations even under the tolling agreement.

10 Second, Plaintiff’s CERCLA claim fails to adequately plead a “release” or “threatened
11 release” of any “hazardous substance” to the environment, *see* 42 U.S.C. § 9607(a)(4), as opposed
12 to a release internal to Plaintiff’s facility, *see 3550 Stevens Creek Associates v. Barclays Bank of*
13 *California*, 915 F.2d 1355, 1359–60 (9th Cir. 1990). In addition, Plaintiff fails to adequately
14 allege “the incurrence of response costs.” 42 U.S.C. § 9607(a)(4). Plaintiff may amend as to its
15 CERLA claim.

16 Third, Plaintiff’s RCRA claim fails to adequately allege that Defendants’ activities
17 “present an imminent and substantial endangerment to health or the environment.” 42 U.S.C.
18 § 6972(a)(1)(B). As far as the Court can ascertain, Plaintiff’s most recent test for the presence of
19 cobalt in its facility was in November 2017. *See* Compl. ¶ 82. Plaintiff may amend as to its
20 RCRA claim.

21 Fourth, as discussed at the Hearing, the Court finds that none of the causes of action
22 asserted against Mr. Doluca in his individual capacity even remotely make out a viable claim and
23 are thus dismissed. Plaintiff may amend as to Mr. Doluca but shall be mindful of the Court’s
24 direction.

25 Accordingly, Defendants’ motion to dismiss claims 1, 2, 5, and 9 is GRANTED WITH
26 LEAVE TO AMEND.

27 Finally, the Court finds claim 10 for “declaratory relief” wholly duplicative of the
28 underlying causes of action and that amendment could not cure this deficiency. Accordingly,

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Defendants’ motion to dismiss claim 10 is GRANTED WITHOUT LEAVE TO AMEND.

IV. ORDER

1. Defendants’ motion to dismiss claims 1–9 of Plaintiff’s complaint is GRANTED WITH LEAVE TO AMEND.
2. Defendants’ motion to dismiss claim 10 of Plaintiff’s complaint is GRANTED WITHOUT LEAVE TO AMEND.
3. Any amended pleading shall be filed on or before May 1, 2019.
4. Leave to amend is granted only as to Plaintiff’s existing claims; Plaintiff may not add claims without leave of the Court.
5. In amending Plaintiff may add other plaintiffs but may not add other defendants without leave of the Court.
6. All discovery disputes are referred to the assigned magistrate judge.

IT IS SO ORDERED.

Dated: April 22, 2019



BETH LABSON FREEMAN
United States District Judge