

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF PUERTO RICO

3 JORGE FRANCISCO SÁNCHEZ and  
4 DOLORES SERVICE STATION AND  
5 AUTO PARTS, INC.,

6 Plaintiffs,

7 v.

8 ESSO STANDARD OIL DE PUERTO  
9 RICO, INC.,

10 Defendant.  
11

Civil No. 08-2151 (JAF)

12 **OPINION AND ORDER**

13 Plaintiffs, Jorge Francisco Sánchez and Dolores Service Station and Auto Parts, Inc.,  
14 brought an action against Defendant, Esso Standard Oil de Puerto Rico, Inc. (Docket No. 1.)  
15 Plaintiffs allege violations of 42 U.S.C. §§ 6901-6992k. (Id.) In an amended answer,  
16 Defendant impleaded Third-Party Defendants, Jorge Luis Sánchez-Sánchez, Alicia Solano-Díaz,  
17 Héctor Benito Sánchez-Gómez, and Ángel M. Sánchez-Gómez, asserting claims under federal  
18 and Puerto Rico laws. (Docket No. 301.) In response, Héctor Benito Sánchez-Gómez and  
19 Ángel M. Sánchez-Gómez (the “Brothers”) counterclaimed for nuisance and in tort under  
20 Puerto Rico law. (Docket No. 350.) Defendant moves to dismiss these counterclaims for want  
21 of jurisdiction and for Defendant’s failure to state a legally-cognizable claim. (Docket  
22 No. 352.) The Brothers oppose (Docket No. 354), and Defendant replies (Docket No. 363.)

1 I.

2 **Factual and Procedural Synopsis**

3 We derive these facts from the Brothers' complaint against Defendant (Docket No. 350).  
4 In addressing a motion to dismiss, we take the plaintiff's factual averments as true and draw all  
5 reasonable inferences in his favor. Gagliardi v. Sullivan, 513 F.3d 301, 305 (1st Cir. 2008).

6 Since 1984, Defendant has operated a service station located on the Brothers'  
7 commercial real estate. During this period of time, Defendant installed underground storage  
8 tanks and adjoining equipment, all owned by Defendant, to dispense petroleum products for  
9 sale. The tanks were susceptible to corrosion and Defendant did not monitor and maintain them.  
10 As a result, the tanks discharged hazardous substances underground.

11 In February 2003, Defendant learned from its experts that the soil surrounding the tanks,  
12 above the water table, was possibly contaminated with diesel fuel. In September 2006,  
13 Defendant hired experts to conduct further tests of the soil and groundwater near the tanks.  
14 Defendant learned that the groundwater beneath the service station is contaminated with  
15 hazardous substances, likely due to releases from the tanks and a nearby drain at the service  
16 station. Defendant did not inform the Puerto Rico Environmental Quality Board ("EQB") of  
17 its findings. Defendant took no steps to discover the full extent of the contamination, to  
18 mitigate the discharges, or to remedy the pollution. Defendant did not inform the Brothers  
19 about the contamination that Defendant discovered. Instead, Defendant tried to hide the extent  
20 of the releases and their effect on the surrounding property. Discharges from Defendant's tanks

1 have commingled with hazardous substances released from other sources at the service station.  
2 Because of the combined pollution, the Brothers have not tried to sell their land. The Brothers  
3 seek injunctive relief to remedy the contamination and compensatory damages for their injuries.

4 On October 7, 2008, Plaintiffs commenced this case in federal court. (Docket No. 1.)  
5 Defendant filed an amended answer with counterclaims and claims against Third-Party  
6 Defendants. (Docket Nos. 301; 311.) On May 7, 2010, the Brothers filed an amended answer  
7 to this third-party complaint and counterclaimed against Defendant.<sup>1</sup> (Docket No. 350.) On  
8 May 26, Defendant moved to dismiss the Brothers' counterclaims.<sup>2</sup> (Docket No. 352.) The  
9 Brothers opposed the motion (Docket No. 354), and Defendant replied (Docket No. 363).

## 10 II.

### 11 Standard for Dismissal

12 Under Federal Rule of Civil Procedure 12(b)(1), a movant may challenge the court's  
13 subject-matter jurisdiction by attacking the sufficiency of the plaintiff's averments. Valentín  
14 v. Hosp. Bella Vista, 254 F.3d 358, 363 (1st Cir. 2001). The court takes the plaintiff's  
15 "jurisdictionally-significant facts as true" and "assess[es] whether the plaintiff has propounded  
16 an adequate basis for subject-matter jurisdiction." Id. The party asserting jurisdiction must  
17 show its existence. See Skwira v. United States, 344 F.3d 64, 71 (1st Cir. 2003).

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<sup>1</sup> Plaintiffs, Sánchez-Sánchez, and Solano-Díaz filed a separate answer. (Docket No. 305.)

<sup>2</sup> Defendant previously moved to dismiss on April 6. (Docket No. 319.) That motion is moot because it related to an earlier answer by the Brothers (Docket No. 302) that has been supplanted (Docket No. 350).

1 Similarly, a defendant may move to dismiss an action against him, based solely on the  
2 complaint, for the plaintiff's "failure to state a claim upon which relief can be granted." Fed.  
3 R. Civ. P. 12(b)(6). In assessing this motion, we "accept[] all well-pleaded facts as true, and  
4 we draw all reasonable inferences in favor of the [plaintiff]." Wash. Legal Found. v. Mass. Bar  
5 Found., 993 F.2d 962, 971 (1st Cir. 1993). However, mere legal conclusions "are not entitled  
6 to the assumption of truth." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1950 (2009).

7 The complaint must demonstrate "a plausible entitlement to relief" by alleging facts that  
8 directly or inferentially support each material element of some legal claim. Gagliardi, 513 F.3d  
9 at 305 (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 559 (2007)). "Specific facts are not  
10 necessary; the statement need only give the defendant fair notice of what the . . . claim is and  
11 the grounds upon which it rests." Erickson v. Pardus, 551 U.S. 89, 93 (2007) (quoting  
12 Twombly, 550 U.S. at 559) (internal quotation marks omitted).

### 13 III.

#### 14 Analysis

15 Defendant argues that we lack supplemental jurisdiction over the Brothers' counterclaims  
16 and should otherwise dismiss their counterclaims for failure to state a claim upon which relief  
17 may be granted. (Docket No. 352.) We discuss these defenses in turn.

#### 18 A. Supplemental Jurisdiction

19 Defendant argues that we lack supplemental jurisdiction because the Brothers' claims  
20 are not sufficiently related to the federal question presented in Plaintiffs' complaint. (Id.)

1           A federal court has the competence to entertain supplemental claims under state law “that  
2           are so related to claims in the action [over which the court had] original jurisdiction [such] that  
3           they form part of the same case or controversy under Article III of the United States  
4           Constitution.” 28 U.S.C. § 1367(a). If a federal court has original jurisdiction arising from a  
5           federal question, it “must also exercise supplemental jurisdiction over asserted state-law claims  
6           that arise from the same nucleus of operative facts.” Roche v. John Hancock Mut. Life Ins. Co.,  
7           81 F.3d 249, 256 (1st Cir. 1996). However, if the court dismisses the federal claim, it has  
8           discretion under § 1367(c) to decline to exercise its supplemental jurisdiction. Id. at 256-57.

9           In the case at bar, Plaintiffs’ averments largely resemble the Brothers’ allegations. (See  
10          Docket Nos. 1; 350 at 12-24.) Moreover, the harms that the Brothers allegedly suffered arise  
11          from the same course of conduct that led to Plaintiffs’ complaint in this court. (See id.) The  
12          Brothers’ supplemental claims under Puerto Rico law, thus, arise from a common nucleus of  
13          operative facts with Plaintiffs’ claims. As we have not dismissed Plaintiffs’ claims under  
14          federal law, we find no grounds to dismiss the Brothers’ complaint. See Roche, 81 F.3d at 256.

15          **B. Failure to State a Claim**

16          We next consider whether the Brothers’ non-conclusory averments sustain their  
17          counterclaims for nuisance and in tort under Puerto Rico law. (See Docket No. 350.)

18                  **1. Nuisance**

19          Patterned after California law, Puerto Rico’s private nuisance statute outlaws “[a]nything  
20          which is injurious to health, or indecent, or offensive to the senses, or an obstruction to free use

1 of property, so as to interfere with the comfortable enjoyment of life or property.” 32 L.P.R.A.  
2 § 2761 & n. (2004). “[A]ny person whose property is injuriously affected or whose personal  
3 enjoyment is lessened by the nuisance” may sue for injunctive and monetary relief. Id.

4 For a private nuisance to be actionable, it must interfere with “the present usability of a  
5 person’s land.” Casiano-Sales v. Lozada-Torres, 91 P.R. 473, 483 (1964) (quoting Restatement  
6 of Torts § 822 (1939)); see Restatement (Second) of Torts § 821D cmt. b (1979) (defining  
7 “interest in the use and enjoyment of the land” as including “not only the interests that a person  
8 may have in the actual present use of land . . . , but also his interests in having the present use  
9 value of the land unimpaired by changes in its physical condition”).

10 Puerto Rico courts also imply a reasonableness test into the statute, whereby the harm  
11 suffered by the plaintiff must “impos[e] a burden greater than [he] ought to be required to bear,  
12 thereby upsetting the equilibrium or balance necessary to harmonize the parties’ correlative  
13 rights.” Arcelay v. Sánchez, 77 P.R. 782, 790 (1955) (citing American precedents). The  
14 purpose of the test is “to find that mutuality of the benefit between the public interest and the  
15 private prejudice, that juridical equilibrium indispensable in every fair Law,” so as to fashion  
16 remedies that allow for “the operation of the industrial processes which are compatible with the  
17 reasonable enjoyment of the property and personal welfare.” Casiano-Sales, 91 P.R. at 481-82;  
18 see Restatement (Second) of Torts § 826 cmt. b (“[T]he unreasonableness of intentional  
19 invasions is a problem of relative values to be determined by the trier of fact in each case in the  
20 light of all the circumstances of that case.”).

1           The Brothers allege that their real property is subject to contamination by chemicals  
2 released from Defendant's underground storage tanks. (Docket No. 350.) This contamination  
3 has allegedly caused a diminution in the market value of their land, thereby frustrating some  
4 business prospects. (Id.) At the same time, the Brothers acknowledge that they own the  
5 property on which the service station and the tanks are located. (Id.) Thus, the Brothers  
6 permitted Defendant to enter onto the land to install and supply the tanks with fuel products for  
7 the Brothers' commercial benefit. Furthermore, as owners of a property containing a service  
8 station, the Brothers may have foreseen the type of pollution alleged. However, reasonableness  
9 is a fact-bound inquiry; it suffices at this juncture that the Brothers allege that the contamination  
10 unreasonably diminishes the present value of their land. (See id.) We, thus, deny Defendant's  
11 challenge to the nuisance claim, but without prejudice to similar arguments in later proceedings.

## 12           **2.    Tort**

13           Under Puerto Rico law, "[a] person who by an act or omission causes damage to another  
14 through fault or negligence shall be obliged to repair the damage so done." 31 L.P.R.A. § 5141  
15 (1990). "[F]ault and negligence are faces of the same coin" in that "negligence supposes an  
16 omission producing the same effect" as fault. Gierbolini-Rivera v. Employers Fire Ins. Co., 4  
17 P.R. Offic. Trans. 1197, 1201 (1976) (quoting 12 Manresa, Comentarios al Código Civil  
18 Español 837 (6th ed. 1973)). Negligence "consists in the failure to exercise [the] due  
19 diligence' . . . which one can expect from . . . the good paterfamilias." Jiménez v. Pelegrina-  
20 Espinet, 12 P.R. Offic. Trans. 881, 886 (1982) (quoting C. Rogel Vide, La Responsabilidad

1 Civil Extracontractual 90-91 (1976)); accord CMI Capital Mkt. Inv., LLC v. González-Toro,  
2 520 F.3d 58, 64 (1st Cir. 2008).

3           There must be also a sufficient causal nexus between the defendant's conduct and the  
4 resulting harm. Id. Under the theory of adequate causality, the defendant's conduct must be  
5 of the sort "that . . . ordinarily produces [the consequent injury] according to the general  
6 experience." Marital Com'y v. Jerónimo Corp., 3 P.R. Offic. Trans. 179, 186 (1974) (quoting  
7 J. Santos Briz, Derecho de Daños, in Editorial Revista de Derecho Privado 215 (1963)). There  
8 is no fault where the defendant could not have foreseen the harm caused by his conduct.  
9 Jiménez, 12 P.R. Offic. Trans. at 888.

10           The Brothers accuse Defendant of various omissions, including its failure to inform the  
11 Brothers of the presence of contaminants underground after the discoveries in 2003 and 2006  
12 and its failure to mitigate further releases. (Docket No. 350 at 14-16, 21.) The Brothers also  
13 aver that Defendant purposely covered up its discoveries relating to the extent of the  
14 contamination. (Id. at 20.) According to the Brothers, Defendant's dereliction caused a loss  
15 of value in the Brothers' property; loss of business and goodwill and public stigma; and mental  
16 anguish and emotional distress. (Id. at 22.)

17           It remains to be seen whether the Brothers will prove that they suffered all these harms  
18 and that the injuries were the foreseeable consequence of Defendant's conduct. However, the  
19 Brothers' averments pass muster at this stage. See Gagliardi, 513 F.3d at 305. We, thus, reject



1 Defendant's challenge to the tort claims, but without prejudice to similar arguments in later  
2 proceedings.

3 **IV.**

4 **Conclusion**

5 In view of the foregoing, we hereby **DENY** Defendant's motion to dismiss (Docket  
6 No. 352). We **DENY** as **MOOT** Defendant's earlier motion to dismiss (Docket No. 319).

7 **IT IS SO ORDERED.**

8 San Juan, Puerto Rico, this 2<sup>nd</sup> day of August, 2010.

9 s/José Antonio Fusté  
10 JOSE ANTONIO FUSTE  
11 Chief U.S. District Judge