

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JENNIFER FRYE, et al.,
Plaintiffs,

v.

MARTINEZ REFINING COMPANY LLC,
Defendant.

Case No. 24-cv-04506-RFL

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS WITH LEAVE TO AMEND
AND DENYING MOTION TO STRIKE
PREMISES LIABILITY CLAIM**

Re: Dkt. No. 32

Plaintiffs, residents and workers in Martinez, California, allege that Defendant Martinez Refining Company’s (“MRC”) ongoing safety failures caused toxic chemicals to be repeatedly released into the local communities surrounding its Martinez-based refinery, poisoning residents and contaminating their homes. Specifically, Plaintiffs point to a series of documented incidents throughout 2022 and 2023 that are alleged to have released thousands of tons of chemicals—including spent catalyst, coke dust, and sulfur dioxide—into the air. Plaintiffs now bring suit against MRC alleging negligence, public and private nuisance, premises liability, trespass, and strict liability for ultrahazardous activities.

MRC moves to dismiss the Complaint for failure to state a claim and further moves to strike Plaintiffs’ premises liability claim. (Dkt. No. 23.) Plaintiffs, with a few exceptions, have adequately alleged that the refinery’s toxic releases caused physical symptoms and trespassed upon their homes. The question whether petroleum refining is an ultrahazardous activity is a fact question not suitable for determination at this stage of the case. Accordingly, the motion to dismiss is **GRANTED IN PART AND DENIED IN PART WITH LEAVE TO AMEND**, and the motion to strike is **DENIED**. This order assumes the reader is familiar with the facts, the

applicable legal standard, and the arguments made by the parties.

Negligence and causation. Each Plaintiff—with the exception of Plaintiffs Isao Nakagawa and Heather Carraher—has plausibly alleged that the toxic releases caused their injuries. To adequately plead causation, Plaintiffs must allege that exposure to the chemicals released by the refinery was a “substantial factor” in bringing about the alleged harm. *Leyva v. Garcia*, 20 Cal. App. 5th 1095, 1104 (2018).

Plaintiffs have provided robust allegations regarding the timing and dispersion of each of the toxic discharges, identified the contents of each of those discharges, and described the common health impacts of the toxins contained in the discharges. (Compl. ¶¶ 49–117.) Moreover, each Plaintiff has sufficiently demonstrated exposure to at least one of the releases. Eighteen of the Plaintiffs—all but Tanicha Thomas and Jennifer Frye—allege that they live within two miles of facility. When viewed in conjunction with allegations detailing the spread of the chemicals during various releases, exposure becomes plausible, not just possible.¹ (Compl. ¶ 81 (showing a map of the estimated dispersion of the spent catalyst); Compl. ¶ 101 (alleging that the coke dust was carried by the wind into the residential area east of the refinery). Many of the Plaintiffs have also alleged that they were present in Martinez during the releases, or that they saw visible dust after the releases on their property or vehicles.

While Plaintiff Thomas does not allege that she lived in Martinez, it is still plausible to infer from her allegations that she was exposed to chemicals emitted during the releases. Thomas alleges that she worked on-site at the refinery during the November 2022 and Oct 2023 toxic releases. (Compl. ¶ 140.) Even if it were true that no chemicals fell in the refinery itself during the releases, as MRC claims, it is reasonable to infer that Thomas likely had to walk around outside the refinery every day as part of her commute, exposing her to the chemicals. Moreover, that Thomas alleges her symptoms developed shortly after the November release

¹ MRC argues that Plaintiffs’ allegations fail because they do not allege the addresses of their homes and cars. But MRC cites no in-circuit authority requiring this level of detail at the pleading stage, especially when other allegations already support an inference of exposure.

increases the plausibility of her exposure. (Compl. ¶ 140.)

Plaintiff Frye alleges she was exposed to “powder” on her motorcycle while riding near the refinery after the July 2023 release, and that the dust “rain[ed] down upon her.” (Compl. ¶ 13.) Those allegations are sufficient to establish exposure.

Each Plaintiff, further, has connected the timing of their symptoms to the timing of at least one of the alleged releases. (*See, e.g.*, Compl. ¶ 129 (Plaintiff Allen Kass “experienced breathing issues after the November [] release[s].”). And most of the Plaintiffs have alleged symptoms that are within the range of symptoms alleged to be caused by the chemicals released.²

Plaintiff Isao Nakagawa, however, only alleges that he was “impacted” by the releases and does not describe any specific symptoms experienced. (Compl. ¶ 135.)

Plaintiff Heather Carraher’s claims are also insufficiently alleged. Carraher claims that “[s]hortly after the [November] release,” she “sought emergency room treatment for severe dehydration, nausea/vomiting, fever, diarrhea, headache, and fatigue leading to hospitalization.” (Compl. ¶ 130.) However, without more information, none of those symptoms appear to be within those alleged to result from exposure to spent catalyst, which was the type of chemical alleged to be released in November 2022. (Compl. ¶¶ 3, 54 (alleging that spent catalyst can cause breathing problems, cardiovascular and pulmonary diseases, increased risk for genetic defects, increased cancer risk, fertility and pregnancy issues, neurological issues, kidney damage, anemia, and burning of the skin, eyes, and throat)). And while Carraher does allege that she was present for two other chemical release incidents approximately a year later in October 2023 and December 2023, she does not allege that she experienced any symptoms after those releases. (Compl. ¶ 130.) Thus, because Isao Nakawa and Carraher fail to adequately allege the link between their symptoms and those caused by the releases they allegedly experienced, MRC’s

² MRC argues that Plaintiffs Kelly Williams and Rachel Hart do not allege symptoms consistent with chemical exposure. But Williams alleges coughing, chest congestion, and a sore throat, which is consistent with the pulmonary and throat symptoms spent catalyst is alleged to cause. (Compl. ¶ 137.) Many of Hart’s alleged symptoms (difficulty breathing, dizziness, and headaches), which developed after the October 2023 coke dust release, are also symptoms that coke dust is alleged to cause. (Compl. ¶ 131.)

motion as to those Plaintiffs' negligence claims is **GRANTED WITH LEAVE TO AMEND**. MRC's motion to dismiss as to the other Plaintiffs' negligence claims is **DENIED**.

Trespass. MRC moves to dismiss trespass claims for twelve Plaintiffs³ because they do not allege that the chemicals invaded their physical properties, *i.e.*, by seeing dust in or around their home.⁴ To plead trespass under California law, "a plaintiff must allege an unauthorized and tangible entry on the land of another" that interfered with their "exclusive possessory rights." *McBride v. Smith*, 18 Cal. App. 5th 1160, 1174 (2018). Eleven of those Plaintiffs allege that they live within two miles of the refinery, which, coupled with the dispersion allegations described above, are sufficient to support an inference that chemicals landed in or on their property. Plaintiff Jennifer Frye, however, does not allege that she lived within two miles of the refinery. Nor did she allege that she saw dust on her property. Thus, MRC's motion to dismiss is **GRANTED WITH LEAVE TO AMEND** as to Frye's trespass claim. MRC's motion to dismiss as to the other Plaintiffs' trespass claims is **DENIED**.

Motion to strike premises liability claim. MRC's motion to strike Plaintiffs' premises liability claim is denied. "Since a motion to strike is disfavored and infrequently granted it should only be granted if the matter may prejudice one or more of the parties to the suit. Prejudice may be found where superfluous pleadings may confuse the jury, or where a party may be required to engage in burdensome discovery around frivolous matters." *Joe Hand Promotions, Inc. v. Dorsett*, No. 12-CV-1715-JAM-EFB, 2013 WL 1339231, at *1 (E.D. Cal. Apr. 3, 2013) (internal quotation marks and citations omitted). While the elements of a negligence claim and a premises liability claim are the same, Plaintiffs are allowed to plead alternative or multiple theories of recovery on the same facts. And given the similarity of the claims, there is no risk of undue burden in discovery. To the extent jury confusion is an issue, it may be addressed at a later stage of the case.

³ Jennifer Frye, Rachel Hart, Zachary Ladner, Zhen Guan, Kristoffer Mendoza, Misa Nakagawa, Kylie Klein, Tywaan Gaines, Antoinette Redus, Allen Kass, Scott Going, and Isao Nakagawa.

⁴ Plaintiff Tanicha Thomas does not bring a trespass claim.

Ultra-hazardous activities claim. MRC's request to dismiss the ultra-hazardous activities claim is denied. Plaintiffs have plausibly alleged the claim, and the determination of whether an activity is an ultra-hazardous one is heavily fact-based and not suitable for determination at this stage of the case. *See Edwards v. Post Transportation Co.*, 228 Cal. App. 3d 980, 984 (1991) (nature of this decision "is peculiarly related to a weighing of factual information"); *SKF Farms v. Superior Ct.*, 153 Cal. App. 3d 902, 907 (1984) ("[B]y its very nature, the issue of whether an activity is ultra-hazardous cannot be decided on demurrer."); *see also* Civil Minutes at 4, *Cruz v. PBF Energy Inc.*, 3:23-cv06142-JD (N.D. Cal. Apr. 4, 2024), ECF No. 36. Even if some of Plaintiffs' allegations could be construed to imply that petroleum refining can be done with due care, the fact that due care can be exercised to reduce risk doesn't indicate that that due care will *eliminate* the risks of serious harm inherent in the activity.

Punitive damages. MRC's request to dismiss punitive damages is denied. Rule 12(b)(6) provides for dismissal of claims, not prayers for relief. *See, e.g., Apple v. Starr Surplus Lines Ins. Co.*, No. 24-CV-03738-RFL, 2024 WL 4834424, at *1 (N.D. Cal. Nov. 18, 2024). Also, even if the request were considered on the merits, California law conditions punitive damages on a showing that the defendant is guilty of "oppression, fraud, or malice." Cal. Civ. Code § 3294(a). Malice is defined as either: (1) conduct which is intended by the defendant to cause injury to the plaintiff or (2) "despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." *Rhynes v. Stryker Corp.*, No. 10-5619 SC, 2011 WL 2149095, at *5 (N.D. Cal. May 31, 2011). Plaintiffs have plausibly alleged facts supporting an inference that MRC engaged in "despicable conduct" by willfully and consciously disregarding the safety of Plaintiffs and their surrounding community. Specifically, Plaintiffs have alleged that: MRC failed to maintain adequate internal controls to safely operate the refinery despite being located in a residential area, leading to at least three documented releases of large quantities of toxic chemicals into the air over a period of two years (Compl. ¶¶ 1–11); MRC failed to timely notify the emergency responders or the public following the November 2022 discharge (Compl. ¶¶ 86–90); and MRC failed to timely activate the community


warning system after the July 11, 2023 discharge, preventing individuals from being able to take precautionary measures while the chemicals were still airborne (Compl. ¶¶ 100–104.)

* * *

For the reasons described above, MRC’s Motion to Dismiss is **GRANTED AND PART AND DENIED IN PART WITH LEAVE TO AMEND** and MRC’s Motion to Strike is **DENIED**. If Plaintiff wishes to file an amended complaint correcting the deficiencies identified above, counsel shall do so within **21 days of the date of this Order**. The amended complaint may not add new claims or parties, or otherwise change the allegations except to correct the identified deficiencies, absent leave of the Court or stipulation by the parties pursuant to Federal Rule of Civil Procedure 15.

IT IS SO ORDERED.

Dated: December 16, 2024



RITA F. LIN
United States District Judge