

1 HANSON BRIDGETT LLP  
DAVINA PUJARI, SBN 183407  
2 [dpujari@hansonbridgett.com](mailto:dpujari@hansonbridgett.com)  
MERTON A. HOWARD, SBN 161125  
3 [mhoward@hansonbridgett.com](mailto:mhoward@hansonbridgett.com)  
ROSSLYN HUMMER, SBN 190615  
4 [bhummer@hansonbridgett.com](mailto:bhummer@hansonbridgett.com)  
425 Market Street, 26th Floor  
5 San Francisco, California 94105  
Telephone: (415) 777-3200  
6 Facsimile: (415) 541-9366

7  
8 Attorneys for TETRA TECH EC, INC., TETRA  
TECH, INC., DAN L. BATRACK, and STEVEN  
9 M. BURDICK

10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**

12  
13 BAYVIEW HUNTERS POINT RESIDENTS,  
DANIELLE CARPENTER, CHRISTOPHER  
14 CARPENTER, DECEASED, BY DANIELLE  
CARPENTER, REPRESENTATIVE AND  
15 SUCCESSOR IN INTEREST; CATHERINE  
MUHAMMAD, *Including All Parties Listed*  
16 *In Exhibit A*; and Doe Plaintiffs 1-40,000, on  
behalf of themselves, and all others similarly  
17 situated,

18 Plaintiffs,

19 v.

20 TETRA TECH EC, INC., et al.

21 Defendants.

Case No. 3:19-cv-01417-JD

**DEFENDANTS TETRA TECH EC, INC.,  
TETRA TECH, INC., DAN L. BATRACK,  
and STEVEN M. BURDICK'S NOTICE  
OF MOTION AND MOTION TO DISMISS  
CORRECTED FOURTH AMENDED  
COMPLAINT; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT**

Filed Concurrently with *Request For Judicial  
Notice and [Proposed] Order*

Date: September 10, 2020  
Time: 10:00 a.m.  
Courtroom: 11, 19th Floor  
Judge: Hon. James Donato

22  
23  
24 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

25 PLEASE TAKE NOTICE that pursuant to the Stipulation and Order Regarding  
26 Responsive Pleading Briefing (ECF No. 62), on September 10, 2020, at 10:00 a.m., or as soon  
27 thereafter as counsel may be heard, in Courtroom 11, 19<sup>th</sup> Floor, United States District  
28 Courthouse, 450 Golden Gate Avenue, San Francisco, California, 94102, before the Honorable

1 James Donato,<sup>1</sup> and pursuant to Federal Rules of Civil Procedure (“FRCP”) 8(a), 9, 10(b),  
2 12(b)(1), 12(b)(6), 12(b)(7), 12(f), 17, 19, 20(b), and 23, Defendants Tetra Tech EC, Inc., Tetra  
3 Tech, Inc., Dan L. Batrack, and Steven M. Burdick will and hereby do move this Court to dismiss  
4 with prejudice Plaintiffs’ Corrected Fourth Amended Complaint (the “Complaint”). Alternatively,  
5 Defendants move to dismiss specific causes of action, to strike the class allegations, and to sever  
6 Plaintiffs’ improperly joined personal injury and wrongful death actions.

7 Defendants move to dismiss the Complaint with prejudice because Plaintiffs’ lack of  
8 standing cannot be cured. Defendants further move on grounds that the Complaint does not  
9 contain a short, plain statement of Plaintiffs’ claims, does not plead fraud with particularity,  
10 purports to state claims not available under California law, and fails to state a claim as to the First,  
11 Second, Third, Fourth, Fifth, Sixth, Ninth, Tenth, Eleventh, and Twelfth Causes of Action. The  
12 Complaint also does not plead facts demonstrating that Plaintiffs may proceed as a class under  
13 FRCP 23, does not name indispensable parties the United States Navy and Environmental  
14 Protection Agency, which are required parties under FRCP 19(b), and improperly joins more than  
15 9,200 personal injury and/or wrongful death Plaintiffs in one civil action, without identifying for  
16 each Plaintiff the specific injuries, cause of death, date of occurrence, source of injury, or facts  
17 supporting proximate cause. The Complaint also must be dismissed as to Tetra Tech, Inc., Dan L.  
18 Batrack, and Steven M. Burdick because the Complaint makes no allegations against those parties.

19 ///  
20 ///  
21 ///  
22 ///  
23 ///  
24 ///  
25 ///  
26 ///

27  
28 <sup>1</sup> Subject to General Order No. 72-4.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

This Motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities, the pleadings, files, and records in this proceeding, the concurrently-filed Request for Judicial Notice, all matters of which this Court may take judicial notice, and on such other and further information and argument as may be presented at hearing.

DATED: July 16, 2020

HANSON BRIDGETT LLP

By:           /s/ Rosslyn Hummer            
DAVINA PUJARI  
MERTON A. HOWARD  
ROSSLYN HUMMER  
Attorneys for TETRA TECH EC, INC., TETRA  
TECH, INC., DAN L. BATRACK, and STEVEN  
M. BURDICK

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. INTRODUCTION.....	1
II. THE COMPLAINT’S ALLEGATIONS .....	2
III. ARGUMENT .....	3
A. The Complaint Must Be Dismissed with Prejudice Because its Defects Cannot Be Cured. ....	3
1. Plaintiffs Do Not and Cannot Establish Standing. ....	4
a. <i>Plaintiffs Do Not Have Article III Standing to Prosecute                 Their Claims.</i> .....	4
b. <i>Plaintiffs Likewise Do Not Have Standing Under California                 Law to Prosecute Four of Their Causes of Action.</i> .....	5
i. Plaintiffs Do Not Plead Standing Under the UCL and the FAL. ....	5
ii. Private Parties Do Not Have a Direct Remedy to Abate a Public Nuisance. ....	6
iii. Plaintiffs’ Failure to Plead Compliance with Proposition 65’s Notice of Violation Requirement Is Fatal to the Fifth Cause of Action. ....	6
2. Plaintiffs Failed to Sue Indispensable Parties. ....	7
3. The Complaint Does Not Allege any Facts to Support its Claims Against TtEC, TTI, Dan L. Batrack, and Steven M. Burdick. ....	8
B. Even if the Complaint Could Survive Dismissal with Prejudice, Several Additional Defects Must Be Cured Before this Action Can Proceed. ....	8
1. The Complaint Exemplifies Prohibited “Shotgun Pleading” and Unfairly Burdens the Court and the Parties. ....	9
2. The Complaint’s Structure Confuses Its Claims and Makes It Confusing. ....	10
a. <i>Improperly Joined Claims Should Be Severed.</i> .....	10
b. <i>The Complaint Does Not State a Plausible Claim.</i> .....	11
c. <i>The Class Allegations Should Be Stricken.</i> .....	11
3. The Complaint’s Structure Reveals Problems with the Parties.....	12
a. <i>Plaintiffs Do Not Plead Facts Showing Their Capacity to                 Sue.</i> .....	13

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

b.	<i>Plaintiff “Bayview Hunters Point Residents” Lacks Capacity to Sue.</i> .....	14
4.	Plaintiffs’ First, Second, and Sixth Causes of Action Fail to Plead Fraud with Particularity.....	14
5.	Plaintiffs Fail to Allege Facts to Support Their Third Cause of Action (Negligence Fear of Cancer). .....	15
6.	Plaintiffs Fail to Allege Facts to Support Their Fourth Cause of Action (Strict Liability for Ultrahazardous Activity).....	16
7.	Plaintiffs Fail to Allege Facts to Support Their Ninth and Tenth Causes of Action (Nuisance).....	16
8.	Plaintiffs Fail to Allege Facts to Support Their Eleventh Cause of Action (Survival).....	17
9.	Plaintiffs Fail to Allege Facts to Support Their Twelfth Cause of Action (Wrongful Death). .....	17
10.	Purported Causes of Action Unrecognized in California Must Be Dismissed. ....	17
a.	<i>There Is No Bad Faith Breach of Third-Party Beneficiary Contract Claim.</i> .....	17
b.	<i>Negligence per Se Is not a Cause of Action.</i> .....	18
c.	<i>The Claim for Injunctive Relief is Improperly Plead as a Cause of Action.</i> .....	18
IV.	CONCLUSION .....	19

**TABLE OF AUTHORITIES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Page(s)**

**Cases**

*Amchem Prods., Inc. v. Windsor*,  
521 U.S. 591 (1997) .....11

*Aschroft v. Iqbal*,  
556 U.S. 662 (2009) .....11

*Atlantic Richfield Co. v. Christian*,  
140 S. Ct. 1335 (2020) .....7

*Baker v. Burbank-Glendale-Pasadena Airport Auth.*,  
39 Cal. 3d 862 (1985).....16

*Bautista v. Los Angeles County*,  
216 F.3d 837 (9th Cir. 2000).....9

*Bell Atlantic Corp. v. Twombly*,  
550 U.S. 544 (2007) .....8, 11

*Birke v. Oakwood Worldwide*,  
169 Cal. App. 4th 1540 (2009).....6

*Bobosky v. adidas*,  
AG, 2011 WL 13250946, \*2 (D. Or. Jun. 21, 2011) .....9

*Bockrath v. Aldrich Chemical Co., Inc.*,  
21 Cal. 4th 71 (1999).....10

*City of San Jose v. Superior Court*,  
12 Cal. 3d 447 (1974).....12

*Consumer Advocacy Grp., Inc. v. Kintetsu Enterprises of Am.*,  
150 Cal. App. 4th 953 (2007).....7

*Corder v. Corder*,  
41 Cal. 4th 644 (2007).....13

*El Escorial Owners’ Assn. v. DLC Plastering, Inc.*,  
154 Cal. App. 4th 1337 .....16

*FW/PBS, Inc. v. City of Dallas*,  
493 U.S. 215 (1990) .....4

*Garcia v. Superior Court*,  
50 Cal. 3d 728 (1990).....14

1 *General Teleph. Co. of Southwest v. Falcon*,  
 2 457 U.S. 147 (1982) .....11

3 *Gompper v. VISX, Inc.*,  
 4 298 F.3d 893 (9th Cir. 2002).....7

5 *Grand Grove of United Ancient Order of Druids of Cal. v. Garibaldi Grove, No.*  
 6 *71, United Ancient Order of Druids*,  
 7 130 Cal. 116 (1900).....14

8 *In re N. D. Cal. Dalkon Shield IUD Prods. Liab. Litig.*,  
 9 693 F.2d 847, 853 (9th Cir. 1982).....11, 12

10 *Ivanoff v. Bank of America, N.A.*,  
 11 9 Cal.App.5th 719, 734 (2017).....18

12 *Jackson v. Bank of America, N.A.*,  
 13 898 F.3d 1348 (11th Cir. 2018).....9

14 *Kamm v. California City Dev. Co.*,  
 15 509 F.2d 205 (9th Cir. 1975).....12

16 *Klamath Water Users Protection Ass’n v. Patterson*,  
 17 204 F.3d 1206 (9th Cir. 1999).....18

18 *Kwikset Corp. v. Superior Court*,  
 19 51 Cal. 4th 310 (2011).....5

20 *Lockheed Martin Corp. v. Superior Court*,  
 21 29 Cal. 4th 1096 (2003).....12

22 *In re Lorillard Tobacco Co.*,  
 23 370 F.3d 982 (9th Cir. 2004).....19

24 *Lujan v. Defenders of Wildlife*,  
 25 504 U.S. 555 (1992) .....4, 14

26 *McGill v. Citibank, N.A.*,  
 27 2 Cal. 5th 945, 954–55 (2017).....19

28 *Melton v. Boustred*,  
 183 Cal. App. 4th 521 (2010).....16

*Mirkin v. Wasserman*,  
 5 Cal. 4th 1082 (1993).....15

*Mishiyev v. Alphabet, Inc.*,  
 --- F. Supp. 3d ---, 2020 WL 1233843 (N.D. Cal. 2020) .....18

1 *In re N. D. Cal. Dalkon Shield IUD Prods. Liab. Litig.*,  
 2 693 F.2d 847 (9th Cir. 1982).....11, 12

3 *National Metal & Steel Corp. v. Colby Crane & Mfg. Co.*,  
 4 200 Cal. App. 3d 1111 (1988).....13

5 *Okwu v. McKim*,  
 6 682 F.3d 841 (9th Cir. 2012).....3

7 *Orange County, Cal. Airport Hotel Assocs. v. Hongkong & Shanghai Banking  
 Corp.*,  
 8 52 F.3d 821 (9th Cir. 1995).....19

9 *Orff v. United States*,  
 10 358 F.3d 1137 (9th Cir. 2004).....18

11 *Ott v. Mortgage Investors Corp. of Ohio, Inc.*,  
 12 65 F. Supp. 3d 1046, 1062 (D. Or. 2014).....12

13 *Padilla v. Pomona College*,  
 14 166 Cal. App .4th 661, 674 (2008).....18

15 *Papasan v. Allain*,  
 16 478 U.S. 265 (1986) .....8, 11

17 *People v. Kinder Morgan Energy Partners, L.P.*,  
 18 569 F.Supp.2d 1073 (S.D. Cal. 2008) .....18

19 *Phillips v. City of Pasadena*,  
 20 27 Cal. 2d 104 (1945).....16

21 *Pierce v. Pac. Gas & Elec. Co.*,  
 22 166 Cal. App. 3d 68 (Ct. App. 1985) .....16

23 *Potter v. Firestone Tire & Rubber Co.*,  
 24 6 Cal. 4th 965 (1993).....15

25 *Romero v. Pacific Gas & Elec. Co.*,  
 26 156 Cal. App. 4th 211 (2007).....13

27 *SEC v. Bardman*,  
 28 216 F. Supp. 3d 1041, 1051 (N.D. Cal. 2017) .....9

*Simon v. Eastern Ky. Welfare Rights Organization*,  
 426 U.S. 26 (1976) .....4

*Sollberger v. Wachovia Sec., LLC*,  
 2010 WL 3674456 (C.D. Cal. 2010).....9

1 *Sonner v. Premier Nutrition Corp.*,  
 2 962 F.3d 1072, 1081 (9th Cir. 2020).....6

3 *Spokeo, Inc. v. Robins*,  
 4 136 S. Ct. 1540 (2016) .....4

5 *Steckman v. Hart Brewing, Inc.*,  
 6 143 F.3d 1293 (9th Cir. 1989).....3

7 *Steel Co. v. Citizens for a Better Environment*,  
 8 523 U.S. 83 (1998) .....4

9 *Streit v. County of Los Angeles*,  
 10 236 F.2d 552 (9th Cir. 2001).....14

11 *Tietsworth v. Sears, Roebuck & Co.*,  
 12 720 F.Supp.2d 1123 (N.D. Cal. 2010) .....12

13 *Town of Chester, N.Y. v. Laroe Estates, Inc.*,  
 14 137 S. Ct. 1645 (2017) .....4

15 *United States, for the Benefit and Use of Ehmke Sheet Metal Works v. Wausau Ins.*  
 16 *Cos.*,  
 17 755 F. Supp. 906 (E.D. Cal. 1991).....18

18 *United States Liability Ins. Co. v. Haidinger-Hayes, Inc.*,  
 19 1 Cal. 3d 586 (1970).....8

20 *United States v. Azrael*,  
 21 765 F. Supp. 1239 (D.C. Md. 1991).....7

22 *United States v. Skipper*,  
 23 781 F. Supp. 1106 (E.D.N.C. 1991).....7

24 *Vess v. CIBA-Geigy Corp. USA*,  
 25 317 F.3d 1097,1106 (9th Cir. 2003).....15

26 *Wal-Mart Stores, Inc. v. Dukes*,  
 27 564 U.S. 338 (2011) .....12

28 *Williams v. Southern Pacific R.R. Co.*  
 (1907) 150 Cal. 624.....16

*Williams v. Wraxhall*,  
 33 Cal. App. 4th 120 (1995).....14

*Zach’s, Inc. v. City of Sausalito*,  
 165 Cal. App. 4th 1163 (2008).....6

1 **Statutes**

2 Cal. Bus. & Prof. Code § 17204.....5, 6

3 Cal. Civ. Code § 1709 .....15

4 Cal. Civ. Code § 3481 .....16

5 Cal. Civ. Code § 3493 .....6

6 Cal. Code Civ. Proc. § 338(b) .....17

7 Cal. Code Civ. Proc. § 372.....14

8 Cal. Evid. Code § 669(a).....18

9 Cal. Health & Safety Code § 25249.7(d)(1).....7

10 Cal. Code Civ. Proc. § 377.60.....13

11 Cal. Evid. Code § 669 .....18

12

13 **Other Authorities**

14 Judicial Council of California Civil Jury Instructions 1623 .....15, 16

15 Fed. R. Civ. Proc. 8(a).....9, 11

16 Fed. R. Civ. Proc. 8(a)(2), 9(b) and 10(b).....8

17 Fed. R. Civ. Proc. 9(b) .....14

18 Fed. R. Civ. Proc. 10(b) .....9

19 Fed. R. Civ. Proc. 12(b)(6).....7

20 Fed. R. Civ. Proc. 17 .....8

21 Fed. R. Civ. Proc. 17(b) .....14

22 Fed. R. Civ. Proc. 23 .....12, 13

23 Fed. R. Civ. Proc. 12(f) .....12

24 U.S. Const. art. III, § 2, cl. 1 .....4

25 U.S. Constitution Article III..... *passim*

26

27

28

1 **Memorandum of Points and Authorities**

2 Defendants Tetra Tech EC, Inc. (“TtEC”), Tetra Tech, Inc. (“TTI”), Dan L. Batrack, and  
3 Steven M. Burdick (collectively, “Defendants”) move to dismiss with prejudice Plaintiffs’  
4 Corrected Fourth Amended Complaint (the “Complaint”) in its entirety.

5 **STATEMENT OF ISSUES TO BE DECIDED**

- 6 1. Do Plaintiffs lack standing under Article III of the U.S. Constitution and California  
7 substantive law?
- 8 2. Have Plaintiffs failed to sue indispensable parties?
- 9 3. Have Plaintiffs pleaded purported causes of action unrecognized by California law?
- 10 3. Have Plaintiffs failed to plead facts showing causation with regard to TtEC?
- 11 4. Have Plaintiffs failed to plead any facts against TTI, Dan L. Batrack, or Steven M.  
12 Burdick?
- 13 5. Are Plaintiffs’ claims inappropriate for resolution by class action?
- 14 6. Are Plaintiffs’ claims improperly joined?

15 **I. INTRODUCTION**

16 Plaintiffs purport to bring thousands of unique toxic tort claims against Defendants,  
17 alleging that contamination *caused solely by the Navy* has made them sick and fearful of getting  
18 sicker. The fundamental problem is that the Navy, not Defendants, contaminated Hunters Point  
19 Naval Shipyard (“Hunters Point”) with radionuclides, metals, and chemicals. Plaintiffs do not sue  
20 the Navy, however. Instead, they hope to bridge the glaring causation gap with hyperbole and  
21 unsupported speculation about alleged widespread data falsification. Yet, even if Plaintiffs’  
22 overblown fraud allegations were true (they are not), and even if Defendants could be held liable  
23 for secretive, unsanctioned acts by rogue employees (they cannot), the insurmountable causation  
24 problem remains. Plaintiffs cannot tie their alleged personal injuries to Defendants, because  
25 Plaintiffs’ claims are inextricably tied to the contamination at Hunters Point placed there by the  
26 Navy – and the Navy is not named a defendant.

27 Alleged data falsification, even if it occurred, does not cause physical injuries. The bulk of  
28 Plaintiffs’ allegations are about Navy conduct at Hunters Point dating to 1939 (long before any

1 Defendant set foot on the site), with which they attempt to tar Defendants. Plaintiffs have failed to  
2 plead facts necessary to establish standing to prosecute their Complaint, much less the elements of  
3 any cause of action entitling them to relief from Defendants. Indeed, the overwhelming majority of  
4 the Plaintiffs fail to identify the injuries or properties they seek damages for, the dates they were  
5 diagnosed or acquired their properties, and other basic elements required to assert a personal  
6 injury or fear of cancer claim. The Complaint thus fails the most basic and foundational  
7 requirement for suit: it must present a case or controversy in order for this Court to act, and it does  
8 not.

9 Many more problems with the Complaint abound, including that Plaintiffs allege an  
10 excessive number of facts with no clear organization, and then assert that all of those alleged facts  
11 describe every cause of action. This style of “shotgun pleading” is disfavored precisely because it  
12 causes problems of the kind now faced by this Court and Defendants: sorting out what Plaintiffs  
13 allege and against whom they allege it. The Complaint unfairly burdens the Court and Defendants  
14 with the task of distilling cogent allegations against Defendants from the mass of accusations  
15 thrown into the Complaint. Plaintiffs’ shotgun Complaint (1) violates the Federal Rules of Civil  
16 Procedure (“FRCP”); (2) prevents Defendants from knowing what they are actually accused of;  
17 (3) glosses over contradictory facts; and (4) unfairly burdens Defendants’ defenses.

## 18 **II. THE COMPLAINT’S ALLEGATIONS**

19 More than 9,200 people and an undefined group called “Bayview Hunters Point Residents”  
20 accuse Defendants of defrauding them, causing them personal injuries and property damage, and  
21 putting them in fear for their lives. Plaintiffs allege their community suffers from higher cancer  
22 and asthma rates due to the “Navy’s dumping of toxic materials” at Hunters Point. (Compl. ¶3.)  
23 They allege fear of cancer and birth defects, claim they suffer increased rates of cardiovascular  
24 and respiratory illness, and that the contamination is a substantial factor in causing them myriad  
25 injuries, including cancer, respiratory failure, heart attack, stroke, and premature death preceded  
26 by “misery, discomfort, and anguish[.]” (Compl. ¶¶ 3, 115, 121, 123, 169, 177, 183, 215, 219,  
27 226, and 232.) Yet Plaintiffs do not allege facts to show they have standing, either under Article  
28 III or California law. The Complaint does not plead facts showing Defendants are liable for the

1 criminal conduct of two rogue (now former) TtEC employees. It does not plead allegations against  
 2 TTI, Dan L. Batrack, or Steven M. Burdick. It does not allege injury to Plaintiffs different from  
 3 injury to the community as a whole. Plaintiffs also fail to allege that Defendants made any  
 4 misleading statements to them, that they relied on any allegedly misleading statement, or that they  
 5 were injured because of that reliance.

6 Incredibly, the Complaint fails to identify a specific toxic exposure or illness alleged for  
 7 any of the more than 9,200 named Plaintiffs, other than decedent Christopher Carpenter. (Compl.  
 8 ¶123.D.) And Plaintiffs completely fail to meet their pleading burden for fear of cancer claims;  
 9 they do not assert it is more likely than not they will develop a specific cancer (negligence  
 10 standard), nor do they plead that each of them has been individually evaluated by a qualified  
 11 expert offering reliable medical or scientific opinion that his/her exposure to a specific toxic  
 12 substance was caused by Defendants, and that such exposure significantly increased his/her risk of  
 13 developing a specific type of cancer and has resulted in an actual risk that is significant  
 14 (negligence based on malicious, oppressive, or fraudulent conduct).

### 15 **III. ARGUMENT**

#### 16 **A. The Complaint Must Be Dismissed with Prejudice Because its Defects Cannot** 17 **Be Cured.**

18 The Complaint is plagued by fatal defects that cannot be cured by amendment. These  
 19 include Plaintiffs' lack of Article III standing, their failure to name indispensable parties, and  
 20 suing parties without making any allegations against them. The futility of any attempt to re-plead  
 21 Plaintiffs' claims means the Court must dismiss the Complaint with prejudice. *Steckman v. Hart*  
 22 *Brewing, Inc.*, 143 F.3d 1293, 1298 (9th Cir. 1989). Particularly where Plaintiffs attempt to plead  
 23 causes of action not recognized in California law, dismissal without leave to amend must be  
 24 granted. *Id.* at 792. Similarly, where federal law precludes "citizen enforcement in the enactment  
 25 itself, either explicitly, or implicitly by imbuing it with its own comprehensive remedial  
 26 scheme[,]" amending the Complaint cannot cure this problem. *Okwu v. McKim*, 682 F.3d 841, 844  
 27 (9th Cir. 2012) (collecting cases).

28 ///

1           1.       Plaintiffs Do Not and Cannot Establish Standing.

2           The “irreducible constitutional minimum of standing contains three elements.” *Lujan v.*  
 3 *Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Plaintiffs must establish, at the outset and at  
 4 every stage of the action, that (1) they have suffered “injury in fact[.]” (2) a “causal connection  
 5 between the injury and the conduct complained of” exists; and (3) it is likely “that the injury will  
 6 be ‘redressed by a favorable decision.’” *Id.* at 560–61; *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540,  
 7 1547 (2016); *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 38, 41–43 (1976).

8           a.       ***Plaintiffs Do Not Have Article III Standing to Prosecute Their Claims.***

9           The Complaint fails the most basic and foundational requirement for suit: it must present a  
 10 case or controversy in order for this Court to act. U.S. Const. art. III, § 2, cl. 1; *Town of Chester,*  
 11 *N.Y. v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1650 (2017). Absent a case or controversy, this Court  
 12 has no jurisdiction to hear Plaintiffs’ claims. *Steel Co. v. Citizens for a Better Environment*, 523  
 13 U.S. 83, 93–94 (1998). A case or controversy exists only where the party invoking Court  
 14 jurisdiction has standing. *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990). Whether  
 15 Plaintiffs have standing must be determined first, before attending to any of the merits of their  
 16 claims. *Steel Co.*, 523 U.S. at 94.

17           Plaintiffs do not and cannot establish the “triad of injury in fact, causation, and  
 18 redressability [at] the core of Article III’s case-or-controversy requirement[.]” *Steel Co.*, 523 U.S.  
 19 at 103. Specifically, Plaintiffs fail to identify specific personal injuries and the location of real  
 20 properties alleged to have been damaged, along with other “injury in fact” details required by the  
 21 FRCP. But the defects in their Complaint are deeper and broader than these obvious omissions.

22           Plaintiffs allege that “admitted falsifications and ‘mishandling’ of soil samples [mean]  
 23 none of the Navy or EPA’s representations of planned action are reliable, which has greatly  
 24 elevated the fear, anxiety, and emotional distress among” Plaintiffs. (Compl. ¶ 55.) Defendants  
 25 have made no such admissions, and the Complaint does not allege that they did. Instead, the  
 26 Complaint merely asserts that Defendants are liable for employee criminal conduct based on  
 27 *respondeat superior*. (Compl. ¶¶ 30–34.) Even if the Court improperly accepts this legal theory as  
 28 akin to a factual allegation that the admitted criminal conduct of two employees should be imputed

1 to Defendants, the Complaint does not tie that criminal conduct to Plaintiffs’ alleged injuries.  
 2 Plaintiffs do not allege that Stephen Rolfe’s and Justin Hubbard’s admitted falsification of soil  
 3 sample records were the proximate cause of any of their injuries. Rather, they allege that  
 4 “Plaintiffs’ fear, anxiety, and emotional distress” arise from representations made to them *by the*  
 5 *Navy and EPA*, which Plaintiffs do not sue.

6           b.       ***Plaintiffs Likewise Do Not Have Standing Under California Law to***  
 7                   ***Prosecute Four of Their Causes of Action.***

8           The Complaint does not plead facts showing that Plaintiffs have standing to pursue their  
 9 Unfair Competition and Fraudulent Advertising Law, Proposition 65, or Public Nuisance claims.

10           i.       Plaintiffs Do Not Plead Standing Under the UCL and the FAL.

11           In 2004, Proposition 64 tightened standing requirements for private parties prosecuting  
 12 representative unfair competition and false advertising claims. *Kwikset Corp. v. Superior Court*,  
 13 51 Cal. 4th 310, 317 (2011). Standing for Unfair Competition Law (“UCL”) claims is restricted to  
 14 private individuals who have “suffered injury in fact” and “lost money or property as a result of  
 15 the unfair competition.” Cal. Bus. & Prof. Code § 17204. For False Advertising Law (“FAL”)   
 16 claims, only individuals who have “suffered injury in fact” and “lost money or property as a result  
 17 of [false advertising]” have standing. *Id.* at § 17535. To prevail, Plaintiffs must suffer economic  
 18 injury caused by a UCL violation. *Kwikset*, 51 Cal. 4th at 317. The “apparent purpose [of  
 19 Proposition 64 was] to eliminate standing for those who have not engaged in any business dealings  
 20 with would-be defendants[.]” *Id.* A “simple test” determines standing to prosecute Plaintiffs’ First  
 21 and Second Causes of Action: do Plaintiffs plead (1) “a loss or deprivation of money or property  
 22 sufficient to qualify as injury in fact, i.e., *economic injury*, and (2) show that that economic injury  
 23 was the result of, i.e., *caused by*, the unfair business practice or false advertising that is the  
 24 gravamen of the claim”? *Id.* at 322 (emphasis in original).

25           The Complaint fails this test. Plaintiffs level accusations of several kinds of fraud against  
 26 Defendants, but *do not allege* economic “injury in fact” from Defendants’ alleged conduct.  
 27 Plaintiffs seek “restitution of all monies wrongfully obtained through [Defendants’] unfair and  
 28 fraudulent business practices[.]” but do not allege that Defendants obtained any of the monies they

1 want restored from Plaintiffs. (Compl. ¶ 143.) Plaintiffs allege that Defendants’ “wrongful conduct  
 2 adversely impacts the public interest [and] is a factual and legal cause of financial harm to  
 3 PLAINTIFFS and class members.” (Compl. ¶ 153.) But adverse impacts to the public interest are  
 4 not injury in fact to Plaintiffs. Cal. Bus. & Prof. Code § 17204. Moreover, because they do not  
 5 show their legal remedies are inadequate, Plaintiffs cannot obtain restitution under federal  
 6 common law. *Sonner v. Premier Nutrition Corp.*, 962 F.3d 1072, 1081 (9th Cir. 2020).

7 Plaintiffs’ FAL claim is even flimsier. Plaintiffs allege that Defendants made undated,  
 8 misleading statements to the general public on its website—not to Plaintiffs specifically. (Compl. ¶  
 9 167.) Plaintiffs do not plead any facts demonstrating economic harm from those allegedly false  
 10 statements. (*Id.*) And Plaintiffs’ assertion of “justifiable reliance” cannot be maintained without  
 11 any allegation that misrepresentations were made to any of them specifically. (*See* Compl. ¶¶ 168–  
 12 169.)

13 ii. Private Parties Do Not Have a Direct Remedy to Abate a Public Nuisance.

14 Public nuisance law protects community interests. *Birke v. Oakwood Worldwide*, 169 Cal.  
 15 App. 4th 1540, 1547 (2009). Plaintiffs would have “a direct remedy to abate a public nuisance that  
 16 is a private nuisance as to [them,] if the nuisance is ‘especially injurious to [them], but not  
 17 otherwise.’” *Zach’s, Inc. v. City of Sausalito*, 165 Cal. App. 4th 1163, 1192 (2008) (quoting Cal.  
 18 Civ. Code § 3493). Thus, Plaintiffs must plead that Defendants created a condition particularly  
 19 harmful to them. *Birke*, 169 Cal. App. 4th at 1547; *Zach’s*, 165 Cal. App. 4th at 1192. However,  
 20 Plaintiffs allege that they represent their entire community and that they have all been injured by  
 21 the same conduct in the same manner. (*See, e.g.*, Compl. ¶¶ 215, 217, 219.) Without allegations  
 22 showing how each Plaintiff was especially injured by the alleged nuisance, no Plaintiff has  
 23 standing to prosecute the Ninth Cause of Action.

24 iii. Plaintiffs’ Failure to Plead Compliance with Proposition 65’s Notice of  
 25 Violation Requirement Is Fatal to the Fifth Cause of Action.

26 Before suing, private enforcers of Proposition 65 must serve notice of the alleged violation,  
 27 including a certificate of merit, on the public prosecutor with jurisdiction and the alleged violator.  
 28 Cal. Health & Safety Code § 25249.7(d)(1). The notice requirement is jurisdictional. *Consumer*

1 *Advocacy Grp., Inc. v. Kintetsu Enterprises of Am.*, 150 Cal. App. 4th 953, 963 (2007). The  
2 Complaint does not allege pre-suit notice. Thus, Fed. R. Civ. Proc. 12(b)(6) requires dismissal of  
3 the Fifth Cause of Action with prejudice. *See Gompper v. VISX, Inc.*, 298 F.3d 893, 898 (9th Cir.  
4 2002).

5 2. Plaintiffs Failed to Sue Indispensable Parties.

6 Plaintiffs rail at the Navy for the Superfund site it created by allegedly burning, spreading,  
7 using, and dumping toxic and radioactive materials over decades, polluting the “ground, buildings,  
8 sewer lines, landfills, and surrounding areas[.]” (Compl. ¶¶ 3, 11, 36, 42, 43.) They allege that  
9 when the Navy studied and disposed “hundreds of irradiated mice, rats, dogs, goats, mules, and  
10 pigs,” it “contaminated the soil, dust, sediments, surface water and groundwater[.]” (Compl. ¶¶ 43  
11 and 5.) Yet Plaintiffs do not sue the Navy. In TtEC’s Notice of Removal (ECF No. 1), TtEC noted  
12 that it was sued for its actions conducted at the direction of a federal officer (ECF No. 1 at 4:3-9;  
13 5:1-3), which Plaintiffs admit at paragraphs 19, 48, 88, 153, and 166 of the Complaint. The Navy  
14 is an indispensable party; the case simply cannot proceed without it.

15 Plaintiffs also berate EPA over remediation of Hunters Point, but do not sue EPA, even as  
16 they demand relief available only from the EPA. They seek “comprehensive” remediation, an  
17 injunction ordering Defendants to “cease and desist” from “any additional remediation” of HPNS,  
18 and an undefined injunction because monetary damages are alleged to be insufficient. (Compl. ¶¶  
19 244; 247.) None of this relief is available without the EPA. *See Atlantic Richfield Co. v. Christian*,  
20 140 S. Ct. 1335, 1353–1354 (2020).

21 Plaintiffs will not be able to cure these problems; they cannot now sue either the Navy or  
22 the EPA, because both sovereign departments of the federal government are immune, and  
23 Plaintiffs have not established a valid exception to sovereign immunity for their claims. Plaintiffs  
24 also cannot sue EPA acting, as here, in a regulatory capacity overseeing a Superfund site cleanup.  
25 *United States v. Skipper*, 781 F. Supp. 1106, 1111 (E.D.N.C. 1991) (citing *United States v. Azrael*,  
26 765 F. Supp. 1239 (D.C. Md. 1991)).

27 ///

28 ///

1           3.     The Complaint Does Not Allege any Facts to Support its Claims Against TtEC,  
 2                    TTI, Dan L. Batrack, and Steven M. Burdick.

3           Plaintiffs’ entire theory of liability against TtEC rests on the legal doctrine of *respondeat*  
 4 *superior*—that TtEC is liable for its [former] employees’ conduct. However, the Complaint does  
 5 not contain any facts allegedly showing that Defendants are responsible for the criminal conduct  
 6 of Stephen Rolfe or Justin Hubbard. Instead, the Complaint simply sets out *factors* used to  
 7 determine whether *respondeat superior* liability exists. But factors are not facts. A legal argument  
 8 about alleged employer ratification does not state facts required for relief. The Court should not  
 9 accept legal conclusions “couched as factual allegations” as true. *Bell Atlantic Corp. v. Twombly*,  
 10 550 U.S. 544, 555 (2007) (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).

11           Plaintiffs have no theory of liability against TTI, Batrack, or Burdick; the Complaint  
 12 includes no allegations against any of them. Without any facts whatsoever alleged about these  
 13 Defendants, these Defendants must be dismissed from this action. *See United States Liability Ins.*  
 14 *Co. v. Haidinger-Hayes, Inc.*, 1 Cal. 3d 586, 595 (1970).

15           **B.     Even if the Complaint Could Survive Dismissal with Prejudice, Several**  
 16                    **Additional Defects Must Be Cured Before this Action Can Proceed.**

17           For all its bluster, the Complaint cannot make up for what is not there: concrete factual  
 18 allegations showing (a) causation<sup>2</sup> by and (b) redressability from Defendants. Plaintiffs also fail to  
 19 comply with the Federal Rules of Civil Procedure, which require the Complaint to contain a short  
 20 and plain statement showing Plaintiffs are entitled to relief, plead with particularity claims for  
 21 fraud, and set forth claims in numbered paragraphs, with each paragraph “limited as far as  
 22 practicable to a single set of circumstances[.]” Fed. R. Civ. Proc. 8(a)(2), 9(b) and 10(b). Rule 17  
 23 requires the action to be prosecuted by a real party in interest with capacity to sue, as governed by  
 24 California law. The Complaint violates all of these Rules. Plaintiffs must demonstrate cures for  
 25 these defects in order to proceed in this action.

26  
 27 <sup>2</sup> Plaintiffs fail to provide factual support for other required elements of each of the ten causes of  
 28 action which are in fact cognizable causes of action they attempt to plead. Defendants do not have  
 sufficient space, however, to address every missing element of each of these causes of action here.



1           2.       The Complaint’s Structure Confuses Its Claims and Makes It Confusing.

2           The Complaint<sup>3</sup> names more than 9,279 Plaintiffs and two proposed class representatives,  
3 but also indicates that all Plaintiffs will serve as class representatives, including unidentified Does.  
4 (Compl. ¶¶ 16 – 18.) The proposed class includes current residents of ZIP Code 94124 since 2004  
5 and anyone who “had substantial contact with[] the Hunters Point Community[.]” (Compl. ¶ 16.)

6           a.        ***Improperly Joined Claims Should Be Severed.***

7           The Rules prohibit joinder of thousands of unspecified personal injury claims that do not  
8 arise out of a single occurrence. Here, each Plaintiff’s injury necessarily differs from the next, yet  
9 the Complaint does not plead exposure and injury for each alleged toxic substance, nor does it  
10 allege the time period and location of exposure for each Plaintiff, the date of diagnosis of injury  
11 for each Plaintiff, or the cause of each Plaintiff’s injury. Plaintiffs must plead, for each of the more  
12 than 9,200 Plaintiffs, that each of the Defendants caused any one Plaintiff’s alleged injuries  
13 generally (whether the substance(s) *can cause* the alleged injury); and specifically (whether  
14 individual exposure to the substance(s) *did cause* the individual’s specific alleged injury).  
15 Plaintiffs must identify (1) the alleged substance causing the alleged harm; (2) exposure to each  
16 substance; facts showing (3) the substance entered his/her body; (4) that s/he suffers from a  
17 specific illness; (5) that each substance alleged to have entered his/her body was a substantial  
18 factor in bringing about, prolonging, or aggravating that illness; and (6) a connection between the  
19 substance alleged to have entered his/her body and each named defendant. *Bockrath v. Aldrich*  
20 *Chemical Co., Inc.*, 21 Cal. 4th 71, 79–80 (1999). The Complaint fails this test.

21           Long standing principles of procedural fairness and transparency established by the FRCP  
22 ensure that meritless claims have no place in Court. Allowing thousands of disparate, unrelated  
23 claims to be lumped together into a single Complaint causes significant prejudice and harm to the  
24 litigants and the judicial process. Opaque and unsubstantiated claims convey false information;  
25 they increase the burden, expense, and length of litigation; they complicate rather than clarify the  
26 assessments needed to understand the strength and value of cases; and they make it difficult, if not

27  
28 <sup>3</sup> On June 26, 2020, Plaintiffs amended Exhibit A without stipulation or leave. (ECF No. 56.)

1 impossible, to select meaningful bellwether cases for discovery and trial. Plaintiff fact sheets and  
2 other discovery are not the solution. At the outset, each individual Plaintiff must be required to set  
3 forth specific allegations (presumably based on supporting evidence) of exposure to the alleged  
4 harm, identification of the specific injury in question, and proximate cause. Only then will the  
5 Court and the litigants be able to ascertain the correct course for the litigation for those who are  
6 deserving, to ensure a fair and timely resolution of the matters at issue.

7                   b.       ***The Complaint Does Not State a Plausible Claim.***

8           Rule 8(a) requires a “short and plain statement” of grounds for court jurisdiction and “of  
9 the claim showing the pleader is entitled to relief.” If a complaint’s allegations are to be accepted  
10 as true, the complaint must contain enough facts to show that it requests relief “plausible on its  
11 face.” *Aschcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). This  
12 means “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory  
13 statements” is not allowed. *Id.* “[F]ormulaic recitation of the elements of a cause of action will not  
14 do[.]” *Twombly*, 550 U.S. at 555. “[U]nadorned the-defendant-unlawfully-harmed-me  
15 accusation[s]” do not pass muster. *Iqbal*, 556 U.S. at 678. Legal conclusions “couched as factual  
16 allegation” need not be accepted as true. *Twombly*, 550 U.S. at 555 (quoting *Allain*, 478 U.S. at  
17 286). Because the Complaint fails to allege facts supporting the elements of each cause of action,  
18 the Court cannot accept as true Plaintiffs’ legal conclusions couched as “facts.”

19                   c.       ***The Class Allegations Should Be Stricken.***

20           Class action treatment of mass personal injury claims is inherently unworkable where the  
21 allegations involve separate exposures (*Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 624–25  
22 (1997)), because these suits are akin to products liability suits, where no “single happening or  
23 accident occurs to cause similar types of physical harm or property damage.” *In re N. D. Cal.*  
24 *Dalkon Shield IUD Prods. Liab. Litig.*, 693 F.2d 847, 853 (9th Cir. 1982). “Commonality”  
25 requires proposed class members to “have suffered the same injury[.]” *General Teleph. Co. of*  
26 *Southwest v. Falcon*, 457 U.S. 147, 157 (1982). Class actions are not appropriate where “[n]o  
27 single proximate cause applies equally to each potential class member and each defendant.”  
28 *Dalkon Shield*, 693 F.2d at 853. In determining whether a class action can succeed, *i.e.*, whether

1 common questions of law or fact predominate, the focus must be on whether the questions raised  
2 by the proposed class action can be answered in the same way, not on whether the questions it  
3 asks are the same. *See, generally, Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349–50 (2011).  
4 California law is in accord. A “class action cannot be maintained where each member’s right to  
5 recover depends on facts peculiar to his case[.]” *City of San Jose v. Superior Court*, 12 Cal. 3d  
6 447, 459 (1974). Commonality also fails when a mass of plaintiffs seeks medical monitoring  
7 because of alleged exposure to toxic substances. *Lockheed Martin Corp. v. Superior Court*, 29  
8 Cal. 4th 1096, 1109–1111 (2003).

9 Pursuant to FRCP 12(f), the Court should strike the class allegations in the Complaint as  
10 “redundant” and “immaterial.” Class allegations may be stricken at the pleading stage. *Ott v.*  
11 *Mortgage Investors Corp. of Ohio, Inc.*, 65 F. Supp. 3d 1046, 1062 (D. Or. 2014) (citing *Kamm v.*  
12 *California City Dev. Co.*, 509 F.2d 205, 212 (9th Cir. 1975)). Although rare, a Complaint that  
13 demonstrates on its face “that a class action cannot be maintained” warrants the grant of an FRCP  
14 12(f) motion to strike class allegations. *Id.* (citing *Tietsworth v. Sears, Roebuck & Co.*, 720  
15 F.Supp.2d 1123, 1146 (N.D. Cal. 2010)). The Complaint here exemplifies an attempt to plead  
16 claims as a class action that have no hope of ever satisfying any of the FRCP 23 requirements.

17 3. The Complaint’s Structure Reveals Problems with the Parties.

18 The Complaint names thousands of Plaintiffs, yet only discusses six in any detail: Danielle  
19 Carpenter (¶¶ 16, 124, 125, 139); Catherine Muhammad (¶¶ 16, 125, 139); Monica Miranda  
20 Arevelo (¶ 123.A.); an anonymous 74 year-old woman (¶ 123.B.); Carolyn Ann Nash (¶ 123.C.);  
21 and decedent Christopher Carpenter (¶ 123.D.) (together, “The Six”). Every Plaintiff alleges that  
22 TtEC “terrifyingly exacerbated” “the cancers, asthma, debilitating respiratory illnesses and many  
23 other diseases” they suffer because of the toxic conditions at Hunters Point (¶¶ 2 and 48), but  
24 identifies only The Six with any of these ailments. Plaintiffs allege they “are marinating in  
25 radioactive, carcinogenic killer toxins,” they suffer from being Hunters Point’s neighbors, and  
26 their “higher incidences of cancer and asthma are caused by the Navy’s dumping of toxic  
27  
28

1 materials, including radioactive materials, into the land adjacent to their neighborhood.”<sup>4</sup> (*Id.* and  
 2 ¶¶ 3, 115.) However, the Complaint does not allege any facts showing how Plaintiffs came to  
 3 “marinate” in the Navy’s toxic substances, let alone facts showing anything Defendants did to  
 4 expose Plaintiffs to those substances. In fact, the Complaint does not allege any facts indicating  
 5 actual exposure and resulting harm to anyone, except Mr. Carpenter. (Compl. ¶ 123.D. at 41:20-  
 6 21.) The Complaint simply connects the Plaintiffs to Hunters Point by virtue of their ZIP Code,  
 7 with nothing more.

8 a. ***Plaintiffs Do Not Plead Facts Showing Their Capacity to Sue.***

9 Only those persons expressly identified in California Code of Civil Procedure section  
 10 377.60 have standing to maintain a wrongful death action. Amended Exhibit A (ECF No. 56)  
 11 identifies its first 428 Plaintiffs as deceased, but the Complaint does not include any allegations  
 12 about the timing or circumstances of any Plaintiff’s death, other than Mr. Carpenter (Compl. ¶  
 13 123.D.). Nor do the Complaint and Amended Exhibit A demonstrate that the alleged decedent  
 14 representatives have standing to bring claims as personal representatives.

15 In California, only one wrongful death action per death is permitted. *Romero v. Pacific*  
 16 *Gas & Elec. Co.*, 156 Cal. App. 4th 211, 216 (2007). California law regulates such actions with  
 17 the “one action rule” for wrongful death claims. Cal. Code Civ. Proc. § 377.60; *Corder v. Corder*,  
 18 41 Cal. 4th 644, 652 (2007) (while each heir designated in section 377.60 has a personal and  
 19 separate wrongful death cause of action, the actions are deemed joint, single and indivisible and  
 20 must be joined together in one suit). California courts have long held the one action rule to be  
 21 *procedural*, but it operates as a substantive bar as well, preventing more than one wrongful death  
 22 action per decedent. *National Metal & Steel Corp. v. Colby Crane & Mfg. Co.*, 200 Cal. App. 3d  
 23 1111, 1115–1116 (1988).

24 Amended Exhibit A identifies “Minor Children in Lawsuit,” but does not include a single  
 25 fact showing that the individuals identified in Amended Exhibit A are qualified to represent the  
 26 2,023 listed minors. Amended Exhibit A also omits names of minor’s representatives throughout.

27 \_\_\_\_\_  
 28 <sup>4</sup> Here, again, Plaintiffs admit that it is the Navy’s alleged actions, not Defendants, that has caused  
 their alleged injuries.

1 Minors (under age 18) and incompetents do not have capacity to sue in their own names; the  
 2 litigation must be conducted through a guardian, conservator of the estate, or guardian ad litem.  
 3 Cal. Fam. C. § 6601; Cal. Code Civ. Proc. § 372. Failure to comply with these requirements is  
 4 grounds for dismissal.

5 In sum, Amended Exhibit A confusingly breaks down Plaintiffs into three categories:  
 6 “Deceased Plaintiffs,” “Minors,” and “Plaintiffs Seeking Damages for Personal Injuries.” But the  
 7 Complaint demands restitution to all Plaintiffs of the entire alleged dollar value of the TtEC  
 8 remediation contracts at Hunters Point. (Compl. ¶ 239.) The categories of Plaintiffs on Amended  
 9 Exhibit A and the Complaint’s allegations are out of sync and unintelligible. The Exhibit should  
 10 be stricken from the Complaint.

11 b. ***Plaintiff “Bayview Hunters Point Residents” Lacks Capacity to Sue.***

12 No plaintiff may prosecute a claim absent capacity to sue, which is governed by forum  
 13 state law. *Streit v. County of Los Angeles*, 236 F.2d 552, 565 (9th Cir. 2001). California has long  
 14 closed its courthouses to unincorporated associations. *See, e.g., Grand Grove of United Ancient*  
 15 *Order of Druids of Cal. v. Garibaldi Grove, No. 71, United Ancient Order of Druids*, 130 Cal.  
 16 116, 119 (1900). “Bayview Hunters Point Residents” lacks the organizational or associational  
 17 standing required for Article III standing. Without distinct harms alleged to it, as opposed to its  
 18 members, no case or controversy will lie. *Lujan*, 504 U.S. at 560; Fed. R. Civ. Proc. 17(b). This  
 19 fictional entity should be dismissed or stricken as a named Plaintiff.

20 4. Plaintiffs’ First, Second, and Sixth Causes of Action Fail to Plead Fraud  
 21 with Particularity.

22 Plaintiffs purport to plead three claims sounding in fraud, including their UCL and FAL  
 23 claims, but none alleges the “circumstances constituting fraud” required by FRCP 9(b). Indeed,  
 24 Plaintiffs never plead facts showing the “who, what, when, and where” of the alleged fraud. In  
 25 addition, to plead fraud, Plaintiffs must state a “complete causal relationship” between the fraud  
 26 and their damages. *Williams v. Wraxhall*, 33 Cal. App. 4th 120, 132 (1995) (citing *Garcia v.*  
 27 *Superior Court*, 50 Cal. 3d 728, 737 (1990)). All species of fraud in California prohibit statements  
 28 from being used to “willfully deceive another with intent to induce him to alter his position to his

1 injury or risk.” Cal. Civ. Code § 1709; *Vess v. CIBA-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th  
2 Cir. 2003). But Plaintiffs do not plead that Defendants (1) made any representation *to them* of any  
3 kind, true or false; (2) intended that *they rely* on any representation; (3) that they *reasonably relied*  
4 on any representation; or that (4) their reasonable reliance on any representation was a substantial  
5 factor in *causing* the harm they allege. Without alleging anything directed at Plaintiffs causing  
6 them to alter their position to their detriment, Plaintiffs’ fraud claims fail. The absence of facts  
7 alleging reliance similarly guts Plaintiffs’ fraud claims. *Mirkin v. Wasserman*, 5 Cal. 4th 1082,  
8 1091 (1993).

9           5.       Plaintiffs Fail to Allege Facts to Support Their Third Cause of Action  
10                   (Negligence Fear of Cancer).

11           Plaintiffs do not plead any facts showing that each of them was exposed to a specific toxic  
12 substance; nor do they allege that their fear of cancer stems from knowledge, corroborated by  
13 reliable scientific or medical opinion, that such exposure is more likely than not to develop into a  
14 specific cancer. As such, Plaintiffs concede they are unable to meet the pleading standard for  
15 “Negligence – Fear of Cancer.” *Potter v. Firestone Tire & Rubber Co.*, 6 Cal. 4th 965, 1009  
16 (1993); Judicial Council of California Civil Jury Instruction (“CACI”) No. 1622.

17           Instead, Plaintiffs offer general recitations of the elements for Negligence - Fear of Cancer  
18 based on “Malicious, Oppressive, or Fraudulent Conduct,” which they attempt to tie to generic  
19 “expert” contentions that the entire group of more than 8,600 living Plaintiffs, as well as a putative  
20 class numbering in the tens of thousands, has a significantly increased risk of “cancer” caused by  
21 Defendants, who Plaintiffs admit were not responsible for causing the contamination that has  
22 allegedly harmed Plaintiffs. Such overly broad and unspecific pleading is insufficient.

23           To assert a fear of cancer claim based on alleged malicious, oppressive, or fraudulent  
24 conduct, each Plaintiff must allege, among other elements, that a defendant caused him/her to  
25 sustain a quantifiable exposure to a specific toxic substance, that reliable medical or scientific  
26 opinion confirms that his/her risk of developing a specific cancer was significantly increased by  
27 such exposure, and that the exposure has resulted in an actual risk that is significant. *Potter*, 6 Cal.  
28 4th at 998, 1000, 1004; CACI 1623. Such opinion cannot be offered en masse, nor can it be based

1 on unquantified and unqualified references to radionuclides, metals, and other chemicals that were  
 2 improperly handled by the Navy. To legally implicate these Defendants, there must be specific and  
 3 detailed allegations that (1) Defendants caused each Plaintiff specific exposures to defined  
 4 substances, (2) such substances are known to cause particular cancers, and (3) reliable medical or  
 5 scientific opinion confirms that (a) the exposure sustained by each Plaintiff created a significantly  
 6 increased risk of developing the cancer in question, and (b) the exposure at issue resulted in an  
 7 actual risk to the Plaintiff that is significant. *Id.* The Complaint does not meet this test. Indeed, in  
 8 the absence of specificity, it is not plausible that Plaintiffs can meet their burden.

9           6.       Plaintiffs Fail to Allege Facts to Support Their Fourth Cause of Action  
 10                   (Strict Liability for Ultrahazardous Activity).

11           Plaintiffs do not plead any facts that allege Defendants caused Plaintiffs’ injuries or  
 12 damages. Even a strict liability claim must plead facts alleging or supporting causation, *i.e.*, that  
 13 Defendants’ conduct was a substantial factor in causing Plaintiffs’ alleged harm. In California,  
 14 “one who undertakes an ultrahazardous activity is liable to every person who is injured as a  
 15 proximate result of that activity.” *Pierce v. Pac. Gas & Elec. Co.*, 166 Cal. App. 3d 68, 85 (Ct.  
 16 App. 1985). Simply reciting that there *is* causation does not satisfy the requirement to plead *facts*  
 17 alleging causation.

18           7.       Plaintiffs Fail to Allege Facts to Support Their Ninth and Tenth Causes of  
 19                   Action (Nuisance).

20           In California, any nuisance that is not a public nuisance is a private nuisance. Cal. Civ.  
 21 Code § 3481. The law further distinguishes between continuing and permanent nuisances.  
 22 Continuing nuisance can be (a) discontinued and (b) enjoined. *Phillips v. City of Pasadena*, 27  
 23 Cal. 2d 104, 107–08 (1945). Permanent nuisance occurs “where ‘by one act a permanent injury is  
 24 done [and] damages are assessed once for all.’” *Baker v. Burbank-Glendale-Pasadena Airport*  
 25 *Auth.*, 39 Cal. 3d 862, 870 (1985) (citing *Williams v. Southern Pacific R.R. Co.*, (1907) 150 Cal.  
 26 624, 626). The type of nuisance controls the remedies available. When nuisance claims “rely on  
 27 the same facts about lack of due care[,]” they are nothing more than a repackaged negligence  
 28 claim. *Melton v. Boustred*, 183 Cal. App. 4th 521, 542 (2010) (quoting *El Escorial Owners’ Assn.*

1 v. *DLC Plastering, Inc.*, 154 Cal. App. 4th 1337, 1349 (2007).

2 Plaintiffs assert that TtEC, by allegedly falsifying records relating to its remediation  
 3 contract with the Navy, created conditions that caused Plaintiffs' harm. They allege the false  
 4 records were made by Justin Hubbard before January 2014, and by Stephen Rolfe in August 2012,  
 5 in each instance more than three years before Plaintiffs filed suit on May 1, 2018. (Compl. ¶¶ 113,  
 6 114.) News reports in the Bay Area in February, May, and October of 2014 also aired detailed  
 7 stories about accusations of improper remediation of Hunters Point. (*See* Request for Judicial  
 8 Notice, Exhibits 1-3.) The statute of limitations for nuisance is three years. Cal. Code Civ. Proc. §  
 9 338(b). Plaintiffs' Causes of Action for Nuisance are time barred and must be dismissed.  
 10 Furthermore, Plaintiffs do not plead facts alleging or supporting causation; this omission defeats  
 11 both their private nuisance and negligence *per se* causes of action.

12 8. Plaintiffs Fail to Allege Facts to Support Their Eleventh Cause of Action  
 13 (Survival).

14 Amended Exhibit A lists 428 deceased Plaintiffs, but no facts about any of the 428  
 15 survivors. In California, survivors cannot recover for pain and suffering, yet Plaintiffs seek these  
 16 damages. (Compl. ¶ 232). These defects must be cured for this cause of action to survive.

17 9. Plaintiffs Fail to Allege Facts to Support Their Twelfth Cause of Action  
 18 (Wrongful Death).

19 Plaintiffs' Twelfth Cause of Action purports to plead a claim for wrongful death, but other  
 20 than incorporating by reference allegations regarding Mr. Carpenter, the Complaint does not  
 21 identify when any of the deceased Plaintiffs died or their cause of death, let alone allege any facts  
 22 linking the deaths to Defendants' alleged conduct. Without facts alleging general and specific  
 23 causation for each deceased Plaintiff, the Wrongful Death Cause of Action must be dismissed.

24 10. Purported Causes of Action Unrecognized in California Must Be  
 25 Dismissed.

26 a. ***There Is No Bad Faith Breach of Third-Party Beneficiary Contract***  
 27 ***Claim.***

28 The covenant of good faith and fair dealing implied in every contract by California law  
 benefits the parties to the contract. Plaintiffs attempt to combine this implied covenant with third-

1 party beneficiary theory to invent a cause of action that does not exist. The covenant does not run  
 2 to third-party beneficiaries of a contract because they are not in privity. *United States, for the*  
 3 *Benefit and Use of Ehmke Sheet Metal Works v. Wausau Ins. Cos.*, 755 F. Supp. 906, 910–911  
 4 (E.D. Cal. 1991). Moreover, Plaintiffs do not plead any facts showing they were intended rather  
 5 than incidental beneficiaries to TtEC’s contracts with the Navy. *See, e.g., Klamath Water Users*  
 6 *Protection Ass’n v. Patterson*, 204 F.3d 1206, 1210, 1212 (9th Cir. 1999); *Orff v. United States*,  
 7 358 F.3d 1137, 1147 (9th Cir. 2004).

8 **b. *Negligence per Se Is not a Cause of Action.***

9 “[N]egligence per se is merely an evidentiary doctrine and not an independent cause of  
 10 action.” *People v. Kinder Morgan Energy Partners, L.P.*, 569 F.Supp.2d 1073, 1087 (S.D. Cal.  
 11 2008) (emphasis omitted). California Evidence Code section 669 codified the presumption.  
 12 *Padilla v. Pomona College*, 166 Cal. App .4th 661, 674 (2008). To deploy the presumption,  
 13 Plaintiffs must plead (1) violation of a statute; that (2) proximately causes Plaintiffs’ injuries;  
 14 which (3) “resulted from an occurrence of the nature which the statute ... was designed to  
 15 prevent;” and that (4) they are in the class of persons for whose protection the statute was adopted.  
 16 Cal. Evid. Code § 669(a). Because it is a presumption, even if Plaintiffs successfully plead all four  
 17 elements of the presumption, they still must plead the *tort* to state a claim for relief. *Kinder*  
 18 *Morgan*, 569 F.Supp.2d at 1087. The Complaint does not do this; it pleads no facts showing  
 19 Defendants caused any of the alleged injuries.

20 **c. *The Claim for Injunctive Relief is Improperly Plead as a Cause of***  
 21 ***Action.***

22 An injunction is a remedy, not a cause of action. *Mishiyev v. Alphabet, Inc.*, — F. Supp. 3d  
 23 —, 2020 WL 1233843, \*5 (N.D. Cal. Mar. 13, 2020) (citing *Ivanoff v. Bank of America, N.A.*, 9  
 24 Cal. App.5th 719, 734 (2017). “California does not recognize a standalone claim for injunctive  
 25 relief.” *Id.* The cause of action should be stricken.

26 Plaintiffs’ request for the *remedy* also fails because the “three fundamental characteristics  
 27 of an injunction ... that it is (1) ‘directed to a party,’ (2) ‘enforceable by contempt,’ and (3)  
 28 ‘designed to accord or protect some or all of the substantive relief sought by a complaint in more

1 than [temporary] fashion,” show that no injunction is available here. *In re Lorillard Tobacco Co.*,  
2 370 F.3d 982, 986 (9th Cir. 2004) (citing *Orange County, Cal. Airport Hotel Assocs. v. Hongkong*  
3 *& Shanghai Banking Corp.*, 52 F.3d 821, 825 (9th Cir. 1995)). Plaintiffs seek relief directed at  
4 parties they failed to sue—the Navy and EPA. To the extent Plaintiffs seek public injunctive relief  
5 under their UCL and FAL claims, that relief is foreclosed because they lack standing to pursue it.  
6 *See, e.g., McGill v. Citibank, N.A.*, 2 Cal. 5th 945, 954–55 (2017).

7 **IV. CONCLUSION**

8 For all of the foregoing reasons, the Court should dismiss Plaintiffs’ Corrected Fourth  
9 Amended Complaint with prejudice.

10  
11 DATED: July 16, 2020

HANSON BRIDGETT LLP

12  
13 By:           /S/ Rosslyn Hummer          

14 DAVINA PUJARI

MERTON A. HOWARD

15 ROSSLYN HUMMER

16 Attorneys for TETRA TECH EC, INC., TETRA  
17 TECH, INC., DAN L. BATRACK and STEVEN  
18 M. BURDICK

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

**Bayview Hunters Point Residents, et a. v. Tetra Tech EC, Inc., et al.  
Case No. 3:19-cv-01417-JD**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 777 S. Figueroa Street, Suite 4200, Los Angeles, CA 90017.

On July 16, 2020, I served true copies of the following document(s) described as **DEFENDANTS TETRA TECH EC, INC., TETRA TECH, INC., DAN L. BATRACK, AND STEVEN M. BURDICK'S NOTICE OF MOTION AND MOTION TO DISMISS CORRECTED FOURTH AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** on the interested parties in this action as follows:

**BY CM/ECF NOTICE OF ELECTRONIC FILING:** I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on July 16, 2020, at Los Angeles, California.

\_\_\_\_\_  
/s/ Silvia Abrignani  
Silvia Abrignani