

1 FRED M. BLUM, ESQ. (SBN 101586)
fblum@eghblaw.com
2 WILLIAM NOEL EDLIN, ESQ. (SBN 107796)
nedlin@eghblaw.com
3 MARYLIN JENKINS, ESQ. (SBN 89832)
mjenkins@eghblaw.com
4 **EDLIN GALLAGHER HUIE + BLUM**
5 601 Montgomery Street, Suite 1100
San Francisco, CA 94111
6 Telephone: (415)397-9006
7 Facsimile: (415)397-1339

8 KRISTA MACNEVIN JEE, ESQ. (SBN 198650)
kmj@jones-mayer.com
9 **JONES MAYER**
10 3777 N. Harbor Blvd.
Fullerton, CA 92835
11 Telephone: (714) 446-1400
12 Facsimile: (714) 446-1448

13 Attorneys for Defendants CITY OF FORT BRAGG

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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION

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18 SIERRA NORTHERN RAILWAY, a
California corporation, and MENDOCINO
19 RAILWAY, a California corporation,

20 Plaintiffs,

21 vs.

22 CITY OF FORT BRAGG, et al.,

23 Defendants.
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25

) Case No.: 4:24-cv-04810-JST

) **AMENDED [PROPOSED] ORDER ON**
) **DEFENDANT’S MOTION TO DISMISS**
) **FIRST THROUGH THIRD CLAIMS FOR**
) **RELIEF PURSUANT TO Fed. R. Civ. P.**
) **(12)b(6), AND MOTION TO STRIKE**
) **PURSUANT TO Fed. R. Civ. P12(f)**

) DATE: February 20, 2025
) TIME: 2:00 p.m.
) DEPT: Courtroom 6, Second Floor

) Case Filed: August 7, 2024
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27 This matter came before the Court on February 20, 2025, on Defendant’s Motion to
28 Dismiss, pursuant to Fed.R.Civ.P (12)(b)(6) and Defendant’s Motion to Strike, pursuant to

1 Fed.R.Civ.P (12(f). Having considered the papers submitted in support of and in opposition to the
2 Motions, the arguments of counsel, and the applicable law, the Court hereby GRANTS Defendant's
3 Motion to Dismiss Claims for Relief One through Three of the Second Amended Complaint, and
4 Defendant's Motion to Strike that portion of Paragraph 37 of the Second Amended Complaint
5 requesting joint and several liability.

- 6 1. According to the Second Amended Complaint ("SAC"), Plaintiffs own or operate a
7 plot of land in Fort Bragg, California, ("the Site"). The Site was previously owned and
8 is currently operated by Mendocino Railway. The Site was owned by Georgia Pacific
9 from 1972 until 2002, when Georgia-Pacific apparently ceased operations. Georgia-
10 Pacific investigated "environmental concerns" at the Site and expended approximately
11 \$31 million in response costs through 2011. Georgia-Pacific dismissed the lawsuit it
12 filed against the Defendant in October of 2014.
- 13 2. Plaintiffs allege that Defendant has been polluting a pond on the Site with stormwater
14 runoff containing hazardous substances, and that the situation "requires response
15 actions per the California Department of Toxic Substances Control (DTSC).
- 16 3. The SAC sets out claims against Defendant for recovery of Plaintiffs' response costs
17 under 42 U.S.C. Section 9607(a)(4)(B) (hereinafter "CERCLA 107" [First Claim for
18 Relief]), for contribution under 42 U.S.C. Section 9613(f)(1) (hereinafter "CERCLA
19 113") [Third Claim for Relief], and for declaratory relief under CERCLA 113 [Second
20 Claim for Relief]. The SAC also alleges that Defendant is liable for "taking" under 42
21 U.S.C. § 1983, and under state law claims for nuisance, contribution and indemnity,
22 inverse condemnation, negligence, trespass, and declaratory relief.
- 23 4. Plaintiffs' First Claim for Relief fails to state a claim for cost recovery under CERCLA
24 107 because Plaintiffs have not adequately pleaded that they incurred necessary
25 response costs consistent with the National Contingency Plan at the Site. In order to
26 state a *prima facie* claim for cost recovery under CERCLA 107, Plaintiffs must have
27 incurred "necessary costs of response" as defined in 42 U.S.C. § 9601(23) and 42
28 U.S.C. § 9601(23). The costs which Plaintiffs state as support for their CERCLA 107

1 claim do not rise to the level required as they do not constitute any action to actually
2 clean up or abate the alleged pollution on the Site.

- 3 5. Plaintiffs' Third Claim for Relief fails to state a claim for contribution under CERCLA
4 113 because no person has yet filed a civil action against them and Plaintiffs have not
5 resolved liability to the United States or a State, as required by 42 U.S.C. § 9113(f)(1).
- 6 6. Plaintiffs' Second Claim for Relief, for declaratory judgment under CERCLA 113,
7 also must be dismissed because they have no underlying claim to support such a
8 judgment. CERCLA section 113(g)(2) authorizes courts to "enter a declaratory
9 judgment on liability for response costs or damages that will be binding on any
10 subsequent action or actions to recover *further* response costs." 42 U.S.C. § 9613(g)(2)
11 (emphasis added). Thus, the right to pursue a declaratory judgment under section
12 113(g)(2) depends on establishing the existence of a valid underlying cause of action
13 under CERCLA. Plaintiffs have failed to meet the basic pleadings requirements of
14 CERCLA 107 or CERCLA 113, and therefore cannot state a claim for declaratory relief
15 under CERCLA 113.
- 16 7. Plaintiffs' request that joint and several liability be imposed on Defendant, as set out in
17 Paragraph 37 of the SAC, must be stricken because Plaintiffs are owners/operators of
18 the Site, and therefore qualify as PRPs under §40 CFR § 304.12(m). A private party
19 that is itself a PRP may not pursue a CERCLA 107 action against other PRPs for joint
20 and several liability. Cooper Indus., Inc. v. Aviall Servs., Inc., 543 U.S. 157, 169,
21 (2004),

22 The Court therefore GRANTS Defendant's Motion for to Dismiss the First, Second and
23 Third Claims for Relief in the SAC, and GRANTS Defendant's Motion to Strike the claim for joint
24 and several liability in Paragraph 37 of the SAC. As Plaintiffs have already amended their pleadings
25 twice, the Court considers it unlikely that they have additional as-yet-unpleaded facts to add, and
26 therefore this order of dismissal is without leave to further amend.
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1 **IT IS SO ORDERED.**

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3 Dated:

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5 Hon. Jon S. Tigar
6 United States District Judge
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