

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Harrison v. Veolia Water West Operating Services, Inc.

No. 3:24-cv-1584-JES-VET (S.D. Cal. Sept. 12, 2025) · No. 3:24-cv-1584-JES-VET · Decided September 12,
2025

OPINION

Harrison v. Veolia Water West Operating Services, Inc.

PER CURIAM.

1 2 3 4 5 6

7 UNITED STATES DISTRICT COURT

8 SOUTHERN DISTRICT OF CALIFORNIA

9 10 MARVEL HARRISON, et al., Case No.: 3:24-cv-1584-JES-VET 11 Plaintiffs,

ORDER GRANTING IN PART AND

12 v. DENYING IN PART MOTION TO

DISMISS

13 VEOLIA WATER WEST OPERATING

SERVICES, INC., et al., 14 [ECF No. 19] Defendants. 15 16 Pending before the Court is the
Defendants’ Motion to Dismiss. ECF No. 19. 17 Plaintiff filed an opposition, and Defendants filed
a reply. ECF Nos. 34, 36. On March 19, 18 2025, the Court held a hearing on the motion and took
the matter under submission. ECF

19 No. 41. After due consideration and for the reasons discussed below, the Court GRANTS

20 IN PART and DENIES IN PART Defendants’ motion.

21 I. BACKGROUND

22 On September 6, 2024, Plaintiffs filed this lawsuit against Defendants Veolia Water 23 West
Operating Service, Inc. and Veolia Water North America West, LLC (collectively, 24 “Veolia”).
ECF No. 1. Plaintiffs are all residents in Imperial Beach, California, who allege 25 that their
homes suffered in value and that they suffer a loss of enjoyment of the waters 26 bordering their
community due to pollution originating from Tijuana, Mexico. Id. at 2. 27 The United States
Section of the International Boundary and Water commission 28 (“USIBWC”) owns the South
Bay International Wastewater Treatment Plant (“the Plant”) 1 in San Diego, California. Id. ¶ 1.
The Plant treats sewage that originates from Tijuana, 2 Mexico, and discharges the treated water
into the Pacific Ocean at the South Bay Outfall. 3 Id. ¶ 2. Plaintiffs allege that the USIBWC has
contracted with Veolia to operate, manage, 4 and maintain the Plant. Id. ¶ 22. 5 Plaintiffs allege
that Veolia, together with the USIBWC, has caused or failed to 6 prevent over 500 illegal
discharge incidents from the Plant since 2018 that have polluted 7 the neighboring waters. Id. ¶
23. Thus, Plaintiffs claim that Veolia has “caused, or 8 contributed to, or failed to ameliorate, a

public health and environmental crisis that 9 continues to harm residents in Imperial Beach.” Id. Plaintiffs further allege that Veolia has 10 itself failed to comply with the terms of its contract with the USIBWC. Id. ¶ 24. Due to 11 these discharges, Plaintiffs allege that there is a noxious stench residents breathe in 12 Imperial Beach, the adjacent ocean water tests of various chemical and drugs, and the 13 pollution has increased significantly over the last few years. Id. ¶¶ 26-30. Based on the 14 foregoing, Plaintiffs assert two causes of action for (1) nuisance; and (2) negligence. Id. ¶¶ 15 38-49. 16 Pending now before the Court is Defendants’ motion to dismiss. ECF No. 19. 17 Defendants move to dismiss the complaint on two grounds: (1) for lack of standing; and 18 (2) for failure to state a claim. Id.

19 II. STANDING

20 A. Legal Standards 21 In order to bring a case in federal court, a plaintiff is limited to bringing in actual 22 “cases and controversies.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 559 (1992). One of the 23 prudential considerations is that the plaintiff must have standing to sue. Id. This requires 24 the plaintiff to establish three elements: (1) an injury-in-fact— 25 “an invasion of a legally protected interest which is (a) concrete and particularized, and (b) 26 actual or imminent, not conjectural or hypothetical;” (2) causation—that the injury is 27 “fairly traceable to the challenged action of the defendant;” and (3) redressability—that it 28 is “likely, as opposed to merely speculative, that the injury will be redressed by a favorable 1 decision.” Id. at 560-61. Defendants’ motion to dismiss for lack of standing focuses on the 2 second of these elements—namely that Plaintiffs’ injuries are not “fairly traceable” to 3 them. ECF No. 19-1 at 14-17. 4 Pursuant to Federal Rule of Civil Procedure 12(b)(1), a party may bring a motion to 5 dismiss based on lack of subject matter jurisdiction, which includes a challenge to lack of 6 standing. *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1123 (9th Cir. 2010). 7 The challenge may be either facial or factual. *Safe Air for Everyone v. Meyer*, 373 F.3d 8 1035, 1039 (9th Cir. 2004). “In a facial attack, the challenger asserts that the allegations 9 contained in a complaint are insufficient on their face to invoke federal jurisdiction. By 10 contrast, in a factual attack, the challenger disputes the truth of the allegations that, by 11 themselves, would otherwise invoke federal jurisdiction.” Id. In a factual attack, the court 12 “may review evidence beyond the complaint without converting the motion to dismiss into 13 a motion for summary judgment.” Id. The truthfulness of the allegations in the complaint 14 are not presumed. *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). Rather, “[o]nce the 15 moving party has converted the motion to dismiss into a factual motion by presenting 16 affidavits or other evidence properly brought before the court, the party opposing the 17 motion must furnish affidavits or other evidence necessary to satisfy its burden of 18 establishing subject matter jurisdiction.” *Safe Air*, 373 F.3d at 1039 (citation omitted). 19 B. Consideration of Evidence Outside the Pleadings 20 Before getting to the merits of the arguments, the Court must first consider both 21 parties’ reliance on evidence outside the pleadings. Defendants make a factual attack on 22 standing here, which does permit the parties to then bring in evidence beyond the 23 complaint. However, that leaves open the question of how

the Court should handle 24 conflicting evidence. 25 In *Bowen v. Energizer Holdings, Inc.*, 118 F.4th 1134, 1143 (9th Cir. 2024), the 26 Ninth Circuit explained that how a court treats disputed factual issues turns on whether 27 jurisdictional disputes are intertwined with the merits of the claim. If “jurisdictional 28 disputes are not intertwined with the merits of the claim, then it falls to the district court to 1 ‘resolve those factual disputes itself.’” *Id.* (cleaned up). “Conversely, when jurisdictional 2 issues are ‘intertwined with an element of the merits of the plaintiff’s claim,’ the court must 3 treat the motion like a motion for summary judgment and ‘leave the resolution of material 4 factual disputes to the trier of fact.’” *Id.* In *Bowen*, the court concluded that where there is 5 “clear overlap” between the theory of Article III injury and the injury element of the 6 substantive claim in the case, the allegations of standing cannot be separated from the 7 merits of the claim such that the district court was permitted to resolve factual disputes. *Id.* 8 at 1145-46. Because the resolution of the standing issue would necessarily require the 9 district court to resolve issues going to the merits of the claim, resolution of any disputed 10 facts must be left to the trier of fact. *Id.* 11 Here, whether this Court may resolve factual issues or not at this motion to dismiss 12 for standing stage similarly turns on whether the Article III causation issue is so intertwined 13 with any element of the Plaintiffs’ claims such that a resolution on standing would require 14 the Court to resolve an issue on the merits. The claims asserted by Plaintiffs here are for 15 nuisance and negligence. The Court finds that, like in *Bowen*, causation for Article III 16 standing would require it to resolve issues going to the merits of the claims. For example, 17 causation is a well-established element of the negligence claim. See *Stasi v. Inmediata 18 Health Grp. Corp.*, 501 F. Supp. 3d 898, 912 (S.D. Cal. 2020). Thus, the Court finds it 19 appropriate to review the evidence under summary judgment standards and will refrain 20 from adjudicating any factual disputes at this motion to dismiss stage. 21 C. Discussion 22 Defendants argue that the harms alleged by Plaintiffs cannot be “fairly traceable” to 23 their actions. First, they cite studies that they argue show that the main source of the 24 pollution affecting water quality off the coast of Imperial Beach is “water runoff from 25 metropolitan Tijuana, and discharges of untreated or partially treated sewage from [a plant 26 in] Punta Bandera in Mexico.” ECF No. 19-1 at 15. They argue that the Outfall has 27 specifically been ruled out as a source of that pollution. *Id.* at 15-16. Finally, even if some 28 small amount of runoff from the Outfall did reach the waters off Imperial Beach, 1 Defendants argue that it is USIBWC—not them—that controls the operations at the Plant.

2 *Id.* at 16-17. Specifically Defendants cite the following evidence of that: (1) the contract 3 with USIBWC states that Veolia personnel cannot be placed in positions of “command, 4 supervision, administration or control over USIBWC personnel;” (2) USIBWC’s 5 contracting officer has final approval authority for Veolia’s workplan, hiring of key 6 personnel, recruitment, staffing, firing, the Plant’s safety plan and emergency preparedness 7 plan, and discretion to issue stop-work orders; (3) only USIBWC has authority to approve 8 and fund “major repairs, refurbishments, replacements, and upgrades in future years;” and 9 (4) it is USIBWC that has at

times made the final decision to shut off the pipelines 10 connecting the canyon collectors to the pump stations to prevent the accumulation of silt, 11 debris, and large garbage that could destroy Plant equipment. Id. 12 Plaintiffs counter that it does not matter if there are other factors that contributed to 13 the harm, but that Defendants' actions only need to be a "substantial factor" in causing the 14 harm. ECF No. 34 at 11. As for evidence of that position, Plaintiffs submit a declaration 15 from an expert, who opines that Veolia failed to intercept and divert raw sewage from 16 Tijuana through the Canyon Interceptors, which Veolia had let fall into disrepair. ECF No. 17 34-1, Declaration of Glen Daigger, ¶¶ 20, 24-25. Plaintiffs submit that this waste should 18 have been treated at the Plant, but instead went directly into the Tijuana River and Estuary, 19 which then contributed to the pollution into the ocean. ECF No. 34 at 12. Daigger also 20 opines that Veolia failed to comply with its contract for years. ECF No. 34-1, ¶¶ 20-22. 21 Applying summary judgment standards under Bowen with this evidence in mind, the 22 Court finds that there are genuine disputes of material fact that render dismissal based on 23 lack of standing improper. At the very least, there is a dispute over what sources contribute 24 to the pollution at issue here, with Defendants citing evidence that the pollution is not 25 attributable to their actions while Plaintiffs cite expert testimony that it can be traced 26 partially to Veolia's actions at the Canyon Interceptors and Plant. There is also a dispute 27 over what level of control Veolia retains under the contract between Veolia and the 28 USIBWC. These factual disputes preclude this Court from finding that Plaintiffs lack 1 standing to bring this claim against Defendants at this stage. Accordingly, the Court 2 DENIES the motion to dismiss for lack of standing.

3 III. FAILURE TO STATE A CLAIM

4 In addition to the standing issue, Defendants also raise several failure to state a claim 5 issues under Federal Rule of Civil Procedure 12(b)(6). For the remainder of these issues, 6 even though Plaintiffs substantively opposed them in their opposition to the motion (ECF 7 No. 34), during the motion hearing, Plaintiffs requested leave to amend the complaint as to 8 the issues rather than address the substantive arguments. 9 For the nuisance claim, during the motion hearing, Plaintiffs acknowledge that the 10 Court said that the claim "could have been more clear, and we agree with the Court" and 11 asked the Court for leave to amend the nuisance claim to provide more detail. ECF No. 41 12 at 25:9-13. Similarly, for the negligence claim, Plaintiffs stated that since filing of the 13 complaint, they have retained the services of an expert and "discovered new ways in which 14 Veolia was negligent" and also requested leave to amend the complaint for the negligence 15 claim. Id. at 25:14-22. 16 For the indispensable party issue, Plaintiffs stated that they filed a Federal Tort 17 Claims Act claim on October 3, 2024 and after six months from that point, they would be 18 able to and "intend on bringing in the USIBWC." Id. at 25:23-26:4. 19 For the derivative sovereign immunity argument, when questioned by the Court on 20 whether their allegations in their complaint were too conclusory, Plaintiffs stated "[w]ell, 21 one way to address it, your Honor, candidly, is that we are hopefully going to be given 22 leave to amend, we can flesh out those facts better with the assistance of [our expert's] 23 opinions" and

they can do better and they will. Id. at 26:5-27:11. 24 Requests for leave to amend the complaint are generally granted liberally. See Fed. 25 R. Civ. P. 15(a)(2) (“The court should freely give leave when justice so requires.”); 26 Eminence Cap., LLC v. Aspeon, Inc., 316 F.3d 1048, 1051 (9th Cir. 2003) (rule “to be 27 applied with extreme liberality”); Bowles v. Reade, 198 F.3d 752, 757 (9th Cir. 1999) 28 (noting “strong policy permitting amendment”). Consistent with this policy, the Court 1 noted at the motion hearing that it intended to grant leave to amend. ECF No. 42 at 27:1-2 ||6. Accordingly, based on the representations made at the oral argument on this motion, the 3 ||Court GRANTS AS MOOT the remainder of Defendants’ motion to dismiss.’ Plaintiffs 4 have 21 days from the date of this Order to file an amended complaint, in 5 || accordance with the representations made at the motion hearing.

6 D. CONCLUSION

7 After due consideration and for the reasons discussed above, the Court DENIES IN 8 || PART AND GRANTS IN PART Defendants’ motion to dismiss the complaint with leave 9 amend. Plaintiff shall file an amended complaint within 21 days of this order. 10 IT IS SO ORDERED. 11 || Dated: September 12, 2025 12 Vw Sin, 13 Honorable James E. Sunmons Jr. 14 United States District Judge 15 16 17 18 19 20 21 22 23 24 25 26 27 28 ‘To be clear, the Court is not ruling on any of the parties’ substantive arguments at this time given Plaintiffs’ plan to amend the complaint on those issue.