

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

Malan v. Martinez Refining Company LLC

Case No. 23-cv-04184-HSG (N.D. Cal. Sept. 30, 2025) · No. 23-cv-04184-HSG · Decided September 30, 2025

OPINION

Malan v. Martinez Refining Company LLC

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 DAVID MALAN, et al., Case No. 23-cv-04184-HSG 8 Plaintiffs, ORDER DENYING
MOTION FOR

CLASS CERTIFICATION

9 v. Re: Dkt. No. 83

10 MARTINEZ REFINING COMPANY LLC,

11 Defendant. 12

13 Pending before the Court is Plaintiff David Malan’s motion for class certification. Dkt.

14 No. 83. The Court held a hearing on the motion, and now DENIES it.

15 I. BACKGROUND

16 This is one of several related cases filed in this district against Defendant Martinez 17 Refining
Company, LLC (“MRC” or “Defendant”).¹ MRC owns and operates an oil refinery in 18
Martinez, California, that processes crude oil into gasoline and jet fuel. See Dkt. No. 69 (“FAC”)
19 at ¶¶ 2, 14, 20–37. The refinery is surrounded by residential properties. See id. at ¶ 15. Plaintiff
20 alleges that Defendant emits large quantities of particulate matter as a result of its operations.
See 21 id. at ¶¶ 23–28. Specifically, Plaintiff contends that the refinery’s Fluidized Catalytic
Cracking 22 Units (“FCCU”) are a major source of its particulate emissions, including petroleum
coke and 23 spent catalyst, byproducts of the oil refining process.² See Cal Report at 5; FAC at ¶¶
26–28. 24 1 These cases include the above-captioned case, Malan, Case No. 4:23-cv-4184-HSG;
Cruz v. PBF 25 Energy, Inc., Case No. 23-cv-06142-HSG; Frye v. Martinez Refining Company
LLC, Case No. 24- cv-04506-HSG; Saliba v. Martinez Refining Company LLC, Case No. 24-cv-
08153-HSG; Silvestri 26 v. Martinez Refining Company LLC, Case No. 24-cv-08241-HSG;
Manning v. Martinez Refining Company LLC, Case No. 24-cv-08316-HSG; and Canning v.
Martinez Refining Company LLC, 27 Case No. 25-cv-04511-HSG. They are all currently
coordinated before this Court for resolution of 1 Additionally, Plaintiff alleges that Defendant
creates a substantial amount of wastewater, which 2 “is noxious and highly odiferous” if not

properly handled. See FAC at ¶ 30. 3 Defendant currently uses electrostatic precipitators (“ESP”) to filter out particulates from 4 its emissions. See id. at ¶ 35. But Plaintiff contends that ESP is not the best available technology, 5 and that regulators recommend Defendant use wet gas scrubbers instead. See id. at ¶¶ 35–37. 6 Although not specifically requiring such technology, Plaintiff points out that in 2021 the Bay Area 7 Air Quality Management District (“BAAQMD”), which regulates MRC, amended Rule 6-5. See 8 Dkt. No. 83-7, Ex. 7; see also FAC at ¶ 33. The Rule seeks to reduce the amount of total 9 particulate pollution released from FCCU units, prohibits refineries from exceeding certain limits, 10 and imposes monitoring requirements. See Dkt. No. 83-7, Ex. 7. However, Plaintiff contends that 11 Defendant has yet to come into compliance with Rule 6-5.3 See FAC at ¶¶ 34–35; Dkt. No. 83 at 12 3. 13 Rather, Plaintiff documents repeated emissions incidents at the refinery. See FAC at 14 ¶¶ 48–49, 54. Plaintiff contends that BAAQMD has repeatedly issued Notices of Violations to 15 Defendant, including for odor and dust nuisance. See id. at ¶ 49; see also Dkt. No. 83-8, Ex. 8 16 (sample Notices); Dkt. No. 83-9, Ex. 9 (Notice logs); Dkt. No. 83-10, Ex. 10 (Notice logs). 17 Plaintiff contends that these are therefore not isolated incidents, but a pattern and practice of 18 Defendant’s ongoing operations. See FAC at ¶¶ 38–45, 49–57. 19 By way of example, Plaintiff describes a particularly acute incident. In November 2022, 20 MRC released an estimated 20–24 tons of spent catalyst after an FCCU unit “upset” that disabled 21 the ESPs for several days. See id. at ¶ 49; Dkt. No. 83-13, Ex. 13 (internal MRC email noting 22 community complaints and lab results finding material consistent with catalyst); Dkt. No. 83-12, 23 24 crack crude petroleum into lighter hydrocarbons used to make marketable fuels, such as gasoline and jet fuel. See Dkt. No. 83-4, Ex. 4 (“Cal Report”) at 5. This process produces petroleum coke 25 and “spent,” or deactivated, catalyst. Id.; see also FAC at ¶¶ 26–28. 3 Defendant filed a lawsuit in state court against BAAQMD regarding Rule 6-5, which it settled in 26 February 2024. See Dkt. No. 83-11, Ex. 11. Under the settlement agreement, Defendant stated that it is implementing changes to reduce its total particulate emissions from its FCCU and come 27 into compliance with Rule 6-5, including installing a monitoring system. See id. at 2–3. It will be

1 Ex. 12 (BAAQMD Summary Report). Investigators observed “visible dust” at various locations 2 within Plaintiff’s proposed class area. See id. at 2–4. BAAQMD also conducted air quality 3 modeling “to help define areas likely impacted by deposited catalyst material” and to “inform 4 future soil sampling.” See id. at 5–7. The model predicted that catalyst material was deposited in 5 the “main area” extending about 8km to the west-southwest of the MRC in concentrations 6 exceeding 0.1 grams per square meter (“g/m²”). See id. at 7. In March 2023, Contra Costa Health 7 Services (“CCH”) issued a health advisory, recommending that “no one consume fruits or 8 vegetables grown in soil exposed to substances released on November 24 and 25, 2022.” See Dkt. 9 No. 83-16, Ex. 16. CCH stated that it had no evidence of a health risk associated with the 10 incident, but made the recommendation “out of an abundance of caution.” See id. The advisory 11 was lifted in June 2023 after testing results found that the spent catalyst “did not increase the

12 public’s risk of exposure to hazardous metals in the soil.” See Dkt. No. 83-17, Ex. 17 at 3. But
13 CCH continued to identify other incidents, including 21 “releases or spills of hazardous
materials 14 at the Martinez refinery” in 2023 alone. See Dkt. No. 83-18, Ex. 18. 15 In short,
Plaintiff alleges that MRC has repeatedly failed to implement appropriate 16 emission control
practices to prevent particulate matter and “noxious odors” from migrating offsite 17 and onto the
surrounding residential properties. See FAC at ¶¶ 1, 17–18, 35–44, 50, 57–58, 83– 18 85, 100,
102–03, 106, 113. Plaintiff further alleges that the odor and particulate matter caused 19 Plaintiff
and putative class members harm, and interfered with their comfortable use and 20 enjoyment of
their residential properties. See id. at ¶¶ 85, 88, 104, 115. 21 Plaintiff provides some examples of
this interference, such as causing putative class 22 members to remain inside and keep doors and
windows closed; spend considerable time and 23 money to clean and repair the dust on their
property; sustain damage to their property in the form 24 of “chipping, pitting, sedimentation,
corrosion, destruction, and waste to the gardens, lawns, soil, 25 and other flora” and lost property
value; and lose the exclusive possession of their properties. See 26 id. at ¶¶ 85, 115. Plaintiff also
alleges that the odor and dust causes Plaintiff and putative class 27 members “annoyance,
discomfort, embarrassment, and reluctance to invite guests to their homes.” 1 Based on these
allegations, Plaintiff alleges four causes of action under California law: 2 (1) public nuisance; (2)
private nuisance; (3) negligence; and (4) trespass. See id. at ¶¶ 82–116. 3 Plaintiff now seeks to
represent a class defined as: 4 All owner-occupants and renters of residential property located, in 5
whole or in part, within one mile (1.0) Defendant’s Refinery, located at 3485 Pacheco Boulevard,
Martinez California, from August 16, 6 2020 to the Present. 7 8 See Dkt. No. 83 at 2.4 Plaintiff
estimates that this includes approximately 3,761 residential 9 households. See Dkt. No. 83-28, Ex.
28 at ¶ 8.

10 II. LEGAL STANDARD

11 Federal Rule of Civil Procedure 23(a) provides that a district court may certify a class only 12
if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions
13 of law or fact common to the class; (3) the claims or defenses of the representative parties are
14 typical of the claims or defenses of the class; and (4) the representative parties will fairly and
15 adequately protect the interests of the class. Fed. R. Civ. P. 23(a). That is, the class must satisfy
16 the requirements of numerosity, commonality, typicality, and adequacy of representation to 17
maintain a class action. See *Mazza v. Am. Honda Motor Co., Inc.*, 666 F.3d 581, 588 (9th Cir. 18
2012), overruled on other grounds by *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods*
19 *LLC*, 31 F.4th 651 (9th Cir. 2022). 20 If the four prerequisites of Rule 23(a) are met, a court
also must find that the plaintiff 21 “satisf[ies] through evidentiary proof” one of the three
subsections of Rule 23(b). *Comcast Corp. 22 v. Behrend*, 569 U.S. 27, 33 (2013). Rule 23(b)(3)
applies where there is both “predominance” 23 24 4 Unlike in the other related cases, Plaintiff
here only seeks to recover for property damage and does not raise any toxic tort or personal injury
claims. Both in his briefing on the motion for class 25 certification and during the hearing on the

motion, Plaintiff has repeatedly emphasized the relatively narrow scope of this case as compared to the others. He also has stressed the logistical difficulty in resolving this case and those of putative class members if a class is not certified here. But as the Court explained at the hearing, there are overlapping core issues across these cases that will be resolved on a coordinated basis regardless of the outcome of this motion. The denial of 1 and “superiority,” meaning “questions of law or fact common to class members predominate over 2 any questions affecting only individual members, and . . . a class action is superior to other 3 available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 4 23(b)(3). To determine whether a putative class action satisfies the requirements of Rule 23(b)(3), 5 courts consider: 6 (A) the class members’ interests in individually controlling the 7 prosecution or defense of separate actions; 8 (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; 9 (C) the desirability or undesirability of concentrating the litigation of 10 the claims in the particular forum; and 11 (D) the likely difficulties in managing a class action. 12 13 Fed. R. Civ. P. 23(b)(3)(A)–(D). Plaintiff, as the party seeking certification, “must affirmatively 14 confirm” his compliance with Rule 23 by a preponderance of the evidence. See *White v. Symetra Assigned Benefits Serv. Co.*, 104 F.4th 1182, 1192 (9th Cir. 2024) (quotations and citations 16 omitted). To do so, Plaintiff “must actually prove—not simply plead—that [his] proposed class 17 satisfies each requirement of Rule 23, including (if applicable) the predominance requirement of 18 Rule 23(b)(3).” *Id.* (quotation omitted) (emphasis in original).

19 III. DISCUSSION

20 As discussed at the hearing on the motion, the key dispute among the parties—and for the 21 Court’s consideration—is whether Plaintiff has met the predominance requirement under Rule 22 23(b)(3). The Court therefore begins its analysis with predominance, rather than the Rule 23(a) 23 factors. 24 A. Predominance 25 The predominance inquiry “tests whether proposed classes are sufficiently cohesive to 26 warrant adjudication by representation.” *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 27 (2016) (quotation omitted). When “one or more of the central issues in the action are common to 1 even though other important matters will have to be tried separately, such as damages or some 2 affirmative defenses peculiar to some individual class members.” *Id.* The Supreme Court has 3 defined an individual question as “one where members of a proposed class will need to present 4 evidence that varies from member to member, while a common question is one where the same 5 evidence will suffice for each member to make a prima facie showing [or] the issue is susceptible 6 to generalized, class-wide proof.” *Id.* (quotation omitted). This “inquiry asks whether the 7 common, aggregation-enabling, issues in the case are more prevalent or important than the non- 8 common, aggregation-defeating, individual issues.” *Id.* (quotation omitted). The Supreme Court 9 has made clear that Rule 23(b)(3)’s predominance requirement is “even more demanding” than the 10 commonality requirement of Rule 23(a). See *Comcast*, 569 U.S. at 34 (citing *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623–24 (1997)). In short, “‘Rule 23(a)(2) asks whether there are issues 12 common to the class,’ and ‘Rule

23(b)(3) asks whether these common questions predominate.” 13 *Abdullah v. U.S. Sec. Assocs., Inc.*, 731 F.3d 952, 957 (9th Cir. 2013) (quoting *Wolin v. Jaguar 14 Land Rover N. Am., LLC*, 617 F.3d 1168, 1172 (9th Cir. 2010)). 15 There are undoubtedly common and substantial questions here, such as whether 16 Defendant’s conduct in emitting particulate matter and odor into the surrounding neighborhood 17 fell below the standard of care. However, that does not end the inquiry, because individual issues 18 may still predominate over such common questions. Whether “questions of law or fact common 19 to class members predominate begins . . . with the elements of the underlying cause of action.” 20 *Olean*, 31 F.4th at 665 (quotation omitted). Defendant contends that Plaintiff has not met the 21 predominance requirement because the key elements of liability for all his claims—harm, 22 causation, and damages—will require individualized evidence. See Dkt. No. 92 at 1–2, 10–20. 23 The Court finds that for purposes of this inquiry, the critical element in each of Plaintiff’s claims 24 is whether Defendant’s conduct caused Plaintiff and putative class members harm or injury.⁵ It is 25 5 This is distinct from the concept of individual damages calculations, which would not preclude 26 the Court from certifying the class. See *Yokoyama v. Midland Nat. Life Ins. Co.*, 594 F.3d 1087, 1094 (9th Cir. 2010) (“The amount of damages is invariably an individual question and does not 27 defeat class action treatment.”) (quotation omitted); cf. *Lara v. First Nat’l Ins. Co. of Am.*, 25 1 Plaintiff’s burden to prove that he can establish this element with class-wide proof. And without 2 such proof, a purported class action would instead devolve into thousands of individual inquiries 3 as to whether Plaintiff and putative class members were harmed by Defendant’s conduct. 4 Public and Private Nuisance. Under California law, a nuisance is “[a]nything which is 5 injurious to health . . . or is indecent or offensive to the senses, or an obstruction to the free use of 6 property, so as to interfere with the comfortable enjoyment of life or property” Cal. Civ. 7 Code § 3479. Public nuisances “affect[] at the same time an entire community or 8 neighborhood” *Id.* § 3480. Every nuisance that is not a public nuisance is a private one. See 9 Cal. Civ. Code § 3481. The elements therefore are largely the same. As relevant here, to establish 10 either a public or a private nuisance claim, Plaintiff must prove that Defendant created a condition 11 that was harmful to health or interfered with the comfortable enjoyment of life or property.⁶ See 12 *Birke v. Oakwood Worldwide*, 169 Cal. App. 4th 1540, 1548 (Cal. Ct. App. 2009); *Mendez v. 13 Rancho Valencia Resort Partners, LLC*, 3 Cal. App. 5th 248, 262–63 (Cal. Ct. App. 2016). The 14 interference with property, as alleged here, must be “substantial and unreasonable.” See *Mendez*, 15 3 Cal. App. 5th at 262 (quotation omitted). The degree of harm is measured by an objective 16 standard: “the effect . . . the invasion [would] have on persons of normal health and sensibilities 17 living in the same community.” *Id.* at 263 (quotation omitted) (alterations in original). 18 Negligence. Under California law, “[e]veryone is responsible . . . for an injury occasioned 19 to another by his or her want of ordinary care or skill in the management of his or her 20 property” Cal. Civ. Code § 1714(a). And to establish a negligence claim, Plaintiff likewise 21 must prove, inter alia, that he was harmed by Defendant’s breach of duty.⁷ See *Romero v. Los 22 6 A public nuisance claim*

requires a plaintiff to prove: (1) the defendant “created a condition that 23 was harmful to health” or “interfere[d] with the comfortable enjoyment of life or property”; (2) “the condition affected a substantial number of people at the same time”; (3) “an ordinary person 24 would be reasonably annoyed or disturbed by the condition”; (4) “the seriousness of the harm outweighs the social utility” of the defendant’s conduct; (5) the plaintiff did not consent to the 25 conduct; (6) the plaintiff “suffered harm that was different from the type of harm suffered by the general public”; and (7) the defendant’s conduct “was a substantial factor” in causing plaintiff’s 26 harm. See *Birke*, 169 Cal. App. 4th at 1548. A plaintiff asserting a private nuisance, however, does not have to prove that the nuisance is one that affects a community or neighborhood and that 27 they suffered a special injury. See *Mendez*, 3 Cal. App. 5th at 262. 1 *Angeles Rams*, 91 Cal. App. 5th 562, 567 (Cal. Ct. App. 2023); see also *Aas v. Superior Ct.*, 24 2 Cal. 4th 627, 646 (Cal. 2000), superseded by statute on other grounds, Civ. Code, §§ 895 et seq. 3 (recognizing “that appreciable, nonspeculative, present injury is an essential element of a tort 4 cause of action”). 5 Trespass. During the hearing on the motion, Plaintiff’s counsel suggested that his trespass 6 claim was distinct from the nuisance and negligence claims. However, a trespass claim still 7 generally requires Plaintiff to prove that he and putative class members were harmed by 8 Defendant’s emissions.⁸ See *Ralphs Grocery Co. v. Victory Consultants, Inc.*, 17 Cal. App. 5th 9 245, 262 (Cal. Ct. App. 2017). Plaintiff does not directly address the need to establish “harm” for 10 purposes of his trespass claim. See generally Dkt. Nos. 83, 103. Instead, he briefly notes that a 11 plaintiff may be entitled to nominal damages even if he does not claim any injury to his property. 12 See Dkt. No. 103 at 9 (citing *In re Burbank Env’t Litig.*, 42 F. Supp. 2d 976, 983 (C.D. Cal. 13 1998)). Although he does not clarify this point, Plaintiff’s argument relies on the suggestion that 14 the existence of any tangible dust on the putative class’s residential properties is enough on its 15 own to establish liability for trespass. 16 It is true that California courts have recognized that “every trespass is an invasion of a 17 legal right of another and carries with it the right to nominal damages.” See *Costerisan v. Tejon 18 Ranch Co.*, 255 Cal. App. 2d 57, 60 (Cal. Ct. App. 1967); cf. *Sefton v. Prentice*, 103 Cal. 670, 674 19 (Cal. 1894) (“[A] man has no right to commit a trespass upon the property of another because, in 20 the opinion of the trespasser or of a court, it would do the owner of the property no harm.”). But 21 at least as currently alleged, Plaintiff is not seeking nominal damages in this case. See generally 22 FAC at 26–27 (“Prayer for Relief”) (requesting compensatory damages). Rather, he alleges as 23 part of his trespass claim that he and putative class members “suffered harm,” such as needing to 24 remain indoors, as well as physical damage to their properties. See *id.* at ¶ 115; see also Dkt. No. 25 *Romero*, 91 Cal. App. 5th at 567. 26 8 A trespass claim requires a plaintiff to prove: (1) he owns or controls the property; (2) the defendant negligently, recklessly, or intentionally caused something tangible to enter the 27 plaintiff’s property, (3) without the plaintiff’s permission; and (4) the defendant’s conduct was a 1 103 at 9 (stating that “[t]he question is whether the physical invasion of dust into private property 2 constitutes harm”). Plaintiff’s trespass claim, like his

nuisance and negligence claims, therefore, 3 still requires consideration of harm. 4 For purposes of predominance, the Court thus considers whether Plaintiff can present 5 common, class-wide proof to establish harm. Plaintiff largely sidesteps this issue in his briefing, 6 focusing on the efficiency gains of a class action under these circumstances and noting that 7 individualized damages questions may be resolved later. See, e.g., Dkt. No. 83 at 21–24. But as 8 discussed above, harm is an element of Plaintiff’s claims, and is distinct from the amount of 9 damages any individual class member may be entitled to if they ultimately succeed in establishing 10 liability. See *Lara*, 25 F.4th at 1139–40. Plaintiff also emphasizes the objective standard that 11 applies when evaluating nuisance and trespass claims. See Dkt. No. 83 at 23; Dkt. No. 103 at 2. 12 But critically, even if evaluated under an objective standard, Plaintiff does not discuss what 13 common proof he would use to satisfy this element. Plaintiff points out that Defendant has not 14 provided its own, contrary evidence that the putative class was unharmed. See Dkt. No. 103 at 7–15 8. But this is Plaintiff’s motion, and he bears the burden of proving that class certification is 16 appropriate. 17 There is no doubt that Plaintiff has provided ample evidence at this stage that Defendant 18 has repeatedly released particulate matter from the refinery. But Plaintiff has not proved that he 19 can show on a class-wide basis that these emissions—alone or collectively—caused harm. Taking 20 the nuisance claims, for example, Plaintiff must show that Defendant’s emissions caused 21 substantial interference with the comfortable enjoyment of class members’ property. When 22 pressed during the hearing about what common evidence Plaintiff intends to use to show 23 substantial interference for everyone, counsel did not point to any specific evidence. Instead, 24 counsel emphasized Defendant’s conduct rather than Plaintiff’s harm: evidence demonstrating the 25 frequency of the emissions and the fact that Defendant is not using the best available technology to 26 prevent the emissions. This is not common proof of harm. 27 Although Plaintiff does not emphasize this evidence as common proof of harm, he has 1 conducted after the November 2022 incident. See Dkt. No. 83 at 13, 23; Dkt. No. 103 at 3–4. But 2 Plaintiff has not proved that either could provide the kind of class-wide proof of harm necessary to 3 establish predominance at this stage. 4 Dr. Cal conducted preliminary “atmospheric dispersion modeling” to show how particulate 5 matter is dispersed from the refinery into the surrounding area. See generally Cal Report. He did 6 not model the dispersion of spent catalyst or coke dust, but instead looked at particulate matter 2.5 7 micrometers or smaller (“PM-2.5”) and particulate matter 30 micrometers or larger (“PM-30”). 8 Id. Dr. Cal concludes that his modeling “displayed elevated PM dispersion and deposition 9 throughout the entire proposed class area.” Id. at 14. In other words, Dr. Cal concluded that some 10 amounts of PM 2.5 and PM 30 were “transport[ed] . . . throughout the proposed class area.” See 11 id. at 19. But his report is limited. Dr. Cal’s report explicitly states that he did not model the 12 “extent, severity, and frequency of the defendant’s emissions.” Id. at 14. During his deposition, 13 Dr. Cal further clarified that his modeling showed “variability in [particulate matter] 14 concentrations across the proposed class area.” See Dkt. No. 92-1, Ex. 7 at 373, 377 (110:9–16, 15 170:2–8). 16 Plaintiff does not engage

with this variability or explain why it would not undermine the use of Dr. Cal's modeling as common proof of harm. Like Plaintiff, the Court rejects Defendant's argument that individual differences in how putative class members responded to the emissions preclude class treatment. See Dkt. No. 103 at 9. But Dr. Cal's report itself suggests that the nature and scope of the emissions varied across the class area and thus across the thousands of properties owned or rented by members of the proposed class. Defendant's expert confirms this variability, and explains that it is due to a variety of factors such as particle size, wind speed and direction, precipitation, and the existence of large structures, trees, and vegetation. See Dkt. No. 24 92-1, Ex. 2 at 18–20. In his report, Dr. Cal states that "[a] more detailed atmospheric dispersion modeling analysis" could "determine the intensity and location of nuisance-level particulate matter (dust) deposition and/or odor dispersion within the proposed class area." See Cal Report at 19. Such 1 impacted by particulate material and/or odor emissions from the facility and to what extent." See 2 id. But he did not do this work in the report presented to the Court, and did not explain how he 3 would do it moving forward, or how such results might impact the proposed class area.⁹ The 4 BAAQMD's analysis likewise indicates that following the November 2022 release, dust was 5 observed throughout the class area. See Dkt. No. 83-12, Ex. 12 at 2–4 (BAAQMD Summary 6 Report). Its modeling of the incident also reflects dust concentrations exceeding 0.1 g/m² in the 7 class area. See id. at 6–8. But here too, the modeling shows some variability. Id. The report 8 states that the "main area with total deposition exceeding 0.1 g/m² extends about 8k to the west- 9 southwest of MRC." See id. at 7. The report also states that the modeling was designed "to 10 identify candidate areas for soil sampling," and "does not show areas of community impact." See 11 id. at 6, 7. 12 Even assuming future modeling could demonstrate the extent, scope, and frequency of the 13 emissions, and even assuming there was no meaningful variability across the class area, Plaintiff 14 still has not explained how he intends to establish harm from this exposure level on a class-wide 15 basis. Whether Plaintiff can ultimately establish that any individual class member suffered harm 16 from the emissions is a merits question not before the Court at this stage. But whether Plaintiff 17 will be able to prove such harm with class-wide proof is a class certification question. And 18 Plaintiff has not presented adequate evidence of such proof. Even as alleged in the FAC, the 19 currently-asserted harm seems highly individualized. Plaintiff notes, for example, that the 20 emissions substantially interfered with his and class members' use and enjoyment of their 21 properties by causing property damage "through chipping, pitting, sedimentation, corrosion, 22 destruction, and waste to gardens, lawns, soil, and other flora" See FAC at ¶ 85. But there is 23 nothing before the Court to suggest that Defendant's emissions caused such harm across the 24 thousands of properties in the class area. Plaintiff appears to assume that Defendant's emissions 25 are inherently harmful. While that might someday be capable of being proved, this blanket 26 27 9 The Court also notes that neither Dr. Cal's nor BAAQMD's reports modeled the distribution of 1 assumption cannot establish by a preponderance of the evidence that common issues predominate

2 over individualized ones. 3 The Court acknowledges the challenges inherent in adjudicating these issues on a parcel- 4 by-parcel basis. But resolving the critical element of injury appears to require just that: 5 consideration of individualized issues that necessarily would eclipse any common ones. Plaintiff 6 has not met his burden of establishing that the requirements of Rule 23 are met here, and the Court 7 therefore DENIES the motion for class certification. Dkt. No. 83.

8 IV. MOTIONS TO SEAL

9 A. Legal Standard 10 Courts generally apply a “compelling reasons” standard when considering motions to seal 11 documents. *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010) (quoting *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006)). “This standard derives from the 13 common law right ‘to inspect and copy public records and documents, including judicial records 14 and documents.’” *Id.* (quoting *Kamakana*, 447 F.3d at 1178). “[A] strong presumption in favor of 15 access is the starting point.” *Kamakana*, 447 F.3d at 1178 (quotations omitted). To overcome this 16 strong presumption, the party seeking to seal a judicial record attached to a dispositive motion 17 must “articulate compelling reasons supported by specific factual findings that outweigh the 18 general history of access and the public policies favoring disclosure, such as the public interest in 19 understanding the judicial process” and “significant public events.” *Id.* at 1178–79 (quotations 20 omitted). “In general, ‘compelling reasons’ sufficient to outweigh the public’s interest in 21 disclosure and justify sealing court records exist when such ‘court files might have become a 22 vehicle for improper purposes,’ such as the use of records to gratify private spite, promote public 23 scandal, circulate libelous statements, or release trade secrets.” *Id.* at 1179 (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)). “The mere fact that the production of records 25 may lead to a litigant’s embarrassment, incrimination, or exposure to further litigation will not, 26 without more, compel the court to seal its records.” *Id.* 27 The Court must “balance[] the competing interests of the public and the party who seeks to 1 certain judicial records, it must base its decision on a compelling reason and articulate the factual 2 basis for its ruling, without relying on hypothesis or conjecture.” *Id.* Civil Local Rule 79-5 3 supplements the compelling reasons standard set forth in *Kamakana*: the party seeking to file a 4 document or portions of it under seal “must explore all reasonable alternatives to filing documents 5 under seal, minimize the number of documents filed under seal, and avoid wherever possible 6 sealing entire documents” Civil L.R. 79-5(a). The party must further explain the interests 7 that warrant sealing, the injury that will result if sealing is declined, and why a less restrictive 8 alternative to sealing is not sufficient. See Civil L.R. 79-5(c). 9 Records attached to nondispositive motions must meet the lower “good cause” standard of 10 Rule 26(c) of the Federal Rules of Civil Procedure, as such records “are often unrelated, or only

11 tangentially related, to the underlying cause of action.” See *Kamakana*, 447 F.3d at 1179–80 12 (quotations omitted). However, because the motion for class certification is more than 13 tangentially related to the merits of the underlying action, the Court applies the “compelling 14

reasons” standard in evaluating the motions to seal. 15 B. Discussion 16 In conjunction with his motion for class certification, Plaintiff filed two motions to 17 consider whether another party’s material should be sealed under Civil L.R. 79-5(f). Dkt. Nos. 96, 18 106. The two motions seek to seal the same material: four exhibits filed in support of the motion 19 for class certification and portions of Plaintiff’s motion for class certification that reference these 20 documents.¹⁰ Plaintiff explained that Defendant had designated these documents as confidential 21 during discovery. See Dkt. Nos. 96, 106. 22 As required under Civil L.R. 79-5(f)(3), Defendant filed a declaration in support of the 23 motions to seal. Dkt. No. 97. Defendant seeks to seal a narrower subset of the documents. 24 Defendant does not request to seal any portions of Plaintiff’s motion for class certification or

25 Exhibit 31. The Court therefore DENIES the motions to seal as to these documents. Defendant 26 27 10 The Court found that the initial motion to seal, Dkt. No. 96, did not comply with all the 1 seeks to seal Exhibit 29 and Exhibit 30 in their entirety, as well as a portion of Exhibit 26.

2 Exhibit 29 and Exhibit 30 are confidential settlement agreements that Defendant 3 previously obtained from Martinez residents. Defendant seeks to seal these two exhibits in their 4 entirety, arguing that they provide sensitive and non-public information about the company’s 5 litigation strategy and personally identifiable information about those who entered into the 6 agreements. See Dkt. No. 97 at ¶¶ 17–18. They include, for example, information about the 7 specific settlement terms, including the amounts paid to each individual. The agreements also 8 contain the names and contact information for the individuals who entered into the agreements 9 with Defendant. Plaintiff cites these documents broadly in support of his assertion that Martinez 10 residents in the proposed class area have experienced adverse impacts due to Defendant’s conduct. 11 However, the specifics of these releases were not germane to the Court’s predominance analysis 12 above, and the public’s interest in these documents is minimal. The disclosure of this information, 13 on the other hand, would reveal confidential information about Defendant’s settlement 14 negotiations and litigation strategy, and would disincentivize settlements. See *Celgard, LLC v. 15 Targray Tech. Int’l Inc.*, No. 19-CV-02401-VKD, 2019 WL 3841997, at *2–3 (N.D. Cal. Aug. 15, 16 2019) (“[C]ourts have long recognized the general policy of protecting settlement negotiations and 17 communications in order to promote settlement.”) (collecting cases). 18 Similarly, Exhibit 26 is a spreadsheet that contains communications that Defendant had 19 with Martinez residents in November 2022 following a catalyst release. Defendant only seeks to 20 redact the personally identifiable information of the individuals with whom Defendant 21 communicated, specifically their name, phone number, and email address. The Court did not rely 22 on the spreadsheet, particularly the identity of any of the individuals, in deciding the motion for 23 class certification either. The information is thus unrelated to the public’s understanding of the 24 judicial proceedings in this case, and the public’s interest in disclosure of this information is 25 minimal. 26 Because the documents divulge sensitive information unrelated to the public’s 27 understanding of the judicial proceedings in this action,

the Court finds that there are compelling 1 and the portions of Exhibit 26 that Defendant identified.'! Dkt. Nos. 96, 106. Pursuant to Civil 2 Local Rule 79-5(g)(1), documents filed under seal as to which the administrative motion is granted 3 will remain under seal.

4 || Vv. CONCLUSION

5 The Court DENIES the motion for class certification. Dkt. No. 83. The Court GRANTS 6 IN PART and DENIES IN PART the motions to seal. Dkt. Nos. 96, 106. Plaintiff is 7 DIRECTED to file an unredacted version of the motion for class certification and Exhibit 31, for 8 which the proposed sealing has been denied, as well as Exhibit 28 in support of his motion, for 9 which a motion to seal was never filed, within seven days of this order. 10 The Court further SETS a case management conference in this case and all related cases 11 on October 28, 2025, at 2:00 p.m. The hearing will be held by Public Zoom Webinar. All 12 || counsel, members of the public, and media may access the webinar information at 13 <https://www.cand.uscourts.gov/hsg>. All attorneys and pro se litigants appearing for the case 14 || management conference are required to join at least 15 minutes before the hearing to check in with 3 15 the courtroom deputy and test internet, video, and audio capabilities. The Court DIRECTS all a 16 || parties in the related cases to meet and confer and file a joint case management statement by 17 || October 21, 2025. 18 IT IS SO ORDERED. 19 || Dated: 9/30/2025

20 Apipured 3 Mbt).

HAYWOOD S. GILLIAM, JR. 21 United States District Judge 22 23 24 25 26 7 '! The Court notes that portions of Plaintiff's Exhibit 28, the declaration of Matthew Roman, are also redacted. See Dkt. No. 83-28, Ex. 28. Plaintiff did not file a motion to seal as to this exhibit 2g || and these redactions are improper. The Court therefore DIRECTS Plaintiff to file an unredacted version of Exhibit 28 within seven days of this order.