UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 14-1072 ABC (JCx)	Date	May 30, 2014
Title	Regina Lazo et al v. Mobil Oil Refining Corporation et al.		

Present: The Honorable	Audrey B. Collins	
Angela Bridges	None Present	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
None Present	None Present	

Proceedings: Order **GRANTING** Motion to Dismiss (In Chambers)

Pending before the Court is a Motion to Dismiss ("Motion," docket no. 23) filed by Defendants Mobil Oil Refining Corporation and Exxon Mobil Corporation ("Defendants"). Plaintiffs Regina Lazo, Alex Lazo, and Marc Lazo ("Plaintiffs") filed an Opposition and Defendants filed a Reply.[1] The Court will decide the Motion without oral argument and **VACATES** the June 2, 2014 hearing. Fed. R. Civ. P. 78; Local Rule 7-15. For the reasons below, the Motion is **GRANTED**.

I. BACKGROUND

Plaintiffs allege that decedent Youssef Lazo ("Decedent") was exposed to toxic chemicals during his employment with Defendants, and that this exposure caused his health to deteriorate, leading to acute myeloid leukemia ("AML"), a degenerative disease that led to Decedent's death. Plaintiffs are Decedent's heirs.

Plaintiffs' initial Complaint asserted claims for wrongful death, negligence, negligent infliction of emotional distress, loss of consortium, and failure to warn. The Court dismissed these claims as barred by worker's compensation exclusivity, and found that Plaintiffs had not sufficiently pled the fraudulent concealment exception to worker's compensation exclusivity. See Order, docket no. 14. The Court granted Plaintiffs leave to amend to attempt to cure these defects.

Plaintiffs' First Amended Complaint ("FAC") asserts the same claims as their initial Complaint but adds a claim for fraudulent concealment (Labor Code § 3602(b)(2). Defendants move to dismiss on the ground that Plaintiffs' FAC does not cure the fatal defects in their initial Complaint.

II. LEGAL STANDARD

[1] Plaintiffs also filed a document entitled Request for Oral Argument (docket no. 29). However, this document is more in the nature of a sur-reply because it contains additional argument. The Court did not authorize this filing, so it is hereby **STRICKEN**. The Court denies the request for oral argument because it would not be productive. The Court also finds that Defendant complied with Local Rule 7-3.

Fed. R. Civ. Proc. 8(a)(2) requires a pleading to present a "short and plain statement of the claim showing that the pleader is entitled to relief." Under Fed. R. Civ. Proc. 12(b)(6), a defendant may move to dismiss a pleading for "failure to state a claim upon which relief can be granted." Thus, a pleading that does not satisfy Rule 8 is subject to dismissal under Rule 12(b)(6). Dismissal is proper under Rule 12(b)(6) where there is either a "lack of a cognizable legal theory" or "the absence of sufficient facts alleged under a cognizable legal theory." Balistreri v. Pacifica Police Dept., 901 F.2d 969, 699 (9th Cir. 1988).

"[A] plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal quotations and alterations omitted). Although this does not require "detailed factual allegations," it "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." Ashcroft v. Iqbal, 555 U.S. 662, 678 (2009). A sufficiently-pled claim must be "plausible on its face." Id. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. For purposes of a motion to dismiss, allegations of fact are taken as true and are construed in the light most favorable to the nonmoving party. See Newdow v. Lefevre, 598 F.3d 638, 642 (9th Cir. 2010).

The first step in determining whether a claim is sufficiently pled is to identify the elements of that claim. See Iqbal, 555 U.S. at 675. The court should then distinguish between the pleading's allegations of fact and its legal conclusions: a court "must take all of the factual allegations in the complaint as true," but should not give legal conclusions this assumption of veracity. Iqbal, 556 U.S. at 678. The court must then decide whether the pleading's factual allegations, when assumed true, "plausibly give rise to an entitlement to relief." Id. at 679. The court may not consider material beyond the pleadings other than judicially noticeable documents, documents attached to the complaint or to which the complaint refers extensively, or documents that form the basis of the claims. See United States v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003).

III. DISCUSSION

A. Plaintiffs' Claims for Wrongful Death, Negligence, Negligent Infliction of Emotional Distress, Loss of Consortium, and Failure to Warn Remain Barred by Worker's Compensation Exclusivity.

As noted, the Court previously dismissed Plaintiffs' claims for wrongful death, negligence, negligent infliction of emotional distress, loss of consortium, and failure to warn as barred by the doctrine of worker's compensation exclusivity. See Order p. 3 ("As such, workers' compensation provides the exclusive remedy for Plaintiffs' injury, and Defendants are immune from Plaintiffs' tort claims, except to the extent the [fraudulent concealment exception] may apply."). These claims remain

barred by worker's compensation exclusivity. The Motion is therefore granted as to these claims.

B. Plaintiffs Have Not Adequately Pled Fraudulent Concealment.

Plaintiffs contend that the fraudulent concealment exception to workers' compensation exclusivity applies. This exception allows an employee or his dependents to bring an action for damages against the employer "where the employee's injury is aggravated by the employer's fraudulent concealment of the existence of the injury and its connection with the employment, in which case the employer's liability shall be limited to those damages proximately caused by the aggravation." Cal. Lab. Code § 3602(b)(2).

The three "essential elements" for pleading fraudulent concealment are: "(1) the employer knew that the plaintiff had suffered a work-related injury; (2) the employer concealed that knowledge from the plaintiff; and (3) the injury was aggravated as a result of such concealment." Palestini v. General Dynamics Corp., 99 Cal. App. 4th 80, 90 (2002). A plaintiff must prove that the employer had actual knowledge of the employee's injury; an employer's prior knowledge of the risks and dangers of its workplace is not enough to establish liability. See Hughes Aircraft Co. v. Superior Court, 44 Cal. App. 4th 1790, 1795-1797 (Cal. Ct. App. 1996). Furthermore, because the fraudulent concealment exception sounds in fraud, it is subject to Fed. R. Civ. P. 9(b)'s requirement that "the circumstances constituting fraud or mistake shall be stated with particularity." Fed. R. Civ. P. 9(b). Under Rule 9(b), "allegations of fraud must be specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged so that they can defend against the charge and not just deny that they have done anything wrong." Bly-Magee v. California, 236 F.3d 1014, 1019 (9th Cir. 2001) (citation and quotations omitted).

When read in view of the foregoing standards, the FAC does not sufficiently plead fraudulent concealment. The FAC's operative paragraphs are 23, 24, and 25. The Court has reviewed these paragraphs sentence by sentence and finds that they fall short of alleging all of the elements of fraudulent concealment. In particular, the FAC fails to allege that Defendants knew of the decedent's injury. The Court will summarize the allegations in these paragraphs.

Paragraph 23 alleges that Defendants "had knowledge" of risks that hazardous substances on the job posed health risks to employees. FAC 6:10-18. Knowledge of risk does not equate to knowledge of injury, and the former is inadequate to support Plaintiffs' claim. Accord Rodriguez v. United Airlines, Inc., 2013 WL 6199275 (N.D. Cal. Nov. 27, 2013) (plaintiffs "are conflating knowledge of exposure with knowledge of injury, which is insufficient to support a § 3602(b)(2) claim as a matter of law."). Paragraph 23 next alleges that Defendants "had knowledge" that other employees were exposed to the same substances that decedent was exposed to, which caused illness. FAC 6:18-21. This allegation falls short because it does not pertain to Defendants' knowledge *of decedent*. Furthermore, although this portion also alleges that the substances other employees were exposed to caused them illnesses, it fails to allege that Defendants knew these substances caused its other employees to develop illness. In short,

paragraph 23 alleges only knowledge of risk and knowledge that other employees were also exposed. This does not equate to knowledge that decedent had a work-related injury. Thus, none of paragraph 23's allegations are that Defendant knew decedent had a work-related injury.

Paragraph 24's first sentence is merely conclusory (FAC 6:22-25) so the Court will disregard it. Paragraph 24 next asserts that, at Defendants' direction, decedent took at least annual physicals and random urine and blood tests conducted by Defendants' physicians, and that these tests revealed decedent was "suffering from physical precursors to AML, including a compromised immune system – in part manifested by deficient red and white blood count and mutated cells – and dermal barrier." FAC 6:25-7:4. This allegation comes closest to satisfying the knowledge element, but still falls short. This allegation that blood tests revealed that decedent had low blood counts and mutated cells is not the same as an allegation that decedent had an illness and that Defendant knew about the illness. Any number of conditions can produce the blood test results and "compromised . . . dermal barrier" that decedent alleges, and the Court knows of no provision of law requiring an employer to seek a diagnosis on an employee's behalf. It may seem like hair-splitting to distinguish between mere suspicious blood tests without a resulting diagnosis on one hand and actual knowledge of an illness on the other, but that is what the law requires, and logically, an employer cannot fraudulently conceal an employee's illness unless it actually knows that the employee has that illness. Even constructive knowledge does not satisfy this knowledge requirement; only actual knowledge does. Hughes Aircraft Co. v. Superior Court, 44 Cal. App. 4th 1790, 1797 (1996) ("The first consideration [to establish liability under § 3602(b)(2)] is whether . . . Hughes[had] actual prior knowledge of plaintiffs' injuries. Only if the answer is yes would the court consider whether the employer concealed those injuries and their relationship to the work environment from plaintiffs. It is not enough for plaintiffs to rely on evidence from which a trier of fact might conclude Hughes should have known of plaintiffs' injuries before they were reported; only evidence of actual knowledge would raise an issue of fact . . ."). The next sentence of paragraph 24 alleges that Defendant "concealed the results" of the aforementioned tests from decedent. FAC 7:4-7. But again, this is not the equivalent of concealing an injury. None of paragraph 24's allegations can be construed as pleading Defendant had knowledge of decedent's illness.

Paragraph 25 repeats that Defendant concealed "(1) the nature and extent of other employees' illnesses and deaths" and concealed "(2) DECEDENT'S own health system and the genesis and development of the diseases to which he ultimately succumbed" in order to cause decedent to keep working. FAC 7:8-13. These allegations are insufficient because they (1) are about employees other than decedent, and (2) the allegation that does pertain to decedent is a rephrasing of the allegation that Defendant hid from decedent the results of his blood tests, which is not the same as alleging that Defendant knew of decedent's injury. The remainder of paragraph 25 alleges the consequences of Defendant's alleged concealment, and has nothing to do with Defendant's knowledge of the decedent's injury. Paragraph 25 therefore does not plead that Defendant had knowledge of decedent's injury.

No other allegations in the FAC can even arguably be construed as alleging that Defendant had

knowledge of decedent's injury. In their Opposition, Plaintiffs state they can amend their FAC to allege three additional facts. See Opp'n 4:3-27. These additional allegations are that decedent's supervisors actively concealed the results of decedent's physical exams, that Defendant advised decedent that if he did not work overtime he would not be viewed as a "team player," and that decedent's brother-in-law, who also worked for Defendant, developed a similar illness from the same exposure. These allegations are more of the same and simply fail to allege the only kind of knowledge that satisfies the knowledge element of fraudulent concealment: that Defendant had *actual* knowledge of decedent's *injury*.

Because the FAC fails to plead the knowledge element of fraudulent concealment, the claim fails. Because none of the additional allegations Plaintiffs propose satisfy this element, the Court finds that further amendment would be futile and therefore will not grant leave to amend.

Because the foregoing ruling is dispositive, the Court need not reach the Motion's other grounds.

IV. CONCLUSION

The Court therefore **GRANTS** Defendants' Motion to Dismiss. Defendants are **ORDERED** to file a Proposed Judgment within ten (10) days of the issuance of this Order.

IT IS SO ORDERED.

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Initials of Preparer AB

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