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16 UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT
17 OF CALIFORNIA – WESTERN DIVISION

18 AMERICA UNITES FOR KIDS, et al.,
19 Plaintiffs,
20 v.
21 SANDRA LYON, et al.,
22 Defendants.

CASE NO. 2:15-cv-02124-PA-AJW

**DECLARATION OF JENNIFER
DENICOLA IN SUPPORT OF
PLAINTIFFS’ OPPOSITION TO
DEFENDANT’S MOTION FOR
SANCTIONS FOR DISCOVERY
VIOLATION**

Hearing Date: December 14, 2015
Hearing Time: 1:30 pm
Judge: Hon. Percy Anderson
Courtroom: 15

Complaint Filed: March 23, 2015
Discovery Cutoff: March 7, 2016
Pre Trial Conference: April 15, 2016
Trial: May 17, 2016

1 I, Jennifer DeNicola, declare:

2 1. I am the founder and President of Plaintiff America Unites for Kids,
3 formerly known as Malibu Unites (“America Unites”). I make this declaration in
4 support of Plaintiffs’ Opposition to Defendants’ Motion for Sanctions for Discovery
5 Violation.

6 2. Defendant’s motion alleges that I and others associated with America
7 Unites performed unauthorized and illegal sampling and testing of caulk at the Juan
8 Cabrillo Elementary School and Malibu Middle and High School (the “Malibu
9 Schools”). I understand that officials of the Santa Monica Malibu Unified School
10 District (the “District”) caused the filing of a police report with the Los Angeles
11 County Sheriff’s department, which alleges that I had committed criminal acts of
12 trespass and vandalism in connection with the purported unauthorized sampling and
13 testing.

14 3. At the time that Plaintiffs’ portion of the Joint Stipulation in connection
15 with Defendant’s motion was due, I understood that the criminal investigation into
16 my alleged conduct was still open. Therefore, I did not think it appropriate to submit
17 a declaration in opposition to Defendant’s motion at that time. However, the Los
18 Angeles District Attorney has now declined to file any charges. A copy of the
19 declination is attached hereto as Exhibit A. Attached hereto as Exhibit E is a
20 November 30, 2015 email that my attorney, Cyn Yamashiro, received from the Los
21 Angeles District Attorney explaining the basis for his decision.

22 4. I have dedicated my professional career to education and the welfare of
23 children and teachers in schools. I have a Master’s degree in education, and am a
24 former teacher and P.T.A. President. America Unites advocates for the elimination
25 of PCBs and other harmful chemicals in schools. America Unites has thousands of
26 supporters, including members of the District’s Board of Education and the Malibu
27 City Council. America Unites’ advisors include top PCB experts from around the
28 world. I have given presentations on PCBs in schools at the Eighth International

1 PCB Conference in Woods Hole, Massachusetts, and at the Harvard School of
2 Public Health. I am scheduled to speak about PCBs to professors at Stanford next
3 month.

4 5. I have two children who attended the Malibu Schools. One is still a
5 student there. In October 2013, I learned from news reports that the District had
6 been aware of PCB contamination at the Malibu Schools since 2009. The District
7 had not publicly disclosed the existence of this contamination. In October 2013, I
8 became a member of a District-led environmental task force to act as parent
9 representative. Since that time, I have been advocating for the removal of PCBs
10 from the Malibu Schools.

11 6. I have been openly assisting with so-called “independent” testing of
12 caulking at the Malibu Schools for PCBs since May of 2014. Plaintiffs America
13 Unites and Public Employees for Environmental Responsibility presented results of
14 such independent testing to the District and the United States Environmental
15 Protection Agency (“EPA”) in July and September of 2014, and January 2015. We
16 also provided certain of these results to the Los Angeles County District Attorney’s
17 office. Copies of my September 22, and September 24, 2014 emails to Jackie Lacey
18 and Yael Massry, respectively, of the Los Angeles District Attorney, concerning the
19 independent testing are attached hereto as Exhibit B and C, respectively. None of
20 these agencies ever informed me that they considered this independent testing
21 illegal. In fact, in March 2015, District’s environmental consultant conducted its
22 own “verification” testing of the independent testing, and found that the independent
23 testing was 100% accurate in showing PCB contamination at illegal levels. The
24 District claims to have remediated the contamination shown by the independent and
25 verification testing.

26 7. EPA officials have repeatedly confirmed to me that any caulk at the
27 Malibu Schools containing PCBs over 50 ppm as shown by independent testing
28 must be removed. Attached hereto as Exhibit D is a December 11, 2014 email to me

1 all caulk tested and verified to have PCBs greater than 50 ppm. This includes caulk
2 tested by independent parties.” (Emphasis in original).

3 8. America Unites was involved in the “independent” testing of caulk
4 samples from the Malibu Schools by EPA-certified labs in the summer of 2015.
5 American Unites submitted the results from this testing to Congressman Ted Lieu,
6 who submitted them to the EPA. America Unites also submitted these results to the
7 District. America Unites performed such testing and provided the results to these
8 parties to inform the community, its elected representatives, the EPA and the
9 District of the presence of PCBs at the Malibu Schools. America Unites’ only goal
10 in doing this was to protect teachers and students from a highly-toxic and banned
11 substance.

12 I declare under penalty of perjury that the foregoing is true and correct.

13 Executed this 30th day of November, 2015, at Malibu, California.


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15 _____
16 Jennifer DeNicola
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EXHIBIT A



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF BRANCH & AREA OPERATIONS

JACKIE LACEY • District Attorney
SHARON J. MATSUMOTO • Chief Deputy District Attorney
WILLIAM HODGMAN • Assistant District Attorney

VICTORIA L. ADAMS • Director
Region I

November 25, 2015

Cyn Yamashiro
Law Offices of Cyn Yamashiro
100 Wilshire, Ste 1300
Santa Monica, CA 90402

RE: Jennifer DeNicola
DOB: 6/18/1971

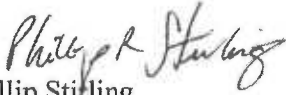
RE: Matthew DeNicola
DOB: 8/20/1970

Dear Mr. Yamashiro,

On November 19, 2015, the Van Nuys Branch of the Los Angeles County District Attorney's Office formally declined to file charges against Jennifer DeNicola and Matthew DeNicola for the charges of Vandalism (PC 594(a)) or Trespassing (PC 602(c)).

Very truly yours,

JACKIE LACEY
District Attorney
Los Angeles County

By 
Phillip Stirling
Assistant Head Deputy District Attorney
Van Nuys Branch Office

6230 Sylmar Avenue
Room 201
Van Nuys, CA 91401
(818) 374-2400

EXHIBIT B

From: Jennifer deNicola <jen@malibuunites.com>
Date: September 22, 2014 at 3:18:45 PM PDT
To: JLACEY@DA.LACOUNTY.GOV
Cc: yassry@da.lacounty.gov, smatsumoto@da.lacounty.gov, SGOODWIN@DA.LACOUNTY.GOV, JESPOSITO@DA.LACOUNTY.GOV, dwright@da.lacounty.gov, swilliams@da.lacounty.gov, Dan Wright <dwright@da.lacounty.gov>
Subject: PCBs found at 7000 times the legal limit at Malibu Schools: requiring assistance by LADA office

September 19, 2014

Dear Ms. Jackie Lacey,

My name is Jennifer deNicola and I am the president of a concerned group of parents, teachers and experts known as Malibu Unites. We organized Malibu Unites last year after the discovery of polychlorinated biphenyls (PCBs) at Malibu High School where my children and the children of many other Malibu Unites members attend school.

I am writing to provide you copies of new independent lab tests (Sept 2014) showing that more classrooms in Malibu public schools have toxic contamination thousands of times greater (231,000 ppm) than permitted under federal law and are currently being occupied by students and teachers. These EPA-certified laboratory results suggest to our experts that these conditions represent an ongoing and immediate danger to students and teachers. Over the past few months I have had numerous conversations with Dan Wright, from your office, who has been actively looking into this serious matter to take action to prevent further exposure to our children and teachers and for that we are very grateful.

I am writing to you because you without question have jurisdiction to enforce state laws protecting public health. We believe it is incumbent upon the District Attorney's Office, the leading law enforcement agency in

the county, to take a leading role in this arena. Many are unaware of the Office's expansive powers to insure and enforce the health and safety of the county's residents and schoolchildren against public nuisance. We believe that if fully informed of the circumstances and facts surrounding this issue, the District Attorney's Office would have sufficient evidence to pursue criminal sanctions against the Santa Monica-Malibu Unified School District.

We formed Malibu Unites with the intention and trust that we could assist in an open and honest dialogue between the school district and the parents to allow us all to work together collaboratively to find the most reasonable, effective and safe resolution to protect our children and teachers from any damaging exposure to PCBs. Now, almost a year later, we find ourselves horrified as we watch our children threatened with truancy and our teachers threatened with termination by a district that is barricading itself with lawyers against potential civil liability and the Region 9 EPA who has interpreted its role to be the management of a potential national crisis rather than the protection of citizens immediately exposed to deadly toxicants and who is not doing their job as the enforcer of the Toxic Substance Control Act.

Our requests to the district and EPA are very reasonable requests and are in aligned with the EPA's own policy stated on their website: to test the sources of PCBs in all pre-1979 classrooms, remediate in compliance with Federal PCB law and provide portable classrooms so that our children and teachers can remain together in a safe, PCB-free environment. To help assist in our request, Malibu Unites has provided the district with a PCB testing plan created by a superfund PCB expert that would take 14 days to execute and receive the results, the funds to test the sources of PCBs and a plan to install portable classrooms on the grassy fields of our campus to house all students in all pre-1979 classrooms so that they may stay together as a school, but be in a safe environment while proper testing of the sources and remediation compliant with Federal law can occur. Yet the district has refused and Region 9 EPA has chosen a "don't test, don't know" policy towards PCBs in schools leaving children and teachers in harms way. The Toxic Substance Control Act states that PCBs found over 50 ppm presents "an unreasonable risk of injury to health."

In July, independent samples taken from several Malibu school facilities showed illegal PCB levels dramatically higher than previously reported by the district – as much as 7400 times higher than legal limits and the highest known results for a classroom in the US. These independent test results showed PCBs in classrooms at 370,000ppm at Malibu High and 340,000ppm at Juan Cabrillo Elementary. The District Attorney's office has confirmed these test results with the Los Angeles County Sanitation District's lab.

In September, new samples from five additional classrooms showed four classrooms testing above the federal Toxic Substance Control Act (TSCA) limit of 50 parts-per-million (ppm). One classroom sample tested at 231,000 ppm, while another contained 146,000 ppm. In addition, a piece of caulking was dropped from a trash bag that an "air duct worker" was throwing away. This caulk sample, from an unannounced removal operation, tested above legal limits and as hazardous waste, it's disposal violates TSCA law. [See attached lab report]

Experts in this field working with Malibu Unites tell us that these EPA certified lab results are of great concern and require immediate action as children are sitting in classrooms every day that vastly exceed the legal health

standard. The concern is that high concentrations in the caulk may be causing significant exposure to students and teachers within the school. Special concern is exposure to dioxin-like PCB congeners that have been identified in these samples that are orders of magnitude more toxic than total PCBs.

Earlier this month, Malibu Unites appealed to the Malibu City Council. Surrounded by more than 200 Malibu families, the Council unanimously approved in a 5-0 vote, a resolution in concurrence with Malibu Unites requests that the school district conduct source testing for PCBs in all pre-1979 classrooms and removal as required by Federal regulations. The District immediately rejected the City of Malibu's recommendation saying the City Council has no legal authority or jurisdiction in this matter.

The District has closed some classrooms and barricaded some grounds because of elevated levels of PCBs, yet they insist, with the concurrence of the U.S. Environmental Protection Agency, that all other classrooms are safe and students and staff can occupy them. They claim that air tests done in a limited amount of classrooms renders the entire rest of the campus safe even if they contain illegally high PCB levels or haven't been tested at all. The latest independent testing took place in rooms the District has declared safe and are being occupied by students and teachers. The District is threatening truancy proceedings against children whose parents have requested their child not be permitted in contaminated classrooms which tested to have high levels of PCBs. Teachers resisting assignment to classrooms with PCBs above federal law have also been threatened with termination.

We are frustrated that politics and fear of liability have prevented both our school district and EPA from protecting our children and teachers from exposure to cancer-causing PCBs. We are turning to the Los Angeles District Attorney's to seek enforcement of the law, particularly violations of several California state statutes, including Maintaining a Public Nuisance, in violation of California Penal Code Section 372; Child Endangerment in violation of Penal Code Section 273a; and Failing to Disclose a Serious Concealed Danger in violation of Penal Code Section 387.

We, as parents, have a great sense of urgency in this matter as our children and teachers are exposed to extremely high levels of PCBs seven hours a day, five days a week, for 175 days a year. The Santa Monica Malibu School District has known about the existence of these PCBs since June of 2009 and failed to inform parents and teachers until October 2013, and only then under pressure from the media. Our children and teachers cannot wait any longer for a safe, PCB-free environment to learn and work in. Please take immediate action to remedy this situation.

We are requesting to schedule a meeting with you. The purpose of the meeting would be to fully explain the evidence that we have gathered, the events that have transpired over the past year and actions we hope your office will take to protect our innocent children and teachers.

Sincerely,

Jennifer deNicola, On behalf of Malibu Unites

310-848-5400

cc:

Jackie Lacey	Malibu Unites Board and Directors
Sharon Matsumoto	Cindy Crawford
Joseph Esposito	Hope Edelman
Scott Goodwin	Cami Winicoff
Stan Williams	Nicolle Holland
Yael Massry	Matt deNicola
Dan Wright	Beth Lucas
	Josh Malina
	Anson Williams
	Malibu Mayor Skylar Peak
	PEER

EXHIBIT C

From: Jennifer DENICOLA <jd18@me.com>
Date: September 24, 2014 at 2:33:11 PM PDT
To: Yael Massry <ymassry@da.lacounty.gov>
Cc: Dan Wright <dwright@da.lacounty.gov>, Paula Dinerstein <pdinerstein@peer.org>
Subject: Malibu high Photos of Pcb caulking

Dear Yael,

I was at school yesterday, and noticed a couple of things that you might be interested in.

The first photo is from room one where the caulking has exceeded federal law. As you can see it is peeling and falling off. Once this falls off it will drop onto the ground with the possibility that a child or staff member will pick it up. Or somebody can peel this off with their hands and be exposed.

Photos three through five are the classroom that has exceeded 50 ppm. The district custodians/ maintenance staff dug out the caulking and filled it in with silicone, in an unauthorized removal and there is no record of hazardous waste disposal. This is in addition the air duct worker that dropped caulking out of his trash bag and left it on the cement at school where a teacher picked it up and put it in a Ziploc bag and we had it tested which showed it exceeded 50 ppm. This is an illegal disposal of hazardous waste violation.

Thank you for taking this matter seriously as the health and welfare of children and teachers, including pregnant teachers, is at stake.

Jennifer Denicola

EXHIBIT D

From: "Armann, Steve" <Armann.Steve@epa.gov>
Subject: RE: Malibu PCBs
Date: December 11, 2014 at 4:11:54 PM PST
To: "Jen@mu" <jen@malibuunites.com>, "Scott, Jeff" <Scott.Jeff@epa.gov>
Cc: "Huetteman, Tom" <Huetteman.Tom@epa.gov>

Jennifer, We have not received any documents from the District since we approved their plan in late October. As part of the plan, the District will be conducting sampling during the winter break. Environ and I are scheduling a call to discuss their sampling.

Regarding the issue of independent tests of PCBs over 50 ppm, you and I exchanged email on September 30/October 1 where I explained that the District's plan includes removal of all caulk tested and verified to have PCBs greater than 50 ppm. This includes caulk tested by independent parties. Please let me know if you were looking for some else from us.

Please email or call me if you need anything. I'll be on vacation from December 18 until January 5.

Steven S. Armann, Manager
Corrective Action Office (LND-4-1)
USEPA Region 9
75 Hawthorne Street
San Francisco, CA 94105

Phone: 415-972-3352
Fax: 415-947-3533
Email: armann.steve@epa.gov

EXHIBIT E

From: Phillip Stirling <PStirling@da.lacounty.gov>
Date: November 30, 2015 at 12:04:08 PM PST
To: Cyn Yamashiro <cyn@yamashirolawfirm.com>

Subject: RE: deNicola

Cyn,

It was primarily declined because I strongly believed the element of “maliciously” damages or destroys property was not present, as required by PC 594(a)(2)/(3). Your client and her husband were not “maliciously” damaging property, rather they were attempting to determine how many PCB’s were in the molding, etc. This is clearly evidenced by the fact that they sent the samples to my office’s Environmental Crimes Division, coupled with the fact that the molding had 30% PCB’s (if I recall correctly). Also, extent of damage was unclear and did not appear to meet the required \$400 threshold, although the school district claimed approximately \$17,000 (or more) in damages.

Hope that is helpful.

Phil Stirling
AHD Van Nuys Branch

From: Cyn Yamashiro [<mailto:cyn@yamashirolawfirm.com>]
Sent: Monday, November 30, 2015 11:25 AM
To: Phillip Stirling
Subject: deNicola

Philip,

Thanks for your quick response on the declination letter. My client is also asking for a document that describes some of the underlying rationale for the declination. Any chance we could have access to that document?

Cyn Yamashiro
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