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13 SANDRA LYON, ET AL.

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 WESTERN DIVISION

17 AMERICA UNITES FOR KIDS, et
18 al.,

19 Plaintiffs,

20 vs.

21 SANDRA LYON, et al.,

22 Defendants.

) No. 2:15-CV-02124
) **DISCOVERY SANCTION**
) **MATTER**
) **JOINT STIPULATION**
) **REGARDING DEFENDANTS'**
) **MOTION FOR SANCTION**
) **FOR DISCOVERY**
) **VIOLATION**

) Hearing Date: Dec. 14, 2015
) Hearing Time: 10 a.m.
) Dept. 690
) Judge: Wistrich
) Complaint Filed: Mar. 23, 2015
) Discovery Cutoff Date: 3/7/16
) Pretrial Conference Date: 4/15/16
) Trial Date: 5/17/16

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1 Pursuant to Fed. R. Civ. P. 37 and Local Rule 37-2, Defendants Sandra Lyon,
2 in her official capacity as Superintendent of the Santa Monica-Malibu Unified
3 School District (“SMMUSD”), Jan Maez, in her official capacity as SMMUSD’s
4 Associate Superintendent and Chief Financial Officer, and Laurie Lieberman, Dr.
5 Jose Escarce, Craig Foster, Maria Leon-Vazquez, Richard Tahvildaran-Jesswein,
6 Oscar De La Torre, and Ralph Mechur, in their official capacities as members of
7 SMMUSD’s Board Of Education (collectively, “Defendants”) and Plaintiffs
8 America Unites for Kids and Public Employees for Environmental Responsibility
9 (collectively, “Plaintiffs”), through their undersigned counsel of record, respectfully
10 submit this Joint Stipulation regarding Defendants’ motion, pursuant to Fed. R. Civ.
11 P. 37(b)(2)(A), for terminating sanctions or, in the alternative, monetary,
12 evidentiary, and other sanctions. The parties met and conferred regarding the issues
13 disputed herein on November 4, 2015.

14 **I. DEFENDANTS’ INTRODUCTORY STATEMENT**

15 On at least four separate occasions, Plaintiffs have violated this Court’s order
16 limiting discovery to testing for concentrations of polychlorinated biphenyls
17 (“PCBs”) in air and dust at Juan Cabrillo Elementary School and Malibu High
18 School (collectively, the “Malibu Campus”). The President of Plaintiff America
19 Unites for Kids (“America Unites”), Jennifer DeNicola, and the Executive Director
20 of Plaintiff Public Employees for Environmental Responsibility (“PEER”), Jeffrey
21 Ruch, publicized these discovery violations in a letter to SMMUSD Superintendent
22 Sandra Lyon on October 29, 2015.

23 Plaintiffs have illicitly sampled building materials at locations throughout the
24 Malibu Campus through acts of trespass and vandalism. Some of this illicit
25 sampling disturbed EPA-mandated and approved removal activities that occurred
26 over the Summer 2015 school break. Plaintiffs have clearly indicated that they do
27 not intend to abide by the Court’s order or engage in good faith in the legal process
28 before this Court. And inexplicably, though they claim to advocate for removal of

1 building materials and encapsulation of substrate per the Toxic Substances Control
2 Act (“TSCA”) and EPA guidance, they have also damaged many thousands of
3 dollars of the very removal and encapsulation work that was properly completed in
4 accordance with the law over the summer months.

5 “It is well settled that dismissal is warranted where . . . a party has engaged
6 deliberately in deceptive practices that undermine the integrity of judicial
7 proceedings.” *Anheuser-Busch, Inc. v. Natural Beverage Distributors*, 69 F.3d 337,
8 348 (9th Cir. 1995). SMMUSD has spent roughly \$400,000 over the last four
9 months to engage in good faith in the litigation process, most of those resources
10 devoted to responding to Plaintiffs’ broad requests for written discovery. But
11 Plaintiffs have not yet responded to a single discovery request; instead, they have
12 engaged multiple times in unauthorized discovery expressly prohibited by this Court
13 at this stage in the proceedings. Plaintiffs have no qualms about taking matters into
14 their own hands when this Court does not grant them the relief that they seek.

15 Defendants, who have acted in good faith throughout, are prejudiced by
16 Plaintiffs’ unwillingness to cede to the Court’s authority. Defendants therefore
17 respectfully request this Court terminate the above-captioned action with prejudice.

18 **II. PLAINTIFFS’ INTRODUCTORY STATEMENT**

19 Plaintiffs, two non-profit organizations, filed this citizen suit to restrain clear
20 violations of the Toxic Substances Control Act (“TSCA”) at the Malibu Schools.
21 The school is contaminated with PCBs, a highly-toxic substance which causes
22 cancers and numerous other serious diseases. TSCA imposes a near-total ban on
23 PCBs because of the “extreme threat PCBs pose to human health and the
24 environment.” *United States v. Commonwealth Edison Co.*, 620 F. Supp. 1404,
25 1408 (N.D. Ill. 1985). It is undisputed that TSCA and the regulations thereunder
26 prohibit the use of materials containing PCBs at concentrations of 50 parts per
27 million (“ppm”) or greater.

28

1 Defendants' motion alleges that Plaintiffs violated a Court order by collecting
2 tiny samples of caulk from a number of locations at the Malibu Campus, having
3 such caulk tested at independent laboratories and providing the test results showing
4 illegal levels of PCBs to Congressman Ted Lieu and to the SMMUSD. The Court
5 should deny Defendants' motion for the following reasons.

6 First, the alleged conduct did not violate any Court order. Defendants rely on
7 statements by the Court in an order denying Defendants' motion to dismiss that it
8 would not order certain types of testing through the "discovery process." The
9 alleged conduct at issue was not conducted through the discovery process. The
10 independent testing in question is the same type of testing conducted in 2014, before
11 the lawsuit was initiated, which was obviously not part of any discovery process.

12 Second, Defendants have not even attempted to substantiate their conclusory
13 contention that the independent testing was illegal. Defendants have not cited any
14 legal authority or evidence to support their ridiculous claim. When Plaintiffs
15 provided Defendants with independent testing results in 2014 prior to the filing of
16 the claims, they did act as if that testing were illegal or claim that it caused any
17 damage to the School; instead, they "verified" the independent results (which
18 proved to accurately show illegal levels of PCB contamination) and acted on the
19 results.

20 Third, Defendants have not submitted any evidence of any willful or bad faith
21 misconduct. The independent testing provided important information to the
22 community concerning legal violations that must be addressed and the safety of
23 teachers and students. Defendants should commend the independent testing, not
24 seek to sanction it.

25 Finally, Defendants have not shown how their position in the lawsuit was
26 prejudiced by the independent testing. No such showing is possible. Although
27 Defendants make the conclusory contention that the independent testing "likely"
28 caused damage to the Malibu Schools, they have not submitted any competent

1 evidence to support their inherently incredible claim that taking tiny samples of over
2 60-year old caulk for laboratory analysis caused damage to the Schools. In any
3 event, such damage is not recoverable in a motion for discovery sanctions.

4 Defendants' motion is completely meritless.

5 **III. DEFENDANTS' STATEMENT OF ISSUES IN DISPUTE**

6 EPA is the federal agency granted sole jurisdiction by Congress over
7 remediation of PCB materials under TSCA. *See* 15 U.S.C. §§ 2601 *et seq.*
8 Pursuant to that jurisdiction, EPA has promulgated regulations specifically and
9 comprehensively delineating the circumstances of manufacture, use, and disposal of
10 PCBs. *See* 40 C.F.R. §§ 761.1-.398, 761.60, 761.61, 761.70. It has also developed
11 a policy specific to managing PCBs in schools and other buildings. *See, e.g.,* Decl.
12 of Douglas Daugherty ("Daugherty Decl."), Exh. E.

13 On June 15, 2015, this Court issued an order (the "June 15 Order") (ECF No.
14 53) on Defendants' Motion to Dismiss, or, in the Alternative, Stay (ECF No. 48). A
15 true and correct copy of the June 15 Order is attached hereto as Exhibit 1. Noting
16 the EPA's jurisdiction and authority under TSCA, this Court stated it would run the
17 risk of interference with EPA's jurisdiction over the management of PCBs at the
18 Malibu Campus "if the Court were to allow testing in excess of that deemed prudent
19 by the EPA." ECF No. 53 at *5. Instead, the Court chose to "limit[] the testing that
20 Plaintiffs are allowed to take through the discovery process to the air and surface
21 wipe testing that EPA has determined is sufficient to measure 'health-based
22 screening levels that, pursuant to [the EPA's October 2014] approval, will be used
23 to evaluate the effectiveness of the remediation and BMP measures at ensuring that
24 PCBs remain at levels protective of human health.'" *Id.* The Court held that the
25 "testing of caulk or other more invasive discovery" would only be permitted
26 "should the initial air and wipe testing demonstrate its necessity." *Id.*

27 At the time of the Court's order, initial air and wipe sampling did not show
28 any PCB concentrations elevated above EPA's health-based screening levels that

1 would warrant testing of caulk or other more invasive discovery. Since the issuance
2 of the June 15 Order, Defendants have voluntarily conducted air and wipe sampling
3 in all previously-unsampled regularly occupied classrooms on the Malibu Campus,
4 as well as pre-BMP, post-BMP, and confirmatory air and wipe sampling as part of
5 the Summer 2015 remediation activities overseen by EPA. Final results from this
6 extensive testing confirmed that concentrations of PCBs in all air and wipe samples
7 taken remain below EPA thresholds, and in many of the samples, PCBs were not
8 even detected above the laboratory reporting limit, which is lower than the lowest
9 EPA threshold, protective of children as young as three years old. In short, air and
10 wipe testing at the Malibu Campus to date has not demonstrated any need for testing
11 of building materials. Daugherty Decl., Exh. D.

12 Nonetheless, June 23, 2015 laboratory records (the “June 23 Records”) from
13 Positive Lab Service—which were e-mailed to Superintendent Sandra Lyon by
14 America Unites President Jennifer DeNicola on October 29, 2015—show that on
15 June 16, 2015, just one day after the Court issued its order limiting discovery to air
16 and wipe testing, Positive Lab Service received samples of building materials
17 collected from the Malibu Campus sent by Jennifer DeNicola for testing and
18 analysis. These laboratory records indicate samples were taken on June 4, 2015 and
19 June 8, 2015, and identify Jennifer DeNicola as the sampler of the building
20 materials for which analysis is requested. A true and correct copy of the June 23
21 Records is attached hereto as Exhibit 2.

22 Throughout the summer months, SMMUSD conducted removal and
23 encapsulation activities in all known and verified locations at the Malibu Campus
24 where PCBs had previously been identified in excess of 50 ppm, as well as pre-
25 BMP, post-BMP, and confirmatory air and surface wipe sampling. This work was
26 completed on August 14, 2015 and EPA concluded, on November 2, 2015, that the
27 work had been completed pursuant to EPA’s guidelines and prior approvals.
28 Daugherty Decl., Exh. D.

1 Immediately after this work was completed, America Unites sent additional
2 samples of building materials to Positive Lab Service for testing and analysis.
3 Laboratory records from August 14, August 17, and August 18, 2015 (the “August
4 Records”) show that on August 10, 2015, Positive Lab Service received a new
5 round of samples of building materials collected from the Malibu Campus. The
6 August Records indicate samples were taken on August 5, 2015, while the summer
7 work was still ongoing, and identify Brenton Brown, a member of America Unites’
8 Leadership Team, as the sampler of the building materials for which analysis is
9 requested. A true and correct copy of the August Records is attached hereto as
10 Exhibit 3. A true and correct copy of America Unites’ Leadership Team webpage,
11 identifying Brenton Brown as a member of the Leadership Team, is attached hereto
12 as Exhibit 4.

13 On August 24, 2015, Plaintiffs filed a reconsideration motion in this Court,
14 asking the Court to vacate the portion of the June 15, 2015 Order that initially
15 limited discovery to air and surface wipe sampling, and arguing that Plaintiffs
16 should be entitled to test caulk and other building materials as well. ECF No. 63-1
17 at *1. A true and correct copy of Plaintiffs’ reconsideration motion is attached
18 hereto as Exhibit 5. In that motion, Plaintiffs argued that “testing of caulk and other
19 building materials is the only way to identify violations of TSCA’s 50 ppm
20 limitation, and thus the only means to obtain evidence to support the allegations in
21 [Plaintiffs’ First Amended Complaint].”¹ *Id.* at *8.

22 However, unbeknownst to SMMUSD, which was diligently working in good
23 faith to respond to written discovery requests it had received from Plaintiffs on
24

25 ¹ Illicit sampling has played an integral role in Plaintiffs’ case from the start. The bases for the
26 initial notices of intent to sue and First Amended Complaint were sampling data gathered from
27 trespasses onto the Malibu Campus. Such data were gathered as early as May 10, 2014 and
28 continued to be gathered through November 2014. Daugherty Decl., ¶10. No member of
Plaintiffs or any other member of the public was ever granted access to the Malibu Campus to take
the samples from which the reported data were derived.

1 August 12, 2015, Plaintiffs were continuing their trend of illicitly gathering and
2 testing samples of caulk and other building materials even as they were petitioning
3 the Court to reconsider the very order stating they could not do so. B.C.
4 Laboratories, Inc. reports dated September 14, 2015 (the “September 14 Records”)
5 show that on September 8, 2015, B.C. Laboratories received samples collected by
6 Jennifer DeNicola on August 5, 2015 and August 21, 2015; the chain of custody
7 forms for those samples were completed on September 3, 2015—a week and a half
8 after the reconsideration motion was filed—indicating they were sent to the
9 laboratory for testing on that date. A true and correct copy of the September 14
10 Records is attached hereto as Exhibit 6.

11 Positive Lab Service records dated October 5, 2015 and October 6, 2015 (the
12 “October 5/6 Records”) show that America Unites again collected unauthorized
13 samples of building materials on September 21, 2015 and submitted them to
14 Positive Lab Service for testing and analysis on September 25, 2015; the samples
15 were received by the laboratory on September 28, 2015. A true and correct copy of
16 the October 5/6 Records is attached hereto as Exhibit 7.

17 On September 30, 2015, this Court issued an order on Plaintiffs’
18 reconsideration motion (the “September 30 Order”) (ECF No. 67). A true and
19 correct copy of the September 30 Order is attached hereto as Exhibit 8. Finding that
20 it “committed no clear error in phasing and limiting discovery as it has,” the Court
21 denied Plaintiffs’ reconsideration motion, continuing to restrict discovery in this
22 case to air and wipe sampling and “making the invasive testing of caulk dependent
23 upon threshold evidence obtained from air and surface wipe testing.” ECF No. 67
24 at *5-6. This Court noted that:

25 “The EPA has far more expertise in this area than does the
26 Court, and is in a much better position to balance the significant
27 costs of requiring school districts throughout the country to test
28 and remove PCB-containing caulk and other building materials

1 against the potential health risks of leaving those products in
2 place until school buildings undergo planned renovations or
3 demolitions. To allow the testing of caulk without air and
4 surface wipe testing first showing levels of PCBs in excess of
5 the EPA’s health-based screening levels would expose schools
6 to extraordinary costly, and what the EPA has deemed
7 unnecessary, testing and remediation expenses.” *Id.* at *5.

8 But the Court’s decision was immaterial to Plaintiffs. On October 9, 2015,
9 ten days after the Court declined to allow Plaintiffs to proceed with testing of caulk
10 and other building materials unless air and wipe samples first exceed EPA’s health-
11 based thresholds—which they, to date, have not—Jennifer DeNicola again entered
12 the Malibu Campus to collect samples of caulk and building materials. Speech
13 pathologist Emily Huffman observed Ms. DeNicola and a companion cut samples of
14 building materials from Ms. Huffman’s classroom using box cutters and plastic re-
15 sealable bags. Decl. of Emily Huffman, ¶¶7-8, 12. They also took material from an
16 exterior window frame of Ms. Huffman’s classroom and from an internal window
17 frame in the classroom adjacent to Ms. Huffman’s classroom. *Id.* Ms. DeNicola
18 spoke to Ms. Huffman about this lawsuit, and she and her companion told Ms.
19 Huffman not to inform the Juan Cabrillo principal of Ms. DeNicola’s presence or
20 what she and her companion had been doing. *Id.* at ¶¶6, 10. Ms. DeNicola and her
21 companion also told Ms. Huffman that they planned to take samples in two other
22 classrooms on the Malibu Campus that day. *Id.* at ¶9.

23 Upon learning that Ms. DeNicola had been removing building materials from
24 the Malibu Campus, SMMUSD asked the lead environmental contractor for the
25 Summer 2015 removal work, Ramboll Environ, to inspect the Malibu Campus,
26 particularly to ensure that the remediation work conducted over the summer
27 pursuant to EPA-approved and regulatory standards was undamaged. This
28 inspection was undertaken on October 30 and 31, 2015. Daugherty Decl., ¶20.

1 Ramboll Environ found that the integrity of encapsulated areas had been
2 compromised in seven (7) of the twelve (12) rooms where encapsulation had been
3 applied as a part of the Summer 2015 removal work. *Id.* at ¶21. In addition, caulk
4 had been removed in ten (10) of the remediated rooms, and wall stucco had been
5 removed and damaged in three (3) of the remediated rooms. *Id.* at ¶22. These areas
6 will now require repair in accordance with EPA requirements and approved EPA
7 methods and procedures. *Id.* at ¶¶21-22; Daugherty Decl., Exh. D. Because repair
8 of these damaged areas must be done in accordance with these requirements and
9 procedures, the cost for SMMUSD to undertake the necessary repair is estimated to
10 range between \$90,000 and \$120,000. Daugherty Decl., ¶23.

11 Plaintiffs have, on multiple occasions, flagrantly violated this Court’s order
12 limiting discovery. While Defendants continue to act in good faith in this lawsuit,
13 reviewing and producing thousands of pages of documents in response to Plaintiffs’
14 written discovery requests, Plaintiffs have shown they will stop at nothing—not
15 even the directives of this Court—to get the testing of building materials they are
16 convinced is necessary to prove their case. Not only does it prejudice Defendants to
17 expend resources on good faith participation in this lawsuit when Plaintiffs show no
18 intent to respect the decisions of this Court, but Plaintiffs’ activities will also cost
19 SMMUSD thousands of dollars in repair work now necessary to bring the
20 previously-completed remediation work damaged by Plaintiffs back into
21 compliance with EPA requirements. Accordingly, Defendants respectfully ask that
22 this Court dismiss the instant lawsuit with prejudice.

23 **IV. PLAINTIFFS’ STATEMENT OF ISSUES IN DISPUTE**

24 Plaintiffs filed the instant action on March 23, 2015. As alleged in the First
25 Amended Complaint (“FAC”), until TSCA’s ban, PCBs were used in numerous
26 applications. (Accompanying Declaration of Charles Avrith (“Avrith Decl.”), Ex. A
27 at ¶33.) One common use of PCBs was as a plasticizer in caulk, a material used to
28 seal gaps to make windows, door frames and joints in buildings air tight and water

1 tight. (*Id.*) Caulk and other materials containing PCBs were used in schools built
2 from the 1950's through the 1970's. (*Id.* at ¶¶ 36 and 40.) Many of the School's
3 buildings were built prior to 1980.

4 As the FAC also alleges, in November 2013, the District's limited testing
5 revealed that caulk in four of the School's rooms had PCB levels above the legal
6 limit of 50 ppm. (*Id.* at ¶63.) Thereafter, the District refused to conduct any further
7 testing of caulk. (*Id.* at ¶69.) Accordingly, independent testing of additional rooms
8 was conducted. The results, which were submitted by Plaintiffs to the District and
9 the EPA, as well as the Los Angeles District Attorney, in July and September 2014,
10 and January 2015, showed illegal levels of PCBs - - up to 7,000 times the legal limit
11 - - in an additional 12 rooms. (*Id.* at ¶¶ 80, 83, 103, 109.) The District committed to
12 remediating any such "newly discovered" PCB-containing caulk, including PCB-
13 containing caulk discovered through independent testing. *See e.g.* October 31, 2014
14 Letter from EPA to the District, Avrith Decl. Ex. B, noting that "the District
15 committed to remove any newly-discovered PCB-containing caulk within one year
16 after the District verifies that the caulk contains PCBs at or above 50 ppm." *See*
17 *also*, December 11, 2014 email to Plaintiff America Unites: "[T]he District's plan
18 includes removal of all caulk tested and verified to have PCBs greater than 50 ppm.
19 This includes caulk tested by independent parties." (Avrith Decl. Ex. C.)

20 On March 23, 2015, the District publicly disclosed the results of its
21 "verification" testing. The District's verification testing confirmed the results of the
22 independent testing. The verification testing showed the presence of illegal levels
23 of PCBs in caulk and violation of federal law in 10 additional rooms at the School.
24 (*Id.* at ¶129.) The District took 24 samples from 10 rooms and in each case, illegal
25 levels of caulk- - up to 11,000 times the regulatory limit--were found. (*Id.*)

26 The District claims to have remediated the specific areas where its own
27 testing revealed PCB levels over 50 ppm over the summer of 2015. (Declaration of
28 Douglas Daugherty submitted by Defendants ("Daugherty Decl."), ¶¶ 10-11.) For

1 example, in a classroom with 11 doors, the District only remediated two of the
2 doors. However, Defendants continue to refuse to test any other areas of the
3 School, let alone remediate other areas, even though many other rooms in the
4 School were built at the same time and using the same or similar materials as the
5 tested rooms, and thus it is a virtual certainty that those other rooms also contain
6 materials with illegal levels of PCBs. (FAC, Avrith Decl. Ex. A, at ¶¶ 127 and
7 134.)

8 On April 9, 2015, Plaintiffs served their Request to Enter Land Pursuant to
9 Fed. R. Civ. P. 34(a)(2) (the “Rule 34 Request”), pursuant to which they sought
10 access for their expert consultants to enter the School on the weekend of May 15-17,
11 2015 to perform a comprehensive inspection sampling of building materials that
12 could contain illegal levels of PCBs. As set forth in Plaintiffs’ Request, Plaintiffs
13 proposed to use qualified professionals to take up to four small caulk samples in
14 each pre-1980 regularly occupied room. Plaintiffs also propose to do spot sampling
15 of joint compound and other building materials which a visual inspection by
16 experienced EPA-recommended PCB remediation professionals indicates might
17 contain PCBs. (Declaration of Mark E. Elliott submitted by Defendants (“Elliott
18 Decl.”), ¶2, and Ex. 1 thereto). After Defendants objected to the Request, Plaintiffs
19 filed a motion to compel which was scheduled for hearing on July 20, 2015. (Elliott
20 Decl. ¶3.)

21 Prior to the hearing on Plaintiffs’ Motion to Compel, the Court issued its June
22 15, 2015 Order (the “June 15, 2015 Order”) denying Defendants’ motion to dismiss.
23 (Dkt. No. 53, attached as Joint Stipulation, Ex. 1.) One of the bases for Defendants’
24 motion was the argument that the EPA had primary jurisdiction over the dispute. In
25 its June 15, 2015 Order, the Court stated in pertinent part as follows:

26 “As the Court concluded when it denied Plaintiffs’ Motion for
27 Preliminary Injunction despite finding that Plaintiffs had established a
28 likelihood of success, Defendants have overstated the degree to which

1 the relief Plaintiffs seek conflicts with EPA's expertise and considered
2 judgment. In ruling on the Motion for Preliminary Injunction, the Court
3 stated that 'nothing in the record to date suggests that an order
4 requiring the removal of PCB-containing caulk would be contrary to or
5 interfere with the EPA's expertise.' Similarly, nothing alleged in the
6 FAC, or that is the subject of judicial notice, suggests that, at a
7 minimum, air and surface wipe sampling at the subject schools would
8 be inconsistent with the EPA's analysis, policies, or considered
9 judgment.

10 “. . . There is only a possibility of interference with the EPA's
11 primary jurisdiction if the Court were to allow testing in excess of that
12 deemed prudent by the EPA. At least at this stage of the proceedings,
13 the Court can eliminate the possibility of such interference by limiting
14 the testing that Plaintiffs are allowed to undertake through the
15 discovery process to the air and surface wipe testing that the EPA has
16 determined is sufficient to measure 'health-based screening levels
17 that, pursuant to [the EPA's October 2014] approval, will be used to
18 evaluate the effectiveness of the remediation and BMP measures at
19 ensuring that PCBs remain at levels protective of human health.' By
20 phasing discovery in this way, and only allowing the testing of caulk
21 or other more invasive discovery should the initial air and surface
22 wipe testing establish its necessity, the Court can balance the EPA's
23 expertise in such matters against Plaintiffs' rights to pursue a TSCA
24 claim as contemplated by the TSCA's citizen suit provisions. . . .”

25 (*Id.* at p. 5). In light of the Court's statements, Plaintiffs withdrew their motion to
26 compel the Request. (Elliott Decl., ¶3) Pursuant to its Order dated September 15,
27 2015, the Court denied Plaintiffs' motion for reconsideration of the discovery
28

1 limitation made in the course of its ruling on the motion to dismiss. (Dkt. No. 67,
2 attached as Joint Stipulation, Ex. 8)

3 According to Defendants, in June through October 2015, persons associated
4 with America Unites conducted additional independent sampling and testing of
5 caulk samples from the Malibu Schools. According to the documents submitted by
6 Defendants, this sampling began on June 4, 2015 (see, e.g., third page of Joint
7 Stipulation, Ex. 2, “Date Sampled” column). This was before the Court issued its
8 June 15, 2015 Order, which Defendants contend was violated by the sampling. The
9 independent testing about which Defendants now complain is the exact same type of
10 independent testing conducted in 2014, prior to the lawsuit. As discussed above,
11 Defendants “verified” the results of the 2014 independent testing, and claimed to
12 have remediated the illegal contamination shown by that testing. Moreover,
13 Defendants have not claimed that Plaintiff PEER played any role in the activities
14 which they claim are deserving of sanctions.

15 The 2015 independent testing shows once again that there are many
16 additional rooms at the Malibu Schools that contain illegal levels of PCBs.
17 Plaintiffs submitted the results to the SMMUSD. (Daugherty Decl. Ex. F.)
18 Plaintiffs also submitted the results of the testing to Congressman Ted Lieu, who
19 has submitted them to EPA Administrator, Gina McCarthy. (Avrith Decl. Ex. D.)

20 **V. DEFENDANTS’ POINTS AND AUTHORITIES IN SUPPORT OF**
21 **THEIR MOTION FOR TERMINATING, OR OTHER, SANCTIONS**

22 **A. Legal Standard**

23 When a party fails to obey a discovery order, courts may impose sanctions,
24 including an order “prohibiting the disobedient party from supporting or opposing
25 designated claims or defenses,” “dismissing the action or proceeding in whole or in
26 part,” or “rendering a default judgment against the disobedient party.” Fed. R. Civ.
27 P. 37(b)(2)(A)-(B). “[C]ourts have inherent power to dismiss an action when a
28 party has willfully deceived the court and engaged in conduct utterly inconsistent

1 with the orderly administration of justice.” *Wyle v. R.J. Reynolds Indus., Inc.*, 709
2 F.2d 585, 589 (9th Cir. 1983) (upholding dismissal of a complaint where the
3 plaintiff willfully disobeyed discovery orders). Courts retain this power even when
4 a party obtains the information in question outside of the formal discovery process.
5 *See, e.g., Jackson v. Microsoft Corp*, 211 F.R.D. 423, 431 (W.D. Wash. 2002)
6 (terminating sanctions were appropriate when plaintiff stole documents from
7 defendant and relied upon them in preparing his case); *Perna v. Elec. Data Sys.,*
8 *Corp.*, 916 F. Supp. 388, 389, 399-401 (D.N.J. 1995). A court’s determination to
9 impose terminating sanctions is granted significant deference and may only be set
10 aside if clearly erroneous. *Anheuser-Busch, Inc.*, 69 F.3d at 348.

11 In determining whether to dismiss an action due to Plaintiffs’ noncompliance
12 with a court order or otherwise, the court “must weigh... (1) the public’s interest in
13 expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the
14 risk of prejudice to the defendants; (4) the public policy favoring the disposition of
15 cases on their merits; and (5) the availability of less drastic sanctions.” *Malone v.*
16 *U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987). Dismissal is warranted when
17 “a party has engaged deliberately in deceptive practices that undermine the integrity
18 of judicial proceedings.” *Anheuser-Busch, Inc.*, 69 F.3d at 348.

19 **B. Terminating Sanctions are Necessary and Appropriate**

20 That the Plaintiffs willfully violated the Court’s June 15 and September 30
21 Orders is clear. On at least four separate occasions following the Court’s June 15
22 Order, Plaintiffs deliberately tested samples of building materials illicitly taken from
23 the Malibu Campus, in direct contradiction to the Order’s prescription that such
24 testing was only to take place if initial air and wipe samples demonstrated its
25 necessity. At least one instance of improper sampling occurred after the Court
26 affirmed its June 15 decision in the September 30 Order. On at least one occasion,
27 the President of Plaintiff America Unites engaged in a lengthy conversation with a
28 teacher regarding this lawsuit and expressly instructed that teacher not to let a

1 school administrator know she had been present on or had taken building materials
2 from school property.

3 This “willfulness, bad faith, and fault justif[ies] terminating sanctions.”
4 *Conn. Gen. Life Ins. Co. v. New Images of Beverly Hills*, 482 F.3d 1091, 1096 (9th
5 Cir. 2007) (internal quotations omitted). So, too, do the public’s interest in
6 expeditious resolution of this case, this Court’s need to manage its docket, the
7 severe prejudice experienced by Defendants, and the insufficiency of lesser
8 sanctions. *Malone*, 833 F.2d at 130. In light of Plaintiffs’ extreme conduct,
9 terminating sanctions are both appropriate and necessary.

10 **1. The public’s, and the Court’s, interests are served by**
11 **granting termination sanctions.**

12 The public has a very strong interest in “the just, speedy, and inexpensive
13 determination of every action.” *In re Phenylpropanolamine (PPA) Products*
14 *Liability Litigation*, 460 F.3d 1217, 1227 (9th Cir. 2006) (*quoting* Fed. R. Civ. P. 1).
15 “The public’s interest in expeditious resolution of litigation always favors
16 dismissal.” *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) (*citing*
17 *Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)).

18 In fact, where, as here, “the party to be sanctioned violated a court order, the
19 first and second factors [public interest in expeditious resolution of litigation and the
20 court’s need to manage its docket] weigh in favor of terminating sanctions.”
21 *Williamson v. Hawaii*, No. 14-00001 HG-RLP, 2014 WL 7642094, *2 (D. Haw.
22 Dec. 30, 2014) (*citing* *Computer Task Group, Inc. v. Brotby*, 364 F.3d 1112, 1115
23 (9th Cir. 2004)). “Disregard of a court order undermines the court’s ability to
24 control its docket and rewards the indolent and cavalier.” *McPeek v. Harrah’s*
25 *Imperial Palace Corp.*, No. 2:13-cv-01371-JAD-PAL, 2015 WL 2448748, *3 (D.
26 Nev. May 20, 2015) (*citing* *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604,
27 610 (9th Cir. 1992)). Indeed, “[d]istrict courts have an inherent power to control
28 their dockets. In the exercise of that power they may impose sanctions

1 including...default or dismissal.” *Thompson v. Housing Auth. of City of Los*
2 *Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

3 And while, generally, public policy favors disposition of cases on the merits,
4 this factor “‘lends little support’ to a party whose responsibility is to move a case
5 towards disposition on the merits but whose conduct impedes progress in that
6 direction.” *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 460
7 F.3d at 1228 (quoting *Allen v. Exxon Corp.*, 102 F.3d 429, 433 (9th Cir. 1993)).

8 **2. Defendants are severely prejudiced by the discovery**
9 **violation.**

10 Defendants are prejudiced when the “opposing party willfully thwarts the
11 discovery process.” *Consumer Financial Protection Bureau v. Morgan Drexen,*
12 *Inc.*, No. SACV 13-1267-JLS (JEMx), 2015 WL 1926223, *14 (C.D. Cal. April 21,
13 2015). Plaintiffs continue to trespass on SMMUSD property and gather and test
14 building materials in a manner forbidden by the Court’s June 15 and September 30
15 Orders, ultimately seeking to present ill-gotten information as evidence in this
16 lawsuit, and “threaten[ing] to interfere with the rightful decision of the case.”
17 *Malone*, 833 F.2d at 131.

18 Plaintiffs’ willful and consistent failure to obey the orders of this Court
19 causes “substantial interference with the prompt resolution of the case.”
20 *Construction Laborers Trust Funds for Southern California Administrative Co. v.*
21 *Montalvo*, No. CV 10-01193-DMG (SSx), 2011 WL 1195892, *5 (C.D. Cal. March
22 3, 2011) (citing *Adriana Intl. Corp v. Thoeren*, 913 F.2d 1406, 1412 (9th Cir.
23 1990)). Additional time and resources must now be devoted to repairing
24 remediation work that had already been completed and approved by EPA. Further
25 investigation and discovery is required simply for Defendants to understand the full
26 scope of Plaintiffs’ illicit sampling activities so that EPA-compliant repair work can
27 be done.

28

1 And Defendants suffer the ultimate prejudice by Plaintiffs' violation of the
2 June 15 and September 30 Orders: Plaintiffs' actions have demonstrated they do not
3 intend to abide by the decisions of this Court when those decisions are unfavorable
4 to Plaintiffs. Similarly, they do not intend to abide by the decisions of the EPA.²
5 Defendants have already been forced to expend significant resources that would be
6 better devoted to SMMUSD's educational mission than to defend actions that the
7 lead agency, EPA, has approved. They even now devote still more time and money
8 responding in good faith to Plaintiffs' discovery requests, briefing motions, and
9 preparing for a May 2016 trial date. But Defendants can no longer trust that
10 Plaintiffs will respect the Court's resolution of the issues before it. Plaintiffs'
11 willful violation of the Court's orders out of convenience to themselves
12 "undermines the institutional integrity of the court" and the litigation process itself.
13 *Baker v. Transunion L.L.C.*, No. CV-06-2927-PCT-NVW, 2008 WL 544826, *2 (D.
14 Ariz. Feb. 26, 2008).

15 **3. Lesser sanctions will not suffice.**

16 While the Court must consider "the impact of the sanction and the adequacy
17 of less drastic sanctions," lesser sanctions are not appropriate where their imposition
18 would be futile or would reward the disobedient party for its misconduct. *Malone*,
19 833 F.2d at 131-132 (quoting *United States v. Nat'l Med. Enters., Inc.*, 792 F.2d
20 906, 912 (9th Cir. 1986)); *Leon v. IDX Systems Corp.*, 464 F.3d 951, 960 (9th Cir.
21 2006); *Wm. T. Thompson Co. v. Gen. Nutrition Corp., Inc.*, 593 F. Supp. 1443, 1456
22

23 ² Plaintiffs' actions appear not merely to have been directed to thwart the discovery process, but
24 they also appear to be designed to usurp the jurisdiction of the EPA. On several occasions, most
25 recently in its July 28, 2015 PCBs in Building Materials Guidance, the EPA has stated that
26 invasive sampling is not required to comply with TSCA where air and wipe samples are below the
27 national health-based thresholds. Daugherty Decl., Exh. E. EPA has applied that principle to the
28 Malibu Campus in its November 2 letter. Daugherty Decl., Exh. D. Plaintiffs clearly disagree
with this application of law and their actions indicate a clear lack of deference to the agency
vested by the United States Congress with regulatory and enforcement power pursuant to TSCA.
While not directly akin to the discovery process, this does indicate the extreme measures that
Plaintiffs will employ to accomplish their goals.

1 (C.D. Cal. 1984). Furthermore, “[i]t is appropriate to reject lesser sanctions where
2 the court anticipates continued deceptive misconduct.” *Anheuser-Busch, Inc.*, 69
3 F.3d at 352.

4 Imposing lesser sanctions here would simply reward Plaintiffs’ bad faith
5 actions. Even if the Court imposed evidentiary sanctions to bar Plaintiffs’ use of the
6 improperly-gathered data from these discovery violations, Plaintiffs have showed no
7 compunction in the past about gathering and testing building materials in violation
8 of this Court’s mandate, and could continue to do so at great expense to SMMUSD
9 while Defendants are forced to spend additional resources defending this litigation
10 in good faith.

11 A sanction prohibiting Plaintiffs from continuing to violate the Court’s orders
12 would, in practicality, be difficult to enforce: the President of Plaintiff America
13 Unites for Kids is a parent of a child who attends school at the Malibu Campus, and
14 Plaintiff PEER counts among its members a handful of teachers who work at the
15 Malibu Campus. It would be nearly impossible to restrict these individuals’ access
16 to the Malibu Campus or to monitor their activities at all times they are present on
17 the Malibu Campus.

18 Even one willful violation of a court’s order may merit terminating sanctions;
19 multiple violations certainly justify them. *See Valley Engineers Inc. v. Electric Eng.*
20 *Co.*, 158 F.3d 1051, 1056 (9th Cir. 1998). “A plaintiff can hardly be surprised by a
21 harsh sanction in response to willful violation of a pretrial order.” *Malone*, 833 F.2d
22 at 133. In this case, only terminating sanctions are appropriate given the repeated
23 nature of Plaintiffs’ discovery violations, and only terminating sanctions would be a
24 sufficient penalty for Plaintiffs’ bad faith actions.

25
26
27
28

1 **C. If Terminating Sanctions are not Granted, the Court should**
2 **Impose Monetary Sanctions, Evidentiary Sanctions, and Bar**
3 **Future Illicit Sampling**

4 This Court may exercise its discretion under Rule 37 to apply a wide variety
5 of sanctions in response to violation of its orders, including monetary sanctions,
6 prohibiting the disobedient party from introducing certain matters into evidence, and
7 treating the failure to obey any order as contempt of court. *See* Fed. R. Civ. P.
8 37(b)(2)(A). When sanctions are ordered for failure to comply with an order of the
9 court, “the court must order the disobedient party, the attorney advising that party,
10 or both to pay the reasonable expenses, including attorney’s fees, caused by the
11 failure.” Fed. R. Civ. P. 37(b)(2)(C).

12 In light of Plaintiffs’ repeated violation of the Court’s orders, Defendants ask
13 that, in the event this Court chooses not to impose terminating sanctions, the Court
14 impose the following sanctions:

15 1. A prohibition on the introduction into evidence in this Court or any
16 other court of competent jurisdiction, whether for purposes of a summary judgment
17 motion, trial, or any other purpose, of: (a) any physical samples of caulk or other
18 building materials obtained from the Malibu Campus after June 15, 2015 and (b) any
19 information, data, or other analysis processed or received after June 15, 2015 that is
20 derived from physical samples of caulk or other building materials obtained from
21 the Malibu Campus;

22 2. An order expressly forbidding any sampling or testing of caulk or other
23 building materials from the Malibu Campus without first demonstrating to the
24 satisfaction of the Court and upon express approval of the Court that air and surface
25 wipe samples exceed EPA’s health-based standards, the violation of which will be
26 treated as contempt of court; and

27 3. Monetary sanctions for damage to EPA-approved remediation work
28 and attorneys’ fees incurred responding to the violations of the Court’s order.

1 **D. Conclusion**

2 For the reasons stated above, Defendants respectfully request this Court grant
3 terminating sanctions. If this Court declines to grant such sanctions, Defendants
4 respectfully request that the Court grant the monetary and evidentiary sanctions
5 described above, and treat all current and future violations of the Court’s June 15
6 and September 30 orders as contempt of court.

7 **VI. PLAINTIFFS’ POINTS AND AUTHORITIES IN OPPOSITION TO**
8 **DEFENDANTS’ REQUEST FOR TERMINATING, OR OTHER,**
9 **SANCTIONS**

10 **A. Defendants are Not Entitled To Sanctions Under Rule 37**

11 While Defendants bring their motion under Fed. R. Civ. P. 37(b)(2)(A), that
12 rule is not applicable here. By its terms, that provision applies to a failure “to obey
13 an order to provide or permit discovery” (emphasis added). *See Societe*
14 *Internationale Pour Participations v. Rogers*, 357 U.S. 197, 206 (1958) (“Rule 37
15 describes the consequences of a refusal to make discovery”). Defendants do not
16 allege that Plaintiffs have violated any order to provide or permit discovery, nor is
17 there any such order. Instead, their claim is that Plaintiffs have allegedly
18 participated in unauthorized discovery by taking tiny samples of building materials
19 and having laboratories analyze them for the presence of PCBs. Even assuming that
20 Plaintiffs engaged in this conduct and it violated a discovery order, which, as shown
21 below, is not the case, it would not be subject to Rule 37 sanctions.

22 The courts have strictly limited Rule 37, and the availability of sanctions
23 under that rule, to its plain language addressing orders to “provide or permit
24 discovery.” In *Unigard Sec. Ins. Co. v. Lakewood Engineering & Mfg. Corp.*, 982
25 F.2d 363 (9th Cir. 1992), the Ninth Circuit refused to impose Rule 37 sanctions for
26 destruction of evidence, stating:

27 “This court, however, has foreclosed the application of Rule 37
28 sanctions in cases such as this where a party's alleged discovery-related

1 misconduct is not encompassed by the language of the rule. . . . Rule
2 37(b)(2) has never been read to authorize sanctions for more general
3 discovery abuse.”

4 *Id.* at 368; accord *Telluride Management Solutions v. Telluride Inv. Group*, 55 F.3d
5 463, 467 (9th Cir. 1995). See also *Meléndez-García v. Sánchez*, 629 F.3d 25, 33-34
6 (1st Cir. 2010) (denying Rule 37 sanctions because there was no order to provide or
7 permit discovery); *Coleman v. Ryan*, 2014 U.S. Dist. LEXIS 98141, *6-7 (D. Ariz.
8 May 21, 2014) (based on the plain language of Rule 37(b), failure to obey a
9 scheduling order is not subject to sanctions under that rule); *Dolan v. Chase Home*
10 *Fin., LLC*, 2015 U.S. Dist. LEXIS 105383, *41 (D. Mass. July 10, 2015) (Rule 37
11 sanctions unavailable where party “did not violate a judicial order to produce
12 discovery”).

13 In contrast, where sanctions under Rule 37 have been imposed, there were
14 clear violations of court orders to produce discovery. *E.g.*, *Computer Task Group,*
15 *Inc. v. Brody*, 364 F.3d 1112, 1115 (9th Cir. 2004) (finding failure to comply with
16 repeated court orders to produce discovery); *Constr. Laborers Trust Funds for S.*
17 *Cal. Admin. Co. v. Montalvo*, 2011 U.S. Dist. LEXIS 34259, 2011 WL 1195892
18 (C.D. Cal. March 3, 2011) (Rule 37 is applicable to disobedience to court order
19 compelling production of documents).

20 **B. Plaintiffs Did Not Violate a Discovery Order**

21 In any event, Plaintiffs did not violate a discovery order of any sort, whether
22 covered by Rule 37 or not. Defendants claim that persons associated with Plaintiff
23 America Unites³ have sampled building materials at the Malibu Schools in violation

24 _____
25 ³ Plaintiff PEER advocates on behalf of the “Concerned Malibu/Cabrillo Teachers,” a group of 30
26 teachers and staff at the three school campus comprising approximately 1/3 of the approximately
27 90 total teachers and staff at the Malibu Schools. There is absolutely no evidence, or even an
28 assertion, that Plaintiff PEER, or even anyone associated with PEER, played any part in any
sampling or testing. The fact that PEER, along with America Unites, submitted the results to the
District, Daugherty Decl. Ex. F, does not mean that PEER has conducted any allegedly
“unauthorized” sampling or testing, any more than Congressman’s Lieu’s submission of the

1 of the Court’s June 15, 2015 Order on Defendants’ Motion to Dismiss. As quoted
2 above, that order provided that the Court would “limit[] the testing that Plaintiffs are
3 allowed to undertake through the discovery process to the air and surface wipe
4 testing that the EPA has determined is sufficient to measure ‘health-based screening
5 levels only allowing the testing of caulk or other more invasive discovery
6 should the initial air and surface wipe testing establish its necessity” Dkt. No.
7 53, at p. 5 (Joint Stipulation Ex. 1 hereto) (emphasis added). Defendants also claim
8 that Plaintiffs violated the Court’s ruling denying Plaintiffs’ motion for
9 reconsideration where the Court reaffirmed its decision to “phas[e] and limit[]
10 discovery.” Dkt. No. 67, at p. 6 (Joint Stipulation Ex. 8 hereto).

11 Defendants’ claim that Plaintiffs have violated these orders is wrong because
12 building material samples were not taken or analyzed through the discovery process.

13 As discussed above, Plaintiffs sought discovery under Rule 34 which would
14 have allowed their consultants to enter the School over the course of a weekend
15 (when the School would not likely be open) to do a comprehensive inspection and
16 sampling of building materials in all pre-1980 rooms at the Schools. The Court did
17 not order this discovery. However, this does not mean that Plaintiffs could not
18 engage in any sampling and testing outside of the discovery process. The case law
19 is clear that parties may gather evidence outside of the discovery process and that
20 such evidence is admissible in court. *L.A. News Service v. CBS Broad, Inc.*, 305
21 F.3d 924, 933-34 (9th Cir. 2002) (holding that evidence obtained outside of the
22 discovery process could be introduced in evidence); *Tan v. City & County of San*
23 *Francisco*, 2010 U.S. Dist. LEXIS 24668, 2010 WL 726985 (N.D. Cal. Feb. 26,
24 2010) (refusing to bar evidence because it was obtained outside of discovery,
25 though limiting its use for a separate reason under the Rules of Evidence); *Jackson*
26 *v. First Federal Sav., F.A.*, 709 F. Supp. 887, 889 (E.D. Ark. 1989) (“there is no

27
28 results to EPA means that he has conducted “unauthorized” sampling or testing. Thus, sanctions
could not possibly lie against Plaintiff PEER.

1 rule that the parties to a lawsuit may only gather evidence through the formal
2 discovery devices created by the federal rules of civil procedure. . . . Nor is it
3 required that one party give notice to other parties that evidence gathering outside
4 the discovery process is being undertaken); *cf. Seattle Times v. Rhinehart*, 467 U.S.
5 20, 33 (1984) (protective order prohibiting dissemination of information obtained in
6 discovery does not prevent dissemination of “the identical information covered by
7 the protective order as long as the information is gained through means independent
8 of the court’s processes”).

9 With regard to Rule 34 discovery in particular, a party may enter the other
10 party’s premises and gather evidence which is admissible in court outside of Rule
11 34 procedures. In *Grabau v. Target Corp.*, 2008 U.S. Dist. LEXIS 20238, 2008 WL
12 616068 (D. Colo. Feb. 29, 2008), the defendants moved to exclude evidence in an
13 expert report derived from testing and inspection of Target stores at 23 locations,
14 claiming that it was not obtained in compliance with Rule 34(a)(2). The court
15 denied the motion, stating:

16 “I do not think that failure to request an inspection as contemplated in
17 Fed. R. Civ. P. 34 is a basis for excluding evidence. I note that Rule 34
18 is permissive rather than compulsory and that, by its plain language,
19 contemplates that the rule applies to evidence or property that is
20 possessed by or under the control of the opposing party. Taking into
21 account the intention and reason behind the rule, the rule arguably does
22 not apply when the opposing party does not control access to the
23 property such as when the property is open to the public. Furthermore,
24 Rule 34 does not mandate that the possessor or owner of the land be
25 present during an inspection by the opposing party.”

26 *Id.* at *7-8. In *MONY Life Ins. Co. v. Hinsdale Mgmt. Corp.*, 2002 U.S. Dist.
27 LEXIS 10771, 2002 WL 1285076 (N.D. Ill. June 5, 2002), the court allowed
28 photographic and videotaped evidence from an inspection of Plaintiff’s property

1 without a Rule 34 request because the Defendant “did not need an order under Rule
2 34 to gain access to the property . . .”. 2002 U.S. Dist. LEXIS at *10. The court
3 further stated that “we do not find anything in the language or history of Rule 34
4 that would allow MONY to use the rule as a sword, to strip Hinsdale of its
5 contractual right to enter upon the premises.” *Id. See also Houston v. 7-Eleven,*
6 *Inc.*, 2014 U.S. Dist. LEXIS 155335 (M.D. Fla. Nov. 3, 2014) (denying motion to
7 exclude expert reports because they were derived from unauthorized inspections of
8 store sites, where Plaintiff argued that Rule 34 is permissive rather than
9 compulsory).

10 Here, as Defendants acknowledge, the parents and teachers who are
11 associated with Plaintiffs America Unites and PEER have a right to be on the
12 Malibu Campus, and “[i]t would be nearly impossible to restrict these individuals’
13 access to the Malibu Campus or to monitor their activities at all times they are
14 present on the Malibu Campus.” Joint Stipulation at Sec. V.B.3. Thus, just as with
15 the parties in the cases cited above, these individuals do not need Rule 34 to enter
16 the School, and may obtain admissible evidence through inspections and sampling
17 outside of Rule 34. In contrast, Plaintiffs served a Rule 34 Request, so that their
18 consultants (who are not parents or teachers at the School) could perform a
19 comprehensive sampling and inspection over the course of the weekend (when the
20 School is likely to be closed).

21 While Defendants make the inflammatory accusation that Plaintiffs obtained
22 these samples “through acts of trespass and vandalism,” Joint Stipulation at Sec. I,
23 Defendants have provided absolutely no support for their allegations of these
24 criminal acts. Moreover, their admission, quoted above, that access to the campus
25 by parents and teachers cannot be restricted, contradicts any claim of trespassing.
26 The claim of vandalism is also belied by Defendants’ admission that far from
27 considering prior independent sampling acts of vandalism, they were used by the
28 District to locate and verify areas of illegal caulk and remediate those areas.

1 (Daugherty Decl. pp. 5-6, ¶10.) Clearly, previous independent sampling reported by
2 Plaintiffs to the District and EPA performed a public service by leading the District
3 to verify and remediate illegal and dangerous PCBs. Presumably it will do so again
4 with these new samples.

5 Until now, when Defendants have come to see these accusations as a possible
6 means to have this lawsuit dismissed, no one has claimed that the previous three sets
7 of independent sampling were trespassing or vandalism, or, for that matter, that they
8 caused any damage to the School; indeed, as noted above, results from the 2014
9 independent sampling were submitted to the Los Angeles District Attorney.
10 Instead, both the District and EPA treated the results as information that needed to
11 be acted on in order to comply with TSCA.

12 The fact that the sampling and testing provided to the District by Plaintiffs
13 was conducted outside of Rule 34, and outside of discovery in this case, is further
14 confirmed by the use to which these test results have been put. It is Defendants, not
15 Plaintiffs, who have submitted these results to the Court. Plaintiffs have used these
16 results to inform the District of additional violations of TSCA so they would take
17 action to remediate them. (*See* Daugherty Decl. Ex. F.) EPA’s latest November 2,
18 2015 letter to the District, Daugherty Decl. Ex. D, reconfirms EPA’s requirement
19 that any “newly discovered” building material with PCBs at or above 50 ppm must
20 be removed, and the adjacent substrate either encapsulated or decontaminated. (*Id.*,
21 2nd page.)

22 As discussed above, Plaintiffs also contacted Congressman Ted Lieu, who
23 represents Malibu, concerning these TSCA violations and he submitted the test
24 results to EPA. Thus, these test results were obtained for purposes outside of this
25 lawsuit. While Plaintiffs reserve the right to seek to introduce these test results into
26 evidence in this case (assuming Defendants have not already done so), it may not be
27 necessary if the District and EPA meet their commitments to implement TSCA
28

1 independently of this citizen suit.⁴

2 **C. Sanctions are Not Warranted Under the Court’s Inherent Power**

3 **1. None of the Factors Favoring Dismissal are Present Here**

4 While Defendants are correct that a court may impose sanctions for discovery
5 misconduct under its inherent power even when Rule 37 does not apply, the
6 situation here does not come anywhere close to meeting the requirements for the
7 exercise of that power. Even assuming that the building material sampling here
8 constituted some sort of misconduct, which, as explained above, it did not,
9 terminating sanctions may only be imposed for conduct involving “willfulness,
10 fault, or bad faith.” *Anheuser-Busch v. Natural Beverage Distribs.*, 69 F.3d 337, 348
11 (9th Cir 1995). Moreover, “[d]ue process concerns further require that there exist a
12 relationship between the sanctioned party's misconduct and the matters in
13 controversy such that the transgression “threatens to interfere with the rightful
14 decision of the case.” *Id.* (citations omitted).

15 These conditions are not met here because there was no willfulness, fault or
16 bad faith, but only, as explained above, Malibu community members conducting
17 testing to determine the safety of their school and to inform the District and EPA of
18 the results so that compliance with TSCA and protection of public health can be
19 assured. Moreover, there is no way that this testing could “interfere with the
20 rightful decision of the case,” which is a citizen suit to enforce TSCA, since all
21 parties agree that PCBs above 50 ppm violate TSCA and must be removed. *See e.g.*
22 June 15, 2015 Order, at p. 2, Dkt. No. 53, Joint Stipulation Ex. 1 (“Defendants
23 appear to acknowledge that the TSCA requires the removal of PCB containing
24 building materials when testing indicates that those materials contain PCBs in

25 _____
26 ⁴ It is ironic that Defendants claim that Plaintiffs’ actions “appear to be designed to usurp the
27 jurisdiction of the EPA,” Joint Statement Sec. V.B.3, n. 2, when Plaintiffs have submitted all
28 previous independent test results to EPA as the agency with the authority to enforce TSCA, and
Congressman Lieu has done so with the most recent results. EPA has always agreed that under
TSCA, test results over 50 ppm PCBs require remediation.

1 excess of 50 ppm”). Additional information concerning the existence of building
2 materials with PCB concentrations in excess of 50 ppm can only promote the
3 “rightful decision of the case.”

4 In contrast, cases in which courts have found this requirement for a
5 terminating sanction to be met involve deceptive practices which obstruct finding
6 the truth in the case. *E.g. Conn. Gen. Life Ins. Co. v. New Images of Beverly Hills*,
7 482 F.3d 1091, 1095 (9th Cir. 2007) (perjured declarations and fabricated
8 pleadings); *Anheuser-Busch*, 69 F.3d at 354 (concealment of evidence forcing the
9 other party to rely on “incomplete and spotty evidence”). Where there has merely
10 been discovery misconduct which “did not deceive the court about the issues in
11 controversy or threaten to interfere with the correct decision of this case,” dismissal
12 under the court’s inherent power is not warranted. *Fjelstad v. American Honda*
13 *Motor Co.*, 762 F.2d 1334, 1338 (9th Cir. 1985).

14 In addition, none of the other factors which must be considered with regard to
15 terminating sanctions favor that result here. The court is directed to consider:

- 16 (1) the public's interest in expeditious resolution of litigation; (2) the
17 court's need to manage its dockets; (3) the risk of prejudice to the party
18 seeking sanctions; (4) the public policy favoring disposition of cases on
19 their merits; and (5) the availability of less drastic sanctions.

20 *Anheuser-Busch*, 69 F.3d at 348.

21 Here, there is no concern about the expeditious resolution of the litigation,
22 since the independent sampling has in no way impeded or delayed the conduct of
23 the litigation, except to the extent that Defendants have interposed this motion for
24 sanctions. Likewise, the independent testing does not implicate the court’s need to
25 manage its docket since it had no effect on docket management. *Compare*
26 *Computer Task Group, Inc. v. Brotby*, 364 F.3d 1112, 1116 (9th Cir. 2004)
27 (sanctioned party’s conduct “clogged the Court’s docket, protracted this litigation
28 by years, and made it impossible for [plaintiff] to proceed to any imaginably fair

1 trial”); *Valley Eng’rs v. Electric Eng’g Co.*, 158 F.3d 1058 (9th Cir. 1998)
2 (plaintiff’s violation of discovery orders resulted in several continuances of the trial
3 and “three years wasted in nothing but a struggle to obtain discovery of what should
4 have been promptly produced”); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 131(9th
5 Cir. 1987) (“Malone’s dilatory conduct greatly impeded resolution of the case and
6 prevented the district court from adhering to its trial schedule”).

7 The third factor, the risk of prejudice to the party seeking sanctions, involves
8 “prejudice . . . [that] impair[s] the defendant's ability to go to trial or threaten[s] to
9 interfere with the rightful decision of the case.” *Anheuser-Busch*, 69 F.3d at 353-54
10 (citations omitted); *accord, Malone*, 833 F.2d at 131. However, here Defendants’
11 claim of prejudice, apart from a conclusory claim that the alleged violation of a
12 discovery order prejudiced them, is based on matters that have nothing to do with
13 prejudice in this case. Instead, Defendants claim prejudice from the alleged need to
14 repair the alleged damage done to the School by the independent sampling. Joint
15 Stipulation at Sec. V.B.2. Apart from the fact that this is not a cognizable prejudice
16 for purposes of sanctions, Defendants’ claims of damage to the School are wholly
17 unsupported. (*See, e.g.*, Daugherty Decl. p. 5 ¶ 21 (stating that compromise to the
18 integrity of encapsulated areas was “likely” due to independent sampling, but
19 providing no evidence that it was actually caused by the independent sampling);⁵ *id.*
20 at ¶ 22 (referencing damage to stucco by windows but not tying it to independent
21 sampling); *id.* at ¶ 23 (estimating repair costs at \$90,000 to \$120,000 without any
22 evidence supporting the estimates or supporting the claim that the damage was
23 caused by the independent sampling).).

24 In reality, there is no reason to believe that taking tiny samples of caulk could
25 cause significant damage to the School, and no such claims were made with regard
26

27 ⁵ Mr. Daugherty does not explain how sampling the caulk could even theoretically have damaged
28 the surrounding materials (remediation waste) which were encapsulated.

1 to the previous three sets of independent sampling. In fact, in response to Plaintiffs’
2 Notice of Intent to Sue, Defendants claimed with regard to the earlier independent
3 sampling that they could not even locate where most of the samples were taken in
4 order to verify the results, either because, in some locations, there was no evident
5 damage to the caulk, or in others, because there were so many existing holes in the
6 caulk that they could not tell which were the sample locations. (*See, e.g.*, March 16,
7 2015 letter from Defendants’ counsel to Plaintiffs’ counsel, Avrith Decl. Ex. E, at p.
8 4.).⁶

9 The fourth factor, favoring disposition of cases on the merits, can only favor
10 Plaintiffs. The policy favoring adjudication on the merits is even stronger here,
11 where there is a strong public interest in the subject matter of the litigation, the
12 presence of banned toxic chemicals at public schools. *Cf., Halaco Eng’g v. Costle*,
13 843 F.3d 376, 378 (9th Cir. 1988) (court refuses to impose severe sanction for
14 providing an excised report in a case involving alleged violations of the Clean
15 Water Act, because of the “nature of the public interest in the subject matter of the
16 lawsuit”). In addition, dismissal would be even more inappropriate here, because
17 the Court has already ruled that Plaintiffs are likely to succeed on the merits of their
18 claims concerning the presence of PCBs above 50 ppm. (Dkt. No. 47, at p. 4,

19 _____
20 ⁶ Defendants also claim prejudice from having to respond to Plaintiffs’ discovery requests.
21 Defendants’ claims about the conduct of written discovery in this case are irrelevant to this
22 motion, for which they must show prejudice from the alleged violation of the Court’s Orders by
23 caulk sampling to the rightful resolution of the litigation. Defendants’ statements are also highly
24 misleading, in another apparent attempt to prejudice the Court. Defendants claim that “Plaintiffs
25 have not yet responded to a single discovery request,” Joint Stipulation, Sec. I, yet neglect to
26 mention that Plaintiffs’ discovery responses were not yet due at that time. Plaintiff America
27 Unites has now timely responded to Defendant’s first set of discovery responses, and the
28 remaining discovery responses from America Unites and PEER are not yet due. (Avrith Decl. ¶8.)
Defendants also claim that they have expended \$400,000 in responding to Plaintiffs’ discovery
requests, which they now claim were “irrelevant and unnecessary” and intended to “harass
Defendants.” (Elliott Decl. p. 4, ¶7.) However, Defendants supposedly learned that Plaintiffs’
discovery was “irrelevant and unnecessary” based on a filing Plaintiffs made on August 24, 2015,
id., but then proceeded to allegedly expend \$400,000 responding to discovery during the months
of September to November 2015, *id.* p. 3, ¶5, without objecting or seeking a protective order on
that basis. (Avrith Decl. ¶9) In addition, it appears that much of this \$400,000 expenditure was
wasteful in other respects. For example, the first 35,000 plus pages produced to Plaintiffs were
also available on the District’s website, to which Plaintiffs could have been referred. (*Id.*)

1 Avrith Decl. Ex. F.)

2 The fifth factor is the consideration of lesser sanctions. The court must
3 consider the feasibility of less drastic sanctions and explain why alternative
4 sanctions would be inadequate; if possible, implement alternative methods of
5 sanctioning or curing the malfeasance before ordering dismissal; and if possible,
6 warn the party of the possibility of dismissal before actually ordering dismissal.
7 *Malone*, 833 F.2d at 132. Dismissal is generally ordered only after repeated
8 attempts to obtain compliance by lesser means. *E.g. Computer Task Group*, 364
9 F.3d at 1116 (five orders to comply with discovery requests and two monetary
10 sanctions). Here, Defendants have requested alternative lesser sanctions,
11 presumably because they are feasible. They have only noted that one of their
12 suggested lesser sanctions – an order forbidding further building materials testing --
13 would be difficult to enforce because parents and teachers associated with Plaintiffs
14 have access to the School. This is not a sufficient reason to move straight to
15 dismissal, assuming any sanctionable misconduct is found.

16 In sum, none of the factors to be considered in connection with terminating
17 sanctions favor dismissal here.

18 **2. Lesser Sanctions Are Not Appropriate Here**

19 Lesser sanctions are not appropriate here for the primary reason that no
20 sanctions are appropriate because Plaintiffs did not violate a court order or
21 otherwise engage in litigation misconduct. In addition, the particular sanctions
22 sought by Defendants are not properly available in this situation.

23 First, Defendants ask for a prohibition on the introduction of evidence in this
24 court, or any other court of competent jurisdiction of any of the samples taken after
25 June 15, 2015, or the data derived therefrom. As noted above, courts do not have
26 the power to prevent the dissemination of information obtained outside of the
27 discovery process. *Seattle Times*, 467 U.S. at 33 (protective orders may not prevent
28 dissemination of information obtained “independent of the court’s processes”).

1 Thus, the court definitely could not prohibit the introduction of this material
2 in other cases. In addition, as explained above, Plaintiffs obtained this information
3 outside of the discovery process and may introduce it as evidence in this case. *See*
4 Sec. VI.B.1, above. Finally, such a sanction would contravene the public interest,
5 since it would suppress information about legal violations which threaten public
6 health.

7 Second, Defendants seek as a sanction an order forbidding sampling or
8 testing of building materials from the Malibu Campus without approval of the Court
9 based on air and surface wipe sample results; the violation of which will be treated
10 as contempt of court. Such a sanction would be inappropriate because this Court
11 does not have the power to control what Plaintiffs do outside of the litigation, much
12 less to control persons who are not Plaintiffs in the lawsuit. All this court can do, is
13 what it already has done, which is to decline to order that such sampling and testing
14 be done as part of the court's discovery processes.

15 Finally, Defendants ask for monetary sanctions for the alleged damage to
16 "EPA-approved remediation work" as well as attorneys' fees incurred in connection
17 with the motion for sanctions. It is not this Court's place to award monetary
18 sanctions for alleged damage to the School unrelated to any claimed damages to
19 Defendants in this litigation. The purpose of the Court's "inherent power" which
20 would be the source of this sanction is to "protect[] the due and orderly
21 administration of justice and ... maintain[] the authority and dignity of the court. . .
22 ." *Roadway Express v. Piper*, 447 U.S. 752, 764 (1980) (citation omitted). Its
23 purpose is not to right alleged wrongs unrelated to the conduct of the proceedings
24 before the court.

25 If Defendants want to seek such damages they should bring a civil action
26 against the purported perpetrators of alleged damage to the School, in which they
27 would have to prove that those parties were actually responsible for the damage and
28 provide evidence regarding the extent of damage and its monetary value. Such a

1 civil tort claim has no place in this citizen enforcement litigation. The need to
2 conduct of a mini-trial to assess responsibility and the monetary value of the alleged
3 damage points up the absurdity of this sanctions request.

4 As for awarding the expenses of bringing this motion, no such award should
5 be made because the motion has no merit, as shown above.

6 **D. Conclusion**

7 For the reasons set out above, Defendants' motion such be denied and in full
8 and no relief awarded.

9
10
11 Dated: November 18, 2015

Respectfully submitted,

PILLSBURY WINTHROP SHAW
PITTMAN LLP

12
13 By: /s/ Mark E. Elliott

14 Mark E. Elliott

15 *Attorneys for Defendants Sandra Lyon,*
16 *Jan Maez, Laurie Lieberman, Dr. Jose*
17 *Escarce, Craig Foster, Maria Leon-*
18 *Vazquez, Richard Tahvildaran-*
Jesswein, Oscar De La Torre, and
Ralph Mechur

19 Dated: November 18, 2015

NAGLER & ASSOCIATES

20
21 By: /s/ Charles Avrith

22 Charles Avrith

23 *Attorneys for Plaintiffs America Unites*
24 *for Kids and Public Employees for*
25 *Environmental Responsibility*

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Dated: November 18, 2015

PAULA DINERSTEIN

By: /s/ Paula Dinerstein
Paula Dinerstein
*Attorneys for Plaintiff Public
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EXHIBIT 1

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No. CV 15-2124 PA (AJWx) Date June 15, 2015

Title America Unites for Kids, et al. v. Sandra Lyon, et al.

Present: The Honorable PERCY ANDERSON, UNITED STATES DISTRICT JUDGE

Stephen Montes Kerr

Not Reported

N/A

Deputy Clerk

Court Reporter

Tape No.

Attorneys Present for Plaintiff:

Attorneys Present for Defendants:

None

None

Proceedings: IN CHAMBERS - COURT ORDER

Before the Court is a Motion to Dismiss (Docket No. 48) filed by defendants Sandra Lyon, Jan Maez, Laurie Lieberman, Jose Escarce, Craig Foster, Maria Leon-Vazquez, Richard Tahvildaran-Jesswein, Oscar de la Torre, and Ralph Mechur (collectively "Defendants"). Defendants challenge the sufficiency of the First Amended Complaint ("FAC") filed by plaintiffs America Unites for Kids and Public Employees for Environmental Responsibility (collectively "Plaintiffs"). Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that this matter is appropriate for decision without oral argument. The hearing calendared for June 8, 2015, is vacated, and the matter taken off calendar.

I. Factual and Procedural Background

Plaintiffs filed their Complaint on March 23, 2015, and then filed the operative FAC as a matter of right on April 1, 2015. Plaintiffs' FAC alleges a claim against Defendants, who are administrators and members of the Board of Education of the Santa Monica-Malibu Unified School District (the "District"), pursuant to the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2601-2695d.

According to the FAC, testing in 2009 and 2010 revealed elevated levels of polychlorinated biphenyls ("PCBs") in air and soil samples at Malibu Middle and High School ("MHS") and Juan Cabrillo Elementary School ("JCES"). Additional testing undertaken since then has revealed that caulk and other building materials used at MHS and JCES contain levels of PCBs in excess of standards adopted by the Environmental Protection Agency ("EPA"). The FAC alleges that although the District has, in consultation with the EPA, agreed to remove the PCB-containing materials from certain areas within the schools, Defendants have refused or been slow to test additional areas within MHS and JCES that are also likely to contain building materials with levels of PCBs in excess of those allowed by the EPA.

Pursuant to the TSCA, beginning in 1978, "no person may . . . use any polychlorinated biphenyl in any manner other than in a totally enclosed manner." 15 U.S.C. § 2605(e)(2)(A). The TSCA also authorizes the EPA Administrator to promulgate rules authorizing the use of PCBs "other than in a totally enclosed manner . . . if the Administrator finds that such . . . use . . . will not present an unreasonable risk of injury to health or the environment." 15 U.S.C. § 2605(e)(2)(B). The EPA has

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concluded that items “with PCB at concentrations of 50 ppm or greater present an unreasonable risk of injury to health within the United States.” 40 C.F.R. § 761.20. As a result, “[n]o persons may use any PCB, or any PCB item regardless of concentration, in any manner other than in a totally enclosed manner” 40 C.F.R. § 761.20(a).

Defendants do not dispute that caulk containing PCBs is not use of PCBs in “a totally enclosed manner.” Moreover, Defendants appear to acknowledge that the TSCA requires the removal of PCB-containing building materials when testing indicates that those materials contain PCBs in excess of 50 ppm. Specifically, Defendants have committed to removing the PCB-containing caulk in the specific locations identified in their testing because that caulk contains concentrations of PCBs in excess of 50 ppm.

However, according to Defendants, and consistent with the EPA’s nationwide “PCBs in Schools” policy, EPA has authorized the District to allow PCB-containing materials to remain at the school so long as air and surface wipe testing does not reveal heightened levels of PCBs. For instance, in August 2014, EPA informed the District that “EPA does not recommend additional testing of caulk unless dust or air samples persistently fail to meet EPA’s health-based guidelines.” (Defendant’s Request for Judicial Notice, Ex. C.)^{1/} Additionally, in October 2014, EPA approved certain provisions of the District’s “Site-Specific PCB-Related Building Materials Management, Characterization and Remediation Plan for the Library and Building E Rooms 1, 5, and 8 at Malibu High School.” (Request for Judicial Notice, Ex. D.) Among other approvals, EPA approved:

- Best Management Practices (BMPs), including proper maintenance of the ventilation system at the schools, increased cleaning of the classrooms to reduce dust and residue buildup, and use of cleaning equipment that does not cause dust to become airborne. . . .
- Periodic air and surface wipe samples shall be collected to monitor the efficacy of the above remediation and BMP measures until major renovation or demolition occurs that results in removal of PCB-contaminated material. The District shall undertake monitoring, as identified in the Application, through July 1, 2015. Based upon data collected during this initial monitoring period, the District will propose for EPA approval a supplement to the Application to include a new monitoring plan for the period after July 1, 2015. The plan shall include

^{1/} Defendants have submitted a Request for Judicial Notice (Docket No. 43) in which they ask the Court to take judicial notice of various letters between EPA and the District and EPA policies concerning PCBs in schools. Plaintiff’s object to the Request for Judicial Notice to the extent Defendants seek to have the Court take judicial notice of the truth of the EPA’s statements. The Court does not take judicial notice of the factual accuracy of the information contained within the EPA documents, but does take judicial notice of the fact of the EPA’s policies and positions.

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an evaluation of monitoring data collected to date and a description of how the monitoring plan will continue to ensure the effectiveness of the remediation and BMP measures as evaluated against the levels identified in the following bullet. . . .

- All air samples gathered by the District shall be evaluated against the applicable EPA public health levels of PCBs in air . . . (those levels range from 70 to 600 ng/m³ based on the age of the children and the duration of exposure), and all surface wipe samples shall be evaluated against the district's proposed goal of 1 ug/100cm². These air and surface wipe concentrations are health-based screening levels that, pursuant to this approval, will be used to evaluate the effectiveness of the remediation and BMP measures at ensuring that PCBs remain at levels protective of human health. If any samples exceed these levels, within thirty (30) days of receipt of the laboratory results, the District shall conduct an evaluation of the exceedances. . . .

(Id.)

II. Legal Standard

Generally, plaintiffs in federal court are required to give only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). While the Federal Rules allow a court to dismiss a cause of action for “failure to state a claim upon which relief can be granted,” they also require all pleadings to be “construed so as to do justice.” Fed. R. Civ. P. 12(b)(6), 8(e). The purpose of Rule 8(a)(2) is to “give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964, 167 L. Ed. 2d 929 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47, 78 S. Ct. 99, 103, 2 L. Ed. 2d 80 (1957)). The Ninth Circuit is particularly hostile to motions to dismiss under Rule 12(b)(6). See, e.g., Gilligan v. Jamco Dev. Corp., 108 F.3d 246, 248–49 (9th Cir. 1997) (“The Rule 8 standard contains a powerful presumption against rejecting pleadings for failure to state a claim.”) (internal quotation omitted).

However, in Twombly, the Supreme Court rejected the notion that “a wholly conclusory statement of a claim would survive a motion to dismiss whenever the pleadings left open the possibility that a plaintiff might later establish some set of undisclosed facts to support recovery.” Twombly, 550 U.S. at 561, 127 S. Ct. at 1968 (internal quotation omitted). Instead, the Court adopted a “plausibility standard,” in which the complaint must “raise a reasonable expectation that discovery will reveal evidence of [the alleged infraction].” Id. at 556, 127 S. Ct. at 1965. For a complaint to meet this standard, the “[f]actual allegations must be enough to raise a right to relief above the speculative level.” Id. at 555, 127 S. Ct. at 1965 (citing 5 C. Wright & A. Miller, Federal Practice and Procedure §1216, pp. 235–36 (3d ed. 2004) (“[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action”) (alteration in original)); Daniel

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v. County of Santa Barbara, 288 F.3d 375, 380 (9th Cir. 2002) (“All allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party.”) (quoting Burgert v. Lokelani Bernice Pauahi Bishop Trust, 200 F.3d 661, 663 (9th Cir. 2000)). “[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.” Twombly, 550 U.S. at 555, 127 S. Ct. at 1964–65 (internal quotations omitted). In construing the Twombly standard, the Supreme Court has advised that “a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” Ashcroft v. Iqbal, 556 U.S. 662, 679, 129 S. Ct. 1937, 1950, 173 L. Ed. 2d 868 (2009).

III. Analysis

In their Motion to Dismiss, Defendants assert that the FAC should be dismissed, or, in the alternative, that the action be stayed because the EPA has primary jurisdiction over the testing requirements and removal of PCBs in schools. Defendants additionally contend that this action is moot because the District has already committed to removing the PCB-containing caulk that contains PCBs in excess of 50 ppm that has been identified in previous rounds of testing. Finally, Defendants seek dismissal of the action based on what they contend is a deficient Notice of Intent to File Suit.

A. Primary Jurisdiction

Defendants contend that because the EPA has the authority and expertise to oversee issues related to PCBs at the schools, and is in fact exercising that authority, the Court’s involvement would interfere with the EPA’s primary jurisdiction. The primary jurisdiction doctrine “is applicable whenever the enforcement of a claim subject to a specific regulatory scheme requires resolution of issues that are ‘within the special competence of an administrative body.’” Farley Transp. Co. v. Santa Fe Trail Transp. Co., 778 F.2d 1365, 1370 (9th Cir. 1985) (quoting United States v. W. Pac. R.R., 352 U.S. 59, 64, 77 S. Ct. 161, 165, 1 L. Ed. 2d 126 (1956)). When the primary jurisdiction doctrine applies, “the judicial process should be suspended and the issues referred to the appropriate administrative body for its views.” Id. “No fixed formula . . . exists for applying the doctrine, and each case must be examined on its own facts to determine if ‘the reasons for the existence of the doctrine are present and whether the purposes it serves will be aided by its application in the particular litigation.’” Id. (quoting W. Pac. R.R., 352 U.S. at 64, 77 S. Ct. at 165).

Plaintiffs assert that the primary jurisdiction doctrine is inapplicable where, as here, the statutory scheme includes a citizen suit provision. See 15 U.S.C. § 2619; see also N.Y. Cmty. for Change v. N.Y. City Dept. of Educ., No. 11CV3494 (SJ)(CLP), 2013 WL 1232244, at *6 (E.D.N.Y. Mar. 26, 2013); Ass’n of Irrigated Residents v. Fred Schakel Dairy, No. 1:05-CV-00707 OWW SMS, 2008 WL 850136, at *12 (E.D. Cal. Mar. 28, 2008) (“Like the majority of these courts, I find that applying the doctrine of primary jurisdiction to citizen suits would frustrate Congress’s intent, as evidenced by its

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provisions for citizen suits, to facilitate broad enforcement of environmental-protections laws and regulations.”) (quoting Sierra Club v. Tri-State Generation & Transmission Ass’n, Inc., 173 F.R.D. 275, 284 (D. Colo. 1997)).

As the Court concluded when it denied Plaintiffs’ Motion for Preliminary Injunction despite finding that Plaintiffs had established a likelihood of success, Defendants have overstated the degree to which the relief Plaintiffs seek conflicts with EPA’s expertise and considered judgment. In ruling on the Motion for Preliminary Injunction, the Court stated that “nothing in the record to date suggests that an order requiring the removal of PCB-containing caulk would be contrary to or interfere with the EPA’s expertise.” Similarly, nothing alleged in the FAC, or that is the subject of judicial notice, suggests that, at a minimum, air and surface wipe sampling at the subject schools would be inconsistent with the EPA’s analysis, policies, or considered judgment. At least according to the FAC’s allegations, “since December 2013, the District has tested only air and dust in selected rooms throughout the Malibu Schools.” (FAC ¶ 70.)

The Court concludes that the FAC has alleged sufficient facts to satisfy the Twombly plausibility standard that there are locations within the subject schools that have not been subject to air and surface wipe sampling that may exceed the EPA’s thresholds for PCBs and trigger the need for BMPs, thorough cleanings, and potential further testing, including of caulk, within such locations. Such air and surface wipe testing would be consistent with the EPA’s regulatory authority and the prior approvals it has issued to the District. If those tests revealed circumstances requiring additional testing or other measures consistent with the EPA’s approvals, those additional measures would also not interfere with the EPA’s expertise or primary jurisdiction. There is only a possibility of interference with the EPA’s primary jurisdiction if the Court were to allow testing in excess of that deemed prudent by the EPA. At least at this stage of the proceedings, the Court can eliminate the possibility of such interference by limiting the testing that Plaintiffs are allowed to undertake through the discovery process to the air and surface wipe testing that the EPA has determined is sufficient to measure “health-based screening levels that, pursuant to [the EPA’s October 2014] approval, will be used to evaluate the effectiveness of the remediation and BMP measures at ensuring that PCBs remain at levels protective of human health.” By phasing discovery in this way, and only allowing the testing of caulk or other more invasive discovery should the initial air and surface wipe testing establish its necessity, the Court can balance the EPA’s expertise in such matters against Plaintiffs’ rights to pursue a TSCA claim as contemplated by the TSCA’s citizen suit provisions.^{2/} The Court therefore will not dismiss this action based on the primary jurisdiction doctrine.

^{2/} The Court understands that Plaintiffs have filed a Motion to Compel that seeks an order from the assigned United States Magistrate Judge to allow destructive testing of caulk throughout the subject schools. The parties shall immediately notify the assigned United States Magistrate Judge of this Order.

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B. Mootness

Defendants contend that Plaintiffs' claim is moot because they are already taking action to remove the PCB-containing caulk that they have identified, and the TSCA requires that they remove any additional PCB-containing caulk they may identify in the future. At least at this stage, Defendants have not completed the removal of the identified PCB-containing caulk. Moreover, Plaintiffs have plausibly alleged the existence of additional PCB-containing caulk at the subject schools. As the Court has already concluded, those plausible allegations justify allowing this action to continue past the pleading stage to permit Plaintiffs, at a minimum, to conduct air and surface wipe testing at additional locations to determine if additional destructive testing is warranted under the EPA's policies. The Court therefore concludes that this action is not moot under the current circumstances.

C. Adequacy of Notice of Intent to File Suit

The regulations implementing the TSCA include a requirement that before a plaintiff may commence an action under the TSCA, the plaintiff must give notice to the defendant and the EPA of the intent to file suit. See 40 C.F.R. § 702.61. Although Plaintiffs' Notice of Intent to File Suit identifies the rooms at the campus in which testing has shown caulk containing concentrations of PCBs in excess of 50 ppm, and information concerning suspicions that caulk installed in other locations at MHS and JCES built at the same time prior to 1980, and presumably using the same types of materials that testing has shown contain concentrations of PCBs in excess of 50 ppm, Defendants nevertheless assert that the Notice of Intent to File Suit must identify the precise location on each window where the caulk contains PCBs in excess of 50 ppm. Nothing in the TSCA's statutory or regulatory language requires that level of specificity. Cf. Ctr. for Biological Diversity v. Marina Point Dev. Co., 566 F.3d 794, 800-01 (9th Cir. 2008) (construing the Clean Water Act's similar notice provision and noting that the Ninth Circuit has "sometimes been slightly forgiving to plaintiffs in this area, but even at our most lenient we have never abandoned the requirement that there be a true notice that tells a target precisely what it allegedly did wrong, and when. The target is not required to play a guessing game in that respect."). Here, Defendants have been provided notice that caulk used on the windows of buildings at MHS and JCES constructed prior to 1980 may contain PCBs in concentrations that exceed the levels allowed by EPA. The Court concludes that this notice is sufficiently specific to satisfy the applicable notice provisions. See N.Y. Cmty. for Change v. N.Y. City Dept. of Educ., No. 11CV3494 (SJ)(CLP), 2012 WL 7807955, at *11 (E.D.N.Y. Aug. 29, 2012). As a result, the Court denies the Motion to Dismiss on this ground.

Conclusion

For all of the foregoing reasons, the Court denies Defendants' Motion to Dismiss. Defendants shall Answer the FAC no later than June 29, 2015.

IT IS SO ORDERED.

EXHIBIT 2



781 East Washington Blvd., Los Angeles, CA 90021
(213) 745-5312 FAX (213) 745-6372

June 23, 2015

Jennifer DeNicola
America Unites
22741 Pacific Coast Highway # 401
Malibu, CA 90265

Report No.: 1506181
Project Name: MHS

Dear Jennifer DeNicola,

This report contains the analytical results for the sample(s) received under chain of custody(s) by Positive Lab Service on June 16, 2015.

The test results in this report are performed in compliance with ELAP accreditation requirements for the certified parameters. The laboratory report may not be produced, except in full, without the written approval of the laboratory.

The issuance of the final Certificate of Analysis takes precedence over any previous Preliminary Report. Preliminary data should not be used for regulatory purposes. Authorized signature(s) is provided on final report only.

If you have any questions in reference to this report, please contact your Positive Lab Service coordinator.


Project Manager



781 East Washington Blvd., Los Angeles, CA 90021
(213) 745-5312 FAX (213) 745-6372

Certificate of Analysis

Page 2 of 2

America Unites
22741 Pacific Coast Highway # 401
Malibu, CA 90265

File #:75236
Report Date: 06/23/15
Submitted: 06/16/15
PLS Report No.: 1506181

Attn: Jennifer DeNicola Phone: (310) 436-6000 FAX:

Project: MHS

Sample ID: MHS-JR-PRP-ID Solid (1506181-01) Sampled:06/04/15 17:45 Received:06/16/15 16:20											
Analyte	Results	Flag	D.F.	Units	PQL	Prep/Test Method		Prepared	Analyzed	By	Batch
Aroclor-1016	ND		1	mg/kg	10.0	EPA 3550C	EPA 8082	06/18/15	06/19/15	ai	BF52235
Aroclor-1221	ND		1	mg/kg	10.0	EPA 3550C	EPA 8082	06/18/15	06/19/15	ai	BF52235
Aroclor-1232	ND		1	mg/kg	10.0	EPA 3550C	EPA 8082	06/18/15	06/19/15	ai	BF52235
Aroclor-1242	ND		1	mg/kg	10.0	EPA 3550C	EPA 8082	06/18/15	06/19/15	ai	BF52235
Aroclor-1248	ND		1	mg/kg	10.0	EPA 3550C	EPA 8082	06/18/15	06/19/15	ai	BF52235
Aroclor-1254	173		10	mg/kg	100	EPA 3550C	EPA 8082	06/18/15	06/22/15	ai	BF52235
Aroclor-1260	ND		1	mg/kg	10.0	EPA 3550C	EPA 8082	06/18/15	06/19/15	ai	BF52235
Aroclor-1262	ND		1	mg/kg	10.0	EPA 3550C	EPA 8082	06/18/15	06/19/15	ai	BF52235
<i>Surrogate: 2,4,5,6 Tetrachloro-m-xylene 66.3 % 54-131 EPA 3550C EPA 8082 06/18/15 06/19/15 ai BF52235</i>											

Quality Control Data

Analyte	Result	PQL	Units	Spike Level	Source Result	%REC	%REC Limits	RPD	RPD Limit	Qualifier
Batch BF52235 - EPA 3550C										
Blank Prepared: 06/18/15 Analyzed: 06/22/15										
Aroclor-1016	ND	0.0500	mg/kg							
Aroclor-1221	ND	0.0500	mg/kg							
Aroclor-1232	ND	0.0500	mg/kg							
Aroclor-1242	ND	0.0500	mg/kg							
Aroclor-1248	ND	0.0500	mg/kg							
Aroclor-1254	ND	0.0500	mg/kg							
Aroclor-1260	ND	0.0500	mg/kg							
Aroclor-1262	ND	0.0500	mg/kg							
<i>Surrogate: 2,4,5,6 Tetrachloro-m-xylene 0.00889 mg/kg 0.01250 71.1 54-131</i>										
LCS Prepared: 06/18/15 Analyzed: 06/22/15										
Aroclor-1016	0.289	0.0500	mg/kg	0.3125		92.6	60-129			
Aroclor-1260	0.300	0.0500	mg/kg	0.3125		95.9	60-129			
<i>Surrogate: 2,4,5,6 Tetrachloro-m-xylene 0.0133 mg/kg 0.01250 107 58-122</i>										
LCS Dup Prepared: 06/18/15 Analyzed: 06/22/15										
Aroclor-1016	0.285	0.0500	mg/kg	0.3125		91.3	60-129	1.36	30	
Aroclor-1260	0.296	0.0500	mg/kg	0.3125		94.8	60-129	1.10	30	
<i>Surrogate: 2,4,5,6 Tetrachloro-m-xylene 0.0133 mg/kg 0.01250 106 58-122</i>										

Notes and Definitions

- NA Not Applicable
- ND Analyte NOT DETECTED at or above the reported limit(s)
- NR Not Reported
- MDL Method Detection Limit
- PQL Practical Quantitation Limit

Authorized Signature(s)

Environmental Laboratory Accreditation Program Certificate No. 1131, Mobile Lab No. 2534, LACSD No. 10138

88954

CHAIN OF CUSTODY AND ANALYSIS REQUEST



781 East Washington Blvd., Los Angeles, CA 90021
(213) 745-5312 FAX (213) 745-6372

DATE: June 4, 2015 PAGE 1 OF 1
LOG BOOK NO. _____ FILE NO. _____ LAB NO. 1500181

CLIENT NAME: America Unites Project Name/No. Mtts AIRBILL NO. _____
ADDRESS: 22741 PCA #401 Malibu, CA P.O. NO. _____
PROJECT MANAGER: denise PHONE NO: 310 436-6000 FAX NO: _____
SAMPLER NAME: denise (Printed) (Signature) _____
TAT (Analytical Turn Around Time) 0 = Same day; 1 = 24 Hour; 2 = 48 Hour; (Etc.) N = NORMAL

CONTAINER TYPES: B = Brass, E = Encore, G = Glass, P = Plastic, V = VOA Vial, O = Other:
UST Project: Y N - Global ID# _____

SAMPLE NO.	DATE SAMPLED	TIME SAMPLED	SAMPLE DESCRIPTION	MATRIX			CONTAINER		SAMPLE CONDITION/CONTAINER COMMENTS:	
				WATER	SOIL	SLUDGE	OTHER	TAT		#
1	6/4	5:45	MHS - Jr - Pop-ID				X	N	G	
2	6/4	5:50	MHS - 212 - ID				X	N	G	
3										
4										
5										
6										
7										
8										
9										
10										

8082 Pers

ANALYSES REQUESTED: _____
REMARKS: _____
RECEIVED BY: (Signature and Printed Name) _____ Date: 6/17/15 9:13
RELINQUISHED BY: (Signature and Printed Name) _____ Date: 6/17/15 9:13
SPECIAL INSTRUCTIONS: _____
SAMPLE DISPOSITION: 1. Samples returned to client? YES NO
2. Samples will not be stored over 30 days, unless additional storage time is requested.
3. Storage time requested: _____ days

1 AR COPY



781 East Washington Blvd., Los Angeles, CA 90021
(213) 745-5312 FAX (213) 745-6372

June 23, 2015

Jennifer DeNicola
America Unites
22741 Pacific Coast Highway # 401
Malibu, CA 90265

Report No.: 1506179
Project Name: MHS-SPED

Dear Jennifer DeNicola,

This report contains the analytical results for the sample(s) received under chain of custody(s) by Positive Lab Service on June 16, 2015.

The test results in this report are performed in compliance with ELAP accreditation requirements for the certified parameters. The laboratory report may not be produced, except in full, without the written approval of the laboratory.

The issuance of the final Certificate of Analysis takes precedence over any previous Preliminary Report. Preliminary data should not be used for regulatory purposes. Authorized signature(s) is provided on final report only.

If you have any questions in reference to this report, please contact your Positive Lab Service coordinator.


Project Manager



781 East Washington Blvd., Los Angeles, CA 90021
(213) 745-5312 FAX (213) 745-6372

Certificate of Analysis

Page 2 of 3

America Unites
22741 Pacific Coast Highway # 401
Malibu, CA 90265

File #:75236
Report Date: 06/23/15
Submitted: 06/16/15
PLS Report No.: 1506179

Attn: Jennifer DeNicola Phone: (310) 436-6000 FAX:

Project: MHS-SPED

Sample ID: MHS-SpEd-BATH DOOR Solid (1506179-01) Sampled:06/04/15 17:01 Received:06/16/15 16:20											
Analyte	Results	Flag	D.F.	Units	PQL	Prep/Test Method	Prepared	Analyzed	By	Batch	
Aroclor-1016	ND		1	mg/kg	10.0	EPA 3550C EPA 8082	06/18/15	06/19/15	ai	BF52235	
Aroclor-1221	ND		1	mg/kg	10.0	EPA 3550C EPA 8082	06/18/15	06/19/15	ai	BF52235	
Aroclor-1232	ND		1	mg/kg	10.0	EPA 3550C EPA 8082	06/18/15	06/19/15	ai	BF52235	
Aroclor-1242	ND		1	mg/kg	10.0	EPA 3550C EPA 8082	06/18/15	06/19/15	ai	BF52235	
Aroclor-1248	ND		1	mg/kg	10.0	EPA 3550C EPA 8082	06/18/15	06/19/15	ai	BF52235	
Aroclor-1254	44600		1000	mg/kg	10000	EPA 3550C EPA 8082	06/18/15	06/22/15	ai	BF52235	
Aroclor-1260	ND		1	mg/kg	10.0	EPA 3550C EPA 8082	06/18/15	06/19/15	ai	BF52235	
Aroclor-1262	ND		1	mg/kg	10.0	EPA 3550C EPA 8082	06/18/15	06/19/15	ai	BF52235	
<i>Surrogate: 2,4,5,6 Tetrachloro-m-xylene 68.1 % 54-131 EPA 3550C EPA 8082 06/18/15 06/19/15 ai BF52235</i>											

Sample ID: MHS-SpEd-501B-DOOR Solid (1506179-02) Sampled:06/04/15 17:05 Received:06/16/15 16:20											
Analyte	Results	Flag	D.F.	Units	PQL	Prep/Test Method	Prepared	Analyzed	By	Batch	
Aroclor-1016	ND		1	mg/kg	10.0	EPA 3550C EPA 8082	06/18/15	06/19/15	ai	BF52235	
Aroclor-1221	ND		1	mg/kg	10.0	EPA 3550C EPA 8082	06/18/15	06/19/15	ai	BF52235	
Aroclor-1232	ND		1	mg/kg	10.0	EPA 3550C EPA 8082	06/18/15	06/19/15	ai	BF52235	
Aroclor-1242	ND		1	mg/kg	10.0	EPA 3550C EPA 8082	06/18/15	06/19/15	ai	BF52235	
Aroclor-1248	ND		1	mg/kg	10.0	EPA 3550C EPA 8082	06/18/15	06/19/15	ai	BF52235	
Aroclor-1254	91600		1000	mg/kg	10000	EPA 3550C EPA 8082	06/18/15	06/22/15	ai	BF52235	
Aroclor-1260	ND		1	mg/kg	10.0	EPA 3550C EPA 8082	06/18/15	06/19/15	ai	BF52235	
Aroclor-1262	ND		1	mg/kg	10.0	EPA 3550C EPA 8082	06/18/15	06/19/15	ai	BF52235	
<i>Surrogate: 2,4,5,6 Tetrachloro-m-xylene 67.3 % 54-131 EPA 3550C EPA 8082 06/18/15 06/19/15 ai BF52235</i>											

Sample ID: MHS-SpEd-501 DOOR Solid (1506179-03) Sampled:06/04/15 17:08 Received:06/16/15 16:20											
Analyte	Results	Flag	D.F.	Units	PQL	Prep/Test Method	Prepared	Analyzed	By	Batch	
Aroclor-1016	ND		1	mg/kg	5.00	EPA 3550C EPA 8082	06/18/15	06/19/15	ai	BF52235	
Aroclor-1221	ND		1	mg/kg	5.00	EPA 3550C EPA 8082	06/18/15	06/19/15	ai	BF52235	
Aroclor-1232	ND		1	mg/kg	5.00	EPA 3550C EPA 8082	06/18/15	06/19/15	ai	BF52235	
Aroclor-1242	ND		1	mg/kg	5.00	EPA 3550C EPA 8082	06/18/15	06/19/15	ai	BF52235	
Aroclor-1248	ND		1	mg/kg	5.00	EPA 3550C EPA 8082	06/18/15	06/19/15	ai	BF52235	
Aroclor-1254	68900		2000	mg/kg	10000	EPA 3550C EPA 8082	06/18/15	06/22/15	ai	BF52235	
Aroclor-1260	ND		1	mg/kg	5.00	EPA 3550C EPA 8082	06/18/15	06/19/15	ai	BF52235	
Aroclor-1262	ND		1	mg/kg	5.00	EPA 3550C EPA 8082	06/18/15	06/19/15	ai	BF52235	
<i>Surrogate: 2,4,5,6 Tetrachloro-m-xylene 67.5 % 54-131 EPA 3550C EPA 8082 06/18/15 06/19/15 ai BF52235</i>											

Sample ID: MHS-BG-OUT505 Solid (1506179-04) Sampled:06/04/15 17:15 Received:06/16/15 16:20											
Analyte	Results	Flag	D.F.	Units	PQL	Prep/Test Method	Prepared	Analyzed	By	Batch	
Aroclor-1016	ND		1	mg/kg	5.00	EPA 3550C EPA 8082	06/18/15	06/19/15	ai	BF52235	
Aroclor-1221	ND		1	mg/kg	5.00	EPA 3550C EPA 8082	06/18/15	06/19/15	ai	BF52235	
Aroclor-1232	ND		1	mg/kg	5.00	EPA 3550C EPA 8082	06/18/15	06/19/15	ai	BF52235	
Aroclor-1242	ND		1	mg/kg	5.00	EPA 3550C EPA 8082	06/18/15	06/19/15	ai	BF52235	
Aroclor-1248	ND		1	mg/kg	5.00	EPA 3550C EPA 8082	06/18/15	06/19/15	ai	BF52235	
Aroclor-1254	88.3		5	mg/kg	25.0	EPA 3550C EPA 8082	06/18/15	06/23/15	ai	BF52235	
Aroclor-1260	ND		1	mg/kg	5.00	EPA 3550C EPA 8082	06/18/15	06/19/15	ai	BF52235	
Aroclor-1262	ND		1	mg/kg	5.00	EPA 3550C EPA 8082	06/18/15	06/19/15	ai	BF52235	
<i>Surrogate: 2,4,5,6 Tetrachloro-m-xylene 82.1 % 54-131 EPA 3550C EPA 8082 06/18/15 06/19/15 ai BF52235</i>											



781 East Washington Blvd., Los Angeles, CA 90021
 (213) 745-5312 FAX (213) 745-6372

Certificate of Analysis

Page 3 of 3

America Unites
 22741 Pacific Coast Highway # 401
 Malibu, CA 90265

File #: 75236
 Report Date: 06/23/15
 Submitted: 06/16/15
PLS Report No.: 1506179

Attn: Jennifer DeNicola Phone: (310) 436-6000 FAX:

Project: MHS-SPED

Quality Control Data

Analyte	Result	PQL	Units	Spike Level	Source Result	%REC	%REC Limits	RPD	RPD Limit	Qualifier
Batch BF52235 - EPA 3550C										
Blank Prepared: 06/18/15 Analyzed: 06/22/15										
Aroclor-1016	ND	0.0500	mg/kg							
Aroclor-1221	ND	0.0500	mg/kg							
Aroclor-1232	ND	0.0500	mg/kg							
Aroclor-1242	ND	0.0500	mg/kg							
Aroclor-1248	ND	0.0500	mg/kg							
Aroclor-1254	ND	0.0500	mg/kg							
Aroclor-1260	ND	0.0500	mg/kg							
Aroclor-1262	ND	0.0500	mg/kg							
Surrogate: 2,4,5,6 Tetrachloro-m-xylene	0.00889		mg/kg	0.01250		71.1	54-131			
LCS Prepared: 06/18/15 Analyzed: 06/22/15										
Aroclor-1016	0.289	0.0500	mg/kg	0.3125		92.6	60-129			
Aroclor-1260	0.300	0.0500	mg/kg	0.3125		95.9	60-129			
Surrogate: 2,4,5,6 Tetrachloro-m-xylene	0.0133		mg/kg	0.01250		107	58-122			
LCS Dup Prepared: 06/18/15 Analyzed: 06/22/15										
Aroclor-1016	0.285	0.0500	mg/kg	0.3125		91.3	60-129	1.36	30	
Aroclor-1260	0.296	0.0500	mg/kg	0.3125		94.8	60-129	1.10	30	
Surrogate: 2,4,5,6 Tetrachloro-m-xylene	0.0133		mg/kg	0.01250		106	58-122			

Notes and Definitions

- NA Not Applicable
- ND Analyte NOT DETECTED at or above the reported limit(s)
- NR Not Reported
- MDL Method Detection Limit
- PQL Practical Quantitation Limit

Environmental Laboratory Accreditation Program Certificate No. 1131, Mobile Lab No. 2534, LACSD No. 10138

Authorized Signature(s)

88952

CHAIN OF CUSTODY AND ANALYSIS REQUEST



781 East Washington Blvd., Los Angeles, CA 90021
(213) 745-5312 FAX (213) 745-6372

DATE: 6/4/15 PAGE 1 OF 1
LOG BOOK NO. _____ FILE NO. _____ LAB NO. 60179

CLIENT NAME: America Unites Project Name/No. MHS-Sped AIRBILL NO: _____ P.O. NO. _____

ADDRESS: 22741 PCH #401, Malibu COOLER TEMP: 2.0

PROJECT MANAGER: dennise PHONE NO: 310 4346000 PRESERVED: _____

SAMPLER NAME: dennise (Printed) (Signature) _____ REMARKS: _____

TAT (Analytical Turn Around Time) 0 = Same day; 1 = 24 Hour; 2 = 48 Hour; (Etc.) N = NORMAL

CONTAINER TYPES: B = Brass, E = Encore, G = Glass, P = Plastic, V = VOA Vial, 0 = Other:

UST Project: Y N - Global ID# _____

ANALYSES REQUESTED:

SAMPLE NO.	DATE SAMPLED	TIME SAMPLED	SAMPLE DESCRIPTION	MATRIX			TAT	CONTAINER		SAMPLE CONDITION/CONTAINER COMMENTS:	
				WATER	SOIL	SLUDGE		OTHER	#		TYPE
1	6/4	5:01	MHS-Sped-Bath-Door				X		1	G	
2	6/4	5:05	MHS-Sped-501B-Door				X		1	G	
3	6/4	5:08	MHS-Sped-501-Door				X		1	G	
4	6/4	5:15	MHS-BG-OUT505				X		1	G	
5											
6											
7											
8											
9											
10											

ANALYSES REQUESTED: 8082 PCB

Received By: (Signature and Printed Name) _____ Date: 6/16/15 Time: 4:20 SAMPLE DISPOSITION: YES NO
 Relinquished By: (Signature and Printed Name) _____ Date: 6/17/15 Time: 4:20 1. Samples returned to client?
 Relinquished By: (Signature and Printed Name) _____ Date: _____ 2. Samples will not be stored over 30 days, unless additional storage time is requested.
 Relinquished By: (Signature and Printed Name) _____ Date: _____ 3. Storage time requested: _____ days

SPECIAL INSTRUCTIONS: _____ By _____ Date _____

1 AS COPY



781 East Washington Blvd., Los Angeles, CA 90021
(213) 745-5312 FAX (213) 745-6372

June 23, 2015

Jennifer DeNicola
America Unites
22741 Pacific Coast Highway # 401
Malibu, CA 90265

Report No.: 1506182
Project Name: JC-MHS-OUT

Dear Jennifer DeNicola,

This report contains the analytical results for the sample(s) received under chain of custody(s) by Positive Lab Service on June 16, 2015.

The test results in this report are performed in compliance with ELAP accreditation requirements for the certified parameters. The laboratory report may not be produced, except in full, without the written approval of the laboratory.

The issuance of the final Certificate of Analysis takes precedence over any previous Preliminary Report. Preliminary data should not be used for regulatory purposes. Authorized signature(s) is provided on final report only.

If you have any questions in reference to this report, please contact your Positive Lab Service coordinator.


Project Manager



781 East Washington Blvd., Los Angeles, CA 90021
(213) 745-5312 FAX (213) 745-6372

Certificate of Analysis

Page 2 of 2

America Unites
22741 Pacific Coast Highway # 401
Malibu, CA 90265

File #:75236
Report Date: 06/23/15
Submitted: 06/16/15
PLS Report No.: 1506182

Attn: Jennifer DeNicola Phone: (310) 436-6000 FAX:

Project: JC-MHS-OUT

Sample ID: MHS-GR-OUT	Solid (1506182-05)	Sampled:06/08/15 15:01		Received:06/16/15 16:21							
Analyte	Results	Flag	D.F.	Units	PQL	Prep/Test Method		Prepared	Analyzed	By	Batch
Aroclor-1016	ND		1	mg/kg	10.0	EPA 3550C	EPA 8082	06/18/15	06/19/15	ai	BF52235
Aroclor-1221	ND		1	mg/kg	10.0	EPA 3550C	EPA 8082	06/18/15	06/19/15	ai	BF52235
Aroclor-1232	ND		1	mg/kg	10.0	EPA 3550C	EPA 8082	06/18/15	06/19/15	ai	BF52235
Aroclor-1242	ND		1	mg/kg	10.0	EPA 3550C	EPA 8082	06/18/15	06/19/15	ai	BF52235
Aroclor-1248	ND		1	mg/kg	10.0	EPA 3550C	EPA 8082	06/18/15	06/19/15	ai	BF52235
Aroclor-1254	2960		100	mg/kg	1000	EPA 3550C	EPA 8082	06/18/15	06/22/15	ai	BF52235
Aroclor-1260	ND		1	mg/kg	10.0	EPA 3550C	EPA 8082	06/18/15	06/19/15	ai	BF52235
Aroclor-1262	ND		1	mg/kg	10.0	EPA 3550C	EPA 8082	06/18/15	06/19/15	ai	BF52235
<i>Surrogate: 2,4,5,6 Tetrachloro-m-xylene</i>		60.6 %		54-131		EPA 3550C	EPA 8082	06/18/15	06/19/15	ai	BF52235

Quality Control Data

Analyte	Result	PQL	Units	Spike Level	Source Result	%REC	%REC Limits	RPD	RPD Limit	Qualifier
Batch BF52235 - EPA 3550C										
Blank Prepared: 06/18/15 Analyzed: 06/22/15										
Aroclor-1016	ND	0.0500	mg/kg							
Aroclor-1221	ND	0.0500	mg/kg							
Aroclor-1232	ND	0.0500	mg/kg							
Aroclor-1242	ND	0.0500	mg/kg							
Aroclor-1248	ND	0.0500	mg/kg							
Aroclor-1254	ND	0.0500	mg/kg							
Aroclor-1260	ND	0.0500	mg/kg							
Aroclor-1262	ND	0.0500	mg/kg							
<i>Surrogate: 2,4,5,6 Tetrachloro-m-xylene</i>	0.00889		mg/kg	0.01250		71.1	54-131			
LCS Prepared: 06/18/15 Analyzed: 06/22/15										
Aroclor-1016	0.289	0.0500	mg/kg	0.3125		92.6	60-129			
Aroclor-1260	0.300	0.0500	mg/kg	0.3125		95.9	60-129			
<i>Surrogate: 2,4,5,6 Tetrachloro-m-xylene</i>	0.0133		mg/kg	0.01250		107	58-122			
LCS Dup Prepared: 06/18/15 Analyzed: 06/22/15										
Aroclor-1016	0.285	0.0500	mg/kg	0.3125		91.3	60-129	1.36	30	
Aroclor-1260	0.296	0.0500	mg/kg	0.3125		94.8	60-129	1.10	30	
<i>Surrogate: 2,4,5,6 Tetrachloro-m-xylene</i>	0.0133		mg/kg	0.01250		106	58-122			

Notes and Definitions

- NA Not Applicable
- ND Analyte NOT DETECTED at or above the reported limit(s)
- NR Not Reported
- MDL Method Detection Limit
- PQL Practical Quantitation Limit

Authorized Signature(s)

Environmental Laboratory Accreditation Program Certificate No. 1131, Mobile Lab No. 2534, LACSD No. 10138

88953

CHAIN OF CUSTODY AND ANALYSIS REQUEST



781 East Washington Blvd., Los Angeles, CA 90021
(213) 745-5312 FAX (213) 745-6372

DATE: 6/18/15 PAGE 1 OF 1
LOG BOOK NO. _____ FILE NO. 15020 LAB NO. 15008

AIRBILL NO: _____
COOLER TEMP: 2.0
PRESERVED: _____
REMARKS: _____

P.O. NO. _____

Project Name/No. JC-MHS-OUT

ANALYSES REQUESTED:

ADDRESS: America Unites 22741 PCH #401 Malibu, CA

PROJECT MANAGER: dennisa PHONE NO: 310 436 6000 FAX NO: _____

SAMPLER NAME: dennisa (Printed) _____ (Signature)

TAT (Analytical Turn Around Time) 0 = Same day; 1 = 24 Hour; 2 = 48 Hour; (Etc.) N = NORMAL

CONTAINER TYPES: B = Brass, E = Encore, G = Glass, P = Plastic, V = VOA Vial, O = Other:

UST Project: Y N - Global ID# _____

SAMPLE NO.	DATE SAMPLED	TIME SAMPLED	SAMPLE DESCRIPTION	MATRIX			CONTAINER				
				WATER	SOIL	SLUDGE	OTHER	TAT	#	TYPE	
1	6/18	2:40	JC-17-OUT-L				X	N	1	G	X
2	6/18	2:45	JC-18-OUT-L				X	N	1	G	X
3	6/18	2:50	JC-19-OUT-L				X	N	1	G	X
4	6/18	2:55	JC-Girl-OUT-R				X	N	1	G	X
5	6/18	3:01	MHS-GL-OUT				X	N	1	G	X
6											
7											
8											
9											
0											

8082 PCBs

Relinquished By: (Signature and Printed Name) _____ Date: _____ Time: _____
 Relinquished By: (Signature and Printed Name) _____ Date: 6/18/15 Time: 4:24
 Relinquished By: (Signature and Printed Name) _____ Date: 6/18/15 Time: 4:20

SAMPLE DISPOSITION:
 1. Samples returned to client? YES NO
 2. Samples will not be stored over 30 days, unless additional storage time is requested.
 3. Storage time requested: _____ days

SPECIAL INSTRUCTIONS: _____ By: _____ Date: _____

EXHIBIT 3



781 East Washington Blvd., Los Angeles, CA 90021
(213) 745-5312 FAX (213) 745-6372

August 14, 2015

Mr. Brenton Brown
Brenton Brown
2543 S. Foose Rd.
Malibu, CA 90265

Report No.: 1508082
Project Name: MHSIJC 8-2015

Dear Mr. Brenton Brown,

This report contains the analytical results for the sample(s) received under chain of custody(s) by Positive Lab Service on August 10, 2015.

The test results in this report are performed in compliance with ELAP accreditation requirements for the certified parameters. The laboratory report may not be produced, except in full, without the written approval of the laboratory.

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If you have any questions in reference to this report, please contact your Positive Lab Service coordinator.


Project Manager



781 East Washington Blvd., Los Angeles, CA 90021
 (213) 745-5312 FAX (213) 745-6372

Certificate of Analysis

Page 2 of 2

Brenton Brown
 2543 S. Foose Rd.
 Malibu, CA 90265

File #: 75244
 Report Date: 08/14/15
 Submitted: 08/10/15
PLS Report No.: 1508082

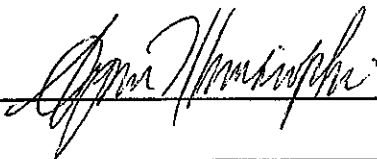
Attn: Mr. Brenton Brown Phone: (310) 924-4922 FAX:

Project: MHSIJC 8-2015

Sample ID: MHS-5-IN-W Solid (1508082-01) Sampled: 08/05/15 15:15 Received: 08/10/15 17:15											
Analyte	Results	Flag	D.F.	Units	PQL	Prep/Test Method		Prepared	Analyzed	By	Batch
Aroclor-1016	ND		2	mg/kg	0.100	EPA 3550C	EPA 8082	08/12/15	08/14/15	al	BH51415
Aroclor-1221	ND		2	mg/kg	0.100	EPA 3550C	EPA 8082	08/12/15	08/14/15	al	BH51415
Aroclor-1232	ND		2	mg/kg	0.100	EPA 3550C	EPA 8082	08/12/15	08/14/15	al	BH51415
Aroclor-1242	ND		2	mg/kg	0.100	EPA 3550C	EPA 8082	08/12/15	08/14/15	al	BH51415
Aroclor-1248	ND		2	mg/kg	0.100	EPA 3550C	EPA 8082	08/12/15	08/14/15	al	BH51415
Aroclor-1254	97.2		2	mg/kg	0.100	EPA 3550C	EPA 8082	08/12/15	08/14/15	al	BH51415
Aroclor-1260	ND		2	mg/kg	0.100	EPA 3550C	EPA 8082	08/12/15	08/14/15	al	BH51415
Aroclor-1262	ND		2	mg/kg	0.100	EPA 3550C	EPA 8082	08/12/15	08/14/15	al	BH51415
<i>Surrogate: 2,4,5,6 Tetrachloro-m-xylene</i>	<i>79.6 %</i>			<i>54-131</i>		<i>EPA 3550C</i>	<i>EPA 8082</i>	<i>08/12/15</i>	<i>08/14/15</i>	<i>al</i>	<i>BH51415</i>
<i>Surrogate: Decachlorobiphenyl</i>	<i>105 %</i>			<i>53-131</i>		<i>EPA 3550C</i>	<i>EPA 8082</i>	<i>08/12/15</i>	<i>08/14/15</i>	<i>al</i>	<i>BH51415</i>

Notes and Definitions

- NA Not Applicable
- ND Analyte NOT DETECTED at or above the detection limit
- NR Not Reported
- MDL Method Detection Limit
- PQL Practical Quantitation Limit



Authorized Signature(s)

Environmental Laboratory Accreditation Program Certificate No. 1131, Mobile Lab No. 2534, LACSD No. 10138



781 East Washington Blvd., Los Angeles, CA 90021
(213) 745-5312 FAX (213) 745-6372

August 17, 2015

Mr. Brenton Brown
Brenton Brown
2543 S. Foose Rd.
Malibu, CA 90265

Report No.: 1508084
Project Name: MHSIJC 8-2015

Dear Mr. Brenton Brown,

This report contains the analytical results for the sample(s) received under chain of custody(s) by Positive Lab Service on August 10, 2015.

The test results in this report are performed in compliance with ELAP accreditation requirements for the certified parameters. The laboratory report may not be produced, except in full, without the written approval of the laboratory.

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If you have any questions in reference to this report, please contact your Positive Lab Service coordinator.


Project Manager



781 East Washington Blvd., Los Angeles, CA 90021
 [213] 745-5312 FAX [213] 745-6372

Certificate of Analysis

Page 2 of 2

Brenton Brown
 2543 S. Foose Rd.
 Malibu, CA 90265

File #:75244
 Report Date: 08/17/15
 Submitted: 08/10/15
PLS Report No.: 1508084

Attn: Mr. Brenton Brown Phone: (310) 924-4922 FAX:

Project: MHSJC 8-2015

Analyte	Results	Flag	D.F.	Units	PQL	Prep/Test Method	Prepared	Analyzed	By	Batch
Sample ID: MHS-505-IN-D Solid (1508084-01) Sampled:08/05/15 13:05 Received:08/10/15 17:15										
Aroclor-1016	ND		1	mg/kg	0.100	EPA 3550C EPA 8082	08/14/15	08/17/15	aj	BH51729
Aroclor-1221	ND		1	mg/kg	0.100	EPA 3550C EPA 8082	08/14/15	08/17/15	aj	BH51729
Aroclor-1232	ND		1	mg/kg	0.100	EPA 3550C EPA 8082	08/14/15	08/17/15	aj	BH51729
Aroclor-1242	ND		1	mg/kg	0.100	EPA 3550C EPA 8082	08/14/15	08/17/15	aj	BH51729
Aroclor-1248	ND		1	mg/kg	0.100	EPA 3550C EPA 8082	08/14/15	08/17/15	aj	BH51729
Aroclor-1254	12600		100	mg/kg	10.0	EPA 3550C EPA 8082	08/14/15	08/17/15	aj	BH51729
Aroclor-1260	ND		1	mg/kg	0.100	EPA 3550C EPA 8082	08/14/15	08/17/15	aj	BH51729
Aroclor-1262	ND		1	mg/kg	0.100	EPA 3550C EPA 8082	08/14/15	08/17/15	aj	BH51729
<i>Surrogate: 2,4,5,6 Tetrachloro-m-xylene</i>	<i>73.4 %</i>				<i>54-131</i>	<i>EPA 3550C EPA 8082</i>	<i>08/14/15</i>	<i>08/17/15</i>	<i>aj</i>	<i>BH51729</i>
<i>Surrogate: Decachlorobiphenyl</i>	<i>309 %</i>	<i>DO</i>			<i>53-131</i>	<i>EPA 3550C EPA 8082</i>	<i>08/14/15</i>	<i>08/17/15</i>	<i>aj</i>	<i>BH51729</i>

Notes and Definitions

- DO Coeluting Peaks
- NA Not Applicable
- ND Analyte NOT DETECTED at or above the detection limit
- NR Not Reported
- MDL Method Detection Limit
- PQL Practical Quantitation Limit

Authorized Signature(s)

Environmental Laboratory Accreditation Program Certificate No. 1131, Mobile Lab No. 2534, LACSD No. 10138



781 East Washington Blvd., Los Angeles, CA 90021
[213] 745-5312 FAX [213] 745-6372

August 18, 2015

Mr. Brenton Brown
Brenton Brown
2543 S. Foose Rd.
Malibu, CA 90265

Report No.: 1508096
Project Name: MHSIJC 8-2015


Dear Mr. Brenton Brown,

This report contains the analytical results for the sample(s) received under chain of custody(s) by Positive Lab Service on August 10, 2015.

The test results in this report are performed in compliance with ELAP accreditation requirements for the certified parameters. The laboratory report may not be produced, except in full, without the written approval of the laboratory.

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If you have any questions in reference to this report, please contact your Positive Lab Service coordinator.


Project Manager



781 East Washington Blvd., Los Angeles, CA 90021
 (213) 745-5312 FAX (213) 745-6372

Certificate of Analysis

Page 2 of 2

Brenton Brown
 2543 S. Foose Rd.
 Malibu, CA 90265

File #: 75244
 Report Date: 08/18/15
 Submitted: 08/10/15
PLS Report No.: 1508096

Attn: Mr. Brenton Brown Phone: (310) 924-4922 FAX:

Project: MHSJC 8-2015

Sample ID: MHS-16-IN-W Solid (1508096-01) Sampled: 08/05/15 14:45 Received: 08/10/15 17:15											
Analyte	Results	Flag	D.F.	Units	PQL	Prep/Test Method		Prepared	Analyzed	By	Batch
Aroclor-1016	ND		1	mg/kg	15.0	EPA 3550C	EPA 8082	08/14/15	08/17/15	ai	BH51729
Aroclor-1221	ND		1	mg/kg	15.0	EPA 3550C	EPA 8082	08/14/15	08/17/15	ai	BH51729
Aroclor-1232	ND		1	mg/kg	15.0	EPA 3550C	EPA 8082	08/14/15	08/17/15	ai	BH51729
Aroclor-1242	ND		1	mg/kg	15.0	EPA 3550C	EPA 8082	08/14/15	08/17/15	ai	BH51729
Aroclor-1248	ND		1	mg/kg	15.0	EPA 3550C	EPA 8082	08/14/15	08/17/15	ai	BH51729
Aroclor-1254	81.8		1	mg/kg	15.0	EPA 3550C	EPA 8082	08/14/15	08/17/15	ai	BH51729
Aroclor-1260	ND		1	mg/kg	15.0	EPA 3550C	EPA 8082	08/14/15	08/17/15	ai	BH51729
Aroclor-1262	ND		1	mg/kg	15.0	EPA 3550C	EPA 8082	08/14/15	08/17/15	ai	BH51729
<hr/>											
Surrogate: 2,4,5,6 Tetrachloro-m-xylene	55.2 %			54-131		EPA 3550C	EPA 8082	08/14/15	08/17/15	ai	BH51729
Surrogate: Decachlorobiphenyl	78.5 %			53-131		EPA 3550C	EPA 8082	08/14/15	08/17/15	ai	BH51729

Notes and Definitions

- NA Not Applicable
- ND Analyte NOT DETECTED at or above the detection limit
- NR Not Reported
- MDL Method Detection Limit
- PQL Practical Quantitation Limit

Authorized Signature(s)

Environmental Laboratory Accreditation Program Certificate No. 1131, Mobile Lab No. 2534, LACSD No. 10138

CHAIN OF CUSTODY AND ANALYSIS REQUEST



781 East Washington Blvd., Los Angeles, CA 90021
(213) 745-5312 FAX (213) 745-6372

DATE: 8/5/15 PAGE: 1 of 1
 FILE NO.: _____ LAB NO.: 008040
 AIRBILL NO.: _____
 COOLER TEMP: 24
 PRESERVED: _____
 REMARKS: _____

CLIENT NAME: Brenton Brown PROJECT NAME/NO: WATS 1 JE 8-2015 P.O. NO.: _____
 ADDRESS: PO Box 22 FAX NO.: _____
 PROJECT MANAGER: PC PHONE NO.: 805 724 4622
 SAMPLER NAME: BRENTON BROWN SIGNATURE: _____
 TAT (Turn-Around-Time): 0=Same Day; 1=24 Hour; 2=48 Hour; (ETC.) N=Normal
 CONTAINER TYPES: B=Brass; E=Encore/Easy Draw; P=Plastic; G=Glass; V=VOA Vial; O=Other

SAMPLE ID	DATE SAMPLED	TIME SAMPLED	SAMPLE DESCRIPTION	GLOBAL ID#	MATRIX				CONTAINER		
					WATER	SOIL	SLUDGE	OTHER	TAT	#	TYPE
	8/5	2:45	WATS 1 JE SW-W				X		N	6	G

ANALYSES REQUESTED: PCB 882

SAMPLE DISPOSITION	Date:	Time:
1. Samples returned to client? Yes No	<u>8/15/15</u>	<u>5:15</u>
2. Samples will not be stored over 30 day unless additional storage time is requested	<u>8/10/15</u>	<u>5:15</u>
3. Storage time requested: _____ day	Date:	Time:

Relinquished by (Signature & Name): [Signature]
 Relinquished by (Signature & Name): [Signature]
 Relinquished by (Signature & Name): [Signature]

SPECIAL INSTRUCTION: _____



781 East Washington Blvd., Los Angeles, CA 90021
(213) 745-5312 FAX (213) 745-6372

August 17, 2015

Mr. Brenton Brown
Brenton Brown
2543 S. Foose Rd.
Malibu, CA 90265

Report No.: 1508086
Project Name: MHSIJC 8-2015

Dear Mr. Brenton Brown,

This report contains the analytical results for the sample(s) received under chain of custody(s) by Positive Lab Service on August 10, 2015.

The test results in this report are performed in compliance with ELAP accreditation requirements for the certified parameters. The laboratory report may not be produced, except in full, without the written approval of the laboratory.

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If you have any questions in reference to this report, please contact your Positive Lab Service coordinator.


Project Manager



781 East Washington Blvd., Los Angeles, CA 90021
 (213) 745-5312 FAX (213) 745-6372

Certificate of Analysis

Page 2 of 2

Brenton Brown
 2543 S. Foose Rd.
 Malibu, CA 90265

File #:75244
 Report Date: 08/17/15
 Submitted: 08/10/15
PLS Report No.: 1508086

Attn: Mr. Brenton Brown Phone: (310) 924-4922 FAX:

Project: MHSJC 8-2015

Analyte	Results	Flag	D.F.	Units	PQL	Prep/Test Method		Prepared	Analyzed	By	Batch
Sample ID: MHS-506-IN-D-N.E. Solid (1508086-01) Sampled:08/05/15 13:30 Received:08/10/15 17:15											
Aroclor-1016	ND		1	mg/kg	0.0500	EPA 3550C	EPA 8082	08/14/15	08/17/15	al	BH51729
Aroclor-1221	ND		1	mg/kg	0.0500	EPA 3550C	EPA 8082	08/14/15	08/17/15	al	BH51729
Aroclor-1232	ND		1	mg/kg	0.0500	EPA 3550C	EPA 8082	08/14/15	08/17/15	al	BH51729
Aroclor-1242	ND		1	mg/kg	0.0500	EPA 3550C	EPA 8082	08/14/15	08/17/15	al	BH51729
Aroclor-1248	ND		1	mg/kg	0.0500	EPA 3550C	EPA 8082	08/14/15	08/17/15	al	BH51729
Aroclor-1254	61600		1000	mg/kg	50.0	EPA 3550C	EPA 8082	08/14/15	08/17/15	al	BH51729
Aroclor-1260	ND		1	mg/kg	0.0500	EPA 3550C	EPA 8082	08/14/15	08/17/15	al	BH51729
Aroclor-1262	ND		1	mg/kg	0.0500	EPA 3550C	EPA 8082	08/14/15	08/17/15	al	BH51729
<hr/>											
Surrogate: 2,4,5,6 Tetrachloro-m-xylene	84.7 %				54-131	EPA 3550C	EPA 8082	08/14/15	08/17/15	al	BH51729
Surrogate: Decachlorobiphenyl	324 %	DO			53-131	EPA 3550C	EPA 8082	08/14/15	08/17/15	al	BH51729

Notes and Definitions

- DO Coeluting Peaks
- NA Not Applicable
- ND Analyte NDT DETECTED at or above the detection limit
- NR Not Reported
- MDL Method Detection Limit
- PQL Practical Quantitation Limit

Authorized Signature(s)

Environmental Laboratory Accreditation Program Certificate No. 1131, Mobile Lab No. 2534, LACSD No. 10138

POSITIVE LAB SERVICE
 CHAIN OF CUSTODY AND ANALYSIS REQUEST

781 East Washington Blvd., Los Angeles, CA 90021
 (213) 745-5312 FAX (213) 745-5372

DATE: **8-5-15** PAGE: **1** OF **1**
 LAB NO.: **1508086**

CLIENT NAME: **Brenton Brown** PROJECT NAME/NO. **MHS1208-2015** RO.NO.
 ADDRESS: **On File**

PROJECT MANAGER: **BB** PHONE NO: **310-924-4622**
 SIGNATURE: *[Signature]*

SAMPLER NAME: **BRENTON BROWN** SIGNATURE: *[Signature]*

TAT (Turn-Around-Time): 0-Same Day; 1-24 Hour; 2-48 Hour; ETC. **N-Normal**

CONTAINER TYPES: B=Brass; E=Encore/Easy Draw; P=Plastic; **G-Glass**; V=VOA Vial; O=Other

PROJECT: **Y** N GLOBAL ID#:

SAMPLE ID	DATE SAMPLED	TIME SAMPLED	SAMPLE DESCRIPTION	MATRIX	VOL.	SUB.	SOURCE	OTHER	TAT	CONTAINER	
										#	TYPE
915	11:30		MHS-506-IN-D-6					X	N	1	G
			N.E.								

ANALYSES REQUESTED

REMARKS: **Sr East and Duv on N well goes outside by Teacher Bathroom**

AIRBILL NO.: **0.400**
 COOLER TEMP: _____
 PRESERVED: _____
 REMARKS: _____

SAMPLE CONDITIONS/CONTAINER COMMENTS

SAMPLE DISPOSITION

1. Samples returned to client? Yes No
 2. Samples will not be stored over 30 days, unless additional storage time is requested
 3. Storage time requested: _____ days

Received by (Signature & Name): *[Signature]* Date: **8/6/15** Time: **3:15**
 Relinquished by (Signature & Name): *[Signature]* Date: **8/10/15** Time: **5:15**
 Received by (Signature & Name): _____ Date: _____ Time: _____
 Relinquished by (Signature & Name): _____ Date: _____ Time: _____

SPECIAL INSTRUCTION:



781 East Washington Blvd., Los Angeles, CA 90021
(213) 745-5312 FAX (213) 745-6372

August 17, 2015

Mr. Brenton Brown
Brenton Brown
2543 S. Foose Rd.
Malibu, CA 90265

Report No.: 1508087
Project Name: MHSIJC 8-2015

Dear Mr. Brenton Brown,

This report contains the analytical results for the sample(s) received under chain of custody(s) by Positive Lab Service on August 10, 2015.

The test results in this report are performed in compliance with ELAP accreditation requirements for the certified parameters. The laboratory report may not be produced, except in full, without the written approval of the laboratory.

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If you have any questions in reference to this report, please contact your Positive Lab Service coordinator.


Project Manager



781 East Washington Blvd., Los Angeles, CA 90021
 (213) 745-5312 FAX (213) 745-6372

Certificate of Analysis

Page 2 of 2

Brenton Brown
 2543 S. Foose Rd.
 Malibu, CA 90265

File #:75244
 Report Date: 08/17/15
 Submitted: 08/10/15
PLS Report No.: 1508087

Attn: Mr. Brenton Brown Phone: (310) 924-4922 FAX:

Project: MHSIJC 8-2015

Sample ID: MHS-506A-IN-D Solid (1508087-01) Sampled:08/05/15 13:10 Received:08/10/15 17:15											
Analyte	Results	Flag	D.F.	Units	PQL	Prep/Test Method		Prepared	Analyzed	By	Batch
Aroclor-1016	ND		100	mg/kg	5.00	EPA 3550C	EPA 8082	08/14/15	08/17/15	al	BH51729
Aroclor-1221	ND		100	mg/kg	5.00	EPA 3550C	EPA 8082	08/14/15	08/17/15	al	BH51729
Aroclor-1232	ND		100	mg/kg	5.00	EPA 3550C	EPA 8082	08/14/15	08/17/15	al	BH51729
Aroclor-1242	ND		100	mg/kg	5.00	EPA 3550C	EPA 8082	08/14/15	08/17/15	al	BH51729
Aroclor-1248	ND		100	mg/kg	5.00	EPA 3550C	EPA 8082	08/14/15	08/17/15	ai	BH51729
Aroclor-1254	50900		1000	mg/kg	50.0	EPA 3550C	EPA 8082	08/14/15	08/17/15	ai	BH51729
Aroclor-1260	ND		100	mg/kg	5.00	EPA 3550C	EPA 8082	08/14/15	08/17/15	al	BH51729
Aroclor-1262	ND		100	mg/kg	5.00	EPA 3550C	EPA 8082	08/14/15	08/17/15	al	BH51729
Surrogate: 2,4,5,6 Tetrachloro-m-xylene	121 %				54-131	EPA 3550C	EPA 8082	08/14/15	08/17/15	al	BH51729
Surrogate: Decachlorobiphenyl	87800 %	DO			53-131	EPA 3550C	EPA 8082	08/14/15	08/17/15	al	BH51729

Notes and Definitions

- DO Coeluting Peaks
- NA Not Applicable
- ND Analyte NOT DETECTED at or above the detection limit
- NR Not Reported
- MDL Method Detection Limit
- PQL Practical Quantitation Limit

Authorized Signature(s)

Environmental Laboratory Accreditation Program Certificate No. 1131, Mobile Lab No. 2534, LACSD No. 10138



781 East Washington Blvd., Los Angeles, CA 90021
(213) 745-5312 FAX (213) 745-6372

August 17, 2015

Mr. Brenton Brown
Brenton Brown
2543 S. Foose Rd.
Malibu, CA 90265

Report No.: 1508085
Project Name: MHSIJC 8-2015

Dear Mr. Brenton Brown,

This report contains the analytical results for the sample(s) received under chain of custody(s) by Positive Lab Service on August 10, 2015.

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If you have any questions in reference to this report, please contact your Positive Lab Service coordinator.


Project Manager



781 East Washington Blvd., Los Angeles, CA 90021
 (213) 745-5312 FAX (213) 745-6372

Certificate of Analysis

Page 2 of 2

Brenton Brown
 2543 S. Foose Rd.
 Malibu, CA 90265

File #:75244
 Report Date: 08/17/15
 Submitted: 08/10/15
PLS Report No.: 1508085

Attn: Mr. Brenton Brown Phone: (310) 924-4922 FAX:

Project: MHSJC 8-2015

Sample ID: MHS-506-IN-SINK Solid (1508085-01) Sampled:08/05/15 13:35 Received:08/10/15 17:15											
Analyte	Results	Flag	D.F.	Units	PQL	Prep/Test Method		Prepared	Analyzed	By	Batch
Aroclor-1016	ND		1	mg/kg	0.0500	EPA 3550C	EPA 8082	08/14/15	08/17/15	ai	BH51729
Aroclor-1221	ND		1	mg/kg	0.0500	EPA 3550C	EPA 8082	08/14/15	08/17/15	ai	BH51729
Aroclor-1232	ND		1	mg/kg	0.0500	EPA 3550C	EPA 8082	08/14/15	08/17/15	ai	BH51729
Aroclor-1242	ND		1	mg/kg	0.0500	EPA 3550C	EPA 8082	08/14/15	08/17/15	ai	BH51729
Aroclor-1248	ND		1	mg/kg	0.0500	EPA 3550C	EPA 8082	08/14/15	08/17/15	ai	BH51729
Aroclor-1254	6660		100	mg/kg	5.00	EPA 3550C	EPA 8082	08/14/15	08/17/15	ai	BH51729
Aroclor-1260	ND		1	mg/kg	0.0500	EPA 3550C	EPA 8082	08/14/15	08/17/15	ai	BH51729
Aroclor-1262	ND		1	mg/kg	0.0500	EPA 3550C	EPA 8082	08/14/15	08/17/15	ai	BH51729
<hr/>											
Surrogate: 2,4,5,6 Tetrachloro-m-xylene	69.4 %			54-131		EPA 3550C	EPA 8082	08/14/15	08/17/15	ai	BH51729
Surrogate: Decachlorobiphenyl	248 %	DO		53-131		EPA 3550C	EPA 8082	08/14/15	08/17/15	ai	BH51729

Notes and Definitions

- DO Coeluting Peaks
- NA Not Applicable
- ND Analyte NOT DETECTED at or above the detection limit
- NR Not Reported
- MOL Method Detection Limit
- PQL Practical Quantitation Limit

Authorized Signature(s)

Environmental Laboratory Accreditation Program Certificate No. 1131, Mobile Lab No. 2534, LACSD No. 10138



781 East Washington Blvd., Los Angeles, CA 90021
(213) 745-5312 FAX (213) 745-6372

August 18, 2015

Mr. Brenton Brown
Brenton Brown
2543 S. Foose Rd.
Malibu, CA 90265

Report No.: 1508090
Project Name: MHSIJC 8-2015

Dear Mr. Brenton Brown,

This report contains the analytical results for the sample(s) received under chain of custody(s) by Positive Lab Service on August 10, 2015.

The test results in this report are performed in compliance with ELAP accreditation requirements for the certified parameters. The laboratory report may not be produced, except in full, without the written approval of the laboratory.

The issuance of the final Certificate of Analysis takes precedence over any previous Preliminary Report. Preliminary data should not be used for regulatory purposes. Authorized signature(s) is provided on final report only.

If you have any questions in reference to this report, please contact your Positive Lab Service coordinator.


Project Manager



781 East Washington Blvd., Los Angeles, CA 90021
 (213) 745-5312 FAX (213) 745-6372

Certificate of Analysis

Page 2 of 2

Brenton Brown
 2543 S. Foose Rd.
 Malibu, CA 90265

File #:75244
 Report Date: 08/18/15
 Submitted: 08/10/15
PLS Report No.: 1508090

Attn: Mr. Brenton Brown Phone: (310) 924-4922 FAX:

Project: MHSJC 8-2015

Sample ID: MHS-506-IN-IN-N.E. Solid: (1508090-01) Sampled:08/05/15 13:20 Received:08/10/15 17:15											
Analyte	Results	Flag	D.F.	Units	PQL	Prep/Test Method		Prepared	Analyzed	By	Batch
Aroclor-1016	ND		100	mg/kg	1500	EPA 3550C	EPA 8082	08/14/15	08/17/15	ai	BH51729
Aroclor-1221	ND		100	mg/kg	1500	EPA 3550C	EPA 8082	08/14/15	08/17/15	ai	BH51729
Aroclor-1232	ND		100	mg/kg	1500	EPA 3550C	EPA 8082	08/14/15	08/17/15	ai	BH51729
Aroclor-1242	ND		100	mg/kg	1500	EPA 3550C	EPA 8082	08/14/15	08/17/15	ai	BH51729
Aroclor-1248	ND		100	mg/kg	1500	EPA 3550C	EPA 8082	08/14/15	08/17/15	ai	BH51729
Aroclor-1254	205000		1000	mg/kg	15000	EPA 3550C	EPA 8082	08/14/15	08/18/15	ai	BH51729
Aroclor-1260	ND		100	mg/kg	1500	EPA 3550C	EPA 8082	08/14/15	08/17/15	ai	BH51729
Aroclor-1262	ND		100	mg/kg	1500	EPA 3550C	EPA 8082	08/14/15	08/17/15	ai	BH51729
Surrogate: 2,4,5,6 Tetrachloro-m-xylene	72.3 %				54-131	EPA 3550C	EPA 8082	08/14/15	08/17/15	ai	BH51729
Surrogate: Decachlorobiphenyl	685 %	M			53-131	EPA 3550C	EPA 8082	08/14/15	08/17/15	ai	BH51729

Notes and Definitions

- M Matrix Interference
- NA Not Applicable
- ND Analyte NOT DETECTED at or above the detection limit
- NR Not Reported
- MDL Method Detection Limit
- PQL Practical Quantitation Limit

Rick Owen Parker

 Authorized Signature(s)

Environmental Laboratory Accreditation Program Certificate No. 1131, Mobile Lab No. 2534, LACSD No. 10138

EXHIBIT 4



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Leadership Team

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- [About Us](#)
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Our Leadership team is a collaborative effort from parents, teachers, and experts working together toward a common goal. We thank each of you for your time and your passion. – Leadership Team

- Jennifer deNicola, Parent, Educator, Child Advocate and AU President
- Hope Edelman, International Best Selling Author, Parent, and AU Secretary [website](#)
- Nicolle Holland, Parent and AU Director
- Matt deNicola, Parent, Founder of Malibu Group & Beverage Promotions, AU Board
- Cindy Crawford, Parent and AU Advisory Council & Spokesperson
- Joshua Malina, Parent and AU Advisory Council
- Anson Williams, Parent and AU Advocate
- Beth Lucas, Parent and AU Director
- Lori Jacobas, Parent and AU Director
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- Dana Friedman, Parent and AU Advocate
- Sky Kunerth, Parent and AU Advocate
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- Steven Fox, Parent and Malibu Unites Advocate
- Soniya Perl, Professor, Parent and AU Advocate
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- Claudia Damasceno, Parent and AU Advocate
- William Bowling, Parent, former EPA consultant and AU Advocate/Advisory Council

- Ingrid Peterson, Educator and AU Advocate
- Paula Dinerstein, Attorney for PEER
- Judi Shils, Environmental Advocate and AU Advisory Council
- Robina Suwal, Environmental Advocate and AU Advisory Council
- Dennis O'Connell, Parent and AU Advocate
- Kathy Feig, Parent and CEO of Still Water Interactive, AU Advocate
- Penny Newman, Environmental Advocate and AU Advisory Council
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- Stacie Cox, Parent and AU Advocate

Please contact us to join our Leadership team. Whether you have 5 minutes a month or 5 hours a week, we want your help! Please use the contact us page or email Jennifer deNicola directly at jen@malibuunites.com.

Get Updates

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Join us and spread the word.

Stand With Us!

PCBs are a toxic threat that should not be in any schools. Protecting children and school faculty from harmful chemical exposures is a top priority for the EPA.

- **Judith A Enck** USEPA Region 2 Regional Administrator

Donate

Your generous donation will help us ensure Environmental Health Excellence in all schools, free from PCBs, pesticides and other hazards that impede learning and risk health.

Donate

We must demand a healthy environment for ourselves and for our children.

- **Maribel Hemingway**

Joel Shufro, Executive Director of the New York Committee for Occupational Safety and Health

(I have) urged the EPA to acknowledge the emerging science on the health effects of PCB exposure, and apply the precautionary principle to protect school employees, teachers and children who work and learn in these buildings."

David O. Carpenter, MD 2013 IARC PCB carcinogenicity panel, Director of the Institute for Health and the Environment at the University of Albany

"What really needs to be done is that the caulk needs to be taken out of there so there are no PCBs in the air."

Director of Litigation at New York Lawyers for the Public Interest, on the importance of community action

The government agencies and school board "will do nothing, to be blunt, that we don't compel them to do...It is really the mobilization of all of you (parents, teachers and coworkers, friends, and neighbors) that will make the difference and make this happen."



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EXHIBIT 5

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12 UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT
 13 OF CALIFORNIA – WESTERN DIVISION

14 AMERICA UNITES FOR KIDS, and
 15 PUBLIC EMPLOYEES FOR
 16 ENVIRONMENTAL RESPONSIBILITY,

17 Plaintiffs,

18 v.

19 SANDRA LYON, JAN MAZE, LAURIE
 20 LIEBERMAN, DR. JOSE ESCARCE,
 21 CRAIG FOSTER, MARIA LEON-
 22 VAZQUEZ, RICHARD TAHVILDARAN-
 23 JESSWEIN, AND OSCAR DE LA
 TORRE,

24 Defendants.

Case No. 2:15-cv-02124-PA-AJW

**MEMORANDUM OF POINTS
 AND AUTHORITIES IN
 SUPPORT OF PLAINTIFFS’
 MOTION FOR
 RECONSIDERATION OF
 DISCOVERY LIMITATION
 MADE IN THE COURSE OF
 RULING ON MOTION TO
 DISMISS**

Hearing Date: September 21, 2015
Hearing Time: 1:30 p.m.
Judge: Hon. Percy Anderson
Courtroom: 15

Trial Date: 5/17/16
 Final Pretrial Conference: 4/15/16
 Motion Cut-off Date: 3/14/16
 Discovery Cut-off Date: 3/7/16

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CASES

Ass'n of Irrigated Residents v. Fred Schakel Dairy,
No. 1:05-CV-00707 OWW MSM,
2008 WL 8501362

Davel Communs., Inc. v. Qwest Corp.
460 F.3d 1075 (9th Cir. 2006)3

Farley Transp. Co. v. Santa Fe Trail Transp. Co.,
778 F.2d 1365 (9th Cir. 1985)2

Sierra Club v. Tri-State Generation and Transmission Ass'n, Inc.
173 F.R.D. 275 (D. Colo. 1997)2

United States v. Culliton,
328 F.3d 1074 (9th Cir. 2003)2

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Code of Federal Regulations
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RULES

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1 **I. INTRODUCTION**

2 In the course of its June 15, 2015 Order denying Defendants' Motion to
3 Dismiss (the "June 15, 2015 Order") (Dkt. 53), the Court indicated that the
4 discovery that Plaintiffs are entitled to under Fed. R. Civ. P. 34 should be limited.
5 Plaintiffs are seeking to sample caulk and other building materials to determine the
6 nature and extent of violations of TSCA's regulatory limit of 50 ppm PCBs in pre-
7 1980 buildings at the Malibu Schools, as alleged in their First Amended Complaint
8 ("FAC"). The Court stated that discovery should be limited initially to air and
9 surface wipe sampling, and that the testing of caulk "or other more invasive
10 discovery" should be allowed only if the initial air and wipe testing establish its
11 necessity, *i.e.* if it reveals PCBs in excess of EPA's "health-based screening levels"
12 set forth in its October 2014 approval of the District's handling of PCB remediation
13 waste. June 15, 2015 Order at 5.

14 Plaintiffs seek reconsideration of this portion only of the June 15, 2015 Order
15 for the reasons detailed below. The discovery matter was not before the Court and
16 was not briefed in connection with the Motion to Dismiss. Thus, material facts and
17 law on this issue were not presented to or considered by the Court. Plaintiffs request
18 reconsideration of the matters detailed below and a revision of the June 15, 2015
19 Order to eliminate the restrictions on discovery. This motion complies with Local
20 Rule 7-18 because the facts and law relevant to the discovery ruling were not
21 presented to the Court before its decision.

22 **II. ARGUMENT**

23 **A. The Primary Jurisdiction Doctrine Is Not An Appropriate Ground**
24 **For Limiting Discovery Here**

25 In the June 15, 2015 Order, the Court recognized case law holding that the
26 primary jurisdiction doctrine is inapplicable where, as here, the suit is brought under
27 a citizen suit provision. June 15, 2015 Order at 4-5. The cases cited by the Court
28 hold that where Congress has provided for citizen suits, application of the doctrine

1 of primary jurisdiction would frustrate congressional intent “to facilitate broad
2 enforcement of environmental-protection laws.” *Id.*, quoting *Ass’n of Irrigated*
3 *Residents v. Fred Schakel Dairy*, No. 1:05-CV-00707 OWW MSM, 2008 WL
4 850136, at *12 (quoting *Sierra Club v. Tri-State Generation and Transmission*
5 *Ass’n, Inc.*, 173 F.R.D. 275, 284 (D. Colo. 1997)). Although not finding any
6 exception to this principle which would make the doctrine of primary jurisdictions
7 applicable to this case, the Court went on to find that limiting discovery was
8 necessary to avoid conflict with EPA’s “analysis, policies or considered judgment.”
9 June 15, 2015 Order at 5. There is an inherent contradiction in recognizing that
10 primary jurisdiction does not apply, and therefore Plaintiffs are authorized to pursue
11 enforcement of TSCA here, and yet to apply the doctrine to restrict the legal tools
12 normally available in a citizen suit to achieve enforcement – namely, discovery to
13 obtain evidence to prove Plaintiffs’ allegations of legal violations.

14 Moreover, as the Ninth Circuit stated, the primary jurisdiction doctrine should
15 not be invoked unless “it would be inconsistent with the statutory scheme to deny
16 the agency’s power to resolve the issues in question.” *United States v. Culliton*, 328
17 F.3d 1074, 1082 (9th Cir. 2003) (citation omitted). Given that TSCA expressly
18 provides for citizen suits, it would not be inconsistent with the statutory scheme to
19 deny the EPA the authority to determine what kind of discovery should be allowed
20 in an action brought to enforce TSCA. To the contrary, application of the primary
21 jurisdiction doctrine to prevent Plaintiffs from using the discovery procedures to
22 enforce TSCA frustrates Congressional intent to facilitate broad enforcement of the
23 statute. No case law supports use of the primary jurisdiction doctrine to restrict
24 discovery.

25 In any event, the purpose of the primary jurisdiction doctrine (even if it did
26 apply) is to allow “referral” to the administrative agency for initial decision making;
27 it has nothing to do with restricting discovery. *See Farley Transp. Co. v. Santa Fe*
28 *Trail Transp. Co.*, 778 F.2d 1365, 1370 (9th Cir. 1985) (where primary jurisdiction

1 applies, “the judicial process should be suspended and the issues referred to the
2 appropriate administrative body for its views”) (quoted in the June 15, 2015 Order at
3 4); *Davel Communs., Inc. v. Qwest Corp.*, 460 F.3d 1075, 1086-1087 (9th Cir.
4 2006) (“Referral’ . . . means that a court either stays proceedings, or dismisses the
5 case without prejudice, so that the parties may pursue their administrative
6 remedies”). Because, as this Court found, these measures are not appropriate here,
7 Plaintiffs should be accorded their full rights under TSCA’s citizen suit provision to
8 pursue enforcement through this litigation, including their rights to discovery under
9 the Federal Rules of Civil Procedure.

10 **B. EPA’s Expertise And Policies Do Not Conflict With Plaintiffs’**
11 **Proposed Sampling And Testing Of Caulk And Other Building**
12 **Materials**

13 Equally important, there is in fact no conflict between Plaintiffs’ proposed
14 discovery and any EPA policy, expertise, judgment, or approval related to the
15 Malibu Schools. The June 15, 2015 Order recognizes that EPA’s TSCA regulations
16 contain a finding that items “with PCB concentrations of 50 ppm or greater present
17 an unreasonable risk of injury to health within the United States,” and that as a
18 result, use of such items is forbidden. June 15, 2015 Order at 2, citing 40 C.F.R. §
19 761.20. The Order recognizes that even Defendants agree that TSCA “requires the
20 removal of PCB-containing building materials when testing indicates that those
21 materials contain PCBs in excess of 50 ppm.” *Id.* It follows that in a citizen suit to
22 enforce TSCA, Plaintiffs are entitled to discovery to prove allegations that building
23 materials with 50 ppm or greater are present at the school in violation of TSCA and
24 must be removed. *See, e.g.*, Fed. R. Civ. P. 26(b) (“Parties may obtain discovery
25 regarding any nonprivileged matter that is relevant to any party’s claim or
26 defense....”).

27 However, contradictorily, the June 15, 2015 Order also appears to agree with
28 Defendants’ claim that “EPA has authorized the District to allow PCB-containing

1 materials to remain at the school so long as air and surface wipe testing does not
2 reveal heightened levels of PCBs.” *Id.* at 2. The Court goes on to rely on EPA’s
3 October 2014 approval of the District’s handling of PCB remediation waste to
4 conclude that EPA “expertise and considered judgment” prevents caulk testing
5 unless and until air and wipe sampling reveals PCBs in excess of EPA’s “health-
6 based screening levels.” *Id.* at 5. Even assuming this is a correct understanding of
7 EPA expertise and considered judgment, it would not change TSCA and the
8 regulations thereunder, and could not prevent Plaintiffs from enforcing TSCA and
9 its regulations as written, as authorized by TSCA’s citizen suit provision.¹
10 However, the Court need not reach that question, because EPA’s “expertise and
11 considered judgment” in fact requires removal of materials containing PCBs in
12 excess of 50 ppm regardless of levels found in air and surface wipe sampling, and
13 does not prohibit caulk testing unless air and wipe testing first reveals exceedances
14 of health-based screening levels.

15 First, EPA has no policy, guidance, expertise or considered judgment that
16 would allow caulk and other building materials with PCBs in excess of 50 ppm to
17 remain in place, regardless of the results of air and surface wipe testing. Such a
18 policy would be in clear contravention of the prohibition of continued use of such
19 materials in TSCA and its implementing regulations and has never been advanced
20

21 ¹ EPA’s public guidance documents generally contain disclaimers stating
22 that they do not override the TSCA law and regulations. For example, EPA’s
23 “Current Best Practices for PCBs in Caulk Fact Sheet-Removal and Clean-Up of
24 PCBs in Caulk and PCB-Contaminated Soil and Building Material (“Current Best
25 Practices”),” www.epa.gov/pcbs_incaulk/caulkremoval.htm, states the following (at
26 3): “This fact sheet is intended solely for guidance and should be used as an
27 informal reference. It does not replace or supplant the requirements of the Toxic
28 Substances Control Act or the PCB regulations at 40 CFR part 761, and it is not
binding on the Agency or individuals. Please refer to the regulations at 40 CFR part
761 for specific requirements relating to PCBs and PCB-containing materials.”
EPA’s Current Best Practices is attached as Exhibit A to Plaintiffs’ accompanying
Request for Judicial Notice (“RJN”).

1 by EPA. To the contrary, EPA has repeatedly stated, in its regulations, in general
2 public guidance documents and in specific communications concerning the Malibu
3 Schools that “[c]aulk containing PCBs at levels > 50 ppm is not authorized for use
4 under the PCB regulations and must be removed.” See, e.g., Current Best Practices,
5 RJN Ex. A, at 1.

6 From the first discovery of PCBs in excess of 50 ppm at the Malibu schools in
7 November 2013, EPA has advised the District that that a PCB clean-up plan would
8 be required which included "Removal and disposal of caulk material and any other
9 sources of PCBs present at the school." (RJN, Ex. B, at 1-2). The October 31, 2014
10 EPA approval of the District’s plan concerning remediation waste upon which the
11 Court relies states:

12 "As you know, the federal Toxic Substances Control Act (TSCA) and
13 implementing regulations prohibit the use of caulk containing PCBs at
14 or above 50 ppm. When such caulk is found, it must be removed and
15 disposed of in accordance with TSCA.”

16 (RJN, Ex. C, at 1).

17 The portions of this October 2014 approval which the Court cites concerning
18 best management practices (BMPs) and air and surface wipe samples “address[] the
19 PCBs remaining in the substrate (known as PCB remediation waste) after PCB-
20 containing caulk is removed at both schools.” (*Id.*) The BMPs and air and wipe
21 sampling are to be employed to insure that there will be no unreasonable risk posed
22 by the remediation wastes remaining in place after the caulk is removed and the
23 substrate is either encapsulated or decontaminated with a solvent. (*Id.*, attachment
24 at 1-2.) The requirements in the October 2014 approval for BMPs and air and wipe
25 sampling come into play only after illegal caulk has been removed, and certainly do
26 not purport to mandate or permit leaving illegal caulk in place. As this Court
27 recognized when it ruled on Plaintiffs’ Motion for Preliminary Injunction, this
28 October 2014 approval concerns only the remediation waste, and has no bearing on

1 the treatment of PCB-containing caulk. Dkt. No. 47 at 1-2.

2 In short, the October 2014 approval allows remediation wastes to remain in
3 place after the removal of illegal caulk and the encapsulation or decontamination of
4 the remaining substrate, if BMPs and air and wipe samples are employed to insure
5 that the substrate poses no unreasonable risk. It in no way authorizes caulk or other
6 building materials with PCBs in excess of 50 ppm materials to remain in place based
7 on BMPs and air and surface wipe testing.

8 Second, nothing in EPA's policies, approvals, expertise or considered
9 judgment prevents the testing of caulk and other building materials to identify
10 violations of TSCA, either by the District itself or by third parties such as Plaintiffs.
11 While it is true that EPA stated in a communication with the District in August 2014
12 that it did not "recommend" additional caulk testing unless air or dust samples failed
13 to meet EPA's health-based guidelines (Dkt. 43, Ex. C, at 2), subsequent
14 communications make clear that EPA never directed the District not to test caulk,
15 and actually anticipated that there would be further caulk testing, which in fact has
16 occurred.²

17 The October 2014 approval explicitly contemplates further caulk testing,
18 stating that the District had committed to removing any "newly discovered PCB-
19 containing caulk." (RJN, Ex. C, at 1) Caulk containing PCBs could only be "newly
20 discovered" by testing the caulk. On April 17, 2015, EPA confirmed in an email to
21 Plaintiff America Unites that "[n]othing in the [October 2014] approval limits the
22 District's ability to perform additional caulk sampling or removal provided the
23 [removal] work is performed consistent with TSCA regulations at 40 C.F.R. §
24 761.62(a) or (b)." (Accompanying Declaration of Jennifer DeNicola ("DeNicola

25

26
27 ² At the time EPA stated that it did not "recommend" further caulk testing in
28 August 2014, it only referenced four rooms where caulk over 50 ppm had been
identified. There have been no communications from EPA as to its
recommendations now that the District has identified 10 additional rooms with
extremely high levels of PCBs.

1 Decl.”), Ex. A). In fact, the District did perform additional caulk testing in March
2 2015 and found TSCA violations in all of 24 samples in 10 rooms (FAC ¶¶ 128-29),
3 which the District told the Court it would remediate in the summer of 2015.

4 EPA has also indicated that it expects the District to remediate caulk that is
5 found to contain 50 ppm or more PCBs not only based on the District’s own testing,
6 but also based on third party testing similar to what would occur in discovery here.
7 For example, on December 11, 2014, Steve Armann, the manager of EPA Region
8 9’s Corrective Action Office, emailed Jennifer DeNicola, President of America
9 Unites, stating: “Regarding the issue of independent tests of PCBs over 50 ppm,
10 you and I exchanged email on September 30/October 1 where I explained that the
11 District’s plan includes removal of all caulk tested and verified to have PCBs greater
12 than 50 ppm. This includes caulk tested by independent parties.” (DeNicola Decl.,
13 Ex. B.) The District has indicated that in accordance with EPA direction, it will
14 remove caulk testing above 50 ppm in independent tests verified by the District,
15 regardless of the fact that air and dust testing in those rooms did not exceed EPA’s
16 health guidelines. (Declaration of Douglas Daugherty, April 2, 2015, Dkt. No. 34 at
17 p. 20, Sec. VI.2.b-d.) In other words, when caulk above legal limits is identified by
18 anyone’s testing, which would include testing conducted in discovery in this case,
19 EPA policy requires removal in accordance with TSCA, regardless of air and dust
20 test results.

21 In sum, the doctrine of primary jurisdiction does not apply here and cannot
22 support the restriction of discovery in this case. Even if it could, there is absolutely
23 no conflict between Plaintiffs’ proposed sampling of caulk and other building
24 materials and EPA policy, expertise, considered judgment, or approvals, or any
25 conflict with TSCA and its implementing regulations.

26 ///

27 ///

28 ///

1 **C. Testing Of Caulk And Other Building Materials Is The Only Way**
2 **To Identify Violations Of TSCA's 50 PPM Limitation, And Thus**
3 **The Only Means To Obtain Evidence To Support The Allegations**
4 **In The FAC**

5 As shown above, EPA has not precluded caulk testing, and it would make no
6 sense to do so, since it is the only way to identify TSCA violations in the form of
7 continued use of building materials with 50 ppm or more PCBs, which EPA has
8 found to "present an unreasonable risk of injury to health." 40 C.F.R. § 761.20. Air
9 and surface wipe samples simply cannot identify whether or not building materials
10 contain illegal concentrations of PCBs and are required to be removed under TSCA.
11 The Court's direction to perform air and surface wipe sampling as a prerequisite to
12 building material testing is not necessary to avoid conflict with any EPA policy,
13 guidance or Malibu-specific approval, and would entail an unnecessary layer of
14 additional testing and cause significant delay in reaching the discovery which could
15 actually provide irrefutable evidence of TSCA violations.³ If air and dust samples
16 do not exceed EPA's health guidelines, material testing would be precluded
17 altogether, even though the air and wipe results would not indicate that there are not
18 illegal levels of PCBs in building materials which, as Defendants admit, would

19 _____
20 ³ While 40 C.F.R. § 761.20 prohibits continued use of items with PCBs in
21 concentrations of 50 ppm or greater, and does not mention surface concentrations,
22 40 C.F.R. §761.1(b)(3) states that the provisions of the regulations "that apply to
23 PCBs at concentrations of [$>$] 50 to $<$ 500 ppm apply also to contaminated surfaces
24 at PCB concentrations of $>10/100 \text{ cm}^2$ to $< 100 \text{ [}\mu\text{]g}/100 \text{ cm}^2$." Thus, it is
25 possible that surface wipe samples could reveal an actual violation of TSCA, if the
26 surface concentration is more than 10 micrograms per 100 square centimeters of the
27 surface, rather than just an exceedance of EPA suggested health guideline, which is
28 1 microgram per 100 cm^2 . See June 15, 2015 Order at 3, quoting EPA's October
2014 approval regarding remediation wastes. However, as noted above, surface
wipe testing does not reveal whether TSCA's prohibition against continued use of
materials containing concentrations of PCBs at levels of 50 ppm or greater is being
violated. The most direct and certain way to identify violations of TSCA is to test
building materials to determine the concentrations of PCBs.

1 require removal under TSCA regardless of air and wipe results.

2 Defendants' steadfast refusal to test any more building materials and their
3 opposition to Plaintiffs' discovery seeking to do so is a transparent effort to evade
4 TSCA's legal requirement to remove building materials containing PCBs at or
5 above 50 ppm. Defendants well know that illegal caulk is highly likely to exist
6 throughout the Malibu Schools, based on the high levels of PCBs already found in
7 caulk in several school buildings, and that the same PCB-containing caulk was
8 installed throughout those buildings and likely also in other buildings built at the
9 same time. Defendants know that by testing only air and dust, these likely TSCA
10 violations would never be identified. Denying Plaintiffs the right to test building
11 materials would prevent Plaintiffs from obtaining evidence to support their
12 allegations of violations of TSCA, thus undermining the intent of the citizen suit
13 provision to allow citizens to enforce TSCA when EPA is not doing so.

14 **D. Caulk And Building Material Sampling Is Not Destructive Or**
15 **Invasive**

16 It appears that the Court may believe that air and surface wipe sampling is
17 preferable to determine the need for caulk or building material testing because the
18 latter is destructive and invasive. However, this is not the case. Testing of building
19 materials involves removal of tiny samples barely noticeable to the naked eye, and
20 would be limited to a maximum of 3 or 4 samples per room, followed by repair of
21 the sampled areas with fresh, clean material, as described in Plaintiffs' discovery
22 request. It will be carried out by experienced professionals who have done this type
23 of testing in many other schools under EPA supervision and in accordance with
24 EPA guidance. As Defendants' consultant ENVIRON describes in its own
25 Sampling and Analysis Plan for the Malibu Schools, caulk sampling involves
26 cutting out a 3 to 10 gram sample with a metal chisel or sharp knife. (RJN, Ex. D, at
27 4, Sec. 2.1.1, and Appendix A at 8, Sec. 9.2.2-9.2.3). Samples are placed in 2 ounce
28 glass jars which can hold roughly 90 grams of sample. (*Id.*, Appendix A at 10, Sec.

1 10.1.)

2 When complete, the sampling would not be noticeable, even assuming the
3 sampled areas were not repaired, which they will be. ENVIRON stated in this case
4 that their experts could not identify where caulk samples had been taken for
5 independent testing in the Malibu Schools because there were so many existing gaps
6 in the caulking. (Dkt. No. 34, at 15, V.4.)

7 The samples would be placed in sealed containers and taken off site for
8 analysis in EPA-certified laboratories, posing no danger of exposure to anyone.
9 (Ironically, of course, this is the material which, in much larger amounts, teachers
10 and students are exposed to every day). The sampling will be conducted over a
11 short period when school is not in session and will avoid any conflict with the
12 District's activities on campus. Sampling the caulking is the least expensive and
13 most reliable way to identify TSCA violations.

14 **III. CONCLUSION**

15 For the foregoing reasons, the Court should reconsider the limitation of
16 Plaintiffs' discovery contained in the June 15, 2015 Order initially to air and surface
17 wipe testing, and only allowing testing of caulk and other building materials if the
18 air and wipe testing reveals exceedances of EPA's suggested health guidelines as
19 stated in EPA's October 2014 approval concerning remediation waste. Plaintiffs
20 request that the Court amend its June 15, 2015 Order to remove this limitation.

21 Dated: August 24, 2015

Respectfully submitted,
NAGLER & ASSOCIATES

By: Charles Avrith
Charles Avrith

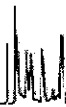
*Attorneys for Plaintiffs America Unites for
Kids and Public Employees for
Environmental Responsibility*

26 Dated: August 24, 2015

PAULA DINERSTEIN

By: Paula Dinerstein
*Attorneys for Plaintiff Public Employees for
Environmental Responsibility*

EXHIBIT 6



Date of Report: 09/14/2015

Jennifer deNicola

Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

Client Project: MHS
BCL Project: PCB
BCL Work Order: 1522567
Invoice ID: B213508

Enclosed are the results of analyses for samples received by the laboratory on 9/8/2015. If you have any questions concerning this report, please feel free to contact me.

Sincerely,

Contact Person: Vanessa Sandoval
Client Service Rep

Authorized Signature

Certifications: CA ELAP #1186; NV #CA00014; OR ELAP #4032-001; AK UST101

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Laboratories, Inc.

Environmental Testing Laboratory Since 1949

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Chain of Custody and Cooler Receipt Form for 1522567 Page 1 of 2

BC LABORATORIES
4100 Atlas Court Bakersfield, Ca, 93308
(661) 327-4911 • FAX (661) 327-1918 • www.bclabs.com

RUSH! Chain of Custody
15-22567

TEMP: _____

Phone #: 310.436.6000 FAX #: _____
E-mail: JDIR@bcme.com

Client/Company Name: Jennifer de la Cruz
Address: 28741 Peck Malibu CA 90265
Project Information: MHS

Report Attention: Jennifer de la Cruz
City: Malibu CA Zip: 90265
PO # MHS 2015 BCL Quote # _____

How would you like your completed results sent? E-Mail Fax BDD Mail Only

QC Request: STD Level II STD Day** 2 Day** Day**

Sampler Name Printed / Signature: J. De la Cruz

Matrix Types: RSW = Raw Surface Water CRW = Chlorinated Finished Water CWW = Chlorinated Waste Water RW = Drinking Water
RGW = Raw Ground Water FW = Finished Water WW = Waste Water SW = Storm Water DW = Drinking Water SO = Solid

Sample #	Bottles	Sampled		Sample Description / Location	Matrix	Cooling Method	Received by (Signature and Printed Name)	Date	Time	Company	Payment Received at Delivery:	Amount	Check/Cash/Card	PIA #	Inil.
		Date	Time												
1	1	9/14/15	1:10	MHS-5064-12-D-BGLabs	SO		[Signature]	9/14/15	8:55	BC Labs					

Shipping Method: CAO UPS WALK-IN SVC FED EX OTHER
Cooling Method: WET BLUE NONE
Packing Material: Box | Glass

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Chain of Custody and Cooler Receipt Form for 1522567 Page 2 of 2

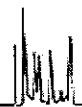
BC LABORATORIES INC.		COOLER RECEIPT FORM		Page 1 Of 1							
Submission #: 15-27567											
SHIPPING INFORMATION Fed Ex <input type="checkbox"/> UPS <input type="checkbox"/> Ontrack <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> BC Lab Field Service <input type="checkbox"/> Other <input type="checkbox"/> (Specify) <u>5</u>			SHIPPING CONTAINER Ice Chest <input type="checkbox"/> None <input type="checkbox"/> Box <input checked="" type="checkbox"/> Other <input type="checkbox"/> (Specify) _____		FREE LIQUID YES <input type="checkbox"/> NO <input type="checkbox"/>						
Refrigerant: Ice <input type="checkbox"/> Blue Ice <input type="checkbox"/> None <input checked="" type="checkbox"/> Other <input type="checkbox"/> Comments: _____											
Custody Seals: Ice Chest <input type="checkbox"/> Containers <input type="checkbox"/> None <input checked="" type="checkbox"/> Comments: _____											
All samples received? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> All samples containers intact? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Description(s) match COC? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>											
COC Received <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		Emissivity: 0.95 Container: Glass Thermometer ID: 208		Date/Time: 9-8-15							
		Temperature: (A) 28.5c (C) 28.6c		Analyst Init: JS 8:55							
SAMPLE CONTAINERS		SAMPLE NUMBERS									
		1	2	3	4	5	6	7	8	9	10
QT PE UNPRES											
4oz / 8oz / 16oz PE UNPRES											
2oz Cr ¹⁴											
QT INORGANIC CHEMICAL METALS											
INORGANIC CHEMICAL METALS 4oz / 8oz / 16oz											
PT CYANIDE											
PT NITROGEN FORMS											
PT TOTAL SULFIDE											
2oz. NITRATE /NITRITE											
PT TOTAL ORGANIC CARBON											
PT CHEMICAL OXYGEN DEMAND											
PIA PHENOLICS											
40ml VOA VIAL TRAVEL BLANK											
40ml VOA VIAL											
QT EPA 1664											
PT ODOR											
RADIOLOGICAL											
BACTERIOLOGICAL											
40 ml VOA VIAL- 504											
QT EPA 508/608/8080											
QT EPA 515.1/8150											
QT EPA 525											
QT EPA 525 TRAVEL BLANK											
40ml EPA 547											
40ml EPA 531.1											
8oz EPA 548											
QT EPA 549											
QT EPA 8015M											
QT EPA 8270											
8oz / 16oz / 32oz AMBER											
8oz / 16oz / 32oz JAR 4oz				A							
SOIL SLEEVE											
PCB VIAL											
PLASTIC BAG											
TEDLAR BAG											
FERROUS IRON											
ENCORE											
SMART KIT											
SUMMA CANISTER											
Comments:						Date/Time: 9/8/15 1236		Rev 20 07/24/2015			
Sample Numbering Completed By: JDL											
A = Actual / C = Corrected											

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Laboratories, Inc.

Environmental Testing Laboratory Since 1949



Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

Reported: 09/14/2015 17:06
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

Laboratory / Client Sample Cross Reference

Laboratory	Client Sample Information			
1522567-01	COC Number:	---	Receive Date:	09/08/2015 08:55
	Project Number:	---	Sampling Date:	08/05/2015 13:10
	Sampling Location:	---	Sample Depth:	---
	Sampling Point:	MHS-506A-IN-D-BCLabs	Lab Matrix:	Solids
	Sampled By:	Jennifer deNicola	Sample Type:	Other

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BC Laboratories, Inc.

Environmental Testing Laboratory Since 1949



Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

Reported: 09/14/2015 17:06
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

PCB Analysis (EPA Method 8082)

BCL Sample ID:	1522567-01	Client Sample Name:	MHS-506A-IN-D-BCLabs, 8/5/2015 1:10:00PM, Jennifer deNicola					
Constituent	Result	Units	PQL	MDL	Method	MB Bias	Lab Quals	Run #
PCB-1016	ND	mg/kg	1000	270	EPA-8082	ND	A01	1
PCB-1221	ND	mg/kg	1000	380	EPA-8082	ND	A01	1
PCB-1232	ND	mg/kg	1000	240	EPA-8082	ND	A01	1
PCB-1242	ND	mg/kg	1000	400	EPA-8082	ND	A01	1
PCB-1248	ND	mg/kg	1000	260	EPA-8082	ND	A01	1
PCB-1254	11000	mg/kg	1000	320	EPA-8082	ND	A01	1
PCB-1260	ND	mg/kg	1000	160	EPA-8082	ND	A01	1
Total PCB's (Summation)	11000	mg/kg	1000	500	EPA-8082	ND	A01	1
Decachlorobiphenyl (Surrogate)	0	%	40 - 120 (LCL - UCL)		EPA-8082		A01,A17	1

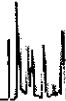
Run #	Method	Prep Date	Run Date/Time	Analyst	Instrument	Dilution	QC Batch ID
1	EPA-8082	09/10/15	09/14/15 12:40	ZZZ	GC-14	100000	BY11242

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BC Laboratories, Inc.

Environmental Testing Laboratory Since 1949



Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

Reported: 09/14/2015 17:06
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

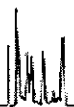
PCB Analysis (EPA Method 8082)

Quality Control Report - Method Blank Analysis

Constituent	QC Sample ID	MB Result	Units	PQL	MDL	Lab Quals
QC Batch ID: BYI1242						
PCB-1016	BYI1242-BLK1	ND	mg/kg	0.010	0.0027	
PCB-1221	BYI1242-BLK1	ND	mg/kg	0.010	0.0038	
PCB-1232	BYI1242-BLK1	ND	mg/kg	0.010	0.0024	
PCB-1242	BYI1242-BLK1	ND	mg/kg	0.010	0.0040	
PCB-1248	BYI1242-BLK1	ND	mg/kg	0.010	0.0028	
PCB-1254	BYI1242-BLK1	ND	mg/kg	0.010	0.0032	
PCB-1260	BYI1242-BLK1	ND	mg/kg	0.010	0.0016	
Total PCB's (Summation)	BYI1242-BLK1	ND	mg/kg	0.010	0.0050	
Decachlorobiphenyl (Surrogate)	BYI1242-BLK1	91.7	%	40 - 120 (LCL - UCL)		

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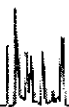
Jennifer deNicola 22741 Pacific Coast Highway Malibu, CA 90265-5208	Reported: 09/14/2015 17:06 Project: PCB Project Number: MHS Project Manager: Jennifer deNicola
---	---

PCB Analysis (EPA Method 8082)

Quality Control Report - Laboratory Control Sample

Constituent	QC Sample ID	Type	Result	Spike Level	Units	Percent Recovery	RPD	Control Limits		Lab
								Percent Recovery	RPD	
QC Batch ID: BY11242										
PCB-1016	BY11242-BS1	LCS	0.079734	0.083056	mg/kg	96.0		60 - 120		
PCB-1260	BY11242-BS1	LCS	0.081728	0.083056	mg/kg	98.4		60 - 120		
Decachlorobiphenyl (Surrogate)	BY11242-BS1	LCS	0.018272	0.019934	mg/kg	91.7		40 - 120		

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Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

Reported: 09/14/2015 17:06
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

PCB Analysis (EPA Method 8082)

Quality Control Report - Precision & Accuracy

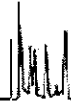
Constituent	Source Type	Source Sample ID	Source Result	Result	Spike Added	Units	RPD	Percent Recovery	Control Limits		Lab Quals
									RPD	Percent Recovery	
QC Batch ID: BY11242		Used client sample: N									
PCB-1016	MS	1516891-64	ND	0.086441	0.084746	mg/kg		102		50 - 130	
	MSD	1516891-64	ND	0.079461	0.084175	mg/kg	8.4	94.4	30	50 - 130	
PCB-1260	MS	1516891-64	ND	0.12034	0.084746	mg/kg		142		50 - 120	Q03
	MSD	1516891-64	ND	0.10875	0.084175	mg/kg	10.1	129	30	50 - 120	Q03
Decachlorobiphenyl (Surrogate)	MS	1516891-64	ND	0.019322	0.020339	mg/kg		95.0		40 - 120	
	MSD	1516891-64	ND	0.016835	0.020202	mg/kg	13.8	83.3		40 - 120	

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Laboratories, Inc.

Environmental Testing Laboratory Since 1949



Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

Reported: 09/14/2015 17:06
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

Notes And Definitions

- MDL Method Detection Limit
- ND Analyte Not Detected
- PQL Practical Quantitation Limit
- A01 Detection and quantitation limits are raised due to sample dilution.
- A17 Surrogate not reportable due to sample dilution.
- Q03 Matrix spike recovery(s) is(are) not within the control limits.

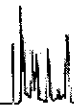
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Laboratories, Inc.

Environmental Testing Laboratory Since 1949



Date of Report: 09/14/2015

Jennifer deNicola

Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

Client Project: MHS
BCL Project: PCB
BCL Work Order: 1522569
Invoice ID: B213510

Enclosed are the results of analyses for samples received by the laboratory on 9/8/2015. If you have any questions concerning this report, please feel free to contact me.

Sincerely,

Contact Person: Vanessa Sandoval
Client Service Rep

Authorized Signature

Certifications: CA ELAP #1186; NV #CA00014; OR ELAP #4032-001; AK UST101

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Laboratories, Inc.

Environmental Testing Laboratory Since 1949

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Chain of Custody and Cooler Receipt Form for 1522569 Page 1 of 2

RUSH!

5 days

15-22569

781 East Washington Blvd., Los Angeles, CA 90021
 (213) 745-5312 FAX (213) 745-6372

POSITIVE LAB SERVICE

CHAIN OF CUSTODY AND ANALYSIS REQUEST

DATE: 9-3-15 PAGE: 1 OF 1

FILE NO.: LAB NO.: AIRBILL NO.:

P.O. NO.:

CLIENT NAME: Jennifer deHoffa PROJECT NAME/NO. lefts 2015

PROJECT MANAGER: J. deHoffa PHONE NO: 805-436-6000 FAX NO.:

SAMPLER NAME: J. deHoffa SIGNATURE: [Signature]

TAT (Turn-Around-Time): 0=Same Day; 1=24 Hour; 2=48 Hour; (ETC.) N=Normal

CONTAINER TYPES: B=Brass; E=Encore/Easy Draw; P=Plastic; G=Glass; V=VOA Vial; O=Other

TEST PROJECT: Y N GLOBAL ID#:

SAMPLE ID	DATE SAMPLED	TIME SAMPLED	SAMPLE DESCRIPTION	MATRIX			TAT CONTAINER		ANALYSES REQUESTED	COOLER TEMP. PRESERVED:	REMARKS:	SAMPLE CONDITIONS/CONTAINER COMMENTS
				WATER	SOIL	SLUDGE	#	TYPE				
-1	9/2/15	3:55	MAR-505A-D				X	N	1	G		
			MAR-505A-D									

Relinquished by (Signature & Name): [Signature]

Relinquished by (Signature & Name): [Signature]

Relinquished by (Signature & Name): [Signature]

Received by (Signature & Name): AD Jarmin D. Date: 9.8.15 Time: 8:55

Received by (Signature & Name): [Signature] Date: [] Time: []

Received by (Signature & Name): [Signature] Date: [] Time: []

SAMPLE DISPOSITION

1. Samples returned to client? Yes No

2. Samples will not be stored over 30 days, unless additional storage time is requested _____ days.

3. Storage time requested: _____ days.

By: _____ Date: _____

SPECIAL INSTRUCTION:



Chain of Custody and Cooler Receipt Form for 1522569 Page 2 of 2

BC LABORATORIES INC.		COOLER RECEIPT FORM		Page <u>1</u> Of <u>1</u>								
Submission #: <u>15-27569</u>												
SHIPPING INFORMATION Fed Ex <input type="checkbox"/> UPS <input type="checkbox"/> Ontrack <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> BC Lab Field Service <input type="checkbox"/> Other <input type="checkbox"/> (Specify) <u>5</u>			SHIPPING CONTAINER Ice Chest <input type="checkbox"/> None <input type="checkbox"/> Box <input checked="" type="checkbox"/> Other <input type="checkbox"/> (Specify) _____		FREE LIQUID YES <input type="checkbox"/> NO <input type="checkbox"/>							
Refrigerant: Ice <input type="checkbox"/> Blue Ice <input type="checkbox"/> None <input checked="" type="checkbox"/> Other <input type="checkbox"/> Comments: _____												
Custody Seals: Ice Chest <input checked="" type="checkbox"/> Containers <input type="checkbox"/> None <input checked="" type="checkbox"/> Comments: _____												
All samples received? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> All samples containers intact? Yes <input type="checkbox"/> No <input type="checkbox"/> Description(s) match COC? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>												
COC Received <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		Emissivity: <u>0.95</u> Container <u>CAVASS</u> Thermometer ID: <u>208</u>		Date/Time: <u>9-8-15</u>								
		Temperature: (A) <u>28.5</u> C / (C) <u>28.1</u> C		Analyst Init: <u>AS</u> 8:55								
SAMPLE CONTAINERS			SAMPLE NUMBERS									
			1	2	3	4	5	6	7	8	9	10
QT PE UNPRES												
4oz / 8oz / 16oz PE UNPRES												
2oz Cr ⁴												
QT INORGANIC CHEMICAL METALS												
INORGANIC CHEMICAL METALS 4oz / 8oz / 16oz												
PT CYANIDE												
PT NITROGEN FORMS												
PT TOTAL SULFIDE												
2oz NITRATE / NITRITE												
PT TOTAL ORGANIC CARBON												
PT CHEMICAL OXYGEN DEMAND												
PIA PHENOLICS												
40ml VOA VIAL TRAVEL BLANK												
40ml VOA VIAL												
QT EPA 1664												
PT ODOR												
RADIOLOGICAL												
BACTERIOLOGICAL												
40 ml VOA VIAL- 504												
QT EPA 508/608/6080												
QT EPA 515.1/8150												
QT EPA 525												
QT EPA 525 TRAVEL BLANK												
40ml EPA 547												
40ml EPA 531.1												
8oz EPA 548												
QT EPA 549												
QT EPA 8015M												
QT EPA 8270												
8oz / 16oz / 32oz AMBER												
8oz / 16oz / 32oz JAR <u>4oz</u>												
SOIL SLEEVE												
PCB VIAL												
PLASTIC BAG												
TEDLAR BAG												
FERROUS IRON												
ENCORE												
SMART KIT												
SUMMA CANISTER												

Comments: _____
 Sample Numbering Completed By: JL Date/Time: 9/8/15 12:30 Rev 20 07/24/2015
 A = Actual / C = Corrected

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Laboratories, Inc.

Environmental Testing Laboratory Since 1949



Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

Reported: 09/14/2015 17:07
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

Laboratory / Client Sample Cross Reference

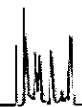
Laboratory	Client Sample Information		
1522569-01	COC Number:	---	Receive Date: 09/08/2015 08:55
	Project Number:	---	Sampling Date: 08/21/2015 15:55
	Sampling Location:	---	Sample Depth: ---
	Sampling Point:	MHS-505A-D	Lab Matrix: Solids
	Sampled By:	Jennifer deNicola	Sample Type: Other

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Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

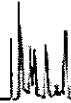
Reported: 09/14/2015 17:07
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

PCB Analysis (EPA Method 8082)

BCL Sample ID: 1522569-01	Client Sample Name: MHS-505A-D, 8/21/2015 3:55:00PM, Jennifer deNicola							
Constituent	Result	Units	PQL	MDL	Method	MB Bias	Lab Quals	Run #
PCB-1016	ND	mg/kg	3000	810	EPA-8082	ND	A01	1
PCB-1221	ND	mg/kg	3000	1100	EPA-8082	ND	A01	1
PCB-1232	ND	mg/kg	3000	720	EPA-8082	ND	A01	1
PCB-1242	ND	mg/kg	3000	1200	EPA-8082	ND	A01	1
PCB-1248	ND	mg/kg	3000	780	EPA-8082	ND	A01	1
PCB-1254	46000	mg/kg	3000	960	EPA-8082	ND	A01	1
PCB-1260	ND	mg/kg	3000	480	EPA-8082	ND	A01	1
Total PCB's (Summation)	46000	mg/kg	3000	1500	EPA-8082	ND	A01	1
Decachlorobiphenyl (Surrogate)	0	%	40 - 120 (LCL - UCL)		EPA-8082		A01,A17	1

Run #	Method	Prep Date	Run		Instrument	Dilution	QC
			Date/Time	Analyst			Batch ID
1	EPA-8082	09/10/15	09/14/15 12:51	ZZZ	GC-14	300000	BY11242

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Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

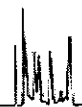
Reported: 09/14/2015 17:07
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

PCB Analysis (EPA Method 8082)

Quality Control Report - Method Blank Analysis

Constituent	QC Sample ID	MB Result	Units	PQL	MDL	Lab Quals
QC Batch ID: BY11242						
PCB-1016	BY11242-BLK1	ND	mg/kg	0.010	0.0027	
PCB-1221	BY11242-BLK1	ND	mg/kg	0.010	0.0036	
PCB-1232	BY11242-BLK1	ND	mg/kg	0.010	0.0024	
PCB-1242	BY11242-BLK1	ND	mg/kg	0.010	0.0040	
PCB-1246	BY11242-BLK1	ND	mg/kg	0.010	0.0026	
PCB-1254	BY11242-BLK1	ND	mg/kg	0.010	0.0032	
PCB-1260	BY11242-BLK1	ND	mg/kg	0.010	0.0016	
Total PCB's (Summation)	BY11242-BLK1	ND	mg/kg	0.010	0.0050	
Decachlorobiphenyl (Surrogate)	BY11242-BLK1	91.7	%	40 - 120 (LCL - UCL)		

The results in this report apply to the samples analyzed in accordance with the chain of custody document. This analytical report must be reproduced in its entirety.
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 22741 Pacific Coast Highway
 Malibu, CA 90265-5208

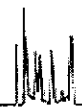
Reported: 09/14/2015 17:07
 Project: PCB
 Project Number: MHS
 Project Manager: Jennifer deNicola

PCB Analysis (EPA Method 8082)

Quality Control Report - Laboratory Control Sample

Constituent	QC Sample ID	Type	Result	Spike Level	Units	Percent Recovery	Control Limits		Lab
							RPD	Percent Recovery	
QC Batch ID: BY11242									
PCB-1016	BY11242-BS1	LCS	0.079734	0.083056	mg/kg	96.0		60 - 120	
PCB-1260	BY11242-BS1	LCS	0.081728	0.083056	mg/kg	98.4		60 - 120	
Decachlorobiphenyl (Surrogate)	BY11242-BS1	LCS	0.018272	0.019934	mg/kg	91.7		40 - 120	

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Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

Reported: 09/14/2015 17:07
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

PCB Analysis (EPA Method 8082)

Quality Control Report - Precision & Accuracy

Constituent	Type	Source Sample ID	Source Result	Result	Spike Added	Units	RPD	Control Limits		Lab
								Percent Recovery	RPD	
QC Batch ID: BY11242		Used client sample: N								
PCB-1016	MS	1516891-64	ND	0.086441	0.084746	mg/kg		102		50 - 130
	MSD	1516891-64	ND	0.079461	0.084175	mg/kg	8.4	94.4	30	50 - 130
PCB-1260	MS	1516891-64	ND	0.12034	0.084746	mg/kg		142		50 - 120 Q03
	MSD	1516891-64	ND	0.10875	0.084175	mg/kg	10.1	129	30	50 - 120 Q03
Decachlorobiphenyl (Surrogate)	MS	1516891-64	ND	0.019322	0.020339	mg/kg		95.0		40 - 120
	MSD	1516891-64	ND	0.016835	0.020202	mg/kg	13.8	83.3		40 - 120

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Environmental Testing Laboratory Since 1949



Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

Reported: 09/14/2015 17:07
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

Notes And Definitions

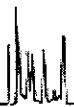
- MDL Method Detection Limit
- ND Analyte Not Detected
- PQL Practical Quantitation Limit
- A01 Detection and quantitation limits are raised due to sample dilution.
- A17 Surrogate not reportable due to sample dilution.
- Q03 Matrix spike recovery(s) is(are) not within the control limits.

The results in this report apply to the samples analyzed in accordance with the chain of custody document. This analytical report must be reproduced in its entirety.
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Laboratories, Inc.

Environmental Testing Laboratory Since 1949



Date of Report: 09/14/2015

Jennifer deNicola

Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

Client Project: MHS
BCL Project: PCB
BCL Work Order: 1522577
Invoice ID: B213518

Enclosed are the results of analyses for samples received by the laboratory on 9/8/2015. If you have any questions concerning this report, please feel free to contact me.

Sincerely,

Contact Person: Vanessa Sandoval
Client Service Rep

Authorized Signature

Certifications: CA ELAP #1186; NV #CA00014; OR ELAP #4032-001; AK UST101

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Laboratories, Inc.

Environmental Testing Laboratory Since 1949

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Chain of Custody and Cooler Receipt Form for 1522577 Page 2 of 2

BC LABORATORIES INC.		COOLER RECEIPT FORM		Page 1 of 1								
Submission #: <u>15-27577</u>												
SHIPPING INFORMATION Fed Ex <input type="checkbox"/> UPS <input type="checkbox"/> Ontrack <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> BC Lab Field Service <input type="checkbox"/> Other <input type="checkbox"/> (Specify) <u>5</u>			SHIPPING CONTAINER Ice Chest <input type="checkbox"/> None <input type="checkbox"/> Box <input checked="" type="checkbox"/> Other <input type="checkbox"/> (Specify) _____		FREE LIQUID YES <input type="checkbox"/> NO <input type="checkbox"/>							
Refrigerant: Ice <input type="checkbox"/> Blue Ice <input type="checkbox"/> None <input checked="" type="checkbox"/> Other <input type="checkbox"/> Comments: _____												
Custody Seals Ice Chest <input type="checkbox"/> Containers <input type="checkbox"/> None <input checked="" type="checkbox"/> Comments: _____ Intact? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Intact? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>												
All samples received? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> All samples containers intact? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Description(s) match COC? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>												
COC Received <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		Emissivity: <u>0.95</u> Container: <u>CAJSS</u> Thermometer ID: <u>208</u> Temperature: (A) <u>28.5</u> C (C) <u>28.1</u> C		Date/Time: <u>9-8-15</u> Analyst Init: <u>AS 8:55</u>								
SAMPLE CONTAINERS			SAMPLE NUMBERS									
			1	2	3	4	5	6	7	8	9	10
QT PE UNPRES												
4oz / 8oz / 16oz PE UNPRES												
2oz Cr ⁶												
QT INORGANIC CHEMICAL METALS												
INORGANIC CHEMICAL METALS 4oz / 8oz / 16oz												
PT CYANIDE												
PT NITROGEN FORMS												
PT TOTAL SULFIDE												
2oz. NITRATE / NITRITE												
PT TOTAL ORGANIC CARBON												
PT CHEMICAL OXYGEN DEMAND												
PLA PHENOLICS												
40ml VOA VIAL TRAVEL BLANK												
40ml VOA VIAL												
QT EPA 1664												
PT ODOR												
RADIOLOGICAL												
BACTERIOLOGICAL												
40 ml VOA VIAL - 504												
QT EPA 508/608/8080												
QT EPA 515.1/8150												
QT EPA 525												
QT EPA 525 TRAVEL BLANK												
40ml EPA 547												
40ml EPA 531.1												
8oz EPA 548												
QT EPA 549												
QT EPA 8015M												
QT EPA 8270												
8oz / 16oz / 32oz AMBER												
8oz / 16oz / 32oz JAR <u>9oz.</u> <u>A</u>												
SOIL SLEEVE												
PCB VIAL												
PLASTIC BAG												
TEDLAR BAG												
FERROUS IRON												
ENCORE												
SMART KIT												
SUMMA CANISTER												
Comments: _____												
Sample Numbering Completed By: <u>JJC</u>			Date/Time: <u>9/8/15 12:30</u>			Rev 20 07/24/2015						
A = Actual / C = Corrected												

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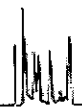
Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

Reported: 09/14/2015 17:10
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

Laboratory / Client Sample Cross Reference

Laboratory	Client Sample Information			
1522577-01	COC Number:	---	Receive Date:	09/08/2015 08:55
	Project Number:	---	Sampling Date:	08/21/2015 15:00
	Sampling Location:	---	Sample Depth:	---
	Sampling Point:	MHS-505-W-Out	Lab Matrix:	Solids
	Sampled By:	Jennifer deNicola	Sample Type:	Other

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Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

Reported: 09/14/2015 17:10
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

PCB Analysis (EPA Method 8082)

BCL Sample ID: 1522577-01	Client Sample Name: MHS-505-W-Out, 8/21/2015 3:00:00PM, Jennifer deNicola							
Constituent	Result	Units	PQL	MDL	Method	MB Bias	Lab Quals	Run #
PCB-1016	ND	mg/kg	1000	270	EPA-8082	ND	A01	1
PCB-1221	ND	mg/kg	1000	380	EPA-8082	ND	A01	1
PCB-1232	ND	mg/kg	1000	240	EPA-8082	ND	A01	1
PCB-1242	ND	mg/kg	1000	400	EPA-8082	ND	A01	1
PCB-1248	ND	mg/kg	1000	260	EPA-8082	ND	A01	1
PCB-1254	ND	mg/kg	1000	320	EPA-8082	ND	A01	1
PCB-1260	3700	mg/kg	1000	160	EPA-8082	ND	A01	1
Total PCB's (Summation)	3700	mg/kg	1000	500	EPA-8082	ND	A01	1
Decachlorobiphenyl (Surrogate)	0	%	40 - 120 (LCL - UCL)		EPA-8082		A17	1

Run #	Method	Prep Date	Run		Analyst	Instrument	Dilution	QC
			Date/Time					Batch ID
1	EPA-8082	09/10/15	09/14/15	13:02	ZZZ	GC-14	100000	BY11242

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Jennifer deNicola
 22741 Pacific Coast Highway
 Malibu, CA 90265-5208

Reported: 09/14/2015 17:10
 Project: PCB
 Project Number: MHS
 Project Manager: Jennifer deNicola

PCB Analysis (EPA Method 8082)

Quality Control Report - Method Blank Analysis

Constituent	QC Sample ID	MB Result	Units	PQL	MDL	Lab Quals
QC Batch ID: BY11242						
PCB-1016	BY11242-BLK1	ND	mg/kg	0.010	0.0027	
PCB-1221	BY11242-BLK1	ND	mg/kg	0.010	0.0038	
PCB-1232	BY11242-BLK1	ND	mg/kg	0.010	0.0024	
PCB-1242	BY11242-BLK1	ND	mg/kg	0.010	0.0040	
PCB-1248	BY11242-BLK1	ND	mg/kg	0.010	0.0026	
PCB-1254	BY11242-BLK1	ND	mg/kg	0.010	0.0032	
PCB-1260	BY11242-BLK1	ND	mg/kg	0.010	0.0016	
Total PCB's (Summation)	BY11242-BLK1	ND	mg/kg	0.010	0.0050	
Decachlorobiphenyl (Surrogate)	BY11242-BLK1	91.7	%	40 - 120 (LCL - UCL)		

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Jennifer deNicola
 22741 Pacific Coast Highway
 Malibu, CA 90265-5208

Reported: 09/14/2015 17:10
 Project: PCB
 Project Number: MHS
 Project Manager: Jennifer deNicola

PCB Analysis (EPA Method 8082)

Quality Control Report - Laboratory Control Sample

Constituent	QC Sample ID	Type	Result	Spike Level	Units	Percent Recovery	Control Limits		Lab
							RPD	Percent Recovery	
QC Batch ID: BY11242									
PCB-1016	BY11242-BS1	LCS	0.079734	0.083056	mg/kg	96.0		60 - 120	
PCB-1260	BY11242-BS1	LCS	0.081728	0.083056	mg/kg	98.4		60 - 120	
Decachlorobiphenyl (Surrogate)	BY11242-BS1	LCS	0.018272	0.019934	mg/kg	91.7		40 - 120	

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Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

Reported: 09/14/2015 17:10
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

PCB Analysis (EPA Method 8082)

Quality Control Report - Precision & Accuracy

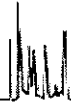
Constituent	Type	Source Sample ID	Source Result	Result	Spike Added	Units	RPD	Control Limits		Lab
								Percent Recovery	RPD	
QC Batch ID: BY11242		Used client sample: N								
PCB-1016	MS	1516891-64	ND	0.086441	0.084746	mg/kg		102		50 - 130
	MSD	1516891-64	ND	0.079461	0.084175	mg/kg	8.4	94.4	30	50 - 130
PCB-1260	MS	1516891-64	ND	0.12034	0.084746	mg/kg		142		50 - 120 Q03
	MSD	1516891-64	ND	0.10875	0.084175	mg/kg	10.1	129	30	50 - 120 Q03
Decachlorobiphenyl (Surrogate)	MS	1516891-64	ND	0.019322	0.020339	mg/kg		95.0		40 - 120
	MSD	1516891-64	ND	0.016835	0.020202	mg/kg	13.8	83.3		40 - 120

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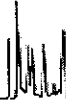
Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

Reported: 09/14/2015 17:10
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

Notes And Definitions

- MDL Method Detection Limit
- ND Analyte Not Detected
- PQL Practical Quantitation Limit
- A01 Detection and quantitation limits are raised due to sample dilution.
- A17 Surrogate not reportable due to sample dilution.
- Q03 Matrix spike recovery(s) is(are) not within the control limits.

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Date of Report: 09/14/2015

Jennifer deNicola

Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

Client Project: MHS
BCL Project: PCB
BCL Work Order: 1522574
Invoice ID: B213514

Enclosed are the results of analyses for samples received by the laboratory on 9/8/2015. If you have any questions concerning this report, please feel free to contact me.

Sincerely,

Contact Person: Vanessa Sandoval
Client Service Rep

Authorized Signature

Certifications: CA ELAP #1186; NV #CA00014; OR ELAP #4032-001; AK UST101

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Environmental Testing Laboratory Since 1949

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Chain of Custody and Cooler Receipt Form for 1522574 Page 2 of 2

BC LABORATORIES INC.		COOLER RECEIPT FORM		Page 1 Of 1						
Submission #: 15-27574										
SHIPPING INFORMATION Fed Ex <input type="checkbox"/> UPS <input type="checkbox"/> Ontrack <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> BC Lab Field Service <input type="checkbox"/> Other <input type="checkbox"/> (Specify) <u>5</u>		SHIPPING CONTAINER Ice Chest <input type="checkbox"/> None <input type="checkbox"/> Box <input checked="" type="checkbox"/> Other <input type="checkbox"/> (Specify)		FREE LIQUID YES <input type="checkbox"/> NO <input type="checkbox"/>						
Refrigerant: Ice <input type="checkbox"/> Blue Ice <input type="checkbox"/> None <input checked="" type="checkbox"/> Other <input type="checkbox"/> Comments:										
Custody Seals: Ice Chest <input type="checkbox"/> Containers <input type="checkbox"/> None <input checked="" type="checkbox"/> Comments: <u>im 9815</u>										
All samples received? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> All samples containers intact? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Description(s) match COC? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>										
COC Received <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		Emissivity: <u>0.95</u> Container: <u>CASS</u> Thermometer ID: <u>208</u>		Date/Time: <u>9-8-15</u> Analyst Init: <u>AS 8:55</u>						
Temperature: (A) <u>28.5</u> C (C) <u>28.1</u> C										
SAMPLE CONTAINERS	SAMPLE NUMBERS									
	1	2	3	4	5	6	7	8	9	10
QT PE UNPRES										
4oz / 8oz / 16oz PE UNPRES										
2oz Cr ⁶										
QT INORGANIC CHEMICAL METALS										
INORGANIC CHEMICAL METALS 4oz / 8oz / 16oz										
PT CYANIDE										
PT NITROGEN FORMS										
PT TOTAL SULFIDE										
2oz. NITRATE / NITRITE										
PT TOTAL ORGANIC CARBON										
PT CHEMICAL OXYGEN DEMAND										
PIA PHENOLICS										
40ml VOA VIAL TRAVEL BLANK										
40ml VOA VIAL										
QT EPA 1664										
PT ODOR										
RADIOLOGICAL										
BACTERIOLOGICAL										
40 ml VOA VIAL- 504										
QT EPA 508/608/8080										
QT EPA 515.1/8150										
QT EPA S25										
QT EPA 525 TRAVEL BLANK										
40ml EPA 547										
40ml EPA 531.1										
8oz EPA 548										
QT EPA 549										
QT EPA 8015M										
QT EPA 8270										
8oz / 16oz / 32oz AMBER										
8oz / 16oz / 32oz JAR <u>4oz</u>	<u>A</u>									
SOIL SLEEVE										
PCB VIAL										
PLASTIC BAG										
TEDLAR BAG										
FERROUS IRON										
ENCORE										
SMART KIT										
SUMMA CANISTER										

Comments: Description doesn't match, but the time and date are correct

Sample Numbering Completed By: _____ Date/Time: 9/8/15 12:36 Rev 20 07/24/2015

A = Actual / C = Corrected

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Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

Reported: 09/14/2015 17:09
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

Laboratory / Client Sample Cross Reference

Laboratory	Client Sample Information			
1522574-01	COC Number:	---	Receive Date:	09/08/2015 08:55
	Project Number:	---	Sampling Date:	08/21/2015 15:40
	Sampling Location:	---	Sample Depth:	---
	Sampling Point:	MHS-401B-Office-W	Lab Matrix:	Solids
	Sampled By:	Jennifer deNicola	Sample Type:	Other

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Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

Reported: 09/14/2015 17:09
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

PCB Analysis (EPA Method 8082)

BCL Sample ID:	1522574-01	Client Sample Name:	MHS-401B-Office-W, 8/21/2015 3:40:00PM, Jennifer deNicola						
Constituent	Result	Units	PQL	MDL	Method	MB Bias	Lab Quals	Run #	
PCB-1016	ND	mg/kg	21	5.8	EPA-8082	ND	A01	1	
PCB-1221	ND	mg/kg	21	8.1	EPA-8082	ND	A01	1	
PCB-1232	ND	mg/kg	21	5.1	EPA-8082	ND	A01	1	
PCB-1242	ND	mg/kg	21	8.6	EPA-8082	ND	A01	1	
PCB-1248	ND	mg/kg	21	5.6	EPA-8082	ND	A01	1	
PCB-1254	210	mg/kg	21	6.9	EPA-8082	ND	A01	1	
PCB-1260	ND	mg/kg	21	3.4	EPA-8082	ND	A01	1	
Total PCB's (Summation)	210	mg/kg	21	11	EPA-8082	ND	A01	1	
Decachlorobiphenyl (Surrogate)	83.3	%	40 - 120 (LCL - UCL)		EPA-8082		A01	1	

Run #	Method	Prep Date	Run Date/Time	Analyst	Instrument	Dilution	QC Batch ID
1	EPA-8082	09/10/15	09/14/15 10:13	ZZZ	GC-15	2142.9	BY11242

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Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

Reported: 09/14/2015 17:09
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

PCB Analysis (EPA Method 8082)

Quality Control Report - Method Blank Analysis

Constituent	QC Sample ID	MB Result	Units	PQL	MDL	Lab Quals
QC Batch ID: BY11242						
PCB-1016	BY11242-BLK1	ND	mg/kg	0.010	0.0027	
PCB-1221	BY11242-BLK1	ND	mg/kg	0.010	0.0038	
PCB-1232	BY11242-BLK1	ND	mg/kg	0.010	0.0024	
PCB-1242	BY11242-BLK1	ND	mg/kg	0.010	0.0040	
PCB-1248	BY11242-BLK1	ND	mg/kg	0.010	0.0026	
PCB-1254	BY11242-BLK1	ND	mg/kg	0.010	0.0032	
PCB-1260	BY11242-BLK1	ND	mg/kg	0.010	0.0016	
Total PCB's (Summation)	BY11242-BLK1	ND	mg/kg	0.010	0.0050	
Decachlorobiphenyl (Surrogate)	BY11242-BLK1	91.7	%	40 - 120 (LCL - UCL)		

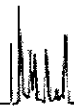
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Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

Reported: 09/14/2015 17:09
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

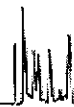
PCB Analysis (EPA Method 8082)

Quality Control Report - Laboratory Control Sample

Constituent	QC Sample ID	Type	Result	Spike Level	Units	Percent Recovery	RPD	Control Limits		Lab
								Percent Recovery	RPD	
QC Batch ID: BY11242										
PCB-1016	BY11242-BS1	LCS	0.079734	0.083056	mg/kg	96.0		60 - 120		
PCB-1260	BY11242-BS1	LCS	0.081728	0.083056	mg/kg	98.4		60 - 120		
Decachlorobiphenyl (Surrogate)	BY11242-BS1	LCS	0.018272	0.019934	mg/kg	91.7		40 - 120		

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Jennifer deNicola 22741 Pacific Coast Highway Malibu, CA 90265-5208	Reported: 09/14/2015 17:09 Project: PCB Project Number: MHS Project Manager: Jennifer deNicola
---	---

PCB Analysis (EPA Method 8082)

Quality Control Report - Precision & Accuracy

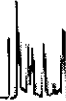
Constituent	Type	Source Sample ID	Source Result	Result	Spike Added	Units	RPD	Control Limits		Lab
								Percent Recovery	RPD	
QC Batch ID: BY11242		Used client sample: N								
PCB-1016	MS	1516891-64	ND	0.086441	0.084746	mg/kg		102		50 - 130
	MSD	1516891-64	ND	0.079461	0.084175	mg/kg	8.4	94.4	30	50 - 130
PCB-1260	MS	1516891-64	ND	0.12034	0.084746	mg/kg		142		50 - 120 Q03
	MSD	1516891-64	ND	0.10875	0.084175	mg/kg	10.1	129	30	50 - 120 Q03
Decachlorobiphenyl (Surrogate)	MS	1516891-64	ND	0.019322	0.020339	mg/kg		95.0		40 - 120
	MSD	1516891-64	ND	0.016835	0.020202	mg/kg	13.8	83.3		40 - 120

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Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

Reported: 09/14/2015 17:09
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

Notes And Definitions

- MDL Method Detection Limit
- ND Analyte Not Detected
- PQL Practical Quantitation Limit
- A01 Detection and quantitation limits are raised due to sample dilution.
- Q03 Matrix spike recovery(s) is(are) not within the control limits.

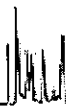
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Date of Report: 09/14/2015

Jennifer deNicola

Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

Client Project: MHS
BCL Project: PCB
BCL Work Order: 1522572
Invoice ID: B213512

Enclosed are the results of analyses for samples received by the laboratory on 9/8/2015. If you have any questions concerning this report, please feel free to contact me.

Sincerely,

Contact Person: Vanessa Sandoval
Client Service Rep

Authorized Signature

Certifications: CA ELAP #1186; NV #CA00014; OR ELAP #4032-001; AK UST101

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Chain of Custody and Cooler Receipt Form for 1522572 Page 2 of 2

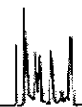
BC LABORATORIES INC.		COOLER RECEIPT FORM		Page 1 of 1							
Submission #: 15-22572											
SHIPPING INFORMATION Fed Ex <input type="checkbox"/> UPS <input type="checkbox"/> Ontrack <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> BC Lab Field Service <input type="checkbox"/> Other <input type="checkbox"/> (Specify) 5			SHIPPING CONTAINER Ice Chest <input type="checkbox"/> None <input type="checkbox"/> Box <input checked="" type="checkbox"/> Other <input type="checkbox"/> (Specify)		FREE LIQUID YES <input type="checkbox"/> NO <input type="checkbox"/>						
Refrigerant: Ice <input type="checkbox"/> Blue Ice <input type="checkbox"/> None <input checked="" type="checkbox"/> Other <input type="checkbox"/> Comments:											
Custody Seals: Ice Chest <input type="checkbox"/> Containers <input type="checkbox"/> None <input checked="" type="checkbox"/> Comments: 202-915											
All samples received? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> All samples containers intact? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Description(s) match COC? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>											
COC Received <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		Emissivity: 0.95 Container: GLASS Thermometer ID: 208		Date/Time: 9-8-15							
		Temperature: (A) 27.5c (C) 28.1c		Analyst Init: JS 8:55							
SAMPLE CONTAINERS		SAMPLE NUMBERS									
		1	2	3	4	5	6	7	8	9	10
QT PE UNPRES											
4oz / 8oz / 16oz PE UNPRES											
2oz Cr ⁶											
QT INORGANIC CHEMICAL METALS											
INORGANIC CHEMICAL METALS 4oz / 8oz / 16oz											
PT CYANIDE											
PT NITROGEN FORMS											
PT TOTAL SULFIDE											
2oz NITRATE / NITRITE											
PT TOTAL ORGANIC CARBON											
PT CHEMICAL OXYGEN DEMAND											
PIA PHENOLICS											
40ml VOA VIAL TRAVEL BLANK											
40ml VOA VIAL											
QT EPA 1664											
PT ODOR											
RADIOLOGICAL											
BACTERIOLOGICAL											
40 ml VOA VIAL- 504											
QT EPA 508/608/8080											
QT EPA 515.1/8150											
QT EPA 525											
QT EPA 525 TRAVEL BLANK											
40ml EPA 547											
40ml EPA 531.1											
8oz EPA 548											
QT EPA 549											
QT EPA 8015M											
QT EPA 8270											
8oz / 16oz / 32oz AMBER											
8oz / 16oz / 32oz JAR 4oz		A									
SOIL SLEEVE											
PCB VIAL											
PLASTIC BAG											
TEDLAR BAG											
FERROUS IRON											
ENCORE											
SMART KIT											
SUMMA CANISTER											
Comments: description don't match but the form sample and date are correct Sample Numbering Completed By: [Signature] Date/Time: 9/8/15 12:50 A = Actual / C = Corrected											

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Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

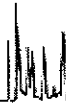
Reported: 09/14/2015 17:08
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

Laboratory / Client Sample Cross Reference

Laboratory	Client Sample Information			
1522572-01	COC Number:	---	Receive Date:	09/08/2015 08:55
	Project Number:	---	Sampling Date:	08/21/2015 15:35
	Sampling Location:	---	Sample Depth:	---
	Sampling Point:	MHS-401C-D-IN	Lab Matrix:	Solids
	Sampled By:	Jennifer deNicola	Sample Type:	Other

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Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

Reported: 09/14/2015 17:08
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

PCB Analysis (EPA Method 8082)

BCL Sample ID:	1522572-01	Client Sample Name:	MHS-401C-D-IN, 8/21/2015 3:35:00PM, Jennifer deNicola						
Constituent	Result	Units	PQL	MDL	Method	MB Bias	Lab Quals	Run #	
PCB-1016	ND	mg/kg	25000	6800	EPA-8082	ND	A01	1	
PCB-1221	ND	mg/kg	25000	9500	EPA-8082	ND	A01	1	
PCB-1232	ND	mg/kg	25000	6000	EPA-8082	ND	A01	1	
PCB-1242	ND	mg/kg	25000	10000	EPA-8082	ND	A01	1	
PCB-1248	ND	mg/kg	25000	6500	EPA-8082	ND	A01	1	
PCB-1254	48000	mg/kg	25000	8000	EPA-8082	ND	A01	1	
PCB-1260	ND	mg/kg	25000	4000	EPA-8082	ND	A01	1	
Total PCB's (Summation)	48000	mg/kg	25000	12000	EPA-8082	ND	A01	1	
Decachlorobiphenyl (Surrogate)	0	%	40 - 120 (LCL - UCL)			EPA-8082	A01,A17	1	

Run #	Method	Prep Date	Run Date/Time	Analyst	Instrument	Dilution	QC Batch ID
1	EPA-8082	09/10/15	09/14/15 14:55	ZZZ	GC-14	2500000	8Y11242

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22741 Pacific Coast Highway
Malibu, CA 90265-5208

Reported: 09/14/2015 17:08
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

PCB Analysis (EPA Method 8082)

Quality Control Report - Method Blank Analysis

Constituent	QC Sample ID	MB Result	Units	PQL	MDL	Lab Quals
QC Batch ID: BYI1242						
PCB-1016	BYI1242-BLK1	ND	mg/kg	0.010	0.0027	
PCB-1221	BYI1242-BLK1	ND	mg/kg	0.010	0.0038	
PCB-1232	BYI1242-BLK1	ND	mg/kg	0.010	0.0024	
PCB-1242	BYI1242-BLK1	ND	mg/kg	0.010	0.0040	
PCB-1248	BYI1242-BLK1	ND	mg/kg	0.010	0.0026	
PCB-1254	BYI1242-BLK1	ND	mg/kg	0.010	0.0032	
PCB-1260	BYI1242-BLK1	ND	mg/kg	0.010	0.0016	
Total PCB's (Summation)	BYI1242-BLK1	ND	mg/kg	0.010	0.0050	
Decachlorobiphenyl (Surrogate)	BYI1242-BLK1	91.7	%	40 - 120 (LCL - UCL)		

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Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

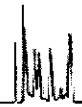
Reported: 09/14/2015 17:08
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

PCB Analysis (EPA Method 8082)

Quality Control Report - Laboratory Control Sample

Constituent	QC Sample ID	Type	Result	Spike Level	Units	Percent Recovery	Control Limits		Lab	
							RPD	Percent Recovery		RPD
QC Batch ID: BY11242										
PCB-1016	BY11242-BS1	LCS	0.079734	0.083056	mg/kg	96.0		60 - 120		
PCB-1260	BY11242-BS1	LCS	0.081728	0.083056	mg/kg	98.4		60 - 120		
Decachlorobiphenyl (Surrogate)	BY11242-BS1	LCS	0.018272	0.019934	mg/kg	91.7		40 - 120		

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Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

Reported: 09/14/2015 17:08
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

PCB Analysis (EPA Method 8082)

Quality Control Report - Precision & Accuracy

Constituent	Type	Source Sample ID	Source Result	Result	Spike Added	Units	RPD	Control Limits		Lab
								Percent Recovery	RPD	
QC Batch ID: BY11242		Used client sample: N								
PCB-1016	MS	1516891-64	ND	0.086441	0.084746	mg/kg		102		50 - 130
	MSD	1516891-64	ND	0.079461	0.084175	mg/kg	8.4	94.4	30	50 - 130
PCB-1260	MS	1516891-64	ND	0.12034	0.084746	mg/kg		142		50 - 120 Q03
	MSD	1516891-64	ND	0.10875	0.084175	mg/kg	10.1	129	30	50 - 120 Q03
Decachlorobiphenyl (Surrogate)	MS	1516891-64	ND	0.019322	0.020339	mg/kg		95.0		40 - 120
	MSD	1516891-64	ND	0.016835	0.020202	mg/kg	13.8	83.3		40 - 120

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Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

Reported: 09/14/2015 17:08
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

Notes And Definitions

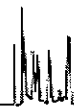
- MDL Method Detection Limit
- ND Analyte Not Detected
- PQL Practical Quantitation Limit
- A01 Detection and quantitation limits are raised due to sample dilution.
- A17 Surrogate not reportable due to sample dilution.
- Q03 Matrix spike recovery(s) is(are) not within the control limits.

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Laboratories, Inc.

Environmental Testing Laboratory Since 1949



Date of Report: 09/14/2015

Jennifer deNicola

Jennifer deNicola

22741 Pacific Coast Highway
Malibu, CA 90265-5208

Client Project: MHS
BCL Project: PCB
BCL Work Order: 1522571
Invoice ID: B213511

Enclosed are the results of analyses for samples received by the laboratory on 9/8/2015. If you have any questions concerning this report, please feel free to contact me.

Sincerely,

Contact Person: Vanessa Sandoval
Client Service Rep

Authorized Signature

Certifications: CA ELAP #1186; NV #CA00014; OR ELAP #4032-001; AK UST101

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Laboratories, Inc.

Environmental Testing Laboratory Since 1949

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Chain of Custody and Cooler Receipt Form for 1522571 Page 2 of 2

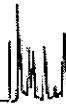
BC LABORATORIES INC.		COOLER RECEIPT FORM		Page 1 Of 1								
Submission #: <u>15-27571</u>												
SHIPPING INFORMATION Fed Ex <input type="checkbox"/> UPS <input type="checkbox"/> Ontrack <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> BC Lab Field Service <input type="checkbox"/> Other <input type="checkbox"/> (Specify) <u>5</u>			SHIPPING CONTAINER Ice Chest <input type="checkbox"/> None <input type="checkbox"/> Box <input checked="" type="checkbox"/> Other <input type="checkbox"/> (Specify) _____		FREE LIQUID YES <input type="checkbox"/> NO <input type="checkbox"/>							
Refrigerant: Ice <input type="checkbox"/> Blue Ice <input type="checkbox"/> None <input checked="" type="checkbox"/> Other <input type="checkbox"/> Comments: _____												
Custody Seals: Ice Chest <input type="checkbox"/> Containers <input checked="" type="checkbox"/> None <input checked="" type="checkbox"/> Comments: _____												
All samples received? Yes <input type="checkbox"/> No <input type="checkbox"/> All samples containers intact? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Description(s) match COC? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>												
COC Received <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		Emissivity: <u>0.95</u> Container: <u>CA 155</u> Thermometer ID: <u>208</u>		Date/Time: <u>9-8-15</u>								
		Temperature: (A) <u>28.5</u> C (C) <u>28.1</u> C		Analyst Init: <u>AS</u> 8:55								
SAMPLE CONTAINERS			SAMPLE NUMBERS									
			1	2	3	4	5	6	7	8	9	10
QT PE UNPRES												
4oz / 8oz / 16oz PE UNPRES												
2oz Cr ⁴												
QT INORGANIC CHEMICAL METALS												
INORGANIC CHEMICAL METALS 4oz / 8oz / 16oz												
PT CYANIDE												
PT NITROGEN FORMS												
PT TOTAL SULFIDE												
2oz. NITRATE / NITRITE												
PT TOTAL ORGANIC CARBON												
PT CHEMICAL OXYGEN DEMAND												
PIA PHENOLICS												
40ml VOA VIAL TRAVEL BLANK												
40ml VOA VIAL												
QT EPA 1664												
PT ODOR												
RADIOLOGICAL												
BACTERIOLOGICAL												
40 ml VOA VIAL- 504												
QT EPA 508/608/8080												
QT EPA 515.1/8150												
QT EPA 525												
QT EPA 525 TRAVEL BLANK												
40ml EPA 547												
40ml EPA 531.1												
8oz EPA 548												
QT EPA 549												
QT EPA 8015M												
QT EPA 8270												
8oz / 16oz / 32oz AMBER												
8oz / 16oz / 32oz JAR <u>4oz</u>			<u>A</u>									
SOIL SLEEVE												
PCB VIAL												
PLASTIC BAG												
TEDLAR BAG												
FERROUS IRON												
ENCORE												
SMART KIT												
SUMMA CANISTER												
Comments: _____												
Sample Numbering Completed By: <u>JDC</u>						Date/Time: <u>9/8/15 12:26</u>						
A = Actual / C = Corrected												

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Laboratories, Inc.

Environmental Testing Laboratory Since 1949



Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

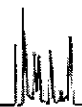
Reported: 09/14/2015 17:08
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

Laboratory / Client Sample Cross Reference

Laboratory	Client Sample Information			
1522571-01	COC Number:	---	Receive Date:	09/08/2015 08:55
	Project Number:	---	Sampling Date:	08/21/2015 15:45
	Sampling Location:	---	Sample Depth:	---
	Sampling Point:	MHS-402B-IN-D	Lab Matrix:	Solids
	Sampled By:	Jennifer deNicola	Sample Type:	Other

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Jennifer deNicola
 22741 Pacific Coast Highway
 Malibu, CA 90265-5208

Reported: 09/14/2015 17:08
 Project: PCB
 Project Number: MHS
 Project Manager: Jennifer deNicola

PCB Analysis (EPA Method 8082)

BCL Sample ID:	1522571-01	Client Sample Name:	MHS-402B-IN-D, 8/21/2015 3:45:00PM, Jennifer deNicola						
Constituent	Result	Units	PQL	MDL	Method	MB Bias	Lab Quals	Run #	
PCB-1016	ND	mg/kg	12000	3200	EPA-8082	ND	A01	1	
PCB-1221	ND	mg/kg	12000	4600	EPA-8082	ND	A01	1	
PCB-1232	ND	mg/kg	12000	2900	EPA-8082	ND	A01	1	
PCB-1242	ND	mg/kg	12000	4800	EPA-8082	ND	A01	1	
PCB-1248	ND	mg/kg	12000	3100	EPA-8082	ND	A01	1	
PCB-1254	50000	mg/kg	12000	3800	EPA-8082	ND	A01	1	
PCB-1260	ND	mg/kg	12000	1900	EPA-8082	ND	A01	1	
Total PCB's (Summation)	50000	mg/kg	12000	6000	EPA-8082	ND	A01	1	
Decachlorobiphenyl (Surrogate)	0	%	40 - 120 (LCL - UCL)		EPA-8082		A01,A17	1	

Run #	Method	Prep Date	Run Date/Time	Analyst	Instrument	Dilution	QC Batch ID
1	EPA-8082	09/10/15	09/14/15 14:44	ZZZ	GC-14	1200000	BY11242

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Jennifer deNicola
 22741 Pacific Coast Highway
 Malibu, CA 90265-5208

Reported: 09/14/2015 17:08
 Project: PCB
 Project Number: MHS
 Project Manager: Jennifer deNicola

PCB Analysis (EPA Method 8082)

Quality Control Report - Method Blank Analysis

Constituent	QC Sample ID	MB Result	Units	PQL	MDL	Lab Quals
QC Batch ID: BY11242						
PCB-1016	BY11242-BLK1	ND	mg/kg	0.010	0.0027	
PCB-1221	BY11242-BLK1	ND	mg/kg	0.010	0.0038	
PCB-1232	BY11242-BLK1	ND	mg/kg	0.010	0.0024	
PCB-1242	BY11242-BLK1	ND	mg/kg	0.010	0.0040	
PCB-1248	BY11242-BLK1	ND	mg/kg	0.010	0.0026	
PCB-1254	BY11242-BLK1	ND	mg/kg	0.010	0.0032	
PCB-1260	BY11242-BLK1	ND	mg/kg	0.010	0.0016	
Total PCB's (Summation)	BY11242-BLK1	ND	mg/kg	0.010	0.0050	
Decachlorobiphenyl (Surrogate)	BY11242-BLK1	91.7	%	40 - 120 (LCL - UCL)		

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Jennifer deNicola
 22741 Pacific Coast Highway
 Malibu, CA 90265-5208

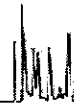
Reported: 09/14/2015 17:08
 Project: PCB
 Project Number: MHS
 Project Manager: Jennifer deNicola

PCB Analysis (EPA Method 8082)

Quality Control Report - Laboratory Control Sample

Constituent	QC Sample ID	Type	Result	Spike Level	Units	Percent Recovery	Control Limits		Lab
							RPD	Percent Recovery	
QC Batch ID: BY11242									
PCB-1016	BY11242-BS1	LCS	0.079734	0.083056	mg/kg	96.0		60 - 120	
PCB-1260	BY11242-BS1	LCS	0.081728	0.083056	mg/kg	98.4		60 - 120	
Decachlorobiphenyl (Surrogate)	BY11242-BS1	LCS	0.018272	0.019934	mg/kg	91.7		40 - 120	

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Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

Reported: 09/14/2015 17:08
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

PCB Analysis (EPA Method 8082)

Quality Control Report - Precision & Accuracy

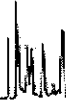
Constituent	Type	Source Sample ID	Source Result	Result	Spike Added	Units	RPD	Percent Recovery	Control Limits		Lab
									RPD	Percent Recovery	
QC Batch ID: BY11242		Used client sample: N									
PCB-1016	MS	1516891-64	ND	0.086441	0.084746	mg/kg		102		50 - 130	
	MSD	1516891-64	ND	0.079461	0.084175	mg/kg	8.4	94.4	30	50 - 130	
PCB-1260	MS	1516891-64	ND	0.12034	0.084746	mg/kg		142		50 - 120	Q03
	MSD	1516891-64	ND	0.10675	0.084175	mg/kg	10.1	129	30	50 - 120	Q03
Decachlorobiphenyl (Surrogate)	MS	1516891-64	ND	0.019322	0.020339	mg/kg		95.0		40 - 120	
	MSD	1516891-64	ND	0.016835	0.020202	mg/kg	13.8	83.3		40 - 120	

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Laboratories, Inc.

Environmental Testing Laboratory Since 1949



Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

Reported: 09/14/2015 17:08
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

Notes And Definitions

- MDL Method Detection Limit
- ND Analyte Not Detected
- PQL Practical Quantitation Limit
- A01 Detection and quantitation limits are raised due to sample dilution.
- A17 Surrogate not reportable due to sample dilution.
- Q03 Matrix spike recovery(s) is(are) not within the control limits.

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Laboratories, Inc.

Environmental Testing Laboratory Since 1949



Date of Report: 09/14/2015

Jennifer deNicola

Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

Client Project: MHS
BCL Project: PCB
BCL Work Order: 1522570
Invoice ID: B213527

Enclosed are the results of analyses for samples received by the laboratory on 9/8/2015. If you have any questions concerning this report, please feel free to contact me.

Sincerely,

Contact Person: Vanessa Sandoval
Client Service Rep

Authorized Signature

Certifications: CA ELAP #1186; NV #CA00014; OR ELAP #4032-001; AK UST101

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Environmental Testing Laboratory Since 1949

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Precision and Accuracy.....	9

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Chain of Custody and Cooler Receipt Form for 1522570 Page 1 of 2

S. day RUSH! 15-22570

POSITIVE LAB SERVICE CHAIN OF CUSTODY AND ANALYSIS REQUEST 781 East Washington Blvd., Los Angeles, CA 90021 (213) 745-5312 FAX (213) 745-6372		DATE: <u>9-3-15</u> PAGE: <u>1</u> OF <u>1</u> FILE NO.: _____ LAB NO.: _____
CLIENT NAME: <u>Jennifer deMiguel</u> PROJECT NAME/NO: <u>HHS 2015</u> ADDRESS: _____ P.O. NO.: _____		AIRBILL NO.: _____ COOLER TEMP: _____ PRESERVED: _____ REMARKS: _____ SAMPLE CONDITIONS/CONTAINER/COMMENTS: _____
PROJECT MANAGER: <u>J. deMiguel</u> PHONE NO: <u>80-034</u> FAX NO: <u>6000</u> SAMPLER NAME: <u>J. deMiguel</u> SIGNATURE: _____		ANALYSES REQUESTED: _____ <u>PCO 80 82</u>
TAT (Turn-Around-Time): 0=Same Day; 1=24 Hour; 2=48 Hour; (ETC.) N=Normal CONTAINER TYPES: B=Brass; E=Encore/Easy Draw; P=Plastic; G=Glass; V=VOA Vial; O=Other		SAMPLE CONDITIONS/CONTAINER/COMMENTS: _____
TAT (Turn-Around-Time): 0=Same Day; 1=24 Hour; 2=48 Hour; (ETC.) N=Normal CONTAINER TYPES: B=Brass; E=Encore/Easy Draw; P=Plastic; G=Glass; V=VOA Vial; O=Other		ANALYSES REQUESTED: _____
MUST PROJECT: Y N GLOBAL ID#: _____		ANALYSES REQUESTED: _____
SAMPLE ID: <u>1</u> DATE SAMPLED: <u>9/21/15</u> TIME SAMPLED: <u>3:15</u> SAMPLE DESCRIPTION: <u>MFB-4-06T-W</u>	MATRIX: WATER _____ SOIL _____ SLUDGE _____ OTHER _____ TAT CONTAINER: H _____ TYPE _____ <u>X N 1 G X</u>	ANALYSES REQUESTED: _____
Relinquished by (Signature & Name): _____ Date: _____ Time: _____ Relinquished by (Signature & Name): _____ Date: _____ Time: _____ Relinquished by (Signature & Name): _____ Date: _____ Time: _____		SAMPLE DISPOSITION: 1. Samples returned to client? Yes No 2. Samples will not be stored over 30 days, unless additional storage time is requested 3. Storage time requested: _____ days. By: _____ Date: _____
SPECIAL INSTRUCTION: _____		

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Chain of Custody and Cooler Receipt Form for 1522570 Page 2 of 2

BC LABORATORIES INC.		COOLER RECEIPT FORM		Page 1 Of 1							
Submission #: 15-27570											
SHIPPING INFORMATION Fed Ex <input type="checkbox"/> UPS <input type="checkbox"/> Ontrac <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> BC Lab Field Service <input type="checkbox"/> Other <input type="checkbox"/> (Specify) <u>5</u>			SHIPPING CONTAINER Ice Chest <input type="checkbox"/> None <input type="checkbox"/> Box <input checked="" type="checkbox"/> Other <input type="checkbox"/> (Specify) _____		FREE LIQUID YES <input type="checkbox"/> NO <input type="checkbox"/>						
Refrigerant: Ice <input type="checkbox"/> Blue Ice <input type="checkbox"/> None <input checked="" type="checkbox"/> Other <input type="checkbox"/> Comments: _____											
Custody Seals: Ice Chest <input checked="" type="checkbox"/> Containers <input type="checkbox"/> None <input checked="" type="checkbox"/> Comments: _____											
All samples received? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> All samples containers intact? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Description(s) match COC? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>											
COC Received <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		Emissivity: <u>0.95</u> Container <u>GLASS</u> Thermometer ID: <u>208</u>		Date/Time: <u>9-8-15</u>							
		Temperature: (A) <u>28.5c</u> (C) <u>28.1c</u>		Analyst Init: <u>AS</u> 8:55							
SAMPLE CONTAINERS		SAMPLE NUMBERS									
		1	2	3	4	5	6	7	8	9	10
QT PE UNPRES											
4oz / 8oz / 16oz PE UNPRES											
2oz Cr ⁴											
QT INORGANIC CHEMICAL METALS											
INORGANIC CHEMICAL METALS 4oz / 8oz / 16oz											
PT CYANIDE											
PT NITROGEN FORMS											
PT TOTAL SULFIDE											
2oz. NITRATE / NITRITE											
PT TOTAL ORGANIC CARBON											
PT CHEMICAL OXYGEN DEMAND											
PIA PHENOLICS											
40ml VOA VIAL TRAVEL BLANK											
40ml VOA VIAL											
QT EPA 1664											
PT ODOR											
RADIOLOGICAL											
BACTERIOLOGICAL											
40 ml VOA VIAL- 504											
QT EPA 508/608/8080											
QT EPA 515.1/8150											
QT EPA 525											
QT EPA 525 TRAVEL BLANK											
40ml EPA 547											
40ml EPA 531.1											
8oz EPA 548											
QT EPA 549											
QT EPA 8015M											
QT EPA 8270											
8oz / 16oz / 32oz AMBER											
8oz / 16oz / 32oz JAR <u>4oz</u>			<u>A</u>								
SOIL SLEEVE											
PCB VIAL											
PLASTIC BAG											
TEDLAR BAG											
FERROUS IRON											
ENCORE											
SMART KIT											
SUMMA CANISTER											

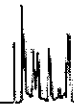
Comments: _____
 Sample Numbering Completed By: JJL Date/Time: 9/8/15 12:36 Rev 20 07/24/2015
 A = Actual / C = Corrected

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Laboratories, Inc.

Environmental Testing Laboratory Since 1949



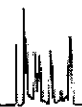
Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

Reported: 09/14/2015 17:19
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

Laboratory / Client Sample Cross Reference

Laboratory	Client Sample Information			
1522570-01	COC Number:	---	Receive Date:	09/08/2015 08:55
	Project Number:	---	Sampling Date:	08/21/2015 15:15
	Sampling Location:	---	Sample Depth:	---
	Sampling Point:	MHS-4-Out-W	Lab Matrix:	Solids
	Sampled By:	Jennifer deNicola	Sample Type:	Other

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Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

Reported: 09/14/2015 17:19
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

PCB Analysis (EPA Method 8082)

BCL Sample ID: 1522570-01	Client Sample Name: MHS-4-Out-W, 8/21/2015 3:15:00PM, Jennifer deNicola								
Constituent	Result	Units	PQL	MDL	Method	MB Bias	Lab Quals	Run #	
PCB-1016	ND	mg/kg	16	4.3	EPA-8082	ND	A01	1	
PCB-1221	ND	mg/kg	16	6.0	EPA-8082	ND	A01	1	
PCB-1232	ND	mg/kg	16	3.8	EPA-8082	ND	A01	1	
PCB-1242	ND	mg/kg	16	6.3	EPA-8082	ND	A01	1	
PCB-1248	ND	mg/kg	16	4.1	EPA-8082	ND	A01	1	
PCB-1254	200	mg/kg	16	5.1	EPA-8082	ND	A01	1	
PCB-1260	ND	mg/kg	16	2.5	EPA-8082	ND	A01	1	
Total PCB's (Summation)	200	mg/kg	16	7.9	EPA-8082	ND	A01	1	
Decachlorobiphenyl (Surrogate)	0	%	40 - 120 (LCL - UCL)		EPA-8082		A01,A17	1	

Run #	Method	Prep Date	Run Date/Time	Analyst	Instrument	Dilution	QC Batch ID
1	EPA-8082	09/10/15	09/14/15 10:58	ZZZ	GC-14	1578.9	BY11242

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Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

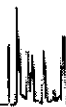
Reported: 09/14/2015 17:19
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

PCB Analysis (EPA Method 8082)

Quality Control Report - Method Blank Analysis

Constituent	QC Sample ID	MB Result	Units	PQL	MDL	Lab Quals
QC Batch ID: BY11242						
PCB-1016	BY11242-BLK1	ND	mg/kg	0.010	0.0027	
PCB-1221	BY11242-BLK1	ND	mg/kg	0.010	0.0038	
PCB-1232	BY11242-BLK1	ND	mg/kg	0.010	0.0024	
PCB-1242	BY11242-BLK1	ND	mg/kg	0.010	0.0040	
PCB-1248	BY11242-BLK1	ND	mg/kg	0.010	0.0026	
PCB-1254	BY11242-BLK1	ND	mg/kg	0.010	0.0032	
PCB-1260	BY11242-BLK1	ND	mg/kg	0.010	0.0016	
Total PCB's (Summation)	BY11242-BLK1	ND	mg/kg	0.010	0.0050	
Decachlorobiphenyl (Surrogate)	BY11242-BLK1	91.7	%	40 - 120 (LCL - UCL)		

The results in this report apply to the samples analyzed in accordance with the chain of custody document. This analytical report must be reproduced in its entirety.
All results listed in this report are for the exclusive use of the submitting party. BC Laboratories, Inc. assumes no responsibility for report alteration, separation, detachment or third party interpretation.



Jennifer deNicola
 22741 Pacific Coast Highway
 Malibu, CA 90265-5208

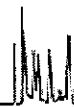
Reported: 09/14/2015 17:19
 Project: PCB
 Project Number: MHS
 Project Manager: Jennifer deNicola

PCB Analysis (EPA Method 8082)

Quality Control Report - Laboratory Control Sample

Constituent	QC Sample ID	Type	Result	Spike Level	Units	Percent Recovery	RPD	Control Limits		Lab Quals
								Percent Recovery	RPD	
QC Batch ID: BY11242										
PCB-1016	BY11242-BS1	LCS	0.079734	0.083056	mg/kg	96.0		60 - 120		
PCB-1260	BY11242-BS1	LCS	0.081728	0.083056	mg/kg	98.4		60 - 120		
Decachlorobiphenyl (Surrogate)	BY11242-BS1	LCS	0.018272	0.019934	mg/kg	91.7		40 - 120		

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Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

Reported: 09/14/2015 17:19
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

PCB Analysis (EPA Method 8082)

Quality Control Report - Precision & Accuracy

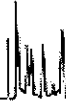
Constituent	Type	Source Sample ID	Source Result	Result	Spike Added	Units	RPD	Percent Recovery	Control Limits		Lab
									RPD	Percent Recovery	
QC Batch ID: BY11242		Used client sample: N									
PCB-1016	MS	1516891-64	ND	0.086441	0.084746	mg/kg		102		50 - 130	
	MSD	1516891-64	ND	0.079461	0.084175	mg/kg	8.4	94.4	30	50 - 130	
PCB-1260	MS	1516891-64	ND	0.12034	0.084746	mg/kg		142		50 - 120	Q03
	MSD	1516891-64	ND	0.10875	0.084175	mg/kg	10.1	129	30	50 - 120	Q03
Decachlorobiphenyl (Surrogate)	MS	1516891-64	ND	0.019322	0.020339	mg/kg		95.0		40 - 120	
	MSD	1516891-64	ND	0.016835	0.020202	mg/kg	13.8	83.3		40 - 120	

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Laboratories, Inc.

Environmental Testing Laboratory Since 1949



Jennifer deNicola
22741 Pacific Coast Highway
Malibu, CA 90265-5208

Reported: 09/14/2015 17:19
Project: PCB
Project Number: MHS
Project Manager: Jennifer deNicola

Notes And Definitions

- MDL Method Detection Limit
- ND Analyte Not Detected
- PQL Practical Quantitation Limit
- A01 Detection and quantitation limits are raised due to sample dilution.
- A17 Surrogate not reportable due to sample dilution.
- Q03 Matrix spike recovery(s) is(are) not within the control limits.

The results in this report apply to the samples analyzed in accordance with the chain of custody document. This analytical report must be reproduced in its entirety.
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EXHIBIT 7



781 East Washington Blvd., Los Angeles, CA 90021
(213) 745-5312 FAX (213) 745-6372

October 05, 2015

Jennifer DeNicola
Jennifer DeNicola
22741 Pacific Coast Highway # 401
Malibu, CA 90265

Report No.: 1509297
Project Name: MHS

Dear Jennifer DeNicola,

This report contains the analytical results for the sample(s) received under chain of custody(s) by Positive Lab Service on September 28, 2015.

The test results in this report are performed in compliance with ELAP accreditation requirements for the certified parameters. The laboratory report may not be produced, except in full, without the written approval of the laboratory.

The issuance of the final Certificate of Analysis takes precedence over any previous Preliminary Report. Preliminary data should not be used for regulatory purposes. Authorized signature(s) is provided on final report only.

If you have any questions in reference to this report, please contact your Positive Lab Service coordinator.


Project Manager



781 East Washington Blvd., Los Angeles, CA 90021
 (213) 745-5312 FAX (213) 745-6372

Certificate of Analysis

Page 2 of 3

Jennifer DeNicola
 22741 Pacific Coast Highway # 401
 Malibu, CA 90265

File #: 75236
 Report Date: 10/05/15
 Submitted: 09/28/15
PLS Report No.: 1509297

Attn: Jennifer DeNicola Phone: (310) 436-6000 FAX:

Project: MHS

Sample ID: MHS-505C-D-IN Solid (1509297-01) Sampled:09/21/15 18:44 Received:09/28/15 10:40										
Analyte	Results	Flag	D.F.	Units	PQL	Prep/Test Method	Prepared	Analyzed	By	Batch
Aroclor-1016	ND		1000	mg/kg	3750	EPA 3550C EPA 8082	10/01/15	10/05/15	ai	BJ50524
Aroclor-1221	ND		1000	mg/kg	3750	EPA 3550C EPA 8082	10/01/15	10/05/15	ai	BJ50524
Aroclor-1232	ND		1000	mg/kg	3750	EPA 3550C EPA 8082	10/01/15	10/05/15	ai	BJ50524
Aroclor-1242	ND		1000	mg/kg	3750	EPA 3550C EPA 8082	10/01/15	10/05/15	ai	BJ50524
Aroclor-1248	ND		1000	mg/kg	3750	EPA 3550C EPA 8082	10/01/15	10/05/15	ai	BJ50524
Aroclor-1254	80800		1000	mg/kg	3750	EPA 3550C EPA 8082	10/01/15	10/05/15	ai	BJ50524
Aroclor-1260	ND		1000	mg/kg	3750	EPA 3550C EPA 8082	10/01/15	10/05/15	ai	BJ50524
Aroclor-1262	ND		1000	mg/kg	3750	EPA 3550C EPA 8082	10/01/15	10/05/15	ai	BJ50524
<i>Surrogate: 2,4,5,6 Tetrachloro-m-xylene</i>	<i>869 %</i>	<i>DO</i>		<i>54-131</i>		<i>EPA 3550C EPA 8082</i>	<i>10/01/15</i>	<i>10/05/15</i>	<i>ai</i>	<i>BJ50524</i>
<i>Surrogate: Decachlorobiphenyl</i>	<i>760 %</i>	<i>DO</i>		<i>53-131</i>		<i>EPA 3550C EPA 8082</i>	<i>10/01/15</i>	<i>10/05/15</i>	<i>ai</i>	<i>BJ50524</i>

Sample ID: MHS-505 Solid (1509297-02) Sampled:09/21/15 18:48 Received:09/28/15 10:40										
Analyte	Results	Flag	D.F.	Units	PQL	Prep/Test Method	Prepared	Analyzed	By	Batch
Aroclor-1016	ND		1000	mg/kg	3750	EPA 3550C EPA 8082	10/01/15	10/05/15	ai	BJ50524
Aroclor-1221	ND		1000	mg/kg	3750	EPA 3550C EPA 8082	10/01/15	10/05/15	ai	BJ50524
Aroclor-1232	ND		1000	mg/kg	3750	EPA 3550C EPA 8082	10/01/15	10/05/15	ai	BJ50524
Aroclor-1242	ND		1000	mg/kg	3750	EPA 3550C EPA 8082	10/01/15	10/05/15	ai	BJ50524
Aroclor-1248	ND		1000	mg/kg	3750	EPA 3550C EPA 8082	10/01/15	10/05/15	ai	BJ50524
Aroclor-1254	56600		1000	mg/kg	3750	EPA 3550C EPA 8082	10/01/15	10/05/15	ai	BJ50524
Aroclor-1260	ND		1000	mg/kg	3750	EPA 3550C EPA 8082	10/01/15	10/05/15	ai	BJ50524
Aroclor-1262	ND		1000	mg/kg	3750	EPA 3550C EPA 8082	10/01/15	10/05/15	ai	BJ50524
<i>Surrogate: 2,4,5,6 Tetrachloro-m-xylene</i>	<i>792 %</i>	<i>DO</i>		<i>54-131</i>		<i>EPA 3550C EPA 8082</i>	<i>10/01/15</i>	<i>10/05/15</i>	<i>ai</i>	<i>BJ50524</i>
<i>Surrogate: Decachlorobiphenyl</i>	<i>1800 %</i>	<i>DO</i>		<i>53-131</i>		<i>EPA 3550C EPA 8082</i>	<i>10/01/15</i>	<i>10/05/15</i>	<i>ai</i>	<i>BJ50524</i>

Sample ID: MHS-505-AMP Solid (1509297-03) Sampled:09/21/15 18:50 Received:09/28/15 10:40										
Analyte	Results	Flag	D.F.	Units	PQL	Prep/Test Method	Prepared	Analyzed	By	Batch
Aroclor-1016	ND		1000	mg/kg	3750	EPA 3550C EPA 8082	10/01/15	10/05/15	ai	BJ50524
Aroclor-1221	ND		1000	mg/kg	3750	EPA 3550C EPA 8082	10/01/15	10/05/15	ai	BJ50524
Aroclor-1232	ND		1000	mg/kg	3750	EPA 3550C EPA 8082	10/01/15	10/05/15	ai	BJ50524
Aroclor-1242	ND		1000	mg/kg	3750	EPA 3550C EPA 8082	10/01/15	10/05/15	ai	BJ50524
Aroclor-1248	ND		1000	mg/kg	3750	EPA 3550C EPA 8082	10/01/15	10/05/15	ai	BJ50524
Aroclor-1254	18200		1000	mg/kg	3750	EPA 3550C EPA 8082	10/01/15	10/05/15	ai	BJ50524
Aroclor-1260	ND		1000	mg/kg	3750	EPA 3550C EPA 8082	10/01/15	10/05/15	ai	BJ50524
Aroclor-1262	ND		1000	mg/kg	3750	EPA 3550C EPA 8082	10/01/15	10/05/15	ai	BJ50524
<i>Surrogate: 2,4,5,6 Tetrachloro-m-xylene</i>	<i>117 %</i>			<i>54-131</i>		<i>EPA 3550C EPA 8082</i>	<i>10/01/15</i>	<i>10/05/15</i>	<i>ai</i>	<i>BJ50524</i>
<i>Surrogate: Decachlorobiphenyl</i>	<i>1630 %</i>	<i>DO</i>		<i>53-131</i>		<i>EPA 3550C EPA 8082</i>	<i>10/01/15</i>	<i>10/05/15</i>	<i>ai</i>	<i>BJ50524</i>



781 East Washington Blvd., Los Angeles, CA 90021
 (213) 745-5312 FAX (213) 745-6372

Certificate of Analysis

Page 3 of 3

Jennifer DeNicola
 22741 Pacific Coast Highway # 401
 Malibu, CA 90265

File #:75236
 Report Date: 10/05/15
 Submitted: 09/28/15
PLS Report No.: 1509297

Attn: Jennifer DeNicola Phone: (310) 436-6000 FAX:

Project: MHS

Quality Control Data

Analyte	Result	PQL	Units	Spike Level	Source Result	%REC	%REC Limits	RPD	RPD Limit	Qualifier
Batch BJ50524 - EPA 3550C										
Blank Prepared: 10/01/15 Analyzed: 10/02/15										
Aroclor-1016	ND	0.0375	mg/kg							
Aroclor-1221	ND	0.0375	mg/kg							
Aroclor-1232	ND	0.0375	mg/kg							
Aroclor-1242	ND	0.0375	mg/kg							
Aroclor-1248	ND	0.0375	mg/kg							
Aroclor-1254	ND	0.0375	mg/kg							
Aroclor-1260	ND	0.0375	mg/kg							
Aroclor-1262	ND	0.0375	mg/kg							
Surrogate: 2,4,5,6 Tetrachloro-m-xylene	0.0137		mg/kg	0.01250		109	54-131			
Surrogate: Decachlorobiphenyl	0.0145		mg/kg	0.01250		116	53-131			
LCS Prepared: 10/01/15 Analyzed: 10/02/15										
Aroclor-1260	0.317	0.0375	mg/kg	0.3125		101	60-129			
Surrogate: 2,4,5,6 Tetrachloro-m-xylene	0.0134		mg/kg	0.01250		107	58-122			
Surrogate: Decachlorobiphenyl	0.0138		mg/kg	0.01250		111	53-141			
LCS Dup Prepared: 10/01/15 Analyzed: 10/02/15										
Aroclor-1260	0.322	0.0375	mg/kg	0.3125		103	60-129	1.47	30	
Surrogate: 2,4,5,6 Tetrachloro-m-xylene	0.0140		mg/kg	0.01250		112	58-122			
Surrogate: Decachlorobiphenyl	0.0140		mg/kg	0.01250		112	53-141			

Notes and Definitions

- DO Coeluting Peaks
- NA Not Applicable
- ND Analyte NOT DETECTED at or above the reported limit(s)
- NR Not Reported
- MDL Method Detection Limit
- PQL Practical Quantitation Limit

Environmental Laboratory Accreditation Program Certificate No. 1131, Mobile Lab No. 2534, LACSD No. 10138

Authorized Signature(s)

CHAIN OF CUSTODY AND ANALYSIS REQUEST

POSITIVE LAB SERVICE
781 East Washington Blvd., Los Angeles, CA 90021
(213) 745-5312, FAX (213) 745-6372

DATE: 9/25/15 PAGE: 1 OF 1
FILE NO.: LAB NO.: 809297

CLIENT NAME: Jennifer de la Cruz PROJECT NAME/NO. MHS AIRBILL NO. _____
 ADDRESS: on file PHONE NO. on file FAX NO. _____
 PROJECT MANAGER: JD SIGNATURE: _____
 SAMPLER NAME: JD TAT (Turn-Around-Time): 0=Same Day; 1=24 Hour; 2=48 Hour; (ETC) N=Normal
 CONTAINER TYPES: B=Brass; E=Encore/Easy Draw; P=Plastic; G=Glass; Y=VOA Vial; O=Other
 UST PROJECT: Y N GLOBAL ID#: _____

SAMPLE ID	DATE SAMPLED	TIME SAMPLED	SAMPLE DESCRIPTION	MATRIX			TAT CONTAINER			
				WATER	SOIL	SLUDGE	OTHER	#	TYPE	
<u>9/24/15</u>	<u>6:44</u>	<u>1:44</u>	<u>MHS-SOSC-D-12</u>				<u>X</u>	<u>N</u>	<u>1</u>	<u>G</u>
			<u>MHS-SOS</u>				<u>X</u>	<u>N</u>	<u>1</u>	<u>G</u>
			_____				_____	_____	_____	_____
			<u>G-80 MHS-SOS-18mp</u>				<u>X</u>	<u>N</u>	<u>1</u>	<u>G</u>

ANALYSES REQUESTED: _____
 COOLER TEMP: 5.2°C
 PRESERVED: _____
 REMARKS: _____
 SAMPLE CONDITIONS/CONTAINER COMMENTS: _____

RECEIVED BY (Signature & Name): _____ Date: 9/25/15 Time: 1040
 RECEIVED BY (Signature & Name): _____ Date: _____ Time: _____
 RECEIVED BY (Signature & Name): _____ Date: _____ Time: _____

SAMPLE DISPOSITION:
 1. Samples returned to client? Yes No
 2. Samples will not be stored over 30 days, unless additional storage time is requested
 3. Storage time requested: _____ days, By: _____ Date: _____

SPECIAL INSTRUCTION: _____



781 East Washington Blvd., Los Angeles, CA 90021
(213) 745-5312 FAX (213) 745-6372

October 06, 2015

Jennifer DeNicola
Jennifer DeNicola
22741 Pacific Coast Highway # 401
Malibu, CA 90265

Report No.: 1509298

Project Name: MHS

Dear Jennifer DeNicola,

This report contains the analytical results for the sample(s) received under chain of custody(s) by Positive Lab Service on September 28, 2015.

The test results in this report are performed in compliance with ELAP accreditation requirements for the certified parameters. The laboratory report may not be produced, except in full, without the written approval of the laboratory.

The issuance of the final Certificate of Analysis takes precedence over any previous Preliminary Report. Preliminary data should not be used for regulatory purposes. Authorized signature(s) is provided on final report only.

If you have any questions in reference to this report, please contact your Positive Lab Service coordinator.


Project Manager



781 East Washington Blvd., Los Angeles, CA 90021
(213) 745-5312 FAX (213) 745-6372

Certificate of Analysis

Page 2 of 5

Jennifer DeNicola
22741 Pacific Coast Highway # 401
Malibu, CA 90265

File #: 75236
Report Date: 10/06/15
Submitted: 09/28/15
PLS Report No.: 1509298

Attn: Jennifer DeNicola Phone: (310) 436-6000 FAX:

Project: MHS

Sample ID: MHS-1-OUT-W Solid (1509298-01) Sampled:09/21/15 18:38 Received:09/28/15 10:40											
Analyte	Results	Flag	D.F.	Units	PQL	Prep/Test Method		Prepared	Analyzed	By	Batch
Aroclor-1016	ND		5000	mg/kg	18800	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1221	ND		5000	mg/kg	18800	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1232	ND		5000	mg/kg	18800	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1242	ND		5000	mg/kg	18800	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1248	ND		5000	mg/kg	18800	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1254	131000		5000	mg/kg	18800	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1260	ND		5000	mg/kg	18800	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1262	ND		5000	mg/kg	18800	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
<hr/>											
Surrogate: 2,4,5,6 Tetrachloro-m-xylene	319 %	DD		54-131		EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Surrogate: Decachlorobiphenyl	2880 %	DD		53-131		EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524

Sample ID: MHS-2-OUT-W Solid (1509298-02) Sampled:09/21/15 18:12 Received:09/28/15 10:40											
Analyte	Results	Flag	D.F.	Units	PQL	Prep/Test Method		Prepared	Analyzed	By	Batch
Aroclor-1016	ND		10	mg/kg	37.5	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1221	ND		10	mg/kg	37.5	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1232	ND		10	mg/kg	37.5	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1242	ND		10	mg/kg	37.5	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1248	ND		10	mg/kg	37.5	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1254	ND		10	mg/kg	37.5	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1260	ND		10	mg/kg	37.5	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1262	ND		10	mg/kg	37.5	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
<hr/>											
Surrogate: 2,4,5,6 Tetrachloro-m-xylene	78.4 %			54-131		EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Surrogate: Decachlorobiphenyl	314 %	DD		53-131		EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524

Sample ID: MHS-3-OUT-W Solid (1509298-03) Sampled:09/21/15 18:37 Received:09/28/15 10:40											
Analyte	Results	Flag	D.F.	Units	PQL	Prep/Test Method		Prepared	Analyzed	By	Batch
Aroclor-1016	ND		20	mg/kg	75.0	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1221	ND		20	mg/kg	75.0	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1232	ND		20	mg/kg	75.0	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1242	ND		20	mg/kg	75.0	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1248	ND		20	mg/kg	75.0	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1254	2680		20	mg/kg	75.0	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1260	ND		20	mg/kg	75.0	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1262	ND		20	mg/kg	75.0	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
<hr/>											
Surrogate: 2,4,5,6 Tetrachloro-m-xylene	86.5 %			54-131		EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Surrogate: Decachlorobiphenyl	353 %	DD		53-131		EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524

Sample ID: MHS-5-OUT-W Solid (1509298-04) Sampled:09/21/15 18:24 Received:09/28/15 10:40											
Analyte	Results	Flag	D.F.	Units	PQL	Prep/Test Method		Prepared	Analyzed	By	Batch
Aroclor-1016	ND		100	mg/kg	375	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Aroclor-1221	ND		100	mg/kg	375	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Aroclor-1232	ND		100	mg/kg	375	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Aroclor-1242	ND		100	mg/kg	375	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Aroclor-1248	ND		100	mg/kg	375	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Aroclor-1254	8290		100	mg/kg	375	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Aroclor-1260	ND		100	mg/kg	375	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Aroclor-1262	ND		100	mg/kg	375	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
<hr/>											
Surrogate: 2,4,5,6 Tetrachloro-m-xylene	122 %			54-131		EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524



781 East Washington Blvd., Los Angeles, CA 90021
(213) 745-5312 FAX (213) 745-6372

Certificate of Analysis

Page 3 of 5

Jennifer DeNicola
22741 Pacific Coast Highway # 401
Malibu, CA 90265

File #: 75236
Report Date: 10/06/15
Submitted: 09/28/15
PLS Report No.: 1509298

Attn: Jennifer DeNicola Phone: (310) 436-6000 FAX:

Project: MHS

Sample ID: MHS-5-OUT-W Solid (1509298-04) Sampled:09/21/15 18:24 Received:09/28/15 10:40											
Surrogate: Decachlorobiphenyl		329 %	DO		53-131	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Sample ID: MHS-6-OUT-W Solid (1509298-05) Sampled:09/21/15 18:14 Received:09/28/15 10:40											
Analyte	Results	Flag	D.F.	Units	PQL	Prep/Test Method		Prepared	Analyzed	By	Batch
Aroclor-1016	ND		10	mg/kg	37.5	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1221	ND		10	mg/kg	37.5	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1232	ND		10	mg/kg	37.5	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1242	ND		10	mg/kg	37.5	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1248	ND		10	mg/kg	37.5	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1254	ND		10	mg/kg	37.5	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1260	ND		10	mg/kg	37.5	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1262	ND		10	mg/kg	37.5	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Surrogate: 2,4,5,6 Tetrachloro-m-xylene		91.2 %			54-131	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Surrogate: Decachlorobiphenyl		155 %	DO		53-131	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Sample ID: MHS-7-OUT-W Solid (1509298-06) Sampled:09/21/15 18:23 Received:09/28/15 10:40											
Analyte	Results	Flag	D.F.	Units	PQL	Prep/Test Method		Prepared	Analyzed	By	Batch
Aroclor-1016	ND		1000	mg/kg	3750	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Aroclor-1221	ND		1000	mg/kg	3750	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Aroclor-1232	ND		1000	mg/kg	3750	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Aroclor-1242	ND		1000	mg/kg	3750	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Aroclor-1248	ND		1000	mg/kg	3750	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Aroclor-1254	13400		1000	mg/kg	3750	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Aroclor-1260	ND		1000	mg/kg	3750	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Aroclor-1262	ND		1000	mg/kg	3750	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Surrogate: 2,4,5,6 Tetrachloro-m-xylene		98.6 %			54-131	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Surrogate: Decachlorobiphenyl		1510 %	DO		53-131	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Sample ID: MHS-8-OUT-W Solid (1509298-07) Sampled:09/21/15 18:16 Received:09/28/15 10:40											
Analyte	Results	Flag	D.F.	Units	PQL	Prep/Test Method		Prepared	Analyzed	By	Batch
Aroclor-1016	ND		100	mg/kg	375	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Aroclor-1221	ND		100	mg/kg	375	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Aroclor-1232	ND		100	mg/kg	375	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Aroclor-1242	ND		100	mg/kg	375	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Aroclor-1248	ND		100	mg/kg	375	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Aroclor-1254	477		100	mg/kg	375	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Aroclor-1260	ND		100	mg/kg	375	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Aroclor-1262	ND		100	mg/kg	375	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Surrogate: 2,4,5,6 Tetrachloro-m-xylene		122 %			54-131	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Surrogate: Decachlorobiphenyl		363 %	DO		53-131	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Sample ID: MHS-9-OUT-W Solid (1509298-08) Sampled:09/21/15 18:22 Received:09/28/15 10:40											
Analyte	Results	Flag	D.F.	Units	PQL	Prep/Test Method		Prepared	Analyzed	By	Batch
Aroclor-1016	ND		1000	mg/kg	3750	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1221	ND		1000	mg/kg	3750	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1232	ND		1000	mg/kg	3750	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1242	ND		1000	mg/kg	3750	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1248	ND		1000	mg/kg	3750	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1254	66900		1000	mg/kg	3750	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1260	ND		1000	mg/kg	3750	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524



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(213) 745-5312 FAX (213) 745-6372

Certificate of Analysis

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Jennifer DeNicola
22741 Pacific Coast Highway # 401
Malibu, CA 90265

File #:75236
Report Date: 10/06/15
Submitted: 09/28/15
PLS Report No.: 1509298

Attn: Jennifer DeNicola Phone: (310) 436-6000 FAX:

Project: MHS

Sample ID: MHS-9-OUT-W Solid (1509298-08) Sampled:09/21/15 18:22 Received:09/28/15 10:40											
Aroclor-1262	ND		1000	mg/kg	3750	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Surrogate: 2,4,5,6 Tetrachloro-m-xylene	334 %	DO			54-131	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Surrogate: Decachlorobiphenyl	3310 %	DO			53-131	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Sample ID: MHS-10-OUT-W Solid (1509298-09) Sampled:09/21/15 18:17 Received:09/28/15 10:40											
Analyte	Results	Flag	D.F.	Units	PQL	Prep/Test Method	Prepared	Analyzed	By	Batch	
Aroclor-1016	ND		20	mg/kg	75.0	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1221	ND		20	mg/kg	75.0	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1232	ND		20	mg/kg	75.0	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1242	ND		20	mg/kg	75.0	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1248	ND		20	mg/kg	75.0	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1254	908		20	mg/kg	75.0	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1260	ND		20	mg/kg	75.0	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Aroclor-1262	ND		20	mg/kg	75.0	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Surrogate: 2,4,5,6 Tetrachloro-m-xylene	109 %				54-131	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Surrogate: Decachlorobiphenyl	542 %	DO			53-131	EPA 3550C	EPA 8082	10/01/15	10/06/15	al	BJ50524
Sample ID: MHS-16-OUT-W Solid (1509298-10) Sampled:09/21/15 18:39 Received:09/28/15 10:40											
Analyte	Results	Flag	D.F.	Units	PQL	Prep/Test Method	Prepared	Analyzed	By	Batch	
Aroclor-1016	ND		100	mg/kg	375	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Aroclor-1221	ND		100	mg/kg	375	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Aroclor-1232	ND		100	mg/kg	375	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Aroclor-1242	ND		100	mg/kg	375	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Aroclor-1248	ND		100	mg/kg	375	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Aroclor-1254	1350		100	mg/kg	375	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Aroclor-1260	ND		100	mg/kg	375	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Aroclor-1262	ND		100	mg/kg	375	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Surrogate: 2,4,5,6 Tetrachloro-m-xylene	97.2 %				54-131	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524
Surrogate: Decachlorobiphenyl	607 %	DO			53-131	EPA 3550C	EPA 8082	10/01/15	10/05/15	al	BJ50524



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Certificate of Analysis

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Jennifer DeNicola
 22741 Pacific Coast Highway # 401
 Malibu, CA 90265

File #:75236
 Report Date: 10/06/15
 Submitted: 09/28/15
PLS Report No.: 1509298

Attn: Jennifer DeNicola Phone: (310) 436-6000 FAX:

Project: MHS

Quality Control Data

Analyte	Result	PQL	Units	Spike Level	Source Result	%REC %REC	RPD RPD	Limit Limits	Limit	Qualifier
Batch BJ50524 - EPA 3550C										
Blank Prepared: 10/01/15 Analyzed: 10/02/15										
Aroclor-1016	ND	0.0375	mg/kg							
Aroclor-1221	ND	0.0375	mg/kg							
Aroclor-1232	ND	0.0375	mg/kg							
Aroclor-1242	ND	0.0375	mg/kg							
Aroclor-1248	ND	0.0375	mg/kg							
Aroclor-1254	ND	0.0375	mg/kg							
Aroclor-1260	ND	0.0375	mg/kg							
Aroclor-1262	ND	0.0375	mg/kg							
Surrogate: 2,4,5,6 Tetrachloro-m-xylene	0.0137		mg/kg	0.01250		109		54-131		
Surrogate: Decachlorobiphenyl	0.0145		mg/kg	0.01250		116		53-131		
LCS Prepared: 10/01/15 Analyzed: 10/02/15										
Aroclor-1260	0.317	0.0375	mg/kg	0.3125		101		60-129		
Surrogate: 2,4,5,6 Tetrachloro-m-xylene	0.0134		mg/kg	0.01250		107		58-122		
Surrogate: Decachlorobiphenyl	0.0138		mg/kg	0.01250		111		53-141		
LCS Dup Prepared: 10/01/15 Analyzed: 10/02/15										
Aroclor-1260	0.322	0.0375	mg/kg	0.3125		103		60-129	1.47	30
Surrogate: 2,4,5,6 Tetrachloro-m-xylene	0.0140		mg/kg	0.01250		112		58-122		
Surrogate: Decachlorobiphenyl	0.0140		mg/kg	0.01250		112		53-141		

Notes and Definitions

- DO Coeluting Peaks
- NA Not Applicable
- ND Analyte NOT DETECTED at or above the reported limit(s)
- NR Not Reported
- MDL Method Detection Limit
- PQL Practical Quantitation Limit

Authorized Signature(s)

Environmental Laboratory Accreditation Program Certificate No. 1131, Mobile Lab No. 2534, LACSD No. 10138

CHAIN OF CUSTODY AND ANALYSIS REQUEST

POSITIVE LAB SERVICE
781 East Washington Blvd., Los Angeles, CA 90021
(213) 745-5312 FAX (213) 745-6372

DATE: 9/25/15 PAGE: 1 OF 2
FILE NO.: 1509298

CLIENT NAME: Jennifer deNardis PROJECT NAME/NO. MHS AIRBILL NO. _____
 ADDRESS: on file PHONE NO. 310 400 FAX NO. _____
 PROJECT MANAGER: JD SIGNATURE: _____
 SAMPLER NAME: JD SIGNATURE: _____

TAT (Turn-Around-Time): 0=Same Day; 1=24 Hour; 2=48 Hour; (ETC.) N=Normal
 CONTAINER TYPES: B=Brass; E=Encore/Easy Draw; P=Plastic; G=Glass; V=VOA Vial; O=Other

UST PROJECT: Y N GLOBAL ID# _____

SAMPLE ID	DATE SAMPLED	TIME SAMPLED	SAMPLE DESCRIPTION	MATRIX			TAT CONTAINER		ANALYSES REQUESTED	COOLER TEMP.	PRESERVED:	REMARKS:	SAMPLE CONDITIONS/CONTAINER COMMENTS
				WATER	SOIL	SLUDGE	OTHER	#					
	9/24/15	6:39p	MHS-1-OUT-W				X	N	1	G			
	9/24	6:12p	MHS-2-OUT-W				X	N	1	G			
		6:37p	MHS-3-OUT-W				X	N	1	G			
		6:14p	MHS-5-OUT-W				X	N	1	G			
		6:14p	MHS-6-OUT-W				X	N	1	G			
		6:23p	MHS-7-OUT-W				X	N	1	G			
		6:16p	MHS-8-OUT-W				X	N	1	G			
		6:22p	MHS-9-OUT-W				X	N	1	G			
		6:13p	MHS-10-OUT-W				X	N	1	G			
		6:39	MHS-10-OUT-W				X	N	1	G			

Relinquished by (Signature & Name): _____ Date: 9/25/15 Time: 1040

Received by (Signature & Name): [Signature] Date: _____ Time: _____

Relinquished by (Signature & Name): _____ Date: _____ Time: _____

Received by (Signature & Name): _____ Date: _____ Time: _____

Relinquished by (Signature & Name): _____ Date: _____ Time: _____

Received by (Signature & Name): _____ Date: _____ Time: _____

SAMPLE DISPOSITION
 1. Samples returned to client? Yes No
 2. Samples will not be stored over 30 days, unless additional storage time is requested
 3. Storage time requested: _____ days, By: _____ Date: _____

SPECIAL INSTRUCTION: _____

EXHIBIT 8

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No. CV 15-2124 PA (AJWx) Date September 30, 2015

Title America Unites for Kids, et al. v. Sandra Lyon, et al.

Present: The Honorable PERCY ANDERSON, UNITED STATES DISTRICT JUDGE

Stephen Montes Kerr

Not Reported

N/A

Deputy Clerk

Court Reporter

Tape No.

Attorneys Present for Plaintiff:

Attorneys Present for Defendants:

None

None

Proceedings: IN CHAMBERS - COURT ORDER

Before the Court is a Motion for Reconsideration filed by plaintiffs America Unites for Kids and Public Employees for Environmental Responsibility (collectively "Plaintiffs") (Docket No. 63). Plaintiffs seek reconsideration of a portion of the Court's June 15, 2015 minute order denying the Motion to Dismiss filed by defendants Sandra Lyon, Jan Maez, Laurie Lieberman, Jose Escarce, Craig Foster, Maria Leon-Vazquez, Richard Tahvildaran-Jesswein, Oscar de la Torre, and Ralph Mechur (collectively "Defendants"). Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that this matter is appropriate for decision without oral argument. The hearing calendared for September 21, 2015, is vacated, and the matter taken off calendar.

Plaintiffs' operative First Amended Complaint ("FAC") alleges a claim against Defendants, who are administrators and members of the Board of Education of the Santa Monica-Malibu Unified School District (the "District"), pursuant to the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2601-2695d. According to the FAC, testing in 2009 and 2010 revealed elevated levels of polychlorinated biphenyls ("PCBs") in air and soil samples at Malibu Middle and High School ("MHS") and Juan Cabrillo Elementary School ("JCES"). Additional testing undertaken since then has revealed that caulk and other building materials used at MHS and JCES contain levels of PCBs in excess of standards adopted by the Environmental Protection Agency ("EPA"). The FAC alleges that although the District has, in consultation with the EPA, agreed to remove the PCB-containing materials from certain areas within the schools, Defendants have refused or been slow to test additional areas within MHS and JCES that are also likely to contain building materials with levels of PCBs in excess of those allowed by the EPA.

Pursuant to the TSCA, beginning in 1978, "no person may . . . use any polychlorinated biphenyl in any manner other than in a totally enclosed manner." 15 U.S.C. § 2605(e)(2)(A). The TSCA also authorizes the EPA Administrator to promulgate rules authorizing the use of PCBs "other than in a totally enclosed manner . . . if the Administrator finds that such . . . use . . . will not present an unreasonable risk of injury to health or the environment." 15 U.S.C. § 2605(e)(2)(B). The EPA has concluded that items "with PCB at concentrations of 50 ppm or greater present an unreasonable risk of injury to health within the United States." 40 C.F.R. § 761.20. As a result, "[n]o persons may use any PCB, or any PCB item regardless of concentration, in any manner other than in a totally enclosed manner . . ." 40 C.F.R. § 761.20(a).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERALCase No. CV 15-2124 PA (AJWx) Date September 30, 2015Title America Unites for Kids, et al. v. Sandra Lyon, et al.

Defendants do not dispute that caulk containing PCBs is not use of PCBs in “a totally enclosed manner.” Moreover, Defendants appear to acknowledge that the TSCA requires the removal of PCB-containing building materials when testing indicates that those materials contain PCBs in excess of 50 ppm. Specifically, Defendants have committed to removing the PCB-containing caulk in the specific locations identified in their testing because that caulk contains concentrations of PCBs in excess of 50 ppm.

However, according to Defendants, and consistent with the EPA’s nationwide “PCBs in Schools” policy, EPA has authorized the District to allow PCB-containing materials to remain at the school so long as air and surface wipe testing does not reveal heightened levels of PCBs. For instance, in August 2014, EPA informed the District that “EPA does not recommend additional testing of caulk unless dust or air samples persistently fail to meet EPA’s health-based guidelines.” (Defendant’s Request for Judicial Notice, Ex. C.) Additionally, in October 2014, EPA approved certain provisions of the District’s “Site-Specific PCB-Related Building Materials Management, Characterization and Remediation Plan for the Library and Building E Rooms 1, 5, and 8 at Malibu High School.” (Request for Judicial Notice, Ex. D.) Among other approvals, EPA approved:

- Best Management Practices (BMPs), including proper maintenance of the ventilation system at the schools, increased cleaning of the classrooms to reduce dust and residue buildup, and use of cleaning equipment that does not cause dust to become airborne. . . .
- Periodic air and surface wipe samples shall be collected to monitor the efficacy of the above remediation and BMP measures until major renovation or demolition occurs that results in removal of PCB-contaminated material. The District shall undertake monitoring, as identified in the Application, through July 1, 2015. Based upon data collected during this initial monitoring period, the District will propose for EPA approval a supplement to the Application to include a new monitoring plan for the period after July 1, 2015. The plan shall include an evaluation of monitoring data collected to date and a description of how the monitoring plan will continue to ensure the effectiveness of the remediation and BMP measures as evaluated against the levels identified in the following bullet. . . .
- All air samples gathered by the District shall be evaluated against the applicable EPA public health levels of PCBs in air . . . (those levels range from 70 to 600 ng/m³ based on the age of the children and the duration of exposure), and all surface wipe samples shall be evaluated against the district’s proposed goal of 1 ug/100cm². These air and surface wipe concentrations are health-based screening levels that, pursuant to this approval, will be used to evaluate the effectiveness of the remediation and BMP measures at ensuring that PCBs remain at levels protective of human

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No. CV 15-2124 PA (AJWx) Date September 30, 2015

Title America Unites for Kids, et al. v. Sandra Lyon, et al.

health. If any samples exceed these levels, within thirty (30) days of receipt of the laboratory results, the District shall conduct an evaluation of the exceedances. . . .

(Id.)

In their Motion to Dismiss, Defendants asserted, among other arguments, that the FAC should be dismissed, or, in the alternative, that the action be stayed because the EPA has primary jurisdiction over the testing requirements and removal of PCBs in schools. The primary jurisdiction doctrine “is applicable whenever the enforcement of a claim subject to a specific regulatory scheme requires resolution of issues that are ‘within the special competence of an administrative body.’” Farley Transp. Co. v. Santa Fe Trail Transp. Co., 778 F.2d 1365, 1370 (9th Cir. 1985) (quoting United States v. W. Pac. R.R., 352 U.S. 59, 64, 77 S. Ct. 161, 165, 1 L. Ed. 2d 126 (1956)). When the primary jurisdiction doctrine applies, “the judicial process should be suspended and the issues referred to the appropriate administrative body for its views.” Id. “No fixed formula . . . exists for applying the doctrine, and each case must be examined on its own facts to determine if ‘the reasons for the existence of the doctrine are present and whether the purposes it serves will be aided by its application in the particular litigation.’” Id. (quoting W. Pac. R.R., 352 U.S. at 64, 77 S. Ct. at 165).

Plaintiffs opposed the Motion to Dismiss by arguing that the primary jurisdiction doctrine is inapplicable where, as here, the statutory scheme includes a citizen suit provision. See 15 U.S.C. § 2619; see also N.Y. Cmty. for Change v. N.Y. City Dept. of Educ., No. 11CV3494 (SJ)(CLP), 2013 WL 1232244, at *6 (E.D.N.Y. Mar. 26, 2013); Ass’n of Irrigated Residents v. Fred Schakel Dairy, No. 1:05-CV-00707 OWW SMS, 2008 WL 850136, at *12 (E.D. Cal. Mar. 28, 2008) (“Like the majority of these courts, I find that applying the doctrine of primary jurisdiction to citizen suits would frustrate Congress’s intent, as evidenced by its provisions for citizen suits, to facilitate broad enforcement of environmental-protections laws and regulations.”) (quoting Sierra Club v. Tri-State Generation & Transmission Ass’n, Inc., 173 F.R.D. 275, 284 (D. Colo. 1997)).

In denying the Motion to Dismiss, the Court concluded that Defendants had overstated the degree to which the relief Plaintiffs seek conflicts with EPA’s expertise and considered judgment. Specifically, at a minimum, air and surface wipe sampling at the subject schools is not inconsistent with the EPA’s analysis, policies, or considered judgment and that the FAC alleged sufficient facts to satisfy the Twombly plausibility standard that there are locations within the subject schools that have not been subject to air and surface wipe sampling that may exceed the EPA’s thresholds for PCBs and trigger the need for BMPs, thorough cleanings, and potential further testing, including of caulk, within such locations. The Minute Order denying the Motion to Dismiss explained:

Such air and surface wipe testing would be consistent with the EPA’s regulatory authority and the prior approvals it has issued to the District. If those tests revealed circumstances requiring additional testing or other measures consistent with the EPA’s approvals, those additional measures would also not interfere with the EPA’s expertise or primary jurisdiction.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No. CV 15-2124 PA (AJWx) Date September 30, 2015

Title America Unites for Kids, et al. v. Sandra Lyon, et al.

There is only a possibility of interference with the EPA's primary jurisdiction if the Court were to allow testing in excess of that deemed prudent by the EPA. At least at this stage of the proceedings, the Court can eliminate the possibility of such interference by limiting the testing that Plaintiffs are allowed to undertake through the discovery process to the air and surface wipe testing that the EPA has determined is sufficient to measure "health-based screening levels that, pursuant to [the EPA's October 2014] approval, will be used to evaluate the effectiveness of the remediation and BMP measures at ensuring that PCBs remain at levels protective of human health." By phasing discovery in this way, and only allowing the testing of caulk or other more invasive discovery should the initial air and surface wipe testing establish its necessity, the Court can balance the EPA's expertise in such matters against Plaintiffs' rights to pursue a TSCA claim as contemplated by the TSCA's citizen suit provisions. The Court therefore will not dismiss this action based on the primary jurisdiction doctrine.

(June 15, 2015 Minute Order at 5.)

In their Motion for Reconsideration, Plaintiffs seek to have the Court vacate its limitation on initial discovery at the schools to air and surface wipe testing so that they may proceed immediately with the testing of caulk and other more invasive discovery without first obtaining results from air and surface wipe testing that exceed EPA health-based standards.

Reconsideration is an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." Kona Enters., Inc. v. Estate of Bishop, 229 F.3d 877, 890 (9th Cir. 2000) (citation omitted). A "motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." 389 Orange St. Partners v. Arnold, 179 F.3d 656, 665 (9th Cir. 1999) (citation omitted); see also McDowell v. Calderon, 197 F.3d 1253, 1255 (9th Cir. 1999). A motion to reconsider "may not be used to raise arguments or present evidence for the first time when they reasonably could have been raised earlier in the litigation." Carroll v. Nakatani, 342 F.3d 934, 945 (9th Cir. 2003). Under Local Rule 7-18, a motion to reconsider may only be brought if the moving party demonstrates:

(a) a material difference in fact or law from that presented to the Court before such decision that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision, or (b) the emergence of new material facts or a change of law occurring after the time of such decision, or (c) a manifest showing of a failure to consider material facts presented to the Court before such decision.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

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Local Rule 7-18 also advises that “[n]o motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion.”

Although the TSCA prohibits the use of PCBs, EPA has determined, both generally with its “PCBs in Schools” policy, and with its approval of the District’s “Site-Specific PCB-Related Building Materials Management, Characterization and Remediation Plan” that PCB-containing materials may remain at schools so long as air and surface wipe testing does not reveal heightened levels of PCBs. The EPA has far more expertise in this area than does the Court, and is in a much better position to balance the significant costs of requiring school districts throughout the country to test and remove PCB-containing caulk and other building materials against the potential health risks of leaving those products in place until school buildings undergo planned renovations or demolitions. To allow the testing of caulk without air and surface wipe testing first showing levels of PCBs in excess of the EPA’s health-based screening levels would expose schools to extraordinarily costly, and what the EPA has deemed unnecessary, testing and remediation expenses.

Discovery limitations such as those adopted by the Court in this instance are authorized by the Federal Rules of Civil Procedure, which provides that a court, on motion “or on its own” must limit the frequency or extent of discovery:

[I]f it determines that . . . the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties’ resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

Fed. R. Civ. P. 26(b)(2)(C)(iii). District Courts have “broad discretion” to “permit or deny discovery, and its decision to deny discovery will not be disturbed except upon the clearest showing that denial of discovery results in actual and substantial prejudice to the complaining litigant.” Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002) (quoting Goehring v. Brophy, 94 F.3d 1294, 1305 (9th Cir. 1996)).

The Court’s phasing of discovery, and making the invasive testing of caulk dependent upon threshold evidence obtained from air and surface wipe testing, is within the Court’s “broad discretion.” Given the EPA’s policies and expert determinations, allowing the testing of caulk in the absence of air and surface wipe testing results that exceed the EPA’s health-based screening levels would outweigh the benefits of the testing, “considering the needs of the case, the amount in controversy, the parties’ resources, the importance of the issues at stake in the action, and the importance of the discovery in

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resolving the issues.” Fed. R. Civ. P. 26(b)(2)(C)(iii).^{1/} The Court committed no clear error in phrasing and limiting discovery as it has. The Court therefore denies Plaintiffs’ Motion for Reconsideration.

IT IS SO ORDERED.

^{1/} Unless Congress acts prior to December 1, 2015, amendments to Federal Rule of Civil Procedure 26 will move Rule 26(b)(2)(C)(iii)’s limitation into Rule 26(b)(1). As a result, discovery that outweighs the benefits, considering the needs of the case, will be outside the scope of permissible discovery. The Court’s balancing of the factors presented in this action would be the same under either version of Rule 26.

EXHIBIT 9

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AMERICA UNITES FOR KIDS, et al.,
Plaintiff,
v.
SANDRA LYON, et al.,
Defendant.

Case No. CV15-2124 PA (AJWx)
SCHEDULING ORDER [FED. R. CIV. P.
16(b)]

1. Establishing a Discovery Cut-off Date of 3/7/2016
2. Setting Motion Cut-off date of 3/14/2016
3. Setting Final Pretrial Conference for 4/15/2016, at 1:30 p.m.
4. Setting Court Trial Date of 5/17/2016, at 9:00 a.m.

1. Discovery Cut-Off. This is the last date to complete discovery, including expert discovery, and the resolution of any discovery motions before the magistrate judge. If expert witnesses are to be called at trial, the parties shall designate experts to be called at trial and provide reports required by Fed. R. Civ. P. 26(a)(2)(B), not later than eight weeks prior to the discovery cutoff date. Rebuttal expert witnesses shall be designated and reports provided as required by Fed. R. Civ. P. 26(a)(2)(B), not later than five weeks prior to the discovery cutoff date. Failure to timely comply with this deadline may result in the expert being excluded at trial as a witness. The Court requires compliance with Local Rule 37-1

1 and 37-2 in the preparation and filing of discovery motions. Discovery motions may not be
2 heard on an ex parte basis.

3 2. Joinder of Parties and Amendment of Pleadings. The deadline for joining parties
4 and amending pleadings is listed in the "Schedule of Trial and Pretrial Dates" issued by the
5 Court. Any motions to join other parties or for leave to amend the pleadings shall be filed
6 and served at least twenty-eight (28) days prior to the hearing deadline as required by Local
7 Rule 6-1 so that they can be heard and decided prior to the deadline. This deadline does not
8 apply if the deadline for joining parties or amending pleadings has already been calendared
9 or occurred by virtue of an order issued by this Court or another court.

10 In addition to the requirements of Local Rule 15-1, all motions to amend the
11 pleadings shall (1) state the effect of the amendment; (2) be serially numbered to
12 differentiate the amendment from previous amendments and (3) state the page, line
13 number(s), and wording of any proposed change or addition of material.

14 For the Court's ease of reference, the moving party shall submit to chambers a
15 redlined version of the amended pleading.

16 3. Motion Filing Cut-Off. The Court hears motions on Mondays at 1:30 p.m. The
17 motion filing cut-off date is the last day motions may be heard (not filed). The Court will
18 not decide late motions. Issues left undetermined by the passage of the motion cut-off date
19 should be listed as issues for trial in the Final Pretrial Conference Order. As an exception to
20 the above, motions in limine dealing with evidentiary matters may be heard at or before trial;
21 however, summary judgment motions disguised as motions in limine will not be heard.
22 Parties need not wait until the discovery cut-off to bring motions for summary judgment or
23 partial summary judgment. However, in the usual case, the Court expects that more than the
24 minimum notice will be provided to counsel opposing motions for summary judgment. In
25 the usual case, the parties should confer and agree on the date for setting such motions.

26 Ex parte applications are entertained solely for extraordinary relief. See Mission
27 Power Eng. Co. v. Continental Casualty Co., 883 F.Supp. 488 (C.D. Cal. 1995). Strict
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1 adherence to proper ex parte procedures is required for any ex parte application filed with
2 the Court.

3 4. Stipulations to Extend Time. Stipulations to extend the time to file any required
4 document or to continue any pretrial or trial date must set forth:

- 5 (a) the existing due date or hearing date;
- 6 (b) the current pretrial conference date and trial date;
- 7 (c) the specific reasons supporting good cause for granting the extension or
8 continuance. For example, a statement that a continuance “will promote settlement” or that
9 the parties decided to suspend discovery while engaging in settlement discussions is
10 insufficient.
- 11 (d) whether there have been any prior requests for extensions or continuances, and
12 whether these were granted or denied by the Court.

13 5. Summary Judgment Motions. The Separate Statement of Undisputed Facts is to be
14 prepared in a two column format. The left hand column should set forth the allegedly
15 undisputed fact. The right hand column should set forth the evidence that supports the
16 factual statement. The fact statements should be set forth in sequentially numbered
17 paragraphs. Each paragraph should contain a narrowly focused statement of fact. Each
18 numbered paragraph should address a single subject in as concise a manner as possible.

19 The opposing party’s statement of genuine issues must be in two columns and
20 track the movant’s separate statement exactly as prepared. The document must be in two
21 columns; the left hand column must restate the allegedly undisputed fact, and the right hand
22 column must indicate either undisputed, or disputed. The opposing party may dispute all or
23 only a portion of the statement, but if disputing only a portion, must clearly indicate what
24 part is being disputed. Where the opposing party is disputing the fact in whole or part, the
25 opposing party must, in the right hand column, label and restate the moving party’s evidence
26 in support of the fact, followed by the opposing party’s evidence controverting the fact.
27 Where the opposing party is disputing the fact on the basis of an evidentiary objection, the
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1 party must cite to the evidence alleged to be objectionable and state the ground of the
2 objection and nothing more. **No argument should be set forth in this document.**

3 The opposing party may submit additional material facts that bear on or relate to
4 the issues raised by the movant, which shall follow the format described above for the
5 moving party's separate statement. These additional facts shall follow the movant's facts,
6 shall continue in sequentially numbered paragraphs (i.e., if movant's last statement of fact
7 was set forth in paragraph 30, then the first new fact will be set forth in paragraph 31), and
8 shall set forth in the right hand column the evidence that supports that statement.

9 The moving party, in its reply, shall respond to the additional facts in the same
10 manner and format that the opposition party is required to adhere to in responding to the
11 statement of undisputed facts, as described above.

12 (a) Supporting Evidence. No party should submit any evidence other than the
13 specific items of evidence or testimony necessary to support or controvert a proposed
14 statement of undisputed fact. Thus, for example, the entire transcript of a deposition, entire
15 sets of interrogatory responses, and documents that do not specifically support or controvert
16 material in the separate statements, should not be submitted in support or opposition to a
17 motion for summary judgment. Any such material will not be considered.

18 Evidence submitted in support or opposition to a motion should be submitted
19 either by way of stipulation or as exhibits to declarations sufficient to authenticate the
20 proffered evidence, and should not be attached to the Memorandum of Points and
21 Authorities. The Court will accept counsel's authentication of deposition transcript, of
22 written discovery responses, and of the receipt of documents in discovery if the fact that
23 the document was in the opponent's possession is of independent significance.

24 Documentary evidence as to which there is no stipulation regarding foundation must be
25 accompanied by the testimony, either by declaration or properly authenticated deposition
26 transcript, of a witness who can establish its authenticity.

27 If evidence in support of or in opposition to a motion exceeds twenty pages, the
28 evidence must be in a separate bound volume and include a Table of Contents.

1 (b) Objections to Evidence. If a party disputes a fact based in whole or in part on
2 an evidentiary objection, the ground of the objection, as indicated above, should be stated in
3 the separate statement but not argued in that document. Evidentiary objections are to be
4 addressed in a separate memorandum to be filed with the opposition or reply brief of the
5 party. This memorandum should be organized **to track the paragraph numbers of the**
6 **separate statement in sequence**. It should identify the specific item of evidence to which
7 objection is made, the ground of the objection, and a very brief argument with citation to
8 authority as to why the objection is well taken. The following is an example of the format
9 contemplated by the Court:

10 Separate Statement Paragraph 1: Objection to the supporting
11 deposition transcript of Jane Smith at 60:1-10 on the grounds
12 that the statement constitutes inadmissible hearsay and no
13 exception is applicable. To the extent it is offered to prove her
14 state of mind, it is irrelevant since her state of mind is not in
15 issue.

16 Fed. R. Evid. 801, 802.

17 Do not submit blanket or boilerplate objections to the opponent's statements of
18 undisputed fact: these will be disregarded and overruled.

19 (c) The Memorandum of Points and Authorities. The movant's memorandum of
20 points and authorities should be in the usual form required under Local Rule 7 and should
21 contain a narrative statement of facts as to those aspects of the case that are before the Court.
22 All facts should be supported with citations to the paragraph number in the Separate
23 Statement that supports the factual assertion and not to the underlying evidence.

24 Unless the case involves some unusual twist on Rule 56, the motion need only
25 contain a brief statement of the Rule 56 standard; the Court is familiar with the Rule and
26 with its interpretation under Celotex and its progeny. If at all possible, the argument should
27 be organized to focus on the pertinent elements of the cause(s) of action or defense(s) in
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1 issue, with the purpose of showing the existence or non-existence of a genuine issue of
2 material fact for trial on that element of the claim or defense.

3 Likewise, the opposition memorandum of points and authorities should be in the
4 usual form required by Local Rule 7, and where the opposition memorandum sets forth
5 facts, the memorandum should cite to paragraphs in the separate statement if they are not in
6 dispute, to the evidence that contravenes the fact where the fact is in dispute, or, if the fact is
7 contravened by an additional fact in the statement of genuine issues, the citation should be to
8 such fact by paragraph number.

9 (d) Timing. In virtually every case, the Court expects that the moving party will
10 provide more than the minimum twenty-eight (28) day notice for such motions. The moving
11 party shall submit a copy of the Statement of Uncontroverted Facts and Conclusions of Law
12 to the Court's ECF e-mail address, in WordPerfect format (X6 or earlier versions) or
13 Microsoft Word (Word 2010 or earlier versions).

14 6. Motions in Limine. Before filing any motion in limine, counsel for the parties
15 shall confer pursuant to Local Rule 7-3 in a good faith effort to eliminate the necessity for
16 hearing the motion in limine or to eliminate as many of the disputes as possible. It shall be
17 the responsibility of counsel for the moving party to arrange for this conference. The
18 conference shall take place in person within seven days of service upon opposing counsel of
19 a letter requesting such conference. Unless counsel agree otherwise, the conference shall
20 take place at the office of the moving party. If both counsel are not located in the same
21 county in the Central District, the conference may take place by telephone. The moving
22 party's letter shall identify the testimony, exhibits, or other specific matters alleged to be
23 inadmissible and/or prejudicial, shall state briefly with respect to each such matter the
24 moving party's position (and provide any legal authority which the moving party believes is
25 dispositive), and specify the terms of the order to be sought.

26 (a) If counsel are unable to resolve their differences, they shall prepare a Joint
27 Motion in Limine. The Joint Motion in Limine shall consist of one document signed by all
28 counsel. The Joint Motion in Limine shall contain a clear identification of the testimony,

1 exhibits, or other specific matters alleged to be inadmissible and/or prejudicial and a
2 statement of the specific prejudice that will be suffered by the moving party if the motion is
3 not granted. The identification of the matters in dispute shall be followed by each party's
4 contentions and each party's memorandum of points and authorities. The title page of the
5 Joint Motion in Limine must state the hearing date for the motions in limine and the trial
6 date.

7 (b) Unless otherwise ordered by the Court, motions in limine will be heard on the
8 date indicated in the Schedule of Trial and Pretrial Dates issued by the Court. Unless the
9 Court in its discretion otherwise allows, no motions in limine shall be filed or heard on an ex
10 parte basis absent a showing of irreparable injury or prejudice not attributable to the lack of
11 diligence of the moving party. The moving party shall serve its portion of the Joint Motion
12 in Limine on the responding party fourteen (14) days prior to the date for filing of motions
13 in limine indicated in the Schedule of Trial and Pretrial Dates. The responding party shall
14 then serve the opposition portion of the Joint Motion in Limine on the moving party both on
15 paper and in an electronic format seven (7) days prior to the date for the filing of motions in
16 limine. The moving party shall incorporate the responding party's portion into the Joint
17 Motion in Limine, add its arguments in reply, and file and serve the Joint Motion in Limine.
18 Neither party's portions of a Joint Motion in Limine shall exceed eight (8) pages.

19 (c) Joint Motions in Limine made for the purpose of precluding the mention or
20 display of inadmissible and/or prejudicial matter in the presence of the jury shall be
21 accompanied by a declaration from the moving party that includes the following: (1) a clear
22 identification of the specific matter alleged to be inadmissible and/or prejudicial; (2) a
23 representation to the Court that the subject of the motion in limine has been discussed with
24 opposing counsel, and that opposing counsel has either indicated that such matter will be
25 mentioned or displayed in the presence of the jury before it is admitted in evidence or that
26 counsel has refused to stipulate that such matter will not be mentioned or displayed in the
27 presence of the jury unless and until it is admitted in evidence; and (3) a statement of the
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1 specific prejudice that will be suffered by the moving party if the motion in limine is not
2 granted.

3 (d) Unless ordered by the Court, no supplemental or separate memorandum of
4 points and authorities shall be filed by either party in connection with any motion in limine.

5 (e) The Court will not consider any motion in limine in the absence of a joint
6 motion or a declaration from counsel for the moving party establishing that opposing
7 counsel: (1) failed to confer in a timely manner; (2) failed to provide the opposing party's
8 portion of the joint motion in a timely manner; or (3) refused to sign and return the joint
9 motion after the opposing party's portion was added.

10 (f) The failure of any counsel to comply with or cooperate in the foregoing
11 procedures will result in the imposition of sanctions, including a resolution of the issue
12 against the party refusing to cooperate.

13 7. Pretrial Conference and Trial Setting. Compliance with the requirements of Local
14 Rule 16 is mandatory. Counsel shall submit carefully prepared Memoranda of Contentions
15 of Fact and Law (which may also serve as the trial briefs) and Proposed Pre-Trial
16 Conference Order ("PTCO") in accordance with the provisions of Local Rules 16-2.8
17 through 16-6. The Proposed Pre-Trial Conference Order shall conform to the example set
18 forth in Appendix A to the Local Rules, modified as necessary to comply with this order.

19 The Memoranda of Contentions of Fact and Law, Exhibit Lists, and Witness Lists
20 shall be served and filed no later than fourteen (14) days before the Pre-Trial Conference.
21 The Proposed Pre-Trial Conference Order shall be filed fourteen (14) days before the Pre-
22 Trial Conference.

23 The Proposed Pre-Trial Conference Order must contain a Table of Contents. Place
24 in all capital letters and in bold the separately numbered headings for each category in the
25 PTCO. Under paragraph 1, list each claim, counterclaim, or defense that has been dismissed
26 or abandoned. In multiple party cases where not all claims or counterclaims will be
27 prosecuted against all remaining parties on the other side, please specify to which party each
28 claim or counterclaim directed. The factual issues in dispute should track the elements of a

1 claim or defense upon which the jury would be required to make findings. Counsel should
2 state issues in ultimate fact form, not as evidentiary fact issues (i.e., “was the defendant
3 negligent,” “was defendant’s negligence the proximate cause of plaintiff’s injury;” not “was
4 the plaintiff standing on the corner of 5th and Spring at 10:00 a.m. on May 3”). Issues of
5 law should state legal issues upon which the Court will be required to rule after the Pre-Trial
6 Conference, including during the trial, and should not list ultimate fact issues to be
7 submitted to the trier of fact.

8 In drafting the PTCO, the Court expects that counsel will attempt to agree on and
9 set forth as many non-contested facts as possible. The Court will normally read the
10 uncontested facts to the jury at the start of the trial. Carefully drafted and comprehensively
11 stated stipulation of facts will reduce the length of trial and increase jury understanding of
12 the case.

13 If expert witnesses are to be called at trial, each party must list and identify its
14 respective expert witnesses, both retained and non-retained. Failure of a party to list and
15 identify an expert witness in the Proposed Pre-Trial Conference Order shall preclude a party
16 from calling that expert witness at trial.

17 This case has been placed on calendar for a Final Pretrial Conference (“PTC”)
18 pursuant to F. R. Civ. P. 16 and Local Rule 16-1, unless the PTC was expressly waived at
19 the Scheduling Conference by the Court. Unless excused for good cause, each party
20 appearing in this action shall be represented at the PTC and all pretrial meetings of counsel,
21 by lead trial counsel. The failure to attend the PTC or to submit the required pretrial
22 documents may result in the dismissal of the action, striking the answer and entering a
23 default, and/or the imposition of sanctions.

24 A continuance of the Final Pretrial Conference at counsel’s request or stipulation is
25 highly unlikely. Counsel should plan to do the necessary pretrial work on a schedule which
26 will insure its completion with time to spare before the Final Pretrial Conference.
27 Specifically, failure to complete discovery work, including expert discovery, is not a ground
28 for a continuance.

1 Compliance with the requirements of Local Rules 16-1 to 16-13 is required by the
2 Court. Carefully prepared Memoranda of Contentions of Fact (which may also serve as the
3 trial brief) and a proposed Final Pretrial Conference Order shall be submitted in accordance
4 with the provisions of Local Rule 16-6 and the form of the proposed Final Pretrial
5 Conference Order shall be in conformity with the format set forth in Appendix A to the
6 Local Rules.

7 At the PTC, counsel should be prepared to discuss means of streamlining the trial,
8 including, but not limited to: bifurcation, presentation of non-critical testimony by
9 deposition excerpts, stipulations as to the content of testimony, presentation of testimony on
10 direct examination by declaration subject to cross-examination, and qualification of experts
11 by admitted resumes. In rare cases where the PTC is waived by the Court, counsel must
12 follow Local Rule 16-10.

13 8. Summary of Witness Testimony and Time Estimates. Counsel shall prepare a list
14 of their witnesses, including a brief summary (two to three paragraphs) of each witness'
15 expected testimony and an estimate of the length of time needed for direct examination; and
16 whether the witness will testify by deposition or in person. Counsel shall exchange these
17 lists with opposing counsel. **Counsel shall jointly file a single list of witness testimony**
18 **summaries, including estimates for direct examination of their own witnesses and**
19 **estimates for cross-examination of opposing witnesses.** These statements shall be filed at
20 the time counsel file the Proposed Pre-Trial Conference Order, i.e., fourteen (14) days
21 before the Pre-Trial Conference. A copy of the Joint Trial Witness Form is attached to this
22 Order.

23 If a party desires to offer deposition testimony into evidence at trial, he shall
24 designate only those relevant portions of same which he wishes to read at trial and advise
25 opposing counsel of same. Opposing counsel shall then designate those relevant portions of
26 such deposition which he wishes to offer in evidence. All objections to any such testimony
27 shall be made in writing and filed at the same time counsel file the Proposed Pre-Trial
28 Conference Order so the Court may consider whether ruling on such objections will either

1 facilitate the conduct of the trial or result in the disposition of certain evidentiary matters
2 that may assist continuing settlement negotiations.

3 9. Jury Instructions and Verdict Forms. Fourteen (14) days prior to counsel’s Rule
4 16 pre-trial meeting, counsel shall exchange proposed jury instructions (general and special)
5 and special verdict forms (if applicable). Seven (7) days prior to the Rule 16-2 meeting,
6 counsel shall exchange any objections to the instructions and special verdict forms. Prior to,
7 or at the time of the Rule 16 meeting, counsel shall meet and confer with the goal of
8 reaching agreement on one set of joint jury instructions and one special verdict form.

9 The parties should make every attempt to agree upon the jury instructions before
10 submitting them to the Court. The Court expects counsel to agree on the substantial
11 majority of jury instructions, particularly when pattern instructions provide a statement of
12 applicable law. When the Manual of Model Civil Jury Instructions for the Ninth Circuit
13 provides a version of an applicable requested instruction, the parties should submit the most
14 recent version of the Model instruction. Where language appears in brackets in the model
15 instruction, counsel shall select the appropriate text and eliminate the inapplicable bracketed
16 text. Where California law applies, counsel should use the current edition of the Judicial
17 Council of California Civil Jury Instructions (“CACI”). If neither of the above sources is
18 applicable, counsel are directed to use the instructions from O’Malley, Grenig & Lee
19 (formerly Devitt, et al.), Federal Jury Practice and Instructions (latest edition). Each
20 requested jury instruction shall cover only one subject or principle of law and shall be
21 numbered and set forth in full on a separate page, citing the authority or source of the
22 requested instruction (except for the “clean” jury copy discussed below).

23 When the parties disagree on an instruction, the party opposing the instruction
24 must attach a short statement (one to two paragraphs) supporting the objection, and the party
25 submitting the instruction must attach a short statement supporting the instruction. Each
26 statement should be on a separate page and should follow directly after the disputed
27 instruction.

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1 The parties ultimately must submit one document or, if the parties disagree over
2 any proposed jury instructions, two documents. If the parties submit two documents, those
3 documents shall consist of: (1) a set of Joint Proposed Jury Instructions and (2) a set of
4 Disputed Jury Instructions, along with reasons supporting and opposing each disputed
5 instruction in the format set forth in the previous paragraph.

6 The parties must file proposed jury instructions fourteen (14) days before the Pre-
7 Trial Conference. If the court is closed that day, counsel shall file the proposed instructions
8 the preceding Friday. No later than 5:00 p.m. on the date such instructions are due, the
9 parties must submit conformed courtesy copies to the Court's courtesy box located outside
10 the entrance to chambers on the Spring Street level of the U.S. Courthouse. Counsel shall
11 also submit a copy of the proposed jury instructions to the Court's ECF e-mail address in
12 WordPerfect format (X6 or earlier versions) or Microsoft Word (Word 2010 or earlier
13 versions) in accordance with this paragraph and the previous paragraph.

14 The Court will send a copy of the instructions into the jury room for the jury's use
15 during deliberations. Accordingly, in addition to the file copies described above, the e-mail
16 containing the jury instructions shall contain a "clean set" of Joint Proposed and/or Disputed
17 Jury Instructions, containing only the text of each instruction set forth in full on each page,
18 with the caption "Court's Instruction No. ___" (eliminating titles, supporting authority,
19 indication of party proposing, etc.).

20 An index page shall accompany all jury instructions submitted to the Court. The
21 index page shall indicate the following:

- 22 (a) The number of the instruction;
 - 23 (b) A brief title of the instruction;
 - 24 (c) The source of the instruction and any relevant case citations; and
 - 25 (d) The page number of the instruction.
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1 EXAMPLE:

2	<u>Number</u>	<u>Title</u>	<u>Source</u>	<u>Page</u>
3	1	Trademark-Defined	9th Cir. 15.3.2	7
4		(15 U.S.C. § 1127)		

5 Along with the jury instructions, counsel shall submit any necessary special verdict
6 form fourteen (14) days before the Pre-Trial Conference and e-mail any such proposed
7 special verdict form in WordPerfect format (X6 or earlier versions) or Microsoft Word
8 (Word 2010 or earlier versions) to the Court's ECF e-mail address.

9 10. Voir Dire Questions. Counsel may, but need not, submit brief proposed voir dire
10 questions for the jury at the Pre-Trial Conference. The Court will conduct its own voir dire
11 after consulting any proposed voir dire submitted by counsel.

12 11. Joint Statement of the Case. Counsel shall submit a joint statement of the case at
13 the Pretrial Conference. The joint statement of the case will be read to the prospective panel
14 of jurors prior to the commencement of voir dire. The statement should not exceed one
15 page. The statement shall be filed with the Court at the Pre-Trial Conference.

16 12. Exhibits. The parties shall file their witness lists and exhibits lists in accordance
17 with Local Rule 16. Counsel are to assemble their exhibits by placing them in three-ring
18 binders labeled on the spine portion of the binder showing both the volume number and the
19 exhibit numbers. Each exhibit shall be separated by a tabbed divider on the right side.
20 Counsel shall provide original exhibits for the Courtroom Deputy Clerk and a duplicate set
21 for the judge. The original exhibits shall be tagged with the appropriate exhibit tags in the
22 upper or lower right corner of the first page of each exhibit. Each binder shall contain a
23 Table of Contents. Counsel must comply with Local Rule 26-4 when numbering the
24 exhibits. The Clerk's Office, Room G-8, 312 North Spring Street, Los Angeles, California
25 can supply counsel with appropriate exhibit tags.

26 13. Pre-Trial Exhibit Stipulation. The parties shall prepare a Pre-Trial Exhibit
27 Stipulation which shall contain each party's numbered list of trial exhibits, with objections,
28 if any, to each exhibit including the basis of the objection and the offering party's response.

1 All exhibits to which there is no objection shall be deemed admitted. All parties shall
2 stipulate to the authenticity of exhibits whenever possible, and the Pre-Trial Exhibit
3 Stipulation shall identify any exhibits whose authenticity has not been stipulated to and the
4 specific reasons for the party’s failure to stipulate.

5 The Stipulation shall be substantially in the following form:

6 Pre-Trial Exhibit Stipulation

7 Plaintiff’s Exhibits

8 <u>Number</u>	<u>Description</u>	<u>Objection</u>	<u>Response to Objection</u>
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10 Defendant’s Exhibits

11 <u>Number</u>	<u>Description</u>	<u>Objection</u>	<u>Response to Objection</u>
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13 The Pre-Trial Exhibit Stipulation shall be filed at the same time as counsel files the
14 Proposed Pre-Trial Conference Order. Failure to comply with this paragraph shall constitute
15 a waiver of all objections.

16 The Court requires the following to be submitted to the Courtroom Deputy Clerk
17 on the first day of trial:

- 18 (1) The original exhibits with the Court’s exhibit tags. Plaintiff shall use
19 yellow tags; defendant shall use blue tags. Each tag shall be stapled to
20 the front of the exhibit on the upper right corner and include the case
21 number, case name, and exhibit number.
- 22 (2) One bench book with a copy of each exhibit for the Court’s use, tabbed
23 as described above; a copy of the witness lists).
- 24 (3) Three (3) copies of exhibit lists. The exhibit list should also be
25 submitted to the Court’s ECF e-mail address in both a PDF version and
26 a WordPerfect(X6 or earlier versions) or Microsoft Word (Word 2010
27 or earlier versions) version.

28

1 (4) Three (3) copies of witness lists in the order in which the witnesses will
2 be called to testify.

3 All counsel are to meet no later than fourteen (14) days before trial to discuss and
4 agree to the extent possible on issues including foundation and admissibility.

5 14. Findings of Fact and Conclusions of Law. For a non-jury trial, counsel for each
6 party shall file and serve proposed findings of fact and conclusions of law fourteen days
7 before trial. The parties should also e-mail these proposed findings of fact and conclusions
8 of law in WordPerfect format (X6 or earlier versions) or Microsoft Word (Word 2010 or
9 earlier versions) to the Court's ECF e-mail address. Counsel for each party shall then:

- 10 (1) Underline or highlight in red the portions which it disputes;
11 (2) Underline or highlight in blue the portions which it admits; and
12 (3) Underline or highlight in yellow the portions which it does not dispute,
13 but deems irrelevant.

14 Counsel may agree with a part of a finding or conclusion, disagree with a part of it
15 and/or consider a part of it irrelevant.

16 The parties should then file and serve their respective objections to the other
17 party's proposed findings of fact and conclusions of law. Courtesy copies of the marked
18 copies shall be delivered to the courtesy box next to the entrance to chambers on the Spring
19 Street level of the U.S. Courthouse, 312 North Spring Street, by 12:00 noon of the business
20 day following filing.

21 15. Settlement. Local Rule 16-15.2 provides that the Settlement Conference shall be
22 conducted not later than 45 days before the Pretrial Conference. The Court believes that in
23 most cases completion of all discovery and dispositive motions will help the parties assess
24 their positions before they embark on the costly pre-trial process. However, in many cases,
25 the parties find it more difficult to settle after they have incurred the cost of all discovery
26 and motion practice. Accordingly, the Court strongly encourages counsel and the parties to
27 pursue settlement earlier.

28

1 Notwithstanding the provisions of Local Rule 16-15.5, unless the parties have
2 received prior approval by the Court, lead trial counsel and each party shall appear at the
3 settlement proceeding in person or, in the case of a corporation or other non-governmental
4 entity, by a corporate representative with final authority to settle the case and who is
5 knowledgeable about the facts of the case. Representatives of insurers with decision-making
6 authority are also required to attend the settlement proceedings in person unless their
7 presence is expressly excused by the Court. The Court's requirement that lead trial counsel,
8 parties, corporate representatives, and insurer representatives must appear at the settlement
9 proceedings in person unless they have been expressly excused by the Court applies to
10 individuals located both within and outside the Central District of California.

11 The Court has a keen interest in helping the parties achieve settlement. If the
12 parties believe that it would be more likely that a settlement would be reached if they
13 conduct settlement conference at an earlier time than that specified by the Court, they should
14 conduct it at that time. In any event, the parties must together file a single Joint Status
15 Report re Settlement at the time they file the Proposed Pretrial Order.

16 The Court will not conduct settlement conferences in non-jury cases which the
17 Court will try. In jury cases, the Court will conduct a settlement conference at the parties'
18 request if three conditions exist:


- 19 1. The parties are satisfied that the fact issues in the case will be tried to a jury;
- 20 2. All significant pre-trial rulings which Court must make have been made; and
- 21 3. The parties desire the Court to conduct the conference, understanding that if
22 settlement fails, the Court will preside over the trial of the case.

23 16. Sanctions. The failure to attend the pretrial conference or to submit in conformity
24 with this order, the jury instructions, pre-trial exhibit stipulation, joint statement of the case,
25 voir dire questions, summary of witness testimony and times estimates, proposed Pretrial
26
27
28

1 Conference Order or the memorandum of contentions of fact and law may result in the
2 dismissal of the action, striking the answer and entering default and/or the imposition of
3 sanctions.

4 IT IS SO ORDERED.

5 Dated: August 13, 2015

6 
7 _____
8 Percy Anderson
9 UNITED STATES DISTRICT JUDGE

10 Revised: 10/29/2013

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JOINT TRIAL WITNESS ESTIMATE FORM

CASE: _____

TRIAL DATE: _____

	WITNESS NAME	PARTY CALLING WITNESS AND ESTIMATE	X-EXAMINER'S ESTIMATE	DESCRIPTION OF TESTIMONY	COMMENTS
1					
2					
3					
4					
5					
6					
7					
8					
9					
1					
	TOTAL ESTIMATES THIS PAGE:				

Instructions:

(1) List witnesses (last name first); (2) For description, be extremely brief, e.g., “eyewitness to accident.” Or “expert on standard of care.” (3) Use estimates within fractions of an hour, rounded off to closest quarter of an hour. E.g., if you estimate 20 minutes, make it .25. An estimate of one and one-half hours would be 1.5. An estimate of three-quarters of an hour would be .75; (4) Note special factors in “Comments” column. E.g., “Needs interpreter.” (5) Entries may be in handwriting if very neat and legible.