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11 CITY OF SAUSALITO, JILL JAMES HOFFMAN, JOHN  
ROHRBACHER, MARCIA RAINES, KENT BASSO

12  
13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA

15 SAUSALITO/MARIN COUNTY CHAPTER  
OF THE CALIFORNIA HOMELESS UNION,  
16 on behalf of itself and those it represents;  
ROBBIE POWELSON; SHERI I. RILEY;  
17 ARTHUR BRUCE; MELANIE MUASOU;  
SUNNY JEAN YOW; NAOMI  
18 MONTEMAYOR; MARK JEFF; MIKE  
19 NORTH; JACKIE CUTLER and MICHAEL  
ARNOLD on behalf of themselves and  
20 similarly situated homeless persons,

21 Plaintiffs,

22 v.

23 CITY OF SAUSALITO; MAYOR JILL  
24 JAMES HOFFMAN; POLICE CHIEF JOHN  
ROHRBACHER; CITY MANAGER  
25 MARCIA RAINES; DEPT. OF PUBLIC  
WORKS SUPERVISOR KENT BASSO,  
26 individually and in their respective official  
27 capacities,

28 Defendants.

CASE NO. 3:21-cv-01143-LB

**SUPPLEMENTAL DECLARATION OF  
MONTE DEIGNAN IN SUPPORT OF  
DEFENDANTS' MOTION TO MODIFY  
PRELIMINARY INJUNCTION**

Date: April 29, 2021  
Time: 1:30 p.m.  
Courtroom: 5-17<sup>th</sup> Floor

Action Filed: February 16, 2021  
Trial Date: T.B.D.  
Judge: Hon. Judge Edward M. Chen

**DECLARATION OF MONTE DEIGNAN**

I, Monte Deignan, declare as follows:

1. I am an environmental consultant and Cal OSHA certified asbestos consultant (Consultant No. CAC 93-0879, 1993). If called as a witness, I could and would competently testify to all facts stated herein based upon my personal knowledge except where stated upon information and belief. This Declaration is submitted in support of Defendants’ Motion to Modify Preliminary Injunction.

2. As detailed in my previous declaration, on March 11, 2021, I collected air and soil samples from the lawn area of Marinship Park during active boat disposal operations at the adjacent Army Corps of Engineers facility. I then submitted the air and soil samples to Micro Analytical Lab (MAL) for testing. The testing showed that all hazardous materials were either not detectable or present at ordinary background levels. A true and correct copy of the report documenting my findings is attached to Defendants’ Index of Exhibits as **Exhibit 1**.

3. I have reviewed the April 16, 2021 letter from Robyn Ray, a lab manager with ESML Analytical Inc., attached to the Declaration of Anthony Prince. According to the letter, Ms. Ray did not review my report but provided “general advice” in response to three questions posed by Mr. Prince. The following responds to Ms. Ray’s letter.

**The Phase Contrast Microscope Analysis Was Appropriate For Airborne Fibers**

4. Ms. Ray suggests that MAL used the wrong methodology to test for asbestos and fiberglass dust in the air samples. Specifically, MAL used a phase contrast microscope (PCM), pursuant to NIOSH Method 7400. However, Ms. Ray contends MAL should have used a transmission electron microscope (TEM), pursuant to the NIOSH Method 7402.

5. Ms. Ray is incorrect: The PCM/NIOSH Method 7400 analysis was appropriate. PCM is the standard methodology used to determine airborne concentrations of asbestos and fiberglass dust, and both Federal and California OSHA direct that fiberglass analysis should be conducted pursuant to NIOSH Method 7400. For example, attached as Exhibit A is a true and correct copy of OSHA’s web page for “Exposure Limits for Synthetic Mineral Fibers.” (Available

1 at: <https://www.osha.gov/synthetic-mineral-fibers/exposure-limits>.) The highlighted footnotes  
2 specify that that NIOSH Method 7400 “shall be used for measuring airborne fiber concentrations.”

3 6. Compared to a phase contrast microscope, a transmission electron microscope uses  
4 a much higher level of magnification and can differentiate between different types of fibers, such  
5 as asbestos and fiberglass. Here, the PCM analysis showed that fiber counts were below the  
6 permissible exposure level (PEL) for either asbestos or fiberglass, so there was no reason to  
7 conduct a more detailed TEM analysis to characterize the fibers. Accordingly, MAL did not  
8 initially perform a TEM analysis.

#### 9 **Additional Electron Microscope Analysis Confirms No Fibers In The Air Samples**

10 7. Nevertheless, in response to Ms. Ray’s letter, I asked MAL to perform a TEM  
11 NIOSH Method 7402 analysis on the remaining portions of the air samples I collected on March  
12 11, 2021. The results from the TEM NIOSH Method 7402 testing found no asbestos or fiberglass  
13 in either of the two air samples. Thus, as expected, the more detailed TEM analysis confirms the  
14 results of the earlier PCM analysis. Attached as Exhibit B is a true and correct copy of the lab  
15 report from MAL confirming no fiberglass detected.

#### 16 **The Air Samples Were Taken From Appropriate Locations And Positions**

17 8. Ms. Ray also commented on the locations and positions of the air sampling  
18 equipment. Both were appropriate. The selected air sample locations were (1) the point on the  
19 lawn closest to the boat demolition area, representing a maximum possible exposure scenario, and  
20 (2) the east side of the rest room building in the park, representing an area where people might  
21 logically congregate. Both air samples were taken at a height of 42 inches above the ground,  
22 which measures a typical breathing zone applicable to sitting and standing individuals. The  
23 direction that the air filters were pointing in the outside ambient air would not affect the results,  
24 due to wind shifts during the sample period. The suggestion that the filter should be in the  
25 breathing zone of a specific person would not apply, since there was not a specific employee or  
26 person that was being tested for exposure.

27  
28



# **EXHIBIT A**

Safety and Health Topics / Synthetic Mineral Fibers

Exposure Limits for Synthetic Mineral Fibers

AGENCY/SUBSTANCE	
OSHA PEL - TWA	
<i>General Industry</i> Inert or Nuisance Dust (1910.1000, Table Z-3)	Respirable fraction: 15 mppcf or 5 mg/m <sup>3</sup> Total dust: 50 mppcf or 15 mg/m <sup>3</sup>
<i>Construction Industry</i> Inert or Nuisance Particulates (1926.55, Appendix A)	50 mppcf (or 15 mg/m <sup>3</sup> whichever is the smaller) of total dust <1% SiO <sub>2</sub>
<i>Shipyard</i> Fibrous Glass (1915.1000, Table Z)	Respirable fraction: 5 mg/m <sup>3</sup> Total dust: 15 mg/m <sup>3</sup>
<i>Shipyard</i> Mineral Wool (1915.1000, Table Z)	Respirable fraction: 5 mg/m <sup>3</sup> Total dust: 15 mg/m <sup>3</sup>
<i>Shipyard</i> Inert or Nuisance Particulates (Mineral Dusts Table)	50 mppcf (or 15 mg/m <sup>3</sup> whichever is the smaller) of total dust <1% SiO <sub>2</sub>
*Millions of particles per cubic foot of air, based on impinger samples counted by light-field techniques.	
ACGIH TLV - TWA	
Synthetic Vitreous Fibers [1999] <sup>(1)</sup>	Continuous filament glass fibers <sup>**</sup> : 1 f/cc, A4 Continuous filament glass fibers <sup>***</sup> : 5 mg/m <sup>3</sup> , A4 Glass wool fibers <sup>**</sup> : 1 f/cc, A3 Rock wool fibers <sup>**</sup> : 1 f/cc, A3 Slag wool fibers <sup>**</sup> : 1 f/cc, A3 Special purpose glass fibers <sup>**</sup> : 1 f/cc, A3 Refractory ceramic fibers <sup>**</sup> : 0.2 f/cc, A2
<sup>**</sup> Respirable fibers > 5µm aspect ratio ≥ 3:1 as determined by the membrane filter method at 400-450X magnification (4mm objective), using phase contrast illumination.	
<sup>***</sup> Inhalable particulate matter. The concentration of inhalable particulate for the application of this TLV is to be determined from the fraction passing a size-selector with characteristics defined in Appendix C, paragraph A of the ACGIH TLV book.	
A2 Suspected Human Carcinogen	
A3 Confirmed Animal Carcinogen with Unknown Relevance to Humans	
A4 Not Classifiable as a Human Carcinogen	
NIOSH REL - TWA	
Fibrous glass dust, Mineral wool fiber (synthetic vitreous fibers)	5 mg/m <sup>3</sup> (total) 3 f/cm <sup>3</sup> (fibers ≤ 3.5µm in diameter & ≥ 10µm in length)
State of California's Established PEL - TWA	
Fibrous glass (as Glass)	1 f/cc <sup>(1)</sup>
Mineral wool fiber (as Particulates not otherwise regulated, or nuisance particulates)	5 mg/m <sup>3</sup> (total dust) 10 mg/m <sup>3</sup> (respirable fraction) <sup>(2)</sup>

<sup>(1)</sup> Fibers per cubic centimeter of air at 25°C and 760mm Hg pressure. To be considered a fiber for this limit the glass particle must be longer than 5µm, have a length to diameter ratio of three or more, and have a diameter less than 3µm. NIOSH Method 7400 (Issue 2, August 15, 1994) shall be used for measuring airborne fiber concentrations.

<sup>(2)</sup> The concentration and percentage of the particulate used for this limit are determined from the fraction passing a size selector with the following characteristics:

Aerodynamic Diameter in Micrometers (unit density sphere)	Percent Passing Selector
0	100
1	97
2	91
3	74
4	50
5	30
6	17
7	9
8	5
10	1

# **EXHIBIT B**

# MICRO ANALYTICAL LABORATORIES, INC.

TEM ASBESTOS ANALYSIS - NIOSH 7402



1084  
 Monte Deignan & Associates  
 P.O. Box 546  
 Larkspur, CA 94977

PROJECT:  
**MARIN SHIP PARK  
 MONITORING**

Micro Log In **280547**  
 Total Samples 2  
 Date Sampled 03/11/2021  
 Date Received 03/12/2021  
 Date Analyzed 04/19/2021

SAMPLE INFORMATION	FIBERS COUNTED	ASBESTOS CONCENTRATIONS (FIBERS >0.25 μm IN DIAMETER, >5 μm IN LENGTH)																		
CLIENT ID  <div style="border: 1px solid black; padding: 2px; display: inline-block;">RBD-07</div>  MICRO ID 280547-01  Time 336 LPM 8.000 Liters 2688.0  DESCRIPTION FENCE LINE AT US ACE (REANALYSIS OF PCM 279409-01)	<table border="0"> <tr> <td>ASBESTOS</td> <td>NON-ASBESTOS</td> </tr> <tr> <td><input type="text" value="0"/> CHRYSOTILE</td> <td><input type="text" value="0"/> Fibrous Glass</td> </tr> <tr> <td><input type="text" value="0"/> AMOSITE</td> <td><input type="text" value="0"/> Gypsum</td> </tr> <tr> <td><input type="text" value="0"/> CROCIDOLITE</td> <td><input type="text" value="0"/> Cellulose</td> </tr> <tr> <td><input type="text" value="0"/> TREMOLITE</td> <td><input type="text" value="0"/> Other</td> </tr> <tr> <td><input type="text" value="0"/> ACTINOLITE</td> <td></td> </tr> <tr> <td><input type="text" value="0"/> ANTHOPHYLLITE</td> <td></td> </tr> <tr> <td><input type="text" value="0"/> TOTAL ASBESTOS</td> <td></td> </tr> <tr> <td><input type="text" value="0"/> TOTAL FIBERS</td> <td></td> </tr> </table>	ASBESTOS	NON-ASBESTOS	<input type="text" value="0"/> CHRYSOTILE	<input type="text" value="0"/> Fibrous Glass	<input type="text" value="0"/> AMOSITE	<input type="text" value="0"/> Gypsum	<input type="text" value="0"/> CROCIDOLITE	<input type="text" value="0"/> Cellulose	<input type="text" value="0"/> TREMOLITE	<input type="text" value="0"/> Other	<input type="text" value="0"/> ACTINOLITE		<input type="text" value="0"/> ANTHOPHYLLITE		<input type="text" value="0"/> TOTAL ASBESTOS		<input type="text" value="0"/> TOTAL FIBERS		<div style="border: 1px solid black; padding: 5px; display: inline-block; text-align: center;"> <b>ASBESTOS FIBERS PER CC</b>  <span style="font-size: 1.2em;">&lt; 0.00040</span> </div>  ASBESTOS FRACTION OF TOTAL FIBER COUNT (IF APPLICABLE)  <div style="border: 1px solid black; width: 100px; height: 20px; margin: 0 auto;"></div> Total Fibers per cc  <div style="border: 1px solid black; padding: 2px; display: inline-block;"> <span style="font-size: 1.2em;">&lt; 0.000</span> </div>
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<input type="text" value="0"/> TOTAL ASBESTOS																				
<input type="text" value="0"/> TOTAL FIBERS																				

COMMENTS

**NO ASBESTOS DETECTED**

Operating Parameters	Filter Data	Analytical Data	Additional Data
Microscope: JEOL 1200EX TEM EDX: EDAX Element C2 SDD Minimum Accelerating Voltage: 80 KV Magnifications Used: 100x to 25,000x	Type MCE Diameter 25 mm Effective Collection Area 385 mm <sup>2</sup>	Grid Squares Analyzed 40 Grid Square Area 0.0091 mm <sup>2</sup> Area Analyzed 0.364 mm <sup>2</sup> Analytical Sensitivity 0.0004 Fibers / cc	SAED Photo#  Quantitation Limit 0.0015 Fibers per cc  *Fibers / mm <sup>2</sup> < 2.7

Technical Supervisor:

Frank Raviola, M.S.

4/19/2021

Date Reported

Analyst: \_\_\_\_\_

FPR

AIHA-LAP, LLC IHLAP Accreditation: Laboratory ID No. 101768. Samples are analyzed by Transmission Electron Microscopy in accordance with SOP T134, based on NIOSH 7402 Method (8/15/1994). Asbestos and other fibers >5 μm in length, and >0.25 μm in diameter, with a length to width ratio of 3:1 or greater, are counted. Asbestos fibers per cc: concentration of airborne asbestos detected in this TEM analysis. If no air volume is given, fibers per cc are not applicable. Asbestos Fraction of total fiber count: 100\*(asbestos fibers counted in this TEM analysis / total fibers counted in this TEM analysis). Analytical sensitivity: the airborne concentration represented by each asbestos fiber. \*Fibers / mm<sup>2</sup> are applicable to BLANKS ONLY; they have no correlation to any other TEM method. Non-asbestos counts are approximate; specific characterization of non-asbestos particles is not applicable to this analysis. This analysis, where applicable, is done on a different filter wedge than the original PCM analysis. Variability due to different airborne fiber distributions on different portions of the same filter may be significant. Many fibers with diameters <0.25 μm may be countable by PCM, but are excluded from the TEM count. Therefore, the TEM total fiber count may be much higher or lower than the previously reported PCM count. It is up to the end user of this report to decide whether the Asbestos Fraction should be multiplied by the previous PCM result, to get an estimate of asbestos F/cc in the PCM result (assuming that fibers are evenly distributed on the filter). Unless otherwise indicated on this report, all required Quality Control samples have been determined to be in control prior to releasing these analytical results. Duplicate QC samples have lower analytical sensitivities. Unless otherwise stated in this report, all samples were received in acceptable condition for analysis. Note: due to software limitations, the number of reported significant figures does not necessarily reflect the uncertainty of the analysis. This report must not be reproduced except in full without the approval of Micro Analytical Laboratories, Inc., and pertains only to the samples analyzed as received. Air volumes are reported as given by the customer. SAED = Selected Area Electron Diffraction. If asbestos SAED is photographed, the photo number and fiber ID are reported. EDX: Energy Dispersive X-ray Spectroscopy. N/A = not applicable.



**MICRO ANALYTICAL LABORATORIES, INC.**

**TEM ASBESTOS ANALYSIS - NIOSH 7402**



1084  
 Monte Deignan & Associates  
 P.O. Box 546  
 Larkspur, CA 94977

**PROJECT:**  
**MARIN SHIP PARK**  
**MONITORING**

Micro Log In **280547**  
 Total Samples 2  
 Date Sampled 03/11/2021  
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 Date Analyzed 04/19/2021

SAMPLE INFORMATION	FIBERS COUNTED	ASBESTOS CONCENTRATIONS (FIBERS >0.25 μm IN DIAMETER, >5 μm IN LENGTH)																		
<b>CLIENT ID</b> <div style="border: 1px solid black; padding: 2px; display: inline-block;">RBD-08</div> MICRO ID 280547-02 Time 319 LPM 8.000 Liters 2552.0 <b>DESCRIPTION</b> REST ROOM AT TENNIS COURT (REANALYSIS OF PCM 279409-02)	<table border="0"> <tr> <td><b>ASBESTOS</b></td> <td><b>NON-ASBESTOS</b></td> </tr> <tr> <td><input type="text" value="0"/> CHRYSOTILE</td> <td><input type="text" value="0"/> Fibrous Glass</td> </tr> <tr> <td><input type="text" value="0"/> AMOSITE</td> <td><input type="text" value="0"/> Gypsum</td> </tr> <tr> <td><input type="text" value="0"/> CROCIDOLITE</td> <td><input type="text" value="0"/> Cellulose</td> </tr> <tr> <td><input type="text" value="0"/> TREMOLITE</td> <td><input type="text" value="0"/> Other</td> </tr> <tr> <td><input type="text" value="0"/> ACTINOLITE</td> <td></td> </tr> <tr> <td><input type="text" value="0"/> ANTHOPHYLLITE</td> <td></td> </tr> <tr> <td><input type="text" value="0"/> TOTAL ASBESTOS</td> <td></td> </tr> <tr> <td><input type="text" value="0"/> TOTAL FIBERS</td> <td></td> </tr> </table>	<b>ASBESTOS</b>	<b>NON-ASBESTOS</b>	<input type="text" value="0"/> CHRYSOTILE	<input type="text" value="0"/> Fibrous Glass	<input type="text" value="0"/> AMOSITE	<input type="text" value="0"/> Gypsum	<input type="text" value="0"/> CROCIDOLITE	<input type="text" value="0"/> Cellulose	<input type="text" value="0"/> TREMOLITE	<input type="text" value="0"/> Other	<input type="text" value="0"/> ACTINOLITE		<input type="text" value="0"/> ANTHOPHYLLITE		<input type="text" value="0"/> TOTAL ASBESTOS		<input type="text" value="0"/> TOTAL FIBERS		<div style="border: 1px solid black; padding: 5px; display: inline-block;"> <b>ASBESTOS FIBERS PER CC</b>  <b>&lt; 0.00040</b> </div> ASBESTOS FRACTION OF TOTAL FIBER COUNT (IF APPLICABLE) <div style="border: 1px solid black; width: 100px; height: 20px; margin: 5px auto;"></div> Total Fibers per cc <div style="border: 1px solid black; padding: 2px; display: inline-block;"> <b>&lt; 0.000</b> </div>
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**COMMENTS**

**NO ASBESTOS DETECTED**

Operating Parameters	Filter Data	Analytical Data	Additional Data
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# **EXHIBIT C**

