

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
 A Limited Liability Partnership
 2 Including Professional Corporations
 ARTHUR J. FRIEDMAN, Cal. Bar No. 160867
 3 ALEXANDER L. MERRITT, Cal. Bar No. 277864
 Four Embarcadero Center, 17th Floor
 4 San Francisco, California 94111-4109
 Telephone: 415.434.9100
 5 Facsimile: 415.434.3947
 E mail: afriedman@sheppardmullin.com
 6 amerritt@sheppardmullin.com

7 MARY WAGNER, Cal. Bar No. 167214
 CITY ATTORNEY FOR CITY OF SAUSALITO
 8 Sausalito City Hall
 420 Litho Street
 9 Sausalito, CA 94965
 E-mail: mwagner@sausalito.gov

10 Attorneys for Defendants
 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
 20 ARNOLD on behalf of themselves and
 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
 26 WORKS SUPERVISOR KENT BASSO,
 27 individually and in their respective official
 capacities,

28 Defendants.

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

**SECOND SUPPLEMENTAL DECLARATION
 OF MONTE DEIGNAN IN SUPPORT OF
 EVIDENTIARY HEARING ON
 DEFENDANTS' MOTION TO MODIFY
 PRELIMINARY INJUNCTION**

Date: May 14, 2021
 Time: 1:30 p.m.
 Courtroom: 5-17th Floor

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

1 **A Fiberglass Boat was Demolished During the Air Sampling on March 11, 2021**

2 5. Plaintiffs' contention that no fiberglass boat was demolished on March 11, 2021 is
3 incorrect.

4 6. On the morning of March 11, 2021, I inspected the U.S. Army Corps of Engineers
5 ("USACE") facility adjacent to Marinship Park, where the Richardson's Bay Regional Agency
6 ("RBRA") performs boat and marine debris demolition.

7 7. I was provided access to the USACE facility by Jim Malcolm, Assistant
8 Harbormaster of the RBRA.

9 8. During my inspection on March 11, 2021, I personally observed four boats that
10 were slated for demolition or disposal. That same day, I personally observed RBRA personnel
11 perform various demolition and disposal work on these boats. At the same time this work was
12 occurring, I collected air and soil samples from the lawn area of Marinship Park as detailed in my
13 Environmental Report. The following describes the four boats that I personally observed during
14 my inspection of the USACE facility, and the work on those boats that I personally observed while
15 collecting the environmental samples that are the subject of my Environmental Report.

16 a. I observed an approximately 24-foot fiberglass sailboat (vessel number CF
17 6003CY) in the USACE facility. The sailboat is shown in Photo 4 (left) of my Environmental
18 Report. I observed RBRA personnel crush and demolish this fiberglass boat between
19 approximately 9:30 and 11:00 a.m. on March 11, 2021, while I was collecting air samples at
20 Marinship Park.

21 b. I observed an approximately 50-foot wood-hulled powerboat (Marlin) in the
22 USACE facility. The powerboat is shown in Photo 5 (bottom) of my Environmental Report and in
23 Exhibit C to my Supplemental Declaration. I observed RBRA personnel crush and demolish this
24 boat between approximately 10:30 a.m. and 2:30 p.m. on March 11, 2021, while I was collecting
25 air samples at Marinship Park.

26 c. I observed an approximately 40-foot fiberglass fishing boat (Trident) in the
27 USACE facility. The fishing boat is shown in Photo 4 (center) and Photo 5 (top) of my
28 Environmental Report. I observed RBRA personnel prepare this boat for demolition on March 11,

1 2021, including by removing batteries and fluids. However, I did not observe RBRA personnel
2 crush or demolish this boat on March 11, 2021. As explained below, the fact that this boat was not
3 demolished on March 11, 2021 does not affect the conclusions of my Environmental Report. The
4 demolition of the fiberglass sailboat (vessel number CF 6003CY) was sufficient for the
5 environmental analysis and demonstrates that crushing of fiberglass vessels at the USACE facility
6 does not pose a toxic risk to Marinship Park.

7 d. I observed a small aluminum skiff in the USACE facility. The skiff is
8 shown in Photo 4 (right) of my Environmental Report. The skiff was small enough that it could be
9 disposed of without crushing by the excavator. On information and belief, RBRA personnel
10 disposed of this boat by placing it in a dumpster.

11 9. Full details of the collection and testing of the environmental samples are set forth
12 in my Environmental Report and in my Supplemental Declaration dated April 23, 2021. In
13 summary, at the same time the fiberglass sailboat and wood-hulled powerboat were being
14 demolished on March 11, 2021, I collected air and soil samples from the lawn area of Marinship
15 Park. I then submitted the samples to Micro Analytical Lab (MAL) for testing for regulated
16 metals, airborne lead, and airborne fibers. As to airborne fibers, MAL tested the air samples with a
17 phase contrast microscope (PCM) and then later with transmission electron microscope (TEM).
18 The environmental testing showed that airborne fibers, airborne lead, and regulated metals were
19 either not detectable or present at normal ambient levels. This demonstrates that boat disposal
20 operations do not pose an environmental risk to Marinship Park, and that no toxic materials have
21 accumulated in the soil of Marinship Park over time.

22 10. Plaintiffs' contention that no fiberglass boat was demolished on March 11, 2021 is
23 incorrect. As detailed above, RBRA personnel that day crushed and demolished a fiberglass
24 sailboat (vessel number CF 6003CY). The crushing and demolition of the fiberglass sailboat was
25 sufficient for analyzing the toxic risk to Marinship Park from airborne fibers, given the size of the
26 sailboat and the proximity of the work to the park. If boat demolition operations at the USACE
27 facility exposed Marinship Park to a toxic level of airborne fibers, the air samples I collected on
28 March 11, 2021 would have shown this.

1 **There Was No Discrepancy Between the PCM and TEM Air Sample Results**

2 11. Plaintiffs' contention that there is a discrepancy between the phase contrast
3 microscope (PCM) and transmission electron microscope (TEM) air sample test results is
4 incorrect.

5 12. In accordance with standard PCM analysis practice, each air sample I collected has
6 a small 1/3 slice of the total filter removed for processing. This ensures that the laboratory has
7 remaining filter material available in case it needs to re-run a test or conduct a different test. Each
8 time the laboratory runs a specific test on an air sample, it uses a different portion of the sample.
9 Accordingly, here, the PCM and TEM tests were run on different portions of the sample air
10 sample filters that I collected. Because the tests are evaluating different portions of the same
11 sample, small variations in the tests results are normal and expected. Importantly, here both the
12 PCM and TEM tests demonstrated that airborne fibers in the samples I collected were not present
13 at anywhere near the regulated or toxic levels.

14 **The Orientation of the Air Samplers was Proper**

15 13. Plaintiffs' contention that the air samplers were not properly oriented is incorrect.

16 14. To begin with, the orientation of the air sampler does not affect the results of the
17 environmental testing. The reason is that the air sampling system used to collect the samples is
18 powered by a vacuum pump that pulls air into the filter membrane from all directions. Thus,
19 regardless of the direction the sampler is facing, it collects the ambient air at that spot.

20 15. Moreover, I placed the two air samplers facing in different directions. The air
21 sampler closest to the USACE facility was facing west, and the air sampler closest to the
22 Marinship Park restrooms was facing east. The test results from both samplers were consistent
23 with each other. This demonstrates that the orientation of the samplers had no effect on the air
24 samples or test results.

25 16. The only criteria for placing air samplers are that (1) the air filter should be angled
26 downward to prevent larger falling debris, such as leaves, dirt, or rain from entering the filter, and
27 (2) the air filter should not be placed next to a wall or in an area that does not have good exchange
28 of air. Here, I placed both air samplers consistent with these criteria.

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct.

3 Executed on this 10th day of May, 2021 in Larkspur, California.
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Monte Deignan
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