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 8 *Laurie Lieberman, Dr. Jose Escarce, Craig Foster,*
 9 *Maria Leon-Vazquez, Richard Tahvildaran-*
Jesswein, Oscar De La Torre, and Ralph Mechur

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA
 12 WESTERN DIVISION

13
 14 AMERICA UNITES FOR KIDS, et
 15 al.,
 16 Plaintiffs,
 17 vs.
 18 SANDRA LYON, et al.,
 19 Defendants.
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Case No. 2:15-CV-02124
 Hon. Percy Anderson

**DEFENDANTS' ANSWER TO
 FIRST AMENDED
 COMPLAINT**

Complaint filed: March 23, 2015
 First Amended Complaint filed:
 April 1, 2015

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1 TO THE COURT, ALL INTERESTED PARTIES, AND THEIR
2 ATTORNEYS OF RECORD:

3 COME NOW Defendants SANDRA LYON, JAN MAEZ, LAURIE
4 LIEBERMAN, DR. JOSE ESCARCE, CRAIG FOSTER, MARIA LEON-
5 VAZQUEZ, RICHARD TAHVILDARAN-JESSWEIN, OSCAR DE LA
6 TORRE, and RALPH MECHUR (collectively, “Defendants”) and answering
7 Plaintiffs’ First Amended Complaint (“FAC”) herein for themselves and for
8 no other Defendants, admit, deny, and allege as follows:

9 **JURISDICTION, NATURE OF THE ACTION AND VENUE**

10 1. Answering Paragraph 1 of the FAC, Defendants admit the factual
11 allegations of Paragraph 1.

12 2. Answering Paragraph 2 of the FAC, Plaintiffs’ allegations contain
13 conclusions of law to which no responsive pleading is required and
14 Defendants deny such allegations on that basis. Defendants otherwise deny
15 the allegations of Paragraph 2.

16 3. Answering Paragraph 3 of the FAC, Plaintiffs’ allegations are
17 conclusions of law to which no responsive pleading is required and
18 Defendants deny such allegations on that basis.

19 4. Answering Paragraph 4 of the FAC, Defendants admit that venue
20 is proper in this district and that Defendants have their principal place of
21 business in this district.

22 5. Answering Paragraph 5 of the FAC, Plaintiffs’ allegations are
23 conclusions of law to which no responsive pleading is required and
24 Defendants deny such allegations on that basis.

25 6. Answering Paragraph 6 of the FAC, Defendants admit that they
26 were sent a 60-day Notice of Intent to Sue by Plaintiffs more than 60 days
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1 prior to the filing of the Complaint in this action. Defendants deny such notice
2 was sufficient as required by TSCA.

3 **PARTIES AND STANDING**

4 7. Answering Paragraph 7 of the FAC, Plaintiffs' allegations contain
5 conclusions of law to which no responsive pleading is required and
6 Defendants deny such allegations on that basis. Defendants admit that
7 Plaintiff America Unites is a non-profit 501(c)(3) organization incorporated in
8 California. Defendants otherwise deny the allegations of Paragraph 7.

9 8. Answering Paragraph 8 of the FAC, Plaintiffs' allegations contain
10 conclusions of law to which no responsive pleading is required and
11 Defendants deny such allegations on that basis. Defendants admit that
12 Plaintiff Public Employees for Environmental Responsibility is a non-profit
13 501(c)(3) organization incorporated in Washington, D.C. Defendants
14 otherwise deny the allegations of Paragraph 8.

15 9. Answering Paragraph 9, Plaintiffs' allegations contain
16 conclusions of law to which no responsive pleading is required and
17 Defendants deny such allegations on that basis. Defendants admit that
18 Defendant Sandra Lyon is the Superintendent of the SMMUSD. Defendants
19 otherwise deny the allegations of Paragraph 9.

20 10. Answering Paragraph 10 of the FAC, Plaintiffs' allegations
21 contain conclusions of law to which no responsive pleading is required and
22 Defendants deny such allegations on that basis. Defendants admit that
23 Defendant Jan Maez is the Associate Superintendent and Chief Financial
24 Officer of the SMMUSD. Defendants otherwise deny the allegations of
25 Paragraph 10.

26 11. Answering Paragraph 11 of the FAC, Plaintiffs' allegations
27 contain conclusions of law to which no responsive pleading is required and
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1 Defendants deny such allegations on that basis. Defendants admit that
2 Defendants Laurie Lieberman, Dr. Jose Escarce, Craig Foster, Maria Leon-
3 Vazquez, Richard Tahvildaran-Jesswein, Oscar de La Torre, and Ralph
4 Mechur are members of the SMMUSD Board of Education. Defendants
5 otherwise deny the allegations of Paragraph 11.

6 **LEGAL BACKGROUND**

7 12. Answering Paragraph 12 of the FAC, Plaintiffs' allegations are
8 conclusions of law to which no responsive pleading is required and
9 Defendants deny such allegations on that basis.

10 13. Answering Paragraph 13 of the FAC, Plaintiffs' allegations
11 contain conclusions of law to which no responsive pleading is required and
12 Defendants deny such allegations on that basis. Defendants otherwise deny
13 the allegations of Paragraph 13.

14 14. Answering Paragraph 14 of the FAC, Plaintiffs' allegations are
15 conclusions of law to which no responsive pleading is required and
16 Defendants deny such allegations on that basis.

17 15. Answering Paragraph 15 of the FAC, Plaintiffs' allegations are
18 conclusions of law to which no responsive pleading is required and
19 Defendants deny such allegations on that basis.

20 16. Answering Paragraph 16 of the FAC, Plaintiffs' allegations
21 contain conclusions of law to which no responsive pleading is required and
22 Defendants deny such allegations on that basis. Defendants otherwise deny
23 the allegations of Paragraph 16.

24 17. Answering Paragraph 17 of the FAC, Plaintiffs' allegations are
25 conclusions of law to which no responsive pleading is required and
26 Defendants deny such allegations on that basis.

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1 18. Answering Paragraph 18 of the FAC, Plaintiffs’ allegations are
2 conclusions of law to which no responsive pleading is required and
3 Defendants deny such allegations on that basis.

4 19. Answering Paragraph 19 of the FAC, Plaintiffs’ allegations are
5 conclusions of law to which no responsive pleading is required and
6 Defendants deny such allegations on that basis.

7 20. Answering Paragraph 20 of the FAC, Plaintiffs’ allegations
8 contain conclusions of law to which no responsive pleading is required and
9 Defendants deny such allegations on that basis. Defendants otherwise deny
10 the allegations of Paragraph 20.

11 21. Answering Paragraph 21 of the FAC, Defendants aver that the
12 alleged passage from EPA’s “Facts about PCBs in Caulk” is an incomplete
13 citation and the document speaks for itself. Except as averred, Defendants
14 deny the allegations of Paragraph 21.

15 22. Answering Paragraph 22 of the FAC, Plaintiffs’ allegations are
16 conclusions of law to which no responsive pleading is required and
17 Defendants deny such allegations on that basis.

18 23. Answering Paragraph 23 of the FAC, Plaintiffs’ allegations are
19 conclusions of law to which no responsive pleading is required and
20 Defendants deny such allegations on that basis.

21 24. Answering Paragraph 24 of the FAC, Plaintiffs’ allegations
22 contain conclusions of law to which no responsive pleading is required and
23 Defendants deny such allegations on that basis. Defendants otherwise deny
24 the allegations in Paragraph 24.

25 25. Answering Paragraph 25 of the FAC, Plaintiffs’ allegations are
26 conclusions of law to which no responsive pleading is required and
27 Defendants deny such allegations on that basis.

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1 35. Answering Paragraph 35 of the FAC, Defendants state that they
2 are without knowledge or information sufficient to form a belief as to the truth
3 of the allegations of Paragraph 35 and deny such allegations on that basis.

4 36. Answering Paragraph 36 of the FAC, Defendants state that they
5 are without knowledge or information sufficient to form a belief as to the truth
6 of the allegations of Paragraph 36 and deny such allegations on that basis.

7 37. Answering Paragraph 37 of the FAC, Defendants state that they
8 are without knowledge or information sufficient to form a belief as to the truth
9 of the allegations of Paragraph 37 and deny such allegations on that basis.

10 38. Answering Paragraph 38 of the FAC, Defendants state that they
11 are without knowledge or information sufficient to form a belief as to the truth
12 of the allegations of Paragraph 38 and deny such allegations on that basis.

13 39. Answering Paragraph 39 of the FAC, Defendants state that they
14 are without knowledge or information sufficient to form a belief as to the truth
15 of the allegations of Paragraph 39 and deny such allegations on that basis.

16 40. Answering Paragraph 40 of the FAC, Defendants state that they
17 are without knowledge or information sufficient to form a belief as to the truth
18 of the allegations of Paragraph 40 and deny such allegations on that basis.

19 41. Answering Paragraph 41 of the FAC, Defendants admit the
20 allegations of Paragraph 41.

21 42. Answering Paragraph 42 of the FAC, Defendants state that they
22 are without knowledge or information sufficient to form a belief as to the truth
23 of the allegations of Paragraph 42 and deny such allegations on that basis.

24 43. Answering Paragraph 43 of the FAC, Defendants state that they
25 are without knowledge or information sufficient to form a belief as to the truth
26 of the allegations of Paragraph 43 and deny such allegations on that basis.

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1 44. Answering Paragraph 44 of the FAC, Defendants state that they
2 are without knowledge or information sufficient to form a belief as to the truth
3 of the allegations of Paragraph 44 and deny such allegations on that basis.

4 45. Answering Paragraph 45 of the FAC, Defendants state that they
5 are without knowledge or information sufficient to form a belief as to the truth
6 of the allegations of Paragraph 45 and deny such allegations on that basis.

7 46. Answering Paragraph 46 of the FAC, Defendants state that they
8 are without knowledge or information sufficient to form a belief as to the truth
9 of the allegations of Paragraph 46 and deny such allegations on that basis.

10 47. Answering Paragraph 47 of the FAC, Defendants state that they
11 are without knowledge or information sufficient to form a belief as to the truth
12 of the allegations of Paragraph 47 and deny such allegations on that basis.

13 48. Answering Paragraph 48 of the FAC, Defendants state that they
14 are without knowledge or information sufficient to form a belief as to the truth
15 of the allegations of Paragraph 48 and deny such allegations on that basis.

16 49. Answering Paragraph 49 of the FAC, Defendants state that they
17 are without knowledge or information sufficient to form a belief as to the truth
18 of the allegations of Paragraph 49 and deny such allegations on that basis.

19 50. Answering Paragraph 50 of the FAC, Defendants admit that the
20 District conducted environmental reviews in 2009 and 2010 in connection
21 with planned improvements on the Malibu High School Campus. Defendants
22 otherwise deny the allegations in Paragraph 50.

23 51. Answering Paragraph 51 of the FAC, Defendants aver that the
24 alleged passage from the 2010 ARCADIS report “Removal Action Workplan
25 Malibu Middle and High School Campus Improvements Project” is an
26 incomplete citation and Plaintiffs have mischaracterized the document.
27 Except as averred, Defendants state that they are without knowledge or
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1 information sufficient to form a belief as to the truth of the allegations of
2 Paragraph 51 and deny such allegations on that basis.

3 52. Answering Paragraph 52 of the FAC, Defendants admit that
4 ARCADIS' 2010 removal action plan was carried out during the summer of
5 2011 and that the District removed 48 truckloads of soil (1,179 cubic yards
6 weighing 1,158 tons) from the Middle School Quad. Defendants otherwise
7 state that they are without knowledge or information sufficient to form a belief
8 as to the truth of the allegations of Paragraph 52 and deny such allegations on
9 that basis.

10 53. Answering Paragraph 53 of the FAC, Defendants state that they
11 are without knowledge or information sufficient to form a belief as to the truth
12 of the allegations of Paragraph 53 and deny such allegations on that basis.

13 54. Answering Paragraph 54 of the FAC, Defendants state that they
14 are without knowledge or information sufficient to form a belief as to the truth
15 of the allegations of Paragraph 54 and deny such allegations on that basis.

16 55. Answering Paragraph 55 of the FAC, Defendants admit the
17 allegations of Paragraph 55.

18 56. Answering Paragraph 56 of the FAC, Defendants state that they
19 are without knowledge or information sufficient to form a belief as to the truth
20 of the allegations of Paragraph 56 and deny such allegations on that basis.

21 57. Answering Paragraph 57 of the FAC, Defendants admit the
22 allegations of Paragraph 57.

23 58. Answering Paragraph 58 of the FAC, Defendants admit the
24 allegations of Paragraph 58.

25 59. Answering Paragraph 59 of the FAC, Defendants admit that bulk
26 samples of caulk and interior wall paint were collected in ten classrooms; air
27 and wipe samples were also collected in ten classrooms at that time.

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1 Defendants deny that bulk samples were collected in Room 105 of the Mako
2 Building; bulk samples were collected in Rooms 103, 104, and 106 of that
3 building.

4 60. Answering Paragraph 60 of the FAC, Defendants state that they
5 are without knowledge or information sufficient to form a belief as to the truth
6 of the allegations of Paragraph 60 and deny such allegations on that basis.

7 61. Answering Paragraph 61 of the FAC, Defendants state that they
8 are without knowledge or information sufficient to form a belief as to the truth
9 of the allegations of Paragraph 61 and deny such allegations on that basis.

10 62. Answering Paragraph 62 of the FAC, Defendants deny the
11 allegations in Paragraph 62. Defendants deny that the District unilaterally
12 changed the air screening level at the Malibu Campus to 100 ng because it
13 received test results of PCBs higher than 20.2 ng per cubic meter of air. This
14 action level was set to adhere to EPA's strictest public health level for school-
15 aged children, not because some of the test results were higher than 20.2 ng
16 per cubic meter.

17 63. Answering Paragraph 63 of the FAC, Defendants admit the
18 allegations of Paragraph 63.

19 64. Answering Paragraph 64 of the FAC, Defendants admit that some
20 level of PCBs were detected in the 30 wipe samples in the ten tested rooms
21 and that PCBs in excess of 50 ppm were detected at locations in Rooms 1 and
22 5 and the Library. Defendants otherwise deny Plaintiffs' allegations on the
23 basis that they contain conclusions of law to which no responsive pleading is
24 required. To the extent a response is required, Defendants deny the remainder
25 of the allegations of Paragraph 64.

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1 65. Answering Paragraph 65 of the FAC, Defendants state that they
2 are without knowledge or information sufficient to form a belief as to the truth
3 of the allegations of Paragraph 65 and deny such allegations on that basis.

4 66. Answering Paragraph 66 of the FAC, Defendants state that they
5 are without knowledge or information sufficient to form a belief as to the truth
6 of the allegations of Paragraph 66 and deny such allegations on that basis.

7 67. Answering Paragraph 67 of the FAC, Defendants state that they
8 are without knowledge or information sufficient to form a belief as to the truth
9 of the allegations of Paragraph 67 and deny such allegations on that basis.

10 68. Answering Paragraph 68 of the FAC, Defendants admit that on
11 November 21, 2013, Steve Armann of EPA Region 9's PCB program sent a
12 letter to Defendant Sandra Lyon, Superintendent of SMMUSD. Plaintiffs
13 have mischaracterized the content of the letter and therefore, except as herein
14 admitted, Defendants are otherwise without knowledge or information
15 sufficient to form a belief as to the truth of the allegations of Paragraph 68 and
16 deny such allegations on that basis.

17 69. Answering Paragraph 69 of the FAC, Defendants deny the
18 allegations of Paragraph 69.

19 70. Answering Paragraph 70 of the FAC, Defendants deny the
20 allegations of Paragraph 70.

21 71. Answering Paragraph 71 of the FAC, Defendants deny the
22 allegations of Paragraph 71.

23 72. Answering Paragraph 72 of the FAC, Defendants deny the
24 allegations of Paragraph 72.

25 73. Answering Paragraph 73 of the FAC, Defendants admit the
26 allegations of Paragraph 73.

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1 74. Answering Paragraph 74 of the FAC, Defendants aver that on
2 April 25, 2014, ENVIRON submitted a draft “Comprehensive PCB-Related
3 Building Materials Inspection, Management and Removal Plan for the Santa
4 Monica-Malibu Unified School District” to EPA and that the document speaks
5 for itself. Except as averred, Defendants deny the allegations of Paragraph 74.

6 75. Answering Paragraph 75 of the FAC, Defendants aver that the
7 First Environ Plan provided for sampling of building materials and soils to
8 determine the nature and extent of the presence of PCBs prior to renovation or
9 demolition of the buildings by the District, and that the document speaks for
10 itself. Except as averred, Defendants deny the allegations of Paragraph 75.

11 76. Answering Paragraph 76 of the FAC, Defendants deny the
12 allegations of Paragraph 76.

13 77. Answering Paragraph 77 of the FAC, Defendants aver that on
14 July 3, 2014, ENVIRON submitted a “Site-Specific, PCB-Related Building
15 Materials Management, Characterization and Remediation Plan” for the
16 Library and Building E rooms 1, 5, and 8 to EPA and that the document
17 speaks for itself. Except as averred, Defendants deny the allegations of
18 Paragraph 77.

19 78. Answering Paragraph 78 of the FAC, Defendants admit the
20 allegations of Paragraph 78.

21 79. Answering Paragraph 79 of the FAC, Defendants deny the
22 allegations of Paragraph 79.

23 80. Answering Paragraph 80 of the FAC, Defendants admit that on
24 July 17, 2014, PEER and Malibu Unites submitted comments on the Second
25 Environ Plan along with which PEER and Malibu Unites submitted test results
26 from illegally-obtained sources. As to the remaining allegations of Paragraph
27 80, Plaintiffs’ allegations contain conclusions of law to which no responsive
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1 pleading is required and Defendants deny such allegations on that basis. To
2 the extent a response is required, Defendants state that they are without
3 knowledge or information sufficient to form a belief as to the truth of the
4 allegations of Paragraph 80 and deny such allegations on that basis.

5 81. Answering Paragraph 81 of the FAC, Defendants state that they
6 are without knowledge or information sufficient to form a belief as to the truth
7 of the allegations of Paragraph 81 and deny such allegations on that basis.

8 82. Answering Paragraph 82 of the FAC, Defendants state that they
9 are without knowledge or information sufficient to form a belief as to the truth
10 of the allegations of Paragraph 82 and deny such allegations on that basis.

11 83. Answering Paragraph 83 of the FAC, Defendants state that they
12 are without knowledge or information sufficient to form a belief as to the truth
13 of the allegations of Paragraph 83 and deny such allegations on that basis.

14 84. Answering Paragraph 84 of the FAC, Defendants state that they
15 are without knowledge or information sufficient to form a belief as to the truth
16 of the allegations of Paragraph 84 and deny such allegations on that basis.

17 85. Answering Paragraph 85 of the FAC, Defendants admit that
18 cleaning was performed during the summer of 2014, but deny such cleaning
19 was performed by ENVIRON. Defendants otherwise admit the allegations of
20 Paragraph 85.

21 86. Answering Paragraph 86 of the FAC, Defendants state that they
22 are without knowledge or information sufficient to form a belief as to the truth
23 of the allegations of Paragraph 86 and deny such allegations on that basis.

24 87. Answering Paragraph 87 of the FAC, Defendants state that they
25 are without knowledge or information sufficient to form a belief as to the truth
26 of the allegations of Paragraph 87 and deny such allegations on that basis.

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1 88. Answering Paragraph 88 of the FAC, Defendants state that they
2 are without knowledge or information sufficient to form a belief as to the truth
3 of the allegations of Paragraph 88 and deny such allegations on that basis.

4 89. Answering Paragraph 89 of the FAC, Defendants state that they
5 are without knowledge or information sufficient to form a belief as to the truth
6 of the allegations of Paragraph 89 and deny such allegations on that basis.

7 90. Answering Paragraph 90 of the FAC, Defendants admit that the
8 December 2014 ENVIRON report concluded that conditions in rooms not
9 tested were not expected to be different from those tested. Defendants deny
10 the remainder of the allegations of Paragraph 90.

11 91. Answering Paragraph 91 of the FAC, Defendants deny the
12 allegations of Paragraph 91.

13 92. Answering Paragraph 92 of the FAC, Defendants deny that
14 cleaning decreased PCB air concentrations in a small percentage of cases.
15 Defendants admit that PCB concentrations in air samples increased but
16 remained below EPA threshold levels in 12 rooms (21%), decreased and
17 remained below EPA threshold levels in 7 rooms (12%), and remained the
18 same in 38 rooms (67%), 37 samples of which represented non-detects for
19 PCBs in air.

20 93. Answering Paragraph 93 of the FAC, Defendants admit that PCB
21 concentrations in dust samples increased but remained below EPA threshold
22 levels in 7 rooms (5%), decreased and remained below EPA threshold levels
23 in 34 rooms (26%), and were not detected in 89 rooms (68%).

24 94. Answering Paragraph 94 of the FAC, Defendants deny the
25 allegations of Paragraph 94.

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1 95. Answering Paragraph 95 of the FAC, Defendants state that they
2 are without knowledge or information sufficient to form a belief as to the truth
3 of the allegations of Paragraph 95 and deny such allegations on that basis

4 96. Answering Paragraph 96 of the FAC, Defendants admit that a soil
5 removal action took place in a fenced-off area near the woodshop room under
6 the supervision of the California Department of Toxic Substances Control.

7 Defendants deny that ENVIRON's testing over the summer of 2014 showed
8 that the soil near the woodshop room exceeded regulatory standards for PCBs
9 in soil. As to the remainder of the allegations stated in Paragraph 96,

10 Defendants state that they are without knowledge or information sufficient to
11 form a belief as to the truth of the allegations and deny such allegations on that
12 basis.

13 97. Answering Paragraph 97 of the FAC, Defendants deny the
14 allegations of Paragraph 97.

15 98. Answering Paragraph 98 of the FAC, Defendants state that they
16 are without knowledge or information sufficient to form a belief as to the truth
17 of the allegations of Paragraph 98 and deny such allegations on that basis.

18 99. Answering Paragraph 99 of the FAC, Defendants state that they
19 are without knowledge or information sufficient to form a belief as to the truth
20 of the allegations of Paragraph 99 and deny such allegations on that basis.

21 100. Answering Paragraph 100 of the FAC, Defendants state that they
22 are without knowledge or information sufficient to form a belief as to the truth
23 of the allegations of Paragraph 100 and deny such allegations on that basis.

24 101. Answering Paragraph 101 of the FAC, Defendants admit that on
25 August 14, 2014, a District official sent an e-mail to an EPA Region 9 official.
26 Defendants aver that the alleged passages from this e-mail are incomplete
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1 citations and that the document speaks for itself. Except as averred,
2 Defendants deny the allegations of Paragraph 101.

3 102. Answering Paragraph 102 of the FAC, Defendants admit that
4 Administrator Blumenthal wrote a letter to Superintendent Lyon on August
5 14, 2014. Defendants aver that the alleged passages from this letter are
6 incomplete citations and that the document speaks for itself. Except as
7 averred, Defendants deny the allegations of Paragraph 102.

8 103. Answering Paragraph 103 of the FAC, Defendants admit that in
9 September 2014, Plaintiffs submitted alleged test results from illegally-
10 obtained sources to the District. As to the remainder of the allegations in
11 Paragraph 103, Defendants state that they are without knowledge or
12 information sufficient to form a belief as to the truth of the allegations and
13 deny such allegations on that basis.

14 104. Answering Paragraph 104 of the FAC, Defendants deny the
15 allegations of Paragraph 104.

16 105. Answering Paragraph 105 of the FAC, Defendants state that they
17 are without knowledge or information sufficient to form a belief as to the truth
18 of the allegations of Paragraph 105 and deny such allegations on that basis.

19 106. Answering Paragraph 106 of the FAC, Defendants admit the
20 allegations of Paragraph 106.

21 107. Answering Paragraph 107 of the FAC, Defendants admit that the
22 Environ Supplement was submitted to EPA Region 9 official Steve Armann
23 by ENVIRON on behalf of the District. Defendants aver that the alleged
24 passage from the Environ Supplement is an incomplete citation and that the
25 document speaks for itself. Except as averred, Defendants deny the
26 allegations of Paragraph 107.

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1 108. Answering Paragraph 108 of the FAC, Defendants state that they
2 are without knowledge or information sufficient to form a belief as to the truth
3 of the allegations of Paragraph 108 and deny such allegations on that basis.

4 109. Answering Paragraph 109 of the FAC, Defendants admit that in
5 December 2014 Plaintiffs submitted to the District alleged sampling results
6 from illegally-obtained sources. As to the remainder of the allegations in
7 Paragraph 109, Defendants state that they are without knowledge or
8 information sufficient to form a belief as to the truth of the allegations and
9 deny such allegations on that basis.

10 110. Answering Paragraph 110 of the FAC, Plaintiffs' allegations are
11 conclusions of law to which no responsive pleading is required and
12 Defendants deny such allegations on that basis. To the extent a response is
13 required, Defendants deny the allegations of Paragraph 110.

14 111. Answering Paragraph 111 of the FAC, Defendants state that they
15 are without knowledge or information sufficient to form a belief as to the truth
16 of the allegations of Paragraph 111 and deny such allegations on that basis.

17 112. Answering Paragraph 112 of the FAC, Defendants admit that the
18 District received a letter from Plaintiffs dated October 6, 2014 containing
19 statements consistent with the allegations of Paragraph 112. Defendants
20 further admit that no response has been issued.

21 113. Answering Paragraph 113 of the FAC, Defendants aver that EPA
22 sent a letter to the District on October 31, 2014, that the document speaks for
23 itself, and that Plaintiffs have mischaracterized the contents of the letter.
24 Except as averred, Defendants deny the allegations of Paragraph 113.

25 114. Answering Paragraph 114 of the FAC, Defendants deny the
26 allegations of Paragraph 114.

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1 115. Answering Paragraph 115 of the FAC, Defendants admit that
2 ENVIRON conducted air and wipe sampling at the Malibu Campus over
3 winter break in December 2014 and January 2015. As to the remainder of the
4 allegations of Paragraph 115, Defendants deny these allegations.

5 116. Answering Paragraph 116 of the FAC, Defendants deny the
6 allegations in Paragraph 116.

7 117. Answering Paragraph 117 of the FAC, Defendants deny the
8 allegations in Paragraph 117.

9 118. Answering Paragraph 118 of the FAC, Defendants deny the
10 allegations in Paragraph 118.

11 119. Answering Paragraph 119 of the FAC, Defendants admit that
12 Room 722 (a faculty office) in the Old Gymnasium in MHS and Room 19 in
13 JCES each had dust wipe samples above $1 \mu\text{g}/100 \text{ cm}^2$, none of which
14 exceeded the Malibu Campus threshold of $10 \mu\text{g}/100 \text{ cm}^2$. As to the
15 remainder of the allegations of Paragraph 119, Defendants state that they are
16 without knowledge or information sufficient to form a belief as to the truth of
17 the allegations and deny such allegations on that basis.

18 120. Answering Paragraph 120 of the FAC, Defendants admit that,
19 because the first re-cleaning of Room 19 was not performed to appropriate
20 standards, Room 19 was re-cleaned for a second time and that wipe sample
21 results below the MHS threshold of $10 \mu\text{g}/100 \text{ cm}^2$ were obtained after the
22 second re-cleaning. Defendants deny the remainder of the allegations of
23 Paragraph 120.

24 121. Answering Paragraph 121 of the FAC, Defendants admit the
25 allegations in Paragraph 121.

26 122. Answering Paragraph 122 of the FAC, Defendants admit that the
27 District sent an e-mail message to parents and staff of the Malibu Campus on
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1 February 27, 2015. Defendants deny the remainder of the allegations of
2 Paragraph 122.

3 123. Answering Paragraph 123 of the FAC, Defendants deny the
4 allegations in Paragraph 123.

5 124. Answering Paragraph 124 of the FAC, Defendants aver that the
6 alleged passage from the District's February 27, 2015 e-mail is an incomplete
7 citation and that the document speaks for itself. Except as averred, Defendants
8 deny the allegations of Paragraph 124.

9 125. Answering Paragraph 125 of the FAC, Defendants admit that a
10 principal of ENVIRON spoke at the March 19, 2015 Board of Education
11 meeting. Defendants deny the remainder of the allegations of Paragraph 125.

12 126. Answering Paragraph 126 of the FAC, Defendants admit that
13 counsel for the District sent a letter to Plaintiffs dated March 16, 2015.
14 Plaintiffs have mischaracterized the content of the letter and therefore
15 Defendants deny the remainder of the allegations of Paragraph 126.

16 127. Answering Paragraph 127 of the FAC, Defendants admit that
17 counsel for the District sent a letter to Plaintiffs dated March 16, 2015.
18 Plaintiffs have mischaracterized the content of the letter and therefore
19 Defendants deny the remainder of the allegations of Paragraph 127.

20 128. Answering Paragraph 128 of the FAC, Defendants admit that on
21 March 23, 2015, the District posted a letter sent by ENVIRON to EPA Region
22 9 entitled "Notification of Additional Locations at Malibu High School and
23 Juan Cabrillo Elementary School to be Addressed in Accordance with October
24 2014 USEPA Approved Plan." Plaintiffs have mischaracterized the content of
25 the letter and therefore Defendants deny the remainder of the allegations of
26 Paragraph 128.

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FIFTH AFFIRMATIVE DEFENSE

143. As a separate and affirmative defense, Defendants are informed and believed, and on that basis allege, that Plaintiffs are not entitled to the relief sought because it conflicts with EPA’s primary jurisdiction over the Malibu Campus.

SIXTH AFFIRMATIVE DEFENSE

144. As a separate and affirmative defense, Defendants are informed and believed, and on that basis allege, that Plaintiffs’ claims and requests for relief are barred, in whole or in part, because EPA is “diligently prosecuting” a proceeding at the Malibu Campus pursuant to 15 U.S.C. § 2619.

SEVENTH AFFIRMATIVE DEFENSE

145. As a separate and affirmative defense, Defendants are informed and believed, and on that basis allege, that the locations of PCBs in excess of 50 ppm alleged by the FAC have been removed, the alleged violations are wholly past, and that therefore Plaintiffs’ claims and requests for relief are barred, in whole or in part, because they are moot.

EIGHTH AFFIRMATIVE DEFENSE

146. As a separate and affirmative defense, Defendants are informed and believe, and on that basis allege, that the FAC and each claim contained therein is barred, in whole or in part, by the doctrine of unclean hands.

NINTH AFFIRMATIVE DEFENSE

147. As a separate and affirmative defense, Defendants are informed and believed, and on that basis allege, that Plaintiffs’ claims and requests for relief are barred, in whole or in part, by the doctrine of laches.

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TENTH AFFIRMATIVE DEFENSE

148. As a separate and affirmative defense, Defendants are informed and believed, and on that basis allege, that Plaintiffs’ claims and requests for relief are barred, in whole or in part, by the doctrine of estoppel.

ELEVENTH AFFIRMATIVE DEFENSE

149. As a separate and affirmative defense, Defendants are informed and believed, and on that basis allege, that to the extent the statute upon which the FAC purports to be based, 15 U.S.C. §§ 2601 *et seq.*, has been violated, any such violation was caused in whole or in part by the acts, wrongs, or omissions of other persons, entities, preexisting conditions, forces, and/or things over which Defendants had no control and for which Defendants are not responsible.

TWELFTH AFFIRMATIVE DEFENSE

150. As a separate and affirmative defense, Defendants are informed and believed, and on that basis allege, that to the extent that Plaintiffs have suffered any harm, such alleged harm was caused in whole or in part by the Plaintiffs and/or by third parties unrelated by contract or otherwise to Defendants.

THIRTEENTH AFFIRMATIVE DEFENSE

151. As a separate and affirmative defense, Defendants are informed and believed, and on that basis allege, that Plaintiffs have failed to state a claim upon which attorneys’ fees and costs can be awarded.

FOURTEENTH AFFIRMATIVE DEFENSE

152. Defendants have insufficient knowledge or information upon which to form a belief as to whether they may have additional, as yet unstated, separate defenses available. Defendants reserve the right to amend this Answer to add, delete, or modify defenses based upon legal theories which

