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

AMERICA UNITES FOR KIDS, and PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY,

Plaintiffs,

v.

SANDRA LYON, IN HER OFFICIAL CAPACITY AS SUPERINTENDENT OF THE SANTA MONICA MALIBU UNIFIED SCHOOL DISTRICT, JAN MAEZ, IN HER OFFICIAL CAPACITY AS ASSOCIATE SUPERINTENDENT AND CHIEF FINANCIAL OFFICER OF THE SANTA MONICA MALIBU UNIFIED SCHOOL DISTRICT, AND

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

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF FOR VIOLATION OF TOXIC SUBSTANCES CONTROL ACT

LAURIE LIEBERMAN, DR. JOSE ESCARCE, CRAIG FOSTER, MARIA LEON-VAZQUEZ, RICHARD TAHVILDARAN-JESSWEIN, OSCAR DE LA TORRE, AND RALPH MECHUR, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE SANTA MONICA MALIBU UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION,

Defendants.

Plaintiffs America Unites for Kids (formerly Malibu Unites) ("American Unites") and Public Employees for Environmental Responsibility ("PEER"), on behalf of themselves and their members, allege as follows:

JURISDICTION, NATURE OF THE ACTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1331 (federal question), 28 U.S.C. §2201 (declaratory judgment), and 15 U.S.C. §2619 (TSCA citizen suit provision).

2. This is a citizen suit under the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §2619, seeking to restrain ongoing violations of TSCA and its implementing regulations by the Defendants, administrators and members of the Board of Education of the Santa Monica Malibu Unified School District ("SMMUSD" or "District"). The ongoing violations of TSCA stem from the continued use at Malibu Middle and High School ("MHS") and Juan Cabrillo Elementary School ("JCES") (collectively "Malibu Schools") of polychlorinated biphenyls ("PCBs") in caulk and other building materials at concentrations of greater than 50 parts per million, other than in a totally enclosed manner, as well the continued use of materials with surfaces having PCB concentrations in excess of 10 micrograms (ug) per 100 square centimeters (cm^2).

3. Plaintiffs seek declaratory and injunctive relief requiring Defendants to cease ongoing violations of TSCA by removing all building materials which violate TSCA and its implementing regulations from the Malibu Schools.

4. Venue is proper under 15 U.S.C. §2619(a)(2) because this is the district in which the alleged violations are ongoing, and in which Defendants have their principal place of business.

5. Plaintiffs will also be filing a Motion for Preliminary Injunction, seeking immediate removal of caulk which has already been determined by laboratory testing to contain PCBs in excess of legal limits, and an application for Expedited Discovery under Fed. R. Civ. P. 34(a)(2) to enter the Malibu Schools and sample and test building materials to determine to what extent illegal levels of PCBs exist in those materials.

6. Plaintiffs gave notice of the Administrator of the Environmental Protection Agency ("EPA") and the Defendants of the alleged violations more than 60 days prior to the filing of this Complaint, in accordance with 15 U.S.C. §2619(b) and 40 C.F.R. 702.62 (1982).

PARTIES AND STANDING

7. Plaintiff America Unites for Kids (formerly Malibu Unites) is a non-profit 501(c)(3) organization incorporated in California with members and supporters who are parents, teachers and community members at the Malibu Schools. The mission of America Unites is to ensure environmental health excellence in schools for all children and those that educate them. Members of America Unites are injured by the ongoing violations of TSCA at the Malibu Schools because they have children who attend school in classrooms with illegal levels of PCBs, which have been found to cause cancer and have other serious health effects, or because they have been forced to withdraw their children from the

Malibu Schools in order to avoid exposure to illegal levels of PCBs, or because they teach in those classrooms.

8. Plaintiff Public Employees for Environmental Responsibility (PEER) is a non-profit 501(c)(3) educational and advocacy organization, incorporated in Washington, D.C., which advocates for public employees concerned with environmental issues, including the "Concerned Malibu/Cabrillo Teachers," a group of 30 teachers and staff at the Malibu Schools. Members of PEER, including teachers and staff and the Malibu Schools, are injured by the ongoing violations of TSCA at the Malibu Schools because they work in classrooms which have illegal levels of PCBs, which have been found to cause cancer and have other serious health effects.

9. Defendant Sandra Lyon is the Superintendent of the SMMUSD, and is engaged in ongoing violations of TSCA by permitting and failing to act to remedy the unauthorized use of materials containing illegal levels of PCBs in the Malibu Schools. She is being sued in her official capacity.

10. Defendant Jan Maez is the Associate Superintendent and Chief Financial Officer of the SMMUSD, and is engaged in ongoing violations of TSCA by permitting and failing to act to remedy the unauthorized use of materials containing illegal levels of PCBs in the Malibu Schools. She is being sued in her official capacity.

11. Defendants Laurie Lieberman, Dr. Jose Escarce, Craig Foster, Maria Leon-Vazquez, Richard Tahvildaran-Jesswein, Oscar De La Torre and Ralph Mechur are members of the SMMUSD Board of Education, and are engaged in ongoing violations of TSCA by permitting and failing to act to remedy the unauthorized use of materials containing illegal levels of PCBs in the Malibu Schools. They are being sued in their official capacities.

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LEGAL BACKGROUND

12. Congress enacted TSCA in 1976, 15 U.S.C. §2601 *et seq.*, to "regulate chemical substances and mixtures which present an unreasonable risk of injury to health or the environment." 15 U.S.C. §2601(b)(2).

13. PCBs are the only chemical which Congress specifically identified for regulation under TSCA. TSCA imposed a near-total ban on PCBs because Congress determined that the chemical and toxicological properties of PCBs posed a significant risk to public health and the environment. 15 U.S.C. §2605(e)(2)(A) states:

> Except as provided under subparagraph (B), effective one year after the effective date of this Act [January 1, 1977] no person may manufacture, process, or distribute in commerce or use any polychlorinated biphenyl in any manner other than in a totally enclosed manner.

14. In TSCA, in subparagraph B referenced in the preceding quotation, Congress gave EPA the authority to promulgate rules granting exceptions to the statute's PCB ban, upon a finding that a particular manufacture or use of non-totally enclosed PCBs "will not present an unreasonable risk of injury to health or the environment." 15 U.S.C. §2605(e)(2)(B); §2605(e)(3)(B).

15. TSCA requires that any EPA exceptions to its PCB prohibition be promulgated in a rulemaking proceeding in accordance with the notice and comment requirements of the Administrative Procedure Act (APA). 15 U.S.C. §2605(e)(4); §2605(c)(2). Any exceptions to TSCA's PCB ban are judicially reviewable under the APA and must be supported by substantial evidence. *E.g.* *Environmental Defense Fund, Inc. v. EPA*, 636 F.2d 1267 (D.C. Cir. 1980).

16. In the rules implementing TSCA's PCB ban ("PCB Regulations"), the EPA Administrator found based on the documented scientific evidence that any use

of items containing PCBs at 50 ppm or greater did pose an unreasonable risk of injury to health. The Administrator found:

> that the manufacture, processing, and distribution in commerce of PCBs at concentrations of 50 ppm or greater and PCB Items with PCB concentrations of 50 ppm or greater present an unreasonable risk of injury to health within the United States. This finding is based upon the well-documented human health and environmental hazard of PCB exposure, the high probability of human and environmental exposure to PCBs and PCB Items from manufacturing, processing, or distribution activities; the potential hazard of PCB exposure posed by the transportation of PCBs or PCB Items within the United States; and the evidence that contamination of the environment by PCBs is spread far beyond the areas where they are used. . . .

40 C.F.R. 761.20 (emphasis added).

17. "PCB Item" is defined in the PCB Regulations to mean "any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs." 40 C.F.R. 761.3 (1999) (emphasis added). "PCB Items" include PCB-containing building materials such as caulk.

18. 40 C.F.R. 761.20(a) expressly provides that, except for certain limited situations not applicable here, "[n]o person may use any PCB, or any PCB item regardless of concentrations, in any manner, other than in a totally enclosed manner within the United States unless authorized under [40 C.F.R. 761.30]." 40 C.F.R. 761.20(a) also refers to 40 C.F.R. 761.3, which excludes from regulation PCB

products containing less than 50 ppm PCBs. None of the exceptions in 40 C.F.R. 761.20(a) apply to PCBs at concentrations at or greater than 50 ppm.

19. Exclusions to the ban on the use of PCBs and PCB Items are also found in 40 C.F.R. 761.30 (2012). *See* 40 C.F.R. 761.20(a). 40 C.F.R. 761.30 (2012) contains exemptions for the use of materials containing PCBs in concentrations of 50 ppm or greater which are not totally enclosed in limited circumstances in uses such as in transformers and natural gas pipeline systems. 40 C.F.R. 761.30 (2012). None of the exceptions permitting the use of materials containing PCBs in concentrations of 50 ppm or greater applies to caulk or other building materials.

20. TSCA defines "totally enclosed manner" as a manner that "will ensure that any exposure of human beings or the environment to a [PCB] will be insignificant as determined by the Administrator rule." 15 U.S.C. §2605(e)(2)(C). In the PCB Regulations, the EPA Administrator found that the exception from the PCB ban for totally enclosed PCB Items applies only to situations where there is zero exposure to humans or the environment. 40 C.F.R. 761.20 provides as follows:

> For purposes of determining which PCB Items are totally enclosed, pursuant to section 6(e)(2)(C) of TSCA, since exposure to such Items may be significant, the Administrator further finds that a totally enclosed manner is a manner which results in no exposure to humans or the environment to PCBs.

(emphasis added). PCBs in caulk and other building materials result in exposure of humans or the environment to PCBs. Thus, the use of PCBs in caulk and other building materials is not a use in a totally enclosed matter under TSCA.

21. EPA has publicly confirmed that caulk and other building materials containing PCBs at levels at or over 50 ppm are not authorized for use under the PCB Regulations and must be removed and disposed of in accordance with those

Regulations. EPA has consistently stated, "[t]he use of PCBs in caulk is not authorized under TSCA's PCB regulations." EPA, Facts about PCBs in Caulk, www.epa.gov/pcbsincaulk/guide/guide-sect1.htm.

22. The PCB Regulations applicable to materials containing 50 ppm or greater PCBs also apply to "PCB Contaminated" materials which contain PCBs at greater than 50 ppm or have surface PCB concentrations of greater than 10 ug per 100 cm^2. 40 C.F.R. 761.1(b)(3) (1999); 761.3.

23. When PCBs are found at levels which violate the PCB Regulations, they must be removed and disposed of in accordance with the PCB disposal regulations. 40 C.F.R. 761.61 (2009); 41 C.F.R. 761.62 (2009).

24. For PCB "Remediation Waste," which includes soil and building materials contaminated with PCBs, the PCB disposal regulations include a site characterization in which materials are sampled to identify the nature and extent of the contamination. 40 C.F.R. 761.61(a)(3). If PCB Remediation Waste is sought to be disposed of in any manner not specifically prescribed by the regulation, an application to do so must be approved by EPA upon a finding that "the method will not pose an unreasonable risk of injury to health or the environment."

25. If PCB "Bulk Product Waste," which includes PCB-containing caulk, is sought to be disposed of in any manner not specifically prescribed by the regulations, an application to do so must be approved by EPA upon a finding that "the method will not pose an unreasonable risk of injury to health or the environment." 40 C.F.R. 761.62(c)(2).

26. There are no regulatory standards for PCB concentrations in indoor air. Rather, the statutory and regulatory scheme is directed at prohibiting the manufacture, distribution and continued use of materials containing PCBs, and providing for their proper storage and disposal. There are no exceptions to the statutory and regulatory prohibitions based on whether or not, or to what extent, PCB-containing materials are causing contamination of indoor air or dust.

27. By informal means, such as posting on its website, EPA has created "suggested public health levels" for PCBs in indoor air in schools. These suggested levels assume that there are not additional PCB exposures above background levels from dust, soil or outdoor air. EPA has cautioned that the "suggested public health levels" should be used with "an appreciation of the uncertainty surrounding the estimates," and that they do not take into account direct ingestion of, or contact with, contaminated building materials. EPA's "PCBs in Caulk – Q & A" http://www.epa.gov/pcbsincaulk/pdf/caulk_faq.pdf, p. 12 ¶¶ 38, 40.

28. The "suggested public health levels" of PCBs for indoor air in schools have no regulatory basis and do not affect the statutory and regulatory scheme under TSCA which prohibits the continued use of any building materials containing PCBs in concentrations of 50 ppm or greater or surface concentrations of greater than 10 ug per 100 cm^2.

29. Apart from having no regulatory basis, the "suggested public health levels" for PCBs in indoor air are not appropriate for use in Malibu because, among other reasons, they do not take into account the following: additional exposure pathways known to exist in Malibu, such as elevated concentrations of PCBs on building surfaces and in dust and outdoor soil; direct contact with (touching) and possible ingestion of materials containing PCBs by children; risks to the unborn children of pregnant teachers (the "suggested public health levels" are based on the age of the children in the classroom); and because they are based on levels of total PCBs and do not take into account exposure to far more toxic, dioxin-like congeners, which have been found in the Malibu Schools.

30. TSCA makes it unlawful to fail to comply with its provisions or any regulation promulgated under the Act. 15 U.S.C. §§ 2614; 2689. TSCA provides for civil penalties for such violations of not more than $25,000 for each day of violation, and for knowing and willful violations, TSCA provides in addition to or in

lieu of the civil penalties, fines of not more than $25,000 for each day of violation, imprisonment for not more than one year, or both. 15 U.S.C. § 2615.

31. TSCA provides for citizen suits against any person or entity alleged to be in violation of TSCA to restrain violations of the Act, which may be filed after at least 60 days' notice of the violation to the alleged violator and the Administrator of EPA. 15 U.S.C. § 2619.

32. On January 12, 2015, Plaintiffs America Unites and PEER served a Notice of Intent to Sue the Defendants for ongoing violations of TSCA and its implementing regulations by the continued use at Malibu Middle and High School and Juan Cabrillo Elementary School of PCBs in caulking materials at concentrations of greater than 50 parts per million other than in a totally enclosed manner, as well the continued use of "PCB-Contaminated" materials. The Notice of Intent to Sue was sent to the Defendants and the EPA by certified mail, return receipt requested. The receipts which were returned to Plaintiffs evidence that the latest that any Defendant or the EPA received notice of Plaintiffs' intent to sue was January 20, 2015. A copy of the Notice is attached hereto as Ex. A.

FACTUAL BACKGROUND

A. Nature and Uses of PCBs

33. Polychlorinated biphenyls (PCBs) belong to the family of man-made organic chemicals known as chlorinated hydrocarbons. PCBs were domestically manufactured from 1929 until their manufacture was banned by TSCA in 1976 because of their toxicity. Due to their non-flammability, chemical stability, high boiling point, and electrical insulating properties, PCBs were used in hundreds of industrial and commercial applications including electrical, heat transfer, and hydraulic equipment; as plasticizers in paints, plastics, caulk, and rubber products; and in carbonless copy paper.

34. PCBs do not readily break down in the environment or the human body, but persist for long periods. They volatilize from liquid and solid PCB-containing materials and cycle between air, water and soil.

35. Although PCBs were no longer manufactured or distributed after 1979, due to their persistent nature, materials containing PCBs remain widespread to this day. Materials such as caulk containing PCBs continue to have high levels of PCBs as long as 60 years after installation, and will continue to emit PCBs into the environment and humans far into the future.

36. In schools built before 1980, PCBs can be found in caulk, window glazing, florescent lighting ballasts, paint, joint sealants, ceiling tile coatings and other building materials.

37. The PCBs used in these products are chemical mixtures made up of 209 varieties of individual chlorinated biphenyl components, known as congeners. Aroclor is a trade name for common commercial mixtures of PCB congeners which were manufactured by Monsanto in the United States, and is the type of PCB product found in the Malibu Schools.

38. PCBs in one material, for example, caulk, can volatilize into the air and can be absorbed by or migrate into surrounding materials, causing wood, brick, concrete and other building materials to become contaminated with PCBs. PCBs from these secondary sources can also volatilize and contaminate the air, dust, and other materials in the building. PCBs in buildings can also volatilize and be deposited into and contaminate surrounding soil. PCBs are not water soluble and have been found miles away from their source.

39. Exposure to PCBs can occur through inhalation, ingestion and dermal contact with PCB-contaminated building materials, air, dust and soil.

40. Caulk and other building materials containing PCBs were used in schools mainly between 1950 and 1979.

B. Health Effects of PCBs

41. According to EPA, PCBs are probable human carcinogens, and cause adverse effects on the immune, reproductive, nervous and endocrine systems. EPA, "Health Effects of PCBs," available at http://www.epa.gov/wastes/hazard/tsd/pcbs/pubs/effects.htm#Other.

42. In 2013, the International Agency for Research on Cancer (IARC) reassessed the carcinogenicity of PCBs. The Working Group, composed of 26 experts from 12 countries, considered more than 70 independent epidemiological studies. The Working Group classified PCBs as Group 1 "known human carcinogens" on the basis of sufficient evidence of carcinogenicity to humans and experimental animals.

43. Exposure to PCBs can cause liver toxicity, immunotoxicity, neurotoxicity, reproductive toxicity (including birth defects), developmental toxicity, endocrine disruption, disrupted insulin function, and changes in thyroid and steroid hormones.

44. PCBs are a risk factor for autism, attention deficit-hyperactivity disorder, lowered IQ and impaired cognitive function.

45. A high level of PCBs in humans is also a risk factor for heart disease, hypertension and diabetes.

46. Exposure to PCBs is also a risk factor for asthma and respiratory diseases.

47. PCBs accumulate in the human body (bioaccumulate) and remain in the body for many years after exposure. Studies have shown that PCBs can last in body fat for 20 years.

48. PCB congener 126 is a dioxin-like chemical which is highly stable and resistant to biodegradation, and the most toxic of all of the PCB congeners. According to EPA's Regional Screening Levels, which attempt to set a guideline for what the EPA predicts is a 1 in 1 million cancer risk and an acceptable risk level for

health effects other than cancer, PCB 126 is orders of magnitude more toxic than other PCB congeners and PCB commercial mixtures (Aroclors).

49. PCBs are one of only 17 chemicals slated for elimination internationally by the Stockholm Convention on Persistent Organic Pollutants, ratified by 150 countries and entered into force in 2004.

C. History of PCBs at the Malibu Schools

50. In 2009 and 2010, the District conducted environmental reviews in connection with planned improvements on the Malibu High School campus. In an environmental impact report, ARCADIS (the District's environmental consultant) reported to the District that the soil in the Middle School Quad (located on the MHS campus) was contaminated with PCBs at over 11 times the California Human Health Screening Levels established by the California Environmental Protection Agency, as well as with pesticides and other toxins.

51. In 2010, ARCADIS concluded that the PCBs and pesticides in the soil were at "concentrations that presented an unacceptable health risk" and proposed a removal action plan. "Removal Action Workplan Malibu Middle and High School Campus Improvements Project," available at http://fip.smmusd.org/downloads/MalibuMHS_Removal.pdf.

52. This plan was carried out during the summer of 2011, while summer school was in session. The District removed 48 truckloads of soil (1,179 cubic yards weighing 1,158 tons) from the Middle School Quad, which, unbeknownst to parents and teachers at the time, was contaminated with PCBs and pesticides.

53. Neither ARCADIS nor the District attempted to determine the source of the PCBs in the soil, or to test building materials to determine if they contained PCBs which may have migrated to nearby soils.

54. In the two year period following the soil removal, three teachers then working at the MHs campus were diagnosed with thyroid cancer - a disease with an expected annual incidence of 1.29 per 10,000 Americans. As of today, at least three

student alumni have also been diagnosed with thyroid cancer. There are also at least 14 known cases of thyroid disease among teachers, and three cases of melanoma or pre-melanoma (a cancer which is also associated with exposure to PCBs) among teachers and former teachers, as well as other serious health problems.

55. In October 2013, several teachers wrote to the District with concerns that medical conditions they suffered may have been caused by the school environment. They pointed to three diagnoses of thyroid cancer among them within the preceding six months, several other cases of thyroid disease, and cases of migraines, rashes, hair loss, respiratory problems and bladder cancer. The teachers asked for environmental testing and for access to testing that had already occurred.

56. Following the public revelation of these medical issues among teachers and of the 2011 removal of toxic soil, in October 2013 a group of Malibu parents hired a local environmental scientist to advocate for immediate testing of all of the school rooms as well comprehensive soil testing. Although no comprehensive soil testing was performed at that time, at the parents' insistence some of the school rooms were tested.

57. Also around that time, some of the classrooms in which teachers had reported illnesses were vacated and those teachers and their students were sent to other classrooms or facilities.

58. The District employed Mark Katchen, with the Phylmar Group, to conduct testing.

59. In the initial testing in November 2013, ten rooms were tested for PCBs in caulk and interior wall paint ("bulk samples"). These rooms were: the Library (in the "Great White Building"); Rooms 1, 2, 5, 8 and 9 in the "Blue Building" or Building E; Room 301 in the "Thresher Building," or Building F; and Rooms 103, 104 and 105 in the Mako Building. Building E is primarily a middle school building; the Library, Building F, the Thresher Building and the Mako Building are used for both middle school and high school classes.

60. An Environmental Task Force formed by the District including parents and teachers selected these rooms because of their proximity to where PCBs had been found in the soil by ARCADIS. The intent was to test the hypothesis that building materials were the source of the PCBs in the soil. The test results appeared to confirm this hypothesis.

61. The Phylmar Group originally calculated a Malibu-specific screening level for cancer from PCBs in indoor air in order to reach a one in one million risk level (*i.e.* there would be one excess cancer out of a million people exposed to PCBs at this level for the amount of time students and teachers spend in classrooms) of 20.2 nanograms (ng) per cubic meter for staff and 63.7 ng per cubic meter for students. (The level for staff was lower because they spend more time in the classrooms). The Task Force agreed to use 20.2 ng as an action-level threshold for the Malibu Schools.

62. However, after receiving some test results of PCBs higher than 20.2 ng per cubic meter of air, the District unilaterally changed the screening level to 100 ng without any input or agreement from the Task Force. Months later, on January 27, 2014, EPA changed the threshold to use 200 ng per cubic meter as a health guideline for indoor air at the Malibu Schools. EPA's suggested threshold was based on a calculation for a school in New York City with significantly different conditions from those in Malibu.

63. All of the caulk and paint samples from these rooms contained some level of PCBs. Four of the ten tested rooms had caulk samples with levels above the regulatory threshold of 50 ppm. The rooms testing above the regulatory limit were Rooms 1, 5 and 8 in Building E ("Blue Building") and the Library.

64. Out of 30 wipe (surface) samples in the ten tested rooms, all had some level of PCBs detected. Four wipe samples had PCBs at levels deemed "PCB Contaminated" under the PCB Regulations, *i.e.* above 10 micrograms per 100 square centimeters. These samples all came from window sills in Rooms 1 and 5 in

Building E ("Blue Building"), Room 301 (Thresher Building) and the Library. All of these rooms with the exception of Room 301 also had levels of PCBs in caulk exceeding the regulatory limit of 50 ppm.

65. In addition, air samples from the same ten rooms were tested for PCBs. All of the air samples showed some level of PCBs well above outdoor background levels. The highest level in these ten rooms was close to 100 ng of PCBs per cubic meter of air.

66. The initial samples were tested for all 209 PCB congeners. Most wipe and bulk samples and many air samples contained PCB 126, the most highly toxic of the PCB congeners.

67. The three teachers with thyroid cancer all taught in classrooms with toxic illegal levels of PCB in caulk or with wipe samples considered "PCB Contaminated" under the PCB Regulations.

68. On November 21, 2013, Steve Armann of EPA Region 9's PCB program wrote to Defendant Sandra Lyon, Superintendent of the District, informing the District that a PCB clean-up plan would be required which included "Removal and disposal of caulk material and any other source(s) of PCBs present at the school."

69. The initial test results indicated that there was some source of PCBs in all of the ten tested rooms in four different buildings in MHS, which was causing PCBs to be found in all of the air and wipe samples at well above background levels. Levels in caulk above regulatory thresholds were found in five out of ten tested rooms (four with over 50 ppm in caulk and one with over 10 ug per 100 cm^2 in a wipe sample). All these results indicated the likelihood of widespread violations of TSCA throughout the Malibu Schools. However, the District has since steadfastly refused to test any more caulk or other building materials in the Malibu Schools to determine the scope and extent of contamination requiring remediation under TSCA.

70. Instead, since December 2013, the District has tested only air and dust in selected rooms throughout the Malibu Schools. It is impossible to determine from air and dust tests whether PCBs in caulk or other materials exceed the regulatory threshold of 50 ppm or greater than 10 ug per 100 cm^2. However, the initial tests of building materials, as well as later independent testing, indicate that illegal PCBs are found throughout the Malibu Schools; in some cases at many times the levels found in the initial testing.

71. The District's testing of air and dust revealing the presence of PCBs in many rooms evidences that there is a source of PCBs in those rooms which could be above TSCA limits, and in fact is highly likely to be above TSCA limits where the same type of caulk in the same building tested above legal limits.

72. In December 2013, the District conducted cleaning and pre-and post-cleaning air and wipe testing in 21 classrooms, including the ten tested previously. These rooms were in the Building E ("Blue Building"), Building F ("Thresher Building"), the Great White Building where the Library is located, the Mako Building, and a faculty office located near the boys' locker room for the gym, which is used by both the Middle and High Schools. Despite the fact that the District's consultant left the windows open in several of the tested rooms, thus diluting the PCBs in the samples, all of the tested rooms showed some level of PCBs in the air significantly in excess of outdoor levels, as well as PCBs in all of the wipe samples, both pre- and post-cleaning, indicating that there is a source of PCBs in all of these 21 rooms in five different buildings in MHS.

73. In February 2014, the District retained the firm Environ International (Environ) as its consultant on chemical contamination issues in the Malibu Schools.

74. On April 25, 2014, Environ submitted to EPA its draft "Comprehensive PCB-Related Building Materials Inspection, Management and Removal Plan for the Santa Monica-Malibu Unified School District" (hereinafter "First Environ Plan") In that Plan, Environ, on behalf of the District, proposed to

remove caulk determined to contain PCBs in concentrations above the regulatory standard of 50 ppm in the Library and rooms 1, 5 and 8 only in connection with the demolition or renovation of the buildings in which those rooms are located, even though no such demolitions or renovations were then scheduled. Environ, again on behalf of the District, proposed to "manage in place" those PCBs and other suspected PCB-containing materials in the interim. Management in place would consist of general school cleaning and repair or removal only of visibly deteriorating caulk.

75. The First Environ Plan provided for sampling of building materials and soils to determine the nature and extent of the presence of PCBs, but only immediately prior to any renovation or demolition the District might conduct at an unknown time in the future. If such sampling prior to renovation or demolition revealed PCBs in excess of regulatory limits, then a site-specific remediation plan would be created at that time to govern removal and appropriate disposal of PCB-containing materials from the buildings about to be renovated or demolished. The First Environ Plan did not provide for any testing of building materials, air, or dust during the "manage in place" period prior to renovation or demolition.

76. On June 4, 2014, EPA rejected the First Environ Plan. EPA asked for the submission within 30 days of two separate plans – one for Malibu High School and one for schools District-wide. EPA demanded a schedule to actually remove caulk containing 50 ppm or greater concentrations of PCBs, and asked for the addition to the plan of periodic air and wipe testing pending removal.

77. On July 3, 2014, Environ submitted on behalf of the District its "Site-Specific, PCB-Related Building Materials Management, Characterization and Remediation Plan" for the Library and Building E rooms 1, 5 and 8" (hereinafter "Second Environ Plan.") Despite EPA's demand for a schedule to actually remove illegal PCBs, the Second Environ Plan continued the proposal in the First Environ Plan to remove and dispose of the illegal caulk and other building materials only

when renovations or demolitions of the buildings occurred at an unknown time in the future. The Second Environ Plan merely added a provision that removal would occur within 15 years, if that were sooner than renovation or demolition, with the possibility of requesting an extension of the 15-year timeframe.

78. The Second Environ Plan provided for no further testing of caulk or other materials, except in conjunction with building renovation or demolition, or in conjunction with caulk removal when more than 15 years had elapsed without renovation or demolition.

79. Prior to such future removal of caulk and other contaminated materials, management in place would take place through cleaning (as with the First Environ Plan), with the addition of air and wipe sampling in selected rooms over a one year period. EPA has never approved or disapproved the Second Environ Plan.

80. On July 17, 2014 Plaintiffs PEER and America Unites (then Malibu Unites) submitted comments on the Second Environ Plan, asserting that the Plan was in violation of TSCA and of EPA's specific directions for the Plan. Along with their comments, PEER and Malibu Unites submitted results from independent testing for PCBs from an EPA-certified laboratory. (First Set of Independent Tests). The first room to be tested in JCES, Room 19, Building F, had 340,000 ppm PCBs in the caulk, thousands of times higher than the highest level of 1,870 ppm previously found in the Library and nearly seven thousand times the regulatory limit of 50 ppm. The woodshop room in the High School Angel Building had caulk in the door frame which tested even higher – at 370,000 ppm PCBs.

81. Ironically, Room 19 in JCES was one to which a sixth grade teacher and her students had been moved during the previous school year to protect them from exposures in a Middle School room which contained caulk only modestly above the 50 ppm legal threshold. The District had touted its "protective" action which in fact moved this teacher and students to a then-untested room with thousands of times more PCBs.

82. The independent testing also showed that caulk in the office (Room No. 722) near the boys' locker room in MHS exceeded regulatory standards at 190 ppm, and dirt samples showed PCB levels as much as 11 times higher than EPA's regional screening guide in MHS Rooms 1, 2 and 5 in Building E (the Blue Building).

83. In sum, the First Set of Independent Tests found three rooms with caulk exceeding legal limits, with two of them in the hundreds of thousands ppm PCBs.

84. PCBs above regulatory limits had now been found in four different buildings at all three Malibu Schools – the Elementary, Middle and High Schools.

85. Over the summer of 2014, Environ carried out its plans to clean and test air and dust in many of the rooms at the Malibu Schools. No caulk or other building materials (bulk samples) were tested.

86. Unlike the earlier testing by the Phylmar Group, Environ did not test all of the component PCB congeners, but only total PCBs. Also, Environ used a detection level of approximately 70 ng per cubic meter for air tests, thus producing numerous "non-detect" results which do not in fact indicate that there were no PCBs in the air. The earlier testing was able to detect PCBs in outdoor air at 1.23 ng per cubic meter.

87. As noted above, the earlier testing found PCBs in indoor air above outdoor background levels in all tested rooms, indicating a source of PCBs in those rooms. The Environ testing avoided such findings by setting the detection level much higher. Environ's detection level of 70 ng per cubic meter was not far below EPA's health guideline of 100 ng per cubic meter for children ages 3 to 6. As noted above, EPA has cautioned that it suggested health guidelines for PCBs in air should be used with "an appreciation of the uncertainty surrounding the estimates."

88. While Environ claimed to "clear" for occupation all of the Malibu School buildings based on its air and dust sampling, its findings did not consider whether or not there were regulatory exceedances in the rooms tested. For example,

Room 19 at JCES, which had 340,000 ppm total PCBs in caulk and 122 ppm PCB 126, more than two million times above the EPA health screening guideline, was cleared for occupancy by elementary school children. Because Environ did not test for individual PCB congeners, it is not known how much of the PCBs which were detected in the air of Room 19 were PCB 126.

89. When rooms tested above EPA guidelines for PCBs in air and dust, Environ simply re-cleaned the rooms until a reading below the EPA guidelines could be obtained. In two rooms, the woodshop room in MHS and an office at JCES, this did not succeed, and those rooms were closed off, though rooms all around them, likely built with the same caulk and other building materials, remained open regardless of whether they had been tested in any form.

90. In a December 2014 Report on its sampling and cleaning efforts over the summer of 2014, Environ reported that it had tested air and dust in 30 to 60% of regularly occupied rooms either pre- or post-cleaning. It stated that the tested rooms were expected to be representative of the non-sampled regularly occupied rooms because they had the same construction history, similar potentially PCB-impacted building materials and similar functions and usage patterns. Thus, Environ concluded that conditions in the rooms not tested were not expected to be different from those that were tested.

91. The same reasoning would apply to rooms where caulk was tested and found to be above legal limits; the same results should be expected in other rooms with the same construction history and similar PCB-impacted building materials, *e.g.* caulk.

92. In many cases, the cleaning conducted by Environ for the District over the summer of 2014 actually increased the levels of PCBs in the air. Cleaning decreased PCB air concentrations only in a small percentage of cases. Environ reported that 21% of air samples collected at the same location both pre- and post-

cleaning had increased levels of PCBs after cleaning, 67% remained the same, and only 12% decreased.

93. Environ reported that the levels of PCBs in dust samples increased post-cleaning in 5% of the samples, decreased in 26% of the samples and 68% stayed non-detect.

94. Thus, the "best management practices" cleaning conducted by the District actually causes PCBs in the air to increase or stay the same most of the time, while removing dust succeeds in reducing PCB levels in dust more often than it raises those levels, although it is not known how temporary the improvement is, *i.e.* how soon PCB-laden dust is re-deposited.

95. Based on repeated testing in other schools such as those in New York City, it has been shown that air and dust levels of PCBs are highly variable over even short periods of time – any particular test only gives a snapshot that could change substantially from day to day.

96. In Environ's testing over the summer of 2014, an area of soil near the woodshop room also exceeded regulatory standards for PCBs in soil. It was fenced off and a soil removal action subsequently took place under the supervision of the California Department of Toxic Substances Control. The source of PCBs in that soil was not determined; however the nearby woodshop room had the highest level of PCBs in caulk found in the independent tests discussed above.

97. On August 12, 2014, Plaintiff America Unites submitted to the District a Memorandum containing "Recommendations for PCB Investigation at Malibu Middle & High" which contained a plan for thorough testing and remediation throughout the Malibu Schools. This plan was never acknowledged or followed.

98. Also on August 12, 2014 at a public gathering, Cindy Crawford and her husband, who were MHS parents, offered to pay for full testing of all of the caulk at the Malibu Schools. The District did not accept their offer.

99. When school re-opened in late August 2014, teachers were threatened with firing if they did not re-occupy rooms in which caulk or wipe samples had tested above regulatory limits.

100. A first grade student whose parents did not want her to attend specialty classes in a room in Building F of JCES which had tested with extremely high levels of PCBs in caulk was threatened with truancy.

101. Although EPA had neither approved nor disapproved the Second Environ Plan to leave PCBs in violation of TSCA in place for 15 years or more, on August 14, 2014, a District official sent an email to an EPA Region 9 PCB official stating that the District would remedy the TSCA violations identified at "four window areas" by June 30, 2015. The District official stated that this was a "voluntary corrective agreement." The email also stated: "Additionally should we find additional TSCA regulated materials, we anticipate voluntary removal of those materials and will coordinate with the EPA regarding any necessary approvals and timing." However, the District did not reference or agree to remove the caulk that had already been found to be in violation of TSCA in independent tests in additional rooms; nor did it provide any plans to "find additional TSCA regulated materials."

102. Also on August 14, 2014, EPA Region 9 Administrator Jared Blumenthal wrote a letter to Sandra Lyon, Superintendent of the District. The letter "acknowledge[d] the District's plan to remove the caulk" from four windows by June 30, 2015. The letter also stated that "EPA concurs with this approach," and that EPA did not recommend "additional testing of caulk unless dust or air samples persistently fail to meet EPA's health-based guidelines." The letter did not address the extremely high levels of PCBs, up to thousands of times the legal limit, that had been identified in independent testing, or that many other rooms where caulk had not been tested were likely to exceed legal limits based on the fact that rooms in the same building, likely built with the same caulk, had exceedances.

103. In September 2014, additional independent test results from an EPA-certified laboratory were submitted to EPA and the District. (Second Set of Independent Tests). Four additional rooms in MHS where caulk had not been previously tested were found to exceed regulatory limits, with two of these in the hundreds of thousands of ppm PCBs.

-- Room 401 in the Leopard Building had 146,000 ppm PCBs.

-- Room 505 in the Angel Building had 231,000 ppm PCBs.

-- Room 205 in the Mako Building had 200 ppm PCBs

-- Room 7 in Building E (Blue Building) had 190 ppm PCBs.

104. The Second Set of Independent Tests also included a piece of caulk which was retrieved from a walkway on the MHS campus after it fell out of a trash bag being hauled by a worker towards the High School parking lot to a car labeled "air duct cleaning." This was apparently part of a surreptitious caulk removal effort which was not reported to the community or to EPA to ensure compliance with protective practices and disposal regulations. This caulk also tested above the legal limit at 58 ppm.

105. At this point, every building on the MHS campus (six buildings) where caulk had been tested and the only building on the JCES campus where caulk had been tested had exceedances of the regulatory limit, indicating the likelihood that many more as yet untested rooms in all of the pre-1980 school buildings had regulatory exceedances.

106. On September 26, 2014, Environ submitted by email a letter to EPA Region 9 PCB official Steve Armann on behalf of the District regarding "Supplemental Removal Information for the Library, Building E – Rooms 1, 5 and 8, and Building G, Room 506 at Malibu High School" (hereinafter "Environ Supplement"). The letter stated that it was intended to supplement and modify the Second Environ Plan. The document clarified that the four window areas referenced in the District's August 14, 2014 email as having TSCA violations were four

windows in the Library, and Rooms 1, 5 and 8. It also stated the District's intention to implement a similar remedy for the interior doorframe in the woodshop room, Room 506. Room 506 was the room identified in independent testing as having 370,000 ppm PCBs in the caulk in the interior door frame, though Environ's letter did not acknowledge this. Instead, the letter noted that wipe samples from the door frame exceeded the regulatory standard of 10 ug per hundred cm^2 even after repairs and additional cleaning.

107. The Environ Supplement stated the District's then current intention to physically remove and replace caulk only from the four window units and one doorframe. It did not extend even to caulk in other windows and doors in the same rooms. However, the letter also committed to the same procedures for other buildings in the District where 50 ppm or greater PCBs are "identified and verified in building materials," within one year of identification and verification. However, the Supplement did not acknowledge or address the findings in the independent tests of caulk exceeding legal limits.

108. In October 2014, America Unites asked the laboratory to re-run the caulk from the two rooms with the highest PCB concentrations (JCES Room 19 and the High School woodshop room) for all of the PCB congeners, and then specifically for congener 126, the most toxic of all of the PCB congeners. The samples had previously been analyzed only for total PCBs. These new tests found the presence of congener 126 at 122 ppm in Juan Cabrillo Room 19 and 57 ppm in the woodshop – up to more than three million times more toxic than the EPA health-based Regional Screening Level which provides for PCB 126 concentrations in the low parts per *trillion* to provide an acceptable level of cancer risk.

109. In December 2014, additional test results were received by America Unites and submitted to EPA and the District showing regulatory exceedances in four more rooms in JCE and two more rooms in the MHS. (Third Set of

Independent Tests). These results were also resubmitted to the Defendants with the Notice of Intent to Sue on January 12, 2015.

- MHS Room 704 had 4,700 ppm PCBs in caulk an a door frame in a hallway
- JCES Room 22 had 74,000 ppm PCBs in interior window caulk
- JCES Room 18 had 110,000 ppm PCBs in interior window caulk
- A JCES office had 710 ppm PCBs in interior window caulk
- JCES Room 23 had 17,000 ppm PCBs in interior window caulk

110. Neither EPA, nor the District, nor its contractor Environ ever responded to the submission of the three sets of independent test results or created a plan to remediate these thirteen additional rooms, six of which had extremely high levels of PCBs in caulk -- four in the hundreds of thousands of ppm, and two in the tens of thousands ppm.

111. At the present time, there are known to be 17 rooms in six different buildings in MHS and two different buildings in JCES with PCBs in caulk above 50 ppm.

112. On October 6, 2014, Plaintiffs PEER and Malibu Unites wrote to Superintendent Lyon asking for clarification of the September 26, 2014 Environ Supplement. Specifically, Plaintiffs asked "what information the District needs to 'identify and verify' the presence of PCBs above TSCA limits," and whether the District would accept and act upon the independent test results that showed at least twelve additional rooms with caulk above TSCA limits. The letter also requested that if those independent test results were considered deficient, the District specify with particularity in what manner they were deficient. Finally, the letter asked if the District would "accept and execute the [August 12, 2014] testing plan provided to them by Malibu Unites and Cindy Crawford to test all three schools? This plan takes one weekend to execute and 10 days to produce preliminary results. If not, please specify with particularity as to why the district will not identify and verify all PCB

sources in the three schools." To date, Plaintiffs have received no response to this letter.

113. On October 31, 2014, EPA approved under 40 C.F.R. 761.61 only the portion of the Second Environ Plan and Environ Supplement regarding the PCBs remaining in the substrate (known as PCB Remediation Waste) after removal of PCB-containing caulk in the four rooms slated for caulk removal by June 2015. EPA approved Environ's plan to seal and encapsulate porous substrates underneath the removed caulk and within one foot of it, and to decontaminate non-porous substrates with a solvent, until renovation or demolition occurs. The District is required to continue best management practices cleaning and periodic air and wipe samples for at least a year and to take further action if exceedances of EPA's health guidelines occur. Full remediation and disposal of the PCB Remediation Waste in accordance with the PCB Regulations would occur at the time of renovation or demolition.

114. Therefore, even with respect to materials in proximity to caulk testing in excess of regulatory limits, the District will not be identifying and removing materials in violation of TSCA prior to renovation or demolition at an unknown time in the future.

115. Over winter break in December 2014 and January 2015, Environ conducted additional air and dust sampling at the Malibu Schools. Again, no caulk or other building materials were tested.

116. As with its testing the previous summer, Environ did not test for the individual congeners of PCBs, and used a detection level of approximately 70 ng per cubic meter for air tests, thus producing numerous "non-detect" results which do not in fact indicate that there were no PCBs in the air.

117. Just before the winter break, from December 16-19, 2014, the SMMUSD sent in a "special crew" to clean and wipe down surfaces in the Malibu Schools. This special cleaning concluded just 24 hours prior to the beginning of

Environ's testing of air and dust for PCBs, which took place between December 20 and 29, 2014.

118. This special cleaning was intended to reduce the amount of PCBs in air and dust in the samples about to be collected, such that those samples would not accurately reflect the exposures that students and teachers actually experienced in the time period since the last testing and cleaning the previous summer of 2014, and to make it appear that EPA's health guidelines for air and dust samples had been met, even if conditions prior to the special cleaning did not meet those guidelines.

119. Despite this pre-cleaning effort, two rooms had dust samples above EPA's threshold – the old gymnasium in MHS and Room 19 in JCES, both of which independent test results had shown to have PCBs above legal limits in the caulk.

120. The District then performed additional cleaning in these two rooms. In the case of JCES Room 19, four samples remained above EPA guidelines, and a second re-cleaning was done, finally obtaining results below the guidelines. The air in this room was not tested until after the second re-cleaning.

121. On January 12, 2015, Plaintiffs served the Notice of Intent to Sue in this case. Return receipts from certified mail evidence that Defendants and EPA received this Notice at the latest by January 20, 2015.

122. On February 27, 2015, the District sent an email message to the parents and staff of the Malibu Schools. The message stated, among other things, that the District had been made aware of third party sampling revealing the existence of caulk above the 50 ppm TSCA threshold. In fact, the District had been aware of independent testing showing extremely high illegal levels of PCBs for over seven months, since July 2014.

123. The District's February 27, 2015 email then claimed that it had not been able to confirm the exact locations where these samples were taken. However, in fact the Plaintiffs had supplied the District with information identifying the rooms and locations where the samples were taken, and the District had reported in

September 2014 that it had sampled air and dust in some of the same rooms that were independently tested, specifically identifying those rooms, revealing that it in fact had no problem identifying the rooms where the independent samples were taken.

124. The District's February 27, 2015 email stated that the District would proceed with "verification sampling of locations from which caulk appears to have been removed and sampled," and apply its removal plan to any PCBs found in excess of the TSCA threshold. However, the District supplied no information as to which rooms it would test or when it would do so, and did not state any intention to test additional caulk or other building materials in pre-1980 buildings at the Malibu Schools to determine the nature and extent of PCB contamination.

125. On March 19, 2015, at a Board of Education meeting, a principal of Environ confirmed that it had retested nine locations where there had been independent testing and had obtained "similar results." He stated that the District would be remediating these areas. However, he did not state where these areas were or when or when or how they would be remediated, or what levels of PCBs were found in that testing.

126. On March 20, 2015, one business day before the running of 60 days from the Notice of Intent to Sue, Plaintiff PEER received by certified mail the District's first response to the Notice. In a letter from the District's counsel, the District claimed that it was unable to investigate, verify and assess the violations alleged in the Notice because it had been unable to verify the exact locations where caulk had been removed in independent testing. The letter indicated that the District was well aware of which rooms were alleged to be in violation of TSCA based on independent testing, but for some unexplained reason, believed that they could only investigate the allegations and address continuing violations of TSCA if they took samples from the exact same spot.

127. In the March 20, 2015 letter, the District did admit that in locations where caulk was missing and it took samples, it obtained results above 50 ppm in the classrooms listed in the Notice. The District stated that it would "abate" caulk above 50 ppm, but did not reveal where this caulk was, or when or how it would do so, or what levels of PCBs were found in the District's sampling. The District did not address Plaintiffs' claims that TSCA violations are widespread in the Malibu Schools in rooms where building materials have not yet been tested, if they were built around the same time with the same or similar building materials as rooms where violations have already been confirmed by testing.

128. At the end of the day on March 23, 2015, after the filing of the original Complaint in this case, the District posted on its website a letter from Environ to EPA Region 9 entitled "Notification of Additional Locations at Malibu High School and Juan Cabrillo Elementary School to be Addressed in Accordance with October 2014 USEPA Approved Plan." In it, Environ informed EPA that it would be removing caulk from additional areas (in addition to the five areas the District had previously committed to remediating by June 30, 2015) within one year of validation of the sampling results, but that it might request an extension of that time. Attached to the letter was a chart showing the sampling results, buried in over 250 pages of attachments. The chart showed that the independent test results for nine rooms were not only confirmed, but the District actually got much higher results, up to 570,000 ppm, an amount unprecedented in any school in the United States. All four rooms tested in one building in JCES had PCBs in caulk in the hundreds of thousands of ppm, and five rooms in MHS plus a hallway had legal exceedances, two of them in the hundreds of thousands of ppm.

129. The District's test results showed the following. Some rooms had several caulk samples taken. All of the JCES samples were in Building F.

JCES Room 18 (Computer classroom)	290,000 ppm
	270,000 ppm

	230,000 ppm
JCES Room 19 (Music/Overflow Room)	390,000 ppm
	570,000 ppm
	560,000 ppm
JCES Room 22 (Resource (special needs) classroom)	
	280,000 ppm
	470,000 ppm
	220,000 ppm
	130,000 ppm
JCES Room 23 (Science classroom)	350,000 ppm
	440,000 ppm
	280,000 ppm
	130,000 ppm
MHS Room 3 (Building E classroom)	1,600 ppm
	1,800 ppm
MHS Room 7 (Building E classroom)	330 ppm
	1,800 ppm
MHS Room 505 (Building G art classroom)	220,000 ppm
MHS Room 401 (Building I classroom)	190,000 ppm
MHS Room 704 (Old gym faculty office)	4,500 ppm
	1,800 ppm
	1,500 ppm
MHS Room 704 Hallway	3,800 ppm

130. Despite knowing of these results at the December 19, 2015 Board of Education meeting, the District did not disclose these test results, and held to its position that no more caulk at the Malibu Schools would be tested.

131. As of February 2015, the District had spent or committed to spend approximately four million dollars in connection with the contamination issues at the Malibu Schools. This money was spent for environmental consultants, lawyers, and public relations consultants, without ever remedying the ongoing violations of TSCA by removing any caulk or other building materials with illegal levels of PCBs.

132. District and independent tests of a relatively small percentage of the rooms at the Malibu Schools have demonstrated the illegal continued use of caulk above legal limits in 17 rooms in ten different buildings, all built before 1979.

133. District testing of air and dust has also demonstrated the presence of PCBs at well above background levels in the environments of many more rooms at the Malibu Schools, which indicates the presence of PCBs in the caulk and other building materials in those rooms.

134. Caulk and other building materials in the same buildings or buildings built during the same time period with the same or similar building materials as those where illegal levels of PCBs have been found also contain illegal levels of PCBs.

CAUSE OF ACTION

135. Plaintiffs re-allege and incorporates all of the preceding paragraphs.

136. By continuing an unauthorized use and failing to remove and properly dispose of building materials with PCBs at or above 50 ppm or with surface concentrations above 10 ug per 100 cm^2 at the Malibu Schools, the Defendants have violated TSCA, 15 U.S.C. 2605(e)(2) and 15 USC §2614(1); and its implementing regulation at 40 CFR §761.20(a).

137. Plaintiffs will suffer irreparable injury and there is no adequate remedy at law unless preliminary and permanent injunctive is granted.

138. Plaintiffs are authorized to bring this action to restrain a violation of TSCA, and the Court is authorized to provide declaratory and injunctive relief by 15 U.S.C. § 2619.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Declare that Defendants have violated TSCA by continuing the unauthorized use of and failing to remove building materials containing 50 ppm or more PCBs or which have surface concentrations of PCBs above 10 ug per 100 cm^2 from the Malibu Schools;

B. Issue preliminary and permanent injunctive relief requiring Defendants to (i) cease all use of caulk and other materials at the Malibu Schools containing PCBs at concentrations of 50 ppm or greater or having surface concentrations of PCBs above 10 ug per 100 cm^2, including all caulk of like kind and age to caulk which has tested above the regulatory limits; (ii) promptly remove all building materials containing 50 ppm or more PCBs or which have surface concentrations of PCBs above 10 ug per 100 cm^2 from the Malibu Schools, including caulk of like kind and age to caulk which has tested above the regulatory limits; and (iii) dispose of such materials in accordance with the TSCA Regulations;

C. Award Plaintiffs costs, expert witness fees, testing costs, and attorneys' fees in accordance with 15 U.S.C. §2619(e); and

D. An award of any other relief the Court deems appropriate.

Dated: April 1, 2015

NAGLER & ASSOCIATES

By: _____
Charles Avrith
Attorneys for Plaintiffs America Unites for Kids and Public Employees for Environmental Responsibility

Dated: April 1, 2015

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