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7

8 **UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
10 **EASTERN DIVISION**

11 CALMAT CO. dba VULCAN
MATERIALS COMPANY,
12 WESTERN DIVISION, a Delaware
corporation,

13 Plaintiff,

14 v.

15 SAN GABRIEL VALLEY GUN
16 CLUB, a non-profit California
corporation, and DOES 1 through 10,
17 inclusive,

18 Defendants.

19 AND RELATED COUNTER-CLAIM.

CASE NO: EDCV08-01198 JLQ(OPx)
**DEFENDANT’S EVIDENTIARY
OBJECTIONS RE: PLAINTIFF’S
STATEMENT OF GENUINE ISSUES
AND ADDITIONAL MATERIAL
FACTS IN SUPPORT OF
OPPOSITION TO THE GUN CLUB’S
MOTION FOR SUMMARY
JUDGMENT, OR IN THE
ALTERNATIVE, SUMMARY
JUDGMENT AS TO PORTIONS OF
PLAINTIFF’S COMPLAINT**

Hon. Justin L. Quackenbush

Date: June 27, 2011

Time: 10:00 AM

Courtroom: 1

21 Defendant San Gabriel Valley Gun Club (the “Club”) hereby submits its
22 evidentiary objections regarding certain supporting evidence relied on in Plaintiff
23 Calmat Company dba Vulcan Materials Company, Western Division’s (“Vulcan”)
24 Statement of Genuine Issues and Additional Material Facts In Support of
25 Opposition to the Gun Club’s Motion for Summary Judgment, or in the Alternative,
26 Summary Judgment as to Portions of Plaintiff’s Complaint (“Stmt.”). The factual
27 assertions made by Vulcan and discussed herein should be stricken or otherwise
28 disregarded by the Court for the reasons set forth below.

Authority for Objections

The following authorities are the basis for the evidentiary objections set out below:

Fed. R. Evid. 401 (“FRE 401”) states that “‘relevant’ evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”

Fed. R. Evid 402 (“FRE 402”) states that evidence which is not relevant is not admissible.

Fed. R. Evid. 602 (“FRE 602”) states “[a] witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.”

Federal Rule of Civil Procedure (“FRCP”) 56(c)(4) contains a similar foundational requirement: “An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.”

Fed. R. Evid. 701 (“FRE 701”) states that lay opinion is not admissible when it is based on specialized knowledge within the scope of Rule 702, which applies to expert testimony. Legal knowledge is such specialized knowledge, but “Matters of law are for the court’s determination, not that of an expert witness” *United States v. Boulware*, 558 F.3d 971, 975 (9th Cir. 2009) (citing *Aguilar v. International Longshoreman’s Union*, 966 F.2d 443, 447 (9th Cir. 1992)). Therefore, testimony which requires a legal conclusion is inadmissible, whether given by a layperson or an expert.

Fed. R. Evid. 801, 802 (“FRE 801, 802”) state that “‘[h]earsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted” and that

1 “[h]earsay is not admissible except as provided by these rules or by other rules
2 prescribed by the Supreme Court pursuant to statutory authority or by Act of
3 Congress.” Fed. R. Evid. 801(c), 802.

4

5 **Objections to Evidence Submitted to Support Vulcan’s Dispute of the**
6 **Club’s Proposed Uncontroverted Facts, Stmt. at 2-32.**

7 **Defendant’s Proposed Uncontroverted Fact 4**

8 The condition of the Leased Property prior to 1/1/47 is unknown.

9 Vulcan’s Response to the First Set of Requests for Production of Documents
10 (“Plf’s. Resp. to POD1”) at 10:12-28 to 11:1-2. (Declaration of Scott M. Franklin
11 [“SMF Dec.”] Ex. A).

12 **Vulcan’s Response:**

13 Disputed. Ehrlich Decl., Ex. P (Bock Depo.), at 24:8-25:10. This “fact” is
14 also not supported by the evidence cited by the Gun Club.

15 **Evidentiary Objection to the Response:**

16 The material cited (pages 24:8-25:10) has nothing to do with the assertion at
17 issue; based on the information found in pages 25:8-26:10 of the cited material, it
18 appears that Vulcan intended to cite 25:8-26:10 (and if not, the evidence fails to
19 support or address a fact, and is thus objectionable under Federal Rules of Civil
20 Procedure [“FRCP”] Rule 56(e). The Club will presume Vulcan intended to cite to
21 25:8-26:10.

22 The evidence cited to is plainly hearsay on the issue at hand (the condition of
23 certain property before 1947) and outside the personal knowledge of the person
24 stating the hearsay. Indeed, the grounds for objecting under Rules 602 and 802 are
25 clear on the face of the testimony:

26 **Q** . . . do you have an understanding as to what the leased property was
27 used for before the Gun Club leased it? **A** As I recall - - as I recall
from what I’ve heard and heard about the Gun Club and what
28 *happened before that, before it became - - it was a bean field* **Q** So
you heard that, I guess prior to when the Gun Club opened in ‘46, it

1 was essentially farm land for these beans? A Yeah. They *called it*
2 bean field.
3 (Ehrlich Decl., Ex. P (Bock Depo.), at 25:8-26:10) (italics added). Further, Bock
4 states that he became aware of the Club in 1958, when he first moved here. (*Id.* at
5 22:4-7). Thus, he obviously has no personal knowledge of the condition or use of
6 the real property at issue in this case (the “Property”) as of 1946-47. For these
7 reasons, the Club’s evidentiary objection should be sustained and the “evidence” at
8 issue should not be considered by the Court.

9
10 **Defendant’s Proposed Uncontroverted Fact 5**

11 There is evidence that the Leased Property was used as a shooting range
12 prior to a lease being in place.

13 Letter of 1/14/47 (VUL01235; Vulcan’s Response to the Third Set of
14 Requests for Admission propounded by the Club (“Plf’s. Resp. to RFA3”) at 10:1-9.
15 (SMF Dec. Ex. C).

16 **Vulcan’s Response:**

17 Disputed and unsupported by competent and admissible evidence. *See*
18 Evidentiary Objections to Franklin Declaration; Ehrlich Decl., Ex. P (Bock
19 Depo.), at 24:8-25:10. This “fact” is also not supported by the evidence cited by the
20 Gun Club.

21 **Evidentiary Objection to the Response:**

22 The material cited (pages 24:8-25:10) has nothing to do with the assertion at
23 issue; based on the information found in pages 25:8-26:10 of the cited material, it
24 appears that Vulcan intended to cite 25:8-26:10 (and if not, the evidence fails to
25 support or address a fact, and is thus objectionable under FRCP 56(e). The Club
26 will presume Vulcan intended to cite to 25:8-26:10.

27 The evidence cited to is hearsay on the issue at hand (the condition of certain
28 property before 1947) and outside the personal knowledge of the person stating the

1 hearsay. Indeed, the grounds for objecting under Rules 602 and 802 are clear on the
2 face of the testimony:

3 **Q** . . . do you have an understanding as to what the leased property was
4 used for before the Gun Club leased it? **A** As I recall - - as I recall
5 *from what I've heard* and heard about the Gun Club and what
6 happened before that, before it became - - it was a bean field **Q** So
7 *you heard* that, I guess prior to when the Gun Club opened in '46, it
8 was essentially farm land for these beans? **A** Yeah. They *called it*
9 bean field.

10 (Ehrlich Decl., Ex. P (Bock Depo.), at 25:8-26:10) (italics added). Further, Bock
11 states that he became aware of the Club in 1958, when he first moved here. (*Id.* at
12 22:4-7). Thus, he obviously has no personal knowledge of the condition or use of
13 the Property as of 1946-47. Finally, the earliest lease/license for use of the Property
14 by the Club is dated January 1, 1947; the hearsay testimony at issue refers to the
15 condition of the Property prior to 1946. Thus, even if the presence of bean fields at
16 the property somehow precluded the possibility of the Property being used as
17 shooting range (which is doubtful), the hearsay testimony cited states the Club
18 opened in '46, thus leaving some period between the opening of the Club and the
19 first lease/license (effective January 1, 1947) where the Club was "open" and thus
20 being used as a shooting Range. For these reasons, the Club's evidentiary
21 objection should be sustained and the "evidence" at issue should not be considered
22 by the Court.

23
24 **Defendant's Proposed Uncontroverted Fact 53**

25 No regulator has been involved with testing on the Site, or has indicated it
26 might require Vulcan to clean up the Site.

27 Vulcan's Response to the First Set of Interrogatories propounded by the Club
28 ("Plf's. Resp. to ROGS1") at 8:21-25 to 9:1-9. (SMF Dec. Ex. G).

Vulcan's Response:

Disputed and unsupported by the evidence cited. *See*, Ehrlich Decl., Ex. Y.

Evidentiary Objection to the Response:

1 Exhibit Y is a series of seven letters between Vulcan’s counsel and the
 2 Club’s counsel that allege various contract responsibilities and supposed violations
 3 of law. What is *not* in the letters, however, is a reference to either a “regulator
 4 ha[ving] been involved with testing on the Site,” or a regulator “indicating it might
 5 require Vulcan to clean up the Site.” Whether or not Vulcan has asserted in the past
 6 that the Club has violated a contract or environmental law is simply irrelevant to
 7 disproving the fact(s) at issue. That is, Vulcan’s assertions in the letter do not have
 8 “any tendency to make the existence of any fact that is of consequence to the
 9 determination of the action (i.e., regulatory involvement or indication by a regulator
 10 that it might require Vulcan to cleanup the Property) more probable or less probable
 11 than it would be without the evidence.” Fed. R. Evid. 401. Because the “evidence”
 12 at is not relevant, it is not admissible, and should not be considered by this Court.

13
 14 **Objections to Evidence Submitted to Support Vulcan’s Additional**
 15 **Material, Stmt. at 32-49**

16 **Vulcan’s Additional Material Fact No. 2**

17 From 1947 through 2006 Vulcan, or its predecessor entities, leased a portion
 18 of its property immediately adjacent to the quarry (the “Property”) to the Gun Club
 19 for use as a pistol, rifle, and skeet shooting range (the remaining portion of the Gun
 20 Club's range was leased from the Army Corps of Engineers (the “Corps”) and is not
 21 part of this litigation).

22 Linton Decl., ¶ 3; Kroeger Decl., Ex. K (Gore depo.) at 16:22-18:4, Ex. 3; Ex.
 23 P (Bock depo.) at 19:19-22:3.

24 **Evidentiary Objections:**

25 **FRE 602, FRCP 56(c)(4): Lack of Foundation:** The cited portion of the
 26 Linton Decl. does not state how Linton acquired the personal knowledge that would
 27 serve as the foundation for this purported fact. The cited paragraph refers to a series
 28 of written leases, but does not provide a foundation because it does not state how

1 Linton acquired his purported knowledge of the period those leases was in effect or
2 the legal effect of those agreements. The Gore and Bock Deps. are not cited for this
3 issue, thus they provide no evidence to support the assertion at issue. Finally, as
4 discussed above, any testimony Bock gave on this issue is automatically hearsay on
5 issues before 1958. Bock states that he became aware of the Club in 1958, when he
6 first moved here. (Ehrlich Decl., Ex. P (Bock Depo.) at 22:4-7). Finally, as
7 whether or not the Property was leased at a certain time under the written
8 leases/licenses, that is a question of law. Therefore, the offered evidence is
9 inadmissible.

10

11 **Vulcan’s Additional Material Fact No. 3**

12 Former Gun Club president, Herb Bock testified that “before the Gun Club
13 leased” property from Vulcan’s predecessors “it was a bean field” or “farm lands”
14 for beans.

15 Ehrlich Decl., Ex. P (Bock Depo.), at 24:8-25:10.

16 **Evidentiary Objections:**

17 **Cited testimony does not support fact.** The material cited (pages 24:8-
18 25:10) has nothing to do with the assertion at issue; based on the information found
19 in pages 25:8-26:10 of the cited material, it is clear that Vulcan intended to cite
20 25:8-26:10 (and if not, the evidence fails to support or address a fact, and is thus
21 objectionable under FRCP 56(e)). The Club will presume Vulcan intended to cite
22 to 25:8-26:10.

23 **FRE 602: Lack of Foundation / Personal Knowledge, FRE 801, 802:**

24 **Hearsay:** The evidence cited to is hearsay on the issue at hand (the condition of
25 certain property before 1947) and outside the personal knowledge of the person
26 stating the hearsay. Indeed, the grounds for objecting under Rules 602 and 802 are
27 clear on the face of the testimony:

28 Q . . . do you have an understanding as to what the leased property was

1 used for before the Gun Club leased it? A As I recall - - as I recall
2 *from what I've heard* and heard about the Gun Club and what
3 *happened before that, before it became - - it was a bean field* Q So
4 *you heard* that, I guess prior to when the Gun Club opened in '46, it
5 was essentially farm land for these beans? A Yeah. They *called it*
6 bean field.

7 (Ehrlich Decl., Ex. P (Bock Depo.), at 25:8-26:10) (italics added). Further, Bock
8 states that he became aware of the Club in 1958, when he first moved here. (*Id.* at
9 22:4-7). Thus, he obviously has no personal knowledge of the condition or use of
10 the Property as of 1946-47 (i.e., before a license or lease was in place). For these
11 reasons, the Club's evidentiary objection should be sustained and the evidence at
12 issue should not be considered by the Court.

13 **Vulcan's Additional Material Fact No. 5**

14 The operative lease on the date the Gun Club vacated the Property is dated
15 May 20, 1992 (the "Lease").

16 Linton Decl., ¶ 14, Exs. H-I.

17 **Evidentiary Objections:**

18 **FRE 701: Inadmissible Lay Legal Conclusion.** Whether or not a lease is
19 "operative" at a given time is question of contractual interpretation, which is a
20 question of law, not fact.

21 **Vulcan's Additional Material Fact No. 7**

22 During the time the Gun Club occupied the Property, the club patrons'
23 shooting activities resulted in the deposit of bullet fragments, debris and waste,
24 including hazardous waste, being deposited throughout the Property, including lead,
25 which is a "hazardous substance" under the law.

26 Anderson Decl., ¶¶ 4-7; Linton Decl., ¶ 17; Ehrlich Decl., Ex. L (Armato
27 depo.) at Ex. 17, Ex. S (Hoenig depo.) at 139:22-141:25, Ex. T (Peddicord Report)
28 at pp. 5-6.

1 **Evidentiary Objections:**

2 **FRE 701: Inadmissible Lay Legal Conclusion, Vague and ambiguous.**

3 The terms “debris” and “waste” are vague and ambiguous and subject to multiple
4 reasonable interpretations. Whether or not a certain material is a hazardous waste
5 or hazardous substance under any law is a question of law, and lay testimony on the
6 subject is inadmissible.

7
8 **Vulcan’s Additional Material Fact No. 8**

9 Under the Lease, the Gun Club agreed to clean up all of its debris and rubbish
10 at its own cost, including any bullet fragments, upon Lease termination before
11 returning the Property to Vulcan.

12 Linton Decl., Ex. H at ¶¶ 9-10.

13 **Evidentiary Objections:**

14 **FRE 701: Legal Conclusion.** What the Club was required to do before
15 returning the Property to Vulcan requires contractual interpretation, which is a
16 question of law, not fact. Lay testimony on this subject is inadmissible.

17
18 **Vulcan’s Additional Material Fact No. 11**

19 John Armato, a former Gun Club president, testified on behalf of the Gun
20 Club, and asserted that the Gun Club Board of Directors believed that, under the
21 Lease, the Gun Club had the obligation to return the property to a "pristine
22 condition."

23 Ehrlich Decl., Ex. L (Armato depo.) at 133:3-9.

24 **Evidentiary Objections:**

25 **Fact Not Supported by Cited Testimony, FRE 401, 402: Irrelevant.** The
26 cited testimony is: "Q: During these discussions [of the Club Board] was the
27 concept ever raised that the Gun Club had the obligation to return the property to a
28 pristine condition? A: Yeah. It was all part of the general conversation . . ." This

1 testimony shows merely that the Club Board considered the concept of being
2 required to return the property in pristine condition, which is a far cry from
3 believing they had the obligation.

4 Furthermore, it is irrelevant what Armato or the other directors thought the
5 Club's duties were or possibly might have been under a lease (a question of law),
6 especially *the* Lease, which makes no mention of "pristine condition."

7
8 **Vulcan's Additional Material Fact No. 12**

9 When the Gun Club ultimately vacated the Property, the Property was in
10 extremely poor condition, and overrun with bullet shell casings and hazardous
11 materials, including lead.

12 Anderson Decl., ¶¶ 4-7; Linton Decl., ¶ 17; Ehrlich Decl., Ex. S (Hoenig
13 depo.) at 141:21-25, Ex. T (Peddicord Report), Ex. W (David Liu Expert Report).

14 **Evidentiary Objections:**

15 **Vague and Ambiguous, FRE 701: Inadmissible Lay Legal Opinion.** The
16 phrase "extremely poor condition" and the term "overrun" are subjective, and
17 providing a response to a material fact using those terms/phrases would
18 impermissibly require the Club to speculate in formulating its response. Whether or
19 not a certain material is a hazardous material under any law is a question of law, so
20 the lay testimony cited in support of this portion of the fact is inadmissible.

21 Anderson's cited testimony is essentially equivalent to this purported fact, a
22 vague conclusion. The other citations do not directly support this purported fact.
23 Linton's cited testimony is to the effect that Vulcan has preserved the Site in the
24 same condition it was in when the Club vacated it. Hoenig's testimony is simply that
25 lead could be seen on the berms with the naked eye. Peddicord's 29-page report and
26 Liu's 7-page report (cited in their entirety with no pin cite) confirm that there are
27 casings and spent bullets on the Site.

28

1 **Vulcan's Additional Material Fact No. 13**

2 There are hundreds of thousands, if not more, of ammunition shell casings
3 and bullets on the ground of the various former shooting ranges in between the
4 firing line and the impact area. The Property is strewn with casings and bullets from
5 a variety of different caliber firearms, including shot gun casings and other larger
6 ordinance. A large majority of these bullets are made of lead.

7 Anderson Decl., ¶¶ 4-7; Linton Decl., ¶ 17; Ehrlich Decl., Ex. S (Hoenig
8 depo.) at 141:21-25, Ex. T (Peddicord Report), Ex. W (David Liu Expert Report).

9 **Evidentiary Objections:**

10 **FRE 602, FRCP 56(c)(4): Lacks Foundation.** This purported fact is quoted
11 from Anderson's Decl., but that source contains no information on how Anderson
12 developed his conclusion that there are "hundreds of thousands" of shell casings
13 and bullets. It seems unlikely that Anderson could make that estimate by just
14 observing the Site; some sort of calculation procedure would be required. The
15 estimate of "hundreds of thousands" is not supported by any of the other cited
16 sources. Once again, Vulcan cites to the entirety of the Peddicord and Liu reports;
17 the lack of a pin cite makes it difficult to check whether these reports directly
18 support the purported fact.

19

20 **Vulcan's Additional Material Fact No. 14**

21 The former gun range also remains littered with other metals, including brass
22 and copper.

23 Ehrlich Decl., Ex. W (David Liu Expert Report).

24 **Evidentiary Objections:**

25 **Vague and Ambiguous.** The term "littered" is subjective, and "other metals"
26 is so broad as to be vague. Providing a response to a purported fact using those
27 terms would impermissibly require the Club to speculate in formulating its
28 response.

1 **Vulcan's Additional Material Fact No. 15**

2 A recent inspection of the earthen soil berm along the face of the hill
3 revealed potentially hundreds of thousands, if not more, of bullets, bullet fragments,
4 and shell casings readily visible from the face of the hill.

5 Anderson Decl., ¶¶ 4-7; Linton Decl., ¶ 17; Ehrlich Decl., Ex. S (Hoenig
6 depo.) at 141:21-25, Ex. T (Peddicord Report), Ex. W (David Liu Expert Report).

7 **Evidentiary Objections:**

8 **FRE 602, FRCP 56(c)(4): Lacks Foundation.** This purported fact is quoted
9 from Anderson's Decl., but that source contains no information on how Anderson
10 developed his conclusion that there are "hundreds of thousands" of shell casings
11 and bullets. It seems unlikely that Anderson could make that estimate by just
12 observing the Site; some sort of calculation procedure would be required. The
13 estimate of "hundreds of thousands" is not supported by any of the other cited
14 sources.

15

16 **Vulcan's Additional Material Fact No. 16**

17 Armato testified that, "[the Gun Club was] aware what the obligations were
18 according to the [Lease], but [the Gun Club had to consider] what can we get done
19 with what we have? That was always the question was the fact they we were so
20 limited in our resources."

21 Ehrlich Decl., Ex. L (Armato depo.) at 132:14-133:9; see also id. at 73:4-
22 74:24, 140:1-12.

23 **Evidentiary Objections:**

24 **FRE 401, 402: Lack of Relevance, FRE 602: Lack of Personal**
25 **Knowledge, FRE 701: Inadmissible Lay Testimony on Legal Conclusion.** It is
26 irrelevant what Armato might have understood the Club's obligation were under the
27 Lease in hindsight; aside from the fact the issue of contract interpretation is a
28 question of law, Armato was not involved in the negotiation of the relevant lease, so

1 he cannot give testimony as to contractual intent based on personal knowledge.

2 Specifically, the cited testimony clearly refers to Armato looking at an
3 executed lease *in response* to Vulcan having requested remediation of the Property.
4 Further, Armato expressly stated he had no role in negotiating any lease for the
5 Property. (Armato Dep. at 68:11-13).

6

7 **Vulcan's Additional Material Fact No. 17**

8 When asked if the Gun Club ever discussed its responsibility to clean up the
9 hazardous materials on the Property, Armato testified that, "[the board of the Gun
10 Club] was saying it was eating into a lot of the funds, and our concern was that we
11 would only be able to do what we could do until we ran out of money. We had a
12 commitment on that. We had started it. It was being hauled out along with the lead
13 shot that was taken from the skeet fields, and we were quickly approaching a point
14 where we were just - - we were going broke."

15 Ehrlich Decl., Ex. L (Armato depo.) at 135:7-20.

16 **Evidentiary Objections:**

17 **FRE 401, 402: Lacks Relevance, FRE 602: Lack of Foundation /**

18 **Personal Knowledge, FRE 701: Inadmissible Lay Opinion on a Legal Issue.** It
19 is irrelevant what Armato thought the Club's responsibilities were under the Lease
20 in hindsight (if that is even what his testimony was intended to state, which the
21 Club denies); aside from the fact the issue of contract interpretation is a question of
22 law, Armato was not involved in the negotiation of the relevant lease, so he cannot
23 give testimony as to contractual intent based on personal knowledge.

24 Specifically, the cited testimony clearly refers to Armato looking an executed
25 lease *in response* to Vulcan having requested remediation of the Property. Further,
26 Armato expressly stated he had no role in negotiating any lease for the Property.
27 (Armato Depo. at 68:11-13).

28

1 **Vulcan's Additional Material Fact No. 18**

2 Armato testified that, even though environmental test results identified heavy
3 metals on the Property, ". . . it was becoming a moot question anyway because [the
4 Gun Club] [was] running out of money."

5 Ehrlich Decl., Ex. L (Armato depo.) at 136:14-21.

6 **Evidentiary Objections:**

7 **FRE 602: Lacks Foundation / Personal Knowledge.** Vulcan's selective
8 quotation in this purported fact is misleading: the testimony given by Armato was
9 that he believed there was environmental testing showing heavy metals on the
10 Property, but that resolving where the heavy metal came from (Vulcan or the Club)
11 would become moot because the Club was running out of money ("the question of
12 heavy metals was such that was that material already in the tailings when it was
13 dumped, or how did we [i.e., the Club] put it in[.]") (Armato Dep. at 136:1-21).
14 Armato's cited (or any other) testimony does not establish his knowledge of test
15 results.

16

17 **Vulcan's Additional Material Fact No. 19**

18 Armato testified that, even if the Gun Club was required to clean up the
19 Property before vacating it, it never took that obligation into real consideration
20 because it never planned on leaving the Property; it believed the Lease would never
21 be terminated.

22 Ehrlich Decl., Ex. M (Phillips depo.) at 39:14-40:10.

23 **Evidentiary Objections:**

24 **Objection: Fact Not Supported by Cited Testimony, FRE 401, 402:**

25 **Relevance, FRE 602: Lack of Foundation/Personal Knowledge:** The document
26 cited is the transcript of the Deposition of Rick Phillips, and contains Phillips' own
27 opinions and recollections. It does not refer to any opinions or recollections
28 obtained from Armato – and those would be hearsay. Nothing in the cited portion of

1 Phillips' testimony supports the assertion that the Club might be "required" to clean
2 up the Property. There is no foundation in Phillips testimony as to how Phillips
3 knew whether the Club "took that obligation into real consideration." In addition,
4 nothing in Armato's deposition supports the statement that the Club did not take any
5 alleged cleanup obligation "into real consideration."

6
7 **Vulcan's Additional Material Fact No. 21**

8 Due to the current condition of the Property, Vulcan cannot use the Property
9 or lease it to another tenant. Vulcan will not be able to re-lease the Property until
10 the Gun Club's debris has been cleaned and the Property has been remediated.

11 Anderson ¶ 10; Linton Decl., ¶¶ 17- 18.

12 **Evidentiary Objections:**

13 **FRE 602, FRCP 56(c)(4): Lacks Foundation / Personal Knowledge.** The
14 cited portions of Linton's declaration has nothing to do with the assertion that
15 Vulcan cannot use the Property or lease it to another tenant.

16 Anderson's Decl. fails to provide a sufficient foundation for this purported
17 fact. Anderson does not state that Vulcan has even attempted to lease the Property
18 (let alone that such attempt was thwarted solely because of the presence of Spent
19 Ammunition on the Property), or that he is an expert in real estate qualified to
20 determine that the Property cannot be leased. Indeed, Anderson does not even state
21 a basis for why Vulcan allegedly can't use the Property, probably because the
22 presence of Spent Ammunition on a portion of the Property simply does not prevent
23 use.

24
25 **Vulcan's Additional Material Fact No. 22**

26 During his deposition, Tom Jenkins expressed no memory of three
27 memoranda attached as Exhibit V to the Franklin Declaration or any of the matters
28 discussed therein.

1 Ehrlich Decl., Ex. N. (Jenkins depo), 48:11-53:24

2 **Evidentiary Objections:**

3 **FRE 401, 402: Irrelevant.** Vulcan does not cite this fact in the Opposition,
4 nor does the fact itself indicate how it could possibly be relevant. Tom Jenkins' lack
5 of memory of three memoranda that he wrote, which were produced by Vulcan,
6 does not put the authenticity of those memoranda into question.

7
8 **Vulcan's Additional Material Fact No. 23**

9 During his deposition, Mr. Jenkins testified that the reference to the "lead
10 problem" in the memoranda attached as Exhibit V referred to the leased property.
11 Instead he testified that "he heard in the media that it was being brought up as a
12 environmental problem and I wanted to point it out to management that when they
13 were considering the lease, they consider that."

14 Ehrlich Decl., Ex. N. (Jenkins depo), 48:11-53:24

15 **Evidentiary Objections:**

16 **Cited testimony does not support fact.** Jenkins did not testify that the "lead
17 problem" referred to the Site, though this can be inferred from the testimony, based
18 on the quoted portion." Note that Jenkins' testimony as to what he was referring to
19 when he wrote the memorandum in question contradicts his testimony in Fact 22
20 that he didn't remember the memoranda.

21
22 **Vulcan's Additional Material Fact No. 24**

23 During his deposition, Tom Davis expressed no memory of three memoranda
24 attached as Exhibit V to the Franklin Declaration or any of the matters discussed
25 therein, other than "assumptions."

26 Ehrlich Decl., Ex. Q. (Davis depo), 68:21-81:5.

27 **Evidentiary Objections:**

28 **FRE 401, 402: Irrelevant.** Vulcan does not cite this fact in the Opposition,

1 nor does the fact itself indicate how it could possibly be relevant. Tom Davis' lack
2 of memory of three memoranda, which were produced by Vulcan, does not put the
3 authenticity of those memoranda into question.

4
5 **Vulcan's Additional Material Fact No. 27**

6 In 2005, members of Vulcan met with members of the Gun Club and
7 requested that "the Gun Club institute those practices as provided in U.S. EPA
8 Guidance Document so that the lead was being reclaimed and recovered.

9 Ehrlich Decl, Ex. R (Anderson depo), 75:15-79:1.

10 **Evidentiary Objections:**

11 **Cited testimony does not support fact.** Anderson testified that sometime
12 between 2005 and the end of 2007 he, as the sole representative of Vulcan at the
13 meeting, talked to a single unnamed person at the Club, requesting that the Club
14 implement the EPA BMP Guidance. The parties meeting were Anderson and a
15 single Club representative, not multiple "members" of each.

16
17 **Vulcan's Additional Material Fact No. 28**

18 Vulcan communicated with the City of Azusa with respect to the disposition
19 of the structures that were previously located on the Property.

20 Ehrlich Decl, Ex. R (Anderson depo), 66:7-19.

21 **Evidentiary Objections:**

22 **FRE 602 Lack of Foundation/Personal Knowledge, FRE 801, 802:**

23 **Hearsay.** Anderson testified that "The City of Azusa, my understanding, contacted
24 Vulcan Materials Company with respect to the disposition of structures that
25 previously were located on the Gun Club property." Anderson's qualification of the
26 statement with "my understanding" indicates he has no personal knowledge of this
27 contact with the City of Azusa, and that he heard of the contact from someone else,
28 making his testimony hearsay. Accordingly Vulcan has not established Fact 28 with

1 admissible evidence.

2

3 **Vulcan's Additional Material Fact No. 29**

4 Vulcan hired expert David Liu, who prepared a report that proposes three
5 methods of remediating the Property based on NCP criteria.

6 Ehrlich Decl., Ex. W.

7 **Evidentiary Objections:**

8 **Cited Evidence Does Not Support Fact**, as to the Liu Report being based on
9 NCP criteria. Ex. W to the Ehrlich Decl. is the "Report of Evaluation of
10 Remediation Alternatives and Costs" prepared by David Liu. The report does not
11 mention the NCP, or that any part of the report is based on the NCP. None of the
12 three alternatives is NCP compliant since, e.g. none of them contains a "Community
13 Relations Program" required by 40 C.F.R. § 300.155.

14

15 **Vulcan's Additional Material Fact No. 30**

16 Vulcan hired another expert, Dr. Rudy Von Burg, who has determined that
17 the site poses a significant risk to human health, and that "[t]he contaminated areas
18 contain hazardous waste as defined by California and Federal law and unless a
19 Remedial Investigation and mitigation program is instituted, the property will be
20 unfit for either industrial reclamation or for general population/recreational use."

21 Ehrlich Decl., Ex. V.

22 **Evidentiary Objections:**

23 **Cited Evidence Does Not Support Fact**, as to Von Burg's supposed
24 determination "that the site poses a significant risk to human health." Ex. V., the
25 Von Burg Report, contains no such opinion.

26

27 **Vulcan's Additional Material Fact No. 32**

28 After informing the Gun Club that it was terminating the Lease, Vulcan's

1 counsel exchanged many letters with the Gun Club and its counsel requesting that
2 the Gun Club clean up the property pursuant to NCP and EPA criteria. The Gun
3 Club consistently refused these requests.

4 Ehrlich Decl., Ex. Y

5 **Evidentiary Objections:**

6 **Cited Evidence Does Not Support Fact, Assumes Incorrect Fact** as to
7 Vulcan’s counsel requesting that the Club clean up the Site pursuant to NCP
8 criteria. The NCP was not mentioned in the series of 7 letters in Ex. Y. Furthermore,
9 the NCP specifies a process that private parties must follow in order to have a valid
10 CERCLA cost-recovery claim. It does not contain “criteria” for cleanup, although it
11 does contain criteria for evaluation of remedial action objectives (40 C.F.R. §
12 300.430(e)(2)(i)), and for evaluation of remediation alternatives (40 C.F.R. §
13 300.430(e)(9)(iii)).

14
15 **Vulcan’s Additional Material Fact No. 33**

16 Vulcan is committed to remediating the Property and will not abandon it, in
17 part because it provides access to its nearby mining operations.

18 Linton Decl., ¶ 18.

19 **Evidentiary Objections:**

20 **FRE 402, FRCP 56(c)(4): Lack of Foundation, Vague and Ambiguous.**

21 Linton’s declaration does not state what “committed to seeing the Property properly
22 remediated” means or how he knows that Vulcan is committed to remediating the
23 property. Linton’s statement could mean, for example, that Vulcan management has
24 decided to remediate the Site to a pristine condition even if it cannot recover any of
25 the cleanup costs from the Club. Or it could mean that Vulcan will clean up the
26 portion of the property used for quarry access to a level such that drivers of vehicles
27 accessing Vulcan’s mining operations via the Site will not be exposed to hazardous
28 conditions.

1 **Vulcan's Additional Material Fact No. 35**

2 In the early or mid 1990's, to protect Vulcan workers from ricochets, Vulcan
3 deposited inert mining tailings (fines and small rocks left over after the aggregate
4 was crushed) in front of the toe of hill, creating a "berm" in front of the impact area
5 for the rifle and pistol ranges.

6 Ehrlich Decl., Ex. L (Armato depo.) at 38:13-41:20, Ex. M (Phillips depo.) at
7 96:17-97:8, Ex. P (Bock depo.) at 77:17- 78:25, Ex. O (Cowan depo.) at 38:11-23,
8 59:4-7.

9 **Evidentiary Objections:**

10 **FRE 602: Lacks Foundation/Personal Knowledge, Cited Evidence Does**
11 **Not Support the Purported Fact.**

12 1) *None* of the deponents has the requisite relationship with Vulcan to make a
13 statement based on personal knowledge of why Vulcan did something that only a
14 member of Vulcan's control group (e.g., an executive) would have the personal
15 knowledge to make. Three of the deponents at issue are affiliated with the Club, and
16 the fourth was the heavy equipment operator (not an executive) who oversaw the
17 placement of overburden (i.e., the Waste Pile) on the Property. (Armato Dep.at
18 7:5-10; Phillips Dep. at 6:5-6; Bock Dep. at 13:14-15:19, 24:11-19; Cowan Dep. at
19 14:20-19:25). Vulcan is avoiding providing *any* testimony of an executive on this
20 issue, perhaps because that would show (as discussed in part 3 below), that Vulcan
21 is intentionally misrepresenting facts.

22 2) *None* of the cited material refers to deposited material as "inert."

23 3) Most importantly, Vulcan is intentionally confusing three separate issues:

24 a) the use of rock dust on the floor of the range to reduce
25 ricochets,

26 b) Vulcan's extension of its mining operation that encroached on
27 the pistol range (including the placement of "base" which spilled onto
28 the pistol range), and

1 c) the creation of a Waste Pile.

2 *Every one of the depositions cited to by Vulcan in support of this "fact" contradicts*
3 *Vulcan's misrepresentation about the purpose of the creation of the Waste Pile (i.e.,*
4 *what Vulcan refers to as "a 'berm' in front of the impact area for the rifle and pistol*
5 *ranges"). In fact, three of the four deponent citations have *nothing to do* with*
6 *ricochet's or safety, and the fourth expressly distinguishes the creation of the Waste*
7 *Pile from a *different location* where rock dust was placed to help reduce ricochets.*

8 a) *Armato*. The portion of the Armato deposition cited makes no mention of
9 ricochets or protecting workers; in fact Armato's testimony is that he did not know
10 why the mining tailings (i.e., the Waste Pile) was brought onto the Property, though
11 he did note the mining tailings were "like waste" and that he didn't think the mining
12 tailings were brought in at the request of the Club. (Armato Dep. at 44:6-25 to
13 45:1-24).

14 b) *Phillips*. Vulcan's citation to Phillips' deposition is the most disconcerting
15 of the bunch. Phillips plainly does give testimony that "rock dust was placed on the
16 property as a way to try to mitigate those ricochets[.]" (Phillips Dep. at 96:17-97:8).
17 Vulcan fails to cite, however, the portions of the Phillips deposition wherein he
18 explains that, contrary to Vulcan's attempt to graft the ricochet issue on to the Waste
19 Pile issue, the two issue were completely separate.

20 Q . . . you mentioned the placement of rock dust. Had you requested
21 that Vulcan place rock dust on the property? A We requested the
22 material itself, the rock dust, which we were given the rock dust to
23 place in areas where it would be an impact area, and it would cut down
24 on ricochets in doing so. . . . Q Did the Club physically
25 pick up the rock dust from the quarry? A Sometimes or we would hire
26 [a dump truck owner/operator] to come with the dump truck and pick
27 up the rock dust and spread it for us.

28 [¶¶]

1 Q Did Vulcan . . . ever bring the rock dust down on the property for the
2 Club? A The rock dust, no. Q And do you have any estimate as to the
3 quantity that may have been brought down . . .? Would it have been in
4 the tons? A Yes. Q The hundreds of tons? A Yes. Q Thousands of
5 tons? A No.

6
7 [¶¶]

8 [As to the] *elevation in the 2005 photo that's not there in the 1980*
9 *photo, sort of along the base of the hill . . .* Do you have any
10 knowledge as to whether the placement of the rock dust could have
11 been one of the things that contributed to the new elevation there in
12 2005 that wasn't there in 1980? A No. [sic, the punctuation should
13 clearly be a comma, not a period] [t]he placement of the rock dust was
14 right across the front . . . *Q The rock dust was never placed along sort*
15 *of the impact berms up here? A No. The area you're referring to, that*
16 *was put there by Vulcan or then Calmat with their vehicles and their*
17 *employees. That was not requested by the Gun Club.*

18 (Phillips Dep. at 69:22-74:24) (emphasis added).

19 Phillips' Deposition Transcript also shows that the pistol range encroachment
20 issue and the placement of the Waste Pile are two different things.

21 [as to the mining tailings located on "haul roads" seen on aerial photos]

22 Q. . . [D]id Mr. Cow[a]n express to you one of the reasons they were
23 causing the tailings on the property was because Vulcan was in the
24 process of installing the conveyor and needed to make room? *A. The*
25 *material that we are talking about* [i.e., the mining tailings on the haul
26 roads], *there is a separate -- it was a separate deal.* They needed to
27 encroach on the pistol range, so they deposited material to build the
28 conveyor and the tunnel. The tunnel required a certain amount of base

1 over the top of it which was going to spill over onto the pistol range.
2 They basically took part of the pistol range away in order to be able to
3 build the tunnel.

4
5 [¶¶]

6 Q. Did Mr. Cow[a]n say any other reason why they wanted to move the
7 mining tailings onto the property? A. I don't remember his comment
8 exactly, but I was led to believe it was just a lower grade of material.
9 They didn't have a sale for the material and had to have a place to put
10 it.

11 (Phillips Dep. at 179:1-25 to 180:1-25, 182:1-7).

12 c)_Bock. Just like Vulcan's citation to Armato's deposition testimony, the
13 portion of the Bock deposition cited makes no mention of ricochets or protecting
14 workers. It discusses one topic: Bock's memory concerning discussions as to the
15 placement of mining tailings at the Site. Therefore, it appears Vulcan is citing to
16 Bock's deposition regarding only the time frame the mining tailings (i.e., the Waste
17 Pile) was deposited. Bock's deposition fails to provide any reliable evidence on that
18 point, however, both in and of itself and when compared to the other evidence in
19 this case.

20 Aside from the fact that Bock said he was "not positive" about the time frame
21 (Bock Dep. at 77:17-25 to 78:1-5), the testimony (which is admittedly unclear)
22 indicates that Bock was trying to set a time frame based on a conversation he had
23 with Harry Sanford (who died in 1996) wherein Mr. Sanford "complained to me
24 [i.e., Bock] about them putting those tailings up there" (*Id.*). Thus, the
25 recollection Bock was relying on in attempting to set the time frame of the
26 deposition was not a memory regarding of the Waste Pile being placed, but a
27 memory that he had discussed the presence of the pile in 1995-96, i.e., he was trying
28 to remember when a discussion about the Waste Pile occurred, not when the Waste

1 Pile was placed (preventing Bock's testimony from being based on personal
2 knowledge, making it inadmissible). In fact, Bock's first comment on this topic
3 during deposition was that he had "no recollection of that at all" when he asked if
4 the Waste Pile was transported onto the property at issue before or after May 20,
5 1992 (the effective date of the 1992 lease). (*Id.* at 61:12-15).

6 Because Vulcan offers only bald misinterpretations and inadmissible
7 material, it states no facts upon which UF 38 can stand. The photo, memo, and
8 deposition testimony cited herein proves UF 38 is utterly untrue.

9 Finally, the Club objects to this purported fact as it refers to an alleged fact
10 (i.e., that the placement of materials was done to protect Vulcan employees) never
11 raised in the motion at issue.

12

13 **Vulcan's Additional Material Fact No. 36**

14 At all relevant times, the berm existed at only a portion of the Gun Club
15 Property.

16 Anderson Decl., ¶¶ 4-6, 10; Ehrlich Decl., Ex. T (Peddicord Report) at 4-6.

17 **Evidentiary Objections:**

18 **Vague and Ambiguous.** Vulcan and the Club likely have different
19 definitions of the what the "relevant times" are in this case. Vulcan's use of a
20 subjective term would require the Club to speculate as the intended meaning of that
21 term to respond, meaning the Club has no duty to respond. Similarly, the use of the
22 undefined term "berm" is vague and subject to multiple reasonable interpretations,
23 and the Club is not required to select one such interpretation in responding to this
24 purported fact.

25

26

27

28 **Vulcan's Additional Material Fact No. 38**

1 The Gun Club made no effort to assess or remediate the area prior to or
2 during the time that the berm existed.

3 Ehrlich Decl., Ex. M (Phillips depo.) at 31:24-33:6, 156:16-158:25, 182:23-
4 183:4.

5 **Evidentiary Objections:**

6 **Vague and Ambiguous, FRE 602, FRCP 56(c)(4): Lacks Foundation /**
7 **Personal Knowledge.** This purported fact fails to explain what "area" is at issue.
8 Further, the terms "assess," "berm," and "remediate" are vague and subject to
9 multiple reasonable interpretations. The Club is not required to speculate as to what
10 the abovementioned terms mean. Furthermore, Phillips' cited testimony does not
11 establish his knowledge of all efforts the Club may have made at the time in
12 question.

13

14 **Vulcan's Additional Material Fact No. 39**

15 The Gun Club did not make any efforts to clean up shell casings, bullet
16 fragments, or other materials deposited at or about the time that Vulcan commenced
17 placing material at the Property.

18 Ehrlich Decl., Ex. M (Phillips depo.) at 156:16-158:25; 182:23-183:4; see
19 also, Ex. O (Cowan depo.) at 62:4-10.

20 **Evidentiary Objections:**

21 **Vague and Ambiguous.** The phrase "other materials" and the term "berm"
22 are vague and cannot be interpreted without speculation, and the Club is not
23 required to speculate in responding to a purported fact.

24

25 **Vulcan's Additional Material Fact No. 40**

26 At no time did the Gun Club attempt to clean the bullet debris surrounding or
27 in the berm areas.

28 Ehrlich Decl., Ex. L (Armato depo.) at 70:23-25, Ex. M (Phillips depo.) at

1 31:24-33:6, 156:16-158:25, 182:23-183:4.

2 **Evidentiary Objections:**

3 **Vague and Ambiguous.** The phrase "bullet debris" and the term "berm
4 areas" are vague and cannot be interpreted without speculation, and the Club is not
5 required to speculate in responding to a purported fact.

6

7 **Vulcan's Additional Material Fact No. 41**

8 As a result, by the time the Gun Club vacated the Property, thousands of
9 bullets and bullet fragments littered the entire face of the berm, and on top of the
10 berm.

11 Anderson Decl., ¶¶ 4-5; Linton Decl., ¶ 17; Ehrlich Decl., Ex. T (Peddicord
12 Report) at 5.

13 **Evidentiary Objections:**

14 **Vague and Ambiguous.** The terms "berm" and "littered" are vague and
15 subjective, and the Club would have to speculate as to the intended meaning of
16 those terms to respond, something the Club is not required to do.

17

18 **Vulcan's Additional Material Fact No. 43**

19 The berm was installed in the early or mid-1990's, and no other mining
20 tailings were deposited on the Property after that time.

21 Ehrlich Decl., Ex. L (Armato depo.) at 41:12-20, Ex. P (Bock depo.) at 77:17-
22 78:25, 80:18-81:25, Ex. T (Peddicord Report) at 4.

23 **Evidentiary Objections:**

24 **Not Supported by the Cited Evidence, Vague and Ambiguous, FRE 602:**
25 **Lacks Foundation/Personal Knowledge.** The term "berm" is vague and
26 ambiguous. None of the cited testimony states or even indicates that "no other
27 mining tailings were deposited on the Property after" the creation of the Waste Pile.
28 At most, the cited material generally discusses when the Waste Pile was created.

1 Vulcan cites no evidence that the creation of the Waste Pile was the only placement
2 of waste material on the Property. The cited testimony does not establish how the
3 deponents and author know the purported facts. Peddicord is unlikely to have
4 personal knowledge of these facts since he was not involved with Vulcan at the time
5 the Waste Pile was installed on the Site.

6

7 **Vulcan's Additional Material Fact No. 45**

8 The Gun Club did not object to Paragraph 35 of the Lease or request that
9 Vulcan be made liable for cleaning up the stockpile area before, during, or after it
10 was created.

11 Ehrlich Decl., Ex. P (Bock depo.) at 64:11-68:23, Ex. M (Phillips depo.) at
12 79:22-80:4; 138:11-139:11.

13 **Evidentiary Objections:**

14 **Not Supported by the Cited Evidence, Vague and Ambiguous, FRE 602:**
15 **Lacks Foundation / Personal Knowledge.** The Club interprets the vague and
16 undefined term "stockpile area" to mean the area where the Waste Pile was placed
17 on the Property.

18 This fact is really two facts: 1) The Gun Club did not object to Paragraph 35
19 of the Lease and 2) [the Club did not] request that Vulcan be made liable for
20 cleaning up the stockpile area before, during, or after it was created.

21 1) The Club presumes the use of the ambiguous term "object" is intended to
22 refer to the act of expressly making opposition known. Bock's testimony regarding
23 the addition of Paragraph 35 is as follows. "There was a discussion about it because
24 we were losing a good portion of the pistol range, but once again, since [Vulcan]
25 were our landlord, we felt we had no recourse." This plainly does not support the
26 assertion made here. In fact, Bock's deposition testimony on this point is clear.

27

28 "A . . . there was some discussion about how the rock company

1 could just arbitrarily cover up that area that we lease from them with
2 dirt. . . . [¶¶] The only concession [Vulcan] made is that they
3 wouldn't go beyond 100 meters It would remain a hundred
4 meters at the least [from the firing area], and they accepted that, but
5 they did cover it up, and they covered all the impact area along that
6 hundred yard line.

7 Q And so do you recall these discussions in the context of the lease
8 negotiations for [the Lease]?

9 *A No. They didn't come up during lease - - I recall they*
10 *didn't come up during lease negotiation [¶¶] I think was the*
11 *midterm of a lease, you know, but I can't be sure.*

12 (Bock Dep. at 61:18-25 to 62:1-20) (emphasis added).

13 Additionally, Phillips' testimony is mischaracterized by Vulcan, as he
14 states that "Nobody raised any objections to [the deposition of the Waste
15 Pile] that I recall[,] *not* that the Club did not object to Paragraph 35

16 2) Bock's testimony is not a broad as would be required to support
17 Vulcan's assertion. That is, Bock testified that he did not recall *during the*
18 *negotiation for the Lease*, the Club ever requesting "that Vulcan be
19 responsible for remediation of any soil, dirt that they [sic] brought on to the .
20 . . Property."

21
22 **Vulcan's Additional Material Fact No. 46**

23 The Gun Club consented to Vulcan's depositing of the mining tailings
24 on the Property.

25 Linton Decl., Ex. H at ¶ 35 and Ex. B; Ehrlich Decl., Ex. P (Bock
26 depo.) at 79:8-20, 87:19-88:18, Ex. M (Phillips depo.) at 80:2-4, 182:8-22,
27 Ex. O (Cowan depo.) at 59:1-63:18..

28 Linton Decl., ¶ 18.

1 **Evidentiary Objections:**

2 **Not Supported by the Cited Evidence, Vague and Ambiguous, FRE**
3 **701: Inadmissible Lay Legal Conclusion, FRE 602: Lacks Foundation /**
4 **Personal Knowledge.** The Club presumes the reference to “depositing of
5 the mining tailings” refers to the creation of the Waste Pile. This purported
6 fact states an inadmissible legal conclusion as to the interpretation of a
7 contract as to the Club’s consent.

8 Vulcan’s citation to the Lease is unavailing for at least two reasons. 1)
9 the Waste Pile was created starting *well before* the execution of the Lease
10 (See response to AMF 44), and 2) the Lease makes no mention of absolving
11 Vulcan for creating the Waste Pile without a contractual right to do so. The
12 entirety of the Lease’s discussion regarding the reservation of the
13 “stockpile” (i.e., Waste Pile) is as follows:

14 Landlord reserves the right to use and landscape the stockpile area in
15 back of the range area of the Premises, as illustrated on the landscape
16 plan attached hereto as Exhibit ‘B’.”

17 Similarly Bock does not testify regarding any consent; in fact, he testifies that
18 the Club *did* contact Vulcan about limiting the size of the Waste Pile.

19 Finally, Vulcan citation to the deposition testimony given by Cowan supports
20 that the Club *did* object to the placement of the Waste Pile.

21 Q At any point was an objection ever raised by the [Club]
22 concerning the - - depositing of the - - rock dust and sand [i.e., what
23 Cowan testified the Waste Pile was composed of] on the [P]roperty?

24 A Yes [Phillips stated] he was concerned of what we were doing
25 and what we were burying [¶¶] Q So . . . Phillips raised a
26 concern to you that you [i.e., Vulcan] were burying lead. A Yes.

27

28 (Cowan Dep. at 59:1-25 to 63:1-25).

1 **Vulcan’s Additional Material Fact No. 48**

2 The Gun Club's designated expert, Richard K. Peddicord, Ph.D, estimated
3 that properly remediating the contamination caused by the Gun Club at Property
4 would cost between \$405,018 and \$1.5 million.

5 Ehrlich Decl., Ex. T (Peddicord Report) at 12, 17.

6 **Evidentiary Objections:**

7 **Not Supported by the Cited Evidence, Vague and Ambiguous.** The
8 meaning of “properly” is subject to multiple interpretations. The cited document
9 does not support the specific assertion made.

10

11 **Vulcan’s Additional Material Fact No. 49**

12 Due to the current condition of the Property, Vulcan cannot use the Property
13 or lease it to another tenant. Vulcan will not be able to re-lease the Property until
14 the Gun Club's debris has been cleaned and the Property has been remediated.

15 Anderson Decl., ¶ 10; Linton Decl., ¶ 17.

16 **Evidentiary Objections:**

17 **Not Supported by the Cited Evidence, FRE 602, FRCP 56(c)(4) Lacks**
18 **Foundation / Personal Knowledge.** The cited declarations state the following.

19 Due to the current condition of the Property, Vulcan is unable to
20 lease the property to another tenant, and it will not be able to lease
21 the Property until the . . . Club’s debris has been cleared and the
22 Property has been remediated.

23 (Anderson Decl., ¶ 10)

24 Since the . . . Club vacated the Property, Vulcan has undertaken to
25 preserve it in its original condition as much as possible, including
26 keeping all public access to the Property locked. Vulcan has
27 demolished certain structures to prevent nuisance, but has preserved
28 the area in front of the firing lines of the pistol and rifle ranges, as

1 well as the impact areas, as near as possible to the condition they
2 were in when the . . . Club left.

3 (Linton Decl. ¶ 17).

4 The cited portion of Linton’s declaration does not support the assertion that
5 Vulcan cannot use the Property or lease it to another tenant.

6 Anderson’s Decl. fails to provide a sufficient foundation for this purported
7 fact. Anderson does not state that Vulcan has even attempted to lease the Property
8 (let alone that such attempt was thwarted solely because of the presence of Spent
9 Ammunition on the Property), or that he is an expert in real estate qualified to
10 determine that the Property cannot be leased. Indeed, Anderson does not even state
11 a basis for why Vulcan allegedly can’t use the Property.

12

13 **Vulcan’s Additional Material Fact No. 52**

14 Although the Gun Club occasionally "swept" the area in front of the firing
15 lines for shell casings, and, on an inconsistent and irregular basis, caused a lead
16 recycler to recycle some of the lead from the hill for its economic value, the Gun
17 Club never attempted to remediate or clean up the hill or the ranges of
18 environmental hazards during the entirety of the time it leased the Property.

19 Ehrlich Decl., Ex. L (Armato depo.) at 26:4-35:17, 70:23-25, Ex. M (Phillips
20 depo.) at 28:2-34:11, Ex. P (Bock depo.) at 43:4-45:5, 48:17-50:21, 85:8-11.

21 **Evidentiary Objections:**

22 **Vague and Ambiguous.** This purported fact uses several terms that are
23 susceptible to several reasonable interpretations and the Club would have to
24 speculate as to their meaning in attempting to provide a response (“inconsistent,”
25 “irregular,” “remediate,” and “environmental hazard”).

26

27 **Vulcan’s Additional Material Fact No. 53**

28

1 The Gun Club and its leadership knew that the lead bullet debris constitutes
2 "hazardous" material under the law, but still failed to make regular or thorough
3 efforts to remediate the waste.

4 Ehrlich Decl., Ex. L (Armato depo.) at 66:10-20, 133:10-136:21, Ex. 17, Ex.
5 P (Bock depo.) at 42:5-10, 43:4-45:5, 48:17- 50:21, 56:25-57:2, Ex. M (Phillips
6 depo.) at 29:18-34:11, 59:21-61:16, Ex. O (Cowan depo.) at 60:9-61:10.

7 **Evidentiary Objections:**

8 **Vague and Ambiguous, Not Supported by the Cited Evidence.** The term
9 "hazardous material" is not a term of art under environmental law and could mean a
10 variety of things. Likewise, "remediate" is susceptible to a variety of interpretations.
11 This purported fact is also vague as to time.

12 The Armato Dep at 66:10-20 merely states that Armato was not aware of any
13 Club remediation effort prior to 2005. There is nothing in this testimony to indicate
14 that the Club knew that lead bullet debris constituted "hazardous material."
15 Likewise, in Armato's testimony at 133:10-136:2, the only discussion of "hazardous
16 materials" is Vulcan's counsel quoting from a letter written by the Club's counsel to
17 Vulcan claiming that the mining tailings Vulcan had deposited on the Site
18 contained "hazardous materials".

19 The Bock Dep. at 42:5-10 shows Vulcan's counsel instructing Bock on the
20 definition of "remediation" to be used during the deposition, i.e. returning the
21 property to a pristine condition. There is no mention of "hazardous material" in the
22 Bock Depo at 43:4-45:5, 48:17-50:21 or 56:256-57:2.

23 The closest the Phillips Dep. comes to mentioning "hazardous material" is
24 Phillips' answer of "yes" to Vulcan's counsel's question: "Every once in a while
25 throughout your employ, the concept that lead may be a potential environmental
26 hazard was discussed?" This testimony does not show that the Club leadership
27 knew lead was a "hazardous material." Similarly, the cited portions of Cowan's
28 Dep. do not mention "hazardous materials."

1 **Vulcan’s Additional Material Fact No. 54**

2 When the Gun Club ultimately vacated the Property, the Property was in
3 extremely poor condition, and overrun with bullet shell casings and hazardous
4 materials, including lead.

5 Anderson Decl., ¶¶ 4-7; Linton Decl., ¶ 17; Ehrlich Decl., Ex. S (Hoenig
6 depo.) at 141:21-25, Ex. T (Peddicord Report), Ex. W (David Liu Expert Report).

7 **Evidentiary Objections:**

8 **Vague and Ambiguous, Not Supported by the Cited Evidence, FRCP**

9 **56(c)(4): Lack of Personal Knowledge.** The term “hazardous material” is not a
10 term of art under environmental law and could mean a variety of things. The phrase
11 “extremely poor condition” and the term “overrun” are subjective, and providing a
12 response to a purported fact using those terms/phrases would impermissibly require
13 the Club to speculate in formulating its response.

14 Anderson’s cited testimony is essentially equivalent to this purported fact, a
15 vague conclusion. The other citations do not directly support the purported fact.
16 Linton’s cited testimony is to the effect that Vulcan has preserved the Site in the
17 same condition it was in when the Club vacated it. Hoenig’s testimony is simply
18 that lead could be seen on the berms with the naked eye. Peddicord’s 29-page report
19 and Liu’s 7-page report (cited in their entirety with no pin cite) confirm that there
20 are casings and spent bullets on the Site.

21

22 **Vulcan’s Additional Material Fact No. 55**

23 Due to the Gun Club's activities, lead (and other heavy metal) contamination
24 has been deposited at the Property, and such contamination remains on the Property
25 to this day.

26 Anderson Decl., ¶¶ 4-7; Linton Decl., ¶ 17; Ehrlich Decl., Ex. L (Armato
27 depo.) at Ex. 17, Ex. P (Bock depo.) at 43:4-45:5, Ex. S (Hoenig depo.) at

28

1 139:22-141:25, Ex. T (Peddicord Report) at pp. 5-6, Ex. W (David Liu Expert
2 Report).

3 **Evidentiary Objections:**

4 **Vague and Ambiguous; FRCP 56(c)(4): Lack of Personal Knowledge.**

5 The term “contamination” is subjective, and providing a response to a purported
6 fact using those terms/phrases would impermissibly require the Club to speculate in
7 formulating its response. The term “heavy metal” is vague and undefined.

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9 Dated June 16, 2011

MICHEL & ASSOCIATES, P.C.

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/s/Scott M. Franklin

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Scott M. Franklin

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Attorney for Defendants

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1 PROOF OF SERVICE

2 IT IS HEREBY CERTIFIED THAT:

3
4 I, Christina Sanchez, the undersigned, am a citizen of the United States and
5 am at least eighteen years of age. My business address is 180 E. Ocean Blvd., Suite
200, Long Beach, California, 90802.

6 I am not a party to the above-entitled action. I have caused service of:

7
8 **DEFENDANT'S EVIDENTIARY OBJECTIONS RE: PLAINTIFF'S**
9 **STATEMENT OF GENUINE ISSUES AND ADDITIONAL MATERIAL**
10 **FACTS IN SUPPORT OF OPPOSITION TO THE GUN CLUB'S MOTION**
11 **FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY**
12 **JUDGMENT AS TO PORTIONS OF**
13 **PLAINTIFF'S COMPLAINT**

14 on the following party by electronically filing the foregoing with the Clerk of the
15 District Court using its ECF System, which electronically notifies them.

16 Kenneth A. Ehrlich
17 kehrlich@jmbm.com
18 Paul A. Kroeger
19 pkroeger@jmbm.com
20 JEFFER MANGELS BUTLER & MITCHELL LLP
21 1900 Avenue of the Stars, 7th Floor
22 Los Angeles, CA 90067

23 I declare under penalty of perjury that the foregoing is true and correct.

24 Executed on June 16, 2011.

25
26 /s/Christina Sanchez
27 CHRISTINA SANCHEZ
28