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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

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

Plaintiff,

v.

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

Defendants.

CASE NO: EDCV08-01198 JLQ(OPx)

**DEFENDANT'S RESPONSE TO
PLAINTIFF'S STATEMENT OF
GENUINE ISSUES AND
ADDITIONAL MATERIAL FACTS
IN SUPPORT OF ITS 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

AND RELATED COUNTER-CLAIM.

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I. CLUB’S RESPONSES TO VULCAN’S ADDITIONAL MATERIAL FACTS AND SUPPORTING EVIDENCE

VULCAN ADDITIONAL MATERIAL FACTS & EVIDENCE	THE CLUB’S RESPONSE
<p>1. Vulcan produces various types of building aggregates and construction materials. Among other enterprises, it operates the Azusa Rock Quarry in Azusa, California where it mines aggregate for use in construction projects.</p> <p>Linton Decl., ¶ 2.</p>	<p><i>Undisputed.</i></p>
<p>2. From 1947 through 2006 Vulcan, or its predecessor entities, leased a portion of its property immediately adjacent to the quarry (the "Property") to the Gun Club for use as a pistol, rifle, and skeet shooting range (the remaining portion of the Gun Club's range was leased from the Army Corps of Engineers (the "Corps") and is not part of this litigation).’</p> <p>Linton Decl., ¶ 3; Ehrlich Decl., Ex. K (Gore depo.) at 16:22-18:4, Ex. 3; Ex. P (Bock depo.) at 19:19-22:3.</p>	<p>Objection: FRE 602: Lack of Foundation/Personal Knowledge, FRE 702: Inadmissible Lay Legal Opinion: The cited portion of the Linton Decl. does not state how Linton acquired the personal knowledge that would serve as the foundation for this purported fact. The cited paragraph refers to a series of written leases, but does not provide a foundation because it does not state how Linton acquired his purported knowledge of the period those leases was in effect or the legal effect of those agreements. The Gore and Bock Deps. are not cited for this issue.</p> <p>Disputed: The first contracts between the Club and Vulcan and/or its predecessors in interest (“Vulcan”), dated January 1, 1947, September 1, 1950, and January 1, 1958, are license agreements, not leases. And there are periods of time between January 1947 and November 2006 when there was no lease in place for the Property, including December 11, 1987 to February 3, 1988.</p>

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VULCAN ADDITIONAL MATERIAL FACTS & EVIDENCE	THE CLUB’S RESPONSE
	<p>(Compl. Exs. A, B, C, G at 1, H at 1-2.)</p> <p>It is <i>undisputed</i> that, as to the majority of time between January 1, 1947, and November 6, 2006, there was some kind of lease or license agreement in place between Vulcan and the Club regarding the Property, that the lease allowed the property to be used as a pistol, rifle and skeet shooting range, and that the remaining portion of the Club’s range was leased from the Corps.</p>
<p>3. Former Gun Club president, Herb Bock testified that “before the Gun Club leased” property from Vulcan’s predecessors “it was a bean field” or “farm lands” for beans.</p> <p>Ehrlich Decl., Ex. P (Bock Depo.), at 24:8-25:10.</p>	<p>Objection: Cited Testimony Does Not Support Fact. The material cited (pages 24:8-25:10) has nothing to do with the assertion at issue; based on the information found in pages 25:8-26:10 of the cited material, it is clear that Vulcan intended to cite that section (and if not, the evidence fails to support or address a fact, and is thus objectionable under FRCP 56(e)). The Club will presume Vulcan intended to cite to 25:8-26:10.</p> <p>FRE 602: Lack of Foundation / Personal Knowledge, FRE 801, 802 Hearsay: The evidence cited to is hearsay on the issue at hand (the condition of certain property before 1947) and outside the personal knowledge of the person stating the hearsay. Indeed, the grounds for objecting under Rules 602 and 802 are clear on the face of the testimony:</p> <p>Q . . . do you have an understanding as to what the leased property was used for before the Gun Club leased it? A As I recall - - as I recall <i>from</i></p>

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VULCAN ADDITIONAL MATERIAL FACTS & EVIDENCE	THE CLUB’S RESPONSE
	<p><i>what I’ve heard</i> and heard about the Gun Club and what happened before that, before it became - - it was a bean field Q So <i>you heard</i> that, I guess prior to when the Gun Club opened in ‘46, it was essentially farm land for these beans? A Yeah. They <i>called it</i> bean field.</p> <p>(Ehrlich Decl., Ex. P (Bock Depo.), at 25:8-26:10) (italics added). Further, Bock states that he became aware of the Club in 1958, when he first moved here. (<i>Id.</i> at 22:4-7). Thus, he obviously has no personal knowledge of the condition or use of the real property at issue in this case (the “Property”) as of 1946-47 (i.e., before a license or lease was in place). For these reasons, the Club’s evidentiary objection should be granted and the “evidence” at issue should not be considered by the Court.</p>
<p>4. Over the decades of the Gun Club’s operations, the Gun Club and Vulcan, or its predecessors, entered into a number of the leases for the Property.</p> <p>Linton Decl., ¶¶ 3-13, Exs. A-J.</p>	<p><i>Undisputed.</i></p>
<p>5. The operative lease on the date the Gun Club vacated the Property is dated May 20, 1992 (the "Lease").</p> <p>Linton Decl., ¶ 14, Exs. H-I.</p>	<p><i>Objection: FRE 701: Inadmissible Lay Legal Conclusion.</i> Whether or not a lease is "operative" at a given time is question of contractual interpretation, which is a question of law, not fact.</p>

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<p style="text-align: center;">VULCAN ADDITIONAL MATERIAL FACTS & EVIDENCE</p>	<p style="text-align: center;">THE CLUB’S RESPONSE</p>
<p>6. Vulcan terminated the Gun Club's Lease in 2005 and the Gun Club ceased operations in November 2006.</p> <p>Linton Decl., ¶ 15, Ex. J; Ehrlich Decl., Ex. L (Armato depo.) at 85:24-86:3.</p>	<p><i>Undisputed</i> assuming 1) the term "terminated" is understood as giving notice of termination and 2) the phrase "ceased operations" means ceased being used as a firing range</p>
<p>7. During the time the Gun Club occupied the Property, the club patrons' shooting activities resulted in the deposit of bullet fragments, debris and waste, including hazardous waste, being deposited throughout the Property, including lead, which is a "hazardous substance" under the law.</p> <p>Anderson Decl., ¶¶ 4-7; Linton Decl., ¶ 17; Ehrlich Decl., Ex. L (Armato depo.) at Ex. 17, Ex. S (Hoenig depo.) at 139:22-141:25, Ex. T (Peddicord Report) at pp. 5-6.</p>	<p>Objections: Vague and Ambiguous, FRE 701: Inadmissible Lay Legal Conclusion: The terms debris and waste are vague and ambiguous and subject to multiple reasonable interpretations. Whether or not a certain material is a hazardous waste or hazardous substance under any law is a question of law, on which lay opinion is inadmissible. It is <i>undisputed</i> that during the time the Club occupied the Property, the Club patrons' shooting activities resulted in the deposit of bullets and bullet fragments (including lead bullets and fragments), primer powder, and casings on certain portions of the Property.</p>
<p>8. Under the Lease, the Gun Club agreed to clean up all of its debris and rubbish at its own cost, including any bullet fragments, upon Lease termination before returning the Property to Vulcan.</p> <p>Linton Decl., Ex. H at ¶¶ 9-10.</p>	<p>Objection: FRE 701: Inadmissible Lay Legal Conclusion. What the Club was required to do before returning the Property to Vulcan requires contractual interpretation, which is a question of law, not fact. Lay testimony on this subject is inadmissible.</p> <p><i>Disputed:</i> the Lease cited makes no mention of "bullet fragments."</p>
<p>9. Paragraph 9 of the Lease provides, in part, that: "Tenant agrees, at its own cost and expense, to comply with all laws, rules, regulations, ordinances and statutes of any and all municipal,</p>	<p><i>Undisputed.</i></p>

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VULCAN ADDITIONAL MATERIAL FACTS & EVIDENCE	THE CLUB'S RESPONSE
<p>county, State and federal authorities which are now in effect or which may hereafter become effective pertaining to the use of the Premises and its occupancy by Tenant. Tenant shall not commit, or suffer to be committed, any waste upon the Premises, or any public or private nuisance. Tenant shall not occupy or use the Premises during the term of this Lease in such a manner as to interfere with the use of the Premises or an part thereof after termination of this Lease."</p> <p>Linton Decl., Ex. H at ¶ 9.</p>	
<p>10. Paragraph 10 of the Lease provides, in part, that: "[u]pon the expiration of this Lease or upon any termination herein provided, Tenant shall at its sole cost and expense remove from the Premises all Tenant's personal property, and clean up and remove from the Premises all rubbish and debris and turn over the Premises to Landlord in good order and in a safe, sanitary condition. Should tenant fail to do so, Landlord may at its option make those removals required above or do such work as shall be required to return the Premises to an orderly and safe, sanitary condition and the cost thereof to Landlord shall be immediately repaid by Tenant to Landlord."</p> <p>Linton Decl., Ex. H at ¶ 10.</p>	<p><i>Undisputed.</i></p>
<p>11. John Armato, a former Gun Club president, testified on behalf of the Gun Club, and asserted that the Gun Club Board of Directors believed that,</p>	<p><i>Disputed. Objections: Fact Not Supported by Cited Testimony, FRE 401, 402: Irrelevant.</i> The cited testimony is: "Q: "During these</p>

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VULCAN ADDITIONAL MATERIAL FACTS & EVIDENCE	THE CLUB'S RESPONSE
<p>under the Lease, the Gun Club had the obligation to return the property to a "pristine condition." Ehrlich Decl., Ex. L (Armato depo.) at 133:3-9.</p>	<p>discussions [of the Club Board] was the concept ever raised that the Gun Club had the obligation to return the property to a pristine condition? A: Yeah. It was all part of the general conversation . . ." This testimony shows merely that the Club Board considered the concept of being required to return the property in pristine condition, which is a far cry from believing they had the obligation.</p> <p>Furthermore, it is irrelevant what Armato or the other directors thought the Club's duties were under a lease (a question of law), especially <i>the Lease</i>, which makes no mention of "pristine condition."</p> <p>In addition, this purported fact is phrased so as to indicate the fact at issue is that Armato made certain statements when deposed, not the fact(s) described in those statements. In the context of a summary judgment motion, material facts are those facts that are "necessary to the proof or defense of a claim[.]" <i>Nat'l Am. Ins. Co. of Cal. v. Certain Underwriters at Lloyd's London</i>, 93 F.3d 529, 533 (9th Cir. 1996) (citing <i>Anderson v. Liberty Lobby</i>, 477 U.S. 242, 248 (1986)). Deposition testimony may be evidence of facts, but that does not make it "necessary to the proof or defense of a claim[.]" and it is thus not a material fact for the purpose of summary judgment.</p>
<p>12. When the Gun Club ultimately vacated the Property, the Property was in extremely poor condition, and overrun with bullet shell casings and</p>	<p>Objections: Vague and Ambiguous, FRE 701: Inadmissible Lay Legal Opinion. The phrase "extremely poor condition" and the term "overrun" are</p>

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VULCAN ADDITIONAL MATERIAL FACTS & EVIDENCE	THE CLUB'S RESPONSE
<p>hazardous materials, including lead.</p> <p>Anderson Decl., ¶¶ 4-7; Linton Decl., ¶ 17; Ehrlich Decl., Ex. S (Hoenig depo.) at 141:21-25, Ex. T (Peddicord Report), Ex. W (David Liu Expert Report).</p>	<p>subjective, and providing a response to a material fact using those terms/phrases would impermissibly require the Club to speculate in formulating its response. Whether or not a certain material is a hazardous material under any law is a question of law, so the lay testimony cited in support of this portion of the fact is inadmissible.</p> <p>Anderson's cited testimony is essentially equivalent to this purported fact, a vague conclusion. The other citations do not directly support this purported fact. Linton's cited testimony is to the effect that Vulcan has preserved the Site in the same condition it was in when the Club vacated it. Hoenig's testimony is simply that lead could be seen on the berms with the naked eye. Peddicord's 29-page report and Liu's 7-page report (cited in their entirety with no pin cite) confirm that there are casings and spent bullets on the Site.</p> <p>It is <i>undisputed</i> that when the Club turned the Property over to Vulcan, there were casings and spent bullets (including spent lead bullets and portions thereof) present at the Property.</p>
<p>13. There are hundreds of thousands, if not more, of ammunition shell casings and bullets on the ground of the various former shooting ranges in between the firing line and the impact area. The Property is strewn with casings and bullets from a variety of different caliber firearms, including shot gun casings and other larger ordinance. A large majority of these bullets are made of lead.</p>	<p>Objection: FRE 602, FRCP 56(c)(4): Lacks Foundation. This purported fact is quoted from Anderson's Decl., but that source contains no information on how Anderson developed his conclusion that there are "hundreds of thousands" of shell casings and bullets. It seems unlikely that Anderson could make that estimate by just observing the Site; some sort of calculation procedure would be required. The</p>

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VULCAN ADDITIONAL MATERIAL FACTS & EVIDENCE	THE CLUB'S RESPONSE
<p>Anderson Decl., ¶¶ 4-7; Linton Decl., ¶ 17; Ehrlich Decl., Ex. S (Hoenig depo.) at 141:21-25, Ex. T (Peddicord Report), Ex. W (David Liu Expert Report).</p>	<p>estimate of "hundreds of thousands" is not supported by any of the other cited sources. Once again, Vulcan cites to the entirety of the Peddicord and Liu reports; the lack of a pin cite makes it difficult to check whether these reports directly support the purported fact. Disputed, as to the number of ammunition shell casings and bullets on the Site.</p>
<p>14. The former gun range also remains littered with other metals, including brass and copper.</p> <p>Ehrlich Decl., Ex. W (David Liu Expert Report).</p>	<p>Objection: Vague and Ambiguous. The term "littered" is subjective, and "other metals" is so broad as to be vague. Providing a response to a purported fact using those terms would impermissibly require the Club to speculate in formulating its response.</p> <p>It is undisputed that brass and copper are present at the Property. Disputed as to any metallic material other than brass, copper, and lead.</p>
<p>15. A recent inspection of the earthen soil berm along the face of the hill revealed potentially hundreds of thousands, if not more, of bullets, bullet fragments, and shell casings readily visible from the face of the hill.</p> <p>Anderson Decl., ¶¶ 4-7; Linton Decl., ¶ 17; Ehrlich Decl., Ex. S (Hoenig depo.) at 141:21-25, Ex. T (Peddicord Report), Ex. W (David Liu Expert Report).</p>	<p>Objections: FRE 602, Lacks Foundation/Personal Knowledge. This purported fact is quoted from Anderson's Decl., but that source contains no information on how Anderson developed his conclusion that there are "hundreds of thousands" of shell casings and bullets. It seems unlikely that Anderson could make that estimate by just observing the Site; some sort of calculation procedure would be required. The estimate of "hundreds of thousands" is not supported by any of the other cited sources. Once again, Vulcan cites to the entirety of the Peddicord and Liu reports; the lack of a pin cite makes it difficult to check whether these reports</p>

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VULCAN ADDITIONAL MATERIAL FACTS & EVIDENCE	THE CLUB'S RESPONSE
	<p>directly support the purported fact. It will be assumed that "the earthen soil berm along the face of the hill" (though there is no evidence the material is "soil" as opposed to crushed rock) is intended to refer to the Waste Pile, which was deposited there by Vulcan. <i>Disputed</i>, as to the number of ammunition shell casings and bullets in the berm.</p>
<p>16. Armato testified that, "[the Gun Club was] aware what the obligations were according to the [Lease], but [the Gun Club had to consider] what can we get done with what we have? That was always the question was the fact they we were so limited in our resources." Ehrlich Decl., Ex. L (Armato depo.) at 132:14-133:9; see also id. at 73:4-74:24, 140:1-12.</p>	<p>Though not a material fact, it is <i>undisputed</i> that Armato so testified; in all other respects, <i>disputed</i>. Objection: FRE 401, 402: Lack of Relevance, FRE 602:Lack of Personal Knowledge, FRE 701: Inadmissible Lay Testimony on Legal Conclusion. It is irrelevant what Armato might have understood the Club's obligation were under the Lease in hindsight; aside from the fact the issue of contract interpretation is a question of law, Armato was not involved in the negotiation of the relevant lease, so he cannot give testimony as to contractual intent. Specifically, the cited testimony clearly refers to Armato looking at an executed lease <i>in response</i> to Vulcan having requested remediation of the Property. Further, Armato expressly stated he had no role in negotiating any lease for the Property. (Armato Dep. at 68:11-13). In fact, the Club identified Bock as its "person most knowledgeable" about lease negotiations (<i>see</i> Bock Dep. at 14:12-25 to 15:2-5), and he stated that he does not recall "any conversations"</p>

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VULCAN ADDITIONAL MATERIAL FACTS & EVIDENCE	THE CLUB'S RESPONSE
	<p>during negotiations wherein "Vulcan said they were concerned about . . . hazardous materials being on the [P]roperty[.]" (Bock Depo. at 56:2-6). Specifically, Bock deposition testimony indicates that he does not recall the concept of returning the Property to a "pristine condition" being discussed. (<i>Id.</i> at 42:5-10) (Q . . . Remediation we mean to be we mean basically the concept of returning the property to sort of a pristine condition, so getting rid of all the contaminants from the area. Do you understand that? A I understand that, but I don't know if that was ever discussed.").</p> <p>Further, this purported fact is phrased so as to indicate the fact at issue is that Armato made certain statements when deposed, not the fact(s) described in those statements. In the context of a summary judgment motion, material facts are those facts that are "necessary to the proof or defense of a claim[.]" <i>Nat'l Am. Ins. Co. of Cal. v. Certain Underwriters at Lloyd's London</i>, 93 F.3d 529, 533 (9th Cir. 1996) (citing <i>Anderson v. Liberty Lobby</i>, 477 U.S. 242, 248 (1986)). Deposition testimony may be evidence of facts, but that does not make it "necessary to the proof or defense of a claim[.]" and it is thus not a material fact for the purpose of summary judgment.</p> <p>It is <i>undisputed</i> that as of either the time Vulcan gave notice of lease termination or at the end of the holdover tenancy thereafter), the Club had insufficient funds to perform the</p>

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VULCAN ADDITIONAL MATERIAL FACTS & EVIDENCE	THE CLUB'S RESPONSE
	amount of cleanup Vulcan indicated it desired.
<p>17. When asked if the Gun Club ever discussed its responsibility to clean up the hazardous materials on the Property, Armato testified that, "[the board of the Gun Club] was saying it was eating into a lot of the funds, and our concern was that we would only be able to do what we could do until we ran out of money. We had a commitment on that. We had started it. It was being hauled out along with the lead shot that was taken from the skeet fields, and we were quickly approaching a point where we were just - - we were going broke."</p> <p>Ehrlich Decl., Ex. L (Armato depo.) at 135:7-20.</p>	<p>Though not a material fact, it is undisputed that Armato so testified in response the question: "[d]uring the board meetings, was it ever discussed that the Club should only be responsible for cleaning up materials, hazardous materials, it deposited on the site?;]" in all other respects, disputed.</p> <p>Objections: FRE 401, 402: Lacks Relevance, FRE 602, FRCP 56(c)(4): Lack of Foundation / Personal Knowledge, FRE 701: Inadmissible Lay Opinion on a Legal Issue. It is irrelevant what Armato thought the Club's responsibilities were under the Lease in hindsight; aside from the fact the issue of contract interpretation is a question of law, Armato was not involved in the negotiation of the relevant lease, so he has no personal knowledge as to the Club's contractual intent.</p> <p>Specifically, the cited testimony clearly refers to Armato looking an executed lease <i>in response</i> to Vulcan having requested remediation of the Property. Further, Armato expressly stated he had no role in negotiating any lease for the Property. (Armato Depo. at 68:11-13). In fact, the Club identified Bock as its "person most knowledgeable" about lease negotiations (<i>see</i> Bock Dep.) at 14:12-25 to 15:2-5), and he stated that he does not recall "any conversations" during negotiations wherein "Vulcan said they were concerned about . . . hazardous materials being on the</p>

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VULCAN ADDITIONAL MATERIAL FACTS & EVIDENCE	THE CLUB'S RESPONSE
	<p>[P]roperty[.]" (Bock Depo. at 56:2-6). Specifically, Bock deposition testimony indicates that he does not recall the concept of returning the Property to a "pristine condition" being discussed. (<i>Id.</i> at 42:5-10) (Q . . . Remediation we mean to be we mean basically the concept of returning the property to sort of a pristine condition, so getting rid of all the contaminants from the area. Do you understand that? A I understand that, but I don't know if that was ever discussed.").</p> <p>Further, this purported fact is phrased so as to indicate the fact at issue is that Armato made certain statements when deposed, not the fact(s) described in those statements. In the context of a summary judgment motion, material facts are those facts that are "necessary to the proof or defense of a claim[.]" <i>Nat'l Am. Ins. Co. of Cal. v. Certain Underwriters at Lloyd's London</i>, 93 F.3d 529, 533 (9th Cir. 1996) (citing <i>Anderson v. Liberty Lobby</i>, 477 U.S. 242, 248 (1986)). Deposition testimony may be evidence of facts, but that does not make it "necessary to the proof or defense of a claim[.]" and it is thus not a material fact for the purpose of summary judgment.</p> <p>It is <i>undisputed</i> that as of either the time Vulcan gave notice of lease termination or the end of the holdover period thereafter, the Club had insufficient funds to perform the amount of cleanup Vulcan indicated it desired.</p>
18. Armato testified that, even though	Though not a material fact, it is

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VULCAN ADDITIONAL MATERIAL FACTS & EVIDENCE	THE CLUB'S RESPONSE
<p>environmental test results identified heavy metals on the Property, ". . . it was becoming a moot question anyway because [the Gun Club] [was] running out of money."</p> <p>Ehrlich Decl., Ex. L (Armato depo.) at 136:14-21.</p>	<p><i>undisputed</i> that Armato so testified; in all other respects, <i>disputed</i>.</p> <p>Objection: FRE 602:Lacks Personal Knowledge. Vulcan's selective quotation in this purported fact is misleading: the testimony given by Armato was that he believed there was environmental testing showing heavy metals on the Property, but that resolving where the heavy metal came from (Vulcan or the Club) would become moot because the Club was running out of money ("the question of heavy metals was such that was that material already in the tailings when it was dumped, or how did we [i.e., the Club] put it in[.]") (Armato Dep. at 136:1-21). Armato's cited (or any other) testimony does not establish his knowledge of test results. To the degree this UF is being used to establish that tests showed heavy metals are present in the soil on the Property, it is therefore <i>disputed</i>.</p> <p>Further, this purported fact is phrased so as to indicate the fact at issue is that Armato made certain statements when deposed, not the fact(s) described in those statements. In the context of a summary judgment motion, material facts are those facts that are "necessary to the proof or defense of a claim[.]" <i>Nat'l Am. Ins. Co. of Cal. v. Certain Underwriters at Lloyd's London</i>, 93 F.3d 529, 533 (9th Cir. 1996) (citing <i>Anderson v. Liberty Lobby</i>, 477 U.S. 242, 248 (1986)). Deposition testimony may be evidence of facts, but that does not make it "necessary to the proof or defense of a</p>

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VULCAN ADDITIONAL MATERIAL FACTS & EVIDENCE	THE CLUB’S RESPONSE
	<p>claim[.]" and it is thus not a material fact for the purpose of summary judgment.</p> <p>It is <i>undisputed</i> that as of either the time Vulcan gave notice of lease termination or the end of the holdover period thereafter, the Club had insufficient funds to perform the amount of cleanup Vulcan indicated it desired.</p>
<p>19. Armato testified that, even if the Gun Club was required to clean up the Property before vacating it, it never took that obligation into real consideration because it never planned on leaving the Property; it believed the Lease would never be terminated.</p> <p>Ehrlich Decl., Ex. M (Phillips depo.) at 39:14-40:10.</p>	<p><i>Disputed. Objection: Fact Not Supported by Cited Testimony, FRE 401, 402: Relevance, FRE 602: Lack of Foundation / Personal Knowledge:</i></p> <p>The document cited is the transcript of the Deposition of Rick Phillips, and has to do with Phillips' opinions and recollections. It does not refer to any opinions or recollections obtained from Armato – and those would be hearsay. Nothing in the cited portion of Phillips’ testimony supports the assertion that the Club might be “required” to clean up the Property. In addition, nothing in Armato's deposition supports the statement that the Club did not take any alleged cleanup obligation "into real consideration."</p> <p>Further, this purported fact is phrased so as to indicate the fact at issue is that Armato (or possibly Phillips) made certain statements when deposed, not the fact(s) described in those statements. In the context of a summary judgment motion, material facts are those facts that are "necessary to the proof or defense of a claim[.]" <i>Nat'l Am. Ins. Co. of Cal. v. Certain Underwriters at Lloyd's London</i>, 93 F.3d 529, 533 (9th Cir. 1996) (citing</p>

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VULCAN ADDITIONAL MATERIAL FACTS & EVIDENCE	THE CLUB'S RESPONSE
	<p><i>Anderson v. Liberty Lobby</i>, 477 U.S. 242, 248 (1986)). Deposition testimony may be evidence of facts, but that does not make it "necessary to the proof or defense of a claim[,]" and it is thus not a material fact for the purpose of summary judgment.</p> <p>It is undisputed that, as of either the time Vulcan gave notice of lease termination or the end of the holdover period thereafter, the Club had insufficient funds to perform the amount of cleanup Vulcan indicated it desired.</p>
<p>20. Prior to the date when Vulcan terminated the Lease, the Gun Club never anticipated remediating the Property.</p> <p>Ehrlich Decl., Ex. P (Bock depo.) at 88:19-22; Ex. L (Armato depo.) at 62:14-63:9.</p>	<p>Undisputed assuming Vulcan is referring to the definition it has used herein referring to remediation as restoring property to "pristine" condition. Disputed otherwise, as the Club had in the past, and intended to engage in further recycling until Vulcan precluded Wooldridge's work. It is assumed that "the date when Vulcan terminated the lease" refers to November 6, 2006, and not the later date when the holdover tenancy ended. (The second source cited does not support this purported fact.)</p>
<p>21. Due to the current condition of the Property, Vulcan cannot use the Property or lease it to another tenant. Vulcan will not be able to re-lease the Property until the Gun Club's debris has been cleaned and the Property has been remediated.</p> <p>Anderson ¶ 10; Linton Decl., ¶¶ 17-18.</p>	<p>Disputed. Objection: FRE 602: Personal Knowledge.</p> <p>The cited declarations state the following.</p> <p>Due to the current condition of the Property, Vulcan is unable to lease the property to another tenant, and it will not be</p>

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	<p>able to lease the Property until the . . . Club's debris has been cleared and the Property has been remediated.</p> <p>(Anderson Decl. at 10).</p> <p>Since the . . . Club vacated the Property, Vulcan has undertaken to preserve it in its original condition as much as possible, including keeping all public access to the Property locked. Vulcan has demolished certain structures to prevent nuisance, but has preserved the area in front of the firing lines of the pistol and rifle ranges, as well as the impact areas, as near as possible to the condition they were in when the . . . Club left.</p> <p>(Linton Decl. At 17).</p> <p>The citation to Linton's declaration has nothing to do with the assertion that Vulcan cannot use the Property or lease it to another tenant. Assuming that the term "original condition" refers to the condition of the Property when the Club vacated the same, the substance of the quotation from Linton's declaration at 17 is <i>undisputed</i>.</p> <p>Anderson's Decl. fails to provide a sufficient foundation for this</p>

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	<p>purported fact. Anderson does not state that Vulcan has even attempted to lease the Property (let alone that such attempt was thwarted solely because of the presence of Spent Ammunition on the Property), or that he is an expert in real estate qualified to determine that the Property cannot be leased. Indeed, Anderson does not even state a basis for why Vulcan allegedly can't use the Property, probably because the presence of Spent Ammunition on a portion of the Property simply does not prevent use.</p> <p>It is undisputed that the Property contains a blacktop-covered parking lot; that lot could be used to store heavy equipment or other mining-related material. There is no reason to believe that alleged contamination on one portion of the Property effects the use of others. Furthermore, Vulcan has admitted that it does not intend to remove the Waste Pile from the Site at any specific time in the future. (Vulcan's Resp. To RFA Set No. 4 Propounded by the Club, RFA 65.) Therefore the Site is being used right now to store mining tailings and other waste.</p> <p>Anderson's testimony is not thus sufficient to support this purported fact. This fact is <i>disputed</i>.</p>
<p>22. During his deposition, Tom Jenkins expressed no memory of three memoranda attached as Exhibit V to the Franklin Declaration or any of the matters discussed therein.</p> <p>Ehrlich Decl., Ex. N. (Jenkins depo),</p>	<p>Objection: FRE 401, 402: Irrelevant. Vulcan does not cite this fact in the Opposition, nor does the fact itself indicate how it could possibly be relevant. Tom Jenkins' lack of memory of three memoranda that he wrote, which were produced by Vulcan, does</p>

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VULCAN ADDITIONAL MATERIAL FACTS & EVIDENCE	THE CLUB’S RESPONSE
48:11-53:24.	not put the authenticity of those memoranda into question.
<p>23. During his deposition, Mr. Jenkins testified that the reference to the “lead problem” in the memoranda attached as Exhibit V referred to the leased property. Instead he testified that “he heard in the media that it was being brought up as a environmental problem and I wanted to point it out to management that when they were considering the lease, they consider that.”</p> <p>Ehrlich Decl., Ex. N. (Jenkins depo), 48:25-49:10.</p>	<p>Objection: Cited testimony does not support fact. Jenkins did not testify that the “lead problem” referred to the Site, though this can be inferred from the testimony, based on the quoted portion.</p>
<p>24. During his deposition, Tom Davis expressed no memory of three memoranda attached as Exhibit V to the Franklin Declaration or any of the matters discussed therein, other than “assumptions.”</p> <p>Ehrlich Decl, Ex. Q (Davis depo), 68:21-81:5.</p>	<p>Objection: FRE 401, 402: Irrelevant. Vulcan does not cite this fact in the Opposition, nor does the fact itself indicate how it could possibly be relevant. Tom Davis’ lack of memory of three memoranda, which were produced by Vulcan, does not put the authenticity of those memoranda into question.</p>
<p>25. In 2004, Vulcan hired ENV America to prepare a preliminary environmental inspection.</p> <p>Anderson Depo., 62:6-16.</p> <p>Ehrlich Decl, Ex. R (Anderson depo), 62:6-16.</p>	<p>Undisputed.</p>
<p>26. ENV proposed remediation alternatives that included a voluntary clean up plan in conjunction with a regulatory agency.</p> <p>Ehrlich Decl., Ex. U, (Bajsarowicz depo.) 58:224-62:10 & Ex. 5.</p>	<p>Undisputed.</p>

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<p>27. In 2005, members of Vulcan met with members of the Gun Club and requested that “the Gun Club institute those practices as provided in U.S. EPA Guidance Document so that the lead was being reclaimed and recovered.”</p> <p>Ehrlich Decl, Ex. R (Anderson depo), 75:15-79:1.</p>	<p>Objection: Cited testimony does not support fact. Anderson testified that sometime between 2005 and the end of 2007 he talked to an unnamed person at the Club, requesting that the Club implement tthe EPA BMP Guidance. The parties meeting were Anderson and a single Club representative, not multiple “members” of each.</p>
<p>28. Vulcan communicated with the City of Azusa with respect to the disposition of the structures that were previously located on the Property.</p> <p>Ehrlich Decl, Ex. R (Anderson depo), 66:7-19.</p>	<p>Objections: FRE 402, FRE 602, FRE 801, 802: Hearsay. Anderson testified that “The City of Azusa, my understanding, contacted Vulcan Materials Company with respect to the disposition of structures that previously were located on the Gun Club property.” Anderson’s qualification of the statement with “my understanding” indicates he has no personal knowledge of this contact with the City of Azusa, and that he heard of the contact from someone else, making his testimony hearsay. Accordingly Vulcan has not established Fact 28 with admissible evidence. Further, this case has nothing to do with “the disposition of structures that were previously located on the Property[,]” Vulcan has never alleged it is seeking relief regarding environmental damage to structures, making this alleged fact irrelevant.</p>
<p>29. Vulcan hired expert David Liu, who prepared a report that proposes three methods of remediating the Property based on NCP criteria.</p> <p>Ehrlich Decl., Ex. W.</p>	<p>Objection: Cited Evidence Does Not Support Fact, as to the Liu Report being based on NCP criteria. Ex. W to the Ehrlich Decl. is the “Report of Evaluation of Remediation Alternatives and Costs” prepared by David Liu. The report does not</p>

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	mention the NCP, or state that any proposed method of remediation is based on NCP criteria. None of the three alternatives is NCP compliant since, e.g., none of them contains a “Community Relations Program” required by 40 C.F.R. § 300.155.
<p>30. Vulcan hired another expert, Dr. Rudy Von Burg, who has determined that the site poses a significant risk to human health, and that “[t]he contaminated areas contain hazardous waste as defined by California and Federal law and unless a Remedial Investigation and mitigation program is instituted, the property will be unfit for either industrial reclamation or for general population/recreational use.”</p> <p>Ehrlich Decl., Ex. V.</p>	<p>Objection: Cited Evidence Does Not Support Fact, as to Von Burg’s supposed determination “that the site poses a significant risk to human health.” Ex. V., the Von Burg Report, contains no such opinion.</p>
<p>31. The Rebuttal Expert Report of Vulcan’s retained expert Dr. David Liu rejects the methods of remediation suggested by the Gun Club’s expert, in part, because it does not consider NCP criteria.</p> <p>Ehrlich Decl., Ex. X.</p>	<p><i>Undisputed.</i></p>
<p>32. After informing the Gun Club that it was terminating the Lease, Vulcan’s counsel exchanged many letters with the Gun Club and its counsel requesting that the Gun Club clean up the property pursuant to NCP and EPA criteria. The Gun Club consistently refused these requests.</p> <p>Ehrlich Decl., Ex. Y</p>	<p>Objection: Cited Evidence Does Not Support Fact, Assumes Incorrect Fact as to Vulcan’s counsel requesting that the Club clean up the Site pursuant to NCP criteria. The NCP was not mentioned in the series of 7 letters in Ex. Y. Furthermore, the NCP specifies a process that private parties must follow in order to have a valid CERCLA cost-recovery claim. It does not contain “criteria” for cleanup,</p>

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	<p>although it does contain criteria for evaluation of remedial action objectives (40 C.F.R. § 300.430(e)(2)(i)), and for evaluation of remediation alternatives (40 C.F.R. § 300.430(e)(9)(iii)).</p> <p><i>Disputed</i> that the Club “consistently” refused the requests at issue (the cited evidence does not support the allegation that a refusal occurred). It is <i>undisputed</i> that the Exhibit does reflect a series of letters between counsel for Vulcan and the Club.</p>
<p>33. Vulcan is committed to remediating the Property and will not abandon it, in part because it provides access to its nearby mining operations.</p> <p>Linton Decl., ¶ 18.</p>	<p>Objections: FRE 402, Lack of Foundation., Vague and Ambiguous.</p> <p>Linton’s declaration does not state what “committed to seeing the Property properly remediated” means or how he knows that Vulcan is committed to remediating the property. Linton’s statement could mean, for example, that Vulcan management has decided to remediate the Site to a pristine condition even if it cannot recover any of the cleanup costs from the Club. Or it could mean that Vulcan will clean up the portion of the property used for quarry access to a level such that drivers of vehicles accessing Vulcan’s mining operations via the Site will not be exposed to hazardous conditions. The Club does not know what fact Vulcan is trying to allege. Accordingly, if a response is required, this “fact” is <i>disputed</i>.</p>
<p>34. Paragraph 35 of the Lease provides that "Landlord reserves the right to use and landscape the stockpile area in the back of the range area of the Premises,</p>	<p><i>Undisputed.</i></p>

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as illustrated on the landscape plan attached hereto as Exhibit 'B.'" Linton Decl., Ex. H at ¶ 35 and Ex. B thereto.	

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<p>35. In the early or mid 1990's, to protect Vulcan workers from ricochets, Vulcan deposited inert mining tailings (fines and small rocks left over after the aggregate was crushed) in front of the toe of hill, creating a "berm" in front of the impact area for the rifle and pistol ranges.</p> <p>Ehrlich Decl., Ex. L (Armato depo.) at 38:13-41:20, Ex. M (Phillips depo.) at 96:17-97:8, Ex. P (Bock depo.) at 77:17- 78:25, Ex. O (Cowan depo.) at 38:11-23, 59:4-7.</p>	<p><i>Disputed. Objection: FRE 602: Lacks Foundation, Cited Evidence Does Not Support the Purported Fact.</i></p> <p>1) <i>None</i> of the deponents has the requisite relationship with Vulcan to make a statement based on personal knowledge of why Vulcan did something that only a member of Vulcan's control group (e.g., an executive) would have the personal knowledge to make. Three of the deponents at issue are affiliated with the Club, and the fourth was the heavy equipment operator (not an executive) who oversaw the placement of overburden (i.e., the Waste Pile) on the Property. (Armato Dep.at 7:5-10; Phillips Dep. at 6:5-6; Bock Dep. at 13:14-15:19, 24:11-19; Cowan Dep. at 14:20-19:25). Vulcan is avoiding providing <i>any</i> testimony of an executive on this issue, perhaps because that would show (as discussed in part 3 below), that Vulcan is intentionally misrepresenting facts.</p> <p>2) <i>None</i> of the cited material refers to deposited material as "inert."</p> <p>3) Most importantly, Vulcan is intentionally confusing three separate issues:</p> <p style="padding-left: 40px;">a) the use of rock dust on the floor of the range to reduce ricochets,</p> <p style="padding-left: 40px;">b) Vulcan's extension of its mining operation that</p>

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	<p>encroached on the pistol range (including the placement of "base" which spilled onto the pistol range), and</p> <p>c) the creation of a Waste Pile.</p> <p><i>Every one of the depositions cited to by Vulcan in support of this "fact" contradicts Vulcan's misrepresentation about the purpose of the creation of the Waste Pile (i.e., what Vulcan refers to as "a 'berm' in front of the impact area for the rifle and pistol ranges"). In fact, three of the four deponent citations have <i>nothing to do</i> with ricochet's or safety, and the fourth expressly distinguishes the creation of the Waste Pile from a <i>different location</i> where rock dust was placed to help reduce ricochets.</i></p> <p>a) <i>Armato</i>. The portion of the Armato deposition cited makes no mention of ricochets or protecting workers; in fact Armato's testimony is that he did not know why the mining tailings (i.e., the Waste Pile) was brought onto the Property, though he did note the mining tailings were "like waste" and that he didn't think the mining tailings were brought in at the request of the Club. (Armato Dep. at 44:6-25 to 45:1-24).</p> <p>b) <i>Phillips</i>. Vulcan's citation to Phillips' deposition is the most disconcerting of the bunch. Phillips</p>

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	<p>plainly does give testimony that "rock dust was placed on the property as a way to try to mitigate those ricochets[.]" (Phillips Dep.at 96:17-97:8). Vulcan fails to cite, however, the portions of the Phillips deposition wherein he explains that, contrary to Vulcan's attempt to graft the ricochet issue on to the Waste Pile issue, the two issue were completely separate.</p> <p>Q . . . you mentioned the placement of rock dust. Had you requested that Vulcan place rock dust on the property? A We requested the material itself, the rock dust, which we were given the rock dust to place in areas where it would be an impact area, and it would cut down on ricochets in doing so. . . . Q Did the Club physically pick up the rock dust from the quarry? A Sometimes or we would hire [a dump truck owner/operator] to come with the dump truck and pick up the rock dust and spread it for us.</p> <p>[¶¶]</p> <p>Q Did Vulcan . . . ever bring the rock dust down on the property for the Club? A The rock dust, no. Q And do you have</p>

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	<p>any estimate as to the quantity that may have been brought down . . .? Would it have been in the tons? A Yes. Q The hundreds of tons? A Yes. Q Thousands of tons? A No.</p> <p>[¶¶]</p> <p>[As to the] <i>elevation in the 2005 photo that's not there in the 1980 photo, sort of along the base of the hill . . .</i> Do you have any knowledge as to whether the placement of the rock dust could have been one of the things that contributed to the new elevation there in 2005 that wasn't there in 1980? A No. [sic, the punctuation should clearly be a comma, not a period] [t]he placement of the rock dust was right across the front . . . <i>Q The rock dust was never placed along sort of the impact berms up here? A No. The area you're referring to, that was put there by Vulcan or then Calmat with their vehicles and their employees. That was not requested by the Gun Club.</i></p>

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	<p>(Phillips Dep. at 69:22-74:24) (emphasis added).</p> <p>Phillips' Deposition Transcript also shows that the pistol range encroachment issue and the placement of the Waste Pile are two different things.</p> <p>[as to the mining tailings located on "haul roads" seen on aerial photos] Q. . . [D]id Mr. Cow[a]n express to you one of the reasons they were causing the tailings on the property was because Vulcan was in the process of installing the conveyor and needed to make room?</p> <p>A. The material that we are talking about [i.e., the mining tailings on the haul roads], there is a separate -- it was a separate deal. They needed to encroach on the pistol range, so they deposited material to build the conveyor and the tunnel. The tunnel required a certain amount of base over the top of it which was going to spill over onto the pistol range. They basically took part of the pistol range away in order to be able to build the tunnel.</p>

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	<p data-bbox="1019 289 1079 327">[¶¶]</p> <p data-bbox="1019 373 1419 856">Q. Did Mr. Cow[a]n say any other reason why they wanted to move the mining tailings onto the property? A. I don't remember his comment exactly, but I was led to believe it was just a lower grade of material. They didn't have a sale for the material and had to have a place to put it.</p> <p data-bbox="927 905 1511 982">(Phillips Dep. at 179:1-25 to 180:1-25, 182:1-7).</p> <p data-bbox="927 1031 1495 1682">c) <i>Bock</i>. Just like Vulcan's citation to Armato's deposition testimony, the portion of the Bock deposition cited makes no mention of ricochets or protecting workers. It discusses one topic: Bock's memory concerning discussions as to the placement of mining tailings at the Site. Therefore, it appears Vulcan is citing to Bock's deposition regarding only the time frame the mining tailings (i.e., the Waste Pile) was deposited. Bock's deposition fails to provide any reliable evidence on that point, however, both in and of itself and when compared to the other evidence in this case.</p> <p data-bbox="927 1730 1523 1927">Aside from the fact that Bock said he was "not positive" about the time frame (Bock Dep. at 77:17-25 to 78:1-5), the testimony (which is admittedly unclear) indicates that Bock was trying</p>

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	<p>to set a time frame based on a conversation he had with Harry Sanford (who died in 1996) wherein Mr. Sanford "complained to me [i.e., Bock] about them putting those tailings up there" (<i>Id.</i>). Thus, the recollection Bock was relying on in attempting to set the time frame of the deposition was not a memory regarding of the Waste Pile being placed, but a memory that he had discussed the presence of the pile in 1995-96, i.e., he was trying to remember when a discussion about the Waste Pile occurred, not when the Waste Pile was placed (preventing Bock's testimony from being based on personal knowledge, making it inadmissible). In fact, Bock's first comment on this topic during deposition was that he had "no recollection of that at all" when he asked if the Waste Pile was transported onto the property at issue before or after May 20, 1992 (the effective date of the 1992 lease). (<i>Id.</i> at 61:12-15).</p> <p>Further, Bock stated definitively that Rick Phillips would be the most knowledgeable person associated with the Club vis-a-vis the creation of the Waste Pile. (<i>Id.</i> at 155:15-24). Phillips testified the Waste Pile was placed in the early to mid-1990s. (Franklin Decl. Ex. L (Phillips Dep.) at 82:20-25). Cowan, who was responsible for the pile's creation, states it occurred in the late 1980s to early 1990s (Cowan Dep. at 37:20-38:15 (Waste pile material was taken to the gun club facility starting</p>

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	<p>when Kirst still owned the quarry), 17:2-4 (CalMat and Owl Rock acquired Kirst in the late '80s). But in actuality, no deposition testimony is needed to establish when the pile was created: an interoffice memo from Vulcan's predecessor dated December 5, 1991, clearly states the need to "Decide what to do with bullet problem in waste pile on rifle range." (Franklin Decl. Ex. P at VUL00816). Plaintiff has also provided hauling records showing material for the pile being transferred to the property at issue prior to the execution of the 1992 lease. (Franklin Decl. Ex. LL). Finally, the Waste Pile, in an incomplete condition, is present and easily visible in a photo taken January 13, 1992, (before the execution of the Lease), which was provided to Vulcan prior to filing of Vulcan's Motion for Summary Judgment. (See I.D. supplement served by the Club May 10, 2011). Even if Bock's testimony clearly indicated a belief that Vulcan commenced creation of the Waste Pile in 1994 or 1995 (which it does not), that alone would not be sufficient to create a genuine issue of fact; i.e., no reasonable trier of fact could find Bock's memory is of sufficient weight to refute the internal memo and photo (not to mention Phillips' memory, which Bock states is better than his own on this issue) that definitively prove the Waste Pile was created prior to May 20, 1992.</p> <p>d) <i>Cowan</i>. The portion of the Cowan deposition transcript cited by Vulcan</p>

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	<p>indicates that <i>prior</i> to Krist being taken over by a joint venture (which occurred in 1989, see Franklin Decl. Ex. O (Sheedy Dep.) at 31:2-25), that overburden (i.e., non-saleable "rock dust and sand") was taken to the Site. The cited material also refers to the fact that Cowan used the terms overburden, mining tailings, and "rock dust and sand" interchangeably when discussing the issue of the Waste Pile. What the quoted material does not address, however, is ricochets or protecting workers.</p> <p>Because Vulcan offers only bald misinterpretations and inadmissible material, there is no admissible evidence to support this purported fact. The photo, memo, and deposition testimony cited herein prove this "fact" is utterly untrue.</p> <p>Finally, the Club objects to this purported fact as it refers to an alleged fact (i.e., that the placement of materials was done to protect Vulcan employees) never raised in the motion at issue.</p>
<p>36. At all relevant times, the berm existed at only a portion of the Gun Club Property.</p> <p>Anderson Decl., ¶¶ 4-6, 10; Ehrlich Decl., Ex. T (Peddicord Report) at 4-6.</p>	<p>Objection: Vague and Ambiguous. Vulcan and the Club likely have different definitions of the what the "relevant times" are in this case. Vulcan's use of a subjective term would require the Club to speculate as the intended meaning of that term to respond, meaning the Club has no duty to respond. Similarly, the use of the undefined term "berm" is vague and subject to multiple reasonable</p>

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	<p>interpretations, and the Club is not required to select one such interpretation in responding to this purported fact.</p> <p>It is <i>undisputed</i> that the Waste Pile on the Property (i.e., the "approximately 600,000 tons of waste material on the CalMat (Gun Club) property" as of December 14, 1994) was in existence from some point prior to December 12, 1991 to the present, though it obviously grew from less than 600,000 tons to that size (if not larger) over the course of its existence. The Waste Pile is and has always been located "in back of pistol/rifle range" (<i>id.</i>), i.e., the area behind the targets on those ranges, and the Waste Pile does not cover the entirety of the Property.</p>
<p>37. From the time the berm was created until the Gun Club closed in 2006, the Gun Club users fired bullets into the face of the berm.</p> <p>Anderson Decl., ¶ 4; Ehrlich Decl., Ex. M (Phillips depo.) at 31:24-32:2, Ex. T (Peddicord Report) at 4.</p>	<p><i>Undisputed</i>, assuming the vague term "berm" is understood to mean the Waste Pile.</p>
<p>38. The Gun Club made no effort to assess or remediate the area prior to or during the time that the berm existed.</p> <p>Ehrlich Decl., Ex. M (Phillips depo.) at 31:24-33:6, 156:16-158:25, 182:23-183:4.</p>	<p><i>Disputed. Objections: Vague and Ambiguous, FRE 602: Lacks Foundation/Personal Knowledge.</i></p> <p>The purported fact fails to explain what "area" is at issue. Further, the terms "assess," "berm," and "remediate" are vague and subject to multiple reasonable interpretations. The Club is not required to speculate as to what the abovementioned terms mean. Furthermore, Phillips' cited testimony</p>

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	<p>does not establish his knowledge of all efforts the Club may have made at the time in question.</p> <p>Assuming Vulcan is referring to the definition it has used herein referring to remediation as restoring property to "pristine" condition, it is undisputed that, in light of the fact that Vulcan never asked the Club to perform any cleanup in the area where the Waste Pile was created before or during the creation of the Waste Pile, no such cleanup occurred. Disputed otherwise, as the Club had in the past recycled from the impact area at issue, and intended to engage in further recycling until Vulcan precluded Wooldridge's work. (Armato Dep. at 26:24-27:7).</p>
<p>39. The Gun Club did not make any efforts to clean up shell casings, bullet fragments, or other materials deposited at or about the time that Vulcan commenced placing material at the Property.</p> <p>Ehrlich Decl., Ex. M (Phillips depo.) at 156:16-158:25; 182:23-183:4; see also, Ex. O (Cowan depo.) at 62:4-10.</p>	<p>Objection: Vague and Ambiguous. The phrase "other materials" and the term "berm" are vague and cannot be interpreted without speculation, and the Club is not required to speculate in responding to a UF.</p> <p>Assuming Vulcan is referring to the definition it has used herein referring to remediation as restoring property to "pristine" condition, it is undisputed that, in light of the fact that Vulcan never asked the Club to perform any cleanup in the area where the Waste Pile was created before or during the creation of the Waste Pile, no such cleanup occurred "at or about the time that Vulcan commenced placing material at the Property." Disputed otherwise, as the Club had in the past recycled from the impact area at issue, and intended to engage in</p>

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	<p>further recycling until Vulcan precluded Wooldridge's work.(Armato Dep. at 26:24-27:7). Further, as simple matter of physics, there would be no casings in the area where the Waste Pile was placed, it is simply too far away from the relevant firing positions for any signficiant amount of casings to get near or on the Waste Pile area.</p>
<p>40. At no time did the Gun Club attempt to clean the bullet debris surrounding or in the berm areas.</p> <p>Ehrlich Decl., Ex. L (Armato depo.) at 70:23-25, Ex. M (Phillips depo.) at 31:24-33:6, 156:16-158:25, 182:23-183:4.</p>	<p>Objection: Vague and Ambiguous. The phrase "bullet debris" and the term "berm areas" are vague and cannot be interpreted without speculation, and the Club is not required to speculate in responding to a purported fact.</p> <p>It is <i>undisputed</i> that, in light of the fact that Vulcan never asked the Club to perform any cleanup in the area the Waste Pile was created before or during the creation of the Waste Pile, no such cleanup occurred at or about the time that Vulcan commenced placing material at the Property.</p> <p>To the extent this purported fact is not limited to period of time immediately proceeding the establishment of the Waste Pile until its completion, it is <i>disputed</i>. The Club hired Fred Wooldridge in early 2007 to remove bullets and bullet fragments from the Property, including the Waste Pile. (Armato Dep. at 26:24-27:7).</p>
<p>41. As a result, by the time the Gun Club vacated the Property, thousands of bullets and bullet fragments littered the entire face of the berm, and on top of the berm.</p> <p>Anderson Decl., ¶¶ 4-5; Linton Decl., ¶ 17; Ehrlich Decl., Ex. T (Peddicord</p>	<p>Objection: Vague and Ambiguous. The terms "berm" and "littered" are vague and subjective, and the Club would have to speculate as to the intended meaning of those terms to respond, something the Club is not required to do.</p> <p>Because the cited information</p>

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Report) at 5.	provides no sampling data or computations to support this assertion, it is <i>disputed</i> . It is <i>undisputed</i> that, when the Club vacated the Property, what appear to be lead bullets or bullet fragments were visible on the face and the top of the Waste Pile.
42. Vulcan deposited the mining tailings berm in the stock pile area identified in Exhibit B to the Lease. Ehrlich Decl., Ex. P (Bock depo.) at 58:20-61:13.	<i>Disputed</i> . Vulcan never deposited a "mining tailing berm" on the Site, nor does the cited deposition transcript say so. That document addresses Vulcan's expressed intent to landscape the Waste Pile. Further, the testimony referred to in the does not identify a stockpile, at least not expressly. It is <i>undisputed</i> that the area between the "toe of slope" indication and the hill/mountain indication on the document at issue (i.e., Exhibit B to the Lease) is the general area where the Waste Pile is located.
43. The berm was installed in the early or mid-1990's, and no other mining tailings were deposited on the Property after that time. Ehrlich Decl., Ex. L (Armato depo.) at 41:12-20, Ex. P (Bock depo.) at 77:17-78:25, 80:18-81:25, Ex. T (Peddicord Report) at 4.	<i>Disputed in part. Objections: Not Supported by the Cited Evidence, Vague and Ambiguous, FRE 602: Lacks Foundation/Personal Knowledge.</i> Assuming the term "berm" refers to the Waste Pile, the creation of the Waste Pile appears to have started in the late 1980s or early 1990s, but no later than December 4, 1991; to that extent, this fact is <i>undisputed</i> . As to the supporting documents, none of them state or even indicate that "no other mining tailings were deposited on the Property after" the creation of the Waste Pile. At most, the cited material generally discusses when the Waste Pile was created. Vulcan cites no evidence that the creation of the Waste Pile was the

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	<p>only placement of waste material on the Property. The cited testimony does not establish how the deponents and author know the purported facts. Peddicord is unlikely to have personal knowledge of these facts since he was not involved with Vulcan at the time the Waste Pile was installed on the Site. That portion of this purported fact is <i>disputed</i>.</p>
<p>44. Herb Bock testified that the berm was installed in 1994-95. Bock's testimony was based on his recollection that his predecessor as Gun Club President died around the time that the berm was installed -- and thus he was able to link the berm installation to a specific date.</p> <p>Ehrlich Decl., Ex. P (Bock depo.) at 77:17-78:25.</p>	<p><i>Disputed.</i></p> <p>This purported fact is phrased so as to indicate the fact at issue is that Bock made certain statements when deposed, not the fact(s) described in those statements. In the context of a summary judgment motion, material facts are those facts that are "necessary to the proof or defense of a claim[.]" <i>Nat'l Am. Ins. Co. of Cal. v. Certain Underwriters at Lloyd's London</i>, 93 F.3d 529, 533 (9th Cir. 1996) (citing <i>Anderson v. Liberty Lobby</i>, 477 U.S. 242, 248 (1986)). Deposition testimony may be evidence of facts, but that does not make it "necessary to the proof or defense of a claim[.]" and it is thus not a material fact for the purpose of summary judgment.</p> <p>Regardless, Bock's deposition fails to provide reliable evidence as to when the "berm" (presumed to be the Waste Pile) was created. Aside from the fact that Bock said he was "not positive" about the time frame (Franklin Decl. Ex. B (Bock Dep.) at 77:17-25 to 78:1-5), the testimony (which is unclear) indicates that Bock was trying to set a time frame based on a conversation he had with Harry</p>

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	<p>Sanford (who died in 1996) wherein Mr. Sanford "complained to me [i.e., Bock] about them putting those tailings up there" (<i>Id.</i>). Thus, Bock was relying on his recollection of a conversation he had with Sanford 15 years ago, which took place some indeterminate amount of time before Sanford's death, and in the conversation Sanford complained to Bock about the mining tailings, which had been placed on the Site another indeterminate amount of time before the conversation. At most, Bock testified that the Waste Pile existed in 1994-1995, which is undisputed. Because of the difficulty of remembering the duration of these two spans of time fifteen years later, little weight can be given to Bock's testimony if it is being used, as it is here, to show that the Waste Pile was created in 1994 or 1995, as opposed to the late 1980s to 1991.</p> <p>In fact, Bock's first comment on this topic during deposition was that he had "no recollection of that at all" when he asked if the Waste Pile was transported onto the property at issue before or after May 20, 1992 (the effective date of the 1992 lease). (<i>Id.</i> at 61:12-15).</p> <p>Further, Bock stated definitively that Rick Phillips would be the most knowledgeable person associated with the Club vis-a-vis the creation of the Waste Pile.</p> <p>Even if Bock's testimony clearly indicated a belief that Vulcan commenced creation of the Waste Pile</p>

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	<p>in 1994 or 1995 (which it does not), that alone would not be sufficient to create a genuine issue of fact; i.e., no reasonable trier of fact could find Bock's memory is sufficient to trump the internal memo and photo (not to mention Phillips' memory, which Bock states is better than his own on this issue) that definitively prove the Waste Pile was created prior to May 20, 1992.</p>
<p>45. The Gun Club did not object to Paragraph 35 of the Lease or request that Vulcan be made liable for cleaning up the stockpile area before, during, or after it was created.</p> <p>Ehrlich Decl., Ex. P (Bock depo.) at 64:11-68:23, Ex. M (Phillips depo.) at 79:22-80:4; 138:11-139:11.</p>	<p><i>Disputed in part. Objection: Not Supported by the Cited Evidence, Vague and Ambiguous, FRE 602: Lacks Foundation / Personal Knowledge.</i> The Club interprets the vague and undefined term “stockpile area” to mean the area where the Waste Pile was placed on the Property.</p> <p>This fact is really two facts: 1) The Gun Club did not object to Paragraph 35 of the Lease and 2) [the Club did not] request that Vulcan be made liable for cleaning up the stockpile area before, during, or after it was created.</p> <p>1) The Club presumes the use of the ambiguous term “object” is intended to refer to the act of expressly making opposition known. Bock’s testimony regarding the addition of Paragraph 35 is as follows. “There was a discussion about it because we were losing a good portion of the pistol range, but once again, since [Vulcan] were our landlord, we felt we had no recourse.” This plainly does not support the assertion made here. In fact, Bock’s deposition testimony on th is point is clear.</p>

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	<p data-bbox="1036 289 1409 1066">“A . . . there was some discussion about how the rock company could just arbitrarily cover up that area that we lease from them with dirt. . . . [¶¶] The only concession [Vulcan] made is that they wouldn’t go beyond 100 meters It would remain a hundred meters at the least [from the firing area], and they accepted that, but they did cover it up, and they covered all the impact area along that hundred yard line.</p> <p data-bbox="1036 1115 1409 1314">Q And so do you recall these discussions in the context of the lease negotiations for [the Lease]?</p> <p data-bbox="1036 1362 1409 1682"><i>A No. They didn’t come up during lease - - I recall they didn’t come up during lease negotiation [¶¶] I think was the midterm of a lease, you know, but I can’t be sure.</i></p> <p data-bbox="927 1730 1458 1808">(Bock Dep. at 61:18-25 to 62:1-20) (emphasis added).</p> <p data-bbox="927 1814 1511 1927">Additionally, Phillips’ testimony is misused by Vulcan, as he states that “Nobody raised any objections to [the</p>

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	<p>deposition of the Waste Pile] that I recall[,] <i>not</i> that the Club did not object to Paragraph 35. This distinction is key when it is remembered that Vulcan had <i>already</i> started the Waste Pile by the time the Lease was being negotiated (see response to AMF 44). And it should be noted that Cowan actually recalls Phillips raising an objection, and that Cowan in turn raised the issue to Sheedy. (Cowan Dep. at 59:1-25 to 63:1-25).</p> <p>2) Bock’s testimony is not as broad as would be required to support Vulcan’s assertion. That is, Bock testified that he did not recall <i>during the negotiation for the Lease</i>, the Club ever requesting “that Vulcan be responsible for remediation of any soil, dirt that they [sic] brought on to the . . . Property.”</p> <p>Phillips testimony not only fails to support Vulcan’s assertion on AMF 44 part 2), it explains why there would have been no reason for the Club to make a clean up request. “Q Did you ever alert Vulcan of the fact when they started allegedly depositing the mining tailings that we’ve discussed? A <i>Wasn't an issue at the time.</i>” (Emphasis added). It wasn’t an issue because the Club did not expect to be required to remediate the Site.</p> <p>It is <i>undisputed</i> that, in light of the fact that, prior to the completion of the Waste Pile, Vulcan never indicated an intent that the Club would be responsible for cleaning up the area under and including the Waste Pile, the Club assumed that Vulcan would be</p>

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	responsible for any required cleanup of the Site.
<p>46. The Gun Club consented to Vulcan's depositing of the mining tailings on the Property.</p> <p>Linton Decl., Ex. H at ¶ 35 and Ex. B; Ehrlich Decl., Ex. P (Bock depo.) at 79:8-20, 87:19-88:18, Ex. M (Phillips depo.) at 80:2-4, 182:8-22, Ex. O (Cowan depo.) at 59:1-63:18.</p>	<p><i>Disputed in part. Objections: Not Supported by the Cited Evidence, Vague and Ambiguous, FRE 701: Inadmissible Lay Legal Conclusion, FRE 602: Lacks Foundation / Personal Knowledge.</i> The Club presumes the reference to “depositing of the mining tailings” refers to the creation of the Waste Pile. This purported fact states an inadmissible legal conclusion as to the interpretation of a contract as to the Club’s consent.</p> <p>Vulcan’s citation to the Lease is unavailing for at least two reasons. 1) the Waste Pile was created starting <i>well before</i> the execution of the Lease (See response to AMF 44), and 2) the Lease makes no mention of absolving Vulcan for creating the Waste Pile without a contractual right to do so. The entirety of the Lease’s discussion regarding the reservation of the “stockpile” (i.e., Waste Pile) is as follows:</p> <p style="padding-left: 40px;">Landlord reserves the right to use and landscape the stockpile area in back of the range area of the Premises, as illustrated on the landscape plan attached hereto as Exhibit ‘B’.”.</p> <p>Similarly Bock does not testify regarding any consent; in fact, he testifies that the Club <i>did</i> contact Vulcan about limiting the size of the Waste Pile.</p>

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VULCAN ADDITIONAL MATERIAL FACTS & EVIDENCE	THE CLUB’S RESPONSE
	<p>Finally, Vulcan citation to the deposition testimony given by Cowan supports that the Club <i>did</i> object to the placement of the Waste Pile.</p> <p>Q At any point was an objection ever raised by the [Club] concerning the - - depositing of the - - rock dust and sand [i.e., what Cowan testified the Waste Pile was composed of] on the [P]roperty? A Yes [Phillips stated] he was concerned of what we were doing and what we were burying [¶¶]</p> <p>Q So . . . Phillips raised a concern to you that you [i.e., Vulcan] were burying lead. A Yes.</p> <p>(Cowan Dep. at 59:1-25 to 63:1-25).</p> <p>Thus, it is <i>undisputed</i> that <i>after</i> the execution of the Lease, Vulcan had the right to use the already extant stockpile (i.e., Waste Pile), though it is <i>disputed</i> that the Club consented to the creation or use of the Waste Pile prior to the execution of the Lease.</p>
<p>47. The Gun Club knew that Vulcan was depositing the mining tailings, and the Gun Club arranged with Vulcan to make the deposits when the Gun Club was closed for safety reasons and in order to avoid disturbing the club's</p>	<p><i>Undisputed</i>, assuming the phrase “depositing the mining tailings” refers to the placement of the Waste Pile.</p>

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<p>operations.</p> <p>Ehrlich Decl., Ex. P (Bock depo.) at 79:8-20, 85:12-86:3, 87:19-88:18, Ex. M (Phillips depo.) at 80:2-4, 182:8-22, Ex. O (Cowan depo.) at 59:1-63:18.</p>	
<p>48. The Gun Club's designated expert, Richard K. Peddicord, Ph.D, estimated that properly remediating the contamination caused by the Gun Club at Property would cost between \$405,018 and \$1.5 million.</p> <p>Ehrlich Decl., Ex. T (Peddicord Report) at 12, 17.</p>	<p><i>Disputed in part. Objections: Not Supported by the Cited Evidence, Vague and Ambiguous.</i> The meaning of “properly” is subject to multiple interpretations. The cited document does not support the specific assertion made.</p> <p>It is <i>undisputed</i> that, subject to several specific limitations, and as a part of “necessarily somewhat general discussion of management alternatives[,]” Dr. Peddicord <i>estimated</i> costs for certain alternatives from \$405,018 to \$1,571,061.</p>
<p>49. Due to the current condition of the Property, Vulcan cannot use the Property or lease it to another tenant. Vulcan will not be able to re-lease the Property until the Gun Club's debris has been cleaned and the Property has been remediated.</p> <p>Anderson Decl., ¶ 10; Linton Decl., ¶ 17.</p>	<p><i>Disputed. Objections: Not Supported by the Cited Evidence, FRE 602: Lacks Foundation / Personal Knowledge.</i></p> <p>The cited declarations state the following.</p> <p>Due to the current condition of the Property, Vulcan is unable to lease the property to another tenant, and it will not be able to lease the Property until the . . . Club’s debris has been cleared and the Property has been remediated.</p>

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	<p>(Anderson Decl., ¶ 10)</p> <p>Since the . . . Club vacated the Property, Vulcan has undertaken to preserve it in its original condition as much as possible, including keeping all public access to the Property locked. Vulcan has demolished certain structures to prevent nuisance, but has preserved the area in front of the firing lines of the pistol and rifle ranges, as well as the impact areas, as near as possible to the condition they were in when the . . . Club left.</p> <p>(Linton Decl. ¶ 17).</p> <p>The citation to Linton's declaration has nothing to do with the assertion that Vulcan cannot use the Property or lease it to another tenant. Assuming that the term "original condition" refers to the condition of the Property when the Club vacated the same, the substance of the quotation from Linton's declaration at ¶ 17 is undisputed.</p> <p>Anderson's Decl. fails to provide a sufficient foundation for this purported fact. Anderson does not state that Vulcan has even attempted to lease the Property (let alone that such</p>

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	<p>attempt was thwarted solely because of the presence of Spent Ammunition on the Property), or that he is an expert in real estate qualified to determine that the Property cannot be leased. Indeed, Anderson does not even state a basis for why Vulcan allegedly can’t use the Property, probably because the presence of Spent Ammunition on a portion of the Property simply does not prevent use.</p> <p>It is <i>undisputed</i> that the Property contains a blacktop-covered parking lot; that lot could be used to store heavy equipment or other mining-related material. There is no reason to believe that alleged contamination on one portion of the Property effects the use of others.</p> <p>Though Anderson’s testimony is not sufficient to support this purported fact, for the avoidance of doubt, the Club will state this fact is <i>disputed</i>.</p>
<p>50. Paragraph 17 of the Lease provides: “Tenant shall indemnify and defend Landlord and save him harmless from and against any and all claims, actions, damages liability and expenses in connection with loss of life, bodily injury or damage to property arising from or out of any occurrence in, upon or at the Premises or the improvements, or any occupancy or use by Tenant of the Premises or the improvements or any part thereof, or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees or servants”</p>	<p><i>Undisputed.</i></p>

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Linton Decl., Ex. H at ¶ 17.	
<p>51. The Gun Club had no regular process of cleaning the range or the hill of the bullets and bullet fragments deposited as part of the Gun Club's operations.</p> <p>Ehrlich Decl., Ex. L (Armato depo.) at 26:4-35:17, 70:23-25, Ex. M (Phillips depo.) at 28:2-34:11, Ex. P (Bock depo.) at 43:4-45:5, 48:17-50:21.</p>	<p>Disputed. Contradicted by portions of the cited evidence – (Armato Dep. at 26:10-16 (lead bullets from black powder shooters were swept up every day after the range was closed, recycled), 28:16-19, 29:11-30:24, 33:15-34:11 (regular program of allowing outsiders to clean the range of bullets and bullet fragments); (Bock Dep. at 43:16-44:1 (regular program of picking up or mining lead from impact areas on the rifle range), 44:10-17 (program to use private contractors to mine lead on the shotgun field, though it wasn’t “ongoing”), 49:15-50:21 (outside company would mine lead from the rifle and shotgun fields)). The Club had lead removed as needed, and when it was economically viable.</p>
<p>52. Although the Gun Club occasionally "swept" the area in front of the firing lines for shell casings, and, on an inconsistent and irregular basis, caused a lead recycler to recycle some of the lead from the hill for its economic value, the Gun Club never attempted to remediate or clean up the hill or the ranges of environmental hazards during the entirety of the time it leased the Property.</p> <p>Ehrlich Decl., Ex. L (Armato depo.) at 26:4-35:17, 70:23-25, Ex. M (Phillips depo.) at 28:2-34:11, Ex. P (Bock depo.) at 43:4-45:5, 48:17-50:21, 85:8-11.</p>	<p>Objection: Vague and Ambiguous. This purported fact uses several terms that are susceptible to multiple reasonable interpretations and the Club would have to speculate as to their meaning in attempting to provide a response (“inconsistent,” “irregular,” “remediate,” and “environmental hazard”).</p> <p>Regardless, this UF is disputed. It is undisputed that the Club lead removed as needed, and when it was economically viable, but that the Club did not adhere to a specific timetable for such removal.</p>
53. The Gun Club and its leadership knew that the lead bullet debris	Disputed. Objection: Vague and Ambiguous, Not Supported by the

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<p style="text-align: center;">VULCAN ADDITIONAL MATERIAL FACTS & EVIDENCE</p>	<p style="text-align: center;">THE CLUB’S RESPONSE</p>
<p>constitutes "hazardous" material under the law, but still failed to make regular or thorough efforts to remediate the waste.</p> <p>Ehrlich Decl., Ex. L (Armato depo.) at 66:10-20, 133:10-136:21, Ex. 17, Ex. P (Bock depo.) at 42:5-10, 43:4-45:5, 48:17- 50:21, 56:25-57:2, Ex. M (Phillips depo.) at 29:18-34:11, 59:21-61:16, Ex. O (Cowan depo.) at 60:9-61:10.</p>	<p>Cited Evidence. The term “hazardous material” is not a term of art under environmental law and could mean a variety of things. Likewise, “remediate” is susceptible to a variety of interpretations. This purported fact is also vague as to time.</p> <p>The Armato Dep at 66:10-20 merely states that Armato was not aware of any Club remediation effort prior to 2005. There is nothing in this testimony to indicate that the Club knew that lead bullet debris constituted “hazardous material.” Likewise, in Armato’s testimony at 133:10-136:2, the only discussion of “hazardous materials” is Vulcan’s counsel quoting from a letter written by the Club’s counsel to Vulcan claiming that the mining tailings Vulcan had deposited on the Site contained “hazardous materials”. (Ex. 17).</p> <p>The Bock Dep.at 42:5-10 shows Vulcan’s counsel instructing Bock on the definition of “remediation” to be used during the deposition, i.e. returning the property to a pristine condition. There is no mention of “hazardous material” in the Bock Depo at 43:4-45:5, 48:17-50:21 or 56:256-57:2.</p> <p>The closest the Phillips Dep. comes to mentioning “hazardous material” is Phillips’ answer of “yes” to Vulcan’s counsel’s question: “Every once in a while throughout your employ, the concept that lead may be a potential environmental hazard was discussed?” This testimony does not show that the Club leadership knew</p>

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VULCAN ADDITIONAL MATERIAL FACTS & EVIDENCE	THE CLUB’S RESPONSE
	<p>lead was a “hazardous material.” Similarly, the cited portions of Cowan’s Dep. do not mention “hazardous materials.”</p>
<p>54. When the Gun Club ultimately vacated the Property, the Property was in extremely poor condition, and overrun with bullet shell casings and hazardous materials, including lead.</p> <p>Anderson Decl., ¶¶ 4-7; Linton Decl., ¶ 17; Ehrlich Decl., Ex. S (Hoenig depo.) at 141:21-25, Ex. T (Peddicord Report), Ex. W (David Liu Expert Report).</p>	<p>Disputed. Objection: Vague and Ambiguous, Not Supported by the Cited Evidence. The term “hazardous material” is not a term of art under environmental law and could mean a variety of things. The phrase “extremely poor condition” and the term “overrun” are subjective, and providing a response to a purported fact using those terms/phrases would impermissibly require the Club to speculate in formulating its response.</p> <p>Anderson’s cited testimony is essentially equivalent to this purported fact, a vague conclusion. The other citations do not directly support the fact. Linton’s cited testimony is to the effect that Vulcan has preserved the Site in the same condition it was in when the Club vacated it. Hoenig’s testimony is simply that lead could be seen on the berms with the naked eye. Peddicord’s 29-page report and Liu’s 7-page report (cited in their entirety with no pin cite) confirm that there are casings and spent bullets on the Site.</p> <p>It is <i>undisputed</i> that when the Club turned the Property over to Vulcan, there were casings and spent bullets (including spent lead bullets and portions thereof) present at the Property.</p>
<p>55. Due to the Gun Club's activities, lead (and other heavy metal) contamination has been deposited at the Property, and such contamination</p>	<p>Objection: Vague and Ambiguous. The term “contamination” is subjective, and providing a response to a purported fact using those</p>

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VULCAN ADDITIONAL MATERIAL FACTS & EVIDENCE	THE CLUB’S RESPONSE
<p>remains on the Property to this day.</p> <p>Anderson Decl., ¶¶ 4-7; Linton Decl., ¶ 17; Ehrlich Decl., Ex. L (Armato depo.) at Ex. 17, Ex. P (Bock depo.) at 43:4-45:5, Ex. S (Hoenig depo.) at 139:22-141:25, Ex. T (Peddicord Report) at pp. 5-6, Ex. W (David Liu Expert Report).</p>	<p>terms/phrases would impermissibly require the Club to speculate in formulating its response. The term “heavy metal” is vague and undefined.</p> <p>Disputed as to “contamination and “other heavy metal.”</p> <p>It is undisputed that lead was deposited at the Property due to the Club’s activities thereat, and that some of the lead deposited as a result of the Club’s activities remain at the Property currently.</p>

Date: June 16, 2011

MICHEL & ASSOCIATES, P.C.

/s/Scott M. Franklin
 Scott M. Franklin
 Attorney for Defendants

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PROOF OF SERVICE

IT IS HEREBY CERTIFIED THAT:

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

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

DEFENDANT'S RESPONSE TO PLAINTIFF'S STATEMENT OF GENUINE ISSUES AND ADDITIONAL MATERIAL FACTS IN SUPPORT OF ITS OPPOSITION TO THE GUN CLUB'S MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY JUDGMENT AS TO PORTIONS OF PLAINTIFF'S COMPLAINT

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

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

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

Executed on June 16, 2011.

Christina Sanchez
CHRISTINA SANCHEZ