

EXHIBIT

B

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Sumeya Mohamed, Rukia Bile, Abdirisak
Sheikh, Ubah Shire, Paul Stoderl, and
Sharon Martin, on behalf of themselves
and others similarly situated,

Court No.: 23-cv-1740 (JRT/JFD)

Plaintiffs,

v.

Marquette Management, Inc., G&I X
Phoenix Apartments LLC, and Kelly
Delisle,

Defendants.

DECLARATION OF GREG MYERS

1. My name is Greg Myers. I am a Minnesota Department of Health Certified Asbestos Inspector (AI 2289), an Asbestos Management Planner (AM 2289), an Asbestos Site Supervisor (AS 2289), and a Certified Microbial Consultant. Attached as Exhibit 1 is my C.V.

2. I began working with tenants' legal counsel in June 2022 to determine based on available evidence whether renovation activities at The Haven of Battle Creek apartment complex in St. Paul, Minnesota ("Haven") were being conducted safely and in compliance with state and federal hazardous materials laws and regulations, including those related to asbestos, a substance known to cause life-threatening cancers and lung diseases if mishandled.

3. In 2022, I advised tenants' counsel that the first step in determining whether renovations at Haven were being conducted safely and in compliance with asbestos safety laws and regulations was to request the results of any pre-renovation inspection and testing that may have been performed by Haven management. Initially, the reason for this suggestion was that Haven was built prior to 1981 and therefore contains building materials that are presumed to contain asbestos under applicable state and federal regulations, as discussed further below.

4. I am aware that tenants' counsel requested pre-renovation asbestos inspection and compliance records, including testing results, from Haven management in August 2022 and did not receive any such records in response. I am aware that tenants' counsel again requested these materials in August 2023, December 2023, and January 2024, and did not receive records showing that the appropriate testing had been conducted.

5. In August 2023, tenants' counsel provided me with a copy of a 2017 Phase I Environmental Assessment Report done by Nova Consulting Group ("2017 Nova Report"), which had been prepared for Haven's previous ownership and management group and summarized potential environmental concerns located at the Haven property. [Poradek Ex. 3]¹ I understand that the 2017 Nova Report was located by Haven's current ownership/management group in company records by at least August 2023.

¹ All exhibits referenced are attached to the Declaration of James Poradek and cited as "Poradek Ex. ____." References to statements in the Declarations of Sumeya Mohamed, Sharon Martin, and James Poradek are cited as "Mohamed ¶ __," "Martin ¶ __," and "Poradek ¶ __" respectively.

6. The 2017 Nova Report confirms that asbestos is present in certain construction materials within Haven, including textured ceiling plaster (commonly referred to as “popcorn” ceiling material). [Poradek Ex. 3, at 13] The 2017 Nova Report also confirmed the presence of widespread “historically suspect” asbestos-containing materials, including “flooring and mastic, ceiling tile, textured ceiling plaster, sheetrock and taping compound, and roofing materials.” [*Id.*]

7. Tenants’ counsel also provided me with a copy of a 2021 Asbestos Containing Materials Operations and Maintenance Program (“Haven Asbestos O&M Program”), which had been drafted by the same consulting firm responsible for the 2017 Nova Report. [Poradek Ex. 2] The Haven Asbestos O&M Program was prepared for DRA Advisors, a real-estate investment firm that I understand partnered with Marquette Companies, a company affiliated with Defendant Marquette Management, in the purchase of Haven.²

8. The Haven Asbestos O&M Program confirmed the presence of presumed and suspect asbestos-containing material at Haven and detailed the responsibilities that must be undertaken by Haven’s owner, maintenance personnel, and contractors to minimize and control tenant and employee exposure to asbestos fibers. The majority of renovation, repair, and maintenance activities performed by Defendants are governed by the standards set forth in the Haven Asbestos O&M Program.

² <https://www.us.jll.com/en/newsroom/sale-of-phoenix-apartments-in-battle-creek>

9. I thereafter was provided with several images and videos of renovation activity at Haven. [See Mohamed ¶4] Tenants' counsel provided me pictures and documents evidencing the repair and maintenance activities that they believe to be occurring in Haven. I have been asked by tenants' counsel to analyze and render an opinion as to whether current renovation, repair, and maintenance activities at Haven are being conducted safely and in compliance with safety regulations that apply to the handling of asbestos-containing and suspect asbestos-containing materials.

10. It is my opinion that the current renovations at Haven, along with many repair and maintenance activities, are being done in violation of state and federal asbestos safety laws and regulations and therefore threaten the health and safety of Haven tenants.

A. Background and Experience

11. I have over thirty years of experience in environmental safety, specializing in lead and asbestos management and training.

12. I have conducted training for all the asbestos disciplines. I have developed training for on-site technicians required to conduct monitoring of asbestos-abatement projects. In addition to the trainings I conduct, I also design lead abatement and remediation plans, and design and manage asbestos-abatement projects and lead-based inspection/lead-risk assessments, all of which are developed to be consistent with current standards and legal requirements. I investigate indoor air quality concerns and develop remedial design services for indoor air quality. I also currently conduct lead paint training services. I have developed lead training services for contractors and renovators to meet current accreditation for Federal Environmental Protection Agency (EPA) and Minnesota

Department of Health (MDH) licensor requirements. I serve as an EPA accredited training provider for the Renovation, Repair, & Painting program, as well as a training provider for all of the MDH lead-based paint disciplines.

B. Conclusion that Defendants Are Not Complying with Asbestos Safety Laws and Therefore Threaten the Health and Safety of Haven Residents

13. Based on my expertise, experience, and review of the evidence, I have reached the following conclusion.

14. Defendants are engaged in extensive renovation, repair, and maintenance activities at Haven that fail to comply with multiple state and federal laws designed to protect building residents and workers from exposure to asbestos. The long-term dangers of exposure to asbestos are well-established. Exposure to airborne asbestos fibers substantially increases the risks of cancers and lung diseases that can take years to manifest themselves. Thus, Defendants' continued renovation, repair, and maintenance throughout the common areas and apartment units at Haven poses a real and continued risk to the health and safety of the tenants at Haven.

C. Material Relied Upon in This Report

15. In addition to my expertise and experience, I have relied on the following material in reaching the conclusions in this report:

- 2017 Nova Report
- Haven Asbestos O&M Program

- Materials submitted by Marquette Management to St. Paul's Department of Safety and Inspections in support of its rent-increase application disclosing renovation activity performed at Haven
- Marquette Management's description of renovation activity in public statements
- Marquette Management paperwork used in the turnover of apartment units
- A physical inspection of Haven on June 23, 2022, including most of the common areas and selected apartments, conducted at the invitation of Haven tenants
- Photographs and videos regarding renovation, repair, and maintenance activities at Haven³
- Conversations with tenants and tenant organizers regarding renovation, repair, and maintenance activities at Haven
- Public databases regarding Haven property and state contractor certifications for asbestos-related work

C. Health Risks of Asbestos Exposure

16. The dangers associated with exposure to asbestos are serious and well established. Exposure to even small amounts of asbestos increases an individual's risk of developing debilitating diseases such as lung cancer, mesothelioma, and asbestosis. Asbestos becomes dangerous once disturbed because it breaks down into microscopically thin fibers that remain airborne for days. Individuals can then inhale these microscopic

³ All photographs referenced in my Declaration can be found in the Declarations of Sumeya Mohamed and Sharon Martin, unless otherwise noted.

fibers, substantially increasing their risk of developing serious disease. Therefore, preventing exposure to asbestos is paramount.⁴

D. Critical Asbestos Safety Laws Govern Defendants’ Renovation, Repair, and Maintenance Work at Haven

17. There are several federal and state regulations that govern renovation, repair, maintenance, or other work that may impact or disturb materials containing asbestos at residential properties such as Haven. The EPA has passed regulations governing all work where asbestos is or may be present. 40 C.F.R. Part 61, subp. M. In addition, the federal Occupational Safety and Health Administration (OSHA) has regulations establishing standards for demolition, renovation, and maintenance work where asbestos is or may be present. 29 C.F.R. § 1926.1101 (“OSHA Construction Standard”). The State of Minnesota and the Minnesota Department of Health have established statutes and rules related to asbestos abatement. Minn. Stat. §§ 326.70-.81; Minn. R. 4620.3000-.3724 (“Asbestos Abatement Rules”). And the Minnesota Occupational Safety and Health Administration has passed rules that govern work where asbestos may be present which reference and incorporate federal OSHA regulations, including the OSHA Construction Standard. Minn. R. 5205.0010, subp. 6(K), 5205.0660, 5207.0035.

⁴ See <https://www.epa.gov/asbestos/learn-about-asbestos#effects>; <https://www.health.state.mn.us/communities/environment/asbestos/homeowner/heffects.html#:~:text=Asbestos%20is%20dangerous%20because%20it,can%20breathe%20these%20fibers%20in.>

18. The Haven Asbestos O&M Program confirms the applicability of the above asbestos safety laws to the Haven property.

This ACM O&M Program is not designed to function as a training manual; additional information will be required of the training programs. The facility is subject to Occupational Safety and Health Administration (OSHA), United States Environmental Protection Agency (USEPA), and the State of MN asbestos-related rules and regulations.

[Poradek Ex. 2, at HAVEN000047]

19. In many ways, the OSHA Construction Standard is the broadest in scope and reach. *See* 29 C.F.R. § 1926.1101. It applies to a wide variety of work activities that may impact asbestos-containing materials, including demolition, construction, alteration, repair, maintenance, and renovation. § 1926.1101(a). The Standard places the affirmative burden on employers and building owners engaging in these activities to identify asbestos hazards and ensure that building occupants and workers are not exposed to asbestos above prescribed limits when performing work that may impact asbestos-containing materials. § 1926.1101(a)(3), (c)-(d), (k). The definition of “building owner” covers property management companies because they are “the legal entity . . . which exercises control over management and record keeping functions relating to a building and/or facility in which activities covered by this standard take place.” § 1926.1101(b).

20. Under the OSHA Construction Standard, before commencing any work subject to the regulation a building owner is required to locate and identify asbestos-containing (ACM) or presumed asbestos-containing materials (PACM).

§ 1926.1101(k)(1)-(2). Certain materials must be presumed to contain asbestos if found in buildings constructed prior to 1981. *See* § 1926.1101(k)(1)(i). These include thermal

system insulation and surfacing material,⁵ each of which pose a high risk of containing and releasing asbestos fibers. § 1926.1101(b) (defining “presumed asbestos containing material”). Similarly, asphalt and vinyl flooring must be treated as asbestos containing if installed before 1981. § 1926.1101(k)(1)(i). To rebut the presumption that these materials contain asbestos, a building owner must conduct testing using specified methods.

§ 1926.1101(k)(5). If a building owner chooses not to conduct testing, it must treat any pre-1981 thermal system insulation, surfacing material, and vinyl flooring as asbestos containing.

21. In addition, regardless of the age of the building, owners must identify materials they know, or should know through the exercise of due diligence, contain asbestos. § 1926.1101(k)(1)(i). For example, it is well-known by those in the industry that asbestos can be found in a variety of building materials, including wallboard, taping compound, ceiling tiles, and mastic adhesives. Although these materials are not presumptively considered asbestos containing, a building owner must identify them and either treat them as asbestos containing or, alternatively, show that they are non-asbestos containing through testing or other records. If a building owner does not conduct testing and does not have adequate records, it must treat these suspect materials as if they contain asbestos.

⁵ “Thermal system insulation” is material “applied to pipes, fittings, boilers, breeching, tanks, ducts or other structural components to prevent heat loss or gain.” § 1926.1101(b). “Surfacing material means material that is sprayed, troweled-on or otherwise applied to surfaces (such as acoustical plaster on ceilings and fireproofing materials on structural members, or other materials on surfaces for acoustical, fireproofing, and other purposes).” *Id.*

22. When there is actual, presumed, or suspect ACM in a building, the OSHA Construction Standard sets forth a number of safety requirements designed to prevent or minimize exposure to asbestos. Under these requirements building owners and employers/contractors must:

- notify in writing or by personal communication all “[t]enants who will occupy areas containing such material,” 29 C.F.R. § 1926.1101(k)(2)(ii)(D);
- use specified engineering controls that minimize exposure, § 1926.1101(g);
- implement specified work practices (including isolation and containment of the work area and maintaining the proper ventilation systems) during demolition and renovation, § 1926.1101(g);
- conduct worker training regarding the risks of asbestos and best practices to contain asbestos and minimize exposure, § 1926.1101(k)(9);
- use specified respiratory protection needed for working with asbestos, § 1926.1101(h);
- follow specific requirements for the disposal of asbestos waste, § 1926.1101(g), (l); and
- maintain records of notification, training, asbestos exposure testing, and PACM rebuttal testing, § 1926.1101(k)(5), (n)(2), (n)(4)-(6).

23. In addition to the OSHA Construction Standard, Minnesota’s Asbestos Abatement Act requires owners and property managers of buildings to contract with asbestos abatement contractors when conducting asbestos-related work. Minn. Stat.

§ 326.76. In multifamily residences, asbestos-related work includes interior or exterior renovations or repairs in excess of six square feet or ten linear feet that disturb friable asbestos-containing material. Minn. Stat. § 326.71, subd. 4; Minn. R. 4620.3100, subp. 31. Anyone performing asbestos-related work is required to (1) install barriers to ensure asbestos containment; (2) establish a decontamination unit; (3) have a ventilation system equipped with a HEPA-filter; (4) safely encapsulate and remove asbestos containing material; and (5) notify the MDH commissioner of each project to be performed. Minn. R. 4620.3410, .3567-.3572.

24. Many of the asbestos-related requirements noted above are reiterated in the Haven Asbestos O&M Program. Operations and Maintenance Programs are often implemented by building owners to ensure that PACM and ACM is not being disturbed and/or is not deteriorating to an unsafe level. The Haven Asbestos O&M Program “describes the policies, required procedures, and work practices established for the management of suspect asbestos-containing materials” that “when implemented, provide[] a level of assurance that the most prudent steps are being taken to minimize, and in some instances eliminate, the potential for asbestos exposure for facility employees, tenants, maintenance personnel, vendors, and the general public.” [Poradek Ex. 2, at HAVEN000047]

25. The scope of work that is subject to the Haven Asbestos O&M Program is broad and includes “all maintenance which is thought likely to disturb building materials known to contain and potentially containing asbestos.” [*Id.* at HAVEN000053] Examples of work that can disturb asbestos include:

1. The cutting, sawing, sanding, abrasion and/or drilling through the material (such as with wallboard, joint compound, and/or wall/ceiling textures [like "popcorn ceilings"]).
2. Damage of intact material (any confirmed or suspect materials).
3. Dry buffing or dry stripping of un-waxed vinyl floor tiles (specific to floor tiles and mastics).

[*Id.* at HAVEN000055] Because of the broad reach of the Haven Asbestos O&M Program, its policies, like those of the OSHA Construction Standard, cover not only maintenance work at Haven, but also encompass renovation and many general repair activities done by on-site staff.

26. Under the Program, Haven's building owner is required to oversee asbestos-related training, maintain facility documentation, communicate with tenants and employees, as well as maintain familiarity with procedures related to asbestos removal, respiratory protection, and all the work done in Haven that is subject to the Program's policies.

2.1 Responsibilities of the Building Owner

- Overall design and co-ordination of the O&M Program;
- Overseeing implementation of initial and ongoing training of the O&M Program participants;
- Maintaining familiarity with building surveys and asbestos-related policies, as well as state-of-the-art removal procedures, operations and maintenance activities involving asbestos, respiratory protection for asbestos, and emergency procedures for fiber release episodes;
- Handling communication with tenants and employees;
- Authorizing expenditures for training, equipment, and outside services;
- Identifying the O&M Coordinator;
- Authorizing services to be performed by outside contractors;
- Maintaining facilities documentation and overall project files; and
- Conducting long-term monitoring and assess corrective action requirement.

[*Id.* at HAVEN000048] Beyond the building owner, the Haven Asbestos O&M Program also places responsibilities on the "O&M Coordinator," building maintenance supervisors and personnel, asbestos-abatement contractors, and general contractors. [*Id.* at

HAVEN000048-49] Among the responsibilities placed on these Program participants is thorough documentation of asbestos-related training and the use of maintenance work request and authorization forms. [*Id.* at HAVEN000065-72] The required training and documentation requirements appear designed to reinforce many of the safety precautions mandated by the OSHA Construction Standard, as well as other federal and state asbestos safety laws.

E. Defendants’ Renovation, Repair, and Maintenance Activity at Haven Violates Asbestos Safety Laws

27. Based on the foregoing legal requirements, I conclude that Defendants are comprehensively violating asbestos safety law with their renovation, repair, and maintenance activities at Haven. The analysis below explains why (i) Defendants are subject to asbestos safety laws; (ii) Haven contains asbestos throughout the property; (iii) Defendants’ renovation, repair, and maintenance activities implicate asbestos safety laws; and (iv) Defendants’ renovations, repairs, and maintenance activities violate asbestos safety laws. For purposes of the analysis in this Report, I will focus on the OSHA Construction Standard, which, as noted above, has been incorporated into Minnesota law. *See* Minn. R. 5205.0010, subp. 6(K), 5205.0660, 5207.0035.

i. Defendants Are Subject to Asbestos Safety Laws

28. My understanding is that Marquette Management is the legal entity that manages the renovation activity taking place at Haven on behalf of the legal entity that owns Haven, G&I X Phoenix Apartments LLC. In a January 24, 2023, email to St. Paul’s Department of Safety and Inspections, Marquette Management represented that: “Over

the past 21 months, ownership with *Marquette Management, Inc. handling the day-to-day property management services and oversight of the capital improvements business plan*, has invested nearly \$2.8 million in improvements.” (Emphasis added.) [Poradek Ex. 17] Thus, the OSHA Construction Standard applies to both Marquette Management and G&I X Phoenix Apartments LLC because each is a “building/facility owner” as defined in the regulation: “the legal entity . . . which exercises control over management and record keeping functions relating to a building and/or facility in which activities covered by this standard take place.” § 1926.1101(b). The OSHA Construction Standard also applies to Marquette Management as the “employer” that acts as “contractor and subcontractor” for the renovation and maintenance activities at Haven. § 1926.32(k).

ii. Haven Is Presumed to Contain Asbestos

29. Ramsey County property records and Minnesota Department of Revenue records state that Haven was constructed in 1976.⁶ A press release announcing the purchase also identifies Haven’s construction date as 1976.⁷ The 2017 Nova Report states that Haven was built in 1977. [Poradek Ex. 3, at 13]

30. Given that Haven is a pre-1981 building, there is a legal presumption under the OSHA Construction Standard that all of its thermal system insulation, surfacing material, and vinyl flooring contain asbestos. 29 C.F.R. § 1926.1101(b), (k)(1)(i). This presumption is explicitly stated in the Haven Asbestos O&M Program.

⁶ <https://maps.co.ramsey.mn.us/MapRamsey/> [search “200 Winthrop Street South”]; https://www.mndor.state.mn.us/ecrv_search/app/openPublicEcrvView?ecrvId=1250207&countyFinal=true&title=View+Summary+for+Completed+eCRV+ID+1250207.

⁷ <https://www.us.jll.com/en/newsroom/sale-of-phoenix-apartments-in-battle-creek>.

The OSHA regulation 29 CFR 1926.1101, requires certain construction materials to be presumed to contain asbestos, for purposes of this regulation. All TSI, surfacing material, and asphalt/vinyl flooring that are present in a building constructed no later than 1980 and have not been appropriately tested are PACM.

[Poradek Ex. 2, at HAVEN000050] To rebut this presumption, a building owner must conduct asbestos testing using specified methods. 29 C.F.R. § 1926.1101(k)(5).

31. I understand tenants' counsel has repeatedly requested from Defendants all of the inspection and testing reports for asbestos at Haven. Despite these requests, Defendants have failed to produce records showing that they conducted the testing necessary to rebut the presumption that numerous building materials within Haven are asbestos containing. Nor have Defendants provided documentation showing that all PACM or suspect ACM has been removed from Haven or that all new materials purchased and installed during past or current renovations were determined to also not contain asbestos.

32. Instead, documents produced by Defendants confirm that actual, presumed, and suspect ACM is present at Haven. The 2017 Nova Report expressly states that prior testing detected asbestos in textured ceiling plaster in Haven apartment units and hallways.

Sampling and analysis of building materials identified asbestos in samples of textured ceiling plaster from apartment units and hallways. The report recommended development of an Operations and Maintenance Program to maintain these materials.

[Poradek Ex. 3, at 106] The 2017 Nova Report goes on to state that “historically suspect asbestos-containing building materials” had been noted throughout the property.

4.9 Asbestos-Containing Building Materials (ACBM)

Historically suspect asbestos-containing building materials noted during the Property visit included flooring and mastic, ceiling tile, textured ceiling plaster, sheetrock and taping compound, and roofing materials. The roof was not observed during Nova's reconnaissance. Prior sampling and testing for asbestos was completed in 1996 and asbestos was detected in textured ceiling plaster from apartment units and hallways. These materials were generally in good condition at the time of Nova's site reconnaissance. Reportedly, an Operations and Maintenance Plan (O&M) was prepared for the Property in 1996. The current site manager, Lea Gilson, was unaware of an O&M Plan in place at the property.

[*Id.* at 13] The Haven Asbestos O&M Program affirmed that suspect ACM had been “previously identified” throughout Haven and expanded the list of suspect materials to include linoleum and associated mastics, carpet mastic, window/door caulk, window glazing, and spray on fireproofing.

No inspection or sampling was performed during the preparation of this ACM O&M Program. However, suspect materials previously identified include the following: textured ceiling material; ceiling tile; wall system components; drywall and joint compound; plaster; vinyl floor tile and associated mastics; linoleum and associated mastics; carpet mastic; window/door caulk; window glazing; spray on fireproofing; thermal system insulation; and roof materials. Materials were reported to be in generally good condition throughout the Property. Based on the reported condition of the ACM and PACM, it can effectively be managed in place under the provisions of an O&M Program.

[Poradek Ex. 2, at HAVEN000050] The terms “historically suspect” and “suspect asbestos-containing materials” refer to materials that are suspected of being asbestos containing because of their look, age, or usage and are known in the industry as the type of materials that commonly contain asbestos. Because these materials are suspected of containing asbestos, an owner must use due diligence to determine if they are ACM. § 1926.1101(k)(1)(i). To comply with the due-diligence standard, owners can choose to either treat these suspect materials as ACM, or determine through testing, building records, or other documentation, that the materials are asbestos free.

33. As noted above, Defendants have produced wholly insufficient testing or other records to show that the suspect materials identified in both the 2017 Nova Report and the Haven Asbestos O&M Program are asbestos free. The only documents produced by Defendants showing actual asbestos testing are (1) a report from 2021 done by an environmental testing laboratory, in which a collective total of 16 samples from 3 units and 3 hallway areas were taken, and (2) a report from 2023 done by the same laboratory, in which 9 samples from a single bathroom of a single unit were taken. [Poradek Ex. 12] In each of these reports, the samples tested came from a very limited sampling of ceilings and walls. There is no indication that testing was performed on any other materials identified as “suspect” in the 2017 Nova Report and the Haven Asbestos O&M Program. And although the laboratory found no asbestos in the collected samples, this limited testing comes nowhere near the comprehensive property-wide testing required to either rebut the OSHA Construction Standard’s presumptions or meet its due diligence standard. *See* § 1926.1101(k)(1)(i), (5). The two reports, which represent only 4 units and 3 hallways, are especially deficient at a large 216-unit multifamily complex where there has already been an affirmative finding of asbestos in units and common areas, and in which extensive renovation, repair, and maintenance is occurring. In fact, what these testing reports show is that Defendants are aware of their testing obligations under the OSHA Construction Standard but have apparently chosen not to perform them with respect to the many dozens of units in which they have, or are now, conducting renovation, repair, or maintenance work.

34. Because Defendants have failed to produce testing or other records to show that Haven's PACM and suspect ACM are asbestos free, my analysis is governed by the un rebutted legal presumption that asbestos is present in materials in the floors, ceilings, and walls throughout Haven.

iii. Defendants Are Engaging in Extensive Renovation, Repair, and Maintenance Activities that Require Compliance with Asbestos Safety Law

35. The evidence shows that Defendants have engaged in, and continue to engage in, wide-ranging renovation, repair, and maintenance activity at Haven that is subject to the OSHA Construction Standard. Recall that the Standard broadly applies to the construction, alteration, repair, maintenance, and renovation of materials that contain asbestos. 29 C.F.R. § 1926.1101(a)(3). The definitions of "renovation" and "repair" are similarly broad, covering "the modifying of any existing structure, or portion thereof," and the "overhauling, rebuilding, reconstructing, or reconditioning of structures or substrates, including encapsulation or other repair of ACM or PACM attached to structures or substrates." § 1926.1101(b).

36. What follows are several categories of mutually reinforcing evidence that Defendants are engaged in renovation, repair, and maintenance activity at Haven that impacts existing PACM and suspect ACM, thereby triggering the OSHA Construction Standard.

37. In January 2023, Marquette Management submitted a rent-increase application to St. Paul's Department of Safety and Inspections, which included detailed summaries of its completed 2021 and 2022 capital improvements and planned 2023 and

2024 capital improvements, reproduced below. [Poradek Exs. 13, 14] These summaries show how extensive the renovation at Haven has been since Defendants took over. In 2021 and 2022, renovation activities included widespread replacement and modification of existing structures throughout the common areas at Haven—including full “upgrades” to the centrally located pool, fitness center, and package room totaling \$611,284, as well as hallway painting and door handle replacement, common area door replacements, exterior painting, siding repair, repair due to water damage, and balcony repairs. Renovation activities in 2021 and 2022 also include widespread replacement and modification of existing structures throughout numerous individual units, including 40 “full” “unit renovations” totaling \$735,898, as well as 49 carpet and wood flooring replacements, 216 electrical panel replacements, and 12 patio door replacements. Marquette Management also anticipates 104 “full” unit renovations throughout 2023 and 2024—almost half of the units at Haven. From pictures and videos shared with me showing numerous unit demolitions, *see* Mohamed ¶¶4, 8, it appears that Marquette Management is making substantial progress on its “full” unit renovation goal for 2023 and 2024.

Completed 2021-2022 Capital Improvements

Units Impacted	Notes
25	Carpet Replacement
22	Wood Flooring Replacement
2	Appliance Replacement
1	Appliance Replacement
2	Appliance Replacement
12	Blinds Replacement
4	Bathroom Fixtures
31	Tub/Shower Resurface and/or Replacement
11	A/C Wall Unit Replacement
1	Door Replacement
2	Patio Door Replacements
1	Window Replacement
216	Pool Equipment
216	Boiler Motor Replacement
216	Heat Exchanger and Pipe Replacement
216	Exterminating
2	Wood Flooring Replacement
40	Unit Renovations (Full)
10	Patio Door Replacements
216	Tuckpointing / Siding Repairs
216	Roof Repairs
216	Exterior Painting
216	Hallway Painting and Door Hardware
216	Trash Chute Door Replacements
216	Security Improvements
216	Landscaping Improvements
216	Concrete Replacement
216	Garage Re-Striping
216	Model Furnishings
216	Garage Door Replacements
216	Garage Maintenance
216	Signage
0	
216	Pool / Fitness Center / Package Room Upgrades
216	Office Supplies and Management Services
216	Common Area Door Replacements
216	Balcony Repairs
216	Sprinkler Head Replacement
216	Camera Rewiring
216	Underground Storage Tank Removal
1	Baseboard Heater Partial Replacement
216	Electrical Panel Replacement
216	Exterminating
216	Management Services

Planned 2023-2024 Capital Improvements

Units Impacted	Notes
20	Carpet Replacement
11	Wood Flooring Replacement
2	Appliance Replacement
10	Appliance Replacement
8	Appliance Replacement
8	Appliance Replacement
24	Blinds Replacement
26	Tub/Shower Resurface and/or Replacement
24	A/C Wall Unit Replacement
216	Trash Chute Door Replacements
216	Addition of 2 Dog Waste Stations
216	Hot Water Tank Heat Exchanger Replacement
5	Baseboard Heater Replacement
104	Unit Renovations (Full)
30	Patio Door Replacements
216	Exterior Lighting Upgrades
216	Hallway Ventilation Repairs and Painting
216	Landscaping Improvements
216	Concrete Repairs
114	Asphalt Repairs (215 Building)
216	Network Boards / Directory System Replacement
216	Garage Exhaust Repairs
216	Elevator Cab Improvements
2	Window Replacement
216	Galvanized Pipe Replacements
216	Exterior Garage Cameras Installation
216	Boiler Replacement
216	Management Services

38. It is also clear that the renovation process Defendants employ when conducting “full” interior renovations within individual units disturbs both PACM and suspect ACM. On August 11, 2022, counsel for Marquette Management provided tenants’ counsel the following one-page document summarizing the extensive scope of interior demolition and installation for unit renovations at Haven.

The Haven of Battle Creek classic to full interior renovation scope.

Demo:

Remove - Counters, cabinets, mirrors in the bathrooms, blinds, and door hardware.

Remove all slab doors and sliding doors/Bi fold doors

Remove appliances

Remove toilet for floor install.

Dispose of all demoed items to the dumpster outside provided by the property.

Install:

Paint – Ceilings, walls, doors, and trim.

Provide and install cabinets and black cabinet pulls.

Install – Laminate counter (sink will be provided) in the kitchen and cultured marble vanity in bathrooms with sink (White)

Install appliances

Install slab doors and sliding doors/bi fold doors

Install –bath accessories, update light fixture, update digital thermostat, USB outlet, blinds, and door hardware.

Install – framed mirrors

Reinstall toilet after floor install.

Install flooring and carpet (Carpet color Shaw Spellbound Pz040 Flannel Gray 713

1st floors Faux wood vinyl trough out carpet in bedrooms only

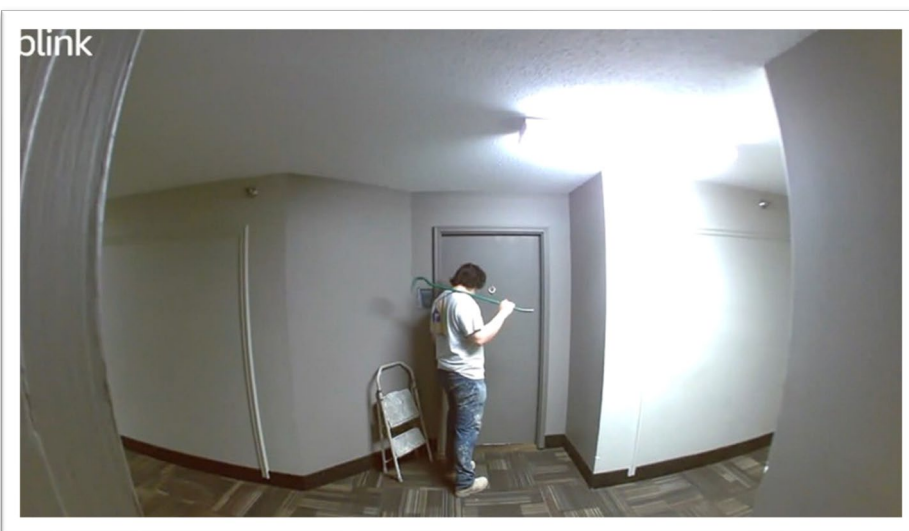
2nd floors faux wood vinyl kitchen bathrooms, dining area and entry rest carpet.

3rd floor floors faux wood vinyl kitchen bathrooms, dining area and entry rest carpet.

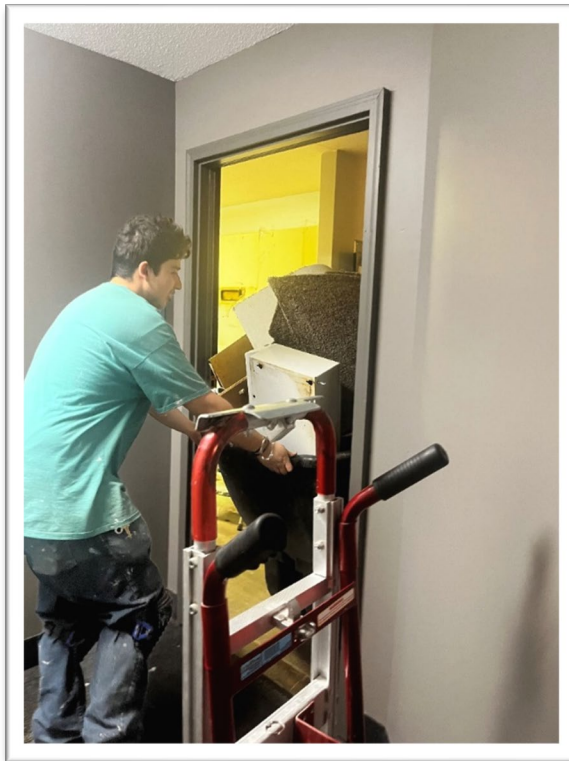
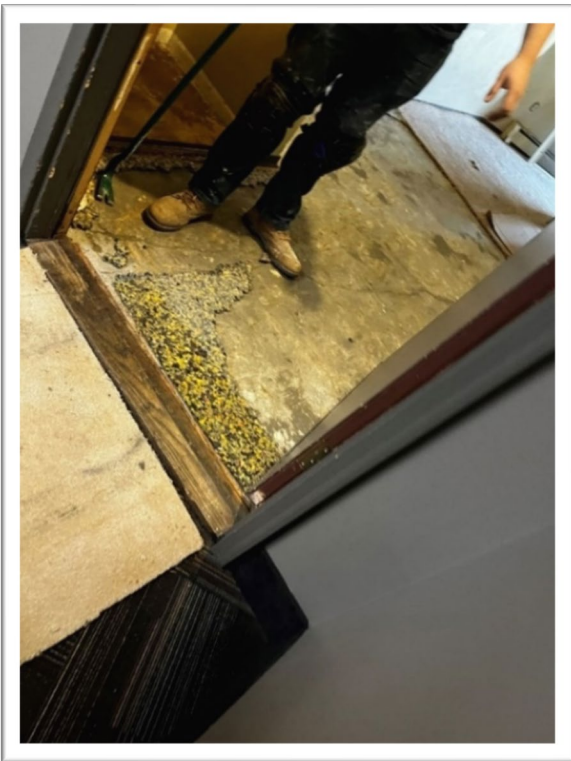
[Poradek Ex. 23] Although the document misleadingly omits the specific activities that, as explained below, cause widespread disruption of PACM and suspect ACM, the document, along with photographic and video evidence captured by Plaintiffs Mohamed and Martin, confirms that there is a common demolition and renovation process taking

place during the renovation of units across the Haven complex. That process is as follows:

- First, workers “demo” the interior of the unit. Workers use tools, including crowbars, to pull cabinets and counters away from walls, an activity that likely damages suspect ACM sheetrock and joint compound and generates potentially harmful dust and debris. Workers remove sinks and toilets from bathrooms, and appliances from kitchens, so that they can then remove the surrounding vinyl flooring—a material that must be treated as asbestos-containing if untested and installed prior to 1981—and the associated mastic adhesive, a suspect ACM. At Haven, there appear to be two types of vinyl flooring that are removed from units during demolition—a faux tile vinyl flooring and a faux woodgrain vinyl flooring. Photographs confirm that both types of vinyl flooring materials have been disturbed. Carpets and carpet pads from bedrooms and living areas are also removed.



Worker with crowbar entering apartment undergoing renovation.

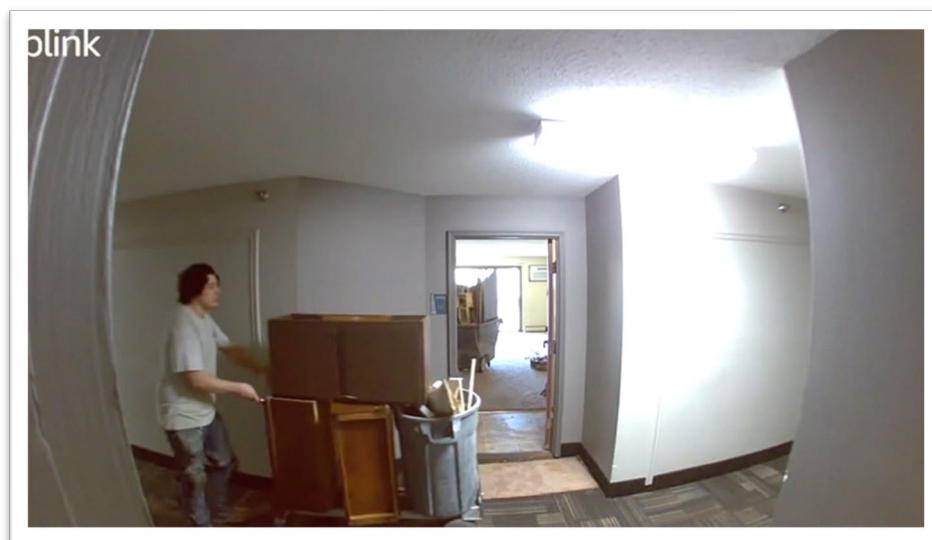


Clockwise from top left:

Worker with crowbar and flooring removed.

Worker removing renovation debris, including flooring.

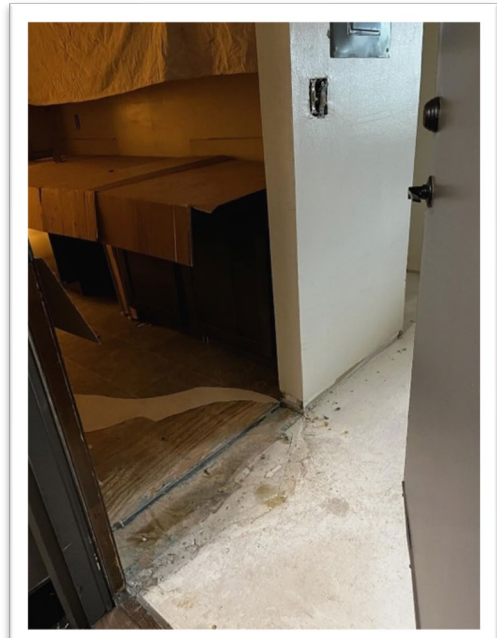
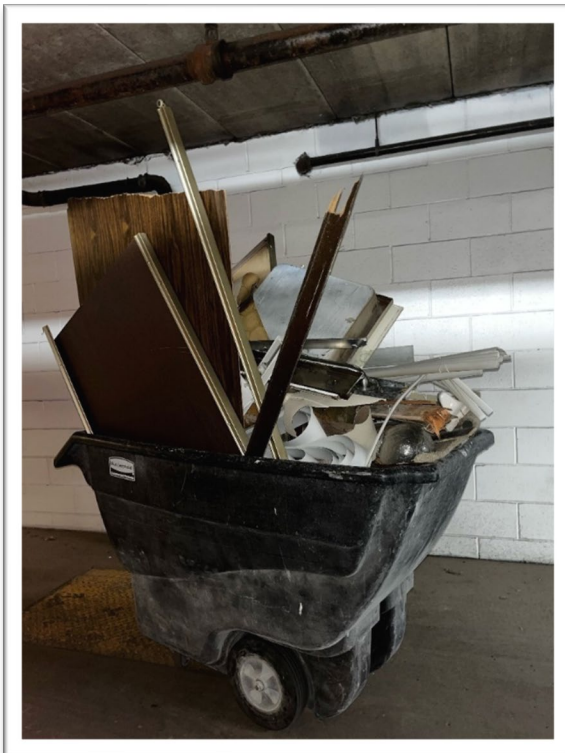
Worker removing cabinets.





Above: Ripped faux tile vinyl flooring.

Below: Renovation debris, including vinyl flooring (center bottom).



Above: Ripped faux woodgrain vinyl flooring.

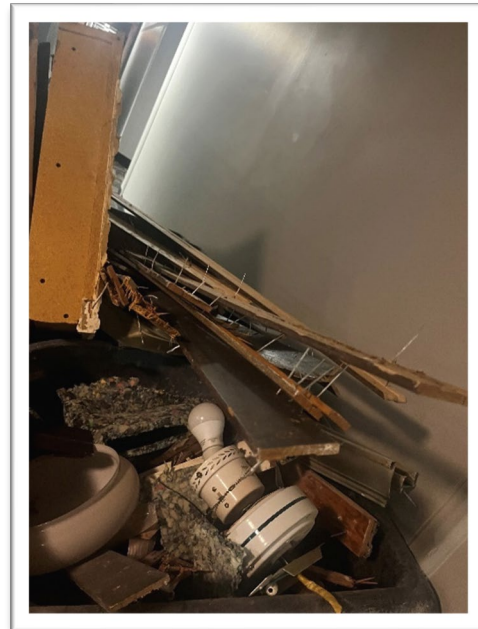
Below: Worker removing toilet.



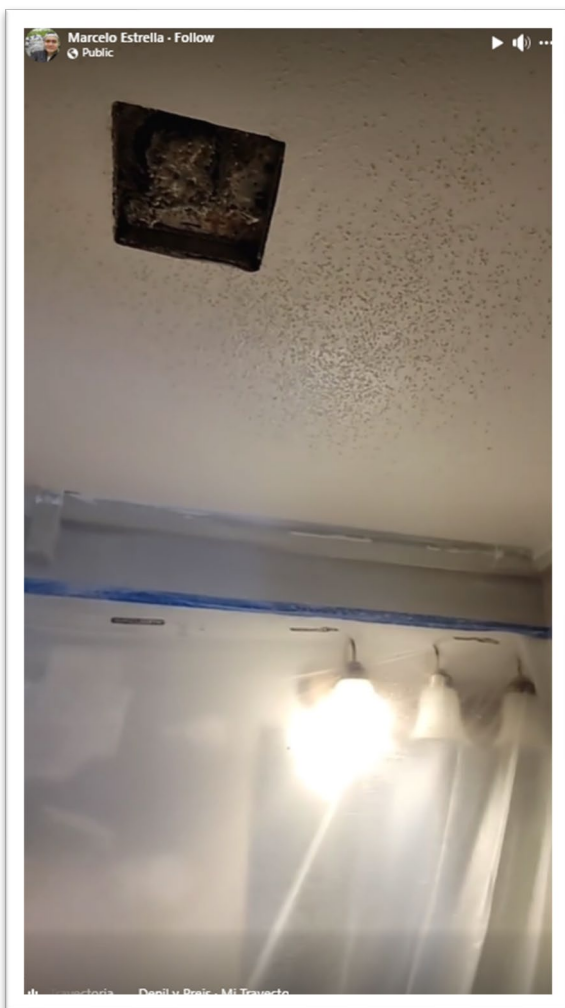
- Second, workers paint the unit and install new fixtures. Among the items painted during “full” unit renovations are the unit ceilings. As seen in photographs, and as communicated to me in conversations with tenants, the ceilings in many Haven units have a “popcorn” texture. The popcorn texture is a surfacing material, and because it is found in a pre-1981 building is considered PACM. In addition, prior testing at Haven had detected actual asbestos in the ceiling plaster. Despite this, Defendants’ renovation process calls for the painting of ceilings, a potentially dangerous activity because rollers or brushes can disturb and break off the popcorn texture, releasing harmful asbestos fibers. Workers also install new fixtures, which, similar to painting, can disturb PACM and suspect ACM. For example, the installation of new ceiling light-fixtures can disturb popcorn ceiling material, and the installation of cabinets and mirrors requires drilling through suspect ACM sheetrock and joint compound.



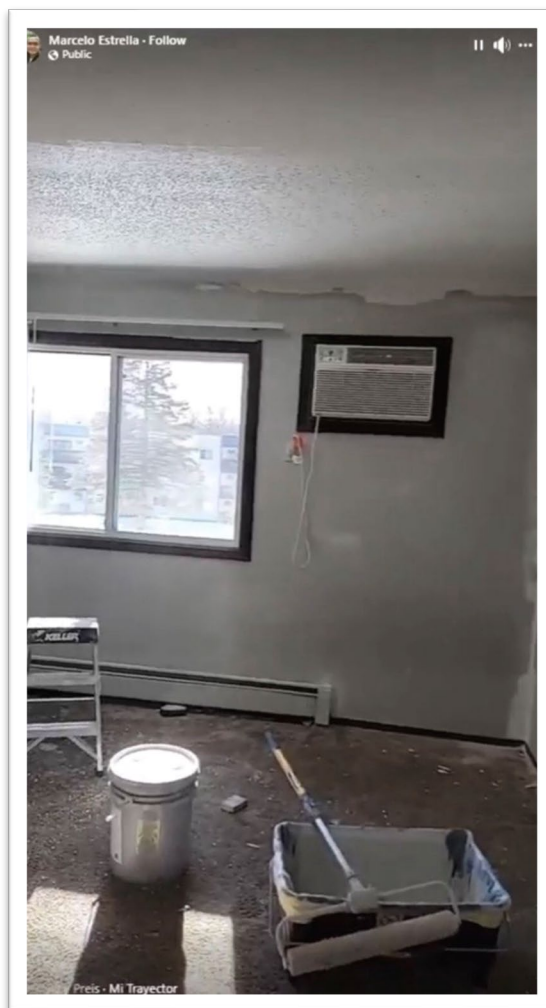
Above: New ceiling light fixture.



Right: Old light fixture in hallway dumpster.

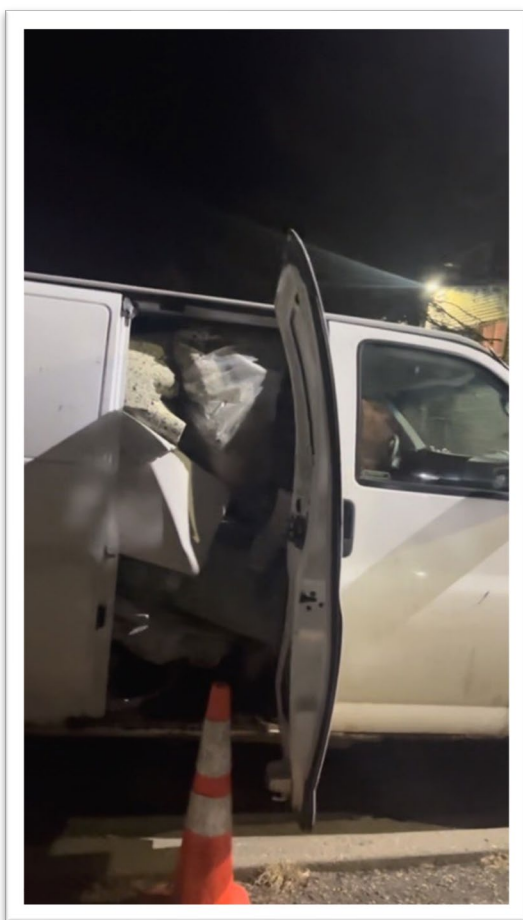


Popcorn ceiling freshly painted
with vent removed.



Popcorn ceiling freshly painted
with roller brush.

- Finally, at various points in the renovation project, PACM and suspect ACM is carted through Haven's hallways and improperly disposed of in open dumpsters. More recently, PACM and suspect ACM have been surreptitiously removed from the building and placed in an unmarked van.



Clockwise from top left:

Unmarked van loaded with debris, including possible flooring. [Poradek ¶30]

Dumpster filled with renovation debris, including countertop and flooring.

Worker transporting buckets of renovation debris through hallway.



39. Beyond renovations, it is my understanding that Defendants also perform maintenance and repair work in response to requests by tenants, as well as to prepare vacated units for new tenants. Common maintenance and repair work often implicates the OSHA Construction Standard. For example, the replacement of a smoke detector, the adjustment or repair of HVAC systems, and the repairing of holes in drywall, all have the potential to disturb the underlying PACM or suspect ACM. Similarly, common maintenance and repair work done during the “turnover” of units—the period after a tenant vacates but before a new tenant moves in—can implicate the OSHA Construction Standard. It is clear from Defendants’ own turnover paperwork that they plan for a certain amount of maintenance and repair between tenants. In a generic “walk sheet” provided to tenants’ counsel, it appears that upon a tenant move out, Haven staff identify certain items—including flooring, countertops, cabinets, trim, and baseboards—as “good” or “needs replaced.” [Poradek Ex. 24, at HAVEN000223] Should these items need to be replaced, the work involved would likely implicate the OSHA Construction Standard. The replacement of flooring, subflooring, or carpet can disturb ACM vinyl flooring and suspect ACM mastic adhesives. The replacement of cabinets or countertops can disturb suspect ACM sheetrock and joint compound. Beyond these more routine turnover activities, it is my understanding that the ceilings of many units have been damaged by water leaks over the years. [See Martin ¶¶2, 9; Mohamed ¶15] This damage must be addressed, whether during the full interior renovations discussed above, in response to tenant requests, or as part of the turnover process. As noted, many Haven apartments have popcorn ceilings, which are a PACM. Despite this, photographic evidence shows

that, during the course of either renovation, repair, or turnover, these ceilings have been cut open, repaired, and painted, clearly disturbing asbestos-containing material.

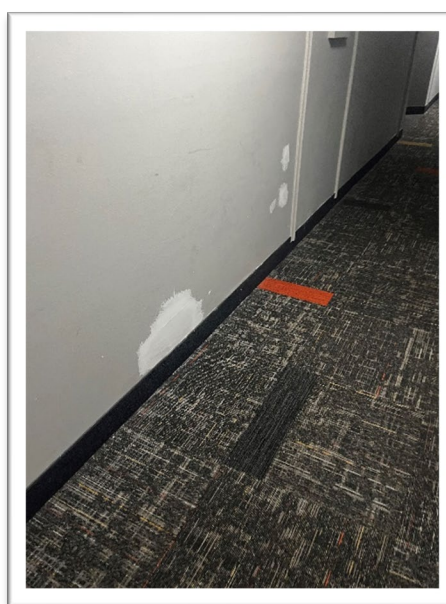
40. The following photographs demonstrate the pervasive disruption at Haven of three categories of presumed and suspect ACM: Sheetrock and taping compound, flooring and associated mastic adhesive, and textured ceiling plaster.

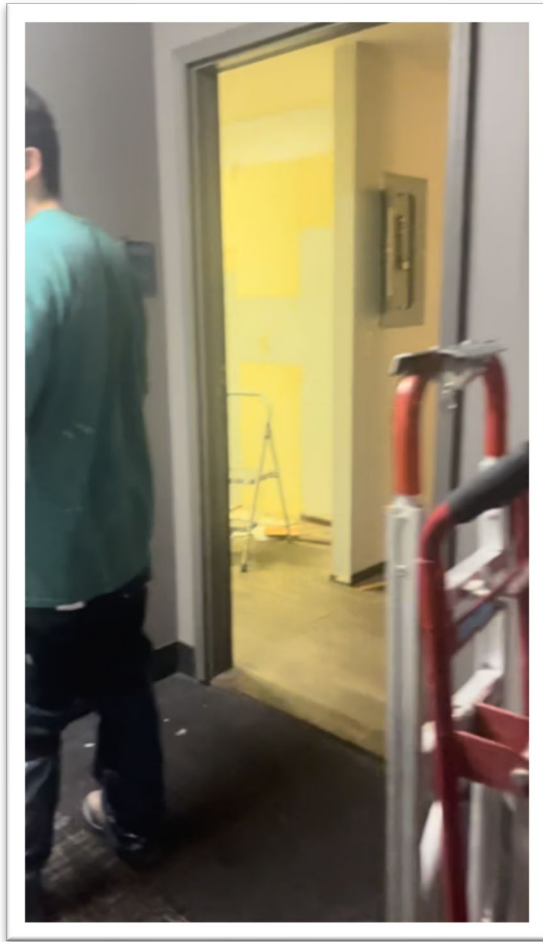
- **Sheetrock and taping compound.** As noted in both the 2017 Nova Report and the Haven Asbestos O&M Program, sheetrock and taping compound are suspect ACM. Yet, Defendants are disturbing these materials in the course of renovation, repair, and maintenance. Within units, cabinets and countertops have been pulled off walls, and in common areas damaged sheetrock and taping compound have been removed and repaired. These activities clearly disturb suspect ACM and generate potentially harmful dust and debris.



Left: Drywall removal and repair in common area hallway.

Right: Drywall patching in common area hallway





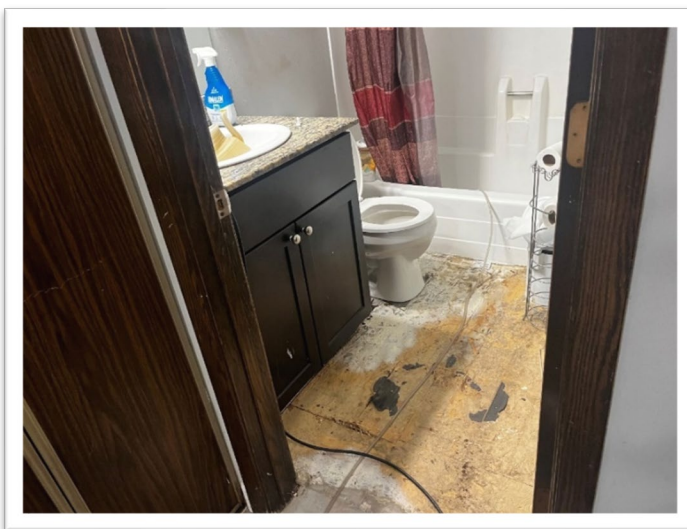
Clockwise from top left:

Cabinets removed from
drywall.

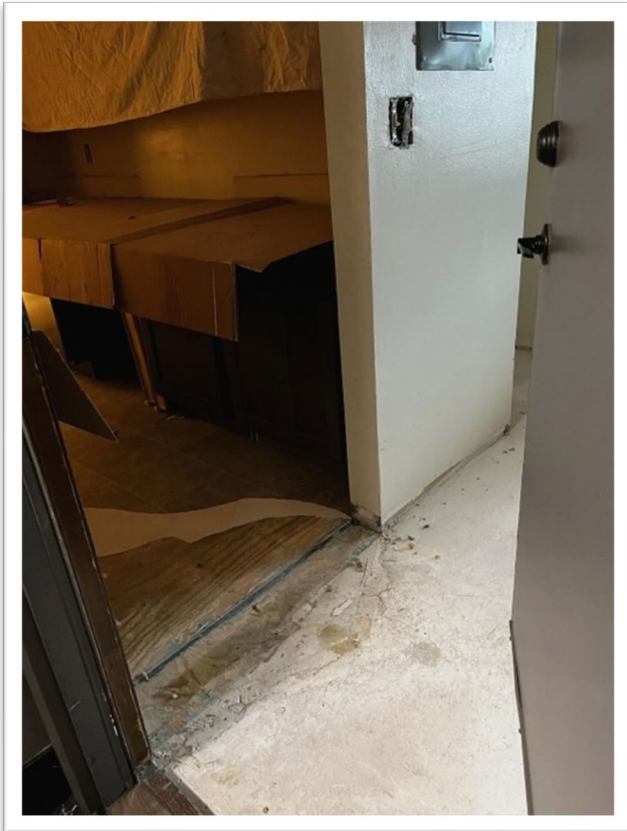
Possible drywall and joint
compound debris.

Drywall removal and repair.

- **Flooring and associated mastic.** Under the OSHA Construction Standard, vinyl flooring installed before 1981 must be treated as asbestos containing, unless testing shows otherwise. And, as noted in both the 2017 Nova Report and the Haven Asbestos O&M Program, vinyl flooring and its mastic backing are suspect ACM. Despite this, there is evidence that vinyl flooring and mastic adhesive have been removed in units throughout Haven. In two photos below, the sheet vinyl, along with any mastic adhesive underneath it, has clearly been disturbed during what is either the removal of vinyl flooring or the covering of vinyl flooring. Beyond the flooring, it also appears that floor thresholds have been removed, an activity which itself can disturb the mastic adhesive underlying the threshold. I am also aware that toilets, sinks, and appliances have been removed and replaced in many Haven units during either renovation, or routine maintenance and repair. If not done correctly, this work has the potential to disturb vinyl flooring and the associated mastic through scrapes and tears.



Removed flooring
with possible mastic
backing remaining.



Clockwise from left corner.

Ripped faux woodgrain vinyl flooring and absent threshold.

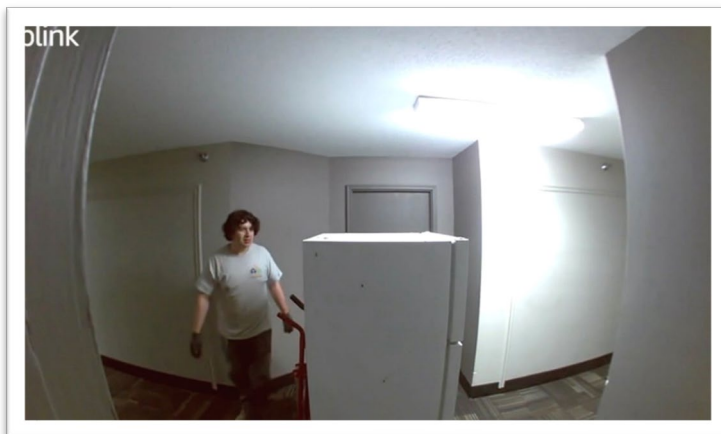
Completely removed flooring.

Ripped faux-tile vinyl flooring.



Left: Faux woodgrain vinyl flooring in trash.

Below: Refrigerator removed from unit.



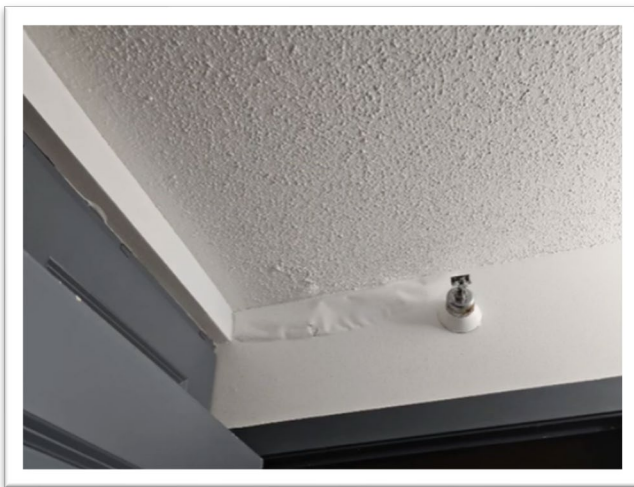
- **Textured Ceiling Plaster.** Many units and common areas have textured ceiling plaster, PACM, that has been damaged by water leaks over the years. This material is also identified as suspect ACM in the 2017 Nova Report and the Haven Asbestos O&M Program. Textured ceiling plaster is a high-risk material because it can easily break and release asbestos fibers. Despite this, Defendants are disturbing ceiling plaster during both renovations, as well as maintenance and repair work. Photos below, many of which are taken from the Facebook page of a former Marquette Management contractor (and current Marquette Management employee), show that ceiling plaster at Haven has been removed, repaired, and/or painted. There is also evidence to suggest that ceiling fixtures, such as lights and vents, have been replaced, activities which disturb PACM and generate dust and debris.



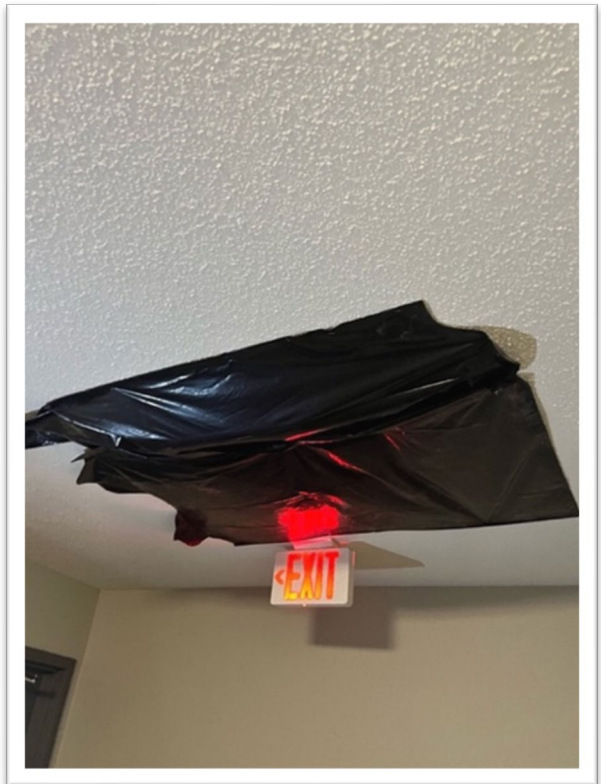
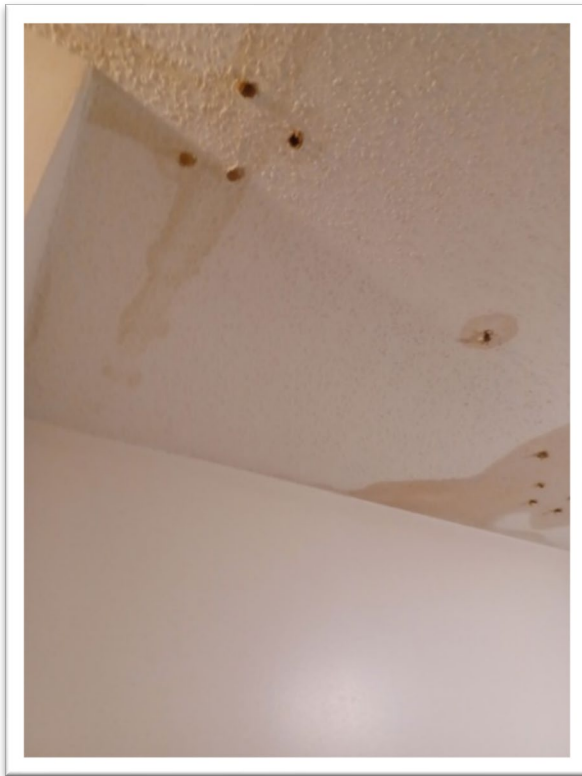
Large section of textured ceiling removed.



Repair of large section of textured ceiling.



Wall/textured ceiling connection with suspected water damage.



Clockwise from top left:

Holes drilled in popcorn ceiling due to water damage.

Temporary fix of water-damaged popcorn ceiling in hallway.
[Poradek ¶30]

Repaired textured ceiling.



iv. Defendants' Renovations, Repair, and Maintenance Work Violate Asbestos Safety Laws

41. There is no evidence that Defendants have complied with the necessary asbestos safety laws. To begin, Defendants failed to conduct the required pre-renovation inspection and testing. This is especially problematic because multiple third-party technical documents reveal that Defendants had been warned of the extensive actual, presumed, and suspect ACM found at Haven and the need for testing of this material prior to any planned disturbance. The 2017 Nova Report warned that untested suspect ACM should be tested before any demolition or renovation activity that may cause disturbance.

Prior to demolition or renovation activities, previously untested suspect asbestos-containing materials, if identified, that are likely to be impacted should be sampled by a licensed asbestos inspector and analyzed by an accredited laboratory.

[Poradek Ex. 3, at 13] This same warning was twice repeated in the Haven Asbestos O&M Program.

No known or suspect ACM or PACM shall be disturbed or involved in any work, in any way, prior to laboratory analysis for asbestos content.

Any construction materials not previously tested are presumed to contain asbestos until proper sampling and analysis proves otherwise. In addition, suspect ACMs may be located within walls, ceiling cavities and other non-accessible areas, which were not accessed during the limited surveys. Pre-caution should be used when accessing these areas and coming in contact with materials not previously tested.

[Poradek Ex. 2, at HAVEN000050, HAVEN000056] And this warning had also been communicated in the limited asbestos-testing report done in 2021.

There is no guarantee, implied or otherwise, that all asbestos containing materials have been identified. If suspect materials are encountered during renovation and/or demolition that have not been addressed in this report, the materials must not be disturbed until they are positively identified.

[Poradek Ex. 12, at HAVEN000207]

42. But Defendants failed to act on the warnings found in these third-party documents. Instead, they are engaging in extensive renovation, repair, and maintenance activity prior to conducting the appropriate testing. As described above, these activities disturb exactly the types of PACM and suspect ACM warned of in the 2017 Nova Report and Haven Asbestos O&M Program. This is a flagrant violation of the OSHA Construction Standard and an obvious departure from Defendants' own Haven Asbestos O&M Program guidance.

43. Because Defendants did not test PACM or suspect ACM, they must treat these materials as if they contain asbestos and adhere to a variety of work practices designed to prevent and minimize asbestos exposure. However, it is clear from the photographic evidence, as well as my conversations with tenants and tenant organizers, that Defendants have not complied with numerous worksite regulations found in the OSHA Construction Standard. For one, Defendants have failed to supply evidence that their workers, contractors, and subcontractors have the required asbestos certification, licensure, and training. 29 C.F.R. § 1926.1101(k)(9). This is a violation of not only the OSHA Construction Standard, but of Defendants' own policies under the Haven Asbestos O&M Program. [Poradek Ex. 2, at HAVEN000048-53]

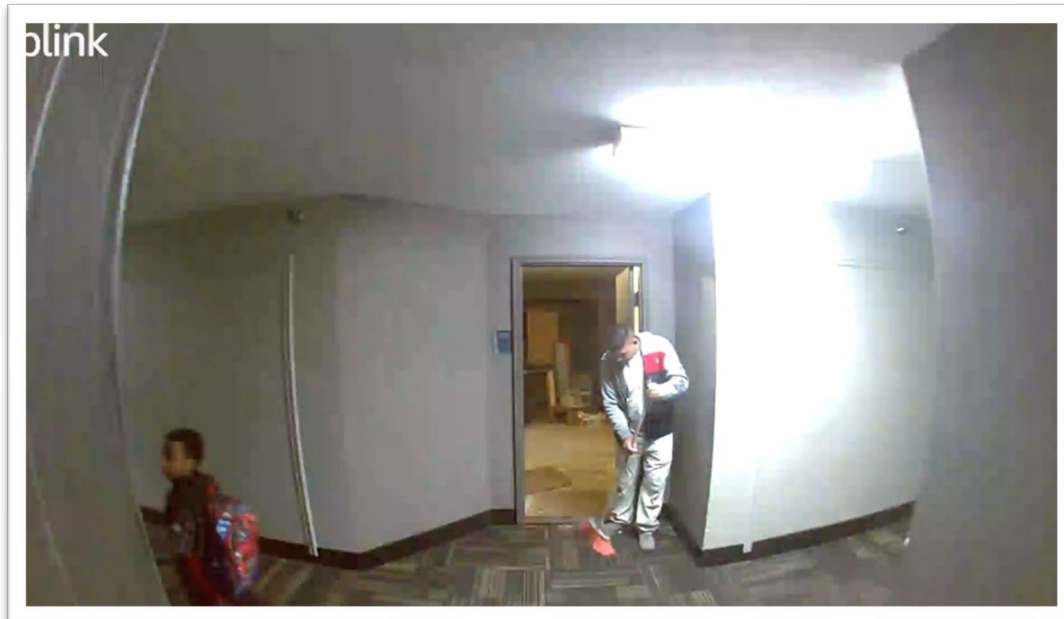
44. Further, there is no evidence that Defendants or their contractors are following work practices designed to minimize or eliminate asbestos exposure. For example, I have seen no evidence that workers are:

- installing the necessary work barriers or otherwise containing and isolating the work area, 29 C.F.R. § 1926.1101(g);
- using specified respiratory protection, § 1926.1101(g), (h);
- using HEPA-filter equipped vacuums and ventilation systems; § 1926.1101(g), (l); or
- posting warning signs outside regulated work area, § 1926.1101(k)(7).

Instead, evidence shows that hallway doors have been open in apartments undergoing renovation; common areas in which repairs occur are not blocked off; workers are wearing no protective gear, freely walking through the Haven complex, and tracking dust and debris; and warning signs are not visible. [See Mohamed ¶¶4, 8, 15] Such work practices run afoul of the OSHA Construction Standard and put tenants and workers at risk of asbestos exposure.

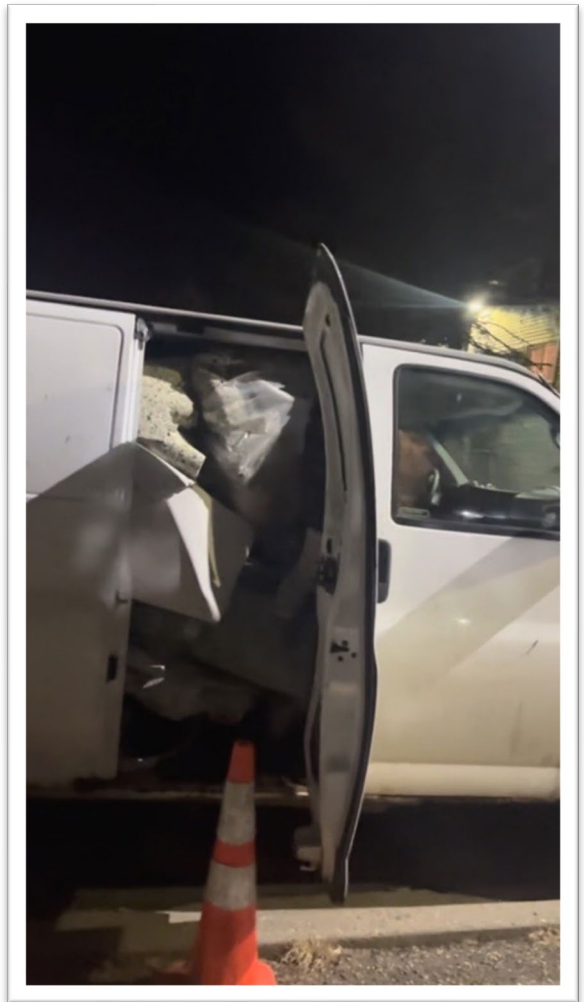
45. Defendants are also failing to dispose of PACM and suspect ACM in a manner consistent with asbestos safety law. 29 C.F.R. § 1926.1101(g), (l). Presumed and suspect ACM is carted through hallways and improperly disposed of in open dumpsters or placed in unmarked vans. Throughout Defendants' renovation process, dust and debris from renovation activities has been seen in hallways. This dust and debris, if asbestos-containing, is hazardous to tenant health. Concerningly, Defendants and their contractors

appear to have been using dry-sweeping methods on this dust and debris, which only reagitates any settled asbestos fibers.



Above: Worker dry sweeping outside apartment undergoing renovation.

Left: Worker carting suspect ACM drywall through hallway.



Clockwise from top left:

Dust tracked in common area hallway. [Poradek ¶30]

Renovation debris in unmarked van.

Renovation debris in open dumpster. [Poradek ¶30]

46. Defendants have not kept any of the mandated documentation related to exposure and notification requirements under both the OSHA Construction Standard, as well as under the Haven Asbestos O&M Program. For example, employers are required to keep records of their asbestos exposure measurements for 30 years. 29 C.F.R. § 1926.1101(n)(2). Property managers and owners are required to keep records of mandated asbestos notifications to building occupants indefinitely, § 1926.1101(n)(6), in addition to any documentation that may demonstrate presumed asbestos containing material is not asbestos containing, § 1926.1101(n)(5). Employers must maintain employee training records for at least one year after the employee's final day. § 1926.1101(n)(4). Despite repeated requests by Plaintiffs, virtually no such documents have been provided.

47. Finally, Defendants have violated another important asbestos safety law. Section 112 of the Clean Air Act sets forth regulations for the control of air quality for any air pollutant deemed "hazardous," including asbestos. The relevant EPA rules are the National Emission Standards for Hazardous Air Pollutants or NESHAP. 40 C.F.R. Part 61. Minnesota's Pollution Control Agency has adopted the asbestos NESHAP standards. Minn. R. 7011.9920.

48. Under the asbestos NESHAP, the owners and operators of a property are required to do several things **before** engaging in renovation, which is broadly defined as "altering a facility or one or more facility components in any way." 40 C.F.R. § 61.141. First, "prior to the commencement of the demolition or renovation" "the owner or operator of a demolition or renovation activity" is required to "thoroughly inspect the

affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos.” § 61.145(a). Second, owners and operators whose renovations disturb a set amount of asbestos, must provide the relevant government agencies with “written notice of intention to demolish or renovate.” § 61.145(b)(1). These regulations apply to all owners or operators, defined as “any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated,” definitions which apply to Marquette Management and G&I X Phoenix Apartments LLC. § 61.141.

49. As discussed above, despite repeated requests by Plaintiffs’ counsel, Defendants have produced no documentation showing that they conducted a pre-renovation inspection or notified the appropriate government agencies of intended renovation activities, as required by NESHAP. For this reason, it is my conclusion that Defendants have violated NESHAP.

50. In sum, Defendants have violated the OSHA Construction Standard, NESHAP, as well as its own policies and procedures, through its extensive renovation, repair, and maintenance activity. This work has exposed Haven tenants, as well as employees and other building occupants, to asbestos risks.

Under 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Signed in Kanabec County, Minnesota

April 2, 2024

s/Greg Myers

Greg Myers