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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH THRASH, et al.,
Plaintiffs,
v.
THE BOEING COMPANY, et al.,
Defendants.

Case No. 17-cv-01501-JST

**ORDER GRANTING DEFENDANT
ROHR, INC.'S MOTION FOR
SUMMARY JUDGMENT AND
DENYING PLAINTIFFS'
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL**

Re: ECF Nos. 147, 183

Before the Court is Defendant Rohr, Inc.'s motion for summary judgment. ECF No. 147. Plaintiffs Joseph and Chez Thrash filed an administrative motion to file documents under seal in support of their opposition to Rohr's motion. ECF No. 183. The Court will grant Rohr's motion and deny Plaintiffs' administrative motion as moot.¹

I. ROHR'S MOTION FOR SUMMARY JUDGMENT

Defendant Rohr, Inc. moves for summary judgment on grounds that "Plaintiffs have not and cannot establish the threshold element of their claims against Rohr: that Joseph Thrash was ever exposed to asbestos from a Rohr product." ECF No. 147 at 10. Exposure to a Rohr product is an element of Plaintiffs' claims. See *Rutherford v. Owens-Illinois, Inc.*, 16 Cal. 4th 953, 982 (1997) ("In the context of a cause of action for asbestos-related latent injuries, the plaintiff must first establish some threshold exposure to the defendant's defective asbestos-containing products . . .") (emphasis in original).

Nor do Plaintiffs dispute that, in opposing Rohr's motion, they have the burden of presenting admissible evidence to show that a genuine dispute of material fact exists on the

¹ Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-1(b), the Court finds both matters suitable for disposition without oral argument.

1 question of exposure by Rohr. See *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099,
2 1102-03 (9th Cir. 2000). Plaintiffs’ opposition, however, fails to present any such evidence.
3 Instead, Plaintiffs argue that the Court should either deny the motion or grant a continuance under
4 Federal Rule of Civil Procedure 56(d) to allow Plaintiffs additional time to conduct discovery.
5 ECF No. 184 at 7-8.

6 Plaintiffs’ argument has no merit. To receive a Rule 56(d) continuance, a party opposing
7 summary judgment “must show: (1) it has set forth in affidavit form the specific facts it hopes to
8 elicit from further discovery; (2) the facts sought exist; and (3) the sought-after facts are essential
9 to oppose summary judgment.” *Family Home & Fin. Ctr., Inc. v. Fed. Home Loan Mortg. Corp.*,
10 525 F.3d 822, 827 (9th Cir. 2008).² Here, Plaintiffs have not demonstrated the second
11 requirement, that the facts exist. Plaintiffs argue that:

12 If Rohr were to actually search their records for the writings and
13 contracts between themselves and the other defendants in this case,
14 which has been requested, they would uncover the components used
15 to make and assemble the products at issue as well as the products
16 used to install the engines on the aircraft.

17 ECF No. 184 at 7. But this is mere speculation.

18 Indeed, the documents Plaintiffs believe Rohr should be able to find have been the subject
19 of multiple discovery disputes before Magistrate Judge Elizabeth D. Laporte. In denying
20 Plaintiffs’ recent motion for evidentiary sanctions,³ Judge Laporte concluded that Rohr’s
21 “opposition and accompanying declaration shows that it took steps that appear to be reasonable to
22 comply with” her January 25, 2018 order. ECF No. 221 at 1. Moreover, Judge Laporte noted that
23 “it is not surprising that [Rohr] did not locate the documents that Plaintiffs want, given that . . .
24 they are fifty years old or more, and under the applicable build-to-print programs, the customers
25 (Boeing and Lockheed) instructed [Rohr] to roll them up and return them to those customers.” *Id.*

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27 ² This case refers to Rule 56(f), but the Federal Rules of Civil Procedure have since been
28 amended, and the content of former Rule 56(f) is now contained in Rule 56(d).

³ Plaintiffs’ motion requested “either (A) an order compelling Defendant [Rohr] to allow Plaintiffs
access to their records; or, in the alternative, (B) an order imposing evidentiary sanctions against
Defendant Rohr, Inc. that establishes (1) Defendant Rohr, Inc. manufactured and supplied
asbestos-containing products, and (2) that Plaintiff Joseph Thrash was exposed to asbestos from
such products manufactured and supplied by Defendant.” ECF No. 210 at 3.

1 Nonetheless, she ordered Rohr to file a declaration “describing precisely how the search team used
2 Plaintiffs’ proposed keywords (which were only provided by Plaintiffs to [Rohr] quite late, on
3 March 20, 2018) in the search portal for the Iron Mountain records and the results.” Id.

4 Rohr filed the required declaration, which explained that the search terms provided by
5 Plaintiffs’ counsel “were typed into the Iron Mountain portal to see if there were any hits in the
6 Major Description and/or Minor Description fields for each of the aircraft at issue.” ECF No. 222
7 at 2. These “narrative fields” are where “those key words would be located, if they exist.” Id.
8 “The searches were performed on all Rohr Iron Mountain accounts, across all departments and
9 divisions. There were no responsive results.” Id.

10 Plaintiffs have not met their burden of demonstrating that a Rule 56(d) continuance should
11 be granted. Nor have they presented any evidence of Rohr’s liability. Accordingly, the Court will
12 grant Rohr’s motion for summary judgment.

13 **II. PLAINTIFFS’ ADMINISTRATIVE MOTION TO FILE UNDER SEAL**

14 In connection with their opposition to Rohr’s motion, Plaintiffs filed an administrative
15 motion to file under seal portions of the deposition transcript of Nolan Leatherman. ECF No. 183.
16 The Court will deny the motion as moot because the Court did not rely on the Leatherman
17 deposition in ruling on Rohr’s motion. The documents shall not be filed in the public record.

18 However, the Court reminds Defendants – the Boeing Company, in this instance – of the
19 requirements of Civil Local Rule 79-5(e). Where, as here, Plaintiffs seek to file material
20 designated as confidential by another party, “the Designating Party must file a declaration as
21 required by subsection 79-5(d)(1)(A) establishing that all of the designated material is sealable.”
22 Civil L.R. 79-5(e)(1). Boeing failed to do so here. Failure to file the required declarations in the
23 future may result in the Court’s denying a motion to file documents under seal and allowing the
24 documents to be filed in the public record.

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1 **CONCLUSION**

2 Rohr's motion for summary judgment is granted. Plaintiffs' motion to file documents
3 under seal in connection with their opposition to Rohr's motion is denied as moot.

4 **IT IS SO ORDERED.**

5 Dated: April 16, 2018

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8 JON S. TIGAF
9 United States District Judge

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United States District Court
Northern District of California