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13 **MARILYN M. DIETZEL, AS SUCCESSOR TO
THE ESTATE OF FRED R. BRYANT**

14
15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
17

18 **ATCHISON TOPEKA & SANTA FE**
19 **RAILWAY COMPANY,**
20 **Plaintiff,**
21 **v.**
22 **HERCULES INCORPORATED et. al.,**
23 **Defendants.**
24

No. 1:96-cv-05879 OWW/ DLB
(Consolidated With 1:98-cv-05050 OWW)

**STIPULATION AND ORDER FOR
MUTUAL DISMISSAL OF CLAIMS**

Trial Date: None

25 The Dow Chemical Company (“Dow”) and Marilyn M. Dietzel (“Marilyn Dietzel”) as
26 successor to the Estate of Fred R. Bryant, collectively referred to herein as the “Parties,” hereby
27 stipulate and agree as follows:
28

1 A. This action was initiated as *Atchison Topeka, et al v. Brown & Bryant Inc, et al.*, No.
2 1:92-cv-05068-OWW-DLB, filed February 5, 1992. Initially brought as a cost recovery action
3 under CERCLA in connection with the environmental cleanup of the Brown & Bryant site in
4 Arvin, California (“the Arvin Site”), the action was expanded under a Sixth Counterclaim by
5 Brown & Bryant, Inc., Fred R. Bryant and others filed March 5, 1993 to include cost recovery
6 claims in connection with the environmental cleanup of the Brown & Bryant site in Shafter,
7 California (“the Shafter Site”).

8 B. On March 7, 1996, Dow filed a third-party complaint against the Estate of Fred R.
9 Bryant, and by order dated August 21, 1996, Marilyn Dietzel was substituted as successor of the
10 estate. On November 8, 1996, Marilyn Dietzel filed a counterclaim for cost recovery, indemnity
11 and contribution against Dow, Shell Oil Company and Hercules, Inc.

12 C. At a scheduling conference on May 5, 1997, all claims relating to the Arvin site were
13 ordered to be coordinated under docket number CV-F-92-5068. Claims relating to the Shafter
14 site were ordered to be coordinated under docket number CV-F-96-5879.

15 D. The claims related to the Arvin Site were tried from March through September 1999,
16 and judgment was entered by the district court on September 10, 2003. The judgment was
17 appealed to the U.S. Court of Appeals for the Ninth Circuit (*U.S. v. Burlington Northern and*
18 *Santa Fe Railway Co.* (9th Cir. 2008) 520 F.3d 918), and the U.S. Supreme Court (*Burlington*
19 *Northern and Santa Fe Railway Co. v. U.S.* (2009) 129 S.Ct. 1870). On May 4, 2009, the U.S.
20 Supreme Court issued its decision in *Burlington Northern and Santa Fe Railway Co. v. U.S.*
21 (2009) 129 S.Ct. 1870. Among other things, the Supreme Court made rulings with regard to the
22 scope of “arranger” liability under CERCLA that has resulted in mutual dismissals of claims
23 between Dow and four other parties, Burlington Northern & Santa Fe Railway Company
24 (“BNSF”), Shell Chemical Company, Shell Oil Company and the California Department of Toxic
25 Substances Control (“DTSC”). No claims are pending between Dow and Hercules, Inc. Dow has
26 also been removed as a respondent under the Imminent & Substantial Endangerment Order issued
27 by DTSC on July 23, 1993.

1 E. By order filed July 26, 2010, the Court, acting on the motions of Dow and BNSF,
2 adopted the Magistrate Judge's Findings and Recommendations submitted on February 17, 1999
3 and issued terminating sanctions against Brown & Bryant, Inc., John H. Brown, an Individual,
4 and Ed A. Brown, an Individual (the "Brown & Bryant Parties"). The Brown & Bryant Parties'
5 answers to Dow's counterclaim (including answers of Brown & Bryant, Inc., John H. Brown, and
6 Ed A. Brown to Dow's counterclaim) were stricken, and default judgment was entered against the
7 Brown & Bryant Parties as to all claims of Dow against them in this case, as set forth in Dow's
8 counterclaim for cost recovery and contribution filed March 7, 1996. The order also specified
9 that Dow shall recover its costs of suit against the Brown & Bryant Parties, which is the subject of
10 a pending motion under Fed.R.Civ.Proc. 55(b).

11 F. The Parties have determined that it is in their respective interests to bring resolution
12 to the claims between them in this action without the expense of further litigation. Accordingly,
13 the Parties hereby stipulate and agree to the following:

14 1. Dow's claims against Marilyn Dietzel, set forth in the third-party complaint of
15 March 7, 1996, are dismissed with prejudice.

16 2. Marilyn Dietzel's claims against Dow, set forth in the November 8, 1996
17 counterclaim, are dismissed with prejudice.

18 3. Dow and Marilyn Dietzel may not recover any costs, expenses, attorneys' fees
19 or other monetary recovery from each other in connection with the claims that are dismissed by
20 this Stipulation and Order, or any other claims arising from the releases or threatened releases of
21 hazardous substances at and from the Shafter Site alleged in the Dow's complaint and Marilyn
22 Dietzel's counterclaim.

23 4. This Stipulation may be signed in counterpart and facsimiles of signatures, or
24 signatures on a portable document format (pdf) copy of the stipulation, shall have the same force
25 and effect as originals.

26 5. The signatories are authorized to sign and bind the parties for whom they are
27 signing.

28 [Signatures on following page]

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Dated: April 5, 2011

WENDEL, ROSEN, BLACK & DEAN, LLP

/s/
Stephen McKae
Attorneys for The Dow Chemical Company

Dated: April 5, 2011

LAW OFFICES OF SCOTT PERLMAN

/s/
Scott Perlman
*Attorneys for Marilyn M. Dietzel as
successor to the Estate of Fred R. Bryant*

IT IS SO ORDERED.

Dated: April 7, 2011

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE