

1 CHRISTIAN VOLZ (SBN 139352)
cvolz@mckennalong.com
2 REBECCA L. WOODSON (SBN 194191)
rwoodson@mckennalong.com
3 **MCKENNA LONG & ALDRIDGE LLP**
101 California Street
4 41st Floor
San Francisco, CA 94111
5 Telephone: (415) 267-4000
Facsimile: (415) 267-4198

6 Attorneys for Defendant
7 **HERCULES INCORPORATED**

8
9 **UNITED STATES DISTRICT COURT**
10 **EASTERN DISTRICT OF CALIFORNIA**

11
12 DEPARTMENT OF TOXIC SUBSTANCES
CONTROL,

13
14 Plaintiff,

15 vs.

16 **HERCULES INCORPORATED, et al.,**

17 Defendants.

CASE NO. CV F 96-5879 LJO DLB
(Consolidated Shafter Cases)

**STIPULATION OF DISMISSAL AND
ORDER**

FRCP 41(a)(1); Local Rule 143

18 TO THE HONORABLE COURT AND ALL PARTIES OF RECORD please take
19 notice of the following stipulation and order:

20 WHEREAS, on January 14, 1998, the California Department of Toxic Substances
21 Control (“DTSC”) filed its original complaint in the action *DTSC v. Brown & Bryant, Inc., et*
22 *al.*, Case No. CIV-F-98-5050 (“*DTSC Action*”) against BNSF Railway Company (formerly The
23 Atchison Topeka & Santa Fe Railway Company) (“BNSF”), Hercules Incorporated
24 (“Hercules”), and others pursuant to the Comprehensive Environmental Response,
25 Compensation and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601, *et seq.*

26 WHEREAS, the Court consolidated the *DTSC Action* with two earlier CERCLA actions
27 which had been filed concerning the Brown & Bryant Shafter site: *Atchison Topeka & Santa Fe*
28 *Railway Co., et al. v. Brown & Bryant, Inc., et al.*, Case No. CIV-F-92-5068; and *Atchison*

1 *Topeka & Santa Fe Railway Co. v. Hercules Incorporated, et al.*, Case No. CIV-F-96-5879
2 (“*ATSF v. Hercules Action*”), and directed that “all future pleadings should contain ONLY the
3 LEAD CASE NUMBER OF CIV-F-96-5879 OWW DLB (member case 98-5050 OWW).”
4 (These consolidated actions are referred to herein as the “Consolidated Shafter Cases”).

5 WHEREAS, on or about May 6, 1998, BNSF filed its answer and cross-claim in the
6 DTSC Action, and on or about November 9, 1998, BNSF filed its answer to DTSC’s Second
7 Amended Complaint and an amended cross-claim. BNSF’s amended cross-claim asserted
8 claims against a number of individuals and entities, but not against Hercules.

9 WHEREAS, on or about October 30, 1998, Hercules filed its answer in the *DTSC*
10 *Action*, a counterclaim against DTSC, and a cross-claim against BNSF. DTSC answered the
11 counterclaim on November 20, 1998; BNSF answered the cross-claim on November 23, 1998.

12 WHEREAS, on or about July 23, 1996, BNSF filed its original complaint against
13 Hercules in the *ATSF v. Hercules Action*, and on or about July 21, 1998 filed a First Amended
14 Complaint.

15 WHEREAS, on or about August 11, 1998, Hercules filed its answer to the First
16 Amended Complaint in the *ATSF v. Hercules Action*, and on or about October 30, 1998, filed a
17 cross-claim against BNSF.

18 WHEREAS, on January 5, 2012, a Consent Decree entered in the above-entitled matter
19 among DTSC, BNSF, and Hercules was approved by the Honorable Lawrence J. O’Neill,
20 United States District Judge. A true and correct copy of this Consent Decree is attached hereto
21 and incorporated by reference herein as **Exhibit A**.

22 WHEREAS, pursuant to the terms of Exhibit A, section 11.2.3 BNSF and Hercules
23 Dismissal of Claims, “Upon the Effective Date of this Consent Decree [January 5, 2012], the
24 Court shall dismiss with prejudice: (1) all claims asserted by BNSF against Hercules in the
25 Consolidated Shafter Cases; and (2) all claims asserted by Hercules against BNSF in the
26 Consolidated Shafter Cases.”

27 NOW THEREFORE, IT IS HEREBY STIPULATED by and between BNSF and
28 Hercules, through their designated counsel, that the claims asserted by Hercules against BNSF

1 in the Consolidated Shafter Cases be and hereby are dismissed with prejudice pursuant to
2 Federal Rule of Civil Procedure Rule 41(a)(1) and Local Rule 143, with BNSF and Hercules
3 each to bear its own costs and attorneys' fees; and

4 IT IS HEREBY FURTHER STIPULATED by and between BNSF and Hercules,
5 through their designated counsel, that the claims asserted by BNSF against Hercules in the
6 Consolidated Shafter Cases be and hereby are dismissed with prejudice pursuant to Federal Rule
7 of Civil Procedure Rule 41(a)(1) and Local Rule 143, with BNSF and Hercules each to bear its
8 own costs and attorneys' fees.

9
10 Dated: January 31, 2012

MCKENNA LONG & ALDRIDGE LLP

11
12 By: /s/ Christian Volz
13 CHRISTIAN VOLZ
14 Attorneys for
HERCULES INCORPORATED

15 Dated: January 31, 2012

BARG COFFIN LEWIS & TRAPP LLP

16
17 By: /s/ Mark Zeppetello
18 MARK ZEPPELLO
19 Attorneys for
20 BNSF RAILWAY COMPANY

21 IT IS SO ORDERED.

22 Dated: February 2, 2012

/s/ Lawrence J. O'Neill
23 UNITED STATES DISTRICT JUDGE
24
25
26
27
28