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8  
 9 IN THE UNITED STATES DISTRICT COURT  
 10 FOR THE EASTERN DISTRICT OF CALIFORNIA

11  
 12 **CALIFORNIA DEPARTMENT OF TOXIC  
 SUBSTANCES CONTROL,**

13 Plaintiff,

14 v.

15  
 16 **CHARLES V. KESTER, ET AL.,**

17 Defendants,

18  
 19  
 20 **AND RELATED CROSS-CLAIMS,  
 COUNTERCLAIMS AND/OR THIRD-  
 21 PARTY ACTIONS.**

CIV-S-02-0018 GEB-GGH

**PLAINTIFF'S REQUEST FOR  
 DISMISSAL OF SECOND AND THIRD  
 CAUSES OF ACTION AND  
 [PROPOSED] ORDER**

Judge The Honorable Garland E.  
 Burrell, Jr.

Trial Date: None  
 Action Filed: January 4, 2002

22 Plaintiff, California Department of Toxic Substances Control ("DTSC") hereby requests  
 23 dismissal of the Second Cause of Action (for Injunctive Relief under California Health and Safety  
 24 Code Section 25358.3) and the Third Cause of Action (Abatement of a Public Nuisance) in  
 25 DTSC's Fourth Amended Complaint (Document 1145, filed 7/22/2010) ("Fourth Amended  
 26 Complaint").

27 Pursuant to the April 2010 Consent Decree (see, Exhibit A to Declaration of Sandra  
 28 Goldberg in Support of Plaintiff's Motion for Approval and Entry of Consent Decree, Document

1 # 1100, filed April 1, 2010), approved by the Court on April 28, 2010 (Document # 1120), DTSC  
2 has recovered funds that it will use to remediate the Brighton Oil Site (as defined in the Fourth  
3 Amended Complaint at paragraphs 4 and 5). Accordingly, DTSC will not seek relief from the  
4 remaining defendants under the Second and Third Causes of Action, which seek injunctive relief  
5 under state laws.

6 This dismissal has no effect on DTSC's First Cause of Action in the Fourth Amended  
7 Complaint which seeks recovery of past response costs and declaratory judgment on liability for  
8 future response costs under Sections 107 and 113(g)(2) of CERCLA, 42. U.S.C. §§ 9607 and  
9 9613(g)(2). Further, this dismissal also has no effect on the Counterclaims filed by defendants  
10 John L. Sullivan Chevrolet, Inc. and Gordon Turner Motors seeking contribution and  
11 apportionment under Section 113 of CERCLA. (Answer and Counterclaim to Fourth Amended  
12 Complaint By Defendants John L. Sullivan Chevrolet, Inc. and Gordon Turner Motors,  
13 Documents ## 1163 and 1164, filed September 22, 2010).

14 Dated: October 5, 2010

Respectfully submitted,

15 EDMUND G. BROWN JR.  
16 Attorney General of California  
17 MARGARITA PADILLA  
18 Supervising Deputy Attorney General

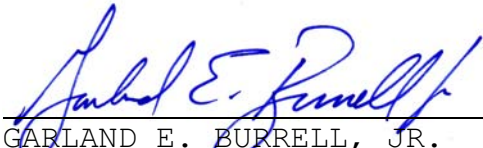
/s/ Sandra Goldberg, Esq.

19 SANDRA GOLDBERG  
20 Deputy Attorney General  
21 *Attorneys for Plaintiff California*  
22 *Department of Toxics Substance Control*

23 Plaintiff's Second and Third Causes of Action in the Fourth Amended Complaint are  
24 hereby dismissed.

25 IT IS SO ORDERED.

26 10/5/10

27   
28 GARLAND E. BURRELL, JR.  
United States District Judge