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6 Attorneys for Plaintiff
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10
11 ROGER HENRY,
12 Plaintiff,

No. C-05-5000 PJH

STIPULATION AND [PROPOSED]
ORDER OF DISMISSAL AND
REMAND TO STATE COURT

13
14 vs.

15 ASBESTOS DEFENDANTS (B ♦ P),
16 Defendants

17 THE BOEING COMPANY,
18 Removing Defendant.
19

20 WHEREAS:

21 1. This case was originally filed in the Superior Court of California for the County of San
22 Francisco; and

23 2. Defendant THE BOEING COMPANY filed its Notice of Removal on December 5,
24 2005, alleging that this Court has removal jurisdiction pursuant to the federal officer removal
25 statute, 28 U.S.C. §1442(a)(1), on the ground that it was acting under the direction of agencies
26 and officers of the United States government in committing the acts that Plaintiff complains of;
27 and

28 ///

1 3. The removal by defendant THE BOEING COMPANY did not require the consent of
2 other party defendants and no consent or joinder in the removal was submitted to the court, and

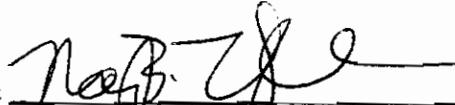
3 4. The parties have agreed to and do hereby stipulate that defendant THE BOEING
4 COMPANY should be dismissed with prejudice from the above entitled action, pursuant to
5 FRCP 41 (a)(2), each party to bear its own costs;

6 IT IS HEREBY STIPULATED by and between the parties to this action through their
7 designated counsel, that because the sole removing defendant is hereby dismissed with prejudice,
8 no basis currently exists for this court to exercise jurisdiction over this action and remand to the
9 Superior Court of California for the County of San Francisco is appropriate.

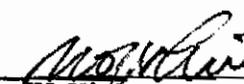
10 Accordingly, the parties petition this court for an order dismissing defendant THE
11 BOEING COMPANY from this action, and remanding the action to the Superior Court of
12 California for the County of San Francisco.

13
14 Dated: December 12, 2005

BRAYTON ♦ PURCELL LLP

15
16 By: 
17 Nancy B. Thorington
Attorneys for Plaintiff

18 PERKINS COIE LLP

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20 By: 
21 Bo W. Kim,
22 Attorneys for Defendant
THE BOEING COMPANY

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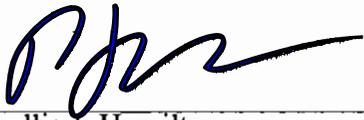
1 **ORDER DISMISSING DEFENDANT AND REMANDING CASE TO STATE COURT**

2 Having considered the stipulation between the plaintiff and the sole removing
3 party, and good cause appearing:

4 IT IS HEREBY ORDERED that the sole removing defendant, THE BOEING
5 COMPANY, is dismissed with prejudice from this action pursuant to FRCP 41 (a)(2), each party
6 to bear its own costs; and

7 IT IS FURTHER ORDERED THAT the sole removing defendant having been
8 dismissed with prejudice from the case, no basis currently exists for removal of this action from
9 the Superior Court of California for the County of San Francisco, and this matter should be and
10 is, therefore, remanded to that court immediately.

11 12/14/05
12 Dated _____

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14 _____
15 Phyllis J. Hamilton,
16 United States District Judge
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PROOF OF SERVICE

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I am employed in the County of Marin, State of California. I am over the age of 18 years and am not a party to the within action. My business address is 222 Rush Landing Road, Novato, California 94948-6169.

On December 13, 2005, I served the attached:

STIPULATION AND [PROPOSED] ORDER OF DISMISSAL AND REMAND TO STATE COURT

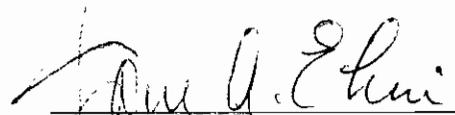
on the interested parties in this action by transmitting a true copy thereof in a sealed envelope, and each envelope addressed as follows:

BOEING COMPANY
c/o Bo W. Kim, Esq.
Perkins Coie
1620 26th Street, 6th Floor
Santa Monica, CA 90404-4013
(310) 788-9900
(310) 788-3399 Fax

XXX (BY MAIL) I am readily familiar with the business practice at my place of business for collection and processing of correspondence for delivery by mail. Correspondence so collected and processed is deposited with the United States Postal Service on the same day in the ordinary course of business. On the above date the said envelope was collected for the United States Postal Service following ordinary business practices.

Executed this **December 13, 2005** at Novato, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



JANE A. EHNI

Roger Henry v. Asbestos Defendants (BP)
USDC C05-5000 PJH

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