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7 CalMat Co. dba Vulcan Materials Company

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 CALMAT CO. dba VULCAN
12 MATERIALS COMPANY, WESTERN
13 DIVISION, a Delaware corporation,

14 Plaintiff,

15 vs.

16 SAN GABRIEL VALLEY GUN CLUB,
17 a non-profit California corporation, and
18 DOES 1 through 10, inclusive,

19 Defendants.

20 SAN GABRIEL VALLEY GUN CLUB,
21 a non-profit California corporation,

22 Counterclaimant

23 vs.

24 CALMAT CO. dba VULCAN
25 MATERIALS COMPANY, WESTERN
26 DIVISION, a Delaware corporation,

27 Counterdefendant
28

CASE NO. EDCV08-1198 SGL (OPx)

Assigned to Judge Stephen G. Larson

**CALMAT CO. DBA VULCAN
MATERIALS COMPANY
WESTERN DIVISION'S ANSWER
TO COUNTERCLAIM OF SAN
GABRIEL VALLEY GUN CLUB**

[DEMAND FOR JURY TRIAL]

1 Plaintiff and Counter-Defendant CALMAT CO. dba VULCAN MATERIALS
2 COMPANY, WESTERN DIVISION (“VULCAN”) answers, on behalf of itself and
3 no other parties, the Counterclaim of Defendant and Counter-Claimant SAN
4 GABRIEL VALLEY GUN CLUB (“GUN CLUB”) in the above-captioned matter as
5 follows:

6 1. As Paragraph 1 of the Counterclaim states conclusions of law, no
7 response is required. To the extent that a response may be deemed required,
8 VULCAN denies the allegations.

9 2. In response to Paragraph 2 of the Counterclaim, VULCAN admits that
10 the GUN CLUB utilized the Site as a shooting range from 1947 through 2006, and
11 that VULCAN has owned the Site, which has varied in size, from 1947 through the
12 present. To the extent that the remainder of Paragraph 2 requires a response,
13 VULCAN denies the allegations.

14 3. VULCAN denies the allegations in Paragraph 3 of the Counterclaim,
15 and specifically denies that the GUN CLUB is entitled to any relief.

16 4. VULCAN denies the allegations in Paragraph 4 of the Counterclaim.

17 5. VULCAN denies the allegations in Paragraph 5 of the Counterclaim,
18 and specifically denies that the Court should exercise any supplemental jurisdiction
19 in this case.

20 6. VULCAN denies the allegations in Paragraph 6 of the Counterclaim,
21 and specifically denies that the Court should exercise any supplemental jurisdiction
22 in this case.

23 **JURISDICTION AND VENUE**

24 7. VULCAN admits the allegations in Paragraph 7 of the Counterclaim.

25 8. VULCAN admits the allegations in Paragraph 8 of the Counterclaim.

26 9. As Paragraph 9 of the Counterclaim states conclusions of law, no
27 response is required.

PARTIES

10. VULCAN admits the allegation in Paragraph 10 of the Counterclaim.

11. As to Paragraph 11 of the Counterclaim, VULCAN admits that it constitutes a "person" as that term is defined in the applicable state and federal statutory provisions cited by GUN CLUB. As to the remainder of Paragraph 11, VULCAN denies the allegations.

12. VULCAN lacks sufficient information upon which to admit or deny the allegations found in Paragraph 12 of the Counterclaim, and on that basis denies those.

13. As Paragraph 13 of the Counterclaim states conclusions of law, no response is required. To the extent that a response may be deemed required, VULCAN admits the allegations.

DEFINITIONS

14. As Paragraph 14 of the Counterclaim states conclusions of law, no response is required.

15. As Paragraph 15 of the Counterclaim states conclusions of law, no response is required.

16. As Paragraph 16 of the Counterclaim states conclusions of law, no response is required.

17. As Paragraph 17 of the Counterclaim states conclusions of law, no response is required.

18. As Paragraph 18 of the Counterclaim states conclusions of law, no response is required.

19. As Paragraph 19 of the Counterclaim states conclusions of law, no response is required.

20. As Paragraph 20 of the Counterclaim states conclusions of law, no response is required.

1 21. As Paragraph 21 of the Counterclaim states conclusions of law, no
2 response is required.

3 22. As Paragraph 22 of the Counterclaim states conclusions of law, no
4 response is required.

5 23. As Paragraph 23 of the Counterclaim states conclusions of law, no
6 response is required.

7 **GENERAL ALLEGATIONS**

8 24. VULCAN admits that prior to 1947, VULCAN (Consolidated Rock
9 Products Co., changing its name to Conrock Co. in 1972) owned the Site, and that
10 VULCAN is current owner of the Site, and has been the owner of the Site since
11 1947. VULCAN denies the remaining allegations in Paragraph 24.

12 25. VULCAN admits the allegations in Paragraph 25 of the Counterclaim.

13 26. VULCAN admits the allegations in Paragraph 26 of the Counterclaim.

14 27. VULCAN denies the allegations in Paragraph 27 of the Counterclaim.

15 28. VULCAN denies the allegations in Paragraph 28 of the Counterclaim.

16 29. VULCAN denies the allegations in Paragraph 29 of the Counterclaim.

17 30. As to Paragraph 30 of the Counterclaim, VULCAN admits that the GUN
18 CLUB disposed of hazardous substances at the Site. VULCAN denies the remaining
19 allegations in Paragraph 30.

20 31. VULCAN denies the allegations in Paragraph 31 of the Counterclaim.

21 32. VULCAN denies the allegations in Paragraph 32 of the Counterclaim.

22 33. VULCAN denies the allegations in Paragraph 33 of the Counterclaim.

23 **FIRST CLAIM FOR RELIEF**

24 **(Contribution Pursuant to CERCLA §§ 107(a), 113(f))**

25 34. Answering Paragraph 34 of the Counterclaim, VULCAN incorporates
26 by reference its answers to paragraphs 1 through 33 as though fully specified here.

27 35. VULCAN denies the allegation in Paragraph 35 of the Counterclaim.

28 36. VULCAN denies the allegations in Paragraph 36 of the Counterclaim.

1 37. VULCAN denies the allegations in Paragraph 37 of the Counterclaim.

2 **SECOND CLAIM FOR RELIEF**

3 **(Declaratory Relief Under Federal Law Pursuant to CERCLA § 113(g), SWDA**
4 **§ 1002, and 28 U.S.C. § 2201)**

5 38. Answering Paragraph 38 of the Counterclaim, VULCAN incorporates
6 by reference its answers to paragraphs 1 through 37 as though fully specified here.

7 39. As to Paragraph 39 of the Counterclaim, VULCAN admits to the
8 presence of a “dispute” between the parties. As to the remainder of Paragraph 39,
9 VULCAN denies the allegations.

10 40. As Paragraph 40 of the Counterclaim states conclusions of law, no
11 response is required. To the extent a response may be deemed required, VULCAN
12 lacks sufficient information upon which to admit or deny the allegations, and on that
13 basis denies these.

14 41. VULCAN denies the allegations in Paragraph 41 of the Counterclaim.

15 42. VULCAN denies the allegations in Paragraph 42 of the Counterclaim.

16 43. VULCAN denies the allegations in Paragraph 43 of the Counterclaim.

17 **THIRD CLAIM FOR RELIEF**

18 **(Recovery Under the California Hazardous Substances Account Act, California**
19 **Health and Safety Code Sections 25300 et. seq.)**

20 44. Answering Paragraph 44 of the Counterclaim, VULCAN incorporates
21 by reference its answers to paragraphs 1 through 43 as though fully specified here.

22 45. As to Paragraph 45 of the Counterclaim, the Hazardous Substances
23 Account Act speaks for itself. VULCAN denies the remaining allegations in
24 Paragraph 45.

25 46. VULCAN denies the allegations in Paragraph 46 of the Counterclaim.

26 47. VULCAN denies the allegations in Paragraph 47 of the Counterclaim.

27
28 48. VULCAN denies the allegations in Paragraph 48 of the Counterclaim.

1 49. VULCAN denies the allegations in Paragraph 49 of the Counterclaim.

2 **FOURTH CLAIM FOR RELIEF**

3 **(Negligence Per Se)**

4 50. Answering Paragraph 50 of the Counterclaim, VULCAN incorporates
5 by reference its answers to paragraphs 1 through 49 as though fully specified here.

6 51. VULCAN denies the allegations in Paragraph 51 of the Counterclaim.

7 52. The federal and state statutory provisions cited by GUN CLUB speak
8 for themselves, thus no response is needed.

9 53. VULCAN denies the allegations in Paragraph 53 of the Counterclaim.

10 54. VULCAN denies the allegations in Paragraph 54 of the Counterclaim.

11 55. VULCAN denies the allegations in Paragraph 55 of the Counterclaim.

12 56. VULCAN denies the allegations in Paragraph 56 of the Counterclaim.

13 57. VULCAN denies the allegations in Paragraph 57 of the Counterclaim.

14 **FIFTH CLAIM FOR RELIEF**

15 **(Negligence)**

16 58. Answering Paragraph 58 of the Counterclaim, VULCAN incorporates
17 by reference its answers to paragraphs 1 through 57 as though fully specified here.

18 59. VULCAN denies the allegations in Paragraph 59 of the Counterclaim.

19 60. VULCAN denies the allegations in Paragraph 60 of the Counterclaim.

20 61. VULCAN denies the allegations in Paragraph 61 of the Counterclaim.

21 62. VULCAN denies the allegations in Paragraph 62 of the Counterclaim.

22 **SIXTH CLAIM FOR RELIEF**

23 **(Equitable Indemnity)**

24 63. Answering Paragraph 63 of the Counterclaim, VULCAN incorporates
25 by reference its answers to paragraphs 1 through 62 as though fully specified here.

26 64. As to Paragraph 64 of the Counterclaim, VULCAN admits that the GUN
27 CLUB is and will continue to be obligated to undertake a variety of response actions
28 at the Site. VULCAN denies that it has any liability for contamination at the Site.

1 65. VULCAN denies the allegations in Paragraph 65 of the Counterclaim.

2 66. VULCAN denies the allegations in Paragraph 66 of the Counterclaim.

3 **SEVENTH CLAIM FOR RELIEF**

4 **(Declaratory Relief Under State Law Pursuant to California Code of Civil**
5 **Procedure Section 1060)**

6 67. Answering Paragraph 67 of the Counterclaim, VULCAN incorporates
7 by reference its answers to paragraphs 1 through 66 as though fully specified here.

8 68. As to Paragraph 68 of the Counterclaim, VULCAN admits to the
9 presence of a "dispute" between the parties. As to the remainder of Paragraph 39,
10 VULCAN denies the allegations.

11 69. As Paragraph 69 of the Counterclaim states conclusions of law, no
12 response is required. To the extent a response may be deemed required, VULCAN
13 lacks sufficient information upon which to admit or deny the allegations, and on that
14 basis denies these allegations.

15 70. As Paragraph 70 of the Counterclaim states conclusions of law, no
16 response is required.

17 **EIGHTH CLAIM FOR RELIEF**

18 **(Breach of Contract)**

19 71. Answering Paragraph 70 of the Counterclaim, VULCAN incorporates
20 by reference its answers to paragraphs 1 through 69 as though fully specified here.

21 72. As to Paragraph 72 of the Counterclaim, the lease between the parties
22 speaks for itself.

23 73. As to Paragraph 73 of the Counterclaim, the lease between the parties
24 speaks for itself.

25 74. As to Paragraph 74 of the Counterclaim, the lease between the parties
26 speaks for itself.

27 75. VULCAN denies the allegations in Paragraph 75 of the Counterclaim.

28

1 76. VULCAN admits that, in or about May 2007, the GUN CLUB retained a
2 contractor for work at the Site. VULCAN denies the remaining allegations in
3 Paragraph 76 of the Counterclaim.

4 77. VULCAN lacks sufficient information upon which to admit or deny the
5 allegation in Paragraph 77 of the Counterclaim.

6 78. VULCAN denies the allegations in Paragraph 78 of the Counterclaim.

7 79. VULCAN denies the allegations in Paragraph 79 of the Counterclaim.
8

9 **AFFIRMATIVE DEFENSES**

10 VULCAN further alleges the following affirmative defenses to each purported
11 claim for relief:

12 **FIRST AFFIRMATIVE DEFENSE**

13 **(Failure to State a Claim)**

14 80. GUN CLUB's counterclaim fails to state a claim against VULCAN upon
15 which relief can be granted.

16 **SECOND AFFIRMATIVE DEFENSE**

17 **(Lack of Standing)**

18 81. GUN CLUB lacks standing to bring the claims alleged in the
19 Counterclaim.

20 **THIRD AFFIRMATIVE DEFENSE**

21 **(Failure to Mitigate)**

22 82. GUN CLUB is barred from recovery because it has failed to mitigate its
23 damages.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 **(Offset)**

26 83. VULCAN alleges on information and belief that, among other forms of
27 offset to which it is entitled, GUN CLUB has successfully obtained or will obtain
28 from third parties the damages it claims in the current action.

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FIFTH AFFIRMATIVE DEFENSE

(Improper Claim for Attorneys' Fees)

84. GUN CLUB has not alleged any adequate legal basis for the recovery of attorneys' fees.

SIXTH AFFIRMATIVE DEFENSE

(Waiver and/or Consent)

85. GUN CLUB's claims are barred by the doctrines of waiver and/or consent.

SEVENTH AFFIRMATIVE DEFENSE

(Estoppel)

86. GUN CLUB by its own conduct is estopped from asserting or enforcing any claim in the Counterclaim.

EIGHTH AFFIRMATIVE DEFENSE

(Laches)

87. GUN CLUB's claims are barred, in whole or in part, by the equitable doctrine of laches.

NINTH AFFIRMATIVE DEFENSE

(Unclean Hands)

88. GUN CLUB is barred from recovery by the doctrine of unclean hands.

TENTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

89. GUN CLUB is barred from obtaining any relief by the application of the applicable statutes of limitations, including 42 U.S.C. § 9613, 42 U.S.C. § 9607, 42 U.S.C. § 9606, 42 U.S.C. § 9604, 42 U.S.C. § 9651, 42 U.S.C. § 9622, 41 U.S.C. § 112, 42 U.S.C. § 9113, California Code of Civil Procedure §§ 337, 337.2, 338, 339, 339.5, 340, and 343.

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ELEVENTH AFFIRMATIVE DEFENSE

(Contribution)

90. VULCAN alleges on information and belief that any damages sustained or to be sustained by GUN CLUB were proximately caused and contributed to by the acts, omissions, conduct, breach of obligations by, and/or negligence of GUN CLUB and/or other defendants and/or third-parties. Accordingly, VULCAN is entitled to contribution from GUN CLUB and/or other defendants and/or third-parties for the pro rata share to which their fault contributed to any damages sustained or to be sustained by VULCAN.

TWELFTH AFFIRMATIVE DEFENSE

(Indemnity)

91. VULCAN alleges on information and belief that any damages sustained or to be sustained by GUN CLUB were proximately caused and contributed to, both at common law and statute, by the acts, omissions, conduct, breach of obligations by, and/or negligence of GUN CLUB and/or other defendants and/or other third parties. Accordingly, VULCAN is entitled to indemnity from GUN CLUB and/or other defendants and/or other third parties to the extent their acts or omissions proximately caused or contributed to the damage for which GUN CLUB seeks to hold VULCAN liable.

THIRTEENTH AFFIRMATIVE DEFENSE

(Failure to Join Indispensable Parties)

92. GUN CLUB has failed to join indispensable parties and similarly failed to explain the exclusion of such parties.

FOURTEENTH AFFIRMATIVE DEFENSE

(Compliance with Law)

93. GUN CLUB's claims are barred in full or in part because VULCAN complied with all relevant local, state and federal environmental statutes, regulations, rules, orders, directives, and guidelines at all relevant times.

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FIFTEENTH AFFIRMATIVE DEFENSE

(Acts of God)

94. To the extent that acts of God, as defined at 42 U.S.C. § 9601(1), caused releases on the Property, VULCAN is not responsible for any resulting response costs of damages.

SIXTEENTH AFFIRMATIVE DEFENSE

(Costs not Incurred in Accord with Statutes)

95. To the extent that the costs allegedly incurred by GUN CLUB in responding to the alleged contamination at the Site have not been incurred in accordance with the requirements of applicable statutes, regulations, and guidelines, including, but not limited to, the National Contingency Plan and the provisions of CERCLA (42 U.S.C. §§ 9601-9675), GUN CLUB does not have a cognizable claim under CERCLA, and cannot recover those costs, if any.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Equitable Bar of CERCLA)

96. The equitable factors which the Court may apply pursuant to 42 U.S.C. § 9613(f) bar GUN CLUB’s claims in whole or part.

EIGHTEENTH AFFIRMATIVE DEFENSE

(VULCAN is Not a “Responsible Party”)

97. GUN CLUB fails to state facts sufficient to constitute a claim for relief because GUN CLUB and/or other defendants and/or third-parties, not VULCAN, constitute the sole parties responsible for any existing environmental contamination at the Site.

NINETEENTH AFFIRMATIVE DEFENSE

(No Release, Discharge or Deposit)

98. GUN CLUB is barred from obtaining relief as VULCAN did not commit a “release,” “discharge” or “disposal” under any applicable statute.

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TWENTIETH AFFIRMATIVE DEFENSE

(No Damages)

99. GUN CLUB has not sustained any cognizable damages whatsoever, and has not sustained any damages from any act or omission attributable to VULCAN, and, therefore, GUN CLUB has no claim upon which relief may be granted as against VULCAN.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Uncertainty)

100. GUN CLUB's Counterclaim is barred because the Counterclaim and all allegations contained in the Counterclaim are uncertain.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Speculative Damages)

101. GUN CLUB is barred from recovery of any expenditures or costs relating to the alleged contamination at the Site that have not yet been incurred at the time of trial because any such recovery would be impermissibly speculative.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Unjust Enrichment)

102. GUN CLUB is not entitled to any of the relief sought by the Counterclaim because it would be unjustly enriched thereby.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Compliance with Legal and Contractual Obligations)

103. GUN CLUB's claims are barred in full or in part because VULCAN complied with and performed any and all legal and contractual obligations imposed upon it to the full extent of its responsibility at all relevant times.

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TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Intervening or Superseding Cause)

104. GUN CLUB's claims are barred by some intervening and/or superseding or other outside cause not the responsibility of VULCAN.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Reasonable Care)

105. VULCAN acted with due care and otherwise conducted itself as a reasonable person under the circumstances at all relevant times.

RESERVATION OF ADDITIONAL AFFIRMATIVE DEFENSES

106. VULCAN reserves to itself the right to assert additional affirmative defenses to the GUN CLUB's counterclaim, to the maximum extent permitted under applicable statutory and court rules.

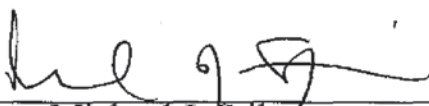
PRAYER FOR RELIEF

WHEREFORE, VULCAN prays for judgment on GUN CLUB's Counterclaim as follows:

1. That GUN CLUB takes nothing by way of its Counterclaim;
2. That the Counterclaim be dismissed in its entirety, with prejudice;
3. That judgment be entered in favor of VULCAN;
4. That VULCAN be awarded its costs of suit and attorneys' fees; and
5. That VULCAN be awarded such other relief as this Court deems proper.

Dated: December 4, 2008

JEFFER, MANGELS, BUTLER & MARMARO LLP
KENNETH A. EHRlich
MICHAEL STILES

By: 
Michael J. Stiles
Attorneys for Plaintiff and Cross-Defendant
CALMAT CO. dba VULCAN MATERIALS COMPANY,
WESTERN DIVISION

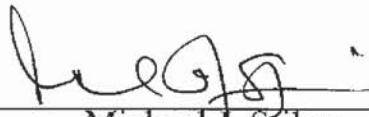
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DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and Local Rule 38-1, of the United States District Court for the Central District of California, Plaintiff and Cross-Defendant CALMAT CO. dba VULCAN MATERIALS COMPANY, WESTERN DIVISION hereby demands a jury trial.

Dated: December 4, 2008

JEFFER, MANGELS, BUTLER & MARMARO LLP
KENNETH A. EHRLICH
MICHAEL STILES

By: 
Michael J. Stiles
Attorneys for Plaintiff and Cross-Defendant
CALMAT CO. dba VULCAN MATERIALS COMPANY,
WESTERN DIVISION

PROOF OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 1900 Avenue of the Stars, 7th Floor, Los Angeles, California 90067.

I am not a party to the above-entitled action. I have caused service of:

CALMAT CO. DBA VULCAN MATERIALS COMPANY WESTERN DIVISION'S ANSWER TO COUNTERCLAIM OF SAN GABRIEL VALLEY GUN CLUB

on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

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TRUTANICH MICHEL, LLP
180 E. Ocean Blvd., Suite 200
Long Beach, CA 90802

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

Executed on December 4, 2008.

/j/
Pamela Johnson