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Attorney for Defendants Eldridge and Milam
 Building Associates, Inc.

IN THE UNITED STATES DISTRICT COURT
 IN AND FOR THE DISTRICT OF ARIZONA

DANIEL FELIX and DOROTHY FELIX,
 Plaintiffs,

vs.

PIC-N-RUN, INC., an Arizona corporation,
 MILAM BUILDING ASSOCIATES, INC., a
 Texas corporation, STELLA JEANETTE
 ELDRIDGE, VERNON W. ELDRIDGE, the
 ENVIRONMENTAL PROTECTION
 AGENCY, an agency of United States Federal
 Government, THE NAVAJO NATION, THE
 NAVAJO NATION ENVIRONMENTAL
 PROTECTION AGENCY, an agency of the
 Navajo Nation, SERVICE STATION
 EQUIPMENT & SALES CO., INC., an Arizona
 corporation, UNDERGROUND ANALYTICAL
 SERVICES, INC., an Arizona corporation,
 PETROLEUM SYSTEMS INCORPORATED,
 an Arizona corporation, SPENCER RIEDEL,
 the ESTATE OF SYBIL BALDWIN,

Defendants.

MILAM BUILDING ASSOCIATES,
 INC., a Texas corporation; and
 STELLA JEANETTE ELDRIDGE and
 VERNON W. ELDRIDGE,

Counter-Claimants,

vs.

DANIEL FELIX and DOROTHY FELIX,
 Counter-Defendants.

NO. 3:09-CV-8015-JAT

**MOTION TO DISMISS
 PURSUANT TO FED. R. CIV. P.,
 RULE 12(b)(1) AND (6) AND
 MEMORANDUM IN SUPPORT
 OF MOTION**

(Oral Argument Requested)

MILAM BUILDING ASSOCIATES, INC., a
Texas corporation, STELLA JEANETTE
ELDRIDGE, VERNON W. ELDRIDGE,

Cross-Claimants,

vs.

PIC-N-RUN, INC., an Arizona corporation,
THE NAVAJO NATION, SERVICE
STATION EQUIPMENT & SALES
CO., INC., an Arizona corporation,
UNDERGROUND ANALYTICAL
SERVICES, INC., an Arizona corporation,
PETROLEUM SYSTEMS INCORPORATED,
an Arizona corporation, SPENCER RIEDEL,
the ESTATE OF SYBIL BALDWIN,

Cross-Defendants.

ESTATE OF SYBIL BALDWIN,

Counter-Claimant,

vs.

DANIEL FELIX and DOROTHY FELIX,

Counter-Defendants.

ESTATE OF BALDWIN,

Cross-Claimant,

vs.

PIC-N-RUN, INC., an Arizona corporation;
MILAM BUILDING ASSOCIATES, INC.,
a Texas corporation; STELLA JEANETTE
ELDRIDGE; VERNON W. ELDRIDGE;
SERVICE STATION EQUIPMENT &
SALES CO., INC., an Arizona
corporation; PETROLEUM
SYSTEMS INCORPORATED, an
Arizona corporation; and SPENCER
RIEDEL,

Cross-Defendants.

1 PIC-N-RUN, INC., an Arizona
corporation,

2 Counter-Claimant,

3 vs.

4 DANIEL FELIX and DOROTHY FELIX,

5 Counter-Defendants.

6
7 PIC-N-RUN, INC., an Arizona
corporation,

8 Cross-Claimant,

9 vs.

10 MILAM BUILDING ASSOCIATES, INC.,
11 a Texas corporation; STELLA
JEANETTE ELDRIDGE; VERNON W.
12 ELDRIDGE; THE NAVAJO NATION;
SERVICE STATION EQUIPMENT &
13 SALES CO., INC., an Arizona corporation;
UNDERGROUND ANALYTICAL
14 SERVICES, INC., an Arizona corporation;
SPENCER RIEDEL; and ESTATE
15 OF SYBIL BALDWIN,

16 Cross-Defendants.

17
18 SERVICE STATION EQUIPMENT &
SALES CO., INC., an Arizona corporation,

19 Counter-Claimant,

20 vs.

21 DANIEL FELIX and DOROTHY FELIX,

22 Counter-Defendants.

23
24 SERVICE STATION EQUIPMENT &
SALES CO., INC., an Arizona corporation,

25 Cross-Claimant,

26 vs.

27 PIC-N-RUN, INC., an Arizona corporation;
MILAM BUILDING ASSOCIATES, INC.,
28 a Texas corporation; STELLA JEANETTE

1 ELDRIDGE; VERNON W. ELDRIDGE;
and ESTATE OF SYBIL BALDWIN,

2 Cross-Defendants.
3

4 SPENCER RIEDEL,

5 Counter-Claimant,

6 vs.

7 DANIEL FELIX and DOROTHY FELIX,

8 Counter-Defendants.
9

10 SPENCER RIEDEL,

11 Cross-Claimant,

12 vs.

13 PIC-N-RUN, INC., an Arizona corporation;
14 MILAM BUILDING ASSOCIATES, INC.,
a Texas corporation; STELLA JEANETTE
ELDRIDGE; VERNON W. ELDRIDGE;
15 SERVICE STATION EQUIPMENT &
SALES CO., INC. an Arizona corporation;
and ESTATE OF SYBIL BALDWIN,

16 Cross-Defendants.
17

18 Pursuant to Fed. R. Civ. P., Rules 12(b)(1) and (6), Defendants Milam Building
19 Associates, Inc. and Eldridge (herein "Defendants Milam"), by and through their
20 undersigned counsel, hereby file this motion to dismiss all claims and cross-claims
21 against Defendants Milam in this case. This motion is supported by the following
22 Memorandum of Points and Authorities.

23 DATED this 7th day of January, 2011.
24

25 /s/ Dean R. Cox

26 Dean R. Cox
107 N. Cortez, Suite 201
Prescott, Arizona 86301
27 Attorney for Defendants Eldridge
and Milam Building Associates, Inc.
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL BACKGROUND

This matter arises out of an incident which occurred on March 21, 2005, wherein an employee of Shiprock Construction Company drove a stake into an underground gasoline supply line at the property located at the southeast corner of the intersection of Navajo Route 7 and C Street in Chinle, Arizona, causing a gasoline leak.

II. PROCEDURAL HISTORY

Plaintiff's First Amended Complaint was filed on May 6, 2009. Plaintiff's First Amended Complaint against Defendants Milam alleged declaratory relief under U.S.C. § 6972(a), RCRA, negligence, negligence per se, unjust enrichment and indemnity. In addition, cross-claims from the other parties remain which include claims regarding breach of contract, indemnity, and contribution, among other things. On May 4, 2010, this Court dismissed all federal claims leaving only common law causes of action. Since that time, until discovery cutoff which occurred on December 3, 2010, the parties have conducted no discovery with the only exception of filing disclosure statements and meeting the expert disclosure deadline. No other depositions, interrogatories, requests for admissions or requests for production have been conducted and/or propounded.

III. ARGUMENT

A. This case should be dismissed as only pendant claims remain after dismissal of all federal claims

On May 4, 2010, this Court dismissed all the federal claims arising from RCRA, 42 U.S.C. § 6921, and along with that, all the potential federal issues. Determining that any allocation of apportionment under the federal RCRA laws would challenge or infringe on the authority of the EPA Order, this Court determined that it must dismiss the RCRA claims.

As a result of dismissing the RCRA claims, the only remaining pendent common law claims leave no federal issue before this Court. In United Mine Workers v. Gibbs, 383 U.S. 715, 726, 86 S. Ct. 1130, 1139, 16 L.Ed.2d 218, 228 (1966) the Court states that

1 “if the federal claims are dismissed before trial. . . the state claims should be dismissed as
 2 well.” This ruling is not meant to be an absolute in every situation, but instead, “[t]he
 3 statement simply recognizes that in the usual case in which federal-law claims are
 4 eliminated before trial, the balance of factors. . . will point toward declining to exercise
 5 jurisdiction over the remaining state law claims.” Carnegie-Mellon Univ. v. Cohill, 484
 6 U.S. 343, 350 n. 7, 108 S. Ct. 614, 619 n. 7, 98 L.Ed.2d 720, 730 n. 7 (1988).

7 While a district court has discretion in retaining a pendant claim (*see* Schultz v.
 8 Sundberg, 759 F.2d 714, 718 (9th Cir. 1985)), thought is given to the time, expense and
 9 judicial economy in a particular case. In the case at hand, no discovery has taken place,
 10 and therefore, there would be no duplication of effort in a lower court action.

11 **B. The current claims in front of this Court are not ripe for decision.**

12 The remaining pendant claims and cross-claims against Defendants Milam
 13 primarily consist of negligence, negligence per se, unjust enrichment, indemnity and
 14 contribution. The primary issue is the lack of damages with regard to these issues making
 15 this case not ripe for adjudication at this point.

16 “The basic rationale of the ripeness doctrine ‘is to prevent the courts, through
 17 avoidance of premature adjudication, from entangling themselves in abstract
 18 disagreements over administrative policies, and also to protect the agencies from judicial
 19 interference until an administrative decision has been formalized and its effects felt in a
 20 concrete way by the parties.’” America West Airlines, Inc. V. National Mediation Board,
 21 743 F.Supp. 693 (D. Ariz., 1990) *citing* Pac. Gas & Elec. V. St. Energy Resources
 22 Conserv., 461 U.S. 190, 103 S.Ct. 1713, 1720, 75 L.Ed.2d 752 (1983).

23 As this Court pointed out in its May 4, 2010, Order, under the federal RCRA
 24 claims, an “asserting party is seeking a declaration apportioning the liability of each
 25 offending party.” In much the same way, any of the pendant claims will be seeking the
 26 same type of apportionment for payment. For the same reasons the RCRA claims had to
 27 be dismissed, the remaining pendant claims must be dismissed as well.

28 Further, such apportionment is in direct opposition to the EPA Order which finds

1 that all parties are jointly liable. Ultimately, until the EPA determines the damages in this
2 case and the actual costs of clean-up are incurred, any other court will merely be
3 interfering with the administrative process, creating more confusion and resolving
4 nothing. A resolution in this Court will have absolutely no effect on what the parties may
5 or may not end up being responsible for when the actual clean up costs are incurred.
6 Until that time, no party actually understands what its damages are, leaving the possibility
7 of no avenue for redressing those damages when incurred. As such, the issues presented
8 in the remaining common law claims are not ripe.

9 **CONCLUSION**

10 For the foregoing reasons, Defendants Milam respectfully request that the claims
11 and cross-claims against them are dismissed without prejudice.

12 DATED this 7th day of January, 2011.

13
14 /s/ Dean R. Cox
15 Dean R. Cox
16 107 N. Cortez, Suite 201
17 Prescott, Arizona 86301
18 Attorney for Defendants Eldridge
19 and Milam Building Associates, Inc.

17 ORIGINAL of the foregoing e-filed
18 this 7th day of January, 2011; and

19 **COPY TO:**

20 The Honorable James A. Teilborg
21 United States District Judge
22 401 W. Washington, Suite 5523
23 Phoenix, Arizona 85003

24 **E-COPY TO:**

25 Tom Shorall
26 Asa Markel
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11 /s/ Connie Evers
Connie Evers