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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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CALIFORNIA DEPARTMENT OF
TOXIC SUBSTANCES CONTROL and
TOXIC SUBSTANCES CONTROL
ACCOUNT,

Plaintiffs,

v.

DAVID VAN OVER,

Defendant.

CIV. NO. 2:14-0595 WBS EFB

ORDER RE: MOTION FOR PARTIAL
SUMMARY JUDGMENT

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Plaintiffs California Department of Toxic Substances
Control and Toxic Substances Control Account brought this action
against defendant David Van Over,¹ seeking recovery of costs they

¹ Five other defendants--Jim Dobbas, Inc.; Continental
Rail, Inc.; Pacific Wood Preserving; West Coast Wood Preserving,
LLC; and Collins & Aikman Products, LLC--were named in this
action. (First Am. Compl. ¶¶ 9-10, 12-14 (Docket No. 77).) Jim
Dobbas and West Coast Wood Preserving have settled their
liability with plaintiffs. (Docket Nos. 141 and 150.) Default
judgments have been entered against Continental Rail, Pacific
Wood Preserving, and Collins & Aikman Products. (Docket Nos. 18,

1 incurred and declaratory relief for costs they may incur in the
2 future in responding to the release and threatened release of
3 hazardous chemicals on property owned by defendant Van Over.
4 (Compl. (Docket No. 1).)

5 The property in question is located at 147 A Street,
6 Elmira, California ("the Elmira property"). (See Decl. of Peter
7 MacNicholl ¶ 2 (Docket No. 144).) Defendant Van Over has owned
8 the Elmira property since February 2011. (See Decl. of Deena
9 Stanley ¶ 10 (Docket No. 161).) He has not, to date, taken
10 actions requested by plaintiffs to address or reimbursed the
11 costs plaintiffs have expended in addressing release and
12 threatened release of hazardous chemicals on the property. (See
13 id. ¶¶ 10, 15.)

14 Plaintiffs now move for partial summary judgment
15 against defendant Van Over, seeking a declaration that he is
16 jointly and severally liable for costs they incurred and may
17 incur in the future in responding to the release and threatened
18 release of hazardous chemicals at the Elmira property ("response
19 costs"), to the extent recovery of such costs is authorized under
20 CERCLA. (Pls.' Mot. (Docket No. 156).) Plaintiffs do not seek a
21 determination, at this time, of the amount of past response costs
22 they are authorized to recover under CERCLA. (See Pls.' Mot.,
23 Mem. at 6, 16 (Docket No. 163).) The amount of past response
24 costs they are authorized to recover under CERCLA, plaintiffs
25 state, is to "be determined either by further motion or at trial
26 of this matter." (See id.; Pls.' Proposed Order at 3 (Docket No.
27
28 19, and 129.) Van Over is the only defendant remaining in this
action.

1 162).)

2 Defendant has filed a statement representing that he
3 does not oppose the granting of plaintiffs' Motion, except that
4 he requests the court note, in this Order, that "Plaintiff[s]
5 still must prove that the particular alleged response costs for
6 which [they] claim[] reimbursement come within CERCLA's
7 definition of a recoverable response cost." (Docket No. 168.)

8 IT IS THEREFORE ORDERED that plaintiffs' Motion for
9 partial summary judgment (Docket No. 156) be, and the same hereby
10 is, GRANTED as follows:

11 (1) Defendant Van Over is jointly and severally liable for
12 costs plaintiffs incurred and may incur in the future
13 in responding to the release and threatened release of
14 hazardous chemicals at the Elmira site, to the extent
15 recovery of such costs is authorized under CERCLA.

16 (2) The amount of past response costs plaintiffs are
17 authorized to recover under CERCLA is yet to be
18 determined.

19 Dated: July 6, 2017



20 **WILLIAM B. SHUBB**
21 **UNITED STATES DISTRICT JUDGE**
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