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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA DEPARTMENT OF
TOXIC SUBSTANCES CONTROL, et
al.,

 Plaintiffs,

 v.

JIM DOBBAS, INC., et al.,

 Defendants.

CIV. NO. 2:14-595 WBW EFB

MEMORANDUM AND ORDER RE: MOTION
FOR JUDICIAL APPROVAL OF
PROPOSED CONSENT DECREE

 Plaintiffs California Department of Toxic Substances
Control and the Toxic Substances Control Account (collectively
"DTSC") brought this action under the Comprehensive Environmental
Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C.
§§ 9601 et seq., to recover cleanup costs incurred at 147 A
Street in Elmira, California ("the Site") from several
defendants, including settling defendant David Van Over ("Van
Over"). DTSC has previously reached settlements or obtained
default judgments against all of the other defendants (Docket
Nos. 18, 19, 129, 141, 150), and Van Over is the last remaining

1 defendant in this action. Before the court is DTSC's motion for
2 judicial approval of a proposed consent decree between plaintiffs
3 and Van Over. (Docket No. 176.) Van Over has not filed an
4 opposition.

5 DTSC states that as of September 30, 2016, its
6 unreimbursed response costs related to the Site exceeded \$2.7
7 million. This court has previously determined that Van Over is a
8 responsible party pursuant to section 107(a) of CERCLA, 42 U.S.C.
9 § 9607(a), and is therefore jointly and severally liable for the
10 costs DTSC incurred at the Site. (Order for Partial Summ. J.
11 Against Van Over (Docket No. 170).) DTSC has reviewed the
12 financial information submitted by Van Over and determined that
13 he is presently unable to pay penalties or a significant portion
14 of the costs incurred, or the future costs to be incurred, at the
15 Site.

16 After determining this, the parties were able to
17 negotiate a settlement agreement resolving Van Over's liability
18 in this case. Pursuant to the proposed Consent Decree, Van Over
19 shall pay \$250,000 to DTSC in multiple installments: \$5,000 must
20 be paid within 30 days of the Consent Decree's effective date and
21 additional payment(s) totaling up to \$245,000 shall be made as
22 follows: (a) within 10 days of each sale of all, or a portion of,
23 the Site, in an amount equal to the Net Sale Proceeds; (b) within
24 10 days of receipt by Van Over of an Ability to Pay
25 Determination. Further, within 60 days of the Consent Decree's
26 effective date, DTSC shall ensure that the existing property lien
27 on the Site is replaced by a judgment lien for \$245,000. This
28 judgment lien will remain in effect, accruing statutory interest,

1 until paid in full. Additionally, if Van Over sells any portion
2 of the Site, 100% of the Net Sale Proceeds of each such sale, up
3 to a total of \$245,000, shall be paid to DTSC to satisfy the
4 judgment lien. If the total net sale proceeds of such sales
5 exceed \$245,000, DTSC shall receive 80% of the excess sale
6 proceeds. However, Van Over will not be required to pay more
7 than \$2.89 million in excess sale proceeds.

8 "In order to approve a CERCLA consent decree, a
9 district court must conclude that the agreement is procedurally
10 and substantively 'fair, reasonable, and consistent with CERCLA's
11 objectives.'" Arizona v. City of Tucson, 761 F.3d 1005, 1011-12
12 (9th Cir. 2014) (quoting United States v. Montrose Chem. Corp. of
13 Cal., 50 F.3d 741, 748 (9th Cir. 1995)). Parties seeking
14 approval of a consent decree must provide "evidence sufficient to
15 evaluate the terms of an agreement." Id. at 1012. Here, the
16 parties agree that the Consent Decree has been negotiated in good
17 faith, that the settlement of this matter will avoid prolonged
18 and complicated litigation, and that this Consent Decree is fair,
19 reasonable, in the public interest, and consistent with the
20 purpose of CERCLA.


21 After reviewing the proposed Consent Decree and the
22 Memorandum of Points and Authorities in Support of the decree
23 (Docket No. 179), the court determines that the Consent Decree,
24 which is the product of arms'-length settlement negotiations that
25 took place over many months between DTSC and Van Over, is
26 procedurally fair. Even though Van Over represented himself, he
27 participated in drafting the terms of the Consent Decree, and the
28 parties exchanged multiple drafts of the decree. Further, DTSC

1 published notice of the lodging of the Consent Decree in the
2 California Regulatory Notice Register, published notice in a
3 local newspaper, gave notice to the other defendants, and invited
4 comments on the Consent Decrees. Additionally, the parties have
5 demonstrated that DTSC evaluated and considered Van Over's
6 ability to pay in arriving at the settlement, and thus the
7 Consent Decree appears to be substantively fair as well. Also, by
8 reaching a settlement, the parties have been able to avoid
9 lengthy, complex, and costly litigation that would have entailed
10 significant discovery and a trial.

11 Furthermore, the Consent Decree will be effective in
12 ensuring cleanups of the Site and it will compensate the public
13 for the costs incurred, and thus the court concludes that the
14 parties have satisfied the "reasonableness" requirement as well.
15 Finally, because the Consent Decree holds Van Over accountable
16 and provides DTSC with funds necessary to protect the
17 environment, it therefore satisfies the goals of CERCLA. For the
18 foregoing reasons, the court approves of the Proposed Consent
19 Decree.

20 IT IS THEREFORE ORDERED that plaintiffs' Motion for
21 Judicial Approval of the Consent Decree between plaintiffs and
22 Van Over (Docket No. 177) be, and the same hereby is, GRANTED.
23 IT IS FURTHER ORDERED that all claims for contribution against
24 Van Over arising out of response costs incurred at the Site be,
25 and the same hereby are, DISMISSED pursuant to 42 U.S.C. §
26 9613(f)(2). The Clerk of Court is instructed to close the case.

27 Dated: March 20, 2018


WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE