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10 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
11 SACRAMENTO DIVISION
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14 **CALIFORNIA DEPARTMENT OF TOXIC**
SUBSTANCES CONTROL and the TOXIC
15 **SUBSTANCES CONTROL ACCOUNT,**

16 Plaintiffs,

17 v.

18 **JIM DOBBAS, INC., a California**
19 **corporation; CONTINENTAL RAIL, INC.,**
a Delaware corporation; DAVID VAN
20 **OVER, individually; PACIFIC WOOD**
PRESERVING, a dissolved California
21 **corporation; and WEST COAST WOOD**
PRESERVING, LLC., a Nevada limited
22 **liability company,**

23 Defendants.
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25 _____
26 And related counterclaim and cross-claims.
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2:14-cv-00595-WBS-EFB

STIPULATION AND PROPOSED
ORDER BETWEEN PLAINTIFFS AND
DEFENDANT WEST COAST WOOD
PRESERVING, LLC TO STRIKE
PORTIONS OF WEST COAST WOOD
PRESERVING, LLC'S ANSWER

Date: September 8, 2014
Time: 2:00 p.m.
Place: Courtroom 5, 14th Floor
Robert T. Matsui United States
Courthouse
501 I Street
Sacramento, CA 95814

Judge: Hon. William B. Shubb
Trial Date: January 4, 2017
Action Filed: March 3, 2014

1 WHEREAS plaintiffs California Department of Toxic Substances Control and the Toxic
2 Substances Control Account (collectively “Plaintiffs”) filed a Complaint in the above-captioned
3 action on March 3, 2014 (ECF No. 1);

4 WHEREAS defendant West Coast Wood Preserving, LLC (“WCWP”) filed an Answer to
5 Plaintiffs’ Complaint on June 10, 2014 (ECF No. 22);

6 WHEREAS Plaintiffs filed a Motion to Dismiss Defendant Jim Dobbas, Inc.’s
7 Counterclaim, and to Strike Portions of Answers of Defendants Jim Dobbas, Inc., David van
8 Over, and WCWP (the “Motion”) on July 7, 2014 (ECF No. 27);

9 WHEREAS after the filing of the Motion, counsel for WCWP and Plaintiffs conferred and
10 agreed to resolve via stipulation the portions of the Motion that concern WCWP’s Answer;

11 IT IS HEREBY STIPULATED by and between Plaintiffs and WCWP that:

12 1. WCWP’s demand for a jury trial and prayer for attorney’s fees are stricken from
13 WCWP’s Answer to Plaintiffs’ Complaint;

14 2. WCWP’s Fifth (Laches), Tenth (Minimal Contribution), Eleventh (Waiver), and
15 Twelfth (Failure to Mitigate) Affirmative Defenses are stricken from WCWP’s Answer to
16 Plaintiffs’ Complaint; and

17 3. If WCWP is found to be liable to Plaintiffs in this case, nothing in this stipulation
18 shall affect WCWP’s rights under 42 U.S.C. section 9613(f)(1) with respect to the Court’s
19 allocation of response costs in resolving contribution claims among liable persons.

20 This stipulation does not resolve the portions of the Motion that concern the counterclaim
21 and answer of Defendant Jim Dobbas, Inc. and the answer of Defendant David van Over.

22 Therefore, the Motion remains set for hearing at the above date and time.
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Dated: August 19, 2014

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
SARAH E. MORRISON
Supervising Deputy Attorney General

/s/ Thomas G. Heller

THOMAS G. HELLER
DENNIS L. BECK, JR.
Deputy Attorneys General
Attorneys for Plaintiffs California
Department of Toxic Substances Control
and Toxic Substances Control Account

Dated: August 18, 2014

Respectfully Submitted,

PERKINS COIE, LLP

/s/ Lester O. Brown (as authorized on
8/18/14)

LESTER O. BROWN
Attorneys for Defendants West Coast Wood
Preserving, LLC

IT IS SO ORDERED.

Dated: August 20, 2014



WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE