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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

PLATTE RIVER INSURANCE  
COMPANY, a Nebraska  
corporation,

Plaintiff,

v.

PREMIER POWER RENEWABLE  
ENERGY, INC., a California  
corporation; DEAN RICHARD  
MARKS, an individual; and  
SARILEE MARKS, an individual,

Defendants.

Civ. No. 2:14-1666 WBS EFB

ORDER RE: MOTION FOR PARTIAL  
SUMMARY JUDGMENT

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Plaintiff Platte River Insurance Company brought this  
action against defendants Premier Power Renewable Energy, Inc.,  
Dean Richard Marks, and Sarilee Marks, asserting claims for  
breach of an indemnity contract, specific performance, injunctive  
relief, and quia timet. (Compl. (Docket No. 1).) Plaintiff now  
moves for partial summary judgment on its claim for breach of the  
indemnity contract against defendants Dean Richard Marks and  
Sarilee Marks ("defendants") pursuant to Federal Rule of Civil

1 Procedure 56. (Docket No. 48.)<sup>1</sup>

2 The indemnity contract required defendants to indemnify  
3 plaintiff "against all demands, claims, loss, costs, damages,  
4 expenses and fees including any attorneys' fees" that plaintiff  
5 incurred as a result of issuing a certain payment bond. (Wills  
6 Decl. ¶¶ 8-12, Ex. 1 § 2, Ex. 2 (Docket No. 48-3).) The contract  
7 also entitled plaintiff to twelve percent per annum interest on  
8 any unpaid amounts. (Id. ¶ 40, Ex. 1 § 10, Ex. 2.)

9 Plaintiff contends that it incurred \$1,217,078.56 in  
10 losses and attorney's fees as a result of claims made against the  
11 payment bond, plus \$117,622.58 in interest pursuant to the twelve  
12 percent contractual rate. (Id. ¶¶ 28-41, Exs. 4-5.) As a  
13 result, plaintiff moves for a total judgment of \$1,334,701.14.  
14 (Id. ¶ 42; Mem. at 15 (Docket No. 48-1).) Plaintiff also  
15 contends that there is no evidence to support any of defendants'  
16 affirmative defenses. (Wills Decl. ¶ 42; Mem. at 15.)

17 Defendants filed a statement of non-opposition to  
18 plaintiff's summary judgment motion. (Docket No. 52.) A  
19 statement of non-opposition is filed by "[a] responding party who  
20 has no opposition to the granting of the motion." E.D. Cal. L.R.  
21 230(c).

22 Accordingly, good cause appearing, IT IS HEREBY ORDERED  
23 that plaintiff's motion for partial summary judgment on its first  
24 cause of action for breach of the indemnity contract be, and the  
25 same hereby is, GRANTED. The hearing set for December 14 at 1:30

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26  
27 <sup>1</sup> Defendant Premier Power Renewable Energy, Inc. has  
28 failed to file a responsive pleading and plaintiff has separately  
moved for default judgment against it. (Docket No. 49.)

1 p.m. is hereby VACATED.

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4 Dated: December 9, 2015



WILLIAM B. SHUBB  
UNITED STATES DISTRICT JUDGE

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