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9
 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 12

13
 14 **CALIFORNIA DEPARTMENT OF
 15 TOXIC SUBSTANCES CONTROL
 and the TOXIC SUBSTANCES
 16 CONTROL ACCOUNT,**

17 Plaintiffs,

18 v.

19 **MANUEL REYNOSO, individually
 20 and d/b/a ORANGE COUNTY
 METAL PROCESSING,**

21 Defendant.
 22

Case No. 8:22-CV-00136

**COMPLAINT FOR RECOVERY
 OF RESPONSE COSTS and
 DECLARATORY RELIEF (42
 U.S.C. §§ 9607(a) and 9613(g)(2) and
 alternative, supplemental state law
 claims)**

23 Plaintiffs, the California Department of Toxic Substances Control (“DTSC”)
 24 and the Toxic Substances Control Account (collectively “Plaintiffs”) allege as
 25 follows:

26 **STATEMENT OF THE CASE**

27 1. This is a civil action brought by Plaintiffs against Manuel Reynoso,
 28 individually and doing business under the name Orange County Metal Processing

1 (“Defendant”) under section 107(a) of the Comprehensive Environmental
2 Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9607(a), for
3 the recovery of unreimbursed response costs that Plaintiffs have incurred, and
4 interest on such response costs, in connection with releases and threatened releases
5 of hazardous substances at, beneath, above, and/or from the Orange County Metal
6 Processing Site (“Site”), a former metal finishing facility located at 1711 Kimberley
7 Avenue, Fullerton, California, 92831, identified with Assessors’ Parcel Number
8 033-270-30.

9 2. Plaintiffs further make a claim for declaratory relief, under 28 U.S.C §
10 2201 and section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), for a declaratory
11 judgment that Defendant is jointly and severally liable to Plaintiffs for the response
12 costs Plaintiffs have incurred, and for any further response costs Plaintiffs incur in
13 the future as a result of any release or threatened release of a “hazardous
14 substance,” as defined in CERCLA section 101(14), 42 U.S.C. § 9601(14), at
15 OCOMP.

16 3. Pursuant to Rule 8 of the Federal Rules of Civil Procedure, Plaintiffs
17 make an alternative claim for the recovery of response costs and interest thereon
18 pursuant to California’s Hazardous Substances Account Act, California Health and
19 Safety Code section 25300 et seq.

20 4. Pursuant to Rule 8 of the Federal Rules of Civil Procedure, Plaintiffs also
21 make an alternative claim for a declaratory judgment that Defendant is liable to
22 Plaintiffs, pursuant to section 25363 of the California Health and Safety Code, for
23 the response costs they have incurred and will incur in responding to releases and
24 threatened releases of hazardous substances at or from the Site.

25 **JURISDICTION AND VENUE**

26 5. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1331
27 and section 113(b) of CERCLA, 42 U.S.C. § 9613(b). This Court has jurisdiction
28 over the subject matter of the claims made under state law in this action under 28

1 U.S.C. § 1367(a) (supplemental jurisdiction) because the claims under state law
2 arise out of the same common nucleus of facts as the federal question jurisdiction
3 claims set forth in this Complaint and the state and federal law claims are so closely
4 related that they form part of the same case or controversy.

5 6. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) and
6 section 113(b) of CERCLA, 42 U.S.C. § 9613(b), because the releases and
7 threatened releases of hazardous substances that are at issue occurred in this judicial
8 district.

9 **PLAINTIFFS**

10 7. DTSC is a public agency of the State of California, organized and
11 existing under California Health and Safety Code sections 58009 and 58010. DTSC
12 is responsible under state law for determining whether there has been a release
13 and/or threatened release of a hazardous substance into the environment and for
14 responding to releases and/or threatened releases of hazardous substances.

15 8. The Toxic Substances Control Account is an account within the State of
16 California General Fund. California Health and Safety Code section 25173.6
17 establishes the account and the Director of DTSC administers the account. Under
18 California Health and Safety Code section 25361(a), the account shall be a party in
19 any action for the recovery of response costs or expenditures under Chapter 6.8 of
20 Division 20 of the California Health and Safety Code that were incurred by DTSC
21 from the account.

22 **DEFENDANT**

23 9. Manuel Reynoso is a citizen of California who, on information and
24 belief, Plaintiffs allege resides in Orange County. Reynoso operated a metal plating
25 and finishing business under the Orange County Metal Processing name since at
26 least 1976. Reynoso is an “owner” and/or “operator” of a facility, as that term is
27 defined in CERCLA section 107(a)(1), 42 U.S.C. § 9607(a)(1). Reynoso was also
28

1 an “owner” and/or “operator” of a facility at the time of disposal of hazardous
2 substances under CERCLA section 107(a)(2), 42 U.S.C. § 9607(a)(2).

3 OCMP SITE

4 10. The Site is located at 1711 Kimberley Avenue, Fullerton, California,
5 92831. The Site occupies approximately 14,000 square feet of a parcel identified
6 with Assessors’ Parcel Number 033-270-30.

7 11. Orange County Metal Processing (“OCMP”) was a metal plating and
8 finishing business located in Fullerton, California. OCMP was a “facility” as that
9 term is defined in section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

10 12. Plaintiffs are informed and believe, and based on such information and
11 belief allege, that OCMP began operation at the Site in or before 1976, and that
12 OCMP continued to operate as a metal plating business at the Site until 2011.

13 13. OCMP’s operations primarily consisted of finishing and coating metal
14 parts used by automobile and computer manufacturers. OCMP used chromium,
15 cadmium, zinc, and solvent metal degreasers including trichloroethylene (“TCE”)
16 and tetrachloroethylene (“PCE”), among other hazardous substances, in its metal
17 finishing and plating, and related operations.

18 14. As a result of OCMP’s operations, hazardous substances within the
19 definition of section 101(14) of CERCLA, 42 U.S.C. § 9601(14), were released into
20 the environment at and from the Site within the meaning of section 101(22) of
21 CERCLA, 42 U.S.C. § 9601(22). These hazardous substances include hexavalent
22 chromium, cadmium, cyanide compounds, copper, zinc, PCE, and TCE that have
23 been identified in the soil and/or groundwater at the Site.

24 15. DTSC conducted an inspection of the OCMP Site on September 20,
25 2007. During the inspection, DTSC staff observed chemical stains and discoloration
26 on the floor near the zinc plating line; rusted tanks with chemical residue on the
27 tank sides in the cadmium plating line; tanks that were partially dissolved by
28 chemicals, leaving an uneven, jagged edge; and wet and/or oily floors in a storage

1 area and beneath cadmium plating line tanks. After the inspection DTSC
2 determined that further investigation was needed to determine the extent of the
3 releases of hazardous substances.

4 16. DTSC and Mr. Reynoso entered into a Corrective Action Consent
5 Agreement on March 5, 2009, which required Mr. Reynoso to perform further
6 investigation of the Site under DTSC's oversight, and to pay DTSC's costs incurred
7 in the implementation of the Consent Agreement.

8 17. On August 22, 2011, DTSC issued an Imminent and/or Substantial
9 Endangerment Determination ("ISE Determination") for the Site. The ISE
10 Determination found that the Site was contaminated with hazardous substances
11 including cadmium, PCE, and TCE. The ISE Determination concluded that a
12 response action was necessary because there may be a significant public health risk
13 to employees and occupants of the buildings at the Site.

14 18. Beginning in 2011 and continuing through May 2015, DTSC conducted
15 remedial investigations into the soil, soil vapor, and groundwater conditions at the
16 Site. These actions included collecting and analyzing samples of soil, soil gas, and
17 groundwater; monitoring groundwater; and implementing a soil vapor extraction
18 pilot study.

19 19. On May 28, 2015, DTSC approved a Feasibility Study / Remedial Action
20 Plan ("FS/RAP") for the OCMP Site and an adjacent site.

21 20. From 2015 to present, DTSC has implemented the remedial actions
22 identified in the FS/RAP, including soil excavation, installation of pilot systems of
23 in-situ chemical oxidation for treating groundwater and soil vapor extraction, and
24 ongoing monitoring.

25 21. Based on the above, from 2011 until the present, DTSC has taken
26 "response" actions at the Site, as that term is defined in section 101(25) of
27 CERCLA, 42 U.S.C. § 9601(25), related to the release and/or threatened release of
28 hazardous substances at the Site. The response actions include, but are not limited

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