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7 SAN JOAQUIN RAPTOR/WILDLIFE RESCUE CENTER
8 CENTRAL VALLEY SAFE ENVIRONMENT NETWORK
9 PROTECT OUR WATER

10 **UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

11
12 SAN JOAQUIN RAPTOR/WILDLIFE RESCUE
CENTER a non-profit corporation, CENTRAL
13 VALLEY SAFE ENVIRONMENT NETWORK,
a non-profit association, and PROTECT OUR
14 WATER, a non-profit association,

15 Plaintiffs,

16 vs.

17 ARDAGH GLASS INC., a corporation and
18 ARDAGH GROUP S.A., a corporation,

19 Defendants.
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Civil Case No.:

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND CIVIL
PENALTIES UNDER THE CLEAN AIR
ACT (42 U.S.C. § 7604)**

I. JURISDICTION AND VENUE

1
2 1. Plaintiffs San Joaquin Raptor/Wildlife Rescue Center (“SWR/WRC”), Central
3 Valley Safe Environment Network (“CVSEN”), and Protect Our Water (“POW”) (collectively,
4 “Plaintiffs”) bring this suit under the citizen suit enforcement provision, 42 U.S.C. § 7604, of the
5 federal Clean Air Act (“CAA”) to redress and prevent violations of the CAA by Ardagh Glass Inc.
6 and Ardagh Group S.A. (“Defendants”) at its facility located at 24441 Avenue 12, Madera,
7 California, 93637 (“Facility”). Among other things, the suit seeks declaratory relief, injunctive
8 relief, and the assessment of civil penalties for violations of permits and requirements under Title V
9 (*i.e.*, the federal operating permits program) of the CAA, 42 U.S.C. §§ 7661-7661f, and the State
10 Implementation Plan (“California SIP”) adopted by the State of California and approved by the
11 Environmental Protection Agency (“EPA”) pursuant to section 110 of the CAA, 42 U.S.C. § 7410,
12 codified at 40 C.F.R. § 52.220. In this lawsuit, Plaintiffs allege that Defendants have repeatedly
13 violated and continue to violate requirements in the Title V permit to operate the Facility.

14 2. This court has subject matter jurisdiction under the CAA, 42 U.S.C. § 7604 (citizen
15 suit provision), and the federal jurisdiction statute, 28 U.S.C. § 1331 (federal question jurisdiction)
16 because the sources of the violations are located within this judicial district. The relief requested is
17 authorized pursuant to 42 U.S.C. § 7604 and 28 U.S.C. §§ 2201-2202.

18 3. The violations complained of occurred and continue to occur in the Eastern District
19 of California. Venue is therefore proper in the Eastern District of California, pursuant to the Clean
20 Air Act, 42 U.S.C. § 7604(c)(1), and the federal venue statute, 28 U.S.C. § 1391(b)-(c).

21 4. Consistent with the CAA’s citizen suit provision, 42 U.S.C. § 7604(b)(1)(A), on
22 March 18, 2022, Plaintiffs notified in writing the Administrator of the EPA (the “Administrator”),
23 the Regional Administrator of Region 9 EPA, the Governor of California, the California Air
24 Resources Board (“CARB”), Defendants, and the plant manager of the Facility of the violations
25 alleged in this complaint and of Plaintiffs’ intent to sue. More than sixty (60) days have passed
26 since this notice (“Notice of Intent to Sue”) was sent via certified U.S. mail.

27 5. Plaintiffs are informed and believe, and thereon allege, that neither EPA nor CARB
28 have commenced or are diligently prosecuting a court action to redress the ongoing violations

1 alleged in the Notice of Intent to Sue and in this complaint. The Notice of Intent to Sue and its
2 exhibits are attached hereto as **Exhibit A** and fully incorporated herein by reference.

3 6. A copy of this complaint will be sent to the Attorney General of the United States
4 and the Administrator, pursuant to 42 U.S.C. § 7604(c)(3).

5 **II. PARTIES**

6 7. Plaintiff SJR/WRC is a California non-profit corporation and plaintiffs CVSEN and
7 POW are non-profit associations sponsored by SJR/WRC. SJR/WRC, CVSEN, and POW's
8 organizational purposes are protecting and preserving wildlife habitats and the environment,
9 including combating pollution of the air and waterways in the San Joaquin Valley.

10 8. Plaintiffs SJR/WRC, CVSEN, and POW's members use the resources in the San
11 Joaquin Valley airshed most immediately impacted by Defendants' violations of the CAA.
12 Members reside, visit, work, and recreate near the Facility and are exposed to the Facility's
13 emissions.

14 9. Plaintiff SJR/WRC also rescues and cares for injured or ailing raptors and other
15 wildlife affected by air and water pollution throughout the San Joaquin Valley.

16 10. The health-related, aesthetic, recreational, environmental, and economic interests of
17 SJR/WRC, CVSEN, and POW's members are and have been injured by Defendants' failure to
18 comply with its CAA permit, which is designed to achieve healthy air quality for people and the
19 environment. Interests of SJR/WRC, CVSEN, and POW's members that are directly injured by
20 Defendants' violations at the Facility include, but are not limited to: (1) breathing air in the San
21 Joaquin Valley free from excessive pollution and without the impact of and concern over negative
22 health effects caused by such pollution; (2) enjoying outdoor recreation that is unimpaired by
23 pollution from the Facility's emissions; (3) using and enjoying property and viewing and enjoying
24 natural scenery, wildlife, and a sky that is unimpaired by pollution from the Facility's excessive
25 emissions; and (4) protecting the natural ecology, including raptors and other wildlife, of the region
26 from air pollution-related impacts.

27 11. Defendant Ardagh Glass Inc. ("Ardagh Glass") is a company organized under the
28 laws of Delaware and registered in California. According to the Title V permit issued by the San

1 Joaquin Valley Air Pollution Control District (“Air District”) to operate the Facility, Ardagh Glass
2 is the legal owner and operator of the Facility.

3 12. On information and belief, Plaintiffs allege that Ardagh Glass is a wholly owned
4 subsidiary of Ardagh Group S.A.

5 13. Defendant Ardagh Group S.A. (“Ardagh Group”) has its executive office at 56, rue
6 Charles Martel, L-2134 Luxembourg, Luxembourg. On information and belief, Plaintiffs allege that
7 the address for Ardagh Group S.A. in the United States is 10194 Crosspoint Blvd, STE 410,
8 Indianapolis, Indiana 46256. Defendants Ardagh Glass and Ardagh Group are collectively referred
9 to herein as “Ardagh.”

10 **III. STATUTORY BACKGROUND**

11 **A. CLEAN AIR ACT CITIZEN ENFORCEMENT PROVISION**

12 14. The CAA is designed “to protect and enhance the quality of the Nation’s air
13 resources so as to promote the public health and welfare and the productive capacity of its
14 population.” 42 U.S.C. § 7401(b)(1).

15 15. Any person may commence a civil enforcement action under the CAA against any
16 party “who is alleged to have violated . . . or to be in violation of [] an emission standard or
17 limitation.” *Id.* at § 7604(a). An “emission standard or limitation” is, among other things, any term
18 or condition of a permit issued under an approved State Implementation Plan, any standard or
19 limitation under any approved State Implementation Plan, or any permit term of a Title V operating
20 permit. *Id.* at § 7604(f)(4).

21 **B. STATE IMPLEMENTATION PLANS (SIPs)**

22 16. The EPA has established National Ambient Air Quality Standards (“NAAQS”) for a
23 number of “criteria pollutants,” such as particulate matter. 42 U.S.C. § 7409; 40 C.F.R. pt. 50. An
24 area that meets the NAAQS for a particular criteria pollutant is deemed to be in “attainment” for
25 that pollutant. *Id.* at § 7407(d)(1). An area that does not meet the NAAQS is a “nonattainment” area.
26 *Id.*

27 17. Pursuant to 42 U.S.C. § 7410, each state must adopt and submit to EPA for approval
28 a SIP that provides for the attainment and maintenance of the NAAQS. Specifically, SIPs set forth

1 requirements for permitting programs and specific emission standards and limitations to assure that
2 geographic areas either remain in attainment or regain attainment status. Compliance with permit
3 terms and conditions is a critical component of NAAQS attainment and maintenance. Once a state's
4 SIP is approved by EPA, it is published in the Code of Federal Regulations and becomes
5 enforceable federal law. 42 U.S.C. § 7413; 40 C.F.R. § 52.23.

6 18. The California SIP can be found at 40 C.F.R. § 52.220.

7 19. The California SIP includes the rules and regulations adopted by the various air
8 districts statewide.

9 **C. TITLE V OPERATING PERMITS**

10 20. Title V of the CAA, 42 U.S.C. §§ 7661 -7661f, establishes an operating permit
11 program for “major sources” of air emissions, such as the Facility. The purpose of the Title V
12 program is to ensure that all “federally-enforceable” requirements for a source’s compliance with
13 CAA are collected in one place—the Title V Operating Permit. Thus, for example, the SIP
14 provisions applicable to a source are incorporated into the source’s Title V permit. EPA has stated
15 that the Title V program “will enable the source, States, EPA, and the public to understand better
16 the requirements to which the source is subject, and whether the source is meeting those
17 requirements. Increased source accountability and better enforcement should result.” 57 Fed. Reg.
18 32,250, 32,251 (July 21, 1992).

19 21. California implements the Title V program pursuant to EPA-approved regulations.
20 California Health & Safety Code § 40001; 40 C.F.R. § 52.220(c).

21 22. It is unlawful for any person to violate any requirement of a permit issued under Title
22 V or to operate a major source except in compliance with a permit issued by a permitting authority
23 under Title V. 42 U.S.C. § 7661a(a).

24 **D. THE SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT**

25 23. Regional air pollution control districts within California are charged with
26 implementing Title V permits. California Health & Safety Code §§ 39002, 40001.

27 24. Defendants’ Facility is under the authority of the Air District. *See* California Health
28 & Safety Code § 40600.

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