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9 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

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

12 CALIFORNIA SPORTFISHING PROTECTION
13 ALLIANCE, a non-profit corporation,

14 Plaintiff,

15 v.

16 MCLANE FOODSERVICE, INC., a Texas
17 corporation,

18 Defendant.

Civil Case No.:

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
CIVIL PENALTIES**

**(Federal Water Pollution Control Act, 33
U.S.C. §§ 1251 *et seq.*)**

19 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE (“CSPA” or “Plaintiff”), by and
20 through its counsel, hereby alleges:

21 **I. JURISDICTION AND VENUE**

22 1. This is a civil suit brought under the citizen suit enforcement provision of the Federal
23 Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* (“Clean Water Act” or “CWA”). *See* 33 U.S.C.
24 § 1365. This Court has subject matter jurisdiction over the parties and this action pursuant to 33 U.S.C.
25 § 1365(a)(1) and 28 U.S.C. §§ 1331 and 2201 (an action for declaratory and injunctive relief arising
under the Constitution and laws of the United States).

26 2. On February 10, 2020, CSPA issued a 60-day notice letter (“Notice Letter”) to McLane
27 Foodservice, Inc. (“Defendant” or “McLane”), for the industrial facility in Tracy, California under its

1 Discharges of Storm Water Associated with Industrial Activities (*National Pollutant Discharge*
2 *Elimination System (NPDES) General Permit No. CAS000001, State Water Resources Control Board*
3 *Water Quality Order No. 97-03-DWQ*) (“1997 Permit”), as superseded by Order No. 2014-0057-DWQ
4 and amended by Order No. 2015-0122 –DWQ (“2015 Permit”) (collectively, hereinafter referred to as
5 the “Storm Water Permit”), recently amended but not yet adopted Order No. 20XX-XXX-DWQ
6 incorporating: 1) Federal Sufficiently Sensitive Test Method Ruling; 2) TMDL Implementation
7 Requirements; and 3) Statewide Compliance Options Incentivizing On-Site or Regional Storm Water
8 Capture and Use (“2018 Permit”), and the Clean Water Act at McLane ’s large-scale industrial
9 fabrication and construction facility located at 800 E. Pescadero Avenue, Tracy, CA 95304 with Waste
10 Discharger Identification Number (WDID) 5S39I020697(“McLane Facility” or “Facility”). The Notice
11 Letter informed Defendant of CSPA’s intent to file suit against Defendant to enforce the Storm Water
12 Permit and the Clean Water Act.

13 3. The Notice Letter was sent to Defendant’s current President and Chief Executive Officer,
14 William G. Rosier, registered agent for service of process, CT Corporation System, and the General
15 Manager Dan Ball, as required by 40 C.F.R. § 135.2(a)(2). The Notice Letter was also sent to the
16 Administrator of the United States Environmental Protection Agency (“EPA”), the Administrator of
17 EPA Region IX, the Executive Director of the State Water Resources Control Board (“State Board”),
18 and the Executive Officer of the Regional Water Quality Control Board, Central Valley Region,
19 (“Regional Board”) as required by Section 505(b) of the CWA, 33 U.S.C. § 1365(b)(1)(A). The Notice
20 Letter is attached hereto as **Exhibit A** and is incorporated herein by reference.

21 4. More than sixty (60) days have passed since the Notice Letter was served on the
22 Defendant and the State and Federal agencies. CSPA is informed and believes, and thereon alleges, that
23 neither the EPA nor the State of California has commenced or is diligently prosecuting an action to
24 redress the violations alleged in the Notice Letter and in this complaint. *See* 33 U.S.C. § 1365(b)(1)(B).
25 This action is not barred by any prior administrative penalty under Section 309(g) of the CWA, 33
26 U.S.C. § 1319(g).

27 5. Venue is proper in the Eastern District of California pursuant to Section 505(c)(1) of the

1 district.

2 **II. INTRODUCTION**

3 6. With every rainfall event, hundreds of millions of gallons of polluted rainwater,
4 originating from industrial operations such as the Facility referenced herein, pour into the storm drains
5 and local waterways. The consensus among regulatory agencies and water quality specialists is that
6 storm water pollution accounts for more than half of the total pollution entering marine and river
7 environments each year. These surface waters, known as Receiving Waters, are ecologically sensitive
8 areas. Although pollution and habitat destruction have drastically diminished once abundant and varied
9 fisheries, these waters are still essential habitat for dozens of fish and bird species as well as macro-
10 invertebrate and invertebrate species. Storm water and non-storm water contain sediment, heavy metals,
11 such as aluminum, iron, chromium, copper, lead, mercury, nickel, and zinc, as well as, high
12 concentrations of nitrate and nitrite, and other pollutants. Exposure to polluted storm water harms the
13 special aesthetic and recreational significance that the surface waters have for people in the surrounding
14 communities. The public's use of the surface waters exposes many people to toxic metals and other
15 contaminants in storm water and non-storm water discharges. Non-contact recreational and aesthetic
16 opportunities, such as wildlife observation, are also impaired by polluted discharges to the Receiving
17 Waters.

18 7. High concentrations of total suspended solids ("TSS") degrade optical water quality by
19 reducing water clarity and decreasing light available to support photosynthesis. TSS has been shown to
20 alter predator-prey relationships (for example, turbid water may make it difficult for fish to hunt prey).
21 Deposited solids alter fish habitat, aquatic plants, and benthic organisms. TSS can also be harmful to
22 aquatic life because numerous pollutants, including metals and polycyclic aromatic hydrocarbons
23 ("PAHs"), are absorbed onto TSS. Thus, higher concentrations of TSS result in higher concentrations of
24 toxins associated with those sediments. Inorganic sediments, including settleable matter and suspended
25 solids, have been shown to negatively impact species richness, diversity, and total biomass of filter
26 feeding aquatic organisms on bottom surfaces.

27 8. Storm water discharged with high pH can damage the gills and skin of aquatic organisms

1 substance varies as a function of the pH of a solution. A one-whole-unit change in SU represents a
2 tenfold increase or decrease in ion concentration. If the pH of water is too high or too low, the aquatic
3 organisms living within it will become stressed or die.

4 9. This complaint seeks a declaratory judgment, injunctive relief, the imposition of civil
5 penalties, and the award of costs, including attorney and expert witness fees, for Defendant's substantive
6 and procedural violations of the Storm Water Permit and the Clean Water Act resulting from
7 Defendant's operations at the McLane Facility.¹

8 10. CSPA specifically alleges violations regarding Defendant's discharge of pollutants from
9 the Facility into waters of the United States; violations of the filing, monitoring and reporting, and best
10 management practice requirements; and violations of other procedural and substantive requirements of
11 the Storm Water Permit and the Clean Water Act, are ongoing and continuous.

12 **III. PARTIES**

13 **A. California Sportfishing Protection Alliance**

14 11. CSPA is a California non-profit 501(c)(3) public benefit conservation and research
15 organization with its principal place of business in Stockton, California. CSPA's organizational purpose
16 is the protection, preservation, and enhancement of fisheries and associated aquatic and riparian
17 ecosystems of California's waterways, including the greater Sacramento-San Joaquin River Delta
18 ("Delta"), Sugar Cut, the Old River and Clifton Court Forebay the Receiving Waters herein. This
19 mission is implemented through active participation in water rights and water quality processes,
20 education and organization of the fishing community, restoration efforts, and vigorous enforcement of
21 environmental laws enacted to protect fisheries, habitat and water quality. Members of CSPA use and
22 enjoy California's numerous rivers, creeks and waterways, including Sugar Cut, the Old River and
23 Clifton Court Forebay, for recreational and scientific activities such as viewing and enjoying wildlife,
24 boating, fishing, birdwatching, golfing, engaging in scientific study to expand their understanding of
25 various species and habitat health. CSPA's members derive significant and ongoing use and enjoyment
26 from the aesthetic, recreational, and conservation benefits of the waters of the greater Sacramento-San
27

1 Joaquin River Delta.

2 12. CSPA has approximately 2,000 members who live, recreate and work in and around
3 waters of the State of California, including those in western San Joaquin County such as Clifton Court
4 Forebay, Sugar Cut and the Old River. CSPA is dedicated to the preservation, protection, and defense of
5 the environment, and the wildlife and the natural resources of all waters of California. To further these
6 goals, CSPA actively seeks federal and state agency implementation of the Clean Water Act and other
7 laws and, where necessary, directly initiates citizen enforcement. As referenced in above, members of
8 CSPA use and enjoy the Receiving Waters herein into which Defendant have caused, are causing, and
9 will continue to cause, pollutants to be discharged. Defendant's discharges of pollutants threaten or
10 impair each of those uses or contribute to such threats and impairments. Thus, the interests of CSPA's
11 members have been, are being, and will continue to be adversely affected by Defendant's ongoing
12 failure to comply with the Clean Water Act and/or the Storm Water Permit. The relief sought herein will
13 redress the harms to Plaintiff caused by Defendant's activities.

14 13. Defendant's failure to comply with the procedural and substantive requirements of the
15 Storm Water Permit and/or the Clean Water Act, including but not limited to Defendant's discharge of
16 polluted stormwater and non-stormwater from the McLane Facility, negatively impacts and impairs
17 CSPA's members' use and enjoyment of these waters.

18 14. Continuing commission of the acts and omissions alleged herein will irreparably harm
19 CSPA's members, for which harm they have no plain, speedy, or adequate remedy at law.

20 **B. The Owners and/or Operators of the McLane Facility**

21 15. CSPA is informed and believes, and thereon alleges, that McLane Company is
22 headquartered at 800 E. Pescadero Avenue, Tracy, California.

23 16. CSPA is informed and believes, and thereon alleges, that Defendant is the owner of the
24 McLane Foodservice, Inc.

25 17. CSPA is informed and believes, and thereon alleges, that Defendant is the operator of the
26 McLane Facility

27 18. CSPA refers to Defendant and its management herein as the "Owners/Operators" of the

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