

1 ANDREW L. PACKARD (State Bar No. 168690)
 2 WILLIAM N. CARLON (State Bar No. 305739)
 3 Law Offices of Andrew L. Packard
 4 245 Kentucky Street, Suite B3
 5 Petaluma, CA 94952
 6 Tel: (707) 782-4060
 7 Fax: (707) 782-4062
 8 Email: andrew@packardlawoffices.com
 9 wncarlton@packardlawoffices.com

10 WILLIAM VERICK (State Bar No. 140972)
 11 Klamath Environmental Law Center
 12 1125 Sixteenth Street, Suite 204
 13 Arcata, CA 95521
 14 Tel. (707) 630-5061
 15 Email: wverick@igc.org

16 DAVID WILLIAMS (State Bar No. 144479)
 17 Law Offices of David Williams
 18 1839 Ygnacio Valley Road, Suite 351
 19 Walnut Creek, CA 94598
 20 Tel: (510) 847 2356
 21 Fax: (925) 332-0352
 22 E-mail: dhwill7@gmail.com

23 Attorneys for Plaintiff
 24 CALIFORNIANS FOR
 25 ALTERNATIVES TO TOXICS

26 **UNITED STATES DISTRICT COURT**
 27 **NORTHERN DISTRICT OF CALIFORNIA**

28 CALIFORNIANS FOR ALTERNATIVES
 TO TOXICS,

Plaintiff,

vs.

EUREKA READY MIX LLC, doing
 business as EUREKA READY MIX
 CONCRETE COMPANY, INC., ROBERT
 MCLAUGHLIN, and MICHAEL
 MCLAUGHLIN,

Defendants.

Case No.

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

**(Federal Water Pollution Control Act, 33
 U.S.C. §§ 1251–1387)**

1 CALIFORNIANS FOR ALTERNATIVES TO TOXICS (“CATs”), by and through its
2 counsel, hereby alleges:

3 **I. JURISDICTION AND VENUE**

4 1. This is a civil suit brought under the citizen suit enforcement provisions of the
5 Federal Water Pollution Control Act, 33 U.S.C. §§ 1251–1387 (the “Clean Water Act”, the “CWA”
6 or “the Act”) against Eureka Ready Mix LLC, doing business as Eureka Ready Mix Concrete
7 Company, Inc., Robert McLaughlin, and Michael McLaughlin (“Defendants”). This Court has
8 subject matter jurisdiction over the parties and the subject matter of this action pursuant to Section
9 505(a)(1) of the Act, 33 U.S.C. § 1365(a), and 28 U.S.C. § 1331 (an action arising under the laws of
10 the United States). Specifically, this action arises under Section 505(a)(1)(A) of the Act, 33 U.S.C.
11 § 1365(a)(1)(A) (citizen suit to enforce effluent standard or limitation). The relief requested is
12 authorized pursuant to 33 U.S.C. § 1365(a) (injunctive relief), 33 U.S.C. §§ 1365(a), 1319(d) (civil
13 penalties), and 28 U.S.C. §§ 2201–2202 (power to issue declaratory relief in case of actual
14 controversy and further necessary relief based on such a declaration).

15 2. On or about June 29, 2020, Plaintiff provided written notice to Defendants, via
16 certified mail, of Defendants’ violations of the Act (“CWA Notice Letter”), and of their intention to
17 file suit against Defendants, as required by the Act. *See* 33 U.S.C. § 1365(b)(1)(A); 40 C.F.R.
18 § 135.2(a)(1) (1991). Plaintiff mailed a copy of the CWA Notice Letter to the Administrator of the
19 United States Environmental Protection Agency (“EPA”); the Administrator of EPA Region IX; the
20 Executive Director of the State Water Resources Control Board (“State Board”); and the Executive
21 Officer of the North Coast Regional Water Quality Control Board (“Regional Board”), pursuant to
22 40 C.F.R. § 135.2(a)(1) (1991). A true and correct copy of CATs’ CWA Notice Letter is attached
23 hereto as Exhibit A, and is incorporated by reference.

24 3. More than sixty days have passed since Plaintiff served this CWA Notice Letter on
25 Defendants and the agencies. Plaintiff is informed and believes, and thereupon alleges, that neither
26 the EPA nor the State of California has commenced or is diligently prosecuting a court action to
27 redress the violations alleged in this Complaint. This action’s claims for civil penalties are not
28 barred by any prior administrative penalty under Section 309(g) of the Act, 33 U.S.C. § 1319(g).

1 4. Venue is proper in the Northern District of California pursuant to Section 505(c)(1)
2 of the Act, 33 U.S.C. § 1365(c)(1), because the sources of the violations are located within this
3 District. Venue is also proper under 28 U.S.C. § 1391(b) because Defendants reside in this District
4 and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this
5 District. Intra-district venue is proper in San Francisco, California, because the sources of the
6 violations are located within Humboldt County, California.

7 **II. INTRODUCTION**

8 5. This Complaint seeks relief for Defendants' violations of the CWA at the
9 approximately 24-acre facility owned and/or operated by Defendants (the "Facility"). The Facility is
10 located at 4945 Boyd Road, in Arcata, California. Defendants discharge pollutant-contaminated
11 storm water from the Facility into the Mad River, which flows into the Pacific Ocean. Mad River
12 and the Pacific Ocean are waters of the United States. Defendants are violating both the substantive
13 and procedural requirements of the CWA.

14 6. Defendants' discharges of pollutant-contaminated storm water from the Facility
15 violate the Act and the State of California's General Industrial Permit for storm water discharges,
16 State Water Resources Control Board ("State Board") Water Quality Order No. 91-13-DWQ, as
17 amended by Water Quality Order No. 92-12-DWQ, Water Quality Order No. 97-03-DWQ, and
18 Water Quality Order No. 2014-0057-DWQ, National Pollutant Discharge Elimination System
19 ("NPDES") General Permit No. CAS000001 (hereinafter "General Permit" or "Permit").
20 Defendants' violations of the filing, monitoring, reporting, discharge and management practice
21 requirements, and other procedural and substantive requirements of the General Permit and the Act
22 are ongoing and continuous.

23 7. The failure on the part of industrial facility operators such as Defendants to comply
24 with the General Permit is recognized as a significant cause of the continuing decline in water
25 quality of receiving waters, such as Mad River. The general consensus among regulatory agencies
26 and water quality specialists is that storm water pollution amounts to more than half the total
27 pollution entering the marine environment each year.

28

1 **III. PARTIES**

2 8. CATs is a non-profit public benefit corporation organized under the laws of
3 California, based in Arcata, California. CATs is dedicated to the defense of the environment from
4 the effects of toxic chemicals, and the preservation and protection of the wildlife and natural
5 resources of California waters, including the waters into which Defendants discharge polluted storm
6 water. To further its goals, CATs actively seeks federal and state agency implementation of state
7 and federal water quality laws, including the CWA, and as necessary, directly initiates enforcement
8 actions on behalf of itself and its members.

9 9. Members of CATs, including citizens, taxpayers, property owners, and residents,
10 live, work, travel and recreate on and near Mad River, into which Defendants cause pollutants to be
11 discharged. These CATs members use and enjoy the impacted waters for cultural, recreational,
12 educational, scientific, conservation, aesthetic and spiritual purposes. Defendants' discharge of
13 storm water containing pollutants impairs each of those uses. Thus, the interests of CATs' members
14 have been, are being, and will continue to be adversely affected by Defendants' failure to comply
15 with the Clean Water Act and the General Permit.

16 10. Members of CATs reside in California and use and enjoy California's numerous
17 rivers for recreation and other activities. Members of CATs use and enjoy the waters of Mad River,
18 into which Defendants have caused, are causing, and will continue to cause, pollutants to be
19 discharged. Members of CATs use these areas to fish, boat, kayak, swim, bird watch, view wildlife,
20 and engage in scientific study, including monitoring activities, among other things. Defendants'
21 discharges of pollutants threaten or impair each of those uses or contribute to such threats and
22 impairments. Thus, the interests of CATs' members have been, are being, and will continue to be
23 adversely affected by Defendants' ongoing failure to comply with the Clean Water Act. The relief
24 sought herein will redress the harms to Plaintiff caused by Defendants' activities.

25 11. Plaintiff is informed and believes, and thereupon alleges that Defendants own
26 and/or operate the Facility, and are subject to the terms of the General Permit.

27 12. Continuing commission of the acts and omissions alleged above will irreparably
28 harm Plaintiff and the citizens of the State of California, for which harm they have no plain, speedy or

1 adequate remedy at law.

2 **IV. LEGAL BACKGROUND**

3 **A. Clean Water Act**

4 13. Congress enacted the CWA to “restore and maintain the chemical, physical, and
5 biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). The CWA establishes an “interim
6 goal of water quality which provides for the protection and propagation of fish, shellfish, and
7 wildlife and provides for recreation in and on the water” 33 U.S.C. § 1251(a)(2). To these
8 ends, Congress developed both a water quality-based and technology-based approach to regulating
9 discharges of pollutants from point sources into waters of the United States.

10 14. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any
11 pollutant from a point source into waters of the United States, unless such discharge is in compliance
12 with various enumerated sections of the Act. Among other things, Section 301(a) prohibits
13 discharges not authorized by, or in violation of, the terms of an NPDES permit issued pursuant to
14 Section 402 of the Act, 33 U.S.C. § 1342.

15 15. The term “discharge of pollutants” means “any addition of any pollutant to
16 navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to include,
17 among other examples, industrial waste, chemical wastes, biological materials, heat, rock, and sand
18 discharged into water. 33 U.S.C. § 1362(6).

19 16. A “point source” is defined as “any discernible, confined and discrete conveyance,
20 including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants
21 are or may be discharged.” 33 U.S.C. § 1362(14).

22 17. “Navigable waters” means “the waters of the United States.” 33 U.S.C. § 1362(7).
23 Waters of the United States includes, among others things, waters that are, were, or are susceptible
24 to use in interstate commerce, and tributaries to such waters. 40 C.F.R. § 230.3 (2015).

25 18. Section 402(p) of the Act establishes a framework for regulating municipal and
26 industrial storm water discharges under the NPDES program, 33 U.S.C. § 1342(p), and, specifically,
27 requires an NPDES permit for storm water discharges associated with industrial activity. *Id.* §
28 1342(p)(2)(B).

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