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EDEN ENVIRONMENTAL CITIZEN'S GROUP, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EDEN ENVIRONMENTAL CITIZEN'S
GROUP, LLC, a California limited liability
company,

Plaintiff,

vs.

MANTREX INC., dba WIT SALES &
REFINING, a California corporation, and
DOES 1-10, inclusive,

Defendant.

Case No: _____

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

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

Plaintiff EDEN ENVIRONMENTAL CITIZEN'S GROUP, LLC ("EDEN") hereby
brings this civil action pursuant to the Federal Water Pollution Control Act, also known as the
Clean Water Act ("CWA"), 33 U.S.C. §§ 1251 *et seq.*

INTRODUCTION

1. This action is a citizen suit for injunctive relief, declaratory relief, civil penalties, and
remediation against Defendant for current and ongoing violations of the National Pollutant
Discharge Elimination System ("NPDES") permit requirements of the CWA.

2. On or about December 14, 2021, EDEN provided a Notice of Defendant's violations to
Defendant Mantrex Inc., dba WIT Sales & Refining ("WIT SALES"), by certified mail, at 538

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF, CIVIL PENALTIES AND REMEDIATION

1 Phelan Avenue, San Jose, California, (“the Facility”), as required by the CWA. 33 U.S.C. §
2 1365(b)(1)(A).

3 3. On or about December 14, 2021, EDEN provided a Notice of Defendant’s violations of
4 the CWA to the (1) Administrator of the United States Environmental Protection Agency
5 (“EPA”), (2) EPA’s Regional Administrator for Region Nine, and (3) Executive Director of the
6 State Water Resources Control Board (“State Board”).

7 4. A copy of EDEN’s Notice of Intent to Sue is attached hereto as Exhibit A and
8 incorporated herein by reference. (Exhibit A, “60-Day Notice of Violations and Intent to File
9 Suit Under the Federal Water Pollution Control Act (“Clean Water Act”).”)

10 5. More than sixty days have passed since EDEN’s Notice was properly and lawfully served
11 on Defendant, the State Water Resources Control Board (“State Board”), and the Regional and
12 National EPA Administrators. EDEN is informed and believes, and thereupon alleges, that
13 neither the National EPA, nor the State of California has commenced or is diligently prosecuting
14 a court action to redress the violations alleged in this complaint. This action’s claim for civil
15 penalties is not barred by any prior administrative penalty under section 309(g) of the Clean
16 Water Act (“CWA”), 33 U.S.C. § 1319(g).

17 **JURISDICTION, VENUE AND INTRADISTRICT ASSIGNMENT**

18 6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. section
19 1331 (federal question), and 33 U.S.C. section 1365(a) (CWA citizen suit jurisdiction). The relief
20 requested is authorized pursuant to 28 U.S.C. sections 2201-2202 (declaratory relief), 33 U.S.C.
21 sections 1319(b), 1365(a) (injunctive relief), and 33 U.S.C. sections 1319(d), 1365(a) (civil
22 penalties).

1 7. The Permit under which this case arises is a Federally required permit based upon
2 California state substantive law. (*Southern California Alliance of Publicly Owned Treatment*
3 *Works v. U.S. Environmental Protection Agency* (9th Cir. 2017), 853 F.3d 1076; *Dept. of*
4 *Finance v. Commission on State Mandates*, 1 Cal.5th 749 (2016).)

5 8. By its express language, a violation of the State permit constitutes a per se violation of
6 the Federal Clean Water Act. (California's Industrial General Permit Order 2014-0057 DWQ,
7 NPDES Order No. CAS000001, Section XXI.A)

8 9. Venue is proper because Defendant reside in and the events or omissions giving rise to
9 EDEN's claims occurred in this District. 28 U.S.C. §1391(b)(1), (2). Venue is also proper
10 because the Facility's CWA violations have occurred and are occurring within the District. 33
11 U.S.C. § 1365(c)(1).

12 PARTIES

13 10. Plaintiff EDEN ENVIRONMENTAL CITIZEN'S GROUP, LLC ("EDEN") is an
14 environmental membership group organized under the laws of the State of California as a limited
15 liability company on June 1, 2018. EDEN previously existed as an unincorporated
16 environmental citizen's association, with members who remain associated with EDEN as of the
17 date of the filing of this Complaint.

18 11. EDEN's organizational purpose is the protection, preservation and enhancement of
19 California's waterways. Its mission is implemented by enforcing the provisions of the Federal
20 Clean Water Act and California's Industrial General Permit by seeking redress from
21 environmental harms caused by Industrial Dischargers who pollute the Waters of the United
22 States, through community education and citizen suit enforcement when necessary.

1 12. EDEN's members donate their time and money resources to protect, enhance, and assist
2 in the preservation and restoration of rivers, creeks, streams, wetlands, vernal pools, and their
3 tributaries located in California.

4 13. EDEN has members that reside, work and pursue recreational activities near the affected
5 Receiving Waters. Defendant WIT SALES discharges storm water into a municipal storm drain
6 system then to the Guadalupe River-Front San Francisco Bay Estuaries, a tributary of the San
7 Francisco Bay which is the "Receiving Waters" for the Facility. Eden members use those waters
8 and their watersheds for surfing, kayaking, camping, cycling, recreation, sports, fishing,
9 swimming, hiking, photography, nature walks and scientific study. Their use and enjoyment of
10 these natural resources have been and continue to be adversely impaired by Defendant's failure
11 to comply with the procedural and substantive requirements of the California Industrial General
12 Permit and Federal Clean Water Act.

13 14. EDEN has standing as an association to bring this suit against Defendant, as at least one
14 of EDEN's current members is experiencing ongoing and continuing harm particular to him or
15 her as a specific result of Defendant's violations of the CWA, and the resulting adverse effects to
16 the environment and the Receiving Waters downstream from the Facility, and has experienced
17 such harm since at least the date that EDEN provided to Defendant a 60-day Notice of Intent to
18 Sue.

19 15. Specifically, the individual member(s) who are experiencing harm from Defendant's
20 violations of the CWA are reluctant to utilize the Receiving Waters downstream from the
21 Facility as specified in Paragraph 13, above, due to the pollution caused by Defendant's
22 environmental violations that EDEN's members believe has entered into the Facility's Receiving
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1 Waters; and the aesthetic and recreational interests of these members has been adversely
2 impacted.

3 16. Defendant's ongoing violations of the California Industrial General Permit and the CWA
4 have and will continue to cause irreparable harm to EDEN and certain of its current members,
5 for which they have no plain, speedy, or adequate remedy. The relief requested will redress the
6 ongoing injury in fact to EDEN and its members. Litigation of the claims asserted and the relief
7 requested in this Complaint will not require the participation in this lawsuit of individual
8 members of EDEN.

9 17. EDEN is informed and believes, and on such information and belief alleges, that
10 Defendant WIT SALES located at 538 Phelan Avenue, San Jose, California, was formed on or
11 about January 1, 1999, as a California corporation.

12 18. EDEN is informed and believes, and on such information and belief alleges, that,
13 Defendant WIT SALES, on or about October 21, 1996, submitted a Notice of Intent ("NOI") to
14 be authorized to discharge storm water from the Facility. EDEN is further informed and believes,
15 and on such information and belief alleges, that on or about December 22, 2015 Defendant WIT
16 SALES, submitted an NOT to be authorized to discharge storm water from the Facility under the
17 California Industrial General Permit ("General Permit") and was assigned Waste Discharger
18 Identification number ("WDID") 2 431012622, according to the Regional Water Board's
19 records.

20 STATUTORY BACKGROUND

21 19. Congress declared that the Federal Clean Water Act was designed to "restore and
22 maintain the chemical, physical, and biological integrity of the Nation's waters" through federal
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