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CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE,

Plaintiff,
v.

DenBeste Yard & Garden, Inc.,

Defendant.

Case No.

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

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

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

I. JURISDICTION AND VENUE

1. This is a civil suit brought under the citizen suit enforcement provision of the
Federal Water Pollution Control Act, 33 U.S.C. §§ 1251–1387 (the “Clean Water Act,” “CWA”
or “Act”) against DenBeste Yard & Garden, Inc. (“Defendant”). This Court has subject matter
jurisdiction over the parties and the subject matter of this action pursuant to Section 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 the
United States). Specifically, this action arises under Section 505(a)(1)(A) of the Act, 33 U.S.C.

1 authorized pursuant to 33 U.S.C. §1365(a) (injunctive relief), 1319(d) (civil penalties), and 28
2 U.S.C. §§ 2201–2202 (power to issue declaratory relief in case of actual controversy and further
3 necessary relief based on such a declaration).

4 2. On January 26, 2022, Plaintiff provided written notice to Defendant, via certified
5 mail, of Defendant’s violation of the Act (“Notice Letter”), and of Plaintiff’s intention to file suit
6 against Defendant, as required by the Act. *See* 33 U.S.C. § 1365(b)(1)(A); 40 C.F.R.
7 § 135.2(a)(1). Plaintiff mailed a copy of the Notice Letter to the Administrator of the United
8 States Environmental Protection Agency (“EPA”); the Administrator of EPA Region IX; the
9 Executive Director of the State Water Resources Control Board (“State Board”); and the
10 Executive Officer of the Regional Water Quality Control Board, San Francisco Bay Region
11 (“Regional Board”), pursuant to 40 C.F.R. § 135.2(a)(1). A true and correct copy of the Notice
12 Letter is attached hereto as **Exhibit A** and is incorporated by reference.

13 3. More than sixty days have passed since Plaintiff served the Notice Letter on
14 Defendant and the agencies. Plaintiff is informed and believes, and thereupon alleges, that
15 neither the EPA nor the State of California has commenced nor is diligently prosecuting a court
16 action to redress the violations alleged in this Complaint. This action’s claims for civil penalties
17 are not barred by any prior administrative penalty under Section 309(g) of the Act, 33 U.S.C. §
18 1319(g).

19 4. Venue is proper in the Northern District of California pursuant to Section
20 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the sources of the violations are located
21 within this District. Venue is also proper under 28 U.S.C. § 1391(b) because a substantial part of
22 the events or omissions giving rise to Plaintiff’s claims occurred in this District. Intra-district
23 venue is proper in either San Francisco or Oakland, California, because the sources of the
24 violations are located within Sonoma County.

25 **II. INTRODUCTION**

26 5. This Complaint seeks relief for Defendant’s violations of the CWA at
27 Defendant’s facility located at 26916 Asti Road, in Cloverdale, California (“Facility”).

28 Defendant discharges pollutants contaminated stormwater from the Facility into the Russian

1 River, which discharges to the Pacific Ocean. The Russian River and the Pacific Ocean (the
2 “Impacted Waters”) are waters of the United States within the meaning of the Clean Water Act.
3 Defendant is in violation of both the substantive and procedural requirements of the CWA.

4 6. Defendant’s unpermitted discharges of polluted storm water from the Facility
5 violate Section 301(a) of the Act, 33 U.S.C. § 1311(a), which prohibits the discharge of storm
6 water associated with industrial activities to waters of the United States except in compliance
7 with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued
8 pursuant to Section 402 of the Act, 33 U.S.C. § 1342. These violations are ongoing and
9 continuous.

10 7. Defendant’s failure to obtain coverage under the State of California’s General
11 Industrial Permit for storm water discharges, State Board Water Quality Order No. 91-13-DWQ,
12 *amended by* Nos. 92-12-DWQ, 97-03-DWQ, 14-0057-DWQ, NPDES General Permit No.
13 CAS000001 (hereinafter “General Permit” or “Permit”) is a violation of Section 301(a) of the
14 Act.

15 8. The failure on the part of industrial facility operators, such as Defendant, to apply
16 for and comply with the General Permit is recognized as a significant cause of the continuing
17 decline in water quality of receiving waters. The general consensus among regulatory agencies
18 and water quality specialists is that storm water pollution amounts to more than half the total
19 pollution entering the aquatic environment each year. With every rainfall event, hundreds of
20 thousands of gallons of polluted storm water originating from industrial facilities discharge to the
21 Impacted Waters.

22 **III. PARTIES**

23 9. Defendant DenBeste Yard & Garden, Inc. is a California corporation.

24 10. The Agent for Service of Process for Defendant DenBeste Yard & Garden, Inc. is
25 PAUL RAY DENBESTE.

26 11. Defendant DenBeste Yard & Garden, Inc. owns the Facility.

27 12. Defendant DenBeste Yard & Garden, Inc. operates the Facility.

28 13. Plaintiff California Sportfishing Protection Alliance (“CSFA”) is a non-profit

1 public benefit corporation organized under the laws of California, with its main offices in
2 Stockton, California. CSPA is dedicated to the preservation, protection, and defense of the
3 environment, wildlife, and natural resources of California waters, including the waters into
4 which Defendants discharge polluted storm water. To further its goals, CSPA actively seeks
5 federal and state agency implementation of state and federal water quality laws, including the
6 CWA, and directly initiates enforcement actions on behalf of itself and its members as necessary.

7 14. Members of CSPA—including citizens, taxpayers, property owners, and
8 residents—live, work, travel, and recreate on and near the Impacted Waters, into which
9 Defendant causes pollutants to be discharged. These members of CSPA use and enjoy the
10 Impacted Waters for recreational, educational, scientific, conservation, aesthetic, and spiritual
11 purposes. Defendant's discharges of storm water containing pollutants impairs each of those
12 uses. Thus, the interests of CSPA's members have been, are being, and will continue to be
13 adversely affected by Defendant's failure to comply with the CWA and the General Permit.

14 15. Members of CSPA reside in California and use and enjoy California's numerous
15 rivers for recreation and other activities. Members of CSPA use and enjoy the Impacted Waters,
16 into which Defendant has caused, are causing, and will continue to cause, pollutants to be
17 discharged. Members of CSPA use these areas to hike, fish, boat, kayak, swim, bird watch, view
18 wildlife, and engage in scientific study, including monitoring activities, among other things.
19 Defendant's discharges of pollutants threaten or impair each of those uses or contribute to such
20 threats and impairments. Thus, the interests of CSPA's members have been, are being, and will
21 continue to be adversely affected by Defendant's ongoing failure to comply with the CWA. The
22 relief sought herein will redress the harms to Plaintiff caused by Defendant's activities because that
23 relief will significantly reduce pollution discharged from Defendant's Facility into the Impacted
24 Waters.

25 16. Continuing commission of the acts and omissions alleged above will irreparably
26 harm Plaintiff and the citizens of the State of California, for which harm they have no plain, speedy
27 or adequate remedy at law.

28 IV. LEGAL BACKGROUND

1 **A. Clean Water Act**

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

9 18. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any
10 pollutant from a point source into waters of the United States, unless such discharge complies
11 with various enumerated sections of the Act. Among other things, Section 301(a) prohibits
12 discharges not in conformance with a NPDES permit, such as discharges without a NPDES
13 permit or discharges that violate the terms of an NPDES permit issued pursuant to Section 402 of
14 the Act (33 U.S.C. §1342).

15 19. 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
17 include, among other examples, industrial waste, chemical wastes, biological materials, heat,
18 rock, and sand discharged into water. 33 U.S.C. § 1362(6).

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

22 21. “Navigable waters” means “the waters of the United States.” 33 U.S.C. §
23 1362(7). Waters of the United States includes, among other things, waters that are, were, or are
24 susceptible to use in interstate commerce and tributaries to such waters. 40 C.F.R. § 230.3
25 (2015).

26 22. Section 402 of the Act, 33 U.S.C. § 1342, establishes the NPDES program—a
27 permitting program that regulates the discharge of pollutants into waters of the United States.

28 Section 402(a) establishes a framework for regulating municipal and industrial storm water

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