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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.

WEST COAST METALS, INC., as a
corporation organized and existing under the
laws of the State of California, 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.

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1 2. On or about February 1, 2022, EDEN provided a Notice of Defendant's violations to
2 Defendant West Coast Metals, Inc. ("WEST COAST METALS"), by certified mail as required
3 by the CWA. 33 U.S.C. § 1365(b)(1)(A). The Defendant's base of operations is located at 470
4 Caletti Avenue, Windsor, California (Facility").

5 3. On or about January 29, 2022, EDEN provided a Notice of Defendant's violations of
6 the CWA to the (1) Administrator of the United States Environmental Protection Agency
7 ("EPA"), (2) EPA's Regional Administrator for Region Nine, and (3) Executive Director of the
8 State Water Resources Control Board ("State Water Board").

9 4. A copy of EDEN's Notice of Intent to Sue is attached hereto as Exhibit "A" and hereby
10 incorporated herein by reference. (Exhibit A, "60-Day Notice of Violations and Intent to File
11 Suit Under the Federal Water Pollution Control Act ("Clean Water Act").")

12 5. More than sixty days have passed since EDEN's Notice was properly and lawfully
13 served on Defendant, the State Board, and the Regional and National EPA Administrators.
14 EDEN is informed and believes, and thereupon alleges, that neither the National EPA, nor the
15 State of California has commenced or is diligently prosecuting a court action to redress the
16 violations alleged in this complaint. This action's claim for civil penalties is not barred by any
17 prior administrative penalty under section 309(g) of the Clean Water Act ("CWA"), 33 U.S.C. §
18 1319(g).

19 **JURISDICTION, VENUE AND INTRADISTRICT ASSIGNMENT**

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

1 sections 1319(b), 1365(a) (injunctive relief), and 33 U.S.C. sections 1319(d), 1365(a) (civil
2 penalties).

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

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

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

14 **PARTIES**

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

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

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

6 13. EDEN has members that reside, work and pursue recreational activities near the
7 affected Receiving Waters. The Facility discharges storm water into a municipal storm drain
8 system which then discharges to the Mark West Creek, a tributary of the Russian River. The
9 Russian River is the "Receiving Waters" for the Facility and is listed for water quality
10 impairment under the Clean Water Act, Section 303(d) - list for dissolved oxygen, mercury,
11 bacteria, temperature and pathogen impairments. Eden members use those waters and their
12 watersheds for surfing, kayaking, camping, cycling, recreation, sports, fishing, swimming,
13 hiking, photography, nature walks and scientific study. Their use and enjoyment of these natural
14 resources have been and continue to be adversely impaired by Defendant's failure to comply
15 with the procedural and substantive requirements of the California Industrial General Permit and
16 Federal Clean Water Act.

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

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

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

13 17. EDEN is informed and believes, and on such information and belief alleges, that
14 Defendant WEST COAST METALS located at 470 Caletti Avenue, Windsor, California, was
15 formed on or about April 4, 1978, as a corporation organized and existing under the laws of the
16 State of California.

17 18. EDEN is informed and believes, and on such information and belief alleges, that,
18 Defendant WEST COAST METALS, on or about July 30, 2004, submitted a Notice of Intent
19 ("NOI") to be authorized to discharge storm water from the Facility. EDEN is further informed
20 and believes, and on such information and belief alleges, that on or about June 9, 2015,
21 Defendant WEST COAST METALS, submitted an NOT to be authorized to discharge storm
22 water from the Facility under the California Industrial General Permit ("General Permit") and
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