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7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 ALFONSO LARES,) Civil No.
11)
12 Plaintiff,)
13 vs.) **COMPLAINT FOR DECLARATORY**
14) **AND INJUNCTIVE RELIEF AND**
15 RELIABLE WHOLESale LUMBER,) **CIVIL PENALTIES**
16 INC,)
17) (Federal Water Pollution Control Act, 33
18 Defendant.) U.S.C. § 1251 et seq.)
19)
20)

21 Plaintiff Alfonso Lares (“Plaintiff”), by and through his counsel, alleges as
22 follows:

23 1. This is a citizen suit, brought pursuant to the section 505(a)(1) of the
24 Federal Water Pollution Control Act (the “Clean Water Act” or “CWA”), 33 U.S.C. §
25 1365(a)(1), to address violations of the CWA by defendant Reliable Wholesale
26 Lumber, Inc. (“Reliable” or the “Defendant”) arising out of operations at Reliable’s
27 facility located at 1450 Citrus St., Riverside, CA 92507 (the “Facility”).

28 2. Since at least December 1, 2011, Defendant has been discharging and
continues to discharge polluted stormwater from the Facility in violation of the express

1 terms and conditions of Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§
2 1311, 1342, and in violation of the General Industrial Stormwater Permits issued by
3 the State of California (NPDES General Permit No. CAS000001 [State Water
4 Resources Control Board] Water Quality Order No. 92-12-DWQ, as amended by Order
5 No. 97-03-DWQ) (“1997 Permit”) and Order No. 2014-0057-DWQ (“2015 Permit”)
6 (collectively, the “Industrial Stormwater Permit” or “IGP”).

7 3. Plaintiff seeks a declaratory judgment, injunctive relief, the imposition of
8 civil penalties, and the award of costs, including attorneys’ and expert witness fees, for
9 Defendant’s repeated and ongoing violations of the Clean Water Act.

10 **JURISDICTION AND VENUE**

11 4. This Court has subject matter jurisdiction over the parties and subject
12 matter of this action pursuant to section 505(a)(1) of the CWA, 33 U.S.C. § 1365(a)(1),
13 28 U.S.C. § 1331 (an action arising under the laws of the United States), and 28 U.S.C.
14 § 2201 (declaratory relief).

15 5. On December 1, 2017, as required by the CWA, 33 U.S.C. §
16 1365(b)(1)(A), Plaintiff provided notice of intent to file suit against Defendant for
17 CWA violations (“Notice Letter”) to the Administrator of the United States
18 Environmental Protection Agency (“EPA”); the Regional Administrator of EPA
19 Region IX; the Executive Director of the State Water Resources Control Board (“State
20 Board”); the Executive Officer of the Regional Water Quality Control Board, Santa
21 Ana Region (“Regional Board”) collectively, “state and federal agencies”) and
22 Defendant.

23 6. The Notice Letter provided Defendant with sufficient information to
24 determine (i) the CWA requirements Plaintiff alleges Defendant violated, (ii) the
25 activity alleged to constitute the violation(s), (iii) sufficient information to determine
26 the date, location, and person responsible for the violation(s), and (iv) the contact
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1 information for the Plaintiff and Plaintiff’s Counsel. A copy of the Notice Letter is
2 attached as Exhibit 1.

3 7. More than sixty (60) days have passed since the Notice Letter was served
4 upon Defendant and the state and federal agencies. During this time, neither the EPA,
5 nor the State of California, has commenced or is diligently prosecuting a court action
6 to redress the violations alleged herein. No claim in this action is barred by any prior
7 administrative action pursuant to section 309(g) of the CWA, 33 U.S.C. § 1319(g).

8 8. Venue is proper in the Central District of California pursuant to section
9 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), because the source of the violations is
10 located within this judicial district.

11 **PARTIES**

12 9. Plaintiff is a citizen of the State of California who, through his recreational
13 activities, uses and enjoys the waters of the Santa Ana River, its inflows, outflows, and
14 other waters of the overall Santa Ana River Watershed. Plaintiff’s use and enjoyment
15 of these waters is negatively affected by the pollution caused by Defendant’s
16 operations. Plaintiff is dedicated to protecting the water quality of the Santa Ana River,
17 and the overall Santa Ana River Watershed, for the benefit of its ecosystems and
18 communities. To further these goals, Plaintiff actively seeks federal and state agency
19 implementation of the CWA, and, where necessary, directly initiates enforcement
20 actions on behalf of himself and for his community.

21 10. Plaintiff, like other citizens, taxpayers, property owners, and residents of
22 his community, lives, works, travels near, and recreates in, the Santa Ana River, its
23 tributaries, and the overall Santa Ana River Watershed, into which Defendant
24 discharges pollutants. Plaintiff, like other citizens, taxpayers, property owners, and
25 residents, uses and enjoys the Santa Ana River, its tributaries, and the overall Santa
26 Ana River Watershed for recreational, educational, scientific, conservation, aesthetic,
27 spiritual, and other purposes. Defendant’s discharges of stormwater containing
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1 pollutants impairs each of these uses. Thus, Plaintiff’s interests have been, are being,
2 and will continue to be adversely affected by Defendant’s failure to comply with the
3 CWA and the Industrial Stormwater Permit.

4 11. For example, in the Spring/Summer of 2016 and in 2017, Plaintiff enjoyed
5 going to the Carlson Bark Park (the “Park”). Plaintiff enjoys relaxing in the park and
6 walking along walking path in the Park.

7 12. The Santa Ana River, runs immediately adjacent to the Park, and is able
8 to be used and enjoyed from the walking path that runs immediately adjacent or through
9 the Park immediately adjacent to the Santa Ana River. While at the Park, Plaintiff has
10 witnessed the polluted nature of the Santa Ana River as it runs through the Park. He
11 has observed that the river appears both brown and dirty. In addition to his visual
12 observation of the water, Plaintiff has also noticed an unpleasant smell coming from
13 the water.

14 13. Plaintiff is aware that Defendant’s Facility is upstream from the Park and
15 that the pollution from the Facility flows downstream through the Santa Ana River and
16 the Park. Plaintiff believes that this has degraded the beauty of the Park and curtailed
17 his enjoyment of the Park.

18 14. Plaintiff intends to return to the Park in the future and believes that
19 reducing Defendant’s pollution of the Santa Ana River will improve the water quality
20 in the Santa Ana River and allow him the opportunity to better enjoy the recreational
21 and aesthetic interests in the Santa Ana River and the Park.

22 15. Defendant Reliable is a California Corporation with headquarters at 7600
23 Redondo Circle, Huntington Beach, CA 92648.

24 16. Reliable owns and operates the Facility, located at 1450 Citrus St.,
25 Riverside, CA 92507.

26 17. The Facility operates as a sawmill, planing mill, and lumber yard.
27 Activities carried out at the Facility include (i) lumber milling; (ii) lumber storage; and
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1 (iii) lumber shipping and receiving. Repair and maintenance activities carried out at
2 the Facility include, but are not limited to, electrical, plumbing, roofing, asphalt,
3 concrete, and utilities repairs as well as janitorial duties.

4 18. The Facility is listed as operating under SIC Code 2421, relating to
5 General Sawmills and Planing Mills. Defendant applied for and received coverage
6 under the California Industrial General Permit since at least July 2011, and was issued
7 WDID No. 8 33I022424. Defendant reapplied for coverage under the 2015 Industrial
8 Stormwater Permit on January 29, 2015, and was granted the continued use of its
9 previously issued WDID No. These “Notice of Intent” for the Facility to comply with
10 the terms of the Industrial Stormwater Permit list “Riverside Reload Center” as the
11 Facility name and “Reliable Wholesale Lumber Inc” as the Operator of the Facility.
12 Plaintiff is therefore informed and believes and thereon alleges that Defendant owns
13 and/or operates the Facility.

14 **REGULATORY BACKGROUND**

15 ***The Problem of Stormwater Pollution***

16 19. Stormwater runoff is one of the most significant sources of water pollution
17 in the nation and has been recognized as a leading cause of significant and cumulative
18 harmful impacts to the water quality of the Santa Ana River, its tributaries, and the
19 overall Santa Ana River Watershed. With every rainfall event, significant amounts of
20 polluted rainwater flow from local industrial facilities, such as the Facility, and pour
21 into storm drains, local tributaries, and into the Santa Ana River, its tributaries, and the
22 overall Santa Ana River Watershed.

23 20. Stormwater runoff from industrial sites such as the Facility causes harm
24 to humans and aquatic life. In particular, stormwater can contain heavy metal
25 pollutants such as aluminum, chromium, copper, iron, lead, mercury, nickel, tin, and
26 zinc, as well as high concentrations of suspended solids, and nitrate plus nitrite
27 nitrogen. Exposure and ingestion of heavy metals can cause health problems in people
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1 and aquatic animals, including neurological, physiological, and reproductive effects.
2 Heavy metals have been shown to alter activity in tissues and blood of fish.

3 21. High concentrations of total suspended solids (“TSS”) degrade optical
4 water quality by reducing water clarity and decreasing light available to support
5 photosynthesis. TSS has been shown to alter predator/prey relationships (for example,
6 turbid water might make it difficult for fish to see their prey). Deposited solids alter
7 habitat for fish, aquatic plants, and benthic organisms. TSS can also be harmful to
8 aquatic life because numerous pollutants, including metals and polycyclic aromatic
9 hydrocarbons (“PAHs”), are absorbed onto TSS. Thus, higher concentrations of TSS
10 mean higher concentrations of toxins associated with those sediments. Inorganic
11 sediments, including settleable matter and suspended solids, have been shown to
12 negatively impact species richness, diversity, and total biomass of filter feeding aquatic
13 organisms on bottom surfaces.

14 ***The Clean Water Act***

15 22. CWA section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any
16 pollutant into waters of the United States unless the discharge is in compliance with
17 various enumerated CWA requirements. Among other things, CWA section 301(a)
18 prohibits discharges not authorized by, or in violation of, the terms of a National
19 Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to CWA
20 section 402, 33 U.S.C. § 1342.

21 23. CWA section 402(b), 33 U.S.C. § 1342(b), allows each state to administer
22 its own EPA approved permit program for discharges. In California, the State Board
23 and its nine Regional Boards have approval from EPA to administer an NPDES permit
24 program for the State. The State Board and Regional Boards issue individual and
25 general NPDES permits regulating water pollutant discharges from various categories
26 of dischargers.

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1 24. CWA section 402(p), 33 U.S.C. § 1342(p), requires that NPDES permits
2 be issued for stormwater discharges “associated with industrial activity.”

3 25. CWA section 301(b) required that, by March 31, 1989, all point source
4 dischargers, including those discharging polluted stormwater must achieve technology
5 based effluent limitations by utilizing the Best Available Technology Economically
6 Achievable (“BAT”) for toxic and nonconventional pollutants and the Best
7 Conventional Pollutant Control Technology (“BCT”) for conventional pollutants. *See*
8 33 U.S.C. § 1311(b); 40 C.F.R. § 125.3(a)(2)(ii)-(iii).

9 26. CWA section 505(a)(1) provides for citizen enforcement actions against
10 any “person,” including individuals, corporations, or partnerships, for violations of
11 NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C.
12 § 1365(a)(1), *see* 33 U.S.C. § 1362(5).

13 27. CWA section 505(a) authorizes a citizen suit action for injunctive relief.
14 33U.S.C. § 1365(a).

15 28. CWA violators are subject to an assessment of civil penalties of up to
16 \$51,570 per day per violation for violations occurring after November 2, 2015 and
17 \$37,500 per day per violation for violations occurring after January 12, 2009 but before
18 November 2, 2015. 33 U.S.C. § 1319(d), 40 C.F.R. §§ 19.1-19.4.

19 ***State Regulations***

20 29. Section 303 of the CWA, 33 U.S.C. § 1313, requires states to adopt Water
21 Quality Standards, including water quality objectives and beneficial uses for navigable
22 waters of the United States. The CWA prohibits discharges from causing or
23 contributing to a violation of such state Water Quality Standards. *See* 33 U.S.C. §
24 1311(b)(1)(c); 40 C.F.R. §§ 122.4(a), (d); 40 C.F.R. § 122.44(d)(1).

25 30. The State of California regulates water quality through the State Board
26 and nine Regional Boards, and each Regional Board maintains a separate Water
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1 Quality Control Plan which contains Water Quality Standards for water bodies within
2 its geographic area.

3 31. Water Quality Standards (“WQS”) applicable to Defendant are set forth
4 in the California Toxic Rule (“CTR”)¹ and the Santa Ana River Basin Water Quality
5 Control Plan (the “Basin Plan”). Exceedances of WQS constitute violations of the
6 Industrial Stormwater Permit, the CTR, and the Basin Plan.

7 32. The Basin Plan establishes WQS for all various areas of the Santa Ana
8 River Basin, including all inland surface waters of the Santa Ana River, including but
9 not limited to the following:

10 a. That “[t]he pH of inland surface waters shall not be raised above
11 8.5 or depressed below 6.5 as a result of controllable water quality
12 factors.” *See* Basin Plan, 4-18;

13 b. That “[w]aste discharges shall not result in increases in COD levels
14 in inland surface waters which exceed the values shown in Table 4-1 or
15 which adversely affect beneficial uses.” *See* Basin Plan, 4-9;

16 c. That “Inland surface waters shall not contain suspended or
17 settleable solids in amounts which cause a nuisance or adversely affect
18 beneficial uses as a result of controllable water quality factors.” *See* Basin
19 Plan, 4-19; and

20 d. That “[t]he concentrations of toxic pollutants in the water column,
21 sediments or biota shall not adversely affect beneficial uses.” *See* Basin
22 Plan, 4-20.

23 33. In addition, the EPA has promulgated WQS for toxic priority pollutants
24 in all California water bodies (the “California Toxics Rule” or “CTR”), which include

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26 ¹ The CTR is set forth at 40 C.F.R. § 131.38 and is explained in the Federal Register
27 preamble accompanying the CTR promulgation set forth at 65 Fed. Reg. 31, 682 (May
28 18, 2000).

1 and apply to the Santa Ana River, its tributaries, and the overall Santa Ana River
2 Watershed, unless expressly superseded by the Basin Plan. 65 Fed. Reg. 31,682 (May
3 18, 2000); 40 C.F.R. § 131.38.

4 ***The Industrial Stormwater Permit***

5 34. In California, the State Board has elected to issue a single, statewide
6 general permit applicable to all stormwater discharges associated with industrial
7 activity. On April 17, 1997, the State Board adopted the 1997 Permit, which was in
8 effect through June 30, 2015. On July 1, 2015, the 2015 Permit became effective and
9 superseded the 1997 Permit, except for enforcement purposes.² To discharge
10 stormwater lawfully in California, industrial dischargers must secure coverage under
11 the Industrial Stormwater Permit and comply with its terms or obtain and comply with
12 an individual NPDES permit. 1997 Permit, p. II; 2015 Permit, Section I(A)(Findings
13 8, 12).

14 35. The Industrial Stormwater Permit is an NPDES permit issued pursuant to
15 CWA section 402(p), 33 U.S.C. § 1342(p). Violations of the Industrial Stormwater
16 Permit are also violations of the CWA. 1997 Permit, Section C(1); 2015 Permit,
17 Section XXI(A).

18 36. The Industrial Stormwater Permit contains certain absolute prohibitions.
19 The Industrial Stormwater Permit prohibits the direct or indirect discharge of materials
20 other than stormwater (“non-stormwater discharges”), which are not otherwise
21 authorized by an NPDES permit, to the waters of the United States. 1997 Permit, Order
22 Part A(1); 2015 Permit, Section III(B). The Industrial Stormwater Permit prohibits
23 stormwater discharges that cause or threaten to cause pollution, contamination, or
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25 ² Notably, the 2015 Permit is much more comprehensive than its predecessor, including
26 expanding its purview to “light industry” uses previously exempted, and including
27 more prescriptive requirements for various parts of permit compliance, including
28 BMPs, NALs, SWPPP requirements, Total Daily Maximum Loads for receiving
waters, amongst others. *See generally*, 2015 Permit.

1 nuisance (1997 Permit, Order Part A(2); 2015 Permit, Sections III(C), VI(C)) and
2 discharges that adversely impact human health or the environment (1997 Permit, Order
3 Part C(1); 2015 Permit, Section VI(B)). Finally, the Industrial Stormwater Permit
4 prohibits discharges that cause or contribute to an exceedance of any applicable water
5 quality standard contained in a Statewide Water Quality Control Plan or the applicable
6 Regional Board’s Basin Plan. 1997 Permit, Order Part C(2); 2015 Permit, Section
7 VI(A).

8 37. On April 1, 2014, the State Board adopted an updated NPDES General
9 Permit for Discharges Associated with Industrial Activity, Water Quality Order No.
10 2014-57-DWQ, effective as of July 1, 2015. As of the effective date, Water Quality
11 Order No. 2014-57-DWQ supersedes and rescinds the current Industrial Stormwater
12 Permit, Water Quality Order No. 97-03-DWQ, except for purposes of enforcement
13 actions brought pursuant to the Industrial Stormwater Permit, Water Quality Order No.
14 97-03-DWQ.

15 38. Under the CWA and the Industrial Stormwater Permit, dischargers must
16 employ Best Management Practices (“BMPs”) that constitute BAT and BCT to reduce
17 or eliminate stormwater pollution. 33 U.S.C. § 1311(b); 1997 Permit, Order Part B(3);
18 2015 Permit, Section X(H). The EPA has developed benchmark levels
19 (“Benchmarks”) that are objective guidelines to evaluate whether a permittee’s BMPs
20 achieve compliance with the BAT/BCT standards. Final National Pollutant Discharge
21 Elimination System (NPDES) General Permit for Stormwater Discharges From
22 Industrial Activities (“Multi-Sector Permit”), 65 Fed. Reg. 64,746, 64,766-67 (Oct. 30,
23 2000); Multi Sector Permit, 73 Fed. Reg. 56,572, 56,574 (Sept. 29, 2008); Multi Sector
24 Permit, 80 Fed. Reg. 34,403 (June 16, 2015).

25 39. The 2015 Permit includes Numeric Action Limits (NALs) that are based
26 on Benchmarks. 2015 Permit, Section I(M) (Finding 62). Like Benchmarks, the NALs
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1 indicate “the overall pollutant control performance at any given facility.” *Id.* Section
2 I(M) (Finding 61).

3 40. Dischargers must develop and implement a Storm Water Pollution
4 Prevention Plan (“SWPPP”) at the time industrial activities begin. 1997 Permit,
5 Section A(1)(a) and Order Part E(2); 2015 Permit, Sections I(I) (Finding 54), X(B).
6 The SWPPP must identify and evaluate sources of pollutants associated with industrial
7 activities that may affect the quality of stormwater and authorized non-stormwater
8 discharges from the facility. 1997 Permit, Section A(2); 2015 Permit, Section X(G).
9 The SWPPP must identify and implement site-specific BMPs to reduce or prevent
10 pollutants associated with industrial activities in stormwater and authorized non-
11 stormwater discharges. 1997 Permit, Section A(2); 2015 Permit, Section X(H). The
12 SWPPP must include BMPs that achieve pollutant discharge reductions attainable via
13 BAT and BCT. 1997 Permit, Order Part B(3); 2015 Permit, Sections I(D) (Finding
14 32), V(A).

15 41. The SWPPP must include: a narrative description and summary of all
16 industrial activity, potential sources of pollutants, and potential pollutants; a site map
17 indicating the stormwater conveyance system, associated points of discharge, direction
18 of flow, areas of actual and potential pollutant contact, including the extent of pollution
19 generating activities, nearby water bodies, and pollutant control measures; a
20 description of stormwater management practices; a description of the BMPs to be
21 implemented to reduce or prevent pollutants in stormwater discharges and authorized
22 non-stormwater discharges; the identification and elimination of non-stormwater
23 discharges; the location where significant materials are being shipped, stored, received,
24 and handled, as well as the typical quantities of such materials and the frequency with
25 which they are handled; a description of dust and particulate-generating activities; and
26 a description of individuals and their current responsibilities for developing and
27 implementing the SWPPP. 1997 Permit, Section A(1)-(10); 2015 Permit, Section X.

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1 42. The Industrial Stormwater Permit also requires facility operators to
2 properly operate and maintain any facilities and systems of treatment and control
3 installed or used to achieve compliance with the conditions of the Industrial
4 Stormwater Permit and requirements of the SWPPP at all times. 1997 Permit, Section
5 C(5); 2015 Permit, Section XXI(F).

6 43. The SWPPP and site maps must be assessed annually and revised as
7 necessary to ensure accuracy and effectiveness. 1997 Permit, Sections A(1), B(3)-(4);
8 2015 Permit, Sections I(J) (Finding 55), X(B)(1).

9 44. The 1997 Permit required facility operators to develop and implement a
10 monitoring and reporting program (“MRP”) when industrial activities begin at a
11 facility. 1997 Permit, Section B(1)-(2) and Order Part E(3). The MRP must ensure
12 that stormwater discharges are in compliance with the Discharge Prohibitions, Effluent
13 Limitations, and Receiving Water Limitations specified in the 1997 Permit. *Id.* at
14 Section B(2). The MRP must ensure that practices at the facility to prevent or reduce
15 pollutants in stormwater and authorized non-stormwater discharges are evaluated and
16 revised to meet changing conditions at the facility, including revision of the SWPPP.
17 *Id.*

18 45. Facilities are required to make monthly visual observations of storm water
19 discharges. The visual observations must represent the quality and quantity of the
20 facility’s storm water discharges from the storm event. 1997 Permit, § B(7); 2015
21 Permit, § XI.A.

22 46. The 2015 Permit requires facility operators to monitor and sample
23 stormwater discharges to ensure that the facility is complying with the terms of the
24 permit. 2015 Permit, Sections I(J) (Findings 55-56); XI.

25 47. Under the 1997 Permit, facilities must analyze storm water samples for
26 “toxic chemicals and other pollutants that are likely to be present in storm water
27 discharges in significant quantities.” 1997 Permit, § B(5)(c)(ii). Under the 2015
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1 Permit, facilities must analyze storm water samples for “[a]dditional parameters
2 identified by the Discharger on a facility-specific basis that serve as indicators of the
3 presence of all industrial pollutants identified in the pollutant source assessment.” 2015
4 Permit, § XI(B)(6)(c).

5 48. Pursuant to the monitoring and reporting requirements of the Industrial
6 Stormwater Permit, facility operators must conduct ongoing visual observations of
7 stormwater and non-stormwater discharges and record responsive measures taken to
8 eliminate unauthorized non-stormwater discharges and to reduce or prevent pollutants
9 in stormwater and authorized non-stormwater discharges. 1997 Permit, Sections B(3)-
10 (4); 2015 Permit, Section XI(A). Facility operators must collect samples of stormwater
11 discharges from all locations where stormwater may be discharged from the facility.
12 1997 Permit, Sections B(5), (7); 2015 Permit, Section XI(B)(4)-(5). As a part of MRP,
13 these collections and analyses must be conducted twice a year; samples must be
14 collected during “the first hour of discharge from (1) the first storm event of the wet
15 season, and (2) at least one other storm event in the wet season.” *Id.* Through the
16 2014-2015 reporting period, facility operators were required to analyze stormwater
17 samples for pH, total suspended solids, total organic carbon (or oil and grease as a
18 substitute), specific conductance, toxic chemicals, and other pollutants which are likely
19 to be present in significant quantities in stormwater discharging from the facility. 1997
20 Permit, Section B(5).

21 49. Section XI(B)(2) of the 2015 Permit requires that dischargers collect and
22 analyze storm water samples from two qualifying storm events (“QSEs”) during the
23 first half of each reporting year (July 1 to December 31) and two QSEs during the
24 second half of each reporting year (January 1 to June 30).

25 50. The EPA has established the Benchmark values as guidelines for
26 determining whether a facility discharging industrial storm water has implemented the
27 requisite BAT and BCT. *See*, U.S. EPA Multi-Sector General Permit for Stormwater
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1 Discharges Associated with Industrial Activity (the “MSGP”). These Benchmarks
2 represent pollutant concentrations at which a storm water discharge could potentially
3 impair, or contribute to impairing, water quality, or affect human health from ingestion
4 of water or fish. Notably, the Benchmark levels contained in the MSGP is “consistent”
5 with the BMPs required of facilities under the Industrial Stormwater Permit. 2015
6 Permit I(D)(33). The following EPA Benchmarks have been established for pollution
7 parameters applicable to the Facility at issue in this action are (i) Chemical Oxygen
8 Demand (“COD”) – 120.0 Mg/L; (ii) Total Suspended Solids (“TSS”) – 100 Mg/L; and
9 (iii) Total Zinc – 0.04-0.26 Mg/L.³

10 51. These Benchmarks are reflected in the 2015 Permit in the form of Numeric
11 Action Levels (“NALs”). The 2015 Permit incorporates annual NALs, which are
12 derived from a Water Board dataset. The following NALs have been established under
13 the 2015 Permit: (i) Chemical Oxygen Demand (“COD”) – 120.0 Mg/L; (ii) Total
14 Suspended Solids (“TSS”) – 100 Mg/L; and (iii) Total Zinc – 0.04-0.26 Mg/L⁴; and
15 (iv) Oil & Grease (“O&G”) – 15.0 Mg/L. An exceedance of annual NALs occurs when
16 the average of all samples obtained for an entire facility during a single reporting year
17 is greater than a particular annual NAL. The reporting year runs from July 1 to June
18 30. The 2015 Permit also established the following instantaneous maximum NALs: (i)
19 pH – 6.0 – 9.0 s.u.; (ii) TSS – 400 Mg/L; and (iii) O&G – 25 Mg/L. An instantaneous
20 maximum NAL exceedance occurs when two or more analytical results from samples
21 taken for any single parameter within a reporting year exceed the instantaneous
22 maximum NAL value (for TSS and O&G) or are outside of the instantaneous maximum
23 NAL range for pH. When a discharger exceeds an applicable NAL, it is elevated to
24 “Level 1 Status,” which requires revision of the SWPPP and additional BMPs. If a
25 discharger exceeds an applicable NAL during Level 1 Status, it is then elevated to

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27 ³ Dependent on the hardness range of the receiving water.

28 ⁴ Dependent on the hardness range of the receiving water.

1 “Level 2 Status.” For Level 2 Status, a discharger is required to submit an Action Plan
2 requiring a demonstration of either additional BMPs to prevent exceedances, a
3 determination that the exceedance is solely due to non-industrial pollutant sources, or
4 a determination that the exceedance is solely due to the presence of the pollutant in the
5 natural background.

6 52. Section B(14) of the 1997 Permit requires dischargers to include
7 laboratory reports with their Annual Reports submitted to the Regional Board. This
8 requirement is continued with the 2015 Permit. 2015 Permit, Fact Sheet, Paragraph O.

9 53. Section 505(a)(1) and Section 505(f) of the Act provide for citizen
10 enforcement actions against any “person,” including individuals, corporations, or
11 partnerships, for violations of NPDES permit requirements. 33 U.S.C. §§1365(a)(1)
12 and (f), § 1362(5). An action for injunctive relief under the Act is authorized by 33
13 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil
14 penalties of up to \$51,570 per day per violation for violations occurring after November
15 2, 2015 and \$37,500 per day per violation for violations occurring after January 12,
16 2009 but before November 2, 2015. 33 U.S.C. § 1319(d), 40 C.F.R. §§ 19.1-19.4. *See*
17 *also* 40 C.F.R. §§ 19.1 -19.4.

18 **STATEMENT OF FACTS**

19 ***Facility Background***

20 54. Defendant operates the Facility located at 1450 Citrus St., Riverside, CA
21 92507.

22 55. The Facility is regulated by the Industrial Stormwater Permit.

23 56. Defendant submitted or was covered by a Notice of Intent to comply with
24 the Industrial Stormwater Permit to the State Board in 2011 and in 2015.

25 57. Operations at the Facility generally include, but are not limited to (i)
26 lumber milling; (ii) lumber storage; and (iii) lumber shipping and receiving. Other
27 activities carried out in the regular course of business at the Facility include: storage of
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1 fuel and other oils, maintenance, equipment storage, and waste storage. Repair and
2 maintenance activities carried out at the facility include, but are not limited to,
3 electrical, plumbing, roofing, asphalt, concrete, and utilities repairs as well as janitorial
4 duties. The Facility also maintains material storage areas, and waste storage areas.

5 58. Certain operations at the Facility occur outdoors and are causing
6 pollutants to be exposed to rainfall.

7 59. Vehicles and equipment at the Facility expose many other sources of
8 pollution to the elements, including gasoline, diesel fuel, anti-freeze, battery fluids, and
9 hydraulic fluids.

10 60. The types of pollutants released by the Facility into the immediate
11 environment are known to include, or have the potential to include, among other
12 contaminants; total suspended solids (“TSS”), waste oils, lubricants, fuel, trash, debris,
13 hazardous materials, oil and grease, pH, chemical oxygen demand (“COD”) heavy
14 metals, such as, zinc, and other pollutants.

15 61. The industrial materials stored and the pollutants generated at the Facility
16 are exposed to stormwater flows.

17 62. Activities at the Facility generate significant debris and particulate matter,
18 which contain pollutants and settle on surfaces within the Facility. During rain events,
19 this pollution washes off of those surfaces and flows into the Santa Ana River, and the
20 overall Santa Ana River Watershed. Stormwater from the Facility discharges into the
21 Santa Ana River and the overall Santa Ana River Watershed.

22 ***Activities Contributing to CWA Violations***

23 63. Defendant has not developed and/or implemented an adequate SWPPP at
24 the Facility.

25 64. Defendant has not developed and/or implemented BMPs that adequately
26 minimize the exposure of pollutants to stormwater at the Facility.

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1 65. Defendant has not developed and/or implemented BMPs at the Facility
2 that adequately control and minimize polluted runoff from the Facility.

3 66. Defendant has not developed and/or implemented BMPs at the Facility
4 that adequately treat and remove pollutants in stormwater prior to discharge.

5 67. Defendant has not developed and/or implemented adequate measures to
6 reduce or eliminate stormwater pollution that constitute BAT/BCT.

7 68. Defendant has not developed and/or implemented adequate BMPs at the
8 Facility to achieve stormwater discharges that meet EPA Benchmarks or applicable
9 Water Quality Standards.

10 69. Defendant has not adequately evaluated and revised the Facility's SWPPP
11 to address these failures. Defendant has also failed to properly operate and maintain
12 the structures and systems that have been put in place at the Facility to achieve
13 compliance with the Industrial Stormwater Permit and its SWPPP requirements.

14 70. Defendant has not developed and/or implemented an adequate MRP at the
15 Facility.

16 71. Defendant's monitoring and reporting activities have not resulted in
17 practices that adequately reduce or prevent pollutants from discharging from the
18 stormwater flows from the Facility.

19 72. Defendant's monitoring activities have not effectively identified
20 compliance problems at the Facility or resulted in effective revisions of the SWPPP.

21 73. Due to Defendant's lack of effective pollution prevention measures,
22 including effective BMPs, and its failure to implement an effective monitoring and
23 reporting program, stormwater from the Facility becomes polluted with many
24 constituents. The potential pollutants from the Facility include among other
25 contaminants; total suspended solids ("TSS"), waste oils, lubricants, fuel, trash, debris,
26 hazardous materials, oil and grease, pH, chemical oxygen demand ("COD") heavy
27 metals, such as, zinc, and other pollutants. Stormwater from the Facility discharges,
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1 via the local storm sewer system and/or surface runoff, directly into the Santa Ana
2 River and the overall Santa Ana River Watershed.

3 74. Polluted stormwater is discharged from the Facility into the Santa Ana
4 River and the overall Santa Ana River Watershed. The Santa Ana River, its tributaries,
5 and the overall Santa Ana River Watershed are waters of the United States.

6 75. Defendant's stormwater testing for the required pollutant parameters
7 during the five years before Plaintiff served his Notice of Violations upon was wholly
8 insufficient – the Defendant submitted stormwater testing data for only two QSEs in
9 the 2015-2016 annual reporting period and submitted stormwater testing data for only
10 one QSE in the 2014-2015, 2013-2014, and 2012-2013 annual reporting periods. As
11 stated in the Industrial Stormwater Permit, facilities are required to provide testing data,
12 for all requisite NALs, for four Qualifying Storm Events (“QSE’s”) per year.⁵

13 76. Significantly, the pollutants associated with SIC Code 2421 are
14 particularly dangerous to riverine ecosystems, including such heavy metals such as
15 zinc. Failures to adequately test stormwater runoff, as is the case here, make it difficult
16 to determine both the amount of pollutants being discharged in a facility's stormwater,
17 and the efficacy of any control measures put in place.

18 77. Additionally, Plaintiff's submitted testing for the 2011-2012, 2012-2013,
19 2014-2015 and 2015-2016 annual reporting period indicate presence of Zinc, COD,
20 and/or TSS in Facility's stormwater runoff far exceeding acceptable levels.

21 78. Due to these numerous insufficiencies, discrepancies, and overages
22 contained in the Defendant's annual stormwater sampling, the Facility's discharges of
23 stormwater have been, are, and are likely to continue to be regularly contaminated with
24 higher levels of pollutants than are consistent with BMPs that constitute BAT/BCT.⁶

25 _____
26 ⁵ Under the Previous Industrial Stormwater Permit, this requirement was two QSEs per
27 year.

28 ⁶ Defendant's failures to report proper NAL testing and/or discharging stormwater
laden with higher than permissible pollutants from the Facility from 2011 through the

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FIRST CAUSE OF ACTION

**Discharges in Violation of Permit Prohibitions of the Industrial Stormwater Permit
(Violations of 33 U.S.C. §§ 1311, 1342)**

79. Plaintiff incorporates the allegations contained in all other paragraphs as though fully set forth herein.

80. The Industrial Stormwater Permit requires that stormwater discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance; and shall not cause or contribute to a violation of any water quality standards contained in a statewide Water Quality Control Plan or the applicable Regional Board’s Basin Plan (collectively, “Prohibitions”).

81. Since at least December 1, 2011, Defendant has been discharging polluted stormwater from the Facility in violation of the Prohibitions of the Industrial Stormwater Permit during every significant rain event (defined by EPA as a rainfall event generating 0.2 inches or more of rain). *See* Exhibit 1, Notice Letter at Attachment 3.

82. The polluted stormwater discharged from the Facility during every significant rain event contains pollutants harmful to fish, plants, birds, and human health that have adversely affected, and continue to adversely affect, human health and the environment in violation of the Industrial Stormwater Permit.

83. Discharges of polluted stormwater from the Facility have in the past caused, and will continue to cause, pollution, contamination, and/or nuisance to the waters of the United States in violation of the Industrial Stormwater Permit and the Water Quality Standards set forth in the Basin Plan.

present are described in more detail in the Notice, which is attached to this Complaint as Exhibit 1.

1 84. Each day since at least December 1, 2011, that Defendant has discharged
2 polluted stormwater from the Facility in violation of the Industrial Stormwater Permit
3 is a separate and distinct violation of CWA section 301(a), 33 U.S.C. § 1311(a).

4 85. By committing the acts and omissions alleged above, Defendant is subject
5 to an assessment of civil penalties pursuant to CWA sections 309(d) and 505, 33 U.S.C.
6 §§ 1319(d) and 1365.

7 86. An action for injunctive relief is authorized by CWA section 505(a), 33
8 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above will
9 irreparably harm Plaintiff, for which harm he has no plain, speedy, or adequate remedy
10 at law.

11 87. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)
12 because an actual controversy exists as to the rights and other legal relations of the
13 Parties.

14 **SECOND CAUSE OF ACTION**

15 **Discharge in Violation of Effluent Limitations of the Industrial**
16 **Stormwater Permit**
17 **(Violations of 33 U.S.C. §§ 1311, 1342)**

18 88. Plaintiff incorporates the allegations contained in all other paragraphs as
19 though fully set forth herein.

20 89. The Industrial Stormwater Permit's SWPPP requirements and effluent
21 limitations require dischargers to reduce or prevent pollutants in their stormwater
22 discharges through the implementation of measures that must achieve BAT for toxic
23 and nonconventional pollutants and BCT for conventional pollutants.

24 90. Defendant has discharged and continues to discharge stormwater from the
25 Facility containing levels of pollutants that do not achieve compliance with the
26 BAT/BCT requirements during every significant rain event occurring from December
27 1, 2011 through the present. Defendant's failure to develop and/or implement BMPs
28 adequate to achieve the pollutant discharge reductions attainable via BAT or BCT at

1 the Facility is a violation of the Industrial Stormwater Permit and the CWA. *See* 1997
2 Permit, Order Part B(3); 2015 Permit, Sections I(D) (Finding 32), V(A); 33 U.S.C. §
3 1311(b).

4 91. Each day since at least December 1, 2011, that Defendant has discharged
5 stormwater containing pollutants in violation of the Industrial Stormwater Permit,
6 specifically Effluent Limitation B(3) of the 1997 Permit, is a separate and distinct
7 violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

8 92. Defendant's CWA violations described in the paragraphs above will
9 continue in the future until Defendant develops and implements BMPs at the Facility
10 adequate to achieve pollutant discharge reductions attainable via BAT and BCT.

11 93. By committing the acts and omissions alleged above, Defendant is subject
12 to an assessment of civil penalties pursuant to sections 309(d) and 505 of the CWA, 33
13 U.S.C. §§ 1319(d) and 1365.

14 94. An action for injunctive relief is authorized by CWA section 505(a), 33
15 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above will
16 irreparably harm Plaintiff for which harm he has no plain, speedy, or adequate remedy
17 at law.

18 95. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)
19 because an actual controversy exists as to the rights and other legal relations of the
20 Parties.

21 **THIRD CAUSE OF ACTION**

22 **Failure to Develop and Implement an Adequate Storm Water**
23 **Pollution Prevention Plan, In Violation of the Industrial Stormwater Permit**
24 **(Violations of 33 U.S.C. § 1311, 1342)**

25 96. Plaintiff incorporates the allegations contained in all other paragraphs as
26 though fully set forth herein.

27 97. The Industrial Stormwater Permit requires dischargers of stormwater
28 associated with industrial activity to develop and implement an adequate SWPPP when

1 they commence industrial activity. 1997 Permit, Section A(1); 2015 Permit, Section
2 X(B).

3 98. Defendant, as of December 1, 2011, has commenced industrial activity
4 and continues to conduct industrial activity at the Facility.

5 99. Defendant has failed and continues to fail to develop and implement an
6 adequate SWPPP or implement all necessary revisions to the SWPPP for the Facility
7 as required by the Industrial Stormwater Permit.

8 100. Defendant has failed and continues to fail to develop or implement a
9 SWPPP for the Facility that includes BMPs adequate to meet the requirements of the
10 Industrial Stormwater Permit, specifically Section A of the 1997 Permit and Section X
11 of the 2015 Permit.

12 101. Defendant has failed and continues to fail to adequately develop or
13 implement a SWPPP at the Facility that prevents discharges from violating the
14 Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations of the
15 Industrial Stormwater Permit.

16 102. Each day since December 1, 2011, that Defendant has failed to adequately
17 develop and/or implement a SWPPP for the Facility in violation of the Industrial
18 Stormwater Permit is a separate and distinct violation of CWA section 301(a), 33
19 U.S.C. § 1311(a).

20 103. Defendant has been in violation of the Industrial Stormwater Permit's
21 SWPPP requirements every day since December 1, 2011. Defendant will continue to
22 be in violation of the SWPPP requirements each day that Defendant fails to develop
23 and fully implement an adequate SWPPP for the Facility.

24 104. By committing the acts and omissions alleged above, Defendant is subject
25 to an assessment of civil penalties pursuant to CWA sections 309(d) and 505, 33 U.S.C.
26 §§ 1319(d) and 1365.

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1 105. An action for injunctive relief is authorized by CWA section 505(a), 33
2 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above will
3 irreparably harm Plaintiff for which harm he has no plain, speedy, or adequate remedy
4 at law.

5 106. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)
6 because an actual controversy exists as to the rights and other legal relations of the
7 Parties.

8 **FOURTH CAUSE OF ACTION**

9 **Failure to Develop and Implement an Adequate Monitoring and Reporting**
10 **Program, In Violation of the Industrial Stormwater Permit**
11 **(Violations of 33 U.S.C. §§ 1311)**

12 107. Plaintiff incorporates the allegations contained in all other paragraphs as
13 though fully set forth herein.

14 108. Defendant has discharged and continues to discharge pollutants from the
15 Facility in violation of the Industrial Stormwater Permit. Defendant is also in violation
16 of the Industrial Stormwater Permit for repeated failure to report proper annual
17 stormwater discharge data as required by the Industrial Stormwater Permit. Thus,
18 Defendant's discharges constitute an unpermitted discharge of pollutants from the
19 Facility to waters of the United States in violation of CWA section 301(a), 33 U.S.C.
20 § 1311(a).

21 109. Defendant has been in violation of CWA section 301(a) every day they
22 have discharged stormwater from the Facility to waters of the United States since
23 December 1, 2011. Defendant will continue to be in violation of the CWA each day
24 that unpermitted stormwater discharges from the Facility to waters of the United States.

25 110. By committing the acts and omissions alleged above, Defendant is subject
26 to an assessment of civil penalties pursuant to sections 309(d) and 505 of the CWA, 33
27 U.S.C. §§ 1319(d) and 1365.

1 111. An action for injunctive relief is authorized by CWA section 505(a), 33
2 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above will
3 irreparably harm Plaintiff for which harm he has no plain, speedy, or adequate remedy
4 at law.

5 112. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)
6 because an actual controversy exists as to the rights and other legal relations of the
7 Parties.

8 **RELIEF REQUESTED**

9 Plaintiff respectfully requests this Court to grant the following relief:

10 A. Declare Defendant to have violated and to be in violation of sections
11 301(a) and (b) of the Clean Water Act, 33 U.S.C. §§ 1311(a) and (b), for discharging
12 pollutants from the Facility in violation of a permit issued pursuant to section 402(p)
13 of the CWA, 33 U.S.C. § 1342(p), for failing to meet effluent limitations which include
14 the Best Available Technology Economically Achievable and Best Conventional
15 Pollutant Control Technology requirements, and for failing to comply with the
16 substantive and procedural requirements of the Industrial Stormwater Permit;

17 B. Enjoin Defendant from discharging pollutants from the Facility to
18 stormwater discharge points, which discharge to the Santa Ana River and the overall
19 Santa Ana River Watershed;

20 C. Order Defendant to restore all receiving waters damaged by Defendant's
21 illegal discharges of pollutants from the Facility;

22 D. Enjoin Defendant from violating sections 301(a) and (b) and section
23 402(p) of the Clean Water Act and from violating the substantive and procedural
24 requirements of the Industrial Stormwater Permit at the Facility;

25 E. Order Defendant to pay civil penalties of up to \$51,570 per day per
26 violation for violations occurring after November 2, 2015 and \$37,500 per day per
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1 violation for violations occurring after January 12, 2009 but before November 2, 2015.
2 33 U.S.C. § 1319(d), 40 C.F.R. §§ 19.1-19.4;

3 F. Award Plaintiff his costs (including reasonable attorney, witness, and
4 consultant fees) as authorized by the CWA section 505(d), 33 U.S.C. § 1365(d);

5 G. Award such other relief as this Court may deem appropriate.

6 Dated: January 29, 2018

BRODSKY & SMITH, LLC

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By: 

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Attorneys for Plaintiff

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