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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

PEOPLE OF THE STATE OF CALIFORNIA *ex rel*. BILL LOCKYER, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, Plaintiffs, v. MIRANT CORPORATION; MIRANT CALIFORNIA, L.L.C; MIRANT DELTA, L.L.C.; MIRANT POTRERO, L.L.C.; MIRANT AMERICAS ENERGY MARKETING, L.P.; MIRANT CALIFORNIA INVESTMENTS, INC.; MIRANT AMERICAS, INC.; SOUTHERN ENERGY GOLDEN STATES HOLDINGS, INC.; and DOES 1-100, Defendants.	Case No.: CGC 02-4054-29 **COMPLAINT FOR RESTITUTION, CIVIL PENALTIES, INJUNCTION, AND OTHER EQUITABLE AND ANCILLARY RELIEF** (California Business & Professions Code § 17200)

The People of the State of California *ex rel*. Bill Lockyer, Attorney General of the State of California, allege the following on information and belief:

INTRODUCTION

1. This action seeks to remedy numerous acts of unfair competition dating back to March of 1999 by the defendants, who are major participants in wholesale electricity markets administered by the California Independent System Operator Corporation (the "ISO"). Defendants have conspired to engage in, and have engaged in, a scheme to violate the rules of the ISO market and to tortiously convert property to which the ISO has an exclusive possessory right, all to the detriment of the reliability of the California electricity market and California's residents and ratepayers. In particular, defendants have repeatedly sold electricity generating capacity to the ISO for use as a reserve and in the event of a system emergency, and subsequently, and unlawfully, sold the *same* capacity into the lucrative "spot" market for wholesale power. As a result, defendants have unlawfully collected millions of dollars. The loss and misuse of these critically important reserves has posed, and continues to pose, a serious threat to the safety and reliability of the transmission grid. Plaintiff seeks an injunction requiring defendants to cease and desist from committing further acts of unfair competition. Plaintiff also seeks an Order imposing restitution, disgorgement, and civil penalties.

PARTIES

2. Plaintiff Bill Lockyer is the Attorney General of the State of California and is the chief law officer of the State (Cal. Const., art. 5, § 13). He is authorized by California Business and Professions Code § 17204 to prosecute any unlawful, unfair or fraudulent business act or practice which is prohibited by California Business and Professions Code § 17200 in a court of competent jurisdiction. For any such violation, he is also authorized to seek injunctive relief, civil penalties not to exceed two thousand five hundred dollars ($2,500) for each violation, and any orders or judgments, including the appointment of receivers, as may be necessary to prevent the use or employment by any person of any unlawful, unfair, or fraudulent business act or practices.

3. Defendant Mirant Delta, L.L.C. (together with its predecessor and successor entities, "MIRANT DELTA"), formerly Southern Energy Delta, L.L.C., is a limited liability company formed under the laws of the State of Delaware. On or about March 1999, MIRANT DELTA

acquired from Pacific Gas & Electric Company two separate electricity generation facilities located in Contra Costa County, California, the Pittsburg and Contra Costa Power Plants. The two facilities consist of eleven separate generating units with a combined capacity of approximately 2700 megawatts ("MW"). MIRANT DELTA is a wholly-owned subsidiary of defendant Mirant California, L.L.C.

4. MIRANT DELTA entered into a Participating Generator Agreement with the ISO on or about March 4, 1999. This Participating Generator Agreement, as amended, governs the rights and responsibilities of MIRANT DELTA with respect to the conduct alleged in this Complaint.

5. Defendant Mirant Potrero, L.L.C. (together with its predecessor and successor entities, "MIRANT POTRERO"), formerly Southern Energy Potrero, L.L.C., is a limited liability company formed under the laws of the State of Delaware. On or about March 1999, MIRANT POTRERO acquired from Pacific Gas & Electric Company the Potrero Power Plant, an electricity generation facility located in San Francisco, California. The Potrero Power Plant consists of four electricity generating units with a total capacity of approximately 400 MW. MIRANT POTRERO is a wholly-owned subsidiary of defendant Mirant California, L.L.C.

6. MIRANT POTRERO entered into a Participating Generator Agreement with the on or about March 4, 1999. This Participating Generator Agreement, as amended, governs the rights and responsibilities of MIRANT POTRERO with respect to the conduct alleged in this Complaint.

7. Defendant Mirant Americas Energy Marketing, L.P. (together with its predecessor and successor entities, "MIRANT AMERICAS ENERGY MARKETING"), formerly Southern Company Energy Marketing, L.P., is a limited partnership formed under the laws of the State of Delaware, and a wholly-owned indirect subsidiary of defendant Mirant Corporation. MIRANT AMERICAS ENERGY MARKETING markets and distributes energy-related products in California. MIRANT AMERICAS ENERGY MARKETING entered into a Scheduling Coordinator Agreement with the ISO on or about December 1, 1997. This Scheduling Coordinator Agreement, as amended, governs MIRANT AMERICAS ENERGY

MARKETING's rights and responsibilities with respect to the conduct alleged in this Complaint. At all relevant times alleged in this Complaint, MIRANT AMERICAS ENERGY MARKETING acted in the capacity of ISO-certified scheduling coordinator ("SC") for itself and for defendants MIRANT DELTA and MIRANT POTRERO.

8. Defendant Mirant California, L.L.C. ("MIRANT CALIFORNIA"), formerly Southern Energy California, L.L.C., is a limited liability company formed under the laws of the State of Delaware that does business in the State of California. MIRANT CALIFORNIA is engaged in the marketing and brokering of electric energy and capacity, and is the parent company of MIRANT DELTA and MIRANT POTRERO. MIRANT CALIFORNIA is fifty percent owned by each of defendants Mirant California Investments, Inc. and Southern Energy Golden States Holdings, Inc.

9. Defendant Mirant California Investments, Inc. ("MIRANT CALIFORNIA INVESTMENTS"), formerly Southern Energy California, L.L.C., is a corporation formed under the laws of the State of Delaware that does business in the State of California. MIRANT CALIFORNIA INVESTMENTS is a subsidiary of defendant Mirant Americas, Inc. and owns a fifty percent interest in MIRANT CALIFORNIA.

10. Defendant Southern Energy Golden States Holdings, Inc. ("SOUTHERN ENERGY HOLDINGS") is a corporation formed under the laws of the State of Delaware that does business in the State of California. SOUTHERN ENERGY HOLDINGS is a subsidiary of defendant Mirant Americas, Inc. and owns a fifty percent interest in MIRANT CALIFORNIA.

11. Defendant Mirant Americas, Inc. ("MIRANT AMERICAS"), formerly Southern Energy North America, Inc., is a corporation formed under the laws of the State of Delaware which through its subsidiaries does business in the State of California. MIRANT AMERICAS is a subsidiary of Mirant Corporation and is the parent company of MIRANT CALIFORNIA INVESTMENTS and SOUTHERN ENERGY HOLDINGS.

12. Defendant Mirant Corporation (together with its subsidiaries, "MIRANT"), formerly Southern Energy, Inc., is a corporation formed under the laws of the State of Delaware which, through its subsidiaries, does business in the State of California. MIRANT is a global

energy company that develops, constructs, owns and operates power plants, and sells wholesale electricity, gas, and other energy-related commodity products. MIRANT's subsidiaries include MIRANT DELTA, MIRANT POTRERO, MIRANT AMERICAS ENERGY MARKETING, MIRANT CALIFORNIA, MIRANT CALIFORNIA INVESTMENTS, SOUTHERN ENERGY HOLDINGS, and MIRANT AMERICAS.

13. The true names and capacities of defendants used in this Complaint under the fictitious names of Does 1 through 100, inclusive, are unknown to the plaintiff, who sues such defendants by such fictitious names. Each of the fictitiously named defendants is responsible in some manner for acts, occurrences, or omissions which caused the violations of law alleged.

14. Unless otherwise alleged, whenever reference is made in this Complaint to any act of the defendants, such allegation shall mean that each defendant acted individually and jointly with the other defendants named in the Complaint.

15. Unless otherwise alleged, whenever reference is made in this Complaint to any act of any corporate or other business defendant, such allegation shall mean that such corporation or other business defendant did the acts alleged in this Complaint through its officers, directors, employees, agents, and/or representatives while they were acting within the actual or ostensible scope of their authority.

16. At all relevant times alleged in this Complaint, each of the defendants has acted as an agent, representative, or employee of each of the other defendants and has acted within the course and scope of said agency or representation.

17. At all relevant times alleged in this Complaint, each of the defendants has conspired, aided and abetted, or acted in concert with each other, in causing defendants MIRANT AMERICAS ENERGY MARKETING, MIRANT DELTA, and MIRANT POTRERO to commit acts of unfair competition, including engaging in a common plan, scheme, or design to violate the rules of the ISO market and the terms of applicable laws and agreements, and to tortiously convert property to which the ISO had an exclusive right of possession. Through their acts alleged herein, each of the defendants acted with knowledge of said conspiracy, common plan, scheme, or design, and with the intent of carrying out such conspiracy, common plan, scheme, or design, all

to the detriment of the reliability of the California electricity market, the ISO, the major investor-owned utilities, the municipal utility districts, and California's residents and ratepayers.

JURISDICTION

18. This Court has jurisdiction to hear the claims alleged in this Complaint and is a court of competent jurisdiction to grant the relief requested.

19. This Court has jurisdiction over the defendants named above because they do sufficient business in California, or otherwise have sufficient minimum contacts with California, to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

VENUE

20. Venue is proper in this Court because the cause of action alleged in this Complaint, and the liability arising therefrom, arose in part in the City and County of San Francisco, and because many of the violations of law alleged herein occurred in the City and County of San Francisco.

FACTUAL ALLEGATIONS

Deregulation of California's Electricity Generation Market

21. Prior to 1996, California's major investor-owned utilities owned and controlled facilities used for the generation, transmission, and distribution of electricity to retail customers. The utilities' operations were regulated by the California Public Utilities Commission ("CPUC"), which set retail rates for each of these services pursuant to its authority under the California Constitution and the California Public Utilities Code.

22. In September 1996, the California Legislature enacted Assembly Bill 1890 ("AB 1890") in order to restructure the electric industry and bring competition to California's electricity generation market by, among other things, requiring utilities to separate their electricity generation operations from their electric power transmission and distribution operations. After the adoption of AB 1890, the utilities sought and received approval from the CPUC to divest themselves of a number of their electricity generating plants. Defendants MIRANT DELTA and MIRANT POTRERO purchased the generating facilities they now own

and operate from Pacific Gas & Electric Company.

23. In addition to facilitating the divestiture of utility-owned generating facilities, AB 1890 established two new entities to administer the deregulated energy market: the California Power Exchange ("PX") and the ISO. Each is a non-profit, public benefit corporation established under California state law.

24. The PX was established to operate a market for the purchase and sale of electricity for delivery during the same or the next day.

The ISO Market

25. The ISO is responsible for ensuring the safe, reliable, and efficient operation of the high voltage transmission grid. As stated in the ISO's by-laws, its "principal objective is to ensure the reliability of the California Grid, while fostering a competitive marketplace for electrical generation and related Services in California." The ISO attempts to achieve this objective by (1) managing the flow of electricity across the grid and (2) balancing demand and supply in real time.

26. The ISO's operations are governed by a Tariff and Protocols (the "ISO Tariff") on file with and approved by the Federal Energy Regulatory Commission ("FERC").

27. In order to maintain system reliability, the ISO procures both "imbalance energy" (energy needed to balance the grid) and Ancillary Services (also known as "operating reserves" or "reserve capacity") through various market auction processes. The ISO uses the imbalance energy and Ancillary Services bought and sold in these markets to keep generation (*i.e.*, supply) and load (*i.e.*, demand) in balance on the system at all times. Generally, the costs of these services are allocated among all load-serving entities (*i.e.*, entities that use the transmission network to serve retail customers) based on their usage. California's major investor-owned utilities (Pacific Gas & Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company) and municipal utilities, which together provide service to millions of retail customers, have historically absorbed the vast majority of these costs.

28. In order to provide Ancillary Services or imbalance energy to the ISO, an entity that owns or controls electricity generating facilities must enter into a standard agreement with the

ISO known as a Participating Generator Agreement ("PGA"). The PGA is a contract which, among other things, expressly requires the generator to comply with the terms of the ISO Tariff. At all relevant times alleged in this Complaint, defendants MIRANT DELTA and MIRANT POTRERO were parties to separate PGAs, as amended from time to time, with the ISO.

29. A Scheduling Coordinator ("SC") is an entity authorized by the ISO to submit energy "schedules" to the ISO on behalf of electricity suppliers and purchasers. These schedules specify the amount of energy the SC expects its customers to use over the course of the next day, together with the amount of electricity generation the SC anticipates having available to meet the projected demand. SCs submit revised schedules one hour before each operating hour in order to account for changes in weather, plant outages, and a number of other factors. The ISO analyzes the energy schedules submitted by SCs to forecast the total amount of generation and load on the system at any given time, and to determine how much energy and Ancillary Services it will need to procure to keep the system in balance.

30. In addition to being responsible for submitting balanced schedules to the ISO, SCs are the only entities authorized to submit bids to sell imbalance energy and Ancillary Services into markets administered by the ISO. A generator or power marketer wishing to participate in these auctions must bid through its SC. A generator or power marketer may serve as its own SC or use a third party to act as its SC.

31. All SCs are required to enter into a standard agreement with the ISO called a Scheduling Coordinator Agreement ("SCA"). The SCA is a contract which, among other things, expressly requires the SC to comply with the terms of the ISO Tariff. All SCs also must certify that the generators they represent have entered into PGAs with the ISO.

32. At all relevant times alleged in this Complaint, MIRANT AMERICAS ENERGY MARKETING was a party to an SCA, as amended from time to time, with the ISO. In its role as SC, defendant MIRANT AMERICAS ENERGY MARKETING has exercised, and continues to exercise, operational control over the electricity generating units owned by defendants MIRANT DELTA and MIRANT POTRERO. In addition, MIRANT AMERICAS ENERGY MARKETING has served, and continues to serve, as the ISO's primary point of contact for resolving any

operational issues that arise in connection with the generating units owned by defendants MIRANT DELTA and MIRANT POTRERO.

The Imbalance Energy Market

33. Although SCs are required to submit preliminary and revised "balanced schedules" to the ISO, actual load often deviates from the amount of scheduled generation for a number of reasons, including increased demand due to weather. In order to keep supply and demand constantly in balance, the ISO procures "imbalance energy" from several different sources.

34. The ISO's primary source of imbalance energy is the imbalance energy market, also known as the "real-time" market. No later than forty five minutes prior to the operating hour, generators and power marketers that wish to sell power into the imbalance energy market submit supply bids through their SCs specifying, among other things, the amount of energy they are willing to provide, and the price at which they are willing to provide it. The ISO then ranks all of the supply bids in order of price from lowest to highest, forming what is commonly referred to as the Balancing Energy and Ex-Post Pricing ("BEEP") stack. The ISO then selects from the BEEP stack all the bids it needs to balance the system. Generally, the last bid needed to balance the system sets the price paid to all successful bidders. The price established in this manner is the "market clearing price" for imbalance energy (also known as the "Ex Post Price"). After selecting the generating units needed to balance the system, the ISO issues dispatch instructions to each of these units directing them to produce the energy.

35. An "uninstructed deviation" occurs when a generating unit produces less (a "negative uninstructed deviation") or more (a "positive uninstructed deviation") energy in real time than it was scheduled to produce. The ISO has no way of knowing in advance the extent to which a given unit will deviate from schedule, but must take uninstructed deviations into account when balancing the system. Uninstructed deviations are determined after the fact by comparing the unit's metered output to the unit's scheduled operating level. Prior to September 2000, generators were paid the Ex Post Price for energy supplied as a result of a positive uninstructed deviation.

36. Uninstructed deviations out of Ancillary Services capacity are prohibited by the

ISO Tariff.

The Ancillary Services Markets

37. In order to maintain system reliability, the ISO is authorized to procure Ancillary Services on behalf of all load-serving entities. Ancillary Services represent generating capacity that can be converted to energy and delivered to the grid in response to uncertain events, such as major plant outages, in order to maintain the safe and reliable operation of the transmission system.

38. The ISO procures four different types of Ancillary Services through market auctions run one day and one hour, respectively, ahead of each operating hour: (1) “regulation,” or “automatic generation control,” (2) “spinning reserves,” (3) “non-spinning reserves,” and (4) “replacement reserves.” The first, regulation, is used primarily to maintain proper electrical frequency on the grid. The four services are distinguished by the amount of time needed to convert the reserve capacity to actual energy and deliver it to the grid when it is called on by the ISO. The fastest-responding service is regulation. Spinning reserves are the next-fastest responding service, followed by non-spinning reserves and then replacement reserves.

39. The amount of each type of Ancillary Service that the ISO must procure in order to maintain an adequate reserve margin is dictated by standards set by the Western Systems Coordinating Council (“WSCC”), a branch of the North American Electric Reliability Council. Generally, the ISO must maintain a reserve margin equal to approximately seven percent of forecasted demand. When the reserve margin falls below a specified threshold, the ISO has authority under the ISO Tariff to declare a system emergency, and to issue any operating orders needed to preserve system reliability, including ordering the utilities to institute rolling blackouts.

40. Generators wishing to provide Ancillary Services to the ISO submit bids through their SCs specifying, among other things, the type and amount of capacity they are willing to provide, and the price at which they are willing to provide it. The ISO then selects all the bids it needs to meet its reserve requirements in a given operating hour. As in the imbalance energy market, the last bid needed to meet the reserve requirement determines the price paid to all successful bidders for any given Ancillary Service in any given operating hour. Under the ISO

Tariff, Ancillary Service bids are unit-specific: once a generator or SC has been awarded an Ancillary Services bid, it may not provide the service from any unit other than the one that submitted the bid. Under the ISO Tariff, the ISO must procure Ancillary Services at the lowest possible cost consistent with maintaining system reliability.

41. A generator providing Ancillary Services capacity to ISO must, as a matter of law, keep its capacity "unloaded" (*i.e.*, held in reserve) unless and until the ISO issues a dispatch instruction directing it to produce energy from that reserve capacity. Moreover, a generator providing Ancillary Service capacity must, as a matter of law, follow ISO dispatch instructions when directed to produce energy out of that reserve capacity. When a generator submits a bid to provide Ancillary Services, it expressly warrants to the ISO that it is capable of providing the service and that it will comply with ISO dispatch instructions if the bid is accepted.

42. A generator providing Ancillary Services is entitled to payment for holding its capacity in reserve, regardless of whether or not the ISO calls on the generator to produce energy out of that capacity. In the event that the ISO issues a dispatch instruction to the generator to supply the energy and the generator complies, the generator is entitled to payment for both the reserve capacity and the resulting energy it provides.

43. The ISO has an exclusive possessory interest in all generating capacity it procures through the Ancillary Services markets. The ISO's interest includes the right to determine how much energy, if any, should be produced out of the capacity it has procured.

<u>The Settlement Process</u>

44. Settlement is the process administered by the ISO whereby suppliers (*i.e.*, generators and marketers) are paid for providing imbalance energy and Ancillary Services, and purchasers (*i.e.*, utilities) are billed for their usage of imbalance energy and Ancillary Services.

45. The ISO generates and sends to each SC preliminary and final settlement statements reflecting all transactions that occurred in each market the ISO administers. Under the ISO Tariff, SCs have an affirmative duty to disclose to the ISO any settlement errors in their favor that they discover. All payments from energy users are wired to a bank account in California controlled by the ISO. Similarly, all payments to SCs are wired from a California bank account

controlled by the ISO.

Misconduct in the Ancillary Services Market

46. On or about March 1999, defendants began to engage in a scheme to violate their Ancillary Services obligations. Instead of holding obligated Ancillary Services capacity in reserve, defendants frequently produced energy out of obligated capacity and "dumped" it into the real-time (BEEP) market in the absence of a dispatch instruction from the ISO. By engaging in this misconduct, defendants unlawfully received payments for both (1) Ancillary Service capacity (or reserves) that they did not keep unloaded; and (2) the energy produced out of those Ancillary Services commitments. The costs associated with the Ancillary Services commitments that defendants did not and could not fulfill have been passed on to the load-serving entities, *i.e.*, California's investor-owned and municipal utilities.

47. In addition to producing energy out of Ancillary Services capacity in the absence of a dispatch instruction, defendants failed to comply with the ISO dispatch instructions they did receive. Instead of producing energy out of obligated Ancillary Services capacity as directed by the ISO, defendants frequently delivered less energy than was required, or even none at all. By engaging in this misconduct, defendants unlawfully received payments for capacity that they did not provide, the costs of which were passed on, again, to the load serving entities, *i.e.,* California's investor owned and municipal utilities.

48. As a result of this scheme, critically important reserves that the ISO relied on to preserve the safety and reliability of the transmission system were not available to serve their intended purpose. The consequences to the safety and reliability of the transmission system were serious and far-reaching. Due in part to defendants' failure to honor their Ancillary Services obligations, the ISO fell out of compliance with WSCC reliability standards on numerous occasions. These violations carried financial penalties, the costs of which have been passed on, again, to the load-serving entities, *i.e.*, California's investor-owned and municipal utilities.

49. As a further result of this scheme, in order to make up for operating reserves that were no longer available for their intended purpose, the ISO was often forced to purchase imbalance energy on an "out-of-market" basis. Such "out-of-market" supplies were generally

much more costly than imbalance energy dispatched through the BEEP stack. In addition, as it grew to recognize that it could no longer count on defendants and other market participants to honor their Ancillary Services obligations, the ISO began procuring larger quantities of Ancillary Services than it would otherwise have had to procure under normal conditions. This, in turn, put upward pressure on the market clearing prices for Ancillary Services and increased the amount paid to all suppliers of Ancillary Services, including generators who did not hold their capacity in reserve as required. Again, these increased costs were passed on to load-serving entities, *i.e.*, California's investor-owned and municipal utilities.

50. During the summer of 1998, the ISO sent several notices addressed to all market participants, including defendants, urging them to comply with their Ancillary Services obligations and stating that failure to do so was a breach of their contracts with the ISO and a violation of the ISO Tariff. The ISO stated in these notices, among other things, that misconduct by generators and SCs was severely compromising its ability to safely operate the transmission grid, and was imposing significant, unnecessary costs on the system.

51. Notwithstanding these and other directives from the ISO, defendants and other market participants violated their Ancillary Services obligations.

52. On or about December 1998, the ISO proposed an amendment to the ISO Tariff ("Amendment 13") designed to remove the economic incentive for generators to violate their Ancillary Services obligations. Specifically, the ISO proposed that when a generator fails to provide Ancillary Services as required, it should not be paid for the capacity it failed to hold in reserve, or for any energy produced out of that capacity in the absence of a dispatch instruction.

53. On or about February 1999, FERC approved Amendment 13, and immediately thereafter the ISO began to develop a software system that would automatically implement the provisions of Amendment 13. The new system, which came to be called "No Pay," was intended to audit the performance of generating units in all hours in which they were obligated to provide Ancillary Services. No Pay would then eliminate inappropriate payments for any Ancillary Services capacity that was not held in reserve, and for any energy produced out of committed Ancillary Service capacity in the absence of a dispatch instruction. No Pay was not fully

implemented until September 2000.

54. From on or about March 1999 until the implementation of No Pay in September 2000, defendants and other market participants continued to violate their Ancillary Services obligations with impunity. They continued to collect payments for Ancillary Services they did not and could not provide, and continued to parlay the operating reserves they were required to hold off the market into highly lucrative energy deals, thus sacrificing the safety and reliability of the transmission system serving millions of Californians, all in an effort to boost their own profitability.

55. On or about September 10, 2000, in an attempt to ensure system reliability and eliminate the financial incentive for generators to fail to honor their Ancillary Services bids, the ISO fully implemented No Pay. The No Pay system has not proven to be a successful deterrent, however, and the reliability of the ISO reserves system continues to be threatened by the misconduct of the defendants and other generators and SCs.

56. From September 10, 2000 to the present, defendants and other market participants have continued to violate their obligations to keep Ancillary Service capacity unloaded and available when bid successfully into the ISO market.

FIRST CAUSE OF ACTION ALLEGED AGAINST ALL DEFENDANTS

(Violation of Cal. Business & Professions Code § 17200)

57. Plaintiff incorporates by reference paragraphs 1 through 56 inclusive, as if fully set forth herein.

58. Section 17200 of the California Business & Professions Code prohibits unfair competition, which includes any unlawful, unfair, or fraudulent business act or practice.

59. California law prohibits the wrongful taking or substantial interference with the personal property of another.

60. MIRANT AMERICAS ENERGY MARKETING, MIRANT DELTA, MIRANT POTRERO, and their agents violated their respective SCA and PGAs, as amended from time to time.

61. From on or about March 1999 through September 9, 2000, defendants, and each of

them, engaged in unlawful, unfair, or fraudulent business acts or practices, which include, but are not limited to, the following:

a. Defendants converted, and conspired to engage in and did engage in a scheme to convert, Ancillary Services capacity and/or monies to which the ISO had an exclusive right of possession by (1) using the same energy capacity that they had sold to the ISO in the form of Ancillary Services to generate electricity to sell a second time into the real-time market, in the absence of a dispatch instruction, and/or (2) failing to comply with ISO dispatch instructions to produce energy out of committed Ancillary Services capacity;

b. In addition, defendants submitted, and conspired to engage in and did engage in a scheme to submit, thousands of bids to provide Ancillary Services on behalf of the participating generators, MIRANT DELTA and MIRANT POTRERO, by falsely and misleadingly warranting to the ISO that the underlying Ancillary Services capacity bid into the market would remain available and unloaded as required by law and that they would comply with the ISO's dispatch instructions to provide that capacity upon request;

c. In addition, defendants unlawfully failed to comply, and conspired to engage in and did engage in a scheme to unlawfully fail to comply, with ISO dispatch instructions to produce energy out of Ancillary Services capacity sold to the ISO as operating reserves;

d. In addition, defendants violated their agreements, and conspired to engage in and did engage in a scheme to violate their agreements, to keep said Ancillary Services capacity unloaded and available. On thousands of occasions defendants failed to comply with their obligations by (1) causing the same capacity to be sold again as energy into the real-time market, and/or (2) failing to provide the committed Ancillary Services capacity altogether;

e. In addition, defendants accepted payments, and conspired to engage in and did engage in a scheme to accept payments, for Ancillary Services that they did not and could not provide, and unlawfully failed to notify the ISO that settlements errors had been made in their favor; and

f. In addition, defendants accepted payments, and conspired to engage in and did engage in a scheme to accept payments, for energy capacity that they unlawfully sold into the real-time market, even though they had no ownership interest in that energy, having sold the underlying capacity to the ISO as Ancillary Services.

62. From on or about September 10, 2000 to the present, defendants, and each of them, have engaged and continue to engage in unlawful, unfair, or fraudulent business acts or practices, which include, but are not limited to, the following:

a. Defendants have failed to honor their Ancillary Services agreements and have conspired to engage in, and have engaged in, a scheme to fail to honor their Ancillary Services capacity bids, despite the implementation of No Pay, by (1) using the same energy capacity that they had sold to the ISO in the form of Ancillary Services to generate electricity to sell a second time into the real-time market, in the absence of a dispatch instruction, and/or (2) failing to comply with ISO dispatch instructions directing them to produce energy out of committed Ancillary Services capacity;

b. In addition, defendants submitted, and conspired to engage in and did engage in a scheme to submit bids to provide Ancillary Services on behalf of the participating generators, MIRANT DELTA and MIRANT POTRERO, by falsely and misleadingly warranting to the ISO that the underlying Ancillary Services capacity committed would remain available and unloaded as required by law and that they would comply with the ISO's dispatch instructions;

c. In addition, defendants violated their agreements, and conspired to engage in and did engage in a scheme to violate their agreements, to keep said Ancillary Services capacity unloaded and available. Defendants failed to comply with their obligations by (1) causing the same capacity to be sold again into the real-time market, and/or (2) failing to provide the committed Ancillary Services capacity altogether.

63. As a result of the conduct alleged above, defendants, through their SC, MIRANT AMERICAS ENERGY MARKETING, unlawfully and unfairly collected millions of dollars in payments for Ancillary Services they did not provide, and for energy sold into the real-time market that was legally required to be held in reserve, in specific amounts to be subject to proof at trial.

64. As a further result of the conduct alleged above, the ISO has faced and continues to

face serious threats to system reliability because operating reserves it was relying on to maintain the reliability of the transmission grid were not available. In many instances, after discovering that defendants had failed to honor their Ancillary Services bids, the ISO was required to purchase emergency supplies of electricity at prices much higher than normal to keep the system in balance. Further, because it could not rely on defendants to honor their obligations, the ISO was required to procure greater amounts of Ancillary Services than it normally would have needed to meet its reserve requirements, which put upward pressure on the market clearing prices for Ancillary Services.

65. As a further result of the conduct alleged above, the ISO has incurred substantial costs for services never received. Those costs have been borne by the utilities, who act as intermediaries to provide consumers and businesses with electricity, and by California's ratepayers and taxpayers. The magnitude of the incremental costs incurred by the ISO to safely and reliably operate the system in the face of said conduct will be subject to proof at trial.

66. As a further result of the conduct alleged above, the ISO and its market participants have incurred substantial penalties from various market-monitoring entities, including the WSCC.

67. Defendants' continuing wrongful conduct, as alleged above, unless and until restrained by an Order of this Court, will further cause great and irreparable harm to the safety and reliability of the California electricity market and to California's ratepayers and taxpayers.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment against defendants, and each of them, as follows:

1. For a preliminary and permanent injunction, as authorized by Cal. Bus. & Prof. Code § 17203, enjoining defendants, and each of them, their successors, agents, representatives, employees and all persons acting in concert with them, from engaging in unfair competition as defined in Cal. Bus. & Prof. Code § 17200, including, but not limited to the types of acts or practices alleged herein;

2. For an order directing defendants to pay restitution in an amount according to proof;

3. For an order directing defendants to disgorge all monies, including any profits, they gained as a result of their violations of Cal. Bus. & Prof. Code § 17200 in an amount according to proof;

4. For an order assessing civil penalties of two thousand five hundred dollars ($2,500) against each defendant for each violation of Cal. Bus. & Prof. Code § 17200, as authorized by Cal. Bus. & Prof. Code § 17206, in an amount according to proof;

5. For costs of suit incurred herein; and

6. For such other and further relief as the nature of the case may require and the Court deems just and proper.

Dated: March 11, 2002

Respectfully submitted,

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