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SAN FRANCISCO COUNTY
SUPERIOR COURT

SECTION 11:30

CLERK

9 Attorneys for THE STATE OF CALIFORNIA

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN FRANCISCO

12
13 THE PEOPLE OF STATE OF CALIFORNIA, *ex rel*
14 BILL LOCKYER, ATTORNEY GENERAL,

15 Plaintiffs,

16 v.

17 HANSON BUILDING MATERIALS AMERICA,
18 INC., HANSON AGGREGATES WEST, INC.,
HANSON AGGREGATES MID-PACIFIC, INC.,
19 HANSON MARINE OPERATIONS, INC., MARINE
AGGREGATE SERVICES, INC., MOE SAND
20 COMPANY, TIDEWATER SAND & GRAVEL,
INC., JAMES PETERSON, JOEL PETERSON,
21 ELLEN R. SEABORN, OLIN JONES SAND
COMPANY, JONES SAND COMPANY, OLIN
22 JONES, AND DOES 1-50,

23 Defendants.

Case No.: 323842

COMPLAINT IN INTERVENTION

Violations of False Claims Act
(Gov't Code § 12650 et seq.)

Conversion of Mineral Deposits
(Public Resources Code §6224.2)

Unlawful Business Practices
(Bus. & Prof. Code § 17200)

24 Plaintiff the People of the State of California ("State") *ex rel* Bill Lockyer, Attorney
25 General alleges as follows:

26 INTRODUCTION

27 1. This action arises under the California False Claims Act, Government Code
28 section 12650 et seq. It was originally filed under seal by *qui tam* Kevin Bartoo on or about

1 wholly owned subsidiary of Hanson Building Materials America, Inc., and is licensed to do and
2 does business in California.

3 7. Defendant Hanson Aggregates Mid-Pacific, Inc., is a Delaware corporation
4 engaged in the business of manufacturing and selling building supplies in the Western United
5 States, and is licensed to do and does business in California.

6 8. Hanson Marine Operations, Inc., is a California corporation formerly known as
7 Moe Sand Co., Inc., with its principal place of business in California.

8 9. Marine Aggregate Services, Inc., is a California corporation formerly known as
9 Olin Jones Sand Co., Inc., with its principal place of business in California.

10 10. Defendants Hanson Aggregates Mid-Pacific, Inc. ("HAMP"), Hanson Marine
11 Operations, Inc. ("Hanson Marine"), and Marine Aggregate Services, Inc. are referred to
12 collectively herein as "Hanson."

13 11. Defendant Moe Sand Company (Moe) was a California partnership with its
14 principal place of business in Oakland, California.

15 12. Defendant Tidewater Sand & Gravel, Inc. (Tidewater) was a California
16 corporation with its principal place of business in Oakland, California.

17 13. Defendant James Peterson is an individual who owned interests in Moe and
18 Tidewater until the sale of those companies to Hanson in or about July 1999, and actively
19 participated in the fraudulent schemes described herein.

20 14. Defendant Joel Peterson is an individual who owned interests in Moe and
21 Tidewater until the sale of those companies to Hanson in or about July 1999, and actively
22 participated in the fraudulent schemes described herein.

23 15. Defendant Ellen R. Seaborn is an individual who owned an interest in Moe until
24 the sale of that company to Hanson in or about July 1999, and who previously owned an interest
25 in Tidewater, and actively participated in the fraudulent schemes described herein.

26 16. Defendant Olin Jones Sand Company (Olin Jones Sand) was a California
27 corporation with its principal place of business in Martinez, California.

28 17. Defendant Jones Sand Company (Jones Sand) was a California corporation with

1 its principal place of business in California.

2 18. Defendant Olin Jones (Jones) is an individual who owned interests in Olin Jones
3 Sand Company and Jones Sand Company, until the sale of those companies to Hanson in or
4 about December 1999, and actively participated in the fraudulent schemes described herein.

5 19. Defendant Moe was the alter ego of Defendant Tidewater, and Defendant
6 Tidewater was the alter ego of Defendant Moe. In about July 1999, Hanson acquired all of
7 Tidewater's stock as well as the partnership interest in Moe, and is the successor in interest to
8 Tidewater and Moe.

9 20. In about December 1999, Hanson acquired all of the stock in Olin Jones Sand and
10 Jones Sand.

11 21. In March 2000, Hanson Aggregates Mid-Pacific merged with Tidewater, and in
12 September 2000 it merged with Jones Sand. As part of its mergers with Tidewater and Jones
13 Sand, Hanson Aggregates Mid-Pacific expressly assumed all assets and liabilities of Tidewater
14 and Jones Sand.

15 22. The true names and capacities, whether corporate, associate, individual,
16 partnership or otherwise of defendants Does 1 through 50, inclusive, are unknown to the State
17 which therefore sues said defendants by such fictitious names. The State will seek leave of court
18 to amend this complaint to allege their true names and capacities when the same are ascertained.
19 On information and belief, at all relevant times each of the defendants, including Doe defendants,
20 was and is the agent, employee, employer, joint venturer, representative, alter ego, subsidiary,
21 and/or partner of one or more of the other defendants, and was, in performing the acts
22 complained of herein, acting within the scope of such agency, employment, joint venture, or
23 partnership authority, and/or is in some other way responsible for the acts of one or more of the
24 other defendants.

25 JURISDICTION AND VENUE

26 23. On information and belief, all of the Defendants reside in the State of California.
27 Each Defendant engaged in conduct directed at the State in perpetrating the deceptive schemes
28 described below.

1 24. Venue is proper in this Court because the Defendants transact business in San
2 Francisco County and some of the acts alleged herein occurred in this venue.

3 THE FRAUDULENT SCHEMES AND UNFAIR PRACTICES

4 25. By methods as sophisticated as fictitious pricing schemes to as simple as outright
5 conversion, Defendants have knowingly and systematically cheated California taxpayers out of
6 tens of millions of dollars in royalties on State-owned sand over the past ten years. From as early
7 as 1992, Defendants: (1) falsified royalty reports to the State by misstating sand prices used to
8 calculate royalties; (2) under-reported the amounts of sand they dredged, thereby avoiding
9 royalties on the unreported sand; and (3) took over two million cubic yards of sand from
10 submerged state lands where they did not have leases.

11 26. By failing to pay State royalties and converting State sand, Defendants reaped
12 huge economic benefits at the expense of State taxpayers. Defendants became so adept at these
13 practices that one company bragged, just before the company was sold to Defendant Hanson for
14 \$44 million in cash, that “tremendous hikes in profitability” pushed the company into “a new era
15 of performance with gross profit margins in excess of 50% of revenues.” Olin Jones, an owner
16 of another sand mining company, boasted to a State environmental agency staffer, after he was
17 fined for excessive sand dredging, that sand mining was so lucrative they couldn’t fine sand
18 miners enough to make them stop over-dredging: it was “like mining gold.”

19 27. Defendants knew they were taking sand from State property and directed their
20 tugboat captains to prospect for quality sand without regard to lease boundaries and the State’s
21 property rights. Moe and Tidewater principals, including Defendants James and Joel Peterson,
22 told tugboat captains to find quality sand and never directed tugboat captains to stay on lease
23 boundaries or to refrain from mining sand on State lands outside of lease boundaries. Similarly,
24 Olin Jones Sand and Jones Sand, through their principal, Defendant Olin Jones, instructed their
25 tugboat captains to go outside the lease areas and “feel around, [and] look around” for quality
26 sand. As a result of Defendants’ improper directives, from as early as 1992 until their companies
27 were sold in 1999, Moe, Tidewater, Olin Jones Sand and Jones Sand knowingly dredged and sold
28 millions of cubic yards of sand mined, without authorization, from State lands.

1 28. Hanson knew about Olin Jones Sand and Moe's prospecting activities when it
2 purchased the companies in 1999. During Hanson's due diligence efforts prior to the purchase of
3 Olin Jones Sand and Moe, Hanson executives discovered that the sand dredgers were simply
4 searching for quality sand by conducting test dredging and, consequently, that dredging activity
5 had occurred outside the lease boundaries throughout the history of dredging in the area. Hanson
6 also discovered that the sand dredgers' prospecting was specifically designed to ensure best
7 quality cargoes and, thus, the mining was concentrated and occurred outside the lease areas.
8 Despite this knowledge of ongoing and improper dredging activities, Hanson continued dredging
9 outside of its lease boundaries, taking hundreds of thousands of cubic yards of State sand without
10 notifying the State of its activities or paying for the State for the sand it took.

11 **The Moe, Tidewater and Peterson Defendants' Liability for Misrepresenting**
12 **Royalty Obligations to the State**

13 29. Beginning in or about 1957, Moe entered into a series of leases with the
14 Commission by which Moe was given the rights to dredge sand and gravel from certain sites in
15 the San Francisco Bay, in return for payment of royalties to the Commission based on the value
16 of the dredged material. By 1993 Moe held three Commission leases; Presidio Shoals, lease
17 number 709.1, Angel Island, lease number 2036.1, and Alcatraz, lease number 7780. In 1999,
18 Hanson assumed all of the leases held by Moe at that time.

19 30. Pursuant to the terms of various leases at issue, Defendants were required to pay
20 royalties to the Commission based on a formula whereby a percentage of the weighted average
21 gross sales price for sales of sand and gravel extracted from lease lands, including both inside
22 and outside sales, is multiplied by the total amount of extracted sand and gravel. An "Inside
23 Sale" is defined in the leases as the transfer or sale of sand and gravel to companies or business
24 entities owned or controlled by lessee. An "Outside Sale" is defined as the sale of sand and
25 gravel to third parties. The "Gross Sales Price" is defined as the actual sales price for outside
26 sales, and for inside sales, as the fair market value of the same material sold in outside sales by
27 Lessee, but never less than the average retail fair market value of the same material sold by
28 similar companies in Lessee's sales and marketing area.

1 31. At all relevant times alleged herein, sales from Moe to Tidewater were inside
2 sales under the terms of the leases since Tidewater was owned and controlled by the same
3 individuals and entities who owned or controlled Moe.

4 32. At all relevant times alleged herein, Defendants Moe and Ellen Seaborn regularly
5 submitted either monthly or quarterly reports (royalty reports) to the Commission stating the
6 quantities dredged from the lease site, and the royalty amounts owed pursuant to the terms of the
7 leases. According to the leases, the royalty amounts owed to the Commission were calculated
8 based on a weighted average sales price (WASP) which included both wholesale sales (sales
9 from Moe by the barge load) and retail sales (sales from Moe's affiliate (Tidewater) at its
10 facility). Prior to 1993, Moe submitted royalty reports which properly calculated the royalty
11 amounts owed to the Commission: that is those calculations included sales from both Moe and
12 its affiliate, Tidewater. Although the WASP changed from report to report based on the
13 changing market price of sand, the WASPs reported for the pre-1993 reports are consistently
14 higher than the WASPs reported thereafter.

15 33. Beginning in 1993 and continuing until the company was sold to Hanson in July
16 1999, Moe stated on each of its monthly or quarterly reports with respect to leases 709.1, 2036.1,
17 and 7780.1, a false royalty amount owed to the Commission. Moe's reported amount of royalty
18 owed was much less than what was actually owed to the Commission. Moe calculated this false
19 amount by purposefully manipulating the WASP in two ways: first, it calculated the WASP
20 based on only wholesale sales (barge load sales from Moe to Tidewater), and stopped including
21 the retail sales as required by the leases; second, in calculating the WASP, it used arbitrary sales
22 prices that were as low as 1/3 the actual gross sales price of the sand sold in wholesale sales. The
23 WASPs used for post-1993 reports are consistently lower than those in pre-1993 reports.

24 34. The first royalty manipulation described above, i.e. elimination of the retail sales
25 in the WASP calculation, was executed when Defendants Moe, Tidewater, Joe Peterson, Jim
26 Peterson and Ellen Seaborn unilaterally and secretly changed the method by which they
27 calculated royalties in contradiction to the lease and to the detriment of the State. Beginning with
28 its 1993 reports, and on all reports thereafter, Defendant Ellen Seaborn falsely certified to the

1 Commission that the WASP was true and correct as calculated under the terms of the leases. In
2 fact, Defendants knew that the WASP was not calculated pursuant to the terms of the lease and
3 failed to disclose such to the Commission.

4 35. Defendants Moe and Ellen Seaborn executed the second manipulation described
5 above, i.e. relying on arbitrary sales prices instead of the gross wholesale sales price, as follows.
6 Beginning in 1993, for sales from Moe to third parties, Defendants charged third parties prices
7 consisting of two components: a token product charge and a demurrage fee, which theoretically
8 includes a fee for transportation, opportunity cost and other miscellaneous costs. Defendants
9 reported to the Commission the token product price only, despite the fact that the demurrage fee
10 should have been included as a component of the actual sales price and should have been
11 included in the royalty owed to the Commission. Then, beginning in 1998, Defendants further
12 manipulated the royalty calculation by 1) dividing the gross sales price into yet another
13 component called "royalty fee" which was not included in the price for purposes of royalty
14 calculations; and 2) increasing the size of the demurrage component and reducing the token
15 product price. As a result of these manipulations, the actual price to customers and the profits to
16 Defendants increased over time, while royalties actually paid to the State decreased substantially
17 below what was actually owed to the State.

18 **The Moe, Tidewater and Peterson Defendants' Liability for Misrepresenting The**
19 **Quantities of Sand Dredged on State Lands**

20 36. Defendants Moe and Tidewater also falsely reported the quantities of sand and
21 gravel Defendants dredged from the leases. Specifically, Moe consistently charged outside
22 customers for full barge loads of sand consisting of 2,400 cubic yards. However, Moe
23 consistently under-reported the amount of sand it dredged and sold to its affiliate Tidewater,
24 falsely stating in dredge reports that it dredged and delivered 2,300 cubic yard barge loads to
25 Tidewater. In fact, Moe consistently delivered 2,400 cubic yard barge loads of sand to
26 Tidewater, but falsely reported lower cubic yard amounts in its dredge reports and falsely
27 understated its sand dredging totals in royalty reports Moe submitted to the Commission.

28 37. Defendants Moe and Tidewater, also made false statements to the State and

1 created false records claiming Moe was dredging, and Tidewater was selling, sand from private
2 tidelands in the Suisun Bay when in fact Moe was dredging, and Tidewater was selling, sand
3 mined from State lands in the Suisun Bay.

4 38. Defendant Moe held sand mining leases on private tidelands owned by Luis
5 Grossi near Middleground Island (“Grossi Lease”) in the Suisun Bay. Defendants Moe,
6 Tidewater, Joe Peterson, Jim Peterson and Ellen Seaborn created, or assisted in creating, false
7 records, including royalty reports, dredging reports and sales reports, showing that Moe and
8 Tidewater were dredging sand and gravel from the Grossi Lease site, when in fact Moe and
9 Tidewater were dredging and selling higher quality sand from State properties for which Moe
10 and Tidewater did not hold leases or permits.

11 **The Jones Defendants’ Liability for Misrepresenting Royalty**
12 **Obligations to the State**

13 39. Beginning in about 1980, Olin Jones Sand entered into a series of leases with the
14 Commission by which Olin Jones Sand was given the rights to dredge sand and gravel from
15 certain sites in the San Francisco Bay and Suisun Bay, in return for payment of royalties to the
16 Commission based on the value of the dredged material.

17 40. By the mid 1990s Olin Jones Sand held Commission leases near Angel Island,
18 lease number 7779.1, and in Suisun Bay, lease number 7781. In 1999, Hanson assumed all of the
19 leases held by Jones at that time.

20 41. The Angel Island and Suisun Bay leases required Olin Jones Sand to calculate
21 royalties as a percentage of the gross weighted average sales price of sand. The leases also
22 provided that the “gross sales price” used to calculate the WASP should be the actual sales price
23 when Olin Jones Sand sold sand directly to third party purchasers (“outside sales”). However, if
24 Olin Jones Sand first transferred sand to its affiliate Jones (“inside sale”), which then sold sand to
25 third party purchasers, the “gross sales price” would be a calculated number which was not less
26 than the “average retail market value” of the sand.

27 42. At all relevant times alleged herein, sales from Olin Jones Sand to Jones Sand
28 were inside sales under the terms of the leases since Olin Jones Sand was owned and controlled

1 by the same individuals and entities who owned or controlled Jones Sand.

2 43. At all relevant times alleged herein, Defendants Olin Jones Sand and Olin Jones
3 submitted quarterly reports (royalty reports) to the Commission stating the quantities dredged
4 from the lease site, and the royalty amounts owed pursuant to the terms of the leases.

5 44. From the time Olin Jones Sand began dredging sand from State lease number
6 7779.1 in 1995, and lease number 7781.1 in 1997, Olin Jones Sand and Olin Jones submitted
7 royalty reports to the Commission that falsely stated the WASP for sand mined from State lands
8 and sold by Olin Jones Sand and Jones Sand. Instead of reporting a WASP that included
9 consideration of both wholesale and retail sales as directed by the leases, Defendants reported a
10 false and deflated sand price and an improperly calculated royalty payment of \$.65 per cubic
11 yard.

12 45. Olin Jones Sand and Olin Jones falsely stated the sales price of sand to the State
13 and avoided royalty obligations by manipulating sand prices in two ways. First, when they
14 "sold" sand to themselves -- transferring it from Olin Jones Sand to its affiliate Jones Sand
15 Company they did not use the "average fair retail market price" of sand in calculating royalties
16 for the transferred sand. Instead, Olin Jones Sand improperly used nominal sand prices charged
17 between Olin Jones Sand to its affiliate Jones Sand Company when calculating royalties for the
18 transferred sand and ignored altogether the actual retail price of sand.

19 46. Olin Jones Sand Company also under-reported and under-paid royalties using a
20 second price manipulation by breaking their barge prices for sand into multiple component parts
21 and deducting each component from the gross sales price charged to their direct barge load
22 customers. Olin Jones Sand Company then improperly used the resulting (and significantly
23 reduced) net price of sand to their direct barge load customers in calculating the State's royalties.

24 47. Each of these practices of Defendants Olin Jones Sand, Jones Sand and Jones,
25 which persisted from 1995 through 1999 caused significant and unauthorized reductions in
26 royalties paid by the sand companies to the State and resulted in numerous violations of the False
27 Claims Act based upon multiple false royalty reports submitted by Olin Jones Sand to the
28 Commission.

1 **The Jones Defendants' Liability for Misrepresenting The Location And Extent of**
2 **Dredging Activity on State Lands**

3 48. Defendants Olin Jones Sand, Jones Sand and Jones also falsely reported on their
4 royalty reports the quantities of sand and gravel Defendants dredged from the leases. Defendant
5 Olin Jones Sand held sand mining leases to dredge and sell sand from the Grossi Lease.
6 Defendants Olin Jones Sand, Jones Sand and Jones created, or assisted in creating, false records,
7 including royalty reports, dredging reports and sales reports, claiming that Olin Jones Sand was
8 dredging sand and gravel from the Grossi Lease site, when in fact it was dredging and selling
9 higher quality sand from State properties for which Defendants Olin Jones Sand, Jones Sand and
10 Jones did not hold leases or permits.

11 **The Hanson Defendants' Liability for Misrepresenting Royalty**
12 **Obligations to the State**

13 49. When the Hanson Defendants acquired Moe, Tidewater, Olin Jones Sand and
14 Jones Sand in 1999, Hanson continued the practices of the purchased companies described
15 above, as set forth in paragraphs 25 through 48.

16 50. The terms of the leases Hanson Marine acquired required Hanson Marine to pay
17 royalties to the Commission based on the formulas contained in the Moe and Olin Jones Sand
18 leases described in detail above.

19 51. At all relevant times alleged herein, sales from Hanson Marine to HAMP were
20 inside sales under the terms of the leases since Hanson Marine was owned and controlled by
21 HAMP.

22 52. At all relevant times alleged herein, Hanson Marine submitted either monthly or
23 quarterly reports (royalty reports) to the Commission stating the quantities dredged from the lease
24 sites, and the royalty amounts owed pursuant to the terms of the leases. According to the leases,
25 the royalty amounts owed to the Commission were calculated based on a WASP which included
26 both wholesale sales (sales from Hanson Marine by the barge load) and retail sales (sales from
27 Hanson Marine's affiliate (HAMP) at its facility).

28 53. From the time the Hanson Defendants acquired Moe, Tidewater, Olin Jones Sand

1 and Jones Sand in 1999, Hanson Marine stated on each of its monthly or quarterly reports with
2 respect to the leases it acquired, a false royalty amount owed to the Commission. Hanson
3 Marine's reported amount of royalty owed was much less than what was actually owed to the
4 Commission. Hanson Marine simply adopted Moe's and Olin Jones Sand's improper royalty
5 calculation methodology and continued manipulating the WASP in the same way by: (1)
6 calculating the WASP based on only wholesale sales; (2) by excluding retail sales from their
7 WASP calculations; and (3) by using arbitrary sales prices that were as low as 1/3 the actual
8 gross sales price of the sand sold in wholesale sales.

9 54. Hanson Marine falsely certified to the Commission that the WASP was true and
10 correct as calculated under the terms of the leases. In fact, Hanson Marine knew that the WASP
11 was not calculated pursuant to the terms of the lease and failed to disclose such to the
12 Commission.

13 55. Hanson Marine also continued its predecessors' practices of manipulating sand
14 prices and reporting a false WASP which was not based on the true gross sales price of sand but
15 on a nominal or net price after various charges lumped into a "demurrage fee" were stripped out
16 of the reported WASP. Hanson Marine reported to the Commission the nominal WASP price
17 only, and used the nominal WASP to calculate the State's royalty despite the fact that the gross
18 sales WASP should have been reported and used to calculate the royalties owed to the
19 Commission.

20 **The Hanson Defendants' Liability for Misrepresenting The Location And Extent of**
21 **Dredging Activity on State Lands**

22 56. Defendant Hanson Marine also falsely stated the quantities of sand and gravel
23 Defendants dredged from the State lands. Specifically, Defendant Hanson Marine acquired the
24 Moe and Olin Jones Sand leases to dredge and sell sand from the Grossi Lease. Defendants
25 Hanson Marine and HAMP created, or assisted in creating, false records, including royalty
26 reports, dredging reports and sales reports, claiming that Hanson Marine was dredging sand and
27 gravel from the Grossi Lease site, when in fact Hanson Marine was dredging and selling higher
28 quality sand from State properties for which Defendants Hanson Marine and HAMP did not hold

1 leases or permits.

2 **Defendants' False Statements and Submissions of False Records to the State**
3 **Misrepresenting The Extent of their Dredging Activity in the Suisun Bay**

4 57. Defendants also submitted false records and made false statements to a number of
5 government regulatory agencies, including, but not limited to the Commission, the San
6 Francisco Bay Conservation and Development Commission (the "BCDC") and California
7 Regional Water Quality Control Board (the "Board"), which misrepresented to the State the true
8 nature and extent of Defendants' dredging activities on State lands.

9 58. The BCDC is a California state agency which is responsible for carrying out two
10 state laws--the McAteer-Petris Act and the Suisun Marsh Preservation Act--and two plans--the
11 San Francisco Bay Plan and the Suisun Marsh Protection Plan. These laws and plans were
12 adopted to protect the Bay and the Suisun Marsh as natural resources for the benefit of the public
13 and to ensure that development is compatible with this protection. The membership of the
14 BCDC includes representatives of numerous State and local agencies including the State Lands
15 Commission.

16 59. Within the primary management area of the Suisun Marsh, the BCDC authorizes
17 development that is consistent with the applicable certified local protection program or, in the
18 absence of a certified program, with the provisions of the Suisun Marsh Preservation Act and the
19 policies of the Suisun Marsh Protection Plan. These acts, plans and programs require that
20 existing land and water uses should be managed to enhance the quality and diversity of aquatic
21 and wildlife habitat.

22 60. It is necessary for every commercial sand miner, including the Defendants in this
23 case, to obtain BCDC approval prior to extracting sand from the bottom of the San Francisco Bay
24 or Suisun Bay. To obtain the required BCDC approval, it is necessary to complete an
25 application, provide the necessary additional information and exhibits, and pay a processing fee.
26 A public hearing will then be held on an application for a major project. Thereafter, if the BCDC
27 votes to approve the project, a permit with relevant conditions will be issued. Work on a project
28 needing BCDC authorization cannot begin until the necessary approval has been secured.

1 61. Throughout the 1980s and 1990s, the BCDC communicated with Defendants in
2 writing, in meetings and in telephone conversations explaining BCDC's role in regulating
3 dredgers in the San Francisco Bay and Suisun Bay. Defendants were told that BCDC was
4 charged with monitoring the environmental impact of Defendants' dredging activities in the San
5 Francisco Bay and Suisun Bay. As part of this oversight BCDC restricted the areas in which
6 Defendants could dredge and the quantities Defendants were authorized to remove from the San
7 Francisco Bay and Suisun Bay.

8 62. Throughout the 1980s and 1990s, Defendants were told by BCDC staff that they
9 were not to engage in commercial sand mining operations in the San Francisco Bay or Suisun
10 Bay without valid permits and that BCDC did not issue permits unless sand miners had a valid
11 existing lease with the State Lands Commission that allowed the dredgers to mine sand from
12 State property and sell the sand at various unloading and distribution facilities in the Bay Area.

13 63. Throughout the 1990s, the BCDC emphasized to Defendants that the companies
14 must accurately report their dredging activities in the San Francisco Bay and Suisun Bay and that
15 state agencies, including the Commission and BCDC, were relying on Defendants' annual reports
16 to assess the environmental impact of Defendants' dredging activity in the San Francisco Bay
17 and Suisun Bay which serve as migration paths for fish species, like the winter-run chinook
18 salmon, Delta smelt and herring. Defendants were also informed by BCDC of the importance of
19 accurately reporting dredging activities in annual reports and in semi-annual surveys of dredged
20 sand shoals which Defendants were obligated to perform pursuant to the terms of their permits.
21 The BCDC and the Commission emphasized to Defendants that the accuracy of information
22 regarding the location and volume of sand dredged was essential for state agencies, including the
23 Commission and the BCDC, to discern any potential depletion of State sand resources and the
24 environmental effects to the sand shoals in the Bay from Defendants' sand mining operations.

25 64. Defendants submitted applications for various major permits to authorize sand
26 dredging in several locations throughout the Bay in the 1990s. Defendants' permit applications
27 purported to identify the specific location of their proposed dredging projects in the Suisun Bay
28 as well as the proposed quantity of sand Defendants intended to mine from the Suisun Bay.

1 However, in direct violation of their obligation to the State and various State regulating agencies,
2 including the Commission and the BCDC, Defendants misrepresented the true extent of their
3 sand mining operations in the Suisun Bay. Specifically, although Defendants submitted
4 applications for dredging sand on what they claimed was the Grossi Lease site, the vast majority
5 of Defendants' dredging operations in the Suisun bay were in fact carried out on State lands to
6 the east and west of the Grossi Lease site where Defendants did not have BCDC permits or
7 Commission leases. Defendants' permit applications materially misrepresented the geographic
8 location of their proposed dredging activity and falsely stated that their projected mining
9 activities involved privately owned sand when, in fact their operations involved mining and
10 selling sand owned by the State.

11 65. Defendants also submitted annual reports to the BCDC throughout the 1990s
12 purportedly identifying the quantities of sand dredged, the location where sand was dredged, the
13 resale location where Defendants sold sand it mined from the Bay, and any changes in the area
14 dredged by Defendants. Numerous of these annual reports falsely stated that Defendants were
15 mining sand on the Grossi Lease site when, in fact, they were taking hundreds of thousands of
16 cubic yards of valuable sand annually from State lands in the Suisun Bay to the east and west of
17 the Grossi Lease. Defendants' annual reports to the BCDC materially misrepresented the
18 geographic location of their actual dredging activity, falsely stating that actual mining activities
19 involved privately owned sand when, in fact the Defendants' operations involved mining and
20 selling sand owned by the State. Olin Jones Sand's and Hanson Marine's annual reports also
21 falsely stated the quantities of sand they were mining in the Suisun Bay by failing to account for
22 hundreds of thousands cubic yards of sand Olin Jones Sand and Hanson Marine mined annually
23 and sold at various locations in the Bay Area.

24 66. Defendants also filed false documents with the Board which concealed
25 Defendants' substantial and unauthorized sand mining operations in the Suisun Bay and their
26 obligation to pay the State for State sand Defendants mined. Specifically, because of its sand
27 mining operations in the Suisun Bay, Defendants were required to, and did, submit applications
28 for permits to the Board. These applications required Defendants to disclose: (a) the proposed

1 location of sand mining, including a map and State Lands Commission lease number (if
2 applicable); (b) the proposed range and depth at which mining will occur; (c) the description of
3 timing of tidal stages during operations; (d) the quantity of proposed material to be dredged; and
4 (e) a description of the equipment and method of the operation to be used.

5 67. Defendants' permit applications to the Board falsely stated the location of
6 Defendants' sand mining operations in the Suisun Bay, and Olin Jones Sand's and Hanson
7 Marine's permit applications failed to account for hundreds of thousands cubic yards of sand they
8 mined annually from the Suisun Bay.

9 68. Defendants also submitted quarterly reports to the Board that purported to set
10 forth Defendants' quarterly dredging activity in the San Francisco Bay and Suisun Bay by
11 identifying the location of dredging activity and the quantities of mined sand. Each of these
12 reports falsely stated the geographic location of Defendants' sand mining activities in the Suisun
13 Bay. None of these reports disclosed that Defendants were, in fact, mining substantial quantities
14 sand to the east and west of the Grossi Lease in the Suisun Bay. Each of these reports, submitted
15 by Olin Jones Sand and Hanson Marine also falsely stated the quantity of sand they mined by
16 failing to disclose hundreds of thousands of cubic yards of sand Olin Jones Sand and Hanson
17 Marine mined in the Suisun Bay to the west of the Grossi Lease.

18 69. The State is informed and believes that Defendants were aware of the falsity of
19 their statements, applications, and submissions or acted in deliberate ignorance or with reckless
20 disregard of the truth. To the extent that Defendants claim that they did not know their
21 statements, applications, and submissions were false at the time they were made, they failed to
22 notify the State once they learned of their falsity.

23 70. As a result of Defendants' creation of false records, submission of false records to
24 the State, and use of false statements regarding their dredging activities as alleged above, the
25 State suffered damages from the conversion of State property and loss of royalty payments in a
26 specific amount to be shown at trial.

27 **The Moe/Tidewater Conspiracy**

28 71. Defendants Moe, Tidewater, Ellen Seaborn, James Peterson and Joel Peterson

1 have, through their agents, subsidiaries, and/or associated companies, participated in the
2 conspiracy in violation of Government Code section 12651, subdivision (a)(3), by, among other
3 things, creating and maintaining an artificial billing system whereby Moe and Tidewater broke
4 the gross price of sand charged to their customers into multiple component "fees" for
5 transportation, unloading, standby time, and royalty. Moe, Tidewater, Ellen Seaborn, James
6 Peterson and Joel Peterson agreed among themselves that Tidewater would bill sand purchasers
7 for every component of the price of sand with the exception of the royalty fee and a nominal sand
8 charge remaining after all other fees were removed from the sand price. Defendants Moe,
9 Tidewater, Ellen Seaborn, James Peterson and Joel Peterson further agreed that, in direct
10 violation of Moe's leases with the Commission, Moe would use the nominal sand price rather
11 than the gross price charged to sand purchasers in calculating the State's royalty. Through this
12 component pricing scheme, Moe, Tidewater, Ellen Seaborn, James Peterson and Joel Peterson
13 acted to further their conspiracy to avoid obligations to the State by creating artificial and falsely
14 deflated sales prices for sand which Moe used to calculate the State's royalty and to create false
15 royalty reports which Moe submitted to the State. Defendants Moe, Tidewater, Ellen Seaborn,
16 James Peterson and Joel Peterson thereby conspired to, and did, create and use false statements
17 and records to conceal, avoid and decrease an obligation to pay the State in violation of
18 Government Code section 12651, subdivision (a)(3).

19 72. Defendants Moe, Tidewater, Ellen Seaborn, James Peterson and Joel Peterson
20 have, through their agents, subsidiaries, and/or associated companies, also participated in a
21 conspiracy by agreeing among themselves to prospect for sand on State lands and to create and
22 use false statements and records with the intent to avoid their obligation to pay the State for the
23 sand they mined from State lands. Defendants Moe, Tidewater, Ellen Seaborn, James Peterson
24 and Joel Peterson intended to defraud the state, and acted in furtherance of their conspiracy to
25 defraud the State, by participating in schemes to falsely report to the State the location where
26 Defendants mined sand in the Suisun Bay. Specifically, from 1992 through 1999, Defendants
27 Moe, Tidewater, Ellen Seaborn, James Peterson and Joel Peterson agreed to and did use the
28 facilities, equipment, employees, and business assets of Moe and Tidewater to mine, market and

1 sell substantial quantities of State-owned Suisun Bay sand and created false dredge logs, sales
2 reports, royalty reports, and annual reports and permit applications to the BCDC and the Board
3 misrepresenting that the State sand they took was mined from the private Grossi Lease site.
4 Defendants Moe, Tidewater, Ellen Seaborn, James Peterson and Joel Peterson thereby conspired
5 to, and did, create and use false statements and records to conceal, avoid and decrease an
6 obligation to pay the State in violation of Government Code section 12651, subdivision (a)(3).

7 **The Olin Jones Sand/Jones Sand Conspiracy**

8 73. Defendants Olin Jones Sand, Jones Sand and Jones have, through their agents,
9 subsidiaries, and/or associated companies, participated in a conspiracy in violation of
10 Government Code section 12651, subdivision (a)(3), by, among other things, creating and
11 maintaining an artificial billing system whereby Olin Jones Sand and Jones Sand broke the gross
12 price of sand charged to their customers into multiple component "fees" for transportation,
13 unloading, standby time, and royalty. Olin Jones Sand, Jones Sand and Jones agreed among
14 themselves that Jones Sand would bill sand purchasers for every component of the price of sand
15 with the exception of the royalty fee and a nominal sand charge which Olin Jones separately
16 billed customers after all other fees were removed from the sand price. Defendants Olin Jones
17 Sand, Jones Sand and Jones further agreed that, in direct violation of Olin Jones Sand's leases
18 with the Commission, Olin Jones Sand would use a nominal sand price rather than the gross
19 price charged to sand purchasers in calculating the State's royalty. Through this component
20 pricing scheme, Olin Jones Sand, Jones Sand and Jones acted to further their conspiracy to avoid
21 obligations to the State by creating artificial and falsely deflated sales prices for sand which Olin
22 Jones Sand used to calculate the State's royalty and to create false royalty reports which Olin
23 Jones Sand submitted to the State. Defendants Olin Jones Sand, Jones Sand and Jones thereby
24 conspired to, and did, create and use false statements and records to conceal, avoid and decrease
25 an obligation to pay the State in violation of Government Code section 12651, subdivision (a)(3).

26 74. Defendants Olin Jones Sand, Jones Sand and Jones have, through their agents,
27 subsidiaries, and/or associated companies, also participated in a conspiracy by agreeing among
28 themselves to prospect for sand on State lands and to create and use false statements and records

1 with the intent to avoid their obligation to pay the State for the sand they mined from State lands.
2 Defendants Olin Jones Sand, Jones Sand and Jones intended to defraud the State, and acted in
3 furtherance of their conspiracy to defraud the State, by participating in schemes to falsely report
4 to the State the location where Defendants mined sand in the Suisun Bay. Specifically, from
5 1995 through 1999, Defendants Olin Jones Sand, Jones Sand and Jones agreed to and did use the
6 facilities, equipment, employees, and business assets of Olin Jones Sand and Jones Sand to mine,
7 market and sell substantial quantities of state-owned Suisun Bay sand which they mined and sold
8 without authorization from, or knowledge of, the State.

9 75. Olin Jones Sand, Jones Sand and Jones furthered their conspiracy by making and
10 using false statements and creating false dredge logs, sales reports, royalty reports, and annual
11 reports and permit applications to the BCDC and Board misrepresenting that the State sand they
12 mined came from areas within the Suisun Bay, including the Grossi Lease site, where Olin Jones
13 Sand had valid sand mining leases and permits from the Commission and the Board. In fact
14 Olin Jones Sand, Jones Sand and Jones mined substantial quantities of sand in areas to the east
15 and west of the Grossi Lease site where Olin Jones Sand did not have leases or permits.
16 Defendants Olin Jones Sand, Jones Sand and Jones thereby conspired to, and did, create and use
17 false statements and records to conceal, avoid and decrease an obligation to pay the State in
18 violation of Government Code section 12651, subdivision (a)(3).

19 **The Hanson Marine/HAMP Conspiracy**

20 76. Defendants HAMP and Hanson Marine have, through their agents, subsidiaries,
21 and/or associated companies, participated in the conspiracy described above by, among other
22 things, creating and maintaining an artificial billing system whereby HAMP and Hanson Marine
23 broke the gross price of sand charged to their customers into multiple component "fees" for
24 transportation, unloading, standby time, and royalty. HAMP and Hanson Marine agreed among
25 themselves that HAMP would bill sand purchasers for every component of the price of sand with
26 the exception of the royalty fee and a nominal sand charge which Hanson Marine separately
27 billed customers after all other fees were removed from the sand price. Defendants HAMP and
28 Hanson Marine further agreed that, in direct violation of Hanson Marine's leases with the

1 Commission, Hanson Marine would use a nominal sand price rather than the gross price charged
2 to sand purchasers in calculating the State's royalty. Through this component pricing scheme,
3 HAMP and Hanson Marine acted to further their conspiracy to avoid obligations to the State by
4 creating artificial and falsely deflated sales prices for sand which Hanson Marine used to
5 calculate the State's royalty and to create false royalty reports which Hanson Marine submitted to
6 the State. Defendants HAMP and Hanson Marine thereby conspired to, and did, create and use
7 false statements and records to conceal, avoid and decrease an obligation to pay the State in
8 violation of Government Code section 12651, subdivision (a)(3).

9 77. Defendants HAMP and Hanson Marine have, through their agents, subsidiaries,
10 and/or associated companies, also participated in a conspiracy by agreeing among themselves to
11 prospect for sand on State lands and to create and use false statements and records with the intent
12 to avoid their obligation to pay the State for the sand they mined from State lands. Defendants
13 HAMP and Hanson Marine acted in furtherance of their conspiracy by participating in schemes
14 to falsely report to the State the location where Defendants mined sand in the Suisun Bay.
15 Specifically, from 1999 through 2002, Defendants HAMP and Hanson Marine agreed to and did
16 use the facilities, equipment, employees, and business assets of HAMP and Hanson Marine to
17 mine, market and sell substantial quantities state-owned Suisun Bay sand which they mined and
18 sold without authorization from, or knowledge by, the State.

19 78. HAMP and Hanson Marine furthered their conspiracy by making and using false
20 statements and creating false dredge logs, sales reports, royalty reports, and annual reports and
21 permit applications to the BCDC and Board misrepresenting that the State sand they mined came
22 from areas within the Suisun Bay, including the Grossi Lease site, where Hanson Marine had
23 valid sand mining leases as well as permits from the Commission and the Board. In fact HAMP
24 and Hanson Marine mined substantial quantities of sand in areas to the to the east and west of the
25 Grossi Lease site where Hanson Marine did not have leases or permits. Defendants HAMP and
26 Hanson Marine thereby conspired to, and did, create and use false statements and records to
27 conceal, avoid and decrease an obligation to pay the State in violation of Government Code
28 section 12651, subdivision (a)(3).

1 Government Code section 12651, subdivision (a)(8).

2 87. As a proximate result of the above-described acts, the State has been injured by
3 Defendants' conversion of State property and in the loss of royalty payments in a specific amount
4 to be determined at trial.

5 THIRD CAUSE OF ACTION

6 False Claims Act Conspiracy - Gov. Code, § 12651(a)(3)
(Against Defendants Moe, Tidewater, Ellen Seaborn, James Peterson Joel Peterson, Olin Jones
7 Sand, Jones Sand, Jones, Hanson Marine Operations, Inc.
and Hanson Aggregates Mid-Pacific, Inc.)

8 88. Plaintiff incorporates here by reference the allegations in paragraphs 1 through 87
9 of this complaint.

10 89. This is a claim for treble damages and penalties under the California False Claims
11 Act, Government Code section 12650 et seq.

12 90. The royalty reports to the Commission made or caused to be made by Defendants
13 constituted "claims" within the meaning of Government Code section 12650 et seq.

14 91. Defendants Moe, Tidewater, Ellen Seaborn, James Peterson and Joel Peterson
15 conspired to conceal, avoid and decrease an obligation to pay the State by submitting false and
16 fraudulent claims within the meaning of Government Code section 12651, subdivision (a)(3).
17 Each conspirator intended to defraud the State, and acted in furtherance of the conspiracy to
18 defraud the State by participating in the schemes, set forth above, to falsely report to the State
19 and various state agencies, including the Commission, BCDC and the Board, the quantity of sand
20 taken from the lease sites, the price for which the sand was sold, and the areas from which
21 Defendants mined sand on State property.

22 92. Defendants Olin Jones Sand, Jones Sand, and Jones conspired to conceal, avoid
23 and decrease an obligation to pay the State by submitting false and fraudulent claims within the
24 meaning of Government Code section 12651, subdivision (a)(3). Each conspirator intended to
25 defraud the State, and acted in furtherance of the conspiracy to defraud the State by participating
26 in the schemes, set forth above, to falsely report to the State and various state agencies, including
27 the Commission, BCDC and the Board, the quantity of sand taken from the lease sites, the price
28 for which the sand was sold, and the areas from which Defendants mined sand on State property.

1 FIFTH CAUSE OF ACTION
2 Unfair Practices Act - Business & Professions Code, § 17200 et seq.
3 (Against All Defendants)

4 100. Plaintiff incorporates here by reference the allegations in paragraphs 1 through 99
5 of this Complaint.

6 101. The above described acts by Defendants constitute unfair competition within the
7 meaning of Business & Professions Code section 17200, in that they include, but are not limited
8 to the following:

9 a. Defendants falsely reported to the Commission and other government
10 agencies the quantity of sand they dredged from State lands leased by Defendants from the
11 Commission;

12 b. Defendants falsely reported to the Commission the price for which they
13 sold the sand they dredged from the leases with the Commission;

14 c. Defendants unilaterally changed the method by which they calculated
15 royalties owed to the State in violation of lease terms;

16 d. Defendants failed to inform the Commission that Defendants changed the
17 method by which they calculated royalties owed to the State;

18 e. Defendants dredged outside of their lease boundaries;

19 f. Defendants failed to pay the State royalties they owed for sand dredged
20 outside of lease boundaries;

21 g. Defendants made false statements and submitted false records to the
22 Commission and other government entities that misrepresented the extent of Defendants' mining
23 operations on State lands;

24 h. Defendants violated Government Code section 12650 et seq.;

25 i. Defendants violated Public Resources Code section 6224.2.

26 PRAYER FOR RELIEF

27 Wherefore, plaintiff the State prays for relief against all Defendants as follows:

28 1. Three times the damages which the State sustained as a result of Defendants' false
claims in an amount to be determined;

