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SUPERIOR COURT OF CALIFORNIA

COUNTY OF HUMBOLDT

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

THE PACIFIC LUMBER COMPANY,
SCOTIA PACIFIC HOLDING
COMPANY, SALMON CREEK
CORPORATION, and DOES 1
through 50,

Defendants.

No. DR030070

**SECOND AMENDED COMPLAINT
FOR CIVIL PENALTIES AND OTHER
RELIEF**

**Business and Professions Code, Section
17200, in re Headwaters Forest Project:**

**Unfair Competition by Fraudulent,
Unlawful, and Unfair Business Practices**

[Jury Trial Demanded]

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I. INTRODUCTION

1. The District Attorney of Humboldt County brings this action against defendants Pacific Lumber Company *et al.* pursuant to its obligation to protect the public against fraudulent, unlawful, and unfair business practices under Sections 17200 et seq. of the California Business and Professions Code, known as the Unfair Competition Law (UCL).

2. The People allege that Pacific Lumber agreed with agencies of the United States Government and the State of California to sell 4500 acres of its timberlands (commonly referred to as the Headwaters Forest) to the public. That agreement (the Headwaters Forest Agreement) provided, among other conditions, the requirement that Pacific Lumber's logging rights on its remaining lands be regulated by a Sustained Yield Plan (SYP) and a Habitat Conservation Plan (HCP) to be reviewed by agencies of the United States and State of California according to procedures established by law.

3. During the environmental review that followed the signing of the Headwaters Forest Agreement, Pacific Lumber submitted fraudulent and false data to the California Department of Forestry (CDF) regarding the effects of logging on steep slopes in one of its watersheds, known as the Jordan Creek watershed. After submitting this incorrect data, Pacific Lumber fraudulently concealed corrected data. Pacific Lumber knowingly committed these acts of fraud in order to gain permission to take more timber from its lands than it would have been permitted to log had the true facts been available to the reviewing agencies. These acts of fraud frustrated meaningful review of Pacific Lumber's applications for environmental and other permits, including (1) timber harvest plans (THPs), (2) Sustained Yield Plan (SYP), (3) Incidental Take Permit (ITP), (4) Habitat Conservation Plan (HCP), (5) Environmental Impact Statement (EIS), and (6)

Environmental Impact Report (EIR), hereinafter collectively referred to as "governmental permits" or "permits."

4. The People allege that: 1) in providing false information to the government, 2) in fraudulently concealing relevant facts, and 3) in cutting timber illegally pursuant to fraudulently obtained governmental permits, Pacific Lumber engaged in unfair business practices from which it profited. Accordingly, the People on behalf of the public seek civil penalties and all other relief authorized by statute or other law pursuant to the UCL.

II. PLAINTIFF

5. PAUL V. GALLEGOS, District Attorney of Humboldt County, acting to protect the general public from unfair business practices, brings this action in the public interest in the name of THE PEOPLE OF THE STATE OF CALIFORNIA, pursuant to sections 17204 and 17206 of the Business and Professions Code.

III. DEFENDANTS

6. Defendant THE PACIFIC LUMBER COMPANY and its subsidiaries, Defendant SCOTIA PACIFIC HOLDING COMPANY and Defendant SALMON CREEK CORPORATION (all three corporations herein being referred to collectively as "Pacific Lumber" or "PL" or "PALCO" or "defendants"), are corporations existing under the laws of the State of California and which are now, and at all times mentioned herein were, engaged in business in the County of Humboldt in the State of California. Pacific Lumber's principal office is located at Scotia, California. At all relevant times Pacific Lumber has been the owner of

properties subject to the Habitat Conservation Plan/Sustained Yield Plan Project incorporated by the Headwaters Forest Agreement of March 1999 between itself, its owner Maxxam Corporation, and various federal and state government agencies.

7. Defendants DOES 1 through 50 are the officers, agents, employees, servants or others acting in interest with defendant Pacific Lumber. Plaintiff is ignorant of the true names of defendants sued herein as DOES 1 through 50. When the names of these defendants have been ascertained, plaintiff will seek leave to amend this complaint to allege such names and capacities.

8. Whenever reference is made in this complaint to any act of the corporate defendants, such allegation shall mean that such corporation did the acts alleged in that particular cause of action through its owners, officers, directors, managers, agents, employees and/or representatives while they were acting within the actual or ostensible scope of their authority.

9. Whenever reference is made in this complaint to any act of “defendants,” such allegation shall mean that each defendant named in that particular cause of action is acting in such defendant's individual capacity as well as acting jointly with the other defendants in that cause of action.

10. Whenever reference is made in this complaint to any act of “defendants,” such allegation shall mean the act of each defendant acting individually, jointly and severally.

11. Plaintiff is informed and believes and on that basis alleges that at all times relevant herein, defendants were the agents, employees, servants or alter egos of their co-defendants and were acting in the course and scope of such agency, employment, and/or relationship.

Defendants conspired to commit all of the acts alleged herein.

12. Defendants at all times mentioned herein have transacted business in the County of Humboldt, and elsewhere in the State of California. The violations of law hereinafter described have been committed in the County of Humboldt and the State of California

IV. JURISDICTION AND VENUE

13. This court has jurisdiction pursuant to Cal. Const. Art. VI, Section 10. This court has jurisdiction over the defendants named above because they do sufficient business in California, or otherwise have sufficient minimum contacts in California to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

14. Venue of this action in Humboldt County is proper in accordance with Code of Civil Procedure sections 392 through 395.5. Venue is also proper in this court because the cause arises in the County of Humboldt where the violations of law have occurred.

15. Pursuant to applicable standards of law, equity and judicial economy, Plaintiffs herein respectfully request that this matter be tried before a jury.

V. FACTUAL ALLEGATIONS

A. Creation of the Motive and Plan

16. On September 28, 1996, (a) Pacific Lumber (on behalf of itself, its subsidiaries and its affiliates), (b) Maxxam Corporation, by Charles E. Hurwitz, (c) The United States Department of the Interior, and (d) The California Resources Agency, signed an agreement ("the Headwaters Agreement") whereby, subject to certain conditions, Pacific Lumber would sell to

the public 4500 acres of its timberlands, commonly referred to as the "Headwaters Forest," and would exchange additional property, for a stated consideration. One of the conditions of this Agreement was that Pacific Lumber, in addition to a Habitat Conservation Plan, submit to the State of California a Sustained Yield Plan for its "Resulting Pacific Lumber Timber Property" (some 211,700 acres) consistent with applicable legal requirements.

17. On February 27, 1998, Pacific Lumber and agencies of the United States and the State of California signed a follow-up agreement (The Pre-Permit Application Agreement in Principle), whereby all parties agreed that the California Department of Forestry and Fire Protection (CDF) and the U.S. Fish and Wildlife Service (USFWS or FWS) would make available for review and comment a draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) on PL's SYP pursuant to the California Environmental Quality Act (CEQA), Cal. Pub. Res. Code 21000, et seq., and the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, et seq.

18. In October 1998, Pacific Lumber knew that the North Coast Regional Water Quality Control Board (Water Quality) had ordered reports about the effects of logging on five watersheds. Reports on Bear Creek and the North Fork Elk River were finished, and three other reports on Jordan, Stitz and Freshwater Creeks had yet to be completed. Pacific Lumber also knew that Water Quality ordered these reports in response to the severe logging-related impacts that had been observed by government agents over the preceding years in these five watersheds.

19. The reports on Bear Creek and Elk River, performed by agents of Pacific Lumber, demonstrated that recently logged areas of those watersheds were more prone to landslides and failures than those areas that had recovered from past logging. Pacific Lumber knew that if left to

fair scientific and public review, such information would likely reduce the amount and rate of timber harvesting that the agencies would allow under an HCP and SYP.

20. Pacific Lumber was strongly motivated to undermine, at all costs, the agencies' review of Pacific Lumber's applications for governmental permits affecting its harvesting of timber because it was under great financial pressure. In August 1998, Pacific Lumber's corporate parent, Maxxam Corporation, refinanced Pacific Lumber's debt by selling almost one billion dollars of "timber bonds." Security for the bonds was the 211,000 acres of timberland owned by Pacific Lumber. These bonds required that Pacific Lumber harvest sufficient timber volume to meet their ongoing bond payments. Pacific Lumber could not risk a reduction in their ability to meet this bond obligation without exposure to harsh financial liability

21. Pacific Lumber feared that the Bear and Elk reports would be used scientifically to show that their proposed logging and mitigations, under their proposed Long-Term Sustained Yield (LTSY) projections and HCP, would expose waterways to unacceptable mass wasting events and other negative impacts associated with their proposed harvesting rates. Pacific Lumber believed that the Elk and Bear reports would result in a lower annual harvest rate, authorized by the SYP/HCP then under consideration, over their entire ownership than that required to meet the financial needs imposed by the company's bond obligations. To counteract such an outcome, Pacific Lumber utilized a four-stage strategy.

B. Stage One – Submission of Material and Significant, False Information by Pacific Lumber

22. In stage one, on November 18, 1998, two days after the close of the public comment period and pursuant to its intention to undermine the Bear and Elk reports, Pacific Lumber

submitted material and significant, false information regarding Jordan Creek, a watershed adjacent to Bear Creek. Pacific Lumber submitted this false information through a report prepared by its consultant Pacific Watersheds Associates (PWA) dated November 10, 1998, and for the purpose of said false information being used to defraud the agencies and the public and to undermine the legitimacy of the agencies' review of the governmental permits. Said false information included the following:

*** "[I]n recently completing a similar sediment source analysis for the adjacent Jordan Creek watershed, . . . we discovered harvest and landslide associations that directly and dramatically contradicted those encountered in Bear Creek."**

*** "[I]n Jordan Creek, 85 percent of the recent landslides had occurred on the older harvested area, and only 15 percent on the recently harvested area."**

This information was false and Pacific Lumber knew or should have known that it was false. Pacific Lumber thereby succeeded in defrauding the agencies and public such that the agencies published the false information as if it were true in the final EIS/EIR. At the time Pacific Lumber provided this false information it did so (a) with the intention of misleading or concealing from the agencies and the public the true scientific data, (b) with the further intention of fraudulently preventing the public from presenting comments, including claims, on the correct information, (c) with the further intention of fraudulently preventing the public and government from effectively reviewing the governmental permits, and (d) with the further intention that the government rely upon the false information in its approval of the governmental permits.

C. Stage Two – Failure by Pacific Lumber to Notify the Government of Corrected Information

23. In stage two, on January 22, 1999, Pacific Lumber prepared a final, truthful report which it knew showed for Jordan Creek "remarkably similar" trends between recent logging and landslides as had been reported for Bear Creek and North Fork Elk River, and which it knew showed for Jordan Creek that 60% of the landslides, not 15%, had occurred on the recently harvested area. In order to benefit from governmental reliance on the false information, Pacific Lumber conceived a tactic to conceal the report.

The tactic entailed delivering the corrected report on January 22, two days *after* the final EIS/EIR was published, to local offices of CDF and to the Water Quality Control Board instead of to the government offices specifically designated to review public comments and make a final determination on the permits. Pacific Lumber did nothing to ensure that those local offices transmitted the corrected information to the designated offices. Pacific Lumber made no attempt to apprise anyone that the new report contradicted the previously submitted false information. Pacific Lumber made no attempt to inform anyone that the new report constituted significant new information.

24. Pacific Lumber knowingly concealed the corrected report from the legally designated government officials in order to prevent full and effective governmental and public review of the permits.

D. Stage Three - Failure of Pacific Lumber to Correct Government's Material Reliance on Their False Information

25. In stage three, when the final EIS/EIR was published on January 20, 1999, the EIS/EIR demonstrated that the government officers charged with the duty to protect both the integrity of the process and the public's participation in the process relied upon, and continued to rely upon, the false Jordan Creek information submitted by Pacific Lumber. Pacific Lumber knew that these government officers had relied on the false Jordan Creek information. Pacific Lumber took no steps to correct the reliance. Instead, Pacific Lumber deceptively withheld and suppressed the corrected data while it actively sought unfair advantages that it knew or should have known would flow from the government's reliance.

26. In doing so Pacific Lumber knowingly deprived members of the public of an opportunity to make comments in view of the true information, and undermined the legitimacy of the governmental approvals. Pacific Lumber's suppression of the material and significant true information was an act of unfair competition and it prevented a meaningful administrative review.

27. On February 25, 1999, CDF issued findings for the SYP adopting a Long-Term Sustained Yield (LTSY) projection known as **SYP Alternative 25(a)**. Pacific Lumber thereafter lobbied CDF for a greater allowance of annual board feet of timber, and on March 1, 1999, CDF adopted a different LTSY, known as **SYP Alternative 25**, which permitted a greater annual timber harvest. Pacific Lumber knew that CDF in issuing these SYPs had relied on the false Jordan Creek Report but did not correct the record. Pacific Lumber falsely asserted that there was no obvious relationship between timber harvesting and landslides.

28. The false Jordan Creek information was and remained published in the Final EIS/EIR, became a basis for the approved Incidental Take Permit and Habitat Conservation Plan and Sustained Yield Plan, became part of the final administrative record for the entire

Headwaters Forest Project, and was thereafter relied upon by governmental officials and the public.

E. Stage Four - Timber Harvesting

29. In stage four, from March 1, 1999 to the present time, Pacific Lumber committed the fraudulent, unlawful, and unfair business practices of submitting timber harvest plans that relied upon the fraudulently obtained SYPs and of harvesting timber under color of the fraudulently obtained SYPs, and of realizing profits from this harvesting activity which were the direct and proximate result of its unfair and fraudulent business practices.

VI. FIRST CAUSE OF ACTION

Violation of Business and Professions Code Section 17200: Submission of False Information to Government Decision Makers With Intent to Deprive Public of Right and Opportunity to Present Claims on Correct Information

30. Plaintiff realleges and incorporates by reference each of the allegations in each of the preceding paragraphs of this complaint.

31. At all relevant times, defendants had the duty under Section 17200 of the Business and Professions Code not to commit any unlawful, unfair, or "fraudulent" business practice.

32. Any business practice constituting "deceit" as defined by the Civil Code is a fraudulent unfair business practice, including suppression of a fact after giving information of other facts. This type of fraud is defined by Section 1710, subd. 3, of the Civil Code as follows:

"A deceit . . . is . . . [t]he suppression of a fact, by one . . . who gives information of other facts which are likely to mislead for want of communication of that fact"

33. On or about November 18, 1998, when they submitted the "incorrect" Jordan Creek draft results to government agents, defendants were under a duty to take all steps reasonably necessary to ensure that accurate and truthful information be submitted to government agents charged with determining the outcome of the Headwaters Project. Said defendants knew or should have known that the information they submitted concerning the Jordan Creek watershed was false and that government agents would rely on such false information. Despite such clear duty, said defendants failed to take sufficient steps to reasonably and completely discharge their duty to submit accurate and truthful information.

34. The aforesaid conduct of said defendants constituted (a) unfair competition under Section 17200 of the Business and Professions Code, (b) fraudulent business practice under Section 17200 and, *inter alia*, Civil Code, section 1710, sub. 3, (c) an unlawful business practice under Section 17200 and Cal. Administrative Code, Title 14, Section 15088.5, and (d) an unfair business practice under Section 17200 of the Business and Professions Code, such "unfair" business practice being defined as any practice which offends public policy or which is immoral, unethical, oppressive, or unscrupulous.

35. Defendants' actions deprived the public, the director of CDF, and all other affected public agencies of an administrative process and of permits untainted by fraud. The review process was so tainted by fraud as to lack all legitimacy, and constituted a fraud and a sham. As a proximate result of the aforesaid conduct of defendants, (a) the public and the government have been deprived of the benefits of a fair administrative process, (b) Pacific Lumber obtained

approvals of permits that allowed a level of harvest that would not otherwise have been obtained, (c) all timber harvested by Pacific Lumber since March 1, 1999 pursuant to THPs that relied upon the fraudulently-obtained SYP has been unlawfully cut in violation of the Unfair Competition Law, and (d) Pacific Lumber has been unjustly enriched by said acts of unfair competition.

VII. SECOND CAUSE OF ACTION

Violation of Business and Professions Code Section 17200: Not Notifying Government of Corrected Information After Submitting False Information

36. Plaintiff realleges and incorporates by reference each allegation of each of the preceding paragraphs of this complaint.

37. The corrected Jordan Creek data constituted "significant new information" under Cal. Admin. Code tit. 14, section 15088.5(a)(2). It constituted a disclosure showing that the timber harvesting in the Jordan Creek watershed would cause a substantial increase in the number of landslides. The new data also validated and strengthened the scientific plausibility of the Bear Creek report and the conclusions drawn regarding other watersheds. This new data required that the Director of CDF recirculate the Final EIS/EIR with the corrected Jordan Creek data pursuant to Cal. Administrative Code tit. 14, section 15088.5(a). Pacific Lumber knew or should have known that the corrected data would, if properly disclosed, require that the Director of CDF recirculate the Final EIS/EIR, with the corrected Jordan Creek data added thereto, pursuant to Cal. Administrative Code tit. 14, section 15088.5(a).

38. Between January 20, 1999, the date of publication of the Final EIS/EIR, and February 23, 1999, the date of Final EIR certification, defendants were specifically under a duty

to take all steps reasonably necessary to ensure that their fraudulently or grossly negligently arrived-at incorrect Jordan Creek data would be disclosed to the Director of CDF in Sacramento as false information. Despite such clear duty arising from their conduct, said defendants failed to take sufficient steps to reasonably and completely discharge their duty to avoid such reliance.

39. On or before February 23, 1999, said defendants knew or should have known that the Final EIR materially relied on the “mistaken” Jordan Creek data, and that this Final EIR would, in turn, be relied upon by the public and by the government agencies being called upon to make decisions regarding Pacific Lumber's proposed HCP and proposed SYP. Once legally charged with this knowledge said defendants were under a duty to correct this misplaced reliance but failed to take any steps reasonably calculated to do so. Said defendants' failure to correct the misplaced reliance on their “mistake” was the result of their specific intent.

40. Defendants, having this knowledge, breached this duty. Such breach of duty resulted in variously foreseeable harms including but not limited to (a) preventing the Director of CDF from complying with his duty to recirculate the EIS/EIR with the corrected information, (b) depriving the public of a fair opportunity to make "comments" based on truthful data, (c) depriving the government of an opportunity to make a fair decision, and (d) undermining the legitimacy of the administrative processes.

41. The aforesaid conduct of said defendants constituted (a) unfair competition under Section 17200 of the Business and Professions Code, (b) fraudulent business practice under Section 17200 and, *inter alia*, Civil Code, section 1710, sub. 3, (c) an unlawful business practice under Section 17200 and Cal. Administrative Code, Title 14, Section 15088.5, and (d) an unfair business practice under Section 17200 of the Business and Professions Code, such "unfair"

business practice being defined as any practice which offends public policy or which is immoral, unethical, oppressive, or unscrupulous.

42. Defendants' actions deprived the public, the director of CDF, and all other affected public agencies of an administrative process and of permits untainted by fraud. The review process was so tainted by fraud as to lack all legitimacy, and constituted a fraud and a sham. As a proximate result of the aforesaid conduct of defendants, (a) the public and the government have been deprived of the benefits of a fair administrative process, (b) Pacific Lumber obtained approvals of permits that allowed a level of harvest that would not otherwise have been obtained, (c) all timber harvested by Pacific Lumber since March 1, 1999 pursuant to THPs that relied upon the fraudulently-obtained SYP has been unlawfully cut in violation of the Unfair Competition Law, and (d) Pacific Lumber has been unjustly enriched by said acts of unfair competition.

VIII. THIRD CAUSE OF ACTION

Violation of Business and Professions Code Section 17200: Failing to Correct Government's Material Reliance on False Information When Certifying the Final Environmental Impact Report

43. Plaintiff realleges and incorporates by reference each allegation of each of the preceding paragraphs of this complaint.

44. From January 20, 1999, when the Final EIS/EIR was published through February 23, 1999, when the Final EIR was certified as complete and adequate by the Director of CDF, defendants, having provided the false Jordan Creek data to the government and being aware of it being part of the Final EIS/EIR, were under a duty to take all reasonable steps necessary to

ensure that the false Jordan Creek data would not be relied upon by government in making any approvals pertaining to the Headwaters Forest Project, including the Final EIR.

45. Defendants, having this knowledge, breached this duty. Such breach of duty resulted in variously foreseeable harms including but not limited to (a) preventing the Director of CDF from complying with his duty to recirculate the EIS/EIR with the corrected information, (b) depriving the public of a fair opportunity to make "comments" based on truthful data, (c) depriving the government of an opportunity to make a fair decision, and (d) undermining the legitimacy of the administrative processes.

46. The aforesaid conduct of said defendants constituted (a) unfair competition under Section 17200 of the Business and Professions Code, (b) fraudulent business practice under Section 17200 and, *inter alia*, Civil Code, section 1710, sub. 3, (c) an unlawful business practice under Section 17200 and Cal. Administrative Code, Title 14, Section 15088.5, and (d) an unfair business practice under Section 17200 of the Business and Professions Code, such "unfair" business practice being defined as any practice which offends public policy or which is immoral, unethical, oppressive, or unscrupulous.

47. Defendants' actions deprived the public, the director of CDF, and all other affected public agencies of an administrative process and of permits untainted by fraud. The review process was so tainted by fraud as to lack all legitimacy, and constituted a fraud and a sham. As a proximate result of the aforesaid conduct of defendants, (a) the public and the government have been deprived of the benefits of a fair administrative process, (b) Pacific Lumber obtained approvals of permits that allowed a level of harvest that would not otherwise have been obtained, (c) all timber harvested by Pacific Lumber since March 1, 1999 pursuant to THPs that relied upon the fraudulently-obtained SYP has been unlawfully cut in violation of the Unfair

Competition Law, and (d) Pacific Lumber has been unjustly enriched by said acts of unfair competition.

IX. FOURTH CAUSE OF ACTION

Violation of Business and Professions Code Section 17200: Failing to Correct Government's Material Reliance on False Information When Approving "Long Term Sustained Yield" Projection, SYP Alternative 25

48. Plaintiff realleges and incorporates by reference each allegation of each of the preceding paragraphs of this complaint.

49. From January 20, 1999, when the Final EIS/EIR was published through March 1, 1999, when the Long-Term Sustained Yield Projection (LTSY) SYP 25 was approved, defendants, having provided the false Jordan Creek data to the government and being aware of it being part of the Final EIS/EIR, were under a duty to take all reasonable steps necessary to ensure that the false Jordan Creek data would not be relied upon by government in making any approvals pertaining to the Headwaters Forest Project, including any SYP and any LTSY.

50. Defendants, having this knowledge, breached this duty. Such breach of duty resulted in variously foreseeable harms including but not limited to (a) preventing the Director of CDF from complying with his duty to recirculate the EIS/EIR with the corrected information, (b) depriving the public of a fair opportunity to make "comments" based on truthful data, (c) depriving the government of an opportunity to make a fair decision, and (d) undermining the legitimacy of the administrative processes.

51. The aforesaid conduct of said defendants constituted (a) unfair competition under Section 17200 of the Business and Professions Code, (b) fraudulent business practice under

Section 17200 and, *inter alia*, Civil Code, section 1710, sub. 3, (c) an unlawful business practice under Section 17200 and Cal. Administrative Code, Title 14, Section 15088.5, and (d) an unfair business practice under Section 17200 of the Business and Professions Code, such "unfair" business practice being defined as any practice which offends public policy or which is immoral, unethical, oppressive, or unscrupulous.

52. Defendants' actions deprived the public, the director of CDF, and all other affected public agencies of an administrative process and of permits untainted by fraud. The review process was so tainted by fraud as to lack all legitimacy, and constituted a fraud and a sham. As a proximate result of the aforesaid conduct of defendants, (a) the public and the government have been deprived of the benefits of a fair administrative process, (b) Pacific Lumber obtained approvals of permits that allowed a level of harvest that would not otherwise have been obtained, (c) all timber harvested by Pacific Lumber since March 1, 1999 pursuant to THPs that relied upon the fraudulently-obtained SYP has been unlawfully cut in violation of the Unfair Competition Law, and (d) Pacific Lumber has been unjustly enriched by said acts of unfair competition.

X. FIFTH CAUSE OF ACTION

Violation of Business and Professions Code Section 17200: Failing to Correct Government's Material Reliance on False Information When Approving the Habitat Conservation Plan

53. Plaintiff realleges and incorporates by reference each allegation of each of the preceding paragraphs of this complaint.

54. From January 20, 1999, when the Final EIS/EIR was published through March 1, 1999, when the Incidental Take Permit (ITP) and the Habitat Conservation Plan were approved by the State of California, defendants, having provided the false Jordan Creek data to the government and being aware of it being part of the Final EIS/EIR, were under a duty to take all reasonable steps necessary to ensure that the false Jordan Creek data would not be relied upon by government in making any approvals pertaining to the Headwaters Forest Project, including any Habitat Conservation Plan and any Incidental Take Permit.

55. Defendants, having this knowledge, breached this duty. Such breach of duty resulted in variously foreseeable harms including but not limited to (a) preventing the Director of CDF from complying with his duty to recirculate the EIS/EIR with the corrected information, (b) depriving the public of a fair opportunity to make "comments" based on truthful data, (c) depriving the government of an opportunity to make a fair decision, and (d) undermining the legitimacy of the administrative processes.

56. The aforesaid conduct of said defendants constituted (a) unfair competition under Section 17200 of the Business and Professions Code, (b) fraudulent business practice under Section 17200 and, *inter alia*, Civil Code, section 1710, sub. 3, (c) an unlawful business practice under Section 17200 and Cal. Administrative Code, Title 14, Section 15088.5, and (d) an unfair business practice under Section 17200 of the Business and Professions Code, such "unfair" business practice being defined as any practice which offends public policy or which is immoral, unethical, oppressive, or unscrupulous.

57. Defendants' actions deprived the public, the director of CDF, and all other affected public agencies of an administrative process and of permits untainted by fraud. The review process was so tainted by fraud as to lack all legitimacy, and constituted a fraud and a sham. As

a proximate result of the aforesaid conduct of defendants, (a) the public and the government have been deprived of the benefits of a fair administrative process, (b) Pacific Lumber obtained approvals of permits that allowed a level of harvest that would not otherwise have been obtained, (c) all timber harvested by Pacific Lumber since March 1, 1999 pursuant to THPs that relied upon the fraudulently-obtained SYP has been unlawfully cut in violation of the Unfair Competition Law, and (d) Pacific Lumber has been unjustly enriched by said acts of unfair competition.

SIXTH CAUSE OF ACTION

Violation of Business and Professions Code Section 17200: Submitting Timber Harvest Plans that Rely on the Fraudulently- Obtained Sustained Yield Plan and Harvesting Timber

58. Plaintiff realleges and incorporates by reference each allegation of each of the preceding paragraphs of this complaint.

59. Commencing on March 1, 1999, and continuing to the present time, defendants have submitted timber harvested plans, and have harvested timber, on Pacific Lumber's Headwaters Forest Project lands (a) based upon a fraudulently obtained, and hence invalid, sustained yield plan, in violation of Cal. Administrative Code tit. 14, sections 1091.10 and 913.11, and (b) based upon a fraudulently obtained, and hence invalid, Habitat Conservation Plan, in violation of the California Endangered Species Act.

60. By submitting timber harvest plans that relied for their validity on the fraudulently-obtained SYP and harvesting timber under those plans, Pacific Lumber has operated illegally in each of the following respects:

a. By harvesting timber under the timber harvest plans that relied upon the fraudulently-obtained SYP, Pacific Lumber has engaged in the fraudulent, unlawful, and unfair business practice of an ongoing violation of Cal. Administrative Code tit. 14, sections 1091.10 and 913.11;

b. By representing in timber harvest plans submitted to CDF since March 1, 1999 that it has an approved SYP 96-002, knowing that it was fraudulently-obtained, Pacific Lumber has engaged in the fraudulent, unlawful, and unfair business practice of committing an ongoing violation of Cal. Administrative Code tit. 14, sections 1035, 1034, and 897(b)(3); and

c. By operating for more than four years, since March 1, 1999, at the level of harvest authorized by the March 1999 LTSY (SYP Alternative 25) approval, thereby exceeding the February 1999 (SYP Alternative 25(a)) approval by levels up to 40 million board feet per year, Pacific Lumber has engaged in the fraudulent, unlawful, and unfair business practice of committing an ongoing violation of Cal. Administrative Code tit. 14, section 913.11(b).

61. During all this time the defendants, having provided the false Jordan Creek data to the government and being aware of it being part of the Final EIS/EIR, were under a duty to take all reasonable steps necessary to ensure that the false Jordan Creek data would not be relied upon by government in making any approvals pertaining to timber operations.

62. Defendants, having this knowledge, breached this duty. Such breach of duty resulted in variously foreseeable harms including but not limited to undermining the legitimacy of the administrative processes.

63. The aforesaid conduct of said defendants constituted (a) unfair competition under Section 17200 of the Business and Professions Code, (b) fraudulent business practice under Section 17200 and, *inter alia*, Civil Code, section 1710, sub. 3, (c) an unlawful business practice

under Section 17200 and Cal. Administrative Code, Title 14, Section 15088.5, and (d) an unfair business practice under Section 17200 of the Business and Professions Code, such "unfair" business practice being defined as any practice which offends public policy or which is immoral, unethical, oppressive, or unscrupulous.

64. Defendants' actions deprived the public, the director of CDF, and all other affected public agencies of an administrative process and of permits untainted by fraud. The review process was so tainted by fraud as to lack all legitimacy, and constituted a fraud and a sham. As a proximate result of the aforesaid conduct of defendants, (a) the public and the government have been deprived of the benefits of a fair administrative process, (b) Pacific Lumber obtained approvals of permits that allowed a level of harvest that would not otherwise have been obtained, (c) all timber harvested by Pacific Lumber since March 1, 1999 pursuant to THPs that relied upon the fraudulently-obtained SYP has been unlawfully cut in violation of the Unfair Competition Law, and (d) Pacific Lumber has been unjustly enriched by said acts of unfair competition.

65. As a proximate result of the aforesaid conduct of defendants, each and every tree that has been harvested since March 1, 1999 by Pacific Lumber under the fraudulently-obtained SYP has been unlawfully cut.

XI. PRAYER FOR RELIEF

WHEREFORE, plaintiff requests that the Court grant the relief authorized by law under the Unfair Competition Law to prevent defendants from benefiting from their acts of unfair competition, including civil penalties as authorized by Bus. & Prof. Code § 17206 and such other relief as authorized by statute or other law.

Further, the People seek costs incurred in this action, and such other and further relief as the nature of this case may require and the Court deems proper to fully and successfully dissipate the effects of the unlawful, fraudulent, and unfair acts complained of herein.

XII. DEMAND FOR JURY

A jury trial is hereby requested.

NOTICE: This Complaint is deemed verified pursuant to Code of Civil Procedure section 446 and requires a verified answer.

Dated: May 27, 2004

PAUL V. GALLEGOS,
District Attorney of the County of Humboldt

By: _____
TIMOTHY O. STOEN
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