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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, *ex rel.* BILL LOCKYER, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, AND THE DEPARTMENT OF WATER RESOURCES; and THE STATE OF CALIFORNIA, Plaintiffs, v. MIRANT CORPORATION; MIRANT AMERICAS, INC.; MIRANT CALIFORNIA INVESTMENTS, INC.; MIRANT CALIFORNIA, L.L.C.; MIRANT AMERICAS ENERGY MARKETING, L.L.P.; MIRANT DELTA, L.L.C.; and MIRANT POTRERO, L.L.C. Defendants.	Case No.: C-02-1787 **COMPLAINT FOR ILLEGAL ACQUISITIONS AND/OR HOLDINGS OF ASSETS UNDER § 7 OF THE CLAYTON ACT; INJUNCTION AND OTHER EQUITABLE AND ANCILLARY RELIEF, DIVESTITURE, DAMAGES AND RESTITUTION; VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200** **JURY TRIAL DEMANDED** Clayton Act § 7, 15 U.S.C. § 18; California Business & Professions Code § 17200 *et seq.*; F.R.C.P. 38(b)

Plaintiffs, People of the State of California, the State of California, on its own behalf and as *parens patrie* on behalf of its citizens, and the California Department of Water Resources, by and through their Attorney General, Bill Lockyer, allege the following on information and belief:

INTRODUCTION

1. This action seeks to remedy defendants' illegal acquisition and continued holding of California's electric power plants. Defendants are now some of the major players in California wholesale electricity markets. Plaintiffs seek, *inter alia*, an injunction that requires defendants to divest enough power plants to restore competition in the relevant market for the spot supply of wholesale electricity and reserves in Northern California during higher demand.

PARTIES

The Plaintiffs

2. 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). The Clayton Act authorizes the Attorney General to bring suit to enjoin and remedy violations of Section 7 of the Clayton Act on behalf of the State of California, its citizens and the general welfare of the State of California. California Business & Professions Code § 17204 also authorizes the Attorney General to prosecute any business act or practice prohibited by California Business & Professions Code § 17200.

3. The State of California buys electricity on behalf of itself, its departments and its agencies.

4. The Department of Water Resources ("DWR") is a state agency and is a purchaser of electricity on behalf of itself and the State of California.

The Mirant Defendants

5. Defendant MIRANT CORPORATION (together with its predecessors and successors, "MIRANT"), formerly Southern Energy, Inc., is a Delaware corporation doing business through its subsidiaries in California. MIRANT builds, owns and operates power plants, and sells wholesale electricity and energy products.

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6. Defendant MIRANT AMERICAS, INC. ("MIRANT AMERICAS"), formerly Southern Energy North America, Inc., is a Delaware corporation doing business through its subsidiaries in California. MIRANT AMERICAS is a subsidiary of defendant MIRANT.

7. Defendant MIRANT CALIFORNIA INVESTMENTS, INC. ("MIRANT CALIFORNIA INVESTMENTS"), formerly Southern Energy California, L.L.C., is a Delaware corporation doing business in California. MIRANT CALIFORNIA INVESTMENTS is a subsidiary of defendant MIRANT AMERICAS and owns fifty percent of Mirant California, L.L.C.

8. Defendant MIRANT CALIFORNIA, L.L.C., (together with its predecessors and successors, "MIRANT CALIFORNIA"), formerly Southern Energy California, L.L.C., is a Delaware limited liability company doing business in California. MIRANT CALIFORNIA markets and brokers electricity.

9. Defendant MIRANT AMERICAS ENERGY MARKETING, L.P. (together with its predecessors and successors, "MIRANT AMERICAS ENERGY MARKETING"), formerly Southern Company Energy Marketing, L.P., is a Delaware limited partnership, and is a wholly owned indirect subsidiary of defendant MIRANT CORPORATION. MIRANT AMERICAS ENERGY MARKETING sells energy-related products in California.

10. Defendant MIRANT DELTA, L.L.C. (together with its predecessors and successors, "MIRANT DELTA"), formerly Southern Energy Delta, L.L.C., is a Delaware limited liability company doing business in California. MIRANT DELTA is a wholly-owned subsidiary of defendant MIRANT CALIFORNIA.

11. Defendant MIRANT POTRERO, L.L.C. (together with its predecessor and successors, "MIRANT DELTA"), formerly Southern Energy Potrero, L.L.C., is a Delaware limited liability company, doing business in California. MIRANT POTRERO is a wholly-owned subsidiary of defendant MIRANT CALIFORNIA.

12. Unless otherwise alleged, when this Complaint refers 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.

13. Unless otherwise alleged, when this Complaint refers 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, or representatives while they were acting within the actual or ostensible scope of their authority.

14. 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, representation or employment.

JURISDICTION AND VENUE

15. This action arises under Section 7 of the Clayton Act, as amended, 15 U.S.C. §18, and Section 17200 *et seq.* of the California Business & Professions Code. This Court has jurisdiction under Section 4 of the Clayton Act, 15 U.S.C. § 15, Section 4(c) of the Clayton Act, 15 U.S.C. § 15(c), and Section 16 of the Clayton Act, 15 U.S.C. § 26.

16. Defendants are engaged in interstate commerce and in activities substantially affecting interstate commerce. Defendants receive gas from interstate pipelines and use it to sell electricity in California.

17. The Court has jurisdiction over the subject matter of this action and jurisdiction over the parties under 15 U.S.C. § 22 and 28 U.S.C. §§ 1331 and 1337. Venue is proper under 28 U.S.C. § 1391(c) because the causes of action, liability, and many violations of the law occurred in the City and County of San Francisco.

18. This Court has supplemental jurisdiction over plaintiffs' claims arising from alleged violations of California Business & Professions Code § 17200, *et seq.* under 28 U.S.C. § 1367(a). The plaintiffs' claims under California Business & Professions Code § 17200 are so related to the plaintiffs' claims under Section 7 of the Clayton Act (15 U.S.C. § 18) that both form part of the same case or controversy under Article III of the United States Constitution, as described below.

NATURE OF THE ACTION

19. In 1999, defendants acquired electricity power plants in California to provide electricity for the newly deregulated California electricity markets. Defendants bought these plants from Pacific Gas & Electricity Company ("PG&E"), one of the three major regulated

California utilities.

20. By at least 1999, the acquisitions were finalized, and defendants became some of the major providers of the spot supply of wholesale electricity and reserves in Northern California during higher demand.

21. By at least sometime in 2000, the defendants started to withhold energy and/or raise the price of electricity in the Northern California market for the spot supply of wholesale electricity and reserves during higher demand.

22. Defendants' acquisitions and continued holdings of power plants has substantially lessened, and will likely continue to lessen, competition in the Northern California market for the spot supply of wholesale electricity and reserves during higher demand, violating Section 7 of the Clayton Act.

THE ACQUISITIONS

23. In or about March 1999, MIRANT DELTA acquired from PG&E the Pittsburgh and Contra Costa Power Plants in Contra Costa County, California. The two plants have eleven (11) electricity generating units with a total capacity of about 2,702 MW.

24. In or about March 1999, MIRANT POTRERO acquired from PG&E the Potrero Power Plant in San Francisco, California. The Potrero Power Plant has four (4) electricity generating units with a total capacity of about 363 MW.

TRADE AND COMMERCE

25. Defendants are major suppliers of spot wholesale electricity and reserves in Northern California during higher demand.

26. Through their acquisitions, defendants acquired and still hold the plants necessary for much of the spot supply of wholesale electricity and reserves in Northern California during higher demand.

THE RELEVANT MARKET

27. Purchasers of the spot supply of wholesale electricity and reserves during higher demand in Northern California cannot and do not switch to other products in response to an increase in the price of that electricity.

28. There is limited electricity transmission capacity into California. During higher demand, the transmission lines into California are fully loaded, making it virtually impossible to send additional electricity into California from other sources. Also, potential imports are often constrained by the exporters' own local needs.

29. During higher demand, the transmission lines (*i.e.*, Path 15) between Northern and Southern California are fully loaded, making it virtually impossible to send more electricity from North (*i.e.*, NP 15) to South (*i.e.,* SP15) or *vice versa*.

30. During higher demand, there is no substitute for spot electricity and reserves because other sources of electricity *(e.g.,* baseload electricity) are used to full capacity, and purchasers have no choice but to buy electricity like that of the defendants.

31. The spot supply of wholesale electricity and reserves in Northern California during higher demand is a relevant market ("the Market") (*i.e.,* a line of commerce and a section of the country) under Section 7 of the Clayton Act.

MARKET SHARES AND STRUCTURE

32. As a result of acquiring two (2) plants, defendants captured approximately forty four percent (44%) of the Market, controlling about 3,065 MW of capacity.

ENTRY

33. Entry into the Market would not be timely, likely, and sufficient in its magnitude, character and scope to deter or counteract the anti-competitive effects that have occurred and are likely to occur from defendants' accumulation of holdings and market power.

34. Sufficient entry into the Market by building new plants is not likely to occur in sufficient time to protect California from defendants' current market power. Similarly, significant entry by building new lines to transmit electricity from outside California is unlikely because it would require a myriad of difficult, costly, and time consuming regulatory, environmental and safety approvals.

ANTI-COMPETITIVE EFFECTS

35. As a result of acquiring the plants, defendants can increase the price and/or withhold output of spot electricity in the Market. By at least 2000, defendants could (and did)

exploit their market power to raise prices and withhold output in the Market.

36. Indeed, in just one month (August 2000) defendants charged about 100% to 200% more than what prices would have been had their plants been owned more diversely.

37. As a result of acquiring and holding the plants, the defendants are more likely to coordinate their pricing, production and withholding of electricity with other electricity generators in the Market.

INJURY

38. The State of California (as well as State departments and agencies) purchased electricity directly from defendants.

39. DWR bought electricity directly from defendants.

40. As a result of defendants' unlawful acquisitions and/or holdings, the State of California, its consumers, departments and agencies, and DWR paid more for electricity than they would have had the Market been more diverse.

41. As a result of defendants' unlawful acquisitions and/or holdings, the State of California and its citizens were injured and continued to be injured by, among other things, wide-spread brown-outs and disruption in the California economy.

42. As a result of defendants' unlawful acquisitions and/or holdings, the State of California, its consumers, departments, and agencies, and DWR have all suffered and will continue to suffer irreparable harm due to the substantial lessening of competition in the Market.

43. As a result of defendants' acquisitions and/or holdings, defendants have reaped and are continuing to reap unlawful profits.

COUNT 1

Equitable Relief for Violation of Section 7 of the Clayton Act:

Divestiture and Disgorgement

44. Defendants' acquisitions and continued holdings of electrical power plants violates Section 7 of the Clayton Act. Injunctive relief, including divesting enough plants to restore competition to the marketplace, should be required. In addition, defendants should be ordered to disgorge all illegal profits that they made from the plants.

45. 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 State of California, its consumers, departments, and agencies and DWR.

COUNT 2

Violation of Section 7: Damages

46. Beginning by at least sometime in 2000, the defendants exercised (and still exercise) market power from the illegal acquisition of power plants in Northern California, damaging the State of California, its departments, and agencies and DWR. Defendants' conduct caused, among other things, higher energy prices and electricity shortages. The State of California, its departments, agencies and DWR request damages according to proof.

COUNT 3

Violation of Cal. Business & Professions Code § 17200

47. Section 17200 of the California Business & Professions Code prohibits unfair competition, which includes any unlawful or unfair business act(s) or practices(s).

48. Section 7 of the Clayton Act, 15 U.S.C. § 18, provides that no person engaged in commerce shall acquire the assets of another person engaged in commerce where the effect of such acquisition may be substantially to lessen competition, or tend to create a monopoly.

49. Defendants engaged in unlawful and unfair competition, and still do so, violating Section 17200 of the California Business & Professions Code. These violations include, but are not limited to:

a. Defendants acquired and continue to hold power plants in Northern California, reducing competition in the Market, in violation of Section 7 of the Clayton Act;

b. Defendants obtained and exercised market power to withhold electricity from the Market and raise electricity prices, in violation of Section 7 of the Clayton Act; and

c. Defendants obtained, held and exercised market power to withhold electricity from the Market causing brown-outs and disrupting the economy, in violation of Section 7 of the Clayton Act.

50. 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 State of California, its consumers, departments and agencies, and to DWR.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for judgment against defendants, and each of them, as follows:

1. For an injunction, as authorized by the Clayton Act, ordering divestiture and other relief as is necessary to prevent irreparable harm to the State of California and its residents;

2. For an injunction, as authorized by the Clayton Act, ordering defendants not to buy or sell power plants or assets in California without adequate notification to the Plaintiffs;

3. For an order directing defendants to disgorge all illegal profits gained from the unlawful acquisition and holding of California power plants in violation of Section 7 of the Clayton Act;

4. That damages be awarded according to proof under the Clayton Act, and that such damages be trebled;

5. For an injunction, as authorized by Cal. Bus. & Prof. Code § 17203, enjoining defendants, 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;

6. For an injunction, as authorized by Cal. Bus. & Prof. Code § 17203, ordering divestiture and such other relief as necessary to prevent irreparable harm to California's ratepayers and taxpayers;

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

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

9. For an order directing defendants to pay restitution in an amount according to

proof as authorized by Cal. Bus. and Prof. Code § 17200;

10. For costs of suit incurred herein, including reasonable attorneys fees; and

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

Dated: April 15, 2002.

Respectfully,

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Senior Assistant Attorney General
KEN ALEX
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By: _____
Paula Quintiliani
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Attorneys for Plaintiffs

JURY DEMAND UNDER F.R.C.P. 38(b)

Plaintiffs request a jury trial for all issues properly determined by a jury.

Dated: April 15, 2002.

Respectfully,

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