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11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE CITY AND COUNTY OF SAN FRANCISCO  
(Unlimited Jurisdiction)  
13

14 PEOPLE OF THE STATE OF CALIFORNIA EX  
15 REL. BILL LOCKYER, ATTORNEY GENERAL  
OF THE STATE OF CALIFORNIA,

16 Plaintiff,

17 v.

18 MIRANT CORPORATION; MIRANT AMERICAS,  
19 INC.; MIRANT CALIFORNIA INVESTMENTS,  
INC.; MIRANT CALIFORNIA, L.L.C.; MIRANT  
20 AMERICAS DEVELOPMENT, INC.; MIRANT  
AMERICAS ENERGY MARKETING, L.P.;  
21 MIRANT DELTA, L.L.C.; MIRANT POTRERO,  
L.L.C. AND DOES 1-100,

22 Defendants.  
23

Case No.

**COMPLAINT FOR  
RESTITUTION,  
DISGORGEMENT, DAMAGES,  
CIVIL PENALTIES,  
INJUNCTION, AND OTHER  
EQUITABLE AND ANCILLARY  
RELIEF (CALIFORNIA  
BUSINESS & PROFESSIONS  
CODE § 17200 et seq.,  
CALIFORNIA CORPORATIONS  
CODE §29536 et seq.); DEMAND  
FOR JURY TRIAL**



1 MIRANT AMERICAS, INC., is a wholly owned subsidiary of defendant MIRANT  
2 CORPORATION and is the parent company of defendant MIRANT CALIFORNIA  
3 INVESTMENTS, INC.

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

8 7. Defendant MIRANT CALIFORNIA, L.L.C., formerly Southern Energy  
9 California, L.L.C., is a Delaware limited liability company doing business in California.  
10 MIRANT CALIFORNIA, L.L.C., is the parent company of Defendants MIRANT DELTA,  
11 L.L.C., and MIRANT POTRERO, L.L.C. At all relevant times alleged in this Complaint,  
12 MIRANT CALIFORNIA, L.L.C., was engaged in the marketing and brokering of electricity.

13 8. Defendant MIRANT DELTA, L.L.C., formerly Southern Energy Delta, L.L.C., is  
14 a Delaware limited liability company doing business in California. MIRANT DELTA, L.L.C., is  
15 a wholly-owned subsidiary of Defendant MIRANT CALIFORNIA, L.L.C. At all relevant times  
16 alleged in this Complaint, MIRANT DELTA, L.L.C., produced and sold energy from generation  
17 facilities located in Northern California.

18 9. Defendant MIRANT POTRERO, L.L.C., formerly Southern Energy Potrero,  
19 L.L.C., is a Delaware limited liability company doing business in California. MIRANT  
20 POTRERO, L.L.C., is a wholly-owned subsidiary of Defendant MIRANT CALIFORNIA, L.L.C.  
21 At all relevant times alleged in this Complaint, MIRANT POTRERO, L.L.C., produced and sold  
22 energy from generation facilities located in Northern California.

23 10. Defendant MIRANT AMERICAS DEVELOPMENT, INC., formerly Southern  
24 Energy Development - Americas, Inc., and Southern Company Energy Marketing G.P., L.L.C., is  
25 a Delaware corporation doing business in California. At all relevant times alleged in this  
26 Complaint, MIRANT AMERICAS DEVELOPMENT, INC., was the sole general partner of  
27 Defendant MIRANT AMERICAS ENERGY MARKETING, L.P.

28 11. Defendant MIRANT AMERICAS ENERGY MARKETING, L.P., formerly

1 Southern Company Energy Marketing, L.P., is a Delaware limited partnership and a wholly-  
2 owned indirect subsidiary of Defendant MIRANT COPRORATION. At all relevant times  
3 alleged in this Complaint, MIRANT AMERICAS ENERGY MARKETING, L.P., marketed and  
4 distributed energy-related products in California.

5 12. The true names and capacities of defendants sued in this Complaint under  
6 fictitious names of DOES 1 through 100, inclusive, are unknown to plaintiff, who sues such  
7 defendants by such fictitious names. Each of the fictitiously-named defendants engaged in or is  
8 otherwise responsible in some manner for the acts, omissions, misrepresentations, use or misuse  
9 of information or other occurrences which caused the violations alleged herein.

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

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

18 15. At all relevant times alleged in this Complaint, each of the defendants has acted as  
19 an agent, representative, or employee of each of the other defendants and has acted within the  
20 course and scope of their actual or ostensible authority.

### 21 **JURISDICTION**

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

24 17. This Court has jurisdiction over the MIRANT Defendants because they each  
25 registered with the Secretary of State to conduct business in California and did conduct business  
26 in California by engaging in the offer, sale, and purchase of electricity in the State of California  
27 and/or the control area of the California Independent System Operator, and because they  
28 otherwise have sufficient minimum contacts in California, to render the exercise of jurisdiction

1 over them by the California courts consistent with traditional notions of fair play and substantial  
2 justice.

3 **VENUE**

4 18. Venue is proper in this Court because the causes of action arise in the City and  
5 County of San Francisco where some of the violations of law have occurred.

6 **STATUTORY BACKGROUND**

7 **A. California Business and Professions Code Section 17200 et seq.: The Unfair**  
8 **Competition Law**

9 19. California Business and Professions Code section 17200 provides that “unfair  
10 competition” shall mean and include *any* unlawful, unfair, or fraudulent business practice.

11 20. Section 17203 of the California Business and Professions Code provides that  
12 “[a]ny person who engages, has engaged, or proposes to engage in unfair competition may be  
13 enjoined in any court of competent jurisdiction.” The court may make such orders or judgments  
14 as may be necessary to prevent the use or employment by any person of any practice which  
15 constitutes unfair competition or as may be necessary to restore any person in interest any money  
16 or property, real or personal, which may have been acquired by means of such unfair  
17 competition.

18 21. Section 17206 of the California Business and Professions Code provides that any  
19 person who engaged, has engaged, or proposes to engage in unfair competition shall be liable for  
20 a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which  
21 shall be assessed and recovered in a civil action brought in the name of the People of the State of  
22 California by the Attorney General. Section 17205 of the California Business and Professions  
23 Code further provides that the remedies or penalties thereunder are cumulative to each other and  
24 to the remedies or penalties available under all other laws of this state.

25 **B. California Corporations Code Section 29500 et seq.: The California**  
26 **Commodity Law of 1990**

27 22. Section 12657 of the California Government Code, which became effective on  
28 January 1, 2004, provides the Attorney General with concurrent enforcement powers to enforce

1 the California Commodity Law of 1990 (Corp. Code, § 29500 et seq.).

2           23. Section 12658 of the California Government Code provides that whenever it  
3 appears to the Attorney General that any person has engaged or is about to engage in any act or  
4 practice constituting a violation of the California Commodity Law, the Attorney General may, in  
5 his discretion, bring an action in the name of the People of the State of California in superior  
6 court to enjoin any act or practice constituting a violation of the commodities laws, and, where  
7 appropriate, seek ancillary relief, including restitution, disgorgement, or damages.

8           24. Section 12661 of the California Government Code also authorizes the Attorney  
9 General to take any actions as are authorized by the federal Commodity and Exchange Act as  
10 amended before or after January 1, 2004, the effective date of Section 12661.

11           25. Section 13a-2 of the Commodity Exchange Act (7 U.S.C. § 13a-2) authorizes the  
12 Attorney General to bring suit for any act or practice constituting a violation of the Commodity  
13 Exchange Act (7 U.S.C. § 1 et seq.) against any person (other than a contract market, derivatives  
14 transaction execution facility clearinghouse, floor broker, or floor trader). Section 13a-2(7) of  
15 the Commodity Exchange Act further provides that:

16                   Nothing contained in this section shall prohibit an authorized State official  
17                   [defined by Section 13a-2(1) to include the attorney general of any State]  
18                   from proceeding in State court on the basis of an alleged violation of any  
19                   general civil or criminal antifraud statute of such State.

20           26. The Attorney General is enforcing only the general unfair competition and  
21 antifraud provisions contained in California Business and Professions Code section 17200 et seq.  
22 and California Corporations Code section 29500 et seq., and not provisions of the Commodity  
23 Exchange Act, against the MIRANT Defendants in this action.

24           27. Section 29504 of the California Commodity Law defines a “commodity” to  
25 include any fuel (whether liquid, gaseous, or otherwise), and all other goods, articles, products or  
26 items of any kind. (Corp. Code, § 29504.) Section 29510 of the California Commodity Law  
27 defines a “commodity option” as the right but not the obligation to purchase or sell one or more  
28 commodities. (Corp. Code, § 29510.)

          28. Section 29513 of the California Commodity Law defines an “offer” to include

1 “every offer to sell, offer to purchase, or offer to enter into a commodity contract or commodity  
2 option.” (Corp. Code, § 29513.)

3 29. Section 29516 of the California Commodity Law defines “sale” or “sell” to  
4 include “every sale, contract of sale, contract to sell, or disposition, for value.” (Corp. Code, §  
5 29516.)

6 30. Section 29536 of the California Commodity Law provides that it is unlawful for  
7 any person, directly or indirectly, in connection with the purchase or sale of, the offer to sell, the  
8 offer to purchase, the offer to enter into, or the entry into, a commodity, commodity contract, or  
9 commodity option to: (a) willfully employ any device, scheme or artifice to defraud; (b) willfully  
10 make any false report, enter any false report, make any untrue statement of a material fact or omit  
11 to state a material fact necessary in order to make the statements made, in the light of the  
12 circumstances under which they were made, not misleading; (c) willfully engage in any  
13 transaction, act, practice, or course of business which operates or would operate as a fraud or  
14 deceit upon any persons; or (d) willfully misappropriate or convert the funds, security, or  
15 property of any other person. (Corp. Code, § 29536.)

16 31. Section 12660 of the California Government Code provides that any person who  
17 violates any provision of the California Commodity Law shall be liable for a civil penalty not to  
18 exceed twenty-five thousand dollars (\$25,000) for each violation, which shall be assessed and  
19 recovered in a civil action brought by the Attorney General in the name of the People of the State  
20 of California.

## 21 **FACTS**

### 22 **A. Deregulation of California’s Electric Generation Market**

23 32. Prior to restructuring of the electricity industry in California, the State’s major  
24 investor-owned utilities (“IOUs”), namely Pacific Gas & Electric Company (“PG&E”), Southern  
25 California Edison (“SCE”), and San Diego Gas & Electric Company (“SDG&E”), provided  
26 bundled services for electricity, including generation, transmission, and distribution, to the  
27 majority of retail customers in the state. In September 1996, the California Legislature enacted  
28 Assembly Bill 1890 (“AB 1890”), with the goal of introducing competition in the generation and

1 sale of electricity, at both the wholesale and retail levels. In order to promote competition, AB  
2 1890 encouraged the IOUs to divest themselves of a significant portion of their generating  
3 capacity. As a consequence, the IOUs sold almost all of their natural gas-fired generating  
4 capacity to five merchant generating companies, including the MIRANT Defendants.

5 33. On or about March 1999, Defendants MIRANT DELTA, L.L.C., and MIRANT  
6 POTRERO, L.L.C., acquired from PG&E three separate electric power generation facilities  
7 located in Contra Costa County and the City and County of San Francisco, California: the  
8 Pittsburg Power Plant, the Contra Costa Power Plant, and the Potrero Power Plant. The Pittsburg  
9 Power Plant, located in Pittsburg, California, consists of seven units with a combined electric  
10 power generation capacity of approximately 2020 megawatts (“MW”). The Contra Costa Power  
11 Plant, located in Antioch, California, consists of four operating units, two of which have a  
12 combined electric power generation capacity of approximately 680 MW. The Potrero Power  
13 Plant, located in San Francisco, California, consists of four units with a combined electric power  
14 generation capacity of approximately 400 MW.

15 **B. The ISO and PX Markets**

16 34. AB 1890 also established two new institutions: the California Independent  
17 System Operator (“ISO”) and the California Power Exchange (“PX”).

18 35. The ISO was established to operate the high-voltage transmission grid serving  
19 most of the state and is responsible for all real-time operations, such as continually balancing  
20 generation and load and managing congestion on the transmission system it controls.

21 36. The PX was established to operate two auction-style markets for the purchase and  
22 sale of electricity for delivery during the same or next day. These were the “day-ahead” and  
23 “day-of” markets. The intent of the deregulation plan was that 95 percent of the power needed to  
24 serve customers in the ISO control area would be sold and purchased through the PX markets. In  
25 the day-ahead and day-of markets, the PX established a single market clearing price that all  
26 sellers collected and all buyers paid for power delivered in each hour across the entire ISO  
27 control area, provided there were no transmission constraints. When transmission congestion  
28 existed, a separate clearing price was established for each transmission constrained area or zone

1 in California.<sup>1/</sup>

2           37. At all relevant times alleged in this Complaint, the ISO was responsible for  
3 managing congestion on the ISO-controlled grid. The ISO solicited “adjustment bids” in order to  
4 allocate the limited transmission capacity available across congested transmission paths to those  
5 market participants that valued it most highly. Adjustment bids represent the amount of money  
6 per megawatt hour that an entity is willing to pay to have its power transmitted over a particular  
7 congested path, or to be paid to reduce the amount of power it plans to send over a congested  
8 path.

9           38. At all relevant times alleged in this Complaint, in addition to operating the  
10 congestion management system, the ISO administered a variety of auction markets for the  
11 purpose of procuring the electricity necessary to operate the transmission system reliably,  
12 including an energy market to procure the power needed to continuously match the amount of  
13 power being supplied to the grid with the amount of energy being demanded by customers. This  
14 market is known as the “real-time” energy market or the “imbalance” energy market.

15           39. The ISO also procured various types of capacity, known as ancillary services, that  
16 could be called upon by the ISO to produce electricity in the event of a system emergency, such  
17 as a major plant outage, or to correct a routine imbalance between supply and demand on the  
18 grid. The ISO procured four different types of ancillary services through auction markets run one  
19 day and one hour ahead of actual (“real-time”) consumption of the electricity. The four different  
20 services are differentiated by the amount of time it takes the producer to deliver the energy to the  
21 grid when called on by the ISO.

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23           1. A transmission path is “congested” when the total amount of electricity scheduled to be  
24 transmitted between two areas across that path exceeds the path’s available transmission capacity.  
25 A “schedule” is a statement submitted to the ISO that indicates both (1) an electricity demand  
26 requirement (including the quantity of electricity need, the duration of the need and where the  
27 delivery is needed) and (2) the proposed electricity supply that is to be used to meet the demand in  
28 question (including the quantity of electricity to be delivered, the duration of delivery, the location  
of the generating facility, along with other technical information regarding transmission losses and  
what ancillary services will be associated with the delivery). A schedule is considered to be  
“balanced” when the schedule’s demand level is matched with an equivalent level of supply.

1           40. A generator or marketer of energy wishing to participate in the PX and ISO energy  
2 markets was required to do so through a scheduling coordinator. A scheduling coordinator is an  
3 entity authorized to submit energy bids and schedules to the PX and ISO on behalf of energy  
4 suppliers and purchasers. A generator or marketer could serve as its own scheduling coordinator  
5 or use a third party to act as its scheduling coordinator. The PX was also considered to be a  
6 scheduling coordinator but with restricted capabilities. Many scheduling coordinators performed  
7 several functions, including coordinating many generators and loads; negotiating generator and  
8 load changes with clients; negotiating bilateral contracts with or between clients; aggregating  
9 contracts between market participants; acting as energy service provider; owning, contracting for,  
10 or brokering generation; bundling generation and load; acting as the sole agent to the ISO; and  
11 submitting schedules and bids for electricity and ancillary services.

12           41. The IOUs were required by law to sell all of the output from the generating units  
13 that they had not previously divested into markets administered by the PX and ISO, and to  
14 purchase all of their energy and capacity requirements from those PX and ISO markets. As a  
15 result, the PX was the largest scheduling coordinator in California, representing at times  
16 approximately 90 percent of the load served by the ISO grid.

17           42. As a scheduling coordinator, the PX was required to submit a balanced schedule  
18 of load and generation to the ISO for the following day. In order to maintain balance on the  
19 transmission grid, the ISO would dispatch power from sellers that submitted successful bids in  
20 the imbalance energy market or ancillary services markets. If there were insufficient bids in the  
21 ISO real-time market to meet customer demand, the ISO, as a last resort, would purchase energy  
22 “out-of-market” in order to procure the resources necessary to operate the system.<sup>2/</sup>

23           43. Neither the ISO nor the PX purchased or sold energy for their own accounts or  
24 benefit. Rather, they served as “market-makers” or clearinghouses to facilitate the sale and  
25 purchase of wholesale power by market participants such as the MIRANT Defendants. In  
26 markets administered by the PX and ISO, sellers submitted bids specifying the amount of

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27           2. An out-of-market, or “OOM”, purchase refers to a purchase of energy by the ISO that was  
28 not bid into the energy markets or was bid at a price above the price cap.

1 electricity and/or capacity they wished to sell and the price at which they were offering to sell.  
2 The auction operator ranked all bids in merit order, (i.e., from lowest to highest price) and then  
3 selected all of the bids it needed in order to meet the demand in a given interval. The bid  
4 submitted by the highest priced unit selected by the ISO set a single, “market-clearing price” that  
5 all buyers paid, and all sellers received.

6 44. At all relevant times alleged in this Complaint, Defendant MIRANT AMERICAS  
7 ENERGY MARKETING, L.P., was the scheduling coordinator for the MIRANT Defendants,  
8 including MIRANT DELTA, L.L.C., and MIRANT POTRERO, L.L.C. In its capacity as  
9 scheduling coordinator, MIRANT AMERICAS ENERGY MARKETING, L.P., submitted bids  
10 to sell the electricity and capacity available from the generation facilities owned and operated by  
11 MIRANT DELTA, L.L.C, and MIRANT POTRERO, L.L.C., in the day-ahead, day-of, real-time,  
12 and ancillary markets which the PX and ISO operated. As a marketer of energy, MIRANT  
13 AMERICAS ENERGY MARKETING, L.P., at times submitted bids to purchase energy from  
14 these energy markets or to sell energy it acquired from other sources, including bilateral energy  
15 transactions. In addition, MIRANT AMERICAS ENERGY MARKETING, L.P., submitted  
16 schedules to the PX and ISO detailing generation and load information for bilateral energy  
17 transactions it purportedly negotiated on behalf of itself and the MIRANT Defendants with other  
18 market participants or energy entities within or outside of the ISO control area. MIRANT  
19 AMERICAS ENERGY MARKETING, L.P., also communicated and interacted with the ISO  
20 regularly, including during real-time and system emergencies, regarding generation and  
21 transmission issues or to negotiate out-of-market sales with the ISO to help balance the grid.

22 **C. The Breakdown of the Market, Skyrocketing Electricity Prices,**  
23 **and Rolling Blackouts**

24 45. In May 2000, the price of wholesale power began to quickly rise to historically  
25 unprecedented levels in California, and did not begin declining until June 2001 (the period  
26 referred to as “the California Energy Crisis”).

27 46. During the Energy Crisis, buyers of wholesale power incurred massive losses.  
28 The two largest IOUs, SCE and PG&E, incurred enormous debts and, as a result, defaulted on

1 payments to both the PX and the ISO. PG&E filed for bankruptcy in April 2001, and SCE  
2 teetered on the brink of bankruptcy. On January 29, 2001, the PX suspended trading in its  
3 markets, effectively ceasing its operations, and declared bankruptcy on March 9, 2001.

4 47. On January 17, 2001, Governor Davis declared a state of emergency in order to  
5 ensure that a continuous supply of energy was available in California. Governor Davis  
6 authorized the State, through the California Department of Water Resources (“DWR”), to  
7 purchase electricity to protect health, safety, and vital economic interests of California citizens  
8 and businesses. From January through October 2001, DWR spent \$10 billion buying electricity  
9 on a short-term basis from suppliers, including the MIRANT Defendants. All told, wholesale  
10 power buyers paid approximately \$27 billion in each of 2000 and 2001 for wholesale power,  
11 compared to \$7 billion in 1999.

12 48. Those costs were passed on to retail, end-use customers, and retail rates remain  
13 among the highest in the nation four years after the start of the crisis. Retail customers of  
14 SDG&E began paying dramatically increased rates in the summer of 2000 as a result of the AB  
15 1890 “rate freeze” ending early. In June, the average residential rate increased to more than 6  
16 cents/kwh from 3-5 cents/kwh in May. In July, the rate increased to more than 13 cents/kwh. By  
17 September, rates had skyrocketed to 21 cents/kwh, with the average price of residential electricity  
18 increasing 413 percent from the third quarter of 1999 to the third quarter of 2000. Paying the  
19 monthly electric bill became a major economic hardship for many individual customers.  
20 Numerous businesses were forced to raise prices, lay off employees, or go out of business  
21 altogether. Public agencies, such as schools and hospitals, also absorbed debilitating rate  
22 increases. Ultimately, the State was forced to adopt legislation capping the retail rates of  
23 SDG&E customers in order to cushion the impact.

24 49. In a series of decisions beginning in 2001, the California Public Utilities  
25 Commission (“CPUC”) was forced to significantly increase the rates paid by retail, end-use  
26 customers of PG&E and SCE, as well. The CPUC also approved steep rate increases necessary  
27 to recoup the billions of dollars that DWR spent buying wholesale power.

28 50. The crisis also posed a serious threat to the safety and reliability of high voltage

1 transmission grid serving the State, which was subjected to extended periods of ISO-declared  
2 system emergencies in which operating reserves fell below system requirements. The ISO  
3 declared numerous Stage 3 system emergencies (the highest level of system emergency) because  
4 actual or anticipated operating reserves were less than or equal to one and a half percent (1½%)  
5 of projected peak demand. For the first time ever in California history, businesses and residents  
6 in the State were subjected to rolling blackouts.

7 **D. The Mirant Defendants' Fraudulent Trading Schemes**

8 51. Through their scheduling coordinator, the MIRANT Defendants sold electricity  
9 into the California markets. They operated in all of the organized spot markets, including day-  
10 ahead, day-of, real-time, and ancillary services. They have made tens of thousands of electricity  
11 transactions in those markets starting in approximately 1998 and continuing through to the  
12 present.

13 52. Beginning as early as 1999 and continuing at least through 2001, the MIRANT  
14 Defendants willfully engaged in an array of manipulative and fraudulent schemes designed to  
15 enable them to obtain "congestion relief" payments for taking actions that did not relieve any  
16 congestion, to receive payment for excess generation through the submission of false schedules,  
17 and to circumvent the ISO's price cap by falsely representing the source of the energy. These  
18 gaming schemes were disclosed in Spring 2002 when memoranda released by Enron Corporation  
19 described in detail numerous fraudulent trading strategies which have become widely known as  
20 the "Enron trading strategies," but were in fact employed by numerous market participants,  
21 including the MIRANT Defendants. Until the disclosure of the Enron memoranda, market  
22 participants, including the MIRANT Defendants, publicly denied any wrongdoing with regard to  
23 their trading activities in the PX and ISO markets. The trading strategies used by the MIRANT  
24 Defendants include, but are not limited to, the following:

25 **1. Congestion Games**

26 53. The MIRANT Defendants engaged in several strategies designed to collect  
27 payment for taking actions that would purportedly "relieve" congestion along constricted  
28 transmission paths. The MIRANT Defendants willfully submitted false schedules to the ISO for

1 the purpose of creating illusory congestion and collecting payment for taking actions to “relieve”  
2 congestion that were bogus and did not relieve any actual congestion. These sham “congestion-  
3 relief” schemes include, but are not limited to, the following:

4 **a) “Deathstar”**

5 54. In a “Deathstar” transaction, the MIRANT Defendants scheduled power in the  
6 opposite direction of congestion without having any intention of delivering the power. The  
7 MIRANT Defendants collected payment for “relieving” congestion, but put no actual power onto  
8 the grid and took no power off of the grid. Thus, no congestion was relieved.

9 **b) “Non-Firm Export”**

10 55. In a “non-firm export,” the MIRANT Defendants scheduled non-firm energy from  
11 a point in California to a control area outside of California in the opposite direction of congestion  
12 without having any intention of making the delivery. As soon as the MIRANT Defendants  
13 collected payment for purportedly “relieving” congestion on the facility, they cut the export  
14 schedule. As a result, no power was transmitted and no congestion was relieved, even though a  
15 congestion relief payment was collected.

16 **2. Ancillary Services-Related Games / “Get Shorty”**

17 56. Market participants providing ancillary services to the ISO are paid by the  
18 megawatt for keeping their capacity in reserve in the event it is needed by the ISO to generate  
19 power. In the event the ISO orders a market participant to produce electricity from this reserve  
20 capacity, the ISO also pays the seller by the megawatt hour for the power provided.

21 57. In order to preserve these critically-important electricity-supply reserves, each  
22 market participant that sells ancillary services to the ISO expressly warrants through a  
23 Participating Generator Agreement that it has sufficient capacity to meet its obligation and will  
24 keep its capacity in reserve and available for dispatch by the ISO.

25 58. The MIRANT Defendants engaged in a manipulative scheme, known both as “Get  
26 Shorty” or paper trading of ancillary services, under which they collected payment for ancillary  
27 services they did not provide, and never intended to provide. The MIRANT Defendants carried  
28 out this scheme by willfully submitting bids to provide ancillary services in the day-ahead market

1 without having any physical resources (i.e., actual generating reserves) backing up the sale. The  
2 MIRANT Defendants then “covered” all or part of their commitment by buying ancillary services  
3 in the hour-ahead market so that they could profit from selling high in the day-ahead market and  
4 buying back at a lower price in the hour-ahead market. In submitting their bids to provide  
5 ancillary services to the ISO, the MIRANT Defendants willfully and falsely represented that the  
6 capacity they were obligated to keep in reserve was actually available for dispatch, when in fact it  
7 did not exist.

### 8 **3. Submission of False Load Schedules / “Fat Boy”**

9 59. Market participants within the ISO-control area are required to submit balanced  
10 schedules to the ISO, in which anticipated generation must be scheduled against an equal amount  
11 of load that the market participant expects to serve. The MIRANT Defendants willfully  
12 submitted false schedules that overstated the load they intended to supply, knowing that the  
13 “excess” generation would be accounted for by ISO as an “uninstructed deviation” and paid the  
14 market clearing price for imbalance energy.

### 15 **4. “Ricochet” or “Megawatt Laundering”**

16 60. The MIRANT Defendants engaged in a manipulative trading scheme known as  
17 “ricochet” or “megawatt laundering” designed to evade the price cap in the ISO’s real-time,  
18 imbalance energy market. The ISO had a practice of paying prices above its cap for power  
19 imported from sources located outside the State when supplies bid into the real-time market were  
20 insufficient to meet demand. Such sales, known as “out-of-market” or “OOM” sales, were  
21 completed outside the centralized, imbalance energy market.

22 61. In a ricochet transaction, the MIRANT Defendants purchased energy in the PX  
23 day-ahead or day-of market, sold it briefly to an entity located outside the State and then  
24 repurchased it back from the entity so that they could sell it back to the ISO at a greatly inflated  
25 price as an OOM sale. Through this strategy, the MIRANT Defendants willfully and falsely  
26 represented to the ISO that the energy it sold as OOM had been imported into California in order  
27 to be paid at a price above the cap, despite the fact that, as a practical matter, no energy ever left  
28 or re-entered the State.

1                   **5. False Outages**

2                   62. Generators within the ISO control area must report to the ISO, through their  
3 scheduling coordinators, the availability or unavailability of the generating units at their power  
4 plants on a regular basis. Such reports allow the ISO to assess the available generation and to  
5 call on the generators when necessary to provide electricity from their generating units in order to  
6 balance the grid or to alleviate system emergencies. The MIRANT Defendants willfully  
7 submitted false outage reports to the ISO and falsely represented that their units were partially or  
8 completely unavailable when in fact the units were fully operational. Through this strategy, the  
9 MIRANT Defendants intentionally withheld energy from the ISO system.

10   **FIRST CAUSE OF ACTION**

11   **UNFAIR BUSINESS COMPETITION**  
12   **(Business & Professions Code § 17200 et seq.)**

13                   63. Plaintiff realleges and incorporates by reference paragraphs 1 through 62 inclusive  
14 as if fully set forth herein.

15                   64. Section 17200 of the California Business and Professions Code prohibits unfair  
16 competition, which includes any unlawful, unfair, or fraudulent business act or practice.

17                   65. Beginning in 1999 and continuing through at least 2001, each MIRANT  
18 Defendant willfully engaged in unfair competition that includes, but is not limited to:

19                                   (a) offering to sell ancillary services to the ISO without having any physical  
20 resources backing up the sale, and collecting payment for ancillary services they did not provide  
21 and had no intention of providing;

22                                   (b) misrepresenting “out-of-market” sales of power to the ISO as “imports,” and  
23 collecting payment for “out-of-market” sales at prices above the price cap, when in fact the  
24 power originated in California;

25                                   (c) overstating the amount of load they expected to serve, and thereby collecting  
26 payment for the “excess” generation at the market clearing price;

27                                   (d) scheduling non-firm energy in the opposite direction of congestion to a point  
28 outside the ISO control area without having any intention of delivering the power, collecting

1 payment for purportedly relieving congestion, and then cutting the schedule before putting any  
2 energy on the grid;

3 (e) scheduling power in the opposite direction of congestion without having any  
4 intention of delivering the power, and collecting payment for purportedly relieving congestion,  
5 when in fact no congestion was relieved; and

6 (f) falsely reporting that generation units were in an outage and unavailable  
7 when in fact the units were operational and available.

8 66. Each of the acts and practices of the MIRANT Defendants, including, but not  
9 limited to, those alleged in Paragraph 65 to this Complaint are “unfair” within the meaning of  
10 California Business and Professions Code section 17200.

11 67. Each of the acts and practices of the MIRANT Defendants, including, but not  
12 limited to, those alleged in Paragraph 65 to this Complaint are “fraudulent” within the meaning  
13 of California Business and Professions Code section 17200.

14 68. Each of the acts and practices of the MIRANT Defendants, including, but not  
15 limited to, those alleged in Paragraph 65 to this Complaint are “unlawful” within the meaning of  
16 California Business and Professions Code section 17200 because they violate California law,  
17 including but not limited to California Corporations Code section 29536.

18 69. As a direct consequence of the MIRANT Defendants’ unlawful, unfair, and  
19 fraudulent business practices, the operations of the ISO and PX markets were adversely affected,  
20 overall system-wide grid reliability was degraded, and the health, safety, and economic well-  
21 being of California businesses and residents were put in danger.

22 70. As a direct consequence of the MIRANT Defendants’ unlawful, unfair, and  
23 fraudulent business practices, California businesses and residents were subjected to the risks and  
24 dangers of power supply interruptions, rolling blackouts and other adverse consequences.

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1 **SECOND CAUSE OF ACTION**

2 **UNLAWFUL COMMODITY TRANSACTIONS**  
3 **(California Corporations Code § 29500 et seq.)**

4 71. Plaintiff realleges and incorporates by reference paragraphs 1 through 70 inclusive  
5 as if fully set forth herein.

6 72. Under California Government Code sections 12658 and 12660, the Attorney  
7 General has authority to enforce the California Commodity Law (Cal. Corp. Code § 29500 et  
8 seq.) and to seek injunctive relief, civil penalties, and ancillary relief, including restitution,  
9 disgorgement, and damages for violations thereof.

10 73. Electricity is a “commodity” as defined under section 29504 of the California  
11 Commodity Law.

12 74. Ancillary services are “commodity options” within the meaning of section 29510  
13 of the California Commodity Law.

14 75. The MIRANT Defendants engaged in transactions in which they offered to sell,  
15 sold, offered to purchase, and purchased commodities and commodity options in the PX and ISO  
16 markets.

17 76. Section 29536 of the California Commodity Law provides in relevant part:

18 It is unlawful for any person, directly or indirectly, in connection with the  
19 purchase or sale of, the offer to sell, the offer to purchase, the offer to enter  
20 into, or the entry into, a commodity, commodity contract, or commodity  
option, to do any of the following:

- 21 (a) To willfully employ any device, scheme, or artifice to  
defraud.
- 22 (b) To willfully make any false report, enter any false record,  
23 make any untrue statement of a material fact, or omit to  
24 state a material fact necessary in order to make the  
statements made, in the light of the circumstances under  
which they were made, not misleading.
- 25 (c) To willfully engage in any transaction, act, practice, or  
26 course of business which operates or would operate as a  
fraud or deceit upon any persons.
- 27 (d) To willfully misappropriate or convert the funds,  
28 security, or property of any other person.

1           77. Beginning in 1999 and continuing through at least 2001, in connection with their  
2 offers to sell, sales, offers to purchase, and purchases, of commodities and commodity options in  
3 the PX and ISO markets, the MIRANT Defendants violated section 29536(a)-(d) of the  
4 California Commodity Law by engaging in conduct including, but not limited to, the following:

5           (a) willfully and fraudulently offering to sell ancillary services to the ISO  
6 without having any physical resources backing up the sale, and collecting payment for ancillary  
7 services they did not provide and had no intention of providing;

8           (b) willfully and fraudulently misrepresenting “out-of-market” sales of power to  
9 ISO as “imports,” and collecting payment for “out-of-market” sales at prices above the price cap,  
10 when in fact the power never left or re-entered California;

11           (c) willfully and fraudulently overstating the amount of load they expected to  
12 serve, and thereby collecting payment for the “excess” generation at the market clearing price;

13           (d) willfully and fraudulently scheduling non-firm energy in the opposite  
14 direction of congestion to a point outside the ISO control area without having any intention of  
15 delivering the power, collecting payment for purportedly relieving congestion, and then cutting  
16 the schedule before putting any energy on the grid;

17           (e) willfully and fraudulently scheduling power in the opposite direction of  
18 congestion without having any intention of delivering the power, and collecting payment for  
19 purportedly relieving congestion, when in fact no congestion was relieved; and

20           (f) willfully and fraudulently reporting that generation units were in an outage  
21 and unavailable when in fact the units were operational and available.

22           78. As a direct consequence of the MIRANT Defendants’ violations of section  
23 29536(a)-(d), the operations of the ISO and PX markets were adversely affected, overall  
24 system-wide grid reliability was degraded, and the health, safety, and economic well-being of  
25 California businesses and residents were put in danger.

26           79. As a direct consequence of the MIRANT Defendants’ violations of section  
27 29536(a)-(d), California businesses and residents were subjected to the risks and dangers of  
28 power supply interruptions, rolling blackouts and other adverse consequences.

**PRAYER FOR RELIEF**

WHEREFORE, the Attorney General prays for judgment against Defendants, and each of them, as follows:

1. For an injunction, as authorized by Business and Professions Code section 17203 and Government Code section 12658, enjoining Defendants, their successors, agents, representatives, employees and all persons acting in concert with them, from engaging in acts and practices that are in violation of Business and Professions Code section 17200 and Corporations Code section 29536, including but not limited to the types of acts and practices alleged herein.

2. For an order directing Defendants to pay restitution in an amount according to proof, as authorized by Business and Professions Code section 17203, for violations of Business and Professions Code section 17200 et seq.;

3. For an order directing Defendants to disgorge all monies, including any profits, they gained as a result of their violations of Business and Professions Code section 17200 et seq.;

4. For an order assessing civil penalties in the amount of Two Thousand Five Hundred Dollars (\$2,500) against each Defendant for each violation of Business and Professions Code section 17200 et seq., as authorized by Business and Professions Code section 17206;

5. For an order awarding damages, according to proof, as authorized by Government Code section 12658(b), for violations of Corporations Code section 29500 et seq.;

6. For an order directing Defendants to pay restitution in an amount according to proof, as authorized by Government Code section 12658(b), for violations of Corporations Code section 29500 et seq.;

7. For an order directing Defendants to disgorge all monies, including any profits, they gained as a result of their violations of Corporations Code section 29500 et seq., as authorized by Government Code section 12658(b);

8. For an order assessing civil penalties in the amount of Twenty Five Thousand Dollars (\$25,000) for each violation of the California Commodity Law, as authorized by California Government Code section 12660;

9. For an order awarding Plaintiffs their costs of suit herein;

