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SUPERIOR COURT OF CALIFORNIA
 COUNTY OF HUMBOLDT

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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 10,

Defendants.

No. ~~CX-~~ **DR030070**

**COMPLAINT FOR CIVIL
 PENALTIES, INJUNCTION,
 AND RESTITUTION**

[Business & Professions Code,
 Section 17200, in re
 Headwaters Forest Project:

1. Deceptive Concealment in re EIR Recirculation;
2. Deceptive Concealment in re Sustained Yield Plan Alternative;
3. Fraudulent Representation in re Jordan Creek Landslides;
4. Fraudulent Suppression in re Final EIR Inclusion;
5. Fraudulent Suppression in re EIR Recirculation; and
6. Fraudulent Suppression in re Sustained Yield Plan Alternative]

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THE PEOPLE OF THE STATE OF CALIFORNIA, by and through PAUL V. GALLEGOS, District Attorney of the County of Humboldt, hereby allege the following upon information and belief:

I.

INTRODUCTION

1. This Complaint seeks civil penalties and injunctive relief for harm to property rights and harm to ancient redwoods inflicted on the people of Humboldt County by The Pacific Lumber Company's ("PL's") unfair and fraudulent business practices in obtaining government approval of PL's preferred "Alternative 25" ("Unstable Slopes Alternative") as part of the "Sustained Yield Plan" ("SYP") of the Headwaters Forest Project, thereby gaining approval to cut down some 100,000 trees on unstable slopes so as to earn an additional \$40 million per year. The Complaint seeks a \$2500 penalty for each tree harvested under Alternative 25. PL's "Jordan Creek deception" involves five stages.

a. Submission of false landslide data for inclusion in Final EIR. In the first stage, PL submitted significant false data regarding the Jordan Creek watershed "investigated" by its agents for the purpose of inclusion in the final environmental impact report ("EIR") on the Headwaters Forest Project. As included in the final EIR this false data stated:

* "[W]e discovered harvest and landslide associations that directly and dramatically contradicted those encountered in Bear Creek."

* "In Jordan Creek, 85 percent of the recent landslides had occurred on the older harvested area, and only 15% on the recently harvested area."

This false data directly contradicted the data of the leading scientific authority establishing the direct correlation of landslide sedimentation to recent timber harvesting on PL's unstable slopes. This false data thereby allowed PL to falsely claim that the landslide data from one watershed contradicted the data from other watersheds, including the adjoining Bear Creek watershed, thus undermining a scientific consensus that the same trend of recent "harvesting-to-landslide" relationships existed for all of PL's unstable slopes and thereby giving PL the opening

to lobby for the right to log on unstable slopes. This false data was published in the final EIR and was relied upon by governmental agencies and the public.

b. Fraudulent suppression of corrective data to prevent EIR recirculation. In the second stage, PL, having succeeded in getting its significant false data into the final EIR and knowing that the purpose of the final EIR was to "fully inform the public" of significant environmental risks, deceptively withheld from the Director of CDF and from the public the significant true corrective data, all of which it had in its possession prior to EIR certification:

*** "The trends of this report [for the Jordan Creek Watershed] are remarkably similar to those found in the Bear Creek and Elk River reports."**

*** "In Jordan Creek, 60% of the landslides and 77% of the landslide sediment delivery came from 50% of the watershed which had been harvested within the last 15 years."**

PL, having submitted false data into the EIR for circulation to the public, failed to undertake its resultant duty to take corrective action that would effectively and fully negate its misrepresentation. The first required action PL did not take was to effectively notify the Director of the California Department of Forestry and Fire Protection ("CDF") of the corrective data and its significance prior to his lead-agency certification of the EIR on February 23, 1999, *PL thereby misleading the Director of CDF, and thereby preventing him from complying with his duty under Section 15088.5 of the State CEQA Guidelines to recirculate an EIR with the corrective data to the public.* The second required action PL refused to take was, in the absence of assurance that the EIR would be recirculated, to directly provide the corrective data to those members of the public having expressed written concerns during the EIR process about the environmental effects of harvesting on unstable slopes, *PL thereby preventing the public from effectively exercising its right (1) to demand recirculation of the EIR, and (2) to voice objections based on this significant corrective data prior to the SYP's Unstable Slopes Alternative being approved on March 1, 1999.*

c. Fraudulent suppression of corrective data soliciting the Unstable Slopes Alternative. In the third stage, PL, knowing (a) that no recirculation of the EIR was forthcoming, (b) that no state or federal agencies having an interest in the project had been notified of the corrective data, and (c) that the Director of CDF had not been actually notified of the corrective data, deceptively

concealed the corrective data while in the very acts of soliciting federal agencies to pressure the Director of CDF to reverse his original approval of SYP Alternative 25(a), which disallowed logging on unstable slopes, and to approve SYP Alternative 25, the Unstable Slopes Alternative. In reliance on PL's deceptive suppression of the corrective data, the federal agencies yielded and the Director of CDF yielded.

d. Causing major environmental harm by logging the unstable slopes. In the fourth stage, from March 1, 1999 through the present time, PL and its related corporations were free to cut down trees on unstable slopes based on its deception in obtaining SYP Alternative 25, and having proceeded to do so, these acts of logging resulted in major landslides causing destruction to ancient redwoods, serious harm to Humboldt Bay, and serious harm to streams, bridges, roads, homes, and property rights of the people of Humboldt County.

e. Defeating Water Quality's mitigations. In the fifth stage, from February 2000 through the present time, PL, following the environmental harm resulting from its logging on the unstable slopes pursuant to SYP Alternative 25, has proceeded to fight and defeat the mitigation demands of the North Coast Water Quality Control Board by arguing that the Sustained Yield Plan, containing its deceptively-procured Unstable Slopes Alternative, prevents any increased monitoring or slowing of PL's logging of trees on such slopes.

II.

PLAINTIFF

2. 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.

THE DEFENDANTS

3. 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 "PL" or "PALCO"), 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. PL's principal office is located at Scotia, California. At all relevant times PL has been the owner of properties subject to the Habitat Conservation Plan/Sustained Yield Plan Project incorporated by the Headwaters Forest Agreement of March 1, 1999 between itself, its owner MAXXAM, INC., and various federal and state government agencies.

4. Defendants DOES 1 THROUGH 10 are the officers, agents, employees, servants or others acting in interest with defendants PL. Plaintiff is ignorant of the true names of defendants sued herein as DOES 1 THROUGH 10. When the names of these defendants have been ascertained, plaintiff will seek leave to amend this complaint to allege such names and capacities.

5. 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 officers, directors, managers, agents, employees and/or representatives while they were acting within the actual or ostensible scope of their authority.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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

11. 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.

12. 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.

V.

STATEMENT OF THE CASE

13. The District Attorney seeks civil penalties, injunctive relief, and restitution against the defendants for violation of the California Unfair Competition Law, set forth in Sections 17200 through 17210 of the Business and Professions Code (also known as the California Unfair Business Practices Act pursuant to *Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1259). This Law and Act makes it illegal for any person, including a corporation, to engage in unfair competition, which is defined by section 17200 of the Business and Professions Code as follows:

"[U]nfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice"

14. The District Attorney is alleging six causes of action based on violations of this Act. All of the violations alleged were committed as part of a continuing course of conduct commencing on or after October 1997 and continuing through the present time.

15. The District Attorney's first cause of action, which alleges an "unfair" business practice, is entitled: Deceptive Concealment in re EIR Recirculation.

16. The District Attorney's second cause of action, which alleges an "unfair" business practice, is entitled: Deceptive Concealment in re Sustained Yield Plan Alternative.

17. The District Attorney's third cause of action, which alleges a "fraudulent" business practice, is entitled: Fraudulent Representation in re Jordan Creek Landslides.

18. The District Attorney's fourth cause of action, which alleges a "fraudulent" business practice, is entitled: Fraudulent Suppression in re Final EIR Inclusion.

19. The District Attorney's fifth cause of action, which alleges a "fraudulent" business practice, is entitled: Fraudulent Suppression in re EIR Recirculation.

20. The District Attorney's sixth cause of action, which alleges a "fraudulent" business practice, is entitled: Fraudulent Suppression in re Sustained Yield Plan Alternative.

VI.

COMPLIANCE WITH STATUTE OF LIMITATIONS

21. This action is brought pursuant to Business and Professions Code, section 17208, which provides that any action to enforce any cause of action pursuant to sections 17200 *et seq.* "shall be commenced within four years after the cause of action accrued."

22. Section 17205 of the Business and Professions Code provides that "the remedies or penalties provided in this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state."

23. The remedies of the Unfair Competition Law are thus *cumulative* to those set forth in all other statutes related to the underlying facts, including the California Environmental Quality Act ("CEQA") (Public Resources Code, sections 21000 *et seq.*) and the Z'berg-Nejedly Forest Practice Act ("FPA") (Public Resources Code, sections 4511 *et seq.*). They are *also* cumulative to all limitations statutes; pursuant to *Cortez v. Purolator Air Filtration Products Company* (2000) 23 Cal.4th 163, 179, this four-year statute under Sections 17208 and 17205 is applicable even if a shorter period of limitations would otherwise be applicable, e.g., to the fraud causes of action herein.

24. Each of the six causes of action set forth in this complaint accrued within the past four years. Each of the causes of action accrued as recently as the last tree harvested on unstable slopes pursuant to SYP Alternative 25 that would not have been allowed to be harvested under SYP Alternative 25(a).

25. The 30-day and 180-day limitation provisions of the California Environmental Quality Act, set forth in Public Resources Code section 21167, apply to "[a]ny action or proceeding to attack, review, set aside, void, or annul the . . . acts or decisions of a public agency." Section 21167 is therefore inapplicable to this action for two reasons. First, the section

can only be applicable if a "public agency" is a defendant, whereas this action is against private parties solely. Second, the section refers only to remedies of "project" nullification, whereas this action seeks the completely different remedy of civil penalties.

VII.

STATUTORY AND REGULATORY BACKGROUND

26. The State of California has enacted a statute prohibiting unfair competition, commonly referred to as the "Unfair Competition Law." Chapter Five ("Enforcement") of Part Two ("Preservation and Regulation of Competition") of Division Seven ("General Business Regulations") of the Business and Professions Code is found at section 17200 *et seq.*

27. Section 17200 of the Business and Professions Code defines "unfair competition," in relevant part as follows:

"As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice"

28. Pursuant to *Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 839, fraud under Section 17200 "only requires a showing members of the public 'are likely to be deceived.'"

29. Pursuant to *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180, because section 17200 of the Business and Professions Code "is written in the disjunctive, it established three varieties of unfair competition--acts or practices which are unlawful, or unfair, or fraudulent."

30. Pursuant to *Federal Trade Commission v. Sperry & Hutchinson Company*, 405 U.S. 233, 244, the factors for determining whether a business practice is "unfair" goes beyond anti-trust laws to include (1) "offends public policy"; (2) "is immoral, unethical, oppressive, or unscrupulous."

VIII.

APPLICABILITY OF ACT TO FOREST PRACTICES

31. Pursuant to *Hewlett v. Squaw Valley Ski Corporation* (1997) 54 Cal.App.4th 499, the Unfair Competition Law applies to forest practices, including timber harvesting.

IX.

CIVIL PENALTY REMEDIES

32. Section 17206(a) of the Business and Professions Code provides the remedy of civil penalties:

“Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, by any district attorney,”

33. Section 17206(b) of the Business and Professions Code sets forth the factors for determining the amount of civil penalties, including the defendant's assets and net worth:

“The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities and net worth.”

X.

\$2,500.00 PENALTY PER TREE

34. Pursuant to *Hewlett v. Squaw Valley Corporation* (1997) 54 Cal.App.4th 499, 514, 536-537, the civil penalties provision set forth in Section 17206(b) of the Business and Professions Code authorizes the imposition of a civil penalty of \$2500.00 per wrongfully-harvested tree:

"In March 1999, while this TRO was in effect, Mott ordered a crew to cut 18 trees in the Tram Basin Bowl. * * *

"[T]he trial court ordered penalties of \$233,000 as follows: . . .

'5. March [1989] cut: Eighteen violations, \$2,500 each,'
"Here, the penalties imposed were modest in light of Squaw
Valley's egregious behavior."

XI.

INJUNCTION REMEDIES

35. Section 17203 of the Business and Professions Code provides the remedy of injunction:

"Any person who engages, has engaged, or proposed to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter,"

XII.

RESTITUTION REMEDIES

36. Section 17203 of the Business and Professions Code further provides the remedy of restitution:

"The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition."

XIII.

HEADWATERS FOREST PROJECT

37. Signing of the Headwaters Agreement. In September of 1996, the Deputy Secretary of the U.S. Department of the Interior and the California Secretary for Resources signed an

agreement ("the Headwaters Agreement") with Charles Hurwitz, Chairman and CEO of MAXXAM Corporation, the owner of The Pacific Lumber Company (PL). This agreement committed the Federal and State Governments to provide \$380 million for the purchase of a grove of old-growth redwood, known as the Headwaters Grove on PL lands. In addition, the agreement specified that PL would develop a Habitat Conservation Plan ("HCP") and a Sustained Yield Plan ("SYP") for the remainder of its lands, approximately 211,000 acres.

38. Watersheds Governed by SYP. These remaining PL lands lie in watersheds that include Elk River, Van Duzen River, Bear Creek, Jordan Creek, Stitz Creek, Yager Creek, Mattole River, Eel River, and Freshwater Creek.

39. Agreement Requiring Environmental Impact Report. On February of 1998, representatives of the state and federal governments and Charles Hurwitz, representing MAXXAM Corporation, signed a "Pre-Permit Agreement." This agreement was a commitment to general conditions of a Habitat Conservation Plan and Sustained Yield Plan. It required that the U.S. Fish and Wildlife Service ("FWS") and the California Department of Forestry and Fire Protection ("CDF") make available a draft Environmental Impact Statement/Environmental Impact Report ("EIS/EIR") as follows:

"[M]ake available for review and comment a draft EIS/EIR on PL's proposed HCP pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, et seq., and its SYP pursuant to the California Environmental Quality Act (CEQA), Cal. Pub. Res. Code 21000, et seq."

40. Habitat Conservation Plan. An HCP is a long-term conservation plan established under the U.S. Endangered Species Act. An approved HCP allows a private landowner to incidentally take listed species, provided adequate conservation measures are enacted that allow for the long-term survival and recovery of the species. Congress intended the HCP process to reduce conflicts between listed species protection and economic development activities.

41. Sustained Yield Plan. An SYP is a state plan that provides for maximum sustained production of high-quality timber products over a 100-year planning period. An SYP requires protection of watersheds, wildlife, and fisheries, and must abide by applicable state and federal laws such as the endangered species acts of the state and federal governments. Following

approval, an SYP is in force for a period of 10 years. In this case, PL prepared a coordinated HCP/SYP.

42. Timber Harvesting Plan. A Timber Harvesting Plan ("THP") is required by the California Department of Forestry and Fire Protection ("CDF") for commercial timber harvesting on all non-federal timberlands. PL must submit a THP for every proposed timber harvest, and must receive approval by CDF, even with the HCP/SYP. The advantage offered by an HCP/SYP is that the general conservation provisions of each THP will already have been agreed to, and thus individual THPs will be processed more rapidly and with greater certainty for the landowner.

43. Relationship Between an SYP and an HCP. The protections developed for watershed, fish and wildlife resources in the HCP will fulfill the requirements of the SYP. In turn, the timber growth and harvest model developed in the SYP will provide for wildlife habitat projections over the life of the HCP. The draft SYP is a combined document, identified by PL in this case as the "SYP/HCP, the Plan," which was intended to act as "both the SYP required under California's 1997 Forest Practice Rules (FPRs) and the HCP prepared in response to the requirements of the federal Endangered Species Act (ESA) and the California Fish and Game Code (FGC)."

44. Environmental Impact Statement and Environmental Impact Report. An Environmental Impact Statement and Environmental Impact Report ("EIS/EIR") is a joint document that evaluates the environmental impacts of a proposed project, and, in this case, the proposed project was the draft HCP/SYP. The EIS/EIR also evaluates a range of alternatives to the proposed project, some that are more environmentally protective and others that are less environmentally protective. The EIS is prepared under the auspices of the National Environmental Policy Act and the EIR is prepared under the California Environmental Quality Act. *The purpose of an EIS/EIR is to allow the public to develop a better understanding of the impacts associated with the proposed project, and to assist the public in forming and expressing their opinions.* Since the gravamen of this complaint concerns the EIR portion of the EIS/EIR and that the State of California alone, acting through CDF as lead agency, had the authority and duty to properly process and approve this EIR portion, the term "EIR" alone shall be henceforth used to indicate the EIR portion of the EIS/EIR that was prepared for the Headwaters Project, it being understood that it was always part of a joint EIS/EIR.

45. Legal Importance of the Environmental Impact Report. The legal importance of an EIR is set forth in the following provisions:

a. *Public Resources Code, Section 21002.1(a)*, which provides (emphasis added) that "[t]he purpose of an environmental impact report is to *identify the significant effects on the environment* of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided.

b. *14 Cal. Administrative Code, Section 15003*, which provides, as part of the "State CEQA Guidelines," that the courts of this state have declared the following policies to be implicit in CEQA (emphasis added):

* "The EIR serves not only to protect the environment but also to *demonstrate to the public that it is being protected.*

* "The EIR is to inform other *governmental agencies and the public generally* of the environmental impact of a proposed project."

* "The EIR is to *demonstrate to an apprehensive citizenry* that the agency has, in fact, analyzed and considered the ecological implications of its action."

* "CEQA was intended to be interpreted in such a way as to afford *the fullest possible protection* to the environment within the reasonable scope of the statutory language."

46. Preparation of draft HCP/SYP. The draft HCP/SYP for the Headwaters Forest Project was prepared by PL. A public comment period began on July 14, 1998, and lasted 90 days.

47. Preparation of draft EIS/EIR. The draft EIS/EIR for the Headwaters Forest Project was prepared by the federal and state government. A public comment period began on October 2, 1998, and lasted until November 16, 1998.

48. CDF as lead agency for SYP and for the EIR on the SYP. For the Headwaters Forest Project, the Director of CDF had the responsibility, as head of the state lead agency, for preparing and reviewing and certifying the EIR as to the environmental impact of the SYP. He had the additional responsibility, following certification of the EIR, for approving or disapproving the SYP, including selecting among its various alternatives. **The entire Headwaters Forest Project depended upon the Director of CDF himself, Richard Wilson, certifying that the EIR portion of the EIS/EIR on the SYP was complete and adequate.**

49. Relationship of draft EIR to final EIR. Pursuant to *14 Cal. Administrative Code ("State CEQA Guidelines")*, section 15088, the lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response. The lead agency shall respond to comments received during the notice comment period and any extensions *and may respond to late comments*. The response to comments may take the form of a revision to the draft EIR or may be a separate section in the final EIR.

50. Requirement to "Recirculate" EIR upon "Significant New Information." Pursuant to *Cal. Administrative Code, tit. 14, section 15088.5*, a lead agency "is required" to recirculate an EIR when significant new information is received (emphasis added):

"(a) A lead agency is **required** to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification.

* * *

"Significant new information' requiring recirculation include, for example, a disclosure showing that: . . . (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance."

* * *

"(e) A decision **not** to recirculate an EIR must be supported by substantial evidence in the administrative record."

XV.

FACTUAL SUMMARY

51. Agreement to prepare "legal" SYP. On September 28, 1996, (a) PALCO (on behalf of itself, its subsidiaries and its affiliates), (b) MAXXAM, INC., 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, PALCO would sell to the public 4500 acres of its timberlands, commonly

referred to as the "Headwaters Forest," and would exchange additional property, for a federal and state combined consideration of \$300 million [later increased to \$430 million]. One of the conditions of this Agreement was that PALCO, in addition to a Habitat Conservation Plan ("HCP"), submit to the State of California a "Sustained Yield Plan" ("SYP") for its "Resulting Pacific Lumber Timber Property" (some 200,000 acres) "consistent with applicable and legal requirements." Pursuant to California Public Resources Code, section 4551.3, subd. (a), an approved sustained yield plan remains "effective" for a period of ten (10) years.

52. Agreement to subject SYP to EIR requirements. On February 27, 1998, (a) PALCO, (b) MAXXAM, Inc., by Charles E. Hurwitz, (c) the UNITED STATES FISH AND WILDLIFE SERVICE ("FWS"), (d) the NATIONAL MARINE FISHERIES SERVICES ("NMFS"), and (e) THE SECRETARY FOR RESOURCES of the STATE OF CALIFORNIA "On Behalf of CDF and CDFG," 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 Sustained Yield Plan "pursuant" to CEQA:

"After receipt of a complete Section 10(a) permit application package and a complete SYP, FWS and CDF will make available for review and comment a draft EIS/EIR on PL's proposed HCP pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, et seq., and its SYP pursuant to the California Environmental Quality Act (CEQA), Cal. Pub. Res. Code 21000, et seq."

53. Knowledge of Public's "mass wasting" concerns. On February 27, 1998, in its aforementioned agreement, PL, further, acknowledged the importance of the Public's "mass wasting" landslide concerns:

"In addition, prior to completion of the DNR process [the Washington Department of Natural Resources watershed assessment process], the mass wasting avoidance strategy of PL's August 27, 1997, Draft HCP/SYP will be used along with harvest

plan specific review and it will be extended to hill slopes and inner gorges where the potential for mass wasting is rated 'high'."

54. PL's retention of consultant William Weaver. On a date prior to May 1998, pursuant to orders from CDF, the North Coast Water Quality Control Board, and other agencies which requested that PL conduct a Sediment Source Investigation and Sediment Reduction Plans for various watersheds governed by the above-mentioned Sustained Yield Plan, including Bear Creek watershed and Jordan Creed watershed, PL retained William Weaver, a principal of Pacific Watershed Associates ("PWA"), to conduct four of the five studies. As part of these duties for PL, William Weaver was to perform data analysis of field measurements and interpretation of aerial photos pertaining to such watersheds.

55. Dr. Reid's finding of a 9.6 fold increase in landslide rates. In May of 1998, Dr. Leslie Reid, a world-renowned scientist and recognized leading authority on sediment source investigation and reduction (who is the co-author of the classic book on the subject, "Rapid Sediment Budget," and of the U.S. Forest Service publication, "Cumulative Watershed Effects"), pursuant to the request of the U.S. Environmental Protection Agency and California North Coast Regional Water Quality Control Board ("Water Quality"), reviewed PL's Sediment Source Inventory ("SSI") for Bear Creek. She found a **9.6 fold increase in landsliding rates from hillslopes selectively logged under modern Forest Practice Rules** (the rules followed by PL in conducting said logging) compared to partially recovered lands logged prior to the Forest Practice Rules.

56. Dr. Reid's "death knell." In June of 1998, Dr. Reid, at the request of Water Quality, prepared a calculation of a cutting rate for the Bear Creek watershed that would result in attainment of the Basin Plan objectives, including recovery of the watershed. Assuming HCP/SYP protections, and disregarding the differences between old growth forest stands and logged lands un-re-entered for more than 15 years, Dr. Reid concluded that 1.5% of the watershed could be logged annually. This rate did not take into account logging-related hydrologic alterations, which would reduce that percentage significantly. Dr. Reid emphasized that the logging would have to be "dispersed through time in any given watershed." Dr. Reid's final observations, in her review of the SSI on for Bear Creek, sounded a death knell to PL's Sustained Yield Plan harvest rates, dependent as they were on maximizing the allowable harvest of "mass wasting" areas of concern (emphasis added):

"It should be noted that soils and bedrock similar to those of Bear Creek watershed are also found through much of the North Fork Mattole watershed and neighboring watersheds along the west valley wall of the Eel; similar soil types are found in parts of the FWC [Fresh Water Creek] watershed. **Information and conclusions drawn from Bear Creek watershed are thus potentially relevant through a large area.**

* * *

"[C]onsider that **many of the landslides that occurred over the past several years were from units that had undergone geologic inspection and had been deemed stable.** Examination of a slope for signs of instability is useless if that slope is not made unstable until the land-use activity occurs.

* * *

"As it stands, **it does not appear that the [mass wasting avoidance] strategy will be capable of avoiding the kinds of failures documented in the Bear Creek report.**" The strategy depends on site-level inspections by a geologist.

57. PL shifts Jordan Creek to be its last inventory. Rather than proceeding to conduct the SSI of the neighboring (to Bear) small watershed of Jordan Creek, as scheduled, PL and its agent PWA evaluated the North Fork of the Elk River ("NFER"). It was reviewed by Dr. Reid and by Frank Reichmuth of Water Quality. Internal inconsistencies in data prevented a final review, but a 13.1 to 13.6-fold increase in mass wasting from harvesting under modern Forest Practice Rules (FPRs) was found, similar to the Bear Creek SSI.

58. Water Quality's challenge to PL. On October 8, 1998, Mr. Lee Michlin, Executive Officer of Water Quality, notified Tom Herman of PL that based on Table 5 of the Sediment Budgets and Inventory for Bear Creek and NF Elk River, the landslide rate on recently harvested slopes less than 15 years old is 9.6 for Bear and 13.0 for Elk when compared to areas harvested greater than 15 years old. Water Quality finds that "the increase in rate of debris landslides is due to silvicultural activities" which "indicates a strong connection between the increased timber harvesting and increased discharge of sediment."

59. The problem for PL. The problem for PL was that the concepts and approach from Dr. Reid's Bear Creek review and calculations would be generalized to other watersheds. These findings were submitted as comment to the Draft EIR/EIS for the HCP/SYP, and unless discredited or otherwise neutralized, they could undermine the basis for PL's SYP harvest rate projections. In order, therefore, to attack the generalizability of Dr. Reid's review (in addition to attacking her scientific methodology), PL and its agent PWA submitted the hereinafter-mentioned "draft Jordan Creek 'report'" demonstrating the opposite from that of Bear Creek.

60. PL's representation to Water Quality of data showing the "opposite conclusion". On November 12, 1998, PL submitted a responsive letter to Lee Michlin of Water Quality, stating (emphasis added):

"[T]he 9.6 multiplier is a misleading statistic.

* * *

"You should be informed that Dr. Weaver has produced any number of sediment source investigations for PALCO and there is no clear pattern to the landsliding rate figures calculated from data contained in these reports. For example, **the draft Jordan Creek report contains data that leads to the opposite conclusion: landsliding in Jordan Creek is less common in recently harvested stands than in older stands.**"

61. PL's report represents the Jordan Creek analysis is already completed. On November 18, 1998, at the very deadline for the information in it to become part of the final EIR, PL, again acting through Daniel Opalach, submitted to Lee Michlin of Water Quality a document dated November 10, 1998, and entitled "Response to Dr. Leslie Reid's review comments of the PWA Bear Creek Sediment Source Investigation and Sediment Reduction Plan" (hereinafter referred to as the "draft Jordan Creek 'report,'" or "draft Jordan Creek report," or "References to a Draft Jordan Creek Report"). In it William Weaver makes the following representation that his analysis of Jordan Creek has been actually completed (emphasis added):

"For example, **in recently completing a similar sediment source analysis for the adjacent Jordan Creek watershed,** which is remarkably similar in most ways to Bear Creek"

62. PL's references to a draft Jordan Creek report neutralizing Bear Creek placed in final EIR. On or about January 14, 1999, PL's References to a Draft Jordan Creek report (no actual Draft Jordan Creek Report has ever been made available to the public) became part of the final EIR, to be relied upon by the state and federal government in determining the environmental impacts of the entire HCP/SYP Headwaters Project. Those portions of the References to a Draft Jordan Creek Report that made it into the final EIR effectively neutralized and undermined the generalization which Dr. Reid stated could be drawn across all watersheds (emphasis added):

* "In fact, **a similar study** by PWA (1998b) in Jordan Creek, which is adjacent to the Bear Creek watershed and had nearly equal areas of recent and older harvesting, **found that 85 percent of the landsliding occurred in the areas of older harvesting.**"

(Page T-188.)

* "For example, in recently completing a similar sediment source analysis for the adjacent Jordan Creek watershed, which is remarkable similar in most ways to Bear Creek (certainly much more similar than the Mattole or Freshwater Creek), **we discovered harvest and landslide associations that directly and dramatically contradicted those encountered in Bear Creek.**"

(Page T-188.)

* "In fact, as was made clear in the adjacent Jordan Creek watershed, it is unclear what role harvesting actually played in the observed landslide frequencies. * * * **In Jordan Creek, 85 percent of the recent landslides had occurred on the older harvested area, and only 15 percent on the recently harvested area.**" (Page T-193.)

63. PL presents "corrected" Final Jordan Creek Report after the final EIR published. On January 22, 1999, a date too late to allow for the final EIR to be corrected, PL disclosed its Final Jordan Creek Report (entitled "Sediment Source Investigation and Sediment Reduction Plan for the Jordan Creek Watershed, Humboldt County, California") containing, in its cover letter and enclosed report, conclusions diametrically opposed to those in its References to Draft Jordan Creek Report, including (emphasis added):

* "The trends of this report [for the Jordan Creek Watershed] are remarkably similar to those found in the Bear Creek and Elk River reports."

* "In Jordan Creek, 60% of the landslides and 77% of the landslide sediment delivery came from 50% of the watershed which had been harvested within the last 15 years."

64. PL deceptively gives report to Fortuna manager of CDF, not Director of CDF. PL surfaced with its Final Jordan Creek Report on January 22, 1999 by hand-delivering it to the resource manager of CDF in Fortuna, California, a Humboldt County city in which PL conducts operations. PL, which is a sophisticated company extremely well-versed in the laws governing certification of environmental impact reports, deceptively served it on the Fortuna resource manager, whom it knew had **no** responsibilities of recirculating an EIR, instead of serving it on Richard Wilson, Director of CDF in Sacramento, whom it knew (1) would, having overseen the preparation of the draft EIR with PL's false Jordan Creek data, have the background and understanding to understand the "deal-breaking" significance of the corrected data as a disclosure confirming the Bear Creek Review conclusions of Dr. Reid, applicable to virtually **all** of PL's watersheds, and (2) *had the consequent duty, and sole authority, under Section 15088.5 of the State CEQA Guidelines, to recirculate the EIR to the public and all governmental agencies with the new data information.*

65. PL deceptively withholds indication of significance or "contradictoriness" to CDF. In giving a copy of the Final Jordan Creek Report to the Fortuna resource manager as the only recipient related to CDF, PL deceptively tried to protect itself from future criticism by stating in its cover letter the corrected landslide data for Jordan Creek **without** complying with its duty, as a matter of fundamental fairness; **Civil Code section 1710(3)** ("**A deceit . . . is . . . the suppression of a fact, by one . . . who gives information of other facts which are likely to mislead for want of communication of that fact**"); public policy; morality; ethics; error-correcting; and truth-telling; (1) to indicate its importance as "significant new information" under Section 15088.5(a) of the CEQA Guidelines, or (2) to indicate this significant new information and data was **directly contradictory** to the false information and data it had previously placed into the final EIR.

66. PL succeeds on its calculation of serving on Fortuna to keep from Sacramento. In giving a copy of the report to the Fortuna resource manager with no reference to its significance or contradictoriness to its false data, PL deceptively succeeded in being able to claim it had "notified" CDF without having **effectively** notified CDF by serving the single person to whom it had previously fed the false information and who would be relying upon it, i.e., Richard Wilson as Director of CDF. *The Fortuna resource manager in fact just "sat on" the report and did nothing with it.* The Fortuna resource manager in fact never notified Richard Wilson about the report. Richard Wilson **in fact never received** the report prior to his certification decision on February 23, 1999. **The report never made it up to the chain of command in Sacramento.** The report never made it into the state administrative record.

67. PL deceptively withholds indication of significance or "contradictoriness" to WQ. In order, also, to deceptively claim that it had given the corrected Jordan Creek information to Water Quality as a "responsible agency" in the EIR process, PL on January 26, 1999 mailed (by ordinary mail) a copy of the Jordan Creek Report to Water Quality, again in violation of its duty, as a matter of fundamental fairness, public policy, morality, ethics, error-correcting, and truth-telling, (1) to indicate its importance as "significant new information" under Section 15088.5(a) of the CEQA Guidelines, or (2) to indicate this significant new information and data was **directly contradictory** to the false information and data it had previously placed into the final EIR.

68. The corrected Jordan Creek data was vitally "significant new information." The Final Jordan Creek Report was vitally "significant new information," as defined by Section 15088.5 of the State CEQA Guidelines for the following, *inter alia*, reasons, as provided by Dr. Leslie Reid on June 7, 2000 (emphasis added):

"The second new contribution to understanding of landslide distribution came with the long-awaited release of the PWA report on landslide distributions in Jordan Creek watershed (PWA 1999), located immediately north of Bear Creek watershed. This event, however, was marked by considerable confusion, because the actual contents of the report were found to directly contradict the results that had been quoted earlier by PWA (1998b), Dr. D. Opalach (1998) of Pacific Lumber Company, and USFWS and

CDF (1999). Between 10 November 1998 and 29 January 1999, the results were said to demonstrate that in Jordan Creek, most recent landsliding was associated with older logging, and that recently logged slopes showed comparatively low rates of landsliding. This 'result' was the primary piece of evidence used to assert that results of the Bear Creek report could not be employed to inform management decisions in nearby areas with similar geology, topography, land-use history, and climate: **if a neighboring watershed shows the opposite pattern as Bear Creek, then it is clear that results cannot be generalized.**

"When the report was finally released, however, it became clear that the actual results of the study showed a pattern very similar to that measured in Bear Creek: 'In Jordan Creek, 60% of the landslides and 77% of the landslide sediment delivery came from 50% of the watershed which had been harvested within the last 15 years' (PWA 1999, p. 27). In other words, rates of landslide sediment delivery from recently logged lands in Jordan Creek watershed are 3.3 times higher than those from partially recovered forest (calculated as the ratio between $(0.77/0.50)$ and $(0.23/0.50)$). **Clearly results in Jordan Creek support those from Bear Creek, removing the argument** that that had been used to prevent Bear Creek results from being used to inform management decisions on similar lands nearby."

69. PL fails to directly inform the interested public of its false data. Prior to the EIR certification deadline of February 23, 1999, or the SYP certification date of February 25, 1999, PL, in addition to having refused to effectively notify the Director of CDF as to the existence and significance of the Final Jordan Creek Report, and having no assurance that the EIR was to be recirculated, refused to directly provide the corrective data to those members of the public, including Dr. Leslie Reid, who had expressed written concerns during the EIR process about the environmental effects of logging on unstable slopes, PL thereby preventing the public from effectively exercising its right (1) to demand of the Director of CDF that he recirculate the EIR,

and (2) to voice objections based on this significant corrective data prior to the SYP's Unstable Slopes Alternative being approved by the Director of CDF on February 27, 1999.

70. PL's refusal to effectively notify CDF Director as unfair business practice. By engaging in the foregoing conduct PL committed the unfair business practice of preventing the Director of CDF from complying with his duty under Section 15088.5 of the State CEQA Guidelines to recirculate to the public the EIR containing the corrective Jordan Creek data.

71. Director of CDF certifies Final EIR on February 23, 1999 without recirculating. On February 23, 1999, the Director of CDF, Richard Wilson, having not been notified of the significant new information in the Final Jordan Creek Report, certified that the Final EIR for the Headwaters Forest Project was complete and adequate, clearing the way for project approval. In addition, in his CEQA Findings for the Final EIR for the PL HCY/SYP for the Headwaters Forest Project, Richard Wilson made a finding that "the effects to coho salmon were minimized and mitigated to a level of less than significant in the HCP/SYP as contained in the draft EIR without additional mitigation . . ." and that no additional mitigation was required, findings that would have been logically undermined had the corrective data in the Final Jordan Creek report been reported to the Director. This meant that no information submitted after November 18, 1998, including the Final Jordan Creek Report and the associated implications from Dr. Reid's review of the Bear Creek and Elk River Sediment Survey Investigation affected any mitigations related to "Fish and Aquatic Habitat: Coho Salmon." Dr. Reid's other comments in these documents had included extensive discussion regarding logging-related increased turbidity from sediment from PL's past and proposed operations, and its harmful impacts on salmonids.

72. Director of CDF initially approves SYP Alternative 25(a) restricting annual harvest. On February 25, 1999, the Director of CDF approved PL's "SYP ALTERNATIVE NO. 25(a)" allowing annual harvesting by PL of **136.6 million board feet** per year, based on the following finding:

"[A]lternative 25(a) is the only alternative with constraints on timber harvesting that are consistent with the interim mitigations required by the federal Habitat Conservation Plan (HCP) and the EIS/EIR."

73. PL lobbies agencies to pressure CDF to substitute "Unstable Slopes Alternative." During the next two days, February 25th through 27th, PL, through the signatory state and

federal agencies contractually allied with MAXXAM, INC. pursuant to paragraph 7 of the 1996 Headwaters Agreement, mounted an extremely aggressive campaign to pressure the Director of CDF to approve "Alternative 25," which would allow the annual harvesting by PL of **176.2 million board feet** per year for the first ten years of the SYP. PL did so by soliciting the California Department of Fish and Game ("CDFG"), the National Marine Fisheries Service ("NMFS"), and the U.S. Fish and Wildlife Service ("USFWS") to write letters to the Director to withdraw his approval of Alternative 25(a) and to approve Alternative 25.

a. PL told CDF, on February 23, 1999, that Alternative 25(a) was an "alternative that PALCO cannot accept" because under its terms "PALCO would be unable to harvest adequate volumes of timber to meet its financial obligations." PL sought, instead, CDF approval of Alternative 25, which would allow PL to earn an estimated \$40 million more per year than it could have under Alternative 25(a).

b. NMFS and USFWS **acknowledged** in their joint letter that most of the difference between the two was that Alternative 25 allowed logging on unstable slopes, i.e., "mass wasting areas of concern" (emphasis added):

"According to information received from PALCO, **most of the difference in available harvest volume in the two alternatives is derived from the amount which can be harvested in mass wasting areas of concern.**"

c. CDFG also acknowledged in its letter that the additional timber harvesting would take place on unstable slopes, i.e., harvest areas prone to landslides. In doing so it twice stated that the conclusion of proneness to landslides arose from an analysis that was "coarse" (emphasis added):

"The **principal difference** in long-term sustained yield (LTSY) between Alternatives 25 and 25a **arises from** assumptions regarding the outcome of watershed analysis for **harvest areas as identified as prone to landslides** through a **coarse analysis**. Alternative 25a establishes a relatively low LTSY by assuming there will be no harvest in the areas identified as prone to landslides in the **coarse analysis.**"

This conclusion could be justified only if the false Jordan Creek data were accepted to show that the Bear Creek study could not be generalized:

d. *None of these three agencies had been given the corrective data of the Final Jordan Creek Report, and hence each of the three agencies was relying upon an EIR with the false Jordan Creek data.*

74. PL itself deceptively conceals from the agencies the corrective Jordan Creek data. In soliciting these three agencies to pressure CDF to accept Alternative 25, PL itself deceptively concealed from them the corrective data in the Final Jordan Creek Report showing the across-the-board probability of the serious environmental harm through landslides and sedimentation to result from logging on these added unstable slopes.

75. CDF gives approval of Unstable Slopes Alternative on February 28, 1999. On February 28, 1999, the Director of CDF, having been pressured by the agencies solicited by PL and having himself been prevented by PL from possessing the corrective Jordan Creek data allowing him to effectively resist such pressure, yielded by selecting Alternative 25, stating:

"The Department of Forestry and Fire Protection will be selecting alternative 25 . . . as being the alternative for the Sustained Yield Plan closest to the Habitat Conservation Plan described in the Final Environmental Impact Statement/Environmental Impact Report on the Pacific Lumber Company Habitat Conservation Plan/Sustained Yield Plan for the Headwaters Forest Project."

76. DFG approves the HCP and SYP for Headwaters Forest Project on March 3, 1999. On March 3, 1999, the California Department of Fish and Game, in its capacity as a responsible agency, signed and filed a Notice of Determination approving the HCP and SYP for the Headwaters Forest Project, said department having never been provided the corrective data in the Final Jordan Creek Report

77. PL's concealing corrective data from agencies as unfair business practice. By engaging in the foregoing conduct leading to approval of the SYP with its Unstable Slopes Alternative, PL committed the unfair business practice of concealing information it had a duty to disclose by having provided false data likely to mislead.

78. PL commences harvesting trees on unstable slopes pursuant to Alternative 25. Commencing on or about March 1, 1999, and continuing to the present time, PL, free to cut down trees on unstable slopes based on its deception in preventing EIR circulation and in obtaining SYP Alternative 25, has proceeded to do so, resulting in major landslides and

destruction to the streams, bridges, roads, homes, and property rights of the people of Humboldt County, now and into the future.

79. PL engaged in this Jordan Creek fraud to increase earnings by \$40 million per year. PL's motive, purpose, and intent in engaging in the foregoing deceptions and unfair practices related to EIR recirculation and Alternative 25 approval were to dramatically increase the allowable harvestable acres under the HCP/SYP and to be able to cut down an estimated 100,000 trees on unstable slopes it could not have otherwise have been allowed to do, and to thereby earn an estimated \$40 million per year.

80. PL's unstable-slopes logging have further degraded five impaired watersheds. Commencing on or about December 1, 2000, and continuing to the present time PL's logging on the unstable slopes pursuant to the SYP and its Alternative 25 has (a) further seriously degraded the five impaired watersheds of **Jordan Creek, Elk River, Freshwater Creek, Stitz Creek, and Bear Creek**; and (b) has prevented recovery under the HCP.

81. Water Quality discredits PL's and Weaver's investigations and "mass wasting model". In September 2000, the California North Coast Water Quality Control Board issued a Staff Report documenting the relationship between the Bear Creek review (that PL's "draft" Jordan Creek report was designed to undermine), and water quality degradation in the above-mentioned five "impaired" watersheds, including serious nuisance flooding in the two residential watersheds of Freshwater Creek and Elk River.

a. The Staff Report noted the inadequacies of PL's and Weaver's MWAS (mass wasting avoidance strategy):

"Regional Water Board staff do not believe that MWAS alone will be adequate to prevent future timber harvest related landslides."

b. The Staff report noted that the MWAS focuses on areas defined as mass wasting areas of concern (MWACs) by the HCP, and noted that failures, however, also occur on slopes which do not meet the MWAC definition, including planar slopes and "break(s) in slope." It further noted that the MWAS relies, in part, on the use of a model which is not sufficient to predict/prevent harvest related landslides because of lacking the necessary methodology of statistical probabilities in order to achieve any reliability:

"It is because of this that the MWAS is inadequate. Neither the computer model that generated the MWAS delineations nor the

mental models that individual geologists use to guess whether a particular site will fail or not is sufficient to identify the future sites of all future logging-related landslides; some will slip through. Because the number that slip through in a given period of time is strongly influenced by the proportion of the watershed logged during and immediately preceding the period, W&H's disclosure indicates that if the excess input is to be kept at a specified level, the area logged per unit time must be kept at a level such that the number of slides that slip through the models remains tolerable."

c. The Staff Report noted, further that the HCP/SYP do not impose any limitations on rates of harvest on a subwatershed basis, thereby making it impossible to comply with water quality objectives (emphasis added):

"The HCP/SYP do not impose any limitations on rates of harvest on a subwatershed basis. **The rates of harvest that the Discharger [i.e., PL] is currently proposing within the five impacted watersheds will produce sediment in quantities which will further degrade water quality and which will violate Basin Plan objectives**, as was demonstrated in the winters of 1995-1996 and 1996-97.

* * *

"This is further explained in analyses by Dr. Leslie Reid, conducted at the request of Regional Water Board staff for Bear Creek and Elk River watersheds, where she demonstrated that **in order to ensure compliance with water quality objectives and to protect these watersheds, it is essential that rates of harvest far below what is currently being proposed be implemented.** Dr. Reid's analyses show that in order to assure compliance with water quality objectives and to not impede the rates of recovery in these watersheds, annual harvest rates must be maintained below 0.3% for the North Fork Elk River watershed . . . and 1.5% for the Bear Creek watershed

* * *

"Limitations on harvest rates are also warranted for Jordan and Freshwater Creeks, based on correlations between timber harvest and landslide incidence within these watersheds"

82. PL's and Weaver's exclusion of "dormant" landslides is discredited. In December 2000 the WQ staff also criticized PL's and Weaver's exclusion of "dormant" landslides as being relevant (an exclusion which was correspondingly accepted by the above-mentioned agencies which, in reliance on the solicitations of PL and PL's suppression of the corrected Jordan Creek data, had pressured the CDF Director to approve SYP Alternative 25):

"The decision as to whether a landslide is active or dormant is primarily based on field observations by the consultant and agency geologists. Unfortunately, the question that a geologist must answer in evaluating a landslide is not whether or not that landslide is currently active or dormant. Rather, the geologist must predict how that landslide will behave once all or a portion of the vegetation has been removed from that landslide. As corroborated by PWA's proposed testimony, this is a determination which cannot be made simply based on field observations."

83. Independent Scientific Review Panel corroborates Dr. Reid's findings. On December 27, 2002, a consensus report from an Independent Scientific Review Panel ("ISRP"), consisting of seven highly regarded independent experts in forestry related sciences commissioned by the California North Coast Water Quality Control Board, corroborated Dr. Reid's and WQ staff's finding that PL's HCP/SYP harvest rates will cause permanent damage. The ISRP determined that in the above-mentioned five impaired watersheds, the rate of harvest, determined by SYP Alternative 25, would prevent recovery (emphasis added):

"[T]he CDF approach to evaluating cumulative impacts is designed to maintain the current level of impact rather than promote the recovery of impaired watersheds. **As such, this approach, administered by CDF, yields a high risk that current harvest rates will not achieve recovery of beneficial uses of water in the impaired water bodies.**"

84. ISRP concludes an immediate reduction in PL's harvest rates is necessary. The ISRP concluded that an immediate reduction in harvest rates was a necessary and effective measure (emphasis added):

"The benefit [for flooding and water quality] would be expected to start **as soon as harvest rate is reduced**, and to increase over time"

85. PL utilizes fraudulently-obtained Alternative 25 to defeat Water Quality mitigations. Commencing on or about February 2000, and continuing to the present time, PL, following the environmental harm resulting from its logging on the unstable slopes pursuant to SYP Alternative 25, has proceeded to fight and defeat the mitigation demands of the California North Coast Water Quality Control Board by arguing that the Sustained Yield Plan, containing its fraudulently-procured Unstable Slopes Alternative, prevents any increased monitoring or slowing of PL's logging of trees on such slopes. **Ignoring its deception in obtaining SYP Alternative 25**, PL as recently as January 21, 2003, based its attack on the Water Quality Control Board's imposition of mitigations by arguing that under Alternative 25 it has a "contract" right, protected by the Constitution, from reduction of harvesting rates "in the first ten years of the agreement":

"The imposition of Waste Discharge Requirements (WDRs) would impair the Headwaters Agreement in violation of the Contract Clauses of the federal and state Constitutions, because WDRs would ensure PALCO would be unable to harvest anywhere near the 176.2 mmbf/yr promised by the governments"

86. PL continues to cause environmental harm by logging slopes under Alternative 25. Humboldt County is currently seeking over \$5 million in emergency disaster relief funds to repair storm damages. An estimated \$1.5 million of that is for sedimentation of Humboldt Bay. All five of the above-mentioned impaired watersheds drain their sediment into the Bay. The sediment from PL's logging of unstable slopes under SYP Alternative 25 has already seriously raised the beds of rivers and creeks, resulting in banks overflowing and bridges eventually needing to be replaced. As many as a dozen ancient redwoods may have been lost in Humboldt Redwoods State Park from channel changes in Bear and Jordan Creeks relating to PL's logging on unstable slopes under SYP Alternative 25. Unless enjoined, PL will continue to cause sediment-induced floodwaters and debris, and other environmental harm, by obtaining

Timber Harvest Plans for logging on the unstable slopes approved by SYP Alternative 25, and by proceeding to log on these very slopes, with its consequent major landslides and destruction to the streams, bridges, roads, homes, and property rights of the people of Humboldt County.

XVI.

FIRST CAUSE OF ACTION

DECEPTIVE CONCEALMENT IN RE EIR RECIRCULATION

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

88. At all relevant times Defendants PL and Does 1 through 5 had the duty not to commit any unfair business practice, as defined by Section 17200 of the Business and Professions Code.

89. Any business practice that meets any one of the following tests is an unfair business practice (a) offends public policy, (b) is immoral, (c) is unethical, (d) is oppressive, or (e) is unscrupulous.

90. Any business practice that amounts to "deceit" as defined by the Civil Code is on its face an unfair business practice and is also, *ipso facto*, an unfair business practice under each of these tests.

91. "Deceit" 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"

92. On February 23, 1999, and continuing to the most recent date in 2002 or 2003 on which PL, or any corporation under its control, harvested any tree subject to the aforesaid HCP/SYP, Defendants PL and Does 1 through 5 committed an unfair business practice and a deceit by suppressing and concealing from the Director of CDF actual and effective notice of the existence and significance of the "corrected Jordan Creek landslide facts," to wit,

* **"The trends of this report [for the Jordan Creek Watershed] are remarkably similar to those found in the Bear Creek and Elk River reports";** and

*** "In Jordan Creek, 60% of the landslides and 77% of the landslide sediment delivery came from 50% of the watershed which had been harvested within the last 15 years",**

said defendants having successfully given information to the Director of CDF, for purpose of final EIR inclusion, of other facts which were likely to mislead for want of communication of the corrected Jordan Creek landslide facts, said other facts including the diametrically opposed and totally "false Jordan Creek landslide facts," to wit,

*** "[W]e discovered harvest and landslide associations that directly and dramatically contradicted those encountered in Bear Creek"; and**

*** "In Jordan Creek, 85 percent of the recent landslides had occurred on the older harvested area, and only 15% on the recently harvested area".**

93. These "false Jordan Creek landslide facts" had created the false conclusion that landslides in Jordan Creek were not significantly related to timber harvesting, a false conclusion undermining the legitimate generalizing of harvesting-landslide relationship data from studies of nearby watersheds, including Bear Creek.

94. The "corrected Jordan Creek landslide facts" constituted "significant new information" under Cal. Admin. Code tit. 14, section 15088.5(a)(2), which defines such information to include "A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of significance." The corrected Jordan Creek landslide facts showed that a substantial increase in the severity of timber harvesting on sedimentation and water quality would result under PL's proposed logging on unstable slopes unless the mitigation measure of precluding logging on unstable slopes were adopted.

95. The aforesaid defendants suppressed the foregoing "corrected Jordan Creek landslide facts" for the purpose of preventing the Director of CDF from exercising his duty, under Cal. Admin. Code tit. 14, section 15088.5(a), to "recirculate" the EIR before certifying it "when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review . . . but before certification."

96. The aforesaid suppressions and concealments were made by said defendants with the intent to induce the Director of CDF to act in the manner alleged herein in reliance thereon, and with the intent to prevent the Director of CDF from further inquiring into the implications generalized from the Bear Creek review. The aforesaid suppressions and concealments of the "corrected Jordan Creek landslide facts" were likely to mislead, and did mislead the Director of CDF in light of the "false Jordan Creek landslide facts" made by said defendants.

97. On February 23, 1999, in reliance upon said defendant's aforesaid suppression and concealment, the Director of CDF certified the EIR instead of recirculating it, thereby allowing the Headwaters Forest Project to proceed. At the time of these suppressions and concealments, and at the time he took the action of certifying the EIR, the Director of CDF was ignorant of the existence of the facts that said defendants suppressed and failed to disclose. If the Director of CDF had been aware of the existence of the facts not disclosed by defendants, he would not have acted as he did, i.e., he would not have failed to recirculate the EIR before certification.

98. The aforesaid suppressions and concealments (a) offend public policy, (b) are immoral, (c) are unethical, (d) are oppressive, and (e) are unscrupulous.

99. As a proximate result of defendants' aforesaid suppressions and concealment, the EIR was not adequate and complete in assessing the environmental impact of the entire Headwaters Forest Project, and the landslides and other serious environmental harms and damage have occurred as set forth in the preceding paragraphs, including paragraph 86.

XVII.

SECOND CAUSE OF ACTION

DECEPTIVE CONCEALMENT IN RE SUSTAINED YIELD PLAN ALTERNATIVE

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

101. On February 28, 1999, and continuing to the most recent date in 2002 or 2003 on which PL, or any corporation under its control, harvested any tree allowed to be harvested under SYP Alternative 25 that had not been allowed to be harvested under SYP Alternative 25(a) (the number of additional trees hereinafter referred to as "the Alternative 25 Difference"), Defendants PL and Does 1 through 5 committed an unfair business practice and a deceit by suppressing and concealing from the Director of CDF and from the agencies NMFS, USFWS, and CDFG, actual

and effective notice of the existence and significance of the significance of the "corrected Jordan Creek landslide facts," to wit,

*** "The trends of this report [for the Jordan Creek Watershed] are remarkably similar to those found in the Bear Creek and Elk River reports"; and**

*** "In Jordan Creek, 60% of the landslides and 77% of the landslide sediment delivery came from 50% of the watershed which had been harvested within the last 15 years",**

said defendants having successfully given information to the Director of CDF, for purpose of final EIR inclusion, of other facts which were likely to mislead for want of communication of the corrected Jordan Creek landslide facts, said other facts including the diametrically opposed and totally "false Jordan Creek landslide facts," to wit,

*** "[W]e discovered harvest and landslide associations that directly and dramatically contradicted those encountered in Bear Creek"; and**

*** "In Jordan Creek, 85 percent of the recent landslides had occurred on the older harvested area, and only 15% on the recently harvested area".**

102. These "false Jordan Creek landslide facts" had created the false conclusion that landslides in Jordan Creek were not significantly related to timber harvesting, a false conclusion undermining the legitimate generalizing of harvesting-landslide relationship data from studies of nearby watersheds.

103. The aforesaid defendants suppressed the foregoing "corrected Jordan Creek landslide facts" for the purpose and intent of pressuring the Director of CDF to substitute SYP Alternative 25 for the SYP Alternative 25(a) previously approved by him on February 25, 1999, thereby enabling PL to log trees on unstable slopes to the extent of the Alternative 25 Difference.

104. The aforesaid suppressions and concealments were made by said defendants with the intent to induce the Director of CDF, and the agencies NFMS, USFWS, and CDFG to act in the manner alleged herein in reliance thereon, and with the intent to prevent the Director of CDF and the agencies NFMS, USFWS, and CDFG from further inquiring into the implications generalized from the Bear Creek review. The aforesaid suppressions and concealments of the

"corrected Jordan Creek landslide facts" were likely to mislead, and did mislead the Director of CDF and the agencies NFMS, USFWS, and CDFG in light of the "false Jordan Creek landslide facts" made by said defendants.

105. On February 28, 1999, in reliance upon said defendants' aforesaid suppressions and concealments, the Director of CDF certified the EIR instead of recirculating it, thereby allowing the Headwaters Forest Project to proceed. At the time of these suppressions and concealments, and at the time he took the action of certifying the EIR, the Director of CDF and the agencies NFMS, USFWS, and CDFG were each ignorant of the existence of the facts that said defendants suppressed and failed to disclose. If the Director of CDF had been aware of the existence of the facts not disclosed by defendants, he would not have acted as he did, i.e., he would not have certified the EIR. If any of NFMS, USFWS, and CDFG had been aware of the existence of these facts not disclosed by defendants, it would not have written letters to the Director of CDF or otherwise sought to influence him to approve Alternative 25.

106. The aforesaid suppressions and concealments (a) offend public policy, (b) are immoral, (c) are unethical, (d) are oppressive, and (e) are unscrupulous.

107. As a proximate result of defendants' aforesaid suppressions and concealments, SYP Alternative 25 was approved, and the landslides and other serious environmental harms and damage resulting from the logging of trees constituting the Alternative 25 Difference have occurred as set forth in the preceding paragraphs, including paragraph 86.

XVIII.

THIRD CAUSE OF ACTION

FRAUDULENT REPRESENTATION IN RE JORDAN CREEK LANDSLIDES

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

109. At all relevant times Defendants PL and Does 6 through 10 had the duty not to commit any fraudulent business practice, as defined by Section 17200 of the Business and Professions Code. " Pursuant to *Blankenheim v. E. F. Hutton & Co.* (1990) 217 Cal.App.3d 1463, negligent misrepresentations are included in the definition of fraud.

110. For the purpose of inducing reliance and EIR certification on February 23, 1999, by the Director of CDF, the aforesaid defendants did, on November 18, 1998, commit the fraudulent

business practice of recklessly or negligently submitting to the Director of CDF and to other governmental agencies, for final EIR inclusion, the aforesaid false Jordan Creek landslide facts on harvesting-related landslides, to wit:

*** "[W]e discovered harvest and landslide associations that directly and dramatically contradicted those encountered in Bear Creek"; and**

*** "In Jordan Creek, 85 percent of the recent landslides had occurred on the older harvested area, and only 15% on the recently harvested area".**

111. Said defendants, and each of them, when they made these representations concerning harvesting-related landslides in Jordan Creek watershed data to the Director of CDF and to other governmental agencies for final EIR inclusion, had no reasonable ground for believing that the representations were true, and said defendants, and each of them, made the representations with the intent to induce the Director of CDF to take the action of certifying the final EIR, including certifying it as adequate and complete, and with the intent to prevent the Director of CDF, other governmental agencies, and interested members of the public, from further inquiring into the implications generalized from the Bear Creek review.

112. These "false Jordan Creek landslide facts" created the false understanding that that landslides in Jordan Creek were not significantly related to timber harvesting, a false conclusion undermining the legitimate generalizing of harvesting-landslide relationship data from studies of nearby watersheds showing the relationship of timber harvesting to landslides, including Bear Creek.

113. The aforesaid false representations were made by said defendants, and each of them, with the intent to induce the Director of CDF to act in the manner alleged herein in reliance thereon. The aforesaid false representations were likely to mislead, and did mislead the Director of CDF.

114. At the time of these false representations, and at the time he took the action of certifying the EIR on February 23, 1999 in reliance on the above-mentioned false representations, the Director of CDF was ignorant of the falsity of these representations. If the Director of CDF had been aware that of falsity of these representations, he would not have acted as he did, i.e., he would not have certified the EIR.

115. As a proximate result of defendants' aforesaid false representations, the EIR was not adequate and complete in assessing the environmental impact of the entire Headwaters Forest Project, and the landslides and other serious environmental harms and damage have occurred as set forth in the preceding paragraphs, including paragraph 86.

116. As a proximate result of defendant's aforesaid false representations, the EIR was not adequate and complete in assessing the environmental impact of the entire Headwaters Forest Project, and the landslides and other serious environmental harms that have occurred as set forth in the preceding paragraphs, including paragraph 86.

XIX.

FOURTH CAUSE OF ACTION

FRAUDULENT SUPPRESSION IN RE FINAL EIR INCLUSION

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

118. At all relevant times Defendants PL and Does 6 through 5 10 had the duty not to commit any fraudulent business practice, as defined by Section 17200 of the Business and Professions Code.

119. Any business practice that amounts to "deceit" as defined by the Civil Code is on its face a fraudulent business practice. "Deceit" 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"

120. On February 23, 1999, and continuing to the most recent date in 2002 or 2003 on which PL, or any corporation under its control, harvested any tree subject to the aforesaid HCP/SYP, Defendants PL and Does 1 through 5 committed a fraudulent business practice and a deceit by suppressing and concealing from the Director of CDF actual and effective notice of the existence and significance of the "corrected Jordan Creek landslide facts," to wit,

*** "The trends of this report [for the Jordan Creek Watershed] are remarkably similar to those found in the Bear Creek and Elk River reports"; and**

*** "In Jordan Creek, 60% of the landslides and 77% of the landslide sediment delivery came from 50% of the watershed which had been harvested within the last 15 years",**

said defendants having successfully given information to the Director of CDF, for purpose of final EIR inclusion, of other facts which were likely to mislead for want of communication of the corrected Jordan Creek landslide facts, said other facts including the diametrically opposed and totally "false Jordan Creek landslide facts," to wit,

*** "[W]e discovered harvest and landslide associations that directly and dramatically contradicted those encountered in Bear Creek"; and**

*** "In Jordan Creek, 85 percent of the recent landslides had occurred on the older harvested area, and only 15% on the recently harvested area".**

121. These "false Jordan Creek landslide facts" had created the false conclusion that landslides in Jordan Creek were not significantly related to timber harvesting, a false conclusion undermining the legitimate generalizing of harvesting-landslide relationship data from studies of nearby watersheds, including Bear Creek.

122. The "corrected Jordan Creek landslide facts" constituted "significant new information" under Cal. Admin. Code tit. 14, section 15088.5(a)(2), which defines such information to include "A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of significance." The corrected Jordan Creek landslide facts showed that a substantial increase in the severity of timber harvesting on sedimentation and water quality would result under PL's proposed logging on unstable slopes unless the mitigation measures of precluding logging on unstable slopes were adopted.

123. The aforesaid defendants suppressed the foregoing "corrected Jordan Creek landslide facts" for the purpose of having the final EIR include the false Jordan Creek landslide facts.

124. The aforesaid suppressions and concealments were made by said defendants with the intent to induce the Director of CDF on February 23, 1999, to act in the manner alleged herein in reliance thereon, and with the intent to prevent the Director of CDF from further

inquiring into the effect of timber harvesting on landslide-caused-sedimentation in the Jordan Creek watershed. The aforesaid suppressions and concealments of the "corrected Jordan Creek landslide facts" were likely to mislead, and did mislead the Director of CDF in light of the "false Jordan Creek landslide facts" made by said defendants.

125. On February 23, 1999, in reliance upon said defendant's aforesaid suppressions and concealments, the Director of CDF certified the EIR, thereby allowing the Headwaters Forest Project to proceed. At the time of these suppressions and concealments, and at the time he took the action of certifying the EIR, the Director of CDF was ignorant of the existence of the facts that said defendants suppressed and failed to disclose. If the Director of CDF had been aware of the existence of the facts not disclosed by defendants, he would not have acted as he did, i.e., he would not have certified the EIR.

126. As a proximate result of defendants' aforesaid suppressions and concealments, the EIR was not adequate and complete in assessing the environmental impact of the entire Headwaters Forest Project, and the landslides and other serious environmental harms and damage have occurred as set forth in the preceding paragraphs, including paragraph 86.

XX.

FIFTH CAUSE OF ACTION

FRAUDULENT SUPPRESSION IN RE EIR RECIRCULATION

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

128. At all relevant times Defendants PL and Does 1 through 5 had the duty not to commit any fraudulent business practice, as defined by Section 17200 of the Business and Professions Code.

129. Any business practice that amounts to "deceit" as defined by the Civil Code is on its face a fraudulent unfair business practice. "Deceit" 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"

130. On February 23, 1999, and continuing to the most recent date in 2002 or 2003 on which PL, or any corporation under its control, harvested any tree subject to the aforesaid HCP/SYP, Defendants PL and Does 1 through 5 committed a fraudulent business practice and a deceit by suppressing and concealing from the Director of CDF actual and effective notice of the existence and significance of the "corrected Jordan Creek landslide facts," to wit,

*** "The trends of this report [for the Jordan Creek Watershed] are remarkably similar to those found in the Bear Creek and Elk River reports"; and**

*** "In Jordan Creek, 60% of the landslides and 77% of the landslide sediment delivery came from 50% of the watershed which had been harvested within the last 15 years",**

said defendants having successfully given information to the Director of CDF, for purpose of final EIR inclusion, of other facts which were likely to mislead for want of communication of the corrected Jordan Creek landslide facts, said other facts including the diametrically opposed and totally "false Jordan Creek landslide facts," to wit,

*** "[W]e discovered harvest and landslide associations that directly and dramatically contradicted those encountered in Bear Creek"; and**

*** "In Jordan Creek, 85 percent of the recent landslides had occurred on the older harvested area, and only 15% on the recently harvested area".**

131. These "false Jordan Creek landslide facts" had created the false conclusion that landslides in Jordan Creek were not significantly related to timber harvesting, a false conclusion undermining the legitimate generalizing of harvesting-landslide relationship data from studies of nearby watersheds, including Bear Creek.

132. The "corrected Jordan Creek landslide facts" constituted "significant new information" under Cal. Admin. Code tit. 14, section 15088.5(a)(2), which defines such information to include "A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of significance." The corrected Jordan Creek landslide facts showed that a substantial increase in the severity of timber harvesting on sedimentation and water quality would result under PL's proposed logging

on unstable slopes unless the mitigation measures of precluding logging on unstable slopes were adopted.

133. The aforesaid defendants suppressed the foregoing "corrected Jordan Creek landslide facts" for the purpose of preventing the Director of CDF from exercising his duty, under Cal. Admin. Code tit. 14, section 15088.5(a), to "recirculate" the EIR before certifying it "when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review . . . but before certification."

134. The aforesaid suppressions and concealments were made by said defendants with the intent to induce the Director of CDF to act in the manner alleged herein in reliance thereon, and with the intent to prevent the Director of CDF from further inquiring into the effect of timber harvesting on landslide-caused-sedimentation in the Jordan Creek watershed. The aforesaid suppressions and concealments of the "corrected Jordan Creek landslide facts" were likely to mislead, and did mislead the Director of CDF in light of the "false Jordan Creek landslide facts" made by said defendants.

135. On February 23, 1999, in reliance upon said defendant's aforesaid suppressions and concealments, the Director of CDF certified the EIR instead of recirculating it, thereby allowing the Headwaters Forest Project to proceed. At the time of these suppressions and concealments, and at the time he took the action of certifying the EIR, the Director of CDF was ignorant of the existence of the facts that said defendants suppressed and failed to disclose. If the Director of CDF had been aware of the existence of the facts not disclosed by defendants, he would not have acted as he did, i.e., he would not have failed to recirculate the EIR before certification.

136. As a proximate result of defendants' aforesaid suppressions and concealments, the EIR was not adequate and complete in assessing the environmental impact of the entire Headwaters Forest Project, and the landslides and other serious environmental harms and damage have occurred as set forth in the preceding paragraphs, including paragraph 86.

XXI.

SIXTH CAUSE OF ACTION

FRAUDULENT SUPPRESSION IN RE SUSTAINED YIELD PLAN ALTERNATIVE

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

138. On February 28, 1999, and continuing to the most recent date in 2002 or 2003 on which PL, or any corporation under its control, harvested any tree allowed to be harvested under SYP Alternative 25 that had not been allowed to be harvested under SYP Alternative 25(a), Defendants PL and Does 1 through 5 committed a fraudulent business practice and a deceit by suppressing and concealing from the Director of CDF and from the agencies NMFS, USFWS, and CDFG, actual and effective notice of the existence and significance of the significance of the "corrected Jordan Creek landslide facts," to wit,

*** "The trends of this report [for the Jordan Creek Watershed] are remarkably similar to those found in the Bear Creek and Elk River reports"; and**

*** "In Jordan Creek, 60% of the landslides and 77% of the landslide sediment delivery came from 50% of the watershed which had been harvested within the last 15 years",**

said defendants having successfully given information to the Director of CDF, for purpose of final EIR inclusion, of other facts which were likely to mislead for want of communication of the corrected Jordan Creek landslide facts, said other facts including the diametrically opposed and totally "false Jordan Creek landslide facts," to wit,

*** "[W]e discovered harvest and landslide associations that directly and dramatically contradicted those encountered in Bear Creek"; and**

*** "In Jordan Creek, 85 percent of the recent landslides had occurred on the older harvested area, and only 15% on the recently harvested area".**

139. These "false Jordan Creek landslide facts" had created the false conclusion that landslides in Jordan Creek were not significantly related to timber harvesting, a false conclusion undermining the legitimate generalizing of harvesting-landslide relationship data from studies of nearby watersheds.

140. The aforesaid defendants suppressed the foregoing "corrected Jordan Creek landslide facts" for the purpose and intent of pressuring the Director of CDF to substitute SYP Alternative 25 for the SYP Alternative 25(a) previously approved by him on February 25, 1999, thereby enabling PL to log trees on unstable slopes to the extent of the Alternative 25 Difference.

141. The aforesaid suppressions and concealments were made by said defendants with the intent to induce the Director of CDF, and the agencies NFMS, USFWS, and CDFG to act in the manner alleged herein in reliance thereon, and with the intent to prevent the Director of CDF and the agencies NFMS, USFWS, and CDFG from further inquiring into the effect of timber harvesting on landslide-caused-sedimentation in the Jordan Creek watershed. thereon. The aforesaid suppressions and concealments of the "corrected Jordan Creek landslide facts" were likely to mislead, and did mislead the Director of CDF and the agencies NFMS, FWS, and CDFG in light of the "false Jordan Creek landslide facts" made by said defendants.

142. On February 28, 1999, in reliance upon said defendants' aforesaid suppressions and concealments, the Director of CDF approved SYP Alternative 25, thereby disapproving the previously- approved SYP Alternative 25(a), thereby allowing timber operations to be conducted on unstable slopes that would not have been allowed under SYP Alternative 25. At the time of these suppressions and concealments, and at the time he took the action of certifying the EIR, the Director of CDF and the agencies NFMS, FWS, and CDFG were each ignorant of the existence of the facts that said defendants suppressed and failed to disclose. If the Director of CDF had been aware of the existence of the facts not disclosed by defendants, he would not have acted as he did, i.e., he would not have approved Alternative 25. If any of NFMS, USFWS, and CDFG had been aware of the existence of the facts not disclosed by defendants, it would not have written letters to the Director of CDF or otherwise sought to influence him to approve Alternative 25.

143. As a proximate result of defendants' aforesaid suppressions and concealments, SYP Alternative 25 was approved, and the landslides and other serious environmental harms and damage resulting from the logging of trees constituting the Alternative 25 Difference have occurred as set forth in the preceding paragraphs, including paragraph 86.

XXII.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court grant the relief that follows:

1. Enter a judgment that defendants PL and Does 1 through 10 are required to pay civil penalties according to proof, including:

a. \$2500.00 per tree for every tree that has or will be logged under SYP Alternative 25 (the "Unstable Slopes Alternative") that would not have been allowed to be logged under SYP Alternative 25(a);

b. Impose all penalties authorized by Fish and Game Code, sections 5650 et seq., for sediment pollution caused by the logging of trees under SYP Alternative 25 (the "Unstable Slopes Alternative") that would not have been allowed to be logged under SYP Alternative 25(a).

2. Enter restraining orders, preliminary injunctions, permanent injunctions, or other orders requiring defendants PL and Does 1 through 10 to:

a. Cease all logging operations under SYP Alternative 25 (the "Unstable Slopes Alternative") that would not have been allowed to be logged under SYP Alternative 25(a);

b. Take appropriate action to remedy and/or remove the sediment caused by the logging of trees under SYP Alternative 25 (the "Unstable Slopes Alternative") that would not have been allowed to be logged under SYP Alternative 25(a); and

c. Cease all logging operations on any landslide or unstable feature, including dormant landslides, until an adequate EIR is conducted incorporating the above-mentioned "corrected Jordan Creek landslide facts.

3. Order defendants PL and Does 1 through 10 to pay restitution according to proof.

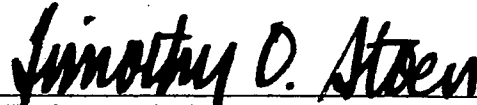
4. Grant Plaintiff its costs incurred in this action.

5. Grant Plaintiff 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.

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

Dated: February 24, 2003

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



TIMOTHY O. STOEN
Assistant District Attorney
Attorneys for the People of the State of California