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11  
12 SUPERIOR COURT OF CALIFORNIA  
13 FOR THE COUNTY OF SAN FRANCISCO  
14

15 PEOPLE OF THE STATE OF CALIFORNIA  
*ex rel.* DEPARTMENT OF FISH AND GAME;  
16 PEOPLE OF THE STATE OF CALIFORNIA  
*ex rel.* CALIFORNIA REGIONAL WATER  
17 QUALITY CONTROL BOARD, SAN  
FRANCISCO BAY REGION; AND PEOPLE  
18 OF THE STATE OF CALIFORNIA *ex rel.*  
STATE LANDS COMMISSION,

19  
20 Plaintiffs,

21 vs.

22 REGAL STONE LTD.; FLEET  
MANAGEMENT LTD.; HANJIN SHIPPING  
23 CO. LTD.; SYNERGY MANAGEMENT  
SERVICES; SYNERGY MARINE LTD.;  
24 JOHN J. COTA, AN INDIVIDUAL; AND  
DOES 1 THROUGH 100,

25 Defendants,  
26  
27  
28

Case No.

COMPLAINT

[Exempt from filing fees pursuant to  
Government Code § 6103]

1 Plaintiffs People of the State of California, *ex relatione* Department of Fish and Game;  
2 California Regional Water Quality Control Board, San Francisco Bay Region; and State Lands  
3 Commission, allege, upon information and belief, as follows:

4 **NATURE OF THE ACTION**

5 1. This action is brought in response to the M/V Cosco Busan (LR/IMO Ship No.  
6 9231743) (“Cosco Busan” or “the vessel”) allision which occurred on November 7, 2007, and  
7 the vessel’s subsequent discharge, spill, and/or leaking of oil which occurred as a result of said  
8 allision (“Cosco Busan oil spill”). The action is brought by the Attorney General on behalf of  
9 the People of the State of California, *ex relatione* Department of Fish and Game (“DFG”);  
10 California Regional Water Quality Control Board, San Francisco Bay Region (“RWQCB”); and  
11 State Lands Commission (“SLC”), pursuant to Government Code sections 8670.53, 8670.56.5,  
12 subdivision (h), 8670.66, subdivision (a)(3), and 8670.66, subdivision (b); Fish and Game Code  
13 sections 2014, 5650, 5650.1, and 12016; the federal Oil Pollution Act of 1990 (OPA) (33 U.S.C.  
14 § 2701 *et seq.*), sections 1002 and 1006; Water Code section 13350; Public Resources Code  
15 section 6224.1; Civil Code sections 3479 and 3480; and common law theories of negligence.

16 **JURISDICTION**

17 2. This Court has jurisdiction to hear the claims alleged in this complaint and is a  
18 court of competent jurisdiction to grant the relief requested.

19 **VENUE**

20 3. Venue is proper in the City and County of San Francisco under Government Code  
21 section 8670.59, Fish and Game Code section 2014, subdivision (c), and Water Code section  
22 13361, subdivision (b), because Defendants engaged in the discharge of oil and related acts that  
23 are the basis of this action in San Francisco County. Venue in this Court is also proper under  
24 Code of Civil Procedure section 395.5 because, at all relevant times, the Defendants conducted  
25 business—and committed several of the disputed acts and omissions giving rise to the liabilities  
26 and obligations alleged herein—in the City and County of San Francisco.

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**PARTIES**

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2           4.       Plaintiff DFG is a state agency and is the trustee, on behalf of the people of the  
3 State of California, for fish, wildlife, and their habitats. As such, DFG and its Office of Spill  
4 Prevention and Response (“OSPR”) is responsible for protecting fish, wildlife, plant species,  
5 animal and plant habitats, and natural communities, for their intrinsic and ecological value and  
6 their benefits to people. In fulfilling its duty to protect and maintain animals and plants and their  
7 habitats in a sufficient amount and quality to ensure the survival of all species and natural  
8 communities, DFG must vigilantly enforce designated provisions of state and federal laws,  
9 including the California Fish and Game Code, the Lempert-Keene-Seastrand Oil Spill Prevention  
10 and Response Act (“Lempert-Keene-Seastrand Act”) (California Government Code § 8670.1 *et*  
11 *seq.*), and OPA. In this action, DFG seeks: penalties for the unlawful deposit of petroleum  
12 products into waters of the State, pursuant to Fish and Game Code section 5650.1; natural  
13 resource damages and penalties for the intentional or negligent unauthorized discharge of oil into  
14 marine waters and for the intentional or negligent violation of a permit, standard, or requirement,  
15 pursuant to Government Code sections 8670.66, subdivision (a)(3), and 8670.66, subdivision (b);  
16 all costs and expenditures that were made from the Oil Spill Response Trust Fund for an oil spill  
17 into marine waters, under 8670.53; and response costs and natural resource damages under  
18 Government Code section 8670.56.5, subdivision (h), and Fish and Game Code sections 2014  
19 and 12016. Also, since DFG serves as a state trustee for natural resources under OPA section  
20 1006, subdivision (b), (33 U.S.C. § 2706(b)), DFG seeks natural resource damages under OPA  
21 sections 1002 and 1006.

22           5.       Plaintiff RWQCB is the state agency that is responsible for protecting the quality  
23 of the waters of California and enforcing the Porter-Cologne Water Pollution Control Act,  
24 (Water Code § 13000 *et seq.*) within the San Francisco Bay region. In this action, RWQCB  
25 seeks penalties for damage to the waters of California under Water Code section 13350.

26           6.       Plaintiff SLC is the state agency that serves as trustee, on behalf of the people of  
27 the State of California, for state sovereign lands, including all ungranted tidelands and  
28 submerged lands. Under Public Resources Code sections 6216 and 6301, SLC is responsible for

1 administering and managing, *inter alia*, all ungranted tidelands and submerged lands—and  
2 interests in such lands—which are held in trust for the benefit of the People of California. In  
3 addition, SLC is vested with all residual jurisdiction, authority, and reversionary trust ownership  
4 concerning tidelands which have been granted by the Legislature in trust to another  
5 governmental subdivision. In this action, SLC seeks damages for trespass on lands under its  
6 jurisdiction, under Public Resources Code section 6224.1; and damages for nuisance, under Civil  
7 Code sections 3479 and 3480.

8           7. At all times relevant to this Complaint, Defendant Regal Stone Ltd. (“Regal  
9 Stone”) was a foreign corporation, or similar entity, that was—and is believed to still be—based  
10 in Hong Kong; that owned, operated, controlled, managed, directed, and/or chartered the Cosco  
11 Busan; and that conducted business in and around the City and County of San Francisco and  
12 other areas affected by the Cosco Busan oil spill.

13           8. At all times relevant to this Complaint, Defendant Fleet Management Ltd. (“Fleet  
14 Management”) was a foreign corporation, or similar entity, that is believed to have been—and is  
15 believed to still be—based in Hong Kong; that owned, operated, controlled, managed, directed,  
16 leased, and/or chartered the Cosco Busan; and that conducted business in and around the City  
17 and County of San Francisco and other areas affected by the Cosco Busan oil spill.

18           9. At all times relevant to this Complaint, Defendant Hanjin Shipping Co. Ltd.  
19 (“Hanjin Shipping”) was a foreign corporation, or similar entity, that is believed to have been—  
20 and is believed to still be—based in South Korea; that owned the oil spilled by the Cosco Busan;  
21 that operated, controlled, managed, directed, leased, and/or chartered the Cosco Busan; and that  
22 conducted business in and around San Francisco and other areas affected by the Cosco Busan oil  
23 spill.

24           10. At all times relevant to this Complaint, Defendant Synergy Management Services  
25 was a foreign corporation, or similar entity, that was—and is believed to still be—based in the  
26 Republic of Cyprus; that owned, operated, controlled, managed, directed, and/or chartered the  
27 Cosco Busan; and that conducted business in and around the City and County of San Francisco  
28 and other areas affected by the Cosco Busan oil spill.



1           16. On that same morning, Defendants’ crew and Defendant Cota navigated the  
2 Cosco Busan from its Oakland berth into the waters of San Francisco Bay.

3           17. On that same morning, at or about 8:30 a.m., the Cosco Busan allided with the  
4 San Francisco-Oakland Bay Bridge (hereinafter “Bay Bridge”), specifically the Bridge’s support  
5 tower known as the Delta Tower.

6           18. The aforementioned allision damaged both the vessel and the Bay Bridge.

7           19. Among the damage to the vessel was a large gash in the vessel’s hull and tanks,  
8 which caused a substantial amount of the oil in the vessel’s bunker tanks to be discharged into  
9 and throughout the Bay and adjoining waters such as the Pacific Ocean, and on to the animals,  
10 plants, shorelines, coastlines, islands, other natural resources and features, and manmade  
11 resources and property, located in and around the Bay, the Pacific Ocean, and adjoining waters,  
12 thereby resulting in severe harm to said areas and resources.

13           20. The aforementioned oil spill and resultant harms were directly and proximately  
14 caused by, *inter alia*, the acts, omissions, strict liability, fault, negligence, breach, and violations  
15 by Defendants and/or their agents, charges, or representatives, in regard to applicable California  
16 laws, regulations, and common law, and OPA.

17           21. At all times relevant to this Complaint, Defendants were responsible for the  
18 operation and navigation of the Cosco Busan.

19           22. In executing their respective duties and responsibilities to respond to the Cosco  
20 Busan oil spill, Plaintiffs have incurred—and will continue to incur—significant damages and  
21 costs.

22           23. The ultimate amount of damages incurred by Plaintiffs as a result of the Cosco  
23 Busan oil spill is not yet ascertainable and shall be established according to the proof presented  
24 at the trial of this matter.

25   **FIRST CAUSE OF ACTION**  
26         **(Cost Recovery Under Lempert-Keene-Seastrand Oil Spill Prevention and Response Act—**  
   **Government Code § 8670.53)**

27           24. Plaintiff DFG refers to and incorporates by reference as though fully set forth  
28 herein each and every foregoing paragraph of this Complaint.

1           25.     The waters of the San Francisco Bay and the Pacific Ocean constitute “marine  
2 waters” under Government Code section 8670.3, subdivision (i), which defines “marine waters”  
3 as “those waters subject to tidal influence....”

4           26.     The oil that was discharged into the San Francisco Bay and Pacific Ocean by the  
5 Cosco Busan constitutes “oil” under Government Code section 8670.3, subdivision (n), which  
6 defines “oil” as “any kind of petroleum, liquid hydrocarbons, or petroleum products or any  
7 fraction or residues therefrom....”

8           27.     The aforementioned unauthorized discharge from the Cosco Busan, which  
9 consisted of at least 53,000 gallons of oil, constituted a “spill” or “discharge” under Government  
10 Code section 8670.3, subdivision (aa), which defines a “spill” or “discharge” as “any release of  
11 at least...42 gallons...of oil into marine waters that is not authorized by any federal, state, or  
12 local government entity.”

13           28.     The Cosco Busan constitutes a “vessel” under Government Code section 8670.3,  
14 subdivision (ag), which defines a “vessel” as “any watercraft or ship of any kind, including every  
15 structure adapted to be navigated from place to place for the transportation of merchandise or  
16 persons.”

17           29.     The Cosco Busan constitutes a “nontank vessel” under Government Code section  
18 8670.3, subdivision (m), which defines a “nontank vessel” as “a vessel of 300 gross tons or  
19 greater that carries oil, but does not carry that oil as cargo.”

20           30.     Each of the Defendants constitute a “responsible party” under Government Code  
21 section 8670.3, subdivision (w), which defines “responsible party” as “(1) [t]he owner or  
22 transporter of oil or a person or entity accepting responsibility for the oil[, or] (2) [t]he owner,  
23 operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a  
24 person or entity accepting responsibility for the vessel or marine facility.”

25           31.     The discharge or spill from the Cosco Busan into the San Francisco Bay and  
26 Pacific Ocean constitutes a “discharge of oil into or onto marine waters” under Government  
27 Code section 8670.3, subdivisions (i), (n), and (aa).

28

1 32. As a result of the oil spill from the Cosco Busan into the San Francisco Bay and  
2 Pacific Ocean, Plaintiffs have made expenditures from the Oil Spill Response Trust Fund and are  
3 thus entitled to recover from Defendants all such expenditures, under Government Code section  
4 8670.53, which provides, in pertinent part, "The Attorney General, in consultation with the  
5 administrator [for oil spill response, i.e., a chief deputy director of DFG], shall undertake actions  
6 to recover all costs to the [Oil Spill Response Trust Fund] from any responsible party for an oil  
7 spill into marine waters for which expenditures are made from the fund."

8 33. By virtue of the acts and omissions alleged in this Complaint, Defendants are  
9 jointly and severally liable and/or vicariously liable for each other's acts and omissions, and  
10 consequently for the aforementioned costs under Government Code section 8670.53.

11 **SECOND CAUSE OF ACTION**  
12 **(Damages Under Lempert-Keene-Seastrand Oil Spill Prevention and Response Act—**  
13 **Government Code § 8670.56.5)**

14 34. Plaintiff DFG refers to and incorporates by reference as though fully set forth  
15 herein each and every foregoing paragraph of this Complaint.

16 35. DFG has incurred costs and damages, including damages for injuries to the  
17 natural resources under its trusteeship, as a result of the discharge and/or leaking of oil from the  
18 Cosco Busan into or onto marine waters.

19 36. Defendants are absolutely liable under Government Code section 8670.56.5,  
20 subdivisions (a), (f), & (h), without regard to fault, for all damages resulting from the discharge  
21 or spill of oil from the Cosco Busan, including but not limited to: all costs of response,  
22 containment, cleanup, removal, and treatment; injury to, or economic losses resulting from  
23 destruction of or injury to, real or personal property; injury to, destruction of or loss of, natural  
24 resources; loss of use and enjoyment of natural resources, public beaches, and other public  
25 resources or facilities; and all costs of the suit, costs of expert witnesses, and attorneys' fees.

26 37. By virtue of the acts and omissions alleged in this Complaint, Defendants are  
27 jointly and severally liable and/or vicariously liable for each other's acts and omissions, and  
28 consequently for the aforementioned damages under Government Code section 8670.56.5.



1 **THIRD CAUSE OF ACTION**  
2 **(Penalties Under Lempert-Keene-Seastrand Oil Spill Prevention and Response Act—**  
3 **Government Code § 8670.66(a)(3))**

4 38. Plaintiff DFG refers to and incorporates by reference as though fully set forth  
5 herein each and every foregoing paragraph of this Complaint.

6 39. By virtue of the acts and omissions alleged in this Complaint, Defendants acted  
7 intentionally or negligently, resulting in the unauthorized discharge or spill of oil from the Cosco  
8 Busan into or onto marine waters.

9 40. Defendants are liable for penalties under Government Code section 8670.66,  
10 subdivision (a)(3), which provides that “Any person who intentionally or negligently does any of  
11 the following acts shall be subject to a civil penalty of not less than...\$25,000...or more  
12 than...\$500,000...for each violation, and each day or partial day that a violation occurs is a  
13 separate violation: (3) [d]ischarges or spills oil into marine waters, unless the discharge is  
14 authorized by the United States, the state, or other agency with appropriate jurisdiction.”

15 41. By virtue of the acts and omissions alleged in this Complaint, Defendants are  
16 jointly and severally liable and/or vicariously liable for each other’s acts and omissions, and  
17 consequently for the aforementioned penalties under Government Code section 8670.66,  
18 subdivision (a)(3).

19 **FOURTH CAUSE OF ACTION**  
20 **(Penalties Under Lempert-Keene-Seastrand Oil Spill Prevention and Response Act—**  
21 **Government Code § 8670.66(b))**

22 42. Plaintiff DFG refers to and incorporates by reference as though fully set forth  
23 herein each and every foregoing paragraph of this Complaint.

24 43. By virtue of the acts and omissions alleged in this Complaint, Defendants acted  
25 intentionally or negligently, resulting in the unauthorized discharge or spill of oil from the Cosco  
26 Busan into or onto marine waters, and thereby constituting violations of various provisions of the  
27 Lempert-Keene-Seastrand Act, including Government Code section 8670.56.5 and section  
28 8670.66, subdivision (a)(3).

1 44. Defendants are liable for penalties under Government Code section 8670.66,  
2 subdivision (b), which provides, in pertinent part, that “[A]ny person who intentionally or  
3 negligently violates any provision of [the Lempert-Keene-Seastrand Act], or any permit, rule,  
4 regulation, standard, or requirement issued or adopted pursuant to those provisions, shall be  
5 liable for a civil penalty not to exceed...\$250,000...for each violation of a separate provision, or,  
6 for continuing violations, for each day that violation continues.”

7 45. By virtue of the acts and omissions alleged in this Complaint, Defendants are  
8 jointly and severally liable and/or vicariously liable for each other’s acts and omissions, and  
9 consequently for the aforementioned penalties under Government Code section 8670.66,  
10 subdivision (b).

11 **FIFTH CAUSE OF ACTION**  
12 **(Damages Under Fish and Game Code § 2014)**

13 46. Plaintiff DFG refers to and incorporates by reference as though fully set forth  
14 herein each and every foregoing paragraph of this Complaint.

15 47. By virtue of the acts and omissions alleged in this Complaint, resulting in the  
16 Defendants’ spill, discharge, and/or leakage of oil from the Cosco Busan into the San Francisco  
17 Bay and other waters of the state, Defendants have caused—and will continue to cause—the  
18 unlawful and/or negligent taking and/or destruction of thousands of animals that are protected by  
19 the State of California, under Fish and Game Code section 2014.

20 48. Defendants’ spill, discharge, and/or leakage of oil is unlawful in that:

21 a. The oil is a waste that was discharged into the waters of the state and  
22 thereby created a condition of pollution and/or nuisance, in violation of Water Code section  
23 13350, subdivision (a).

24 b. The oil is a substance or material that is deleterious to fish, mammals, bird  
25 life, and/or plant life and was deposited in, permitted to pass into, or placed where it could pass  
26 into a water of the state, in violation of Fish and Game Code section 5650.

27 c. By virtue of the acts and omissions alleged in this Complaint, Defendants  
28 unlawfully and/or negligently spilled, discharged, and/or leaked oil, which proximately caused—

1 and will continue to cause—the taking and/or destruction of thousands of birds, mammals, fish,  
2 reptiles, and/or amphibians that are protected by the State of California.

3 d. Defendants are jointly and severally liable under Fish and Game Code  
4 section 2014 for all of the detriment proximately caused by the taking or destruction of said  
5 animals that are protected by the State of California.

6 49. Defendants are liable for civil damages in an amount necessary to compensate for  
7 all of the detriment that has proximately resulted—and will continue to result—from the  
8 destruction of the protected birds, mammals, fish, reptiles, and/or amphibians, under Fish and  
9 Game Code section 2014, subdivisions (a) & (b).

10 50. By virtue of the acts and omissions alleged in this Complaint, Defendants are  
11 jointly and severally liable and/or vicariously liable for each other’s acts and omissions, and  
12 consequently for the aforementioned damages under Fish and Game Code section 2014.

13 **SIXTH CAUSE OF ACTION**  
14 **(Penalties Under Fish and Game Code §§ 5650 and 5650.1)**

15 51. Plaintiff DFG refers to and incorporates by reference as though fully set forth  
16 herein each and every foregoing paragraph of this Complaint.

17 52. By virtue of the acts and omissions alleged in this Complaint, resulting in the  
18 Defendants’ spill, discharge, and/or leakage of at least 53,000 gallons of oil from the Cosco  
19 Busan into the San Francisco Bay and other state waters, Defendants have violated Fish and  
20 Game Code section 5650, subdivision (a), which provides, in pertinent part, “[I]t is unlawful to  
21 deposit in, permit to pass into, or place where it can pass into the waters of the state...[a]ny  
22 petroleum,...or residuary product of petroleum, or carbonaceous material or substance[,  
23 or]...[a]ny substance or material deleterious to fish, plant life, mammals, or bird life.”

24 53. Under Fish and Game Code section 5650.1, Defendants are liable for civil  
25 penalties in an amount of up to \$25,000 for each act or omission which constitutes a depositing  
26 or placing of oil where it can pass into the waters of the San Francisco Bay or other state waters.

27 54. By virtue of the acts and omissions alleged in this Complaint, Defendants are  
28 jointly and severally liable and/or vicariously liable for each other’s acts and omissions, and

1 consequently for the aforementioned penalties under Fish and Game Code sections 5650 and  
2 5650.1.

3 **SEVENTH CAUSE OF ACTION**  
4 **(Damages and Recovery of Costs Under Fish and Game Code § 12016)**

5 55. Plaintiff DFG refers to and incorporates by reference as though fully set forth  
6 herein each and every foregoing paragraph of this Complaint.

7 56. By virtue of the acts and omissions alleged in this Complaint, culminating in the  
8 Defendants discharging and/or depositing at least 53,000 gallons of oil in the San Francisco Bay  
9 and other state waters, which has destroyed or injured several thousands of animals and plants  
10 and their habitats in those waters and has caused DFG to incur substantial costs in cleaning up  
11 said oil from state waters and abating the effects of the oil, Defendants have violated Fish and  
12 Game Code section 12016, subdivision (a), which provides, “In addition to any other provision  
13 of law, any person who discharges or deposits any substance or material deleterious to fish,  
14 plant, bird, or animal life or their habitat into, or which threatens to enter, the waters of this state  
15 is liable civilly to [DFG] for all actual damages to fish, plant, bird, or animal life or their habitat  
16 and, in addition, for the reasonable costs incurred in cleaning up the deleterious substance or  
17 material or abating its effects, or both.”

18 57. Oil is a “substance deleterious to fish, plant, bird, or animal life or their habitat,”  
19 within the meaning of Fish and Game Code section 12016, subdivision (a).

20 58. The oil that has been deposited and/or discharged by Defendants has caused  
21 damage to the fish, plant, bird, and/or animal life and their habitats in state waters.

22 59. Under Fish and Game Code section 12016, subdivision (a), Defendants are liable  
23 to DFG for all actual damages to fish, plant, bird, or animal life or their habitat.

24 60. Under Fish and Game Code section 12016, subdivision (a), Defendants are liable  
25 to DFG for all past and future reasonable costs incurred by DFG in cleaning up the oil and  
26 abating its effects.

27 61. By virtue of the acts and omissions alleged in this Complaint, Defendants are  
28 jointly and severally liable and/or vicariously liable for each other’s acts and omissions, and

1 consequently for the aforementioned damages and costs under Fish and Game Code section  
2 12016.

3 **EIGHTH CAUSE OF ACTION**  
4 **(Natural Resource Damages Under Federal Oil Pollution Act of 1990, §§ 1002 & 1006)**

5 62. Plaintiff DFG refers to and incorporates by reference as though fully set forth  
6 herein each and every foregoing paragraph of this Complaint.

7 63. The Cosco Busan constitutes a “vessel” under OPA section 1001(37) (33 U.S.C. §  
8 2701(37)), which defines “vessel” as “every description of watercraft or other artificial  
9 contrivance used, or capable of being used, as a means of transportation on water, other than a  
10 public vessel.”

11 64. The spill, discharge, and/or leakage of oil from the Cosco Busan constitutes a  
12 “discharge” under OPA section 1001(7) (33 U.S.C. § 2701(7)), which defines “discharge” as  
13 “any emission (other than natural seepage), intentional or unintentional, and includes, but is not  
14 limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping.”

15 65. The oil discharged by the Cosco Busan constitutes “oil” under OPA section  
16 1001(23) (33 U.S.C. § 2701(23)), which defines “oil” as “oil of any kind or in any form,  
17 including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged  
18 spoil....”

19 66. The waters of the San Francisco Bay and the Pacific Ocean constitute “navigable  
20 waters” under OPA section 1001(21) (33 U.S.C. § 2701(21)), which defines “navigable waters”  
21 as “the waters of the United States, including the territorial sea.”

22 67. Defendant Regal Stone constitutes a “responsible party” under OPA section  
23 1001(32)(A) (33 U.S.C. § 2701(32)(A)), which defines “responsible party” as, in pertinent part,  
24 “In the case of a vessel, any person owning, operating, or demise chartering the vessel.”

25 68. Defendant Fleet Management constitutes a “responsible party” under OPA section  
26 1001(32)(A) (33 U.S.C. § 2701(32)(A)), which defines “responsible party” as, in pertinent part,  
27 “In the case of a vessel, any person owning, operating, or demise chartering the vessel.”  
28

1           69. Defendant Hanjin Shipping constitutes a “responsible party” under OPA section  
2 1001(32)(A) (33 U.S.C. § 2701(32)(A)), which defines “responsible party” as, in pertinent part,  
3 “In the case of a vessel, any person owning, operating, or demise chartering the vessel.”

4           70. Defendant John Cota constitutes a “responsible party” under OPA section  
5 1001(32)(A) (33 U.S.C. § 2701(32)(A)), which defines “responsible party” as, in pertinent part,  
6 “In the case of a vessel, any person owning, operating, or demise chartering the vessel.”

7           71. Defendant Synergy Management Services constitutes a “responsible party” under  
8 OPA section 1001(32)(A) (33 U.S.C. § 2701(32)(A)), which defines “responsible party” as, in  
9 pertinent part, “In the case of a vessel, any person owning, operating, or demise chartering the  
10 vessel.”

11           72. Defendant Synergy Marine Ltd. constitutes a “responsible party” under OPA  
12 section 1001(32)(A) (33 U.S.C. § 2701(32)(A)), which defines “responsible party” as, in  
13 pertinent part, “In the case of a vessel, any person owning, operating, or demise chartering the  
14 vessel.”

15           73. By virtue of the acts and omissions alleged in this Complaint, culminating in the  
16 Cosco Busan discharging at least 53,000 gallons of oil in the San Francisco Bay and other state  
17 waters, Defendants have caused injury to, destruction of, loss of, and/or loss of use of “natural  
18 resources” under OPA section 1001(20) (33 U.S.C. § 2701(20)), which defines “natural  
19 resources” as “land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and  
20 other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise  
21 controlled by the United States (including the resources of the exclusive economic zone), any  
22 State or local government or Indian tribe, or any foreign government.”

23           74. Under OPA section 1006(b) (33 U.S.C. § 2706(b)), state governments designate  
24 state and/or local officials to act as trustee for natural resources under OPA. For purposes of  
25 OPA section 1006(b) (33 U.S.C. § 2706(b)), the trustee that has been designated by the Governor  
26 of the State of California is the Secretary of Resources, who delegated his trustee authority to  
27 DFG for resources within DFG’s purview. DFG is a trustee for fish, wildlife, and their habitats,  
28 under Fish and Game Code section 1802.

1 75. The natural resources injured, destroyed, and/or lost as a result of the Cosco  
2 Busan incident are held in trust by California's designated state trustee, within the meaning of  
3 OPA section 1006(b) (33 U.S.C. § 2706(b)).

4 76. Under OPA sections 1002(a)-(b) (33 U.S.C. § 2702(a)-(b)), and OPA section  
5 1006(a) (33 U.S.C. § 2706(a)), Defendants are responsible for a vessel (the Cosco Busan) from  
6 which oil was discharged into or upon the navigable waters or adjoining shorelines of the San  
7 Francisco Bay and adjacent waters, and Defendants are thus strictly liable to the State of  
8 California for the resulting damages, including, but not limited to, damages for injury to,  
9 destruction of, loss of, and loss of use of natural resources, and the reasonable costs of assessing  
10 such damage.

11 77. By virtue of the acts and omissions alleged in this Complaint, Defendants are  
12 jointly and severally liable and/or vicariously liable for each other's acts and omissions, and  
13 consequently for the aforementioned damages under OPA sections 1002 and 1006.

14 **NINTH CAUSE OF ACTION**  
15 **(Civil Liabilities under Water Code § 13350)**

16 78. Plaintiff RWQCB refers to and incorporates by reference as though fully set forth  
17 herein each and every foregoing paragraph of this Complaint.

18 79. By virtue of the acts and omissions alleged in this Complaint, culminating in the  
19 Defendants discharging and/or depositing at least 53,000 gallons of oil and/or residuary products  
20 of petroleum in the San Francisco Bay and other state waters, Defendants have violated Water  
21 Code section 13350, subdivision (a), which provides, in pertinent part, "Any person who...  
22 causes or permits any oil or any residuary product of petroleum to be deposited in or on any of  
23 the waters of the state, except in accordance with waste discharge requirements or other actions  
24 or provisions of [Division 7 of the Water Code], shall be liable civilly, and remedies may be  
25 proposed, in accordance with [Water Code § 13350](d)..."

26 80. Water Code section 13350, subdivision (d), provides, "The court may impose  
27 civil liability either on a daily basis or on a per gallon basis, but not both. ... The civil liability  
28 on a per gallon basis may not exceed twenty dollars (\$20) for each gallon...discharged."

1           81. For purposes of Water Code section 13350, each and every defendant constitutes  
2 a “person,” which is defined by Water Code section 19 as “any person, firm, association,  
3 organization, partnership, business trust, corporation, limited liability company, or company.”

4           82. For purposes of Water Code section 13350, the San Francisco Bay and other  
5 waters affected by the Cosco Busan incident constitute “waters of the state,” which is defined by  
6 Water Code section 13050, subdivision (e) as “any surface water or groundwater, including  
7 saline waters, within the boundaries of the state.”

8           83. Defendants’ act or omission in causing or permitting oil and/or residuary products  
9 of petroleum from the Cosco Busan to be deposited in or on the San Francisco Bay and adjoining  
10 waters of the state was not in accordance with any waste discharge requirements or other actions  
11 or provisions of Division 7 of the Water Code.

12           84. On or about April 9, 2008, after providing due notice and complying with all  
13 applicable law, Plaintiff RWQCB held a public hearing to consider authorizing the California  
14 Attorney General to seek civil penalties and other appropriate remedies judicially. After  
15 considering the testimony and evidence offered at the April 9, 2008, public hearing and in the  
16 record, Plaintiff RWQCB adopted Resolution No. R2-2008-0023, authorizing the Attorney  
17 General to seek, *inter alia*, judicially imposed civil penalties under applicable sections of the  
18 Water Code.

19           85. Under Water Code section 13350, subdivision (g), “The Attorney General, upon  
20 request of a regional board or the state board, shall petition the superior court to impose, assess,  
21 and recover such sums [prescribed in Water Code section 13350].”

22           86. Plaintiff RWQCB is informed and believes, and based thereon alleges, that the  
23 estimated amount of oil and/or residuary products of petroleum from the Cosco Busan that  
24 Defendants caused or permitted to be deposited in or on the San Francisco Bay and adjoining  
25 waters of the state is 53,569 gallons.

26           87. Pursuant to Water Code section 13350, Defendants are liable for civil liabilities,  
27 calculated on a per gallon basis, in an amount of up to \$1,071,380, or \$20 for each of the 53,569  
28 gallons of oil and/or residuary products of petroleum that Defendants caused or permitted to be



1 deposited in or on the San Francisco Bay and adjoining waters of the state.

2 88. Pursuant to Water Code section 13350, subdivision (j), all civil liabilities assessed  
3 under Water Code section 13350 “are in addition to, and do not supersede or limit, any and all  
4 other remedies, civil or criminal...”

5 89. By virtue of the acts and omissions alleged in this Complaint, Defendants are  
6 strictly liable to Plaintiff RWQCB for all remedies prescribed by Water Code section 13350,  
7 including the aforementioned civil liabilities.

8 90. By virtue of the acts and omissions alleged in this Complaint, Defendants are  
9 jointly and severally liable and/or vicariously liable for each other’s acts and omissions, and  
10 consequently for the aforementioned civil liabilities under Water Code section 13350.

11 **TENTH CAUSE OF ACTION**  
12 **(Damages for Trespass Under Public Resources Code § 6224.1)**

13 91. Plaintiff SLC refers to and incorporates by reference as though fully set forth  
14 herein each and every foregoing paragraph of this Complaint.

15 92. Plaintiff SLC is the trustee for state sovereign lands, including all ungranted  
16 tidelands and submerged lands. Under Public Resources Code sections 6216 and 6301, SLC is  
17 responsible for administering and managing, *inter alia*, all ungranted tidelands and submerged  
18 lands—and interests in such lands—which are held in trust for the benefit of the People of  
19 California. In addition, SLC is vested with all residual jurisdiction, authority, and reversionary  
20 trust ownership concerning tidelands which have been granted by the Legislature in trust to  
21 another governmental subdivision.

22 93. Beginning on November 7, 2007, and continuing thereafter to the present time,  
23 Defendants, without lawful authority, trespassed on lands owned or controlled by the state and  
24 under the jurisdiction of SLC, including but not limited to tidelands and submerged lands in and  
25 around San Francisco Bay and adjacent waters, by: (1) causing oil to be spilled, discharged,  
26 and/or leaked into and upon such lands; (2) failing to prevent migration of the spilled oil to such  
27 lands; and (3) failing to remove the spilled oil from such lands.

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1 94. By virtue of the acts and omissions alleged in this Complaint, culminating in the  
2 Defendants discharging and/or depositing at least 53,000 gallons of oil into and upon state waters  
3 and lands, Defendants have violated Public Resources Code section 6224.1, which provides, in  
4 pertinent part, “Any person who trespasses upon any lands owned or controlled by the state and  
5 under the jurisdiction of [SLC], including, but not limited to, tidelands, submerged lands,...  
6 bays, estuaries, inlets, or ... swamp and overflowed lands, without lawful authority, is liable to  
7 the state for the amount of damages which may be assessed therefor, in any civil action, in any  
8 court having jurisdiction.”

9 95. Defendants’ trespass has caused—and continues to cause—injuries to the state’s  
10 property in an amount to be determined, in excess of the jurisdictional limit of this Court.

11 96. By virtue of the acts and omissions alleged in this Complaint, Defendants are  
12 jointly and severally liable and/or vicariously liable for each other’s acts and omissions, and  
13 consequently for the aforementioned damages under Public Resources Code section 6224.1.

14 **ELEVENTH CAUSE OF ACTION**  
15 **(Damages for Private and Public Nuisance Under Civil Code § 3484)**

16 97. Plaintiffs DFG and SLC refer to and incorporate by reference as though fully set  
17 forth herein each and every foregoing paragraph of this Complaint.

18 98. Beginning on November 7, 2007, and continuing thereafter to the present time,  
19 Defendants, without lawful authority, discharged and/or deposited at least 53,000 gallons of oil  
20 into and upon waters under the jurisdiction of DFG—including the fish, wildlife, plant species,  
21 animal and plant habitats, and natural communities located therein—and lands owned or  
22 controlled by the state and under the jurisdiction of SLC—including but not limited to tidelands  
23 and submerged lands in and around San Francisco Bay and adjacent waters and public parks.

24 99. By virtue of the acts and omissions alleged in this Complaint, Defendants have  
25 injured—and continue to injure—the state’s and its people’s health, senses, use, and enjoyment  
26 associated with the aforementioned state waters and lands affected by the Defendants’ conduct,  
27 thereby creating and maintaining a private nuisance under Civil Code § 3479, which defines  
28 “nuisance” as “Anything which is injurious to health, including, but not limited to...an

1 obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life  
2 or property, or unlawfully obstructs the free passage or use, in the customary manner, of any  
3 navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or  
4 highway.”

5 100. By virtue of the acts and omissions alleged in this Complaint, Defendants have  
6 substantially and unreasonably interfered with—and continue to so interfere with—not only the  
7 waters and land of nearly every community along the San Francisco Bay but also the residents’  
8 use and enjoyment of the land in their communities, thereby creating and maintaining a public  
9 nuisance under Civil Code section 3480, which defines a “public nuisance” as “one which affects  
10 at the same time an entire community or neighborhood, or any considerable number of persons,  
11 although the extent of the annoyance or damage inflicted upon individuals may be unequal.”

12 101. Defendants’ creation and maintenance of a private nuisance and/or public  
13 nuisance have actually and proximately caused—and continue to so cause—injuries to the state’s  
14 property and to DFG and SLC in an amount to be determined, in excess of the jurisdictional limit  
15 of this Court.

16 102. As a result of the foregoing facts, the State of California, the People of the State,  
17 DFG, and/or SLC are entitled to, *inter alia*, damages from Defendants (regardless of any  
18 abatement of the aforementioned nuisances), pursuant to Civil Code section 3484, which  
19 provides, “The abatement of a nuisance does not prejudice the right of any person to recover  
20 damages for its past existence.”

21 103. By virtue of the acts and omissions alleged in this Complaint, Defendants are  
22 jointly and severally liable and/or vicariously liable for each other’s acts and omissions, and  
23 consequently for the aforementioned damages under Civil Code section 3484.

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**PRAYER FOR RELIEF**

Wherefore, Plaintiffs, by and through the Attorney General, pray for judgment against Defendants, jointly and severally, as follows:

1. Judgment in favor of the Plaintiffs on each Cause of Action in this Complaint;
2. Past, present, and future penalties, damages, costs, and liabilities pursuant to each Cause of Action in this Complaint, and according to proof;
3. All costs of investigating and prosecuting this action, including attorney's fees, costs, and expert fees, pursuant to Code of Civil Procedure section 1021.8, Government Code section 8670.56.5(f), and any similar applicable provisions; and
4. Such other relief as the Court deems just and proper.

Dated: January 6, 2009

Respectfully submitted,

\_\_\_\_\_  
KEVIN D. LESH  
Deputy Attorney General

FOR EDMUND G. BROWN JR.  
Attorney General of the State of California  
  
Attorneys for Plaintiffs