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6 *Filing fees exempt pursuant to Government Code § 6103*

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8 The People of the State of California

9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
CITY AND COUNTY OF SAN FRANCISCO  
11 UNLIMITED JURISDICTION

12  
13 THE PEOPLE OF THE STATE OF  
CALIFORNIA,

14 Plaintiff,

15 vs.

16 TAM VAN TRAN,

17 Defendant.

Case No.

**COMPLAINT FOR INJUNCTIVE  
RELIEF, CIVIL PENALTIES, AND  
OTHER EQUITABLE RELIEF**

**(Bus. & Prof. Code § 17200 *et seq.*)**

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19  
20 THE PEOPLE OF THE STATE OF CALIFORNIA (the “People”) allege as follows:

21 1. The People bring this action by and through Chesa Boudin, District Attorney of the  
22 City and County of San Francisco, State of California, pursuant to Business and Professions Code  
23 §§ 17200 *et seq.*

24 2. The People may bring a civil action to enjoin “any person who engages, has engaged,  
25 or proposes to engage in unfair competition,” which includes “any unlawful, unfair or fraudulent  
26 business act or practice,” and may seek civil penalties for each act of unfair competition. (Bus. &  
27 Prof. Code §§ 17200, 17203, 17204, & 17206.)

28 3. Defendant Tam Van Tran (“TRAN”) is, and at all times mentioned herein was, a

COMPLAINT FOR INJUNCTIVE RELIEF, CIVIL PENALTIES, AND OTHER RELIEF

1 commercial fisherman licensed by the State of California, License No. L95635. Defendant TRAN  
2 has held a commercial fishing license since 1993 (previously under License No. L76651).  
3 Defendant TRAN has been the sole owner of the fishing vessel “Pacific Mist” since 2016, which is  
4 licensed to fish for Dungeness crab, License No. FG20915.

5 4. In such capacity and as an individual, as alleged herein, Defendant TRAN unlawfully  
6 placed 92 Dungeness crab traps in the North Farallon Islands State Marine Reserve, a Marine  
7 Protected Area and State Marine Reserve, and took Dungeness crab from this area in violation of  
8 Fish & Game Code § 12012.5 and the California Code of Regulations, Title 14, § 632(a)(1)(A).

9 5. Upon information and belief, this is the most egregious case of unlawful crabbing  
10 activity in San Francisco’s history, as well as the largest incident of unlawful commercial crabbing  
11 in any Marine Protected Area in the entire State of California.

12 6. The traps were placed in one of the farthest Marine Protected Areas from the mainland  
13 shore in Northern California, where blue whale and humpback whale migratory routes are likely to  
14 take place. Dungeness crab traps are the primary cause of whale entanglements.

15 7. Defendant TRAN also committed other violations of the California Code of  
16 Regulations, Title 14, §§ 132.1(a)(3) and (b), and 180.2(a)(1), which regulate the tags, buoys, and  
17 escape openings of Dungeness crab traps in California waters.

#### 18 **JURISDICTION AND VENUE**

19 8. Venue is proper in this County pursuant to Code of Civil Procedure § 393, in that the  
20 violations alleged in the Complaint occurred in the North Farallon Islands State Marine Reserve,  
21 which is within the City and County of San Francisco, California.

22 9. This Court has jurisdiction pursuant to Article 6, § 10, of the California Constitution.

#### 23 **ENFORCEMENT AUTHORITY**

24 10. The State of California’s Unfair Competition Law (“UCL”) prohibits unfair  
25 competition, defined to “include any unlawful, unfair or fraudulent business act or practice.” (Bus.  
26 & Prof. Code § 17200.)

27 11. The “unlawful” prong of the UCL includes any business act or practice that violates  
28 any statute or regulation. This part of the UCL creates an independent cause of action when a

1 business practice violates some other statute or regulation. Violations of the laws which prohibit  
2 the taking of Dungeness crab from Marine Protected Areas are unlawful business practices that  
3 may be violations of, and the basis of an action brought pursuant to, the UCL.

4 12. Business and Professions Code § 17203 authorizes courts to enjoin “any person who  
5 engages, has engaged, or proposes to engage in unfair competition.”

6 13. Business and Professions Code § 17206 imposes civil liability of not more than \$2,500  
7 for each violation of the UCL.

#### 8 **NORTH FARALLON ISLANDS STATE MARINE RESERVE**

9 14. The North Farallon Islands State Marine Reserve (“North Farallon Islands SMR”) is in  
10 the Gulf of the Farallones and located approximately 30 miles from the San Francisco Golden Gate  
11 Bridge. The North Farallon Islands SMR encompasses an 18-square mile area offshore on the  
12 northern portion of the Farallon Islands.

13 15. The North Farallon Islands SMR is a Marine Protected Area and a State Marine  
14 Reserve, established by California’s Marine Life Protection Act, Fish & Game Code §§ 2850 *et*  
15 *seq.*, and California Code of Regulations, Title 14, § 632(b)(51).

16 16. A “Marine Protected Area” is “a named, discrete geographic marine or estuarine area  
17 seaward of the mean high tide line or the mouth of a coastal river, including any area of intertidal  
18 or subtidal terrain, together with its overlying water and associated flora and fauna that has been  
19 designated by law, administrative action, or voter initiative to protect or conserve marine life and  
20 habitat.” (Fish & Game Code § 2852, subd. (c).)

21 17. “State Marine Reserves” are the most protected subset of Marine Protected Areas,  
22 wherein the taking of any marine resource is prohibited by law, with minor exceptions. “In a state  
23 marine reserve, it is unlawful to injure, damage, take, or possess any living, geological, or cultural  
24 marine resource, except under a scientific collecting permit issued by the department pursuant to  
25 Section 650 or specific authorization from the commission for research, restoration, or monitoring  
26 purposes.” (Cal. Code Regs., Tit. 14, § 632(a)(1)(A); *see also* Cal. Public Resources Code §  
27 36710.)

28 18. Many marine species benefit from the North Farallon Islands SMR’s prohibition on the

1 taking of marine life, including species directly targeted by fisheries in non-protected areas, such as  
2 Dungeness crab, and species that may be entangled by those fisheries, such as whales and sea  
3 turtles.

4 19. The North Farallon Islands SMR, as well as four other Marine Protected Areas in the  
5 Gulf of the Farallones, are the farthest Marine Protected Areas from the mainland shore in  
6 Northern California. Because most whale migratory routes take place farther offshore, the relative  
7 remoteness of the Gulf of the Farallones makes these Marine Protected Areas particularly habitable  
8 and important for blue whale and humpback whale migratory routes.

9 20. Whale entanglements have been on the rise since 2014 due to a convergence of factors,  
10 including marine heat waves, domoic acid driven season delays, and changes to foraging behavior  
11 due to habitat compression for humpback whales. Entanglements reached a high mark of eighteen  
12 in 2016, which included humpback whales, two blue whales, and a Pacific leatherback sea turtle.  
13 These species are protected by the Endangered Species Act.

14 21. Upon information and belief, a primary cause of whale entanglements is the large  
15 number of traps in the water during the Dungeness crab season. The opening and closing of the  
16 Dungeness crab season is often adjusted to account for risks to the migrating whale populations  
17 and avoid entanglements.

18 22. In the last five years, California’s Department of Fish and Wildlife (“CDFW”) and a  
19 collaborative network of governmental agencies and non-governmental organizations have  
20 performed large-scale public outreach, particularly with commercial fisherman, to address the  
21 increased threats to marine mammals through entanglements.

22 23. Specific laws apply to commercial fishermen who unlawfully take from a Marine  
23 Protected Area, including the North Farallon Islands SMR. Fish & Game Code § 12012.5 provides  
24 that “a person who holds a commercial fishing license ... or is operating a commercial passenger  
25 fishing boat ... and, for commercial purposes, either unlawfully takes a fish, within any meaning  
26 provided in Section 86,<sup>1</sup> within a marine protected area, as defined in Section 2852, or engages in,

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27  
28 <sup>1</sup> “Fish” includes crustaceans such as Dungeness crabs, and “take” means to “hunt, pursue,

1 or knowingly facilitates another person's, fishing activity within the marine protected area, is guilty  
2 of a misdemeanor punishable by a fine of not less than five thousand dollars (\$5,000) nor more  
3 than forty thousand dollars (\$40,000), or imprisonment in the county jail for not more than one  
4 year, or by both that fine and imprisonment.” (Fish & Game Code § 12012.5, subd. (a).)

### 5 **COMMERCIAL FISHING OF DUNGENESS CRAB**

6 24. To minimize entanglements and protect endangered species along California's  
7 coastline, and to conserve commercial fishery resources, CDFW heavily regulates California's  
8 commercial fishing industry, and in particular, the Dungeness crab industry.

9 25. California has required licenses for commercial fishing since 1917. No person may  
10 take Dungeness crab (or any fish) for profit without licenses for both the fishing vessel and the  
11 fisherman. (Fish & Game Code §§ 7850, subd. (a), 7920.)

12 26. The Dungeness crab industry has long been one of the most lucrative commercial  
13 fisheries. In the 2020 calendar year, Dungeness crab was the top grossing commercial fishery with  
14 a total of 8.3 million pounds landing statewide, garnering a total price of \$30,148,421. Average  
15 landings per year in the Central Management Area (which includes San Francisco and Half Moon  
16 Bay ports) have steadily increased since 2011, with those two ports alone accounting for an  
17 average of 28% of statewide landings over the past five Dungeness crab seasons. The Central  
18 Management Area has also seen the highest price per pound of recent commercial Dungeness crab  
19 seasons, including in the 2020-2021 season.

20 27. The lucrative crab industry makes the Dungeness crab licenses quite valuable.  
21 Approximately 420 permitted Dungeness crab vessels made at least one landing during the 2020-  
22 2021 season. Upon information and belief, the current market rate for a transferrable Dungeness  
23 crab license and vessel is in the range of \$200,000 to \$250,000.

24 28. Licensed Dungeness crab fisherman must comply with strict regulatory requirements.  
25 Every Dungeness crab trap aboard a permitted Dungeness crab vessel must have a valid tag  
26 attached which contains the trap owner's telephone number. (Cal. Code Regs., Tit. 14 § 132.1(a).)

27 \_\_\_\_\_  
28 catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.” (Fish & Game Code §§  
45, 86, emphasis supplied.)

1 If the tag is missing, or if the information on the tag is illegible or incorrect, the trap may not be  
2 used to take Dungeness crab. (Cal. Code Regs., Tit. 14 § 132.1(a)(3).)

3 29. Each Dungeness crab trap must also be marked with a buoy, and there must also be a  
4 buoy tag affixed to the main buoy that shows the department-assigned Dungeness crab vessel  
5 permit number and trap tier number. (Cal. Code Regs., tit. 14 § 132.1(b).)

6 30. Furthermore, to ensure that Dungeness crabs have a chance to escape should any trap  
7 become abandoned by the fisherman, each trap must have a destruct device that creates an  
8 unobstructed escape opening in the top or upper half of the trap of at least five inches in diameter  
9 when the destruct attachment material corrodes or fails. (Cal. Code Regs., tit. 14 § 180.2.) The  
10 destruction device is important to ensure that if a trap becomes lost or is abandoned, a portion on  
11 the top of the trap will erode and create an opening for marine life to escape. The destruction  
12 device is the method to prevent unnecessary, inhumane starvation of the Dungeness crabs. Traps  
13 without a destruction device present an unnecessary and inhumane risk that crabs will get caught in  
14 the abandoned trap, and that this will happen for the rest of time. This is called “ghost fishing,”

15 **DEFENDANT TRAN’S UNLAWFUL TAKING OF DUNGENESS CRAB**  
16 **IN THE NORTH FARALLON ISLANDS SMR**

17 31. Defendant TRAN has had a commercial fishing license in California since 1993.  
18 Defendant TRAN’s personal license number is L76651. He is a resident of Vallejo, California.

19 32. Since September 14, 2016, Defendant TRAN has been the sole registered owner of the  
20 *Pacific Mist*, a commercial fishing vessel licensed to take Dungeness crab in California, License  
21 No. FG20915.

22 33. Defendant TRAN does not and has not possessed either (1) a scientific collecting  
23 permit issued pursuant to Section 650 of Title 14 of the California Code of Regulations to feed,  
24 injure, damage, take, or possess any living, geological, or cultural marine resource in a State  
25 Marine Reserve, or (2) specific authorization from the Fish and Game Commission to injure,  
26 damage, take, or possess any living geological or cultural marine resource in a State Marine  
27 Reserve for research, restoration, or monitoring purposes.

28 34. CDFW authorized commercial fishing for Dungeness crab in the 2020-2021 season on

1 December 23, 2020.

2 35. On February 11, 2021, the CDFW was patrolling offshore in the North Farallon Islands  
3 SMR after receiving a tip from a fisherman that there were commercial Dungeness crab traps in  
4 that location. At approximately 1600 hours, CDFW observed what appeared to be a line—often  
5 referred to as a “string”—of commercial Dungeness crab trap buoys inside the southern part of the  
6 Northern Farallon Islands SMR.

7 36. Upon closer inspection, CDFW observed that the buoys and biennial trap tag were  
8 marked with a license number, L95635, which indicated that the traps belonged to the commercial  
9 Dungeness crab permitted fishing vessel Pacific Mist, owned and operated by Defendant TRAN.

10 37. CDFW observed and marked 92 crab traps belonging to Defendant TRAN that were  
11 inside the North Farallon Islands SMR.

12 38. In December 2020, Defendant was issued a Tier 6 permit, which allotted him a  
13 maximum of 250 traps for the 2020-2021 season. The 92 traps found within the North Farallon  
14 Islands SMR constitute more than 36% of traps allotted to Defendant TRAN that season.  
15 Defendant TRAN placed more than 36% of his crab traps in the most restricted portion of the Gulf  
16 of Farallones, which has the most remote Marine Protected Areas in Northern California known for  
17 blue whale and humpback whale migration. **Upon information and belief, this is the most**  
18 **egregious case of unlawful crabbing activity in San Francisco’s history, as well as the largest**  
19 **incident of documented unlawful commercial crabbing in any Marine Protected Area in**  
20 **California.**

21 39. On February 11, 2021, CDFW pulled three traps from the water, which were freshly  
22 baited and full of Dungeness crab. CDFW photographed the traps, released the Dungeness crab,  
23 and seized the traps as evidence. Due to poor weather conditions, CDFW did not have time to pull  
24 any more traps that day.

25 40. CDFW returned the following day, on February 12, 2021, and pulled 13 more traps, for  
26 a total of 16 traps, two from each of the eight strings. Again, CDFW photographed the traps,  
27 released the crabs, and seized the traps as evidence.

28 41. On February 13, 2021, a warden with CDFW called Defendant TRAN and left him a

1 voicemail asking him to return the call. Defendant TRAN returned the call, and the warden  
2 informed him that CDFW had marked his crab gear inside the North Farallon Island SMR, and had  
3 seized 16 of his traps. Defendant TRAN told the warden that he had 92 traps in the “North  
4 Farallons,” which matched the number of traps CDFW had marked. Defendant Tran said that he  
5 did not know fishing was prohibited in that area.

6 42. The warden instructed Defendant TRAN to not disturb any of his gear, which had been  
7 marked by CDFW, as CDFW continued its investigation. CDFW was planning on returning to the  
8 area later that week after weather subsided to pull and document the remaining traps.

9 43. On February 16, 2021, Defendant TRAN texted CDFW Warden Kevin DeRose (Badge  
10 No. 786), and again admitted that his gear was in the area near the North Farallons, and again  
11 stated that he did not know that he could set traps in that location. Defendant TRAN further said  
12 that he thought the fishing restriction in this area only applied to “draggers.” Defendant TRAN  
13 asked for leniency, and Warden DeRose instructed him to leave his traps alone.

14 44. On February 18, 2021, the CDFW returned to North Farallon Islands SMR and pulled  
15 the remaining traps from the area. The crew pulled and photographed a total of 54 more traps.  
16 CDFW photographed the traps, released the crabs, and seized the traps as evidence.

17 45. On February 18, 2021, CDFW noticed that two strings of TRAN’s traps were no longer  
18 there. CDFW had marked 92 traps on February 11, 2021, but were only able to pull and document  
19 a total of 70 traps. Upon information and belief, the other 22 traps were taken by Defendant TRAN  
20 against CDFW’s order that he leave the traps alone. CDFW’s instruction was important for CDFW  
21 to control the fate of any crabs in the remaining traps. The confiscation of the remaining traps from  
22 the North Farallon Islands SMR obstructed CDFW’s ability to release the crabs from the remaining  
23 traps and return them to the North Farallon Islands SMR.

24 46. There are at least 260 crabs shown in CDFW’s photographs of the 70 traps pulled from  
25 the water. The photographed crabs appear larger than typical, which is consistent with the fact they  
26 were able to grow relying on the abundant resources provided in the North Farallon Islands SMR.

27 47. Of the 70 traps pulled from the water and documented, **nine** traps were missing the tags  
28 required by the California Code of Regulations, title 14, § 132.1(a)(3), and **three** traps were



1 missing buoy tier tags as required per § 132.1(b).

2 48. Furthermore, one trap did not have the required destruction device. (Cal. Code Regs.,  
3 tit. 14 § 180.2.) Considering the risk that an abandoned trap without a destruction device will exist  
4 and forever pose the threat of ghost fishing, it is particularly egregious that a trap without a  
5 destruction device was used within the North Farallon Islands SMR, where taking *any* fish is  
6 unlawful.

7 49. Certified landing receipts show that on February 22, 2021, Defendant TRAN (L95635),  
8 from Pacific Mist (FG20195), landed with 133 pounds of Dungeness Crab, grossing \$798. In a  
9 typical landing, Defendant TRAN's would generally bring in over a 1000 lbs of Dungeness crab,  
10 for a total price generally between \$5,000 to \$7,000. The fact Defendant TRAN's landing on  
11 February 22, 2021 is much less than his other landings is consistent with the seizure of his traps by  
12 CDFW.

13 50. After the landing on February 22, 2021, Defendant TRAN did not report any further  
14 landings before the close of the 2020-2021 season on June 1, 2021.

15 51. In the calendar year 2021, Defendant TRAN grossed \$60,750 by selling Dungeness  
16 crab at San Francisco's port. This includes \$37,565 from his eight landings in January-February  
17 2021, and \$23,185 for one landing on December 30, 2021, after the opening of the new season.

18 52. Thus far in the calendar year 2022, Defendant TRAN has grossed another \$65,669  
19 from his sales of Dungeness crab.

## 20 CAUSE OF ACTION

### 21 (Violations of Unfair Competition Law)

#### 22 (Bus. & Prof. Code § 17200 *et seq.*)

23 53. Plaintiff realleges and incorporates by reference, as though set forth in full herein,  
24 paragraphs 1 through 52, inclusive, of this Complaint.

25 54. Between December 23, 2020 and February 18, 2021, Defendant engaged in unlawful  
26 conduct prohibited by the UCL by:

- 27 - placing 92 crab traps and taking at least 260 Dungeness crabs from a Marine Protected  
28 Area and State Marine Reserve in violation of Fish & Game Code § 12012.5 and

1 California Code of Regulations, title 14, § 632(a)(1)(A);

- 2 - placing in California waters a Dungeness crab trap (No. 45) without the destruction  
3 device required by California Code of Regulations, title 14, § 180.2(a)(1), which waters  
4 were a Marine Protected Area and State Marine Reserve;
- 5 - placing in California waters 9 Dungeness crab traps (Nos. 28, 34, 38, 39, 45, 51, 64, 67,  
6 68) that were missing the tags required by California Code of Regulations, title 14, §  
7 132.1(a)(3); and
- 8 - placing in California waters 3 buoys (Nos. 24, 34, and 59) with missing tier tags  
9 required by California Code of Regulations, title 14, § 132.1(b).

10 55. Such acts constitute unlawful acts, omissions, and practices within the meaning of  
11 Business and Professions Code §§ 17200 et seq., and unless enjoined by order of the Court,  
12 Defendant TRAN may or will continue the course of conduct alleged in this Complaint.

13 56. Each and every separate act constitutes an unlawful and/or unfair business practice.  
14 Each day that Defendants engaged in each separate unlawful act, omission, or practice is a separate  
15 and distinct violation of Business and Professions Code section 17200 *eq seq.*

16 57. Based on the above, the People request injunctive relief against Defendant TRAN  
17 under Business and Professions Code section 17203 and civil penalties against Defendant TRAN  
18 under Business and Professions Code section 17206, as described in the People's prayer for relief.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, the People respectfully pray for judgment as follows:

21 1. That the Court issue an order declaring, according to proof, that on or between  
22 December 23, 2020 and February 18, 2021, Defendant violated Business and Professions Code  
23 section 17200 through the following unlawful conduct:

- 24 - Placing 92 traps and taking at least 260 Dungeness crabs from a Marine Protected Area  
25 and State Marine Reserve in violation of Fish & Game Code § 12012.5 and California  
26 Code of Regulations, title 14, § 632(a)(1)(A);
- 27 - Placing in California waters a Dungeness crab trap (No. 45) without the destruction  
28 device required by California Code of Regulations, title 14, § 180.2(a)(1), which waters

1 were a Marine Protected Area and State Marine Reserve;

2 - Placing in California waters 9 Dungeness crab traps (Nos. 28, 34, 38, 39, 45, 51, 64, 67,  
3 68) that were missing the tags required by California Code of Regulations, title 14, §  
4 132.1(a)(3);

5 - Placing in California waters 3 buoys (Nos. 24, 34, and 59) with missing tier tags  
6 required by California Code of Regulations, title 14, § 132.1(b);

7 2. That pursuant to Business and Professions Code § 17203, the Court issue a permanent  
8 injunction enjoining Defendant TRAN from engaging in unfair competition as defined in Business  
9 and Professions Code section 17200, including but not limited by the following unlawful conduct:

10 - placing any traps, or otherwise taking or attempting to take a fish, in any Marine  
11 Protected Area in California, including but not limited to the North Farallon Islands  
12 SMR, as required by Fish & Game Code § 12012.5 and California Code of Regulations,  
13 title 14, § 632(a)(1)(A);

14 - placing in California waters any traps without the destruction device required by  
15 California Code of Regulations, title 14, § 180.2(a)(1);

16 - placing in California waters any traps missing the tags required by California Code of  
17 Regulations, title 14, § 132.1(a)(3); and

18 - placing in California waters any water buoys without the tier tags required by California  
19 Code of Regulations, title 14, § 132.1(b).

20 3. That pursuant to Business and Professions Code section 17206, the Court assess a  
21 \$2,500 civil penalty against Defendant for each act of unfair competition alleged in the Complaint,  
22 equal to \$912,500 for the 365 violations alleged.

23 4. That the Court award the People their costs of suit herein, including the costs of  
24 investigation; and

25 5. For such other and further relief as the Court may deem just and proper.  
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27  
28

1 DATED: May 27, 2022

CHESA BOUDIN, District Attorney  
City and County of San Francisco  
State of California



4 BY: \_\_\_\_\_

5 ALEXANDRA GRAYNER  
6 Assistant District Attorney  
7 Attorneys for Plaintiff

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