

1 Christine Saunders Haskett (Bar No. 188053)
 2 Tracy O. Zinsou (Bar No. 295458)
 3 Udit Sood (Bar No. 308476)
 4 Lindsey Barnhart (Bar No. 294995)
 COVINGTON & BURLING LLP
 5 One Front Street, 35th Floor
 San Francisco, California 94111-5356
 Telephone: + 1 (415) 591-6000
 Facsimile: + 1 (415) 591-6091
 6 Email: chaskett@cov.com; tzinsou@cov.com; usood@cov.com; lbarnhart@cov.com

7 *Attorneys for Plaintiffs*
 8 *Marc Anderson, Ellexa Conway,*
 9 *Kelly Nelson and Juliette Morizur*

10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**

13 MARC ANDERSON, ELLEXA CONWAY,
 14 KELLY NELSON and JULIETTE MORIZUR on
 their own behalf and on behalf of a class of others
 15 similarly situated,

16 Plaintiffs,

17 v.

18 SEAWORLD PARKS AND ENTERTAINMENT,
 19 INC.,

20 Defendant.

Civil Case No.: 4:15-cv-02172-JSW

**SECOND AMENDED CLASS ACTION
 COMPLAINT**

JURY TRIAL DEMANDED

21 Plaintiffs Marc Anderson, Ellexa Conway, Kelly Nelson and Juliette Morizur (collectively,
 22 “Plaintiffs”), by and through their attorneys, bring this class action on behalf of themselves and similarly
 23 situated others who, relying on certain false representations, purchased tickets or orca souvenirs from
 24 SeaWorld Parks & Entertainment, Inc. (“SeaWorld” or “Defendant”), which owns, operates and markets
 25 SeaWorld San Diego, a captive marine animal theme park, and state as follows:
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 27
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INTRODUCTION

1
2 1. SeaWorld is an entertainment company that, among other things, owns and operates a
3 number of marine animal theme parks, including SeaWorld San Diego. SeaWorld is in the business of
4 selling entertainment and educational services, including its orca exhibitions and shows, and selling
5 souvenirs linked to those entertainment and educational services. In order for consumers to avail
6 themselves of SeaWorld’s entertainment and educational services, they are required to purchase
7 admission tickets. As part of a marketing campaign to induce ticket and souvenir purchases, SeaWorld
8 has made, continues to make, and profits off of false and misleading statements concerning the welfare
9 of their captive orcas.

10 2. Orcas are a core SeaWorld San Diego attraction. SeaWorld’s logo features two erect
11 cetacean¹ dorsal fins, and “Shamu” is one of SeaWorld’s most valuable and globally recognized brands.
12 Shamu was the name of an orca captured in October 1965 and sold to SeaWorld in December 1965.
13 Although Shamu died after only about six years in captivity, SeaWorld starting naming other orcas
14 Shamu (and even named its souvenirs “Shamu Plush”) in an endeavor to continue capitalizing on the
15 goodwill associated with the deceased orca.

16 3. Unlike many other theme park businesses, SeaWorld markets itself as a corporation with
17 an environmental and animal welfare purpose. It characterizes its entertainment as an “interactive and
18 educational experience that blend[s] imagination with nature and enable[s] our customers to celebrate,
19 connect with, and care for the natural world we share.”² SeaWorld claims to be “one of the world’s
20 foremost zoological organizations and a global leader in animal welfare, training, husbandry and
21 veterinary care.”³

22
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24 _____
25 ¹ The order Cetacea includes whales, dolphins, and porpoises. Orcas are a type of dolphin.

26 ² *SeaWorld Entertainment, Inc. and Subsidiaries Annual Report on Form 10-K for the Year Ended*
December 31, 2013, page 3.

27 ³ *Id.*

1 4. SeaWorld has engaged in a pervasive, long-term advertising campaign to mislead the
2 public about its care for captive orcas and conceal the detrimental health effects that captivity has on
3 orcas.

4 5. SeaWorld's practices and countless studies demonstrate that SeaWorld's statements
5 regarding the care and health of their captive orcas are false and misleading. Orcas are large, highly
6 intelligent, and extremely social predators. Yet SeaWorld's orcas live significantly shorter lives than
7 their wild counterparts; complete dorsal fin collapse is generally quite rare in the wild but extremely
8 common, if not universal, among captive male orcas; and SeaWorld often separates tightly knit orca
9 families, causing psychological harm and leading to maladaptive behaviors. In sum, captivity at
10 SeaWorld harms orcas.

11 6. SeaWorld's advertising is dominated by images and quotes touting SeaWorld's animal-
12 friendly mission. The overwhelming perception is that far from harming captive orcas, SeaWorld's
13 programs benefit all marine life.

14 7. SeaWorld's advertising misleadingly creates the perception that orcas as a species are
15 generally benefited by SeaWorld's rehabilitative programs, scientific studies, and educational activities,
16 and that the individual orcas it holds in captivity are as healthy and stimulated as their wild counterparts.
17 For example, on its website, SeaWorld carefully deploys imagery of marine mammal rehabilitation
18 juxtaposed with photos of supposedly playfully swimming and jumping orcas.

19 8. SeaWorld also claims that scientific data are inconclusive or judiciously cites academic
20 articles to show that captive orcas are as healthy as wild orcas. For example, in response to the
21 documentary film *Blackfish*, which was released in January 2013 and focused on the negative effects of
22 the captivity of orcas, SeaWorld has posted an open letter, a series of video interviews with caretakers,
23 and a scene-by-scene rebuttal that all generally argue the untruth that SeaWorld orcas are not hurt by
24 captivity.

25 9. Even SeaWorld's logo misrepresents the effects that captivity has on orcas and so
26 misleads consumers. The logo is a stylized profile of two straight dorsal fins in an active and dynamic
27 pose. In reality, as noted above, virtually all of the male captive orcas at SeaWorld's parks suffer from
28 dorsal fin collapse due to their listless existence.

1 On May 14, 2015, SeaWorld removed the suit to the Northern District of California under the Class
2 Action Fairness Act. Plaintiffs filed a motion to remand on May 29, 2015, which was denied on
3 September 24, 2015. On October 5, 2015, Plaintiffs filed a motion seeking leave to file a motion for
4 reconsideration of the order denying remand. The Court granted Plaintiffs leave on October 14, 2015,
5 and Plaintiffs filed a motion for reconsideration on October 29, 2015. On January 12, 2016, the Court
6 granted, in part, and denied, in part, Plaintiffs' motion for reconsideration of the order denying remand.
7 To the extent the Court denied reconsideration, Plaintiffs filed a Petition for Permission to Appeal before
8 the Ninth Circuit on January 22, 2016. On April 7, 2016, the Ninth Circuit denied Plaintiffs' Petition.

9 15. The total amount of injunctive relief and attorneys' fees for Plaintiffs and all class
10 members as a whole does not exceed the \$5,000,000 jurisdictional requirement for the original filing of
11 this action in the United States District Court pursuant to 28 U.S.C. § 1332(d)(2) or the removal of this
12 action to the United States District Court pursuant to 28 U.S.C. § 1441.

13 16. Further, the amount of individual restitution, injunctive relief, and attorneys' fees
14 awardable to Plaintiffs pursuant to this action is below the \$ 75,000 jurisdictional requirement for the
15 original filing of this action in the United States District Court pursuant to 28 U.S.C. § 1332(a) or the
16 removal of this action to the United States District Court pursuant to 28 U.S.C. § 1441.

17 17. Venue is proper. Liability in this case arose in the Northern District of California
18 because SeaWorld conducts business there, SeaWorld's false representations were made to Plaintiffs
19 there, and Plaintiff Anderson purchased tickets to SeaWorld San Diego there. A substantial or
20 significant portion of the wrongful conduct complained of has occurred and continues to occur within
21 this District. *See* Ex. A.

22 PARTIES

23 18. Plaintiff Marc Anderson resides in San Francisco County. Mr. Anderson has a
24 reasonable but firm commitment to animal welfare, and does not purchase tickets to zoos, amusement
25 parks, aquariums, circuses, or other organizations that do not have the facilities to properly care for their
26 animals or that display animals that cannot safely and healthfully be kept in captivity. Since he was a
27 teenager, Mr. Anderson has been exposed to SeaWorld's deceptive long-term advertising campaign
28 regarding the health and happiness of its captive orcas in television commercials depicting happy and

1 healthy orcas, in print advertisements, and/or on the Internet. In reliance on the representations made by
2 SeaWorld as part of its deceptive long-term advertising campaign, Mr. Anderson purchased two tickets
3 to SeaWorld San Diego from SeaWorld's website in March or April 2014, using his computer in San
4 Francisco. Additionally, after purchasing the tickets to SeaWorld San Diego but prior to visiting the
5 park, Mr. Anderson read on SeaWorld's website that orca lifespans in captivity are comparable to orca
6 lifespans in the wild and that SeaWorld does not separate calves from mother orcas. SeaWorld's
7 representations assured him that SeaWorld takes good care of its orcas. Mr. Anderson visited the park
8 on or around June 11, 2014, and in reliance on both SeaWorld's deceptive long-term advertising
9 campaign and the specific representations SeaWorld made on its website, Mr. Anderson paid SeaWorld
10 San Diego's Shamu Store approximately \$25 to purchase a "Shamu Plush" (a stuffed orca souvenir).
11 Mr. Anderson only found out subsequently, when he saw the *Blackfish* documentary in or around March
12 of 2015, that SeaWorld's advertising and representations were false. Had Mr. Anderson been aware that
13 SeaWorld's advertisements were a misrepresentation of the truth—and had he known that SeaWorld
14 does not take good care of its orcas, that it separates calves from mother orcas, and that its orcas did not
15 have lifespans comparable to orcas in the wild—he would not have purchased tickets to SeaWorld San
16 Diego to avail himself of SeaWorld's entertainment and educational services nor the Shamu Plush (or
17 would have paid far less for them). Mr. Anderson suffered an injury in fact by losing the money
18 associated with his purchases and by supporting what, absent SeaWorld's misrepresentations, Mr.
19 Anderson would have correctly understood to be the inhumane treatment of a highly intelligent and
20 social animal. Moreover, Mr. Anderson continues to suffer injury as he cannot be sure about the
21 veracity of SeaWorld's claims. Mr. Anderson may consider purchasing tickets to SeaWorld and
22 merchandise like the Shamu Plush again in the future if SeaWorld's practices were to evolve to better
23 reflect their stated purposes of conservation and education, and to be honest about the health and status
24 of the orcas.

25 19. Plaintiff Ellexa Conway resides in San Francisco County. Ms. Conway has a reasonable
26 but firm commitment to animal welfare, and does not purchase tickets to zoos, amusement parks,
27 aquariums, circuses, or other organizations that do not have the facilities to properly care for their
28 animals or that display animals that cannot safely and healthfully be kept in captivity. Ms. Conway has

1 been exposed to SeaWorld's deceptive long-term advertising campaign regarding the health and
2 happiness of its captive orcas in print advertising, television commercials, and/or on the Internet, and
3 during a previous visit to SeaWorld in 2012. In November 2014, in reliance on the representations made
4 by SeaWorld as part of its deceptive long-term advertising campaign, Ms. Conway purchased two
5 tickets to SeaWorld San Diego from a ticket machine at the park. SeaWorld's marketing campaign
6 assured her that SeaWorld takes good care of its orcas. She visited the park around November 2014, and
7 only found out subsequently in December 2014 that SeaWorld's representations were false when she
8 watched the *Blackfish* documentary. Had Ms. Conway been aware that SeaWorld's advertisements were
9 a misrepresentation of the truth regarding captive orca health, she would not have purchased tickets to
10 SeaWorld San Diego to avail herself of SeaWorld's entertainment and educational services (or would
11 have paid far less for them). Ms. Conway suffered an injury in fact by losing the money associated with
12 her purchase and by supporting what, absent SeaWorld's misrepresentations, Ms. Conway would have
13 correctly understood to be the inhumane treatment of a highly intelligent and social animal.

14 Additionally, Ms. Conway continues to suffer injury: she values the opportunity to enjoy the kind of
15 animal entertainment and education SeaWorld provides, but given SeaWorld's past practices of deceit,
16 Ms. Conway cannot be sure about the veracity of SeaWorld's claims. Ms. Conway may consider
17 purchasing tickets to SeaWorld San Diego again in the future if SeaWorld's practices were to evolve to
18 improve the level of animal care, and to be honest about the health and status of the orcas.

19 20. Plaintiff Kelly Nelson resides in San Clemente, California. Since at least the early 1990s,
20 Ms. Nelson has been familiar with SeaWorld, and for decades has been exposed to SeaWorld's
21 deceptive long-term advertising campaign regarding the health and happiness of its captive orcas in
22 television commercials, print advertisements, billboards, radio, the Internet, and/or other media outlets.
23 After moving to San Clemente, California in 2008, Ms. Nelson's exposure to SeaWorld's deceptive
24 advertising campaign, particularly in print media, billboards, and/or the radio, became more frequent. In
25 August 2015, Ms. Nelson purchased a ticket to SeaWorld San Diego from the ticket counter at the
26 park's entrance. Prior to purchasing her ticket, Ms. Nelson had watched *Blackfish* and was aware of the
27 controversy surrounding SeaWorld's captive orcas. However, Ms. Nelson had seen SeaWorld's
28 statements, on its website as well as on television, disputing the allegations of mistreatment of the orcas

1 raised in *Blackfish*. In particular, Ms. Nelson had seen SeaWorld's claims that it did not separate calves
2 and mothers, and that its captive orcas had similar lifespans to orcas in the wild. Relying in good faith
3 on SeaWorld's claims countering *Blackfish*, and on SeaWorld's long-standing advertising campaign
4 regarding the health and happiness of its captive orcas, Ms. Nelson decided to purchase a ticket and visit
5 the park. However, after witnessing the animals perform for the audiences (including the orca show)
6 and doing additional research online following her visit, Ms. Nelson became convinced that SeaWorld
7 was solely a profit-motivated entertainment corporation and not one dedicated, contrary to its claims, to
8 the conservation of animals. Ms. Nelson was also convinced that SeaWorld did in fact separate orca
9 calves and mothers and SeaWorld's orcas do not live as long as those in the wild. Ms. Nelson
10 discovered the falsity of SeaWorld's claims only after spending money to purchase her ticket. Had Ms.
11 Nelson been aware that SeaWorld's advertisements were a misrepresentation of the truth regarding
12 captive orca health, she would not have purchased tickets to SeaWorld San Diego to avail herself of
13 SeaWorld's entertainment and educational services (or would have paid far less for the same). Ms.
14 Nelson suffered an injury in fact by losing the money associated with her purchase and by supporting
15 what, absent SeaWorld's misrepresentations, Ms. Nelson would have correctly understood to be the
16 inhumane treatment of a highly intelligent and social animal. Additionally, Ms. Nelson continues to
17 suffer injury as she cannot be sure about the veracity of SeaWorld's claims. Ms. Nelson may consider
18 purchasing tickets to SeaWorld San Diego again in the future if SeaWorld's practices were to evolve to
19 better reflect their stated purposes of conservation and education, and to be honest about the health and
20 status of the orcas.

21 21. Plaintiff Juliette Morizur resides in Mountain View, California. On April 11, 2012, Ms.
22 Morizur visited SeaWorld San Diego. While at the park, Ms. Morizur visited the orca show and
23 specifically asked SeaWorld's trainers questions about their captive orca's collapsed dorsal fins.
24 SeaWorld employees told Ms. Morizur that that was normal, and also equally common in the wild.
25 They also told Ms. Morizur that captivity in general does not harm orcas. Additionally, Ms. Morizur
26 had previously been exposed to SeaWorld's deceptive long-term advertising campaign regarding the
27 health and happiness of its captive orcas in television commercials, print advertisements, the Internet,
28 and/or other media outlets. While still at the park, and relying on these representations, Ms. Morizur

1 paid SeaWorld San Diego's Shamu Store approximately \$25 to purchase the Shamu Plush as a souvenir.
2 Ms. Morizur subsequently learned that SeaWorld's representations about its orcas were false when she
3 saw the *Blackfish* documentary shortly after it was released in 2013. Had Ms. Morizur been aware that
4 SeaWorld's statements were a misrepresentation of the truth, she would not have purchased the Shamu
5 Plush (or would have paid far less for it). Ms. Morizur suffered an injury in fact by losing the money
6 associated with her purchase and by supporting what, absent SeaWorld's misrepresentations, Ms.
7 Morizur would have correctly understood to be the inhumane treatment of a highly intelligent and social
8 animal. Additionally, Ms. Morizur continues to suffer injury as she cannot be sure about the veracity of
9 SeaWorld's claims. Ms. Morizur may consider purchasing SeaWorld's merchandise like the Shamu
10 Plush again in the future if SeaWorld's practices were to evolve to better reflect their stated purposes of
11 conservation and education, and to be honest about the health and status of the orcas.

12 22. Defendant SeaWorld is a Delaware corporation with principal executive offices in
13 Orlando, Florida. SeaWorld owns and operates a captive marine animal themed amusement park in
14 California, called SeaWorld San Diego. At all relevant times, SeaWorld has marketed its brand and
15 amusement parks to individuals throughout the world, and specifically in California. SeaWorld broadly
16 sells tickets online, and specifically has sold tickets to individuals in San Francisco County, including to
17 Plaintiffs.

18 **FACTUAL BACKGROUND**

19 23. In January of 2013, the documentary film *Blackfish* premiered at the Sundance Film
20 Festival in Park City, Utah. It focused on the story of one of SeaWorld's orcas, Tilikum, and the
21 controversy surrounding the captivity of orcas and Tilikum's lethal attack against a SeaWorld trainer.
22 Critical of SeaWorld, the film sparked a media flurry. In response to the film, SeaWorld issued public
23 statements, an open letter, and posted interviews and testimonials on its website attempting to rebut one
24 of the central claims of *Blackfish* — that captivity is harmful to orcas.

25 24. Many of SeaWorld's statements concerning orcas are false and misleading to reasonable
26 consumers. In particular, SeaWorld repeatedly makes four false and misleading claims designed to
27 protect its brand and persuade consumers to buy tickets to SeaWorld's parks as well as SeaWorld's
28 merchandise.

1 **A. SeaWorld Claims Orca Lifespans in Captivity are Equivalent to Life Spans in Wild.**

2 25. An open letter⁴ on SeaWorld’s website states that “SeaWorld’s killer whales’ life spans
3 are equivalent with those in the wild. While studies continue to define the average life span of killer
4 whales in the wild, the most recent science suggests that our killer whales’ life spans are comparable —
5 indeed, five of our animals are older than 30, and one of our whales is close to 50.” This statement is
6 measurably false and misleads reasonable consumers into believing that SeaWorld’s captive orcas have
7 the same chance of survival and longevity as wild orcas. To the contrary, captivity at SeaWorld greatly
8 reduces the average life expectancy of an orca because of the stresses and diseases associated with
9 confinement.⁵ Indeed, mortality rates of captive orcas are more than twice as high as those of wild
10 orcas.⁶

11 **B. SeaWorld Claims Collapsed Dorsal Fins are Normal.**

12 26. Like lifespan, dorsal fins indicate the health of male orcas. The exact mechanism is
13 unknown, but virtually all male orcas in captivity suffer from dorsal fin collapse which increases with
14 time spent in captivity. In an effort to portray collapsed dorsal fins as normal and not a result of
15 captivity, SeaWorld claims on its website that “there is scientific evidence that nearly one-quarter of
16 adult male southern resident killer whales in the wild have collapsing, collapsed or bent dorsal fins.” In
17 support, SeaWorld cites Ingrid N. Vissar, *Prolific Body Scars and Collapsing Dorsal Fins on Killer*
18 *Whales (Orcinas Orca) in New Zealand Waters*, *Aquatic Mammals* 1998, 24.2, 71-81.

19 27. This statement and citation of an academic study is highly misleading. It leads
20 reasonable consumers to believe that the dorsal fin collapse experienced by SeaWorld orcas happens
21

22 _____
23 ⁴ <http://seaworld.com/en/truth/killer-whales/letter/> (last accessed April 4, 2015).

24 ⁵ See generally John Jett & Jeffrey Ventre, *Keto and Tilikum Express the Stress of Orca Captivity*,
25 Manuscript submitted to The Orca Project, 2011 (determining the mean duration of captivity for orcas to
be at most 8.9 years), available at [http://www.freemorgan.org/wp-](http://www.freemorgan.org/wp-content/uploads/2012/10/jett__ventre_2011_keto__tilikum_stress.pdf)
content/uploads/2012/10/jett__ventre_2011_keto__tilikum_stress.pdf.

26 ⁶ Robert J. Small & Douglas P. DeMaster, *Survival of Five Species of Captive Marine Mammals*,
27 *MARINE MAMMAL SCIENCE* 209 (April 1995) (finding a survival rate of 0.938 for captive orcas
compared to a survival rate of 0.976 for wild orcas).

1 commonly in the wild and is not abnormal. This is not true. Dr. Vissar herself wrote to SeaWorld
2 regarding their select and misleading use of her research: “I hope, that as a scientist yourself and as the
3 Director of Research at SeaWorld . . . you can see how wrong this misrepresentation is – not only to
4 inform the public by distorting the facts but also misrepresenting the data by not presenting it in
5 context.”⁷

6 28. Far from demonstrating that SeaWorld-style dorsal fin collapse is normal, Dr. Vissar’s
7 study actually shows the opposite. In the population of orcas studied by Dr. Vissar, only one adult male
8 orca out of thirty had a completely collapsed dorsal fin. The other adult males studied by Dr. Vissar with
9 fin abnormalities had partially collapsed, bent, notched, or twisted fins. These other types of fin
10 abnormalities are not analogous to the completely collapsed dorsal fin syndrome experienced by all of
11 SeaWorld’s adult male orcas.

12 29. SeaWorld’s statement is measurably false and misleads reasonable consumers into
13 believing that a telltale and graphic indicator of the negative effects of captivity on orcas is normal and
14 not worrisome, while in fact the opposite is true.

15 **C. SeaWorld Claims it Does Not Separate Calves and Mothers.**

16 30. SeaWorld denies separating mothers and calves: “We do not separate killer whale moms
17 and calves. SeaWorld recognizes the important bond between mother and calf. On the rare occasion that
18 a mother killer whale cannot care for the calf herself, we have successfully hand raised and reintroduced
19 the calf. Whales are only moved to maintain a healthy social structure.”

20 31. This statement misleadingly sidesteps important issues in two ways. First, SeaWorld
21 mother orcas are much less likely to be able to care for their offspring due to SeaWorld’s husbandry
22 techniques. SeaWorld artificially inseminates orcas more frequently and at an earlier age than orcas
23 become pregnant in the wild. Unlike in the wild, captive orcas do not benefit from large pod social
24 groups and stable matrilineal family lines which provide significant calf-rearing assistance. Second,

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26 _____
27 ⁷ <http://www.globalanimal.org/2014/05/28/seaworlds-lies-sink-to-new-low/> (last accessed April 4,
28 2015).

1 SeaWorld frequently separates orcas from their mothers after weaning but before maturity according to a
 2 study by the Orca Network. Captive born orcas Ikaika, Kayla, Keet, Trua, Tuar, Kalina, and many
 3 others were separated from their mothers before the age of five.⁸ Orcas live in highly social and tight-
 4 knit matrilineal pod groups in the wild. The separation of closely related orcas continues to be
 5 traumatizing even later in life.⁹ SeaWorld’s statement that it “do[es] not separate killer whale moms and
 6 calves” is measurably false and misleads reasonable consumers into believing that SeaWorld does not
 7 harm orcas through forced separation while in fact the opposite is true.

8 **D. SeaWorld Claims Captivity in General Does Not Harm Orcas.**

9 32. The above mentioned false and misleading statements work in conjunction with a
 10 longstanding and wide-reaching public relations and marketing campaign on the part of SeaWorld to
 11 assure the public that it is “wrong [] that life at SeaWorld is harmful for killer whales.”¹⁰ Since it
 12 purchased Shamu, its first captive orca, in 1965, SeaWorld has misled the public about its care for
 13 captive orcas and concealed the detrimental health effects that captivity has on orcas. Over at least the
 14 last four decades, SeaWorld has disseminated this public relations and marketing campaign via public
 15 statements by employees, television shows, television commercials, a telephone information line, print
 16 brochures, books, statements made to visitors at SeaWorld’s parks, and the Internet. A few examples of
 17 the types of statements made by SeaWorld over the course of this decades-long campaign include:

- 18 • In a 1976 newspaper article, a SeaWorld spokesperson defended SeaWorld’s capture of
 19 wild orcas by arguing that orcas thrive in captivity and that captive orcas have lower
 20 mortality rates than orcas in the wild.

21
 22 _____
 23 ⁸ See generally <https://www.thedodo.com/orcas-separated-at-birth-a-fac-399545539.html#orcas-separated-at-birth-a-fac-399545539.html>.

24 ⁹ See Jay Sweeney, *Marine mammal behavioural diagnostics*, CRC Handbook of Marine Mammal
 25 Medicine. (1990) (L.A. Dierauf, ed.) (“Attempts at removing a juvenile cetacean under 2 years of age
 26 from its mother frequently results in significant stress to the juvenile. . . . The stressed individual
 frequently exhibits stereotypic swimming patterns, consumes food irregularly, and regresses
 behaviourally in attempting to form infantile bonding with unrelated adults in the new environment.”).

27 ¹⁰ <http://seaworld.com/en/truth/truth-about-blackfish/> (last accessed April 4, 2015).
 28

- 1 • In the early 1990s, activists' calls for the release of Corky, a captive orca, embroiled
2 SeaWorld in a public debate. In public statements conveyed through various media
3 outlets, SeaWorld represented that Corky was healthier and happier in captivity than she
4 would be if she were released back into the wild.
- 5 • In a 1995 print advertising newspaper insert, SeaWorld advertised a new exhibit called
6 "Shamu's Happy Harbor."
- 7 • In a children's book titled *Getting to Know the Whales*, published in 1995, a SeaWorld
8 research biologist wrote that orcas in captivity live just as long as orcas in the wild.
- 9 • In 1997, the Public Broadcasting Service released the Frontline documentary *Whale of a*
10 *Business*, in which senior SeaWorld employees stated that orcas in captivity are healthy
11 and would suffer detrimental effects if they were released back into the wild.
- 12 • Most recently, in response to the 2013 film *Blackfish*, SeaWorld wrote an open letter to
13 the public and posted a series of written and video rebuttals to the film on its website
14 arguing that SeaWorld orcas are not harmed by captivity.

15 To this day, SeaWorld continues to perpetuate this public disinformation strategy regarding the general
16 health and happiness of its captive orcas.

17 33. The representations made as part of SeaWorld's long-term marketing and public relations
18 campaign are simply not true. Orcas are large, highly intelligent, and extremely social predators.
19 Captivity in a small pool necessarily harms orcas both physically and psychologically.

20 34. SeaWorld orcas suffer from a variety of captivity-induced stresses and health problems.
21 Beyond life expectancy and dorsal fin collapse, a host of other indicators demonstrate the unhealthy
22 existence of captive orcas.

23 35. One example of the negative health effects of captivity is that bored Orcas routinely chew
24 on the metal bars separating their pools and often orcas "jaw-pop" through gates in displays of
25 aggression against one another. This can cause teeth to break, leaving the pulp of the tooth exposed
26 which eventually leads to cavities and infection. The broken teeth are then drilled out, leading to a life-
27 long risk of infection and necessitating daily "flushing" of the resulting holes.¹¹

28

¹¹ John Jett & Jeffrey Ventre, *Keto and Tilikum Express the Stress of Orca Captivity*, Manuscript
submitted to The Orca Project, 2011.

1 36. A second example of the negative health effects of captivity is that orcas from different
2 pods and social groups are frequently placed together, leading to aggression and bullying. The mixing
3 of orcas from different family groups causes increased stresses and acts of aggression. Additionally, the
4 relatively small size of holding pools makes it extremely difficult, if not impossible, for bullied orcas to
5 escape from aggressors. Aggressive orcas “rake” and ram other orcas with their teeth and bodies. In
6 one case, an orca bled to death from a self-inflicted wound incurred during an act of aggression when an
7 artery was severed in her upper jaw.¹² These forms of aggression do not occur in the wild to the same
8 degree of severity. SeaWorld’s captivity practices lead to increased risk of orcas hurting themselves and
9 one another.

10 37. Third, the negative effects of inactivity due to captivity lead to a host of long-term health
11 problems. SeaWorld orcas are routinely placed on antibiotic and antifungal medications because of
12 inflammations and infections. Long-term antibiotic use itself carries negative health consequences, such
13 as susceptibility to yeast infections. In addition to antibiotics, SeaWorld often administers
14 benzodiazepines — psychoactive behavior-modifying drugs — to control orcas that display troubling or
15 maladaptive behaviors induced by captivity. SeaWorld has even given psychoactive drugs to nursing
16 mother orcas against widely accepted veterinary guidelines.¹³

17 38. Fourth, SeaWorld’s captive breeding program suffers from lack of genetic diversity,
18 leading to damaging health problems. Though SeaWorld claims that “our marine animal populations are
19 characterized by their substantial genetic diversity,”¹⁴ its orcas are in fact highly inbred. Through
20 artificial insemination, SeaWorld has bred siblings, parents, and offspring together to continue
21 producing orcas for entertainment purposes now that it has ceased to capture orcas from the wild.
22
23

24 ¹² *Id.*

25 ¹³ <https://www.thedodo.com/seaworld-gave-nursing-orca-val-493887337.html#seaworld-gave-nursing-orca-val-493887337.html> (last accessed April 4, 2015).

26 ¹⁴ *SeaWorld Entertainment, Inc. and Subsidiaries Annual Report on Form 10-K for the Year Ended*
27 *December 31, 2013*, page 4.
28

1 44. **Commonality:** This action involves common questions of law and fact, which
2 predominate over any questions affecting individual class members. These common legal and factual
3 questions include, but are not limited to, the following:

4 45. Whether the statements discussed above are true, or misleading, or objectively reasonably
5 likely to deceive.

6 46. Whether SeaWorld's alleged conduct violates public policy.

7 47. Whether the alleged conduct constitutes violations of the laws asserted.

8 48. Whether SeaWorld engaged in false or misleading advertising.

9 49. Whether Plaintiffs and class members have sustained monetary loss.

10 50. Whether Plaintiffs and class members are entitled to corrective advertising on
11 SeaWorld's website and injunctive relief.

12 51. **Typicality:** Plaintiffs' claims are typical of the claims of the members of the proposed
13 class. All class members were injured by purchasing tickets to attend SeaWorld San Diego and/or by
14 purchasing orca souvenirs at SeaWorld San Diego, in reliance on SeaWorld's false and misleading
15 representations concerning captive orca health and welfare. The factual and legal bases of Defendant's
16 liability to Plaintiffs and other members of the class are the same and resulted in injury to Plaintiffs and
17 all other members of the class. Plaintiffs are advancing the same claims and legal theories on behalf of
18 themselves and all members of the class.

19 52. **Adequacy:** Plaintiffs will represent and protect the interests of the proposed class both
20 fairly and adequately. Plaintiffs have no interests that are antagonistic to those of the proposed class, and
21 their interests do not conflict with the interests of the proposed class members they seek to represent.

22 53. **Superiority:** This proposed class action is appropriate for certification. Class
23 proceedings on these facts and this law are superior to all other available methods for the fair and
24 efficient adjudication of this controversy, given that joinder of all members is impracticable. Even if
25 members of the proposed class could sustain individual litigation, that course would not be preferable to
26 a class action because individual litigation would increase the delay and expense to all parties due to the
27 complex factual and legal issues present in this controversy. Here, the class action device will present far
28

1 fewer management difficulties, and it will provide the benefit of a single adjudication, economies of
2 scale, and comprehensive supervision by this Court. Further, uniformity of decisions will be assured.

3 54. Unless an injunction is issued, SeaWorld will continue to commit the violations alleged,
4 and the members of the class and the general public will continue to be irreparably harmed by
5 SeaWorld's deceptive advertising.

6 **FIRST CAUSE OF ACTION**

7 **(Violation of California False Advertising Law — Cal. Bus. & Prof. Code §17500, et seq.)**

8 55. Plaintiffs incorporate by reference and reassert all previous paragraphs.

9 56. SeaWorld engages in unlawful conduct under California Business & Professions Code
10 §17500, *et seq.*, by advertising in a way that misleads reasonable consumers to believe that captive orcas
11 are not negatively affected by their captivity when, in fact, scientific evidence demonstrates the contrary.
12 In addition to the contention that orca health is generally not negatively affected by captivity, SeaWorld
13 made and continues to make numerous discrete and demonstrably false or misleading statements,
14 including that orca lifespans in captivity are equivalent to wild orca lifespans; that collapsed dorsal fins
15 are common in wild orcas; and that SeaWorld does not separate mothers and calves.

16 57. SeaWorld's long-term marketing campaign has conveyed a general impression to the
17 public, including Plaintiffs, that orcas are properly treated in, and not negatively affected by, captivity at
18 SeaWorld. SeaWorld's depiction of happy, healthy orcas at SeaWorld San Diego has saturated the
19 public consciousness in California.

20 58. Plaintiffs and class members reasonably relied upon SeaWorld's representations and/or
21 omissions made in violation of California Business & Professions Code § 17500, *et seq.*

22 59. Plaintiffs and class members relied upon SeaWorld's representations regarding captive
23 orca welfare and as a direct and proximate result purchased tickets to SeaWorld San Diego and/or orca
24 souvenirs at SeaWorld San Diego. Plaintiffs and class members would not have purchased the tickets or
25 souvenirs from SeaWorld (or would have paid less for them) had they known that captivity was
26 extremely detrimental to orca health. They therefore suffered an injury in fact and lost money.

27 60. Plaintiffs and class members continue to suffer injury owing to uncertainty about whether
28 they can rely upon SeaWorld's statements. As their past decision to purchase SeaWorld tickets and/or

1 merchandise demonstrates, Plaintiffs enjoy wildlife and the kind of animal entertainment and education
2 SeaWorld provides. Their willingness to purchase SeaWorld tickets or merchandise again, however, is
3 contingent upon an accurate portrayal of the health and welfare of the animals at the park. Assuming
4 SeaWorld's practices were to evolve to improve the level of animal care, and to be honest about the
5 health and status of the orcas, Plaintiffs may be inclined to purchase SeaWorld tickets or merchandise in
6 the future. Yet they cannot do so because, given SeaWorld's history of making false and misleading
7 statements about the health and welfare of orcas, they cannot be sure about the veracity of SeaWorld's
8 claims. This is exacerbated by SeaWorld's recent announcements that it will end its theatrical orca
9 shows as well as all orca breeding programs, and that the orcas SeaWorld currently has will be
10 SeaWorld's last generation of captive orcas. Plaintiffs' inability to rely on the accuracy of these
11 statements by SeaWorld presents a continuing injury to them.

12 61. Accordingly, Plaintiffs, on behalf of themselves and all others similarly situated, seek
13 equitable relief in the form of an order requiring SeaWorld to refrain from making false or misleading
14 statements regarding captive orca health. Additionally, Plaintiffs seek an order requiring SeaWorld to
15 inform the purchasing public on its website that captivity in general negatively impacts orca health, that
16 orca lifespans are shorter in captivity than in the wild, that collapsed dorsal fins are common only in
17 captive orcas, and that SeaWorld separates closely related and tightly-knit orca family members.
18 Finally, Plaintiffs seek an order requiring SeaWorld to refund to Plaintiffs, in their individual capacities,
19 all monies they paid for purchasing goods and services in reliance on SeaWorld's misrepresentations.

20 **SECOND CAUSE OF ACTION**

21 **(Violation of California Unfair Competition Law — Cal. Bus. & Prof. Code §17200, et seq.)**

22 62. Plaintiffs incorporate by reference and reassert all previous paragraphs.

23 63. SeaWorld engages in unlawful, unfair, and fraudulent conduct under California Business
24 & Professions Code § 17200, *et seq.*, by advertising in a way that misleads reasonable consumers to
25 believe that captive orcas are not negatively affected by their captivity when, in fact, scientific evidence
26 demonstrates the contrary. In addition to the contention that orca health is generally not negatively
27 affected by captivity, SeaWorld made and continues to make numerous discrete and demonstrably false
28 or misleading statements, including that orca lifespans in captivity are equivalent to wild orca lifespans;

1 that collapsed dorsal fins are common in wild orcas; and that SeaWorld does not separate mothers and
2 calves.

3 64. SeaWorld's long-term marketing campaign has conveyed a general impression to the
4 public, including Plaintiffs, that orcas are properly treated in, and not negatively affected by, captivity at
5 SeaWorld. SeaWorld's depiction of happy, healthy orcas at SeaWorld San Diego has saturated the
6 public consciousness in California.

7 65. SeaWorld's conduct is unlawful in that it violates the False Advertising Law, California
8 Business & Professions Code § 17500, *et seq.*

9 66. SeaWorld's conduct is unfair in that it offends established public policy or is immoral,
10 unethical, oppressive, unscrupulous, unconscionable, or substantially injurious to Plaintiffs and the class
11 members. The harm to Plaintiffs and class members arising from SeaWorld's conduct outweighs any
12 legitimate benefit SeaWorld has derived from the conduct.

13 67. SeaWorld's misrepresentations and omissions are likely to mislead a reasonable
14 consumer and are therefore fraudulent within the meaning of the UCL.

15 68. Plaintiffs and class members reasonably relied on SeaWorld's misrepresentations and
16 omissions.

17 69. As a direct and proximate result of SeaWorld's false statements, misrepresentations, and
18 omissions, Plaintiffs and class members purchased tickets to SeaWorld San Diego and/or orca souvenirs
19 at SeaWorld San Diego. Plaintiffs and class members would not have purchased the tickets or souvenirs
20 (or would have paid less for them) had they known that captivity was extremely detrimental to orca
21 health. They therefore suffered an injury in fact and lost money.

22 70. Plaintiffs and class members continue to suffer injury owing to uncertainty about whether
23 they can rely upon SeaWorld's statements. As their past decision to purchase SeaWorld tickets and/or
24 merchandise demonstrates, Plaintiffs enjoy wildlife and the kind of animal entertainment and education
25 SeaWorld provides. Their willingness to purchase SeaWorld tickets or merchandise again, however, is
26 contingent upon an accurate portrayal of the health and welfare of the animals at the park. Assuming
27 SeaWorld's practices were to evolve to improve the level of animal care, and to be honest about the
28 health and status of the orcas, Plaintiffs may be inclined to purchase SeaWorld tickets or merchandise in

1 the future. Yet they cannot do so because, given SeaWorld's history of making false and misleading
2 statements about the health and welfare of orcas, they cannot be sure about the veracity of SeaWorld's
3 claims. This is exacerbated by SeaWorld's recent announcements that it will end its theatrical orca
4 shows as well as all orca breeding programs, and that the orcas SeaWorld currently has will be
5 SeaWorld's last generation of captive orcas. Plaintiffs' inability to rely on the accuracy of these
6 statements by SeaWorld presents a continuing injury to them.

7 71. Accordingly, Plaintiffs, on behalf of themselves and all others similarly situated, seek
8 equitable relief in the form of an order requiring SeaWorld to refrain from making false or misleading
9 statements regarding captive orca health. Additionally, Plaintiffs seek an order requiring SeaWorld to
10 inform the purchasing public on its website that captivity in general negatively impacts orca health, that
11 orca lifespans are shorter in captivity than in the wild, that collapsed dorsal fins are common only in
12 captive orcas, and that SeaWorld separates closely related and tightly-knit orca family members.
13 Finally, Plaintiffs seek an order requiring SeaWorld to refund to Plaintiffs, in their individual capacities,
14 all monies they paid for purchasing goods and services in reliance on SeaWorld's misrepresentations.

15 **THIRD CAUSE OF ACTION**

16 **(Violation of California Consumer Legal Remedies Act — Cal. Civ. Code §1750, et seq.)**

17 72. Plaintiffs incorporate by reference and reassert all previous paragraphs.

18 73. Notice in accordance with California Civil Code § 1782 has been sent by certified mail to
19 the principal place of business for SeaWorld. Additionally, the notice was delivered via electronic mail
20 to SeaWorld's counsel of record. Thirty days after service of that notice, Plaintiffs will amend this
21 complaint to state a claim for restitution if SeaWorld has not complied with the demands included in the
22 notice letter, as provided by California Civil Code § 1782(c).

23 74. Plaintiffs bring this cause of action on behalf of themselves and on behalf of all members
24 of the class.

25 75. SeaWorld is a "person" as defined by California Civil Code § 1761(c).

26 76. Plaintiffs and members of the class are "consumers" within the meaning of California
27 Civil Code § 1761(d).

28

1 77. SeaWorld’s advertising of its entertainment and educational services misleads reasonable
2 consumers to believe that those services, including the orca exhibitions and shows, feature happy,
3 healthy orcas. SeaWorld’s advertising deceives consumers into believing that captive orcas are not
4 negatively affected by their captivity when, in fact, scientific evidence demonstrates the contrary. In
5 addition to the contention that orca health is generally not negatively affected by captivity, SeaWorld
6 made and continues to make numerous discrete and demonstrably false or misleading statements,
7 including that orca lifespans in captivity are equivalent to wild orca lifespans; that collapsed dorsal fins
8 are common in wild orcas; and that SeaWorld does not separate mothers and calves. These
9 misrepresentations deceive consumers regarding the true nature of the entertainment and educational
10 services SeaWorld sells.

11 78. SeaWorld’s misrepresentations regarding the treatment and condition of its captive orcas
12 at SeaWorld San Diego also deceives customers into purchasing souvenirs, such as the Shamu Plush.
13 These goods sold at SeaWorld San Diego have little utility other than serving as memorabilia of
14 SeaWorld’s entertainment and educational services. Indeed, for decades, SeaWorld has advertised the
15 Shamu Plush as a symbol of the “precious memories” created at SeaWorld. By deceiving its customers
16 as to the health and happiness of its captive orcas, SeaWorld is able to unfairly extract a higher price for
17 the Shamu Plush and/or sell a greater number of these goods. SeaWorld’s misrepresentations, therefore,
18 constitute a misrepresentation of the characteristics, uses, benefits and qualities of the Shamu Plush.

19 79. Further, SeaWorld’s long-term marketing campaign has conveyed a general impression
20 to the public, including Plaintiffs, that orcas are properly treated in, and not negatively affected by,
21 captivity at SeaWorld. SeaWorld’s false depiction of happy, healthy orcas at SeaWorld San Diego has
22 saturated the public consciousness in California.

23 80. As a result, SeaWorld’s representations and omissions are false, misleading, and
24 reasonably likely to deceive the public in violation of California Civil Code §§ 1770(a)(5), 1770(a)(7)
25 and 1770(a)(9).

26 81. SeaWorld’s unfair and deceptive acts occurred repeatedly and were capable of deceiving
27 a substantial portion of the purchasing public.
28

1 82. SeaWorld’s misrepresentations and omissions are material and likely to mislead a
2 reasonable consumer.

3 83. Plaintiffs and members of the class reasonably relied on SeaWorld’s misrepresentations
4 and omissions.

5 84. As a direct and proximate result of SeaWorld’s unfair or deceptive acts or practices,
6 Plaintiffs and members of the class purchased tickets to SeaWorld San Diego and/or orca souvenirs at
7 SeaWorld San Diego. Plaintiffs and class members would not have purchased these goods or services
8 from SeaWorld (or would have paid less for them) had they known that captivity was extremely
9 detrimental to orca health. They therefore suffered an injury in fact and lost money.

10 85. Plaintiffs and class members continue to suffer injury owing to uncertainty about whether
11 they can rely upon SeaWorld’s statements. As their past decision to purchase SeaWorld tickets and/or
12 merchandise demonstrates, Plaintiffs enjoy wildlife and the kind of animal entertainment and education
13 SeaWorld provides. Their willingness to purchase SeaWorld tickets or merchandise again, however, is
14 contingent upon an accurate portrayal of the health and welfare of the animals at the park. Assuming
15 SeaWorld’s practices were to evolve to improve the level of animal care, and to be honest about the
16 health and status of the orcas, Plaintiffs may be inclined to purchase SeaWorld tickets or merchandise in
17 the future. Yet they cannot do so because, given SeaWorld’s history of making false and misleading
18 statements about the health and welfare of orcas, they cannot be sure about the veracity of SeaWorld’s
19 claims. This is exacerbated by SeaWorld’s recent announcements that it will end its theatrical orca
20 shows as well as all orca breeding programs, and that the orcas SeaWorld currently has will be
21 SeaWorld’s last generation of captive orcas. Plaintiffs’ inability to rely on the accuracy of these
22 statements by SeaWorld presents a continuing injury to them.

23 86. Accordingly, Plaintiffs, on behalf of themselves and all others similarly situated, seek
24 equitable relief in the form of an order requiring SeaWorld to refrain from making false or misleading
25 statements regarding captive orca health. Additionally, Plaintiffs seek an order requiring SeaWorld to
26 inform the purchasing public on its website that captivity in general negatively impacts orca health, that
27 orca lifespans are shorter in captivity than in the wild, that collapsed dorsal fins are common only in
28 captive orcas, and that SeaWorld separates closely related and tightly-knit orca family members.

PRAYER FOR RELIEF

87. Wherefore, Plaintiffs pray for a judgment:
- a) Certifying the class for injunctive relief as requested herein;
 - b) Awarding injunctive relief as permitted by law or equity, including enjoining SeaWorld from continuing the unlawful practices and requiring SeaWorld to issue corrective statements on its website as set forth herein, and appointing a receiver to supervise SeaWorld’s statements to the public for such time as is necessary to ensure SeaWorld’s continued compliance with said injunction;
 - c) Awarding restitution to Plaintiffs in their individual capacities;
 - d) Awarding attorneys’ fees and costs;
 - e) Providing such further relief as may be just and proper.

Dated: August 22, 2016

By: /s/ Christine Saunders Haskett

Christine Saunders Haskett
Tracy O. Zinsou
Udit Sood
Lindsey Barnhart
COVINGTON & BURLING LLP
One Front Street, 35th Floor
San Francisco, California 94111-5356
chaskett@cov.com
tzinsou@cov.com
usood@cov.com
lbarnhart@cov.com

Attorney for Plaintiffs
Marc Anderson, Ellexa Conway, Kelly Nelson, and
Juliette Morizur