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ENDORSED
FILED
Superior Court of California
County of San Francisco

APR 13 2015

CLERK OF THE COURT
BY: MARYA MORAN

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco
STREET ADDRESS 400 McAllister St.
MAILING ADDRESS
CITY AND ZIP CODE San Francisco, CA 94102
BRANCH NAME

CASE NAME:
Anderson v. Seaworld Parks and Entertainment, Inc.

CIVIL CASE COVER SHEET
[checked] Unlimited (Amount demanded exceeds \$25,000)
[] Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
[] Counter [] Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER 000-15-545292

JUDGE
DEPT

Items 1-6 below must be completed (see instructions on page 2).

- 1. Check one box below for the case type that best describes this case:
Auto Tort: [] Auto (22), [] Uninsured motorist (46)
Other PI/DPDWD (Personal Injury/Property Damage/Wrongful Death) Tort: [] Asbestos (04), [] Product liability (24), [] Medical malpractice (45), [] Other PI/DPDWD (23)
Non-PI/DPDWD (Other) Tort: [checked] Business tort/unfair business practice (07), [] Civil rights (08), [] Defamation (13), [] Fraud (16), [] Intellectual property (19), [] Professional negligence (25), [] Other non-PI/DPDWD tort (35)
Employment: [] Wrongful termination (36), [] Other employment (15)
Contract: [] Breach of contract/warranty (06), [] Rule 3.740 collections (09), [] Other collections (09), [] Insurance coverage (18), [] Other contract (37)
Real Property: [] Eminent domain/Inverse condemnation (14), [] Wrongful eviction (33), [] Other real property (26)
Unlawful Detainer: [] Commercial (31), [] Residential (32), [] Drugs (38)
Judicial Review: [] Asset forfeiture (05), [] Petition re: arbitration award (11), [] Writ of mandate (02), [] Other judicial review (39)
Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403): [] Antitrust/Trade regulation (03), [] Construction defect (10), [] Mass tort (40), [] Securities litigation (28), [] Environmental/Toxic tort (30), [] Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment: [] Enforcement of judgment (20)
Miscellaneous Civil Complaint: [] RICO (27), [] Other complaint (not specified above) (42)
Miscellaneous Civil Petition: [] Partnership and corporate governance (21), [] Other petition (not specified above) (43)

- 2. This case [] is [checked] is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
a. [] Large number of separately represented parties
b. [] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. [] Substantial amount of documentary evidence
d. [] Large number of witnesses
e. [] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. [] Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply) a. [checked] monetary b. [checked] nonmonetary declaratory or injunctive relief c. [] punitive
4. Number of causes of action (specify) 2: Violations of CA False Advertising Law and Unfair Competition Law
5. This case [checked] is [] is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015)

Date: April 13, 2015
Christine Haskett

Signature of Christine Haskett
SIGNATURE OF PARTY OR ATTORNEY FOR PARTY

NOTICE
Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code) (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
File this cover sheet in addition to any cover sheet required by local court rule.
If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

Seaworld Parks and Entertainment, Inc.

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Marc Anderson and Ellexa Conway, on their own behalf and on behalf of a class of others similarly situated

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Superior Court, County of San Francisco
400 McAllister St.
San Francisco, CA 94102

CASE NUMBER
Número del caso: 000-15-545292

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado es):
Christine Haskett, Covington & Burling LLP, One Front Street, 35th Floor, San Francisco, CA 94111

DATE: 4/13/2015
(Fecha)

APR 13 2015
CLERK OF THE COURT

Clerk by
(Secretario)

MARY ANN MORAN

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010))

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010))

SEA)

NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify).
- on behalf of (specify):
 - under: CCP 416.10 (corporation) CCP 416.60 (minor)
 - CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 - CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 - other (specify).
- by personal delivery on (date)

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10 Attorneys for Plaintiffs
11 Marc Anderson and Ellexa Conway

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE CITY AND COUNTY OF SAN FRANCISCO

14 MARC ANDERSON and ELLEXA CONWAY, on
15 their own behalf and on behalf of a class of others
16 similarly situated,

17 Plaintiffs,

18 v.

19 SEAWORLD PARKS AND ENTERTAINMENT,
20 INC.,

21 Defendant.

Civil Case No.: CGC-15-545292

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

22 Plaintiffs Marc Anderson and Ellexa Conway (collectively, "Plaintiffs"), by and through their
23 attorneys bring this class action on behalf of themselves and similarly situated others who purchased
24 tickets to SeaWorld San Diego, a captive marine animal theme park, owned, operated, and marketed by
25 SeaWorld Parks & Entertainment, Inc. ("SeaWorld" or "Defendant"), and state as follows:
26
27
28

ENDORSED
FILED
Superior Court of California
County of San Francisco

APR 13 2015

CLERK OF THE COURT
BY: MARY A. MORAN
Deputy Clerk

1 **INTRODUCTION**

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. As part of a marketing
4 campaign to induce ticket purchases, SeaWorld has made, continues to make, and profits off of false and
5 misleading statements concerning the welfare of their captive orcas.

6 2. Orcas are a core SeaWorld attraction. SeaWorld’s logo features two erect cetacean¹
7 dorsal fins, and the orca “Shamu” is one of SeaWorld’s most valuable and globally recognized brands.

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

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

21 5. SeaWorld’s advertising is dominated by images and quotes touting SeaWorld’s animal-
22 friendly mission. The overwhelming perception is that far from harming captive orcas, SeaWorld’s
23 programs benefit all marine life.

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

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

12 8. Even SeaWorld’s logo misrepresents the effects that captivity has on orcas and so
13 misleads consumers. The logo is a stylized profile of two straight dorsal fins in an active and dynamic
14 pose. In reality, a substantial portion of male captive orcas at SeaWorld suffer from dorsal fin collapse
15 due to their listless existence.

16 9. SeaWorld’s marketing efforts conceal its mistreatment of orcas. For example, SeaWorld
17 San Diego’s home page features a prominent photo and link titled “Our Care for Killer Whales.” The
18 link takes visitors to an open letter which states that the lifespans of SeaWorld’s orcas are “equivalent
19 with those in the wild” and that SeaWorld does not separate orca mothers from calves. In another
20 location, SeaWorld’s website misleads consumers into believing that dorsal fin collapse is common
21 among wild male orcas, citing a scholarly paper. On a page titled “Truth about *Blackfish*,” SeaWorld
22 states that it is “wrong” that “life at SeaWorld is harmful for killer whales.”

23 10. These claims are misleading if not outright lies. Conveyed to purchasers through the
24 website, and disseminated to Plaintiffs and the public at large through promotional materials and emails,
25 SeaWorld’s false statements are misleading to reasonable consumers.

26 11. Plaintiffs and members of the proposed class paid for admission to SeaWorld San Diego.
27 SeaWorld has directed its false and misleading representations about its care for orcas in print, television
28 commercials and/or the Internet to Plaintiffs and members of the proposed class. Absent SeaWorld’s

1 misrepresentations about captive orca care and health, Plaintiffs and members of the proposed class
2 would not have paid for admission to SeaWorld San Diego (or would have paid far less for the same).

3 12. Plaintiffs bring this action on behalf of themselves and all other similarly situated
4 consumers to halt SeaWorld's dissemination of false and misleading statements and correct the false and
5 misleading perception created by SeaWorld. Plaintiffs seek injunctive relief for all consumers who
6 purchased SeaWorld tickets in reliance on SeaWorld's representations concerning orca welfare.
7 Plaintiffs further seek monetary relief in their individual capacities based on their purchase of SeaWorld
8 tickets in reliance on SeaWorld's representations concerning orca welfare.

9 **JURISDICTION AND VENUE**

10 13. The practices upon which this complaint is based occurred or arose out of activities
11 engaged in by Defendant within and affecting the State of California. Plaintiffs received Defendant's
12 false and misleading representations in San Francisco County and, as a result, purchased tickets to
13 SeaWorld San Diego. Additionally, Plaintiff Marc Anderson purchased his tickets while in San
14 Francisco using the internet.

15 14. This Court has jurisdiction in this action under Article VI, section 10 of the California
16 Constitution and §410.10 of the California Code of Civil Procedure. Jurisdiction is also proper under
17 Civil Code §1750, *et seq.*, and Business and Professions Code §17200, *et seq.*

18 15. Jurisdiction over Defendant is proper because SeaWorld has purposely availed itself of
19 the privilege of conducting business in California, and/or has generally maintained systematic and
20 continuous business contacts with the state. SeaWorld maintains and operates the amusement park
21 SeaWorld San Diego in California and markets and sells tickets to the public throughout California.

22 16. The total amount of injunctive relief for Plaintiffs and all class members as a whole does
23 not exceed the \$5,000,000 jurisdictional requirement for the original filing of this action in the United
24 States District Court pursuant to 28 U.S.C. §1332(d)(2) or the removal of this action to the United States
25 District Court pursuant to 28 U.S.C. §1441.

26 17. Further, the amount of individual restitution awardable to Plaintiffs pursuant to this
27 action is below the \$ 75,000 jurisdictional requirement for the original filing of this action in the United
28

1 States District Court pursuant to 28 U.S.C. §1332(a) or the removal of this action to the United States
2 District Court pursuant to 28 U.S.C. §1441.

3 18. Venue is proper under California Code of Civil Procedure §395. Liability in this case
4 arose in San Francisco County because SeaWorld's false representations were made to Plaintiffs there
5 and Plaintiff Anderson purchased tickets to SeaWorld San Diego there. A substantial or significant
6 portion of the wrongful conduct complained of has occurred and continues to occur within San
7 Francisco County.

8 **PARTIES**

9 19. Plaintiff Marc Anderson resides in San Francisco County. Using his computer in San
10 Francisco, Mr. Anderson purchased two tickets to SeaWorld San Diego from SeaWorld's website in
11 March or April 2014. Mr. Anderson has a reasonable but firm commitment to animal welfare, and does
12 not purchase tickets to zoos, amusement parks, aquariums, circuses, or other organizations that do not
13 have the facilities to properly care for their animals or that display animals that cannot safely and
14 healthfully be kept in captivity. Mr. Anderson has been exposed to SeaWorld's false and misleading
15 representations about its care for orcas in television commercials and on the Internet. Mr. Anderson
16 read on SeaWorld's website that orca lifespans in captivity are comparable to orca lifespans in the wild
17 and that SeaWorld does not separate calves from mother orcas. SeaWorld's marketing campaign
18 assured him that SeaWorld's orcas were well taken care of. Had Mr. Anderson been aware that
19 SeaWorld's advertisements were a misrepresentation of the truth regarding captive orca health, he would
20 not have purchased tickets to SeaWorld San Diego. Mr. Anderson suffered an injury in fact by losing
21 the money associated with his purchase and by supporting what, absent SeaWorld's misrepresentations,
22 Mr. Anderson would have correctly understood to be the inhumane treatment of a highly intelligent and
23 social animal.

24 20. Plaintiff Ellexa Conway resides in San Francisco County. In November 2014, Ms.
25 Conway purchased two tickets to SeaWorld San Diego from a ticket machine at the park. Ms. Conway
26 has a reasonable but firm commitment to animal welfare, and does not purchase tickets to zoos,
27 amusement parks, aquariums, circuses, or other organizations that do not have the facilities to properly
28 care for their animals or that display animals that cannot safely and healthfully be kept in captivity. Ms.

1 Conway has been exposed to SeaWorld's false and misleading representations about its care for orcas in
2 print, television commercials and/or on the Internet, and during a previous visit to SeaWorld.
3 SeaWorld's marketing campaign assured her that SeaWorld's orcas were well taken care of. Had Ms.
4 Conway been aware that SeaWorld's advertisements were a misrepresentation of the truth regarding
5 captive orca health, she would not have purchased tickets to SeaWorld San Diego. Ms. Conway
6 suffered an injury in fact by losing the money associated with her purchase and by supporting what,
7 absent SeaWorld's misrepresentations, Ms. Conway would have correctly understood to be the
8 inhumane treatment of a highly intelligent and social animal.

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

15 **FACTUAL BACKGROUND**

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

22 23. Many of SeaWorld's statements concerning orcas are false and misleading to reasonable
23 consumers. In particular, SeaWorld repeatedly makes four false and misleading claims designed to
24 persuade consumers to buy tickets to SeaWorld parks.

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

2 24. 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
6 misleads reasonable consumers into believing that SeaWorld’s captive orcas have the same chance of
7 survival and longevity as wild orcas. To the contrary, captivity at SeaWorld greatly reduces the average
8 life expectancy of an orca because of the stresses and diseases associated with confinement.⁵ Indeed,
9 mortality rates of captive orcas are more than twice as high as those of wild orcas.⁶

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

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

18 26. This statement and citation of an academic study is highly misleading. It leads
19 reasonable consumers to believe that the dorsal fin collapse experienced by SeaWorld orcas happens
20 commonly in the wild and is not abnormal. This is not true. Dr. Vissar herself wrote to SeaWorld
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
28 compared to a survival rate of 0.976 for wild orcas).

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

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

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

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

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

19 30. This statement misleadingly sidesteps important issues in two ways. First, SeaWorld
20 mother orcas are much less likely to be able to care for their offspring due to SeaWorld’s husbandry
21 techniques. SeaWorld artificially inseminates orcas more frequently and at an earlier age than orcas
22 become pregnant in the wild. Unlike in the wild, captive orcas do not benefit from large pod social
23 groups and stable matrilineal family lines which provide significant calf-rearing assistance. Second,
24 SeaWorld frequently separates orcas from their mothers after weaning but before maturity according to a
25

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

1 study by the Orca Network. Captive born orcas Ikaika, Kayla, Keet, Trua, Tuar, Kalina, and many
2 others were separated from their mothers before the age of five.⁸ Orcas live in highly social and tight-
3 knit matrilineal pod groups in the wild. The separation of closely related orcas continues to be
4 traumatizing even later in life.⁹ SeaWorld’s statement misleads reasonable consumers into believing
5 that SeaWorld does not harm orcas through forced separation while in fact the opposite is true.

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

7 31. The above mentioned false and misleading statements work in conjunction with a
8 longstanding and wide-reaching public relations campaign on the part of SeaWorld to assure the public
9 that it is “wrong [] that life at SeaWorld is harmful for killer whales.”¹⁰ But this is just not true. Orcas
10 are large, highly intelligent, and extremely social predators. Captivity in a small pool necessarily harms
11 orcas both physically and psychologically.

12 32. SeaWorld orcas suffer from a variety of captivity-induced stresses and health problems.
13 Beyond life expectancy and dorsal fin collapse, a host of other indicators demonstrate the unhealthy
14 existence of captive orcas.

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

20
21 ⁸ See generally <https://www.thedodo.com/orcas-separated-at-birth-a-fac-399545539.html#orcas-separated-at-birth-a-fac-399545539.html>.

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

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

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

1 34. 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 of
3 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 35. 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 36. 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.
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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 45. Whether the alleged conduct constitutes violations of the laws asserted.

2 46. Whether SeaWorld engaged in false or misleading advertising.

3 47. Whether Plaintiffs and class members have sustained monetary loss.

4 48. Whether Plaintiffs and class members are entitled to corrective advertising and injunctive
5 relief.

6 49. **Typicality:** Plaintiffs' claims are typical of the claims of the members of the proposed
7 class. All class members were injured by purchasing tickets in reliance on SeaWorld's false and
8 misleading representations concerning captive orca health and welfare. The factual and legal bases of
9 Defendant's liability to Plaintiffs and other members of the class are the same and resulted in injury to
10 Plaintiffs and all other members of the class. Plaintiffs are advancing the same claims and legal theories
11 on behalf of themselves and all members of the class.

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

15 51. **Superiority:** This proposed class action is appropriate for certification. Class
16 proceedings on these facts and this law are superior to all other available methods for the fair and
17 efficient adjudication of this controversy, given that joinder of all members is impracticable. Even if
18 members of the proposed class could sustain individual litigation, that course would not be preferable to
19 a class action because individual litigation would increase the delay and expense to all parties due to the
20 complex factual and legal issues present in this controversy. Here, the class action device will present far
21 fewer management difficulties, and it will provide the benefit of a single adjudication, economies of
22 scale, and comprehensive supervision by this Court. Further, uniformity of decisions will be assured.

23 52. Unless an injunction is issued, SeaWorld will continue to commit the violations alleged,
24 and the members of the class and the general public will continue to be irreparably harmed by
25 SeaWorld's deceptive advertising.

26 **FIRST CAUSE OF ACTION**

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

28 53. Plaintiffs incorporate by reference and reassert all previous paragraphs.

1 54. SeaWorld engages in unlawful conduct under California Business & Professions Code
2 §17500, *et seq.*, by advertising in a way that misleads reasonable consumers to believe that captive orcas
3 are not negatively affected by their captivity when, in fact, scientific evidence indicates the contrary. In
4 addition to the contention that orca health is generally not negatively affected by captivity, SeaWorld
5 made and continues to make numerous discrete and demonstrably false or misleading statements,
6 including that orca lifespans in captivity are equivalent to wild orca lifespans; that collapsed dorsal fins
7 are common in wild orcas; and that SeaWorld does not separate mothers and calves.

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

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

14 57. Plaintiffs and class members relied upon SeaWorld's representations regarding captive
15 orca welfare and as a direct and proximate result purchased tickets to SeaWorld San Diego. Plaintiffs
16 and class members would not have purchased tickets from SeaWorld San Diego (or would have paid
17 less for them) had they known that captivity was extremely detrimental to orca health. They therefore
18 suffered an injury in fact and lost money.

19 58. Accordingly, Plaintiffs, on behalf of themselves and all others similarly situated, seek
20 equitable relief in the form of an order requiring SeaWorld to refrain from making false or misleading
21 statements regarding captive orca health. Additionally, Plaintiffs seek an order requiring SeaWorld to
22 inform the purchasing public that captivity in general negatively impacts orca health, that orca lifespans
23 are shorter in captivity than in the wild, that collapsed dorsal fins are common only in captive orcas, and
24 that SeaWorld separates closely related and tightly-knit orca family members. Finally, Plaintiffs seek an
25 order requiring SeaWorld to refund to Plaintiffs, in their individual capacities, all monies they paid for
26 tickets to SeaWorld San Diego.

1 **SECOND CAUSE OF ACTION**

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

3 59. Plaintiffs incorporate by reference and reassert all previous paragraphs.

4 60. SeaWorld engages in unlawful, unfair, and fraudulent conduct under California Business
5 & Professions Code §17200, *et seq.*, by advertising in a way that misleads reasonable consumers to
6 believe that captive orcas are not negatively affected by their captivity when, in fact, scientific evidence
7 indicates the contrary. In addition to the contention that orca health is generally not negatively affected
8 by captivity, SeaWorld made and continues to make numerous discrete and demonstrably false or
9 misleading statements, including that orca lifespans in captivity are equivalent to wild orca lifespans;
10 that collapsed dorsal fins are common in wild orcas; and that SeaWorld does not separate mothers and
11 calves.

12 61. SeaWorld’s long-term marketing campaign has conveyed a general impression to the
13 public, including Plaintiffs, that orcas are properly treated, and not negatively affected, by captivity at
14 SeaWorld. SeaWorld’s depiction of happy, healthy orcas at SeaWorld San Diego has saturated the
15 public consciousness in California.

16 62. SeaWorld’s conduct is unlawful in that it violates the False Advertising Law, California
17 Business & Professions Code §17500, *et seq.*

18 63. SeaWorld’s conduct is unfair in that it offends established public policy or is immoral,
19 unethical, oppressive, unscrupulous, unconscionable, or substantially injurious to Plaintiffs and the class
20 members. The harm to Plaintiffs and class members arising from SeaWorld’s conduct outweighs any
21 legitimate benefit SeaWorld has derived from the conduct.

22 64. SeaWorld’s misrepresentations and omissions are likely to mislead a reasonable
23 consumer and are therefore fraudulent within the meaning of the UCL.

24 65. Plaintiffs and class members relied on SeaWorld’s misrepresentations and omissions.

25 66. As a direct and proximate result of SeaWorld’s false statements, misrepresentations, and
26 omissions, Plaintiffs and class members purchased tickets to SeaWorld San Diego. Plaintiffs and class
27 members would not have purchased tickets from SeaWorld San Diego (or would have paid less for
28

1 them) had they known that captivity was extremely detrimental to orca health. They therefore suffered
2 an injury in fact and lost money.

3 67. Accordingly, Plaintiffs, on behalf of themselves and all others similarly situated, seek
4 equitable relief in the form of an order requiring SeaWorld to refrain from making false or misleading
5 statements regarding captive orca health. Additionally, Plaintiffs seek an order requiring SeaWorld to
6 inform the purchasing public that captivity in general negatively impacts orca health, that orca lifespans
7 are shorter in captivity than in the wild, that collapsed dorsal fins are common only in captive orcas, and
8 that SeaWorld separates closely related and tightly-knit orca family members. Finally, Plaintiffs seek an
9 order requiring SeaWorld to refund to Plaintiffs, in their individual capacities, all monies they paid for
10 tickets to SeaWorld San Diego.

11 **PRAYER FOR RELIEF**

12 68. Wherefore, Plaintiffs pray for a judgment:

- 13 a) Certifying the class for injunctive relief as requested herein;
- 14 b) Awarding injunctive relief as permitted by law or equity, including enjoining
15 SeaWorld from continuing the unlawful practices and requiring SeaWorld to issue
16 corrective statements as set forth herein, and appointing a receiver to supervise
17 SeaWorld's statements to the public for such time as is necessary to ensure
18 SeaWorld's continued compliance with said injunction;
- 19 c) Awarding restitution to Plaintiffs in their individual capacities;
- 20 d) Providing such further relief as may be just and proper.

21 Dated: April 13, 2015

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