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MIDDLE DISTRICT OF FLORIDA
FT. MYERS, FLORIDA

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

Joyce Kuhl, individually and on
behalf of herself and all others similarly
situated,

No. 6:15-cv-574-UNL-22GJK

Plaintiff,

v.

SEA WORLD LLC, a Delaware company;
SEAWORLD OF FLORIDA LLC, (f/k/a SEA
WORLD OF FLORIDA, INC.) a Florida
company; SEAWORLD & BUSH GARDENS
CONSERVATION FUND, INC., a Delaware
corporation; SEAWORLD PARKS &
ENTERTAINMENT, INC., a Delaware corporation,

Defendants.

CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED

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Plaintiff Joyce Kuhl brings this action in her individual capacity, and on behalf of all others similarly situated against SEAWORLD LLC, a Delaware company; SEAWORLD OF FLORIDA LLC, (f/k/a SEAWORLD OF FLORIDA, INC.) a Florida company; SEAWORLD & BUSH GARDENS CONSERVATION FUND, INC., a Delaware corporation; SEAWORLD PARKS & ENTERTAINMENT, INC., a Delaware corporation; collectively referred to as (“SeaWorld”).

Plaintiff’s allegations against Defendants are based upon information and belief and upon investigation of Plaintiff’s counsel, except for allegations specifically pertaining to Plaintiff, which are based upon Plaintiff’s personal knowledge.

I. OVERVIEW

1. SeaWorld is the leading marine life theme park in the world. Each SeaWorld theme park showcases killer whales *Orcinus orca*, the mighty and iconic apex predators of the sea in special amphitheaters called Shamu Stadium that seat thousands.

2. Crowds of children and adults have been mesmerized by SeaWorld’s orca shows. SeaWorld makes hundreds of millions of dollars as a direct result of the illusion created by these shows and its massive public marketing campaign: *Orcinus orca* and *Homo sapiens* living in harmony and playing together for public entertainment. Killer whales “in the care of man,” as SeaWorld’s mantra tells it.

3. This illusion masks the ugly truth about the unhealthy and despairing lives of these whales. This is a truth that, if known to the purchasing public at the time families make the decision to visit SeaWorld, buy a membership, or pay for an “exclusive park experience,” would lead them to seek entertainment elsewhere.

4. Orcas are uncommonly complex and special animals of singular beauty and might in the wild. These whales are larger than any land predator, and they have existed for millions of years. They are highly intelligent and family-orientated. They are long-lived and self-aware. They are socially complex with distinct cultural traditions among varied ecotypes.

5. For the past several decades, dozens of orcas have lived in captivity for public entertainment and corporate profit at each of the SeaWorld parks, either captured or bred for that exclusive purpose.

6. Orcas in the wild are highly social animals which live within long-established matriarchal societies and rely on sound for communication and to maintain group cohesion. They typically live in stable, kin-based social groups that range in size from 2 to 15 (or more) orcas. Orcas of different matrilineages have distinct calls and whistles. Interbreeding between populations and ecotypes does not occur in the wild. Because of their size, morphology, and endurance, in nature orcas can roam approximately one hundred (100) miles a day.

7. The deceptive and false illusion carefully scripted by SeaWorld and created for the public has concealed not only the mistreatment of these animals, but also concealed orca behavior that evidences how their captivity at SeaWorld is harmful to their welfare.

8. Concealed from the public is the impact on these animals of captivity in a tiny confined space, the forced separation of young whales from their mothers, the unnatural mixing of whales that do not have the same culture in small spaces, the forced breeding and inbreeding of young female whales, the routine use of pharmaceutical products to unnaturally drug the orcas, the psychological manipulation and at times food deprivation to which they are subjected.

the deep rake marks on their bodies that result from incompatibility and cramped conditions, and many other life-shortening and painful experiences from which they have no escape.

9. As a result of these and other conditions kept from public view, and as described below, SeaWorld whales die many years before they would in the wild, wear down and break their teeth on concrete and metal, and bang their heads into the walls of their pools from (what humans can only describe as) fear, anxiety, sadness, and a forced resignation to an unnatural and unreasonably monotonous, empty, and dangerous life of captivity.

10. SeaWorld conceals the truth about the conditions and treatment of its captive orcas and attacks without restraint those who question the continuing business decision to keep and breed captive orcas. To question the propriety of harboring and profiting from captive orcas triggers a predictable and desperate response from SeaWorld, accusing the questioners of “radicalism,” “extremism,” or worse.

11. While SeaWorld has ample opportunity to provide accurate information to consumers regarding the health and wellbeing of the captive orcas, SeaWorld instead makes misrepresentations which shield the truth about the motivations and effects of captivity..

12. Plaintiff, and tens of thousands of consumers, would not have paid for admission to SeaWorld, for SeaWorld memberships, or for SeaWorld animal “experiences” for children or adults (or would have paid far less for the same) if the truth about the treatment and behavior of SeaWorld’s orcas in captivity was known.

13. As SeaWorld’s stock price has plummeted since its IPO and the CEO has been removed, along with a decline in attendance at its parks, the public customers subjected to SeaWorld’s material omissions who unwittingly and regrettably paid money to SeaWorld based

upon a false understanding of whale conditions and treatment caused by SeaWorld's misinformation campaign, are entitled to have those funds returned to them.

14. As discussed more fully below, SeaWorld's conduct violates: (i) Florida Statute § 501.201, *et seq.* (Florida Unfair and Deceptive Trade Practices Act); warrants (ii) Declaratory and Injunctive Relief; and (iii) triggers claims for restitution because of its Unjust Enrichment. Plaintiff seeks return of money she and others similarly situated paid to SeaWorld as a result of SeaWorld's concealment of the truth regarding the condition and treatment of its captive orcas.

II. PARTIES

15. Joyce Cole Kuhl, is an individual who at all times mentioned herein was, and is, a proper party to bring this action as a visitor to Florida and as a resident and citizen of South Carolina.

16. At all times relevant to this action, since November 30, 2009, Defendant SeaWorld LLC, is and has been a limited liability company, incorporated in Delaware. Since April 29, 2010 its principal address and mailing address are listed as 9205 S. Park Center Loop, Suite 400, Orlando, FL 32819.

17. At all times relevant to this action, since February 23, 1971, Defendant SeaWorld of Florida LLC, (f/k/a SeaWorld of Florida, Inc.) is and has been incorporated in Florida. Since April 29, 2010 its principal address and mailing address are listed as 9205 South Park Center Loop, Suite 400, Orlando, FL 32819.

18. Since October 29, 2013 Defendant SeaWorld & Busch Gardens Conservation Fund, Inc. is and has been a non-profit corporation, incorporated in Delaware with its principal and mailing address listed as 9205 South Park Center Loop, Suite 400, Orlando, FL 32819.

19. At all times relevant to this action, since February 4, 2010, Defendant SeaWorld Parks & Entertainment, Inc., is a publicly traded company (NYSE: SEAS) is and has been a for profit corporation, incorporated in Delaware with its registered office located at 1999 Bryan St., Suite 900, Dallas, TX 75201 and its mailing address listed as 9205 South Park Center Loop, Suite 400, Orlando, FL 32819.

20. If SeaWorld had properly disclosed the true facts about the conditions and behavior of its captive whales, Plaintiff and the proposed Class members would not have bought tickets, memberships, or SeaWorld orca “experiences.”

III. JURISDICTION AND VENUE

21. This Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because the amount in controversy for the Class exceeds \$5,000,000, and each Class includes members who are citizens of a different state than Defendant.

22. This Court has personal jurisdiction over Plaintiff Kuhl as she submits to the Court’s jurisdiction.

23. This Court has personal jurisdiction over all Defendants collectively referred to as “SeaWorld” because they conduct substantial business in this District and throughout the State of Florida.

24. Venue is proper in this Court under 28 U.S.C. § 1391(b) because SeaWorld has marketed and sold its product within this District, and a substantial number of the acts and omissions alleged in this Complaint occurred within this District.

IV. FACTUAL ALLEGATIONS

25. On December 30, 2013, Plaintiff, Joyce Cole Kuhl, purchased a ticket to SeaWorld Orlando located at 7007 SeaWorld Drive, Orlando, FL 32821. Plaintiff's ticket cost \$92.00 for a total cost to Plaintiff of \$97.98 inclusive of tax, and she used her ticket as admission to SeaWorld in Orlando, Florida.

A. SeaWorld Markets, Advertises and Promotes an Enchanting, Alluring Illusion of Captive Killer Whales

26. SeaWorld's global marine park empire is built upon the backs of its performing orcas. They are the centerpiece attraction and have been since the late 1960s. A ticket to SeaWorld is marketed as a ticket to the magic of orcas living happily and performing for those lucky enough to enter its gates.



27. SeaWorld describes itself as follows:

SeaWorld is widely recognized as the leading marine-life theme park brand in the world. Our SeaWorld theme parks rank among the most highly attended theme parks in the industry and offer up-close interactive experiences, thrilling attractions and a variety of live performances that immerse guests in the marine-life theme. Each

SeaWorld theme park showcases killer whales in specially designed amphitheaters, which feature inspiring shows, underwater viewing and special dining experiences.

28. SeaWorld's water-based theme parks have attracted millions of visitors annually for several years. In 2012, 5.35 million guests visited SeaWorld in Orlando, Florida. The captive orcas that perform at SeaWorld dazzle, fascinate and captivate both children and adults. Those who study orcas in the open seas are in awe at how they live.

B. The Biology of Orcas

1. Distinct orca ecotypes exist in all the oceans of the world.

29. Killer whales (orcas) are the most widely distributed of all marine mammals, found in all parts of the oceans. They are most abundant in colder waters, including Antarctica, the North Atlantic and Pacific Oceans. They are also found in tropical, subtropical, and offshore waters.

30. Orcas exist as what can be termed races, or ecotypes. At least ten distinct ecotypes exist, some separated by significant distance, others living in the same space (sympatric) but different genetically and in other ways. Ecotypes feed on different prey and vocalize in distinct ways, akin to using different languages (known as dialects—each ecotype will have multiple families, each using a different dialect). The white eye patches and gray capes on the back common to orcas may have slightly different orientations, shapes, and sizes, depending on the ecotype. Even the dorsal fins of different ecotypes may have slightly different shapes.

31. Alone among mammals whose habitat is the sea, male orcas have developed a dramatic sword-like dorsal fin that cuts through the water as they dash toward their meals, looking like black-sailed corsairs catching the wind to speed toward booty. The forces of evolution seem to have favored those huge fins for purposes of temperature regulation. The

dorsals help with the enormous energies generated by the speeding orcas who can swim in bursts up to 30 miles per hour by shifting heat away from the body's core, dispersing the elevated temperatures to the extremities so that the killer whales do not overheat.

32. Killer whales are generally considered monotypic (belonging to one species). However, genetic studies and morphological evidence have led many cetacean biologists to now consider the existence of multiple species or subspecies of killer whales worldwide (that is, they believe ecotypes are different species or sub-species). Other scientists consider ecotypes to be less taxonomically distinct than species or sub-species.

33. Among the various populations of killer whales, the whales of the Pacific Northwest have received the most scientific scrutiny and therefore provide us with the bulk of what is known about the life cycle of a killer whale. In this region, there are three ecotypes co-existing within the same larger area: residents (fish-eaters); transients (mammal-eaters); and offshores (shark-eaters). The residents have been studied in most detail and there are two populations: the northern resident killer whale population, which is spread generally from southern Alaska through to mid-Vancouver Island; and the southern resident killer whale population, ranging generally from mid-Vancouver Island to Washington State, but with members observed as far south as central California.

34. Orcas' sense of community is bolstered by what we might call language. Each family is headed by a matriarch and all family members use the same calls and other various sounds that make up a dialect that is, families speak the same "language." Various families that share most of their calls form a pod; pods with some common calls form what scientists call a clan.

35. Different clans have no calls in common, but clans with related genetics and behaviors interbreeding with each other form a population. The northern residents are made up of three clans; the southern residents are one clan. Whales do not mate with close relatives; dialects almost certainly play a role in preventing inbreeding. More remarkably, the northern and southern residents do not interbreed, although the three clans of the northern residents do interbreed. Somehow, these whales recognize common lines of ancestry and can distinguish northern from southern. Genetic field research has confirmed this.

36. Orcas show considerable sexual “dimorphism.” Adult males are much larger and also develop larger pectoral and dorsal fins and tail flukes than females.

37. Killer whales are highly social animals. They live in stable social groups based on kinship (a mother and her offspring) that range in size from 2 to 15 or more animals. Larger groups of 50-100+ animals occasionally form, but are temporary groupings of smaller families that congregate for seasonal concentrations of prey, social interaction, or mating. Differences in availability of food resources likely account for much of the variation in group size within orca populations.

38. Different populations of killer whales exhibit different dietary preferences, behavior patterns, social structures, and home range sizes. Interbreeding does not occur between different populations or ecotypes, despite the occasional overlap of home ranges.

2. Orcas are highly communicative, intelligent, and social.

39. Like all cetaceans, killer whales depend heavily on underwater sound for orientation, feeding, and communication. They produce three categories of sounds: clicks, whistles, and pulsed calls.

40. Echolocation clicks are believed to be used primarily for navigation and discriminating prey and other objects in the surrounding environment, but are also commonly heard during social interactions and may have a communicative function.

41. Whistles and pulsed calls are believed to be used for communication and during social activities. Whistles are frequency modulated sounds (pitch changes with time) with multiple harmonics. Pulsed calls are the most common type of vocalization in killer whales and resemble squeaks, screams, and squawks to the human ear. Most calls are highly distinctive in structure, and are characterized by rapid changes in tone and pulse repetition rate.

42. Killer whales of different pods have distinct calls and whistles. In resident killer whales of the eastern North Pacific, each pod possesses a unique repertoire of discrete calls or dialects which are learned and culturally transmitted. These dialects serve as family badges and are used to maintain group cohesion. In instances with high levels of noise, killer whales are known to increase the amplitude of their calls.

43. Although humans often cite brain size as a basis for our superiority, orcas have larger brains (and their brain-to-body-size ratio is similar to humans) and have had them for millions of years longer than our species. Studies using MRI technology reveal that the neocortex of an orca brain is more “wrinkled” than a human brain, and thus, has greater volume. There are more brain cells and neurons in orca brains. An examination of the orca brain shows us the natural endowment these animals have, and explains the social nature of orcas and their sophisticated level of consciousness and awareness.

3. Orcas are organized in matriarchies and close-knit.

44. Both the northern and southern resident populations are made up of clans and pods and families. Each family is led by a reproductive-aged female (a matriarch) and comprises both sons and daughters; a mother and all her offspring form the basic unit of orca society. Everything in the family revolves around the matriarch. Even when her daughters become adults, their own families stay within reach. Males live with their mothers their whole lives. Whales within a family usually travel less than a mile apart and are often within a single body length of other family members.

45. Everyone in the matriarch's immediate court stays close to her physically, surrounding her like a queen bee in an oceanic hive, a few body lengths away. Her circle includes all her offspring younger than 10-15 years old male and female as well as her adult sons. In some of these families, male relations of the matriarch's own generation or older (brothers and uncles) are part of the entourage. Sometimes nephews (the sons of deceased sisters) are part of the group.

46. Males have no status apart from their mothers or an equivalent female. At the death of a matriarch, her sons will join the families of an aunt or sister or niece, just to maintain social status and a place in some communal hierarchy. Some brothers have travelled together outside of a matriline, but this is rare.

47. As discussed further below, SeaWorld forces motherlessness on many of its male orcas, and engages in other acts that destroy not foster family bonds. It is these males who are often the outcasts of the societies that emerge among SeaWorld's orcas, subjected to vicious and repeated attacks by the other whales.

4. Orcas in nature can live long healthy lives.

48. Under objectively good natural environmental conditions, orcas should live roughly as long as human beings. Both sexes reach sexual maturity at approximately 14. Females give birth approximately every five years and go through menopause at 40 or so years of age. Females have a mean life expectancy of 50 years; males 30 years. Males live an estimated maximum of 60-70 years and females an estimated maximum of 80-90 years or more southern Resident J2 (aka "Granny") is believed to be close to 100 years old.

C. The Undisclosed Truth About SeaWorld's Captive Orcas

1. SeaWorld's family values

a. SeaWorld launches its business with captured orcas.

49. Ted Griffin, an aquarium owner from Seattle, for several years yearned to capture a killer whale for his own entertainment. The history of SeaWorld begins here. After obtaining an orca accidentally caught in a fishing net for his amusement in his own Seattle aquarium (named Namu), he set about to turn capturing these whales into a business. In 1965, Griffin's orca capture business began.

50. Griffin's team captured a young female orca from Puget Sound, off the Washington coast, on October 31, 1965. She was named Shamu (She-Namu), and the legend born of man's conquer and incarceration of killer whales began. The customers lined up to purchase Shamu was the then-nascent water theme park in San Diego, California, called SeaWorld (at that time spelled Sea World). Shamu landed at SeaWorld's Mission Bay marine park on December 29, 1965.

51. SeaWorld continues to aggressively market the now-proverbial “Shamu the killer whale” as the signature attraction of its entertainment empire. The actual story of Shamu is far from the inspirational “man caring for beast” myth that SeaWorld perpetuates.

52. A whale capture itself, of course, involves an aggressive act by an outside intruder (the human hunters) stripping an orca from its family by violence and force. At the time, explosives were used to herd the orcas into areas where they could be isolated and captured. Orcas may be killed in the process, and they can get entangled in nets used to confine the pod several deaths were known to have occurred during the early captures.

53. The abduction of Shamu was no exception. Shamu’s mother died during the abduction of the calf. Even six years later, Shamu, whose life was transformed by violence and aggression, attacked a woman employed by SeaWorld (as a secretary) during a photo promotion session. In subsequent litigation, SeaWorld was forced to acknowledge prior attacks by Shamu.

54. Shamu was taken out of performance and died only four months later, when she was still less than 10 years of age, following a bacterial infection. This captured orca, who died an early death as a young whale taken from her family, became the brand that built SeaWorld’s multi-million-dollar marine entertainment empire.

55. SeaWorld, when pressed to acknowledge the cruelty associated with its initial venture into the world of captured orca entertainment, prefers to misleadingly claim that only 5 of its 29 orcas currently performing were taken from the wild. The more complete and telling truth is that only 5 of the 32 whales violently abducted from their families and ocean homes for SeaWorld’s business purposes (each owned by SeaWorld) have survived. These abductions not only tore

apart these whales' family units, they usually included violence against other whales, sometimes killing them outright.

56. Tilikum, an approximately 34-year-old orca who later became the new orca face of SeaWorld following the death of trainer Dawn Brancheau and the *Blackfish* documentary, was captured at approximately two years of age by an orca capture operator in Iceland. Tilikum, like the others, was torn away from his family against his will and confined to a small concrete tank for a hefty profit.

b. SeaWorld destroys orca families and removes calves from their mothers for profit.

57. SeaWorld has separated nearly two dozen calves (male and female) from their mothers within its captive orca population, sometimes at as young as two years of age and usually before the calf is five years of age. This results in what can only be described as observable suffering and even agony for these separated orcas, animals who have persisted for millions of years in the wild with a high degree of familial cohesion.

58. In the picture used to maintain this illusion of merciful familial preservation, SeaWorld orcas Takara and her calf Kohana are shown together. In truth, Kohana was taken from her mother at age three and is currently performing under leasing arrangements to audiences in Spain; her mother is forced to entertain in Texas.

59. Takara was also robbed of her second calf, Trua, when Trua was also three years old. He is performing without his mother at SeaWorld Orlando. When Takara was transported to Texas from Florida (via a military plane) Takara was also seven months pregnant at the time, adding obvious stress to her plight while at the same time separated from her child.

60. Before this, Takara's mother, Kasatka, was separated from Takara herself. Even earlier, Kasatka began her life of captivity when taken from her mother in the wild. As Takara was taken from San Diego from her mother for business purposes by SeaWorld, Kasatka emitted vocalizations never previously heard from her in her years of captivity. It was determined that the vocalizations, which continued long after her daughter was taken, were long-range vocals.

61. Years later, when Takara's vocalizations were played for Kasatka in San Diego, Kasatka grew extremely agitated by the torture of hearing her daughter's voice. Kasatka was eventually determined to be too dangerous for water work performance, long before all water work ended after the orca Tilikum killed trainer Dawn Brancheau.

62. To SeaWorld, these captured and captive orcas are commodities, to be moved and relocated as the corporation sees fit, regardless of the obvious psychological and physical harm caused to the orcas as a result. All of this is publicly denied by SeaWorld for fear of lost revenue.

2. SeaWorld orcas' living conditions in captivity

63. Agents from the USDA Animal and Plant Health Inspection Service (APHIS) found numerous problems at SeaWorld Orlando during their December 2012 inspection. There were packs of medical sutures that had expired nearly a decade before the inspection, and the inspectors ordered SeaWorld to dispose of them. There were "painted concrete & concrete patches" that "have separated and are loose, are no longer durable, and are not in good repair" which the report found "might create a health risk" especially if the concrete chips were ingested or became abrasive to the dolphin's skin. The inspectors also found two overhead metal beams that were rusty which could cause peeling and flaking that could "also create a potential health hazard." At the Shamu Stadium inspectors found loose areas of flooring which could easily be

dislodged and fall into the water where they would create a health risk if ingested. Finally, the inspectors found problems in one of the slide-out areas where orcas haul out of the water. The area had "worn paint exposing the underlying concrete matrix." The report continued that "these areas are not in good repair, do not facilitate cleaning and disinfection, and can potentially cause a health risk to these whales." See David Kirby, *Why is SeaWorld Allowing its Killer Whales to Live in Crumbling Pools*, TAKEPART.COM, (March 7, 2013),

<http://www.takepart.com/article/2013/03/07/SeaWorld-bad-living-conditions>; US Dep't of Agric., Animal & Plant Health Inspection Service, *Inspection Report*, 64-65 (Dec. 26, 2012).

a. These orcas suffer in tiny and unnatural chemical tubs.

64. SeaWorld confines its captive orcas—one of the largest marine predators in the world, who often swim up to 100 miles a day in the wild—to unnatural and unhealthy tanks that, to them, are the size of a single room.

65. In addition to the tanks in which these orcas are fated to subsist at SeaWorld for the duration of their lives, the water in which they are held does not resemble an ocean environment. Instead, it is a series of interlocking chemical baths.

66. The cramped conditions enhance issues of incompatibility and orcas rake each other's bodies and fight with unnatural levels and durations of violence.

67. When not actually performing, SeaWorld's captive orcas spend many hours a day in so-called "med pools" only eight feet deep. These pools are mostly utilized not for emergency circumstances, but instead for daily, routine staging for the Shamu Shows.

68. The orcas are often in these staging tubs for up to an hour several times a day, before, during, and after each show. Sometimes they are there for extended periods to ensure that

visitors have enough time to see them; SeaWorld does not inform these visitors of the stress of such conditions (exposed to the elements above the water surface for extended periods) for the orcas.

69. The chlorine solution SeaWorld uses to maintain water quality in the tanks is itself several times stronger than household bleach. Tank water is also treated with two other chemicals: ozone (known to damage the lungs and eyes, among other things) and aluminum sulfate (the acidity of which can cause significant burning). Orca trainers have at times developed eye burns from this water serious enough to have been addressed with emergency medical attention. At times, trainers cannot open their own eyes at all. Some trainers, as a result, have been kept from the water for extended periods of time. The orcas themselves, of course, have no such reprieve.

70. SeaWorld provides these orcas with plain-walled chemical baths within which whales develop habits which endanger their health and shorten their life spans.

b. Shallow pools expose the orcas to fatal risks.

71. Due to the shallowness of their tanks and their confinement, orcas at SeaWorld spend most of their time floating listlessly at the surface of the water with little to no shade from the sun. Each SeaWorld location is found in sunny, hot parts of the United States: San Diego, San Antonio, and Orlando. In nature, “logging” behavior is rare and whales escape the sun’s UV rays by spending up to 95% of their time submerged below the surface, finding shade in the depths of the ocean; but at SeaWorld their tanks are far too shallow, the water too clear, and the surfaces too light-reflective.

72. In contrast to the claims by SeaWorld (noted, in part, in the section above), only the front show pools have depths of 40 feet (in Texas) and 36 feet (in San Diego and Orlando). Even so, sunlight easily penetrates to the bottom due to the unnatural clarity of the water and the light-reflective nature of the pool walls. Captive orcas also spend several hours several times a day in the “med pools” noted above. To this day, Google-image pictures (captured randomly) show orcas left unattended essentially roasting in these eight-foot-deep pools for long periods of time, as depicted in the following photograph:



73. This inescapable and inhumane exposure to sunlight and high temperatures (which would never occur in nature) can be fatal. Two SeaWorld orcas have died from mosquito-transmitted diseases resulting from bites they received while floating motionless on the surface of these small pools suffering in the hot and humid climates of central Texas and Florida.

c. SeaWorld hides orca sunburns with black zinc oxide.

74. These harsh elements (i.e., exposure to sunlight and heat near the water surface for hours each day) also cause near perpetual sunburns for the orcas. Rather than acting on the obvious fact that SeaWorld’s unnatural captive environment is unhealthy for these orcas,

SeaWorld shields this from public view with the help of black zinc oxide, which conveniently matches the orcas' skin.

d. The orcas are purposefully deprived of food.

75. SeaWorld's fleet of orca trainers maintain relative authority over the captive whales by simple virtue of the monopoly these trainers have over the orcas' food supply.

76. Orcas get both their nutrition and hydration from the dozens of pounds of fish they consume each day. SeaWorld's entire behavioral training scheme rests upon this fundamental reality. When the training and positive reinforcement fail to deliver the uninterrupted compliance demanded by SeaWorld for its public performance shows, SeaWorld resorts to depriving the orcas of food. Food deprivation is hardly "Behavioral Enrichment."

77. SeaWorld denies this practice, and maintains that the orcas receive their necessary volume of food absent a medical condition or a self-initiated hunger strike by an orca.

78. In fact, this deprivation has occurred and occurs with respect to several orcas over not just one day, but several days and even weeks. Because of the inhumanity of such behavior, SeaWorld has vehemently denied this practice to the public.

3. SeaWorld's captive whales deteriorate as a result of their treatment

a. SeaWorld's captive orcas live shorter lives.

79. Orcas in the wild have a mean life expectancy of 50 years for females and 30 years for males the estimated maximum life span is 60 to 70 years for males and 80 to more than 90 for females. Burnett, *Orcinus orca*, Animal Diversity Web (2009), http://animaldiversity.ummz.umich.edu/site/accounts/information/Orcinus_orca/, see also, Culik,

Odontocetes, The Toothed Whales: "Orcinus Orca," UNEP/CMS Secretariat, Bonn, Germany (2010), http://www.cms.int/reports/small_cetaceans/index.htm. ("Mean life expectancy is 50 years and longevity up to 90 years."). At least one orca in the Pacific Northwest is believed to be about 100 years old. In captivity, most orcas die in their teens or 20s and only a handful have reached 35. The annual mortality rate for captive orcas is 2.5 times higher than that of orcas in the wild.

80. Among captive whales, only two females currently living have passed the age of 40; neither has yet achieved the mean life expectancy of 50. This is after five decades of maintaining the species in captivity and out of dozens of orcas held for display. Only four living females are currently in their 30s, and of the females who have died, only one or two were in their 30s at the time of their deaths (as exact ages at capture were not known, the exact ages of wild-caught captive whales cannot be determined).

81. To date, no captive males have lived longer than 40 years (the oldest, current living, is in his late 30s), and less than a handful have reached 30. Only two males at SeaWorld have lived past the mean life expectancy. The vast majority of captive orcas of either sex die before their early 20s, many still in their early teens.

82. The longevity of orcas in captivity has been a sensitive subject for SeaWorld. Admitting the obvious disparity between longevity in and out of captivity would concern the public and damage SeaWorld. The following table is reproduced from David Kirby's Death at SeaWorld; this death table has been carefully concealed by SeaWorld:

Orca SeaWorld Death Table

Shamu (F), lived 6 years	Winnie (F), lived 24.5 years
Ramu (M), lived 15 years	Kotar (M), lived 16.5 years
Kilroy (M), lived 11.5 years	Shawn (F), lived 1 year
Kandu (F), lived 4 years	Kahana (F), lived 12.5 years
Orky 2 (M), lived 20 years	Nootka 4 (F), lived 12 years
Nootka (F), lived 20 years	Haida 2 (F), lived 19 years
Winston (M), lived 15.5 years	Samoa (F), lived 8.5 years
Kandu 3 (F), lived 4 years	Bjossa (F), lived 21 years
Sandy (F), lived 4.5 years	Katerina (F), lived 10.5 years
Kona (F), lived 6 years	Splash (M), lived 15.5 years
Canuck (M), lived 2.5 years	Taku (M), lived 14 years
Frankie (M), lived 5 months	Nyar (F), lived 2 years
Kanduke (M), lived 15 years	Baby, lived 38 days (Haida 2)
Kenau (F), lived 15 years.	Halyn (F), lived 2.5 years
Gudrun (F), lived 19.5 years	Taima (F), lived 21 years
Canuck 2 (M), lived 4 years	Baby Sharou 2, lived 11 days
Kona 2 (F), lived 10 years	Sumar (M), lived 12 years
Kandu 5 (F), lived 12 years	

83. It is unlikely that the scientific staff at Defendants' parks are "unaware of the scientific literature indicating much longer killer whale longevity than they assert." Hoyt, Garret & Rose, Observations of Disparity Between Educational Materials Related to Killer Whales

(*Orcinus orca*) Disseminated by Public Display Institutions and the Scientific Literature 8 (1994). There is a great deal of highly reliable scientific literature, including at least one study spanning more than 30 years, detailing the long lifespan which wild orcas typically enjoy. Olesiuk, Ellis & Ford, *Life History and Population Dynamics of Northern Resident Killer Whales (Orcinus orca) in British Columbia* (2005).

84. In 1990 the scientific, peer reviewed literature indicated that female killer whales had an average life expectancy of 50.2 years, with a maximum longevity of about 80-90 years. P. F. Olesiuk, M. A. Biggs & M. Ellis, *Life History and Population Dynamics of Resident Killer Whales (Orcinus orca) in the Coastal Waters of British Columbia and Washington State*, REP. INT. WHAL. COMMN, 1990, at 209, 209.

b. SeaWorld orcas' collapsed dorsal fins are not normal or healthy.

85. Defendants fail to provide accurate information regarding the cause of droopy dorsal fins predominantly seen in captive orcas.

86. However, even in 1994, it was understood that fewer than 1% of killer whales in the waters surrounding Vancouver Island, B.C. had droopy dorsal fins whereas in captivity, male killer whales who survive the onset of maturity "invariably exhibit droopy dorsal fins." *See*, HOYT, *supra* at 10.

87. This is in disagreement with relevant scientific literature which states that explanations for fin collapse include alterations in water balance caused by the stresses of captivity or dietary changes, lowered blood pressure due to reduced activity patterns or overheating of the collagen brought on by greater exposure of the fin to ambient air. NMFS: Northwest Regional Office, *Proposed Conservation Plan for Southern Resident Killer Whales (Orcinus orca)* 38 (2005) (emphasis supplied). The report continues, "[c]ollapsed or collapsing

dorsal fins are rare in most wild populations and usually result from a serious injury to the fin, such as from being shot or colliding with a vessel." *Id.* For example, "the dorsal fins of two male resident whales in Alaska began to fold soon after their pod's exposure to oil during the Exxon Valdez spill in 1989 and were completely flattened within two years" both animals "were suspected to be in poor health and subsequently died." *Id.* 117. SeaWorld has long worried the public would learn the truth of this matter (as it is harder to hide from public view than the other signs of captivity), and therefore continues to mislead the public and deny the plain truth that SeaWorld's conditions of captivity cause collapsed dorsal fins.

88. Below is a typical picture of a male orca at SeaWorld with a collapsed dorsal fin:



89. A reasonable consumer viewing this orca would have a far different experience if he or she knew the truth that this collapsed fin is a result of the orca's conditions of captivity at SeaWorld.

90. Most telling is a post made public by a former SeaWorld employee, disclosing to the public how SeaWorld was able to avoid showing the collapsed fin in a commercial, pointing to the obvious importance of the issue for SeaWorld's public relations:

(www.youtube.com/watch?v=fmJcvoipAuM):



c. Captive orcas' teeth are ground down and damaged.

91. In reaction to their forced confinement at SeaWorld, and kept hidden by SeaWorld from the public, the orcas routinely rip the paint off the walls of their pools by using their teeth. This is like a prisoner using a spoon to grind slowly through the prison wall, but with teeth instead of a metal instrument. The orcas also obsessively grind their teeth along the ledges, floors, gates, and pool stages.

92. To those in the viewing public who witness the behavior, it looks as if the orcas are nibbling on the wall or the floor of the pool. Instead, these behaviors are better understood in human terms as compulsive reactions to confinement, repetition, boredom, frustration, ennui, fear, anxiety, and alienation. The orcas occupy themselves, stimulating their enormous jaws and great intelligences, with obsessively meticulous work and repetitive behaviors (also known as stereotypies).

93. One whale, Unna, in SeaWorld San Antonio, went at the wall paint with such frightening vigor that she bloodied and bruised her jaw. So much paint was stripped from the floor of the pool that the familiar geography of the pool was literally transformed by her peeling. This creates significant hazards for both the orcas and trainers.

94. Captive orcas routinely show damaged dentition, primarily broken and worn teeth with the pulp exposed. This is in contrast to wild orcas where most populations show little or no tooth wear, and those that do specialize in prey (such as sharks) or feeding methods (such as suction-feeding, where fish are vacuumed into the mouth rather than grabbed from the water column) that offer a clear mechanism for wearing the teeth. The teeth of captive orcas do not touch their food—dead fish are dropped directly down the whales' gullets. Therefore, the mechanism for any tooth wear or injury is radically different in the wild than in captivity. Indeed, broken teeth in wild orcas are rare.

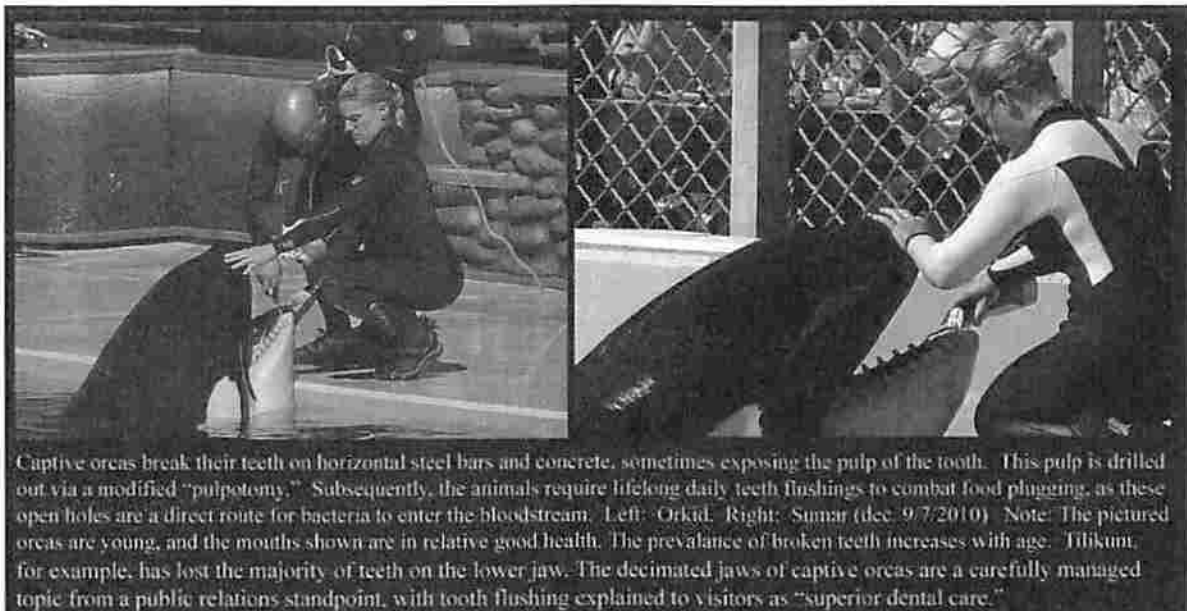
95. In captivity, the abrasion and breakage comes not from prey or feeding methods, but from gnawing on concrete walls or steel gates that separate the various sections of an enclosure complex (there are usually at least two enclosures—a primary and a medical—and in larger complexes there can be as many as seven enclosures, all separated by metal gates), often in shows of aggression to animals in neighboring enclosures or due to other frustrations.

96. Images online depict captive orcas in the open-mouth position, typical of an orca soliciting fish, showing many broken or worn teeth. Tooth breakage invariably leaves the pulp exposed. Once the orca wears down its teeth far enough, a pinhole forms that will ultimately become blocked and require drilling.

97. In captive orcas, food plugs in the exposed cavity can serve as direct routes for infection to enter the body. According to former trainers, when a tooth breaks, a variable speed drill is used to drill holes directly through the pulp, in a modified pulpotomy. Trainers also use manual drills with no anesthetic provided to the orcas.

98. Judging from behavioral reactions, this is painful for the whale. Once the drilling is complete, the tooth is not sealed or capped and therefore trainers must irrigate (flush) the bored-out tooth two to three times each day for the rest of the orca's life, to prevent abscess, bacteremia, and sepsis.

99. The following is a photo of such cleaning:



100. Poor dental health is a known cause of many veterinary/medical conditions, including heart disease and pneumonia. In the case of captive orcas, these open holes represent a direct route for pathogens to enter the blood stream where they can then be deposited into the tissue of various organs throughout the body, such as the heart or kidney.

101. Additionally, and though not observed in nature, SeaWorld's confined orcas routinely regurgitate their food. This, as in humans, creates significant health risk for these animals. It can lead to further organ damage through the body, weight issues and further destruction of healthy teeth. SeaWorld has long known of this, but accepts that abnormal (even desperate) orca behavior among those in captivity is the price paid for this form of human entertainment and company profit.

d. SeaWorld's orcas are injured at SeaWorld.

102. Due to what can only be described as the product of unnatural confinement, boredom, anxiety, stress, fear, disorientation, and the overall poor conditions and treatment described above, including routine violent orca attacks on one another as evidenced by the persistent and unnatural rake marks adorning SeaWorld's orcas, its captive orcas are injured and damaged in a variety of ways.

4. SeaWorld "science" and forced breeding

a. SeaWorld is not a scientific orca research institution.

103. SeaWorld has forcibly bred and inbred orcas of varying ecotypes that would never interbreed in the wild; indeed, a case of extreme incest (a son mating with his mother to produce a daughter/sister) has occurred at SeaWorld. The creation of these orcas serves no conservation

function and leaves these orcas a species markedly social by nature with no social identity whatsoever.

b. SeaWorld impregnates young female orcas with sperm from relatives and different ecotypes.

104. In July 2013, the very month that *Blackfish* first focused national attention on SeaWorld's treatment of captive orcas, SeaWorld artificially inseminated Kalia, an eight-year-old orca. At that young age, an orca is not fully developed and is far short of the 12-14 years of age at which orcas naturally first conceive in the wild. Only after a park guest with a high-powered lens filmed the ultrasound procedure performed on the whale was SeaWorld forced to publicly acknowledge it.

105. This is not surprising given SeaWorld's history of forcibly breeding young whales. Kalina, the original "Baby Shamu" (the first orca calf successfully born in captivity), was bred at only age six (possibly earlier). Her calf named Keet was taken from her when he was less than two-years-old despite a lack of any medical necessity. They were never reunited, and Kalina died at the age of 25.

106. Kohana, another captive orca taken from her mother at age three, was bred by the age of only seven and pregnant with her second calf by the age of eight. She rejected both calves and the second died within its first year of life. The father of both was her uncle, Keto. Keto killed Spanish trainer Alexis Martinez in December 2009 both he and Kohana, although living in a Spanish facility, are owned by SeaWorld.

107. Another captive SeaWorld orca, Katina, who was caught in the wild, was forced to breed when she was only eight years old. Now she is used as a virtual breeding machine and has

produced several calves since 1985. She even produced an inbred daughter with her own son, Taku, a pairing SeaWorld termed a “mistake,” but one that proper husbandry management would have and should have prevented.

108. Further, several of the calves born within the confines of SeaWorld are the children of Tilikum, the whale responsible for three human deaths in his 32 years in captivity. Keto is responsible for the fourth human killing attributed to captive orcas and has sired two calves. In any other captive breeding situation, a known human killer (whether it be a dog or a bull or a tiger or an elephant) would not be bred at all. It is worth noting that there are no historical records of wild orcas killing human beings.

109. In addition to forced breeding of orcas that are socially immature, SeaWorld also breeds orcas from distinct populations and ecotypes; these pairings would never occur in nature and the resultant offspring are unnatural hybrids.

110. Also, and unknown in nature, is a high degree of inbreeding at SeaWorld. SeaWorld disregards the science on this as it does so much else in order to sustain and grow its orca franchise. SeaWorld routinely mates half-siblings, uncles and nieces, aunts and nephews, and cousins. SeaWorld is aware that the actual results of its breeding program have at times interfered with its business planning, and the offspring of forced breeding have been rejected by their mothers and in some instances die early deaths as a result.

111. As Dr. Deborah Giles, a biogeographer at University of California, Davis, who spent nearly a decade of summers observing orcas in nature, has stated, these SeaWorld orcas “were interbred and produced hybrids with no conservation value and with no natural identity.”

c. Trainers masturbate the orcas for profitable sperm.

112. In nature, orcas choose their own mates. But at SeaWorld, orcas are forced to breed on a regular basis. Male orcas are trained to float on their backs, and their trainers masturbate them to collect their sperm.

113. This process carries such risk, and is such an unnatural and foreign procedure forced upon these animals, that SeaWorld trainers involved in the process are routinely not permitted to swim with the whale from whom the specimen was collected for fear that the association with the process might trigger potentially fatal water work aggression or sexual behavior.

d. SeaWorld drugs its captive orcas.

114. Unlike orcas in the wild, the conditions and treatment of SeaWorld's orcas leads SeaWorld to administer a variety of powerful drugs to them, sometimes for their entire lives. It goes without saying that orcas in the wild have lived for millions of years without these medical interventions they are necessary solely because of their captivity at SeaWorld and SeaWorld's interest in controlling and profiting from them.

115. Among the drugs forced upon its captive orcas are antacid products, including Tagamet, used to treat ulcers which are themselves the product of stress and behavior associated with captivity.

116. Antibiotics, including Clindamycin, are also commonly given to SeaWorld's captive orcas. These drugs treat a variety of infectious maladies caused by their conditions of confinement, including infections of the teeth and infections caused by injuries to them by other orcas with whom they are crammed into pools unnaturally. Often these drugs are administered

through their food along with vitamin supplements needed because fish lose nutritional value when frozen.

117. Strong contraceptive products such as Regu-Mate are also forced upon SeaWorld's captive orcas. These drugs are themselves so dangerous that female trainers are not even allowed to administer them.

118. Perhaps most telling, SeaWorld's captive orcas are also subject to drugging by SeaWorld personnel with antipsychotic and psychoactive drugs, including benzodiazepines such as Diazepam (generic Valium) which are given, among other reasons, to calm the captive orcas which react against their conditions of confinement. These drugs are dangerous for the orcas and would never be consumed in nature but in confinement they are additional tools SeaWorld uses to dominate its captive orcas and keep from public view the reactions orcas have to confinement.

5. Established dangers that SeaWorld publicly denies

a. Risks faced by trainers

119. There are no historical records of orcas killing or seriously injuring human beings in the wild. The name "killer whale" arose not because orcas were known to kill people but because they were known to kill other whales.

120. In captivity, the close confines of a tank make escape difficult to impossible during aggressive interactions, and hyper-aggressive orca behavior is now well-established. Despite a voluminous record of captive whale aggression at SeaWorld that SeaWorld has worked mightily to keep from public view, SeaWorld continues to falsely maintain in public that its captive whales never act with aggressive intent (though it acknowledges the actual truth in private). SeaWorld maintains that any unwanted whale behavior is the fault of the individual trainer.

121. On February 24, 2010, experienced SeaWorld trainer Dawn Brancheau was killed by Tilikum (the orca taken as a young calf from his family and home in the wild). In the wake of her death and immediate OSHA investigation, SeaWorld spread false information through proxies implying the deceased was to blame for her own death this to protect its profit.

122. Emerging from a private meeting with SeaWorld's President and other corporate leadership immediately following Brancheau's death, the Orange County Sheriff's Office reported (based on false information provided to it by SeaWorld) that she had slipped and fallen into a pool. Those executives stood behind the officer as he informed the media of this formally blessing the misinformation campaign.

123. Only after park witnesses began to confirm the true circumstances of her abduction and death was SeaWorld forced to rethink its misinformation campaign; so it then falsely stated that the trainer's pony tail in the water caused the "accident."

124. Just a few months prior, orca trainer Alexis Martinez was killed by the orca Keto during a training session at the Loro Parque marine park in Tenerife, Canary Islands, Spain. Each of the orcas at the facility were and are owned by SeaWorld and were trained and bred by SeaWorld, which also trained and established the protocols for Loro Parque and its employees. A SeaWorld representative rushed to the scene after the young trainer's death.

125. SeaWorld similarly responded to the death of Alexis Martinez with a "protect-the-business-and-control-the-message-at-all-costs" mentality. Again, SeaWorld management delayed reporting on the actual circumstances of his death for as long as possible. Indeed, there was no English news coverage of his death at all and only one small Spanish-language news item published.

126. Even after that, SeaWorld first offered the expected explanation that trainer error played a role and, contrary to the Spanish autopsy performed, that panic and drowning explained what happened there. The autopsy pointed to “compression and crushing of the thoracic abdomen with injuries to the vital organs.” In short, Keto slammed Martinez into the pool wall and crushed him; it was not a simple drowning.

127. Dozens of documented examples of aggression toward trainers were unearthed during the OSHA investigation following Dawn Brancheau’s death, and were then made part of the public record over SeaWorld’s strong objection. In truth, several SeaWorld trainers have been variously hit and knocked unconscious, suffered broken limbs and ribs, and been grabbed and pulled into the water at great peril. Many have survived at all only by mere fortune and, but for their excellent physical conditioning, would have perished.

128. This evidence, commented on by the administrative court handling the OSHA investigation in its July 2012 ruling, painted a picture of the SeaWorld-orchestrated campaign to challenge the veracity of any statement supporting whale aggression, to frequently refuse to document incidents that should be reported, and to mislead the public about the nature and extent of captive whale attacks.

129. As the administrative court’s opinion reads: “SeaWorld insists it did not recognize the hazard posed by working in close contact with killer whales. The court finds this implausible and no reasonable person could conclude that.”

130. As the OSHA testimony and evidence summarized in the court’s findings makes plain, the fact that SeaWorld trainers and executives monitor orca behavior so carefully for aggression, documenting aggressive episodes several times over the past decades all while

falsely stating publicly (and even during the OSHA proceedings) that orcas do not ever act aggressively, shows that the company has long known its conditions of confinement cause unnatural aggression.

131. SeaWorld has done its best to keep these incidents from being reported. As the court noted in its ruling: “SeaWorld failed to document several known events of undesirable behavior by killer whales when working with trainers.”

132. Among other things, the court noted the overwhelming evidence that SeaWorld directed all incident reports to automatically indicate that trainer error played a role in any “incident” so that no documented case of “unprovoked” orca aggression would be established.

133. Judge Judith Rogers of the Court of Appeals for the D.C. Circuit, writing in affirmation of Judge Welsch’s OSHA opinion and order, found that SeaWorld “acted irresponsibly” and “violated its duties as an employer.”

134. This known fact of captive orca aggression, a fact SeaWorld utterly refuses to acknowledge to this day, is kept from public view not for fear that the whales would fall into public disfavor; rather, this deception is maintained by SeaWorld for fear that the public would come to conclude (as scientists have) that these aggressions are a product of SeaWorld’s treatment of them.

b. Aberrant orca behavior is caused by confinement.

135. The only recorded fatal attack by one orca on another has occurred in captivity. Incompatibility among SeaWorld’s captive orcas is frequent, with certain orcas using unnatural physical aggression toward others, resulting in lacerations and worse. In the wild, aggression has

been only rarely observed; where it was, serious injuries did not result. If tension erupts in the wild, the ocean provides ample room for orcas to maneuver.

136. The obvious physical difference between the two “habitats” is that a subordinate animal cannot escape and has no choice regarding his or her companions in captivity. In the wild, a subordinate animal can flee in three dimensions from an aggressor and can actively avoid animals with whom he or she is incompatible.

137. The obvious social difference is that captive orca groups are wholly artificial, made up of unrelated animals who often do not get along. This leads to serious injury for many orcas at SeaWorld, which SeaWorld also keeps from the public. Raking, whereby an orca uses teeth to scratch or cut deeply into another’s skin, occurs frequently at SeaWorld and with unnaturally high energy levels. Raking does occur in the wild, but with much lower energy levels.

138. The aberrant behavior seen in captive orcas reflects the abnormal social and psychological development of animals raised in or born into artificial social groups and “habitats.” This conclusion is further supported by the history of aggressive interactions between orcas and people in captivity.

139. In addition to aggression, a host of other captive orca behaviors never seen in the wild are manifest behind-the-scenes at SeaWorld. Orcas will rub their faces against pool walls incessantly or even smash their heads against the pool walls. What we would describe as neurotic or compulsive behaviors are also routinely witnessed by trainers and others at SeaWorld.

D. The Documentary *Blackfish* Begins to Pull Back the Curtain on SeaWorld

140. On January 19, 2013, Gabriela Cowperthwaite’s documentary, *Blackfish*, premiered at the Sundance Film Festival to glowing reviews and sold-out screenings. On January 22, 2013,

CNN Films and Magnolia Pictures acquired the rights to *Blackfish*. CNN's October 24, 2013 broadcast of *Blackfish* was the most widely watched program of the year for the network.

141. *Blackfish* follows the 32-year tumultuous history of Tilikum, an orca living at SeaWorld since 1992, who has been involved in the death of three humans. *Blackfish* is comprised of interviews with former SeaWorld trainers, SeaWorld spectators, and other experts including OSHA's expert witness, an orca field researcher.

142. The film carefully describes much of the misleading conduct SeaWorld engaged in during and surrounding the OSHA investigation. That investigation resulted in a citation and the imposition of (nominal) fines against SeaWorld decisions that were affirmed on appeal by the D.C. Circuit and are now dispositive. Most disappointing for SeaWorld, the investigation resulted in the still-current complete ban on trainer performance in the water with orcas.

143. *Blackfish* reveals to those who have viewed it, among other things, which conditions of confinement at SeaWorld are unnatural and unhealthy for its orcas, and that SeaWorld has mistreated its orca population causing physical harm and mental distress to its orca population. It also reveals how orca confinement compromises orca trainer safety and orca safety, and how SeaWorld continued to feature an orca that had killed several people as a result of frustration stemming from his capture and captivity.

E. The "Materiality" of SeaWorld's Treatment of Orcas is Confirmed by Polls and the Public Drop in Attendance Following *Blackfish* and the Growing Controversy

144. In order to gauge public sentiment on *Blackfish*, various media groups and publications conducted surveys to poll the public regarding the controversy. CNN, for example,

ran a poll on October 25, 2013 asking viewers “[w]ould you take your kids to SeaWorld” in light of the information revealed by *Blackfish*. Of approximately 3,000 responses, 86% stated “No.”

145. Tellingly, SeaWorld was caught red-handed attempting to manipulate the results of a similar poll conducted by the Orlando Sentinel in January 2014. Shortly after the poll began, it was revealed by the news group that more than 50% of the responses were from an IP address owned by SeaWorld. Ultimately, once this tactic was uncovered and the poll was cleansed, two-thirds of voters responding to that poll—which asked whether “CNN’s ‘*Blackfish*’ [sic] documentary changes your perception of SeaWorld”—answered in the affirmative.

146. Similarly, *Blackfish* prompted schools to either cancel long-standing annual field trips to SeaWorld’s parks or publicly swear off attending the parks until SeaWorld changed its policies. For example, just weeks after *Blackfish* aired on CNN, in November 2013, San Diego’s Point Loma High School produced a striking video response to the film, vowing never to return to the parks until the whales and animals were retired from show business. The video entitled “Dear SeaWorld,” received nationwide attention, was aired on CNN and reported on by numerous publications.

147. As reported by CNN in December 2013, Point Dume Marine Science Elementary School in Malibu, California—prompted by the objections of a 10-year old female student—canceled its long-standing trip to SeaWorld over concerns about the treatment of whales revealed for the first time in *Blackfish*. These cancellations and others indicated that children and teens (the individuals who drive parents and families to travel to the parks) were no longer supporting SeaWorld.

F. Popular Musicians Cancel SeaWorld Appearances and Association

148. For years SeaWorld hosted “Bands, Brew & BBQ,” a live concert series at SeaWorld Orlando and Busch Gardens in Tampa during February and March, featuring top classic rock and country bands and artists, BBQ from Central Florida’s top local smokehouses, and other festivities. The concerts were included with regular admission to the parks.

149. “Bands, Brew and BBQ” is part of the Company’s stated business strategy to “increase non-peak demand through seasonal and special events and concerts” i.e., to drive off-season attendance in prime markets. SeaWorld Orlando and Busch Gardens in Tampa depend on the annual “Bands, Brew and BBQ” concert series to increase park attendance and overall revenue during the typically slow midwinter months.

150. In late 2013, as the *Blackfish* controversy continued ablaze, nearly every act slated to perform at “Bands Brew and BBQ” received a petition through Change.Org (along with significant pressures from other social media platforms) imploring the band or artist to cancel its performance. Change.org is the world’s largest online petition platform and seeks to empower individuals to create change by offering them the ability to start a campaign and mobilize supporters.

151. These particular petitions were successful, prompting nearly every artist scheduled to perform at the series in February and March 2014 to withdraw. Beginning in November 2013 and through mid-January 2014, the following artists, among others, canceled their performances: (i) The Barenaked Ladies; (ii) Willie Nelson; (iii) Cheap Trick; (iv) Heart; (v) Martina McBride; (vi) 38 Special; (vii) Trisha Yearwood; (viii) REO Speedwagon; (ix) Pat Benatar; and (x) Beach Boys.

152. For example, the pop band The Barenaked Ladies (the first to withdraw) received a petition signed by 11,782 supporters, prompting the group to alert the public on their Facebook page: “This is a complicated issue, and we don’t claim to understand all of it, but we don’t feel comfortable proceeding with the gig at this time.” Activists successfully directed similar online petitions at other performers including Willie Nelson, Trisha Yearwood, and Cheap Trick.

153. In nearly every instance, the artist specifically cited the controversy surrounding *Blackfish* as the basis for the cancellation. In explaining his decision to cancel, Willie Nelson condemned SeaWorld’s practices, stating, “I don’t agree with the way they treat their animals, [...] it wasn’t that hard a deal for me.” Likewise, sisters Nancy and Ann Wilson of Heart acknowledged their decision to cancel at SeaWorld was “due to the controversial documentary film.”

154. These cancellations attracted international attention, as news sources reported on each successive cancellation over the seven-week-period beginning November 27, 2013 with The Barenaked Ladies’ announcement and continuing through January 15, 2014 with the Beach Boys’ announcement that they would not perform at SeaWorld.

155. A December 11, 2013 *Orlando Sentinel* article entitled, “Will SeaWorld face long-term ‘*Blackfish*’ backlash?” noted that, at a minimum, withdrawals from the concert series “threatened to sabotage SeaWorld’s ‘Bands, Brew and BBQ’ program,” which the park depended on “to drive traffic during the typically slow midwinter months.” Potentially much more damaging, the article noted that the cancellations might help “sustain *Blackfish* in the public consciousness, raising the risk that the film and its criticisms could do lasting damage to SeaWorld’s brand.”

156. Dethroned SeaWorld CEO Jim Atchison admitted in a December 20, 2013 interview with the *Orlando Sentinel* that the cancellations “ended up getting more coverage and became a story of [their] own.” Atchison further explained that the Company decided to publish a December 2013 full-page open letter on social media and within major newspapers in order to refute what he described as “misconceptions that were floating around related to that coverage.”

157. SeaWorld’s ad, entitled “Open Letter from SeaWorld’s Animal Advocates” was widely viewed as evidence that the Company was “concerned about potential long-term brand damage from *Blackfish*,” as reported by the *Sentinel*, and was, according to CNN and the *Orlando Business Journal*, concerned about both *Blackfish*’s “impact on a very key part of their audience” and “the attention generated by *Blackfish* and the accompanying musical guest cancellations.”

G. In the Wake of *Blackfish*, Long-Standing SeaWorld Sponsors and Strategic Partners Jump Ship

158. Amidst the growing negative publicity directed at SeaWorld throughout the Class Period, pressure from activists to cut ties with SeaWorld, and extensive media coverage of this pressure, many SeaWorld corporate partners terminated their relationships with SeaWorld.

159. For example, in October 2013, a Change.org petition urging Southwest Airlines to end its relationship with SeaWorld was launched. By January 2014, the petition had garnered 27,000 signatures. In a widely-reported story, dozens of protesters delivered the petition to Southwest’s headquarters in Dallas on January 9, 2014, prompting the airline to publicly respond. According to reports, Southwest contacted SeaWorld and inquired about *Blackfish* in response to a slew of negative Facebook and Twitter messages Southwest was receiving due to

its association with SeaWorld. Southwest did not cut ties with SeaWorld immediately (though it eventually did in the summer of 2014), but acknowledged the *Blackfish* controversy, stating: “We are engaged with SeaWorld related to the recent concerns being raised. We are in a listening and education mode.”

160. In November 2013, petitions implored Macy’s to ban SeaWorld from participating in the annual Macy’s Thanksgiving Parade later that month. According to the *Huffington Post*, Macy’s also received more than 80,000 emails to this end, while an online petition seeking a similar ban likewise received more than 80,000 signatures.

161. The impact of these petitions, collectively signed by hundreds of thousands of individuals, was amplified by extensive media coverage of them. For example, a January 15, 2014 article on CNBC entitled, “Southwest Air, others, pressured to break ties with SeaWorld” discussed the Change.org petition directed at Southwest and noted that “on Change.org alone, there are more than two dozen ‘*Blackfish*’-inspired petitions.”

162. Similarly, a January 13, 2014 National Geographic article reporting on the *Blackfish* effect noted that there were more than twenty-one (21) *Blackfish* inspired Change.org petitions, including many aimed at ending SeaWorld’s relationships with corporate sponsors and partners, among them Southwest Airlines, Toys R Us, and Groupon.

163. A citizen petition was also effective in persuading Taco Bell, which had been offering discounts on tickets to SeaWorld, to cut ties with SeaWorld in May 2014. Likewise, on May 16, 2014, STA Travel, a company which provides flights, accommodation, tours and expeditions for 2.5 million students and young people, announced that it would stop booking trips to SeaWorld in Orlando and San Diego.

164. By this point, association with SeaWorld was perceived as being so toxic that on June 22, 2014, Outdoor Play, a company specializing in outdoor apparel and equipment, declined to fill an order placed by SeaWorld. The CEO of Outdoor Play wrote in a letter to SeaWorld, “Although I would love to take your money, our company does not support the ethics of your business model.”

165. Likewise, on July 24, 2014, Savings.com, a company that specializes in digital coupons, stopped offering deals on SeaWorld tickets after Savings.com’s chief executive officer was contacted by PETA and watched *Blackfish*.

166. This trend of companies terminating their relationships with SeaWorld was amplified when Southwest Airlines, after enduring the intense and well-publicized efforts of activists for almost ten (10) months, announced on July 31, 2014 that it would not be renewing its 26-year partnership with SeaWorld. While a press release stated that the break was mutual and based on “shifting priorities,” every major news source reporting on the announcement noted that Southwest had been subject to massive pressure in the form of protests and a citizen petition signed by more than 32,000 people, urging it to terminate the partnership.

167. Following the Southwest Airlines announcement, other important corporate partners followed suit, and ended their relationships with SeaWorld. In October 2014, the *Orlando Sentinel* reported that Virgin America, JetBlue, and Alaska Airlines also had terminated their promotional partnerships with SeaWorld.

168. In November 2014, the *Orlando Sentinel* reported that Panama Jack, an Orlando-based sunscreen company, would end its relationship with SeaWorld effective February 2015.

Finally, on November 14, 2014, Hyundai Motors America Communications Executive Director Chris Hosford confirmed that Hyundai had “ended its relationship with SeaWorld.”

169. Remaining sponsors American Express and British Airways are currently subject to similar pressures through Change.org petitions, signed by 75,000 and 265,000 individuals, respectively.

170. The fallout for SeaWorld from *Blackfish*-generated controversy is ongoing. On January 15, 2015, the *Orlando Sentinel* reported that the Miami Dolphins, which had previously offered ticketholders free admission to SeaWorld, had ended its marketing partnership with SeaWorld.

H. SeaWorld Continues to Omit the Truth

171. Despite the obvious truths revealed in *Blackfish*, and recent books challenging SeaWorld’s account of its treatment of captive orcas and their life conditions, SeaWorld continues its efforts to convince the public that such challenges to its centerpiece entertainment product are not to be believed.

172. Stung by the public reaction to *Blackfish*, and anticipating further criticism, SeaWorld has continued attempting to go on the offensive, recently launching a campaign to continue its saturation of the public with the notion that its treatment of killer whales is humane, scientifically sound, and caring. It does so, not only through its own publications, but also through a front group called Awesome Oceans.

173. Awesome Oceans was initially funded, in whole or in part, by SeaWorld. SeaWorld even announced the Awesome Ocean Project in an email, posted here:

<https://s3.amazonaws.com/assets.rbl.ms/244843/980x.jpg>

174. Despite funding from SeaWorld, the site markets itself as an “independent ocean news website.” The Editor-in-Chief, Eric M. Davis, is neither a conservationist nor a journalist. His LinkedIn profile lists him as an “experienced marketer with extensive SEO,” who has worked for travel sites like TravelClick and Hilton Worldwide. His Facebook page lists him as the owner of Purple Moon Media, a “revenue-focused destination marketing” firm whose clients include SeaWorld. The site has several pieces that purport to “debunk” the myths of *Blackfish*.

175. In 2014, SeaWorld became aware that a former trainer, John Hargrove, would have a book called “*Beneath the Surface: Killer Whales, SeaWorld, and the Truth Beyond Blackfish*” published in March of 2015. In response, SeaWorld and Eric Davis began publishing, on the web, statements designed to impeach Mr. Hargrove’s book, calling the book a “whale of a tale.”

176. Mr. Hargrove worked for several years at SeaWorld and his book is based on his personal observations. Yet Davis, with no hands-on experience or scientific training, not only purported to publish “the truth,” but went so far as to threaten Mr. Hargrove last year about publishing his book:

“From: Eric Davis ericfl@gmail.com

To: John Hargrove

Subject: People are digging

Hey John,

Just your friendly AwesomeOcean guy Eric here!

Just wanted to drop you a line and let you know that some journalist [sic] are digging

DEEP into your past. They have some crazy stuff that is ready to drop when your book

drops. Just emailing you as part of my agreement to give you a heads up. I hope you are well. Stay in-touch.

Eric”

177. SeaWorld itself has directly published continuing content designed to attack all critics, including marine scientists, those associated with *Blackfish*, and now Mr. Hargrove.

178. This is part of SeaWorld’s continuing effort to mislead the public and challenge disclosure of the true facts regarding the treatment and condition of its captive orcas.

179. The misinformation campaign SeaWorld began years ago on its website and in its other marketing materials has not changed; it continues to mislead, misinform, distort, and omit material facts about the condition of its captive orcas.

180. A SeaWorld employee, Laura Mathieson, penned an article titled “SeaWorld’s Animals Are Happy.” That chipper heading, belied by the demonstrable unhappiness experienced by these captive animals, is followed by the rhetorical trifecta so common to SeaWorld: (1) the claim that SeaWorld performs “valuable research” on orcas; (2) the pejorative refrain that “known animal rights activists” are behind any challenge to SeaWorld’s business prerogatives and behind any “claim that our killer whales suffer, are stressed or are exploited,” claims that are themselves “blatantly false”; and, finally, (3) the empty and misleading mantra that SeaWorld’s orcas “have and continue to thrive in our care.”

181. Most recently this growing challenge to SeaWorld’s prerogatives played out before the Washington State Legislature during testimony on February 5, 2015, in support and in opposition to a bill that would ban holding cetaceans in captivity. Though Washington does not

have any captive cetaceans on display and the bill is largely symbolic. SeaWorld fears a domino effect at the state level.

182. In support of the ban, former SeaWorld orca trainer Carol Ray testified to the following hidden truths about SeaWorld and in support of the legislation:

*"I'm here today to share some of the personal experiences
I had while working as a marine mammal trainer. ...*

*For example, day after day, watching an adult male orca, Kanduke, who
regularly rammed himself as hard as possible into the cement walls, metal gates
and glass panels in the show pool. His chin, teeth, and rostrum were so bloody
and beat up we were not allowed to bring him out to do shows because
management said, "He just looks too bad for the public to see."*

*As if it weren't bad enough to watch him injure himself, I recall the heartache of
watching him be physically attacked by the other orcas on a regular basis.
Kanduke died of a condition that would never occur in the wild: a mosquito
transmitted encephalitis.*

*I also watched in horror as Kalina, the original baby Shamu, was forcibly
removed from the only family she knew to be moved to another park when she was
just four years old. I saw the unmistakable mourning and desperation of her
mother Katina, who was left behind.*

To this day, Katina has had five of her seven offspring taken from her.

Animals are inseminated and impregnated often in unnatural intervals and in ages that are way too young. Their teeth are chipped, broken, and unhealthy. I've had handfuls of orca skin come off in my hands from sunburn.

I could go on and on, unfortunately, and these really are only a few glimpses into the real world whales [] live in when they live in captivity. It's heartbreaking..."

183. Rather than engage or rebut any of these factual assertions, an industry funded spokesperson from the Alliance of Marine Mammal Parks and Aquariums testified to challenge the legislation.

184. The spokesperson, the Alliance's executive director Ms. Kathleen Dezio, provided the same general unsubstantiated rhetoric deployed previously by SeaWorld to maintain the public illusion of cetaceans "in the care of man."

185. This most recent public debate on the propriety of the status quo as it concerns captive orcas at SeaWorld demonstrates plainly that SeaWorld's chief concern is to maintain the public illusion that its treatment of orcas is above reproach and that its whales live happy lives, beneficial to both animal and man. This misleading message and its related material omissions are now known to be demonstrably false.

I. SeaWorld Has a Duty to Disclose How it Actually Treats the Orcas and their Actual Condition

186. Plaintiff and the Class members identified below purchased SeaWorld's products while unaware of the falsity of SeaWorld's misrepresentations and its material omissions concerning the overall well-being and treatment of its captive orcas, including their life expectancy and physical and emotional well-being while at SeaWorld.

187. Based on the material omissions described in this Complaint, Plaintiff and members of each Class were induced to and did purchase tickets to SeaWorld, membership(s) to SeaWorld, or SeaWorld orca “experiences.”

188. Plaintiff and members of each Class altered their position to their detriment and suffered injuries that include payment of the purchase price for admission to SeaWorld, or membership at SeaWorld, or SeaWorld orca “experiences.”

189. At the time Plaintiff and Class members purchased SeaWorld tickets, memberships, or other orca “experience” products, they relied upon a false understanding of the conditions and treatment of SeaWorld’s orcas, given SeaWorld’s material omissions of fact regarding the treatment, longevity and well-being of the orcas. Plaintiff and other similarly situated consumers were misled and likely to be misled, and they reasonably and justifiably relied, to their detriment, on SeaWorld’s omissions of material facts.

190. If SeaWorld had disclosed the truth about the treatment, conditions, longevity, and overall well-being of its orcas, Plaintiff and Class members would not have purchased SeaWorld’s products.

191. As a result of the alleged misconduct, SeaWorld has generated substantial revenues from the sale of its amusement product showcasing its captive orcas.

192. Plaintiff, individually and on behalf of all others similarly situated, seeks damages, restitution and injunctive relief to put an end to SeaWorld’s deceptive, unfair, and unlawful business practices and its unjust enrichment.

V. CLASS ALLEGATIONS

Class Definition

193. Plaintiff brings this action individually and on behalf of the following Class: All persons or entities who purchased an admission ticket, a membership, or a Sea World “experience” that includes an “orca experience” from the SeaWorld Orlando amusement park in Orlando, Florida at any time in the four years preceding the bringing of this cause of action.

194. Excluded from the Class are the following: Defendants, any parent, subsidiary or affiliate organizations, and the officers, directors, agents, servants, or employees of the same and the members of the immediate family of any such persons; all persons and entities who timely opt out of this proceeding; all persons who have given valid releases releasing the Defendants from the claims asserted in this complaint; all persons who, prior to the date of the filing of this Complaint, have filed a non-class action claim against the Defendants for claims asserted in this complaint; all persons who have signed a retainer agreement with an attorney other than the undersigned counsel to maintain an individual and/or class action based in whole or in part on the claims contained in this complaint; the undersigned counsel, Paul S. Rothstein, and any employees of Paul S. Rothstein as well as their immediate families; and all Judge(s), judicial staff, and other employees of the Judge(s) assigned to this case, as well as their immediate families.

195. Plaintiff reserves the right to modify or amend the definition of the proposed class before the Court determines whether certification is appropriate.

Numerosity of the Class

196. The purported Class Members are so numerous as to make joinder impractical. Attendance at SeaWorld Orlando during the preceding several years is approximately as follows:

- a. 2010: 5.10 million visitors.
- b. 2011: 5.20 million visitors.
- c. 2012: 5.35 million visitors.

Ascertainability, Typicality, Commonality and Predominance of Common Questions of Law and Fact.

197. The Class is ascertainable, and notice can be provided through techniques similar to those customarily used in other consumer fraud cases and complex class actions, and through SeaWorld's business records.

198. There are questions of law and fact common to the Class. Defendants' unlawful false statements and omissions similarly impact all Class members, all of whom purchased one or more of SeaWorld's products for the SeaWorld Orlando amusement park.

199. Plaintiff asserts claims that are typical of the Class members. Plaintiff and all Class members have been subjected to the same wrongful conduct because they all have purchased SeaWorld's products. As a result, and like other members of the Class, Plaintiff purchased and paid a sum of money for SeaWorld's products which she otherwise would not have paid had the true conditions and treatment of SeaWorld's orcas been disclosed by SeaWorld.

Adequacy of Representation.

200. Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff is represented by counsel competent and experienced in both consumer protection and class action litigation. There is no hostility between Plaintiff and the unnamed, purported Class Members.

201. Class certification is appropriate because Defendants have acted on grounds that apply generally to the Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole.

202. Class certification is also appropriate because common questions of law and fact substantially predominate over any questions that may affect only individual members of the Class, including, *inter alia*, the following:

- (a) Whether Defendants' nondisclosures and/or false statements would be material to a reasonable consumer;
- (b) Whether Defendants' nondisclosures and/or false statements constitute unlawful business practices in violation of the Florida Deceptive and Unfair Trade Practices Act (FDUPTA) FLA. STAT. § 501.201 *et seq.*
- (c) Whether Defendants' nondisclosures and/or false statements constitute unfair business practices in violation of Florida law;
- (d) Whether Defendants' nondisclosures and/or false statements were likely to deceive a reasonable consumer in violation of Florida law;
- (e) Whether Defendants intentionally or knowingly or willfully failed to disclose significant concerns associated with SeaWorld's products;
- (f) Whether the challenged practices harmed Plaintiff and members of the Class;
- (g) Whether Defendants were unjustly enriched by making deceptive representations regarding the health and wellbeing of their captive orcas; and
- (h) Whether Plaintiff and members of the Class are entitled to damages, restitution, equitable relief, and/or injunctive relief.

Requirements of Fed. R. Civ. P. 23(b)(1)

203. Prosecuting separate actions by or against individual purported Class Members would both create a risk of inconsistent or varying adjudications with respect to individual purported Class Members that would establish incompatible standards of conduct for the party opposing the class and as a practical matter, adjudications with respect to individual class members would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests. In contrast, the conduct of this action as a class action presents far fewer management difficulties, conserves judicial resources and the parties' resources, and protects the rights of each Class member.

Requirements of Fed. R. Civ. P. 23(b)(2)

204. Defendants have acted, or refused to act, on grounds that apply generally to the class. Specifically, Defendants have disseminated false, deceptive and inaccurate information regarding the health, wellbeing and lifespan of their captive orcas as compared to wild orcas, have failed to correct previously disseminated false, deceptive and inaccurate information and continue to promulgate inaccurate, false and deceptive information.

Requirements of Fed. R. Civ. P. 23(b)(3)

205. The questions of law and fact common to Plaintiff's and each Class Member's claims predominate over any question of law or fact affecting only individual members of the class as set forth above. All claims by Plaintiffs and the unnamed, purported Class Members are based on the Defendants' same deceptive marketing and advertisement scheme used to sell tickets to their orca shows.

206. Common issues predominate when, as here, liability can be determined on a class-wide basis, even when there will be some individualized damage determinations based on different ticket prices.

207. As a result, when determining whether common questions predominate, courts focus on the liability issue, and if the liability issue is common to the class, as is the case at bar, common questions will be held to predominate over individual questions.

Superiority

208. A class action is superior to other available methods for the fair and efficient adjudication of these controversies. Because of the size of the individual purported Class Members' claims, few, if any, purported Class Members could afford to individually seek legal redress for the wrongs complained of herein. Defendants have illicitly and unfairly concealed their wrongful conduct and many purported Class Members may still be unaware of the deceptive acts and practices Defendants have, and are, engaged in. Absent a class action, the purported Class Members, and other prospective ticket purchasers, will continue to suffer damage and Defendants' deceptive and unfair trade practices will proceed unabated and without remedy while Defendants continue to retain the proceeds of their ill-gotten gains.

VI. CAUSES OF ACTION

COUNT I

Deceptive and unfair trade practices in violation of FLA. STAT. § 501.201 *et seq.*

209. Plaintiff realleges and incorporates by reference all preceding paragraphs.

210. This claim is brought on behalf of the Class of SeaWorld Orlando Purchasers, who purchased SeaWorld tickets, memberships, and “orca” experiences for the SeaWorld Orlando amusement park.

211. Plaintiff and the Class are “consumers” within the meaning of the Florida Unfair and Deceptive Trade Practices Act (“FUDTPA”) as defined in Fla. Stat. § 501.203(7).

212. At all relevant times, Plaintiff, Joyce Cole Kuhl and all other purported Class Members were “consumers” as defined by FDUTPA.

213. At all relevant times, Defendants were engaged in “trade or commerce” as defined by FDUTPA.

214. FUDTPA prohibits “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce ...” Fla. Stat. § 501.204(1). SeaWorld’s business practices violate these prohibitions because its material omissions associated with its products, in regard to captive orcas, were unfair, unconscionable, and deceptive, and were likely to and did in fact deceive reasonable consumers about facts material to those consumers.

215. Defendants expressly and impliedly represented to Plaintiff and all other purported Class Members that the orcas at SeaWorld Orlando are: healthy, happy, well cared for and better off than they are in the wild. Defendants made material omissions which caused Plaintiff and all other purported Class Members to purchase tickets to SeaWorld Orlando.

216. Defendants omitted material characteristics inherent to orca captivity at SeaWorld Orlando:

- (a) SeaWorld’s origin based on violence, separation from family and capture;
- (b) SeaWorld’s separation of families and violation of the orca’s natural matriarchal structure and other social norms;

- (c) The negative aspects of physical living conditions for the orcas at SeaWorld including chemical pools, shallow pools, sunburns, injuries, damaged teeth and collapsed dorsal fins; and
- (d) The techniques used to unnaturally maintain the orcas in captivity, including the use of food deprivation, drug treatment and forced incestuous breeding conditions.

217. Defendants violated provisions of FDUTPA by:

- (a) Representing that SeaWorld Orlando is of a particular standard, quality and/or grade, when it is of another;
- (b) Engaging in deceptive conduct as aforesaid which has created a likelihood of confusion or of misunderstanding;
- (c) Willfully failed to disclose and concealed the true facts surrounding the condition and treatment of its captive orcas; and
- (d) SeaWorld's intentional and knowing omission of material facts regarding its captive orcas was done with intent to deceive and mislead Plaintiff and the Class.

218. SeaWorld knew or should have known that these acts were in violation of the FDUTPA.

219. SeaWorld had and has a duty to refrain from these practices and to disclose material facts about the condition and treatment of its captive orcas. The duty to disclose arises from:

- (a) its superior and exclusive knowledge of these material facts, which were not known or reasonably accessible to Plaintiff and the Class; (b) its active concealment of these material facts; and (c) its marketing and sale of SeaWorld products, which

is likely to mislead consumers, and has misled consumers, absent full disclosure of the material facts at issue.

220. As a direct and proximate result of SeaWorld's conduct, Plaintiff and the Class have suffered substantial injury-in-fact and accrued actual damages in the form of money Plaintiff and the Class would not have spent for SeaWorld products had they known the true facts about the condition and treatment of SeaWorld's captive orcas.

221. Pursuant to FLA. STAT. 501.211 (2) of FDUTPA, Plaintiff and all other putative Class Members have a private cause of action against Defendants, and are entitled to recover their actual damages, plus attorney's fees and costs.

222. By reason of Defendants' conduct as aforesaid, Plaintiff and the purported Class Members are entitled to damages, equitable relief, and attorney's fees and costs as provided in FDUTPA.

223. As a direct and foreseeable result of SeaWorld's ubiquitously omissive marketing, advertising and education campaigns, the public is not equipped with accurate information upon purchasing a ticket to SeaWorld.

224. Plaintiff requests that this Court enter such orders or judgments as may be necessary to enjoin Defendant from continuing its unlawful, unfair, and deceptive business practices, to restore to Plaintiff and members of the Class any money that Defendant acquired by its unfair and deceptive conduct and to provide such other relief as deemed fair and just.

COUNT II

Declaratory and injunctive relief.

225. Plaintiff realleges and incorporates by reference all preceding paragraphs.

226. Pursuant to *Davis v. Powertel, Inc.*, declaratory and injunctive relief are available to Plaintiff under FDUTPA. 776 So. 2d 971 (Fla. 1st DCA 2000).

227. As detailed above, Defendants are, and have been for at least the past decade, engaged in a campaign of misinformation. Promulgating factually inaccurate information regarding the suitability of their orca habitats, the expected lifespan of orcas, as well as the reasons for the droopy dorsal fins seen in captive orcas.

COUNT III

Unjust enrichment as to Defendants.

228. Plaintiff realleges and incorporates by reference all preceding paragraphs.

229. In alternative to the compensatory damages requested above, if for any reason the claims under this action lack an adequate remedy at law, Plaintiff, on behalf of herself and purported Class Members, requests this Court to grant equitable relief from Defendants' acts and omissions under the theory of unjust enrichment.

230. Defendant SeaWorld has been, and continues to be, unjustly enriched, to the detriment of and at the expense of Plaintiff and the Class, as a result of its unlawful, unfair, fraudulent and misleading statements and material omissions regarding the treatment and condition of its orcas.

231. As a direct and foreseeable result of SeaWorld's ubiquitously omissive marketing, advertising and education campaigns, the public is not equipped with accurate information upon purchasing a ticket to SeaWorld. Instead public consciousness has been shaped and saturated with the story line that the orcas at SeaWorld are well cared for and thriving and enjoy and bond with trainers. SeaWorld's presentation of its orcas has saturated America's culture.

232. Defendants consistently over the course of at least a decade disseminated false, deceptive and misleading information regarding the health and wellbeing of their captive orcas. This was part of Defendants overall advertising strategy to attract paying customers to their parks. The fact that Defendants have misrepresented the health and wellbeing of their orcas as well as the suitability of their habitats makes circumstances such that it would be inequitable for Defendants to retain the benefit of the ticket sales at the expense of Plaintiff and purported Class Members.

233. Payments for admission tickets, memberships, and SeaWorld orca “experiences,” have been wrongly and unjustly collected and taken by SeaWorld and the retention of such payments is inequitable given the materiality of the true facts regarding the treatment and condition of its orcas.

234. Plaintiff and purported Class Members conferred a benefit on Defendants when they purchased and paid for their tickets to SeaWorld Orlando, depending on the particular ticket purchased, this resulted in Defendants being enriched somewhere between \$77 and \$235, plus tax, per purported Class Member, Defendants have knowledge of this as evidenced by the receipts they issued to purported Class Members and their reported income.

235. Defendant voluntarily accepted and retained these payments.

236. Defendants accepted and retained the benefits conferred by Plaintiff and purported Class Members in the form of ticket sales, without providing a product and/or experience that matches with what Defendants advertised and promised through their various marketing campaigns.

237. SeaWorld should not be allowed to retain the proceeds from the benefits conferred upon it by Plaintiff and the Class, who seek restitution and disgorgement of SeaWorld’s unjustly

acquired profits and other monetary benefits resulting from their unlawful conduct, and who seek restitution or rescission for the benefit of the Plaintiff and Class, in an equitable and efficient manner determined by the Court.

238. Plaintiff and the Class are entitled to the imposition of a constructive trust upon SeaWorld such that its enrichment, benefit, and ill-gotten gains may be allocated and distributed equitably by the Court to and for the benefit of Plaintiff and the Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of all others similarly situated demand relief against the Defendants as follows:

- A. An order certifying the Class, appointing Plaintiff as Class Representative and appointing the undersigned counsel as Class Counsel to represent the Class;
- B. Actual damages including the purchase price of tickets and accompanying fees and taxes to SeaWorld Orlando, and injunctive relief requiring return of all payments made by class members pursuant to Fla. Stat. § 501.211(2);
- C. Injunctive relief as appropriate under Florida law on behalf class members requiring SeaWorld to cease its false, misleading, and deceptive business practices;
- D. Prejudgment interest at the maximum rate;
- E. Costs of the proceedings herein;
- F. An award of attorneys' fees to Class Counsel pursuant to FLA. STAT. § 501.2105(1); and
- G. Such other and further relief under all applicable state and federal law and any other relief the Court deems just and appropriate.

JURY DEMAND

Plaintiff individually and on behalf of the purported Class Members demand a trial by jury as to all issues so triable.

DATED: April 8, 2015

/s/ Paul S. Rothstein

Paul S. Rothstein

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