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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

VALERIE SIMO, JOYCE KUHL, and ELAINE BROWNE, individually and on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

SEAWORLD ENTERTAINMENT, INC.,

Defendant.

No. **'15CV1022 AJB KSC**

CLASS ACTION (FRCP 23)

COMPLAINT

DEMAND FOR JURY TRIAL

TABLE OF CONTENTS

Page

I. OVERVIEW 1

II. PARTIES 4

III. JURISDICTION AND VENUE 5

IV. FACTUAL ALLEGATIONS 5

A. SeaWorld Markets an Enchanting Illusion of Captive Killer Whales 5

B. SeaWorld Represents Itself as the Whales' Greatest Champion 9

C. SeaWorld Claims to Provide Critical Orca Conservation Research 11

D. The Biology of Orcas 14

1. Distinct orca ecotypes exist in all the oceans of the world. 14

2. Orcas are highly communicative, intelligent, and social. 17

3. Orcas are organized in matriarchies and close-knit. 18

4. Orcas in nature can live long healthy lives. 19

E. The Undisclosed Truth About SeaWorld's Captive Orcas 20

1. SeaWorld's family values 20

a. SeaWorld launches its business with captured orcas. 20

b. SeaWorld destroys orca families and removes calves from their mothers for profit. 21

2. SeaWorld orcas' living conditions in captivity 24

a. These orcas suffer in tiny and unnatural chemical tubs. 24

b. Shallow pools expose the orcas to fatal risks. 27

c. SeaWorld hides orca sunburns with black zinc oxide. 29

d. The orcas are purposefully deprived of food. 29

3. SeaWorld's captive whales deteriorate as a result of their treatment 31

a. SeaWorld's captive orcas live shorter lives. 31
b. SeaWorld orcas' collapsed dorsal fins are not normal or healthy. 34
c. Captive orcas' teeth are ground down and damaged. 37
d. SeaWorld's orcas are injured at SeaWorld. 39
4. SeaWorld "science" and forced breeding 40
a. SeaWorld is not a scientific orca research institution. 40
b. SeaWorld impregnates young female orcas with sperm from relatives and different ecotypes. 41
c. Trainers masturbate the orcas for profitable sperm. 42
d. SeaWorld drugs its captive orcas. 43
5. Established dangers that SeaWorld publicly denies 44
a. Risks faced by trainers 44
b. Aberrant orca behavior is caused by confinement. 46
F. The Documentary *Blackfish* Begins to Pull Back the Curtain on SeaWorld 47
G. The "Materiality" of SeaWorld's Treatment of Orcas is Confirmed by Polls and the Public Drop in Attendance Following *Blackfish* and the Growing Controversy 48
H. Popular Musicians Cancel SeaWorld Appearances and Association 49
I. In the Wake of *Blackfish*, Long-Standing SeaWorld Sponsors and Strategic Partners Jump Ship 52
J. SeaWorld Continues to Mislead and Conceal the Truth 54
K. Specific Plaintiff Allegations 59
L. SeaWorld Has a Duty to Disclose How it Actually Treats the Orcas and their Actual Condition 61
V. CLASS ACTION ALLEGATIONS 62
VI. CAUSES OF ACTION 66
FIRST CAUSE OF ACTION VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW (CAL. BUS. & PROF. CODE § 17200, *et seq.*) 66

SECOND CAUSE OF ACTION VIOLATIONS OF THE CONSUMERS LEGAL REMEDIES ACT (CAL. CIV. CODE § 1750, *et seq.*) 68

THIRD CAUSE OF ACTION VIOLATIONS OF THE FALSE ADVERTISING LAW (CAL. BUS. & PROF. CODE § 17500, *et seq.*)..... 70

FOURTH CAUSE OF ACTION DECEIT (CAL. CIV. CODE §§ 1709-1710)..... 72

FIFTH CAUSE OF ACTION VIOLATIONS OF FLORIDA'S UNFAIR AND DECEPTIVE TRADE PRACTICES ACT (FLA. STAT. § 501.201, *et seq.*)..... 74

SIXTH CAUSE OF ACTION VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES – CONSUMER PROTECTION ACT (TEX. BUS. & COM. CODE § 17.41, *et seq.*)..... 75

SEVENTH CAUSE OF ACTION UNJUST ENRICHMENT 78

PRAYER FOR RELIEF 79

JURY DEMAND..... 80

Plaintiffs Valerie Simo, Joyce Kuhl, and Elaine Browne bring this action on behalf of themselves and all others similarly situated against SeaWorld Entertainment, Inc. ("SeaWorld"). Plaintiffs' allegations against Defendant are based upon information and belief and upon investigation of counsel, except for allegations specifically pertaining to each Plaintiff, which are based upon each 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—*Ornicus orca*, the mighty and iconic apex predators of the sea—in special amphitheaters called Shamu Stadium that seat thousands. During its signature "Shamu Show" and in its massive and ubiquitous global marketing campaign, SeaWorld states that it "cares for," "protects," and even "nurtures" its captive orcas.

2. SeaWorld purports to create a "fun, interesting, and stimulating" environment for these animals. SeaWorld tells the public that its orcas enjoy their lives performing in captivity.

3. Last month, SeaWorld Chief Veterinarian, Christopher Dold, told the media in an interview with BBC that at SeaWorld, "we aren't taking anything away from them [orcas] by having them in this habitat—it's just different." As SeaWorld's curator of trainers told the New York Times, referring to the emergent controversy over its treatment of captive orcas: "[w]e sleep and breathe care of animals."

4. 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.

5. 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.

6. 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.

7. 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.

8. 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 matrilines 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 a hundred miles a day.

9. 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.

10. 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.

11. 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.

12. 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.

13. SeaWorld furthers this by deliberate misrepresentations about providing for the "health" and enrichment of its captive orcas, even giving them "fun" lives in captivity.

14. Plaintiffs, 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.

15. 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 false statements and 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.

16. As discussed more fully below, SeaWorld's conduct violates: (i) California's Business & Professions Code § 17200, *et seq*. (the Unfair Competition Laws or "UCL"); (ii) California Civil Code § 1750, *et seq*. (the Consumers Legal Remedies Act or "CLRA"); (iii) California's Business & Professions Code § 17500, *et seq*. (the False Advertising Laws or "FAL"); (iv) California Civil Code §§ 1709-1710 (Deceit); (v) Florida Statute § 501.201, *et seq*. (Florida Unfair and Deceptive Trade Practices Act); (vi) Texas Business & Commercial Code § 17.41, *et seq*. (Texas Deceptive Trade Practices – Consumer Protection Act); and (vii) triggers claims for restitution because of its Unjust Enrichment. Plaintiffs seek return of money they 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

17. Plaintiff Valerie Simo is a citizen of the State of California. Plaintiff Simo purchased a ticket for admission to SeaWorld San Diego on or about July 9, 2013 and attended the Shamu Show on July 10, 2013.

18. Plaintiff Joyce Kuhl is a citizen of the State of South Carolina. Plaintiff Kuhl purchased a ticket for admission to SeaWorld Orlando on or about December 30, 2013, and attended the Shamu Show on that date.

19. Plaintiff Elaine Browne is a citizen of the State of Texas. Plaintiff Browne purchased a ticket for admission to SeaWorld San Antonio on or about June 2012, and attended the Shamu Show on or about June 2012.

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

21. Defendant SeaWorld Entertainment, Inc., is a publicly traded company (NYSE: SEAS) headquartered in Orlando, Florida and incorporated in Delaware, with its original, signature park located in San Diego, California.

III. JURISDICTION AND VENUE

22. 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.

23. This Court has personal jurisdiction over Plaintiffs and each submits to the Court's jurisdiction.

24. This Court has personal jurisdiction over Defendant SeaWorld because it conducts substantial business in this District and throughout the State of California.

25. 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

A. SeaWorld Markets an Enchanting 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 2013, 23 million guests visited SeaWorld parks. Children and adults are enthralled and captivated by performances of SeaWorld's captive orcas, just as those who study them in the wild marvel at their majesty.

29. As stated on the "killer whale" section of SeaWorld San Diego's website, SeaWorld attests that its treatment and handling of captive orcas set it apart:

> Our relationship with these magnificent rulers of the sea spans decades, during which time some incredible human/animal connections have formed. It's with the whales in our care that you see what truly sets SeaWorld apart. Their unique personalities and long-standing relationships with their trainers show that when you open your mind and

> heart to the languages humans and animals share, nearly anything is possible.

30. The orca show itself is held in "Shamu Stadium" at each park. The enclosure complex is divided into two sections. One tank is designated for the "Dine with Shamu" experience. In the parks with that option, visitors eat lunch while sitting next to the tank as the orcas swim past. The other side of the enclosure complex is designated for the performances at Shamu Stadium. A gate separates the two areas and when opened the orcas enter and exit each section of the complex.

31. Shamu Stadium has a large seating area, which is divided into two areas for viewing. The bottom portion is the "soak zone" for those wishing to be splashed by the orchestrated orca jump, and the rest is the dry zone for those wanting to stay dry. Large screens behind the pool display footage showing the orcas interacting with trainers and fellow whales.

32. The screens play videos that include various emotional-laden human interviews and scenes. For example, the introduction to the Shamu show includes a father and daughter hiking along the coast and spotting a whale—albeit, in the wild, not in captivity.

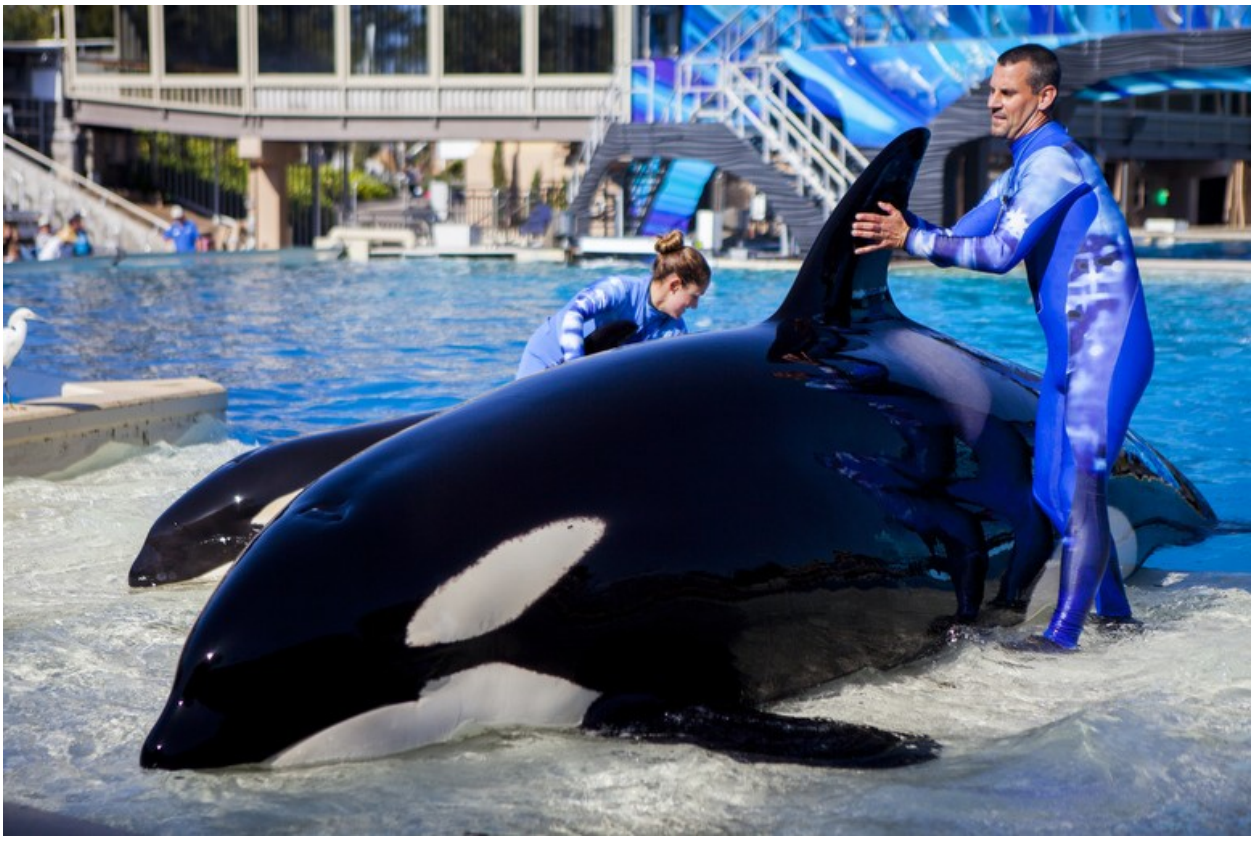
33. As many as eight or more captive orcas perform throughout the "Shamu Show." These orcas provide what is masterfully crafted by SeaWorld to appear as a playful interaction with the audience (and before February 2010, directly in the water with diving and swimming trainers). Commonly guests take photos in front of the tank with an orca swimming up behind, the orcas having been trained to stop and pose for a shot.

34. Loud music played through multiple large speakers accompanies each maneuver the whales make. Each musical score is also accompanied with spot lights that flash throughout the pool in different colors. The music is so loud that it feels like

the whales are performing at a concert. Needless to say, this is noise not found in the wild.

35. Trainers give hand signals to indicate that the orcas should jump 10 to 15 feet into the air while twirling before landing back in the water. The animals are directed to display themselves on a platform ("slide-out") before submerging themselves back into the water. They are fed large quantities of fish while performing as a reward for a job well-done. Being captive, the orcas' lifeline is the collection of SeaWorld trainers who provide their sole source of nourishment.

36. Until they were prevented from doing so, trainers swam with the orcas during the show, in part to create the image of a close bond between the orcas and trainers:



B. SeaWorld Represents Itself as the Whales' Greatest Champion

37. SeaWorld takes great care to create an illusion that it cares deeply for and actually benefits the orcas it holds and breeds in captivity. The following are some of the written statements consumers are provided at SeaWorld and during a Shamu show (each of them false and misleading as alleged in what follows):

- The World We Share. Every day we help people of all ages get excited about animals. SeaWorld is dedicated to the highest standards of care for killer whales and to their conservation through guest education and scientific study.
- SeaWorld's unparalleled breeding success contributes significant information to studies of killer whale reproduction, growth and development.
- Dorsal fins are not all alike. Dorsal fins come in many shapes and sizes. They may be straight, wavy, curved, or bent.

38. The following are comments made during SeaWorld shows:

- "Our commitment to care for the sea and all the creatures who live there"
- "The whales are family"

39. As it does online and throughout its various marketing campaigns, SeaWorld displays written materials around its parks extolling the virtues of its program of care for its captive orcas. A prominent poster in the park reads:

> Research
>
> The information collected at SeaWorld has contributed to the body of knowledge about many animals and may aid in the conservation of endangered or threatened species.

> Physical & mental stimulation
>
> SeaWorld's complex and interactive habitats and training sessions provide enriching challenges.

40. As for its overall treatment of animals, SeaWorld materials answer that question:

> What's our secret to success?
>
> A large and knowledgeable team of dedicated animal care specialists that ensure the health, enrichment, and safety of our diverse family. The knowledge gained from our breeding programs has the potential to be applied to animals in the wild, including threatened and endangered species.

41. And SeaWorld advertisements depict orcas in a colorful, positive light designed to convince potential consumers that the orcas are thriving in captivity:

42. On its website, SeaWorld continues its mission to convince the buying public that its treatment of killer whales is beyond question and even that captured and captive orcas are better off in captivity than in the wild:

> SeaWorld has been safely caring for killer whales for nearly 50 years. We are a global leader in the care, behavior and enrichment of this species …. Including our whales overseas, we provide for the health and well-being of the largest killer whale population in a zoological organization worldwide: 30 animals. These killer whales are healthy and well-adapted to their surroundings, a fact that is evident to us through our constant care, interaction and observation 24 hours per day.
>
> We invest millions of dollars in habitat maintenance and improvement and, in the last three years alone, have invested $70 million in our killer whale habitats.
>
> And, living in these habitats, our whales show every sign of physical fitness … While our whales do not live the same lifestyle as their wild counterparts, this difference does not translate to negative welfare of these animals.…
>
> Also, the animals at SeaWorld do not face many of the challenges of wild animals.

C. SeaWorld Claims to Provide Critical Orca Conservation Research

43. SeaWorld, in promotional and investor literature, represents that it offers exceptional care for its orcas. For example, its 2013 10k filing with the Securities and Exchange Commission reads:

> The well-being of the animals in our care is a top priority. Our zoological staff has been caring for animals for more than five decades, and our expertise is a resource for zoos, aquariums and conservation organizations worldwide. Our expertise and innovation in animal husbandry have led to advances in the care of the species in zoological facilities and in the conservation of wild populations.

> We operate successful zoological breeding programs that help maintain a large and genetically-diverse animal collection. Those efforts have produced 31 killer whales …
>
> Many of our programs represent pioneering contributions to the zoological community. Until the birth of our first killer whale calf in 1985, no zoological institution had successfully bred killer whales. With 29 killer whales, we care for the largest killer whale population in zoological facilities worldwide and today have the most genetically diverse killer whale … collection in our history.

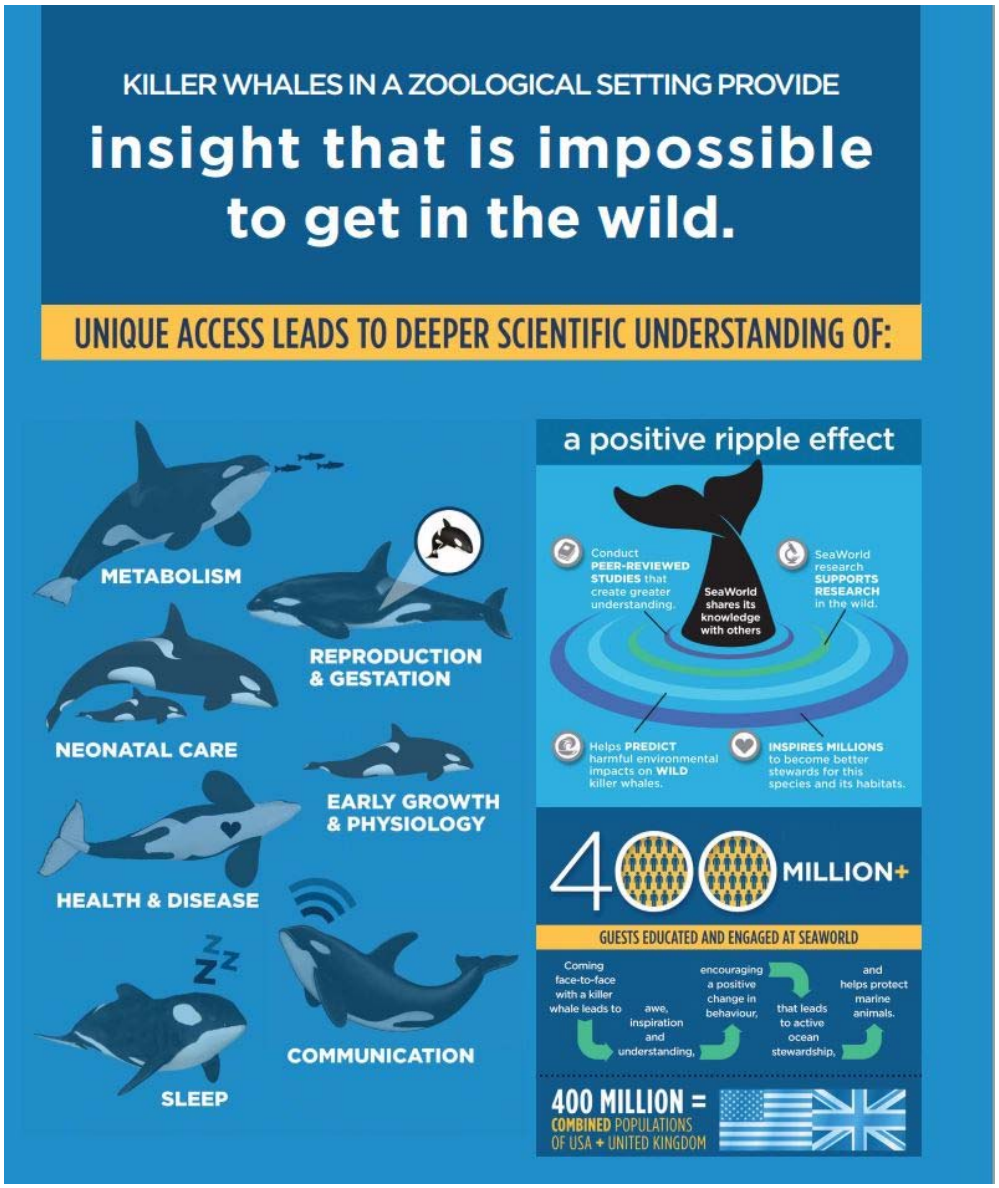
44. In its annual report, SeaWorld celebrates its leadership position in the "care" of its animals:

> Who we are
>
> SeaWorld Entertainment, Inc. is a leading theme park and entertainment company delivering personal, interactive and educational experiences that blend imagination with nature and enable our customers to celebrate, connect with and care for the natural world we share. We own or license a portfolio of globally recognized theme parks, intellectual property and brands, including *SeaWorld*®, *Shamu*® and *Busch Gardens*®. On April 19, 2013, shares of our common stock began trading on the New York Stock Exchange (NYSE: SEAS).
>
> Over our more than 50-year history, we have built a diversified portfolio of 11 theme parks in six key markets across the United States. In 2013, we hosted more than 23 million guests – including 3.7 million international guests – placing our parks among the most highly attended in the industry. Our parks feature a diverse array of rides, shows and other attractions with broad demographic appeal, delivering memorable experiences and value. We feature more than 600 attractions, including 91 animal habitats, 187 rides and 115 shows, with new experiences opening every year. In addition, we offer more than 300 restaurants and specialty shops.

> We are also one of the world's foremost zoological organizations, a global leader in animal welfare, training, husbandry and veterinary care. Through education and up-close experiences, our mission is to inspire guests to care for and protect animals. We believe we care for one of the largest animal collections in the world. Together, our expertise and innovation in animal husbandry have led to advances in the care of species in zoological facilities and in the conservation of wild populations
>
> How we care
>
> We inspire millions of guests each year through up-close animal encounters, educational exhibits and innovative entertainment, providing inspiring and memorable experiences.
>
> The research and conservation undertaken by our parks has led to advances in the care of animals in both zoological facilities and wild populations. Our zoological teams care for approximately 86,000 marine and terrestrial animals. In addition, our successful and innovative breeding programs have resulted in the births of 31 killer whale calves…

45. In addition to the statements cited in the preceding paragraphs, SeaWorld, during the past four years, has responded publicly with additional false information regarding its treatment of orcas and the conditions under which these captive animals exist. It has made these statements in response to the growing criticism about its treatment of these animals, and are discussed further in what follows.

46. On its website SeaWorld boasts of its scientific mission as part of a campaign to convince the public that captivity is beneficial to orcas:



D. The Biology of Orcas

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

47. 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.

48. 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.

49. 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.

50. 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.

51. 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.

52. 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.

53. 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.

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

55. 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.

56. 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.

57. 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.

58. 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.

59. 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.

60. 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.

61. 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.

62. 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.

63. 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.

64. 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.

65. SeaWorld tells the public that it recognizes the "importance of family bonds":

66. 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.

67. 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.

E. The Undisclosed Truth About SeaWorld's Captive Orcas

1. SeaWorld's family values

a. SeaWorld launches its business with captured orcas.

68. 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.

69. 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 customer 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.

70. 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.

71. 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.

72. 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.

73. Shamu was taken out of performance and died only four months later, when she was still less than 15 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.

74. 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 five of its 29 orcas currently performing were taken from the wild. The more complete and telling truth is that only five 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.

75. 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.

76. SeaWorld's vice president of animal training has stated that SeaWorld "recognize[s] the importance of the family bond," and SeaWorld's marketing repeats this message often.

77. In public advertisements SeaWorld promises to recognize and respect such familial bonds:

78. Unfortunately, this statement to assuage the public masks the actual truth that the family bond is intentionally disregarded and undermined by SeaWorld.

79. 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.

80. SeaWorld's corporate vice president of veterinary services testified recently before the California State Assembly where he denied such practices, admitting only that SeaWorld takes young orcas from their mothers to prevent immediate danger to them. This is manifestly untrue and maintained only for fear of public anger were the truth to be told.

81. On its website, SeaWorld represents that it does "not separate mothers from their calves." 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.

82. 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 being separated from her child.

83. 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.

84. 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.

85. 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.

86. And SeaWorld conceals this treatment in part through its relentless campaigns designed to depict a protective and protected mother-calf bond at SeaWorld. An example follows:

2. SeaWorld orcas' living conditions in captivity

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

87. SeaWorld claims ("The Truth is in Our Parks and Our People") that the killer whales are kept in a state-of-the-art environment:

> More than 50 years of world-class care, state-of-the-art animal habitats, and commitment to animal welfare have earned our parks recognition as global leaders in the zoological community.

88. As detailed below, SeaWorld falsely claims that its habitats are safe and healthy for its orcas:

SAFE AND SOPHISTICATED HABITATS

Killer whale health starts with a safe, state-of-the-art habitat and a day filled with enriching activity. Our zoological habitats are among the largest in the world. They are multi-million-gallon environments of continually chilled and filtered saltwater. The killer whale habitat at SeaWorld Orlando, for example, encompasses more than 6 million gallons. We also have a dedicated team of water quality experts on call 24/7 to monitor this advanced system and ensure all water quality conditions meet or exceed federal standards.

The design of these facilities allows for the highest standards of caring for our animals safely. We invest millions of dollars in habitat maintenance and improvement and, in the last three years alone, have invested $70 million in our killer whale habitats.

And, living in these habitats, our whales show every sign of physical fitness including healthy weight, muscle tone, respiratory efficiency, strength and heart rate. While our

> whales do not live the same lifestyle as their wild counterparts, this difference does not translate to negative welfare of these animals. For example, the health of a killer whale is not dependent on long-distance swimming; wild whales must do this to search for food and new foraging grounds. Our trainers work with our whales and closely monitor and provide their food, exercise and other environmental enrichment activities.

89. Rather than provide the "highest standard of care" (avoiding "negative welfare" for its orcas), 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.

90. 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.

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

92. 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.

93. 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.

94. 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.

95. SeaWorld falsely advertises the "complex and interactive habitats" these pools provide for its captive performing orcas. Far from complex or meaningfully interactive, instead 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.

96. 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.

97. 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:

98. The above, true depiction of the daily lives of SeaWorld orcas contrasts with SeaWorld's claims that the whales are "healthy and well adapted":

KILLER WHALE HEALTH AND DAILY CARE

SeaWorld has been safely caring for killer whales for nearly 50 years. We are a global leader in the care, behavior and enrichment of this species and are accredited by the world's foremost professional zoological organizations. Including our whales overseas, we provide for the health and well-being of the largest killer whale population in a zoological organization worldwide: 29 animals. These killer whales are healthy and well adapted to their surroundings, a fact that is evident to us through our constant care, interaction and observation 24 hours per day.

99. 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.

100. 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.

101. SeaWorld claims that it positively reinforces orca behavior:

BEHAVIORAL ENRICHMENT AND TRAINING

Our entire program is grounded in the philosophy of positive reinforcement and compassionate care. When training the whales, SeaWorld uses a variety of positive reinforcements. What is positive for a whale can vary from day to day, and whale to whale. For instance, some whales prefer a massage or toy; some prefer a big salmon. The essence of animal training is to continually vary the reinforcement to keep the animal engaged.

Animals at SeaWorld are never punished, and their food is never withheld.

We recognize that these animals have evolved complex behavioral capacities and problem-solving strategies to succeed in the ocean, and we are committed to caring for their behavioral health as well as physical health. Our trainers work closely with our veterinarians and other team members to provide a holistic behavioral program that focuses on health, exercise and mental challenges.

102. Whatever else can be said about SeaWorld's fleet of orca trainers, they maintain relative authority over the captive whales by simple virtue of the monopoly these trainers have over the orcas' food supply.

103. 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."

104. 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. SeaWorld maintains, on its website, that orcas "are never punished, and their overall diet is never dependent on their behavioral performance."

105. 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.

106. Despite objective, scientific consensus to the contrary, SeaWorld goes to great lengths to misinform the public that its whales live happy, well-adjusted, long lives just like they do in the wild (if not happier, better adjusted, and longer). As depicted in the *Blackfish* documentary, SeaWorld falsely tells the public that wild killer whales live "to be about 35, mid-thirties," and "tend to live a lot longer" as captive orcas in SeaWorld. The truth is the reverse.

107. In reaction to criticism from orca scientists, SeaWorld published misleading statements about the lifespan of orcas including the following:

HOW LONG DO KILLER WHALES LIVE?

KILLER WHALE LIFESPAN IS OFTEN MISREPRESENTED. THE OBSTACLES ARE:

- **Only a small percentage** of the world's wild killer whales have been studied long enough to produce statistically valid research.
- **Killer whales** live all over the world in distinct populations—some very different from each other—and we do not have enough adequate science to know if different ecotypes have different lifespans.
- **Additionally,** when attempting to compare the lifespan of wild populations vs. those that live in zoos, data is limited. Because of the relatively small number of killer whales in our care, direct comparisons can be difficult.

WHAT WE DO KNOW:

The data we do have show that killer whales at SeaWorld are living as long as their counterparts in the wild.

In peer-reviewed studies, scientists estimate that the average, or mean, life expectancy for a female is 30 years and a male is 19 years in the Pacific Northwest[1]. For whales in southeastern Alaska, the maximum longevity appears to be in the 50s for females and late 30s for males[2]. So, in those two areas of the world, female killer whales live around 30 to 50 years and males live around 19 to 30 years.

SeaWorld has several killer whales in their 30s and one that is close to 50.

108. The truth is the following: 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. At least one orca in the Pacific Northwest is believed to be about100 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. SeaWorld knows all of this research and deliberately misrepresents it.

109. 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).

110. 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.

111. 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. After a 12-year-old whale, Sumar, died suddenly, a SeaWorld spokesman claimed that captive orcas "routinely live into their thirties or forties." 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*	

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

112. In captivity, all adult male orcas have collapsed dorsal fins as adults. In nature only 1-5% of males have such fins. The most likely cause of the unnatural prevalence of collapsed fins in captivity is the excessive amount of time the whales spend at the surface, where heat can soften the tissue and gravity can pull over this tall appendage as it grows.

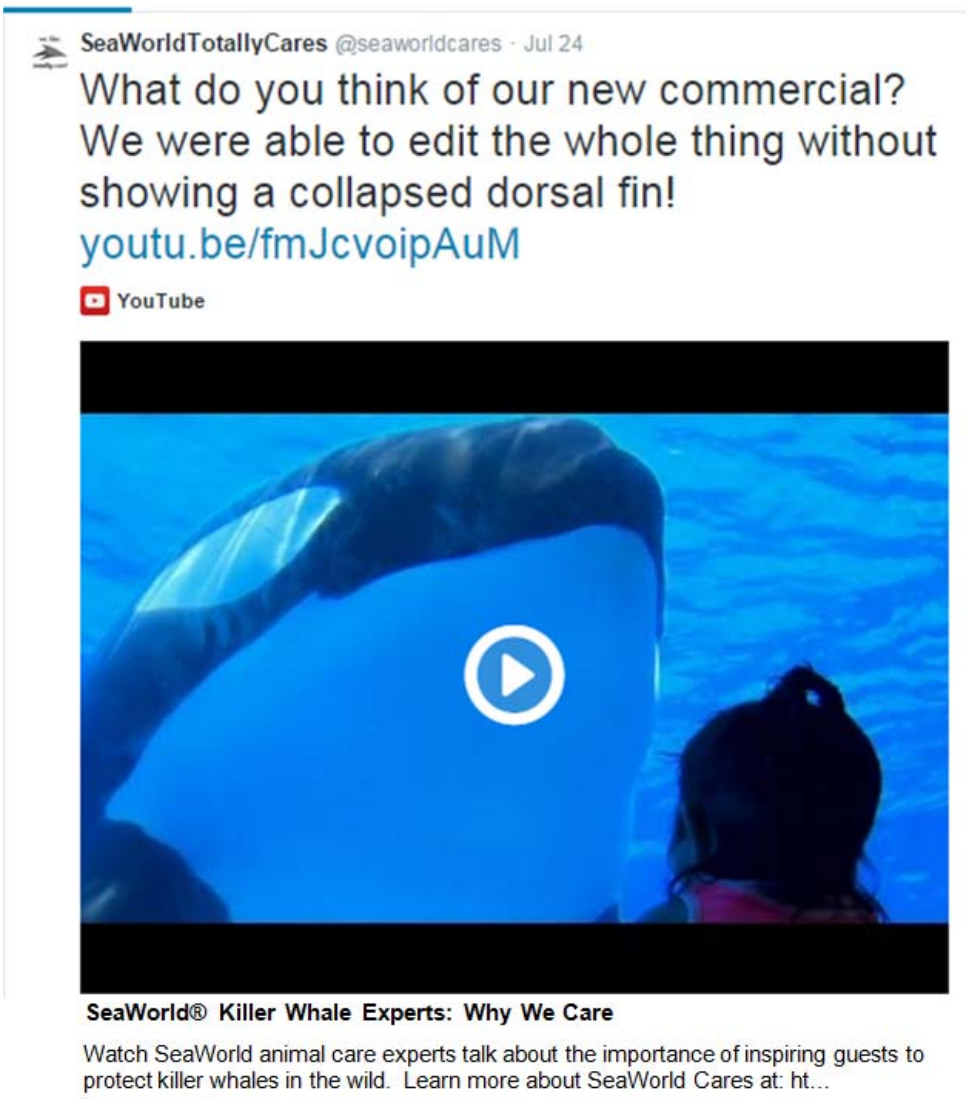
113. SeaWorld has long worried the public would learn the truth of this matter (as it is harder to hide from public view than the other signs of captivity), and therefore continues to mislead the public and deny the plain truth that SeaWorld's conditions of captivity cause collapsed dorsal fins. In nature, the fins are supported by water pressure as the whales spend 95% of their time submerged, pushing through miles and miles of water, which supports the fin as it grows. In captivity, the fins are above water for extended periods of time and exposed to heat and gravity.

114. Contrary to these elemental truths of observable fact known to all reputable marine scientists, SeaWorld claims that this condition is in no manner a product of captivity and in fact common and natural for all orcas. This is despite the fact that collapsed dorsal fins are rarely seen in the wild.

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

116. 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.

117. 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):



118. For this reason, SeaWorld peddles in misinformation, routinely distorting and manipulating the work of New Zealand marine mammal scientist Dr. Ingrid Visser to suggest that 23% of wild orcas have collapsed fins.

119. Dr. Visser has repeatedly instructed SeaWorld to forgo misrepresenting her work, and notes that only 1-5% of wild orcas are observed with this condition. The fins of the orcas she studies are wavy, partially collapsed, or oddly shaped due to a genetic mutation in a single family (the figure 23% represents only 7 animals). None are completely collapsed. Dr. Visser has repeatedly asked SeaWorld's Director of

Research to correct SeaWorld's deliberate misinformation campaign. It has to date not done so.

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

120. 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.

121. 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).

122. 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.

123. 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.

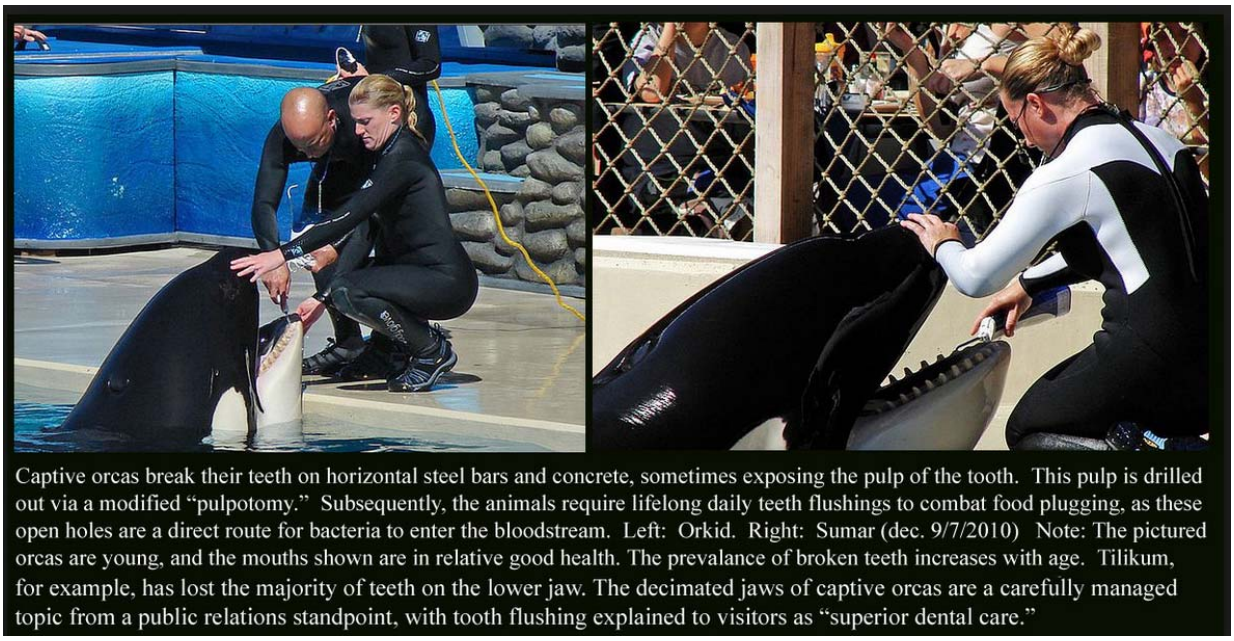
124. In captivity, the abrasion and breakage comes not from prey or feeding methods, but from gnawing on concrete walls or steel gates that separate the various sections of an enclosure complex (there are usually at least two enclosures—a primary and a medical—and in larger complexes there can be as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

125. 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.

126. 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.

127. 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.

128. The following is a photo of such cleaning:



Captive orcas break their teeth on horizontal steel bars and concrete, sometimes exposing the pulp of the tooth. This pulp is drilled out via a modified "pulpotomy." Subsequently, the animals require lifelong daily teeth flushings to combat food plugging, as these open holes are a direct route for bacteria to enter the bloodstream. Left: Orkid. Right: Sumar (dec. 9/7/2010) Note: The pictured orcas are young, and the mouths shown are in relative good health. The prevalance of broken teeth increases with age. Tilikum, for example, has lost the majority of teeth on the lower jaw. The decimated jaws of captive orcas are a carefully managed topic from a public relations standpoint, with tooth flushing explained to visitors as "superior dental care."

129. 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.

130. 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.

131. 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.

132. SeaWorld informs the public that it functions like a research institution, "contributing to the body of knowledge" scientists develop in order to better understand and protect these whales. Just last month, on February 5, 2015, captive display industry representatives testified in opposition to a proposed ban on captive cetaceans before the Washington State Legislature, falsely testifying that the "research" it performs on its "collection" of captured and captive cetaceans is necessary for cetacean conservation.

133. In fact, SeaWorld has challenged the consensus of *actual* whale experts at nearly every turn—this is true with respect to nearly every scientific fact about the orca species.

134. SeaWorld falsely states that the scientific talents of its corporate experts translate to the "conservation of wild populations;" when asked for data to support this tragically ironic claim, SeaWorld has failed to provide it to the actual scientific community that studies these whales.

135. SeaWorld goes further in its audacity by misleadingly claiming to have the "most genetically diverse killer whale" collection in its history. In plain fact, this is only true in that 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.

136. 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.

137. 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.

138. 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.

139. 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.

140. 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.

141. 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.

142. 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.

143. 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.

144. 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.

145. 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.

146. 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.

147. 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.

148. 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.

149. 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.

150. 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

151. 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.

152. 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.

153. 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.

154. 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.

155. 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."

156. 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.

157. 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.

158. 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.

159. 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.

160. 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.

161. 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."

162. 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.

163. 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."

164. 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.

165. 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."

166. 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.

167. 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.

168. 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.

169. 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.

170. 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.

171. 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.

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

172. 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.

173. *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.

174. 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.

175. *Blackfish* reveals to those who have viewed it, among other things, that 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.

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

176. 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."

177. 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.

178. 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.

179. 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.

H. Popular Musicians Cancel SeaWorld Appearances and Association

180. 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.

181. "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 mid-winter months.

182. 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.

183. 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.

184. 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.

185. 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."

186. 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.

187. 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."

188. 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."

189. 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."

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

190. 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.

191. 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."

192. 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.

193. 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."

194. 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.

195. 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.

196. 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."

197. 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*.

198. 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.

199. 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.

200. 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."

201. 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.

202. 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.

J. SeaWorld Continues to Mislead and Conceal the Truth

203. 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.

204. 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 Ocean.

205. Awesome Ocean 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

206. 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*.

207. 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."

208. 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

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

210. 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.

211. 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.

212. Two months ago a current 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."

213. 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 similar to the recent wave of gay marriage legalizations now nearing 40 states in just a few years.

214. 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…

215. 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.

216. 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."

217. First, she claimed that SeaWorld and similar parks play an "important role…every day in the public education, scientific research and conservation efforts" helpful to cetaceans, including orcas. Second, she claimed that SeaWorld and similar parks take "exceptional care" of its cetaceans to "ensure their well-being." Third, she claimed that the industry's "successful reproduction programs" provide a benefit in not requiring the capture of wild cetaceans for public amusement. And, lastly, she claimed that those who criticize and seek to prevent the mistreatment of captive cetaceans seek to "vilify people…who work in these institutions," and are (by implication) radical animal rights activists —"Make no mistake about it, this will not stop with cetaceans."

218. In addition to the attacks mentioned above, in response to media attention given to the publication of former SeaWorld trainer John Hargrove's just-published book *Beneath the Surface*, SeaWorld (without rebutting a single factual allegation contained in the book) has lazily replied, through its VP of Communications, Fred Jacobs, and otherwise, that the author "joined ranks with animal rights extremists … and has eagerly embraced their habit of misleading the public to advance an agenda." The SeaWorld funded website AwesomeOcean has now created a separate website dedicated to attacking Mr. Hargrove personally and childishly.

219. On February 26, 2015, the day that SeaWorld announced further declines in revenue and attendance at its park, and as its stock continued its slide, SeaWorld spokesperson Aimee Jeansonne-Becka stated, in comments to Bloomberg media responding to factual allegations about orca conditions and treatment: "Despite the false claims from (author) John Hargrove and other extreme animal rights activists, we provide the highest standards of care." Further, she stated "our whales are healthy and thriving, as evidenced by independent research that shows our whales have a survival rate equal to those in the wild."

220. 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.

K. Specific Plaintiff Allegations

221. Plaintiff Valerie Simo purchased admission tickets to SeaWorld San Diego for herself and her spouse on or about July 9, 2013. Ms. Simo and her husband attended the Shamu Show at SeaWorld San Diego on July 10, 2013.

222. Subsequent to Ms. Simo's visit to SeaWorld San Diego, she began to learn more of the truth concerning the conditions and treatment of SeaWorld's captive orcas, the true facts of which SeaWorld had variously denied, materially omitted, and misrepresented.

223. At the time of, and prior to, Ms. Simo's visit to SeaWorld, SeaWorld falsely and misleadingly, and with substantial and material omissions, marketed its SeaWorld entertainment products in California and throughout the country, in print media, television commercials, and/or the Internet to Ms. Simo and others who relied upon this marketing to their detriment and deception. SeaWorld failed to properly and

fully disclose the true facts about the condition and treatment of its captive orcas, facts material to Ms. Simo and the Plaintiff Classes.

224. Ms. Simo concluded that SeaWorld's improper treatment of its captive orcas, as well as SeaWorld's false and misleading statements and omissions regarding orca conditions and treatment, was unethical, and that had she known of the true facts regarding these conditions and treatment she would not have paid any money for admission to SeaWorld.

225. Plaintiff Joyce Kuhl purchased an admission ticket to SeaWorld Orlando on December 30, 2013 and visited SeaWorld Orlando using this ticket.

226. Following her December 30, 2013 visit to SeaWorld Orlando, Ms. Kuhl began to learn more of the truth concerning the conditions and treatment of SeaWorld's captive orcas, the true facts of which SeaWorld had variously denied, materially omitted, and misrepresented.

227. At the time of, and prior to, Ms. Kuhl's purchase of tickets for $97.98 SeaWorld falsely and misleadingly, and with substantial and material omissions, marketed its SeaWorld entertainment products in Florida and throughout the country, in print media, television commercials, and/or the Internet to Ms. Kuhl and others who relied upon this marketing to their detriment and deception. SeaWorld failed to properly and fully disclose the true facts about the condition and treatment of its captive orcas, facts material to Ms. Kuhl and the Plaintiff Classes.

228. Subsequent to her December 30, 2013 visit, Ms. Kuhl concluded that SeaWorld's improper treatment of its captive orcas, as well as SeaWorld's false and misleading statements and omissions regarding orca conditions and treatment, was unethical, and that had she known of the true facts regarding these conditions and treatment she would not have paid any money for admission to SeaWorld for herself.

229. Plaintiff Elaine Browne purchased admission tickets to SeaWorld San Antonio for herself and her two children for $282.00 on or about June 2012.

230. Following her June 2012 family visit to SeaWorld San Antonio, Ms. Browne began to learn more of the truth concerning the conditions and treatment of SeaWorld's captive orcas, the true facts of which SeaWorld had variously denied, materially omitted, and misrepresented.

231. At the time of, and prior to, Ms. Browne's purchase of her tickets, SeaWorld falsely and misleadingly, and with substantial and material omissions, marketed its SeaWorld entertainment products in Texas and throughout the country, in print media, television commercials, and/or the Internet to Ms. Browne and others who relied upon this marketing to their detriment and deception. SeaWorld failed to properly and fully disclose the true facts about the condition and treatment of its captive orcas, facts material to Ms. Browne and the Plaintiff Classes.

232. Subsequent to her June 2012 visit, Ms. Browne concluded that SeaWorld's improper treatment of its captive orcas, as well as SeaWorld's false and misleading statements and omissions regarding orca conditions and treatment, was unethical, and that had she known of the true facts regarding these conditions and treatment she would not have paid any money for admission to SeaWorld.

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

233. Plaintiffs 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.

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

235. Plaintiffs 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."

236. At the time Plaintiffs 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. Plaintiffs 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.

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

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

239. Plaintiffs, individually and on behalf of all others similarly situated, seek damages, restitution and injunctive relief to put an end to SeaWorld's deceptive, unfair, and unlawful business practices and its unjust enrichment.

V. CLASS ACTION ALLEGATIONS

240. SeaWorld operates SeaWorld brand amusement parks in the United States, each of which features performances by SeaWorld's captive orcas, including at its San Diego, California; Orlando, Florida; and San Antonio, Texas facilities. Plaintiffs seek certification of three nationwide Classes defined as follows:

SeaWorld San Diego Purchasers

All consumers nationwide who at any time during the four-year period preceding the filing of the original complaint

("the Class"), purchased an admission ticket, a membership, or a SeaWorld "experience" that includes an "orca experience" from the SeaWorld amusement park in San Diego, California.

Excluded from the Class are: the officers, directors or employees of Defendant; any entity in which Defendant has a controlling interest; and any affiliate, legal representative, heir or assign of Defendant. Also, excluded from the Class are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

SeaWorld Orlando Purchasers

All consumers nationwide who, at any time during the four-year period preceding the filing of the original complaint ("the Class"), purchased an admission ticket, a membership, or a SeaWorld "experience" that includes an "orca experience" from the SeaWorld amusement park in Orlando, Florida.

Excluded from the Class are: the officers, directors or employees of Defendant; any entity in which Defendant has a controlling interest; and any affiliate, legal representative, heir or assign of Defendant. Also, excluded from the Class are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

SeaWorld San Antonio Purchasers

All consumers nationwide who at any time during the four-year period preceding the filing of the original complaint ("the Class"), purchased an admission ticket, a membership, or a SeaWorld "experience" that includes an "orca experience" from the SeaWorld amusement park in San Antonio, Texas.

> Excluded from the Class are: the officers, directors or employees of Defendant; any entity in which Defendant has a controlling interest; and any affiliate, legal representative, heir or assign of Defendant. Also, excluded from the Class are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

241. Plaintiffs do not know the exact number of Class members at the present time. However, due to the nature of the trade and commerce involved (several million Americans purchase SeaWorld tickets, memberships, and experiences each year), there appear to be so many Class members such that joinder of all Class members is impracticable.

242. Each 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.

243. There are questions of law and fact common to the Classes. Defendant's unlawful false statements and omissions similarly impact all Class members, all of whom purchased one or more of SeaWorld's products.

244. Plaintiffs assert claims that are typical of the Class members. Plaintiffs 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, Plaintiffs purchased and paid sums of money for SeaWorld's products which they otherwise would not have paid had the true conditions and treatment of SeaWorld's orcas been disclosed by SeaWorld.

245. Plaintiffs will fairly and adequately represent and protect the interests of the Classes. Plaintiffs are represented by counsel competent and experienced in both consumer protection and class action litigation.

246. Class certification is appropriate because Defendant has acted on grounds that apply generally to each Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Classes as a whole.

247. 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 Classes, including, *inter alia*, the following:

(a) Whether Defendant's nondisclosures and/or false statements would be material to a reasonable consumer;

(b) Whether Defendant's nondisclosures and/or false statements constitute unlawful business practices in violation of the state laws pled below;

(c) Whether Defendant's nondisclosures and/or false statements constitute unfair business practices in violation of the state laws pled below;

(d) Whether Defendant's nondisclosures and/or false statements were likely to deceive a reasonable consumer in violation of the state laws pled below;

(e) Whether Defendant intentionally or knowingly or willfully failed to disclose significant concerns associated with SeaWorld's products;

(f) Whether the challenged practices harmed Plaintiffs and members of the Classes; and

(g) Whether Plaintiffs and members of each Class are entitled to damages, restitution, equitable relief, and/or injunctive relief.

248. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all the individual Class members is impracticable. Furthermore, because the restitution demanded and/or damages suffered, and continuing to be suffered, by each individual Class member

may be relatively small, the expense and burden of individual litigation would make it very difficult or impossible for individual Class members to redress the wrongs done to each of them individually, and the burden imposed on the judicial system would be enormous.

249. The prosecution of separate actions by the individual Class members would create a risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct for Defendant. 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.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW (CAL. BUS. & PROF. CODE § 17200, *et seq.*)

250. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

251. This claim is brought on behalf of the Class of SeaWorld San Diego Purchasers, who purchased SeaWorld tickets, memberships, and "orca" experiences for the SeaWorld San Diego amusement park.

252. As a direct and foreseeable result of the design, themes, and statements made by SeaWorld at its Shamu Shows and park facilities, and as a result of SeaWorld's ubiquitous advertising campaigns, the 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.

253. Cal. Bus. & Prof. Code § 17200 prohibits any "unlawful, unfair, or fraudulent business act or practice." Defendant has engaged and engages in unlawful, unfair, and fraudulent business acts and practices in violation of the UCL.

254. SeaWorld's business practices violate the UCL's prohibition on "fraudulent business act[s] or practices" because its false and misleading statements and material omissions associated with its products, in regard to its captive orcas, were and are likely to deceive a reasonable consumer, and the true facts about the condition and treatment of its orcas would be material to a reasonable consumer.

255. SeaWorld's business practices violate the UCL's prohibition on "unlawful…business act[s] or practice[s]" because they violate, *inter alia*, the Consumer Legal Remedies Act (or "CLRA"), Cal. Civ. Code § 1750, *et seq*., as alleged in this Complaint.

256. SeaWorld's business practices violate the UCL's prohibition on "unfair…business act[s] or practice[s]" because they offend established public policy and/or are immoral, unethical, oppressive, unscrupulous and/or substantially injurious to consumers, which harm greatly outweighs any benefit associated with the business practice.

257. SeaWorld 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 Plaintiffs 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.

258. Plaintiffs and the Class have suffered injury-in-fact, including the loss of money, as a result of SeaWorld's unlawful, unfair, and fraudulent practices. As set forth more fully above, in purchasing SeaWorld's tickets, memberships, and "experiences," the Plaintiffs relied on SeaWorld to make complete disclosures of all material information about her purchases. Had Plaintiffs and the Class known the truth

about the condition and treatment of SeaWorld's captive orcas, they would not have purchased those SeaWorld products or they would have paid less for them.

259. All of the wrongful conduct alleged here occurred, and continues to occur, in the conduct of SeaWorld's business. SeaWorld's wrongful conduct is part of a general practice that is still being perpetuated and repeated throughout the State of California and nationwide.

260. Plaintiffs request 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 Plaintiffs and members of the Class any money that Defendant acquired by unfair competition (as provided in Cal. Bus. & Prof. Code § 17203), and to provide such other relief as set forth below.

SECOND CAUSE OF ACTION

VIOLATIONS OF THE CONSUMERS LEGAL REMEDIES ACT (CAL. CIV. CODE § 1750, *et seq.*)

261. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

262. This claim is brought on behalf of the Class of SeaWorld San Diego Purchasers, who purchased SeaWorld tickets, memberships, and "orca" experiences for the SeaWorld San Diego amusement park.

263. Defendant is a "person" under Cal. Civ. Code § 1761(c).

264. Plaintiffs are "consumer[s]," under Cal. Civ. Code § 1761(d), who purchased an admission ticket to SeaWorld, a membership to SeaWorld, or a SeaWorld "experience" involving its captive orcas, which are goods or services made, marketed, and sold by Defendant.

265. The CLRA (including §§ 1770(a)(5) and (a)(7)) supports claims for omissions of material fact that Defendant is obligated to disclose. In this case, Defendant SeaWorld was obligated to disclose—but failed to disclose—truths known to it about the condition and treatment of its captive orcas.

266. As a direct and foreseeable result of the design, themes, and statements made by SeaWorld at its Shamu Shows and park facilities, and as a result of SeaWorld's ubiquitous advertising campaigns, the 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.

267. SeaWorld 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 Plaintiffs 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.

268. Plaintiffs and the Class lost money and were harmed as a result of SeaWorld's violations of the CLRA because they purchased SeaWorld products due to the material omissions about the conditions and treatment of SeaWorld's captive orcas, and they would not have purchased SeaWorld's products on the same terms if the true facts had been known. Absent these material omissions, Plaintiffs and the Class would not have purchased SeaWorld's products at all or they would have paid less for them.

269. As a result of these violations, SeaWorld has caused and continues to cause harm to Plaintiffs and the Class; if not stopped, it will continue to harm them.

270. In accordance with Cal. Civ. Code § 1780(a), Plaintiffs and the Class seek injunctive and equitable relief for SeaWorld's violations of the CLRA.

271. Although Plaintiffs do not seek to recover damages under the CLRA in this initial Complaint, after mailing appropriate notice and demand in accordance with Civil Code § 1782(a) & (d), Plaintiffs will subsequently amend this Complaint to also

include a request for compensatory and punitive damages. A notice was mailed to SeaWorld on April 16, 2015.

272. Plaintiffs and the Class request that this Court enter such orders or judgments as may be necessary to restore to any person in interest any money which may have been acquired by means of such unfair business practices, and for such other relief, including attorneys' fees and costs, as provided in Civil Code § 1780 and the Prayer for Relief.

273. Plaintiffs include an affidavit with this Complaint reflecting that venue in this District is proper, to the extent such an affidavit is required by Cal. Civ. Code § 1780(d) in federal court.

THIRD CAUSE OF ACTION

VIOLATIONS OF THE FALSE ADVERTISING LAW (CAL. BUS. & PROF. CODE § 17500, *et seq.*)

274. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

275. This claim is brought on behalf of the Class of SeaWorld San Diego Purchasers, who purchased SeaWorld tickets, memberships, and "orca" experiences for the SeaWorld San Diego amusement park.

276. California Bus. & Prof. Code § 17500, *et seq*. (the "FAL") broadly proscribes deceptive advertising in the State of California. Section 17500 makes it unlawful for any corporation intending to sell products or perform services to make any statement in advertising those products or services concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or not to sell those products or services as advertised at the price stated therein, or as so advertised.

277. When the seller of such service or product has a duty to disclose material facts about a product, the sale of the product or service to consumers without disclosure of such material facts runs afoul of the FAL.

278. SeaWorld markets and sells the SeaWorld product line by marketing and advertising its healthy treatment and care of orcas, the centerpiece of its entertainment product. SeaWorld advertises and markets that the orcas are as healthy and content at SeaWorld as they are in the wild, and that its performances in captivity are experiences beneficial to both the orcas and the public consumer, neither of which is true. SeaWorld effectively misrepresents and has misrepresented for several years the conditions in which the orcas live and the consequences of those conditions.

279. As a direct and foreseeable result of the design, themes, and statements made by SeaWorld at its Shamu Shows and park facilities, and as a result of SeaWorld's ubiquitous advertising campaigns, the 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.

280. Section 17535 effectively provides that the Court may enjoin any corporation or other person who violates the FAL, and may make such orders or judgments as may be necessary to prevent the use of such practices, or which may be necessary to restore to any person in interest any money or property which may have been acquired by means of such practices. A FAL claim may be prosecuted by any person who has suffered injury in fact and has lost money or property as a result of a violation of the FAL. The action may be prosecuted on a representative basis when it meets the traditional class action requirements.

281. Plaintiffs and the Class have suffered injury-in-fact and lost money or property as a result of SeaWorld's violations of the FAL because: (a) they purchased SeaWorld products (tickets for admission, park memberships, or SeaWorld

"experiences" with orcas) due to SeaWorld's deceptive and untrue marketing and material omissions; and (b) they would not have purchased SeaWorld products on the same terms if the true facts had been known. Absent these false and misleading statements in its marketing and its material omissions, Plaintiffs and the Class would not have purchased SeaWorld products at all or they would have paid less for them.

282. As a result of these violations, SeaWorld has caused and continues to cause damage to Plaintiffs and the Class and, if not stopped, will continue to harm them.

283. Plaintiffs and the Class request that this Court enjoin Defendant from continuing to market and sell SeaWorld products through false and misleading statements and material omissions regarding the treatment and condition of its orcas.

284. In addition, Plaintiffs and the Class request that this Court enter such orders or judgments as may be necessary to restore to any person in interest any money which may have been acquired by means of such material omissions and deceptive marketing and selling of SeaWorld products to consumers.

FOURTH CAUSE OF ACTION

DECEIT
(CAL. CIV. CODE §§ 1709-1710)

285. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

286. This claim is brought on behalf of the Class of SeaWorld San Diego Purchasers, who purchased SeaWorld tickets, memberships, and "orca" experiences for the SeaWorld San Diego amusement park.

287. Under California Civil Code § 1709: "One who willfully deceives another with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers."

288. Under California Civil Code § 1710, Deceit includes (among other things): "[i] The suggestion, as a fact, of that which is not true, by one who does not

believe it to be true; or [ii] the suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact."

289. As a direct and foreseeable result of the design, themes, and statements made by SeaWorld at its Shamu Shows and park facilities, and as a result of SeaWorld's ubiquitous advertising campaigns, the 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.

290. SeaWorld willfully suppressed and omitted material facts concerning the treatment and condition of its captive orcas and used false and misleading statements in support of its marketing campaign regarding the condition and treatment of its captive orcas.

291. Defendant has a duty to disclose these true and material facts known to it. The duty to disclose arises from: (a) its superior and exclusive knowledge of these material facts, which were not known or reasonably accessible to Plaintiffs and the Class; (b) its active concealment of these material facts; and/or (c) its marketing and sale of SeaWorld products, which is likely to mislead consumers absent full disclosure of the material facts at issue.

292. Defendant suppressed and omitted these material facts concerning its orca SeaWorld products with the intent to induce Plaintiffs and the Class to purchase SeaWorld products.

293. Plaintiffs and the Class were unaware of these suppressed and omitted material facts at the time of their purchases of SeaWorld products. If they had known of such material facts at the time of their purchases, Plaintiffs and the Class would not have purchased the SeaWorld products or they would have paid less for them.

294. As a result of SeaWorld's conduct, Plaintiffs and the Class sustained economic damages in an amount to be determined at trial.

FIFTH CAUSE OF ACTION

VIOLATIONS OF FLORIDA'S UNFAIR AND DECEPTIVE TRADE PRACTICES ACT (FLA. STAT. § 501.201, *et seq.*)

295. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

296. 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.

297. Plaintiffs 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).

298. 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 false and misleading statements and 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.

299. As a direct and foreseeable result of the design, themes and statements made by SeaWorld at its Shamu Shows and park facilities, and as a result of SeaWorld's ubiquitous advertising campaigns, the 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.

300. SeaWorld willfully failed to disclose and concealed the true facts surrounding the condition and treatment of its captive orcas.

301. SeaWorld's intentional and knowing misrepresentation and omission of material facts regarding its captive orcas was done with intent to deceive and mislead Plaintiffs and the Class.

302. SeaWorld knew or should have known that these acts were in violation of the FUDTPA.

303. 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 Plaintiffs 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.

304. As a direct and proximate result of SeaWorld's conduct, Plaintiffs and the Class were and are lucky to suffer and have suffered substantial injury-in-fact and accrued actual damages in the form of money Plaintiffs 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.

305. Plaintiffs request 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 Plaintiffs and members of the Class any money that Defendant acquired by its unfair and deceptive conduct and to provide such other relief as set forth below.

SIXTH CAUSE OF ACTION

VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES – CONSUMER PROTECTION ACT (TEX. BUS. & COM. CODE § 17.41, *et seq.*)

306. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

307. This claim is brought on behalf of the Class of SeaWorld San Antonio Purchasers, who purchased SeaWorld tickets, memberships, and "orca" experiences for the SeaWorld San Antonio amusement park.

308. Plaintiffs and the Class are "consumers" within the meaning of the Texas Deceptive Trade Practices – Consumer Protection Act ("DTPA"), as defined at Tex. Bus. & Com. Code § 17.45(4), and may bring this action for relief under Texas Bus. & Com. Code § 17.50.

309. The DTPA prohibits "[f]alse, misleading, or deceptive acts or practices in the conduct of any trade or commerce …" Tex. Bus. & Com. Code § 17.46(a). SeaWorld's business practices violate these prohibitions because its false and misleading statements and 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.

310. The DTPA (including §§ 17.50(a)(1) and (2), and § 17.46 (b)(24)) supports claims for omissions of material fact that Defendant is obligated to disclose. In this case, Defendant SeaWorld was obligated to disclose—but failed to disclose—truths known to it about the condition and treatment of its captive orcas.

311. As a direct and foreseeable result of the design, themes and statements made by SeaWorld at its Shamu Shows and park facilities, and as a result of SeaWorld's ubiquitous advertising campaigns, the 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.

312. SeaWorld willfully failed to disclose and concealed the true facts surrounding the condition and treatment of its captive orcas.

313. SeaWorld's intentional and knowing misrepresentation and omission of material facts regarding its captive orcas was done with intent to deceive and mislead Plaintiffs and the Class.

314. SeaWorld knew or should have known that these acts were in violation of the DTPA.

315. 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 Plaintiffs 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.

316. Plaintiffs and the Class lost money and were harmed as a result of SeaWorld's violations of the DTPA because they purchased SeaWorld products due to material omissions about the conditions and treatment of SeaWorld's captive orcas, and they would not have purchased SeaWorld's products on the same terms if the true facts had been known. Absent these material omissions, Plaintiffs and the Class would not have purchased SeaWorld's products at all or they would have paid less for them.

317. As a result of these violations, SeaWorld has caused and continues to cause harm to Plaintiffs and the Class; if not stopped, it will continue to harm them.

318. In accordance with Tex. Bus. & Com. Code § 17.50(b), Plaintiffs and the Class seek injunctive and equitable relief for SeaWorld's violations of the DTPA.

319. Although Plaintiffs do not seek to recover economic damages under the DTPA in this initial Complaint, after mailing appropriate notice and demand in accordance with Tex. Bus. & Com. Code § 17.505(a), Plaintiffs will subsequently amend this Complaint to also include a request for economic damages, as provided at Tex. Bus. & Com. Code § 17.50(b)(1). A notice was mailed to SeaWorld on March

24, 2015, as was notice to the Texas Office of the Attorney General, Consumer Protection Division.

SEVENTH CAUSE OF ACTION

UNJUST ENRICHMENT

320. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

321. This claim is brought on behalf of the Class of SeaWorld Orlando Purchasers and the Class of SeaWorld San Antonio Purchasers who purchased SeaWorld tickets, memberships, or "orca" experiences for the SeaWorld Orlando or SeaWorld San Antonio amusement parks.

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

323. As a direct and foreseeable result of the design, themes and statements made by SeaWorld at its Shamu Shows and park facilities, and as a result of SeaWorld's ubiquitous advertising campaigns, the 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.

324. 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.

325. SeaWorld should not be allowed to retain the proceeds from the benefits conferred upon it by Plaintiffs and the Classes, 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 Plaintiffs and Classes, in an equitable and efficient manner determined by the Court.

326. Plaintiffs and the Classes 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 Plaintiffs and the Classes.

PRAYER FOR RELIEF

A. Certification of the proposed Classes with notice and claims administration to be paid by Defendant;

B. Injunctive relief requiring return of all payments made by members of the Class of SeaWorld San Diego Purchasers pursuant to Cal. Bus. & Prof. Code §§ 17200, 1750, and 17500;

C. Injunctive relief requiring SeaWorld to cease its unfair business practices pursuant to Cal. Bus. & Prof. Code §§ 17200, 1750, and 17500;

D. All other available remedies pursuant to Cal. Bus. & Prof. Code §§ 17200, 1750, and 17500;

E. Actual damages and injunctive relief requiring return of all payments made by members of the Class of SeaWorld Orlando Purchasers pursuant to Fla. Stat. § 501.211(2);

F. Injunctive relief on behalf of the members of the Class of SeaWorld San Antonio Purchasers requiring SeaWorld to cease its false, misleading, and deceptive business practices pursuant to Tex. Bus. & Com. Code § 17.50(b);

G. Damages, restitution, and injunctive relief as appropriate under Florida and Texas law on behalf of the Class of SeaWorld Orlando Purchasers and the Class of SeaWorld San Antonio Purchasers;

H. Prejudgment interest at the maximum rate;

I. Costs of the proceedings herein;

J. Reasonable attorneys' fees and costs as allowed by statute;

K. *Cy pres* to be awarded to an orca research organization to be identified at the time of judgment. Such *cy pres* will consist of any amounts recovered that are not returned to consumers; and

L. All such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs, by counsel, requests a trial by jury on their legal claims, as set forth above.

DATED: May 7, 2015

HAGENS BERMAN SOBOL SHAPIRO LLP

By */s/ Elaine T. Byszewski*
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Attorney for Plaintiffs Kuhl and Browne and the Proposed Classes

DECLARATION RE CLRA VENUE

I, Valerie Simo, do hereby declare and state as follows:

I am a party plaintiff in *Valerie Simo, et al., individually and on behalf of all others similarly situated v. SeaWorld Entertainment, Inc.* Pursuant to CAL. CIV. CODE § 1780(d), I make this declaration in support of the Class Action Complaint and the claim therein for relief under CAL. CIV. CODE § 1780(a). I have personal knowledge of the facts stated herein and, if necessary, could competently testify thereto.

This action for relief under Cal. Civ. Code § 1780(a) has been commenced in a county that is a proper place for trial of this action because SeaWorld does business throughout the State of California.

This declaration is signed under penalty of perjury under the laws of the State of California this 4th day of May 2015.

Valerie Simo

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

15CV1022 AJB KSC

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

VALERIE SIMO, JOYCE KUHL, and ELAINE BROWNE, individually and on behalf of themselves and all others similarly situated

(b) County of Residence of First Listed Plaintiff San Bernardino
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Elaine T. Byszewski, Hagens Berman Sobol Shapiro LLP, 301 North Lake Ave., Suite 301, Pasadena, CA 91101; (213) 330-7151

DEFENDANTS

SEAWORLD ENTERTAINMENT, INC.

County of Residence of First Listed Defendant San Diego
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ❒ 1 U.S. Government Plaintiff
- ❒ 3 Federal Question *(U.S. Government Not a Party)*
- ❒ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	❒ 4
Citizen of Another State	❒ 2	❒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	☒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ❒ 110 Insurance
- ❒ 120 Marine
- ❒ 130 Miller Act
- ❒ 140 Negotiable Instrument
- ❒ 150 Recovery of Overpayment & Enforcement of Judgment
- ❒ 151 Medicare Act
- ❒ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ❒ 153 Recovery of Overpayment of Veteran's Benefits
- ❒ 160 Stockholders' Suits
- ❒ 190 Other Contract
- ❒ 195 Contract Product Liability
- ❒ 196 Franchise

REAL PROPERTY
- ❒ 210 Land Condemnation
- ❒ 220 Foreclosure
- ❒ 230 Rent Lease & Ejectment
- ❒ 240 Torts to Land
- ❒ 245 Tort Product Liability
- ❒ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ❒ 310 Airplane
- ❒ 315 Airplane Product Liability
- ❒ 320 Assault, Libel & Slander
- ❒ 330 Federal Employers' Liability
- ❒ 340 Marine
- ❒ 345 Marine Product Liability
- ❒ 350 Motor Vehicle
- ❒ 355 Motor Vehicle Product Liability
- ❒ 360 Other Personal Injury
- ❒ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ❒ 365 Personal Injury - Product Liability
- ❒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ❒ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ❒ 370 Other Fraud
- ❒ 371 Truth in Lending
- ❒ 380 Other Personal Property Damage
- ❒ 385 Property Damage Product Liability

CIVIL RIGHTS
- ❒ 440 Other Civil Rights
- ❒ 441 Voting
- ❒ 442 Employment
- ❒ 443 Housing/ Accommodations
- ❒ 445 Amer. w/Disabilities - Employment
- ❒ 446 Amer. w/Disabilities - Other
- ❒ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ❒ 463 Alien Detainee
- ❒ 510 Motions to Vacate Sentence
- ❒ 530 General
- ❒ 535 Death Penalty

Other:
- ❒ 540 Mandamus & Other
- ❒ 550 Civil Rights
- ❒ 555 Prison Condition
- ❒ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ❒ 625 Drug Related Seizure of Property 21 USC 881
- ❒ 690 Other

LABOR
- ❒ 710 Fair Labor Standards Act
- ❒ 720 Labor/Management Relations
- ❒ 740 Railway Labor Act
- ❒ 751 Family and Medical Leave Act
- ❒ 790 Other Labor Litigation
- ❒ 791 Employee Retirement Income Security Act

IMMIGRATION
- ❒ 462 Naturalization Application
- ❒ 465 Other Immigration Actions

BANKRUPTCY
- ❒ 422 Appeal 28 USC 158
- ❒ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ❒ 820 Copyrights
- ❒ 830 Patent
- ❒ 840 Trademark

SOCIAL SECURITY
- ❒ 861 HIA (1395ff)
- ❒ 862 Black Lung (923)
- ❒ 863 DIWC/DIWW (405(g))
- ❒ 864 SSID Title XVI
- ❒ 865 RSI (405(g))

FEDERAL TAX SUITS
- ❒ 870 Taxes (U.S. Plaintiff or Defendant)
- ❒ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ❒ 375 False Claims Act
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 490 Cable/Sat TV
- ❒ 850 Securities/Commodities/ Exchange
- ☒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 893 Environmental Matters
- ❒ 895 Freedom of Information Act
- ❒ 896 Arbitration
- ❒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ❒ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ❒ 2 Removed from State Court ❒ 3 Remanded from Appellate Court ❒ 4 Reinstated or Reopened ❒ 5 Transferred from Another District *(specify)* ❒ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
28 USC 1332(d); Cal. Bus. & Prof. 17200/17500; Cal. Civ. Code 1750/1709-10; FL Stat. 501.201; TX Code 17.41

Brief description of cause:
Cal. Unfair Comp. Law; CLRA; False Advertising Law; Deceit; FLUDTPA; Texas DTP-CP; Unjust Enrichment

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $ 5,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ❒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Hon. Cathy Ann Bencivengo DOCKET NUMBER 15-cv-00660; 15-cv-00842

DATE 05/07/2015

SIGNATURE OF ATTORNEY OF RECORD /s/ Elaine T. Byszewski

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____