UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

LEONARD LEON, MELISSA MARLENE SANABRIA RODRIGUEZ AND RAMON SANTIAGO RODRIGUEZ TORRES, AND MATTHEW PAUL SCHWERI AND DURIA R. RODRIGUEZ SCHWERI, JAMIE HEINDL and JEANNETTE ROTH, as individuals and on behalf of those similarly situated, Plaintiffs, v. DISNEY DESTINATIONS, LLC, a Florida Limited Liability Company, Defendant. _____/	Civil Action No. _____

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1332, 1441, 1446, 1453, Defendant Disney Destinations, LLC ("Disney") hereby removes this action from the Circuit Court for the Ninth Judicial Circuit in and for Orange County, Florida, Civil Action No. 2020-CA-009543-O (the "Circuit Court Action"), to the United States District Court for the Middle District of Florida.[1] This Court has multiple bases for jurisdiction over this action which is properly removed based on federal question jurisdiction, 28 U.S.C. § 1331, under the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332, and pursuant to 28 U.S.C. § 1441(b).

Plaintiffs' Complaint (Exhibit 1, hereto) attempts to construct a lawsuit out of facts and

[1] As of this filing, Disney has not been properly served with process. By filing this Notice of Removal, Disney does not waive or relinquish its rights to assert any affirmative defense, including a motion to dismiss pursuant to the Federal Rules of Civil Procedure, or any other challenge that may be appropriate as this case progresses.

circumstances that have caused them no injury. As a result of the COVID-19 pandemic, Walt Disney World ("WDW") was subject to unprecedented and prolonged park closures. The closures were painful both to Disney and its guests, but soon after it began, Disney promptly suspended collecting payments from its monthly payment annual passholders. In July, WDW was delighted to begin a period of phased and gradual park reopenings, following public health guidelines that required across-the-board reductions in the number of guests that could be admitted to the parks. To help manage attendance, Disney implemented a park reservation system whereby guests had to make reservations in advance of visiting.

Recognizing that this reservation system and the conditions of social distancing in the parks may not appeal to everyone, Disney gave all passholders a period of time in which to decide whether to keep or cancel their passes at no further obligation. Any passholder who canceled was offered a complete, pro rata refund for the unused value of their pass.

Unfortunately, in the lead-up to the July reopening, there was an accidental, one-time (and immediately corrected) billing error that resulted in temporary authorization holds being identified on the accounts of monthly-payment plan passholders. Disney quickly detected the error and immediately fixed this issue before funds were actually taken from passholders accounts – and also publicly offered to reimburse passholders who said they had incurred fees or bank charges as a result of the authorization hold being briefly placed on their account.

Even though Plaintiffs have suffered no cognizable injury, Plaintiffs have now sued, claiming intangible harm arising out of the one-time, electronic billing error. They have also complained that the reservation system provides them with something less than unfettered access to which they believe they should be entitled, even during the COVID-19 pandemic. Finally, they complain that they have had to wait on hold while trying to cancel their annual passes,

although they do not allege that Disney has refused to provide refunds. Each of these causes of action support the assertion of federal court jurisdiction here.

BACKGROUND

1. On September 24, 2020, Plaintiffs Leonard Leon, Melissa Marlene Sanabira Rodriguez, Ramon Santiago Rodriguez Torres, Matthew Paul Schweri, Duria R. Rodriguez Schweri, and Jeannette Roth filed their Class Action Complaint and Demand for a Jury Trial in the Circuit Court Action against Disney.

2. In the Complaint, Plaintiffs allege that Disney (i) placed unauthorized "holds" on named plaintiffs' bank accounts for varying amounts, which caused them "stress and aggravation," *see, e.g.,* Compl. ¶¶ 49-50, (ii) "intentionally prioritized non-annual passholders for access to its parks" and "limit[ed] annual passholders' access," *id*. ¶ 36, and (iii) "created barriers that hindered many [] Class members from cancelling their passes," *id*. ¶ 102.

3. Plaintiffs allege claims on behalf of three classes – (1) "Overbilling Class," (2) "Denial of Access Class," and (3) "Defective Cancellation Class."

4. Plaintiffs bring claims under the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. 501.201 *et seq.*, on behalf of each of the three classes, breach of contract on behalf of each of the three classes, and in the alternative, unjust enrichment for the Denial of Access and Defective Cancellation classes.

5. This Court has federal question jurisdiction, 28 U.S.C. § 1331, because Plaintiffs raise substantial questions of law that arise under and are preempted by the federal Electronic Funds Transfer Act ("EFTA"). *See* 15 U.S.C. § 1693 *et seq.*

6. This Court has subject matter jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d).

7. Because this Court has original jurisdiction, removal of this action to this Court is proper

pursuant to 28 U.S.C. § 1441.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 89(b) and 1441(a) because the United States District Court for the Middle District of Florida is the federal judicial district embracing the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida, where the Circuit Court Action was filed.

9. This Notice of Removal is timely filed in compliance with 28 U.S.C. § 1446(b) because it is filed within 30 days of September 24, 2020, the date that Plaintiffs filed the Circuit Court Action.[2]

10. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings, and orders in the Circuit Court Action as of the date of this filing are attached as Exhibits 1-5.

11. Pursuant to 28 U.S.C. § 1446(d), Disney has filed this Notice with this Court and will serve a copy of this Notice upon counsel of record for all parties and file a copy with the clerk in the Circuit Court Action.

12. The Court may consider the allegations in the notice of removal and any summary judgment-type evidence offered by the parties. *See, e.g. Sierminski v. Transouth Fin. Corp.*, 216 F. 3d 945, 949 (11th Cir. 2000) (affirming denial of motion to remand); *Dart Cherokee Basin Operating Co., LLC v. Owens,* 574 U.S. 81, 89, 135 S. Ct. 547, 554, 190 L. Ed. 2d 495 (2014) ("[A]s specified in § 1446(a), a defendant's notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.").

[2] Plaintiffs have not yet properly served the Complaint on Disney. Removal under these circumstances is nevertheless also permissible under the plain language of 28 U.S.C. § 1441(b)(2) ("A civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest *properly joined and served* as defendants is a citizen of the State in which such action is brought." (emphasis added)).

13. In addition to reviewing the available evidence, this Court may also make "reasonable deductions, reasonable inferences, or other reasonable extrapolations" to determine whether the amount in controversy has been met. *Pretka v. Kolter City Plaza II, Inc.,* 608 F.3d 744, 754 (11th Cir. 2010).

FEDERAL JURISDICTION

14. This Court has multiple bases for federal jurisdiction, including federal question jurisdiction, 28 U.S.C. § 1331, and jurisdiction under CAFA, 28 U.S.C. § 1332.[3]

I. Federal Question Jurisdiction

15. This Court has federal question jurisdiction, 28 U.S.C. § 1331, because Plaintiffs' allegations necessarily implicate federal law.

16. Plaintiffs allege that Disney "overbill[ed] or plac[ed] an impermissible hold on bank accounts" and continued "to bill consumers after consumers notified [Disney] they wished to cancel their annual passes," Compl. ¶ 18.

17. Plaintiffs further allege that, "in approximately the first few days of July, annual passholders were shockingly and suddenly charged or had holds placed on their funds [] by [Disney] in an amount more than their agreed monthly payment." *Id.* ¶ 32; *see also id.* ¶ 49 (alleging Disney "suddenly and wrongfully debited or placed a hold on Mr. and Mrs. Rodriguez's bank account"); *id.* ¶ 56 (alleging Disney "suddenly and wrongfully debited or placed a hold on Mr. and Mrs. Schweri's bank account"); *id.* ¶ 63 (alleging Disney "suddenly and wrongfully debited or placed a hold on Mr. Leon's bank account"); *id.* ¶ 69 (alleging Disney "suddenly and wrongfully debited or placed a hold on Ms. Heindl's bank account").

[3] *See also* 28 U.S.C. § 1441(b); *Texas Brine Co., L.L.C. v. Am. Arbitration Ass'n, Inc.,* 955 F.3d 482,485 (5th Cir. 2020); *Gibbons v. Bristol-Myers Squibb Co.,* 919 F.3d 699 (2d Cir. 2019); *Encompass Insurance Co. v. Stone Mansion Restaurant Inc.,* 902 F.3d 147 (3d Cir. 2018).

18. Plaintiffs define two classes based on these allegedly unauthorized bank debits – the "Overbilling Class" and the "Defective Cancellation Class." *Id*. at ¶ 14 (defining plaintiffs who "were charged or had amounts held beyond what was authorized by contract"), *id.* at ¶ 16 (Disney "collected a monthly payment after [plaintiffs] notified [Disney] of their desire to cancel their annual pass").

19. Electronic billing to consumers' bank accounts through debit cards is comprehensively regulated under the EFTA. *See* 15 U.S.C. § 1693 *et seq*. This federal law specifies the requirements by which a merchant may electronically debit a consumer's bank account and it further comprehensively sets forth the measures that must be taken by merchants, banks and payment processors in the event of any erroneous debit, such as the "wrongful debit[s]" of Plaintiffs' bank accounts, as alleged in the Complaint. *See supra.* The law further provides a remedy to bank account holders who have been injured by unauthorized transfers and inadequate remedial measures in violation of the EFTA.

20. Plaintiffs' artful pleading to frame this Complaint under state law is not dispositive of whether this court may assert federal question jurisdiction. Whether a claim "arises under" federal law must be determined by reference to the "well pleaded complaint." *Merrell Dow Pharms. Inc. v. Thompson*, 478 U.S. 804, 808 (1986). Federal question jurisdiction may also lie in cases where state law creates the cause of action, provided "vindication of a right under state law necessarily turn[s] on some construction of federal law." *See id.* at 809; *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 13 (1983) ("Even though state law creates [the] cause[] of action, [the] case may still 'arise under' the laws of the United States if a well-pleaded complaint established that [the] right to relief under state law requires resolution of a substantial question of federal law in dispute between the parties."); *see also Cotromano v. United Techs.*

Corp., 7 F. Supp. 3d 1253, 1257 (S.D. Fla. 2014) (denying motion to remand where plaintiffs alleged tort claims based on uranium and thorium contamination which were preempted by the Price-Anderson Act); *Hill v. BellSouth Telecommunications, Inc.*, 364 F.3d 1308, 1315 (11th Cir. 2004) (finding error to refuse to recognize federal question jurisdiction where plaintiff's causes of action attempted to challenge the terms of a filed tariff which was barred by the filed rate doctrine). Here, the Complaint cannot be resolved without a determination of a substantial question of federal law: whether the EFTA completely or partially pre-empts causes of actions brought by Plaintiffs' Overbilling and Defective Cancellation classes.

21. Because Plaintiffs' claims fall within the comprehensive regulation of EFTA, they therefore raise substantial questions of federal law and require removal.

II. CAFA Provides Federal Jurisdiction Over This Action.

22. In addition to federal question jurisdiction, there is an independent basis for removal pursuant to CAFA.

23. CAFA expanded federal jurisdiction over proposed class actions. *Kelly v. State Farm Mut. Auto. Ins. Co.,* No. 5:10-CV-194-OC-32GRJ, 2010 WL 9888731, at *8 (M.D. Fla. Sept. 23, 2010) (explaining criteria for subject matter jurisdiction for class action under CAFA). It provides that a class action against a non-governmental entity may be removed to federal court if (1) the number of proposed class members is not less than 100; (2) any member of the proposed plaintiff class is a citizen of a state different from any defendant (so-called "minimum diversity"); and (3) the aggregate amount in controversy exceeds $5 million, exclusive of interests and costs. 28 U.S.C. §§ 1332(d)(2), (d)(5), and 1453(b). As set forth below, each of these elements is satisfied:

1. The Proposed Class Exceeds 100 Class Members

24. The Complaint expressly alleges that the putative class contains at least 25,000 class members. Compl. ¶ 17.

2. There is Minimum Diversity of Citizenship

25. The minimum diversity of citizenship criterion is satisfied if "any member of a class of plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. § 1332(d)(2)(A). The Complaint alleges that Disney is a citizen of the State of Florida. Compl. ¶ 10. As set forth in the accompanying Declaration of Sarah Sinoff (Exhibit 6, hereto), thousands of potential class members have provided addresses to Disney indicating that they receive mail and therefore likely reside outside of Florida. *See, e.g.,* Decl. of Sarah Sinoff ¶ 5 (based on an examination of their addresses, provided when they purchased annual passes from Disney, thousands of Disney park passholders likely reside outside of Florida). Accordingly, minimum diversity under CAFA is satisfied. 28 U.S.C. § 1332(d)(2)(A).

3. The Aggregate Amount in Controversy, Exclusive of Interest and Costs, Exceeds the $5 Million Jurisdictional Threshold.

26. Under CAFA, the claims of the putative class members are aggregated to determine whether the amount in controversy is satisfied. *See* 28 U.S.C. § 1332(d)(6). Those putative class members include "persons (named or unnamed) who fall within the definition of the proposed or certified class." 28 U.S.C. § 1332(d)(1)(D).

27. Disney denies liability and contends that neither Plaintiffs nor any putative class members can recover damages on the Complaint. However, for purposes of this jurisdictional analysis, "the plaintiffs' likelihood of success on the merits is largely irrelevant to the court's jurisdiction because the pertinent question is what is *in controversy* in the case, not how much the plaintiffs are ultimately likely to recover." *Pretka,* 608 F.3d at 751 (emphasis in original).

28. Plaintiffs' Complaint alleges limitations on every putative class member's access to Disney's parks. Compl. ¶ 34 ("Upon reopening, the broad access to [Disney's] parks previously given to annual passholders has been severely restricted"); *id*. at ¶ 36 ("limiting annual passholders' access … while simultaneously collecting money from annual passholders who were deprived of access").

29. Plaintiffs plead that they have been wrongfully assessed unauthorized bank debits in amounts ranging from $225.78 to $803 representing several months' payments on their annual passes. *Id*. at ¶ 49 (Mr. and Mrs. Rodriguez contesting alleged wrongful hold of $345 which reflected two months payment on an annual pass); *id*. at ¶ 56 (Mr. and Mrs. Schweri contesting alleged wrongful hold of $803 which reflected "over four months" payment on an annual pass); *id*. at ¶ 63 (Mr. Leon contesting alleged wrongful hold of $637 which reflected "over four months" payment); *id*. at ¶ 69 (Ms. Heindl contesting alleged wrongful hold of $225.78 which reflected one months' payment).

30. Plaintiffs have defined three potential classes, exceeding 25,000 members in the aggregate, which easily exceeds the $5 million amount "in controversy," assuming the named plaintiffs' potential damages are representative of those of absent class members. Given the 25,000 person class size pled by Plaintiffs, each plaintiff would only need to seek damages in the amount of $200 to hit the $5 million amount in controversy which they have far exceeded based on their own allegations. *See supra*.

31. In addition, Plaintiffs seek attorneys' fees under its Florida Deceptive and Unfair Trade Practices Act ("FDUTPA") claims. Compl. ¶¶ 88-115 (seeking "attorneys' fees and costs" among other damages). Courts may consider a potential award of attorneys' fees in determining the amount in controversy if they are provided for by statute or by contract. *See Lee-Bolton v.*

Koppers Inc., 848 F. Supp. 2d 1342, 1356 (N.D. Fla. 2011) (denying remand after finding amount "in controversy" was satisfied) (citations omitted); *Leslie v. Conseco LifeIns. Co.,* 2012 WL 4049965, at *3 (S.D. Fla. Sept. 13, 2012) (refusing to remand case where CAFA jurisdictional requirements have been met). FDUTPA authorizes recovery of reasonable attorneys' fees and expenses of litigation to a prevailing party. *See* Fla. Stat. § 501.2105.

32. The jurisdictional threshold is met without even considering any reasonable attorneys' fees and expenses of litigation potentially available to the putative class members under the FDUTPA.

CONCLUSION

For the reasons outlined above, this Court has federal question jurisdiction, 28 U.S.C. § 1331, because its state law claims raise a substantial question of federal law under the EFTA. In addition, this Court has jurisdiction over this action under CAFA, 28 U.S.C. § 1332, because (1) the proposed class contains at least 100 members, (2) Plaintiffs are citizens of a state different than Disney, and (3) the aggregate amount in controversy exceeds $5,000,000, exclusive of interest and costs. Disney has complied with the procedural requirements for removal under 28 U.S.C. § 1446. Therefore, Disney respectfully requests that this Court assume full jurisdiction over this action as provided by law.

DATED: September 30, 2020

Respectfully submitted,

/s/ Dennis P. Waggoner

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of September, 2020, I filed the foregoing Notice of Removal with the Clerk of Court. I FURTHER CERTIFY that I caused a true and correct copy of the foregoing to be served via electronic mail to all counsel of record.

s/ *Dennis P. Waggoner*
Dennis P. Waggoner

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IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA
CIVIL DIVISION

LEONARD LEON, MELISSA MARLENE SANABIRA RODRIGUEZ AND RAMON SANTIAGO RODRIGUEZ TORRES, MATTHEW PAUL SCHWERI AND DURIA R. RODRIGUEZ SCHWERI, JAMIE HEINDL, AND JEANNETTE ROTH, ***as individuals and on behalf of those similarly situated,***

Plaintiffs,

v.

DISNEY DESTINATIONS, LLC,
a Florida Limited Liability Company

Defendant.
_____/

CLASS REPRESENTATION

CASE NO.

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiffs, Melissa Marlene Sanabira Rodriguez and Ramon Santiago Rodriguez Torres (Mr. and Mrs. Rodriguez), Matthew Paul Schweri and Duria R. Rodriguez Schweri ("Mr. and Mrs. Schweri"), Leonard Leon ("Mr. Leon"), Jamie Heindl ("Ms. Heindl"), and Jeannette Roth ("Ms. Roth") (collectively, "Plaintiffs") by and through the undersigned counsel and on their own behalf and on behalf of those similarly situated (referred to generally as "the Class" or delineated into subclasses as identified herein), hereby file the following Class Action Complaint against Defendant, Disney Destinations, LLC ("Defendant"), and allege as follows:

PRELIMINARY STATEMENT

1. This is an action for violation of the Florida Unfair and Deceptive Trade Practices Act ("FDUTPA"), Fla. Stat. § 501.201 *et seq*., and for breach of contract. Claims for unjust enrichment are asserted in the alternative to each breach of contract Count.

JURISDICTION AND VENUE

2. This is an action for damages exceeding $30,000.00, exclusive of interest, attorneys' fees and court costs.

3. Pursuant to Fla. Stat. § 26.012, and other applicable law, this Court has jurisdiction over each cause of action set forth herein.

4. Venue is proper in this county pursuant to Fla. Stat. § 47.011 because the defendant resides in Orange County, because the cause of action accrued in Orange County, Florida, and because the Plaintiffs and Defendants have a signed agreement that states, in part, that any "dispute or legal action between you and us arising out of or in connection with this Contract shall be commenced and maintained exclusively in the Circuit Court in and for Orange County, Florida."

PARTIES

5. Mr. and Mrs. Rodriguez are husband and wife, and are individuals residing in Dade County, Florida, and are citizens of Florida.

6. Mr. and Mrs. Schweri are husband and wife, and are individuals residing in Dade County, Florida, and are citizens of Florida.

7. Mr. Leon is an individual residing in Hillsborough County, Florida, and is a citizen of Florida.

8. Ms. Heindl is an individual residing in Flagler County, Florida, and is a citizen of Florida.

9. Ms. Roth is an individual residing in Hillsborough County, Florida, and is a citizen of Florida.

10. Defendant is a Florida Corporation with its principal place of business in Florida, and it conducted business within the State of Florida, including Orange County, during the periods relevant to this action.

11. The conduct of Defendant was authorized, approved and/or ratified by one or more officers, directors, or managers of Defendant, and/or they knew in advance that the Defendant was likely to conduct itself, and allowed them to so act, with conscious disregard of the rights and safety of others. The agent(s) or employee(s) of Defendant acted within the course and scope of such agency or employment and acted with the consent, permission, and authorization of Defendant.

CLASS REPRESENTATION ALLEGATIONS

12. Plaintiffs bring this action as a class action, pursuant to Florida Rule of Civil Procedure 1.220(b)(3), on their own behalf and on behalf of all other similarly-situated consumers.

13. Plaintiffs propose three classes related to the conduct described in this Complaint (the "Classes").

OVERBILLING CLASS

14. The "Over Billing Class" is comprised of:

a. All natural persons who purchased an annual pass to Defendant's Florida theme parks;
b. who funded the annual pass through Defendant's automatic monthly payment system with a debit card or bank account;
c. who were charged or had amounts held beyond what was authorized by contract;
d. on or after four years before the filing of this Complaint.

DENIAL OF ACCESS CLASS

15. The "Denial of Access Class" is comprised of:

a. All natural persons who purchased an annual pass to Defendant's theme parks;
b. who continue to be charged for access to the parks as was originally agreed;
c. who are not able to access the parks and related services as advertised;
d. on or after four years before the filing of this Complaint.

DEFECTIVE CANCELLATION CLASS

16. The "Defective Cancellation Class" is comprised of:

a. All natural persons who purchased an annual pass to Defendant's Florida theme parks;
b. who funded the annual pass through Defendant's automatic monthly payment system;
c. who notified or attempted to notify Defendant they wished to cancel their pass on or after July 3, 2020;
d. from whom Defendant collected a monthly payment after they notified Defendant of their desire to cancel their annual pass;
e. on or after four years before the filing of this Complaint.

Numerosity

17. The Classes are each numerous that joinder of all members is impracticable. Plaintiffs estimate each of the Classes will have at least 25,000 members.

Commonality

18. There are questions of law and fact that are common to the Classes that predominate over questions affecting any individual class member. All class members held annual passes for Defendant's parks and were subject to the same policies and procedures. The common questions of law and fact relating to the Classes include, without limitation, whether Defendant violated FDUPTA, breached its contract with Plaintiffs, or in the alternative is liable for unjust enrichment through its conduct, which includes (a) overbilling or placing an impermissible hold on bank accounts, (b) denying annual passholders access to its parks on the terms promised, and (c)

continuing to bill consumers after consumers notified Defendant they wished to cancel their annual passes.

Typicality

19. Plaintiffs' claims are typical of the claims of the Classes, which are based on the same operative facts and share the same legal theories. Plaintiffs have no interest adverse or antagonistic to the interests of other class members.

Adequacy of Class Representation

20. Plaintiffs will fairly and adequately protect the interests of the Classes. Plaintiffs have retained experienced counsel, competent in prosecuting class action litigation.

Predominance of Common Questions

21. The common questions described in Paragraph 18 predominate over any individual issues.

Superiority of Class Resolution

22. A class action is superior to other methods to fairly and efficiently adjudicate these Plaintiffs' claims. Plaintiffs do not anticipate any unusual difficulties in managing the class action because the claims are based on Defendant's standard conduct patterns.

23. A class action will permit many similarly-situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would create.

24. Class treatment will allow the Court to adjudicate relatively small claims by many class members who could not otherwise afford to seek legal remedies for Defendant's conduct.

25. Without a class action, Defendant will continue to violate the class members' rights and the class members will continue to suffer the loss of their legal rights, as well as monetary damages.

26. Defendant's actions apply generally to the entirety of the Classes and, accordingly, Plaintiffs seek relief that is appropriate for those Classes.

FACTS RELEVANT TO ALL CLASS REPRESENTATIVES

27. Defendant operates theme parks around the world, including in Florida. Defendant offers consumers who wish to purchase annual passes to any of its parks an option to pay for the passes by providing a credit card, debit card, or bank account information. Defendant represented to the public and the Plaintiffs that the purchase of annual passes would provide passholders broad and guaranteed access to Defendant's parks to use as they chose with only specified restrictions such as pre-disclosed blackout dates.

28. If a passholder elects to pay for all or part of his or her annual pass in monthly installments, Defendant automatically debits each installment from the consumer's credit card, debit card, or bank account monthly. Some passholders choose to pay a large down payment to have a favorable impact on their monthly payment.

29. The annual passholders give specific authorization to Defendant regarding these monthly automatic charges. That authorization specifies an amount that can be collected. No additional authority exists to for Defendant to collect amounts above the amount specified in the agreements between Defendant and annual passholders.

30. In March 2020, Defendant closed its parks due to the COVID-19 pandemic.

31. Due to closing its parks, Defendant suspended the monthly auto-payments until the parks could reopen and extended passholders' annual passes for the length of time the parks were shut down.

32. Upon determining that parks would reopen in July 2020, Defendant began the process of starting the auto-payments described above. However, in approximately the first few days of July, annual passholders were shockingly and suddenly charged or had holds placed on their funds placed by Defendant in an amount more than their agreed monthly payment.

33. The amounts charged or placed on hold in annual passholders' bank accounts exceeded any authority given to Defendant to take an auto-payment. This caused harm to annual passholders who were wrongly and unexpectedly deprived of their assets and was a direct breach of the contract between Defendant and annual passholders.

34. Upon reopening, the broad access to Defendant's parks previously given to annual passholders has been severely restricted. Instead of the previously disclosed restrictions, such as blackout dates, annual passholders now have no guaranteed access to Defendant's parks, must make a reservation in order to utilize their annual passes, and are restricted to visiting one park per day. Previously, passholders could visit multiple Disney theme parks in the same day, which is especially attractive to Florida residents due to their proximity to the parks.

35. Defendant has conceded that there will be a "limited capacity period" where "it may be difficult for Annual Passholders to get park reservations." Also, Defendant has conceded that certain "pass benefits and features will not be available" and that "park experiences and offering will be modified and subject to limited availability or even closure."

36. Instead of doing its best to abide by its existing obligations to annual passholders, Defendant intentionally prioritized non-annual passholders for access to its parks. By limiting annual passholders' access, Defendant was taking advantage of the additional admission fees it collected from non-passholders while simultaneously collecting money from annual passholders who were deprived of access. Using its new, mandatory reservation system, Disney intentionally prioritized access to the parks for non-passholders over passholders by making the parks more available to non-passholders. Indeed, there were entire weeks in Disney's reservation system where access to the parks for passholders was blocked, but was wide open for non-passholders. *See* Blog Mickey, "Disney World's Most Loyal Guests Find It Increasingly Difficult to Visit Theme Parks," August 5, 2020 (available at: https://blogmickey.com/2020/08/disney-worlds-most-loyal-guests-find-it-increasingly-difficult-to-visit-the-theme-parks/).

37. In addition, Defendant's actions took into account its belief that non-passholders are more likely to spend money on merchandise and food than annual passholders, and that passholders can obtain those items at a discount. This profit-driven approach to how Defendant treated its most loyal customers, who had already paid for access to Defendant's parks, was misleading, unfair, and deceptive.

38. Indeed, during an earnings call with Disney shareholders in August 2020, Disney CEO Bob Chapek admitted that non-passholders who "travel[] and stay[] for five to seven days" are "more valuable to the business than someone who comes in on an annual pass . . ."

39. Defendant's attempts at mitigating the restricted access to its parks have been illusory.

40. For example, Defendant offered only a brief window of time from July 14, 2020 to August 11, 2020, during which annual passholders could cancel their annual passes.

Passholders would then not have any payments owed after that date and would be entitled to a partial refund. However, Defendant made the process to accomplish this cancelation overly burdensome by making consumers wait on the phone for extended periods of time, up to multiple hours, to reach a customer service representative. Indeed, the cancellation process was called "nightmarish" by the Orlando Sentinel.

41. Further, although passholders were required to contact Defendant by no later than August 11, 2020, to cancel their annual passes, and access to the park was cut off for passholders who did so by August 12, 2020, Defendant informed passholders their refunds will be held until mid- to late-September or later. Some or all of the passholders who notified Disney they wished to cancel their passes are still awaiting refunds as of the date of filing this complaint, up to several months after they notified Disney they wished to cancel their passes.

42. Moreover, Defendant allegedly sent notice of the cancellation option by e-mail, but many passholders never received such an email. Many passholders therefore had no meaningful opportunity to cancel their passes and are stuck with far less than they bargained for.

43. Further, while Disney has stated that those customers who were wrongfully billed are eligible to receive reimbursement of any overdraft fees, having to wait on hold on the telephone for up to hours to receive such reimbursement is infeasible and unfair to ask of customers, and, in reality, provides no meaningful relief at all. Indeed, it compounds the problem through additional frustration and wasted time.

44. Some consumers who waited for hours to inform Defendant that they wished to cancel their annual passes even had payments collected by Defendant after notifying Defendant of their wish to cancel, as detailed below.

MR. AND MRS. RODRIGUEZ

45. Mr. and Mrs. Rodriguez first purchased an annual pass in or around May 2019. They later timely renewed their annual pass in or around April 2020.

46. Their annual pass had limited blackout dates for approximately 2 weeks in December and approximately and 2 weeks around March or April. Otherwise, Mr. and Mrs. Rodriguez's access to Defendant's parks was guaranteed if the park had not met maximum capacity as that capacity was determined at the time of entering the contract. Mr. and Mrs. Rodriguez's annual pass allowed them to access multiple parks, including in a single day, with no reservation required.

47. On or about May of 2019, Mr. and Mrs. Rodriguez purchased their annual passes, paid a down payment, and agreed to pay additional payments of approximately $170.00 per month for 12 months via automatic debit. Around April of 2020, Mr. and Mrs. Rodriguez renewed their annual passes and were able to maintain the same monthly payment.

48. The automatic debit for Mr. and Mrs. Rodriguez's monthly payments was drawn on a checking account via debit card.

49. Around the beginning of July, Defendant suddenly and wrongfully debited or placed a hold on Mr. and Mrs. Rodriguez's bank account for approximately $346.00, amounting to over two months of agreed payments.

50. This sudden, unexpected, and unauthorized reduction in Mr. and Mrs. Rodriguez's access to their funds caused stress and aggravation. For instance, because of Defendant's actions, Mr. and Mrs. Rodriguez had to defer making a car payment.

51. In addition to the improper debiting or holds relating to their funds, Mr. and Mrs. Rodriguez have invested in annual passes that they cannot use as intended. After paying a

significant down payment and monthly payments, Mr. and Mrs. Rodriguez are significantly invested in the annual pass agreement with Defendant. As a result of Defendant's restrictions, they will not be able to utilize their annual pass as Defendant agreed in their contract.

MR. AND MRS. SCHWERI

52. Mr. and Mrs. Schweri first purchased their annual pass in late 2019. At the time, their goal for use of the pass was to have monthly access to Defendant's parks.

53. Their annual pass had limited blackout dates for approximately three weeks in December and approximately two weeks in April. Otherwise, Mr. and Mrs. Schweri's access to Defendant's parks was guaranteed if the park had not met maximum capacity as that capacity was determined at the time of entering the contract. Mr. and Mrs. Schweri's annual pass allowed them access to multiple parks in one day with no reservations required.

54. On or about October or November of 2019, Mr. and Mrs. Schweri purchased their annual passes and paid approximately $800.00 as a down payment and agreed to pay additional payments of $170.00 per month for 12 months via automatic debit.

55. The automatic debit for Mr. and Mrs. Schweri's payment was drawn on a bank account via debit card.

56. Around the beginning of July, Defendant suddenly and wrongfully debited or placed a hold on Mr. and Mrs. Schweri's bank account for approximately $803.00, amounting to over four months of agreed payments.

57. This sudden, unexpected, and unauthorized reduction in access to their funds caused stress and aggravation. Mrs. Schweri was frantic about the lost funds and Defendant's actions caused the Schweris extreme financial hardship. For instance, because of the depravation of use of their funds, two separate bills owed to third parties required emergency deferment or

intervention. Defendant's action caused a third-party's automatic debit to be denied for insufficient funds and Mr. and Mrs. Schweri had to pay an overdraft fee.

58. In addition to the improper action regarding their debit card, Mr. and Mrs. Schweri have invested in annual passes that they cannot use as intended. After paying a significant down payment and several months' payments, Mr. and Mrs. Schweri are significantly invested in the annual pass agreement with Defendant. As a result of Defendant's restrictions, they will not be able to utilize their annual pass as Defendant agreed in their contract.

MR. LEON

59. Mr. Leon first purchased his annual pass around November of 2019.

60. His annual pass had limited blackout dates for approximately three weeks in December and approximately two weeks in around April. Otherwise, Mr. Leon's access to Defendant's parks was guaranteed if the park had not met maximum capacity as that capacity was determined at the time of entering the contract. Mr. Leon's annual pass allowed for access to multiple parks with no reservations required.

61. In 2013 or 2014, Mr. Leon first purchased his annual passes by paying approximately $600.00 as a down payment and agreeing to pay additional payments of approximately $150.00 per month. The annual pass contracts have been renewed in the years since.

62. The automatic debit was drawn on Mr. Leon's checking account via debit card.

63. Around the beginning of July, Defendant suddenly and wrongfully debited or placed a hold on Mr. Leon's bank account for approximately $637.00, amounting to approximately four months of agreed payments.

64. This sudden, unexpected, and unauthorized reduction in access to Mr. Leon's funds caused stress and aggravation. Mr. Leon and his wife had not planned on this large expense. The stress was increased because of another large expense that had occurred on the same day.

65. In addition to the improper actions concerning his debit card, Mr. Leon has invested in an annual pass that he cannot use as intended. After paying a significant down payment and making monthly payments, Mr. Leon is significantly invested in the annual pass agreement with Defendant. As a result of Defendant's restrictions, he will not be able to utilize their annual pass as Defendant agreed in their contract.

MS. HEINDL

65. Ms. Heindl first purchased an annual pass to Defendant's theme parks in or around April 2018.

66. On April 23, 2019, Ms. Heindl renewed the annual pass, made an additional down payment towards those passes, and agreed to additional monthly payments toward the cost of those passes.

67. Ms. Heindl did not thereafter renew the annual passes. The annual passes were scheduled to expire on April 22, 2020, had the Florida Disney theme parks not shut down due to the COVID-19 pandemic and Defendant accordingly extended the expiration of annual passes for the duration of the shutdown. Ms. Heindl had a single payment that remained due at the time of the shutdown.

69. On or around July 3, 2020, Defendant suddenly and wrongfully debited or placed a hold on funds in Ms. Heindl's bank account in the amount of $225.78 without authorization. That amount is the same amount as Ms. Heindl's typical monthly payment for her annual passes but was not on the regularly scheduled payment date.

70. After the July 3, 2020, change, Ms. Heindl called Defendant's customer service department and spoke to customer service representative who informed Ms. Heindl that the charge was made in error and that Ms. Heindl would be reimbursed. The cast member falsely told her that her annual passes were already expired and that she would not be charged any further amounts for them.

71. Approximately ten days later, on or about July 13, 2020, Defendant once again charged Ms. Heindl's debit card $225.78.

72. Ms. Heindl again called Defendant's customer service line, but after an hour of waiting on hold, she gave up and instead used the online chat feature on Defendant's website. She was connected to a Disney customer service representative who provided her further inaccurate information, including that she could expect another charge for her annual passes in August 2020 that would subsequently be reimbursed in September 2020 or October 2020. Ms. Heindl had additional communications through the online chat feature on Defendant's website on July 27, 2020, and July 28, 2020, in which she was again provided inaccurate information.

73. Because Disney's customer service representatives repeatedly told her she could expect additional charges in August for her annual passes, Ms. Heindl believed it was necessary to contact her bank to block such unauthorized charges, and expended considerable time and effort in doing so.

74. This sudden, unexpected, and unauthorized reduction in Ms. Heindl's funds has caused stress and aggravation. Ms. Heindl had to waste time and energy because of Defendant's unauthorized charges and inaccurate information. She has repeatedly spent hours on hold waiting to speak to Defendant's customer service representatives and has had numerous online chat conversations with Defendant's customer service representatives, only to be provided incorrect

information in these communications. Moreover, Ms. Heindl has had to spend hours dealing with her bank, including writing a letter detailing the previous unauthorized charge and anticipated future unauthorized charges in an effort to block future charges. In addition, Ms. Heindl had to transfer money from her savings account in order to pay other bills due to Defendant's unauthorized withdrawal or hold on her funds.

75. Further, as an annual passholder, Ms. Heindl was subject to the same denial of access to the parks as other annual passholders until her pass expired.

MS. ROTH

76. Ms. Roth obtained her annual pass around March of 2020.

77. Ms. Roth's annual pass had limited blackout dates that were specified by Defendant at the time of her agreeing to the terms of the annual passholder agreement. Otherwise, Ms. Roth's access to Defendant's parks was guaranteed if the park had not met maximum capacity as that capacity was determined at the time of entering the contract. Ms. Roth's annual pass allowed for access to multiple parks in a day with no reservations required.

78. As part of her annual passholder agreement with Defendant, Ms. Roth agreed to make her monthly payment by having Defendant automatically charge her credit card monthly.

79. Ms. Roth purchased her annual pass with the intention of using it in August of 2020 because that was when she anticipated long-distance visitors would be coming to the area and she wanted to enjoy Defendant's parks with them.

80. When the Defendant re-opened its parks, Defendant offered to allow annual passholders to cancel their memberships. If a passholder chose to cancel, Defendant represented that no additional fees would be charged on the consumer's account after August 11, 2020.

81. Ms. Roth attempted to accept Defendant's offer to cancel, despite significant barriers to doing so.

82. Ms. Roth contacted Defendant in an attempt to cancel her account on July 17, 2020. At the time she called, it was a three hour wait to reach Defendant's representatives. As a result of this long wait, Ms. Roth was unable to focus on her work which involves making sales calls over the telephone.

83. Ms. Roth's July 17, 2020, phone call began at 12:50 p.m., and she was not connected with a representative until around 4:00 p.m. When Ms. Roth was finally able to speak to one of Defendant's customer service representatives, Defendant's agent represented to Ms. Roth that the cancelation had been processed and that Ms. Roth would receive an email within 48 hours. No such email came.

84. Approximately one week after the first phone call, Ms. Roth called Defendant because she had not received the promised email. Ms. Roth again waited on hold before being connected to a customer service representative. During this second call, Defendant's representative confirmed that the account had been canceled. Oddly, that representative told Ms. Roth that despite her cancelation, she would still be billed for August, but that the funds would be refunded in November. Ms. Roth never agreed to this additional charge.

85. Despite Defendant's public representations and representations to Ms. Roth, Ms. Roth was billed after her cancelation. In fact, as of the date of filing this lawsuit, her most recent charge was September 2, 2020 for $34.59.

86. Ms. Roth called Defendant the day after the September 2, 2020 charge. Defendant acknowledged that the charge was improper.

87. As a result of Defendant's improper billing in contradiction with its public representations, Ms. Roth has been harmed due to the loss of her funds.

FIRST CLAIM FOR RELIEF
FDUTPA
(OVERBILLING CLASS)

88. Plaintiffs and Overbilling Class members incorporate by reference paragraphs 1 through 87 of this Class Complaint as through stated fully herein.

89. This count is brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. 501.201 *et seq.*

90. At all times material hereto, Plaintiffs and all members of the Overbilling Class were consumers within the meaning of Fla. Stat. § 501.203 and are entitled to relief in accordance with Fla. Stat. § 501.211.

91. At all times material hereto, Defendant conducted trade and commerce within the meaning of Fla. Stat. § 501.203.

92. Defendant intentionally engaged in unconscionable acts and practices, and unfair or deceptive acts or practices during trade and commerce in Florida as detailed above. Specifically, Defendant charged or held Plaintiffs' and Overbilling Class members funds in an amount beyond what Defendant was authorized to charge or hold.

93. As a direct and proximate result of Defendants FDUTPA violations, Plaintiffs and the Overbilling Class members suffered loss of use regarding those funds, overdraft fees, financial stress, and actual financial harm in an amount to be proven at trial. As a result of Defendant's FDUTPA violations, Plaintiffs and Overbilling Class members have out-of-pocket losses for which they are entitled to damages.

94. All conditions precedent to this action have occurred, been satisfied, or been waived.

95. Plaintiffs have retained the undersigned attorneys to represent them in this action, and they are obligated to pay a reasonable fee for such services.

96. Plaintiffs and the Overbilling Class members are entitled to actual damages and attorneys' fees pursuant to Fla. Stat. § 501.2105.

WHEREFORE, Plaintiffs and the Overbilling Class request that this Court enter a judgment in their favor (1) granting certification of this matter to proceed as a class action; (2) finding that Defendant has violated FDUTPA; and (3) awarding actual damages, statutory damages, attorneys' fees and costs, together with any and all such further relief as is deemed necessary or appropriate.

SECOND CLAIM FOR RELIEF
FDUTPA
(DENIAL OF ACCESS CLASS)

97. Plaintiffs and Denial of Access Class members incorporate and reference paragraphs 1 through 87 of this Class Complaint as through stated fully herein.

98. This count is brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. 501.201 *et seq*.

99. At all times material hereto, Plaintiffs and all members of the Denial of Access Class were consumers within the meaning of Fla. Stat. § 501.203 and are entitled to relief in accordance with Fla. Stat. § 501.211.

100. At all times material hereto, Defendant conducted trade and commerce within the meaning of Fla. Stat. § 501.203.

101. Defendant intentionally engaged in unconscionable acts and practices, and unfair or deceptive acts or practices during trade and commerce in Florida as detailed above. Specifically, Defendant failed to provide annual passholders with access to the parks as was promised. Instead, Defendant knowingly and intentionally prioritized non-annual passholders to the detriment of annual passholders.

102. Further, Defendant created barriers that hindered many Denial of Access Class members from cancelling their passes, including the short time frame passholders were provided to cancel passes, lengthy wait times of up to several hours to speak to one of Defendants' customer service representatives, and the absence of a method to cancel annual passes online unless the passholder received an email containing a cancellation link, which many passholders did not receive.

103. As a direct and proximate result of Defendants FDUTPA violations, Plaintiffs and the Denial of Access Class members suffered loss of the funds they paid to use Defendant's parks and actual financial harm in an amount to be proven at trial. As a result of Defendant's FDUTPA violations, Plaintiffs and FDUTPA Denial of Access Class members have out-of-pocket losses for which they are entitled to damages.

104. All conditions precedent to this action have occurred, been satisfied, or been waived.

105. Plaintiffs have retained the undersigned attorneys to represent them in this action, and they are obligated to pay a reasonable fee for such services.

106. Plaintiffs and the Denial of Access Class members are entitled to actual damages, and attorneys' fees pursuant to Fla. Stat. § 501.2105.

WHEREFORE, Plaintiffs and the Denial of Access Class request that this Court enter a judgment in their favor (1) granting certification of this matter to proceed as a class action; (2) finding that Defendant has violated FDUTPA; and (3) awarding actual damages, statutory damages, attorneys' fees and costs, together with any and all such further relief as is deemed necessary or appropriate.

THIRD CLAIM FOR RELIEF
FDUTPA
(DEFECTIVE CANCELATION CLASS)

107. Plaintiffs and Defective Cancelation Class members incorporate and reference paragraphs 1 through 87 of this Class Complaint as through stated fully herein.

108. This count is brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. 501.201 *et seq.*

109. At all times material hereto, Plaintiffs and all members of the Defective Cancelation Class were consumers within the meaning of Fla. Stat. § 501.203 and are entitled to relief in accordance with Fla. Stat. § 501.211.

110. At all times material hereto, Defendant conducted trade and commerce within the meaning of Fla. Stat. § 501.203.

111. Defendant intentionally engaged in unconscionable acts and practices, and unfair or deceptive acts or practices during trade and commerce in Florida as detailed above. Specifically, Defendant purported to offer Plaintiffs and Defective Cancelation Class members the opportunity to cancel their annual passholder agreement so that no additional fees would accrue or be charged. Instead, Defendant established a system that did not provide reasonable access by phone or online for Plaintiffs or Class members to cancel their agreements. Even when Plaintiffs or Class members

successfully informed Defendant that they wanted to cancel their annual passholder memberships, Defendant continued to bill and charge Plaintiffs and Class members for the canceled passes.

112. As a direct and proximate result of Defendants FDUTPA violations, Plaintiffs and the Defective Cancelation Class members suffered loss of use regarding those funds, financial stress, loss of time, and actual financial harm in an amount to be proven at trial. As a result of Defendant's FDUTPA violations, Plaintiffs and Defective Cancelation Class members have out-of-pocket losses for which they are entitled to damages.

113. All conditions precedent to this action have occurred, been satisfied, or been waived.

114. Plaintiffs have retained the undersigned attorneys to represent them in this action, and they are obligated to pay a reasonable fee for such services.

115. Plaintiffs and the Defective Cancelation Class members are entitled to actual damages, and attorneys' fees pursuant to Fla. Stat. § 501.2105.

WHEREFORE, Plaintiffs and the Defective Cancelation Class request that this Court enter a judgment in their favor (1) granting certification of this matter to proceed as a class action; (2) finding that Defendant has violated FDUTPA; and (3) awarding actual damages, statutory damages, attorneys' fees and costs, together with any and all such further relief as is deemed necessary or appropriate.

FOURTH CLAIM FOR RELIEF - BREACH OF CONTRACT (OVERBILLING CLASS)

116. Plaintiffs and the Overbilling Class members incorporate by reference paragraphs 1 through 87 of this Class Complaint as though stated fully herein.

117. Plaintiffs and the Overbilling Class members entered into contracts with the Defendant for an annual pass.

118. Defendant charged or held funds belonging to Plaintiffs and the Overbilling Class members in amounts Defendant had no contractual right nor authorization to charge or hold. By charging or holding Plaintiffs and the Class members funds beyond what was authorized, Defendant breached its contract.

119. Plaintiffs and the Overbilling Class members have performed all, or substantially all, of the obligations imposed on them under the contract with Defendant.

120. Plaintiffs and the Overbilling Class members have sustained damages because of Defendant's breach of contract. Even if the funds were later refunded or released, Plaintiffs and class members were deprived of their funds and suffered economic hardship and mental anguish.

WHEREFORE, Plaintiffs and the Overbilling Class request that the Court enter Judgment in their favor for: (1) Certification of this matter to proceed as a class action; (2) actual damages in an amount according to proof; and (3) such other and further relief as the Court deems just and proper.

FIFTH CLAIM FOR RELIEF - BREACH OF CONTRACT
(DENIAL OF ACCESS CLASS)

121. Plaintiffs and the Denial of Access Class members incorporate by reference paragraphs 1 through 87 of this Class Complaint as though stated fully herein.

122. Plaintiffs and the Denial of Access Class members provided Defendant with a benefit in exchange for Defendant providing an annual pass that gave passholders access to Defendant's parks on specific terms.

123. Defendant has unilaterally altered the access that annual passholders contemplated at the time of signing the contract. This is a material breach of the terms of the contract between Defendant and annual passholders.

124. Plaintiffs and the Denial of Access Class members have performed all, or substantially all, of the obligations imposed on them under the contract with Defendant.

125. Plaintiffs and the Denial of Access Class members have sustained damages because of Defendant's breach of contract. Even if the Defendant later restores passholder access to the originally contemplated terms, Plaintiffs and Denial of Access Class members were deprived for a substantial amount of time of the access for which they paid.

126. Further, Defendant created barriers that hindered many Denial of Access Class members from cancelling their passes, including the short time frame passholders were provided to cancel passes, lengthy wait times of up to several hours to speak to one of Defendants' customer service representatives, and the absence of a method to cancel annual passes online unless the passholder received an email containing a cancellation link, which many passholders did not receive.

WHEREFORE, Plaintiffs and the Denial of Access Class request that the Court enter Judgment in their favor for: (1) certification of this matter to proceed as a class action; (2) actual damages in an amount according to proof; and (3) such other and further relief as the Court deems just and proper.

SIXTH CLAIM FOR RELIEF (*IN THE ALTERNATIVE*)
UNJUST ENRICHMENT
(DENIAL OF ACCESS CLASS)

127. Plaintiffs and the Class members incorporate by reference paragraphs 1 through 87 of this Class Complaint as though stated fully herein.

128. Plaintiffs and the Class conferred a benefit on Defendant, specifically the money paid to have access to Defendant's parks on specific terms.

129. Defendant had knowledge of those transactions and accepted and retained the monetary benefit conferred under circumstances that are inequitable and unjust considering the retention of the benefit without Defendant providing the expected access to its parks.

130. Further, Defendant created barriers that hindered many Denial of Access Class members from cancelling their passes, including the short time frame passholders were provided to cancel passes, lengthy wait times of up to several hours to speak to one of Defendants' customer service representatives, and the absence of a method to cancel annual passes online unless the passholder received an email containing a cancellation link, which many passholders did not receive.

131. As a result, Plaintiffs and members of the Denial of Access Class have suffered monetary damages.

WHEREFORE, Plaintiffs and the Denial of Access Class request that the Court enter Judgment in their favor for: (1) certification of this matter to proceed as a class action; (2) actual damages in an amount according to proof; and (3) such other and further relief as the Court deems just and proper.

SEVENTH CLAIM FOR RELIEF - BREACH OF CONTRACT (DEFECTIVE CANCELATION CLASS)

132. Plaintiffs and the Defective Cancelation Class members incorporate by reference paragraphs 1 through 87 of this Class Complaint as though stated fully herein.

133. Plaintiffs and the Defective Cancelation Class members entered into contracts with the Defendant for an annual pass.

134. Defendant recognized that it was unilaterally breaching the original agreement held with annual passholders. In contemplation of this unilateral breach, Defendant offered to

modify the annual passholder agreement so that passholders could cancel the agreement with no charges after August 11, 2020.

135. Plaintiffs and the Defective Cancelation Class members have performed all, or substantially all, of the obligations imposed on them to accept the terms Defendant made under the offer to cancel.

136. Plaintiffs and the Defective Cancelation Class members have sustained damages because of Defendant's breach of contract due to its continued collection of payments from passholders who notified Defendant they wished to cancel their contract. Even if the overbilled funds were later refunded, Plaintiffs and class members were deprived of their funds and suffered economic hardship and mental anguish.

WHEREFORE, Plaintiffs and the Defective Cancelation Class request that the Court enter Judgment in their favor for: (1) certification of this matter to proceed as a class action; (2) actual damages in an amount according to proof; and (3) such other and further relief as the Court deems just and proper.

EIGHTH CLAIM FOR RELIEF (*IN THE ALTERNATIVE*)
UNJUST ENRICHMENT
(DEFECTIVE CANCELATION CLASS)

137. Plaintiffs and the Defective Cancelation Class members incorporate by reference paragraphs 1 through 87 of this Class Complaint as though stated fully herein.

138. Plaintiffs and the Defective Cancelation Class conferred a benefit on Defendant, specifically the money that Defendant improperly collected after annual passholders notified Defendant they wished to cancel their annual passes.

139. Defendant had knowledge of those transactions and accepted and retained the monetary benefit conferred under circumstances that are inequitable and unjust in light of the

retention of the benefit when Defective Cancellation Class members had notified Defendant of their wish to cancel their passes.

140. As a result, Plaintiffs and members of the Defective Cancellation Class have suffered monetary damages.

WHEREFORE, Plaintiffs and the Class request that the Court enter Judgment in their favor for: (1) certification of this matter to proceed as a class action; (2) actual damages in an amount according to proof; and (3) such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff is entitled to and hereby respectfully demands a trial by jury. U.S. Const. Amend. 7 and Fla. R. Civ. Pro. 1.430.

Dated: September 24, 2020

Respectfully Submitted,

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