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15 UNITED STATES DISTRICT COURT
16 SOUTHERN DISTRICT OF CALIFORNIA

17 HOLLY HALL, PAUL DANNER,
18 VALERIE SIMO, JOYCE KUHL, and
19 ELAINE BROWNE, individually and on
20 behalf of themselves and all others
21 similarly situated,

22 Plaintiffs,

23 v.

24 SEAWORLD ENTERTAINMENT,
25 INC.,

26 Defendant.
27
28

No. 3:15-cv-00660-CAB-RBB

CLASS ACTION (FRCP 23)

**FIRST CONSOLIDATED
AMENDED COMPLAINT**

DEMAND FOR JURY TRIAL

TABLE OF CONTENTS

	Page
I. OVERVIEW	1
II. PARTIES	4
III. JURISDICTION AND VENUE.....	6
IV. FACTUAL ALLEGATIONS.....	6
A. SeaWorld Markets an Enchanting Illusion of Happy and Healthy Captive Killer Whales.	6
B. SeaWorld Represents Itself as the Whales' Greatest Champion.	10
C. SeaWorld Claims to Provide Critical Orca Conservation Research.	13
D. The Biology of Orcas	17
1. Distinct orca ecotypes exist in all the oceans of the world.	17
2. Orcas are highly communicative, intelligent, and social.	19
3. Orcas are organized in close-knit matriarchies.	20
4. Orcas in nature can live long, healthy lives.....	21
E. The Undisclosed Truth About SeaWorld's Captive Orcas	22
1. SeaWorld's family values.....	22
a. SeaWorld launches its business with captured orcas.	22
b. SeaWorld destroys orca families and removes calves from their mothers for profit.	24
2. SeaWorld orcas' living conditions in captivity	26
a. SeaWorld orcas suffer in tiny, unnatural, harmful chemical tanks.	26
b. Shallow tanks expose SeaWorld's captive orcas to fatal risks.....	32
c. SeaWorld hides its orcas' sunburns with black zinc oxide.....	34

1	d.	SeaWorld purposefully deprives its captive orcas of food.	34
2			
3	3.	SeaWorld’s captive orcas deteriorate as a result of their treatment.	36
4	a.	SeaWorld’s captive orcas live shorter lives.	36
5	b.	SeaWorld orcas’ collapsed dorsal fins are not normal or healthy.	39
6			
7	c.	SeaWorld’s captive orcas’ teeth are ground down and damaged.	42
8	d.	SeaWorld’s orcas are injured at SeaWorld’s parks.	46
9			
10	4.	SeaWorld “science” and forced breeding.	46
11	a.	SeaWorld is not a scientific orca research institution.	46
12	b.	SeaWorld impregnates its young female orcas with sperm from relatives and different ecotypes.	47
13			
14	c.	SeaWorld trainers masturbate captive orcas for profitable sperm.	49
15	d.	SeaWorld drugs its captive orcas.	49
16			
17	5.	Established dangers that SeaWorld publicly denies.	50
18	a.	SeaWorld trainers face known risks.	50
19	b.	Aberrant orca behavior is caused by confinement.	53
20	F.	The Documentary <i>Blackfish</i> Begins to Pull Back the Curtain on SeaWorld.	54
21			
22	G.	The “Materiality” of SeaWorld’s Treatment of Orcas is Confirmed by Polls and the Public Drop in Attendance Following <i>Blackfish</i> and the Continuing Controversy.	55
23			
24	H.	Popular Musicians Cancel SeaWorld Appearances and Association.	57
25	I.	Long-Standing SeaWorld Sponsors and Strategic Partners Jump Ship.	59
26			
27	J.	To This Day SeaWorld Continues to Mislead and Conceal Material Facts from Consumers About the Treatment and Condition of its Captive Orcas.	61
28			

1	K.	Specific Plaintiff Allegations	68
2	L.	SeaWorld Has a Duty to Disclose to Consumers its Treatment of Captive Orcas and their Actual Condition.	72
3	V.	CLASS ACTION ALLEGATIONS.....	73
4	VI.	CAUSES OF ACTION	77
5		FIRST CAUSE OF ACTION	
6		VIOLOGATIONS OF THE CALIFORNIA UNFAIR	
7		COMPETITION LAW (CAL. BUS. & PROF. CODE § 17200, <i>et</i> <i>seq.</i>).....	77
8		SECOND CAUSE OF ACTION	
9		VIOLOGATIONS OF THE CONSUMERS LEGAL REMEDIES	
10		ACT (CAL. CIV. CODE § 1750, <i>et seq.</i>).....	79
11		THIRD CAUSE OF ACTION	
12		VIOLOGATIONS OF THE FALSE ADVERTISING LAW (CAL.	
13		BUS. & PROF. CODE § 17500, <i>et seq.</i>).....	81
14		FOURTH CAUSE OF ACTION	
15		DECEIT (CAL. CIV. CODE §§ 1709-1711)	83
16		FIFTH CAUSE OF ACTION	
17		VIOLOGATIONS OF FLORIDA’S UNFAIR AND DECEPTIVE	
18		TRADE PRACTICES ACT (FLA. STAT. § 501.201, <i>et seq.</i>)	85
19		SIXTH CAUSE OF ACTION	
20		VIOLOGATIONS OF THE TEXAS DECEPTIVE TRADE	
21		PRACTICES – CONSUMER PROTECTION ACT (TEX. BUS.	
22		& Com. CODE § 17.41, <i>et seq.</i>)	86
23		SEVENTH CAUSE OF ACTION	
24		UNJUST ENRICHMENT	89
25		PRAYER FOR RELIEF	90
26		JURY DEMAND.....	91

1 Plaintiffs Holly Hall, Paul Danner, Valerie Simo, Joyce Kuhl, and Elaine
2 Browne bring this action on behalf of themselves and all others similarly situated
3 against SeaWorld Entertainment, Inc. (“SeaWorld”). Plaintiffs’ allegations against
4 Defendant are based upon information and belief and upon investigation of counsel,
5 except for allegations specifically pertaining to each Plaintiff, which are based upon
6 each Plaintiff’s personal knowledge.

7 I. OVERVIEW

8 1. SeaWorld is the most profitable marine life theme brand in the world.
9 Each SeaWorld theme park showcases killer whales—*Ornicus orca*, the mighty and
10 iconic apex predators of the sea—in special amphitheaters called Shamu Stadium that
11 seat thousands. During its signature “Shamu Show” and in its ubiquitous and decades-
12 long global marketing campaigns, SeaWorld states that it “cares for,” “protects,” and
13 “nurtures” its captive orcas.

14 2. SeaWorld purports to create a “fun, interesting, and stimulating”
15 environment for these animals. SeaWorld confidently tells the public that its orcas
16 even enjoy their lives performing in captivity.

17 3. SeaWorld Chief Veterinarian Christopher Dold told the public in an
18 interview with BBC earlier this year that at SeaWorld, “we aren’t taking anything
19 away from them [orcas] by having them in this habitat – it’s just different.” As
20 SeaWorld’s curator of trainers told the *New York Times*, referring to the then-
21 emergent controversy over SeaWorld’s treatment of captive orcas: “[w]e sleep and
22 breathe care of animals.”

23 4. Crowds of children and adults have been mesmerized by SeaWorld’s orca
24 shows. SeaWorld makes hundreds of millions of dollars as a direct result of the
25 illusion created by these shows and its massive public marketing campaign: *Orcinus*
26 *orca* and *Homo sapiens* living in harmony and playing together for public
27 entertainment. Or, killer whales “in the care of man,” as SeaWorld’s mantra tells it.
28

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

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

11 7. For the past several decades, dozens of orcas have lived in captivity for
12 public entertainment and corporate profit at each of SeaWorld’s U.S. parks, either
13 captured or bred for that exclusive purpose.

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

21 9. Captive orcas’ lives at SeaWorld are quite different from life in the wild,
22 and far worse. The deceptive and false illusion carefully scripted by SeaWorld and
23 created for the public has concealed not only the mistreatment of these animals, but
24 also concealed orca behavior that evidences how their captivity at SeaWorld is
25 harmful to their welfare.

26 10. Concealed from the public is the impact on these animals of captivity in a
27 tiny confined space, the forced separation of calves from their mothers, the unnatural
28

1 mixing of incompatible whales in small tanks, the forced breeding and inbreeding of
2 premature female whales, the routine use of pharmaceutical products to drug the orcas
3 unnaturally, the psychological manipulation and at times food deprivation to which
4 they are subjected, the deep rake marks and other disfigurement on their bodies that
5 result from incompatibility and unnatural conditions, and many other life-shortening,
6 anxiety-inducing, and painful experiences from which they have no escape.

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

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

18 13. SeaWorld furthers this by deliberate misrepresentations attesting to the
19 “health” and enrichment of its captive orcas, claiming even to provide for them “fun”
20 lives in captivity. SeaWorld’s recent \$10 million advertising blitz following the
21 termination of its CEO this spring—launched this year to defend against mounting
22 criticism of its captive orca entertainment business—makes claims in television, print,
23 and on-line media that its captive whales are “healthy” and even “thriving” in
24 SeaWorld’s tanks.

25 14. As conservative commentator Charles Krauthammer (hardly a “radical”)
26 noted in a May 7, 2015 column in the *Washington Post*, the “tone” of these “SeaWorld
27 commercials” is “contrite and almost apologetic, as befits a business that trains
28

splendid creatures to jump high on command for fish—and for our amusement.” SeaWorld’s spokesman Fred Jacobs baldly responds: “We don’t have anything to apologize for,” and SeaWorld’s misinformation campaign directed at consumers continues apace.

15. Plaintiffs, and likely hundreds of thousands of consumers, would not have paid the purchase price for admission to SeaWorld, for SeaWorld memberships, or for SeaWorld animal “experiences” for children or adults if the truth about the treatment and behavior of SeaWorld’s orcas in captivity was known.

16. Customers misled by 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.

17. 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 §§ 1709-1711 (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. Among other things identified below, 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

18. Plaintiff Holly A. Hall is and was at all relevant times a citizen of the State of California, residing in Temecula, California. Hall purchased admission tickets

1 at SeaWorld in San Diego, California on July 13, 2011 for herself and her two
2 grandchildren, both under the age of 10. Hall and her grandchildren attended the
3 Shamu show at SeaWorld on that date.

4 19. Hall also purchased an admission ticket at SeaWorld in San Diego,
5 California on July 12, 2012 for herself, her two grandchildren (still both under the age
6 of 10), and her daughter. Hall, her grandchildren, and her daughter attended the Shamu
7 show at SeaWorld on that date as well.

8 20. Plaintiff Paul Danner is a citizen of the State of Florida. Danner
9 purchased admission tickets for himself and four family members to SeaWorld
10 Orlando in April of 2014 and attended the Shamu Show.

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

14 22. Plaintiff Joyce Kuhl is a citizen of the State of South Carolina. Kuhl
15 purchased a ticket for admission to SeaWorld Orlando on or about December 30,
16 2013, and attended the Shamu Show on that date.

17 23. Plaintiff Elaine Browne is a citizen of the State of Texas. Browne
18 purchased a ticket for admission to SeaWorld San Antonio on or about June 10, 2012,
19 and attended the Shamu Show on or about June 10, 2012.

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

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

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

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

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

29. Venue is proper in this Court under 28 U.S.C. § 1391(b) because SeaWorld has its signature marine park located within this District, 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 Happy and Healthy Captive Killer Whales.

30. SeaWorld's global marine park empire is built upon the backs of its performing orcas. They are SeaWorld's 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 SeaWorld's gates.



31. 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.

32. SeaWorld's water-based theme parks have attracted millions of visitors annually for several years. In 2014, over 22 million guests visited SeaWorld's marine parks. SeaWorld's intention is that its killer whale shows enthrall and captivate children and adults, just as people who study them in the wild marvel at their majesty.

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

1 Our relationship with these magnificent rulers of the sea
2 spans decades, during which time some incredible
3 human/animal connections have formed. It's with the whales
4 in our care that you see what truly sets SeaWorld apart.
5 Their unique personalities and long-standing relationships
6 with their trainers show that when you open your mind and
7 heart to the languages humans and animals share, nearly
8 anything is possible.

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

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

20 36. The massive screens hoisted above the orca tanks play videos that include
21 various emotional-laden human interviews and scenes. For example, an introduction to
22 the Shamu show includes a father and daughter hiking along the coast and spotting a
23 whale—albeit, in the wild, not in captivity.

24 37. As many as eight or more captive orcas perform throughout the "Shamu
25 Show" several times each day. These orcas provide what is masterfully crafted by
26 SeaWorld to appear as a playful interaction with the audience (and before February
27 2010, directly in the water with diving and swimming trainers). It is common for
28 guests to take photos in front of the tank with swimming orcas, and orcas have been
conditioned to pause there for that purpose.

1 38. Loud music played through multiple large speakers accompanies each
2 maneuver the orcas make. Each musical score is also accompanied with spot lights
3 that flash throughout the tanks in different colors. The music is so loud that it sounds
4 and feels like the whales are performing at a concert. Needless to say, this is noise not
5 found in the wild.

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

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



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

41. 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 which is 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.

42. 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"

43. 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.

1 Physical & mental stimulation

2 SeaWorld's complex and interactive habitats and training
3 sessions provide enriching challenges.

4 44. As for its overall treatment of animals, SeaWorld materials answer that
5 question:

6 What's our secret to success?

7 A large and knowledgeable team of dedicated animal care
8 specialists that ensure the health, enrichment, and safety of
9 our diverse family. The knowledge gained from our breeding
10 programs has the potential to be applied to animals in the
wild, including threatened and endangered species.

11 45. And SeaWorld advertisements depict orcas in a colorful, positive light
12 designed to convince potential consumers that the orcas are thriving in captivity:
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46. 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

1 well-adapted to their surroundings, a fact that is evident to us
2 through our constant care, interaction and observation 24
3 hours per day.

4 We invest millions of dollars in habitat maintenance and
5 improvement and, in the last three years alone, have invested
6 \$70 million in our killer whale habitats.

7 And, living in these habitats, our whales show every sign of
8 physical fitness ... While our whales do not live the same
9 lifestyle as their wild counterparts, this difference does not
10 translate to negative welfare of these animals....

11 Also, the animals at SeaWorld do not face many of the
12 challenges of wild animals.

13 **C. SeaWorld Claims to Provide Critical Orca Conservation Research.**

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

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

24 We operate successful zoological breeding programs that
25 help maintain a large and genetically-diverse animal
26 collection. Those efforts have produced 31 killer whales ...

27 Many of our programs represent pioneering contributions to
28 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.

1 48. In its annual report, SeaWorld celebrates its leadership position in the
2 “care” of its animals:

3 Who we are

4 SeaWorld Entertainment, Inc. is a leading theme park and
5 entertainment company delivering personal, interactive and
6 educational experiences that blend imagination with nature
7 and enable our customers to celebrate, connect with and care
8 for the natural world we share. We own or license a portfolio
9 of globally recognized theme parks, intellectual property and
10 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).

11 Over our more than 50-year history, we have built a
12 diversified portfolio of 11 theme parks in six key markets
13 across the United States. In 2013, we hosted more than 23
14 million guests – including 3.7 million international guests –
15 placing our parks among the most highly attended in the
16 industry. Our parks feature a diverse array of rides, shows
17 and other attractions with broad demographic appeal,
18 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.

19 We are also one of the world’s foremost zoological
20 organizations, a global leader in animal welfare, training,
21 husbandry and veterinary care. Through education and up-
22 close experiences, our mission is to inspire guests to care for
23 and protect animals. We believe we care for one of the
24 largest animal collections in the world. Together, our
25 expertise and innovation in animal husbandry have led to
26 advances in the care of species in zoological facilities and in
27 the conservation of wild populations
28

1 How we care

2 We inspire millions of guests each year through up-close
3 animal encounters, educational exhibits and innovative
4 entertainment, providing inspiring and memorable
5 experiences.

6 The research and conservation undertaken by our parks has
7 led to advances in the care of animals in both zoological
8 facilities and wild populations. Our zoological teams care for
9 approximately 86,000 marine and terrestrial animals. In
10 addition, our successful and innovative breeding programs
11 have resulted in the births of 31 killer whale calves...

12 49. In addition to the statements cited in the preceding paragraphs, SeaWorld,
13 during the past four years, has continued to react publicly to criticism with a growing
14 barrage of false statements and continued material omissions regarding its treatment of
15 orcas and the conditions under which these captive animals exist. It has made these
16 statements in response to the growing criticism about its treatment of these animals,
17 discussed further in what follows.

18 50. On its website SeaWorld boasts of its scientific mission as part of a
19 campaign to convince the public that captivity is beneficial to orcas:
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KILLER WHALES IN A ZOOLOGICAL SETTING PROVIDE insight that is impossible to get in the wild.

UNIQUE ACCESS LEADS TO DEEPER SCIENTIFIC UNDERSTANDING OF:



a positive ripple effect



400 MILLION+

GUESTS EDUCATED AND ENGAGED AT SEAWORLD



400 MILLION =
COMBINED POPULATIONS
OF USA + UNITED KINGDOM

D. The Biology of Orcas

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

51. 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 those near Antarctica, and the North Atlantic and Pacific oceans. They are also found in tropical, subtropical, and offshore waters.

52. 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.

53. Alone among mammals whose habitat is the sea, male orcas have developed a dramatic sword-like dorsal fin that cuts through the water. 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.

54. Killer whales are generally considered monotypic (*i.e.*, belonging to one species, albeit with the ecotype differences described above and in what follows). 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).

1 Other scientists consider ecotypes to be less taxonomically distinct than species or
2 sub-species.

3 55. Among the various populations of killer whales, the whales of the Pacific
4 Northwest have received the most scientific scrutiny and therefore provide us with the
5 bulk of what is known about the life cycle of a killer whale. In this region, there are
6 three ecotypes co-existing within the same larger area: residents (typically fish-eaters);
7 transients (typically mammal-eaters); and offshores (typically eaters of shark and other
8 marine fish).

9 56. Among the Pacific Northwest residents are two populations: the northern
10 resident killer whale population, which is spread generally from southern Alaska
11 through to mid-Vancouver Island; and the southern resident killer whale population,
12 ranging generally from mid-Vancouver Island to Washington State, but with members
13 observed as far south as central California.

14 57. The orcas' sense of community is bolstered by what we might call
15 language. Each family is headed by a matriarch, and all family members use the same
16 calls and other various sounds that make up a dialect—that is, families speak the same
17 “language.” Various families that share most of their calls form a pod; pods with some
18 common calls form what scientists call a clan.

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

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

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

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

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

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

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

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

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

6 66. Orcas have larger brains than humans and their brain-to-body-size ratio is
7 similar to humans'. Studies using MRI technology reveal that the neocortex of an orca
8 brain is more “wrinkled” than a human brain, and thus, has greater volume. There are
9 more brain cells and neurons in orca brains. An examination of the orca brain shows
10 us the natural endowment these animals have, and explains the social nature of orcas
11 and their sophisticated level of consciousness and awareness.

12 **3. Orcas are organized in close-knit matriarchies.**

13 67. Both the northern and southern resident populations are made up of clans
14 and pods and families. Each family is typically led by a reproductive-aged female (a
15 matriarch) and comprises both sons and daughters; a mother and all her offspring form
16 the basic unit of orca society. Everything in the family revolves around the matriarch.
17 Post-reproductive matriarchs also lead, but generally lead sons, as the reproductive-
18 aged females lead their own families in turn.

19 68. Even when daughters become adults, however, their original families
20 usually stay within reach. Males often live with their mothers their whole lives.
21 Whales within a family usually travel less than a mile apart and are often within a
22 single body length of other family members.

23 69. Everyone in the matriarch’s immediate court stays close to her physically,
24 surrounding her like a queen bee in an oceanic hive, a few body lengths away. Her
25 circle typically includes all her offspring younger than 10-15 years old—male and
26 female—and often her adult sons. In some of these families, male relations of the
27
28

1 matriarch's own generation or older (brothers and uncles) are part of the entourage.
 2 Sometimes nephews (the sons of deceased sisters) are part of the group.

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

7 71. SeaWorld tells the public that it recognizes the "importance of family
 8 bonds":



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

25 **4. Orcas in nature can live long, healthy lives.**

26 73. Under objectively good natural environmental conditions, orcas should
 27 live roughly as long as human beings. Females give birth approximately every five
 28

1 years and go through menopause at 40 or so years of age. Females have a mean life
 2 expectancy of 50 years; males, 30 years. Males live an estimated maximum of 60-70
 3 years and females an estimated maximum of 80-90 years or more. Southern resident
 4 J2 (aka “Granny”) is believed to be close to 100 years old.

5 **E. The Undisclosed Truth About SeaWorld’s Captive Orcas**

6 **1. SeaWorld’s family values**

7 **a. SeaWorld launches its business with captured orcas.**

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

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

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

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

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

8 79. Shamu was taken out of performance and died only four months later,
9 when she was still less than 15 years of age, following a bacterial infection. This
10 captured orca, who died an early death as a young whale taken from her family,
11 became the brand that built SeaWorld's multi-million-dollar marine entertainment
12 empire.

13 80. SeaWorld, when pressed to acknowledge the cruelty associated with its
14 initial venture into the world of captured orca entertainment, prefers to claim
15 misleadingly that only five of its 29 orcas currently performing were taken from the
16 wild. The more complete and telling truth is that only five of the 32 whales violently
17 abducted from their families and ocean homes for SeaWorld's business purposes (each
18 owned by SeaWorld) have survived. These abductions not only tore apart these
19 whales' family units, but they also usually included violence against other whales,
20 sometimes killing them outright.

21 81. Tilikum, an approximately 34-year-old orca who later became the new
22 orca face of SeaWorld following both the death of trainer Dawn Brancheau in 2010
23 and the premiere of the *Blackfish* documentary in 2013, was captured at approximately
24 two years of age by an orca capture operator in Iceland. Tilikum, like the others, was
25 torn away from his family against his will and confined to a small concrete tank for a
26 hefty profit.

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

82. 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. In response to the ongoing controversy surrounding its treatment of orcas, SeaWorld flatly denies separating calves from their mothers. In its "Open Letter from SeaWorld's Animal Advocates," disseminated on its website and elsewhere first in 2013, SeaWorld flatly stated "We do not separate killer whale moms and calves."

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



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

85. 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

1 described as observable suffering and even agony for these separated orcas, animals
2 who have persisted for millions of years in the wild with a high degree of familial
3 cohesion.

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

9 87. On its website, SeaWorld represents that it does "not separate mothers
10 from their calves." In the picture used to maintain this illusion of merciful familial
11 preservation, SeaWorld orcas Takara and her calf Kohana are shown together. In truth,
12 Kohana was taken from her mother at age three and is currently performing under
13 leasing arrangements to audiences in Spain; her mother is forced to entertain in Texas.

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

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

25 90. Years later, when Takara's vocalizations were played for Kasatka in San
26 Diego, Kasatka grew extremely agitated by the torture of hearing her daughter's voice.
27 Kasatka was eventually determined to be too dangerous for water work performance,
28

1 long before all water work ended after the orca Tilikum killed trainer Dawn
2 Brancheau.

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

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



20 **2. SeaWorld orcas' living conditions in captivity**

21 **a. SeaWorld orcas suffer in tiny, unnatural, harmful chemical**
22 **tanks.**

23 93. SeaWorld claims ("The Truth is in Our Parks and Our People") that its
24 orcas are kept in a state-of-the-art environment:

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

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



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SAFE AND SOPHISTICATED HABITATS

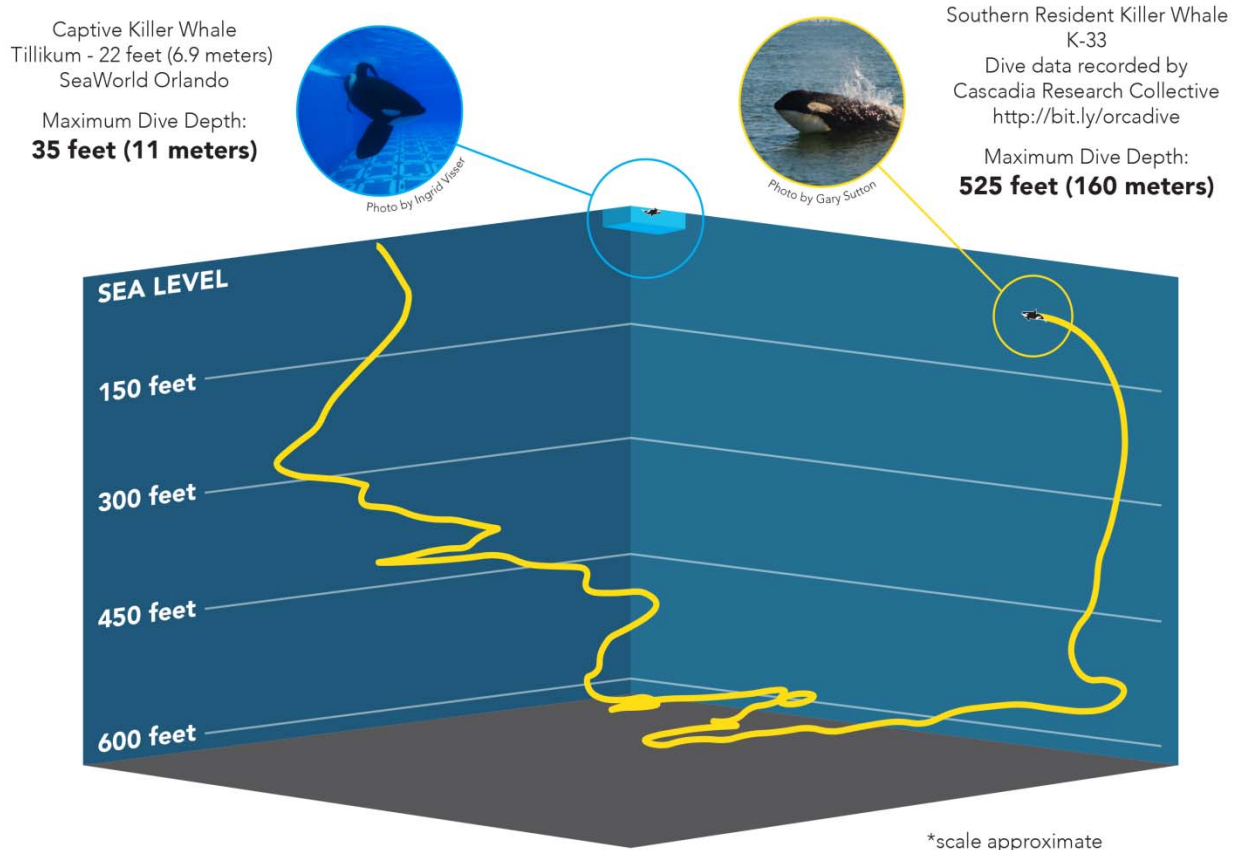
18 Killer whale health starts with a safe, state-of-the-art habitat
19 and a day filled with enriching activity. Our zoological
20 habitats are among the largest in the world. They are multi-
21 million-gallon environments of continually chilled and
22 filtered saltwater. The killer whale habitat at SeaWorld
23 Orlando, for example, encompasses more than 6 million
24 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.

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

1 And, living in these habitats, our whales show every sign of
2 physical fitness including healthy weight, muscle tone,
3 respiratory efficiency, strength and heart rate. While our
4 whales do not live the same lifestyle as their wild
5 counterparts, this difference does not translate to negative
6 welfare of these animals. For example, the health of a killer
7 whale is not dependent on long-distance swimming; wild
8 whales must do this to search for food and new foraging
9 grounds. Our trainers work with our whales and closely
10 monitor and provide their food, exercise and other
11 environmental enrichment activities.

9 95. Rather than provide the “highest standard of care” (avoiding “negative
10 welfare” for its orcas), SeaWorld confines its captive orcas—one of the largest marine
11 predators in the world, who often swim up to 100 miles a day in the wild—to
12 unnatural and unhealthy tanks that, to them, are the size of a single room. The much-
13 touted investment of “\$70 million in our killer whale habitat” was in truth not spent to
14 improve the treatment and condition of its captive orcas, but instead to improve the
15 entertainment aspect of its shows.

16 96. The graphic below illustrates the dive depth available to a captive
17 SeaWorld orca in one of the Orlando SeaWorld tanks (when not confined to much
18 smaller and shallower so-called SeaWorld med pools as they often are) as compared to
19 the dive depth pattern of an actual tracked orca in the wild:
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(data available at, <http://www.cascadiaresearch.org/kws/dtagging.htm>, last accessed Aug. 17, 2015).

97. The photograph below, widely distributed on the Internet, illustrates the disproportionate space allocated by SeaWorld to customer parking at San Diego SeaWorld in glaring contrast to the space allocated for its captive orcas to spend their abbreviated lives wallowing in:



1 98. In addition to the small and shallow tanks in which these orcas are fated
2 to subsist at SeaWorld for the duration of their lives, the water in which they are held
3 does not begin to resemble an ocean environment. Instead, it is a series of interlocking
4 chemical baths.

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

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

11 101. The orcas are often in these staging tubs for up to an hour several times a
12 day, before, during, and after each show. Sometimes the orcas are kept there for
13 extended periods to ensure that visitors have enough time to see them; SeaWorld does
14 not inform these visitors of the stress of such conditions (*e.g.*, exposure to the elements
15 above the water surface for extended periods) for the orcas.

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

24 103. SeaWorld falsely advertises the "complex and interactive habitats" these
25 tanks provide for its captive performing orcas. Far from complex or meaningfully
26 interactive environments, instead SeaWorld provides these orcas with plain-walled
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28

1 chemical tanks within which whales develop habits which endanger their health and
2 shorten their life spans.

3 **b. Shallow tanks expose SeaWorld's captive orcas to fatal risks.**

4 104. Due to the shallowness of their tanks and their confinement, orcas at
5 SeaWorld spend most of their time floating listlessly at the surface of the water with
6 little to no shade from the sun. Each SeaWorld location is found in sunny, hot parts of
7 the United States: San Diego, San Antonio, and Orlando. In nature, "logging"
8 behavior (or resting at the surface) is rare, and whales escape the sun's UV rays by
9 spending up to 95% of their time submerged below the surface, finding shade in the
10 depths of the ocean; but at SeaWorld their tanks are far too shallow, the water too
11 clear, and the surfaces too light-reflective.

12 105. In contrast to the claims by SeaWorld (noted, in part, in the section
13 above), only the front show tanks have depths of 40 feet (in Texas) and 36 feet (in San
14 Diego and Orlando). Even so, sunlight easily penetrates to the bottom due to the
15 unnatural clarity of the water and the light-reflective nature of the tank walls. Captive
16 orcas also spend several hours several times a day in the "med pools" noted above. To
17 this day, Google-image pictures (captured randomly) show orcas left unattended
18 essentially roasting in these eight-foot-deep tanks for long periods of time, as depicted
19 in the following photograph:
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106. 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.

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

6 **c. SeaWorld hides its orcas' sunburns with black zinc oxide.**

7 108. These harsh elements (*e.g.*, exposure to sunlight and heat near the water
8 surface for hours each day) also cause near perpetual sunburns for the orcas.

9 109. Rather than acting on the obvious fact that SeaWorld's unnatural captive
10 environment is unhealthy for these orcas, SeaWorld shields this from public view with
11 the help of black zinc oxide, which conveniently matches the orcas' skin color.

12 **d. SeaWorld purposefully deprives its captive orcas of food.**

13 110. SeaWorld claims that it positively reinforces orca behavior:
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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.

111. 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 and hydration supply.

1 112. Orcas get both their nutrition and hydration from the dozens of pounds of
2 fish and from a massive and unnatural diet of gelatin they consume each day. Gelatin
3 is a substance derived from collagen extracted from the skin and bone of animals
4 (often cattle and pigs). Plainly, gelatin is not a substance orcas consume in the wild.
5 Gelatin is used as a hydration vector to artificially maintain hydration that wild orcas
6 maintain naturally.

7 113. SeaWorld's entire behavioral training scheme rests upon the fundamental
8 reality of SeaWorld's monopoly over food and hydration for these animals. When the
9 training and positive reinforcement fail to deliver the uninterrupted compliance
10 demanded by SeaWorld for its public performance shows, SeaWorld resorts to
11 depriving the orcas of food. Food deprivation is hardly "Behavioral Enrichment."

12 114. SeaWorld denies this practice, and maintains that the orcas receive their
13 necessary volume of food absent a medical condition or a self-initiated hunger strike
14 by an orca. SeaWorld maintains, on its website, that orcas "are never punished, and
15 their overall diet is never dependent on their behavioral performance."

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

20 **3. SeaWorld's captive orcas deteriorate as a result of their treatment.**

21 **a. SeaWorld's captive orcas live shorter lives.**

22 116. Despite objective, scientific consensus to the contrary, SeaWorld goes to
23 great lengths to misinform the public that its whales live happy, well-adjusted, long
24 lives just like they do in the wild (if not happier, better adjusted, and longer). As
25 depicted in the *Blackfish* documentary, SeaWorld falsely tells the public that wild
26 killer whales live "to be about 35, mid-thirties," and "tend to live a lot longer" as
27 captive orcas in SeaWorld. The truth is the opposite.
28

117. 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 Northwest¹. For whales in southeastern Alaska, the maximum longevity appears to be in the 50s for females and late 30s for males². 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.

118. 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 about 100 years old. In captivity, most orcas die in their teens or 20s and only a handful have reached 35. SeaWorld knows all of this research and deliberately misrepresents it.

119. 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).

120. To date, no captive males have lived longer than 40 years (the oldest, current living orca, 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.

121. This is despite the fact that there are no human predators, net entanglements, boat strikes, or similar dangers at SeaWorld, and the fact that SeaWorld has the resources to provide medical care.

122. 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.”

123. The following chart is reproduced from David Kirby’s *Death at SeaWorld*; this death table has been carefully concealed by SeaWorld:

Orca SeaWorld Death Table	
Shamu (F), <i>lived 6 years</i>	Winnie (F), <i>lived 24.5 years</i>
Ramu (M), <i>lived 15 years</i>	Kotar (M), <i>lived 16.5 years</i>
Kilroy (M), <i>lived 11.5 years</i>	Shawn (F), <i>lived 1 year</i>
Kandu (F), <i>lived 4 years</i>	Kahana (F), <i>lived 12.5 years</i>
Orky 2 (M), <i>lived 20 years</i>	Nootka 4 (F), <i>lived 12 years</i>
Nootka (F), <i>lived 20 years</i>	Haida 2 (F), <i>lived 19 years</i>
Winston (M), <i>lived 15.5 years</i>	Samoa (F), <i>lived 8.5 years</i>
Kandu 3 (F), <i>lived 4 years</i>	Bjossa (F), <i>lived 21 years</i>
Sandy (F), <i>lived 4.5 years</i>	Katerina (F), <i>lived 10.5 years</i>
Kona (F), <i>lived 6 years</i>	Splash (M), <i>lived 15.5 years</i>
Canuck (M), <i>lived 2.5 years</i>	Taku (M), <i>lived 14 years</i>
Frankie (M), <i>lived 5 months</i>	Nyar (F), <i>lived 2 years</i>
Kanduke (M), <i>lived 15 years</i>	Baby, <i>lived 38 days</i> (Haida 2)
Kenau (F), <i>lived 15 years.</i>	Halyn (F), <i>lived 2.5 years</i>

Orca SeaWorld Death Table

Gudrun (F), <i>lived 19.5 years</i>	Taima (F), <i>lived 21 years</i>
Canuck 2 (M), <i>lived 4 years</i>	Baby Sharou 2, <i>lived 11 days</i>
Kona 2 (F), <i>lived 10 years</i>	Sumar (M), <i>lived 12 years</i>
Kandu 5 (F), <i>lived 12 years</i>	

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

124. In captivity, all adult male orcas at SeaWorld 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.

125. SeaWorld has long worried that 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.

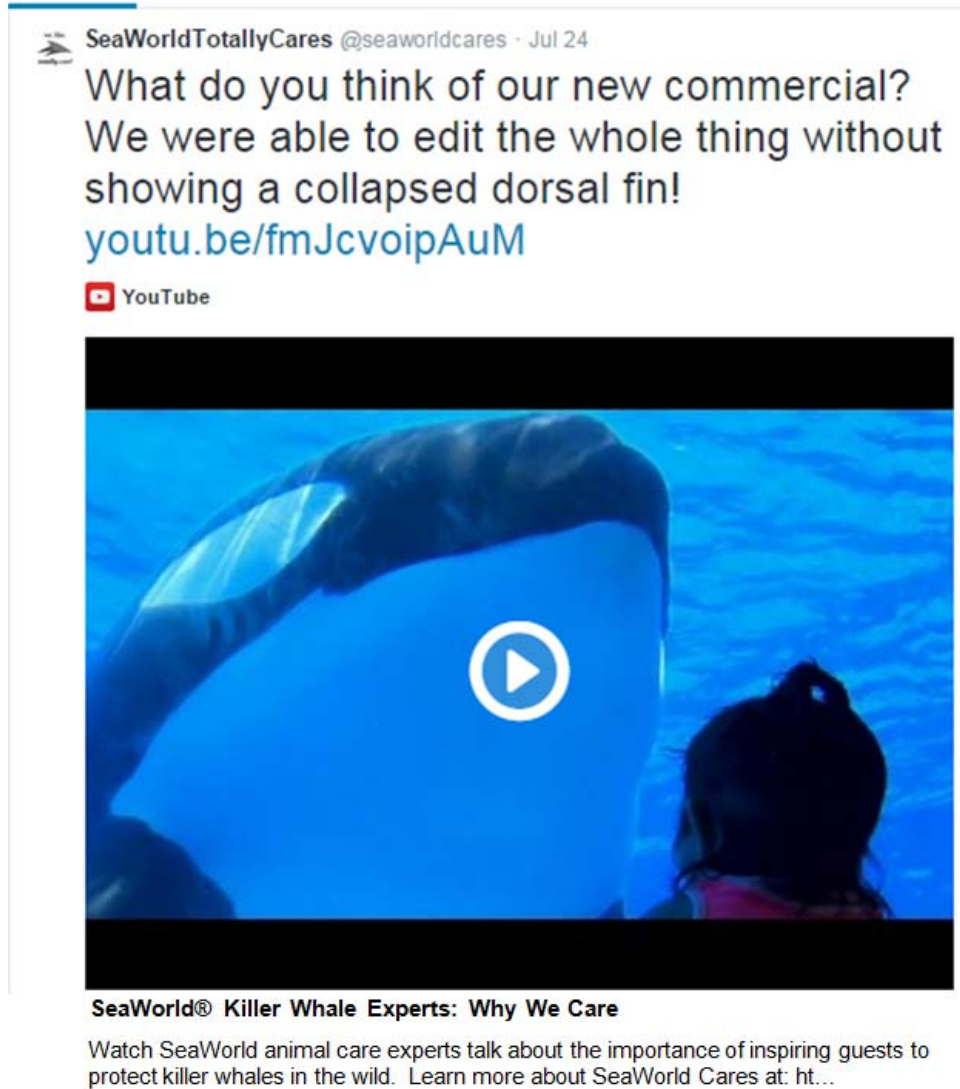
126. Contrary to these elemental truths of observable fact known to all reputable marine scientists, SeaWorld claims that this condition is in no manner a product of captivity and in fact common and natural for all orcas. SeaWorld says this despite the fact that collapsed dorsal fins are rarely seen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

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



128. 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.

129. 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, last accessed August 14, 2015).

130. Accordingly, SeaWorld peddles in misinformation, routinely distorting and manipulating the work of renowned New Zealand marine mammal scientist Dr. Ingrid Visser by stating the demonstrably false proposition that 23% of wild orcas have collapsed fins. Such false statements about collapsed dorsal fins in the wild continue to be made by SeaWorld.

131. Dr. Visser has repeatedly instructed SeaWorld to forgo this complete misrepresentation of her work. She notes that only 1-5% of wild orcas are observed

1 with this condition. Dr. Visser has repeatedly asked SeaWorld's Director of Research
2 to correct SeaWorld's deliberate misinformation campaign. It has to date not done so.

3 **c. SeaWorld's captive orcas' teeth are ground down and**
4 **damaged.**

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

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

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

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

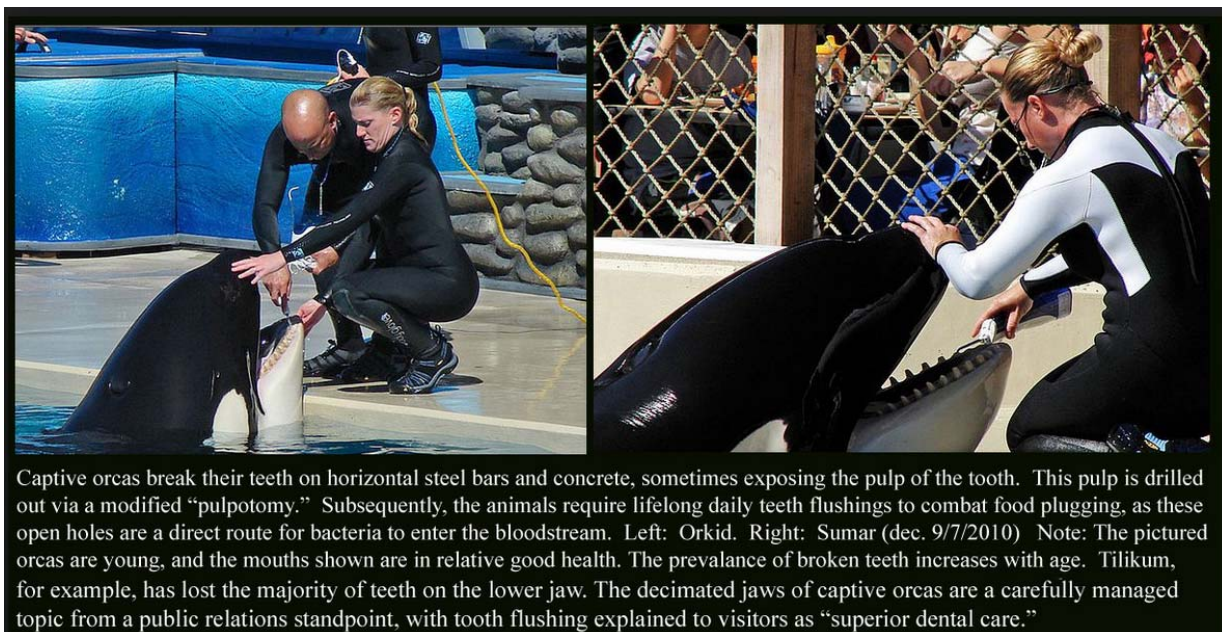
3 136. In captivity, the abrasion and breakage comes not from prey or feeding
4 methods, but from gnawing on concrete walls or steel gates that separate the various
5 sections of an enclosure complex (there are usually at least two enclosures—a primary
6 and a medical—and in larger complexes there can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

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

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

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

22 140. The following is a photo of such cleaning:
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141. Poor dental health is a known cause of many veterinary/medical conditions, including heart disease and pneumonia. In the case of captive orcas, open holes in teeth 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.

142. These recent photos of two captive SeaWorld orcas, taken this summer 2015 at two SeaWorld locations (Orlando and San Diego, respectively), illustrate the damage done to the teeth of SeaWorld’s captive orcas—damage not observed on wild orcas as it is observed in captivity:



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

7 **d. SeaWorld's orcas are injured at SeaWorld's parks.**

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

13 145. Such danger is further aggravated by the housing in small tanks of
14 incompatible orcas that would not be forced to co-habit in the wild. Disfigurement and
15 other significant injuries are routinely observed and observable on SeaWorld's captive
16 orcas.

17 **4. SeaWorld "science" and forced breeding**

18 **a. SeaWorld is not a scientific orca research institution.**

19 146. SeaWorld informs the public that it functions like a research institution,
20 "contributing to the body of knowledge" scientists develop in order to better
21 understand and protect whales. On February 5, 2015, captive display industry
22 representatives testified in opposition to a proposed ban on captive cetaceans before
23 the Washington State Legislature, falsely testifying that the "research" performed on
24 its "collection" of captured and captive cetaceans is necessary for cetacean
25 conservation.
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1 147. In fact, SeaWorld has challenged the consensus of *actual* whale experts at
2 nearly every turn—this is true with respect to nearly every scientific fact about the
3 orca species.

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

8 149. SeaWorld goes further in its audacity by misleadingly claiming to have
9 the “most genetically diverse killer whale” collection in its history. In plain fact, this is
10 only true in that SeaWorld has forcibly bred and inbred orcas of varying ecotypes that
11 would never interbreed in the wild; indeed, a case of extreme incest (a son mating with
12 his mother to produce a daughter/sister) has occurred at SeaWorld. The creation of
13 these orcas serves no conservation function and leaves these orcas—a species
14 markedly social by nature—with no social identity whatsoever.

15 150. As acclaimed scientist Jane Goodall recently observed, SeaWorld’s
16 breeding program is “no longer defensible by science.”

17 **b. SeaWorld impregnates its young female orcas with sperm from**
18 **relatives and different ecotypes.**

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

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

3 153. Kohana, another captive orca taken from her mother at age three, was
4 bred by the age of only seven and pregnant with her second calf by the age of eight.
5 She rejected both calves and the second died within its first year of life. The father of
6 both was her uncle, Keto. Keto killed Spanish trainer Alexis Martinez in December
7 2009—both he and Kohana, although living in a Spanish facility, are owned by
8 SeaWorld.

9 154. Another captive SeaWorld orca, Katina, who was caught in the wild, was
10 forced to breed when she was only eight years old. Now she is used as a virtual
11 breeding machine and has produced several calves since 1985. She even produced an
12 inbred daughter with her own son, Taku, a pairing SeaWorld termed a “mistake,” but
13 one that proper husbandry management would have and should have prevented.

14 155. Further, several of the calves born within the confines of SeaWorld are
15 the children of Tilikum, the whale responsible for more than one human death in his
16 32 years in captivity. Keto is responsible for a fourth human killing attributed to
17 captive orcas and has sired two calves. In any other captive breeding situation, a
18 known human killer (whether it be a dog or a bull or a tiger or an elephant) would not
19 be bred at all. There is no evidence that wild orcas have ever killed human beings.

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

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

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

7 **c. SeaWorld trainers masturbate captive orcas for profitable**
8 **sperm.**

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

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

17 **d. SeaWorld drugs its captive orcas.**

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

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

1 163. Antibiotics, including Clindamycin, are also commonly given to
2 SeaWorld's captive orcas. These drugs treat a variety of infectious maladies caused by
3 their conditions of confinement, including infections of the teeth and infections caused
4 by injuries to them by other orcas with whom they are crammed into tanks
5 unnaturally. Often these drugs are administered through their food, along with vitamin
6 supplements needed because fish lose nutritional value when frozen.

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

10 165. Perhaps most telling, SeaWorld's captive orcas are also subject to
11 drugging by SeaWorld personnel with antipsychotic and psychoactive drugs, including
12 benzodiazepines such as Diazepam (generic Valium) which are given, among other
13 reasons, to calm the captive orcas which react against their conditions of confinement.

14 166. These drugs are dangerous for the orcas, including the calves of lactating
15 mothers, and would never be consumed in nature—but in confinement they are
16 additional tools SeaWorld uses to dominate its captive orcas and keep from public
17 view the reactions orcas have to confinement.

18 **5. Established dangers that SeaWorld publicly denies**

19 **a. SeaWorld trainers face known risks.**

20 167. As noted above, there exist no historical records of orcas killing or
21 seriously injuring any human being in the wild. The name "killer whale" arose not
22 because orcas were known to kill people but because they were known to kill other
23 whales.

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

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

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

15 171. Only after park witnesses began to confirm the true circumstances of her
16 abduction and death was SeaWorld forced to rethink its misinformation campaign; so
17 it then falsely stated that the trainer’s pony tail in the water caused the “accident.”

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

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

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

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

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

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

23 178. As the OSHA testimony and evidence summarized in the court’s findings
24 makes plain, the fact that SeaWorld trainers and executives monitor orca behavior so
25 carefully for aggression, documenting aggressive episodes several times over the past
26 decades all while falsely stating publicly (and even during the OSHA proceedings)

1 that orcas do not *ever* act aggressively, shows that the company has long known its
2 conditions of confinement cause unnatural aggression.

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

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

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

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

18 **b. Aberrant orca behavior is caused by confinement.**

19 183. The only recorded fatal attack by one orca on another has occurred in
20 captivity. Forced incompatibility among SeaWorld’s captive orcas is common, with
21 certain orcas using unnatural physical aggression toward others, resulting in
22 lacerations and worse. In the wild, aggression has been only rarely observed; where it
23 was, serious injuries did not result. If tension erupts in the wild, the ocean provides
24 ample room for orcas to maneuver.

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

3 185. The obvious social difference is that captive orca groups are wholly
4 artificial, made up of unrelated animals who often do not get along. This leads to
5 serious injury for many orcas at SeaWorld, which SeaWorld also keeps from the
6 public.

7 186. Raking, whereby an orca uses teeth to scratch or cut deeply into another's
8 skin, occurs frequently at SeaWorld and at unnaturally high energy levels. Raking
9 does occur in the wild, but with much lower energy levels.

10 187. SeaWorld misleadingly maintains in public statements that the obvious
11 physical injuries to its orcas caused by raking are the same raking injuries found on
12 orcas in the wild. As Chuck Thompkins of SeaWorld told National Public Radio in
13 March of 2015, "we see raking all the time in the wild." In fact, the extreme raking
14 injuries plainly observable on many captive SeaWorld orcas are uncommon in the
15 wild—but quite common at SeaWorld.

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

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

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

26 190. On January 19, 2013, Gabriela Cowperthwaite's documentary, *Blackfish*,
27 premiered at the Sundance Film Festival to glowing reviews and sold-out screenings.
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1 On January 22, 2013, CNN Films and Magnolia Pictures acquired the rights to
 2 *Blackfish*. CNN's October 24, 2013 broadcast of *Blackfish* was the most widely
 3 watched program of the year for the network.

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

9 192. The film carefully describes much of the misleading conduct SeaWorld
 10 engaged in during and surrounding the OSHA investigation that followed Brancheau's
 11 death. That investigation resulted in a citation and the imposition of (nominal) fines
 12 against SeaWorld—decisions that were affirmed on appeal by the D.C. Circuit and are
 13 now dispositive. Most disappointing for SeaWorld, the investigation resulted in the
 14 still-current complete ban on trainer performance in the water with orcas.

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

21 **G. The “Materiality” of SeaWorld’s Treatment of Orcas is Confirmed by Polls**
 22 **and the Public Drop in Attendance Following *Blackfish* and the Continuing**
Controversy.

23 194. Since the wide release of *Blackfish*, revenue and attendance at SeaWorld
 24 have taken a significant hit, along with its stock price. Just recently SeaWorld
 25 announced an 84% drop in second quarter net income compared to the year before,
 26 and a continued decline in visitor attendance. These drops ensued despite a massive,
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1 multi-million-dollar marketing campaign that began earlier this year to deflect and
2 defend against the increasing criticism of its treatment of captive orcas.

3 195. In order to gauge public sentiment on *Blackfish* in the wake of its release,
4 various media groups and publications conducted surveys to poll the public regarding
5 the controversy. CNN, for example, ran a poll on October 25, 2013 asking viewers,
6 “[w]ould you take your kids to SeaWorld” in light of the information revealed by
7 *Blackfish*. Of approximately 3,000 responses, 86% stated “No.”

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

15 197. Similarly, *Blackfish* prompted schools to either cancel long-standing
16 annual field trips to SeaWorld’s parks or publicly swear off attending the parks until
17 SeaWorld changed its policies.

18 198. For example, just weeks after *Blackfish* aired on CNN, in November
19 2013, San Diego’s Point Loma High School produced a striking video response to the
20 film, vowing never to return to the parks until the whales and animals were retired
21 from show business. The video, entitled “Dear SeaWorld,” received nationwide
22 attention and was aired on CNN and reported on by numerous publications.

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

3 **H. Popular Musicians Cancel SeaWorld Appearances and Association.**

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

9 201. “Bands, Brew and BBQ” is part of the Company’s stated business
10 strategy to “increase non-peak demand through seasonal and special events and
11 concerts”—*e.g.*, to drive off-season attendance in prime markets. SeaWorld Orlando
12 and Busch Gardens in Tampa depend on the annual “Bands, Brew and BBQ” concert
13 series to increase park attendance and overall revenue during the typically slow mid-
14 winter months.

15 202. In late 2013, as the *Blackfish* controversy continued ablaze, nearly every
16 act slated to perform at “Bands Brew and BBQ” received a petition through petition
17 platform Change.Org (along with significant pressures from other social media
18 platforms) imploring the band or artist to cancel its performance.

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

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

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

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

16 207. Dethroned SeaWorld CEO Jim Atchison admitted in a December 20,
17 2013 interview with the *Orlando Sentinel* that the cancellations "ended up getting
18 more coverage and became a story of [their] own." Atchison further explained that the
19 company decided to publish a December 2013 full-page open letter on social media
20 and within major newspapers in order to refute what he described as "misconceptions
21 that were floating around related to that coverage."

22 208. SeaWorld's ad, entitled "Open Letter from SeaWorld's Animal
23 Advocates," was widely viewed as evidence that the company was "concerned about
24 potential long-term brand damage from *Blackfish*," as reported by the *Sentinel*, and
25 was, according to CNN and the *Orlando Business Journal*, concerned about both
26 *Blackfish*'s "impact on a very key part of their audience" and "the attention generated
27 by *Blackfish* and the accompanying musical guest cancellations."
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I. Long-Standing SeaWorld Sponsors and Strategic Partners Jump Ship.

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

210. 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 respond publicly. 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."

211. 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.

212. 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."

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

6 214. A citizen petition was also effective in persuading Taco Bell, which had
7 been offering discounts on tickets to SeaWorld, to cut ties with SeaWorld in May
8 2014. Likewise, on May 16, 2014, STA Travel, a company which provides flights,
9 accommodation, tours, and expeditions for 2.5 million students and young people,
10 announced that it would stop booking trips to SeaWorld in Orlando and San Diego.

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

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

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

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

5 219. In November 2014, the *Orlando Sentinel* reported that Panama Jack, an
6 Orlando-based sunscreen company, would end its relationship with SeaWorld
7 effective February 2015. Finally, on November 14, 2014, Hyundai Motors America
8 Communications Executive Director Chris Hosford confirmed that Hyundai had
9 “ended its relationship with SeaWorld.”

10 220. Remaining sponsors American Express and British Airways are currently
11 subject to similar pressures through Change.org petitions, signed by over 75,000 and
12 273,000 individuals, respectively.

13 221. The fallout for SeaWorld from *Blackfish*-generated controversy is
14 ongoing.

15 222. This past April 2015, Mattel announced that it would end its licensing
16 agreement with SeaWorld and would discontinue making SeaWorld-branded toys
17 including Barbie Baby Animal Rescuer Playsets and other SeaWorld-themed Barbie
18 products

19 223. Earlier this year, the *Orlando Sentinel* reported that the Miami Dolphins,
20 which had previously offered ticketholders free admission to SeaWorld, had ended its
21 marketing partnership with SeaWorld.

22 **J. To This Day SeaWorld Continues to Mislead and Conceal Material Facts**
23 **from Consumers About the Treatment and Condition of its Captive Orcas**

24 224. Despite the obvious truths revealed in *Blackfish*, and recent books
25 challenging SeaWorld’s account of its treatment of captive orcas and their life
26 conditions, SeaWorld continues its efforts to convince the public that such challenges
27 to its centerpiece entertainment product are not to be believed.
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1 225. As late as March of 2014, since-dismissed SeaWorld CEO Atchison
2 scoffed at the notion that *Blackfish* and the increased attention paid to the condition
3 and treatment of its captive orcas had harmed the company, assuring investors that
4 “we have seen no effect on our business,” and even that increased interest in “marine
5 mammal parks” might translate to *more* visitors as a result of the publicity surrounding
6 this issue.

7 226. Soon after this statement, SeaWorld experienced a significant decline in
8 attendance and by the summer of 2014 SeaWorld was forced to admit that the
9 criticism of its orca captivity practices had reached SeaWorld’s bottom line. After
10 such belated admission, its stock price immediately plummeted over 30%.

11 227. Stung by the public reaction to *Blackfish*, and anticipating further
12 criticism, SeaWorld has continued its offensive, launching a massive spending
13 campaign this year to continue its saturation of the public with the false impression
14 that its treatment of killer whales is humane, scientifically sound, and caring.

15 228. It does so not only through its own publications, but also through a front
16 group called Awesome Ocean, and, as the public has come to learn, through the
17 apparent hiring of spies to infiltrate animal welfare groups.

18 229. Awesome Ocean was initially funded, in whole or in part, by SeaWorld.
19 SeaWorld even announced the Awesome Ocean Project in an email, posted here:
20 <https://s3.amazonaws.com/assets.rbl.ms/244843/980x.jpg>

21 230. Despite funding from SeaWorld, the site markets itself as an
22 “independent ocean news website.” The Editor-in-Chief, Eric M. Davis, is neither a
23 conservationist nor a journalist. His LinkedIn profile lists him as an “experienced
24 marketer with extensive SEO,” who has worked for travel sites like TravelClick and
25 Hilton Worldwide. His Facebook page lists him as the owner of Purple Moon Media, a
26 “revenue-focused destination marketing” firm whose clients include SeaWorld. The
27 site has several pieces that purport to “debunk” the myths of *Blackfish*.
28

1 231. In 2014, SeaWorld became aware that a former trainer, John Hargrove,
2 would have a book called *Beneath the Surface: Killer Whales, SeaWorld, and the*
3 *Truth Beyond Blackfish* published in March of 2015. In response, SeaWorld and Eric
4 Davis began publishing, on the web, statements designed to impeach Hargrove's book,
5 calling the book a "whale of a tale."

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

10 From: Eric Davis ericfl@gmail.com

11 **To:** John Hargrove

12 **Subject:** People are digging

13 Hey John,

14 Just your friendly AwesomeOcean guy Eric here!

15 Just wanted to drop you a line and let you know that some
16 journalist [sic] are digging DEEP into your past. They have
17 some crazy stuff that is ready to drop when your book drops.

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

20 Eric

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

24 234. This is part of SeaWorld's continuing effort to mislead the public and
25 challenge disclosure of the true facts regarding the treatment and condition of its
26 captive orcas.
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1 235. The misinformation campaign SeaWorld began many years ago has not
2 changed; it continues to mislead, misinform, distort, and omit material facts about the
3 condition of its captive orcas.

4 236. In addition, it was revealed last month that a SeaWorld employee, Paul
5 McComb, fraudulently infiltrated at least one animal welfare organization and
6 attended several gatherings of leading scientists and orca welfare advocates under
7 false and fraudulent pretenses over several years.

8 237. Reportedly McComb encouraged such persons to engage in more
9 aggressive and violent tactics in order to discredit SeaWorld's critics. This behavior is
10 further evidence of the extreme lengths to which SeaWorld goes to attack those who
11 question its business practices and to control the public message.

12 238. This spring a current SeaWorld employee, Laura Mathieson, penned an
13 article titled "SeaWorld's Animals Are Happy." That chipper heading, belied by the
14 demonstrable unhappiness experienced by its captive orcas, is followed by the
15 rhetorical trifecta so common to SeaWorld: (1) the claim that SeaWorld performs
16 "valuable research" on orcas; (2) the pejorative refrain that "known animal rights
17 activists" are behind any challenge to SeaWorld's business prerogatives and behind
18 any "claim that our killer whales suffer, are stressed or are exploited," claims that are
19 themselves "blatantly false"; and, finally, (3) the empty and misleading mantra that
20 SeaWorld's orcas "have and continue to thrive in our care."
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1 239. Most recently this growing challenge to SeaWorld's prerogatives played
2 out before the Washington State Legislature during testimony on February 5, 2015, in
3 support and in opposition to a bill that would ban holding cetaceans in captivity.
4 Though Washington does not have any captive cetaceans on display and the bill is
5 largely symbolic, SeaWorld fears a domino effect at the state level similar to the wave
6 of gay marriage legalizations that swept the country in a short period of time.

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

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

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

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

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

28 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.

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

4 241. Rather than engage or rebut any of these factual assertions, an industry-
5 funded spokesperson from the Alliance of Marine Mammal Parks and Aquariums
6 testified to challenge the legislation with further misinformation.

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

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

20 244. In addition to the attacks mentioned above, in response to media attention
21 given to the publication of former SeaWorld trainer John Hargrove's book *Beneath the*
22 *Surface*, SeaWorld (without rebutting a single factual allegation contained in the book)
23 at first lazily replied, through its VP of Communications, Fred Jacobs, and otherwise,
24 that the author "joined ranks with animal rights extremists ... and has eagerly
25 embraced their habit of misleading the public to advance an agenda."

26 245. The SeaWorld-funded website AwesomeOcean went on to create a
27 separate website dedicated to attacking Hargrove personally and childishy. Further,
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1 SeaWorld has gone to great lengths to attack Hargrove in the most personal of ways in
2 order to attempt discrediting the facts the author puts forth in his SeaWorld expose.

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

11 247. At a San Diego County School Board meeting on May 23 of this year,
12 Robin Sheets, SeaWorld’s Head Killer Whale Trainer and 26-year veteran of
13 SeaWorld, testified in opposition to student efforts to stop school-based field trip
14 support for SeaWorld. Sheets’ emotional and defensive presentation about a “world
15 gone completely mad,” one filled with hyperbole about those concerned with animal
16 welfare constituting “nothing short of social terrorism,” continued SeaWorld’s
17 misinformation campaign.

18 248. Among other false statements, Sheets testified that SeaWorld had “never
19 fed the whales any kind of medicine to make them calm down.” Sheets ended his
20 presentation in typical SeaWorld fashion: “What’s wrong with the shows? Shows are
21 fun. We don’t have a script. The animals aren’t forced to perform any behavior. ... We
22 basically, it’s just a big playtime with music and videos and people sitting in the
23 audience.”

24 249. SeaWorld’s chief concern is to maintain the public deception that its
25 treatment of orcas is above reproach and that its orcas live happy lives, beneficial to
26 both animal and man. This misleading message and its related material omissions are
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1 increasingly known to be demonstrably false. And scores of SeaWorld consumers
2 have unwittingly paid the price for this deception.

3 **K. Specific Plaintiff Allegations**

4 250. Plaintiff Hall first learned about SeaWorld as a young woman in the
5 1960s. She later learned of the death of SeaWorld trainer Dawn Brancheau (which
6 occurred February 24, 2010) and relied upon SeaWorld's (false) statements and
7 material omissions regarding her death, including that Brancheau slipped into the tank,
8 and later that her death was caused by her pony tail being in the water.

9 251. Subsequent to hearing these explanations from SeaWorld (and given
10 SeaWorld's material omissions concerning that event and orca treatment and
11 conditions more generally), Hall paid for admission to SeaWorld San Diego for herself
12 and her two grandchildren on July 13, 2011. She attended the Shamu show with her
13 grandchildren on that date.

14 252. The following summer, Hall paid for admission to SeaWorld San Diego
15 for herself, her two grandchildren, and her daughter on July 12, 2012. With her
16 grandchildren and daughter, she attended the Shamu show on that date.

17 253. At the time of, and prior to, Hall's purchase of these tickets both in 2011
18 and 2012, SeaWorld falsely and misleadingly, and with substantial and material
19 omissions, marketed its SeaWorld entertainment products in California and throughout
20 the country, in print media, television commercials, and/or via the Internet to Hall and
21 others who relied upon this marketing to their detriment and deception. SeaWorld
22 failed to fully disclose the true facts about the condition and treatment of its captive
23 orcas, facts material to Hall and the Plaintiff Classes.

24 254. Sometime after July 12, 2012, Hall watched the documentary *Blackfish*.
25 Hall then began her own further research regarding the treatment and conditions of
26 orcas at SeaWorld.

1 255. Hall concluded that SeaWorld's improper treatment of its captive orcas,
2 as well as SeaWorld's false and misleading statements and omissions regarding orca
3 conditions and treatment, was improper, and that had she known of the true facts
4 regarding these conditions and treatment she would not have paid for the tickets to
5 either of her family visits to SeaWorld in 2011 and 2012.

6 256. Since 2012, Hall has elected to take her grandchildren to LegoLand and
7 other amusement parks nearby that do not feature the exploitation of captive orcas.

8 257. Plaintiff Paul Danner purchased admission tickets to SeaWorld Orlando
9 for himself, his wife, his mother, and his two children, on April 23, 2014 and visited
10 SeaWorld Orlando with his family on April 25, 2014 using those tickets.

11 258. Following his family visit to SeaWorld Orlando in April, Danner began to
12 learn more of the truth concerning the conditions and treatment of SeaWorld's captive
13 orcas, the true facts of which SeaWorld had variously denied, materially omitted, and
14 misrepresented.

15 259. At the time of, and prior to, Danner's purchase of tickets for himself and
16 his family, SeaWorld falsely and misleadingly, and with substantial and material
17 omissions, marketed its SeaWorld entertainment products in Florida and throughout
18 the country, in print media, television commercials, and/or via the Internet to Danner
19 and others who relied upon this marketing to their detriment and deception. SeaWorld
20 failed to fully disclose the true facts about the condition and treatment of its captive
21 orcas, facts material to Danner and the Plaintiff Classes.

22 260. Subsequent to his April 2014 visit, Danner concluded that SeaWorld's
23 improper treatment of its captive orcas, as well as SeaWorld's false and misleading
24 statements and omissions regarding orca conditions and treatment, was improper, and
25 that had he known of the true facts regarding these conditions and treatment he would
26 not have paid any money for admission to SeaWorld for himself or his family in 2014.

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

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

8 263. At the time of, and prior to, Simo's visit to SeaWorld, SeaWorld falsely
9 and misleadingly, and with substantial and material omissions, marketed its SeaWorld
10 entertainment products in California and throughout the country, in print media,
11 television commercials, and/or via the Internet to Simo and others who relied upon
12 this marketing to their detriment and deception. SeaWorld failed to fully disclose the
13 true facts about the condition and treatment of its captive orcas, facts material to Simo
14 and the Plaintiff Classes.

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

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

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

26 267. At the time of, and prior to, Kuhl's purchase of tickets for \$97.98,
27 SeaWorld falsely and misleadingly, and with substantial and material omissions,
28

1 marketed its SeaWorld entertainment products in Florida and throughout the country,
2 in print media, television commercials, and/or via the Internet to Kuhl and others who
3 relied upon this marketing to their detriment and deception. SeaWorld failed to
4 properly and fully disclose the true facts about the condition and treatment of its
5 captive orcas, facts material to Kuhl and the Plaintiff Classes.

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

11 269. Plaintiff Elaine Browne purchased admission tickets to SeaWorld San
12 Antonio for herself and her two children for \$282.00 on or about June 10, 2012.

13 270. Following her June 10, 2012 family visit to SeaWorld San Antonio,
14 Browne began to learn more of the truth concerning the conditions and treatment of
15 SeaWorld's captive orcas, the true facts of which SeaWorld had variously denied,
16 materially omitted, and misrepresented.

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

24 272. Subsequent to her June 10, 2012 visit, Browne concluded that
25 SeaWorld's improper treatment of its captive orcas, as well as SeaWorld's false and
26 misleading statements and omissions regarding orca conditions and treatment, was
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1 improper, and that had she known of the true facts regarding these conditions and
2 treatment she would not have paid any money for admission to SeaWorld.

3 **L. SeaWorld Has a Duty to Disclose to Consumers its Treatment of Captive**
4 **Orcas and their Actual Condition.**

5 273. Plaintiffs and the Class members identified below purchased SeaWorld's
6 products, either in person or on SeaWorld websites, while unaware of the falsity of
7 SeaWorld's misrepresentations and its material omissions concerning the overall well-
8 being and treatment of its captive orcas (as detailed in the preceding paragraphs).

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

12 275. Plaintiffs and members of each Class have relied to their detriment on
13 SeaWorld's multi-faceted and now decades-long advertising campaign of
14 misrepresentations and material omissions as it concerns the conditions and treatment
15 of its captive orcas.

16 276. Plaintiffs and members of each Class altered their position to their
17 detriment and suffered injuries that include payment of the purchase price for
18 admission to SeaWorld parks, or membership at SeaWorld, or SeaWorld orca
19 "experiences."

20 277. At the time Plaintiffs and Class members purchased SeaWorld tickets,
21 memberships, or other orca "experience" products, they relied upon a false
22 understanding of the conditions and treatment of SeaWorld's orcas, given SeaWorld's
23 material omissions of fact regarding the treatment and well-being of the orcas.
24 Plaintiffs and other similarly situated consumers were misled and likely to be misled,
25 and they reasonably and justifiably relied, to their detriment, on SeaWorld's omissions
26 of material facts.

1 278. SeaWorld had an obligation at the time Plaintiffs and Class members
2 made their purchases of SeaWorld products, whether in person or over the Internet on
3 SeaWorld websites, to disclose the truth about the conditions and treatment of its
4 captive orcas and to not misrepresent the same.

5 279. Instead, SeaWorld has, for decades, omitted facts it was and is obligated
6 to disclose so that a reasonable consumer, including Plaintiffs and Class members, can
7 be adequately and truthfully informed about the treatment and conditions of
8 SeaWorld's captive orcas—in other words, truthfully and adequately informed about
9 the orca entertainment product SeaWorld is marketing to them for purchase.

10 280. If SeaWorld had disclosed the truth about the treatment and conditions of
11 its orcas, Plaintiffs and Class members would not have paid the purchase price for
12 SeaWorld's products.

13 281. As a result of the alleged misconduct, SeaWorld has generated substantial
14 revenues from the sale of its amusement products showcasing its captive orcas.

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

18 **V. CLASS ACTION ALLEGATIONS**

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

23 SeaWorld San Diego Purchasers

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

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

7 SeaWorld Orlando Purchasers

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

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

18 SeaWorld San Antonio Purchasers

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

24 Excluded from the Class are: the officers, directors or
25 employees of Defendant; any entity in which Defendant has
26 a controlling interest; and any affiliate, legal representative,
27 heir or assign of Defendant. Also, excluded from the Class
28 are any federal, state or local governmental entities, any
judicial officer presiding over this action and the members of

1 his/her immediate family and judicial staff, and any juror
2 assigned to this action.

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

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

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

14 287. Plaintiffs assert claims that are typical of the Class members. Plaintiffs
15 and all Class members have been subjected to the same wrongful conduct because
16 they all have purchased SeaWorld's products. As a result, and like other members of
17 the Class, Plaintiffs purchased and paid sums of money for SeaWorld's products
18 which they otherwise would not have paid had the true conditions and treatment of
19 SeaWorld's orcas been disclosed by SeaWorld.

20 288. Plaintiffs will fairly and adequately represent and protect the interests of
21 the Classes. Plaintiffs are represented by counsel competent and experienced in both
22 consumer protection and class action litigation. There is no hostility between Plaintiffs
23 and the unnamed Class Members. Plaintiffs anticipate no difficulty in the management
24 of this litigation as a class action.

25 289. Class certification is appropriate because Defendant has acted on grounds
26 that apply generally to each Class, so that final injunctive relief or corresponding
27 declaratory relief is appropriate respecting the Classes as a whole.
28

290. 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.

291. 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

1 to each of them individually, and the burden imposed on the judicial system would be
2 enormous.

3 292. The prosecution of separate actions by the individual Class members
4 would create a risk of inconsistent or varying adjudications, which would establish
5 incompatible standards of conduct for Defendant. In contrast, the conduct of this
6 action as a class action presents far fewer management difficulties, conserves judicial
7 resources and the parties' resources, and protects the rights of each Class member.

8 **VI. CAUSES OF ACTION**

9 **FIRST CAUSE OF ACTION**

10 **VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW** 11 **(CAL. BUS. & PROF. CODE § 17200, *et seq.*)**

12 293. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

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

16 295. As a direct and foreseeable result of SeaWorld's ubiquitous, long-term
17 advertising campaigns, the public consciousness has been shaped and saturated with
18 the story line that the captive orcas at SeaWorld are well cared for and thriving, and
19 that their conditions and treatment are healthy and proper. SeaWorld's misleading
20 presentation of its captive orca entertainment product has saturated America's culture.

21 296. Plaintiffs and the Class have relied upon SeaWorld's campaign of
22 misrepresentations and material omissions regarding the treatment and condition of its
23 captive orcas, a campaign likely to deceive, and which did deceive, reasonable
24 consumers including Plaintiffs and Class members who relied upon this ongoing
25 campaign of deceit to their detriment resulting in economic injury to them.

1 297. Cal. Bus. & Prof. Code § 17200 prohibits any “unlawful, unfair, or
2 fraudulent business act or practice.” Defendant has engaged and engages in unlawful,
3 unfair, and fraudulent business acts and practices in violation of the UCL.

4 298. SeaWorld’s business practices violate the UCL’s prohibition on
5 “fraudulent business act[s] or practices” because the false and misleading statements
6 and material omissions associated with its products, in regard to its captive orcas, were
7 and are likely to deceive a reasonable consumer, and the true facts about the condition
8 and treatment of its orcas would be material to a reasonable consumer.

9 299. SeaWorld’s business practices violate the UCL’s prohibition on
10 “unlawful...business act[s] or practice[s]” because they violate, *inter alia*, the
11 Consumer Legal Remedies Act (or “CLRA”), Cal. Civ. Code § 1750, *et seq.*, the False
12 Advertising Law (“FAL”), Cal. Bus. & Prof. Code § 17500, *et seq.*, and California law
13 against Deceit, Cal. Civ. Code §§ 1709-1711, as alleged in this Complaint.

14 300. SeaWorld’s business practices violate the UCL’s prohibition on
15 “unfair...business act[s] or practice[s]” because they offend established public policy
16 and/or are immoral, unethical, oppressive, unscrupulous and/or substantially injurious
17 to consumers, which harm greatly outweighs any benefit associated with the business
18 practice.

19 301. SeaWorld has a duty to refrain from these practices and to disclose facts
20 material to a reasonable consumer concerning the condition and treatment of its
21 captive orcas. The duty to disclose arises from: (a) its superior and exclusive
22 knowledge of these material facts, which were not known or reasonably accessible to
23 Plaintiffs and the Class; (b) its active concealment of these material facts; and (c) its
24 marketing and sale of SeaWorld products, which is likely to mislead consumers, and
25 has misled consumers, absent full disclosure of the material facts at issue.

26 302. Plaintiffs and the Class have suffered injury-in-fact, including the loss of
27 money, as a result of SeaWorld’s unlawful, unfair, and fraudulent practices. As set
28

1 forth more fully above, in purchasing SeaWorld’s tickets, memberships, and
 2 “experiences,” Plaintiffs and the Class relied on SeaWorld to make complete
 3 disclosures of all material information regarding its captive orcas. Had Plaintiffs and
 4 the Class known the truth about the condition and treatment of SeaWorld’s captive
 5 orcas, they would not have paid the purchase price for SeaWorld products.

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

10 304. Plaintiffs request that this Court enter such orders or judgments as may be
 11 necessary to enjoin Defendant from continuing its unlawful, unfair, and deceptive
 12 business practices, to restore to Plaintiffs and members of the Class any money that
 13 Defendant acquired by unfair competition (as provided in Cal. Bus. & Prof. Code
 14 § 17203), and to provide such other relief as set forth below.

15 **SECOND CAUSE OF ACTION**

16 **VIOLATIONS OF THE CONSUMERS LEGAL REMEDIES ACT** 17 **(CAL. CIV. CODE § 1750, *et seq.*)**

18 305. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

19 306. This claim is brought on behalf of Plaintiffs and the Class of SeaWorld
 20 San Diego Purchasers, who purchased SeaWorld tickets, memberships, and “orca”
 21 experiences for the SeaWorld San Diego amusement park.

22 307. Defendant is a “person” under Cal. Civ. Code § 1761(c).

23 308. Plaintiffs and members of the Class are “consumer[s],” under Cal. Civ.
 24 Code § 1761(d), who purchased an admission ticket to SeaWorld, a membership to
 25 SeaWorld, or a SeaWorld “experience” involving its captive orcas, which are goods or
 26 services made, marketed, and sold by Defendant.

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

5 310. As a direct and foreseeable result of SeaWorld’s ubiquitous, long-term
6 advertising campaigns, the public consciousness has been shaped and saturated with
7 the story line that the captive orcas at SeaWorld are well cared for and thriving, and
8 that their conditions and treatment are healthy and proper. SeaWorld’s misleading
9 presentation of its captive orca entertainment product has saturated America’s culture.

10 311. SeaWorld has a duty to refrain from these practices and to disclose facts
11 material to a reasonable consumer concerning the condition and treatment of its
12 captive orcas. The duty to disclose arises from: (a) its superior and exclusive
13 knowledge of these material facts, which were not known or reasonably accessible to
14 Plaintiffs and the Class; (b) its active concealment of these material facts; and (c) its
15 marketing and sale of SeaWorld products, which is likely to mislead consumers, and
16 has misled consumers, absent full disclosure of the material facts at issue.

17 312. Plaintiffs and the Class lost money and were harmed as a result of
18 SeaWorld’s violations of the CLRA because they purchased SeaWorld products due to
19 the material omissions about the conditions and treatment of SeaWorld’s captive
20 orcas, and they would not have purchased SeaWorld’s products on the same terms if
21 the true facts had been known. Absent these material omissions, Plaintiffs and the
22 Class would not have paid the purchase price for SeaWorld products.

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

25 314. In accordance with Cal. Civ. Code § 1780(a), Plaintiffs and the Class
26 seek compensatory and punitive damages, injunctive, and equitable relief for
27 SeaWorld’s violations of the CLRA.
28

THIRD CAUSE OF ACTION

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

319. 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.

321. SeaWorld markets and sells the SeaWorld product line by marketing and advertising its healthy treatment and care of orcas, the centerpiece of its entertainment

1 product. SeaWorld advertises and markets that the orcas are as healthy and content at
2 SeaWorld as they are in the wild, and that captivity is beneficial to both the orcas and
3 consumers, neither of which is true. SeaWorld effectively misrepresents and has
4 misrepresented by way of several material omissions for several years the conditions
5 in which the orcas live and the consequences of those conditions.

6 322. As a direct and foreseeable result of SeaWorld's ubiquitous, long-term
7 advertising campaigns, the public consciousness has been shaped and saturated with
8 the story line that the captive orcas at SeaWorld are well cared for and thriving, and
9 that their conditions and treatment are healthy and proper. SeaWorld's misleading
10 presentation of its captive orca entertainment product has saturated America's culture.

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

19 324. Plaintiffs and the Class have suffered injury-in-fact and lost money or
20 property as a result of SeaWorld's violations of the FAL because: (a) they purchased
21 SeaWorld products (tickets for admission, park memberships, or SeaWorld
22 "experiences" with orcas) due to SeaWorld's deceptive and untrue marketing and
23 material omissions; and (b) they would not have purchased SeaWorld products on the
24 same terms if the true facts had been known. Absent these false and misleading
25 statements in SeaWorld's marketing and its material omissions, Plaintiffs and the
26 Class would not have paid the purchase price for SeaWorld products.

1 deemed to have intended to defraud every individual in that class, who is actually
2 misled by the deceit.”

3 333. As a direct and foreseeable result of SeaWorld’s ubiquitous, long-term
4 advertising campaigns, the public consciousness has been shaped and saturated with
5 the story line that the captive orcas at SeaWorld are well cared for and thriving, and
6 that their conditions and treatment are healthy and proper. SeaWorld’s misleading
7 presentation of its captive orca entertainment product has saturated America’s culture.

8 334. During its decades-long marketing campaign, SeaWorld has willfully
9 suppressed and omitted material facts concerning the treatment and condition of its
10 captive orcas and used false and misleading statements in support of its marketing
11 campaign regarding the condition and treatment of its captive orcas.

12 335. SeaWorld has a duty to refrain from these practices and to disclose facts
13 material to a reasonable consumer concerning the condition and treatment of its
14 captive orcas. The duty to disclose arises from: (a) its superior and exclusive
15 knowledge of these material facts, which were not known or reasonably accessible to
16 Plaintiffs and the Class; (b) its active concealment of these material facts; and (c) its
17 marketing and sale of SeaWorld products, which is likely to mislead consumers, and
18 has misled consumers, absent full disclosure of the material facts at issue.

19 336. SeaWorld has suppressed and omitted these material facts concerning the
20 condition and treatment of its SeaWorld orca entertainment “products” with the intent
21 to induce Plaintiffs and the Class to purchase these products.

22 337. Plaintiffs and the Class were unaware of these suppressed and omitted
23 material facts at the time of their purchases of SeaWorld products. If they had known
24 of such material facts at the time of their purchases, Plaintiffs and the Class would not
25 have paid the purchase price for SeaWorld products.

26 338. As a result of SeaWorld’s conduct, Plaintiffs and the Class sustained
27 economic damages in an amount to be determined at trial.
28

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

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

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

341. 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).

342. 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).

343. SeaWorld’s business practices violate these prohibitions because its false and misleading statements and material omissions associated with its captive orca entertainment products were unfair, unconscionable, and deceptive, and were likely to and did deceive reasonable consumers about facts material to those consumers.

344. As a direct and foreseeable result of SeaWorld’s ubiquitous, long-term advertising campaigns, the public consciousness has been shaped and saturated with the story line that the captive orcas at SeaWorld are well cared for and thriving, and that their conditions and treatment are healthy and proper. SeaWorld’s misleading presentation of its captive orca entertainment product has saturated America’s culture.

345. SeaWorld, over its decades-long marketing campaign, has willfully failed to disclose and concealed the true facts surrounding the condition and treatment of its captive orcas.

1 352. This claim is brought on behalf of Plaintiffs and the Class of SeaWorld
2 San Antonio Purchasers, who purchased SeaWorld tickets, memberships, and “orca”
3 experiences for the SeaWorld San Antonio amusement park.

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

8 354. The DTPA prohibits “[f]alse, misleading, or deceptive acts or practices in
9 the conduct of any trade or commerce ...” Tex. Bus. & Com. Code § 17.46(a).

10 355. SeaWorld’s business practices violate these prohibitions because its false
11 and misleading statements and material omissions associated with its captive orca
12 entertainment products were unfair, unconscionable, and deceptive, and were likely to
13 and did in fact deceive reasonable consumers about facts material to those consumers.

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

18 357. As a direct and foreseeable result of SeaWorld’s ubiquitous, long-term
19 advertising campaigns, the public consciousness has been shaped and saturated with
20 the story line that the captive orcas at SeaWorld are well cared for and thriving, and
21 that their conditions and treatment are healthy and proper. SeaWorld’s misleading
22 presentation of its captive orca entertainment product has saturated America’s culture.

23 358. SeaWorld has willfully failed to disclose and concealed the true facts
24 surrounding the condition and treatment of its captive orcas.

25 359. SeaWorld’s intentional and knowing misrepresentation and omission of
26 material facts regarding its captive orcas was done with intent to deceive and mislead
27 Plaintiffs and the Class.
28

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

3 361. SeaWorld has a duty to refrain from these practices and to disclose facts
4 material to a reasonable consumer concerning the condition and treatment of its
5 captive orcas. The duty to disclose arises from: (a) its superior and exclusive
6 knowledge of these material facts, which were not known or reasonably accessible to
7 Plaintiffs and the Class; (b) its active concealment of these material facts; and (c) its
8 marketing and sale of SeaWorld products, which is likely to mislead consumers, and
9 has misled consumers, absent full disclosure of the material facts at issue.

10 362. Plaintiffs and the Class lost money and were harmed as a result of
11 SeaWorld's violations of the DTPA because they purchased SeaWorld products due to
12 material omissions about the conditions and treatment of SeaWorld's captive orcas,
13 and they would not have purchased SeaWorld's products on the same terms if the true
14 facts had been known. Absent these material omissions, Plaintiffs and the Class would
15 not have paid the purchase price for SeaWorld products.

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

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

21 365. Plaintiffs and the San Antonio Class are entitled to seek economic
22 damages under the DTPA, having mailed appropriate notice and demand in
23 accordance with Tex. Bus. & Com. Code § 17.505(a), and now having amended the
24 original Complaint to also include a request for economic damages, as provided at
25 Tex. Bus. & Com. Code § 17.50(b)(1). A notice was mailed to SeaWorld, as was
26 notice to the Texas Office of the Attorney General, Consumer Protection Division.
27 Defendant did not respond to the notice.
28

SEVENTH CAUSE OF ACTION
UNJUST ENRICHMENT

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

367. This claim is brought on behalf of Plaintiffs and 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.

368. 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.

369. As a direct and foreseeable result of SeaWorld’s ubiquitous, long-term advertising campaigns, the public consciousness has been shaped and saturated with the story line that the captive orcas at SeaWorld are well cared for and thriving, and that their conditions and treatment are healthy and proper. SeaWorld’s misleading presentation of its captive orca entertainment product has saturated America’s culture.

370. 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.

371. 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.

372. 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

1 allocated and distributed equitably by the Court to and for the benefit of Plaintiffs and
2 the Classes.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs and the proposed Classes ask for the following relief:

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

7 B. Entry of an order appointing Representative Plaintiffs as Class
8 representatives of the respective Classes;

9 C. Entry of an order appointing undersigned counsel as co-lead counsel for
10 the Classes;

11 D. Damages and/or restitution and/or injunctive relief requiring return of all
12 payments made by members of the Class of SeaWorld San Diego Purchasers pursuant
13 to Cal. Bus. & Prof. Code §§ 17200, 1750, and 17500, and as permitted for violations
14 of Cal. Civ. Code §§ 1709-1711;

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

17 F. All other available remedies pursuant to Cal. Bus. & Prof. Code
18 §§ 17200, 1750, and 17500, and as allowed for violations of Cal. Civ. Code §§ 1709-
19 1711, including compensatory and punitive damages;

20 G. Actual damages and injunctive relief requiring return of all payments
21 made by members of the Class of SeaWorld Orlando Purchasers pursuant to Fla. Stat.
22 § 501.211(2);

23 H. Actual damages and injunctive relief on behalf of the members of the
24 Class of SeaWorld San Antonio Purchasers requiring SeaWorld to cease its false,
25 misleading, and deceptive business practices pursuant to Tex. Bus. & Com. Code §
26 17.50(b);

I. 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 in recognition of SeaWorld's unjust enrichment;

J. Prejudgment interest at the maximum rate;

K. Costs of the proceedings herein;

L. Reasonable attorneys' fees and costs as allowed;

M. *Cy pres* to be awarded to a *bona fide* 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

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

JURY DEMAND

Plaintiffs and the Proposed Classes, by counsel, request a trial by jury on their legal claims, as set forth above.

DATED: August 21, 2015

HAGENS BERMAN SOBOL SHAPIRO LLP

By /s/ Steve W. Berman

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PROOF OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party through the Court's electronic filing service on August 21, 2015.

s/ Steve W. Berman
Steve W. Berman

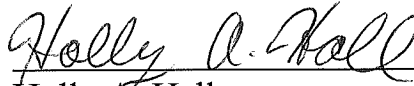
DECLARATION RE CLRA VENUE

I, Holly A. Hall, do hereby declare and state as follows:

I am a party plaintiff in *Holly Hall, 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 15th day of March 2015.


Holly A. Hall

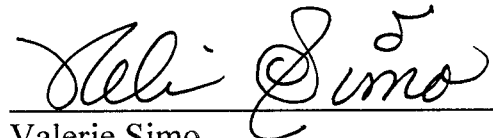
DECLARATION RE CLRA VENUE

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