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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

LISA KOUBALL, on behalf of herself,
and all others similarly situated,

Plaintiff,

v.

SEAWORLD PARKS &
ENTERTAINMENT, INC.,

Defendant.

Case No.: '20CV0870 H BGS

CLASS ACTION

COMPLAINT

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 1. Plaintiff Lisa Kouball (“Plaintiff”) brings this action on behalf of
3 herself and all others similarly situated against Defendant SeaWorld Parks &
4 Entertainment, Inc. (“SeaWorld” or “Defendant”). Plaintiff makes the following
5 allegations pursuant to the investigation of her counsel and based upon information
6 and belief, except as to the allegations specifically pertaining to herself, which are
7 based on personal knowledge:

8 **JURISDICTION AND VENUE**

9 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §
10 1332(d)(2)(A) because this case is a class action where the aggregate claims of all
11 members of the proposed class are in excess of \$5,000,000, exclusive of interest and
12 costs, and most members of the proposed nationwide class are citizens of states
13 different from the states of Defendant.

14 3. This Court has general jurisdiction over Defendant because it conducts
15 substantial business within California such that Defendant has significant,
16 continuous, and pervasive contacts with the State of California.

17 4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the
18 challenged fee practices have been committed in this District and because Plaintiff
19 resides and suffered the alleged harm in this District.

20 **FACTUAL ALLEGATIONS**

21 5. Defendant SeaWorld has made the unconscionable decision to keep
22 charging its thousands of customers monthly membership fees while closing its
23 amusement parks as the novel coronavirus, COVID-19, rages throughout the world
24 and the United States economy has gone into a deep recession.

25 6. Defendant is the operator of several amusement parks and water parks
26 throughout the United States, operating in locations such as San Diego, California,
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1 Orlando, Florida, and San Antonio, Texas.¹ Defendant offers annual passes to its
2 customers that allow them access Defendant’s amusement and water parks on an
3 unlimited basis.² Defendant’s customers are charged a monthly fee for annual passes
4 that range from \$10.00 per month to \$17.75 per month.³

5 7. To sign up for Defendant’s annual membership program, customers
6 often provide Defendant with their credit card or debit card information. Defendant
7 then automatically charges its customers’ credit or debit cards as payments are due
8 on a monthly basis.

9 8. In approximately March of 2020, Defendant closed all of its amusement
10 parks and water parks due to the COVID-19 pandemic. However, unlike most of its
11 competitors, Defendant continued charging its customers monthly membership
12 fees— at full price. Defendant is able to unilaterally charge its customers monthly
13 fees without their consent, as it is in possession of its members’ debit and credit card
14 information. Thus, Defendant has made the deliberate decision to bilk its customers
15 out of a monthly membership fee while its members do not have access to
16 Defendant’s amusement parks and water parks. The sole reason Defendant’s
17 customers pay monthly membership fees is to have access to Defendant’s
18 amusement parks and water parks. Now, Defendant is charging its customers full
19 price while denying customers access to its amusement parks and water parks.

20 9. Plaintiff seeks relief in this action individually, and on behalf of all of
21 Defendant’s customers nationwide that have paid or were charged fees while
22 Defendant’s amusement parks and water parks were closed for Defendant’s
23 violations of the California Consumer Legal Remedies Act (“CLRA”), Civil Code
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25 ¹ <https://seaworld.com/> (last visited May 8, 2020).

26 ² <https://seaworld.com/san-diego/annual-pass/> (last visited May 8, 2020).

27 ³ Id.

1 §§1750, *et seq.*, Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, *et*
2 *seq.*, False Advertising Law (“FAL”), Bus. & Prof. Code §§ 17500, *et seq.*, for
3 breach of contract, unjust enrichment, and money had and received.

4 **PARTIES**

5 10. Plaintiff Lisa Kouball is a citizen of California, residing in San Diego
6 County, California. Ms. Kouball purchased a total of four annual passes to attend
7 Defendant’s amusement park located in San Diego, California, paying a total of
8 \$48.99 per month on a month-to-month basis for the four annual membership
9 passes. In approximately March of 2020, Defendant closed its amusement parks and
10 water parks, including the SeaWorld amusement park in San Diego, California that
11 Plaintiff attended. However, on approximately April 23, 2020, Defendant charged
12 Plaintiff’s credit card in the full amount of her month-to-month memberships—
13 \$48.99— even though Plaintiff does not have access to Defendant’s amusement
14 parks. Further, Defendant has not refunded Plaintiff any part of her monthly fee for
15 the time in which Defendant’s amusement parks and water parks have remained
16 closed. Plaintiff signed up for Defendant’s annual membership passes with the
17 belief and on the basis that he would have access to SeaWorld San Diego amusement
18 park at any time during the month in which she was charged. Plaintiff would not
19 have paid for the membership, or would not have paid for it on the same terms, had
20 she known that she would not have access to Defendant’s amusement park. Plaintiff
21 continues to face imminent harm, as Defendant continues charging its customers
22 monthly fees while all of its amusement parks and water parks remain closed.

23 11. Defendant SeaWorld Parks & Entertainment, Inc. is a Delaware
24 corporation that maintains its principal place of business at 6240 Sea Harbor Drive,
25 Orlando, Florida 32821. Defendant is the operator of several amusement parks and
26 water parks nationwide, including the SeaWorld amusement park located in San
27 Diego, California.

CLASS ACTION ALLEGATIONS

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2 12. Plaintiff brings this action as a class action under Federal Rule of Civil
3 Procedure 23 on behalf of a Class consisting of all persons in the United States who
4 were charged annual membership fees for a period in which Defendant’s amusement
5 parks and water parks were closed.

6 13. Plaintiff also seeks to represent a subclass defined as all members of
7 the Class who are members of Defendant’s amusement parks and water parks located
8 in California. (the “California Subclass”).

9 14. Plaintiff reserves the right to amend or modify the Class definition with
10 greater specificity or further division into subclasses or limitation to particular issues
11 as discovery and the orders of this Court warrant.

12 15. Excluded from the Class are the Defendant, the officers and directors
13 of the Defendant at all relevant times, members of its immediate families and their
14 legal representatives, heirs, successors or assigns and any entity in which Defendant
15 has or had a controlling interest.

16 16. Plaintiff is a member of the Class and California Subclass she seeks to
17 represent.

18 17. Defendant has thousands of customers nationwide that have paid or
19 were charged fees while Defendant’s amusement parks and water parks were closed.
20 Accordingly, members of the Class are so numerous that their individual joinder
21 herein is impracticable. The precise number of Class members and their identities
22 are unknown to Plaintiff at this time but may be determined through discovery.

23 18. Common questions of law and fact exist as to all Class members and
24 predominate over questions affecting only individual Class members. Common legal
25 and factual questions include, but are not limited to whether Defendant has breached
26 its contract with its customers and whether its actions are fraudulent and unlawful.

1 23. Plaintiff brings this claim individually and on behalf of members of the
2 proposed Class against Defendant. Plaintiff also brings this claim individually and
3 on behalf of members of the proposed California Subclass against Defendant.

4 24. Plaintiff and Class members are consumers who paid fees for use of
5 Defendant’s amusement parks and water parks for personal, family or household
6 purposes. Plaintiff and the Class are “consumers” as that term is defined by the
7 CLRA in Cal. Civ. Code § 1761(d).

8 25. Defendant’s amusement park and water park access that Plaintiff and
9 Class members purchased from Defendant was a “service” within the meaning of
10 Cal. Civ. Code § 1761(b).

11 26. Defendant’s actions, representations, and conduct have violated, and
12 continue to violate the CLRA, because they extend to transactions that intended to
13 result, or which have resulted in, the sale of services to consumers.

14 27. Defendant’s advertising that its amusement parks and water parks
15 would be available to its customers and that its customers would have access to its
16 amusement parks and water parks upon paying a membership fee is false and
17 misleading to a reasonable consumer, including Plaintiff, because Defendant in fact
18 closed all of its amusement parks and water parks while continuing to charge its
19 customers the full price of membership.

20 28. California’s Consumers Legal Remedies Act, Cal. Civ. Code §
21 1770(a)(5), prohibits “[r]epresenting that goods or services have sponsorship,
22 approval, characteristics, ingredients, uses, benefits, or quantities which they do not
23 have or that a person has a sponsorship, approval, status, affiliation, or connection
24 which he or she does not have.” By engaging in the conduct set forth herein,
25 Defendant violated and continue to violate Section 1770(a)(5) of the CLRA, because
26 Defendant’s conduct constitutes unfair methods of competition and unfair or
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1 fraudulent acts or practices, in that Defendant misrepresented the particular
2 characteristics, benefits and quantities of the services.

3 29. Cal. Civ. Code § 1770(a)(7) prohibits representing that goods or
4 services are of a particular standard, quality, or grade, or that goods are of a particular
5 style or model, if they are of another. By engaging in the conduct set forth herein,
6 Defendant violated and continues to violate Section 1770(a)(7) of the CLRA,
7 because Defendant's conduct constitutes unfair methods of competition and unfair
8 or fraudulent acts or practices, in that Defendant misrepresents the particular
9 standard, quality or grade of the services.

10 30. Cal. Civ. Code § 1770(a)(9) further prohibits "[a]dvertising goods or
11 services with intent not to sell them as advertised." By engaging in the conduct set
12 forth herein, Defendant violated and continues to violate Section 1770(a)(9), because
13 Defendant's conduct constitutes unfair methods of competition and unfair or
14 fraudulent acts or practices, in that Defendant advertises services with the intent not
15 to sell the services as advertised.

16 31. Plaintiff and the Class acted reasonably when they purchased
17 Defendant's amusement park and water park passes on the belief that Defendant's
18 representations were true and lawful.

19 32. Plaintiff and the Class suffered injuries caused by Defendant because
20 (a) they would not have purchased or paid for Defendant's amusement park and
21 water park memberships absent Defendant's representations and omission of a
22 warning that it would continue charging customers' credit cards and debit cards
23 while all of Defendant's amusement parks and water parks nationwide are closed;
24 (b) they would not have purchased amusement park and water park memberships on
25 the same terms absent Defendant's representations and omissions; (c) they paid a
26 price premium for Defendant's amusement park and water park memberships based
27 on Defendant's misrepresentations and omissions; and (d) Defendant's amusement
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1 park and water park memberships did not have the characteristics, benefits, or
2 quantities as promised.

3 33. Under California Civil Code § 1780(a), Plaintiff and members of the
4 Class seek injunctive and equitable relief for Defendant’s violations of the CLRA.
5 Plaintiff will mail an appropriate demand letter consistent with California Civil Code
6 § 1782(a). If Defendant fails to take corrective action within 30 days of receipt of
7 the demand letter, Plaintiff will amend her complaint to include a request for
8 damages as permitted by Civil Code § 1782(d).

9 34. Wherefore, Plaintiff seeks injunctive and equitable relief for these
10 violations of the CLRA.

11 **SECOND CAUSE OF ACTION**

12 **Violation of California’s Unfair Competition Law**

13 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***

14 35. Plaintiff hereby incorporates by reference the allegations contained in
15 all preceding paragraphs of this complaint.

16 36. Plaintiff brings this claim individually and on behalf of the members of
17 the proposed Class against Defendant. Plaintiff also brings this claim individually
18 and on behalf of members of the proposed California Subclass against Defendant.

19 37. Defendant is subject to California’s Unfair Competition Law, Cal. Bus.
20 & Prof. Code §§ 17200, *et seq.* The UCL provides, in pertinent part: “Unfair
21 competition shall mean and include unlawful, unfair or fraudulent business practices
22 and unfair, deceptive, untrue or misleading advertising”

23 38. Defendant’s advertising that its amusement parks and water parks
24 would be available to its customers, and that its customers would have access to its
25 amusement parks and water parks upon paying a membership fee is false and
26 misleading to a reasonable consumer, including Plaintiff, because Defendant in fact
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1 closed all of its amusement parks and water parks while continuing to charge its
2 customers the full price of amusement park and water park memberships.

3 39. Defendant’s business practices, described herein, violated the
4 “unlawful” prong of the UCL by violating the CLRA, the FAL, and other applicable
5 law as described herein.

6 40. Defendant’s business practices, described herein, violated the “unfair”
7 prong of the UCL in that its conduct is substantially injurious to consumers, offends
8 public policy, and is immoral, unethical, oppressive, and unscrupulous, as the gravity
9 of the conduct outweighs any alleged benefits. Defendant’s advertising and its
10 charging of membership fees while its amusement parks and water parks are closed
11 is of no benefit to consumers.

12 41. Defendant violated the fraudulent prong of the UCL by misleading
13 Plaintiff and the Class to believe that they would only be charged fees when they
14 would have access to Defendant’s amusement parks and water parks.

15 42. Plaintiff and the Class acted reasonably when they signed up for
16 memberships based on the belief that they would only be charged fees when
17 Defendant’s amusement parks and water parks were open and accessible.

18 43. Plaintiff and the Class lost money or property as a result of Defendant’s
19 UCL violations because (a) they would not have purchased or paid for Defendant’s
20 amusement park and water park memberships absent Defendant’s representations
21 and omission of a warning that it would continue charging customers’ credit cards
22 and debit cards while all amusement parks and water parks nationwide are closed;
23 (b) they would not have purchased amusement park and water park memberships on
24 the same terms absent Defendant’s representations and omissions; (c) they paid a
25 price premium for Defendant’s amusement park and water park membership based
26 on Defendant’s misrepresentations and omissions; and (d) Defendant’s amusement
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1 park and water park memberships did not have the characteristics, benefits, or
2 quantities as promised.

3 **THIRD CAUSE OF ACTION**

4 **Violation of California’s False Advertising Law**

5 **Cal. Bus. & Prof. Code §§ 17500, *et seq.***

6 44. Plaintiff hereby incorporates by reference the allegations contained in
7 all preceding paragraphs of this complaint.

8 45. Plaintiff brings this claim individually and on behalf of the members of
9 the proposed Class against Defendant. Plaintiff also brings this claim individually
10 and on behalf of the members of the proposed California Subclass against
11 Defendant.

12 46. California’s False Advertising Law, Cal. Bus. & Prof. Code §§ 17500,
13 *et seq.*, makes it “unlawful for any person to make or disseminate or cause to be
14 made or disseminated before the public in this state, ... in any advertising device ...
15 or in any other manner or means whatever, including over the Internet, any
16 statement, concerning ... personal property or services, professional or otherwise, or
17 performance or disposition thereof, which is untrue or misleading and which is
18 known, or which by the exercise of reasonable care should be known, to be untrue
19 or misleading.”

20 47. Defendant engaged in a scheme of charging customers full monthly
21 membership fees while its amusement parks and water parks were closed.
22 Defendant’s advertising and marketing of its amusement parks and water parks as
23 being accessible during the membership fee period misrepresented and/or omitted
24 the true content and nature of Defendant’s services. Defendant knew that these
25 statements were unauthorized, inaccurate, and misleading.

26 48. Defendant’s advertising that its amusement parks and water parks
27 would be available to its customers during the membership period, and that its
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1 customers would have access to its amusement parks and water parks upon paying
2 a membership fee is false and misleading to a reasonable consumer, including
3 Plaintiff, because Defendant in fact closed all of its amusement parks and water
4 parks while continuing to charge its customers the full price of amusement park and
5 water park membership.

6 49. Defendant violated § 17500, et seq. by misleading Plaintiff and the
7 Class to believe that they would be charged fees only when they have access to
8 Defendant's amusement parks and water parks.

9 50. Defendant knew or should have known, through the exercise of
10 reasonable care that its advertising of its amusement parks and water parks as being
11 accessible during the membership period is false and misleading. Further, Defendant
12 knew or should have known that it was breaching its contracts with its customers
13 and fraudulently charging fees when it continued charging fees while all of its
14 amusement parks and water parks were closed.

15 51. Plaintiff and the Class lost money or property as a result of Defendant's
16 FAL violation because (a) they would not have purchased or paid for Defendant's
17 amusement park and water park memberships absent Defendant's representations
18 and omission of a warning that it would continue charging customers' credit cards
19 and debit cards while all amusement parks and water parks nationwide are closed;
20 (b) they would not have purchased amusement park and water park memberships on
21 the same terms absent Defendant's representations and omissions; (c) they paid a
22 price premium for Defendant's amusement park and water park membership based
23 on Defendant's misrepresentations and omissions; and (d) Defendant's amusement
24 park and water park memberships did not have the characteristics, benefits, or
25 quantities as promised.

1 and the Class. However, Defendant has retained all of the membership fees while its
2 amusement parks and water parks remain closed.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff, individually and on behalf of all others similarly
5 situated, seeks judgment against Defendant, as follows:

- 6 a) For an order certifying the Class under Rule 23 of the Federal Rules of Civil
7 Procedure and naming Plaintiff as representative of the Class and Plaintiff's
8 attorneys as Class Counsel to represent the Class members;
- 9 b) For an order certifying the California Subclass under Rule 23 of the Federal
10 Rules of Civil Procedure and naming Plaintiff as representative of the
11 California Subclass and Plaintiff's attorneys as Class Counsel to represent
12 the California Subclass members;
- 13 c) For an order declaring that Defendant's conduct violates the statutes and
14 laws referenced herein;
- 15 d) For an order finding in favor of Plaintiff, the Class, and the California
16 Subclass, on all counts asserted herein;
- 17 e) For compensatory and punitive damages in amounts to be determined by the
18 Court and/or jury;
- 19 f) For prejudgment and postjudgment interest on all amounts awarded;
- 20 g) For an order of restitution and all other forms of equitable monetary relief;
- 21 h) For injunctive relief as pleaded or as the Court may deem proper; and
- 22 i) For an order awarding Plaintiff and the Class their reasonable attorneys' fees
23 and expenses and costs of suit.

24 **DEMAND FOR TRIAL BY JURY**

25 Plaintiff demands a trial by jury of all issues so triable.
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1 Dated: May 8, 2020

/s/ Ronald A. Marron

2 By: Ronald A. Marron

3 **LAW OFFICES OF RONALD A.**

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13 ***Class***

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [SeaWorld Continues to Charge Membership Fees Despite COVID-19 Park Closures, Class Action Claims](#)
