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

LOU BAKER, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

SEAWORLD ENTERTAINMENT,
INC., JAMES ATCHISON, JAMES M.
HEANEY, MARC SWANSON, AND
THE BLACKSTONE GROUP L.P.,

Defendants.

No. 3:14-cv-02129-MMA-KSC

CLASS ACTION

**SECOND AMENDED
CONSOLIDATED CLASS
ACTION COMPLAINT**

JURY TRIAL DEMANDED

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1 1. Court-Appointed Lead Plaintiffs, Arkansas Public Employees
2 Retirement System (“APERS”) and Pensionskassen For Børne-Og
3 Ungdomspædagoger (“PBU”) (collectively, “Lead Plaintiffs” or “Plaintiffs”) bring
4 this action individually and on behalf of all persons and entities who purchased or
5 otherwise acquired the publicly traded common stock of SeaWorld Entertainment,
6 Inc. (“SeaWorld” or the “Company”)¹ between August 29, 2013 and August 12,
7 2014, inclusive (the “Class Period”) and who were damaged thereby (collectively, the
8 “Class”). Excluded from the Class are: (i) Defendants (defined below); (ii) present or
9 former executive officers of SeaWorld, members of SeaWorld’s Board of Directors,
10 and members of their immediate families (as defined in 17 C.F.R. § 229.404,
11 Instructions (1)(a)(iii) and (1)(b)(ii)); (iii) any of the foregoing persons’ legal
12 representatives, heirs, successors or assigns; and (iv) any entity in which Defendants
13 have or had a controlling interest or any affiliate of SeaWorld.

14 2. Plaintiffs allege the following based upon personal knowledge as to
15 themselves and their own acts and upon information and belief as to all other matters.
16 Plaintiffs’ information and belief is based upon a continuing investigation, conducted
17 by Plaintiffs’ counsel under Plaintiffs’ supervision, into the facts and circumstances
18

19 ¹ As used herein, “SeaWorld” shall refer to the corporate entity defined above. When
20 Defendants refer to attendance results in their filings with the United States Securities
21 and Exchange Commission (“SEC”) and on conference calls, they typically refer to
22 results at all eleven SeaWorld-owned parks collectively. Accordingly, Defendants’
23 statements regarding attendance declines at “SeaWorld,” referenced herein, refer to
24 all eleven SeaWorld-owned parks as a whole. In contrast, Plaintiffs’ allegations
25 regarding attendance declines caused by *Blackfish* refer specifically to the three
26 SeaWorld-branded theme parks in Florida, Texas and California that house killer
27 whales (hereinafter the “SeaWorld-branded parks”), and shall not include the eight
parks that do not bear the “SeaWorld” moniker and are not alleged to house or
otherwise feature killer whales.

1 alleged herein including, without limitation, review and analysis of: (i) SeaWorld’s
2 filings with the SEC; (ii) securities and financial analysts’ reports concerning
3 SeaWorld; (iii) SeaWorld’s press conferences, investor and analyst conference calls,
4 and corresponding transcripts thereof; (iv) SeaWorld’s press releases and other public
5 statements; (v) media and industry reports and other publications concerning
6 Defendants; (vi) interviews of confidential witnesses, including but not limited to,
7 former SeaWorld employees; and (vii) SeaWorld’s corporate website. Plaintiffs
8 believe that additional evidentiary support for the allegations herein will likely
9 emerge after a reasonable opportunity to conduct discovery.

10 **I. INTRODUCTION²**

11 3. This action involves a series of false and misleading statements and
12 omissions by Defendants regarding the critically acclaimed 2013 documentary
13 *Blackfish* – a film that had a profound impact on attendance at SeaWorld-branded
14 parks³ throughout the Class Period, as it damaged the public’s perception of
15 SeaWorld and degraded the Company’s core brand and business. When SeaWorld
16 finally came clean at the end of the Class Period and revealed that attendance at the
17 SeaWorld-branded parks had been negatively affected by the public response to
18 *Blackfish*, the Company’s stock price plummeted by almost 33%. SeaWorld’s
19 admission that declining attendance at its branded parks resulted, at least in part, from
20

21 ² All emphasis herein is added unless otherwise noted.

22 ³ SeaWorld admittedly does not “break [] out” attendance at specific parks in its SEC
23 filings, and on conference calls, its “executives decline[] to offer more specific
24 figures[.]” Therefore, investors’ only source of park-by-park attendance figures is
25 the TEA Reports, discussed herein, and which showed dramatic attendance declines
26 at two of SeaWorld’s three branded parks (Orlando and San Diego) during the Class
27 Period.

1 *Blackfish* was disastrous for SeaWorld’s investors, since a negative shift in the public
2 perception of SeaWorld’s brand that caused consumers to shun the branded parks
3 would starve the Company of the attendance-driven revenues on which it depended.
4 The film ultimately would result in SeaWorld ending its orca breeding program and
5 orca shows, a fundamental change to the Company’s core business.

6 4. SeaWorld is an aquatic theme park and entertainment company best
7 known for shows featuring orca whales (starting with the famous Shamu), which,
8 until March 17, 2016, SeaWorld captured, bred and trained to perform at its three
9 branded parks in Florida, Texas and California. Indeed, orca whales have been the
10 core of SeaWorld’s brand and operations. As Dave Goodman, former vice president
11 and executive producer at SeaWorld Orlando put it, “[r]eplacing *Shamu to*
12 *SeaWorld is like getting rid of Mickey to Disney.*” SeaWorld’s Chief Executive
13 Officer Defendant James Atchison (“Atchison”) agreed, telling *Bloomberg* in
14 November 2014: “*Our killer whales, our killer whale program, and all of our*
15 *animals are emblematic of the whole brand.*”

16 5. Like most theme parks, SeaWorld derives the majority of its revenues
17 from ticket sales. Thus, SeaWorld’s financial health is directly tied to its ability to
18 attract, grow and maintain attendance at its parks.

19 6. Shortly before the Company’s initial public offering (“IPO”), *Blackfish*
20 was released. In *Blackfish*, director Gabriela Cowperthwaite makes the case that
21 SeaWorld – a company that purports to create “distinctive entertainment experiences
22 that blend imagination with a passion for nature” – actually harms both its captive
23 orca whales and their trainers by unnaturally confining the orcas in small spaces and
24 forcing them to perform tricks for audiences. *Blackfish* portrays SeaWorld’s business
25 as turning sensitive and social creatures into aggressively dangerous animals for the
26

1 purposes of public entertainment and financial gain to SeaWorld. After its release,
2 the film garnered the attention of the country, including the media, celebrities, animal
3 rights activists and California lawmakers, who proposed legislation banning orca
4 performances in the state.

5 7. Following the release of *Blackfish*, SeaWorld-branded parks experienced
6 a pronounced trend of significant, unprecedented attendance declines. SeaWorld
7 would blame the entirety of these declines on everything but *Blackfish* – namely,
8 adverse weather conditions, holiday and school schedules, and SeaWorld’s pricing
9 strategies. This was not plausible. Yet, when directly questioned whether *Blackfish*
10 was contributing to the steep attendance declines, Defendants repeatedly assured the
11 market the film had not contributed “at all,” even suggesting the film was positively
12 impacting the Company.

13 8. By the time SeaWorld went public, on April 18, 2013, *Blackfish* had
14 premiered at the world-renowned Sundance Film Festival and had been acquired by
15 CNN Films and Magnolia Pictures – which immediately announced plans to screen
16 the film broadly beginning in the summer of 2013. The documentary had already
17 generated a powerful public and media response, was persistently trending on social
18 media such as Twitter, and was the focus of aggressive public relations campaigns
19 led by the People for the Ethical Treatment of Animals (“PETA”). SeaWorld was
20 acutely aware of these facts and was actively working to counteract the so-called
21 “*Blackfish* effect.” Internally, a former SeaWorld employee reported that SeaWorld
22 adopted an “extremely hush-hush” policy, “feeding [SeaWorld employees] lines,”
23 instructing SeaWorld employees to dissuade family and friends from seeing the film,
24 and, most egregiously, holding “a collective meeting before [*Blackfish*] came out
25 telling [SeaWorld employees] to say it was fake[.]” Externally, SeaWorld waged war
26

1 on the “*Blackfish* effect” by investing millions of dollars into an extensive public
2 relations campaign. Notwithstanding these highly material facts, SeaWorld failed to
3 mention the film by name in its April 18, 2013 amended Registration Statement on
4 Form S-1/A and April 19, 2013 prospectus on Form 424B4 (“IPO Offering
5 Materials”). Instead, SeaWorld offered only a generalized reference to the fact that
6 accidents or adverse publicity “may” potentially harm SeaWorld’s reputation,
7 attendance and business at some point in the future.

8 9. As SeaWorld’s attendance continued to decline, SeaWorld repeated
9 these generalized references in the Company’s SEC filings prior to the Class Period,
10 and continued to fail to acknowledge that *Blackfish* was already having a present
11 impact on attendance.

12 10. On the first day of the Class Period, August 29, 2013, the *Los Angeles*
13 *Times* questioned whether the decline in attendance was also attributable to the ever-
14 growing *Blackfish* effect. In direct response, Vice President of Communications Fred
15 Jacobs (“Jacobs”), speaking on behalf of the Company, flatly denied that *Blackfish* or
16 the public backlash spurred by the film was hurting attendance, stating that
17 “‘Blackfish’ has had no attendance impact.” That same day, Jacobs told *Bloomberg*
18 that the Company “can attribute no attendance impact at all to the movie.” From
19 August 29, 2013 through the end of the Class Period on August 13, 2014, SeaWorld
20 would continue to assure investors that there were no uncertainties at all in regard to
21 whether *Blackfish* was having a negative impact on SeaWorld’s attendance, core
22 brand and business.

23 11. Although SeaWorld publicly denied the effects of *Blackfish*, it was
24 concerned enough about the negative publicity from the film to hire publicist 42West
25 to lead a public relations blitz against *Blackfish*. The Wire reported “[the] magnitude
26

1 of th[e] response [wa]s odd” and that it was “rare” for a corporation to target a
2 documentary, hire a film publicist and “make sure critics and journalists are informed
3 of the Company’s response to a film.” Further, just a month before denying
4 *Blackfish*’s impact on August 29, 2013, Jacobs contacted fifty (50) major film
5 reviewers to “discredit” *Blackfish*, a move that industry insiders noted was extremely
6 unusual. And, SeaWorld devoted a portion of its website to “The Truth About
7 *Blackfish*.”

8 12. Even more egregiously, according to SeaWorld’s own subsequent
9 admission, SeaWorld sent employees to infiltrate PETA and pose as animal rights
10 activists, a campaign that *Bloomberg* began at least as early as Thanksgiving of 2013.
11 SeaWorld finally came clean to this espionage campaign on a February 26, 2016
12 earnings call through a statement that *NonProfit Quarterly* interpreted as “admit[ting]
13 that the practice of spying was at least authorized and possibly intentionally utilized
14 by some in management[.]”

15 13. By the time SeaWorld announced its third quarter (“3Q13”) results on
16 November 13, 2013 – which disclosed that attendance at all SeaWorld parks had
17 dropped another 3.6% for the third quarter – *Blackfish* had been broadcast on CNN to
18 millions of people during a highly publicized screening. The public outcry regarding
19 the film had reached a fever pitch, yet SeaWorld incredibly continued to blame its
20 declining attendance on adverse weather conditions in July and pricing strategies
21 implemented the prior quarter.

22 14. Doubling down, on November 14 and December 20, 2013, Atchison
23 repeatedly told the public that *Blackfish* was having no impact at all on the Company.
24 Yet, at the same time Atchison was publicly denouncing any notion that *Blackfish*
25 was contributing to shrinking attendance, SeaWorld published an open letter
26

1 rebutting the claims made in the film. Commenting on this move, CNN noted, “you
2 have to wonder...why they would go to such an expense” if *Blackfish* truly was not
3 having any impact whatsoever on attendance.

4 15. The furor surrounding *Blackfish* continued throughout 2013 and into
5 2014, as celebrity musicians pulled out of concerts at SeaWorld-branded parks, and
6 long-time corporate sponsors started to cut ties.

7 16. On March 7, 2014, it was announced that legislation had been
8 introduced that would ban orca performances in the state of California. The proposed
9 legislation, if passed, would have a devastating effect on SeaWorld’s operations, and
10 received intense media coverage. The proposed legislation was so closely associated
11 with *Blackfish* that it became known in the popular press as the “*Blackfish* Bill.” Just
12 days after this announcement, on March 13, 2014, SeaWorld announced its fourth
13 quarter (“4Q13”) and full year (“FY13”) financial results, which disclosed an overall
14 decline in attendance for the third consecutive quarter. Moreover, the Company
15 reported that full year attendance in 2013 had declined by 4.1%, or approximately
16 one million guests. Again, SeaWorld blamed the declines on everything but
17 *Blackfish* – namely, pricing and yield management strategies for the fourth quarter
18 decline, and adverse weather conditions and holiday schedules for the full year
19 decline.

20 17. Significantly, in stark contrast to SeaWorld, SeaWorld’s two primary
21 competitors in the Orlando, Florida and Southern California areas—The Walt Disney
22 Company (“Disney”) and Universal Parks and Resorts (“Universal”)—saw either
23 comparable or increased attendance in 2013 over the prior year. Similarly, Disney
24 and Universal parks in Florida and California saw comparable or increased
25 attendance in 2014, while SeaWorld Orlando suffered an 8.0% decline in attendance
26

1 and SeaWorld San Diego suffered a 12.0% decline in attendance. Remarkably,
2 SeaWorld Orlando and SeaWorld San Diego were the only parks who saw attendance
3 declines in 2013 and 2014, as the following chart depicts:

Park	Location	2012 Attendance	2013 Attendance	Change (%)	2013 Attendance	2014 Attendance	Change (%)
Magic Kingdom [Disney]	Lake Buena Vista, FL	17,536,000	18,588,000	6.0%	18,588,000	19,332,000	4.0%
Epcot [Disney]	Lake Buena Vista, FL	11,063,000	11,229,000	1.5%	11,229,000	11,454,000	2.0%
Animal Kingdom [Disney]	Lake Buena Vista, FL	9,998,000	10,198,000	2.0%	10,198,000	10,402,000	2.0%
Hollywood Studios [Disney]	Lake Buena Vista, FL	9,912,000	10,110,000	2.0%	10,110,000	10,312,000	2.0%
Islands of Adventure [Universal]	Orlando, FL	7,981,000	8,141,000	2.0%	8,141,000	8,141,000	0.0%
Universal Studios Florida [Universal]	Orlando, FL	6,195,000	7,062,000	14.0%	7,062,000	8,263,000	17.0%
<i>SeaWorld Orlando [SeaWorld]</i>	<i>Orlando, FL</i>	<i>5,358,000</i>	<i>5,090,000</i>	<i>-5.0%</i>	<i>5,090,000</i>	<i>4,683,000</i>	<i>-8.0%</i>
Disneyland [Disney]	Anaheim, CA	15,963,000	16,202,000	1.5%	16,202,000	16,769,000	3.5%
Cal. Adventure [Disney]	Anaheim, CA	7,775,000	8,514,000	9.5%	8,514,000	8,769,000	3.0%
Universal Studios Hollywood [Universal]	Universal City, CA	5,912,000	6,148,000	4.0%	6,148,000	6,824,000	11.0%
<i>SeaWorld San Diego [SeaWorld]</i>	<i>San Diego, CA</i>	<i>4,444,000</i>	<i>4,311,000</i>	<i>-3.0%</i>	<i>4,311,000</i>	<i>3,794,000</i>	<i>-12.0%</i>

18 18. Further, historical attendance figures demonstrate that attendance at
19 SeaWorld-branded parks, Disney parks and Universal parks in the Florida and
20 California areas ordinarily rise and fall together. For example, attendance across all
21 SeaWorld-branded parks, Disney parks and Universal parks in Florida and California
22 increased in 2011. Similarly, attendance across all SeaWorld-branded parks, Disney
23 and Universal parks in Florida and California increased in 2012, with the lone
24 exception of Disneyland in Anaheim, California, which saw a slight 1.0% decrease.
25 These directionally-correlated historical attendance figures demonstrate that the
26

1 dramatic attendance declines SeaWorld-branded parks saw in 2013 and 2014 had to
 2 be the result of *Blackfish* and not the other generic excuses SeaWorld offered. The
 3 following graph depicts the 2010-2012 attendance figures at SeaWorld as compared
 4 to Disney and Universal parks in the Orlando and Southern California markets:

Park	Location	2010 Attendance	2011 Attendance	Change (%)	2011 Attendance	2012 Attendance	Change (%)
Magic Kingdom [Disney]	Lake Buena Vista, FL	16,972,000	17,142,000	1.0%	17,142,000	17,536,000	2.3%
Epcot [Disney]	Lake Buena Vista, FL	10,825,000	10,825,000	0.0%	10,825,000	11,063,000	2.2%
Animal Kingdom [Disney]	Lake Buena Vista, FL	9,686,000	9,783,000	1.0%	9,783,000	9,998,000	2.2%
Hollywood Studios [Disney]	Lake Buena Vista, FL	9,603,000	9,699,000	1.0%	9,699,000	9,912,000	2.2%
Islands of Adventure [Universal]	Orlando, FL	5,949,000	7,674,000	29.0%	7,674,000	7,981,000	4.0%
Universal Studios Florida [Universal]	Orlando, FL	5,925,000	6,044,000	2.0%	6,044,000	6,195,000	2.5%
SeaWorld Orlando [SeaWorld]	Orlando, FL	5,100,000	5,202,000	2.0%	5,202,000	5,358,000	3.0%
Disneyland [Disney]	Anaheim, CA	15,980,000	16,140,000	1.0%	16,140,000	15,963,000	-1.1%
Cal. Adventure [Disney]	Anaheim, CA	6,278,000	6,341,000	1.0%	6,341,000	7,775,000	22.6%
Universal Studios Hollywood [Universal]	Universal City, CA	5,040,000	5,141,000	2.0%	5,141,000	5,912,000	15.0%
SeaWorld San Diego [SeaWorld]	San Diego, CA	3,800,000	4,294,000	13.0%	4,294,000	4,444,000	3.5%

19. The historical attendance figures also confirm that the addition of new attractions at Disney or Universal was not the reason for the attendance declines in 2013 and 2014 at the SeaWorld-branded parks in Orlando and San Diego. According to a July 18, 2014 report by the Motley Fool entitled “Why These 2 Theme Park Operators Don’t Fear Competition,” “[t]heme park operators like Six Flags [] and SeaWorld Entertainment . . . are far more immune to competition than most

1 companies in other businesses.” Indeed, historically, attendance at all of the parks
2 rose, even as a particular park might see sharp increases because of a new attraction.
3 For example, according to the annual report of Themed Entertainment Association
4 (“TEA”) in 2011, *Theme and Museum Index – Global Attractions Attendance Report*
5 (the “2011 TEA Report”), that year Universal Orlando’s Islands of Adventure park
6 saw a “magical” increase in attendance of 29% because of its new Harry Potter
7 attraction. That same year, SeaWorld Orlando’s attendance also increased, albeit by
8 2%. Similarly, according to TEA’s 2012 attendance report, in 2012, California
9 Adventure and Universal Studios saw industry-leading increases of 22.6% and 15%
10 as a result of their respective additions of CarsLand and Transformers: the Ride 3-D,
11 while SeaWorld San Diego still saw an attendance increase of 3.5%. These historical
12 figures indicate that it was *Blackfish* and not the success of new attractions at other
13 parks that led to attendance declines at SeaWorld-branded parks.

14 20. Indeed, a May 25, 2016 *Los Angeles Times* article acknowledged the
15 impact of *Blackfish* on attendance at the SeaWorld-branded parks compared to its
16 competitors since 2013. The article quoted Brian Sands, Vice President of Aecom,
17 which produces the annual TEA reports, stating: “Over the last couple years, the
18 aggregate increase of the 20 top performing theme parks in North America was
19 between 2% and 3.5%--good, steady, moderate growth. But it positively leapt
20 beyond that in 2015 to an impressive 5.9%.” The article went on to note:

21
22 The [2015 TEA Report] didn’t speculate why SeaWorld lost ground
23 last year, . . . but the marine park has acknowledged that it has
24 foundered in its efforts to improve its image in the face of criticism
25 from animal rights groups. Attendance numbers at the marine-themed
26 park have been flagging since the release of the 2013 documentary
27 “Blackfish” . . .

1 21. As alleged below, SeaWorld’s allocation of its entire attendance declines
2 to factors other than *Blackfish* is simply not plausible.

3 22. During the 4Q13 earnings call, analysts specifically pressed Defendants
4 to discuss *Blackfish*, asking Atchison to “comment on whether there’s any impact
5 that you’ve noticed at all on satisfaction or attendance.” In response, Atchison noted:
6 “I get asked that a lot” and proceeded to deny multiple times that SeaWorld had seen
7 any such impact, stating: “*As much as we’re asked it, we can see no noticeable*
8 *impact on our business.*” Moreover, Atchison surprisingly claimed that *Blackfish*
9 was positively impacting SeaWorld by increasing awareness of SeaWorld’s brand.

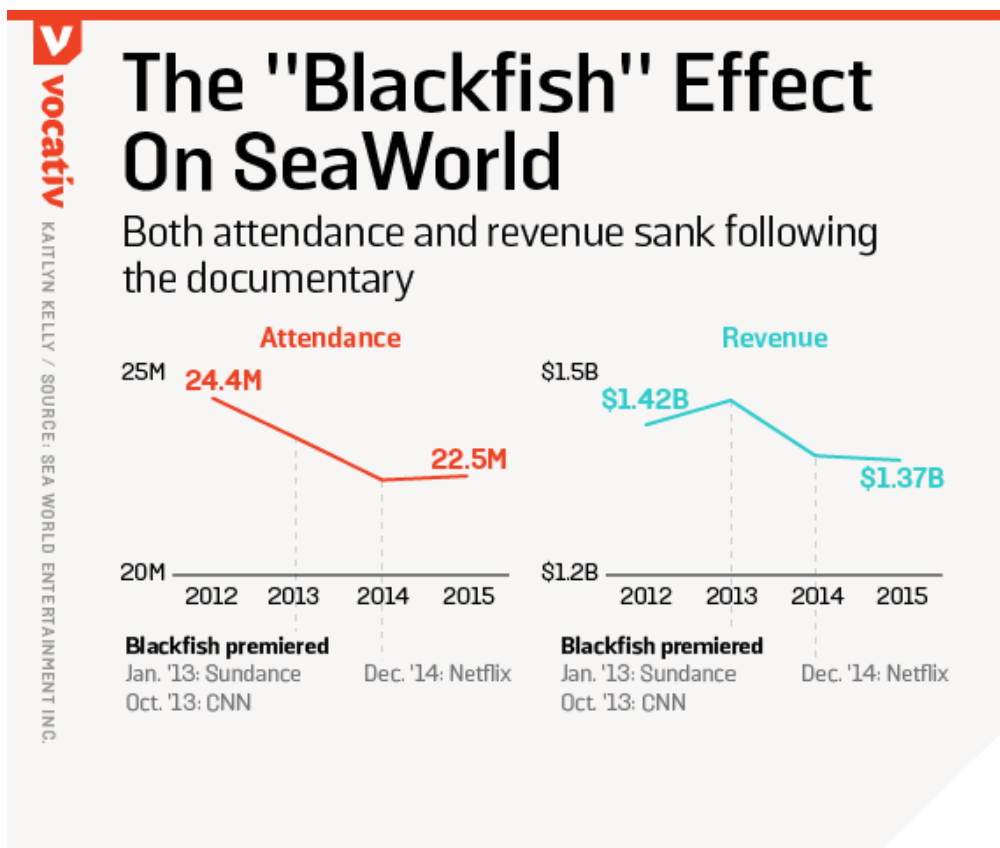
10 23. The *Blackfish* effect continued to resound in the public, and SeaWorld’s
11 attendance slide continued along with it. On May 14, 2014, SeaWorld disclosed the
12 largest attendance decline yet – a staggering 13%. Still refusing to acknowledge the
13 truth, SeaWorld blamed the timing of Easter and Spring Break and adverse weather
14 in Florida and Texas – and excluded *Blackfish*-related issues – as the causes of the
15 decline.

16 24. At the same time SeaWorld was publicly denying the obvious effects of
17 *Blackfish*, the Company was pouring money into an aggressive counterattack against
18 the film and its supporters. In 2014, SeaWorld’s public relations counterattack
19 continued, including increased retaliation using websites and social media. For
20 example, SeaWorld provided funding for Awesome Ocean—a website run by a
21 digital marketing and brand management expert—that is fiercely critical of *Blackfish*
22 and its supporters. Speaking to the *Orlando Sentinel*, Jacobs affirmed the importance
23 of social media sites like Awesome Ocean to SeaWorld, stating “I would certainly
24 characterize them as an important part of our marketing and communications
25 strategy.” It is clear from SeaWorld’s ample and costly response to *Blackfish*
26

1 throughout 2013 and 2014, the Company was aware of, and attempting to mitigate,
2 the film's impact on its bottom line. Yet, SeaWorld continually refused to
3 acknowledge that known impact to its own investors.

4 25. Finally, before the start of trading on August 13, 2014, after a year of
5 express denials, excuses and omissions, SeaWorld finally admitted that *Blackfish*-
6 related issues were hurting attendance at its parks. Although SeaWorld still refused
7 to call *Blackfish* by name, the Company acknowledged, "attendance in the quarter
8 was impacted by demand pressures related to recent media attention surrounding
9 proposed legislation in the state of California" (i.e., the "*Blackfish* Bill"). The entire
10 market saw this for what it was: SeaWorld's first and long overdue public admission
11 that *Blackfish* had been impacting SeaWorld's attendance all along. Indeed, as
12 demonstrated in ¶¶168-75 *infra*, the national media and analysts alike uniformly
13 recognized that despite SeaWorld's refusal to name *Blackfish*, SeaWorld was
14 nevertheless acknowledging the impact of the film on its attendance. Moreover,
15 although SeaWorld's announcement only referred to the 2Q14 attendance decline, it
16 was widely recognized as a long overdue acknowledgment of *Blackfish*'s impact on
17 the Company since the film debuted. In direct response to this disclosure, SeaWorld
18 shares lost almost 33% of their value, falling from \$28.15 per share at closing on
19 August 12, 2014 to \$18.90 per share on August 13, 2014, on extremely heavy
20 volume. The market's reaction to this news signaled that until this announcement,
21 investors had taken the Company at its word that issues surrounding *Blackfish* were
22 not causing damage to SeaWorld's brand and reputation – a much different and more
23 significant threat to the Company's ability to generate future earnings than the
24 fleeting effects of weather or the school and holiday calendars that Defendants had
25 blamed for SeaWorld's attendance slide.

26. The impact of *Blackfish* on SeaWorld’s business is unmistakable. Indeed, after SeaWorld’s disclosure, attendance and revenues continued to decline owing to shifting public opinion as a result of *Blackfish*. On March 17, 2016, SeaWorld announced an end to its orca breeding program and orca trick shows, a historic shift in its business model. The announcement was a tacit acknowledgement that SeaWorld could no longer afford to deny the profound impact *Blackfish* has had on its business or continue to blatantly ignore the data showing a clear shift in public sentiment regarding its killer whale program. Reporting on the announcement, *ABC News* noted, “*Manby . . . acknowledged that ‘Blackfish’ did have an impact[.]*” Another article entitled “*How One Documentary Brought SeaWorld To Its Knees*”, emphasized the profound impact *Blackfish* had on SeaWorld’s core business and operations:



1 27. Manby cast SeaWorld’s dramatic operational shift as a necessary
2 response to public opinion and the Company’s own data regarding public sentiment.
3 According to the *Orlando Sentinel*, Manby told fans in an online forum “***I***
4 ***understand you may feel betrayed . . . [b]ut . . . the data showed, and trends***
5 ***showed, it was a SeaWorld without whales or it would probably be a world without***
6 ***SeaWorld.***” In other words, Manby and SeaWorld could not continue to deny the
7 profound impact of *Blackfish* or ignore the Company’s own public opinion data, as
8 his predecessor had done, and remain viable. Indeed, the *Wall Street Journal*
9 reported that as a result of the announcement, SeaWorld “expects to save \$15 million
10 in reputational-management costs, and it sees attendance rising by 380,000 to
11 940,000 in the next three to five years. . . . SeaWorld also expects revenue to
12 increase by \$20 million to \$80 million during the same time frame.”

13 28. Following SeaWorld’s historic announcement, investors and experts
14 questioned why the Company took so long to come to this decision. For example,
15 activist investor Greg Taxin, whose Luma Asset Management has a 4% stake in
16 SeaWorld, commented “***[w]e believe the company took far too long to respond***
17 ***effectively to the challenge of ‘Blackfish.’***” Likewise, theme park consultant Dennis
18 Speigel recognized that the move away from killer whale shows was a prudent
19 business decision by Manby, stating: “[t]he SeaWorld in 10 years will not be the
20 SeaWorld we know today, and make no mistake, this is all emanating from Joel
21 Manby’s management position.”

22 29. Based on the facts alleged herein, Plaintiffs assert claims under:
23 (i) Section 10(b) of the Exchange Act (defined below) against SeaWorld, Atchison,
24 James M. Heaney (“Heaney”) and Marc G. Swanson (“Swanson”); and (ii) Section
25
26
27

1 20(a) of the Exchange Act against Atchison, Heaney, Swanson and Blackstone Group
2 L.P. (“Blackstone”).

3 **II. JURISDICTION AND VENUE**

4 30. The claims asserted herein arise under and pursuant to Sections 10(b)
5 and 20(a) of the Securities Exchange Act of 1934 (15 U.S.C. §§78j(b) and 78t(a))
6 (the “Exchange Act”), and Rule 10b-5 promulgated thereunder by the SEC (17
7 C.F.R. §240.10b-5) (“Rule 10b-5”).

8 31. This Court has jurisdiction over the subject matter of this action pursuant
9 to 28 U.S.C. §§1331 and 1337 and Section 27 of the Exchange Act (15 U.S.C.
10 § 78aa).

11 32. Venue is proper in this District pursuant to Section 27 of the Exchange
12 Act, and 28 U.S.C. § 1391(b). Certain of the acts, practices and transactions
13 complained of herein, including the dissemination of materially false and misleading
14 information, occurred in this District.

15 **III. THE PARTIES**

16 **A. Lead Plaintiffs**

17 33. APERS is a multi-employer defined benefit retirement plan for
18 employees of the State of Arkansas. APERS was created by statute in 1957. On
19 behalf of its approximately 77,000 participants, APERS has approximately \$7.5
20 billion in assets under management. As reflected in its certification filed previously
21 in this action (ECF No. 13-4), APERS purchased shares of SeaWorld’s common
22 stock during the Class Period and has been damaged as a result of the conduct
23 complained of herein.
24

25 34. PBU is a Danish pension fund for teachers. PBU was established in
26 1976. On behalf of its approximately 110,000 members, PBU has approximately
27

1 \$7.5 billion in assets under management. As reflected on its certification filed
2 previously in this action (ECF No. 13-3), PBU purchased shares of SeaWorld's
3 common stock during the Class Period and has been damaged as a result of the
4 conduct complained of herein.

5 **B. The Corporate Defendant**

6 35. SeaWorld, a Delaware corporation headquartered in Orlando, Florida, is
7 a theme park and entertainment company that owns and operates eleven theme parks
8 within the United States ("U.S."), including: (i) three SeaWorld-branded theme parks
9 in Orlando, Florida; San Antonio, Texas; and San Diego, California; (ii) Busch
10 Gardens theme parks in Tampa, Florida; and Williamsburg, Virginia; (iii) water park
11 attractions in Orlando, Florida (Aquatica); Tampa, Florida (Adventure Island) and
12 Williamsburg, Virginia (Water Country USA); (iv) Discovery Cove, a reservations-
13 only attraction in Orlando offering interaction with marine animals; and (v) Sesame
14 Place, a seasonal park in Langhorne, Pennsylvania. SeaWorld's common stock is
15 publicly traded on the New York Stock Exchange under the symbol "SEAS."

16 **C. The Individual Defendants**

17 36. Defendant Atchison served as SeaWorld's Chief Executive Officer
18 ("CEO"), President and Director from before the start of the Class Period until his
19 resignation effective January 15, 2015. Prior to serving as CEO, Atchison served as
20 President and Chief Operating Officer of Busch Entertainment Corporation from
21 2007 to 2009 and as Executive Vice President and General Manager of SeaWorld
22 Orlando from 2003 to 2007. As alleged below, during the Class Period, Atchison
23 signed the Company's SEC filings and made public statements in the following
24 contexts and/or documents during the Class Period: (i) November 13, 2013 quarterly
25 report on Form 10-Q ("3Q13 Form 10-Q") for the three-month period ended
26

1 September 30, 2013; (ii) November 14, 2013 statement to the *Wall Street Journal*;
2 (iii) December 20, 2013 statement to the *Orlando Sentinel*; (iv) March 13, 2014
3 conference call (“4Q13 Earnings Call”) concerning the Company’s financial results
4 for the three-month period ended December 31, 2013; and (v) May 14, 2014
5 quarterly report on Form 10-Q (“1Q14 Form 10-Q”) for the three-month period
6 ended March 31, 2014 (“1Q14”). In addition, Atchison engaged in insider selling
7 when he personally sold 154,000 shares of SeaWorld common stock in eight sales
8 that he effectuated during a three-month window of the Class Period, amounting to
9 approximately 20% of his beneficially owned shares and yielding proceeds of over
10 \$4.6 million.

11 37. Defendant Heaney has served as SeaWorld’s Chief Financial Officer
12 from before the start of the Class Period to present. Prior to joining SeaWorld,
13 Heaney served as Chief Financial Officer and Senior Vice President of Finance and
14 Travel Operations for Disney Cruise Line. As alleged below, during the Class
15 Period, Heaney signed the Company’s SEC filings and made public statements in the
16 following contexts and/or documents during the Class Period: (i) 3Q13 Form 10-Q;
17 (ii) November 13, 2013 earnings conference call concerning the 3Q13 financial
18 results (“3Q13 Earnings Call”); (iii) 4Q13 Earnings Call; (iv) 1Q14 Form 10-Q; and
19 (v) May 14, 2014 earnings conference call concerning the 1Q14 financial results
20 (“1Q14 Earnings Call”).

21 38. Defendant Swanson has served as SeaWorld’s Chief Accounting Officer
22 from before the start of the Class Period to present. Prior to joining SeaWorld,
23 Swanson served as the Corporate Controller of Busch Entertainment Corporation and
24 Vice President of Finance of Sesame Place. As alleged below, during the Class
25 Period, Swanson signed the Company’s SEC filings and made public statements in
26

1 the following contexts and/or documents that were materially false and misleading
2 and/or omitted material facts: (i) 3Q13 Form 10-Q; and (ii) 1Q14 Form 10-Q.

3 39. Defendants Atchison, Heaney and Swanson are collectively referred to
4 herein as the “Individual Defendants.”

5 **D. The Blackstone Group L.P.**

6 40. Defendant Blackstone is a multinational private equity, investment
7 banking, alternative asset management and financial services corporation based in
8 New York, New York. On December 1, 2009, investment funds associated with
9 Blackstone and certain co-investors acquired 100% of the equity interests of
10 SeaWorld LLC and SeaWorld Parks & Entertainment LLC from certain subsidiaries
11 of Anheuser-Busch Companies, Inc. Throughout the Class Period, Blackstone
12 exercised substantial control over SeaWorld’s operations by, *inter alia*, ensuring that
13 Blackstone executives were seated on SeaWorld’s board of directors and organizing
14 and executing SeaWorld’s issuance and sales of common stock. Following the
15 *Blackfish* premiere in January of 2013, Blackstone aggressively and steadily sold its
16 ownership interest in SeaWorld to generate about \$2.2 billion in a pattern that the
17 *New York Post* described in August of 2014 as follows: “In this murky financial
18 situation, one thing is clear: The Blackstone Group, which bought SeaWorld less than
19 five years ago, is feeling a lot less pain than some other shareholders.”

20 41. Specifically, in the IPO, Blackstone sold 19.9 million shares of
21 SeaWorld common stock, after which it continued to own approximately 63.3% of
22 the outstanding common stock of SeaWorld and thus maintained the majority of the
23 voting power of all outstanding shares of the Company’s common stock. In the
24 secondary offering of SeaWorld common stock that occurred on or about December
25 12, 2013 (“December SPO”), Blackstone sold an additional eighteen (18) million
26

1 shares of SeaWorld common stock, after which it continued to own approximately
 2 42.8% of the outstanding common stock of SeaWorld. In the secondary offering of
 3 SeaWorld common stock that occurred on or about April 4, 2014 (“April SPO”),
 4 Blackstone sold another fifteen (15) million shares of SeaWorld common stock, after
 5 which it continued to own approximately 25% of the outstanding common stock of
 6 SeaWorld. Concurrently with the closing of the April SPO, Blackstone also sold
 7 1,750,000 shares of its own common stock directly to SeaWorld as a part of a private
 8 share repurchase program. As of December 31, 2015, Blackstone owned
 9 approximately 22.2% of SeaWorld’s outstanding common stock. While after the
 10 December and April SPOs, Blackstone no longer owned the majority stake,
 11 SeaWorld stated in its public filings during the Class Period that Blackstone “will
 12 continue to be able to significantly influence [SeaWorld’s] decisions.” Indeed,
 13 Blackstone’s steady decline in its SeaWorld position following the premiere of
 14 *Blackfish* and throughout the Class Period—while Blackstone was privy to material
 15 non-public information regarding SeaWorld’s operations—was staggering.

Date	Blackstone’s Ownership of SeaWorld Throughout Class Period
December 1, 2009	100%
April 18, 2013	63.3%
December 17, 2013	42.8%
April 9, 2014	25%
December 31, 2015	22.2%

21 E. Relevant Non-Parties

22 42. Certain allegations herein are based on information provided by
 23 confidential witnesses (“CWs”) who are former employees of SeaWorld interviewed
 24 by Plaintiffs’ representatives.

1 43. CW-1 worked for SeaWorld for over three years prior to the start of the
2 Class Period through mid-2014, most recently as a Social Media Manager at the
3 Company's corporate headquarters in Orlando, Florida. Starting in the first half of
4 2013, CW-1 reported to the Director of Social Media, who reported to Chief
5 Marketing Officer Peter Frey. In her⁴ position, CW-1 was involved in managing
6 social media for the Company as a whole, which included monitoring and tracking
7 commentary on the internet, on Twitter and within various electronic forums
8 concerning SeaWorld. Each of SeaWorld's eleven parks had its own Facebook and
9 Twitter accounts, as well as social media personnel managing those accounts. As a
10 Social Media Manager, CW-1 was responsible for, among other things, strategizing
11 with the parks about how to convey information to the public through social media.
12 During the Class Period, CW-1 was among those responsible for monitoring
13 *Blackfish*-related commentary and backlash on the internet and Twitter. In one
14 aspect of this work, CW-1 participated in a so-called "war room" in which she and
15 other marketing and media employees worked on various digital media for the
16 Company's website in response to *Blackfish*. CW-1 also worked with representatives
17 from 42West, the public relations company SeaWorld hired in early 2013 to handle
18 the Company's media campaign in response to *Blackfish*.

19 44. CW-2 worked as a Director in marketing and advertisement at
20 SeaWorld's-branded San Antonio park for over three years prior to the start of the
21 Class Period through early 2014. CW-2 reported to the Vice President of Marketing
22 for San Antonio, who, in turn, reported to the General Manager of the San Antonio
23 park ("GM"), and also to the SeaWorld Corporate Marketing leadership in Orlando,
24 Florida. CW-2's responsibilities entailed working on retail and sponsorship

25 _____
26 ⁴ To preserve anonymity, all CWs are referred to herein using feminine pronouns.

1 relationships and promotions, including with companies such as McDonald's, Coca-
2 Cola and Southwest Airlines. As a part of her job function, CW-2 received weekly
3 attendance reports showing actual attendance and target attendance numbers
4 compiled at SeaWorld's corporate headquarters, and participated in conference calls
5 and/or meetings in which these attendance reports were reviewed and discussed.
6 Other attendees at these regular meetings included the San Antonio park's GM, Vice
7 President of Marketing and Vice President of Finance.

8 45. CW-3 worked for SeaWorld's-branded San Diego park for over three
9 years prior to the start of the Class Period through late 2014, most recently as a
10 Supervisor. In this role, CW-3 managed various park personnel, including with
11 respect to salary matters, hiring, retention and scheduling. CW-3 explained that
12 SeaWorld closely managed its staffing based on actual daily attendance figures. In
13 her role as Supervisor, CW-3 also received a daily e-mail concerning attendance
14 figures. By noon each day, if actual attendance was too far below the attendance
15 budgeted for that particular day, CW-3 would receive instructions to send a certain
16 number of her supervisees home for the day. In at least 2013 and 2014, CW-3 also
17 had access to SeaWorld's annual Daily Attendance Budget, via a shared drive on
18 SeaWorld's computer network. The Daily Attendance Budget was a budgeting and
19 forecasting tool developed by SeaWorld's corporate finance department that, among
20 other things, estimated attendance for each day at the park, covering 365 days of the
21 year. According to CW-3, the finance department used weather patterns, school and
22 holiday schedules, information about other SeaWorld parks and historical data to
23 make the daily estimates. The forecasted attendance was then used by management
24 to determine, among other things, needs related to staffing, the purchasing of goods
25 and supplies, food and beverage and ride operations. In or around September each
26

1 year, a member of the finance department would advise supervisors and managers
2 that the report was available. CW-3 also attended Employee Communication
3 Meetings (“ECMs”), which she believed were held at all SeaWorld parks to discuss,
4 among other things, *Blackfish*.

5 46. CW-4 worked for SeaWorld’s-branded San Diego park for over three
6 years prior to the start of the Class Period through late 2014, most recently as a
7 Director in food and beverage services. In this role, CW-4 was responsible for food
8 and beverage service at SeaWorld San Diego, which included managing
9 approximately 1,000 or more employees. CW-4 explained that SeaWorld closely
10 managed its staffing and food and beverage needs based on actual daily attendance
11 figures. In her role, CW-4 was privy to daily, weekly and yearly attendance reports,
12 including the Daily Attendance Budget which CW-4 added was developed by the
13 Company’s Business Analysis Department and typically released in the fourth quarter
14 of the previous year. According to CW-4, the Daily Attendance Budget was the
15 “heart of the operation” at SeaWorld because attendance forecasting was the primary
16 driver of all business planning and management at SeaWorld parks. CW-4 further
17 stated that the Daily Attendance Budget included attendance forecasts for all 365
18 days of the year and could be adjusted on a weekly basis if needed. CW-4 received
19 daily alerts via her smart phone and email regarding attendance so that she could
20 adjust her department’s budget and staffing based on the day’s actual attendance
21 levels. CW-4 recalled it was a regularly occurring, “common practice” to “budget
22 down” by releasing staff early during 2013 and 2014 based on low attendance.

23 47. CW-5 worked for SeaWorld for over five years, first as a Financial
24 Analyst supporting the Marketing division for SeaWorld’s Orlando parks (which
25 included SeaWorld, Discovery Cove and Aquatica), then as a Corporate Analyst in
26

1 the finance division at the Company's Orlando headquarters. CW-5 worked in the
2 former position for over three years prior to the start of the Class Period until
3 December 2014. In her role as a Financial Analyst at SeaWorld Orlando, CW-5 was
4 responsible for budgeting, forecasts, data analysis and analytics for the marketing
5 department. CW-5 compiled park-level data for the Orlando parks that was reported
6 to corporate headquarters in weekly, monthly and quarterly reports. The reports
7 compared actual attendance to budgeted attendance, forecasted attendance, which
8 was updated monthly, and the prior year's attendance. CW-5 explained that
9 SeaWorld used a "homegrown" proprietary database called ParkWare to track
10 attendance and data in real time on each visitor that entered the park. As a Financial
11 Analyst for the Orlando parks, CW-5 primarily had exposure to attendance
12 projections for those parks. As part of her reporting duties, CW-5 also analyzed
13 which ticket types were not selling and the residence of visitors. CW-5 also had
14 responsibility for data analysis for the contact center when she was at the Orlando
15 parks. She explained that the call center was "rich with data" and that every second
16 of every call was recorded in the database. Although CW-5 was only responsible for
17 compiling data on the length and volume of calls and wait times for incoming calls,
18 CW-5 did discuss *Blackfish* as a likely reason for the decreased attendance at the
19 three SeaWorld-branded parks with her colleagues. CW-5 stated that she knew that
20 SeaWorld's Chief Financial Officer, Defendant Heaney, received the information
21 within her reports in some form.

22 48. Sarah Fischbeck joined SeaWorld's-branded San Diego park in 2007 as
23 a water quality diver. During her six years with SeaWorld, Ms. Fischbeck worked
24 across SeaWorld's departments, regularly diving with the various animals and
25 performing maintenance on SeaWorld's different exhibits. Ms. Fischbeck voluntarily
26

1 left SeaWorld in December of 2013, a decision she reportedly made due to poor
2 treatment as an employee and SeaWorld's treatment of its animals. In a two-part
3 interview reported by *The Dodo* entitled "Ex-SeaWorld Employee: 'If You Speak
4 Out Against It, You're Fired,'" Ms. Fischbeck publicly described SeaWorld's
5 corporate culture as being "obsessed with secrecy," explaining that employees who
6 saw anything go wrong at SeaWorld parks were "put under gag orders." In
7 particular, the articles report that "SeaWorld's secretive management policies were
8 perhaps best highlighted during the release of 'Blackfish' in July 2013[.]"
9 Describing SeaWorld's instructions to its employees regarding *Blackfish*, Ms.
10 Fischbeck revealed that SeaWorld "actually had a collective meeting before it came
11 out telling us to say it was fake," and that SeaWorld was "feeding us lines[.]" Ms.
12 Fischbeck further disclosed that employees were instructed to dissuade family and
13 friends from seeing the film and that SeaWorld's entire response to *Blackfish* was
14 "extremely hush-hush."

15 **IV. OVERVIEW**

16 **A. SeaWorld's April 2013 IPO And Two Secondary Public Offerings**

17 49. SeaWorld is a theme park and entertainment company that owns and
18 operates eleven theme parks that are grouped in key markets across the U.S.,
19 including water show parks that house or otherwise feature killer whales located in
20 Orlando, Florida, San Diego, California, and San Antonio, Texas, and Busch
21 Gardens. The three SeaWorld-branded parks are the flagship parks of the SeaWorld
22 brand. SeaWorld owns or licenses a large portfolio of globally recognized brands,
23 including SeaWorld and Shamu (the name of the Company's first performing orca).

24 50. Until April 2013, SeaWorld was 100% privately held. In particular,
25 SeaWorld was privately owned by Busch Entertainment Corp. until December 2009,
26

1 when it was sold in full to Blackstone and renamed SeaWorld Entertainment. In
2 April 2013, Blackstone took SeaWorld public. On or about April 24, 2013, the
3 Company completed the IPO of its common stock at a price of \$27.00 per share. In
4 the IPO, the Company issued and sold 10,000,000 shares of common stock, and
5 certain selling stockholders offered and sold 19,900,000 shares of common stock
6 (owned by Blackstone), including 3,900,000 shares of common stock pursuant to the
7 exercise in full of the underwriters' option to purchase additional shares.

8 51. On December 17, 2013, the Company completed the December SPO, a
9 secondary offering of 18,000,000 shares of common stock (all of which were owned
10 by Blackstone) at a price of \$30.00 per share.

11 52. On April 9, 2014, the Company completed the April SPO, a secondary
12 offering of 17,250,000 shares of common stock (15,000,000 of which were owned by
13 Blackstone and the other 2,250,000 of which were sold pursuant to the exercise in
14 full of the underwriters' option to purchase additional shares) at a price of \$30.00 per
15 share.

16 **B. SeaWorld's Operations**

17 53. SeaWorld's brand and marketing efforts focus on the Company's unique
18 animal-based attractions, particularly at its three branded parks. According to public
19 filings, across its eleven parks, SeaWorld maintains one of the world's largest
20 zoological collections, including ninety-three (93) animal habitats with
21 approximately 86,000 animals, including 8,000 marine and terrestrial animals and
22 78,000 fish. These parks feature, among other things, orca, sea lion and dolphin
23 shows, as well as zoological displays featuring various other marine animals. The
24 Company's parks also feature roller coasters and other mechanical thrill rides.
25
26
27

1 54. The three SeaWorld-branded parks’ main attraction for over fifty years
2 has been its shows featuring orcas (i.e., killer whales), which—until March 2016—
3 the Company has captured, bred and trained to perform. “Shamu” – the name of the
4 Company’s first orca and SeaWorld’s “globally recognized” and trademarked name
5 for its killer whale shows – is a brand “synonymous with SeaWorld for much of the
6 park’s 50-year history,” according to *The Voice of San Diego*. SeaWorld’s logo
7 features a killer whale’s dorsal fin. At the time of the IPO, SeaWorld-branded parks
8 housed twenty-nine (29) killer whales. Currently, SeaWorld houses twenty-four (24)
9 orcas in three parks – eleven (11) at SeaWorld San Diego, seven (7) at SeaWorld
10 Orlando, and six (6) at SeaWorld San Antonio. Five other orcas are on breeding loan
11 to various establishments.

12 55. To be sure, SeaWorld’s killer whale shows have represented a “key
13 point of differentiation” from other theme parks, and are a main driver of the
14 Company’s ability to attract customers to its flagship parks in Orlando and San
15 Diego, as reported by *The Voice of San Diego*. As noted in the Company’s IPO
16 Offering Materials, “each SeaWorld theme park showcases killer whales in specially
17 designed amphitheaters.” Since 1964, hundreds of millions of people have attended
18 SeaWorld’s signature “Shamu Shows,” which emphasize the killer whales’
19 impressive intelligence, massive bodies, and complex social interactions with
20 humans. Before the Occupational Safety and Health Administration (“OSHA”)
21 banned human trainers from working in the water with captive killer whales in 2010,
22 the signature climax of these shows was the iconic “rocket hop” maneuver in which
23 the killer whale propelled a trainer out of the water.

24 56. Orcas and orca shows thus constitute the core of the SeaWorld brand.
25 Dave Goodman, former vice president and executive producer of entertainment at
26

1 SeaWorld’s Orlando park explained to *The Voice of San Diego* that “[t]ying the
2 human experience to the animal one is the vital thrust behind the Shamu shows and
3 the park itself” and analogized that, “[r]eplacing Shamu to Seaworld is like getting
4 rid of Mickey to Disney.” As Atchison told *Bloomberg* in November 2014: “Our
5 killer whales, our killer whale program, and all of our animals are emblematic of
6 the whole brand.”

7 57. Despite SeaWorld’s long reliance on its orca shows as its primary and
8 signature attraction, on March 17, 2016, the Company announced that it was
9 discontinuing its orca breeding program and its trademarked orca trick shows.
10 SeaWorld did so under enormous public pressure and multi-year attendance declines
11 after *Blackfish* spurred public backlash against the Company’s treatment of its orcas.
12 Indeed, SeaWorld’s CEO acknowledged that SeaWorld’s orca shows—once its
13 selling point—was now driving consumers away. A March 24, 2016 *Forbes* article
14 quotes Manby, stating: “[SeaWorld] built the brand around Shamu many years ago
15 and made people fall in love with killer whales . . . but now the paradox is that it’s
16 one of the leading reasons people are uncomfortable with SeaWorld.” In an op-ed
17 Manby authored to announce the decision, published in the *Los Angeles Times*,
18 Manby attributed SeaWorld’s announcement to an “attitudinal change that we helped
19 to create.” And as the *Los Angeles Times* further reported on March 18, 2016,
20 “[t]hrough Manby made no reference to ‘Blackfish’ in his op-ed, the film was
21 largely responsible for that ‘attitudinal change.’”

22 **i. The Amusement And Theme Park Industry**

23 58. The amusement and theme park industry is highly concentrated and
24 dominated by five major players: (i) SeaWorld; (ii) Disney; (iii) Universal; (iv)
25 Cedar Fair LP; and (v) Six Flags, Inc. According to IBISWorld – a group comprised
26

1 of industry-focused analysts, strategists, and researchers that provide comprehensive
2 information on, among other things, the amusement park industry in the U.S. – these
3 five companies collectively account for approximately 86.6% of the total U.S. theme
4 park industry revenue. Notably, each year, IBISWorld issues the “IBISWorld
5 Industry Report – Amusement Parks in the US” (“IBISWorld Report”), and
6 SeaWorld has referenced the IBISWorld Report in its public statements and filings.

7 59. Each year, the Themed Entertainment Association (“TEA”) publishes a
8 *Theme and Museum Index – Global Attractions Attendance Report* (“TEA Report”),
9 in which it identifies the top theme parks and water parks, including SeaWorld, and
10 reports their performance for the calendar year. TEA is a prominent group dedicated
11 to providing consumers with information about, among other things, theme parks like
12 SeaWorld. SeaWorld also references and explicitly relies upon TEA data in its
13 public statements and filings. Indeed, the TEA Reports represent the standard within
14 the theme park industry—as both the industry (including SeaWorld) and the market
15 relies upon data from the TEA Reports in analyzing attendance within the industry.
16 One key piece of information the TEA Reports provide, which theme park operators
17 including SeaWorld typically do not provide to investors, is attendance data for
18 individual theme parks.

19 60. In the Company’s 2013 Form 10-K, SeaWorld identified Disney and
20 Universal as its principal direct competitors. Like SeaWorld, both Disney and
21 Universal operate theme parks in Orlando, Florida and Southern California. In
22 Orlando, Disney operates Magic Kingdom, Epcot, Hollywood Studios, Animal
23 Kingdom, Blizzard Beach and Typhoon Lagoon, while Universal operates Universal
24 Studios Florida and Island of Adventure. In Southern California, Disney operates
25 Disneyland and California Adventures, while Universal operates Universal Studios
26

1 Hollywood. Within the theme park industry, Disney, Universal and SeaWorld are
2 often referred to as the “Big Three.”

3 61. According to IBISWorld, families with children aged ten (10) to
4 nineteen (19) make up the primary consumer market for the theme park industry. As
5 of August 2014, teenagers and children younger than eighteen (18) accounted for
6 approximately 25.6% of all U.S. theme park attendees. As noted by IBISWorld, due
7 to the limited disposable income of this group, consumers between ages thirty-five
8 (35) and fifty-four (54) years old typically accompany children to parks, and account
9 for approximately 21.6% of the market. In short, younger consumers typically drive
10 a significant portion of demand and attendance for the industry as a whole.

11 62. Consistent with this observation, SeaWorld noted in its 2013 Form 10-K
12 that “families comprised 54% of our attendance with an average party size of 3.8
13 people.” Accordingly, SeaWorld’s ability to ensure that its products are and remain
14 appealing to this younger demographic are essential to its success.

15 **ii. Attendance Drives SeaWorld’s Revenues**

16 63. Amusement and theme parks derive the majority of their revenues from
17 ticket sales. Attendance, in turn, allows for in-park spending. SeaWorld is no
18 exception. Throughout the Class Period, Defendants identified attendance as a key
19 proxy for analyzing the success and stability of the Company’s business operations.
20 Indeed, in its 2013 Form 10-K the Company stated, “[w]e generate most of our
21 revenue from selling admission to our theme parks,” and disclosed that admissions
22 accounted for nearly two-thirds (approximately 63%) of its total 2013 revenue.

23 64. Likewise, SeaWorld’s quarterly filings with the SEC on Form 10-Q each
24 include “attendance” as a key business metric evaluated by management, and
25 represent that “[i]ncreased attendance drives increased admissions revenue to our
26

1 theme parks as well as total in-park spending.” As SeaWorld explained in a recent
2 proceeding before a federal court in Florida:

3
4 Your Honor, Sea World keeps records of every guest who enters their
5 parks. Those records include driver’s license numbers, credit card
6 numbers, addresses, information on each and every visit that the guest
7 makes to the park, the dates of those visits, what the guest purchased
8 at the park, names of minor children who purchase passes, et cetera.
9 Sea World also keeps records of each telephone conversation between
10 a guest and Sea World, and keeps notes in a computerized data system
11 of those telephone conversations. These records, as you might
12 imagine, Your Honor, are very voluminous.⁵

13
14 65. Moreover, CW-5 confirmed that SeaWorld very closely monitored its
15 attendance through various internal “home-grown” systems, including ParkWare, a
16 real-time recording system that tracked attendance and various data regarding each
17 visitor that entered a SeaWorld park. CW-5 explained that ParkWare enabled
18 SeaWorld to gather data regarding each visitor to SeaWorld parks, as ParkWare
19 recorded visitor data with a bar code for each park visitor that “clicked” through a
20 SeaWorld turnstile. According to CW-5, SeaWorld maintains numerous databases
21 beyond just ParkWare, and internal reports could be generated from each of these
22 databases. Further, CW-5 confirmed that the universe of data collected from all of
23 these databases could be emailed, imported into Excel, and analyzed by business
24 analysts through one of SeaWorld’s internal programs called Business Objects. The

25 ⁵ Transcript of Preliminary Pretrial Conference, *Jason Herman, et al. v. Sea World*
26 *Parks & Entertainment, Inc.*, No. 8:14-cv-03028-MSS-JSS (M.D. Fla. Mar. 5, 2015),
27 at 21:11-22. Notably, in the same case, a SeaWorld corporate manager attested that
“[t]here are more than eight million individual notes in [SeaWorld’s season pass]
database since December 1, 2008.” Declaration of Scott Trien (Dkt. No. 99-2),
Herman, No. 8:14-cv-03028-MSS-JSS, at ¶8.

1 breadth of the attendance-related records that SeaWorld keeps demonstrates the
2 importance that SeaWorld attributes to this key business metric.

3 66. SeaWorld's growth strategy, as discussed in the materials SeaWorld
4 filed in conjunction with the IPO ("IPO Offering Materials"), revolves around the
5 Company's ability to "increas[e] [the Company's] existing theme park revenues
6 through strategies designed to drive higher attendance and increase in-park per capita
7 spending." Further, the main purpose of SeaWorld's marketing efforts is to increase
8 attendance. As SeaWorld stated in its 2013 Form 10-K, "[o]ur marketing and sales
9 efforts *are focused on generating profitable attendance....*" The Company further
10 acknowledged in its 2013 Form 10-K that reductions in attendance "can materially
11 adversely affect [SeaWorld's] business, financial condition and results of
12 operations."

13 67. The Company's Forms 10-Q likewise represent within a section entitled
14 "Principal Factors Affecting Our Results of Operations" that the Company's
15 "*revenues are driven primarily by attendance in our theme parks* and the level of
16 per capita spending for admission to the theme parks and per capita spending inside
17 the theme parks for culinary, merchandise and other in-park experiences." Thus,
18 maintaining and driving attendance levels is a fundamental concern of SeaWorld's
19 and critical to its revenues and results of operations.

20 68. In order to generate attendance, companies operating amusement parks
21 (or "operators") typically offer various ticketing options, ranging from traditional
22 single-day or multi-day admission tickets granting entrance to a single park to
23 package deals (or "bundles") that entail admission to several different parks,
24 including parks run by different companies. Companies operating multiple parks in a
25

1 particular geographic location generally offer consumers the ability to purchase
2 entrance to more than one of their parks for a discounted price.

3 69. Moreover, in locations that are home to multiple parks operated by
4 various operators in the industry, the ability to offer joint and single ticketing
5 arrangements with discounts in cooperation with other theme parks, such as a multi-
6 park pass, can further boost ticket sales and attendance. For example, Orlando,
7 Florida is home to seven of the largest amusement parks in the U.S. As IBIS
8 explained in the Company's 2014 industry report, "[i]ndustry players have found that
9 there are synergies and promotions and other advantages in having a number of major
10 operators located in the same area."

11 70. TEA explained that increased tourism within a particular destination like
12 Orlando tends to drive increased attendance at all theme parks operating within that
13 market. Tourists who choose to vacation near theme park venues prefer to have a
14 range of options, and will vacation in places that offer multiple attractions in close
15 and convenient proximity.

16 71. These principles apply to SeaWorld, which represented in its public
17 filings during the Class Period that it benefits from the "significant capital
18 investments made in developing the tourism industry in the Orlando area," and that
19 the "high concentration of theme parks operated by several companies" is beneficial
20 to SeaWorld's operations, both in Orlando and in San Diego. Consistent with these
21 observations, SeaWorld reported in its 2013 Form 10-K that approximately 55% and
22 21% (or 76% combined) of its revenues in 2013 were generated in the States of
23 Florida and California, respectively.

24 72. The Company further emphasized this point in its 2013 Form 10-K,
25 stating, "[w]e also participate in joint programs that are designed to provide visitors
26

1 to Florida and Southern California with options, flexibility and value in creating their
2 vacation itineraries. For example, we have partnered with several theme parks in
3 Orlando to create the Orlando FlexTicket....We also created the 2-Park FlexTicket
4 [in San Diego] in conjunction with Universal Studios, which allows guests to
5 purchase a ticket providing access to SeaWorld San Diego and Universal Studios
6 Hollywood.”

7 73. Because attending a park is usually an all-day (and sometimes multi-
8 day) event for visitors, industry operators also generate significant revenues from the
9 sales of food and beverage. In 2013, food, merchandise and other revenue accounted
10 for approximately 37% of SeaWorld’s total revenue, according to the Company’s
11 2013 Form 10-K. In addition, parks generate revenue from merchandise sales, which
12 IBISWorld estimated would account for approximately 16% of overall industry
13 revenue. The remainder of theme park revenues is typically derived from
14 sponsorships, licensing and other fees. Of course, a theme park operator’s ability to
15 generate revenues through the sale of food, beverages or merchandise depends
16 entirely, as a threshold matter, upon attendance.

17 74. Given how critical attendance is to a theme park’s bottom line, theme
18 park companies are focused on, and regularly, monitor, track, and account for, factors
19 that may depress attendance. Such factors, as discussed below, may include adverse
20 weather conditions, annual holiday and school schedules (since school-age children
21 are a critical target demographic), pricing strategies and, as mentioned above,
22 location-related issues. Companies typically list these factors as potential risks to
23 performance within public financial filings.

24 75. Moreover, because attendance statistics are critical to a theme park’s
25 bottom line, attendance figures are incredibly material to an investor’s decision to
26

1 invest in a theme park company, like SeaWorld. As the *San Antonio Express-News*
2 recently explained, however, SeaWorld “doesn’t usually provide information on
3 attendance at specific parks in its SEC filings[,]” and on conference calls, “executives
4 decline[] to offer more specific figures[,]” noting that Peter Crage, SeaWorld’s
5 current CFO, stated “We don’t break that out.” Therefore, to understand the trends of
6 this critical metric, investors must rely on the information available to the market—
7 *i.e.*, the TEA Reports expressly relied upon by SeaWorld and analysts—that never
8 provide the complete breakdown of attendance at *all* of SeaWorld’s parks, or park-
9 level attendance data on anything but an annual basis, and only for the largest theme
10 parks. Beyond that, investors are forced to rely upon only one source for *complete*
11 information about attendance at SeaWorld parks: the Company—who investors trust,
12 and the securities laws require, to tell the *complete* truth about such a critical business
13 metric as attendance.

14 **C. *Blackfish* Premieres At The Sundance Film Festival And Seizes**
15 **Public Attention**

16 76. On January 19, 2013, just months before Blackstone took SeaWorld
17 public in the IPO, Gabriela Cowperthwaite’s documentary *Blackfish* premiered at the
18 world-renowned Sundance Film Festival in Park City, Utah. The documentary tells
19 the disturbing story of Tilikum, a 12,000-pound bull orca implicated in the deaths of
20 three people. Cowperthwaite began work on *Blackfish* following Tilikum’s well-
21 publicized 2010 mutilation and killing of senior trainer Dawn Brancheau, which took
22 place at SeaWorld Orlando.

23 77. More generally, *Blackfish* is an indictment of SeaWorld’s core brand and
24 killer whale-as-entertainment business. The film chronicles the apparent cruelty of
25 baby orca capture methods, the dangers associated with the close human-killer whale
26

1 contact featured at SeaWorld’s most popular shows, and the strains, both physical
2 and psychological, of captivity on the killer whales held by SeaWorld. Featuring
3 graphic images of trainers being mauled and whales being bitten or “raked” by fellow
4 whales in captivity, as well as interviews of former SeaWorld trainers, SeaWorld
5 spectators, and other experts such as OSHA employees and scientists, *Blackfish*
6 makes the case that SeaWorld’s business of keeping killer whales in captivity for the
7 purpose of human entertainment and profit is cruel, dangerous, and immoral. In
8 addition to its anti-captivity message, *Blackfish* suggests that in order to protect its
9 brand and most popular, profitable and iconic attraction – its killer whale shows –
10 SeaWorld cravenly covered up previous dangerous and fatal incidents involving
11 Tilikum, blaming whale trainer error for the tragic incidents. An early review noted
12 that the film makes “SeaWorld’s entire operation look criminal.”

13 78. In particular, the film highlighted SeaWorld’s willingness to disregard
14 and ignore its own internal reports in order to protect its core brand. Specifically,
15 *Blackfish* focused on SeaWorld’s conduct in the OSHA proceedings that resulted in a
16 30-page opinion issued by Administrative Law Judge (“ALJ”), Ken S. Welch. *See*
17 *Secretary of Labor v. SeaWorld of Florida, LLC*, OSHRC Dkt. No. 10-1705, 2012
18 OSAHRC LEXIS 40 (O.S.H.R.C.A.L.J. June 11, 2012). Therein, the ALJ found that:
19 (i) SeaWorld proffered an expert opinion that was “speculative and ha[d] no basis in
20 fact[,]” *id.* at *80; (ii) SeaWorld had adopted a corporate line that “the trainer is
21 always at fault for the killer whale’s undesirable behavior. In this closed system, any
22 injuries sustained by a trainer will always be traceable to human error. It is not the
23 operant conditioning program that is inadequate; it is the performance of the trainer
24 that is flawed[,]” *id.* at *70-71; and (iii) despite a plethora of reports by “management
25 personnel who instituted corporate-wide protocols and safety procedures” that were
26

1 “circulated among the SeaWorld parks” over a fifteen-year span, SeaWorld
2 “insist[ed] it did not recognize the hazard posed by working in close contact with
3 killer whales”—a position the ALJ found was “implausible” because “[n]o
4 reasonable person reading these comments would conclude that SeaWorld was
5 unaware that working in close contact with killer whales during performances creates
6 a hazard for its trainers.” *Id.* at *65-66.

7 79. Moreover, the film charged SeaWorld with having coerced its
8 employees into telling “bold-faced lies” on the witness stand in the OSHA
9 proceeding, specifically pointing to the testimony from SeaWorld’s curator, Kelly F.
10 Clark, that SeaWorld had no affiliation with a park called Loro Parque in Tenerife,
11 Spain, to which SeaWorld had leased five killer whales. Directly contradicting Ms.
12 Clark’s testimony, the ALJ found the SeaWorld and Loro Parque “parks are
13 intertwined” as “[m]anagement personnel at the parks are in constant communication
14 with each other[,]” despite SeaWorld’s “attempt[] to distance itself from the
15 SeaWorld parks and from Loro Parque,” and “to minimize evidence that working
16 closely with killer whales is a recognized hazard,” *id.* at *36-37. Ultimately, as the
17 film showed, the ALJ assessed \$12,000 in penalties against SeaWorld for its
18 “serious” and “willful” violations of the law. *Id.* at *96. These findings by the ALJ
19 were affirmed by the U.S. Court of Appeals for the District of Columbia Circuit.
20 *SeaWorld of Florida, LLC v. Perez*, 748 F.3d 1202 (D.C. Cir. 2014). In short,
21 *Blackfish* exposed SeaWorld’s willingness to consciously disregard internal reports
22 that jeopardized its core operations, as demonstrated by the OSHA proceedings. And
23 while the film directly attacked SeaWorld’s brand and business operations, the
24 Company’s response throughout the Class Period reflected a denial of, and inability
25 to deal with, the impact of *Blackfish*.

1 80. Following the critically acclaimed screening of the film at Sundance, on
2 January 22, 2013, as was widely reported, CNN Films and Magnolia Pictures
3 acquired the rights to *Blackfish* and immediately announced plans to screen the film
4 on a broad public platform beginning in the summer of 2013.

5 81. The film reached increasingly broad swathes of the public throughout
6 2013. On July 19, 2013, *Blackfish* was released in theaters in New York, New York,
7 Los Angeles, California, and Toronto, Canada, among other places. At its widest
8 release, the documentary was shown in approximately ninety-nine (99) theaters for a
9 total of fourteen (14) weeks. Also in July 2013, the film was made available to
10 British customers of Netflix, the leading online video streaming and mail-order
11 service. The next month, on August 26, 2013, *Blackfish* was released on DVD and
12 Blu-ray Disc in the United Kingdom. In September and October of 2013, the film
13 premiered in Germany, Greece, Iceland, Spain and other international locations.

14 82. The documentary was then broadcast to tens of millions more people on
15 CNN during a highly promoted screening on October 24, 2013. CNN reported that,
16 according to Nielsen ratings, the *Blackfish* premiere topped cable news viewership
17 that evening. After the broadcast, CNN aired an Anderson Cooper special with,
18 among others, Gabriela Cowperthwaite. This was followed by a special edition of
19 *Crossfire* with *Blackfish* associate producer Tim Zimmermann debating Grey
20 Stafford, a conservationist, zoologist, and member of the International Marine
21 Animal Trainers Association. CNN re-aired the film numerous times in the days and
22 weeks that followed.

23 83. *Blackfish* was also released on DVD, Blu-ray Disc and iTunes in the
24 U.S. on November 12, 2013. The BBC aired the film in the United Kingdom on
25 November 21, 2013.

1 84. By December 2013, *Blackfish* was made available on Netflix in the U.S.
2 At the time, Netflix maintained approximately thirty-one million U.S. domestic
3 subscribers.

4 85. On January 22, 2014, Cowperthwaite openly challenged SeaWorld to
5 debate the issues raised by the film in a public forum. Cowperthwaite stated:

6 We challenge SeaWorld to debate these issues with our teams in a
7 public forum, which we will be happy to arrange. Throughout the
8 production and theatrical release of *Blackfish*, SeaWorld has refused
9 to directly engage with the film or its points in any public way, despite
10 repeated invitations. Instead of releasing more PR spin, written
11 statements and online critiques (which often allow no comments), we
12 encourage SeaWorld’s leaders to step forward and address these
13 issues openly and honestly in public debate. Let the public hear both
14 sides of the argument (as we have always desired) and draw their own
15 conclusions.

16 86. SeaWorld declined to debate Cowperthwaite directly and continually
17 attempted to downplay *Blackfish* throughout the Class Period, brazenly denying that
18 it was having *any* impact on the Company’s operations and attendance.

19 87. As a result of *Blackfish*, by the time of the Company’s April IPO,
20 SeaWorld had become a public relations target for PETA, other advocacy groups and
21 prominent celebrities across the nation. Given that CNN and Magnolia Pictures
22 planned for wide release of the film, the *Blackfish* effect, already significant, was
23 primed to intensify. Recognizing this, prior to the IPO, SeaWorld already had taken
24 a number of steps that indicate SeaWorld’s notice and internal understanding of the
25 *Blackfish* effect on its core business. As disclosed by Ms. Fischbeck, SeaWorld
26 “actually had a collective meeting before [*Blackfish*] came out telling [SeaWorld
27 employees] to say it was fake[.]” According to Ms. Fischbeck, SeaWorld was
“feeding [its employees] lines,” and instructing SeaWorld employees to dissuade

1 family and friends from seeing the film. And, *externally*, SeaWorld had begun a
2 nationwide campaign to mitigate the harmful impact of *Blackfish* on the public's
3 perception of the Company.

4 88. Despite the fact that it was battling the *Blackfish* effect in a nationwide
5 public relations campaign, rather than inform the public within the IPO Offering
6 Materials that *Blackfish* was presently harming SeaWorld's "reputation, reduc[ing]
7 attendance and negatively impact[ing] [SeaWorld's] business, financial condition and
8 results of operations," the Company disclosed only that *Blackfish* "may" have a
9 negative effect on attendance and other key metrics at some point in the future. This
10 same equivocal language was repeated in certain of SeaWorld's quarterly, annual and
11 offering-related SEC filings prior to and throughout the Class Period.

12 89. Meanwhile, SeaWorld continued to lose customers. On August 13,
13 2013, Defendants reported SeaWorld's 2Q13 financial results. Among other things,
14 Defendants reported a 9% decline in attendance for the second quarter, representing a
15 decrease of approximately 600,000 guests. Defendants attributed the entire drop in
16 attendance to three distinct factors: (i) new pricing strategies (i.e., the Company's
17 annual summer ticket price increases); (ii) adverse weather conditions; and (iii) the
18 "unfavorable timing of Easter," which "caused an overlap with the spring break
19 holiday period for schools." On the earnings call that same day ("2Q13 Earnings
20 Call"), while Atchison admitted that "over the long term these weather effects tend to
21 even out," he claimed SeaWorld was "impacted much more than normal during the
22 second quarter by these adverse weather conditions."

23 90. Later in the 2Q13 Earnings Call, in response to an investment analyst
24 question seeking further information concerning attendance, Heaney again attributed
25 the entire decline to these same three factors, stating that each accounted for one-third
26

1 of the total decline. Heaney further assured investors that “[t]he Easter effect,
2 obviously, won’t repeat in the second half and that’s one piece of attendance we’ll
3 pick up in the third and fourth quarters.”

4 **D. Defendants Mislead Investors Concerning The Impact Of *Blackfish***
5 **On The Company’s Operations And Attendance**

6 **i. Defendants Repeatedly Deny That The Stark Attendance**
7 **Decline At SeaWorld’s Parks Was Caused, To Any Degree,**
8 **By *Blackfish***

9 91. As set forth above, SeaWorld’s financial health is directly tied to its
10 ability to attract and grow attendance at its parks. Attendance at SeaWorld’s parks
11 declined each quarter during the Class Period following the premiere of *Blackfish*, yet
12 Defendants repeatedly assured investors that *Blackfish* had not contributed, at all, to
13 these drastic declines, and was not impacting SeaWorld’s operations in any way.
14 Rather, Defendants attributed the entire decline in attendance to a combination of
15 three factors: (i) adverse weather conditions; (ii) holiday and school schedules;
16 and/or (iii) SeaWorld’s pricing strategies.

17 92. On the first day of the Class Period, August 29, 2013, following the
18 2Q13 earnings release, the *Los Angeles Times* questioned whether the decline in
19 attendance was also attributable to the ever-growing *Blackfish* effect. In response,
20 Vice President of Communications Fred Jacobs (“Jacobs”), speaking on behalf of the
21 Company, flatly denied that *Blackfish* or the public backlash spurred by the film was
22 hurting attendance, stating that “*Blackfish*’ has had no attendance impact.” That
23 same day, Jacobs told *Bloomberg* that the Company “can attribute no attendance
24 impact at all to the movie.”

25 93. Notably, one month prior, SeaWorld had dramatically intensified the
26 Company’s public relations campaign opposing *Blackfish*, as Jacobs reached out to
27

1 fifty (50) major film reviewers to “discredit” *Blackfish*. The president of Magnolia
2 Pictures – the film’s distributor – Eamonn Bowles stated “[f]rankly, I’ve never seen
3 anything like it.” The *New York Times* called this high profile action “an unusual
4 pre-emptive strike” and an “aggressive public pushback” by a corporation.

5 94. Indeed, SeaWorld was concerned enough about the negative publicity
6 resulting from *Blackfish* that it hired communications firm, 42West to lead a public
7 relations counter-attack. NPR called SeaWorld’s counter-campaign “one of the
8 clumsiest, most-ill advised acts of corporate crisis-management” in memory. The
9 Wire likewise reported “[the] magnitude of th[e] response [wa]s odd” and that it was
10 “rare” for a corporation to target a documentary, hire a film publicist [42West] and
11 “make sure critics and journalists are informed of the Company’s response to a film.”

12 95. Also in or around July 2013, as the negative public perception of
13 SeaWorld continued to intensify, SeaWorld released a public statement, speaking out
14 against the film and claiming it was “inaccurate”:

15 *Blackfish...is inaccurate and misleading and, regrettably, exploits a*
16 *tragedy.... [T]he film paints a distorted picture that withholds...key*
17 *facts about SeaWorld—among them...that SeaWorld rescues,*
18 *rehabilitates and returns to the wild hundreds of wild animals every*
19 *year, and that SeaWorld commits millions of dollars annually to*
conservation and scientific research.

20 96. Shortly thereafter, on August 29, 2013, at least one analyst, S&P Capital
21 IQ, remained skeptical about Defendants’ story regarding the effect of *Blackfish*,
22 stating that “we think SEAS confronts considerable negative public relations
23 regarding captivity of killer whales in a high-profile documentary” and describing
24 “negative publicity around a SeaWorld documentary” as an “overhang that will
25 weigh on [SeaWorld’s] shares.” Most analysts, however, took SeaWorld’s word,
26 accepting Defendants’ bullish proffered explanations for the decreased 2Q13

1 attendance. For example, a September 17, 2013 KeyBanc Capital Markets report
2 dismissed concerns over whether the Company's lagging attendance was associated
3 with *Blackfish*, stating:

4
5 [w]hile building investor consternation has been evident in recent
6 weeks following 2Q13 results and suspect publicity surrounding
7 discounts and the potential impact of the *Blackfish* documentary, we
8 believe the operational update provided by SEAS last week should
9 ease some concerns [...]. In our view, the vast majority of these
transitory issues have had little to no impact on the business and that
is now becoming apparent in the results.

10 97. SeaWorld attendance kept falling. On November 13, 2013, Defendants
11 reported SeaWorld's 3Q13 financial results, including a 3.6% decline in attendance
12 for the third quarter – a decrease of 600,000 guests, and a 4.7% decline overall for the
13 first nine months of 2013 as compared to the same periods in the prior year. The
14 decline, Defendants represented, was attributable to adverse weather conditions in
15 July, as well as the “expected result” of pricing strategies the Company implemented
16 in the prior quarter.

17 98. The following day, on November 14, 2013, Atchison stated to the *Wall*
18 *Street Journal*: “I scratch my head if there's any notable impact from this film at all,
19 and I can't attribute one to it,” adding “[i]ronically, our attendance has improved
20 since the movie came out.” Defendants' spin efforts continued to work, as analysts
21 from Wells Fargo, JPMorgan and Barclays, among others, accepted the Company's
22 explanation for declining attendance and made no mention of the *Blackfish*
23 controversy in published reports – even as the film exploded on social media in the
24 weeks following the CNN premiere. However, because SeaWorld's “attendance
25 declines sustained in the third quarter” were “counter to trends at peers[,]” S&P
26 Capital IQ's November 18, 2013 Stock Report questioned whether SeaWorld was

1 forthrightly disclosing the complete truth to the market: “In our opinion, the sharp
2 drop in attendance, particularly when viewed in the context of better performance
3 from peers, feeds concerns that negative publicity of the *Blackfish* documentary is
4 impacting visitation.”

5 99. On December 20, 2013, Atchison similarly rejected the notion that
6 *Blackfish* was in any way, shape or form, playing a part in the decline in attendance.
7 As reported by the *Orlando Sentinel*, he stated: “As much data as we have and as
8 much as we look, I can’t connect anything really between the attention that the film
9 has gotten and any effect on our business.”

10 100. The same day Atchison was denying any harm to the Company’s
11 attendance from *Blackfish*, SeaWorld responded to the film with an open letter
12 purporting to rebut it, which the company placed in full-page ads in major American
13 newspapers. SeaWorld’s “Open Letter from SeaWorld’s Animal Advocates,” was
14 also posted to the Company’s Facebook and Twitter accounts. SeaWorld also
15 devoted an entire section of its website to the documentary, entitled “Truth About
16 *Blackfish*.”

17 101. CNN called the move “very interesting”:

18 [O]ne of the things we have talked with SeaWorld about is how they
19 say, look, *Blackfish* has not had any impact whatsoever on the
20 revenues and on the number of people attending. But then you have
21 to wonder, well, why would they go to such an expense and why
22 would they take this out. Part of it could be because they're starting to
see an impact on a very key part of their audience...

23 102. Similarly, speaking with the *Orlando Business Journal* on December 27,
24 2013, Timothy Coombs, crisis communications specialist and public relations
25 professor with the University of Central Florida, commented on the Company’s
26

1 unusual response, stating “the attention generated by Blackfish and the
2 accompanying musical guest cancellations [discussed in ¶¶144-49, *infra*] did require
3 a public statement to defend SeaWorld's mission and methods of operation.”
4 Likewise the *Seattle Post-Intelligencer* noted on January 24, 2014, “***SeaWorld has***
5 ***spent a considerable amount of money and energy lately trying to undermine and***
6 ***deflect the effectiveness of the film Blackfish***, but they are unable to make much
7 progress – it just isn’t possible to rewrite history in this age of independent media.”
8 Moreover, S&P Capital IQ maintained its continued skepticism about SeaWorld’s
9 forthrightness with the market, stating in its December 17, 2013 Stock Report: “In
10 our opinion, management’s passive responses in hopes attention would fade has
11 proven difficult in today’ social media environment, where messages can be
12 amplified. . . . ***We believe the impact of sustained negative publicity from the***
13 ***Blackfish documentary will impact visitation into 2014.***” S&P further found it
14 significant that the film’s “addition to Netflix, musical act boycotts and a potential
15 Oscar nomination” would bring *Blackfish* “further attention[.]”

16 103. On March 13, 2014, Defendants reported SeaWorld’s 4Q13 and FY13
17 financial results, during which the Company reported that for the third consecutive
18 quarter overall attendance had declined – this time by 1.4%. Moreover, Defendants
19 reported that full year attendance in 2013 had declined by 4.1%, or approximately
20 one million guests.

21 104. Once again, Defendants claimed the 1.4% fourth quarter decline was the
22 “expected result of planned pricing and yield management strategies implemented at
23 the beginning of 2013,” and blamed the full year decline on the same factors noted
24 during the prior quarter – adverse weather conditions and where the holidays and
25 school schedules had fallen on the calendar.

1 105. Notably, according to CW-5, in her experience as a Financial Analyst
2 for various theme parks, weather and timing of Spring Break are the two most
3 common reasons given for a decrease in attendance within the industry. In
4 SeaWorld's case, however, CW-5 did not believe they could be the entire reason for
5 the decrease. Rather, she thought it was logical and obvious that *Blackfish* was the
6 reason. She further explained that, because Spring Break is such a high volume time,
7 and one that can be planned for, companies always budget their attendance for this
8 time. In addition, CW-5 explained that although attendance can vary from day-to-
9 day, if it decreases for weeks or months, it becomes a serious trend. CW-5 stated that
10 this was what happened at SeaWorld Orlando, which she believed was at least
11 partially attributable to *Blackfish*. She recalled noticing that the trend had already
12 been going on for months by the spring of 2014.

13 106. Barton Crockett, an FBR Capital Markets analyst, specifically pressed
14 Defendants to discuss *Blackfish*, asking Atchison to "***comment on whether there's***
15 ***any impact that you've noticed at all on satisfaction or attendance*** or the desirability
16 of SeaWorld for international licensees? ***Has this had any impact on any of that?***"
17 In response, Atchison noted: "I get asked that a lot" and proceeded to deny multiple
18 times that SeaWorld had seen any such impact. In fact, Atchison claimed that
19 *Blackfish* was positively impacting SeaWorld by increasing awareness of the
20 Company's brand and pointed to the Company's "record attendance" in the fourth
21 quarter at its three branded parks, despite the overall 1.4% decline:

22 With respect to the impact on our business, I get asked that a lot, too.
23 ***As much as we're asked it, we can see no noticeable impact on our***
24 ***business.*** If you follow this -- even this recent announcement, our
25 SeaWorld parks had record attendance in the fourth quarter of the
26 year, and are out-performing our other parks by considerable margin.

26 ***

1 With respect to national surveys and data that we collect around our
2 reputation efforts and image, there's awareness of the movie that kind
3 of peaks and drops as CNN -- who is one of the owners of the movie,
4 by the way -- CNN shows it repeatedly from time to time, so that does
5 spike on occasion. ***But our surveys don't reflect any shift in
6 sentiment about intent to visit our parks.***

7 ***

8 A matter of fact, the movie in some ways has actually made perhaps
9 more interest in marine mammal parks, and actually even about us.
10 We have seen that reflected through certain visitor profiles, and
11 certain guest comments and things we get. The movie did not get an
12 Oscar nomination in January, and we continue to take proactive
13 efforts around communicating with our guests and business partners
14 and others.

15 ***

16 But ultimately the assertions by the animal rights, animal activist
17 community -- they don't necessarily burden themselves with fact, and
18 we have to deal with that from time to time. ***But we have seen no
19 impact on the business.***

20 107. Atchison's statement that "SeaWorld parks had record attendance in the
21 fourth quarter" and "are out-performing our other parks by considerable margin" was
22 incredibly misleading for several reasons. First, this "record attendance"
23 pronouncement was misleading because, as SeaWorld reports in its SEC filings,
24 "[a]pproximately two-thirds of the Company's attendance and revenues are generated
25 in the second and third quarters of the year." SeaWorld reported 4.5 million guests as
26 its total attendance at all its parks in 4Q13, which only equated to roughly one-sixth
27 of the total attendance (23.391 million) SeaWorld reported for FY 2013. Therefore,
this "record attendance" assertion created a misguided and disproportional
impression on investors. Second, Atchison's statement that SeaWorld-branded parks
"are out-performing our other parks by considerable margin" was misleading because

1 Defendants failed to mention that many of the non-SeaWorld branded parks were
2 partially or entirely *closed during 4Q13*. Specifically, according to SeaWorld’s SEC
3 filings, all of the following parks are closed for all or some of the winter quarter: (i)
4 Aquatica Orlando (Season: May – September); (ii) Water Country USA (Season:
5 May – September); (iii) Adventure Island (Season: March – October); (iv) Busch
6 Gardens Virginia (Season: March – October; December); and (v) Sesame Place
7 (Season: May – October; December). Thus, for SeaWorld to boast that its three
8 branded parks were out-performing its other parks by a considerable margin, when in
9 fact many of those “other parks” were actually closed during the quarter, is
10 misleading. Third, Atchison provided no detail to support the basis of his claim that
11 SeaWorld-branded parks experienced “record attendance.” While, on the same
12 earnings call, Heaney explained that “[a]nother way to think about the attendance in
13 the quarter was our SeaWorld branded parks were up in attendance and our other
14 parks were down which nets down to the 1.4% decline[,]” SeaWorld admittedly does
15 not disclose the attendance figures at its individual parks to its investors or the public.
16 Thus, SeaWorld’s concealment of these figures prevents investors from being able to
17 confirm the accuracy or falsity of this statement, leaving investors in the vulnerable
18 position of having to exclusively rely upon *ipse dixit* statements like Atchison’s
19 regarding the quarterly attendance figures at individual SeaWorld parks. For all of
20 these reasons, Defendants’ statements regarding the purported “record attendance” at
21 SeaWorld-branded parks during 4Q13—which investors had no way of verifying—
22 were dubious and misleading.

23 108. SeaWorld’s attendance slide continued. On May 14, 2014, Defendants
24 reported SeaWorld’s 1Q14 financial results. This time, Defendants announced a
25 *staggering 13% decline in attendance for the quarter*, which they again attributed,
26

1 in full, to factors other than *Blackfish* – the shift in the timing of Easter and Spring
2 Break and “above average precipitation in the Florida market as well as below
3 average temperatures in the Texas market for the first quarter of 2014.”

4 109. Despite the successive drops in attendance, most analysts continued to
5 accept Defendants’ stated reasons for the decline. For example, Macquarie (USA)’s
6 May 14, 2014 report noted “[a]ttendance drops are not new to SeaWorld as a public
7 company unfortunately, but again the reasons make sense and we are encouraged.”

8 Likewise, JP Morgan’s May 15, 2014 report noted, “[a]ttendance dropped 13% to
9 3.0m guests, with the roughly 0.5m loss in visitors attributed to weather (200K) and
10 Easter (250k) shifting out of the quarter. Cold weather in Texas and rain in Florida
11 resulted in fewer operating days at some parks.” However, the lone skeptic, S&P
12 Capital IQ, again questioned whether SeaWorld was telling the complete truth to the
13 market, noting in its May 15, 2014 Stock Report that “*negative publicity from a*
14 *Blackfish documentary (regarding captivity of killer whales) [had] notably weighed*
15 *on the 2013 second half attendance[,]”* and stating that while SeaWorld’s sharp 13%
16 drop in 1Q14 attendance is “partly attributable to this year’s Easter holiday calendar
17 shift, *we also see potentially lingering fallout from a recent documentary on killer*
18 *whales.”* S&P Capital’s market research and reports directly tie *Blackfish*
19 viewership, and the corresponding negative publicity surrounding it, to declining
20 attendance at SeaWorld parks during the Class Period.

21 110. Further, at least one financial reporter, *The Motley Fool*, appeared to
22 doubt SeaWorld’s denial of *Blackfish*’s impact, stating in a July 18, 2014 report,
23 “SeaWorld saw its attendance figures fall from 24.4 million in 2012 to 23.4 million in
24 2013, largely due to *Blackfish*.” Like S&P, *The Motley Fool* connected the negative
25 publicity from *Blackfish* to SeaWorld’s declining attendance, noting, “[s]trong brands
26

1 still need to be nurtured and protected[.]” Nevertheless, SeaWorld—the primary
2 source, who investors trusted to provide the complete truth—continued to deny that
3 *Blackfish* had any impact on its business.

4 111. Notwithstanding SeaWorld’s public denials regarding *Blackfish*’s impact
5 on attendance, the Company continued to pour resources into its counterattack
6 against the film, including increased retaliation using websites and social media.
7 SeaWorld created a website devoted to “Why ‘Blackfish’ is Propaganda, Not a
8 Documentary.” And, in or around June 2014, SeaWorld provided funding and
9 promotional support for the roll out of Awesome Ocean—a website fiercely critical
10 of *Blackfish* and animal-welfare advocates. According to his LinkedIn.com page,
11 Awesome Ocean’s Editor-in-Chief, Eric Davis has extensive experience in digital
12 marketing and brand management. Speaking to the *Orlando Sentinel* on SeaWorld’s
13 behalf, Fred Jacobs affirmed the importance of social media sites like Awesome
14 Ocean, stating “I would certainly characterize them as an important part of our
15 marketing and communications strategy.”

16 112. SeaWorld’s aggressive response to *Blackfish* did not stop there.
17 According to *Bloomberg*, at least as early as Thanksgiving Day in 2013, SeaWorld
18 sent employees to infiltrate PETA and pose as animal rights activists. A February 16,
19 2016 article on *The Dodo* reported that, according to a source close to SeaWorld, the
20 espionage campaign was authorized by SeaWorld vice president of communications,
21 Fred Jacobs. Jacobs was later fired, a move that, according to the *Dodo*’s source, was
22 an attempt to cover up the campaign.

23 113. Manby finally acknowledged that SeaWorld had asked employees to
24 infiltrate PETA on a February 26, 2016 earnings call in a statement that *NonProfit*
25 *Quarterly* interpreted as “admit[ting] that the practice of spying was at least
26

1 authorized and possibly intentionally utilized by some in management[.]”
2 SeaWorld’s stock dropped 11% on this news.

3 114. As set forth below, contrary to Defendants’ representations concerning
4 the putative lack of impact on attendance caused by *Blackfish*, Defendants knew or
5 recklessly disregarded that *Blackfish* was, in fact, causing a decline in SeaWorld’s
6 attendance and negatively harming its reputation and operations during the Class
7 Period.

8 **ii. The Reasons SeaWorld Provided For The Entire Decline In**
9 **Attendance In Each Quarter Throughout The Class Period**
10 **Are Not Plausible**

11 115. To the extent adverse weather conditions, school and holiday schedule
12 and pricing increases, did, in fact, impact SeaWorld’s attendance figures from April
13 2013 through May 2014, these factors were not and could not have been the
14 exclusive causes of the entire decline in attendance, as set forth below.

15 116. According to the 2013 TEA Report, nearly all of the major theme park
16 groups with locations in the U.S., including Disney and Universal, realized *increases*
17 in domestic attendance for 2013, as compared to 2012. For example, at its domestic
18 parks, Disney reported a 7% increase for the first half of 2013 (including 2Q13), and
19 comparable attendance figures to the prior year for the rest of 2013. Moreover,
20 Disney reported a record-setting 3% increase for 1Q14. For its parks located in
21 Orlando, Disney reported either an increase in or record attendance for every quarter
22 within the Class Period.

23 117. SeaWorld represents to investors that the Company benefits from the
24 “high concentration of theme parks operated by several companies” in Orlando and
25 Southern California, and that through its core attractions (i.e., orcas and other wild
26 animals) it offers a “complementary experience to those offered by fantasy-themed
27

1 Disney and Universal parks.” Thus, when SeaWorld’s competitor theme parks
 2 located in Florida and California—*i.e.* Disney and Universal—experienced increases
 3 in annual attendance for 2013 versus the prior year, SeaWorld should have seen
 4 comparable attendance figures. The same is true for 2014. However, as
 5 demonstrated below, SeaWorld did not see comparable attendance increases. Instead,
 6 it saw marked decreases in annual attendance in both 2013 and 2014, while its
 7 competitors enjoyed increases:

Park	Location	2012 Attendance	2013 Attendance	Change (%)	2013 Attendance	2014 Attendance	Change (%)
Magic Kingdom [Disney]	Lake Buena Vista, FL	17,536,000	18,588,000	6.0%	18,588,000	19,332,000	4.0%
Epcot [Disney]	Lake Buena Vista, FL	11,063,000	11,229,000	1.5%	11,229,000	11,454,000	2.0%
Animal Kingdom [Disney]	Lake Buena Vista, FL	9,998,000	10,198,000	2.0%	10,198,000	10,402,00	2.0%
Hollywood Studios [Disney]	Lake Buena Vista, FL	9,912,000	10,110,000	2.0%	10,110,000	10,312,000	2.0%
Islands of Adventure [Universal]	Orlando, FL	7,981,000	8,141,000	2.0%	8,141,000	8,141,000	0.0%
Universal Studios Florida [Universal]	Orlando, FL	6,195,000	7,062,000	14.0%	7,062,000	8,263,000	17.0%
SeaWorld Orlando [SeaWorld]	Orlando, FL	5,358,000	5,090,000	-5.0%	5,090,000	4,683,000	-8.0%
Disneyland [Disney]	Anaheim, CA	15,963,000	16,202,000	1.5%	16,202,000	16,769,000	3.5%
Cal. Adventure [Disney]	Anaheim, CA	7,775,000	8,514,000	9.5%	8,514,000	8,769,000	3.0%
Universal Studios Hollywood [Universal]	Universal City, CA	5,912,000	6,148,000	4.0%	6,148,000	6,824,000	11.0%
SeaWorld San Diego	San Diego,	4,444,000	4,311,000	-3.0%	4,311,000	3,794,000	-12.0%

[SeaWorld J	CA						
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118. As shown, each of SeaWorld’s main competitors in the same geographic regions, Disney and Universal, attained either comparable or increased attendance figures (over the prior year) in both 2013 and 2014, often achieving record attendance in spite of the same generally-applicable factors to which SeaWorld attributed its attendance decline. Indeed, a May 25, 2016 *Los Angeles Times* report noted that while the top 20 performing parks in North America experienced steady growth in 2013-2014, “[a]ttendance numbers at [SeaWorld] have been flagging since the release of the 2013 documentary ‘Blackfish.’” As alleged below, SeaWorld’s attribution of its entire attendance declines to weather, school year and holiday calendars, and pricing strategies – simply does not hold water.

119. **Adverse Weather**. It is well known within the industry and to investors that seasonal factors bear upon theme park operations. For instance, adverse weather conditions, particularly rain, can lead to “wash outs” at outdoor parks, most commonly during the summer months. Therefore, park operators typically anticipate and account for the impact on their operations of normal weather swings and occasional adverse weather. Of course, park operators in the same geographical location (like Disney, Universal, and SeaWorld in Orlando and southern California) are subject to the same weather conditions.

120. As reported by IBIS, however, “SeaWorld’s amusement parks are geographically dispersed, which helps the company protect itself from localized events and seasonal weather conditions.” Indeed, due to the location of its parks, seven of the Company’s eleven parks – including those in Orlando and California – are able to stay open year-round. Given this ability, Defendants regularly assured investors that weather-related impacts tend to flatten out over the course of a year.

1 For instance, during the 2Q13 Earnings Call, Atchison admitted that “over the long
2 term these weather effects tend to even out.” Defendants nonetheless repeatedly
3 blamed the weather as one reason for the decline in attendance during various
4 quarters in the Class Period and in 2013 as a whole.

5 121. For example, SeaWorld blamed one-third of the 9% decline in
6 attendance during 2Q13 on adverse weather, including within Orlando. But, as the
7 *Orlando Sentinel* reported following the Company’s earnings announcement:
8 “Neither the Walt Disney Co. nor Comcast Corp. [which owns Universal], both of
9 whom recently reported earnings for the same quarter, cited weather at Walt Disney
10 World or Universal Orlando.” TIME too was skeptical of SeaWorld’s weather-
11 related explanation for decreased attendance, noting that, “Disney and Universal
12 parks – which should also be affected by the factors mentioned – have been enjoying
13 record-high visitor numbers.” Alluding to *Blackfish*, the TIME writer noted that “the
14 downturn in visitor numbers has taken place during a summer when SeaWorld found
15 itself as the unfortunate subject of a documentary film,” suggesting that negative
16 publicity from *Blackfish* – not rain – was driving decreased attendance. But, again,
17 investors were left to rely on SeaWorld’s word.

18 122. Similarly, in 1Q14, SeaWorld attributed its staggering 13% decline in
19 attendance in part to “*adverse weather and fewer operating days in 2014.*” Yet,
20 despite being subject to nearly identical weather patterns, particularly as applied to
21 Orlando and California, Disney and Universal reported attendance figures for 1Q14
22 that were comparable to or higher than their attendance marks for the same quarter in
23 the prior year.

24 123. **School And Holiday Schedules.** Both the holiday and school calendar
25 impact theme park operations, attendance and revenue on a quarterly basis. For
26

1 instance, whether Easter and/or Spring Break fall within the first or second fiscal
2 quarter (i.e., in March or April) or overlap within a quarter has a discernible impact
3 on attendance (and therefore revenue derived from attendance and in-park spending),
4 boosting attendance in the quarter that contains Easter and Spring Break, and
5 lowering the attendance in the quarter that does not. As Heaney assured investors
6 during the Class Period, however, such impact largely flattens out over the course of
7 the full year: “The Easter effect, obviously, won’t repeat in the second half and that’s
8 one piece of attendance we’ll pick up in the third and fourth quarters.”

9 124. Nonetheless, Defendants allocated blame for half of the 13%
10 attendance decline in 1Q14 to the timing of Easter and Spring Break. This was
11 simply not plausible. In response, *Motley Fool*, among others, asked “[h]as *Blackfish*
12 hurt sales,” and questioned SeaWorld’s explanation in part due to the fact that rival
13 parks in the same geographic area were unaffected by exactly the same factors:
14 “Disney is often compared to SeaWorld, and Mickey’s theme parks saw increased
15 attendance in the first quarter, while SeaWorld’s dropped 13%, which it attributed to
16 a late Easter (that wasn’t in the first quarter) and weird spring-break timing. But why
17 didn’t late Easter eggs and confused spring breakers have the same effect on Disney
18 World?” CW-5 also doubted SeaWorld’s explanation, noting that weather and the
19 timing of Spring Break are the two most common reasons given by parks for a
20 decrease in attendance and that such reasons should not be taken as “gospel.” CW-5
21 went on to explain that because Spring Break is such a high volume time, and one
22 that can be planned for, theme park companies carefully plan and budget their
23 attendance for this time.

24 125. **Pricing.** It has become an “[a]nnual springtime tradition” in the theme
25 park industry for operators – particularly those located in central Florida – to increase
26

1 ticket prices around Memorial Day in anticipation of the annual boom in tourism that
2 accompanies summer school vacations, according to TIME. Each year, Disney,
3 Universal and SeaWorld seek to capitalize on the increased flow of consumers during
4 the summer months. Notably, as reported by TIME, whenever one raises prices, at
5 least one of the others (if not both) follows suit.

6 126. While for the entire 2013 fiscal year, SeaWorld blamed a purported
7 company-specific pricing strategy for some portion of the decline in attendance,
8 increased pricing and similar strategies actually boosted attendance figures at
9 SeaWorld's competitors. For example, in the summer of 2013, each of the Big Three
10 implemented pricing increases. In May 2013, TIME reported that Universal Orlando
11 raised the price of single-day admission to \$92, becoming the first theme park to
12 cross the \$90 admission mark. Likewise, the *Los Angeles Times* noted that Disney
13 raised entry prices to both of its parks in June 2013, including raising a single-day
14 adult ticket 6%. In June 2013, SeaWorld too raised admission prices to \$92 and \$89
15 for a single-day adult ticket at SeaWorld Orlando and Busch Gardens Tampa,
16 respectively.

17 127. Notwithstanding the fact that they also implemented pricing increases
18 applicable to their companies' flagship parks in Orlando, Disney and Universal,
19 unlike SeaWorld, met or beat prior attendance numbers in 2013, and throughout the
20 Class Period. When Atchison claimed a portion of the 9% drop in 2Q13 was part of
21 SeaWorld's willing and "deliberate" effort to decrease the number of visitors as a
22 trade-off for high-priced admissions and revenues per guest, TIME again questioned
23 the veracity of the excuse, citing the experience of SeaWorld's competitors just down
24 the road.

1 128. Additionally, while SeaWorld raised certain baseline ticket prices, in a
2 historically rare and unexpected move, it slashed certain other ticket prices in
3 multiple markets following the announcement of SeaWorld's 2Q13 9% attendance
4 decline. *Bloomberg* reported on August 29, 2013 that SeaWorld Orlando had cut \$42
5 off the price of a midweek ticket purchased online (a 46% discount) while SeaWorld
6 San Antonio had started offering a free children's ticket with an adult ticket purchase
7 midweek, a \$71 value. CW-2 believed that SeaWorld executives resorted to lowering
8 prices in an attempt to attract guests. As reported on August 29, 2013, Dennis
9 Speigel, president of International Theme Park Services Inc., told *Bloomberg*
10 "[w]hen you're seeing those kinds of discounts in the first part of August, that's
11 telling you attendance is off." Mary Waring, owner of a website that provides
12 information about theme parks and theme-park centric vacation packages – told
13 *Bloomberg* that in the "10-plus years" she had been listing SeaWorld coupons and
14 deals online, she had "never seen a SeaWorld promotion" as "aggressive."

15 129. In or around late-February 2014, both Disney and Universal raised
16 prices for single-day admission tickets. Commenting on Disney's early increase,
17 Doug Mitchelson, a Deutsche Bank analyst, told the *Orlando Business Journal* that
18 the early increase ***evidenced positive park attendance trends across the board***: "The
19 increase came more than three months earlier than last year, which suggests that park
20 attendance trends must be healthy enough that [management] believes a price
21 increase will not unduly negatively impact marketing." Like clockwork, in May
22 2014 SeaWorld raised its general admission price \$3 for both SeaWorld Orlando and
23 Busch Gardens. However, while Disney and Universal saw attendance rise,
24 SeaWorld once again failed to catch on to the "healthy" "park attendance trend,"
25 ***dropping 13% in attendance for that quarter.***

1 **E. Unlike Its Competitors, SeaWorld Was Plagued By *Blackfish*,**
2 **Which Generated Extraordinary Negative Public Response and**
3 **Media Attention Throughout The Class Period**

4 130. Unlike Disney and Universal, prior to and throughout the Class Period
5 SeaWorld was under continual fire arising from the damning indictment of the
6 Company's business practices in *Blackfish*. From the time the film premiered in
7 January 2013, the media regularly reported on *Blackfish* and its potential negative
8 impact on SeaWorld's reputation and business. As its distribution and notoriety
9 increased after January 2013, the film sparked a groundswell of anti-SeaWorld
10 commentary and action from an ever-expanding bloc of public citizens, both
11 prominent and grassroots. This phenomenon was even given a name – the *Blackfish*
12 effect – by observers. It entailed traditional forms of protest, such as demonstrations
13 and lobbying by interest groups, and also leveraged the influence of modern forms of
14 social media, such as online petitions, issue-dedicated websites and celebrity
15 statements on broadcast platforms such as Twitter. These and other responses
16 generated by *Blackfish* urged the public to boycott SeaWorld's parks in response to
17 the Company's treatment of its killer whales, and put pressure on organizations and
18 individuals doing business with SeaWorld to end existing or planned relationships
19 with the Company.

20 131. Such facts led the media, as well as analysts following and reporting on
21 SeaWorld, to query whether at least a portion of the Company's remarkable
22 attendance decline was attributable to consumer sentiment and brand harm from
23 *Blackfish*. However, despite the ever-growing public backlash stemming from the
24 film, Defendants repeatedly assured investors that *Blackfish* was not having any
25 impact whatsoever on SeaWorld's declining attendance.

1 135. Prominent celebrities utilized Twitter to urge their millions of followers
2 – many of whom fell squarely within SeaWorld’s target market of people between
3 ages ten (10) and nineteen (19) – to watch *Blackfish* and avoid SeaWorld.
4 Specifically, around the time of *Blackfish*’s theatrical release in July 2013, celebrities,
5 including Olivia Wilde, Ellen Page, Evan Rachel Wood and Kesha, each made
6 statements on their Twitter pages encouraging followers to watch the film, and
7 condemning the apparently inhumane treatment of animals by SeaWorld. For
8 example, on July 17, 2013, Olivia Wilde, who maintains 1.5 million followers, wrote:
9 “Only movie I want to go see this week: Blackfish. Watch out, Sea World. We are
10 on to you.” On August 12, 2013 Singer Kesha, who maintains 3.6 million followers,
11 urged her followers to watch the film writing, “ANIMALS! Learn the truth about
12 marine mammal theme parks: <http://t.co/jn7eSGQSzs> @humanesociety
13 @MagnoliaPics #Blackfish.” Likewise, on September 8, 2013, Russell Brand, who
14 maintains more than 9 million followers tweeted, “Do watch “Black Fish”. Don’t go
15 to SeaWorld, a stain upon humanity posing as entertainment.
16 #liftedfromanearlyreviewofmine.”

17 136. The social media conversation generated by *Blackfish* reached a fever
18 pitch following the CNN premiere of the film on October 24, 2013. This was no
19 accident. Lila King, CNN’s senior director for social news, explained that CNN
20 aimed to create a parallel experience on Twitter and TV stating, “Our approach was
21 to create a back channel to the broadcast, featuring live Tweets from experts [...] and
22 many others.” King explained that CNN purposely integrated Twitter into the
23 broadcast by inviting “our audiences to join the conversation by showing the
24 #blackfish hashtag on the screen, and also curating the conversation in live blog on
25 CNN.com.”

1 137. CNN’s strategy of deliberately leveraging social media on Twitter to
2 boost TV ratings by creating a synergistic effect between its cable network and its
3 internet and social media platforms worked. On the CNN premiere night alone, there
4 were 67,673 Tweets seen by 7.3 million people about *Blackfish*, which made it the
5 most talked about show on CNN in October 2013. According to CW-1, *Blackfish*
6 became a trending topic shortly after it aired. In the weeks following the premiere, as
7 confirmed by CW-1, numerous high-profile celebrities, with some of the most
8 followed accounts on Twitter, continued to Tweet about the film and their disdain for
9 SeaWorld and its brand, thereby magnifying the scale of the controversy surrounding
10 SeaWorld’s apparent mistreatment of its orcas.

11 138. For example, on November 3, 2013, then nineteen (19) year old singer
12 and former Nickelodeon star Ariana Grande, who maintains 26.2 million followers
13 on Twitter, wrote, “I highly recommend all of my fans watch #Blackfish and never
14 go to @Seaworld again. Used to love that place. Beyond heartbroken #Free Tilly.”
15 Grande’s statement excoriating SeaWorld was the most re-tweeted of that
16 night. Among other high-profile celebrities with massive Twitter followings to
17 Tweet disparaging statements about SeaWorld in light of *Blackfish* were: (i) Miley
18 Cyrus, with 19.2 million followers; (ii) Stephen Fry, with 8.6 million followers; and
19 (iii) Zach Braff, with 1.4 million followers.

20 139. As reported by CNN on December 20, 2013, social media sites became
21 and remained “filled with comments from people vowing they’ll never go to the
22 [SeaWorld-owned] parks again after viewing the film.” According to CW-1, by
23 January or February 2014, SeaWorld began an effort to respond to social media
24 postings as they occurred. Typically, the Company would post a link to their “open
25 letter,” discussed above. CW-1 worked within a so-called “war room” in which she
26

1 and other employees in Interactive Marketing worked on various digital media for the
2 Company's website in response to *Blackfish*. However, CW-1 stated that when
3 SeaWorld would respond, the anti-SeaWorld sentiment would only magnify.

4 140. According to CW-2, *Blackfish* was at least partially the reason for
5 declines in attendance in 2013 and early 2014, when she left the Company. In fact,
6 CW-2 attended weekly meetings that were also attended by the General Manager, the
7 Vice President of Marketing and the Vice President of Finance for SeaWorld's San
8 Antonio park, where attendance at the park was discussed and, in at least one such
9 meeting held between the time of *Blackfish*'s release and February 2014, she recalled
10 that it was acknowledged that the negative press from *Blackfish* seemed to be having
11 an impact on attendance.

12 **ii. External Polls And News Stories Showed That *Blackfish* Had**
13 **Negatively Impacted The Public's Willingness To Attend**
14 **SeaWorld Parks**

15 141. In order to gauge public sentiment on *Blackfish*, various media groups
16 and publications conducted surveys to poll the public. CNN, for example, ran a poll
17 during an October 25, 2013 episode of *Crossfire* asking viewers "[w]ould you take
18 your kids to SeaWorld" in light of the information revealed by *Blackfish*. Of
19 approximately 3,000 responses, 86% stated "No."

20 142. Tellingly, SeaWorld was caught red-handed attempting to manipulate
21 the results of a similar poll conducted by the *Orlando Sentinel* in January 2014.
22 Shortly after the poll began, it was revealed by the news group that more than 50% of
23 the responses were from an IP address owned by SeaWorld. Ultimately, once this
24 tactic was uncovered and the poll was cleansed, two-thirds of voters responding to
25 that poll – which asked whether "CNN's 'Blackfish' [sic] documentary changes your
26 perception of SeaWorld" – answered in the affirmative. Had SeaWorld not believed

1 that *Blackfish* was affecting its business, SeaWorld would have seen no need to
2 manipulate the results of such polls in January of 2014.

3 143. Similarly, *Blackfish* prompted schools to either cancel long-standing
4 annual field trips to SeaWorld's parks or publicly swear off attending the parks until
5 SeaWorld changed its policies. For example, just weeks after *Blackfish* aired on
6 CNN, in November 2013, San Diego's Point Loma High School produced a striking
7 video response to the film, vowing never to return to the parks until the whales and
8 animals were retired from show business. The video entitled "Dear SeaWorld,"
9 received nationwide attention, was aired on CNN and reported on by numerous
10 publications and received a "Compassionate Classroom Award" from PETA, which
11 also made the video available on its website. As reported by CNN in December
12 2013, Point Dume Marine Science Elementary School in Malibu, California –
13 prompted by the concerns of a 10-year old – abruptly canceled its long-standing trip
14 to the Company's park over concerns about the treatment of whales as shown in
15 *Blackfish*. These cancellations and others indicated that children and teens – the
16 individuals who drive parents and families to travel to the parks – were no longer
17 supporting SeaWorld.

18 **iii. The "*Blackfish* Effect" Swallowed SeaWorld's Annual Music**
19 **Festival**

20 144. Each year SeaWorld hosts "Bands, Brew & BBQ," a live concert series
21 at SeaWorld Orlando and Busch Gardens in Tampa during February and March,
22 featuring top classic rock and country bands and artists, BBQ from Central Florida's
23 top local smokehouses, and other festivities. The concerts are included with regular
24 admission to the parks. According to SeaWorld's public filings, the Company's
25 market is "further diversified among a more stable base of local visitors, non-local
26 domestic visitors and international tourists." "Bands, Brew and BBQ" is part of the

1 Company's stated business strategy to "increase non-peak demand through seasonal
2 and special events and concerts" – i.e., to drive off-season attendance in prime
3 markets. SeaWorld Orlando and Busch Gardens in Tampa depend on the annual
4 "Bands, Brew and BBQ" concert series to increase park attendance and overall
5 revenue during the typically slow mid-winter months.

6 145. In late 2013, as the *Blackfish* controversy continued ablaze, nearly every
7 act slated to perform at "Bands Brew and BBQ" received a petition through
8 Change.Org (along with significant pressures from other social media platforms)
9 imploring the band or artist to cancel its performance. Change.org is the world's
10 largest online petition platform and seeks to empower individuals to create change by
11 offering them the ability to start a campaign and mobilize supporters. These
12 particular petitions were successful, prompting nearly every artist scheduled to
13 perform at the series in February and March 2014 to withdraw. Beginning in
14 November 2013 and through mid-January 2014, the following artists canceled their
15 performances: (i) The Barenaked Ladies; (ii) Willie Nelson; (iii) Cheap Trick; (iv)
16 Heart; (v) Martina McBride; (vi) 38 Special; (vii) Trisha Yearwood; (viii) REO
17 Speedwagon; (ix) Pat Benatar; and (x) Beach Boys.

18 146. For example, The Barenaked Ladies – the first to withdraw – received a
19 petition signed by 11,782 supporters, prompting the group to alert the public on their
20 Facebook page: "This is a complicated issue, and we don't claim to understand all of
21 it, but we don't feel comfortable proceeding with the gig at this time." Activists
22 successfully directed similar online petitions at other performers including Willie
23 Nelson, Trisha Yearwood, and Cheap Trick.

24 147. In nearly every instance, the artist specifically cited the controversy
25 surrounding *Blackfish* as the basis for the cancellation. In explaining his decision to
26

1 cancel, Willie Nelson condemned SeaWorld's practices, stating, "I don't agree with
2 the way they treat their animals, [...] it wasn't that hard a deal for me." Likewise,
3 sisters Nancy and Ann Wilson of Heart acknowledged their decision to cancel at
4 SeaWorld was "due to the controversial documentary film."

5 148. These cancellations attracted international attention, as news sources
6 reported on each successive cancellation over the seven week period beginning
7 November 27, 2013 with The Barenaked Ladies' announcement and continuing
8 through January 15, 2014 with the Beach Boys' announcement that they would not
9 perform. A December 11, 2013 *Orlando Sentinel* article entitled, "Will SeaWorld
10 face long-term 'Blackfish' backlash?" noted that, at a minimum, withdrawals from
11 the concert series "threatened to sabotage SeaWorld's 'Bands, Brew and BBQ'
12 program," which the park depended on "to drive traffic during the typically slow
13 midwinter months." Potentially much more damaging, the article noted that the
14 cancellations might help "sustain *Blackfish* in the public consciousness, raising the
15 risk that the film and its criticisms could do lasting damage to SeaWorld's brand."

16 149. Atchison admitted in his December 20, 2013 interview with the *Orlando*
17 *Sentinel* that the cancellations "ended up getting more coverage and became a story
18 of its own." Atchison further explained that the Company decided to publish the
19 December 2013 full-page open letter on social media and within major newspapers in
20 order to refute what he described as "misconceptions that were floating around
21 related to that coverage." SeaWorld's ad, entitled "Open Letter from SeaWorld's
22 Animal Advocates" was widely viewed as evidence that the Company was
23 "concerned about potential long-term brand damage from *Blackfish*," as reported by
24 the *Sentinel*, and was, according to CNN and the *Orlando Business Journal*,
25
26

1 concerned by both *Blackfish*'s "impact on a very key part of their audience" and "the
2 attention generated by Blackfish and the accompanying musical guest cancellations."

3
4 **iv. In The Wake Of *Blackfish*, Long-Standing SeaWorld
5 Sponsors And Strategic Partners Jumped Ship**

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

10 151. For example, in October 2013, activists initiated a Change.org petition
11 urging Southwest Airlines to end its relationship with SeaWorld. By January 2014,
12 the petition had garnered 27,000 signatures. In a widely reported story, dozens of
13 protesters delivered the petition to Southwest's headquarters in Dallas on January 9,
14 2014, prompting the airline to publicly respond. According to CW-1, Southwest
15 contacted SeaWorld and inquired about *Blackfish* in response to a slew of negative
16 Facebook and Twitter messages Southwest was receiving due to its association with
17 SeaWorld. Southwest did not cut ties with SeaWorld immediately, but
18 acknowledged the *Blackfish* controversy stating: "We are engaged with SeaWorld
19 related to the recent concerns being raised. We are in a listening and education
20 mode."

21 152. In November 2013, petitions by PETA and the public implored Macy's
22 to ban SeaWorld from participating in the annual Macy's Thanksgiving Parade later
23 that month. According to the *Huffington Post*, Macy's also received more than
24 80,000 emails to this end, while an online petition started by PETA seeking a similar
25 ban likewise received more than 80,000 signatures.

1 153. The impact of these petitions, collectively signed by hundreds of
2 thousands of individuals, was amplified by extensive media coverage of them. For
3 example, a January 15, 2014 article on CNBC entitled, “Southwest Air, others,
4 pressured to break ties with SeaWorld” discussed the Change.org petition directed at
5 Southwest and noted that “on Change.org alone, there are more than two dozen
6 ‘Blackfish’-inspired petitions, including one asking Toys R Us to stop selling a
7 SeaWorld-themed Barbie and another asking Groupon to stop featuring discounted
8 SeaWorld deals.” Similarly, a January 13, 2014 National Geographic article
9 reporting on the *Blackfish* effect noted that there were more than twenty-one (21)
10 *Blackfish*-inspired Change.org petitions, including many aimed at destroying
11 SeaWorld’s relationships with corporate sponsors and partners, among them
12 Southwest Airlines, Toys R Us, and Groupon.

13 154. A Change.org petition was also effective in persuading Taco Bell, which
14 had been offering discounts on tickets to SeaWorld, to cut ties with SeaWorld in May
15 2014. Likewise, on May 16, 2014, after consulting PETA, STA Travel, a company
16 which provides flights, accommodation, tours and expeditions for 2.5 million
17 students and young people, announced that it would stop booking trips to SeaWorld
18 in Orlando and San Diego.

19 155. By this point, association with SeaWorld was perceived as being so
20 toxic that on June 22, 2014 Outdoor Play, a company specializing in outdoor apparel
21 and equipment, declined to fill an order placed by SeaWorld. The CEO of Outdoor
22 Play wrote in a letter to SeaWorld, “Although I would love to take your money, our
23 company does not support the ethics of your business model.” Likewise, on July 24,
24 2014, Savings.com, a company that specializes in digital coupons, stopped offering
25
26
27

1 deals on SeaWorld tickets after Savings.com’s chief executive officer was contacted
2 by PETA and watched *Blackfish*.

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

11 157. Following the Southwest Airlines announcement, other important
12 corporate partners followed suit, and ended their relationships with SeaWorld. In
13 October 2014, the *Orlando Sentinel* reported that Virgin America, JetBlue, and
14 Alaska Airlines also had terminated their promotional partnerships with SeaWorld.
15 In November 2014, the *Orlando Sentinel* reported that Panama Jack, an Orlando-
16 based sunscreen company, would end its relationship with SeaWorld effective
17 February 2015. Finally, on November 14, 2014, Hyundai Motors America
18 Communications Executive Director Chris Hosford confirmed that Hyundai had
19 “ended its relationship with SeaWorld.” Remaining sponsors American Express and
20 British Airways are currently subject to similar pressures through Change.org
21 petitions, signed by 75,000 and 265,000 individuals, respectively.

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

1 that the proposed bill contained measures “largely motivated by *Blackfish*” and that
2 the “movie’s director, as well as three opponents of SeaWorld’s treatment of killer
3 whales interviewed in the film, appeared” with the sponsor of the bill at the press
4 conference announcing the bill. Similarly, on April 8, 2014, *USA Today* reported
5 “Assemblyman Richard Bloom, D-Santa Monica, has proposed legislation banning
6 the use of orcas for performance purposes at California aquatic theme parks as a
7 result of details revealed in the movie *Blackfish*.” Several other articles published on
8 March 7, 2014 in outlets as diverse as *NPR* and *The Hollywood Reporter* repeatedly
9 referenced *Blackfish* when reporting on the proposed bill and its potentially
10 disastrous effects for SeaWorld’s business. Accordingly, the direct link between
11 *Blackfish* and the California legislation it precipitated were squarely in the public eye.

12 162. However, as *TIME* reported in its online news platform on April 8,
13 2014, “the so-called *Blackfish* bill” was tabled “for further study at a committee
14 hearing in Sacramento.” According to *TIME*, the study was expected to take
15 approximately twelve (12) months. The California Assemblyman who introduced the
16 bill was later quoted by *Bloomberg* as stating, with respect to the bill’s tabling in
17 April 2014: “SeaWorld went to the mat on this issue,” and brought in “big guns” to
18 lobby for the bill to be tabled.

19 **F. The Truth Concerning *Blackfish*’s Impact On SeaWorld Emerges**

20 163. On August 13, 2014, SeaWorld finally admitted, for the first time, that
21 *Blackfish* was hurting attendance at SeaWorld parks. Specifically, SeaWorld stated
22 “attendance in the [second] quarter was impacted by demand pressures related to
23 recent media attention surrounding proposed legislation in the state of California
24 [i.e., the ‘*Blackfish* Bill’].” Although SeaWorld refused to say the word “*Blackfish*”,
25 SeaWorld’s statement “effectively serve[d] as an admission that, despite claims to
26

1 *the contrary, the movie ha[d] indeed had an adverse effect on the business.”⁶*

2 Myriad news sources reporting on this announcement construed SeaWorld’s
3 statement as a belated admission that *Blackfish* was hurting attendance—an
4 admission so stark that *The Wall Street Journal* described it as an “about face.”

5 164. In direct response to this news, SeaWorld’s common stock price tanked
6 \$9.25 per share, or nearly 33%.

7 165. More specifically, on August 13, 2014, SeaWorld: (i) filed with the
8 SEC the Company’s quarterly report on Form 10-Q for the three-month period ended
9 June 30, 2014 (the “2Q14 Form 10-Q”), which was signed by Heaney and Swanson;
10 (ii) issued a press release announcing its second quarter 2014 results (“2Q14 Press
11 Release”); and (iii) held the Company’s second quarter earnings conference call
12 (“2Q14 Earnings Call”), in which Atchison and Heaney participated on behalf of
13 SeaWorld. SeaWorld disclosed dismal revenues, driven by weak attendance levels,
14 for the second quarter and the first half of 2014, severely cut its revenue guidance for
15 the year, and attributed its disappointing performance in part to *Blackfish*-related
16 causes.

17 166. SeaWorld disclosed that in 2Q14 its revenues had fallen 1%, or \$6.1
18 million, compared to 2Q13, and that its revenues for the first half of 2014 were down
19 \$32.5 million, or 5%, compared to the first half of 2013. The Company further
20 disclosed that in 2Q14 it had earned \$0.43 per diluted share, and revised its revenue
21 guidance for 2014 sharply downwards, stating “the Company now expects full year
22 2014 revenue ... to be down in the range of 6-7% ... compared to the prior year.”

23
24
25 ⁶ “SeaWorld Finally Confirms a *Blackfish* Backlash to Investors,” *Adweek.com*,
26 August 13, 2014.

1 167. In an attempt to explain these disappointing results, SeaWorld stated that
2 the “decrease in revenue was driven by a 4.3% decline in attendance” in the first half
3 of 2014, and that “[a]ttendance for the first half of 2014 was largely impacted by a
4 decrease at the Company’s destination parks primarily in the second quarter as
5 discussed in the preceding section.” In “the preceding section,” SeaWorld stated that
6 “lower attendance at the Company’s destination parks [was] due to a combination of
7 factors,” including the school calendar, new attractions at the Company’s competitor
8 parks, and a delay in opening a SeaWorld attraction. “[I]n addition,” SeaWorld
9 stated, “*the Company believes attendance in the quarter was impacted by demand*
10 *pressures related to recent media attention surrounding proposed legislation in the*
11 *state of California.*”

12 168. The Company’s reference to “legislation” obviously was a reference to
13 the so-called “*Blackfish* Bill,” and the entire “*Blackfish* effect” caused by the film.
14 See ¶¶160-61. Indeed, no reasonable person could construe SeaWorld’s August 13,
15 2014 disclosure as anything but an admission that *Blackfish* was a cause of
16 SeaWorld’s attendance declines. Although SeaWorld specifically referred to the
17 legislation instead of more candidly calling *Blackfish* by name, it was widely
18 understood that SeaWorld’s reference to the *Blackfish* Bill was an admission of the
19 impact of *Blackfish* itself. For example, on August 12, 2014, Cinemablend.com
20 reported:

21
22 SeaWorld reveal[ed] the financial results for the second quarter of
23 2014, and within the wording **the company finally admits that they**
24 **have a bit of a *Blackfish* problem** While SeaWorld didn’t
25 specify *Blackfish*’s impact by name, the quote you read above is
26 actually a huge step when compared to the amount of denial that was
27 coming out of the company about the documentary.

1
2 169. That same day, the *Wall Street Journal* reported that SeaWorld blamed
3 its “disappointing second-quarter results” on the “recent media debate about its
4 treatment of captive orcas, saying the negative attention has hurt attendance.” The
5 report further stated that “the controversy was sparked last year in the wake
6 of *Blackfish*,” and that the Company’s attribution of attendance declines to “demand
7 pressures related to recent media attention surrounding proposed legislation” was a
8 reference to the California bill proposed in March 2014 “aiming to restrict
9 SeaWorld’s ability to showcase some animals in that state.”

10 170. SeaWorld’s announcement was widely recognized as a long overdue
11 acknowledgment of *Blackfish*’s impact on the Company since the film debuted.
12 Indeed, several media sources observed that SeaWorld’s announcement was the end
13 of the Company’s long period of denial regarding *Blackfish*’s effect on SeaWorld’s
14 business. Indeed, the *Wall Street Journal* concluded that the Company’s admission
15 that *Blackfish* had hurt attendance and revenues represented “*an about face for*
16 *SeaWorld*, which late last year was singing a different tune,” citing Atchison’s
17 December 2013 statement that *Blackfish* had “had no impact on our business.”
18 Similarly, in an August 13, 2014 *New York Magazine* article entitled “SeaWorld:
19 Remember When We Said That *Blackfish* Movie Didn’t Hurt Us? Well Never Mind,”
20 Kevin Roose noted that SeaWorld attempted to first ignore the film then attack it, all
21 while maintaining that the film had no impact on business. Specifically, Roose
22 noted:

23
24 SeaWorld changed course, and admitted, finally, that the backlash is
25 taking a toll after all. . . . *In today’s press release, SeaWorld admitted*
26 *for the first time that Blackfish may be hurting attendance*, blaming
27

1 people skipping their parks owing to ‘recent media attention
2 surrounding proposed legislation in the state of California.

3 171. Roose likened SeaWorld’s conduct to that of Big Tobacco, “which
4 remained enormously profitable even as its public image was being attacked, then
5 woke up years later to find that, actually, all those anti-smoking ad campaigns had
6 made a mark.” *Adweek.com* reported, in an August 13, 2014 article entitled,
7 “SeaWorld Finally Confirms a *Blackfish* Backlash to Investors:”
8

9 SeaWorld has been very insistent in its messaging since CNN’s
10 Blackfish expose surfaced with variations on ‘The documentary is
11 skewed and it will not affect our business in any way.’ . . . Today,
12 however, the company officially changed its tune in a telling press
13 release. . . . Earlier this year, USA Today tied the law [the Blackfish
14 Bill], proposed by California assemblyman Richard Bloom, directly to
15 ‘details revealed in the movie Blackfish.’ Even if the act (which has
16 been ‘tabled’ in the interest for further research) fails to pass, *this
17 release effectively serves as an admission that, despite claims to the
18 contrary, the movie has indeed had an adverse effect on the
19 business.*

17 172. The *Christian Science Monitor* likewise reported on August 13, 2014,
18 “[f]or *the first time*, SeaWorld is saying that media attention surrounding the
19 treatment of its animals is hurting attendance at its parks.” The report quoted an
20 industry expert as follows:
21

22 “[SeaWorld’s] attendance has been flat since Blackfish came out,’
23 Andy Brennan, lead analyst at IBISWorld, an industry research group,
24 said in an interview. ‘Essentially the company in previous statements
25 said the decline in attendance was caused by other factors, but now
26 they are having to justify bad earnings and why stock prices are going
27 down.’ Mr. Brennan said SeaWorld ‘is underperforming compared to

1 [other companies] in industry’ and that the negative attention is to
2 blame.”

3 173. Moreover, on August 14, 2014, the *New York Post* directly tied
4 SeaWorld’s announcement to *Blackfish* and quoted another industry expert who also
5 explicitly recognized the longstanding effect of *Blackfish* on SeaWorld:

6
7 Investors in SeaWorld got soaked Wednesday as shares of the
8 embattled theme-park operator tumbled 33 percent – erasing \$832
9 million from shareholder portfolios. The company said it expects
10 revenue to decrease by up to 7 percent this year – a drop greater than
11 Wall Street expected – as the fallout from “Blackfish,” a documentary
12 last year about the alleged harm caused to orca whales in captivity,
13 started to hurt attendance. Last month, amid the “Blackfish”
14 controversy, Southwest Airlines announced it would end its 26-year
15 partnership with the Orlando, Fla., company. . . . Dennis Spiegel,
16 president of International Theme Park Services, a consulting firm,
17 said the short-term investment focus of the private-equity giant likely
18 hurt SeaWorld during a time it needed to shift its business strategy.
19 “They didn’t take the offensive soon enough on ‘Blackfish,’” he told
20 The Post. “An owner for whom this was the core focus may have
21 addressed it differently.” . . . “This snowball is getting larger and
22 larger and it has to be crushed by SeaWorld,” Spiegel said, alluding to
23 the “Blackfish” controversy.

24 174. These publications were not alone in their assessment of SeaWorld’s
25 announcement. Far from it, as the following table demonstrates, SeaWorld’s August
26 13, 2014 announcement was widely recognized as a long overdue admission that
27 *Blackfish* had negatively affected SeaWorld’s business for some time.

Source	Title	Quote	Date
Financial Times	<i>SeaWorld Shares Hit as Negative Publicity</i>	“Shares in SeaWorld tumbled 33 per cent on Wednesday after the amusement park group forecast a revenue decline of 6.7 per cent this year, driven in part by	8/13/14

1		<i>From Film Hits Revenue</i>	negative publicity from a film criticising the treatment of its captive killer whales.... The film <i>Blackfish</i> , released in 2013, spawned protests that the company said particularly hit revenues at its San Diego park.... [T]his quarter marks the first time management has mentioned <i>Blackfish</i>-related issues in its earnings results”	
2	Skift.com	<i>SeaWorld Concedes Blackfish Hurt Attendance in Second Quarter</i>	“Shares of SeaWorld Entertainment were tanking August 13 after the theme park company conceded that adverse publicity about restrictive California legislation, which comes on the heels of the <i>Blackfish</i> documentary, negatively impacted attendance.”	8/13/14
3	Times of San Diego	<i>SeaWorld Stock Takes Dive as Park Admits ‘Blackfish’ Protests Hit the Mark</i>	“ SeaWorld’s stock (NYSE: SEAS) took a serious hit Wednesday as the company admitted the PETA/Blackfish protests have taken a toll on the amusement parks’ bottom line. . . . The documentary <i>Blackfish</i> , which outlined activists’ concerns about killer whales kept in captivity, along with a campaign launched by PETA, the animal rights group, against SeaWorld, helped drive state lawmakers to consider banning parks from using orcas in shows. The legislation stalled, but the criticism persists.”	8/13/14
4	IndieWire.com	<i>‘Blackfish’ Backlash Hurts SeaWorld’s Bottom Line</i>	“When ‘ <i>Blackfish</i> ’ was released, SeaWorld said the documentary wouldn’t hurt business, but clearly that hasn’t been the case. With all the talk of measuring the impact of documentaries, in the case of ‘ <i>Blackfish</i> ,’ Gabriela Cowperthwaite’s documentary about the danger of keeping whales in captivity, the effect is clear: SeaWorld reported today that its stock has dropped, largely due to the film. ”	8/13/14
5	San Diego Union Tribune	<i>SeaWorld Stock Plunges, ‘Blackfish’ Blamed</i>	“[SeaWorld] shares tumbled 32 percent to \$19.16 in mid-day New York trading after falling to \$19.30, the lowest since they started trading in April 2013. Before Wednesday, SeaWorld shares had retreated 23 percent in a year following the release of ‘ <i>Blackfish</i> ’. . . . The company acknowledged for the first time that pressure from animal-rights groups is reducing attendance, said Barton	8/13/14

		Crockett, an analyst at FBR & Co. . . .”		
1	New York Times	<i>Media Scrutiny Drags on Earnings at SeaWorld</i>	“SeaWorld is still reeling from the effects of the negative media attention it has received over its treatment of captive orca whales. . . . The drop in stock price is the latest indication of the damage inflicted by the adverse coverage in the news media. SeaWorld came under scrutiny last year after the release of ‘Blackfish,’ a documentary that presents a harsh look at killer whales in captivity.”	8/13/14
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7	The Daily Beast	<i>Whale Mistreatment Charges Sink SeaWorld</i>	“SeaWorld Entertainment shares fell 33 percent on Wednesday, indicating that allegations of animal mistreatment are taking a financial toll. . . . Animal-rights activists have been hitting SeaWorld hard since <i>Blackfish</i> , a movie that accuses the park of mistreating orca whales, came out last year. For the first time, SeaWorld executives admitted that the bad publicity has hurt its bottom line, rather than attribute the drop to ticket price increases or holiday schedules as they have in the past. ”	8/13/14
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14	CNBC’s “Mad Money with Jim Cramer”	<i>The Mad Dash: “SeaWorld Sinks”</i>	“It’s almost as if people were on strike. They’re not going to SeaWorld. This is amazing. . . . Do we think it could be because of a documentary? You know, this <i>Blackfish</i> documentary’s been out there for a long time. I have to tell you, it’s gotta, yeah, it’s gotta play a role. I mean, this is astounding—the decline. . . . The documentary had to have played a big role. ”	8/13/14
15				
16				
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19	Forbes	<i>SeaWorld Shares Plummet As Killer Whale Protests Hurt Parks</i>	“Shares of amusement parks operator SeaWorld fell drastically on Wednesday morning after the company reported disappointing earnings for the second quarter. The cause: more fallout from attention to SeaWorld’s treatment of orcas. . . . The 2013 hit documentary ‘Blackfish,’ which focused on the captivity of one orca who killed three people, shed light on the consequences of keeping the animals in captivity. The media attention has hurt SeaWorld’s bottom line.”	8/13/14
20				
21				
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25	DailyMail.com	<i>SeaWorld’s Profits Fall</i>	“Shares of SeaWorld Entertainment Inc. (SEAS) fell Wednesday after the theme	8/13/14
26				

<p>1 2 3 4 5 6 7</p>	<p><i>\$42MILLION Below Wall Street's Expectations After Devastating Blackfish Documentary</i></p>	<p>park operator reported second-quarter profit and sales that missed Wall Street expectations and cut its outlook for the year. The Orlando, Florida-based company also said it believes attendance during the period was hurt by negative publicity surrounding its treatment of killer whales, which are trained to perform tricks. A documentary last year called Blackfish suggested that the company's treatment of the killer whales provokes violent behavior from them, which in turn has led to the death of trainers."</p>	
<p>8 9 10 11 12 13 14</p>	<p><i>'Blackfish' Effect: SeaWorld Stock Plunges After Controversial Film Sparks Ethical Debate</i></p>	<p>"SeaWorld's stock took a nosedive Wednesday after the company reported fewer ticket sales and lower second-quarter earnings. . . . SeaWorld Entertainment Inc. (NYSE:SEAS), owned by the private-equity company Blackstone, has downplayed the effect of 'Blackfish,' a film that blasted the park for its treatment of orcas. SeaWorld ascribed its 4.3 percent attendance drop over the past year to bad weather, competition with other theme parks and changes to school schedules, but it recognized the role of 'Blackfish' in recent protests against the park."</p>	<p>8/13/14</p>
<p>15 16 17 18 19 20 21 22 23 24 25 26 27</p>	<p><i>SeaWorld Stock Sinks Over 'Blackfish' Killer Whale Outrage</i></p>	<p>"SeaWorld has a whale of a problem. Shares of the theme-park operator—home to beloved killer whale Shamu—tanked more than 34 percent Wednesday after the company slashed its full-year forecast and second-quarter results fell far short of expectations. SeaWorld, owned by the private-equity giant Blackstone, said attendance at its parks has been hurt by the debate over its treatment of captive orcas. . . . The company has been under fire from animal activists who argue it's wrong to keep orcas for the amusement of audiences. That message was hammered home in last year's 'Blackfish.'"</p>	<p>8/13/14</p>

1 2 3 4 5 6 7	Los Angeles Times	<i>S&P Cuts SeaWorld Credit Rating Amid Orca Controversy</i>	“SeaWorld officials had previously attributed lower attendance numbers to bad weather, higher ticket prices and a shift in the timing of Easter this year. But SeaWorld conceded in its earnings report Wednesday that negative publicity over charges that it mistreats its killer whales has hurt attendance. The criticism of SeaWorld gained momentum last year with the release of a documentary, “Blackfish,” that accused the theme park company of mistreating the orcas featured in its shows.”	8/14/14
8 9 10 11 12 13 14 15 16	Washington Post	<i>‘Blackfish’ Takes Its Toll: SeaWorld Shares Take a Nose-Dive</i>	“The 2013 documentary suggests the theme park’s treatment of orcas, also called killer whales, prompted gruesome attacks. Since its release last year, it has evoked backlash from animal rights advocates, corporations and lawmakers. It has moved legislators to attempt to ban their captivity, companies to pull out of partnerships and researchers to study large ocean animals. Now, SeaWorld is paying the price. Crediting animal activism, the company acknowledged for the first time Wednesday the fallout that followed the film’s release, admitting attendance issues in San Diego, according to CNN Money. Although the company did not name ‘Blackfish,’ it stated SeaWorld has been hurt by negative media attention. ”	8/14/14
17 18 19 20 21 22 23 24 25 26 27	The Guardian	<i>SeaWorld Shares Tumble 33% Following Blackfish Documentary</i>	“Shares in the amusement park SeaWorld fell 33% after a 6-7% decline in the company’s revenues was forecast – with falling attendances driven in part by the negative publicity surrounding the documentary film Blackfish. . . . The director of Blackfish, Gabriela Cowperthwaite, backed a recent motion by a member of California’s state assembly to outlaw orca performance. In April the vote was delayed so that a period of review, potentially lasting as long as 18 months, can get under way. James Atchison, SeaWorld chief executive and president, acknowledged the impact of the bill on the company’s bottom line.”	8/14/14

1 2 3 4 5 6 7 8 9 10 11 12	Chicago Tribune	<i>SeaWorld credit rating, stocks plummet in response to 'Blackfish'</i>	"SeaWorld is still feeling the 'Blackfish' effect as the company's shares fell a whopping 22 percent over the past year, down 33 percent on Wednesday alone, when it reported lackluster second quarter earnings at the close of the regular trading day." 8/14/14
13 14 15 16 17 18 19 20 21 22 23 24 25 26 27	Entertainment Weekly	<i>SeaWorld Says Backlash Following 'Blackfish' Has Affected Its Revenue</i>	"For months after the release of <i>Blackfish</i> , a documentary about the negligent treatment of orca whales in captivity, SeaWorld denied allegations that negative press was affecting earnings or attendance. Now, as the company failed to hit an expected revenue mark in its second quarter, it's admitting that the backlash, likely fueled in part by <i>Blackfish</i>, is taking its toll. . . . Though the motion [for legislation in California] was tabled this April as lawmakers decided to wait on the results of a further study, SeaWorld's recognition that <i>Blackfish</i> has affected its business is a significant change in the company's PR." 8/14/14
	ProjectCastin g.com	<i>SeaWorld Finally Admits That the Blackfish Movie Has Hurt the Company</i>	"Since the release of ' <i>Blackfish</i> ', a documentary critical of the treatment of Orcas at SeaWorld many people have condemned, boycotted, and downright despised the theme park attraction. Months following the release of ' <i>Blackfish</i> ', SeaWorld went on a Public Relations campaign discrediting the documentary. Furthermore, SeaWorld execs argued that despite the bad PR for ' <i>Blackfish</i> ', people are still interested in attending the theme park. However, SeaWorld announced on Wednesday that the documentary '<i>Blackfish</i>' had negatively affected the amusement park sales and revenue." 8/14/14

<p>1 Washington 2 Post</p>	<p><i>After 'Blackfish,' SeaWorld hurt financially but keeps up political spending</i></p>	<p>“SeaWorld Entertainment has suffered financially since the release of the 2013 documentary ‘Blackfish’ that accused the theme park of mistreating its main attraction – killer whales. The company last week reported second-quarter losses, its stock plummeted and its Standard & Poor’s credit rating was downgraded. And for the first time publicly, SeaWorld Entertainment attributed its financial woes, at least in part, to the bad publicity from the film.”</p>	<p>8/19/14</p>
<p>7 CNN Money</p>	<p><i>SeaWorld Stock Gets Soaked, Plunges 33%</i></p>	<p>“SeaWorld has come under fire after the airing of ‘Blackfish’ last year. . . . The film has led to proposed legislation in California, home of SeaWorld’s San Diego park, to ban the holding of so-called “killer whales” in captivity. . . . In its earnings release Wednesday, SeaWorld acknowledged that attendance in San Diego was hurt by recent media attention around the legislation. It was the first time the company actually admitted attendance problems because of animal activism, said Barton Crockett, an analyst at FBR Capital Markets....”</p>	<p>8/19/14</p>
<p>14 Wayne Pacelle, 15 President and 16 CEO of The 17 Humane 18 Society of the 19 United States</p>	<p><i>A Whale of a Reaction to Blackfish and SeaWorld</i></p>	<p>“First came the company’s August 13th revelations concerning its underwhelming financial performance over the course of 2014, a year in which SeaWorld’s credit rating and stock value plummeted as investors lost faith with the company in what analysts are calling “the Blackfish effect.” . . . The year also saw more than a dozen scheduled musical acts and its longtime corporate partner, Southwest Airlines, abandon SeaWorld and leave it without that support and those cultural moorings. . . . The fraying of SeaWorld’s business model will one day be the subject of case studies in business schools and schools of communications. For now, it’s providing one of the most vivid examples in the turn of fortune for a major corporation that is on the wrong side of public opinion on a long-standing humane concern. In just a few short years, the company has lost its feel-good cachet, seen its value downgraded, mishandled a tragic incident by re-</p>	<p>8/28/14</p>

		victimizing Dawn Brancheau, and maintained against all available evidence that its revenue model and business prospects were not being affected by swelling public skepticism and rejection.”	
National Public Radio	<i>SeaWorld Hopes New Orca Habitats Will Stem a Tide of Criticism</i>	“[SeaWorld], which has parks in San Diego, San Antonio and Orlando, Fla., saw its attendance drop in recent months. The company blames that, in part, on fallout from <i>Blackfish</i> , a documentary film that's critical of SeaWorld's treatment of its captive killer whales.”	9/11/14

175. As all of these industry and market observers noted, SeaWorld's announcement was understood by the market to be an admission by the Company—for the first time—that *Blackfish* had negatively impacted both attendance and revenue throughout the Class Period.

176. Atchison later conceded that SeaWorld should have responded to *Blackfish* earlier in an August 20, 2014 interview with the *Orlando Sentinel*, entitled “SeaWorld CEO: We should have done more to fight ‘Blackfish.’” According to the *Orlando Sentinel*, Atchison told the paper that “SeaWorld . . . Should have done more to counter the anti-captivity documentary ‘Blackfish’ and in the future will promote its rescue and conservation efforts more aggressively.” Atchison went on to explain “[in] hindsight, yeah we probably [should have come out more forcefully, sooner, against *Blackfish*], because the movie was so misleading, so full of falsehoods and so unfair in its framing and characterizing of what we do. . . . It's a delicate balance though, because one of the worst things you can do is to turn it into the movie SeaWorld doesn't want you to see.” Undoubtedly, SeaWorld was on notice and aware that *Blackfish* was impacting its business long before it finally admitted such on August 13, 2014. However, as Atchison's own explanation makes clear, despite

1 this knowledge, SeaWorld’s chosen strategy was to ignore *Blackfish* and deny its
2 credibility—both to the public and investors.

3 177. After the Company disclosed that *Blackfish*-related attendance declines
4 had caused weak revenues and a downward revision of guidance, SeaWorld’s
5 common stock price plunged, as reported by industry, business and financial press.
6 For example, the *Wall Street Journal*’s online site, *WSJ Blog*, reported during trading
7 on August 13, 2014 that SeaWorld’s common stock price was “tank[ing]” on news
8 that “protests and negative publicity took a significant toll on the company’s second-
9 quarter results.”

10 178. Dow Jones also published a wire during trading on August 13, 2014,
11 reporting that SeaWorld had “slashed its revenue guidance for the year as the theme-
12 park operator reported underwhelming results and attendance for the second quarter.
13 Shares of the company—which acknowledged that media attention about legislation
14 in California to end the orca shows weighed on attendance—fell nearly 30% in
15 morning trading as its results for the period missed analysts’ expectations by a wide
16 margin.”

17 179. This admission was of major significance because *Blackfish* and the
18 fallout surrounding it were tied to how the public viewed SeaWorld. As *Bloomberg*
19 reported on November 20, 2014, SeaWorld’s attendance was declining “because of
20 changing perceptions of killer whale shows” and “*Blackfish* has gone from being a
21 public relations problem to a potentially catastrophic threat to a \$1.4 billion-a-year
22 business.” Damage to SeaWorld’s brand and reputation would constitute a different
23 and direr threat to its ability to generate future earnings than issues stemming from
24 transitory effects of weather or the holiday calendar because harm to brand or
25 reputation risks a structural shift in consumer taste away from a company’s existing
26

1 product. Indeed, the predictions of *Bloomberg* and other commentators regarding the
2 impact of *Blackfish* proved true. Ultimately, *Blackfish* and the ensuing shift in public
3 opinion regarding SeaWorld's treatment of orcas led to a historic change in
4 SeaWorld's business model. As detailed below, on March 17, 2016, SeaWorld stated
5 that it would end all orca breeding programs and phase out the Company's theatrical
6 orca whale trick shows. *See* ¶¶199-203.

7 180. Understanding the significance of SeaWorld's admission on August 13,
8 2014, investment analysts focused on the health of the Company's brand during the
9 2Q14 Earnings Call. For example, Robert Fishman of MoffettNathanson LLC
10 pointedly asked if SeaWorld had sought to measure how its "brand is perceived today
11 versus maybe a year ago?" The admission that *Blackfish*-related issues were, in fact,
12 impacting park attendance, was very bad news for the Company in the eyes of
13 investors.

14 181. In response to the August 13, 2014 disclosure, SeaWorld's common
15 stock price declined a staggering \$9.25 per share, or nearly 33%, from a closing price
16 of \$28.15 per share on August 12, 2014, to a closing price of \$18.90 per share on
17 August 13, 2014. This decline eliminated more than \$830 million from the
18 Company's market capitalization in just one day.

19 **G. The Aftermath Of The Fraud and the Continued Impact of**
20 ***Blackfish***

21 182. On August 14, 2014, S&P lowered SeaWorld's corporate credit rating to
22 BB- from BB, pushing the rating further below investment grade, also known as junk
23 status. The negative outlook reflected S&P's expectation that SeaWorld still faced
24 significant challenges regarding "reputational risk and potential improvements in
25 operating performance beyond 2014." Additionally, S&P cited "negative media
26

1 reports that have specifically targeted the company’s use of orca whales for
2 entertainment purposes” as contributing to “lower attendance and spending at the
3 parks” as a reason for the downgrade.

4 183. As discussed above, SeaWorld suffered new blows in the following
5 months as additional corporate sponsors and marketing partners cut ties with the
6 Company. *See* ¶¶150-58.

7 184. Reports of grassroots protests and school groups organizing to prevent
8 school sponsored associations with SeaWorld continued to arise, threatening to
9 further erode gate attendance. On November 6, 2014, it was reported that California
10 State University Long Beach students planned to stage a protest to demand that the
11 university stop selling discounted SeaWorld tickets due to the theme park's alleged
12 mistreatment of killer whales. The rally came after California State University Long
13 Beach Associated Students Inc. passed a resolution to end the sale of SeaWorld
14 tickets in the University Student Union, which the trustee board for the student union
15 ultimately moved to support.

16 185. Following the announcement of extremely poor attendance figures and
17 earnings in the third quarter earnings call on November 12, 2014, Atchison reiterated
18 his commentary from the 2Q14 Earnings Call regarding negative attendance trends,
19 explaining that “the decline resulted from a combination of factors, including
20 negative media attention in California.” The declining attendance trend was ongoing
21 and Atchison noted that “[c]onsistent with the update we provided in August, the
22 attendance trends the Company experienced in the latter part of the second quarter
23 continued into the third quarter.” Referring to decreased attendance at SeaWorld’s
24 Orlando and San Diego parks, he admitted the Company was not “happy with it or
25 accepting of it, but we're seeing similar trends through those two parks, as has been
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1 reported previously in our Q2 numbers.” Alluding to efforts to repair the damage
2 *Blackfish* had caused to SeaWorld’s brand, he stated, “[o]n the reputation side, we
3 have introduced a number of aggressive and proactive initiatives and campaigns to
4 make sure the truth is being told, address public perceptions, and raise and protect
5 brand awareness.”

6 186. Following that call, Atchison granted wide-ranging access to a
7 *Bloomberg Business* reporter for a November 20, 2014 piece entitled, “Saving
8 SeaWorld,” in which he discussed the negative impact of *Blackfish* on SeaWorld’s
9 reputation and ticket sales. *Bloomberg* reported that, “SeaWorld acknowledges that
10 ticket sales have declined because of changing perceptions of killer whale shows”
11 and noted that “[f]or SeaWorld, whose logo features an orca’s dorsal fin, *Blackfish*
12 has gone from being a public relations problem to a potentially catastrophic threat to
13 a \$1.4 billion-a-year business.” Commenting on the crucial importance of
14 SeaWorld’s killer whale shows to SeaWorld’s business model, Atchison admitted,
15 “Our killer whales, our killer whale program, and all of our animals are emblematic
16 of the whole brand.” He acknowledged that *Blackfish* had long been on the
17 Company’s radar and that he was aware of the “notable momentum” the film gained
18 when “CNN started airing it...[r]epeatedly,” but that the Company had struggled to
19 find an effective approach in responding to widespread criticism and activism
20 generated by the film.

21 187. Weeks later, on December 11, 2014, the *Daily Mail* reported that
22 Atchison had “resigned following low visitor numbers in the wake of a 2013 film,
23 *Blackfish*, which criticized [the Company’s treatment] of killer whales.” As reported
24 by the *Tampa Bay Times* that same day, however, a SeaWorld spokesman “would not
25 say whether Atchison’s decision was voluntary.” According to an analyst with
26

1 Pacific Asset Management, “[SeaWorld’s] board was likely looking for someone
2 who can better handle SeaWorld’s public-relations problems.” Also on December
3 11, 2014, the *Wall Street Journal* confirmed that Atchison would “depart as chief
4 executive” and that SeaWorld would unveil “a restructuring plan that comes as it has
5 faced controversy over its treatment of killer whales.”

6 188. The following day, the *Washington Post*, reported that “Atchison’s
7 departure comes on the heels of what has been a terrible year for the company[]” in
8 which “revenue fell by more than seven percent, and its attendance dropped by nearly
9 five percent.” The paper went on to note, “[t]he changing of the guard is likely the
10 result of something that occurred in July 2013: namely the release of the
11 documentary ‘Blackfish.’” A recent *Orlando Sentinel* report similarly linked
12 Atchison’s departure to *Blackfish*, stating that Atchison “resign[ed] as CEO in 2014
13 amid financial struggles and controversy over the documentary ‘Blackfish.’”

14 189. CW-5 also stated that she believed Atchison’s response to *Blackfish* cost
15 the CEO his job. She believed Atchison’s strategy to ignore *Blackfish* and wait for it
16 to go away did not work and that it was apparent that SeaWorld did not have a
17 contingency plan in the event that ignoring *Blackfish* did not work.

18 190. Days later, SeaWorld announced plans to cut “about 300 jobs” as part of
19 the \$50 million cost-saving restructuring plan it had announced in its 3Q14 report.
20 CW-5 attributed this layoff as a large impact from *Blackfish*. Indeed, CW-5
21 explained that as the 2015 budget was being compiled in the last months of 2014,
22 budgets were repeatedly returned with requests to cut more and more expenses.
23 Ultimately, there were no other costs to cut except labor, resulting in the layoff. In
24 reporting on this development, the *Wall Street Journal* explained that the cuts
25 occurred as SeaWorld “continues to deal with the backlash from animal-rights
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1 activists and consumers about its treatment of animals, especially killer whales,” and
2 noted that, “[t]he documentary ‘Blackfish,’ which has been screened in cinemas and
3 broadcast multiple times by CNN, raised these criticisms to a higher level of public
4 awareness, harming the company’s financial results.”

5 191. CBS reported on December 12, 2014 that “‘Blackfish’ is widely
6 considered to be at least partly responsible for SeaWorld’s attendance drop.” On
7 January 6, 2015, *Fortune* likewise concluded that “SeaWorld has had a bad few
8 years, with park attendance down and the company’s reputation taking a beating due
9 to the controversial anti-SeaWorld documentary *Blackfish*.” Similarly, on February
10 26, 2015, the *Orlando Sentinel* noted SeaWorld’s “attendance and stock value have
11 declined, in part because of negative publicity over its killer whales. The issue went
12 mainstream after the 2013 documentary ‘Blackfish’....”

13 192. Unsurprisingly, when SeaWorld disclosed its full year financial
14 information on February 27, 2015, it reported an overall decline in attendance for
15 2014. Specifically, SeaWorld’s 2014 10-K reported a 4.2% decline in attendance in
16 2014 as compared to 2013. The Company’s net income also dropped from \$51.9
17 million in 2013 to \$49.9 million in 2014. Acknowledging the impact of *Blackfish*,
18 SeaWorld primarily attributed the decline in attendance to “negative media attention
19 in California and a challenging competitive environment in Florida.”

20 193. In an effort to reform its image and boost flailing attendance rates,
21 SeaWorld made several strategic moves in early 2015. First, on March 19, 2015,
22 SeaWorld announced that Joel Manby had been appointed as President and Chief
23 Executive Officer, effective April 7, 2015. SeaWorld touted Manby’s proven track
24 record in the entertainment and theme park industries “[e]ven in the most challenging
25 business environments[.]”

1 194. Second, the Company launched a new ad campaign aimed at restoring
2 its image. According to the *Orlando Sentinel*, Interim CEO D'Alessandro told
3 analysts on February 26, 2015 the Company was engaging in a “targeted marketing
4 campaign starting April 1 [that] will focus on consumers who feel ambivalent about
5 SeaWorld.” As with its prior campaigns, the focus of the new campaign was to
6 refute the claims made by *Blackfish* and animal rights activists. For example,
7 according to NPR, in one video, SeaWorld’s head veterinarian, Chris Dold, told
8 viewers “So don’t believe what PETA and *Blackfish* are saying. Our killer whales
9 live lives just as long as killer whales in the wild.”

10 195. During this same time, former SeaWorld trainer John Hargrove, who
11 was featured in *Blackfish*, released a book, *Beneath the Surface: Killer Whales,*
12 *SeaWorld, and the Truth Beyond ‘Blackfish’*, which was harshly critical of
13 SeaWorld’s treatment of its animals. SeaWorld took the same aggressive tack with
14 Hargrove that it had with *Blackfish*. In an email to ABC News, Jacobs accused
15 Hargrove of repeatedly making statements that were “misleading, false or in conflict
16 with statements [Hargrove] has made previously.” And, within days of the book
17 release, SeaWorld attempted to discredit Hargrove by sending reporters a five-year-
18 old video in which Hargrove was under the influence of alcohol and used derogatory
19 language.

20 196. All told, the *Guardian* reported on August 6, 2015, that SeaWorld spent
21 more than \$10 million on its marketing blitz. Nevertheless, attendance and revenue
22 continued to fall. SeaWorld reported in an 8-K released on August 6, 2015, that its
23 second quarter net income had dropped from \$37.4 million in 2014 to \$5.8 million in
24 2015, ***an 84% decrease***. Attendance in 2Q15 was also down by more than 100,000
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1 from attendance in 2Q14. SeaWorld attributed the decline to “continued brand
2 challenges in California” as well as the timing of Easter and record rainfall in Texas.

3 197. Meanwhile, commentators continued to attribute SeaWorld’s attendance
4 declines to *Blackfish*. The *Guardian* reported on August 6, 2015, “[f]ollowing the
5 **release of the documentary, attendance collapsed** and the company lost more than
6 half its market value on Wall Street and its former CEO was forced out.” That same
7 day, CBS News concluded “SeaWorld has been trying to recover from the 2013
8 documentary film ‘Blackfish’ that suggested the treatment of captive orcas provokes
9 violent behavior. Park attendance dropped after the release of the documentary.”

10 198. In an effort to stem public backlash against its killer whale program,
11 SeaWorld proposed a \$100 million program to double the size of its orca tanks at its
12 San Diego Park. On October 11, 2015, the California Coastal Commission approved
13 SeaWorld’s plan under the condition that SeaWorld end its breeding program in
14 California. Media attributed the California Coastal Commission’s decision to the
15 continued public scrutiny of SeaWorld’s killer whale program in the wake of
16 *Blackfish*. For example, on October 11, *CNN* reported the decision “followed hours
17 of impassioned speeches by hundreds of supporters and opponents of the project”
18 noting that “interest in orcas, and the conditions they live under at SeaWorld, rose
19 after the 2013 documentary ‘Blackfish’ aired on CNN.” The same day, the *Voice of*
20 *San Diego* wrote “[c]laims in the movie [*Blackfish*]—which [SeaWorld] denies—
21 inspired a recent state Coastal Commission decision to force the company to slowly
22 phase out its killer whale program[.]”

23 H. SeaWorld’s About Face

24 199. On March 17, 2016, SeaWorld announced a dramatic and historic shift
25 in its business model, stating that it would end all orca breeding programs and phase
26

1 out the Company's theatrical orca whale trick shows. Reporting on the
2 announcement, *ABC News* noted, "**Manby . . . acknowledged that 'Blackfish' did**
3 **have an impact**, saying 'whether it's a movie, whether it's customers riding us, there
4 is no doubt the mindset of society has changed. I think we have to change with it.'" According to the *Wall Street Journal*, on an analyst call related to the announcement,
5 Manby acknowledged, "[t]here's been a ton of pressure....People today and
6 millennials and moms and dads want vacations with meaning, and they are willing to
7 support organizations that have it."
8

9 200. Manby cast SeaWorld's dramatic operational shift as a necessary
10 response to public opinion. Indeed, while Manby did not originally intend to end the
11 killer whale program at SeaWorld, after reviewing attendance trends and public
12 opinion research and talking to fellow business leaders, he determined it was the most
13 prudent move for the Company. On April 20, 2016, the *Orlando Sentinel* reported
14 Manby made the decision to end the killer whale program because he "saw twin
15 losing battles looming ahead — one against declining attendance, another against
16 increased legislation targeting orcas in captivity," noting that "SeaWorld has been
17 fighting both after the 2010 death of a trainer and the subsequent anti-captivity
18 documentary 'Blackfish.'" As Manby told *Bloomberg* on May 2, 2016, several
19 things convinced SeaWorld to end the killer whale program: "Customer feedback,
20 conversations with other business people and a decision by the California Coastal
21 Commission to prohibit orca breeding in the state if SeaWorld pursued a plan to
22 expand its whale habitat." Manby also acknowledged in *New York Magazine* that his
23 decision was spurred by the fact that SeaWorld had lost the public's trust, stating "**I**
24 **mean, we can say that what Blackfish was saying is not true, and we have facts to**
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1 *back it up, but if we're the only ones saying it, we're not going to have the*
2 *credibility to win that."*

3 201. In other words, Manby and SeaWorld could not continue to deny the
4 profound impact of *Blackfish* or ignore the Company's own data regarding public
5 sentiment, as his predecessor had done, and remain a viable business. Indeed,
6 according to the *Orlando Sentinel*, Manby told fans in an online forum "***I understand***
7 ***you may feel betrayed . . . [b]ut . . . the data showed, and trends showed, it was a***
8 ***SeaWorld without whales or it would probably be a world without SeaWorld."***
9 Manby also told *Forbes* "[t]he world is moving in a different direction, Society
10 is changing and moving in a different direction, and we needed to get ahead of it.
11 Our research showed it would be a losing battle [to continue the shows in the face of
12 this rising tide of hostility]."

13 202. In particular, SeaWorld's consumer research found that the Company's
14 breeding ban led to improved public perception of the Company and an increased
15 likelihood of people to visit the SeaWorld parks. For example, in a March 17, 2016
16 presentation to investors, Manby cited detailed third-party consumer studies of
17 several demographic groups by market that the Company commissioned to test the
18 announcement of SeaWorld's new business model. The results of the study found,
19 *inter alia*, favorability of opinions about SeaWorld improved by 11-27 points and
20 consideration of those likely to visit SeaWorld improved 5-17 points. In addition,
21 Manby told the *San Diego Tribune*:

22
23 We tested the announcement in disguise before we made it, and the
24 actual results in the marketplace were exactly the same. Out of every
25 eight people, seven were very supportive or extremely supportive.
26 This was the general population, and that was who we were going
27 after.... And the willingness of people to visit our parks went up

1 dramatically as well. Out of every five people, four are more likely to
2 come to our parks now. Those are incredible statistics.

3 203. Tellingly, SeaWorld acknowledged that its new business model would
4 significantly increase attendance and revenue. According to the *Wall Street Journal*,
5 SeaWorld “expects to save \$15 million in reputational-management costs, and it sees
6 attendance rising by 380,000 to 940,000 in the next three to five years.... SeaWorld
7 also expects revenue to increase by \$20 million to \$80 million during the same time
8 frame.” According to PETA Vice President Lisa Lange, “[a] corporation like
9 SeaWorld only changes because it’s financially prudent to do so, and it’s financially
10 prudent to do so because people just aren’t going and their stocks are falling.”

11 204. Once again, the national media noted the impact of *Blackfish* on
12 SeaWorld’s surprising shift. For example, the *Washington Post* reported that “after
13 years of defiance, SeaWorld is finally letting go of its killer whale program” because
14 “*the domino effect that followed ‘Blackfish’... has simply proven too crippling to*
15 *ignore.*” Likewise, NPR commented that since *Blackfish* put SeaWorld’s treatment
16 of its whales in the spotlight, “in a steady campaign on social media, critics have
17 demanded SeaWorld end its orca breeding program.” And, the *Motley Fool* reported
18 on March 22, 2016, “SeaWorld has been out of favor since the moment it went public
19 at \$27 in 2013,” and “remains a busted IPO, but that’s not unexpected *given the 2013*
20 *and 2014 slides in attendance as a result of fallout from the Blackfish*
21 *documentary.*” The financial blog went on to note “[a]ttendance inched slightly
22 higher last year, but revenue still retreated as *SeaWorld has to discount admissions*
23 *to drum up park guests.*” Indeed, nearly every media report on the announcement
24 mentioned *Blackfish* as a factor precipitating SeaWorld’s changed business model.
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1 207. In response to shareholder feedback and an apparent recognition of the
2 inept response of its board to *Blackfish*, on April 15, 2016, SeaWorld announced the
3 addition of two independent, veteran theme park industry executives – Ron Benison
4 and Donald Robinson – to its Board of Directors. The new directors were brought on
5 to replace outgoing board members, Joe Baratta, who is also the Global Head of
6 Private Equity, and former CEO, Atchison, who remained on the board after his
7 tenure as CEO. Atchison will remain a consultant with SeaWorld, earning \$620,000
8 per year through 2017, according to his current consulting agreement with the
9 Company.

10 **V. DEFENDANTS’ MATERIALLY FALSE AND MISLEADING**
11 **STATEMENTS AND OMISSIONS OF MATERIAL FACT**

12 **A. August 29, 2013 – SeaWorld’s Statements To The Media**

13 208. On August 29, 2013, the first day of the Class Period, the *Los Angeles*
14 *Times* called into question the Company’s representation to investors that the 6%
15 decline in attendance across SeaWorld-owned parks over the first half of 2013 was
16 attributable to bad weather, and suggested that bad publicity stemming from
17 *Blackfish* may have played a role. In response, Jacobs, speaking on behalf of the
18 Company, flatly denied the suggestion that *Blackfish* or the public backlash spurred
19 on by the film was hurting attendance, stating that “‘*Blackfish*’ *has had no*
20 *attendance impact.*” That same day – again denying that negative publicity from
21 *Blackfish* was impacting the gates at SeaWorld-owned parks – Jacobs told *Bloomberg*
22 that “[w]e [*SeaWorld*] can attribute no attendance impact at all to the movie.”

23 209. Jacobs’ statements on behalf of the Company were express and explicit
24 denials of any *Blackfish*-related impact on SeaWorld’s attendance, whatsoever. Up
25 until August 29, 2013, SeaWorld had refused to publicly acknowledge *Blackfish* by
26

1 name and had only tacitly referred to any possible effect *Blackfish* “may” or “might”
2 have on its attendance in veiled, contingent fashion. However, Jacobs’ statements
3 affirmed to the investing public that *Blackfish* definitively “had no attendance
4 impact” and that SeaWorld “attribute[d] no attendance impact at all to the movie.”

5 210. Yet, each of Jacobs’ August 29, 2013 statements made on behalf of the
6 Company set forth above in ¶208 was materially false and misleading because by the
7 time of each statement:

- 8 a) CW-1 stated that by the April 2013 IPO there were at least a
9 couple hundred anti-SeaWorld posts a day on Twitter, many of
10 which mentioned *Blackfish* and also hijacked SeaWorld’s
11 hashtags in order to reach existing SeaWorld fans. SeaWorld had
12 internal discussions concerning these posts and potential
13 responses.
- 14 b) CW-3 recalled that during the time frame from *Blackfish*’s
15 premiere in January 2013 to April 2013, attendance at SeaWorld
16 San Diego was “tanking,” down approximately 30% from the
17 budgeted attendance. CW-4 likewise stated that there was a
18 noticeable dip in attendance following the premiere, which
19 continued throughout the Class Period.
- 20 c) According to CW-2, CW-3 and CW-4, SeaWorld held ECMs
21 approximately monthly at parks for all employees. At such
22 meetings, attendance was discussed. Moreover, according to
23 former SeaWorld employee, Sarah Fischbeck, SeaWorld held “a
24 collective meeting before [*Blackfish*] came out telling [SeaWorld
25 employees] to say it was fake,” and otherwise instructing
26 SeaWorld employees how to respond to *Blackfish*. According to
27 CW-2, CW-3 and CW-4, there were several instances in 2013
when *Blackfish* was discussed. According to CW-2, in one such
instance, the San Antonio park’s general manager tried to “boost
morale” by expressing “this too shall pass,” indicating that
Blackfish was, in fact, plaguing the Company long before Jacobs’
August 2013 statements. CW-2 stated that Atchison attended one
such meeting and specifically discussed *Blackfish*. CW-4 recalled

1 that these meetings would typically be put together when
2 Atchison was in town.

3 d) Immediately following the premiere of *Blackfish* at Sundance in
4 January 2013, PETA implemented a devastating public relations
5 campaign related to *Blackfish*, which urged consumers and
6 businesses to boycott the Company's parks. Among other things,
7 PETA launched www.seaworldofhurt.com – a website which
8 discussed *Blackfish*, attacked SeaWorld's treatment of its captured
9 animals, and sought to instigate changes in the Company's core
10 business model and attractions.

11 e) As reported by TIME and other publications, all of the major
12 theme parks in SeaWorld's geographic locations, including
13 Disney and Universal, attained comparable, increased or record
14 attendance figures after they too hiked ticket prices in May or
15 June 2013, consistent with the "annual tradition." See ¶¶125-29.

16 f) As reported by *Bloomberg* on May 7, 2013, attendance at
17 Disney's domestic parks rose 8% percent in the same quarter, as
18 compared to SeaWorld's 9% decline, notwithstanding the fact that
19 Disney's primary U.S.-based parks are located in the same
20 geographic markets as SeaWorld's Orlando, Tampa and San
21 Diego parks – and therefore operated under the same weather
22 conditions (and, of course, holiday and school schedules).
23 Moreover, historical data confirms that attendance at SeaWorld-
24 branded parks and Disney and Universal parks in Florida and
25 California ordinarily rise and fall together. See ¶¶17-20, 116-18.

26 g) SeaWorld was in the midst of an unprecedented attendance
27 decline, having reported a 9.5% decline in its 2Q13 attendance,
dropping "from approximately 7.2 million in 2012 to 6.6 million
guests in 2013[,]" a trend that revealed something beyond the
ordinary factors of weather and schedules was occurring.

h) *Blackfish* had reached an even larger domestic and international
audience, thus increasing the probability that the film was having
or would have an impact on the Company's operations and
attendance. For example, on July 19, 2013, *Blackfish* was

1 released in U.S. theaters. Also in July 2013, the film was made
2 available to British customers of Netflix.

- 3 i) In January 2013, almost immediately following the film's
4 showing at Sundance, SeaWorld began an extensive nationwide
5 public relations campaign in an attempt to counteract the film's
6 predictable negative effect on public opinion. Outrage at the
7 practices reflected in the film, and unwillingness to attend the
8 Company's parks had dramatically intensified the Company's
9 public relations campaign opposing *Blackfish* by August 2013.
10 Prior to its release in major markets in the U.S., in July 2013,
11 Jacobs emailed fifty (50) major film reviewers to "discredit"
12 *Blackfish* with a point-by-point refutation of eight claims made in
13 the film. Eammon Bowles, president of Magnolia Pictures, stated
14 publicly "[f]rankly, I've never seen anything like it."
- 15 j) SeaWorld employees believed Defendants' statements that
16 *Blackfish* did not have an effect on SeaWorld's attendance "were
17 pretty false" according to CW-3. In fact, CW-3 described
18 SeaWorld San Diego's attendance during the period after the IPO
19 as "off," and, both she and CW-4 believed that the negative
20 publicity due to *Blackfish* had an impact.
- 21 k) Prior to 2013, the July 4th holiday was one of SeaWorld's biggest
22 events, but, according to CW-3, in 2013 the San Diego park was
23 "abnormally slow" during that holiday. Similarly, CW-4 recalled
24 that in mid-July through at least August 2013, SeaWorld cancelled
25 almost all of their extra dining services the San Diego park would
26 normally set up for the increased summer crowds due to low
27 attendance.
- 28 l) Likewise, as reported by the *Orlando Sentinel*, the Company
29 purchased the rights to Web domains associated with the film
30 title, such as BlackfishFacts.com and
31 TheTruthAboutBlackfish.com, evidencing the Company's internal
32 concern over the growing impact of *Blackfish* on SeaWorld's
33 operation and attendance.

1 m) Prominent celebrities were urging their millions of followers and
2 the public in general to see *Blackfish* and to then boycott
3 SeaWorld's parks in light of the revelations of *Blackfish*
concerning the Company's practices. See ¶¶132-40.

4 n) As reported by the *Huffington Post* on August 10, 2013, the
5 *Blackfish* effect was so strong that upon viewing the film,
6 executives from Disney's Pixar announced that the company
7 would alter the movie storyline for the sequel to "Finding Nemo,"
entitled "Finding Dory," so as to remove references to captive sea
8 animal parks.

9 **B. November 13, 2013 – 3Q13 Form 10-Q, Press Release And Earnings
10 Call**

11 211. On November 13, 2013, SeaWorld: (i) filed with the SEC the
12 Company's 3Q13 Form 10-Q, which was signed by Heaney and Swanson; (ii) issued
13 a press release announcing its third quarter 2013 results ("3Q13 Press Release"); and
14 (iii) held the Company's 3Q13 Earnings Call, in which Atchison and Heaney
15 participated on behalf of SeaWorld.

16 212. In the 3Q13 Press Release, among other things, SeaWorld again reported
17 a decline in attendance: "[a]ttendance for the first nine months of 2013 declined by
18 4.7% compared to the same period in 2012 from 19.9 million to 18.9 million guests."
19 According to the Company, "[a]ttendance was impacted by new pricing and yield
20 management strategies implemented at the beginning of 2013 that increased revenue
21 but reduced low yielding and free attendance, adverse weather conditions in the
22 Company's second quarter and in July, and the negative impact of an early Easter in
23 2013."

24 213. SeaWorld then discussed the specific causes of the decline in attendance
25 for the third quarter – none of which, according to the Company, included *Blackfish*
26 or negative publicity arising from the film:

1 Attendance trends improved in the third quarter compared to the
2 second quarter reversing a negative trend earlier in the year, with a
3 3.6% decline versus a 9.5% decline in the second quarter. Attendance
4 trends also improved steadily within the quarter with July attendance
5 down 5.7% due to adverse weather and August/September attendance
6 down 1.8% as weather conditions improved. Preliminary attendance
7 in October showed continued improvement with attendance
8 comparable to prior year levels. In addition to adverse weather, the
9 attendance decline in the third quarter was an expected result of
10 planned strategies that increased revenue but reduced low yielding
11 and free attendance. These strategies were implemented at the
12 beginning of 2013 to increase revenues and operating margins through
13 higher quality attendance, which the Company achieved in the third
14 quarter.

15 214. Each statement set forth in ¶¶212-13 was repeated in substantial form
16 within SeaWorld's 3Q13 Form 10-Q.

17 215. During the 3Q13 Earnings Call, Defendants continued to omit material
18 facts concerning the impact of *Blackfish* on attendance. For example, Heaney
19 repeated the declining attendance figures announced in the 3Q13 Press Release and
20 re-affirmed that one half of the 3.6% decline was attributable to new pricing
21 initiatives, while the "remainder of the attendance decline" was due to adverse
22 weather not *Blackfish*:

23 Attendance trends improved in the third quarter compared to the
24 second quarter, reversing a negative trend earlier in the year with a
25 3.6% decline in the third quarter versus a 9.5% decline in the second
26 quarter. This improvement continued into October and November,
27 with attendance running flat with prior year levels. Roughly half of
the 3.6% decline in the third quarter was expected due to new pricing
and yield management strategies implemented at the beginning of
2013 to increase revenue, per capita revenue and operating margin.
The remainder of the attendance decline in the third quarter was due
to adverse weather in July when we had above average precipitation

1 in all of our markets, including record precipitation in Florida.
2 Weather conditions improved in August and September, and our
3 attendance trends improved accordingly.

4 216. Each of Defendants' statements set forth in ¶¶212-15 blaming adverse
5 weather conditions and/or pricing and yield management strategies for the decline in
6 SeaWorld's attendance figures was materially false and misleading for the reasons set
7 forth above in ¶210 because – in addition to being subject to the same “adverse
8 weather” conditions as SeaWorld in Orlando and Southern California – Disney and
9 Universal also implemented pricing increases applicable to the quarter and
10 nonetheless reported comparable or higher attendance figures for the quarter than in
11 the preceding year, as discussed above in ¶¶125-29 and recognized by S&P Capital
12 IQ's November 18, 2013 observation that SeaWorld's 3Q13 attendance declines were
13 “counter to trends at peers.”

14 **C. November 14, 2013 – Atchison's Statements To The Media**

15 217. On or around November 14, 2013, Atchison again rejected the assertion
16 that *Blackfish* had or was having any impact on the Company's attendance.
17 Specifically, Atchison stated to the *Wall Street Journal*: “I scratch my head if there's
18 any notable impact from this film at all, and I can't attribute one to it,” adding
19 “[i]ronically, our attendance has improved since the movie came out.”

20 218. In addition to the reasons set forth above in ¶¶210 and 216, Atchison's
21 statement denying that *Blackfish* had or was having any impact on the Company's
22 business as of November 14, 2013 was materially false and misleading because by
23 the time of his statement:

- 24 a) *Blackfish*, which had already inspired public outrage against
25 SeaWorld, now had reached an even larger global audience.
26 Notably, on October 24, 2013, CNN aired *Blackfish* to an

1 estimated twenty-one (21) million viewers, and continued to air
2 and discuss the film multiple times a day thereafter. According to
3 CW-1, media exposure for *Blackfish* just kept getting worse from
4 October forward.

5 b) For SeaWorld San Diego, after CNN aired *Blackfish*, CW-3
6 noticed a drop in attendance of approximately 20% compared
7 with previous years, reflected in the budgeted attendance report
8 that she and others received, which she stated must have been
9 attributable, at least in part, to *Blackfish*.

10 c) External polls evidenced that consumers were no longer interested
11 in attending SeaWorld's parks after viewing *Blackfish*, including
12 an October 25, 2013 poll conducted by CNN asking "[w]ould you
13 take your kids to SeaWorld" in light of the information revealed
14 by *Blackfish*. Of approximately 3,000 responses, 86% stated
15 "No." See ¶¶141-42.

16 d) Teenagers and high school classes like San Diego's Point Loma
17 High School, discussed above in ¶143, started refusing to attend
18 SeaWorld's parks until the Company changed its business
19 practices, drawing additional nationwide attention to *Blackfish*.

20 e) *Blackfish* had sparked enormous opposition to SeaWorld's float at
21 the annual Macy's Thanksgiving Day Parade, as Macy's received
22 more than 80,000 emails urging it to ban SeaWorld from
23 participating in light of *Blackfish*.

24 f) Further to ¶¶132-40, above, after viewing *Blackfish*, more and
25 more prominent celebrities took to Twitter to campaign against
26 SeaWorld's parks. For example, on September 8, 2013, Russell
27 Brand tweeted to his 9.06 million followers: "Do watch "Black
Fish". Don't go to SeaWorld, a stain upon humanity posing as
entertainment..." On October 28, 2013, Stephen Fry similarly
tweeted to his 8.6 million followers: "Finally watched
@Blackfishmovie blackfishmovie.com I hope Seaworld goes out
of business. Horrifying."

1 **D. December 20, 2013 – Atchison’s Statements To The *Orlando Sentinel***

2 219. As reported by the *Orlando Sentinel*, on December 20, 2013, Atchison
3 continued to conceal the impact of *Blackfish* on the Company’s business and deny the
4 negative publicity the film had spawned. For example, Atchison stated “*[a]s much*
5 *data as we have and as much as we look, I can’t connect anything really between*
6 *the attention that the film has gotten and any effect on our business.*”

7 220. In addition to the reasons set forth above in ¶¶210, 216 and 218,
8 Atchison’s statement denying the impact of *Blackfish* on the Company’s business and
9 attendance as of December 20, 2013 was materially false and misleading because:

- 10 a) Beginning as early as November 2013, as a direct consequence of
11 *Blackfish*, nearly every act SeaWorld had booked to headline the
12 Company’s annual “Bands, Brews & BBQ” concert series in
13 February and March 2014 at the Orlando and Tampa parks
14 cancelled their appearances following the public backlash directed
15 towards SeaWorld due to *Blackfish*. See ¶¶144-49. These
16 cancellations received significant media attention, including from
17 *The New York Times*, *CNN*, *Orlando Sentinel* and *National*
18 *Geographic*.
- 19 b) Beginning as early as December 2013 – as Atchison admitted
20 during the December 20 interview – events such as the artist
21 cancellations forced SeaWorld to launch what *ABC News* and the
22 *Orlando Sentinel* called a “big PR blitz” to attempt to counteract
23 the snowballing *Blackfish* effect. SeaWorld’s efforts included
24 placing full-page ads in the country’s largest newspapers and on
25 social media defending SeaWorld’s brand.
- 26 c) By December 2013, *Blackfish* was poised to reach even more
27 viewers, as the film was made available on Netflix. Moreover, by
December 2013, the *Blackfish* effect had continued to spread on
social media, particularly through the use of Twitter and online
petitions on Change.org or related websites. As reported by *CNN*,
social media sites were “filled with comments from people

1 vowing they'll never go to the [SeaWorld-owned] parks again
2 after viewing the film.”

- 3 d) In December 2013, SeaWorld again resorted to offering
4 unprecedented discounts as the Company continued to battle
5 negative publicity related to *Blackfish*. For example, SeaWorld
6 turned to Groupon to promote tickets, allowing users to buy as
7 many as ten (10) tickets to SeaWorld Orlando for \$59 each – 40%
8 below the basic gate price. During a telecast of Legal View with
9 Ashleigh Banfield on December 19, 2013, Peter Shankman, a
10 CNN Social Media Consultant, reported that this type of ticket
11 promotion by SeaWorld had “never happened before” and
12 demonstrated the “incredible hit they’ve taken.”
- 13 e) As discussed above in ¶¶132-40, after viewing *Blackfish*,
14 prominent celebrities took to Twitter to campaign against
15 SeaWorld’s parks. For example, Arianna Grande, who maintains
16 24.6 million followers, implored fans to watch the film and
17 boycott SeaWorld: “I highly recommend all of my fans to watch
18 *Blackfish* and never go to SeaWorld again.”
- 19 f) Beginning in December 2013, SeaWorld could no longer utilize
20 its longstanding soundtrack accompanying orca shows at its parks
21 because of public backlash over *Blackfish*. Specifically, Joan Jett
22 issued a cease and desist letter to SeaWorld demanding that the
23 Company no longer use her music – the song “I Love Rock and
24 Roll” – during orca whale shows. After viewing *Blackfish*, Jett
25 wrote that she was “among the millions who saw ‘Blackfish’ and
26 [was] sickened that [her] music was blasted without [her]
27 permission at sound-sensitive marine mammals.”
- g) *Blackfish* prompted numerous schools to either cancel long-
standing field trips to SeaWorld’s parks or publicly swear off
attending the parks until SeaWorld changed its policies. For
example, as reported by *CNN*, Point Dume Marine Science
Elementary School in Malibu, California canceled its long-
standing annual trip to the Company’s park over concerns about
the treatment of whales as shown in *Blackfish*.

1 h) *Blackfish* sparked enormous opposition to SeaWorld’s float at the
2 annual Macy’s Thanksgiving Day Parade. As reported by CNN
3 on November 25, 2013, an online petition released by PETA
4 asking that the SeaWorld float be removed from the parade
5 received more than 80,000 signatures. Similarly, prominent
6 celebrities like Alec Baldwin publicly urged Macy’s to ban the
7 SeaWorld float. In an open email to Macy’s, Baldwin wrote:
8 “Please don’t be a party of SeaWorld’s crisis-management plan,”
9 as reported by *The New York Times* on November 18, 2013.

10 i) As SeaWorld later admitted, SeaWorld sent its employees to pose
11 as animal-rights activists to infiltrate *Blackfish*-related protests.
12 According to *Bloomberg*, this espionage campaign began as early
13 as November 28, 2013 at the Macy’s Thanksgiving Day Parade in
14 2013. See ¶112.

15 **E. March 13, 2014 – 4Q13 And FY 2013 Press Release And Earnings**
16 **Call**

17 221. On March 13, 2014, SeaWorld issued a press release (“4Q13 Press
18 Release”) announcing its fourth quarter 2013 results and its results for the year ended
19 December 31, 2013 (“FY 2013”) and held the Company’s 4Q13 Earnings Call, in
20 which Atchison and Heaney participated on behalf of SeaWorld.

21 222. In the 4Q13 Press Release, among other things, the Company reported a
22 decline in both the 4Q13 and full-year attendance.

23 223. SeaWorld reported that its 2013 attendance had declined by 4.1%, from
24 24.4 million guests in 2012 to 23.4 million guests in 2013. It stated three reasons for
25 this decline – none of which was *Blackfish*: “The decline was primarily attributable
26 to the expected result of planned pricing and yield management strategies that
27 increased revenue but reduced low yielding and free attendance. Also contributing to
the decline in full year attendance was unexpected adverse weather conditions in the
Company’s second quarter and July as well as the impact of an early Easter in 2013.”

1 224. With respect to the fourth quarter, SeaWorld reported that “consolidated
2 fourth quarter attendance declined by 1.4% to 4.5 million guests in 2013” and
3 attributed the entire decline to “planned pricing and yield management strategies” the
4 Company had implemented in January 2013:

5 The attendance decline was the expected result of planned pricing and
6 yield management strategies implemented at the beginning of 2013.
7 Attendance trends improved sequentially through the year with a 1.4%
8 decline in the fourth quarter compared to a 3.6% decline in the third
9 quarter and a 5.7% decline in the first half of the year.

10 225. In addition to the reasons set forth above in ¶¶210, 216, 218 and 220,
11 each of Defendants’ statements set forth above in ¶¶223-24 regarding the causes of
12 the decline in SeaWorld’s attendance figures was materially false and misleading
13 because:

- 14 a) According to the 2013 TEA Report and discussed above in ¶¶17-
15 20 and 116-18, nearly all of the major theme park groups with
16 locations in the U.S. – including Disney and Universal –
17 experienced *increases* in full year attendance for 2013 despite
18 many being located in the same geographic market as the
19 Company’s SeaWorld Orlando and Busch Gardens Tampa parks
20 and subject to the same calendar as SeaWorld, laying bare the
21 Company’s attempt to attribute attendance declines in 2013 to
22 adverse weather and holiday timing. Specifically, Disney and
23 Universal experienced increases of 4.8% and 5.3%, respectively.
- 24 b) As reported in the 2013 TEA Report and discussed above in ¶¶17-
25 20 and 116-18, nearly all of the largest *individual* theme parks in
26 the U.S. likewise experienced significant year-over-year
27 attendance increases in 2013, including those located in the same
geographic market as SeaWorld. For example, while SeaWorld’s
parks in Orlando and San Diego experienced a 5% and 3% year-
over-year loss in attendance, respectively, Disney’s Magic
Kingdom, Epcot, Animal Kingdom and California Adventures
realized gains in year-over-year attendance of 6.0%, 1.5%, 2.0%

1 and 9.5%, respectively. Universal Studio’s parks in Florida and
2 Hollywood, California similarly experienced year-over-year
increases in attendance of 14% and 4%, respectively.

3 c) By the first quarter of 2014, there were more than two dozen
4 *Blackfish*-related petitions on Change.org, including one petition
5 asking country singer and American Idol winner Scotty McCreery
6 to cancel a March 1, 2014 show that collected nearly 30,000
signatures.

7 d) During 4Q13, prominent sponsors – some of which the Company
8 specifically identified within Class Period filings with the SEC –
9 were under public pressure to terminate long-standing
10 partnerships with SeaWorld, as discussed above in ¶¶150-58 and
by CW-1.

11 e) As the *Seattle Post-Intelligencer* reported on January 24, 2014,
12 “SeaWorld has spent a considerable amount of money and energy
13 lately trying to undermine and deflect the effectiveness of the film
14 *Blackfish*, but they are unable to make much progress – it just
isn’t possible to rewrite history in this age of independent media.”

15
16 226. During the 4Q13 Earnings Call, Defendants continued to omit material
17 facts concerning the impact of *Blackfish* on park attendance. For example, in
18 explaining why 4Q13 attendance had fallen by 1.4%, Heaney stated that the decline
19 was caused by “planned pricing and yield management strategies.” Addressing the
20 full 2013 attendance decline, Heaney explained that such decline was caused both by
21 pricing strategies and bad weather.

22 227. Each of Heaney’s statements set forth above in ¶226 regarding the
23 causes of the decline in SeaWorld’s attendance figures was materially false and
24 misleading for the reasons set forth above in ¶¶210, 216, 218, 220 and 225.

1 spike on occasion. ***But our surveys don't reflect any shift in***
2 ***sentiment about intent to visit our parks.***

3 ***

4 A matter of fact, the movie in some ways has actually made perhaps
5 more interest in marine mammal parks, and actually even about us.
6 We have seen that reflected through certain visitor profiles, and
7 certain guest comments and things we get. The movie did not get an
8 Oscar nomination in January, and we continue to take proactive
9 efforts around communicating with our guests and business partners
10 and others.

11 ***

12 But ultimately the assertions by the animal rights, animal activist
13 community -- they don't necessarily burden themselves with fact, and
14 we have to deal with that from time to time. ***But we have seen no***
15 ***impact on the business.***

16 230. In addition to the reasons set forth above in ¶¶210, 216, 218, 220 and
17 225, each of Atchison's statements set forth above in ¶229, which outright denied the
18 impact *Blackfish* was having on SeaWorld's attendance figures and business as of
19 March 13, 2014, was materially false and misleading because:

- 20 a) PETA was actively campaigning against the Company on the
21 national stage in light of the mistreatment of animals depicted by
22 *Blackfish*, including by staging demonstrations at prominent
23 events such as the January 1, 2014 Rose Parade.
- 24 b) Recognizing the impact of *Blackfish* on the public's willingness to
25 attend the SeaWorld's parks, the Company attempted to
26 manipulate the results of a January 2014 public poll conducted by
27 the *Orlando Sentinel*, which asked whether "CNN's 'Blackfish'
[sic] documentary changes your perception of SeaWorld." See
¶¶141-42.
- c) As SeaWorld reports in its SEC filings, "[a]pproximately two-
thirds of the Company's attendance and revenues are generated in

1 the second and third quarters of the year.” SeaWorld reported 4.5
2 million guests as its total attendance at all its parks in 4Q13,
3 which only equated to roughly one-sixth of the total attendance
4 (23.391 million) that SeaWorld reported for FY 2013. Therefore,
the assertion that “SeaWorld parks had record attendance” created
a misguided and disproportional impression on investors.

5 d) Despite claiming that SeaWorld-branded parks “are out-
6 performing our other parks by considerable margin[,]” Defendants
7 failed to mention that many of the non-SeaWorld branded parks
8 were partially or entirely *closed during 4Q13*. Specifically,
9 according to SeaWorld’s SEC filings, all of the following parks
10 are closed for all or some of the winter quarter: (i) Aquatica
11 Orlando (Season: May – September); (ii) Water Country USA
12 (Season: May – September); (iii) Adventure Island (Season:
March – October); (iv) Busch Gardens Virginia (Season: March –
October; December); and (v) Sesame Place (Season: May –
October; December).

13 e) Atchison provided no detail to support the basis of his claim that
14 SeaWorld-branded parks experienced “record attendance.” And,
15 SeaWorld admittedly does not disclose the attendance figures for
16 its individual parks to investors or the public, leaving investors
with no way of verifying Atchison’s remarks.

17 **F. May 14, 2014 – 1Q14 Form-10Q, Press Release And Earnings Call**

18 231. On May 14, 2014, SeaWorld: (i) filed with the SEC the Company’s
19 1Q14 Form 10-Q, which was signed by Heaney and Swanson; (ii) issued a press
20 release announcing its first quarter 2014 financial results (“1Q14 Press Release”);
21 and (iii) held the Company’s 1Q14 Earnings Call, in which Atchison and Heaney
22 participated on behalf of SeaWorld.

23 232. In the 1Q14 Press Release and 1Q14 Form 10-Q, among other things,
24 SeaWorld reported a staggering *13% decrease in attendance for the first quarter*
25 *2014*, which the Company attributed to factors other than *Blackfish*:
26

1 Attendance in the first quarter was impacted by a shift in the timing of
2 Easter into the second quarter of 2014, which caused a shift in the
3 Spring Break holiday period for schools in many of the Company's
4 key source markets. Attendance was also impacted by adverse
5 weather, particularly above average precipitation in the Florida market
as well as below average temperatures in the Texas market for the first
quarter of 2014.

6 233. During the 1Q14 Earnings Call, Heaney echoed the representations in
7 the Company's 1Q14 Press Release, claiming "[t]he shortfall in attendance is
8 attributable to the shift of Easter and spring break into the second quarter, as well as
9 adverse weather and fewer operating days in 2014. Prior years where Easter was in
10 late April, the Company experienced a similar shift in first-quarter attendance."

11 234. In addition to the reasons set forth above in ¶¶210, 216, 218, 220, 225
12 and 230, each of Defendants' statements set forth above in ¶¶232-33 regarding the
13 causes of the **13%** decline in SeaWorld's attendance figures was materially false and
14 misleading because:

- 15
- 16 a) *Blackfish* had inspired a proposed bill, which could devastate
17 SeaWorld's business model. On March 7, 2014, California
18 Assemblyman Richard Bloom introduced the Orca Welfare and
19 Safety Act, which would ban SeaWorld's San Diego park from
20 featuring orcas in entertainment performances and from breeding,
21 importing and exporting orcas. See ¶¶159-62. National media
uniformly tied this bill directly to *Blackfish*. For example, *USA
Today* reported the bill to be "a result of details revealed in the
movie *Blackfish*."
- 22 b) Regardless of whether Defendants could precisely quantify the
23 impact of *Blackfish* on attendance as of 1Q14, it was clear that it
24 was having some negative impact, as evidenced by Atchison's
25 comments concerning the impact of the *Blackfish*-inspired killer
26 whale legislation. Specifically, as Atchison admitted during the
27 Company's August 12, 2014 second quarter earnings conference

1 call (“2Q14 Earnings Call”), in May the Company was “still
 2 grappling with what impact there would be related to the news
 3 attention around the legislation. So I’m not sure that we had a
 4 clear view....” Despite the fact that *Blackfish* had been plaguing
 5 the Company for over a year and a half, Atchison claimed that in
 6 May 2014 Defendants thought “it was too early to call and tell
 7 what kind of impact” *Blackfish* may have. Given this uncertainty,
 8 Defendants could not reasonable reject *Blackfish* as a cause of
 9 SeaWorld’s attendance decline. Indeed, Atchison conceded that
 10 SeaWorld should have responded to *Blackfish* earlier in an August
 11 20, 2014 interview with the *Orlando Sentinel*. See ¶176.
 Undoubtedly, SeaWorld was on notice and aware that *Blackfish*
 was impacting its business long before it finally admitted such on
 August 13, 2014. However, SeaWorld’s chosen strategy was to
 ignore *Blackfish* and deny its credibility—both to the public and
 investors

- 12 c) While Defendants blamed adverse weather conditions and the
 13 shift of Easter and spring break into the second quarter for the
 14 decline in SeaWorld’s attendance figures, Disney and Universal –
 15 both of which were subject to the same “adverse weather”
 16 conditions and shifts in holiday and school calendars – reported
 17 comparable (Universal) or record (Disney) attendance figures for
 18 1Q14. For instance, Disney reported a 3% increase in attendance
 at its domestic parks for the quarter. See ¶¶115-24.

19 VI. ADDITIONAL SCIENTER ALLEGATIONS

20 A. Defendants’ Actual Knowledge Of And/Or Reckless Disregard For 21 Material Facts Contrary To Their Public Statements

22 235. As alleged herein, SeaWorld and the Individual Defendants acted with
 23 scienter in that each Defendant: (i) knew or recklessly disregarded that the public
 24 statements or documents issued or disseminated in the name of the Company (or in
 25 their own name) were materially false and misleading when made; (ii) knew or
 26 recklessly disregarded that such statements or documents would be issued or
 disseminated to the investing public; and (iii) knowingly and substantially

1 participated or acquiesced in the issuance or dissemination of such statements or
2 documents as primary violators of the federal securities laws. SeaWorld and the
3 Individual Defendants by virtue of their receipt of information reflecting the true
4 facts regarding SeaWorld, and their control over, receipt and/or modification of
5 SeaWorld's materially misleading statements, were active and culpable participants
6 in the fraudulent scheme alleged herein.

7 236. As alleged herein, numerous facts support a strong inference that, during
8 the Class Period, SeaWorld and the Individual Defendants knew or recklessly
9 disregarded the false and misleading nature of information that they caused to be
10 disseminated to the investing public, which artificially inflated the trading prices of
11 the Company's common stock during the Class Period. The misrepresentations and
12 omissions of material fact alleged herein concerning: (i) the then-existing impact (or
13 purported lack thereof) of *Blackfish* on SeaWorld's attendance, brand and reputation;
14 and (ii) the cause of the decline in the Company's attendance figures on a quarterly
15 and year-end basis, could not have been made during the Class Period without the
16 knowledge and complicity or reckless disregard of the personnel at the highest levels
17 of the Company, including Atchison, Heaney and Swanson. The nature of these facts
18 is of such prominence to investors that it would be absurd to suggest that
19 management was without knowledge of the underlying matters.

20 237. The Individual Defendants, because of their positions with SeaWorld,
21 controlled the contents of the Company's public statements during the Class Period.
22 In this regard, each was provided with, or had access to, copies of the documents
23 alleged herein to be false and/or misleading prior to or shortly after, their issuance,
24 had access to the data underlying the representations therein and had the ability and
25 opportunity to prevent the materially false and misleading statements from being
26

1 made and/or to cause them to be corrected. Because of their positions and access to
2 material non-public information, the Individual Defendants knew or recklessly
3 disregarded that the adverse facts alleged herein had not been disclosed to, and/or
4 were being concealed from, the public, and that the positive representations that were
5 being made were materially false, misleading, and incomplete. As a result, the
6 Individual Defendants are responsible for the accuracy of SeaWorld's corporate
7 statements, and each is therefore responsible and liable for the representations
8 contained therein and/or omitted therefrom.

9 238. SeaWorld knowingly and/or recklessly made the materially false and/or
10 misleading statements and omissions of material fact alleged herein based on the fact
11 that Atchison, Heaney and Swanson, the Company's CEO, CFO, and CAO
12 throughout the Class Period, knew and/or recklessly disregarded that the Company's
13 statements were materially false and/or misleading, and/or omitted material facts at
14 the times that such statements were made. Each of these Defendants was among the
15 most senior executives of the Company throughout the Class Period and a member of
16 the Company's management, and their knowledge may be imputed to the Company.

17 239. Further contributing to a strong inference of scienter, the fraud alleged
18 herein concerns the very core of SeaWorld's operations – park attendance – the
19 Company's key proxy for the success and stability of its business operations. Indeed,
20 SeaWorld represented to investors in public filings that: (i) its revenues are “driven
21 primarily by attendance,” as approximately 63% of SeaWorld's 2013 revenue came
22 from selling admission tickets; (ii) the Company's entire growth strategy revolves
23 around “increas[ing] [the Company's] existing theme park revenues through
24 strategies designed to drive higher attendance and increase in-park per capita
25
26
27

1 spending”; and (iii) reductions in attendance “can materially adversely affect
2 [SeaWorld’s] business, financial condition and results of operations.”

3 240. Thus, as SeaWorld’s top officers, the Individual Defendants controlled
4 the Company’s day-to-day operations and were informed of and responsible for
5 monitoring important developments concerning attendance. Indeed, throughout the
6 Class Period, Atchison and Heaney were among those responsible for making
7 specific communications to analysts and the press in response to specific questions
8 concerning the Company’s attendance, the purported causes of its decline and the
9 impact of *Blackfish* on the Company’s operations. In each instance, Defendants
10 affirmatively and conclusively denied that *Blackfish* had or was having any impact
11 whatsoever on the Company. In doing so, Defendants knew and/or recklessly
12 disregarded the false and misleading nature of the information that they caused to be
13 disseminated to the investing public, which artificially inflated the trading prices of
14 the Company’s common stock during the Class Period.

15 241. Statements made by SeaWorld and the Individual Defendants strongly
16 suggest each had access to the disputed information, and the total mix of allegations
17 makes such a conclusion irrefutable. Indeed, on the basis of these facts, it would be
18 absurd to suggest that these Defendants did not have knowledge of the information
19 contradicting their public statements.

20 242. With this in mind, the vast majority of Defendants’ material
21 misrepresentations and omissions, explicitly or implicitly, denied that *Blackfish* had
22 had or was having any impact whatsoever on attendance. These statements could not
23 have been made with any reasonable basis in fact, as Atchison in large part confirmed
24 himself during the 2Q14 Earnings Call and in post-Class Period interviews.

1 243. The scienter of SeaWorld and the Individual Defendants also can be
2 inferred from the fact that the fraud here concerns materially false and misleading
3 statements and omissions intended to conceal the impact of *Blackfish* on the
4 Company's brand and reputation. *Blackfish* attacked the single most important
5 component of SeaWorld's brand – its treatment of orcas. In this regard, the
6 Company's efforts to maintain the public's perception of the Company had
7 developed into another "core operation" by the beginning of the Class Period,
8 requiring constant oversight on a day-to-day basis. In light of the significant, public
9 nature of the potential threat to the Company arising from *Blackfish*, it is unlikely that
10 top management was unaware of facts undermining any purported belief or
11 representation concerning the film's impact.

12 244. In addition to the duties of full disclosure imposed on SeaWorld and the
13 Individual Defendants as a result of making affirmative statements and reports to the
14 investing public, these Defendants also had a duty to disclose information required to
15 update and/or correct their prior misstatements and/or omissions, and to update any
16 statements or omissions that had been become false or misleading as a resulting of
17 intervening events. Further, these Defendants had a duty to promptly disseminate
18 truthful information that would be material to investors in compliance with the
19 integrated disclosure provisions of the SEC, as embodied in SEC Regulation S-X (17
20 C.F.R. Section 210.01, *et seq.*) and Regulation S-K (17 C.F.R. Section 29.10, *et seq.*),
21 as well as other SEC regulations, including accurate and truthful information with
22 respect to the Company's operations, so that the market price of the Company's
23 common stock would be based on truthful, complete, and accurate information.
24 Atchison and Heaney also had duties under the Sarbanes-Oxley Act of 2002 to ensure
25 that SeaWorld's Forms 10-Q and 10-K filed with the SEC did not misrepresent or
26

1 omit any material facts. Both Atchison and Heaney certified that SeaWorld’s Forms
2 10-Q and 10-K issued during the Class Period “d[id] not contain any untrue statement
3 of a material fact or omit to state a material fact necessary to make the statements
4 made, in light of the circumstances under which such statements were made, not
5 misleading” with respect to the periods covered by those filings.

6 245. The following facts also support a strong inference of Defendants’
7 scienter:

- 8 a) SeaWorld’s decision to remove Atchison as CEO after the Class
9 Period, as discussed above in ¶¶187-89 and 206-07.
- 10 b) SeaWorld was both aware of and took affirmative steps to
11 counteract the strong anti-SeaWorld sentiment on numerous social
12 media platforms following *Blackfish*, including by establishing
13 project or “war” rooms and groups responsible for real-time
14 responses to such sentiment, as stated by CW-1.
- 15 c) According to CW-1, SeaWorld’s brand-specific hashtags, created
16 for its followers, were being hijacked by activists and coupled
17 with *Blackfish*-inspired attacks on SeaWorld, ensuring that the
18 *Blackfish* effect would continue to intensify.
- 19 d) According to CW-3, SeaWorld’s Finance Department made
20 accessible to mid- and high-level management SeaWorld’s Daily
21 Attendance Budget via a shared network. CW-3 believed that
22 Atchison, as the CEO of the Company, would have access to
23 similar data on a daily basis. During the time period after CNN
24 aired *Blackfish* and before the new fiscal year, SeaWorld revised
25 the Daily Attendance Budget, and did so again during 2014. CW-
26 3 believed the Daily Attendance Budget was revised as a result of
27 declining attendance due, at least in part, to *Blackfish*. According
to CW-4, the Daily Attendance Budget was also a key attendance-
based forecasting tool, as discussed above in ¶46.
- e) According to CW-3, SeaWorld armed employees with literature
and instructions on how to handle any incidents or inquiries tied

1 to *Blackfish*. According to CW-2, SeaWorld executives circulated
2 an email to employees directing them not to engage in discussion
3 about *Blackfish* with customers. According to Sarah Fischbeck,
4 SeaWorld “actually had a collective meeting before [*Blackfish*]
5 came out telling [SeaWorld employees] to say it was fake,” and
6 SeaWorld was “feeding [its employees] lines,” and instructing
7 them to dissuade family and friends from seeing the film.

8 f) According to CW-2, CW-3 and CW-4, SeaWorld held an ECM
9 every month at parks for all employees. At such meetings,
10 attendance and *Blackfish* were discussed. CW-2 stated that
11 Atchison attended one such meeting at the San Antonio and
12 specifically discussed *Blackfish*, declaring that the negativity
13 towards SeaWorld arising from the film would go away. CW-4
14 stated that the San Diego park would typically try and schedule
15 such meetings when Atchison was in town and could attend.

12 **B. Motive And Opportunity – Insider Selling By CEO Atchison**

13 246. During the Class Period, Defendants were also motivated to artificially
14 inflate SeaWorld’s stock price during the Class Period in order to benefit their own
15 personal financial situation with the proceeds from insider stock sales.

16 247. Atchison in particular disposed of a substantial portion of his personal
17 holdings in SeaWorld common stock in eight sales between December 2, 2013 and
18 March 6, 2014, while in possession of material inside information concerning the
19 enduring impact *Blackfish* was having on the Company’s attendance. He sold all of
20 this stock prior to the disclosure of the Company’s year-end 2013 and 4Q13 results,
21 which showed the Company’s continuing attendance declines. The Company’s stock
22 price would not again (during the Class Period) reach the levels at which Atchison
23 sold his personal holdings in March 2014. And only five months later, Atchison
24 would admit that the Company’s attendance was harmed by *Blackfish* and that in
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26
27

1 March and April 2014 the Company had struggled to understand how the “*Blackfish*
2 Bill” would impact its attendance and revenues.

3 248. In this regard, according to Forms 4 filed with the SEC, Atchison made
4 eight Class Period sales of his personal holdings of SeaWorld common stock, selling
5 a total of **154,000 shares**, for proceeds of **\$4,662,235.37**, between December 2, 2013
6 and March 6, 2014, as reflected in the table below:

Date	Number of Shares	Weighted Avg. Price	Proceeds
12/2/2013	28,300	\$29.9148	\$846,588.84
12/3/2013	16,821	\$29.6883	\$499,386.89
12/4/2013	4,879	\$29.727	\$145,038
1/2/2014	50,000	\$29.0736	\$1,453,680
2/3/2014	45,100	\$31.5052	\$1,420,884.52
2/3/2014	4,900	\$31.9523	\$156,566.27
3/5/2014	2,196	\$35.0321	\$76,892.94
3/6/2014	1,804	\$35.0321	\$63,197.91
Totals	154,000		\$4,662,235.37

16 249. These sales were suspicious as to amount and/or size because of the
17 gross amount of proceeds they generated, which dwarfed Atchison’s total 2013
18 compensation (as disclosed by the Company) of \$2,552,000, and also because they
19 disposed of **20%** of Atchison’s total holdings of SeaWorld common stock, even when
20 including for calculation purposes not only vested common stock, but also unvested
21 and restricted common stock.

22 250. The foregoing tightly-clustered sales were suspiciously timed in that
23 they were Atchison’s only sales during the entire Class Period, they occurred within a
24 brief, discrete time window, and prior to the Company’s disclosure of its full 2013
25 and 4Q13 performance, including attendance declines that were not in keeping with
26

1 what any other large domestic theme park reported, and because SeaWorld's
2 common stock price traded at its highest level during all of 2014 on March 6, 2014,
3 when Atchison made his final sale.

4 251. Further, Atchison's Forms 4 indicate that each of the foregoing trades
5 was made pursuant to a Rule 10b5-1 trading plan. The Company has not disclosed
6 any facts about Atchison's Rule 10b5-1 trading plan (or plans) in effect during the
7 Class Period. Rather, the Company stated in its 2013 10-K that it does "not
8 undertake any obligation to disclose, or to update or revise any disclosure regarding,
9 any such plans and specifically do not undertake to disclose the adoption,
10 amendment, termination or expiration of any such plans." Thus pertinent facts, such
11 as when Atchison entered into the plan or plans under which he made the foregoing
12 trades, are not available because they have not been publicly disclosed. However, to
13 the extent Atchison entered into the applicable trading plan or plans during the Class
14 Period, this, too, would support a finding of scienter.

15 **VII. LOSS CAUSATION**

16 252. Defendants' alleged unlawful conduct directly caused the losses incurred
17 by Plaintiffs and the Class. Throughout the Class Period, the prices of SeaWorld
18 common stock were artificially inflated as a direct result of Defendants' materially
19 false and misleading statements and omissions regarding the purported non-effect of
20 *Blackfish* on the Company's attendance, and thus, revenues. The false and
21 misleading statements and omissions set forth above were widely disseminated to the
22 securities markets, investment analysts, and the investing public. The true facts
23 became known for the first time by investors and the market through a corrective
24 disclosure on August 13, 2014.

25 253. When the true facts became known and/or the materialization of the
26 risks that had been concealed by Defendants occurred, the price of SeaWorld

1 common stock declined immediately and precipitously as the artificial inflation was
2 removed from the market price of the stock, causing substantial damage to Plaintiffs
3 and the members of the Class.

4 254. On August 13, 2014, on its 2Q14 Earnings Call and in the 2Q14 Press
5 Release, SeaWorld announced surprisingly poor results for the second quarter and
6 first half of the year, with earnings of 43 cents a share – well below the consensus
7 analyst estimate of 59 cents a share – and slashed its prior 2014 revenue guidance
8 from between \$1.49 billion and \$1.52 billion to between \$1.36 billion and \$1.37
9 billion. The Company made clear in its press release that the primary driver for its
10 disappointing second quarter and first half 2014 earnings was a “decline in
11 attendance” of 4.3% in the first half of 2014 (versus the first half of 2013). Critically,
12 it acknowledged, for the first time, that attendance at its parks had been negatively
13 affected by the public response to *Blackfish* – specifically, what the Company termed
14 “demand pressures related to recent media attention surrounding proposed legislation
15 in the state of California.”

16 255. After the August 13, 2014 disclosure by the Company, shares of
17 SeaWorld common stock fell by a staggering \$9.25, or 32.9%, from \$28.15 per share
18 at the close on August 12, 2014 to \$18.90 per share at the close on August 13, on
19 extremely heavy volume.

20 256. As confirmed by industry, financial and business press articles and the
21 2Q14 Earnings Call: (i) the Company’s reference to “demand pressures” from
22 “proposed legislation” referred to the so-called “*Blackfish* bill” put forward by a
23 California Assemblyman in March 2014; and (ii) the August 13, 2014 statements
24 marked the first time that the Company had admitted that *Blackfish*-related issues
25 were hurting attendance and the Company’s revenues, both current and going
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1 forward. These admissions were reported widely as notable new disclosures that
2 underlay the sharp August 13, 2014 stock price decline. *See* ¶¶163-75.

3 257. For example, on August 13, 2014, the *Wall Street Journal's* online site,
4 *WSJ Blog*, reported that SeaWorld's stock price was declining after the Company had
5 "blamed" its "disappointing second-quarter results" and lowered revenue guidance on
6 "the recent media debate about its treatment of captive orcas, saying the negative
7 attention has hurt attendance." The report noted "the controversy was sparked last
8 year in the wake of *Blackfish*," and explained that the Company's reference to
9 "demand pressures related to recent media attention surrounding proposed
10 legislation" that hurt attendance was a reference to the California bill proposed in
11 March 2014 (*see* ¶¶159-62, *supra*), which "aim[ed] to restrict SeaWorld's ability to
12 showcase some animals in that state."

13 258. The report described SeaWorld's admission that *Blackfish*-related issues
14 were hurting attendance and thus, revenues, as "*an about face for SeaWorld*," citing
15 Atchison's prior statements that *Blackfish* had "had no impact on our business."

16 259. Other financial press outlets also reported that, in SeaWorld's August
17 13, 2014 public disclosures that preceded the stock price decline that day, SeaWorld
18 had blamed its attendance decline on the *Blackfish* effect. For example, the *Financial*
19 *Times* reported on August 13, 2014 that "this quarter marks *the first time*
20 management has mentioned *Blackfish*-related issues in its earnings results."

21 260. The *Los Angeles Times* reported on August 14, 2014 that the Company's
22 attendance-driven revenue miss preceded this price decline: "[s]hares of SeaWorld
23 Entertainment Inc. plunged 33% on Wednesday after the company's earnings missed
24 Wall Street expectations. The Orlando, Fla.-based company also conceded for the
25 first time that attendance at its theme parks has been hurt by negative publicity
26

1 concerning accusations by animal-rights activists that SeaWorld mistreats killer
2 whales,” publicity which, according to the article, followed *Blackfish*.

3 261. Similarly, the *Washington Post* reported on August 14, 2014, in an
4 article headlined, “*Blackfish*’ Takes Its Toll: SeaWorld Shares Take A Nose-Dive”
5 that SeaWorld “acknowledged *for the first time* Wednesday the fallout that followed
6 the film’s release, admitting attendance issues in San Diego.” And the *Orlando*
7 *Sentinel* reported on August 14, 2014 that “Wednesday was *the first time* SeaWorld
8 had acknowledged that controversy about its whales had taken a toll on attendance.”

9 262. Discussion that occurred during the Company’s 2Q14 Earnings Call
10 further confirms that the reference to “demand pressures” from “proposed
11 legislation” was in fact a reference to the so-called “*Blackfish* bill” introduced in
12 March 2014, as discussed above in ¶¶159-62.

13 263. It was foreseeable to SeaWorld and the Individual Defendants that
14 concealing from investors the actual and reasonably forecast impact that negative
15 publicity from *Blackfish* was having on attendance at the Company’s parks and
16 SeaWorld’s brand and reputation, would artificially inflate the price of SeaWorld
17 common stock during the Class Period. It was similarly foreseeable that the ultimate
18 disclosure of the concealed information would cause the price of SeaWorld common
19 stock to drop significantly as the inflation caused by earlier misstatements was
20 removed from the stock by the corrective disclosure set forth herein.

21 264. Accordingly, the conduct of these Defendants as alleged herein
22 proximately caused foreseeable losses under the Exchange Act to Plaintiffs and
23 members of the Class.

1 **VIII. PLAINTIFFS AND THE CLASS ARE ENTITLED TO A**
2 **PRESUMPTION OF RELIANCE**

3 265. At all relevant times, the market for SeaWorld's common stock was
4 open and efficient for the following reasons, among others:

- 5 a) SeaWorld's common stock met the requirements for listing and
6 was listed and actively traded on the New York Stock Exchange, a
7 highly efficient electronic stock market;
- 8 b) As a registered and regulated issuer of securities, SeaWorld filed
9 periodic public reports with the SEC;
- 10 c) SeaWorld regularly communicated with public investors via
11 established market communication mechanisms, including
12 regularly disseminating press releases on the national circuits of
13 major newswire services and other wide-ranging public
14 disclosures, such as conference calls with analysts and investors
15 and other communications with the financial press and other
16 similar reporting services; and
- 17 d) SeaWorld was followed by securities analysts employed by major
18 brokerage firms, including Wells Fargo Securities, LLC, FBR
19 Capital Markets, and Macquarie Research, which authored reports
20 that were distributed to the sales force and certain customers of
21 their respective brokerage firms. Each of these reports was
22 publicly available and entered the public marketplace.

23 266. As a result of the foregoing, the market for SeaWorld's common stock
24 promptly digested current information regarding the Company from all publicly
25 available sources, and the prices of SeaWorld common stock reflected such
26 information. Based upon the materially false and misleading statements and
27 omissions of material fact alleged herein, SeaWorld common stock traded at
artificially inflated prices during the Class Period. Plaintiffs and all other members of
the Class purchased SeaWorld common stock relying upon the integrity of the market
price of SeaWorld common stock and other market information relating to SeaWorld.

1 267. Under these circumstances, all Class members suffered similar injuries
2 through their purchases and/or acquisitions of SeaWorld common stock at artificially
3 inflated prices, and the presumption of reliance under the fraud-on-the-market
4 doctrine applies.

5 268. Further, at all relevant times, Plaintiffs and the other members of the
6 Class reasonably relied upon Defendants to disclose material information as required
7 by law and in the Company's SEC filings. Plaintiffs and the other members of the
8 Class would not have purchased or otherwise acquired SeaWorld common stock at
9 artificially inflated prices if Defendants had disclosed all material information as
10 required. Thus, to the extent that Defendants concealed or improperly failed to
11 disclose material facts concerning the Company and its operations, Plaintiffs and the
12 other members of the Class are entitled to a presumption of reliance in accordance
13 with *Affiliated Ute Citizens v. United States*, 406 U.S. 128, 153 (1972) ("*Affiliated*
14 *Ute*").

15 **IX. THE STATUTORY SAFE HARBOR AND BESPEAKS CAUTION**
16 **DOCTRINE ARE INAPPLICABLE**

17 269. The PSLRA's statutory safe harbor and/or the bespeaks caution doctrine
18 applicable to forward-looking statements under certain circumstances do not apply to
19 any of the materially false and/or misleading statements alleged herein.

20 270. None of the statements complained of herein was a forward-looking
21 statement. Rather, each was a historical statement or a statement of purportedly
22 current facts and conditions at the time each statement was made.

23 271. To the extent that any materially false and/or misleading statement
24 alleged herein, or any portion thereof, can be construed as forward-looking, such
25 statement was not accompanied by meaningful cautionary language identifying
26 important facts that could cause actual results to differ materially from those in the

1 statement. As set forth above in detail, given the then-existing facts contradicting
2 Defendants' statements, the generalized risk disclosures made by Defendants were
3 not sufficient to insulate Defendants from liability for their materially false and
4 misleading statements.

5 272. To the extent that the statutory safe harbor may apply to any materially
6 false and/or misleading statement alleged herein, or a portion thereof, Defendants are
7 liable for any such false and/or misleading forward-looking statement because at the
8 time such statement was made, the speaker actually knew the statement was false, or
9 the statement was authorized and/or approved by an executive officer of SeaWorld
10 who actually knew that the statement was false.

11 273. Moreover, to the extent that Defendants issued any disclosures
12 purportedly designed to "warn" or "caution" investors of certain "risks," those
13 disclosures were also materially false and/or misleading because they did not disclose
14 that the risks that were the subject of such warnings had already materialized and/or
15 because Defendants SeaWorld, Atchison, Heaney and Swanson had actual
16 knowledge of existing, but undisclosed, material adverse facts that rendered such
17 "cautionary" disclosures materially false and/or misleading.

18 **X. CLASS ACTION ALLEGATIONS**

19 274. Plaintiffs bring this action as a class action pursuant to Federal Rules of
20 Civil Procedure 23(a) and (b)(3) individually and on behalf of a Class, consisting of
21 all persons and entities who: (i) purchased or otherwise acquired the publicly traded
22 common stock of SeaWorld between August 29, 2013 and August 13, 2014.
23 Excluded from the Class are: (i) Defendants; (ii) present or former executive officers
24 of SeaWorld, members of SeaWorld's Board of Directors, and members of their
25 immediate families (as defined in 17 C.F.R. § 229.404, Instructions (1)(a)(iii) and
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1 (1)(b)(ii)); (iii) any of the foregoing persons' legal representatives, heirs, successors
2 or assigns; and (iv) any entity in which Defendants have or had a controlling interest
3 or any affiliate of SeaWorld.

4 275. The members of the Class are so numerous that joinder of all members is
5 impracticable. Throughout the Class Period, the Company's securities were actively
6 traded on the NYSE. While the exact number of Class members is unknown to
7 Plaintiffs at this time, and can only be ascertained through appropriate discovery
8 from Defendants, Plaintiffs believe that there are at least hundreds, if not thousands,
9 of members in the proposed Class. Members of the Class may be identified from
10 records maintained by SeaWorld or its transfer agent, and may be notified of the
11 pendency of this action by mail using a form of notice customarily used in securities
12 class actions.

13 276. Plaintiffs' claims are typical of the claims of the members of the Class,
14 as all members of the Class are similarly affected by Defendants' wrongful conduct
15 in violation of federal law that is complained of herein.

16 277. Plaintiffs will fairly and adequately protect the interests of the members
17 of the Class and have retained counsel competent and experienced in class and
18 securities litigation.

19 278. Common questions of law and fact exist as to all members of the Class
20 and predominate over any questions solely affecting individual members of the Class.
21 Among the questions of law and fact common to the Class are:

- 22 a) whether the federal securities laws were violated by Defendants'
23 acts and omissions as alleged herein;
- 24 b) whether statements made by Defendants to the investing public
25 during the Class Period misrepresented or omitted material facts
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1 about the business, operations, and management of the Company;
2 and

3 c) to what extent the members of the Class have sustained damages,
4 and the proper measure of damages.

5 279. A class action is superior to all other available methods for the fair and
6 efficient adjudication of this controversy since joinder of all members is
7 impracticable. Furthermore, as the damages suffered by individual Class members
8 may be relatively small, the expense and burden of individual litigation make it
9 impossible for members of the Class to redress individually the wrongs done to them.
10 There will be no difficulty in the management of this action as a class action.

11 **XI. CAUSES OF ACTION**

12 **COUNT I**
13 **For Violations Of Section 10(b) Of The Exchange Act And Rule 10b(5)**
14 **Promulgated Thereunder**
15 **(Against SeaWorld and the Individual Defendants)**

16 280. Plaintiffs incorporate by reference and reallege all preceding paragraphs
17 as if fully set forth herein. This claim is brought against SeaWorld and the Individual
18 Defendants pursuant to Section 10(b) of the Exchange Act, 15 U.S.C. §78(j)(b), and
19 Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, by Plaintiffs on behalf of
20 themselves and all other members of the Class.

21 281. During the Class Period, SeaWorld and the Individual Defendants used
22 the means and instrumentalities of interstate commerce, the U.S. mails, and the
23 facilities of a national securities exchange to knowingly and/or recklessly make
24 and/or approve the materially false and misleading statements and omissions of
25 material fact alleged herein to: (i) deceive the investing public, including Plaintiffs
26 and the other Class members; (ii) artificially inflate and/or maintain the market price
27 of SeaWorld's common stock; and (iii) cause Plaintiffs and the other members of the

1 Class to purchase or otherwise acquire SeaWorld common stock at artificially
2 inflated prices. In furtherance of their unlawful scheme, plan, and course of conduct,
3 SeaWorld and the Individual Defendants took the actions alleged herein.

4 282. While in possession of material adverse non-public information,
5 SeaWorld and the Individual Defendants, individually and in concert, directly and
6 indirectly, by the use of means and instrumentalities of interstate commerce, the U.S.
7 mails, and the facilities of a national securities exchange: (i) employed devices,
8 schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or
9 failed to disclose material facts necessary to make the statements that they made not
10 misleading; and (iii) engaged in acts, practices, and a course of business that operated
11 as a fraud and deceit upon the purchasers of the Company's common stock in an
12 effort to maintain artificially high market prices for SeaWorld common stock, in
13 violation of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated
14 thereunder. As alleged herein, the material misrepresentations contained in, or the
15 material facts omitted from, these Defendants' public statements included, but were
16 not limited to, materially false and/or misleading representations and omissions
17 during the Class Period regarding the impact (or purported lack thereof) of *Blackfish*
18 and the negative publicity created by the film on the Company's business and
19 attendance. SeaWorld and the Individual Defendants are sued as primary participants
20 in the wrongful conduct alleged herein.

21 283. By virtue of their high-level positions at the Company during the Class
22 Period, the Individual Defendants were authorized to make public statements, and
23 made public statements during the Class Period on SeaWorld's behalf. These
24 Defendants also were privy to and participated in the creation, development, and
25 issuance of the materially false and misleading statements alleged herein, and/or were
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1 aware of the Company's and their own dissemination of information to the investing
2 public that they either knew, or recklessly disregarded, was materially false and
3 misleading.

4 284. In addition to the duties of full disclosure imposed on SeaWorld and the
5 Individual Defendants as a result of making affirmative statements and reports to the
6 investing public, these Defendants also had a duty to disclose information required to
7 update and/or correct their prior misstatements and/or omissions, and to update any
8 statements or omissions that had become false or misleading as a result of intervening
9 events. Further, SeaWorld and the Individual Defendants had a duty to promptly
10 disseminate truthful information that would be material to investors in compliance
11 with the integrated disclosure provisions of the SEC, as embodied in SEC Regulation
12 S-X (17 C.F.R. Section 210.01, *et seq.*) and Regulation S-K (17 C.F.R. Section
13 229.10, *et seq.*), as well as other SEC regulations, including accurate and truthful
14 information with respect to the Company's operations, so that the market price of the
15 Company's common stock would be based on truthful, complete, and accurate
16 information. Atchison and Heaney also had duties under the Sarbanes-Oxley Act of
17 2002 to ensure that SeaWorld's Forms 10-Q and 10-K filed with the SEC did not
18 misrepresent or omit any material facts.

19 285. SeaWorld and the Individual Defendants had actual knowledge of the
20 misrepresentations and omissions of material facts set forth herein, or acted with
21 reckless disregard for the truth in that they failed to ascertain and to disclose such
22 facts, even though such facts were readily available to them. These Defendants'
23 material misrepresentations and omissions were done knowingly or recklessly, and
24 for the purpose and effect of concealing the truth with respect to SeaWorld's
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1 operations, business, performance, and prospects from the investing public and
2 supporting the artificially inflated price of its common stock.

3 286. The dissemination of the materially false and misleading information
4 and failure to disclose material facts, as set forth above, artificially inflated the
5 market price of SeaWorld's common stock during the Class Period. In ignorance of
6 the fact that the market prices of SeaWorld's common stock were artificially inflated,
7 and relying directly or indirectly on the materially false and misleading statements
8 made by SeaWorld and the Individual Defendants, and on the efficiency and integrity
9 of the market in which the Company's common stock trades, or on the absence of
10 material adverse information that was known to or recklessly disregarded by
11 SeaWorld and the Individual Defendants but not disclosed in public statements by
12 these Defendants during the Class Period, Plaintiffs and the other members of the
13 Class purchased SeaWorld's common stock during the Class Period at artificially
14 inflated prices. As the previously misrepresented and/or concealed material facts
15 eventually emerged, the price of SeaWorld's common stock substantially declined.

16 287. At the time of the material misrepresentations and omissions alleged
17 herein, Plaintiffs and the other members of the Class were ignorant of their falsity,
18 and believed them to be true. Had Plaintiffs and the other members of the Class
19 known the truth with respect to the business, operations, performance, and prospects
20 of SeaWorld, which was misrepresented and/or concealed by SeaWorld and the
21 Individual Defendants, Plaintiffs and the other members of the Class would not have
22 purchased SeaWorld's common stock, or if they had purchased such stock, would not
23 have done so at the artificially inflated prices that they paid.

1 day-to-day operations, and knowledge of the statements filed by the Company with
2 the SEC and other statements disseminated to the investing public, the Individual
3 Defendants had the power to influence and control, and did influence and control,
4 directly or indirectly, the day-to-day decision-making of the Company, including the
5 content and dissemination of the various statements Plaintiffs allege were materially
6 false and misleading and/or omitted material facts. The Individual Defendants were
7 each provided with, or had unlimited access to, copies of the Company's reports,
8 press releases, public filings, and other statements alleged by Plaintiffs to have been
9 misleading prior to and/or shortly after those statements were issued, and each had
10 the ability to prevent the issuance of the statements or to cause the statements to be
11 corrected.

12 293. In particular, the Individual Defendants had direct and supervisory
13 involvement in the day-to-day operations of the Company, and therefore had, or are
14 presumed to have had, the power to control or influence the particular transactions
15 giving rise to the securities violations as alleged herein, and exercised the same.

16 294. Blackstone owned a majority of the voting power of all outstanding
17 shares of the Company's common stock at the time of the filing of the IPO Offering
18 Materials, such that SeaWorld was a "controlled company" within the meaning of the
19 corporate governance standards of the New York Stock Exchange.

20 295. As set forth above, the Individual Defendants and SeaWorld violated
21 Section 10(b) and Rule 10b-5 by making or causing to be made the materially false
22 and misleading statements and omissions of material fact alleged herein. By virtue of
23 their participation in the underlying violations of Section 10(b) and Rule 10b-5,
24 Blackstone and the Individual Defendants are liable pursuant to Section 20(a) of the
25 Exchange Act. As a direct and proximate result of these Defendants' wrongful
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1 conduct, Plaintiffs and the other members of the Class suffered damages in
2 connection with their purchases and/or acquisitions of the Company's common stock
3 during the Class Period.

4 **XII. PRAYER FOR RELIEF**

5 **WHEREFORE**, Plaintiffs pray for relief and judgment, as follows:

- 6 a) Determining that this action is a proper class action, designating
7 Plaintiffs as class representatives under Rule 23 of the Federal
8 Rules of Civil Procedure and Plaintiffs' counsel as Class Counsel;
- 9 b) Awarding compensatory damages in favor of Plaintiffs and the
10 other Class members against all Defendants, jointly and severally,
11 for all damages sustained as a result of Defendants' wrongdoing,
12 in an amount to be proven at trial, including interest thereon;
- 13 c) Awarding Plaintiffs and the Class their reasonable costs and
14 expenses incurred in this action, including counsel fees and expert
15 fees; and
- 16 d) Awarding all equitable and other relief as the Court may deem
17 just and proper.

18 **XIII. JURY TRIAL DEMANDED**

19 Plaintiffs hereby demand a trial by jury on all triable claims and issues.

20 Dated: May 31, 2016

Respectfully Submitted,

21 **KIRBY NOONAN**
22 **LANCE & HOGE LLP**

23 /s/ Ethan T. Boyer

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CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2016, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system. Based upon the records currently on file, the Clerk of the Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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1 I certify under penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct

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4 DATED: May 31, 2016

/s/ Ethan T. Boyer