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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, Plaintiff, - against - FREDERICK D. JACOBS, Defendant.	**1:18-cv-_____-________** **COMPLAINT AND JURY DEMAND** **ECF CASE**

Plaintiff, United States Securities and Exchange Commission (the "SEC"), for its Complaint against defendant Frederick D. Jacobs ("Jacobs" or "Defendant"), alleges as follows:

SUMMARY

1. This Complaint concerns an untrue or misleading statement made by Jacobs, SeaWorld Entertainment, Inc.'s ("SeaWorld") then-vice president of communications, relating to the impact of the documentary film *Blackfish* on the company's reputation and/or business (*i.e.*, "*Blackfish* effect"). *Blackfish* was highly critical of SeaWorld's treatment of its orcas (killer whales). The film was released in theaters in July 2013, and received significant media attention that escalated as the film became more widely distributed—including via multiple airings on cable television beginning in late October 2013.

2. Jacobs—just prior to selling his SeaWorld stock—made an untrue statement of material fact and/or omitted material facts from his statement that were necessary in order to make the statement he made not misleading to investors about the *Blackfish* effect. In particular, in an article published on January 13, 2014, Jacobs provided a quote stating: "[T]here is no truth to the suggestion that SeaWorld's reputation or business has been harmed by *Blackfish*."

NATURE OF THE PROCEEDINGS AND REQUESTED RELIEF

3. The SEC seeks a permanent injunction against Defendant enjoining him from engaging in the transactions, acts, practices, and courses of business alleged in this Complaint and from violating, directly or indirectly, the laws alleged in this Complaint; and disgorgement of all ill-gotten gains from the unlawful activity set forth in this Complaint, together with prejudgment interest.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)].

5. Venue lies in this Court pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)]. Certain of the acts, practices, transactions, and courses of business alleged in this Complaint occurred within the Southern District of New York and were affected, directly or indirectly, by making use of means or instrumentalities of transportation or communication in interstate commerce, or the mails, or the facilities of a national securities exchange. SeaWorld's stock is traded on the New York Stock Exchange ("NYSE"), which is located in the Southern District of New York.

DEFENDANT

6. **Frederick D. Jacobs**: Jacobs is a resident of Philadelphia, Pennsylvania. During the time period relevant to this Complaint, Jacobs was SeaWorld's vice-president of communications. In this role, Jacobs was responsible for responding to inquiries from the media on behalf of SeaWorld.

FACTS

Jacobs Should Have Known that the *Blackfish* Effect Was Material to Investors

7. Even before *Blackfish* was released in theatres in July 2013, SeaWorld's top management was concerned about the film's potential impact to SeaWorld's business. Some investors also expressed concern about the film's potential impact to SeaWorld's business prior to the film's release.

8. In August 2013, soon after *Blackfish*'s theatrical release, SeaWorld reported that attendance in the second quarter dropped from the prior year. At that time, the Company had not done a specific assessment of whether a portion of that drop was related to *Blackfish*. The financial press inquired whether *Blackfish* was harming attendance. In response, SeaWorld told the press that it could "attribute no attendance impact at all to the movie."

9. On August 28, 2013, an article in the financial press suggested that, despite SeaWorld's denial, there might have been a link between *Blackfish* and SeaWorld's declining attendance. Immediately following the article, SeaWorld's share price dropped by five percent (5%). Jacobs should have known that the *Blackfish* effect, if and when such occurred, would be material to investors.

In Fall 2013, SeaWorld Measured Harm to Its Reputation

10. Prior to and throughout the Relevant Period, SeaWorld regularly described its reputation in SEC filings as one of its "most important assets," and linked public perception of the company to the possibility of reduced attendance and a negative impact on the company's business and results of operations.

11. In September 2013, SeaWorld received the results of its annual corporate reputation study, which was conducted from August 22–30, 2013.

12. The results showed that SeaWorld's reputation score had fallen by 12.8% on a year-over-year basis and was the lowest score SeaWorld had measured since beginning the annual study in 2010.

13. The study also showed that, among those who were aware of *Blackfish*, 32% had less favorable opinions of SeaWorld as a result (vs. 11% who had more favorable opinions), and that even some people who had not heard of *Blackfish* by name were aware of the film's anti-captivity message and might be impacted by it.

14. The corporate reputation study was presented by the communications department staff, including Jacobs, to SeaWorld's strategy committee, which included SeaWorld's CEO, on October 17, 2013. Following the study, some SeaWorld officers and employees, including Jacobs, believed that *Blackfish* had harmed SeaWorld's reputation.

In Late 2013, the *Blackfish* Effect Was Becoming More Pronounced

15. In late November and early December 2013, following the first television broadcasts of *Blackfish*, a number of high-profile musical acts cancelled their performances at

SeaWorld and tied the cancellations to *Blackfish*. As Jacobs put it in an email, SeaWorld's reputation at that point was "positively radioactive."

16. By mid-December 2013, SeaWorld had also been informed that a number of nationally known promotional partners wished to withdraw from or delay marketing arrangements due to their fear of a public backlash associated with *Blackfish*. Even SeaWorld's "longest running Partner (25 years)" declined to participate in SeaWorld's 50th anniversary tour because of *Blackfish*.

17. Although SeaWorld at that time was experiencing year-over-year revenue growth and only modest declines in attendance, these cancellations should have provided confirmation that SeaWorld's reputation had been materially damaged by *Blackfish*, and that the *Blackfish* effect was negatively affecting SeaWorld's business relationships.

18. In an article published on January 13, 2014, Jacobs provided a quote stating: "[T]here is no truth to the suggestion that SeaWorld's reputation or business has been harmed by *Blackfish*." In light of the reputational damage SeaWorld had measured and ensuing fallout with sponsors and bands that was linked to *Blackfish*, Jacobs should have known that this statement was untrue and/or that it contained omissions of material facts that were necessary to make the statement not misleading.

19. Over a period of four weeks following the January 13, 2014 article, Jacobs sold SeaWorld stock. SeaWorld's stock price was inflated as a result of the conduct alleged in this Complaint, allowing Jacobs to avoid losses of approximately $84,885 on his sales.

<u>SeaWorld's Disclosure on August 13, 2014</u>

20. On August 13, 2014, SeaWorld, for the first time acknowledging that negative publicity connected with *Blackfish* was impacting attendance, stated in a Form 8-K filing that attendance in Q2 2014 "was impacted by demand pressures related to recent media attention surrounding proposed legislation in the state of California." Although the disclosure did not refer to *Blackfish* by name, it was understood internally, and by the press, analysts, and investors, that SeaWorld had finally disclosed that *Blackfish* was negatively affecting its business and that the *Blackfish* effect—even if not quantifiably material on a companywide basis at that point—was qualitatively material to investors.

21. Following the Form 8-K filing, in which the company also included a downward revision of its earnings guidance for the year, SeaWorld's stock price fell from $28.15 to $18.90—a 33% drop—thereby decreasing SeaWorld's market capitalization by approximately $830 million. The announcement also widely caused analysts to downgrade SeaWorld's stock to a sell recommendation.

<u>FIRST CLAIM FOR RELIEF</u>

Section 17(a)(2) of the Securities Act
[15 U.S.C. Sec. 77q(a)(2)]

22. The SEC realleges and incorporates by reference paragraphs 1 through 22, as though fully set forth herein.

23. By virtue of the foregoing, Jacobs, directly or indirectly, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, acting negligently, obtained money or property by means of an

untrue statement of material fact or omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

24. By virtue of the foregoing, Jacobs, directly or indirectly, violated and, unless restrained and enjoined, will again violate Section 17(a)(2) of the Securities Act.

RELIEF SOUGHT

WHEREFORE, the SEC respectfully requests that this Court:

I.

Find that the Defendant committed the violation alleged in this Complaint;

II.

Enter an Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining the Defendant from engaging in the transactions, acts, practices, and courses of business alleged in this Complaint and from violating, directly or indirectly, the laws alleged in this Complaint;

III.

Order that the Defendant disgorge any and all ill-gotten gains, together with pre-judgment interest, derived from the improper conduct set forth in this Complaint;

IV.

Retain jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and

V.

Grant such other relief as this Court may deem just or appropriate.

JURY DEMAND

The SEC demands a trial by jury on all claims so triable.

Respectfully submitted this 18th day of September, 2018.

/s/ Stephen C. McKenna
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