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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ANDREA VELAZQUEZ, individually and on behalf of all others similarly situated,

Plaintiff,

vs.

FESTIVAL FUN PARKS, LLC,

Defendant.

Case No. 24STCV20667

CLASS ACTION COMPLAINT

1. **Unfair Competition Law**
2. **Quasi-Contract**

Jury Trial Demanded

General Jurisdiction - Civil

Table of Contents

I. Introduction.

1. In recent years, companies that sell goods and services have sought to boost revenues by adding junk fees. One example is the use of "drip pricing," where companies "advertise only part of a product's total price to lure in consumers, and do not mention other mandatory charges until late in the buying process."[1] Such fees are deceptive or unfair "because they are disclosed only at a later stage in the consumer's purchasing process."[2] "Drip pricing interferes with consumers' ability to price-compare and manipulates them into paying fees that are either hidden entirely or not presented until late in the transaction, after the consumer already has spent significant time selecting and finalizing a product or service plan to purchase."[3]

2. This is costly for consumers, who "are paying billions of dollars a year in unnecessary, unavoidable, or surprise charges that inflate prices while adding little to no value. These junk fees, which are often not disclosed upfront and only revealed after a consumer has decided to buy something, obscure true prices and dilute the forces of market competition that are the bedrock of the U.S economy."[4] As the Federal Trade Commission notes, "American consumers, workers, and small businesses today are swamped with junk fees that frustrate consumers, erode trust, impair comparison shopping, and facilitate inflation."[5]

3. In addition to harming consumers, drip pricing is illegal under California law. According to the California legislature, "This practice, like other forms of bait and switch

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[1] *Bringing Dark Pattern to Light*, FTC Staff Report (September 2022), available at https://www.ftc.gov/system/files/ftc_gov/pdf/P214800%20Dark%20Patterns%20Report%209.14.2022%20-%20FINAL.pdf

[2] https://www.federalregister.gov/documents/2022/11/08/2022-24326/unfair-or-deceptive-fees-trade-regulation-rule-commission-matter-no-r207011

[3] *Bringing Dark Pattern to Light*, FTC Staff Report (September 2022), available at https://www.ftc.gov/system/files/ftc_gov/pdf/P214800%20Dark%20Patterns%20Report%209.14.2022%20-%20FINAL.pdf

[4] https://www.whitehouse.gov/wp-content/uploads/2023/03/WH-Junk-Fees-Guide-for-States.pdf

[5] https://www.federalregister.gov/documents/2022/11/08/2022-24326/unfair-or-deceptive-fees-trade-regulation-rule-commission-matter-no-r207011

advertising, is prohibited by existing statutes, including the Unfair Competition Law (Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code) and the False Advertising Law (Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code)."16 *See, e.g.*, Cal. Bus. & Prof. Code § 17200 (California's Unfair Competition Law bans unlawful, unfair, and deceptive business practices); Cal. Bus. Prof. Code §17500 (False Advertising Law prohibits businesses from making statements that they know or should know to be untrue or misleading).

4. Defendant Festival Fun Parks, LLC ("Raging Waters" or "Defendant") is a water park that sells tickets on its website, https://www.ragingwaters.com/. For years, Defendant has sold tickets on its website using drip pricing—advertising one price for the ticket, only to tack on mandatory "processing" fees later in the process. Many consumers, including Plaintiff, paid this junk fee and were harmed.

II. Parties.

5. Plaintiff Andrea Velazquez is domiciled in Los Angeles, California.

6. The proposed class includes citizens of California.

7. Defendant Festival Fun Parks, LLC is a Delaware limited liability company with its principal place of business in Homestead, Pennsylvania.

8. Defendant operates the Raging Waters water park and sells tickets on the Raging Waters website, at https://www.ragingwaters.com/.

III. Jurisdiction and venue.

9. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d)(2). The amount in controversy exceeds $5,000,000, exclusive of interest and costs, and the matter is a class action in which one or more members of the proposed class are citizens of a state different from Defendant.

10. The Court has personal jurisdiction over Defendant because it does business in California. It advertises and sells tickets in California, and serves a market for its tickets in California. Due to Defendant's actions, its tickets have been marketed and sold to consumers in

California, and harmed consumers in California. Due to Defendant's actions, Plaintiff purchased tickets on Defendant's website, and paid illegal hidden fees. Plaintiff was harmed in California.

11. Venue is proper under U.S.C. § 1391(b)(2) because a substantial part of Defendant's conduct giving rise to the claims occurred in this District, including selling tickets with hidden fees to Plaintiff.

IV. Facts.

A. Drip pricing is unfair and illegal.

12. "As more and more commerce has moved online, so too have manipulative design practices—termed 'dark patterns'" that "trick or manipulate users into making choices they would not otherwise have made and that may cause harm."[6]

13. One example of a dark pattern is drip pricing, in which companies "advertise only part of a product's total price to lure in consumers, and do not mention other mandatory charges until late in the buying process."[7] In the ticketing space, companies advertise one price for a ticket, and then load the purchase up with additional fees later in the checkout process. The goal of this is to conceal the true cost of the ticket and prevent comparison shopping. The consumer selects and decides to purchase the ticket based on a lower advertised price, but ends up paying more because of junk fees that are tacked on at the end.

14. The Federal Trade Commission has stated that junk fees are "deceptive or unfair," "because they are disclosed only at a later stage in the consumer's purchasing process."[8] "Drip pricing interferes with consumers' ability to price-compare and manipulates them into paying fees that are either hidden entirely or not presented until late in the transaction, after the

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[6] *Bringing Dark Pattern to Light*, FTC Staff Report (September 2022), available at https://www.ftc.gov/system/files/ftc_gov/pdf/P214800%20Dark%20Patterns%20Report%209.14.2022%20-%20FINAL.pdf

[7] *Id.*

[8] https://www.federalregister.gov/documents/2022/11/08/2022-24326/unfair-or-deceptive-fees-trade-regulation-rule-commission-matter-no-r207011

consumer already has spent significant time selecting and finalizing a product or service plan to purchase."[9] By then, consumers have already committed to the purchase.

15. Drip pricing costs consumers a lot of money. For example, when buying tickets, consumers rely on the initial price, spend more money, and make purchases that they otherwise would not have made.[10]

16. Drip pricing also harms consumers because it can "weaken competition by making it harder for consumers to price-compare across sellers. An honest business that sets forth the total price of its product at the outset will be at a significant disadvantage when compared to a seller that advertises an artificially low price to draw consumers in, then adds mandatory charges late in the transaction."[11]

17. Thus, the Federal Trade Commission has warned that "companies should include any unavoidable and mandatory fees in the upfront, advertised price." "Failure to do so has the potential to deceive consumers in violation of the FTC Act."[12]

18. Because drip pricing is unfair and deceptive, it is also illegal under the FTC Act. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce." And, the FTC has "federal rule-making authority to issue industry-wide regulations (Rules and Guides) to deal with common unfair or deceptive practices and unfair methods of competition."[13] Because drip pricing is unfair and deceptive in violation of the FTC Act, the FTC has proposed specific rules banning junk fees under its rulemaking authority.[14]

19. Drip pricing is also illegal under California law, and has been for years.

20. Starting on July 1, 2024, drip pricing is also a specifically enumerated violation under the California Legal Remedies Act. SB 478 makes drip pricing—namely, "[a]dvertising,

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[9] *Bringing Dark Patterns to Light*, FTC Staff Report, at 9 (September 2022), available at https://www.ftc.gov/system/files/ftc_gov/pdf/P214800%20Dark%20Patterns%20Report%209.14.2022%20-%20FINAL.pdf

[10] *Id.* at 9.

[11] *Id.*

[12] *Id.*

[13] https://www.ftc.gov/enforcement/rulemaking

[14] https://www.federalregister.gov/documents/2023/11/09/2023-24234/trade-regulation-rule-on-unfair-or-deceptive-fees

displaying, or offering a price for a good or service that does not include all mandatory fees or charges" other than taxes and shipping—a violation of California's Consumer Legal Remedies Act.

21. But, even before July 1, 2024, drip pricing was already illegal under California's other consumer protection statutes. As SB 478 expressly states, "This practice, like other forms of bait and switch advertising, is prohibited by existing statutes, including the Unfair Competition Law (Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code) and the False Advertising Law (Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code)."[15] Thus, drip pricing has been illegal under California's other consumer protection statute for years.

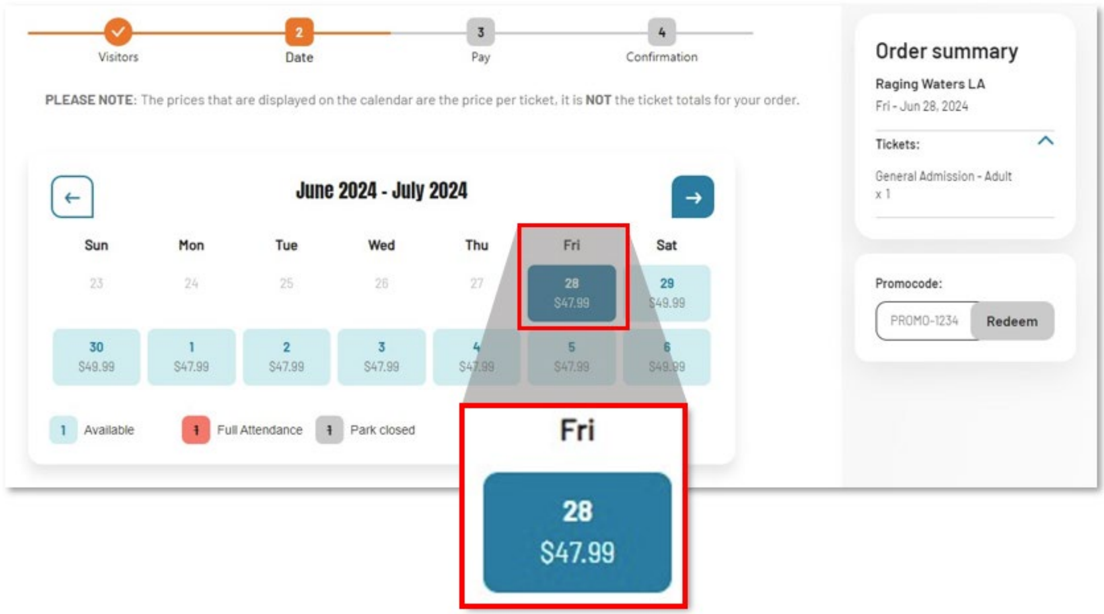
22. On or about June 28, 2024, Raging Waters used drip pricing in its ticket sales. Plaintiff brings this lawsuit to obtain relief for consumers who, like Plaintiff, purchased tickets from Raging Waters with hidden fees.

B. Raging Waters' checkout process.

23. On or about June 28, 2024, Raging Waters used drip pricing, and hid the true price of the ticket until purchase was almost complete. For each of Raging Waters' tickets, Raging Waters used drip pricing and added a mandatory fee during the checkout process. The example below is representative of Raging Waters' checkout process for tickets sold prior to June 28, 2024. In all relevant respects, throughout the entire statute of limitations period, the online ticket sales for Raging Waters were substantially similar.

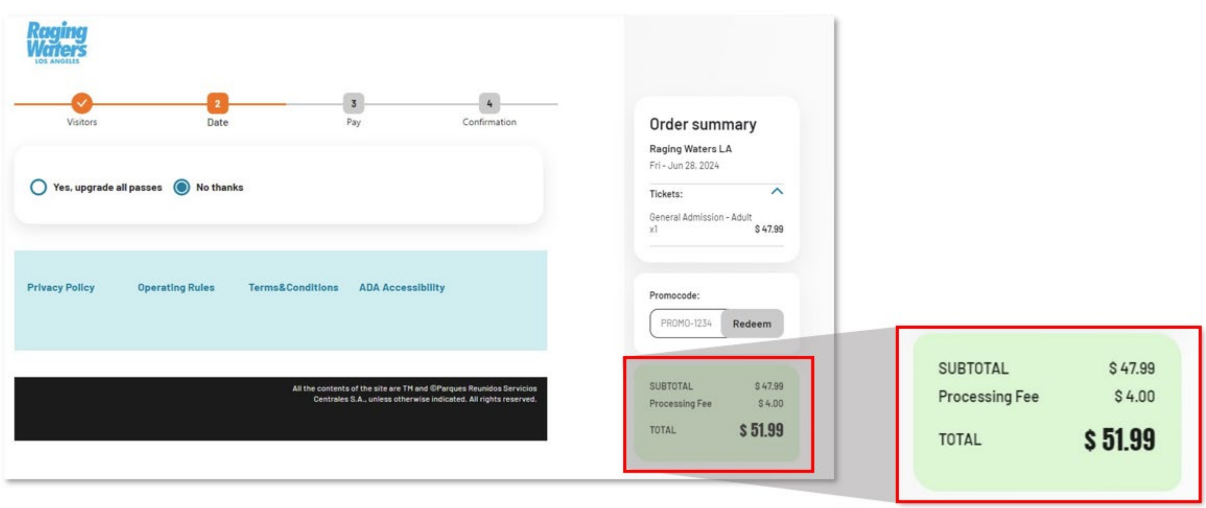
24. When a consumer visited Defendant's website, https://www.ragingwaters.com/, the homepage advertised different tickets and packages. After choosing to book a ticket, consumers were then presented with a calendar of available dates with specific prices for different ticket options. In the example below, the total cost to purchase a ticket for "General Admission - Adult" on June 28, 2024 is represented as $47.99.

[15] Consumer Legal Remedies Act: advertisements., CA S.B. 478, 2023.



Captured June 28, 2024

25. But on the next screen, the ticket price changed. Several screens into the checkout process, Defendant's website reflected a new charge of a "Processing Fee" for $4.00. The cost of this fee was disclosed for the first time in the checkout process in small font. This fee changed the ticket price from the previously advertised $47.99 to an increased price of $51.99.



Captured June 28, 2024

26. Defendant did not disclose this mandatory charge until several pages into the checkout process. This was after the consumer had invested a significant amount of time finalizing their ticket selection and had already decided to purchase the tickets. Consumers were only presented with this charge several pages into the checkout process. Only then, were they finally informed of an additional "Processing Fee" of $4.00 in the subtotal. Because Raging Waters waited until the middle of the checkout process to disclose the true price, it was difficult for consumers to accurately compare ticket prices across other tourist attractions. Not only does this frustrate comparison shopping, but this drip pricing also impeded competition and led consumers to pay more for their ticket than they otherwise would have.

C. Plaintiff purchased from Raging Waters.

27. On June 17, 2024, Ms. Velazquez purchased two general admission tickets to Ragin Waters water park online through Raging Waters' website, https://www.ragingwaters.com/. At the time, Ms. Velazquez was living in Los Angeles, California.

28. During the checkout process, Raging Waters represented that the total of these tickets would cost $79.98. Ms. Velazquez believed that the total of these tickets would cost $79.98. But after its initial representation of the ticket cost, Raging Waters added a "Processing Fee" of $4.00 for each ticket, making the actual ticket price $87.98, not $79.98, as Raging Waters had previously represented.

29. Ms. Velazquez was harmed by paying Defendant's illegal and unfair junk fee. If Raging Waters had not used hidden fees, Plaintiff would have paid less for the tickets.

D. Class Action Allegations.

30. Plaintiff brings the asserted claims on behalf of the proposed class of: all persons who, while in the state of California and within the applicable statute of limitations and before June 28, 2024, purchased admission tickets from https://www.ragingwaters.com/ ("California Class").

31. The following people are excluded from the proposed class: (1) any Judge or Magistrate Judge presiding over this action and the members of their family; (2) Defendant,

Defendant's subsidiaries, parents, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current employees, officers and directors; (3) persons who properly execute and file a timely request for exclusion from the class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and Defendant's counsel, and their experts and consultants; and (6) the legal representatives, successors, and assigns of any such excluded persons.

Numerosity & Ascertainability.

32. The proposed class contains members so numerous that separate joinder of each member of the class is impractical. There are thousands or tens of thousands of class members.

33. Class members can be identified through Defendant's sales records and public notice.

Predominance of Common Questions.

34. There are questions of law and fact common to the proposed class. Common questions of law and fact include, without limitation:

- whether Raging Waters' drip pricing is unfair;
- whether Raging Waters' drip pricing is illegal under California's consumer protection statutes and the FTC Act;
- what damages are needed to reasonably compensate Plaintiff and the proposed class.

Typicality & Adequacy.

35. Plaintiff's claims are typical of the proposed class. Like the proposed class, Plaintiff purchased tickets from Raging Waters. There are no conflicts of interest between Plaintiff and the class.

Superiority.

36. A class action is superior to all other available methods for the fair and efficient adjudication of this litigation because individual litigation of each claim is impractical. It would be unduly burdensome to have individual litigation of thousands of individual claims in separate lawsuits, every one of which would present the issues presented in this lawsuit.

V. Claims.

First Cause of Action: Unfair Competition Law

(By Plaintiff and the California Class)

37. Plaintiff incorporates each and every factual allegation set forth above.

38. Plaintiff brings this cause of action individually and on behalf of the class.

39. Defendant has violated California's Unfair Competition Law (UCL) by engaging in unfair and unlawful conduct.

The Unlawful Prong.

40. Defendant engaged in unlawful conduct by violating the FTC Act and the unfair prong of the UCL, as alleged above and throughout.

The Unfair Prong.

41. Defendant's conduct is unfair because the harm to the consumer greatly outweighs the public utility of Defendant's conduct. There is no public utility to using junk fees. Junk fees mislead consumers on price, and prevents comparison shopping and competition. This injury was not outweighed by any countervailing benefits to consumers or competition. Hidden and late-disclosed fees only injure healthy competition and harm consumers. And companies could easily disclose any such fees upfront.

42. Defendant violated established public policy by violating the FTC Act and the UCL, as alleged below and incorporated here. The unfairness of this practice is tethered to a legislatively declared policy (that of the FTC Act and of the California legislature, which, as alleged above, expressly declared that drip pricing is unfair and violates the UCL).

43. Defendant's conduct, as alleged above, was immoral, unethical, oppressive, unscrupulous, and substantially injurious to consumers.

44. Plaintiff and the class could not have reasonably avoided this injury. As alleged above, Defendant's fees were not disclosed until after consumers select their theme park tickets. By then, the harm was done.

45. Defendant's use of hidden fees were a substantial factor and proximate cause in causing damages and losses to Plaintiff and class members.

46. Plaintiff and class members were injured as a direct and proximate result of Defendant's conduct because (1) they paid illegal and unfair junk fees, and/or (2) they overpaid for the tickets because they are sold at a price premium due to the hidden fees.

<u>Second Cause of Action</u>: Quasi-Contract

(By Plaintiff and the California Class)

47. Plaintiff incorporates each and every factual allegation set forth above.

48. Plaintiff brings this cause of action individually and on behalf of the class.

49. As alleged in detail above, Defendant's false and misleading advertising caused Plaintiff and the class to purchase Raging Waters tickets and to pay a price premium for those tickets.

50. Defendant's unlawful and unfair "processing fees" caused Plaintiff and the class to overpay for the theme park tickets.

51. In this way, Defendant received a direct and unjust benefit, at Plaintiff and the class's expense.

52. Plaintiff and the class seek restitution.

VI. Prayer for Relief.

53. Plaintiff seeks the following relief for herself and the class:

- An order certifying the asserted claims, or issues raised, as a class action;
- A judgment in favor of Plaintiff and the proposed class;
- Damages, and statutory damages, where applicable;
- Restitution;
- Rescission;
- Disgorgement, and other just equitable relief;
- Pre- and post-judgment interest;
- An injunction prohibiting Defendant's deceptive conduct, as allowed by law;
- Reasonable attorneys' fees and costs, as allowed by law;
- Any additional relief that the Court deems reasonable and just.

Date: August 15, 2024

Respectfully submitted,

By: ______________________________

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Attorneys for Plaintiff

Demand for Jury Trial

Plaintiff demands the right to a jury trial on all claims so triable.

Date: August 15, 2024

Respectfully submitted,

By: ______________________________

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