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11 the Proposed Class

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 JENALE NIELSEN, individually and on behalf
15 of others similarly situated,

16 Plaintiff,

17 vs.

18 WALT DISNEY PARKS AND RESORTS
19 U.S., Inc., a Florida Corporation, and DOES 1
20 through 10, inclusive,

21 Defendants.

Case No.: 8:21-cv-02055-DOC-ADS

SECOND AMENDED CLASS ACTION
COMPLAINT

DEMAND FOR JURY TRIAL

22 Plaintiff Jenale Nielsen (“Ms. Nielsen”) hereby brings this Second Amended Complaint
23 against Defendant Walt Disney Parks And Resorts U.S., Inc. (“Disney”) and Does 1-10
24 (collectively referred to herein as “Defendants”) for misleading consumers about the nature,
25 benefits, and restrictions of the Dream Key Passes that Disney sold to Ms. Nielsen and others
26 similarly situated. Ms. Nielsen alleges as follows:

27 **PARTIES, JURISDICTION, AND VENUE**

- 28 1. Ms. Nielsen is an individual who resides in Santa Clara County, California.
2. Walt Disney Parks And Resorts U.S., Inc. is a Florida Corporation whose principal
place of business is in Lake Buena Vista, Florida. Disney has, at all relevant times, engaged in
trade or commerce in California by advertising and offering theme park admission tickets to
California consumers.
3. Ms. Nielsen is ignorant of the true names and capacities of the defendants sued

1 herein as Does 1 through 10, inclusive, and therefore sues these defendants by such fictitious
2 names. Ms. Nielsen prays for leave to amend this complaint to allege the defendants' true names
3 and capacities when the same have been ascertained.

4 4. Ms. Nielsen is informed and believes, and on that basis alleges, that each of the
5 Defendants, including Does 1 through 10, inclusive, is the principal, agent, servant, employee, or
6 alter ego of each of the other Defendants, and in doing the things hereafter mentioned, each
7 Defendant was acting in the scope of its, his, or her authority as such agent, servant, and employee
8 with the permission and consent of each of the other Defendants.

9 **GENERAL ALLEGATIONS**

10 5. Disney operates theme parks, including the Disneyland Resort in Anaheim,
11 California which includes the Disneyland theme park and the California Adventures theme park.

12 6. Ms. Nielsen is a longtime Disney customer who enjoys visiting Disney's theme
13 parks, including the parks located in Anaheim, California.

14 7. Disney requires that all guests entering its theme parks make a reservation and
15 purchase a ticket. A ticket alone is not sufficient for entry. As it explains on its website: "To enter
16 a theme park, Guests (ages 3 and older) will need a valid ticket and a theme park reservation for
17 the same day and same park they want to visit." (<https://disneyland.disney.go.com/>) Disney
18 makes reservations available via its website. Before purchasing a ticket, consumers are guided to
19 a reservation calendar to determine the days for which reservations are available. If a consumer
20 finds an available reservation, he or she can select the desired date and proceed to purchase a
21 ticket. The ticket will then be valid for the day of the reservation. If reservations are not available
22 for a particular day, consumers are not able to purchase tickets for that day.

23 8. In or about August 2021, Disney introduced a sales program that it calls the
24 Disneyland Resort Magic Key program. Pursuant to the program, Disney offers for sale a variety
25 of Magic Key Passes. Consumers who purchase a Magic Key pass from Disney are entitled to
26 make reservations to enter the Disneyland and/or California Adventures theme parks without
27 additional charge for a period of one year from the when their Magic Key pass is first used. As a
28 Disney enthusiast, Ms. Nielsen was interested in purchasing a Magic Key pass and, in September

1 2021, she began to research the various Dream Key options on the Disney website.

2 9. Ms. Nielsen learned that Disney offered several different types of Magic Keys,
3 including each of the following: the Enchant Key pass, the Believe Key pass, and the Dream Key
4 pass. Ms. Nielsen was immediately interested in the top tier Dream Key pass because, according
5 to Disney, it was not subject to “blockout dates” and would provide her with the most
6 opportunities to visit the theme parks. Based on her review of Disney’s advertising materials,
7 Ms. Nielsen reasonably understood that, if reservations were available and the park was not at
8 capacity, Ms. Nielsen could use her Dream Key pass to make a reservation.

9 10. Disney charges \$1,399.00 for the Dream Key pass. Disney advertises the Dream
10 Key pass as follows:

11 **Dream Key Pass**
12 **No Blockout dates**

13
14
15 **Total**
16 **\$1,399.⁰⁰**

- 17 • Reservation-based admission to one or both theme parks every day of the year
- 18 • Theme park reservations can be made up to 90 days in advance. This pass can
19 hold up to 6 park reservations at a time on a rolling basis during any 90-day
20 window, subject to restrictions.
- 21 • Park reservations are subject to availability and are not guaranteed for any
22 specific dates or park
- 23 • Up to 15% off select dining
- 24 • Up to 20% off select merchandise in store
- 25 • Standard theme park parking included*

26 **No Blockout Dates**

27 Admission is not guaranteed and is subject to capacity and other closures.

28 11. The statements quoted in the above paragraph are taken from an advertisement that

1 Ms. Nielsen reviewed on the Disney website and relied upon when she decided to purchase a
2 Dream Key Pass. A true and correct copy of a printout of the Advertisement is attached hereto as
3 Exhibit A. Collectively, the statements and Exhibit A are referred to herein as “the
4 Advertisement.”

5 12. The phrase “blockout date” is not defined in the Advertisement. Ms. Nielson and
6 the proposed class members reasonably understood the phrase to mean that Dream Key pass
7 holders would not be blocked out from making reservations whenever Disney was offering park
8 reservations for entrance to the theme parks. They understood, of course, that if the parks were
9 closed because of Covid or some other reason, and park reservations were unavailable, they would
10 not be able to enter the parks. Similarly, if the parks were open but park reservations were not
11 available because the park was being used to host a private event or film a movie, a Dream Key
12 pass would not be sufficient to obtain a reservation. Ms. Nielsen and the proposed class members
13 also understood, of course, that if the parks could not offer park reservations because the parks
14 were at capacity, they would not be able to enter the parks.

15 13. The Advisement does not define the phrase “subject to availability.” Ms. Nielsen,
16 and the proposed class members reasonably believed that the reference in the Advertisement to
17 park reservations being “subject to availability” meant that if park reservations for entrance to the
18 parks were available and being offered to the public, Dream Key holders could use their passes to
19 make reservations for entry to the parks. At no time did Disney inform Ms. Nielsen or others that
20 Disney intended to create a category of “Dream Key reservations” (presumably a subset if “park
21 reservations”) which would be limited in quantity and subject to Disney’s sole discretion and that
22 Dream Key pass holders would be blocked out from making park reservations that were available
23 to other customers. In the Advertisement, the term park reservations was not qualified or limited.
24 Ms. Nielsen and others reasonably understand and believed that, if Disney was taking reservations
25 to the park, such park reservations would be open to Dream Key holders because their passes were
26 not subject to blockout dates. At no time (either in the Advertisement or the terms and conditions
27 provided at the time of purchase) did Disney ever inform Ms. Nielsen or the proposed class
28 members that Disney would artificially decide whether *Dream Key reservations* would become

1 unavailable even though park reservations were nonetheless available to others.

2 14. Disney also advertises the Enchant Pass and the Believe Pass. In its advertisements
3 for those passes, Disney tells consumers that “Blockout dates apply.” Ms. Nielsen decided not to
4 purchase the Enchant Pass or the Believe Pass because she understood the phrase “blockout dates
5 apply” to mean that Disney would block her from using the Enchant Pass or Believe Pass even
6 when park reservations were otherwise available. The whole point of the Dream Key pass is that
7 it would not be subject to such restrictions.

8 15. After reading the Advertisement, Ms. Nielsen decided to purchase a Dream Key
9 Pass. She paid \$1,399.00 for the Dream Key Pass and finalized her purchase on September 23,
10 2021.

11 16. Shortly thereafter, Ms. Nielsen attempted to use her Magic Key to make park
12 reservations to visit Disneyland. She was, however, disappointed to learn that Disney had already
13 blocked out many days, including all weekend days in the month of November 2021.

14 17. Specifically, on or about October 19, 2021, Ms. Nielsen attempted to use her
15 Dream Key to obtain an admission ticket to Disneyland in November 2021. The Disney website
16 informed her that, for Dream Key passholders, a total of seventeen days in November, including
17 all weekend days, had been blocked out. Given that Disney had advertised and promised that
18 there would be no “blockouts” for Dream Key holders, Ms. Nielsen was surprised. As a frequent
19 Disneyland visitor, Ms. Nielsen thought it unlikely that *all* park reservations for both Disneyland
20 and California Adventures had already been taken for seventeen of the 30 calendar days in
21 November 2021.

22 18. Ms. Nielsen explored further. She navigated to the section of the Disney website
23 where consumers can make park reservations and purchase single day passes to Disneyland and
24 California Adventures. That portion of the website revealed that, in fact, as of October 19, 2021,
25 both parks had park reservations and tickets available for any single day in November 2021. In
26 other words, Disney had park reservations available for all of the days it had blocked out to Dream
27 Key passholders. Disney was happy to allow Ms. Nielsen and other consumers to make park
28 reservations and purchase single day passes for either park (or for both parks) for any day in

1 November 2021. The problem was not that park reservations were unavailable, or that the parks
2 had reached their capacity and therefore could not provide reservations to its Dream Key pass
3 holders, the problem was that Disney had decided to block out otherwise available park
4 reservations so that they were only available to new purchases and were not available to Dream
5 Key pass holders.

6 19. Ms. Nielsen's experience with attempting to make a Dream Key reservation in
7 October 2021 to visit the parks in November 2021 is completely at odds with the advertised
8 features of the Dream Key pass and with Disney's promises to Ms. Nielsen when she purchased
9 her Dream Key that she would be allowed "Reservation-based admission to one or both theme
10 parks every day of the year." The Advertisement told Ms. Nielsen and her fellow consumers that
11 a Dream Key would not be subject to blackout dates. Ms. Nielsen reasonably believed and relied
12 upon Disney's advertisement and promise to mean that, if park reservations were available and
13 Disney had capacity at its Anaheim parks, Ms. Nielsen and her fellow Dream Key pass holders
14 would be allowed to make reservations and visit the parks. The Advertisement did not define the
15 phrase "subject to availability," nor did it inform Ms. Nielsen or others that Disney was reserving
16 the right to declare park reservations "unavailable" to Dream Key pass holders in order to block
17 out certain dates for them. It was misleading and fraudulent for Disney to sell passes that were
18 advertised as having no blackout days and not inform Ms. Nielsen and other consumers that
19 Disney was reserving the right to make park reservations "unavailable" whenever it wanted and
20 even when park reservations are and were *actually* available.

21 20. On information and belief, Disney appears to be limiting the number of
22 reservations available to Dream Key pass holders on any given day in order to maximize the
23 number of single day and other passes that Disney can sell. This practice directly contradicts
24 Disney's advertised promise that the Dream Key would not be subject to blackout dates.
25 Ms. Nielsen and others reasonably understood that, by advertising "no blackout dates," Disney
26 understood and expected consumers to believe that Disney would not artificially limit the
27 availability of park reservations or the capacity of its parks and/or limit the number of Dream Key
28 pass holders that can visit the parks on any given day.

1 21. It is true that, at the time of purchase, Disney told Ms. Nielsen and others that
2 “reservations are subject to availability and are not guaranteed for any specific dates or park.”
3 Disney did not, however, tell Ms. Nielsen or other consumers that Disney planned to artificially
4 limit the number of available park reservations by only allowing a certain number of Dream Key
5 passes to be used on each particular day. In fact, Disney told Ms. Nielsen and her fellow
6 consumers the opposite: It told them there would be no blackout dates. Ms. Nielsen reasonably
7 understood the Advertisement—and the terms and conditions accompanying it—to mean that she
8 could use her Dream Key to reserve a ticket to a park so long as the park was not at capacity and
9 so long as park reservations were available. As alleged, however, Ms. Nielsen and others were
10 blocked out from using their Dream Key passes to make reservations even though Disney had park
11 reservations available and made those reservations available to others.

12 22. Ms. Nielsen understood that she might not get a reservation for her preferred day or
13 days for any number of reasons, including limited capacity as a result of all tickets to the park
14 having already been purchased or due to a public health order that closed the park or reduced the
15 numbers of guests that could visit the park. Ms. Nielsen did not know—and had no way of
16 knowing—that the Dream Key was, essentially, a “second class” ticket that would not allow
17 Dream Key pass holders to make reservations even though park reservations were available.

18 23. Ms. Nielsen understood that, by purchasing a Dream Key, she was paying a
19 premium so that she would have the highest tier pass and no blackout dates. It would be one thing
20 if Disney had expressly told Ms. Nielsen and fellow customers that it intended to only allow a
21 certain number of Dream Key reservations each day, regardless of park capacity or the availability
22 of park reservations, so that Dream Key pass holders would be on notice that the parks would, as a
23 practical matter, be unavailable to them at Disney’s whim. Ms. Nielsen could have then decided
24 whether it was worth it to pay \$1,399.00 for a pass that would allow her entry if and when Disney
25 decided it could not sell tickets to others for higher prices. Disney, however, did the opposite of
26 providing such information. It told customers that there would be no blackout dates and that she
27 could use her pass when park reservations were available, which reasonably led Ms. Nielsen and
28 others to believe that Disney would not engineer reservation unavailability.

1 24. Ms. Nielsen has commenced this lawsuit to stop Disney from engaging in the
2 unlawful trade practices set forth more fully below in connection with its offer and sale of the
3 Dream Key passes, including its practice of promising consumers that Dream Keys would have no
4 blackout dates even though Disney restricts the use of Dream Keys so that, in fact, they cannot be
5 used by Dream Key pass holders on multiple days each month. Ms. Nielsen seeks injunctive relief
6 to prevent Disney from engaging in these and similar unlawful trade practices, civil penalties to
7 deter Disney and others similarly situated from engaging in these and similar unlawful trade
8 practices, disgorgement of Disney’s unlawfully obtained revenue and profit, and the payment of
9 costs, attorney’s fees, damages, and restitution based on the harm consumers have experienced due
10 to Disney’s conduct.

11 25. Ms. Nielsen was deceived by and relied upon the Advertisement. Ms. Nielsen
12 purchased her Dream Key pass in reliance on the false and deceptive advertising and without
13 knowledge of Disney’s true practices regarding the reservation of park tickets with Dream Key
14 passes. Ms. Nielsen, as a reasonable consumer, is not required to scrutinize advertisements to
15 ferret out misleading facts and omissions. She is entitled to take a statement like “no blackout
16 dates” at face value and conclude that Disney would not artificially reduce the number of ticket
17 reservations available to Dream Key pass holders. Ms. Nielsen is lawfully entitled to rely on
18 statements that Disney deliberately places on its websites.

19 26. Ms. Nielsen, and others similarly situated, have not received the benefits of the
20 Dream Key passes that were promised to them. Instead of receiving a “no blackout date” pass that
21 would allow them to reserve admission to the parks whenever the parks had capacity, Ms. Nielsen
22 and her fellow Dream Key pass holders received a much more limited right to make reservations
23 for a limited class of Dream Key tickets. This is a far cry from what Disney advertised to
24 consumers and from what Disney sold to its customers.

25 27. On information and belief, Disney appears to be taking the position that the
26 Advertisement and the Terms and Conditions presented when Ms. Nielsen purchased her Dream
27 Key granted Disney the power to decide whether and when to make generally available
28 reservations available or unavailable to Dream Key passholders. In other words, Disney is

1 asserting that the Parties' agreement provides Disney with the discretion to convert available park
2 reservations into unavailable park reservations. Ms. Nielsen, of course, disagrees with Disney's
3 interpretation of the Parties' agreement. If the Parties' agreement is nonetheless interpreted as
4 providing Disney with such discretion, Disney had and has an obligation to exercise such
5 discretion in good faith. Disney, however, has exercised such discretion in a manner that is
6 contrary to the purposes of the Parties' agreement and contrary to Ms. Nielsen's legitimate
7 expectations. Specifically, on information and belief, Disney limits the availability of reservations
8 to Dream Key passholders whenever Disney has the opportunity to sell reservations to others. Ms.
9 Nielsen and the other Dream Key passholders had a reasonable expectation that the premium they
10 paid for a Dream Key pass would ensure them a reasonable opportunity to access to the theme
11 parks "every day of the year." They also had a reasonable expectation, based on the phrase "no
12 blackout dates," that Disney would not artificially reduce the number of reservations available to
13 Dream Key passholders. Disney has defeated those reasonable expectations by throttling access
14 for Dream Key passholders whenever Disney has the opportunity to sell otherwise available
15 reservations to others.

16 28. Ms. Nielsen would not have purchased a Dream Key pass if she had known, or if
17 Disney had told her, that the Dream Key pass reservations would be limited such that, on many
18 days in any given month (and all weekends) park reservations that were otherwise available would
19 be unavailable to Dream Key pass holders. Had Disney not violated California law, Ms. Nielsen
20 and her fellow Dream Key pass holders would not have been injured as they were.

21 29. Ms. Nielsen and the proposed class have lost money as a result of Disney's
22 unlawful behavior. Ms. Nielsen and the proposed class altered their position to their detriment and
23 suffered loss in an amount equal to, at least, the fee for the Dream Key pass. In fact, Ms. Nielsen
24 decided to visit the parks in November 2021 and had to purchase a ticket even though she holds a
25 Dream Key pass because Disney blocked out so reservations on so many of the days in November
26 for Dream Key pass holders.

27 30. On December 20, 2021, after having filed her Complaint in this matter, Ms. Nielsen
28 wrote to Disney pursuant to California Business and Professions Code section 1782(a) and

1 demanded that Disney correct, repair, replace, or otherwise rectify the violations of B & P Code
2 Sections 1770(a)(5), 1770(a)(9), and 1770(a)(10). Ms. Nielsen has not received any response to
3 her letter and, to her knowledge, Disney has made no effort to correct violations alleged in her
4 letter.

5 **CLASS ALLEGATIONS**

6 31. Ms. Nielsen brings this action individually and as a class action on behalf of all of
7 other consumers who purchased Dream Key passes from Disney during the four years prior to the
8 filing of this lawsuit up to the time class certification is granted.

9 32. Ms. Nielsen's claims are typical of the claims of the class because she purchased
10 her Dream Key passes after having read and reviewed the Advertisement that was made available
11 to all consumers who purchase Dream Key passes.

12 33. Ms. Nielsen is a representative party who will fully and adequately protect the
13 interests of the class members because it is in her best interest to effectively prosecute the claims
14 alleged herein to obtain the injunctive relief, restitution, damages, and/or penalties provided to her
15 and her fellow consumers under California law. Ms. Nielsen has retained counsel who is
16 competent in both class action and consumer protection litigation. Ms. Nielsen does not have an
17 interest which is contrary to, or in conflict with, those of the class members which she seeks to
18 represent.

19 34. The number of class members is believed to include thousands of people which
20 makes it impracticable to bring all members of the class individually before the court, or to join
21 hundreds of individual class members as parties. Furthermore, the identity of the members of the
22 classes are determinable from the Defendants' records. In addition, the records pertaining to the
23 Dream Key passes purchased by consumers, the reservations made available to Dream Key pass
24 holders, and the reservations that Dream Key pass holders were blocked from making are
25 maintained by the Defendants. A class action is, therefore, a reasonable and practical means of
26 resolving the claims raised in this action.

27 35. A class action is superior to other available means for the fair and efficient
28 adjudication of this lawsuit. Even if any class member could afford individual litigation against a

1 large company like Disney, it would be unduly burdensome to the court system. Individual
2 litigation would magnify the delay and expense to all parties. By contrast, a class action presents
3 far fewer management difficulties and affords the benefits of uniform adjudication of the claims,
4 financial economy for the parties, and comprehensive supervision by a single court.
5 Concentrating this litigation in one forum will promote judicial economy and parity among the
6 claims of individual class members and judicial consistency. Notice of the pendency and any
7 resolution of this action can be provided to class members by mail, print, broadcast, internet,
8 and/or multimedia publication.

9 36. This type of case is well-suited for class action treatment because Disney's
10 advertising and practices with regard to Dream Key passes are uniform and were available and
11 applicable to all proposed class members in the same way.

12 37. Many issues of law and/or fact are common to Ms. Nielsen and the class members.
13 These issues predominate over any individual questions. These common issues and/or facts
14 include:

- 15 a. Whether Disney falsely advertised its Dream Key passes when it told Ms. Nielsen
16 and her fellow consumers that the Dream Key passes did not have blackout dates;
- 17 b. Whether Disney falsely advertised its Dream Key passes when it failed to tell
18 Ms. Nielsen and her fellow consumers that reservation availability for Dream Key
19 passes would be limited not by the capacity of the theme parks but by Disney's
20 policy and practice of allocating only a certain amount of reservations on each day
21 to Dream Key pass holders.
- 22 c. Whether reasonable consumers like Ms. Nielsen and the proposed class were
23 mislead by the statements contained in the Advertisement;
- 24 d. Whether Disney's practices constitute unfair business practices within the meaning
25 of California Business & Professions Code §§ 17200 and 17203;
- 26 e. Whether Disney's practices constitute false or misleading advertising with the
27 meaning of California Business & Professions Code § 17500.
- 28 f. Whether Disney's conduct violates California's Consumer Legal Remedies Act;

- 1 g. Whether Ms. Nielsen and the class members are entitled to compensatory damages
2 and, if so, the means of measuring such damages;
3 h. Whether Disney is liable for attorneys' fees and costs.

4 **FIRST CAUSE OF ACTION**

5 **VIOLATIONS OF THE CONSUMERS LEGAL REMEDIES ACT**

6 **CAL. CIV. CODE §§ 1750 ET SEQ.**

7 38. Ms. Nielsen realleges and incorporates the allegations elsewhere in the Complaint
8 as if set forth in full herein.

9 39. The Consumer Legal Remedies Act prohibits unfair or deceptive practices in
10 connection the sale of goods or services to a consumer. The CLRA is meant to be “[c]onstrued
11 liberally and applied to promote its underlying purposes, which are to protect consumers against
12 unfair and deceptive business practices and to provide efficient and economical procedures to
13 secure such protection.” *See* Civil Code Section 1760.

14 40. The Dream Key passes that Disney sells to consumers are “Services” as defined by
15 the CLRA. The Dream Key passes also constitute “Goods” because they entitle pass holders to
16 discounts on purchases within the parks and other Disney locations.

17 41. Ms. Nielsen and the proposed class members are “Consumers” as defined by the
18 CLRA.

19 42. Ms. Nielsen’s purchase of a Dream Key pass from Disney, and the proposed class
20 members’ purchases of Dream Keys from Disney, were “Transactions” as defined by the CLRA.

21 43. Disney’s false and misleading practices as alleged herein and other policies, acts,
22 and practices described herein were designed to, and did, induce Ms. Nielsen and the proposed
23 class members to purchase Dream Keys for personal, family, or household purposes, and violated,
24 and continue to violate, at least the following sections of the CLRA:

- 25 a. § 1770(a)(5): Representing that goods or services have sponsorship, approval,
26 characteristics, ingredients, uses, benefits, or quantities that they do not have or that
27 a person has a sponsorship, approval, status, affiliation, or connection that the
28 person does not have; and

- 1 b. § 1770(a)(9): Advertising goods with intent not to sell them as advertised;
- 2 c. § 1770(a)(10): Advertising goods or services with intent not to supply reasonable
- 3 expectable demand, unless the advertisement discloses a limitation of quantity.

4 44. Disney violated Sections 1770(a)(5), (9), and (10) by marketing and falsely
5 representing Dream Keys as having “no blackout dates” even though Disney has a practice of
6 blocking Dream Key pass holders from making park reservations even when Disney’s theme parks
7 are not at capacity and even when park reservations are available. Disney also violated the
8 foregoing sections by representing that Dream Key passes could be used to make reservations
9 when park reservations were available when, in fact, Disney does not allow Dream Key holders to
10 make reservations even though park reservations are, in fact, available.

11 45. Disney never intended to sell Ms. Nielsen or the other proposed class members
12 Dream Key passes that were not subject to blackout dates and / or that allowed them to make
13 reservations for the parks whenever park reservations are available.

14 46. On information and belief, Disney’s violations of the CLRA discussed above were
15 done with the actual knowledge, intent, and awareness that the conduct alleged was wrongful.

16 47. On information and belief, Disney committed these acts knowing it would harm
17 Ms. Nielsen and the proposed class members.

18 48. Ms. Nielsen and the proposed class members were injured by Disney because they
19 purchased Dream Key passes believing that the passes would not be subject to blackout dates and
20 that they would be allowed to make reservations for the parks when park reservations were
21 available. In fact, once they owned the passes, Ms. Nielsen and other pass holders learned that the
22 passes are subject to extensive block outs and that Dream Pass holders are unable to make
23 reservations even when park reservations are available, as alleged herein.

24 49. As alleged herein, Ms. Nielsen demanded more than thirty days ago that Disney
25 correct violations of the Consumer Legal Remedies Act but Disney has not corrected the alleged
26 violations. Ms. Nielsen has, therefore, complied with California Civil Code Sections 1782 (a)(1-
27 2). In addition, Disney has not corrected the violations since the original Complaint in this matter
28 was filed on

1 proposed class members in exchange for \$1,399.00 each. Ms. Nielsen and the class members
2 specifically agreed with Disney that the Dream Key passes purchased by Ms. Nielsen and the class
3 members would not be subject to blackout dates.

4 58. By entering into the foregoing agreements, Disney incurred the obligation of an
5 implied covenant of good faith and fair dealing found in every contract within this state.

6 59. Ms. Nielsen and the proposed class members have performed their obligations
7 pursuant to their contracts with Disney by paying Disney the agreed price for the Dream Key
8 passes.

9 60. Disney has breached its contracts with Ms. Nielsen and the proposed class
10 members by failing to provide Dream Key passes that are free from blackout dates. Specifically,
11 Disney blocks out certain dates making reservations “unavailable” to Dream Key pass holders
12 even those the parks are available and open. Disney has also breached its contracts by refusing to
13 allow Dream Key pass holders the ability to make park reservations even when park reservations
14 are available.

15 61. In addition, by refusing to allow Dream Key pass holders to make reservations
16 despite the fact that park reservations are available, Disney has violated the covenants of good
17 faith and fair dealing. Specifically, under Disney’s interpretation of the Agreements, it has the
18 unfettered power to decide when to make reservations available to Dream Key passholders. If
19 Disney’s interpretation of the Agreement is accepted by the jury, Disney has violated the covenant
20 of good faith and fair dealing by exercising its discretion in a manner contrary to the Agreement’s
21 purposes and the Parties’ legitimate expectations. Specifically, based on the language contained in
22 the Advertisement (“no blackout dates;” “Reservation-based admission to one or both theme parks
23 every day of the year”), Ms. Nielsen and other Dream Key purchasers had a reasonable
24 expectation that Disney would not artificially limit the reservations available to Dream Key
25 passholders. On information and belief, however, Disney has refused to make reservations
26 available to Dream Key passholders whenever Disney believes that it has the opportunity to sell
27 reservations to others.

28 62. As a result of Disney’s breaches of the Agreements and the covenants contained

1 therein, Ms. Nielsen seeks monetary damages, on behalf of herself and others similarly situated, in
2 excess of the jurisdictional limit in an amount to be proven at trial. Ms. Nielsen also seeks all
3 appropriate equitable relief.

4 **FIFTH CAUSE OF ACTION**

5 **NEGLIGENT MISREPRESENTATION**

6 63. This Cause of Action was dismissed by the Court pursuant to its Order dated April
7 6, 2022. (ECF Doc. No. 35.)

8 **SIXTH CAUSE OF ACTION**

9 **CONCEALMENT/ NON-DISCLOSURE**

10 64. This Cause of Action was dismissed by the Court pursuant to its Order dated April
11 6, 2022. (ECF Doc. No. 35.)

12 **PRAYER**

- 13 1. An Order declaring this action to be a proper class action, appointing Ms. Nielsen
- 14 as class representative, and appointing her undersigned counsel as class counsel;
- 15 2. An Order requiring Disney to bear the cost of class notice;
- 16 3. An Order requiring Disney to pay all actual and statutory damages permitted under
- 17 the causes of action alleged herein;
- 18 4. An award of punitive damages;
- 19 5. An award of attorneys' fees and costs; and
- 20 6. Any other and further relief that Court deems necessary, just, or proper.

21
22 Dated: May 10, 2022

VENTURA HERSEY & MULLER LLP

23
24 By: /s/
25 DANIEL J. MULLER
26 Attorneys for Plaintiff and the Proposed Class
27
28