1 2 3 4	LAW OFFICES OF BRYAN W. PEASE Bryan W. Pease, Esq. (SBN 239139) 302 Washington St. #404 San Diego, CA 92103 Ph. (619) 723-0369 Email: bryan@bryanpease.com	ELECTRONICALLY FILED Superior Court of California, County of San Diego  05/24/2021 at 02:02:57 PM Clerk of the Superior Court By Jose Hernandez, Deputy Clerk
5	LAW OFFICES OF G. DAVID TENENBAUM G. David Tenenbaum, Esq. (SBN 150629)	
6	269 S. Beverly Drive #1041 Beverly Hills, CA 90212	
7	Ph. (312) 404-7723	
8	Email: g.davidtenenbaum@gmail.com	
9	Attorneys for Plaintiff	
10	Animal Protection and Rescue League, Inc.	
11	SUPERIOR COUR	RT OF CALIFORNIA
12	SUPERIOR COURT OF CALIFORNIA	
13	COUNTY O	F SAN DIEGO
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	ANIMAL PROTECTION AND RESCUE	CASE NO
15	ANIMAL PROTECTION AND RESCUE LEAGUE, INC., a California nonprofit	CASE NO. 37-2021-00022805-CU-BT-CTL
15 16		CASE NO. 37-2021-00022805-CU-BT-CTL COMPLAINT
	LEAGUE, INC., a California nonprofit corporation,  Plaintiff,	37-2021-00022805-CO-B1-CTL
16	LEAGUE, INC., a California nonprofit corporation,	37-2021-00022805-CO-B1-CTL
16 17	LEAGUE, INC., a California nonprofit corporation,  Plaintiff,	37-2021-00022805-CO-B1-CTL
16 17 18	LEAGUE, INC., a California nonprofit corporation,  Plaintiff,  vs.	37-2021-00022805-CO-B1-CTL
16 17 18 19	LEAGUE, INC., a California nonprofit corporation,  Plaintiff,  vs.  JOHN H. COX, an individual; and DOES 1-10,	37-2021-00022805-CO-B1-CTL
16 17 18 19 20 21	LEAGUE, INC., a California nonprofit corporation,  Plaintiff,  vs.  JOHN H. COX, an individual; and DOES 1-10,	37-2021-00022805-CO-B1-CTL
16 17 18 19 20	LEAGUE, INC., a California nonprofit corporation,  Plaintiff, vs.  JOHN H. COX, an individual; and DOES 1-10,  Defendants.	37-2021-00022805-CO-B1-CTL
16 17 18 19 20 21 22	LEAGUE, INC., a California nonprofit corporation,  Plaintiff, vs.  JOHN H. COX, an individual; and DOES 1-10,  Defendants.  INTRO	COMPLAINT
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2. Defendants' actions violate, inter alia, San Diego Municipal Code § 44.0305, which provides, "No person shall bring into or maintain within an area coming within the jurisdiction of this ordinance, any lion, tiger, bear...irrespective of their actual or asserted state of docility, tameness or domesticity," and 9 C.F.R. § 2.131, requiring certain safeguards to protect animals and the public, which Defendants are not following.

### **JURISDICTION AND VENUE**

- 3. This Court has jurisdiction over the claims asserted because relief is sought under Bus. & Prof. Code § 17200, et seq., Code of Civil Procedure §§ 526, 526a, and 1060.
- 4. This Court has personal jurisdiction over each of the Defendants because each resides in California and conducts substantial business in California, and the acts and omissions complained of occurred in California.
- 5. Venue is proper in this county because all Defendants reside in this county, all Defendants conduct substantial business in this county, and all of the acts and omissions complained of occurred in this county.

### **PARTIES**

- Plaintiff Animal Protection and Rescue League, Inc. ("APRL") is a California nonprofit 6. corporation headquartered in San Diego County.
  - 7. Defendant John H. Cox is an individual residing in San Diego County.
- 8. Plaintiff is unaware of the true names and capacities of the DOE Defendants, and therefore sues these Defendants under such fictitious names. Plaintiff is furthermore informed and believes and thereon alleges that each of said fictitiously named Defendants was the agent, servant or employee of each and every other Defendant acting within the course and scope of his or her agency and employment and with the knowledge, ratification and consent of each respective principal. Plaintiff will seek leave to amend this Complaint when their true names and capacities have been ascertained.

### **FACTS**

9. Media reported earlier this month that Defendants held an event in San Diego with a captive 1000-pound bear, and then returned and did the same thing again despite protests, complaints and investigations. Further media reports have indicated these events are ongoing.

10. On May 14, 2021, Plaintiff sent a letter to Defendant Cox stating the following:

On behalf of the Animal Protection and Rescue League ("APRL") and its over 10,000 members, most of them in San Diego, I am writing to inform you that your use of a drugged bear as a publicity stunt at campaign events violates animal cruelty and nuisance laws including Penal Code § 597 and San Diego Municipal Code § 44.0305.

We are requesting that you immediately cease and desist this unlawful and abusive activity. Please confirm no later than May 21, 2021 that you will comply, in order to avoid the necessity of APRL organizing protests and seeking your prosecution by appropriate agencies.

Please respond by email to info@APRL.org so we receive your response in a timely manner. Thank you for your cooperation.

- 11. The letter was delivered to Defendant Cox at both his residential and business addresses on May 15, 2021 by Next Day Priority Mail. However, Defendant never responded to the letter.
- 12. APRL has fielded numerous complaints and inquiries from the general public regarding the unlawful activities of Defendants Cox and Does 1-10. APRL now must choose between having its scarce resources diverted organizing protests against Defendants' unlawful business practices and seeking official enforcement action, or filing the present case seeking to enjoin Defendants Cox and Does 1-10 from continuing to violate the law.
- 13. APRL seeks public injunctive relief only, enjoining the use of a captive bear in violation of local, state, and federal laws, and seeks no damages or greater or different relief for itself than for the general public by this action.

### FIRST CAUSE OF ACTION

### Unfair Business Practices – Bus. & Prof. Code § 17200, et seq.

- 14. Plaintiff realleges and incorporates by reference the allegations in each of the preceding paragraphs as if fully set forth herein.
- 15. California's Unfair Competition Law ("UCL"), Business & Professions Code § 17200, et seq., prohibits businesses from engaging in unlawful, fraudulent, or unfair business practices. The UCL applies to any "person," including natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons, and applies to the Defendants named herein. (Bus. & Prof. Code § 17201.)

16. Courts have broadly interpreted the term "business practice," generally finding the UCL to apply to virtually any conduct with any pecuniary element. (*See, e.g., People v. McKale* (1979) 25 Cal.3d 626, 632 ("California courts have consistently interpreted such language broadly. An 'unlawful business activity' includes "anything that can properly be called a business practice and that at the same time is forbidden by law." [Citation.] The Legislature 'intended ... to permit tribunals to enjoin ongoing wrongful business conduct in whatever context such activity might occur.' [Citation.]").)

17. A plaintiff has standing under the UCL if it "suffered both 'injury in fact' and 'a loss of money or property caused by unfair competition.' "Peterson v. Cellco P'ship (2008) 164 Cal.App.4th 1583, 1590. Injury in fact is easily shown and is "not a substantial or insurmountable hurdle;" it suffices "to "allege[] some specific, 'identifiable trifle' of injury." '" (Kwikset Corp. v. Superior Court (2011) 51 Cal.4th 310, 324.) As to the second requirement, loss of money or property, this can be shown in many ways:

There are innumerable ways in which economic injury from unfair competition may be shown. A plaintiff may (1) surrender in a transaction more, or acquire in a transaction less, than he or she otherwise would have; (2) have a present or future property interest diminished; (3) be deprived of money or property to which he or she has a cognizable claim; or (4) be required to enter into a transaction, costing money or property, that would otherwise have been unnecessary.

(Kwikset, supra, at 323.)

- 18. To assert a cause of action under the UCL, it is not necessary that a plaintiff lose money or property in a transaction *with* defendant; rather, it is sufficient that defendant's unlawful conduct cause plaintiff to lose money or property in a transaction with a third party. (*Kwikset, supra*, at 337 ("[W]e hold ineligibility for restitution is not a basis for denying standing under section 17204 and disapprove those cases that have concluded otherwise."))
- 19. Thus, in one recent case, the defendants' conduct allegedly caused the plaintiff an animal activist to incur expenses to buy video equipment from a third party in order to record the defendant's mistreatment of animals. The court found the plaintiff nevertheless had a plausible basis to assert standing under the UCL and there was a triable issue of fact as to whether her expenditure was the result of the defendants' conduct. (*Campbell v. Feld Entm't, Inc.* (N.D. Cal. 2014) 75 F.Supp.3d 1193, 1218 ("To establish standing under the UCL, Campbell has alleged that Defendants' conduct in general

forced her to 'incur substantial additional expense in order to purchase memory cards.' "))

- 20. An action based on Section 17200 to redress an unlawful business practice borrows violations of other laws and treats them as a violation of Section 17200. In other words, a business practice is "unlawful" under Section 17200 when it violates *any* federal, state, or local law. The violated law that serves as a basis for a UCL claim is referred to as a "predicate" law.
- 21. Bus. & Prof. Code § 17203 allows private parties who have lost money or property as a result of illegal business practices to ask a court to enjoin the business practices.
- 22. Defendants are engaged in business practices in the use of a captive bear at events, because doing so involves the exchange of money for goods and services.
  - 23. Civil Code § 3479 provides:

Anything which is injurious to health...or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.

- 24. Defendants' actions in holding events with a captive bear in public parks and on public rights of way and thoroughfares without any barrier interferes with the public's use of such public spaces, including APRL's members.
- 25. The federal Animal Welfare Act provides at 9 CFR § 2.131 regarding handling of animals:
  - (b)(2)(i) Physical abuse shall not be used to train, work, or otherwise handle animals.

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(c)(1) During public exhibition, any animal must be handled so there is minimal risk of harm to the animal and to the public, with sufficient distance and/or barriers between the animal and the general viewing public so as to assure the safety of animals and the public.

...

(c)(4) Drugs, such as tranquilizers, shall not be used to facilitate, allow, or provide for public handling of the animals.

..

(d)(3) During public exhibition, dangerous animals such as lions, tigers, wolves, bears, or elephants must be under the direct control and supervision of a knowledgeable and experienced animal handler.

- 26. Bringing a 1000-pound bear within feet of the viewing public, and without any barrier, is not possible without violating either or both subsections (b)(2)(i) regarding physical abuse, and/or (c)(4) regarding drugs such as tranquilizers, above. Not having a barrier also violates subsections (c)(1) above.
- 27. Defendants do not put up any barriers between the 1000-pound bear and the public at their events. While at one point Defendants claimed to use an "electrified wire" to contain the bear, this would not be sufficient to stop a 1000-pound bear. Defendants later admitted the wire was not even electrified as claimed.
- 28. Accordingly, Defendant's business practices of holding events with a captive 1000-pound bear violates California Civil Code § 3479, San Diego Municipal Code § 44.0305, and 9 CFR 21.131, among other laws.
- 29. Plaintiff APRL has suffered economic injury in the form of diversion of its limited organizational resources and frustration of its mission, and has incurred printing, postage, independent contractor, and other costs as a result of Defendants' unlawful business acts herein.
- 30. Plaintiff APRL would rather spend its time and resources on its core mission of helping animals rather than exposing and seeking official enforcement action against Defendants' unlawful acts.
- 31. Defendants' unlawful business acts as detailed in this Complaint both frustrate APRL's core mission of helping animals and impede APRL's ability to expend valuable time and resources to promote its mission to further animal protection.
- 32. Accordingly, APRL is a party which has "suffered injury in fact and has lost money or property as a result of ...unfair competition," and thus has standing under Business & Professions Code § 17204 to enjoin Defendants' unlawful conduct.
- 33. Instead of spending its limited resources helping animals, APRL instead must spend significant organizational resources exposing and seeking official enforcement action against Defendants' illegal activities that directly impact APRL's core mission.
- 34. Bus. & Prof. Code §17203 provides, "Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition..."

35. Defendants John H. Cox and Does 1-10 have independently and collectively engaged in and will continue to engage in unlawful and unfair business practices unless specifically enjoined from doing so by this Court.

### **SECOND CAUSE OF ACTION**

### **Declaratory Relief - CCP § 1060**

- 36. Plaintiff realleges and incorporates by reference the allegations in each of the preceding paragraphs as if fully set forth herein.
- 37. There is an actual and justifiable controversy between Plaintiff and Defendants regarding whether Defendants' actions comply with all applicable laws.
- 38. CCP § 1060 allows any person "who desires a declaration of his or her rights or duties with respect to another" to seek "a declaration of his or her rights and duties...either alone or with other relief; and the court may make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time. The declaration may be either affirmative or negative in form and effect, and the declaration shall have the force of a final judgment. The declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought."
- 39. Plaintiff contends Defendants' actions of holding events with a captive bear constitute a public nuisance in violation of Civil Code § 3479 and also violates San Diego Municipal Code § 44.0305. Defendants on the other hand contend their actions violate no laws.
- 40. Without a judicial declaration, disputes and controversy will continue over whether Defendants' actions comply with all applicable local and state laws.
- 41. Plaintiff is directly and beneficially interested in Defendants' compliance with all applicable provisions of the law and with all legal duties, as set forth herein. As a result, Plaintiff has standing to bring this claim for declaratory relief.
- 42. Unless such a declaration issues, Plaintiff and the general public will continue to be irreparably harmed by Defendants' actions.

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#### **PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for judgment against Defendants as follows:

#### On the first cause of action:

- 1. For a temporary restraining order, preliminary injunction, and permanent injunction under Bus. & Prof. Code §17203 enjoining Defendants and their principals, members, agents, officers, employees, representatives, co-conspirators, and all person acting in concert, collaboration or participation with them during the pendency of this action and permanently thereafter, from bringing or maintaining a captive bear in the City of San Diego, in violation of San Diego Municipal Code § 44.0305;
- 2. For a temporary restraining order, preliminary injunction, and permanent injunction under Bus. & Prof. Code §17203 enjoining Defendants and their principals, members, agents, officers, employees, representatives, co-conspirators, and all person acting in concert, collaboration or participation with them during the pendency of this action and permanently thereafter, from holding events that violate CFR § 2.131;
- 3. For a temporary restraining order, preliminary injunction, and permanent injunction under Bus. & Prof. Code §17203 enjoining Defendants and their principals, members, agents, officers, employees, representatives, co-conspirators, and all person acting in concert, collaboration or participation with them during the pendency of this action and permanently thereafter, from engaging in any business practices that violate any local, state, or federal law;
  - 4. For reasonable attorneys' fees as provided by Code of Civil Procedure § 1021.5;
  - 5. For costs of suit incurred herein;
  - 6. For pre- and post-judgment interest; and
  - 7. For such other and further relief as the Court deems just and proper.

#### On the second cause of action:

- 1. For a declaration under CCP § 1060 that bringing or maintaining a captive bear in the City of San Diego violates San Diego Municipal Code § 44.0305 and constitutes a public nuisance under Civil Code § 3479;
  - 2. For injunctive relief under CCP § 526 preventing Defendants from violating any local or