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11 Attorneys for Plaintiff
12 Animal Protection and Rescue League, Inc.

11 **SUPERIOR COURT OF CALIFORNIA**

12 **COUNTY OF SAN DIEGO**

<p>15 ANIMAL PROTECTION AND RESCUE 16 LEAGUE, INC., a California nonprofit 17 corporation, 18 19 Plaintiff, 20 vs. 21 JOHN H. COX, an individual; and DOES 1-10, 22 23 Defendants.</p>	<p>15 CASE NO. 37-2021-00022805-CU-BT-CTL 16 17 COMPLAINT</p>
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23 **INTRODUCTION**

24 1. Plaintiff Animal Protection and Rescue League, Inc. (“APRL”) is a San Diego based
25 nonprofit organization founded in 2003, seeks to enjoin Defendants John H. Cox and Does 1-10 from
26 illegally holding events with a captive, 1000-pound bear who has been drugged and abused for this
27 purpose.
28

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

7 17. A plaintiff has standing under the UCL if it “suffered both ‘injury in fact’ and ‘a loss of
8 money or property caused by unfair competition.’ ” *Peterson v. Cellco P'ship* (2008) 164 Cal.App.4th
9 1583, 1590. Injury in fact is easily shown and is “not a substantial or insurmountable hurdle;” it suffices
10 “to “‘allege[] some specific, ‘identifiable trifle’ of injury.’ ” (*Kwikset Corp. v. Superior Court* (2011)
11 51 Cal.4th 310, 324.) As to the second requirement, loss of money or property, this can be shown in
12 many ways:

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

19 (*Kwikset, supra*, at 323.)

20 18. To assert a cause of action under the UCL, it is not necessary that a plaintiff lose money
21 or property in a transaction *with* defendant; rather, it is sufficient that defendant’s unlawful conduct
22 cause plaintiff to lose money or property in a transaction with a third party. (*Kwikset, supra*, at 337
23 (“[W]e hold ineligibility for restitution is not a basis for denying standing under section 17204 and
24 disapprove those cases that have concluded otherwise.”))

25 19. Thus, in one recent case, the defendants’ conduct allegedly caused the plaintiff – an
26 animal activist – to incur expenses to buy video equipment from a third party in order to record the
27 defendant’s mistreatment of animals. The court found the plaintiff nevertheless had a plausible basis to
28 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

1 forced her to ‘incur substantial additional expense in order to purchase memory cards.’ ”))

2 20. An action based on Section 17200 to redress an unlawful business practice borrows
3 violations of other laws and treats them as a violation of Section 17200. In other words, a business
4 practice is “unlawful” under Section 17200 when it violates *any* federal, state, or local law. The violated
5 law that serves as a basis for a UCL claim is referred to as a “predicate” law.

6 21. Bus. & Prof. Code § 17203 allows private parties who have lost money or property as a
7 result of illegal business practices to ask a court to enjoin the business practices.

8 22. Defendants are engaged in business practices in the use of a captive bear at events,
9 because doing so involves the exchange of money for goods and services.

10 23. Civil Code § 3479 provides:

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

15 24. Defendants’ actions in holding events with a captive bear in public parks and on public
16 rights of way and thoroughfares without any barrier interferes with the public’s use of such public
17 spaces, including APRL’s members.

18 25. The federal Animal Welfare Act provides at 9 CFR § 2.131 regarding handling of
19 animals:

20 (b)(2)(i) Physical abuse shall not be used to train, work, or otherwise handle animals.

21 ...

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

26 ...

27 (c)(4) Drugs, such as tranquilizers, shall not be used to facilitate, allow, or provide for
28 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.

1 26. Bringing a 1000-pound bear within feet of the viewing public, and without any barrier, is
2 not possible without violating either or both subsections (b)(2)(i) regarding physical abuse, and/or (c)(4)
3 regarding drugs such as tranquilizers, above. Not having a barrier also violates subsections (c)(1) above.

4 27. Defendants do not put up any barriers between the 1000-pound bear and the public at
5 their events. While at one point Defendants claimed to use an “electrified wire” to contain the bear, this
6 would not be sufficient to stop a 1000-pound bear. Defendants later admitted the wire was not even
7 electrified as claimed.

8 28. Accordingly, Defendant’s business practices of holding events with a captive 1000-pound
9 bear violates California Civil Code § 3479, San Diego Municipal Code § 44.0305, and 9 CFR 21.131,
10 among other laws.

11 29. Plaintiff APRL has suffered economic injury in the form of diversion of its limited
12 organizational resources and frustration of its mission, and has incurred printing, postage, independent
13 contractor, and other costs as a result of Defendants’ unlawful business acts herein.

14 30. Plaintiff APRL would rather spend its time and resources on its core mission of helping
15 animals rather than exposing and seeking official enforcement action against Defendants’ unlawful acts.

16 31. Defendants’ unlawful business acts as detailed in this Complaint both frustrate APRL’s
17 core mission of helping animals and impede APRL’s ability to expend valuable time and resources to
18 promote its mission to further animal protection.

19 32. Accordingly, APRL is a party which has “suffered injury in fact and has lost money or
20 property as a result of ...unfair competition,” and thus has standing under Business & Professions Code
21 § 17204 to enjoin Defendants’ unlawful conduct.

22 33. Instead of spending its limited resources helping animals, APRL instead must spend
23 significant organizational resources exposing and seeking official enforcement action against
24 Defendants’ illegal activities that directly impact APRL’s core mission.

25 34. Bus. & Prof. Code §17203 provides, “Any person who engages, has engaged, or proposes
26 to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may
27 make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent
28 the use or employment by any person of any practice which constitutes unfair competition...”

1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff prays for judgment against Defendants as follows:

3 **On the first cause of action:**

4 1. For a temporary restraining order, preliminary injunction, and permanent injunction
5 under Bus. & Prof. Code §17203 enjoining Defendants and their principals, members, agents, officers,
6 employees, representatives, co-conspirators, and all person acting in concert, collaboration or
7 participation with them during the pendency of this action and permanently thereafter, from bringing or
8 maintaining a captive bear in the City of San Diego, in violation of San Diego Municipal Code
9 § 44.0305;

10 2. For a temporary restraining order, preliminary injunction, and permanent injunction
11 under Bus. & Prof. Code §17203 enjoining Defendants and their principals, members, agents, officers,
12 employees, representatives, co-conspirators, and all person acting in concert, collaboration or
13 participation with them during the pendency of this action and permanently thereafter, from holding
14 events that violate CFR § 2.131;

15 3. For a temporary restraining order, preliminary injunction, and permanent injunction
16 under Bus. & Prof. Code §17203 enjoining Defendants and their principals, members, agents, officers,
17 employees, representatives, co-conspirators, and all person acting in concert, collaboration or
18 participation with them during the pendency of this action and permanently thereafter, from engaging in
19 any business practices that violate any local, state, or federal law;

20 4. For reasonable attorneys' fees as provided by Code of Civil Procedure § 1021.5;

21 5. For costs of suit incurred herein;

22 6. For pre- and post-judgment interest; and

23 7. For such other and further relief as the Court deems just and proper.

24 **On the second cause of action:**

25 1. For a declaration under CCP § 1060 that bringing or maintaining a captive bear in the
26 City of San Diego violates San Diego Municipal Code § 44.0305 and constitutes a public nuisance under
27 Civil Code § 3479;

28 2. For injunctive relief under CCP § 526 preventing Defendants from violating any local or

1 state law the Court determines Defendants' actions violate, including San Diego Municipal Code
2 § 44.0305 and Civil Code § 3479;

3 8. For reasonable attorneys' fees as provided by Code of Civil Procedure § 1021.5;

4 9. For costs of suit incurred herein;

5 10. For pre- and post-judgment interest; and

6 11. For such other and further relief as the Court deems just and proper.

7
8 Dated: May 24, 2021

By: 

9 Bryan W. Pease, Esq.
10 Attorney for Plaintiff
11 Animal Protection and Rescue League, Inc.
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