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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

LOU BAKER, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

SEAWORLD ENTERTAINMENT, INC.,
et al.,

Defendants.

Case No.: 14cv2129-MMA (AGS)

**NOTICE AND ORDER PROVIDING
TENTATIVE RULINGS RE:
DAUBERT MOTIONS AND
DEFENDANTS’ MOTION FOR
SUMMARY JUDGMENT**

[Doc. Nos. 344, 347, 351, 355, 358, 359]

On October 11, 2019, the parties in this action will appear before the Court for a hearing on the parties’ *Daubert* motions and Defendants’ motion for summary judgment. *See* Doc. Nos. 344, 347, 351, 355, 358, 359. In anticipation of the hearing, the Court issues the following tentative rulings on the pending motions:

1. The Court tentatively **DENIES** Defendants’ motion to exclude the testimony of Dr. Steven Feinstein [Doc. No. 344]. The Court tentatively finds that Dr. Feinstein’s opinions are not subject to exclusion under the standards of Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

2. The Court tentatively **DENIES** Defendants’ motion to exclude the testimony

1 of Chad Coffman, CFA [Doc. No. 347]. The Court tentatively finds that Mr. Coffman's
2 opinions are not subject to exclusion under the standards of Federal Rule of Evidence 702
3 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

4 3. The Court tentatively **GRANTS** Defendants' motion to exclude the
5 testimony of Dr. James Gibson [Doc. No. 351]. The Court tentatively finds that Dr.
6 Gibson's opinions are subject to exclusion under the standards of Federal Rule of
7 Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

8 4. The Court tentatively **GRANTS IN PART** and **DENIES IN PART**
9 Plaintiffs' motion to exclude the testimony of Dr. Craig Lewis [Doc. No. 355]. The
10 Court tentatively grants Plaintiffs' motion in part, and tentatively finds that Dr. Lewis
11 should be precluded from offering any market analysis opinion or testimony, set forth in
12 Section III of his expert report. The Court tentatively denies Plaintiffs' motion in part,
13 and tentatively finds that any corrective disclosure opinion or testimony, as well as any
14 rebuttal opinion or testimony regarding disaggregation, the price maintenance theory of
15 inflation, and the constant dollar inflation methodology, are not subject to exclusion
16 under the standards of Federal Rule of Evidence 702 and *Daubert v. Merrell Dow*
17 *Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

18 5. The Court tentatively **GRANTS** Plaintiffs' motion to exclude the testimony
19 of Dr. Randolph Bucklin [Doc. No. 358]. The Court tentatively finds that Dr. Bucklin's
20 opinions are subject to exclusion under the standards of Federal Rule of Evidence 702
21 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

22 6. The Court tentatively **DENIES** Defendants' motion for summary judgment
23 [Doc. No. 359].

24 a. The Court tentatively denies Defendants' motion for summary
25 judgment as to Plaintiffs' Section 10(b) claim.

26 i. The Court tentatively finds that Plaintiffs raise a genuine
27 dispute of material fact as to loss causation. The Court tentatively finds that a rational
28 jury could conclude that the August 13, 2014 disclosure constituted a corrective

1 disclosure.

2 ii. The Court tentatively finds that Plaintiffs raise a triable issue of
3 material fact on the element of damages, as the appropriateness of the constant dollar
4 inflation methodology is a question for the jury.

5 iii. The Court tentatively finds that a rational jury could conclude
6 that each of the challenged statements were false or misleading at the time they were
7 made. *S.E.C. v. Todd*, 642 F. 3d 1207, 1220 (9th Cir. 2011) (“Generally, whether a
8 public statement is misleading, or whether adverse facts were adequately disclosed is a
9 mixed question to be decided by the trier of fact[.]”) (internal quotation marks omitted).

10 iv. The Court tentatively finds that Plaintiffs raise a triable issue of
11 material fact on the element of materiality based in part upon Mr. Coffman’s expert
12 testimony and analyst feedback. *See Retail Wholesale & Dep’t Store Union Local 338*
13 *Ret. Fund v. Hewlett-Packard Co.*, 845 F.3d 1268, 1277 (9th Cir. 2017) (“[M]ateriality is
14 generally an issue of mixed fact and law, best left to the fact-finder[.]”).

15 v. The Court tentatively finds that Plaintiffs raise a genuine
16 dispute of material fact on the element of scienter. The Court tentatively finds that a
17 rational jury could conclude that the Individual Defendants made each of the challenged
18 statements either “intentionally or with deliberate recklessness.” *Zucco Partners, LLC v.*
19 *Digimarc Corp.*, 552 F.3d 981, 991 (9th Cir. 2009) (quoting *In re Daou Sys., Inc.*, 411
20 F.3d 1006, 1015 (9th Cir. 2005)). Additionally, the Court tentatively finds that a rational
21 jury could conclude that the Individual Defendants’ scienter confers scienter on
22 Defendant SeaWorld Entertainment, Inc. *See In re Apple Computer, Inc.*, 127 F. App’x
23 296, 303 (9th Cir. 2005).

24 b. The Court tentatively denies Defendants’ motion for summary
25 judgment as to Plaintiffs’ Section 20(a) claims.

26 i. The Court tentatively finds that a rational jury could conclude
27 that there has been a primary violation of federal securities law.

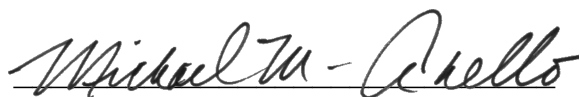
28 ii. The Court tentatively finds that whether Blackstone and the

1 Individual Defendants are controlling persons within the meaning of Section 20(a) are
2 questions for the jury. *See Todd*, 642 F.3d at 1223 (“Whether [the defendant] is a
3 controlling person is an intensely factual question”) (quoting *Kaplan v. Rose*, 49 F.3d
4 1363, 1382 (9th Cir. 1994)).

5 As these rulings are tentative, the Court looks forward to the oral arguments of
6 counsel.

7 **IT IS SO ORDERED.**

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9 Dated: October 9, 2019



10 HON. MICHAEL M. ANELLO
11 United States District Judge
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