

**FEB 13 2019**

Jake Chatters  
Executive Officer & Clerk  
By: S. Hubbard, Deputy

DOWNEY BRAND LLP  
SEAN J. FILIPPINI (Bar No. 232380)  
CHRISTOPHER M. KOLKEY (Bar No. 300206)  
621 Capitol Mall, 18th Floor  
Sacramento, CA 95814-4731  
Telephone: 916.444.1000  
Facsimile: 916.444.2100  
sfilippini@downeybrand.com  
ckolkey@downeybrand.com

OFFICE OF CITY ATTORNEY, CITY OF ROCKLIN  
SHERI CHAPMAN (Bar No. 215775)  
3970 Rocklin Road  
Rocklin, CA 95677  
Telephone: 916.625.5583  
Sheri.chapman@rocklin.ca.us

Attorneys for Plaintiff  
City of Rocklin

**EXEMPT FROM FILING FEES, GOV. CODE § 6103**

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF PLACER

CITY OF ROCKLIN,  
  
PLAINTIFF,  
  
V.

LEGACY FAMILY ADVENTURES-  
ROCKLIN, LLC, A CALIFORNIA  
LIMITED LIABILITY COMPANY;  
DAVID BUSCH, AN INDIVIDUAL;  
AND DOES 1-10 INCLUSIVE,

DEFENDANTS.

CASE NO. **SCV 0042514**

**COMPLAINT FOR:**

- (1) FRAUD
- (2) FRAUD
- (3) NEGLIGENT MISREPRESENTATION
- (4) VIOLATION OF BUS. PROF. CODE  
SECTION 17200, ET SEQ.
- (5) BREACH OF CONTRACT
- (6) BREACH OF CONTRACT
- (7) BREACH OF IMPLIED COVENANT  
OF GOOD FAITH AND FAIR DEALING  
(MASTER AGREEMENT)
- (8) BREACH OF IMPLIED COVENANT  
OF GOOD FAITH AND FAIR DEALING  
(OPERATING AGREEMENT)
- (9) MONEY HAD AND RECEIVED
- (10) BREACH OF CONTRACT –  
ANTICIPATORY REPUDIATION
- (11) DECLARATORY RELIEF
- (12) UNJUST ENRICHMENT

**BY FAX**

1 Plaintiff City of Rocklin (“Plaintiff or the “City”) complains and alleges against  
2 Defendants Legacy Family Adventures-Rocklin, LLC (“LFA”) and David Busch (“Busch”) as  
3 follows:

4 **SUMMARY OF THE CASE**

5 1. David Busch and LFA conned the City. From 2013-2016, Busch’s shell entities  
6 ran adventure parks in Texas into the ground—leaving cities in Texas holding the bag. Busch’s  
7 adventure parks in the Texas cities, which utilized substantially the same public/private  
8 partnership model as Busch utilized with the City, were operational and financial disasters. In  
9 2015, the Busch entities in Texas were actively neglecting their financial and contractual  
10 obligations to the Texas cities that they had partnered with. Also in 2015, the Busch entities in  
11 Texas defaulted on their financial obligations to their third party lenders, resulting in the lenders  
12 coming in, injecting cash, and taking over a majority interest in the entities—with Bush  
13 maintaining a minority interest in the entities. But Busch left his Texas adventure parks in such  
14 poor financial and operational shape in 2015 that the additional cash injection could not save the  
15 entities. By mid-late 2016, the entities failed and the Texas cities ended their long term  
16 agreements with the Busch entities after just two years. To make matters worse, Busch’s Texas  
17 entities were under investigation by the US Government for child labor violations throughout  
18 2015 and eventually cited and fined \$86,000 for the violations in 2016.

19 2. With that backdrop, Busch approached the City in March and April 2016. He  
20 trumpeted his unrivaled experience and expertise in developing amusement and adventure parks.  
21 Busch then made a proposal to the City for an adventure park which included a pro-forma  
22 financial statement showing that if the City invested millions of dollars to build the park, he  
23 would make it a financial success. And although Busch provided credentials and references, he  
24 misrepresented and concealed that his only adventure park projects, which happened to be his  
25 most recent projects, were abject failures that were actively being investigated for child labor law  
26 violations.

27 3. The misrepresented and concealed Texas projects involved situations that are  
28 eerily similar to the facts and circumstances here. In Texas, Busch touted his experience, offered

lofty projections, induced cities to expend millions of dollars, obtained long-term operating agreements, then failed to come close to meeting his projections and left cities holding the bag. He did the same thing to the City of Rocklin. His misrepresented experience and overstated financial projections led the City to expend several million dollars to build an adventure park and give his entity, LFA, a long-term operating agreement. But soon after his entity took over operations, it failed to honor its contractual obligations and proceeded to “revise” its financial projections to show that it was never going to be able to satisfy the financial obligations that it owed to the City. The City proceeded to investigate. After the investigation revealed the misrepresented and concealed dealings and child labor violations in Texas, the City took action to permanently remove LFA and has filed this lawsuit to recoup the losses caused by LFA.

#### **THE PARTIES**

4. Plaintiff City of Rocklin is a local agency of the State of California, as defined by Government Code section 6252, subdivision (a).

5. On information and belief, Defendant Legacy Family Adventures-Rocklin, LLC is a California limited liability company incorporated on October 25, 2016 with its principal place of business in El Dorado Hills, California. On information and belief, its Chief Executive Officer and sole member is David Busch.

6. Defendant David Busch is a natural person who, on information and relief, resides in El Dorado Hills, California. On information and belief, Busch is LFA’s Chief Executive Officer and sole member.

7. Defendants Does 1-10, inclusive, are sued herein under fictitious names. Their true names and capacities are unknown to the City. When their true names and capacities are ascertained, the City will amend this Complaint by inserting their true names and capacities herein.

8. The City is informed and believes, and based thereon alleges, that at all times relevant herein, Defendants and the Doe Defendants (collectively, “Defendants”) were and are the agents, employees, and partners of each of the remaining Defendants, and were, in performing the acts complained of herein, acting with the scope of such agency, employment, or partnership

1 authority.

## 2 JURISDICTION AND VENUE

3 9. The Court is a proper venue because LFA contracted to perform obligations under  
4 the Operating Agreement to operate an adventure park in Placer County, California, and the  
5 Master Agreement and Operating Agreement were both entered into in Placer County, California.  
6 (Code Civ. Proc., § 395, subd. (a).) Further, paragraph 19 of Exhibit F of the Master Agreement  
7 provides that “[a]ny dispute arising under this Agreement shall be venued in the Superior Court of  
8 Placer County.” In addition, Paragraph 28 of the Operating Agreement provides that “venue for  
9 any judicial action under this agreement shall be in Placer County, California.”

10 10. This Court has subject matter jurisdiction because the causes of action arise under  
11 California state law. (Code Civ. Proc., § 410.10.)

12 11. This Court has personal jurisdiction because LFA is incorporated and has its  
13 principal place of business in California, and Busch is a resident of California and will be served  
14 with process in California. (Code Civ. Proc., § 410.50.)

## 15 GENERAL ALLEGATIONS

### 16 **David Busch’s Concealed History of Failings as an Adventure Park Operator**

17 12. David Busch has operated amusement parks in Texas, Hawaii, and California over  
18 at least the past two decades, mostly consisting of water parks. His business model is to approach  
19 municipalities with ideas for parks that appeal to a broad base of constituencies (families and  
20 children), tout his experience and capabilities, offer lofty revenue projections, and then leverage  
21 those concepts into agreements where the municipalities bear the burden of the capital investment  
22 and give Busch a long-term operating agreement.

23 13. As the municipalities bear the risk of a substantial capital investment, Busch  
24 assumes virtually no risk. He has little or no capital investment in the project. Thus, the only  
25 meaningful risk he has is whatever financial obligation is included in the long-term operating  
26 agreement. And that risk is mitigated by Busch’s practice of forming single purpose shell  
27 companies to enter into the agreements and operate the parks. These shell companies, include,  
28 for example:

- Harvest Family Entertainment LLC
- Mansfield Family Entertainment LLC
- Roanoke Family Entertainment LLC
- Hawaiian Parks-Pflugerville LLC
- Hawaiian Parks-White Settlement, LLC
- Waco Family Entertainment LLC
- Legacy Family Adventures-Rocklin, LLC

14. Municipalities are lured by Busch's overstatements about his experience and competence and the lofty financial projections he offers. Municipalities are also drawn to Busch's representations that his parks offer good, wholesome family fun that "brings families together." So for a municipality, the prospect of a partnership with a Busch entity is very appealing—at least on its face.

15. Given Busch's business model, he has very little to lose by overpromising and underperforming. As a result, it is no coincidence that many of Busch's business endeavors have ended in situations where his entities fail to meet their projected expectations and a municipality is out substantial sums of money.

16. Below is a summary of failed Busch endeavors that the City recently discovered and that Busch either misrepresented or never disclosed to the City. In fact, Busch unequivocally misrepresented to the City that two of the below failed ventures—city of White Settlement and city of Pflugerville were highly profitable and "wildly successful."

*The City of Dallas, Texas*

17. On information and belief, in or around 2005, Busch's shell company, Horizon Amusement Management Group, LLC, entered into a long-term agreement to operate an amusement park in Dallas, Texas after the city agreed to pay for the construction of the park. On information and belief, Busch failed to meet his financial projections and failed to satisfy his financial obligations to the city. On information and belief, the city of Dallas terminated the agreement with Busch's company after Busch's entity failed to satisfy its obligations.

///

*The City of White Settlement, Texas*

18. On information and belief, in or around 2014, another one of Busch's shell companies, Harvest Family Entertainment Texas, LP, entered into a long-term agreement to operate an adventure park in White Settlement, Texas (a suburb of Fort Worth), after the city agreed to pay \$17 million to build the park. But in April 2016, after only two years of operations, the city of White Settlement terminated its agreement with Busch's shell company<sup>1</sup> because the company failed to meet its financial projections and failed to honor its financial obligations to White Settlement. In fact, at the time of termination, Busch's shell company owed almost \$1 million in payment obligations to White Settlement. Presently, litigation is pending in Texas relating to the failed White Settlement adventure park where the city of White Settlement is seeking to recoup its losses.

*The City of Pflugerville, Texas*

19. On information and belief, in or around 2014, another one of Busch's shell companies entered into a long-term agreement to operate an adventure park in Pflugerville, Texas (a suburb of Austin), after the city agreed to pay \$25.5 million to build the park. But in December 2016, after only two years of operations, Pflugerville ended its relationship with Busch's shell company because the company failed to honor its financial obligations to Pflugerville. In fact, at the time the relationship was severed, Busch's shell company owed over \$400,000 in payment obligations to Pflugerville. Furthermore, Busch's shell company failed to honor its promises to deliver attractions and refused to operate and remain open for sufficient periods of time to enable attendance to increase.

*The City of Waco, Texas*

20. Most recently, on information and belief, in March 2018, the city of Waco issued a notice of default to another of Busch's shell companies that operates an amusement park in Waco.

---

<sup>1</sup> Because of his business failings, on information and belief, in or around May 2015 Busch was forced to give up 67% of his ownership interest in companies that operated amusement parks in Texas to Source Capital LLC, a private equity firm from whom the Busch entities borrowed money and subsequently defaulted on their repayment obligations. Busch therefore retained approximately a 33% ownership interest in these companies after Source took majority control in the wake of the Busch entity defaults to Source.

1 The company was in default on its financial obligations and owed the city at least \$102,000. The  
2 city of Waco ended its relationship with the Busch entity by summer 2018.

3 *Widespread Violations of Federal Child Labor Laws*

4 21. On information and belief, seven different Texas amusement parks that were  
5 operated by Busch's entities, including the two adventure parks in Pflugerville and White  
6 Settlement, were cited by the federal government for repeated violations of child labor laws  
7 which occurred throughout 2015-2016. The violations included underage employees being  
8 overworked beyond the legally permitted hours and underage employees working on hazardous  
9 equipment and in hazardous conditions. These serious violations resulted in approximately  
10 \$86,000 in government fines and penalties being assessed against Busch's shell companies.

11 **Busch Approaches the City With Proposals and Overstated Projections—While Two of His**  
12 **Shell Companies Owe Hundreds of Thousands of Dollars to Cities in Texas**

13 22. On or around March 7, 2016, at a time when two of Busch's Texas entities were  
14 on the brink of being terminated from long-term agreements in White Settlement and Pflugerville  
15 and the entities were hundreds of thousands of dollars in debt to those cities, Busch met with the  
16 City about the development of an adventure park in Rocklin. Busch pushed an adventure park  
17 concept that would involve, among other things, ziplining, rock-climbing, and an elevated rope-  
18 course. At that time, Busch touted his extensive experience and success with public/private  
19 partnerships in the adventure and amusement park arena but never suggested, let alone disclosed,  
20 that his entities in Texas were indebted to cities by hundreds of thousands of dollars and on the  
21 brink of being terminated.

22 23. On or around April 22, 2016—coincidentally the same month that the city of  
23 White Settlement terminated Busch's entity—Busch provided the City with an initial proposal  
24 outlining his proposed adventure park. Busch proposed a framework for an agreement with the  
25 City in which: 1) he would assist the City with the initial design and development of the  
26 proposed park; 2) the City would pay 100% of the development costs; and 3) he would have a  
27 long-term agreement for the operation of the park and would re-pay the City's development costs  
28 through revenue generated by his operations. This was a substantially similar framework that was

1 causing significant financial losses to cities in White Settlement and Pflugerville.

2 24. On or around June 17, 2016, Busch provided the City with a “cash flow pro-  
3 forma” document which outlined his representations regarding the adventure park’s projected  
4 annual attendance, revenues, and expenses. He projected first-year attendance of 100,000 people  
5 with total first-year operating profits of \$719,395. Busch projected that the attendance would  
6 steadily increase each year and, during the first ten years of operation, the adventure park would  
7 garner 1,384,000 visitors and generate \$9.8 million in net revenues from operations. Busch’s  
8 June 17, 2016 pro-forma presented a very compelling business case for the City to move forward  
9 with the adventure park. And in reliance on it, together with the City’s misinformed belief that  
10 Busch was a competent and experienced operator with an unblemished record of success, the City  
11 moved forward.

12 **Busch Doubles Down on His Misrepresentations and Misleading Statements to Induce**  
13 **Contracts**

14 25. In the months following Busch’s initial contact with the City, and before the City  
15 entered into a written agreement with him in late January 2017, Busch kicked his sales pitch into  
16 high gear. He engaged in an all-out effort to induce a contract from the City that was consistent  
17 with the framework he proposed in April 2016.

18 26. For example, on September 15, 2016, Busch sent an e-mail to the City’s Director  
19 of Community Development, Marc Mondell, in which Busch attached documents and stated, in  
20 relevant part:

21 “I hope this information attached is helpful as you consider the way forward in the  
22 development of the Big Gun/Quarry Park entertainment venue...[w]e have full  
23 confidence no firm can design and operate a combination adventure park and  
24 theme park in a successful manner, other than LFE.”

24 27. An attachment to the same e-mail, also dated September 15, 2016, stated:

25 “You can see from the information included with this communication there is no  
26 other firm in the industry that has the knowledge, experience, depth and track  
27 record to meet the unique needs of the City for this project.”

27 28. Another attachment to the same e-mail, again dated September 15, 2016, stated:

28 “From Beijing, China to Philadelphia, MS, the LFE principals have built and



1 operated more themed family parks than any other group in America.” (Emphasis  
2 in original.)

3 29. But most remarkably, this same attachment repeatedly pointed to Busch’s  
4 amusement parks in White Settlement and Pflugerville as the primary basis that the City should  
5 enter into a contract with Busch. In the attachment, Busch pointed to the fact that both White  
6 Settlement and Pflugerville were particularly important to establishing that his entity was the  
7 most qualified operator in the United States to operate the City’s adventure park because both the  
8 White Settlement and Pflugerville parks were adventure parks as well.

9 30. Incredibly, however, as of September 2016, Busch’s entity had already been  
10 terminated by White Settlement (terminated in April 2016) and was on the brink of being  
11 terminated by Pflugerville (Pflugerville ended the relationship in December 2016). It was  
12 obvious and apparent that both projects were failures by September 2016. Yet Busch nonetheless  
13 failed to disclose any such information to the City and instead misrepresented both projects as  
14 successes that justified the City’s award of a contract to his entity for the adventure park.

15 31. On January 11, 2017, approximately two weeks before the City executed a master  
16 agreement with LFA, Busch sent an e-mail to the City’s Manager (at the time), Ricky Horst,  
17 concerning the alleged financial success of his Texas parks. Amongst the attachments in the e-  
18 mail was a chart summarizing projected profits for Busch’s seven parks in Texas. Notably, the  
19 chart represented that the parks in Pflugerville and White Settlement were projected to realize  
20 substantial profits for 2016. It is inexplicable why Busch, in January 2017, provided the City  
21 with information indicating that Pflugerville and White Settlement were active and successful  
22 parks when his companies’ operation of both parks was completely shut down by that time amidst  
23 huge operational losses and unpaid obligations. This was a blatant misrepresentation by Busch  
24 that was completely misleading.

25 32. On January 23, 2017, on the eve of the City entering into a master agreement with  
26 Busch for the development and operation of the adventure park, City Manager Ricky Horst e-  
27 mailed Busch the following:

28 “Good Morning, As I put the finishing touches on my presentation for tomorrow

1 night's city council meeting, can you please verify the follow [sic] statement from  
2 a presentation you provided to me early in the process?  
LFE: 'Currently owes [sic] seven water parks and tow [sic] adventure parks' [sic]  
3 Is this still a correct statement?'"

4 City Manager Horst made this final inquiry on the eve of the City's decision to  
5 enter into an agreement with Busch because this information was materially important to  
6 the City's decision.

7 33. The same day, on January 23, 2017, Busch e-mailed a response to Mr. Horst in  
8 which he stated: "Yes, I am currently a 30% owner of six water/adventure parks in Texas."

9 34. Busch's response: 1) was a blatant misrepresentation; 2) was evasive and  
10 misleading; and 3) failed to disclose material facts. The response was a blatant misrepresentation  
11 because, in January 2017, Busch neither owned nor operated any adventure parks (because  
12 Pflugerville and White Settlement had both ended their respective relationships with Busch  
13 entities by January 2017). The response was evasive and misleading because Mr. Horst asked  
14 him about seven parks and he responded as to six. And the response also failed to disclose  
15 material facts that his entities had recently had their relationships severed by White Settlement  
16 and Pflugerville months prior.

17 35. The next day, January 24, 2017, the Rocklin City Council met to publicly consider  
18 whether to enter into the Master Agreement with LFA. Busch was in attendance at the January  
19 24 City Council meeting and spoke extensively about his past successes with adventure and  
20 amusement parks and the unqualified success that the City's (yet to be constructed) Adventure  
21 Park would become under his direction.

22 36. During the council meeting, Council Member Gregory Janda specifically asked  
23 Busch about his adventure parks—the two in Pflugerville and White Settlement—and said to  
24 Busch: "how are [those parks] received in those communities? Basically, how are they doing?"  
25 Busch directly responded that the two parks were "wildly successful."

26 37. Later at the same meeting, Rocklin City Council Member Ken Broadway followed  
27 up the question about the two adventure parks in White Settlement and Pflugerville and asked  
28 Busch to confirm that the two parks were "successful" and asked Busch to elaborate. Busch

1 responded by confirming that the White Settlement and Pflugerville parks were successful.

2 38. Later at that same meeting, Busch was asked by the City Council to elaborate on  
3 information that a member of the public raised regarding the cessation of operating agreements in  
4 two Texas cities. Busch responded by stating that people had “been knocking on our doors for  
5 the last 14 years” wanting to buy his parks. Busch went on to say that in 2015 he decided that it  
6 “was a good time” to sell because he was “ready to come home” to the Sacramento area. Busch  
7 then stated he sold a majority interest in the parks in 2015. Busch then stated that the entity that  
8 “bought” the majority interest later sold it to a different company. Busch then stated that if the  
9 City were to contact the people with whom Busch had dealt with over the years that the City  
10 would get “glowing, glowing remarks.”

11 39. Immediately after the aforementioned exchange, Councilmember Janda followed  
12 up by asking: “Mr. Busch, are those parks still functioning and successful, currently?” Busch  
13 unequivocally and directly responded: “yes, yes.” Council member Janda then asked: “so the fact  
14 that you are no longer involved is not because [the parks] went bad or the deal was bad or  
15 anything like that?” Busch responded: “yes, I was on the road and I am old and did not want to  
16 do it anymore.”

17 40. Busch’s aforementioned statements, in direct response to questions by council  
18 members, were a combination of misrepresentations and misleading and evasive statements. The  
19 Pflugerville and White Settlement parks were not “successful” or “wildly successful” at any point  
20 in time, let alone on January 24, 2017, when Busch made the statements. Indeed, by January 24,  
21 2017 both cities had ended their relationship with the Busch entities in the wake of significant  
22 balances owed to the cities of White Settlement and Pflugerville. Busch’s statements about those  
23 parks being “successful” and “wildly successful” were blatant misrepresentations. Further,  
24 Busch’s statements regarding the “sale” of his majority interest in 2015 was misleading at best  
25 and a blatant misrepresentation at worst. Busch concealed and failed to disclose that he gave up  
26 his majority interest the entities in 2015 when his entities defaulted to their creditors while they  
27 were simultaneously in default to multiple Texas cities. Moreover, even when directly confronted  
28 about the termination of the relationships in the cities in Pflugerville and White Settlement, Busch

1 provided a misleading and evasive response and never disclosed that both cities ended their  
2 operating agreements with Busch's entities in 2016 due to the failure of those entities to honor  
3 their financial and contractual obligations to the cities.

4 41. Throughout its extensive involvement with Busch, the City was never aware of the  
5 following material facts, which the City only recently discovered and now alleges on information  
6 and belief:

- 7 • In 2008, the city of Dallas terminated one of Busch's entities from a long-term  
8 agreement when the entity failed to meet its financial obligations to the city of  
9 Dallas;
- 10 • In 2015, Busch lost a majority interest in his Texas entities while in default to third  
11 party lenders and Texas cities;
- 12 • In April 2016, the city of White Settlement terminated its long-term agreement  
13 with one of Busch's entities because the entity was indebted to the city by almost  
14 \$1 million since Busch's entity failed to honor its obligations;
- 15 • In July 2016, the federal government issued citations and fined Busch's various  
16 Texas entities approximately \$86,000 for violation of child labor laws;
- 17 • In December 2016, the city of Pflugerville ended its long-term agreement with  
18 another one of Busch's entities because the entity was indebted to the city by  
19 almost over \$400,000;
- 20 • In March 2018, the city of Waco issued a notice of default to another one of  
21 Busch's entities because Busch's entity was over \$100,000 behind on its  
22 obligations to the city. The City of Waco then proceeded to end its relationship  
23 with Busch's entity in summer 2018.

24 42. As Busch touted his alleged prior success and held himself out to be an unrivaled  
25 theme park magnate, he repeatedly misrepresented himself and misled the City regarding his  
26 checkered past, including his numerous prior business failings and violation of federal child labor  
27 laws.

28 ///

### **The City Enters into the Master Agreement with LFA**

43. In reliance on Busch's misrepresentations, misleading statements, and concealments, and without knowledge of the history of failures with Busch's entities or the child labor law violations and citations, the City entered into a written agreement entitled "Rocklin Adventure Park Master Agreement" (the "Master Agreement") on or about January 24, 2017 with LFA—which was a single purpose entity formed by Busch to operate the City's adventure park. The Master Agreement set forth three phases for the development and operation of the adventure park. In the first phase, LFA agreed to "produce a Design/Development Package to the thirty percent design level" that would "include schematic drawings and information required for a request for proposals for a design build construction of an adventure park similar to the proposed site plan . . . ." In the second phase, LFA agreed "to provide advice and assistance in the final design and construction phase (Design Build Phase) of the Project." Finally, in the third phase, LFA agreed to "operate the Project and its related activities on the Project Site in the manner and as set forth in the Operating Terms . . . ." The Master Agreement contemplated that the City would retain a third party contractor to complete the design of the park and construct it and that the City would pay for the construction of the park. The Master Agreement also provided that the City's investment in the development and construction of the park would be completely recouped over time, together with interest, out of LFA's profitable operation of the park.

44. The Master Agreement included a section entitled "General Contract Terms," the provisions of which generally governed all phases of the parties' relationship. The relevant provisions of the Master Agreement's General Contract terms provided:

- LFA shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of LFA's obligations. (Para. 3.)
- LFA shall only assign competent personnel to perform services. (Para. 7.A.)

### **The Parties Proceed with the Agreement**

45. Once the parties signed the Master Agreement, they pressed forward with the design and construction phases of the adventure park.

13           48. As a result, on or around March 24, 2017, the City issued a nationwide request for  
14 proposals seeking a design-build firm to design and construct the adventure park. On or around  
15 July 25, 2017 the City contracted with a third party contractor to design and build the adventure  
16 park.

20 **LFA's Misrepresentations Continue and the Parties Execute an Amended Operating**  
21 **Agreement**

27 • On July 25, 2017, Busch e-mailed the City “an adjusted 20 year pro forma”  
28 representing year one attendance at 90,200 and year one operating profits of

1           \$490,000. In the first three years, Busch represented operating profits of over \$2  
2           million.

- 3           • On August 14, 2017, Busch e-mailed the City with another pro forma, representing  
4           attendance at 95,000 for the first full year and year one operating profits of  
5           \$498,160. Busch still projected operating profits of over \$2 million for the  
6           adventure park's first three years of operation.
- 7           • On March 28, 2018, Busch e-mailed the City with "the correct projected pro  
8           forma." It represented year one attendance of 95,000 and year one operating  
9           profits of \$498,160. Once again, Busch projected operating profits of over \$2  
10          million for the adventure park's first three years of operation.
- 11          • As detailed below, the parties signed an amended Operating Agreement in April  
12          2018, which contained a pro forma as Exhibit G. It represented year one  
13          attendance of 95,000 and year one operating profits of \$498,160. Again, Busch  
14          projected operating profits of over \$2 million for the first three years of operation.

15          51.     Based on the misleading picture that Busch had painted of himself, the City's  
16          resulting belief in Busch's competence and credibility (and lack of knowledge of his checkered  
17          past), and Busch's repeated representations about the adventure park's projected attendance and  
18          profitability, the City entered into a written agreement entitled "Amended and Re-Stated  
19          Adventure Park Operating Agreement" with LFA on or about April 24, 2018 (the "Operating  
20          Agreement"). The Operating Agreement was largely similar to the operating agreement that was  
21          included as part of the Master Agreement but included several modifications to the previous  
22          version.

23          52.     The Operating Agreement set forth the rights and obligations of the parties with  
24          respect to LFA's operation of the adventure park.

25          53.     Notably, the Operating Agreement specifically set forth the City's heavy reliance  
26          on Busch's representations regarding his experience and expertise. At paragraph 6.2.2.b., it  
27          stated: "The City enters into this Operating Agreement with LFA based on its experience and  
28          history of operating similar facilities."

1           54.     Some of the most critical terms of the Operating Agreement were its financial  
2 terms. Pursuant to paragraph 9.1, LFA was required to repay the City the amount of the City's  
3 investment in the park in full, with interest (at 4%), quarterly, over twelve years beginning July 1,  
4 2018. The proceeds for each payment would derive from the adventure park's net operating  
5 revenue, and the payments were to be interest only for the first three years, then to be amortized  
6 with principal and interest over the remaining nine years. The provision also provided that LFA  
7 would contribute \$60,000 per year towards a capital improvement account and further provided  
8 that LFA and the City would share the remaining proceeds generated by net operating revenues  
9 such that the City would receive 35% and LFA would receive 65%. Significantly, paragraph 9.2  
10 provided that the capital improvement account "shall be established to provide the City access to  
11 the funds in the event of a shortfall of Gross Revenue to cover the City's Debt Service Payment  
12 as outlined in Section 9.1." Thus, at minimum, LFA was to pay the City \$40,000 annually.

13           55.     Paragraph 7.3.4 of the Operating Agreement further provided that the City would  
14 advance LFA pre-opening expenses in the amount of \$150,000, plus an additional \$90,000, for a  
15 total of \$240,000 in pre-opening expenses. Further, LFA agreed to repay \$90,000 of the pre-  
16 opening expenses during the first year of operation.

17           56.     The Operating Agreement set forth numerous other obligations relating to LFA's  
18 operation of the adventure park and its financial obligations to the City.

19                   **The City Issues \$240,000 in Pre-Opening Expenses**

20           57.     Between September 2017 and July, 2018, the City issued a total of \$240,000 in  
21 pre-opening expenses to LFA under the Operating Agreement.

22           58.     As set forth above, the construction of all of the elements of the adventure park  
23 was completed in September 2018 and all of the elements were turned over to LFA for operation  
24 in mid-late September 2018.

25                   **LFA "Revises" its Financial Projections to Reflect that Its Operations Will Not Generate**  
26                   **Sufficient Revenue to Honor Its Financial Obligations**

27           59.     LFA opened all of the elements of the adventure park to the public in mid-late  
28 September 2018. From that time, the proverbial leopard began showing its spots and it has since



1 become apparent that the adventure park, under Busch's direction, would be another one of  
2 Busch's operational failures.

3 60. On October 4, 2018, several months after the execution of the Operating  
4 Agreement and just weeks after opening all of the elements of the adventure park to the public,  
5 LFA provided the City with "revised" pro forma projections (the "10/18 Pro-Forma"), which  
6 contained startling figures never before disclosed or contemplated by the City. The "revised" pro  
7 forma projected attendance at a meager 62,000 for the first year and year one operating profits of  
8 only \$194,800—which was \$300,000 less than included on the pro-forma LFA provided just 6  
9 months prior. LFA further projected for the first time that operating profits for the first three  
10 years would total less than \$600,000—not the \$2 million originally projected on numerous  
11 occasions, including as recently as April 2018. The projections were even more daunting when  
12 viewed over a 10-year span. It projected attendance over the first 10 years at 710,761—about  
13 half of the 1,384,000 attendees that virtually all of Busch's prior pro-formas represented.

14 61. The 10/18 Pro-Forma unequivocally established that LFA would never meet its  
15 financial obligations to the City. The City became extremely concerned about Busch and LFA's  
16 competence and credibility at that point. What followed were numerous meetings and the  
17 beginning of an investigation into Busch's background.

#### 18 **LFA Disregards Numerous Other Contractual Obligations**

19 62. In accord with paragraph 9.1(a)(i) of the Operating Agreement, the City sent an  
20 invoice on October 23, 2018 requesting the first quarter interest-only debt service payment of  
21 \$40,000, due by November 15, 2018. This invoice was based on the adventure park's anticipated  
22 total debt service principal of \$4,000,000 and accrued interest owed to the City of \$40,000 at the  
23 time the invoice was sent. To date, this invoice has not been paid.

24 63. Paragraph 10.2 of the Operating Agreement requires that LFA keep true and  
25 accurate books and records showing all its business transactions concerning its operations on the  
26 adventure park in a format and manner acceptable to the City. At LFA's request, the City  
27 purchased a point-of-sale system for LFA's use. Even though the City has made repeated  
28 requests for LFA to demonstrate its point-of-sale system, LFA has failed to provide a

1 demonstration or access to the system. Nor has LFA provided an accurate record of the adventure  
2 park's attendees despite requests.

3 64. Paragraphs 1.1.29 and 10.1 of the Operating Agreement require that LFA provide  
4 the City with financial reports on a quarterly basis and an annual financial report within 90 days  
5 of the end of each fiscal year. This includes, at minimum, detailed profit and loss statements,  
6 general ledger, and balance sheet. On October 24, 2018, the City requested LFA's annual report  
7 for the year ending June 30, 2018 and the first quarterly report for the current fiscal year. Yet, to  
8 date, LFA has not complied with the City's requests.

9 65. Paragraph 7.1.1 of the Operating Agreement requires that LFA operate the  
10 adventure park for a commercially reasonable period during its operating season, and that the  
11 operations be of good quality. In addition, Paragraph 7.1.2 of the Operating Agreement requires  
12 that LFA establish a schedule of operating hours that "will maximize economic return from  
13 operations, in LFA's reasonable business judgment." Yet, since September 2018, LFA has  
14 offered extremely limited and unpredictable hours of operation, including only opening the  
15 adventure park for private parties during weekdays. In addition, in early October 2018, LFA  
16 advised the City that it intended to close the adventure park's operations in January and February  
17 2019.

18 66. Based on these contractual breaches, among others, the City sent LFA a November  
19 21, 2018 letter detailing the above-described breaches of contract and other breaches, which  
20 particularly described all such breaches and requested that LFA cure the defaults. LFA failed to  
21 cure any of the financial and non-financial breaches identified in the November 21, 2018 letter.

#### 22 **LFA's Repudiation and Anticipatory Breach of the Operating Agreement**

23 67. As set forth above, the 10/18 Pro-Forma unequivocally established that LFA  
24 would default on the material financial terms of the Operating Agreement. More specifically, the  
25 10/18 Pro-Forma showed that LFA would not make the required debt service payments to the  
26 City in any year of the long-term agreement, would not make the required capital account  
27 contribution in any year, and would not repay the City the \$90,000 from the initial \$240,000  
28 contribution to pre-opening expenses in the first year of the Operating Agreement.

1           68.     In November 2018, after receiving the 10/18 Pro-Forma, the City met with Busch.  
2     At that meeting, Busch unequivocally acknowledged that LFA would not be able to satisfy its  
3     financial obligations to the City.

4           69.     In December 2018, LFA and its counsel met with the City and its counsel to  
5     further discuss LFA's ability to honor its obligations to the City under the Operating Agreement.  
6     Once again, LFA acknowledged that it would not be able to meet its financial obligations. LFA  
7     proposed that that the only way that LFA might be able to meet the financial obligations was if  
8     the City would agree to materially modify the Operating Agreement and construct a train  
9     encircling the adventure park as well as a suspension bridge across the adventure park. LFA  
10    acknowledged that neither of those elements was ever contemplated by the Operating Agreement  
11    and further acknowledged that although it did not actually have bids for the material  
12    modifications, the modifications would cost at least \$600,000 to build.

13          70.     While analyzing the issues relating to the 10/18 Pro-Forma Statement, the City  
14    simultaneously performed an initial investigation into Busch's background. That investigation  
15    revealed the aforementioned misrepresentations and concealments relating to Busch's Texas  
16    business dealings.

17                   **Busch and the City enter into an Exit Agreement**

18          71.     As a result of LFA's breaches, its repudiation of its financial obligations, and  
19    Busch's misrepresentations and concealments, the City concluded that it could not let LFA  
20    continue to operate the adventure park. Thus, the City negotiated, and on January 7, 2019,  
21    entered into an Exit Agreement with LFA wherein LFA and the City agreed that LFA would  
22    permanently vacate the Park on January 9, 2019 and transition control of all park related assets to  
23    the City. Pursuant to the Exit Agreement the parties also agreed to reserve all rights and claims  
24    that they had against one another.

25                   **LFA's Long Term Ticket Sales for Which the City Is Now Responsible**

26          72.     The City is informed and believes that once it became apparent that LFA would no  
27    longer be the operator of the adventure park, and the parties began the weeks-long process of  
28    negotiating the Exit Agreement, LFA stepped up its efforts to sell long-term tickets and season

1 passes. This enabled LFA to generate tens of thousands of dollars in revenue at the expense of  
2 the City—which is now left with the expense associated with honoring those tickets and passes.

3 73. Based on the incomplete and vague information LFA has provided to date, it  
4 appears that LFA has obtained a total of approximately \$250,000 in revenue from paying  
5 customers who presently have season passes or unused tickets that the City must honor.

### 6 **FIRST CAUSE OF ACTION**

#### 7 **Fraud**

#### 8 **(Against All Defendants)**

9 74. The City realleges and incorporates by reference each and every allegation of the  
10 above paragraphs 1 through 73 inclusive, as if fully set forth herein.

11 75. Before the City and LFA entered into the Master Agreement and Operating  
12 Agreement, Busch, in his personal capacity and in his capacity as LFA's sole member and CEO,  
13 touted his business acumen and alleged prior success in operating amusement parks, concealing  
14 and not disclosing his prior business failings.

15 76. Also before the City and LFA entered into the Master Agreement and Operating  
16 Agreement, Busch, again in his personal capacity and in his capacity as LFA's sole member and  
17 CEO, affirmatively misrepresented that his parks in Pflugerville, Texas and White Settlement,  
18 Texas were successful and viable in January 2017 when the truth was his operations had been  
19 terminated at those parks because his entities failed to fulfill financial obligations. As set forth  
20 above, Busch represented that the parks in Pflugerville and White Settlement were "wildly  
21 successful" and that he only sold them because he was "ready to come home" to the Sacramento  
22 area. He even represented that if the City were to contact the people with whom he had dealt with  
23 over the years that the City would get "glowing, glowing remarks." The Pflugerville and White  
24 Settlement parks were not, however, "successful" or "wildly successful" at any point in time, let  
25 alone at the time when Busch misrepresented them as such.

26 77. At the time Busch made these representations, Busch knew they were in fact false,  
27 and misleading. Indeed, Busch's portfolio of amusement and adventure parks contained  
28 numerous failures, as set forth above.

1           78.     In addition, Busch failed to fully disclose his business experience and prior  
2 business failings to the City. Indeed, even assuming some of Busch's representations concerning  
3 his business experience was true, in disclosing *some* of his business experience but suppressing  
4 other material facts about his prior business experience, he misled the City. *See* Cal. Civ. Code §  
5 1710; *Persson v. Smart Inventions* (2005) 125 Cal.App.4th 1141 (finding defendant liable for  
6 fraud even where under no duty to speak because partial disclosures were made).

7           79.     Busch made the representations (and concealments) with the intent to deceive the  
8 City and to induce the City into entering into the Master Agreement (on January 24, 2017) and  
9 the Operating Agreement (on April 24, 2018).

10          80.     At the time Busch made the misrepresentations and concealed material facts, the  
11 City believed the representations were valid and true, and in reasonable reliance upon such  
12 representations, executed the Master Agreement and Operating Agreement, deciding to move  
13 forward with the design and construction of the adventure park and thus invest millions of dollars.  
14 Had the City known the true facts, it would not have entered into the Master Agreement or  
15 Operating Agreement; and at minimum, it would have negotiated a significantly different deal for  
16 the design, construction, and operation of the adventure park.

17          81.     As a direct and proximate result of Busch's misrepresentations and concealments,  
18 the City has been damaged in an amount which will be demonstrated according to proof at trial,  
19 including but not limited to, the loss of all amounts Plaintiff advanced to design, build, and  
20 operate the adventure park, which exceeds \$7 million.

21          82.     The City is entitled to the rescission and cancelation of the Master Agreement and  
22 the Operating Agreement, together with damages as provided by law.

23          83.     Defendants' conduct was carried out willfully, maliciously, fraudulently, and/or  
24 with a wanton disregard for Plaintiff's rights, entitling Plaintiff to punitive damages in an amount  
25 to be proven at trial.

26                 WHEREFORE, Plaintiff seeks relief as set forth in the Prayer for Relief.

27                 ///

28                 ///

**SECOND CAUSE OF ACTION****Fraud****(Against All Defendants)**

84. The City realleges and incorporates by reference each and every allegation of the above paragraphs 1 through 83 inclusive, as if fully set forth herein.

85. Before Plaintiff and LFA entered into the Master Agreement and Operating Agreement, Busch, in his personal capacity and in his capacity as LFA's sole member and CEO, made misrepresentations and concealments concerning the projected profitability and attendance levels for the adventure park, and the amount of capital necessary to design, construct, and operate the adventure park.

86. On or around June 17, 2016, Busch provided the City with a pro forma financial statement outlining the adventure park's projected annual attendance, revenues, and expenses. He represented that the park would have first-year attendance of approximately 100,000 people with total operating profits of approximately \$719,395. Busch's June 17 pro forma further represented that during the first ten years of operation, the adventure park would garner approximately 1,384,000 visitors and generate approximately \$9.8 million in operating profits.

87. On or around March 22, 2017, LFA provided what he deemed as 30% drawings to the City, estimating that it would cost \$3.25 million to construct a guest services building and all adventure elements together with equipment.

88. Busch thereafter reaffirmed these misrepresentations, providing the City with the following pro formas:

- On July 25, 2017, Busch e-mailed the City "an adjusted 20 year pro forma" representing year one attendance at approximately 90,200 and year one operating profits of \$490,000. In the first three years, Busch represented operating profits of over \$2 million.
- On August 14, 2017, Busch e-mailed the City with another pro forma, representing attendance at 95,000 for the first full year and year one operating profits of \$498,160. Busch still represented operating profits of over \$2 million for the

adventure park's first three years of operation.

- On March 28, 2018, Busch e-mailed the City "the correct projected pro forma." It represented year one attendance of 95,000 and year one operating profits of \$498,160. Once again, Busch represented operating profits of over \$2 million for the adventure park's first three years of operation.
- The parties entered into the Operating Agreement in April 2018, which contained a pro forma as Exhibit G. It represented year one attendance of approximately 95,000 and year one operating profits of approximately \$498,160. Again, Busch represented operating profits of over \$2 million for the first three years of operation.

89. At the time Busch made these representations, Busch knew they were in fact false or misleading, as explained below:

- **Attendance and Profitability:** On October 4, 2018, after the parties signed the Operating Agreement, Busch provided the City with the 10/18 Pro Forma which contained startling figures never before disclosed. The 10/18 Pro Forma represented first year attendance at a meager 62,000 and first year operating profits of only \$194,800. Busch further represented for the first time that operating profits for the first three years would total less than \$600,000—not the \$2 million originally represented on numerous occasions—prior to the Operating Agreement being executed. The projections were even more daunting when viewed over a 10-year span. The 10/18 Pro Forma represented attendance over the first 10 years at 710,761—about half of the 1,384,000 attendees that Busch's June 15, 2016 pro forma had originally projected. No justifiable explanation was provided for this abrupt change in representations.
- **Capital to Construct the Adventure Park:** Busch knew it would take significantly more than \$3.25 million to design, build, and operate the adventure park. The City, in fact, incurred approximately \$7 Million to construct the adventure park. In addition, Defendants requested on November 14, 2018,

1 November 29, 2018, and December 12, 2018 hundreds of thousands of dollars to  
2 construct a number of additional elements never before contemplated by the  
3 parties to supposedly increase attendance and revenue (but not enough to pay debt  
4 service). This included, for example, a train encircling the adventure park as well  
5 as a suspension bridge across the adventure park.

6 90. In addition, Defendants failed to disclose the reasonable and accurate attendance  
7 and operating profit projections for the adventure park before the parties signed the Master  
8 Agreement and Operating Agreement. Defendants further failed to disclose the reasonable and  
9 accurate amount of capital necessary to design, construct, and operate the adventure park.

10 91. Defendants made the representations and concealments with the intent to deceive  
11 the City and to induce it into entering into the Master Agreement (on January 30, 2017) and  
12 Operating Agreement (on April 24, 2018).

13 92. At the time Defendants made the misrepresentations (and concealed material  
14 facts), the City believed the representations were valid and true, and in reasonable reliance upon  
15 such representations, executed the Master Agreement and Operating Agreement, deciding to  
16 move forward with the design and construction of the adventure park and thus invest millions of  
17 dollars. Had the City known the true facts, it would not have entered into the Master Agreement  
18 or Operating Agreement; at minimum, the City would have negotiated a significantly different  
19 deal for the design, construction, and operation of the adventure park.

20 93. As a direct and proximate result of Defendants' misrepresentations and  
21 concealments, Plaintiff has been damaged in an amount which will be demonstrated according to  
22 proof at trial, including but not limited to, the loss of all amounts Plaintiff advanced to design,  
23 build, and operate the adventure park, which exceeds \$7 million.

24 94. Plaintiff is entitled to the rescission and cancelation of the Master Agreement and  
25 the Operating Agreement, together with damages as provided by law.

26 95. Defendants' conduct was carried out willfully, maliciously, fraudulently, and/or  
27 with a wanton disregard for Plaintiff's rights, entitling Plaintiff to punitive damages in an amount  
28 to be proven at trial.



1 WHEREFORE, Plaintiff seeks relief as set forth in the Prayer for Relief.

2 **THIRD CAUSE OF ACTION**

3 **Negligent Misrepresentation**

4 **(Against All Defendants)**

5 96. The City realleges and incorporates by reference each and every allegation of the  
6 above paragraphs 1 through 95 inclusive, as if fully set forth herein.

7 97. Before Plaintiff and LFA entered into the Master Agreement and Operating  
8 Agreement, Busch, in his personal capacity and in his capacity as LFA's sole member and CEO,  
9 made numerous material misrepresentations to Plaintiff, including but not limited to  
10 representations concerning his business acumen, his alleged prior success in operating amusement  
11 parks, the projected profitability and attendance levels for the adventure park, and the anticipated  
12 amount of capital necessary to design, construct, and operate adventure park. These material  
13 misrepresentations included but were not limited to the representations identified above in this  
14 Complaint.

15 98. Defendants had no reasonable grounds for believing that these representations  
16 were true at the time they made them. In addition, Defendants made the representations with the  
17 intent that the City rely upon them.

18 99. At the time Defendants made the representations alleged herein, the City believed  
19 the representations were valid and true, and in reasonable reliance upon such representations,  
20 executed the Master Agreement and Operating Agreement, deciding to move forward with the  
21 design and construction of the adventure park and thus invest millions of dollars. Had the City  
22 known the true facts, it would not have entered into the Master Agreement or Operating  
23 Agreement; at minimum, Plaintiff would have negotiated a significantly different deal for the  
24 design, construction, and operation of the adventure park.

25 100. As a direct and proximate result of Defendants' negligent misrepresentations,  
26 Plaintiff has been damaged in an amount which will be demonstrated according to proof at trial,  
27 including but not limited to, the loss of all amounts Plaintiff advanced to design, build, and  
28 operate the adventure park, which exceeds \$7 million.

101. Plaintiff is entitled to the rescission and cancelation of the Master Agreement and the Operating Agreement, together with damages as provided by law.

WHEREFORE, Plaintiff seeks relief as set forth in the Prayer for Relief.

#### **FOURTH CAUSE OF ACTION**

##### **Violation of Business & Professions Code Sections 17200, et seq.**

##### **(Against All Defendants)**

102. The City realleges and incorporates by reference each and every allegation of the above paragraphs 1 through 101 inclusive, as if fully set forth herein.

103. Defendants' misrepresentations about Busch's prior business "expertise," the adventure park's anticipated attendance and profitability, amount of capital necessary to build the adventure park, and Busch's failure to install an experienced management team, provide sufficient staffing and course supervision, make the adventure park open for reasonable hours of operation, sufficiently market and advertise the adventure park, provide park security and patron safety, and other bad faith misconduct constitute unfair, unlawful, and/or fraudulent business practices within the meaning of Business & Professions Code section 17200.

104. As a result of the aforementioned misconduct, Defendants have acquired monies to which they are not entitled. Pursuant to Business & Professions Code section 17535, Plaintiff seeks an order enjoining Defendants from continuing to engage in the aforementioned misconduct. In addition, Plaintiff seeks an order directing Defendants to disgorge all monies they received as a result of the above-referenced misconduct, including but not limited to, all amounts Plaintiff has advanced to design, build, and operate the adventure park, which exceeds \$7 million.

105. Plaintiff has incurred and will incur reasonable attorneys' fees in order to enforce the rights described above.

WHEREFORE, Plaintiff seeks relief as set forth in the Prayer for Relief.

#### **FIFTH CAUSE OF ACTION**

##### **Breach of Contract (Master Agreement)**

##### **(Against LFA)**

106. The City realleges and incorporates by reference each and every allegation of the

above paragraphs 1 through 105 inclusive, as if fully set forth herein.

107. The Master Agreement is a valid contract between the City and LFA.

108. The City has at all times performed all or substantially all the terms of the Master Agreement in the manner specified by the Master Agreement, or it has otherwise been excused from performing those terms.

109. LFA has failed and refused, and continues to refuse, to perform as required by the terms of the Master Agreement as follows:

- Paragraph 3 of Exhibit F to the Master Agreement (entitled General Contract Terms) required that LFA devote such time to the performance of services under the Master Agreement as may be reasonable necessary for the satisfactory performance of LFA's obligations pursuant to the Master Agreement. LFA breached paragraph 3 of the Master Agreement to devote such time to the performance of services for the satisfactory performance of LFA's obligations, as described herein.
- Paragraph 7.A of Exhibit F to the Master Agreement (entitled General Contract Terms) required LFA to assign only competent personnel to perform services under the Master Agreement. LFA breached paragraph 7.A by not assigning competent personnel to perform services, as described herein.

110. LFA's failures and refusals to perform its obligations under the Master Agreement have directly damaged Plaintiff in an amount according to proof, including but not limited to the loss of all amounts Plaintiff advanced to design, build, and operate the adventure park, which exceeds \$7 million.

WHEREFORE, Plaintiff seeks relief as set forth in the Prayer for Relief.

### **SIXTH CAUSE OF ACTION**

#### **Breach of Contract (Operating Agreement)**

#### **(Against LFA)**

111. The City realleges and incorporates by reference each and every allegation of the above paragraphs 1 through 110 inclusive, as if fully set forth herein.

112. The Operating Agreement is a valid contract between the City and LFA.

113. The City has at all times performed all or substantially all the terms of the Master Agreement and the Operating Agreement in the manner specified by the Operating Agreement, or it has otherwise been excused from performing those terms.

114. LFA has failed and refused, and continues to refuse, to perform as required by the terms of the Operating Agreement as follows:

- Paragraph 9.1 of the Operating Agreement required that LFA make quarterly payments of the City's annual debt service commencing July 1, 2018, with four percent interest for the first three years on the debt service only due. LFA breached Paragraph 9.1 of the Operating Agreement in failing to pay a first quarter interest-only payment of \$40,000 by November 15, 2018;
- Paragraph 9.2 of the Operating Agreement required that LFA reserve \$60,000 annually for a capital reserve fund. LFA breached Paragraph 9.2 of the Operating Agreement by, on information and belief, failing to maintain a capital reserve of \$60,000 in a separate account to pay the annual debt service;
- Paragraph 10.2 of the Operating Agreement required LFA to keep true and accurate books and records showing all of its business transactions concerning its operations in a format and a manner acceptable to the City. LFA breached Paragraph 10.2 of the Operating Agreement in failing to keep true and accurate books and records showing all of its business transactions concerning its operations of the adventure park in a format and manner acceptable to the City, and refusing to provide a demonstration or access to LFA's point-of-sale system or provide an accurate record of the adventure park's attendees;
- Paragraphs 1.1.29 and 10.1 of the Operating Agreement required LFA to provide financial reports on a quarterly basis and annual financial report within 90 days of the end of each fiscal year. LFA breached Paragraph 1.1.29 and 10.1 of the Operating Agreement in failing to provide the City with timely financial reports, including LFA's annual report for the year ending June 30, 2018 and the first

quarterly report for the current fiscal year;

- Paragraphs 7.1.1 and 7.1.2 of the Operating Agreement required LFA to operate the adventure park for a commercially reasonable period during its operating season and to establish a schedule pursuant to operating plans that would maximize an economic return. LFA breached of Paragraphs 7.1.1 and 7.1.2 of the Operating Agreement in failing to operate the adventure park for a commercially reasonable period during its operating season because LFA has offered extremely limited and unpredictable hours of operation for the adventure park; and
- All other breaches of the Operating Agreement (to the extent they violate a specific provision therein) identified in Plaintiff's November 21, 2018 letter to LFA.

115. LFA's failures and refusals to perform its obligations under the Operating Agreement have directly damaged Plaintiff in an amount according to proof, including but not limited to the loss of all amounts Plaintiff advanced to design, build, and operate the adventure park, which exceeds \$7 million.

WHEREFORE, Plaintiff seeks relief as set forth in the Prayer for Relief.

### **SEVENTH CAUSE OF ACTION**

#### **Breach of the Implied Covenant of Good Faith and Fair Dealing (Master Agreement) (Against LFA)**

116. The City realleges and incorporates by reference each and every allegation of the above paragraphs 1 through 115 inclusive, as if fully set forth herein.

117. Every contract or agreement in California contains an implied promise of good faith and fair dealing. This means that each party will not do anything to unfairly interfere with the right of any other party to receive the benefits of the contract.

118. Plaintiff and LFA entered into the Master Agreement as stated above.

119. Plaintiff performed all or substantially all the terms of the Master Agreement in the manner specified by the Master Agreement, or it has otherwise been excused from performing those terms.

120. All the conditions required by the Master Agreement for LFA's performance occurred.

121. LFA breached its obligation to act fairly and in good faith toward the City by:

- Implementing an inexperienced management team. For example, in October 2018, LFA advised Plaintiff that LFA had appointed a new park director, with no familiarity with other adventure parks and no certified operational training.
- Providing insufficient staffing and course supervision. For example, certain adventure elements have not been operational due to limited staffing, and, on information and belief, LFA staff has in some instances not been paid.
- Failing to adequately market and advertise the adventure park.
- Rejecting the expense and responsibility of providing for park security and patron safety.
- Losing, misplacing, and damaging equipment requested by LFA and purchased by Plaintiff.
- Failing to provide proper oversight of and repair fences around the adventure park.

122. As a direct and proximate result of LFA's breach of the implied covenant of good faith and fair dealing, Plaintiff has suffered damages in an amount to be proven at trial.

WHEREFORE, Plaintiff seeks relief as set forth in the Prayer for Relief.

### **EIGHTH CAUSE OF ACTION**

#### **Breach of the Implied Covenant of Good Faith and Fair Dealing (Operating Agreement) (Against LFA)**

123. The City realleges and incorporates by reference each and every allegation of the above paragraphs 1 through 122 inclusive, as if fully set forth herein.

124. Every contract or agreement in California contains an implied promise of good faith and fair dealing. This means that each party will not do anything to unfairly interfere with the right of any other party to receive the benefits of the contract.

125. Plaintiff and LFA entered into the Operating Agreement as stated above.

126. Plaintiff performed all or substantially all the terms of the Operating Agreement in

1 the manner specified by the Operating Agreement, or it has otherwise been excused from  
2 performing those terms.

3 127. All the conditions required by the Operating Agreement for LFA's performance  
4 occurred.

5 128. LFA breached its obligation to act fairly and in good faith toward the City by:

- 6 • Implementing an inexperienced management team. For example, in October 2018,  
7 LFA advised Plaintiff that LFA had appointed a new park director, with no  
8 familiarity with other adventure parks and no certified operational training.
- 9 • Providing insufficient staffing and course supervision. For example, certain  
10 adventure elements have not been operational due to limited staffing, and, on  
11 information and belief, LFA staff has in some instances not been paid.
- 12 • Failing to adequately market and advertise the adventure park.
- 13 • Rejecting the expense and responsibility of providing for park security and patron  
14 safety.
- 15 • Losing, misplacing, and damaging equipment requested by LFA and purchased by  
16 Plaintiff.
- 17 • Failing to provide proper oversight of and repair fences around the adventure park.

18 129. As a direct and proximate result of LFA's breach of the implied covenant of good  
19 faith and fair dealing, Plaintiff has suffered damages in an amount to be proven at trial.

20 WHEREFORE, Plaintiff seeks relief as set forth in the Prayer for Relief.

21 **NINTH CAUSE OF ACTION**

22 **Money Had and Received**

23 **(Against All Defendants)**

24 **(In the Alternative)**

25 130. The City realleges and incorporates by reference each and every allegation of the  
26 above paragraphs 1 through 129 inclusive, as if fully set forth herein.

27 131. Defendants became indebted to Plaintiff in the sum of all amounts advanced to  
28 design, build, and operate the adventure park, which exceeds \$7 million. These sums were to be

1 used for Plaintiff's benefit and were not.

2 132. Defendant has not returned these sums to Plaintiff, and there is now due and owing  
3 the sum of over \$7 million plus interest at the legal rate.

4 WHEREFORE, Plaintiff seeks relief as set forth in the Prayer for Relief.

5 **TENTH CAUSE OF ACTION**

6 **Breach of Contract – Anticipatory Repudiation**

7 **(Against LFA)**

8 **(In the Alternative)**

9 133. The City realleges and incorporates by reference each and every allegation of the  
10 above paragraphs 1 through 132 inclusive, as if fully set forth herein.

11 134. Based on the 10/18 Pro Forma containing bleak financial projections, it became  
12 apparent that Plaintiff would default on the material financial terms of the Operating Agreement,  
13 including debt service payments required under Paragraph 9.1, among other financial obligations.

14 135. Weeks later, in November 2018, LFA met with the City and unequivocally  
15 acknowledged that the Operating Agreement's financial obligations would not be met.

16 136. When the City, LFA, and their respective counsel met in person on December 12,  
17 2018 to discuss the City's concerns, Busch unequivocally and adamantly represented that LFA  
18 would not obtain the necessary attendance to pay the City the Operating Agreement's required  
19 debt service payments for at least three consecutive years, let alone the foreseeable future.  
20 Specifically, Busch represented that the only way that LFA might be able to meet the financial  
21 obligations was if the City would agree to materially modify the Operating Agreement and  
22 construct a train encircling the adventure park, as well as a suspension bridge across the  
23 adventure park. LFA acknowledged that neither of those elements was ever contemplated by the  
24 Operating Agreement and further acknowledged that although it did not actually have bids for the  
25 material modifications, the modifications would cost at least \$600,000 to build.

26 137. LFA's repudiation has not been retracted.

27 138. At the time Plaintiff received LFA's repudiation, Plaintiff had performed all of its  
28 obligations, covenants, and promises under the Operating Agreement.



139. As a result of LFA's repudiation of its financial obligations and poor operation of the adventure park, the City concluded that it could not let LFA continue to operate the Adventure Park. Thus, the City negotiated, and on January 7, 2019, entered into an Exit Agreement with LFA wherein LFA and the City agreed that LFA would permanently vacate the Park on January 9, 2019 and transition control of all park related assets to the City. Pursuant to the Exit Agreement the parties also agreed to reserve all rights and claims that they had against one another.

WHEREFORE, Plaintiff seeks relief as set forth in the Prayer for Relief.

### **ELEVENTH CAUSE OF ACTION**

#### **Declaratory Relief**

#### **(Against LFA)**

140. The City realleges and incorporates by reference each and every allegation of the above paragraphs 1 through 139 inclusive, as if fully set forth herein.

141. An actual controversy has arisen and now exists between Plaintiff, on the one hand, and LFA, on the other hand, as follows:

a. The City contends that, as a result of the termination of LFA, it has certain rights and remedies, including but not limited to: receipt of any unspent portion of amounts in the capital reserve; and receipt of an accounting of net revenues.

b. The City further contends, in the alternative, that LFA has anticipatorily repudiated the Operating Agreement.

142. The City desires a judicial declaration, through a comprehensive adjudication, on the City's and LFA's rights, remedies, and obligations under the Master Agreement and Operating Agreement as follows:

a. Determining that as a result of the termination of LFA, the City has obtained rights and remedies, *inter alia*, the right to receive from LFA: any unspent portion of amounts in the capital reserve; and an accounting of net revenues.

b. Determining whether, in the alternative, LFA has anticipatorily repudiated the Operating Agreement.

WHEREFORE, Plaintiff seeks relief as set forth in the Prayer for Relief.

**TWELFTH CAUSE OF ACTION**

**Unjust Enrichment**

**(Against LFA)**

143. The City realleges and incorporates by reference each and every allegation of the above paragraphs 1 through 142 inclusive, as if fully set forth herein.

144. On information and belief, once it became apparent that LFA would no longer be the operator of the adventure park, and the parties began the weeks-long process of negotiating the Exit Agreement, LFA stepped up its efforts to sell long-term tickets and season tickets. LFA therefore received the benefit of tens of thousands of dollars in revenue from these ticket sales.

145. LFA has unjustly retained this benefit at the expense of the City, which is now left with the expense associated with honoring those tickets and passes.

146. LFA is liable to the City for unjust enrichment, in the amount of all revenue that LFA has received from its sales of long-term tickets and season tickets (and any other related expenses associated with honoring these tickets), to be proven at trial.

WHEREFORE, Plaintiff seeks relief as set forth in the Prayer for Relief.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment as follows:

1. For general, special, compensatory, and/or consequential damages in an amount according to proof;
2. For rescission;
3. For disgorgement of monies received by Defendants;
4. For restitution;
5. For interest as allowed by law or contract;
6. For costs of suit herein incurred;
7. For reasonable attorneys' fees as provided by contract or law;
8. In the alternative, for the tenth cause of action, for an order that Plaintiff and LFA's contractual relationship under the Operating Agreement and all prior

1 related agreements, including the Master Agreement, are terminated, and Plaintiff  
2 is therefore discharged from performance of any condition.

3 9. Declaratory relief;

4 10. A temporary restraining order, preliminary injunction, and permanent injunction;

5 11. For exemplary and punitive damages pursuant to California Civil Code section  
6 3294;

7 12. For any and all other relief that the Court deems just and proper.  
8

9 DATED: February 13, 2019

DOWNEY BRAND LLP

10  
11 By: 

12 SEAN J. FILIPPINI  
13 Attorney for Plaintiff  
14 City of Rocklin  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28