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

**HARBOR BREEZE CORPORATION,
et al.,**

Plaintiffs,

v.

**NEWPORT LANDING
SPORTFISHING, INC., et al.,**

Defendants.

Case No.: SACV 17-01613-CJC(DFMx)

**ORDER DENYING PLAINTIFFS’
MOTION FOR ORDER FOR
DISGORGEMENT OF PROFITS
[Dkt. 276], GRANTING IN PART
PLAINTIFFS’ MOTION FOR A
PERMANENT INJUNCTION
[Dkt. 277], AND DENYING
PLAINTIFFS’ MOTION FOR
ATTORNEYS’ FEES [Dkt. 278]**

I. INTRODUCTION

Plaintiffs Harbor Breeze Corporation and L.A. Waterfront Cruises, LLC brought this false advertising lawsuit against Defendants Newport Landing Sportfishing, Inc., Daveys Locker Sportfishing, Inc., Ocean Explorer, Inc., and Freelance Sportfishing, Inc.

1 (Dkt. 1.) The case proceeded to trial before a jury in June 2019. After five days of trial,
2 the jury returned a verdict finding Defendants had engaged in false advertising in
3 violation of the Lanham Act. (Dkt. 271.) The jury, however, awarded Plaintiffs \$0 in
4 actual damages and \$0 in disgorgement of profits. (*Id.*)

5
6 Before the Court are three post-trial motions: (1) Plaintiffs' motion for an order
7 disgorging Defendants' profits, (Dkt. 276), (2) Plaintiffs' motion for a permanent
8 injunction, (Dkt. 277), and (3) Plaintiffs' motion for attorneys' fees, (Dkt. 278). For the
9 following reasons, Plaintiffs' motions for disgorgement of profits and for attorneys' fees
10 are **DENIED**. Plaintiffs' motion for a permanent injunction is **GRANTED IN PART**.

11
12 **II. BACKGROUND**

13
14 This whole of a tale concerns the marketing to customers in the multimillion-dollar
15 whale watching industry of the Los Angeles and Orange County metropolitan area.
16 Plaintiffs and Defendants are competitors in this industry. Both offer whale watching
17 cruises for locals and tourists off the California coast. Plaintiffs operate in Long Beach
18 and San Pedro in Los Angeles County, and Defendants operate in Newport Beach in
19 Orange County.

20
21 At issue in this case is how Defendants advertised their whale watching cruises to
22 customers. In September 2017, Plaintiffs filed this lawsuit in federal court, asserting
23 claims for (1) false advertising in violation of the Lanham Act, 15 U.S.C. § 1125(a),
24 (2) violation of California Business and Professions Code §§ 17200 *et seq.*, and (3)
25 violation of California Business and Professions Code §§ 17500 *et seq.* This case
26 proceeded to trial before a jury in June 2019.

1 At trial, Plaintiffs focused on two aspects of Defendants’ advertising. First,
2 Plaintiffs contended that Defendants engaged in false advertising with respect to their
3 location. For instance, if a consumer searched on the internet for “Long Beach whale
4 watching,” the consumer would be directed to a page on Defendants’ website, which
5 made repeated use of the phrase “Long Beach residents and visitors,” suggesting that
6 Defendants’ cruises depart from Long Beach, not Newport Beach. (*See* Dkt. 292 [Day 1
7 Vol. III Transcript] at 74:14–75:8.) Second, Plaintiffs asserted that Defendants engaged
8 in false advertising with respect to their pricing. Defendants advertised, for example, a
9 “\$10 whale watching special.” (*Id.* at 75:19–76:5.) A consumer, however, could never
10 get on Defendants’ whale watching cruise for only ten dollars. In addition to that \$10
11 price, Defendants also charged a \$2.50 fuel surcharge and a 2% wharfage fee. (*See id.* at
12 76:6–77:22.) There was also evidence that calling these extra charges a “fuel surcharge”
13 or “wharfage fee” was misleading because these fees were a way to get extra revenue, not
14 tied to actual expenses, and Defendants did not disclose these fees until late in the
15 process. (*See* Dkt. 294 [Day 3 Vol. I Transcript] at 123:6–128:4.)

16
17 After five days of trial, the jury reached a verdict. The jury found that Plaintiffs
18 had proven all elements necessary to find that the Defendants had engaged in false
19 advertising in violation of the Lanham Act. (Dkt. 271.) On the question of damages,
20 however, the jury awarded \$0 for Plaintiffs’ actual damages and \$0 for Defendants’
21 profits attributable to the false advertising. (*Id.*)

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1 III. DISGORGEMENT OF PROFITS

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3 Plaintiffs ask this Court to grant equitable relief in the form of disgorgement of
4 profits. (Dkt. 276.) The Lanham Act provides that a plaintiff may recover the
5 defendant's profits if the plaintiff prevails on a claim for false advertising. *See* 15 U.S.C.
6 § 1117(a). A claim for disgorgement of profits is an equitable remedy. *Fifty-Six Hope*
7 *Rd. Music, Ltd. v. A.V.E.L.A., Inc.*, 778 F.3d 1059, 1074 (9th Cir. 2015). In the Ninth
8 Circuit, to recover a defendant's profits, the plaintiff must prove that the false advertising
9 was willful. *See Stone Creek, Inc. v. Omnia Italian Design, Inc.*, 875 F.3d 426, 439 (9th
10 Cir. 2017) (interpreting the Lanham Act's remedies provision to require willfulness to
11 recover disgorgement of profits for trademark infringement). Willfulness "carries a
12 connotation of deliberate intent to deceive" and "require[s] a connection between a
13 defendant's awareness of its competitors and its actions at those competitors' expense."
14 *Lindy Pen Co., Inc. v. Bic Pen Corp.*, 892 F.2d 1400, 1406 (9th Cir. 1993) (quoting
15 *ALPO Petfoods, Inc. v. Ralston Purina Co.*, 913 F.2d 958, 966 (D.C. Cir. 1990)),
16 *abrogated on other grounds by SunEarth, Inc. v. Sun Earth Solar Power Co., Ltd.*, 839
17 F.3d 1179 (9th Cir. 2016).

18
19 While disgorgement of profits is an equitable remedy, the parties and the Court
20 submitted this question to the jury. The Court instructed the jury that if Plaintiffs proved
21 they had been injured as a result of the false advertising, Plaintiffs may recover "[a]ny
22 profits earned by the [D]efendants that are attributable to the [D]efendants' false
23 advertising, if the [P]laintiffs prove that the [D]efendants' false advertising was willful."
24 (Dkt. 259 [Jury Instructions] No. 17.) The Court further instructed the jury that "[t]he
25 [D]efendants' false advertising is willful if the [D]efendants knew their advertising was
26 false or misleading, or they acted with reckless disregard for, or willful blindness to, the
27 false or misleading nature of their advertising." (*Id.* No. 20.) Based on these
28 instructions, the jury determined that Plaintiffs were entitled to \$0 for disgorgement of

1 Defendants' profits. Plaintiffs now ask the Court to disregard the jury's verdict and
2 award them Defendants' profits.

3
4 Neither party addresses what standard the Court should apply. Generally, where a
5 court tries legal and equitable issues together in the same proceeding, legal issues are to
6 be determined first, and the findings of the jury are binding on the court, as the trier of
7 equitable claims. *See GTE Sylvania, Inc. v. Cont'l T.V., Inc.*, 537 F.2d 980, 986 n.7 (9th
8 Cir. 1976), *aff'd*, 433 U.S. 36 (1977). Here, Plaintiffs chose to submit the question of
9 disgorgement of profits to the jury. Consequently, the Court must give full effect to that
10 verdict. *See Thompson v. Parkes*, 963 F.2d 885, 890 (6th Cir. 1992) (finding that
11 although Federal Rule of Civil Procedure 39(c) allows a court to submit equitable issues
12 to an advisory jury, the court must give "full effect" to a jury verdict if the court did not
13 specify it was an advisory jury prior to trial).¹ Where a jury has decided an issue, a court
14 can set aside that verdict and grant judgment as matter of law only if "a reasonable jury
15 would not have a legally sufficient evidentiary basis to find for the [prevailing] party."
16 Fed. R. Civ. P. 50(a)–(b). And where substantial evidence supports the jury's verdict, a
17 court may grant a new trial if "the verdict is contrary to the clear weight of the evidence."
18 *Silver Sage Partners, Ltd. v. City of Desert Hot Springs*, 251 F.3d 814, 819 (9th Cir.
19 2001) (quoting *United States v. 4.0 Acres of Land*, 175 F.3d 1133, 1139 (9th Cir. 1999)).

20
21 The Court finds no reason to set aside the jury's verdict. Contrary to Plaintiffs'
22 assertion, the jury's verdict is supported by substantial evidence. First, a jury could
23 reasonably find that Defendants' false advertising was not willful. Pam Watts, one of the
24 individual owners of Defendants, testified that Defendants had made changes to their

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27 ¹ The Court and the parties had agreed to consult an advisory jury, pursuant to Rule 39(c), for findings
28 related to Defendants' unclean hands equitable defense. (*See also* Dkt. 271 [Verdict Form] [asking the
jury whether Plaintiffs had also engaged in false advertising in Questions 7, 8, and 9].) Neither the
Court nor the parties discussed submitting the issue of disgorgement of profits to the jury on an advisory
basis.

1 websites and advertisements following state court litigation in 2012 over false advertising
2 and afterwards, Defendants thought they were in compliance. (Dkt. 294 [Day 3 Vol. I
3 Transcript] at 20:3–22.) One of those changes was to add language on every page that
4 Defendants’ boats departed from “beautiful Newport Beach.” (See Dkt. 293 [Day 2 Vol.
5 I Transcript] at 10:16–25.) Second, a jury could reasonably find that Defendants’ profits
6 were not attributable to false advertising. See *Mishawaka Rubber & Woolen Mfg. Co. v.*
7 *S. S. Kresge*, 316 U.S. 203, 206 (1942) (holding that a plaintiff is not entitled to profits
8 not attributable to the defendant’s unlawful conduct under the Lanham Act). There was
9 evidence that, even including the extra fees, Defendants offered cheaper whale watching
10 cruises than Plaintiffs. (See Dkt. 293 [Day 2 Vol. I Transcript] at 116:6–117:12, 123:9–
11 13.) The jury reasonably could have concluded that Defendants’ profits were attributable
12 to its competitive price, not any false advertising they had done. Consumers might care
13 more about getting a good deal than where the cruise departs or whether a few dollars get
14 added to the ticket cost.

15
16 Nor is the jury’s verdict against the clear weight of the evidence. If the Court were
17 to take its own view of the evidence, it would reach the same result. With respect to
18 Defendants’ advertising on location, the evidence at trial showed that Defendants
19 intended to optimize their search engine results, not confuse consumers. There was also
20 no evidence that Defendants intended to mislead consumers with respect to their ticket
21 prices—even if it was, in fact, misleading—since Defendants ultimately disclosed all fees
22 prior to purchase. Because Plaintiffs have failed to prove that Defendants’ false
23 advertising was willful, Plaintiffs’ motion for order for disgorgement of profits is
24 **DENIED.**

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1 **IV. PERMANENT INJUNCTION**

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3 Plaintiffs seek a permanent injunction enjoining Defendants from engaging in
4 further false advertising. “In most cases, after a full trial finding false advertising, a final
5 injunction is appropriate.” McCarthy on Trademarks and Unfair Competition § 27:37
6 (5th ed. 2019). Similarly, with respect to Plaintiffs’ state law claims under the Uniform
7 Competition Law, an injunction is the primary form of available relief. *See Clayworth v.*
8 *Pfizer, Inc.*, 49 Cal. 4th 758, 790 (2010). To obtain an injunction, a plaintiff must satisfy
9 a four-factor test, demonstrating “(1) that it has suffered irreparable injury; (2) that
10 remedies available at law, such as monetary damages, are inadequate to compensate for
11 that injury; (3) that, considering the balance of hardships between the plaintiff and
12 defendant, a remedy in equity is warranted; and (4) that the public interest would not be
13 disserved by a permanent injunction.” *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388,
14 391 (2006). The Court concludes that all four factors weigh in favor of an injunction.

15
16 First, Plaintiffs have suffered irreparable injury. The jury found that one or more
17 of Defendants’ statements at issue caused or was likely to cause damage to Plaintiffs.
18 (Dkt. 271 [Verdict Form].) Nilda Langston, Harbor Breeze Corporation’s vice president
19 of operations, testified that Plaintiffs regularly receive calls from customers who are
20 confused by Defendants’ advertising and who believe that Plaintiffs offer Defendants’
21 \$16 whale watching special. (Dkt. 293 [Day 2 Vol. I Transcript] at 111:12–114:1, 116:6–
22 117:12.) Langston also testified that a customer once attempted to board Plaintiffs’
23 whale watching cruise with a Groupon voucher from Defendants. (*Id.* at 117:13–118:12.)
24 When the customer became upset, Langston ultimately let him take Plaintiffs’ cruise for
25 free. (*Id.* at 118:13–18.) Other employees similarly testified about confused and angry
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1 customers. (*See id.* at 141:6–145:8.) There was also evidence that this consumer
2 confusion has harmed Plaintiffs’ business reputation and damaged their goodwill.²
3

4 Second, legal remedies are inadequate. Here, Plaintiffs have established harm to
5 their business reputation and goodwill. This kind of harm is difficult to quantify. *See*
6 *Apple Inc. v. Psystar Corp.*, 673 F. Supp. 2d 943, 949–50 (N.D. Cal. 2009) (“[A]n award
7 of damages would be inadequate, simply because the harm caused to [the plaintiff’s]
8 reputation, goodwill, and brand is difficult, if not impossible, to quantify.”), *aff’d*, 658
9 F.3d 1150 (9th Cir. 2011); *see also Rent-A-Ctr., Inc. v. Canyon Television & Appliance*,
10 944 F.2d 597, 603 (9th Cir. 1991) (“[I]ntangible injuries, such as damage to . . . goodwill,
11 qualify as irreparable harm.”). Indeed, the jury was unable to find a reasonable basis to
12 quantify Plaintiffs’ damage and awarded no monetary relief.
13

14 Third, the balance of hardships favors an injunction. In determining whether
15 injunctive relief is appropriate, “courts must balance the competing claims of injury and
16 must consider the effect on each party of the granting or withholding of the requested
17 relief.” *Klein v. City of San Clemente*, 584 F.3d 1196, 1199–1200 (9th Cir. 2009). Here,
18 the jury found that Defendants have engaged in false advertising. An injunction in favor
19 of Plaintiffs would serve the narrow purpose of preventing such false advertising in the
20 future. It would not be a hardship for Defendants to refrain from making false or
21 misleading statements. In the absence of relief, Plaintiffs will continue to suffer harm to
22 their reputation and goodwill.
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26 ² Plaintiffs also submit declarations from other whale watching operators in Southern California to
27 support the assertion that Defendants’ acts irreparably harm other whale watching providers. (*See* Dkts.
28 282–85.) Defendants object to the admissibility of these declarations. (*See* Dkts. 304–07.) As the
Court does not consider these declarations, it does not need to address Defendants’ evidentiary
objections.

1 Lastly, the public interest favors an injunction. There is a public interest in
2 ensuring honest advertising. See McCarthy on Trademarks and Unfair Competition
3 § 27:36 (5th ed. 2019) (“An injunction can vindicate the public interest in truthful
4 advertising.”). There is also a public interest in favor of full and honest competition.
5

6 Defendants argue the injunction would be moot because they have already changed
7 their advertising. But this provides no guarantee that they will keep those changes in
8 place. Since Defendants could immediately return to their prior ways, a permanent
9 injunction is necessary to ensure that Defendants do not repeat their false advertising as
10 soon as this case ends. See *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*, 518 F.
11 Supp. 2d 1197, 1121–22 (C.D. Cal. 2007) (“A private party’s discontinuation of unlawful
12 conduct does not make the dispute moot, however. An injunction remains appropriate to
13 ensure that the misconduct does not recur as soon as the case ends.” (quoting *BMG Music*
14 *v. Gonzalez*, 430 F.3d 888, 893 (7th Cir. 2005))). As all four factors weigh in Plaintiff’s
15 favor, the Court will exercise its discretion to issue an injunction.
16

17 The Court must now consider the terms and scope of a permanent injunction. The
18 scope of an injunction is within the broad discretion of the district court.
19 *TrafficSchool.com, Inc. v. Edriver Inc.*, 653 F.3d 820, 829 (9th Cir. 2011). An overly
20 broad injunction, however, risks burdening truthful commercial speech, which is
21 protected under First Amendment. The First Amendment thus requires that an injunction
22 against false advertising be “narrowly drawn.” See *Cent. Hudson Gas & Elec. Corp. v.*
23 *Pub. Serv. Comm’n of N.Y.*, 447 U.S. 557, 565 (1980); *TrafficSchool.com*, 653 F.3d at
24 830 (“The district court [is] required to tailor the injunction so as to burden no more
25 protected speech than necessary.”).
26

27 In crafting the injunction, the Court must fulfill its obligation to prevent
28 Defendants from misleading the public with false advertising while protecting

1 Defendants' First Amendment rights. *See U-Haul Int'l, Inc. v. Jartran, Inc.*, 793 F.2d
2 1034, 1042 (9th Cir. 1986). The Ninth Circuit achieved this goal in *U-Haul* by
3 modifying an injunction to prohibit only false or deceptive advertising, where the
4 injunction otherwise seemed to prohibit future comparative advertising even if it was
5 truthful. *See id.* at 1042–43. And the injunction in *TrafficSchool.com* failed to meet this
6 balance when it required the defendant to display a “splash screen” to all visitors to a
7 website and visitors had to click through the splash screen to access the site. 653 F.3d at
8 820. This injunction burdened more protected speech than necessary because it applied
9 to *all* content on the website, not just deceptive speech. *Id.*

10
11 With these principles in mind, the Court will make several changes to Plaintiffs'
12 proposed permanent injunction. First, the Court declines to require Defendants to place a
13 statement of their location on *all* advertisements or *all* of Defendants' webpages. In this
14 regard, Plaintiffs' proposed injunction is overbroad. The Court will instead tailor the
15 injunction to require the disclosure of Defendants' location of departure for the
16 advertising at issue—namely, webpages and advertisements that *repeatedly* use the name
17 of another city, making it seem as if Defendants' whale watching cruises depart from a
18 city other than Newport Beach. It is not misleading, for example, for Defendants to state
19 on their website that they are about twenty miles away from Long Beach. But a repeated
20 reference to Long Beach, without a clear disclosure regarding Defendants' location of
21 departure, may mislead or confuse consumers.

22
23 Second, the Court will not require Defendants to edit their webpages' source code
24 to include the text “Newport Beach Cruise Operator” in the title tag or the phrase “All
25 Cruises Depart from Newport Beach” in the description tag. Text that appears in title
26 tags or description tags affects how the webpage appears in search engine results. By
27 requiring Defendants to use certain phrases on all webpages, the proposed injunction
28 would significantly burden protected speech, similar to the splash screen the Ninth

1 Circuit found problematic in *Trafficschool.com*. The proposed injunction would also
2 unfairly impair Defendants’ ability to optimize their search engine results.
3

4 Third, the Court will not order Defendants to relinquish all domain names with
5 other city names. At trial, Plaintiffs did not focus on domain names as a means of false
6 advertising. There are also entirely lawful reasons for Defendants to own domain names
7 with other city names. Defendants may want to reserve a particular domain name, for
8 instance, in the event Defendants decide to expand their operations to other cities. This
9 requested relief is overbroad and goes beyond the scope of the false advertising at issue
10 in the trial.
11

12 Fourth, the Court will not restrict Defendants’ ability to purchase certain types of
13 advertising. Plaintiffs seek to bar Defendants from purchasing the names of geographic
14 locations other than Newport Beach on pay-per-click advertising systems like Google
15 AdWords. Plaintiffs contend that Defendants’ “aggressive purchase of geographical
16 terms as AdWords” has “block[ed] out other operators.” (Dkt. 310 [Pls.’ Reply] at 21.)
17 But there is nothing wrong with Defendants seeking to advertise their whale watching
18 cruises in other cities in Southern California, so long as consumers understand the cruises
19 depart from Newport Beach. There is also nothing wrong with the fact that Defendants
20 invest heavily in pay-per-click advertising systems and outbid other operators for
21 advertising space. Plaintiffs admit, in fact, that the purchase of AdWords of any sort is
22 ordinarily lawful. (*Id.*) Plaintiffs’ proposed injunction is overbroad because it seeks to
23 bar Defendants’ from *any* use of other geographic terms, rather than the *misleading* use
24 of geographic terms.
25

26 Fifth, the Court is concerned about the administrability and feasibility of an
27 injunction that attempts to enjoin what appears in organic Google search results or third-
28 party websites like Groupon. Plaintiffs offer no evidence as to how much control

1 Defendants have over these sites, and the Court does not wish to harpoon Defendants
2 over content they cannot control. Accordingly, the Court declines to adopt the language
3 of Plaintiffs' proposed injunction to the extent it holds Defendants responsible for content
4 created by third parties.

5
6 In sum, Plaintiffs' motion for a permanent injunction is **GRANTED IN PART**.
7 Plaintiffs are entitled to an injunction. The injunction proposed by Plaintiffs, however, is
8 overbroad. The Court will instead issue an injunction that focuses on the kind of
9 advertising that was at issue at trial. If Defendants repeat the name of a city other than
10 Newport Beach in an advertisement or on a webpage, they will be required to clearly
11 disclose that their cruises depart from Newport Beach on that advertisement or webpage.
12 In addition, Defendants must advertise a price for a ticket that is the entire final cost of
13 the ticket, excluding any legally collected sales tax or any optional, add-on services or
14 goods.

15 16 **V. ATTORNEYS' FEES**

17
18 Plaintiffs seek \$1,515,679 in attorneys' fees. (Dkt. 278.) Under the Lanham Act, a
19 court "in exceptional cases may award reasonable attorney fees to the prevailing party."³
20 15 U.S.C. § 1117(a). According to the Supreme Court, an "exceptional" case "is simply
21 one that stands out from others with respect to the substantive strength of a party's
22 litigating position (considering both the governing law and the facts of the case) or the
23 unreasonable manner in which the case was litigated." *Octane Fitness, LLC v. ICON*
24 *Health & Fitness, Inc.*, 572 U.S. 545, 554 (2014). "District courts may determine

25
26 ³ Defendants argue Plaintiffs are not the prevailing party because the jury failed to award them any
27 damages. In order to be a prevailing party, the party must have "achieved a material alteration in the
28 legal relationship of the parties that is judicially sanctioned." *Fifty-Six Hope Rd.*, 778 F.3d at 1078
(quoting *Klamath Siskiyou Wildlands Ctr. v. U.S. Bureau of Land Mgmt.*, 589 F.3d 1027, 1030 (9th Cir.
2009)). As discussed above, Plaintiffs are entitled to injunctive relief, so Plaintiffs are the prevailing
party.

1 whether a case is ‘exceptional’ in the case-by-case exercise of their discretion,
2 considering the totality of the circumstances.” *Id.* A “nonexclusive” list of factors to
3 consider in making this determination includes “frivolousness, motivation, objective
4 unreasonableness (both in the factual and legal components of the case) and the need in
5 particular circumstances to advance considerations of compensation and deterrence.”
6 *SunEarth, Inc. v. Sun Earth Solar Power Co.*, 839 F.3d 1179, 1181 (9th Cir. 2016)
7 (quoting *Octane Fitness*, 572 U.S. at 554 n.6).

8
9 This is not an exceptional case. Plaintiffs’ case does not stand out from others with
10 respect to its substantive strength. As discussed above, Plaintiffs failed to prove that
11 Defendants’ false advertising was willful. Plaintiffs’ lack of proof of damages also
12 proved to be a fundamental problem. In the end, Plaintiffs’ attorneys expended over
13 3,300 hours on this case without recovering any damages for their client. Although the
14 injunction confers some public benefit, stopping misleading advertising about whale
15 watching does not ameliorate a serious public harm. *Cf. TrafficSchool.com*, 653 F.3d at
16 832 (remanding for district court to consider, in determining attorneys’ fees, the
17 substantial benefits gained through an injunction where plaintiffs stopped consumers
18 from mistakenly transferring sensitive personal information to a commercial website
19 called DMV.org). The fact that Plaintiffs have spent eight years litigating related issues,
20 both in state and federal court, does not make this an exceptional case. If anything, it
21 undermines Plaintiffs’ claim of exceptionality, as the litigation has achieved mixed
22 results. Nor did Defendants unreasonably litigate his case. A vigorous defense is not
23 unreasonable. Defendants likely had a good faith belief that Plaintiffs could not prove
24 they suffered damages, a belief ultimately substantiated by the jury’s verdict. Plaintiffs’
25 motion for attorneys’ fees is **DENIED**.

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1 **VI. CONCLUSION**

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3 For the foregoing reasons, Plaintiffs' motions for disgorgement of profits and for
4 attorneys' fees are **DENIED**. Plaintiffs' motion for a permanent injunction is
5 **GRANTED IN PART**. Pursuant to this order, the Court will issue a judgment and
6 permanent injunction forthwith.

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10 DATED: August 26, 2019



11 CORMAC J. CARNEY
12 UNITED STATES DISTRICT JUDGE
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