

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>QUINTON BURNS, <i>et al.</i>,</b>	:	
	:	
<b>Plaintiffs,</b>	:	
	:	
<b>v.</b>	:	<b>CIVIL ACTION</b>
	:	
<b>SEAWORLD PARKS &amp; ENTERTAINMENT, INC.; and SEAWORLD PARKS &amp; ENTERTAINMENT LLC,</b>	:	<b>NO. 22-cv-02941</b>
	:	
<b>Defendants.</b>	:	
	:	

**DEFENDANTS’ MOTION TO DISMISS AMENDED COMPLAINT**

Defendants SeaWorld Parks & Entertainment, Inc. and SeaWorld Parks & Entertainment LLC (collectively “Defendants”) move pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss Plaintiffs’ Amended Class Action Complaint for failure to state a claim upon which relief can be granted and to dismiss Plaintiffs’ requests for injunctive relief pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of standing. This motion is supported by the accompanying Memorandum of Law, which is being filed contemporaneously and which Defendants incorporate by reference.

Dated: November 2, 2022

Respectfully submitted,

**DUANE MORRIS LLP**

/s/ Leigh M. Skipper

Leigh M. Skipper (PA #49239)

Aleksander W. Smolij (PA #329521)

30 South 17th Street

Philadelphia, PA 19103

Tel.: (215) 979-1157

Fax: (215) 689-4939

lmskipper@duanemorris.com

awsmolij@duanemorris.com

Michelle C. Pardo (*admitted pro hac vice*)

John M. Simpson (*admitted pro hac vice*)

Rebecca E. Bazan (*admitted pro hac vice*)

901 New York Avenue NW, Suite 700 East

Washington, DC 20001

Tel.: (202) 776-7844

Fax: (202) 478-2563

mcpardo@duanemorris.com

jmsimpson@duanemorris.com

rebazan@duanemorris.com

*Attorneys for SeaWorld Parks & Entertainment, Inc.  
and SeaWorld Parks & Entertainment LLC*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>QUINTON BURNS, <i>et al.</i>,</b>	:	
	:	
<b>Plaintiffs,</b>	:	
	:	
<b>v.</b>	:	<b>CIVIL ACTION</b>
	:	
<b>SEAWORLD PARKS &amp; ENTERTAINMENT, INC.; and SEAWORLD PARKS &amp; ENTERTAINMENT LLC,</b>	:	<b>NO. 22-cv-02941</b>
	:	
	:	
<b>Defendants.</b>	:	
	:	

**DEFENDANTS’ MEMORANDUM OF LAW IN SUPPORT OF  
MOTION TO DISMISS AMENDED COMPLAINT**

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	FACTUAL AND PROCEDURAL BACKGROUND.....	1
III.	LEGAL STANDARDS .....	2
A.	Federal Rule of Civil Procedure 12(b)(6) .....	2
B.	Federal Rule of Civil Procedure 12(b)(1) .....	3
IV.	THE AMENDED COMPLAINT FAILS TO STATE ANY CLAIM ON WHICH RELIEF CAN BE GRANTED .....	4
A.	The Amended Complaint Fails to State an Actionable Claim for Violation of 42 U.S.C. § 1981 .....	4
1.	Elements of the Cause of Action .....	4
2.	Plaintiffs Fail to Adequately Allege a Contract.....	5
3.	Plaintiffs Fail to Adequately Allege a Contractual Right to Personal Interactions with Costumed Characters During “Meet and Greet” or Parades .....	6
4.	Plaintiffs Fail to Adequately Allege That Intentional Discrimination Was the But-For Cause of Their Experiences.....	9
B.	The Amended Complaint Fails to State an Actionable Claim for Negligence .....	11
1.	Elements of the Cause of Action .....	11
2.	Plaintiffs Fail to Plead Breach of Any Duty Owed to Business Invitees..	11
3.	Plaintiffs Fail to Otherwise Plead Negligence .....	13
C.	The Valdez and Willie Families Must Be Dismissed Because They Have Waived Their Right to Participate in Any Form of Class Action.....	16
V.	PLAINTIFFS LACK ARTICLE III STANDING FOR INJUNCTIVE RELIEF .....	16
VI.	CONCLUSION.....	18

## **TABLE OF AUTHORITIES**

### **Federal Cases**

<i>Anjelino v. N.Y. Times Co.</i> , 200 F.3d 73 (3d Cir. 1999) .....	5
<i>Arguello v. Conoco, Inc.</i> , 330 F.3d 355 (5th Cir. 2003) .....	5, 8
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009) .....	2-3
<i>Ballentine v. United States</i> , 486 F.3d 806 (3d Cir. 2007) .....	3
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007) .....	2, 10
<i>Bobbitt by Bobbitt v. Rage Inc.</i> , 19 F. Supp. 2d 512 (W.D.N.C. 1998) .....	8
<i>Brown v. Philip Morris Inc.</i> , 250 F.3d 789 (3d Cir. 2001) .....	4
<i>Buttermore v. Loans</i> , 2016 WL 308875 (W.D. Pa. Jan. 25, 2016) .....	13-14
<i>City of Los Angeles v. Lyons</i> , 461 U.S. 95 (1983) .....	3, 17-18
<i>Cnty. Ass’n Underwriters of Am., Inc. v. Queensboro Flooring Corp.</i> , 2016 WL 852520 (M.D. Pa. Mar. 4, 2016) .....	12
<i>Comcast Corp. v. Nat’l Ass’n of Afr. Am. Owned Media</i> , 140 S. Ct. 1009 (2020) .....	<i>Passim</i>
<i>Connelly v. Lane Constr. Corp.</i> , 809 F.3d 780 (3d Cir. 2016) .....	2-3, 13
<i>DaimlerChrysler Corp. v. Cuno</i> , 547 U.S. 332 (2006) .....	16
<i>Domino’s Pizza, Inc. v. McDonald</i> , 546 U.S. 470 (2006) .....	5-6
<i>E. Tex. Motor Freight Sys. Inc. v. Rodriguez</i> , 431 U.S. 395 (1977) .....	11
<i>Freedom from Religion Found. Inc. v. New Kensington Arnold Sch. Dist.</i> , 832 F.3d 469 (3d Cir. 2016) .....	17
<i>Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.</i> , 528 U.S. 167 (2000) .....	17
<i>Gen. Bldg. Contractors Ass’n, Inc. v. Pennsylvania</i> , 458 U.S. 375 (1982) .....	10
<i>Goldstein v. Home Depot U.S.A., Inc.</i> , 609 F. Supp. 2d 1340 (N.D. Ga. 2009) .....	18
<i>Gunn v. Minton</i> , 568 U.S. 251 (2013) .....	16
<i>Hassan v. City of New York</i> , 804 F.3d 277 (3d Cir. 2015) .....	4

<i>James v. City of Wilkes-Barre</i> , 700 F.3d 675 (3d Cir. 2012).....	2
<i>Jimenez v. Wellstar Health Sys.</i> , 596 F.3d 1304 (11th Cir. 2010).....	6
<i>In re Johnson &amp; Johnson Talcum Powder Prods. Mktg. Sales Pracs. &amp; Liab. Litig.</i> , 903 F.3d 278 (3d Cir. 2018).....	17
<i>Kennedy Theater Ticket Serv. v. Ticketron, Inc.</i> , 342 F. Supp. 922 (E.D. Pa. 1972).....	5
<i>Kirschbaum v. WRGSB Assoc.</i> , 243 F.3d 145 (3d Cir. 2001).....	11
<i>Korea Week Inc. v. Got Capital, LLC</i> , 2016 WL 3049490 (E.D. Pa. May 27, 2016).....	16
<i>Levin v. Dollar Tree Stores Inc.</i> , 2006 WL 3538964 (E.D. Pa. Dec. 6, 2006).....	13
<i>Lewis v. J.C. Penney Co., Inc.</i> , 948 F. Supp. 367 (D. Del. 1996).....	8
<i>Lloyd v. Hilton Garden Inn</i> , 2021 WL 2206291 (E.D. Pa. June 1, 2021) .....	7
<i>Lujan v. Defs. of Wildlife</i> , 504 U.S. 555 (1992) .....	3
<i>Lundy v. Hochberg</i> , 91 F. App'x 739 (3d Cir. 2003).....	17
<i>Mayer v. Belichick</i> , 605 F.3d 223 (3d Cir. 2010) .....	3, 7, 9
<i>McNair v. Synapse Grp. Inc.</i> , 672 F.3d 213 (3d Cir. 2012).....	17-18
<i>O'Haro v. Bob Evans Farms, Inc.</i> , 2010 WL 4942219 (M.D. Pa. Oct. 4, 2010) .....	8
<i>O'Shea v. Littleton</i> , 414 U.S. 488 (1974) .....	4
<i>Oldham v. Pa. State Univ.</i> , 2022 WL 1528305 (W.D. Pa. May 13, 2022).....	14
<i>Parker v. Sw. Airlines Co.</i> , 406 F. Supp. 3d 1328 (M.D. Fla. 2019).....	8
<i>Paschal v. Billy Beru, Inc.</i> , 2009 WL 1099182 (W.D. Pa. Apr. 23, 2009).....	6-7
<i>Pryor v. Nat'l Collegiate Athletic Ass'n</i> , 288 F.3d 548 (3d Cir. 2002) .....	3
<i>Renne v. Geary</i> , 501 U.S. 312 (1991).....	16
<i>Santomenno ex rel. John Hancock Tr. v. John Hancock Life Ins. Co. (U.S.A.)</i> , 768 F.3d 284 (3d Cir. 2014).....	3, 7
<i>Schmidt v. Skolas</i> , 770 F.3d 241 (3d Cir. 2014) .....	3
<i>Schuchardt v. President of the United States</i> , 839 F.3d 336 (3d Cir. 2016).....	4

<i>Silva v. Rite Aid Corp.</i> , 416 F. Supp. 3d 394 (M.D. Pa. 2019) .....	18
<i>Speirs v. Marriott Int’l</i> , 2009 WL 3365877 (E.D. Pa. Oct. 20, 2009) .....	11-12
<i>Spokeo, Inc. v. Robins</i> , 136 S. Ct. 1540 (2016), <i>as revised</i> (May 24, 2016) .....	4
<i>Uber Driver Partner Emery v. Uber Techs. Inc.</i> , 2022 WL 1196700 (3d Cir. Apr. 22, 2022) .....	10
<i>Wal-Mart Stores, Inc. v. Dukes</i> , 564 U.S. 338 (2011) .....	11
<i>Williams v. Carson Concrete Corp.</i> , 2021 WL 1546455 (E.D. Pa. Apr. 20, 2021) .....	5
<i>Winkworth v. Spectrum Brands, Inc.</i> , 2020 WL 3574687 (W.D. Pa. June 30, 2020).....	17
<i>Wright v. Reed</i> , 2021 WL 912521 (E.D. Pa. Mar. 10, 2021).....	10

#### **State Cases**

<i>Campisi v. Acme Markets, Inc.</i> , 915 A.2d 117 (Pa. Super. 2006) .....	11
<i>Farabaugh v. Pa. Turnpike Comm’n</i> , 590 Pa. 46 (Pa. 2006) .....	11
<i>Krentz v. Consol. Rail Corp.</i> , 910 A.2d 20 (Pa. 2006) .....	11
<i>Miller v. Pittsburgh Athletic Co.</i> , 91 Pa. Super. 241 (1927).....	5
<i>Mulligan v. Crescent Plumbing Supply Co., Inc.</i> , 845 S.W.2d 589 (Mo. Ct. App. 1992) .....	12
<i>Petrongola v. Comcast-Spectacor, L.P.</i> , 789 A.2d 204 (Pa. Super. 2001).....	11
<i>Vanic v. Ragni</i> , 435 Pa. 26 (Pa. 1969) .....	12

#### **Federal Statutes**

42 U.S.C. § 1981 .....	<i>Passim</i>
------------------------	---------------

#### **Rules**

Federal Rule of Civil Procedure 12(b)(1) .....	1, 3-4
Federal Rule of Civil Procedure 12(b)(6) .....	1-3

## **I. INTRODUCTION**

Plaintiffs allege that Defendants violated their civil rights and are liable for negligence because certain costumed Sesame Street characters allegedly did not personally interact with them during “Meet and Greets” or Parades at Sesame Place Philadelphia (“Sesame Place”). Plaintiffs’ claims fail because an admission ticket to Sesame Place provides no contractual right to personal interactions with costumed characters on demand and because Plaintiffs have not alleged that the costumed characters treated them differently than other park guests. And Plaintiffs’ negligence claim fails because Plaintiffs fail to identify any applicable legal duty and make only conclusory allegations about breach without providing any factual support. Therefore, the entirety of Plaintiffs’ Amended Class Action Complaint (“Amended Complaint”) must be dismissed for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). Further, the Amended Complaint’s requests for injunctive relief should be dismissed for lack of standing pursuant to Federal Rule of Civil Procedure 12(b)(1) because the named Plaintiffs do not intend to return to Sesame Place and therefore are not likely to be harmed again in a similar way.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiffs allege that eight (8) putative class representative families purchased tickets to Sesame Place between December 29, 2021 and July 11, 2022. Am. Compl. ¶¶ 36, 45, 54, 63, 72, 81, 90, 99. While at Sesame Place, Plaintiffs allege that the putative class representatives “attempted to participate in a ‘Meet and Greet’” or “attempted to participate in a Parade” with costumed characters Elmo, Ernie, Telly Monster, Abby Cadabby, Rosita, Big Bird, Grover, Baby Bear, Zoey, and/or Cookie Monster, but that those characters “refus[ed] to engage with them” and/or “ignor[ed] them.” *Id.* ¶¶ 40, 41, 49, 50, 58, 59, 67, 68, 76, 77, 85, 86, 94, 95, 103, 104. Plaintiffs further allege, “[u]pon information and belief,” that the characters’ actions “were



intentional race discrimination,” because unidentified “SeaWorld[.]”<sup>1</sup> performers readily engaged with numerous similarly situated white customers[.]” *Id.* ¶ 43, 52, 61, 70, 79, 88, 97, 106.

Based on these allegations, Plaintiffs bring a putative class action pleading (1) violation of 42 U.S.C. § 1981; and (2) negligence. They seek, *inter alia*, monetary damages, declaratory relief, and multiple forms of injunctive relief. Am. Compl. ¶ 130.<sup>2</sup>

### III. LEGAL STANDARDS

#### A. Federal Rule of Civil Procedure 12(b)(6)

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) must be granted if the complaint fails to allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). To meet the “facial plausibility” standard, a plaintiff must plead allegations showing “more than a sheer possibility that a defendant has acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Rather, the “[f]actual allegations must be enough to raise a right to relief above the speculative level[.]” *Twombly*, 550 U.S. at 555. While factual allegations are accepted as true, courts disregard “rote recitals of the elements of a cause of action, legal conclusions, and mere conclusory statements.” *James v. City of Wilkes-Barre*, 700 F.3d 675, 679 (3d Cir. 2012).

Based on this standard, the Third Circuit has held that “a court reviewing the sufficiency of a complaint must take three steps. First, it must ‘tak[e] note of the elements [the] plaintiff must plead to state a claim.’” *Connelly v. Lane Constr. Corp.*, 809 F.3d 780, 787 (3d Cir. 2016) (quoting

---

<sup>1</sup> Sesame Place is owned and operated by SeaWorld Parks & Entertainment LLC. *See id.* ¶ 26.

<sup>2</sup> Plaintiffs filed their original complaint on July 27, 2022, ECF 1, and filed their Amended Complaint on September 28, 2022, ECF 25, prior to Defendants’ October 3, 2022 deadline to respond to the original complaint. ECF 15.

*Iqbal*, 556 U.S. at 675). “Second, it should identify allegations that, ‘because they are no more than conclusions, are not entitled to the assumption of truth.’” *Id.* (quoting *Iqbal*, 556 U.S. at 679). “Finally, ‘[w]hen there are well-pleaded factual allegations, [the] court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.’” *Id.* (quoting *Iqbal*, 556 U.S. at 679) (alterations in original).

In ruling on a Rule 12(b)(6) motion, courts consider the complaint, exhibits attached thereto, matters of public record, and undisputedly authentic documents if the complainant’s claims are based on those documents. *Mayer v. Belichick*, 605 F.3d 223, 230 (3d Cir. 2010); *Schmidt v. Skolas*, 770 F.3d 241, 249 (3d Cir. 2014). In addition, “[d]ocuments that the defendant attaches to the motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff’s complaint and are central to the claim.” *Santomenno ex rel. John Hancock Tr. v. John Hancock Life Ins. Co. (U.S.A.)*, 768 F.3d 284, 291 (3d Cir. 2014) (quoting *Pryor v. Nat’l Collegiate Athletic Ass’n*, 288 F.3d 548, 560 (3d Cir. 2002)).

#### **B. Federal Rule of Civil Procedure 12(b)(1)**

A claim for which the plaintiff lacks Article III standing is subject to dismissal for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). *Ballentine v. United States*, 486 F.3d 806, 810 (3d Cir. 2007) (“A motion to dismiss for want of standing is ... properly brought pursuant to Rule 12(b)(1), because standing is a jurisdictional matter.”).

“It goes without saying that those who seek to invoke the jurisdiction of the federal courts must satisfy the threshold requirement imposed by Article III of the Constitution by alleging an actual case or controversy.” *City of Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983) (citations omitted). Article III standing requires, as an “irreducible constitutional minimum,” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992), that plaintiffs “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a

favorable judicial decision.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016), *as revised* (May 24, 2016).

A Rule 12(b)(1) motion for lack of subject matter jurisdiction can be either facial or factual. *Schuchardt v. President of the United States*, 839 F.3d 336, 343 (3d Cir. 2016). In a facial attack, the court reviews only the allegations of the complaint and the documents referenced therein, and the same standard of review applies as to motions to dismiss for failure to state a claim. *Id.* at 343-44. To survive a motion to dismiss for lack of standing, “the plaintiff must ‘plausibly allege facts establishing each constitutional requirement.’” *Id.* at 344 (quoting *Hassan v. City of New York*, 804 F.3d 277, 289 (3d Cir. 2015)).

In the class context, at least one named plaintiff must have Article III standing. *O’Shea v. Littleton*, 414 U.S. 488, 494-95 (1974) (“[I]f none of the named plaintiffs purporting to represent a class establishes the requisite of a case or controversy ..., none may seek relief on behalf of himself or any other member of the class.” (citations omitted)).

#### **IV. THE AMENDED COMPLAINT FAILS TO STATE ANY CLAIM ON WHICH RELIEF CAN BE GRANTED**

##### **A. The Amended Complaint Fails to State an Actionable Claim for Violation of 42 U.S.C. § 1981**

###### **1. Elements of the Cause of Action**

To state a claim under § 1981, “a plaintiff must allege facts in support of the following elements: (1) [that plaintiff] is a member of a racial minority; (2) intent to discriminate on the basis of race by the defendant; and (3) discrimination concerning one or more of the activities enumerated in the statute[,] which includes the right to make and enforce contracts.” *Brown v. Philip Morris Inc.*, 250 F.3d 789, 797 (3d Cir. 2001) (alterations in original) (quotation and citation omitted). “[A] plaintiff must initially plead and ultimately prove that, but for race, it would not have suffered the loss of a legally protected right.” *Comcast Corp. v. Nat’l Ass’n of Afr. Am.*

*Owned Media*, 140 S. Ct. 1009, 1019 (2020). “[A] § 1981 plaintiff must first show that he was deprived of the protected right and then establish causation—and [] these two steps are analytically distinct.” *Id.* at 1018.

Section 1981 was not “meant to provide an omnibus remedy for *all* racial injustice.” *Domino’s Pizza, Inc. v. McDonald*, 546 U.S. 470, 479 (2006); *Arguello v. Conoco, Inc.*, 330 F.3d 355, 358-59 (5th Cir. 2003) (“Section 1981 does not provide a general cause of action for race discrimination.”). Rather, it is specifically limited to situations involving contractual rights. *Domino’s Pizza*, 546 U.S. at 474 (Section 1981’s “specific function” is to “protect[] the equal right of ‘[a]ll persons ... to ‘make and enforce **contracts** without respect to race.’”) (quoting 42 U.S.C. § 1981(a)) (first alteration in original) (emphasis added); *Anjelino v. N.Y. Times Co.*, 200 F.3d 73, 98 (3d Cir. 1999) (a claim under § 1981 “is limited to issues of racial discrimination in the making and enforcing **of contracts**.”) (emphasis added); *Williams v. Carson Concrete Corp.*, 2021 WL 1546455, at \*5 (E.D. Pa. Apr. 20, 2021) (“Unlike Title VII, which prohibits employers from discriminating on the basis of a protected characteristic, Section 1981 **applies specifically** to racial discrimination in the making and enforcement **of contracts**.”) (citations omitted) (emphasis added).

## 2. Plaintiffs Fail to Adequately Allege a Contract

As a preliminary matter, the Amended Complaint does not identify what constitutes Plaintiffs’ alleged “contracts.” Assuming, however, that the purported “contracts” are the tickets for admission to Sesame Place, admission tickets are generally found to be licenses, not contracts. *Kennedy Theater Ticket Serv. v. Ticketron, Inc.*, 342 F. Supp. 922, 925-26 (E.D. Pa. 1972) (“Admission tickets have been uniformly defined as revocable licenses ...”); *Miller v. Pittsburgh Athletic Co.*, 91 Pa. Super. 241, 243 (1927) (“[T]he privilege granted by the delivery of a ticket of admission to a place of public amusement is a revocable license ...”). Thus, Plaintiffs’ § 1981

claim can be dismissed for failure to adequately allege the existence of an actual contract. *See, e.g., Jimenez v. Wellstar Health Sys.*, 596 F.3d 1304, 1309 (11th Cir. 2010) (affirming grant of motion to dismiss § 1981 claim based on suspension of medical staff privileges because medical staff privileges do not constitute a contract).

3. Plaintiffs Fail to Adequately Allege a Contractual Right to Personal Interactions with Costumed Characters During “Meet and Greets” or Parades

Even assuming that the Sesame Place admission tickets do constitute “contracts” that could serve as the basis for a § 1981 claim, Plaintiffs’ claim still fails. The Supreme Court has made it clear that a § 1981 plaintiff must have “suffered the **loss of a legally protected right.**” *Comcast Corp.*, 140 S. Ct. at 1019 (emphasis added); *Domino’s Pizza*, 546 U.S. at 479-80 (“[A] plaintiff cannot state a claim under § 1981 unless he has ... rights under the existing ... contract that he wishes to make and enforce.” (quotation omitted)); *see also Paschal v. Billy Beru, Inc.*, 2009 WL 1099182, at \*4 (W.D. Pa. Apr. 23, 2009) (“[A] § 1981 claim for interference with the right to make and enforce a contract must involve **the actual loss of a contract interest.**” (emphasis added) (quotation omitted)). Here, Plaintiffs have not and cannot show that they were deprived of a “legally protected right” because the tickets do not provide a contractual right to on-demand personal interactions by Sesame Street costumed characters during “Meet and Greets,” Parades, or in any other capacity.<sup>3</sup>

The named Plaintiffs purchased various admission tickets or season passes to Sesame Place. *See* Declaration of Brittany Kenny, filed herewith, ¶¶ 3-8 and Exs. 1-5, and 7 thereto. None

---

<sup>3</sup> The Amended Complaint provides no source of the alleged contractual rights to personal interactions during “Meet and Greets” and Parades other than a reference to admission tickets. *See e.g., Am. Compl.* ¶ 111 (“Plaintiffs **entered into contracts** with SeaWorld **by way of their ticketed admission** to SeaWorld’s amusement park Sesame Place Philadelphia[.]”) (emphasis added).

of those tickets or season passes includes any language guaranteeing the holder personal, on-demand interactions with costumed characters during “Meet and Greets,” Parades, or in any other capacity during a park visit. *See* Kenny Decl. Exs. 1-7 (Copies of Named Plaintiffs’ Tickets to Sesame Place).<sup>4</sup> In fact, some of the tickets, like those purchased by the Burns family, specifically state that “Park may temporarily close due to capacity limitations. **Park** hours and **content subject to change without notice.**” Kenny Decl. Ex. 1 (Burns tickets) (emphasis added). In other words, the ticket does not even guarantee the holder entry to the park, let alone any particular on-demand personal experience *in* the park. *See also* Kenny Decl. Exs. 2, 3, 4, 7 (Fleming, Morales, Romero, L.W. tickets) (“Admission is not guaranteed.”).<sup>5</sup>

Accordingly, Plaintiffs had no legally protected contractual right to on-demand, personal interactions during “Meet and Greets” or Parades, or to any other personal interaction with a costumed character, and their § 1981 claim must fail. *Comcast Corp.*, 140 S. Ct. at 1019; *Paschal*, 2009 WL 1099182 at \*4; *Lloyd v. Hilton Garden Inn*, 2021 WL 2206291, at \*6 (E.D. Pa. June 1, 2021) (plaintiff brought § 1981 claim against hotel based on hotel’s failure to move other hotel guests; court granted motion to dismiss because plaintiff had no right to have the other guests

---

<sup>4</sup> Because the Amended Complaint refers to the named Plaintiffs’ tickets, the Court can consider them in ruling on the motion to dismiss without converting it to a motion for summary judgment. *See Santomenno*, 768 F.3d at 291; *see also Mayer*, 605 F.3d at 229, 231 (considering copy of ticket stub attached to motion to dismiss in affirming dismissal).

<sup>5</sup> Sesame Place has been unable to locate tickets for the Miles or Valette families or for M.L. (child of Katie Valdez) for the dates in the Amended Complaint. Kenny Decl. ¶ 9. This could mean that the families did not purchase tickets on those days or that they purchased physical tickets at Sesame Place rather than purchasing their tickets online. *Id.* Plaintiffs allege that the Miles family purchased admission tickets on or around June 24, 2022, that the Valette family purchased admission tickets on or around June 20, 2022, and that the Valdez family (including M.L.) purchased admission tickets on or around December 29, 2021. Am. Compl. ¶¶ 54, 81, 90. The form language for single day tickets purchased at Sesame Place in December 2021 and June 2022 does not include any right to personal interactions with costumed characters. *See* Kenny Decl. ¶ 9 and Ex. 8 thereto.

moved and thus no part of the “contractual relationship [was] violated when the hotel chose to not move [the other guests] to a different hotel room.”).

That Plaintiffs allegedly did not receive the personal attention they allegedly desired may have been disappointing, but case law makes clear that it is not sufficient to state a § 1981 claim. *See Arguello*, 330 F.3d at 358-59 (affirming judgment as a matter of law for defendant on § 1981 claim because plaintiff “received all she was entitled to under the retail-sales contract ... [and thus] cannot demonstrate any loss recoverable under § 1981.”) (citation omitted); *Parker v. Sw. Airlines Co.*, 406 F. Supp. 3d 1328, 1336 (M.D. Fla. 2019) (plaintiff upset by her treatment by airline failed to establish a prima facie case for § 1981 claim because she did not establish an “actual thwarting of her contract rights”; she received what she “contracted for: a safe flight home as booked.”); *O’Haro v. Bob Evans Farms, Inc.*, 2010 WL 4942219, at \*8 (M.D. Pa. Oct. 4, 2010) (plaintiffs failed to establish § 1981 claim against restaurant; “plaintiffs have shown neither that their creation of a contractual relationship was blocked nor that an existing contractual relationship was impaired. All that plaintiffs have established is poor service.”); *Bobbitt by Bobbitt v. Rage Inc.*, 19 F. Supp. 2d 512, 518 (W.D.N.C. 1998) (granting motion to dismiss § 1981 claim by customers who received poor service but “were denied neither admittance to the restaurant nor service, nor were they asked to leave at any time.”); *Lewis v. J.C. Penney Co., Inc.*, 948 F. Supp. 367, 371-72 (D. Del. 1996) (rejecting argument that § 1981 provides remedy for breach of unstated contract that all who enter a commercial establishment will be treated equally as “such a theory would come close to nullifying the contract requirement of § 1981 altogether, thereby transforming the statute into a general cause of action for race discrimination in all contexts”).

As the Third Circuit noted in affirming dismissal based on a plaintiff-NFL-ticket-holder's allegation that his contractual expectation to see an "honest" NFL game was violated by the Patriots' cheating:

[Plaintiff] possessed either a license or, at best, a contractual right to enter Giants Stadium and to have a seat from which to watch a professional football game. In the clear language of the ticket stub, '[t]his ticket only grants entry into the stadium and a spectator seat for the specific NFL game.' [Plaintiff] was allowed to enter the stadium and witnessed the 'specified NFL game[s]' ... He thereby suffered no cognizable injury to a legally protected right or interest.

*Mayer*, 605 F.3d at 233, 236. Similarly here, Plaintiffs possessed at most a right to admission to Sesame Place, which they undisputedly received, and the clear language of the ticket/season pass does not provide a contractual right to any personal contact with a Sesame Street character. Thus no legally protected right was lost. Accordingly, Plaintiffs' § 1981 claim must be dismissed.

4. Plaintiffs Fail to Adequately Allege That Intentional Discrimination Was the But-For Cause of Their Experiences

Even if Plaintiffs had a legally protected right to whatever personal interaction they allegedly did not receive (which they do not), their § 1981 claim should still be dismissed for failure to adequately allege causation. Causation is required and "analytically distinct" from the alleged deprivation of protected right. *Comcast Corp.*, 140 S. Ct. at 1018. To establish causation, the "plaintiff bears the burden of showing that race was a but-for cause of its injury." *Id.* at 1015. Plaintiffs have failed to do so.

Notably, none of the named Plaintiffs alleges that the costumed characters that allegedly refused to engage with them were actively engaging with similarly situated white children. Instead, they carefully allege, "upon information and belief," that unnamed, unidentified "SeaWorld performers" engaged with white customers. For example, Plaintiffs allege that the character Telly Monster allegedly refused to engage with the Fleming family. Am. Compl. ¶ 50. They do not allege that Telly Monster was readily engaging with white customers at the time. *See*



*id.* ¶ 52. The same is true for all of the other named Plaintiffs—none alleges that the characters that allegedly ignored them were, at the same time, actively engaging with white children. *Id.* ¶¶ 41, 43, 59, 61, 68, 70, 77, 79, 86, 88, 95, 97, 104, 106. In other words, Plaintiffs do not allege that they were treated differently than anyone else by the characters that allegedly refused to engage with them. This is fatal to their § 1981 claim.

Plaintiffs have not alleged facts to demonstrate that they experienced disparate treatment by the at-issue costumed characters, let alone that the characters acted with the required intentional racial animus at the time of the interactions. *Gen. Bldg. Contractors Ass’n, Inc. v. Pennsylvania*, 458 U.S. 375, 383 n.8, 391 (1982) (“§ 1981 can be violated only by intentional discrimination”; disparate impact insufficient). Accordingly, Plaintiffs “have not nudged their claim[] across the line from conceivable to plausible,” *Twombly*, 550 U.S. at 570, and their § 1981 claim should be dismissed. *See, e.g., Uber Driver Partner Emery v. Uber Techs. Inc.*, 2022 WL 1196700, at \*2 (3d Cir. Apr. 22, 2022) (affirming dismissal of § 1981 claim where plaintiff “failed to allege facts to suggest that he was treated differently than similarly situated Uber drivers who were not in a protected class.”); *Wright v. Reed*, 2021 WL 912521, at \*4 (E.D. Pa. Mar. 10, 2021) (plaintiffs failed to adequately allege a § 1981 claim where “the only allegations pertaining in any way to race are that (1) [Plaintiffs] are African American, (2) the Defendant police officers are white, (3) there were several non-African Americans among the group of teenagers at the basketball game; and (4) the teenagers who were arrested are African American.”). Similarly here, Plaintiffs allege that they are members of racial minorities and that they did not receive the attention that they allegedly desired, but that is not sufficient where they have not even alleged that the same characters that allegedly ignored them were at the same time actively engaging with non-minority guests.

For the same reason, the named Plaintiffs do not fall within the class as defined, which is limited to those who “suffered disparate treatment from SeaWorld and/or its agents and/or employees by ignoring minority children *while openly interacting with similarly situated white children*,” (Am. Compl. § 108(d)(e) (emphasis added)), and they therefore lack standing to serve as class representatives. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348-49 (2011) (“[A] class representative must be part of the class and possess the same interest and suffer the same injury as the class members.”) (quoting *E. Tex. Motor Freight Sys. Inc. v. Rodriguez*, 431 U.S. 395, 403 (1977)).

## **B. The Amended Complaint Fails to State an Actionable Claim for Negligence**

### **1. Elements of the Cause of Action**

Under Pennsylvania law, the elements of a negligence claim are: (1) the existence of a duty or obligation recognized by law; (2) a breach of that duty; (3) a causal connection between the breach of duty and the resulting injury; and (4) actual loss or damage. *Krentz v. Consol. Rail Corp.*, 910 A.2d 20, 27 (Pa. 2006). “Whether a duty exists under a particular set of facts is a question of law.” *Campisi v. Acme Markets, Inc.*, 915 A.2d 117, 119 (Pa. Super. 2006) (quoting *Petrongola v. Comcast-Spectacor, L.P.*, 789 A.2d 204, 209 (Pa. Super. 2001)). While it is not clear the source of the legal duty that Plaintiffs allege existed and was breached, they appear to base their negligence claim on the fact that they were “business invitees” to Sesame Place and thus were entitled to duties owed to business invitees. Am. Compl. ¶ 125.

### **2. Plaintiffs Fail to Plead Breach of Any Duty Owed to Business Invitees**

“Pennsylvania courts have adopted the Second Restatement of Torts to determine the duty owed by a possessor of land to an invitee on his or her property.” *Speirs v. Marriott Int’l*, 2009 WL 3365877, at \*3 (E.D. Pa. Oct. 20, 2009) (citing *Kirschbaum v. WRGSB Assoc.*, 243 F.3d 145, 152 (3d Cir. 2001)); *see also Farabaugh v. Pa. Turnpike Comm’n*, 590 Pa. 46, 59 (Pa. 2006) (“[A]

landowner's duty" to business invitees "derives from Section 343 of the Restatement (Second) of Torts."). Under the applicable Restatement section, "a possessor of land is subject to liability for *physical harm* caused to invitees by a *condition on the land*" in certain circumstances. *Speirs*, 2009 WL 3365877 at \*3 (citing Restatement (Second) of Torts § 343 (1965)) (emphasis added); *Vanic v. Ragni*, 435 Pa. 26, 32 (Pa. 1969) ("[T]he possessor of land is responsible to business invitees for *physical harm* caused by a dangerous *condition existing on the land* if he fails to exercise reasonable care to protect them against the danger.") (quotation omitted) (emphasis added).

Here, Plaintiffs have not identified any physical harm that they have allegedly suffered. The plain language of the Restatement, as explicitly adopted by Pennsylvania courts, requires physical harm for a negligence claim by a business invitee against a landowner. Defendants have located no case in which a Pennsylvania state or federal court has ever recognized a duty of landowners to prevent non-physical harm to business invitees (or such a case where a plaintiff even made the argument, given the clarity of the physical harm requirement). Thus, to the extent that Plaintiffs base their negligence claim on the duties owed to business invitees, they fail to state a claim. *See Mulligan v. Crescent Plumbing Supply Co., Inc.*, 845 S.W.2d 589, 591-92 (Mo. Ct. App. 1992) (affirming grant of motion to dismiss plaintiff's negligence claim; holding that landowners have no duty to prevent property loss, only physical harm).

Further, Plaintiffs additionally fail to state such a claim because people (such as employees dressed as Sesame Street characters) do not constitute a "condition on the land," required for a negligence claim premised on the duty of landowners to business invitees. *See Cmty. Ass'n Underwriters of Am., Inc. v. Queensboro Flooring Corp.*, 2016 WL 852520, at \*7 (M.D. Pa. Mar.

4, 2016) (“[W]orkers cannot serve as a basis for the imposition of liability against [defendant] under section 343 because their presence does not constitute a condition on the land.”).

### 3. Plaintiffs Fail to Otherwise Plead Negligence

Other than the duty owed to business invitees, the Amended Complaint does not identify any other source of an alleged duty recognized by law. The negligence count instead appears to be a re-packaging of Plaintiffs’ discrimination claim: because some of its employees allegedly discriminated against Plaintiffs in violation of § 1981,<sup>6</sup> SeaWorld must have been negligent. That is not sufficient. Plaintiffs cannot “borrow” § 1981 for use as evidence to prove negligence. *See Levin v. Dollar Tree Stores Inc.*, 2006 WL 3538964, at \*3-4 (E.D. Pa. Dec. 6, 2006) (finding that an alleged violation of federal anti-discrimination statute could not be used as evidence of negligence); *see also Buttermore v. Loans*, 2016 WL 308875, at \*5 (W.D. Pa. Jan. 25, 2016) (rejecting complaint’s reliance on “the premise that because Caliber’s employees allegedly violated the law, it must follow that Caliber was negligent or reckless in hiring them.”).

Further, the majority of the count is a list of thirty alleged breaches of an undefined duty. These are all mere conclusory statements devoid of factual support that are not entitled to the presumption of truth and must be disregarded. *Connelly*, 809 F.3d at 789, 790 (as part of motion to dismiss analysis, the Court must “identify those allegations that, being merely conclusory, are not entitled to the presumption of truth,” and “affirmatively disregard[] a pleading’s legal conclusions.”).

---

<sup>6</sup> The Amended Complaint’s allegation that the employees allegedly discriminated against Plaintiffs is a legal conclusion not entitled to the presumption of truth on a motion to dismiss. *See Connelly*, 809 F.3d at 790 (allegation that plaintiff’s supervisors “subjected her to disparate treatment based on her gender and retaliation for making complaints about discrimination and sexual harassment” was not entitled to the presumption of truth).

For example, Plaintiffs allege a breach based upon “[f]ailing to screen and perform background checks [sic] potential employees to ensure that no employee has a propensity for racial discrimination” and for “[f]ailing to have, enact, follow and enforce policies and procedures for screening potential employees.” Am. Compl. ¶ 127(c)(d). But Plaintiffs fail to allege any duty that would require such “propensity” background checks, nor does the Amended Complaint contain any allegations about what kind of background checks or “screenings” were performed, what information allegedly existed pre-hire that should have alerted SeaWorld not to hire any particular individuals, or any other basis to conclude that SeaWorld was negligent in its hiring process. *See Buttermore*, 2016 WL 308875 at \*3-4 (granting motion to dismiss negligent hiring claim, stating that plaintiffs must “allege facts that would establish that the employer knew or should have known of a reason not to hire the employee” at the time of hiring, and determining that allegations that employer failed to “properly interview” and “properly supervise” its employees were conclusory statements not entitled to the presumption of truth).

Similarly, Plaintiffs allege a breach based upon “[f]ailing to properly train the employees and managers to recognize incidents of racial discrimination between employees and customers.” Am. Compl. ¶ 127(o). Plaintiffs fail to point to any legal duty that would require such “recognition” training, nor any facts regarding what kind of training is provided or what policies and procedures are in place or why they are insufficient. *See Oldham v. Pa. State Univ.*, 2022 WL 1528305, at \*24 (W.D. Pa. May 13, 2022) (dismissing claim for negligent training where plaintiff alleged that the defendants failed to provide adequate training, but provided no information about the trainings, who did or did not receive them, or why they were deficient).<sup>7</sup>

---

<sup>7</sup> The “list of 30” includes multiple other alleged breaches that appear to be re-statements of this alleged failure to properly train. *See* Am. Compl. ¶ 127(e) (“Failing to have, enact, follow and enforce policies and procedures designed to prevent and discourage racial discrimination in

Finally, the “list of 30” contains allegations of affirmative offensive actions that have absolutely no factual support. For example, it alleges that SeaWorld “[e]nact[ed] policies, practices and/or customs that ... rewarded racial discrimination in customer interactions.” Am. Compl. ¶ 127(g). Which policies are those? Which rewards are those? The Amended Complaint does not, and cannot, say. Similarly, it alleges that SeaWorld “[e]ncourag[ed] racial discrimination against customers.” *Id.* ¶ 127(w). What affirmative “encouragement” did SeaWorld provide? Again, on these extremely inflammatory allegations, the Amended Complaint is silent.

None of the “list of 30” is entitled to the presumption of truth, and they must all be disregarded. Once those conclusory allegations are properly disregarded, there is nothing left. Plaintiffs have failed to adequately allege a negligence claim, and it should be dismissed.

---

customer interactions”); *id.* ¶ 127(f) (“Failing to train, educate, supervise or inform its employees to avoid racial discrimination in customer interactions”); *id.* ¶ 127(k) (“Failing to have policies and procedures to prevent employees from engaging in racial discrimination”); *id.* ¶ 127(l) (“Failing to use, require and enforce policies and procedures that ensure hiring and training of employees who do not engage in racial discrimination”); *id.* ¶ 127(m) (“Failing to have policies and procedures designed to educate employees about racial discrimination and/or implicit bias”); *id.* ¶ 127(n) (“Failing to use, require and enforce policies and procedures designed to educate employees about racial discrimination and/or implicit bias”); *id.* ¶ 127(p) (“Failing to properly train the employees and managers on how to document and report incident [sic] of racial discrimination between employees and customers”); *id.* ¶ 127(q) (“Failing to properly train the employees and managers to recognize employees who are engaged in racial discrimination of customers”); *id.* ¶ 127(r) (“Failing to adopt, enact, employ and enforce proper and adequate programs, precautions, procedures, measures and plans to prevent racial discrimination between employees and customers”); *id.* ¶ 127(s) (“Failing to adequately plan, plot and implement policies, procedures and responses related to racial discrimination between employees and customers”); *id.* ¶ 127(u) (“Enacting inadequate policies and procedures to prevent or discourage employees from committing acts of racial discrimination against customers”). No matter how many times Plaintiffs say it with slightly different words, they have failed to allege facts to support a negligence claim based on failure to train.

**C. The Valdez and Willie Families Must Be Dismissed Because They Have Waived Their Right to Participate in Any Form of Class Action**

The Valdez and Willie parent-plaintiffs purchased season passes. *See* Kenny Decl. ¶¶ 7, 8 and Exs. 5 and 7 thereto. Season passes refer to SeaWorld’s EZpay terms and conditions. Kenny Decl. Exs. 5 and 7. Those terms and conditions explicitly state:

Any and all disputes, claims, and causes of action arising out of or connected with this contract or the use of any park or membership **SHALL BE RESOLVED INDIVIDUALLY, WITHOUT RESORT TO ANY FORM OF CLASS ACTION.**

Kenny Decl. Ex. 6 at page 5/7. Because their claims arise out of “use of” the Sesame Place park, these plaintiffs are required to resolve any such claims on an individual basis. *Id.* They cannot “resort to any form of class action.” *Id.* They therefore should be dismissed from this case—a putative class action for which they can be neither a member nor a representative. *See, e.g., Korea Week Inc. v. Got Capital, LLC*, 2016 WL 3049490, at \*1, \*11 (E.D. Pa. May 27, 2016) (finding that named plaintiffs who signed class action waivers cannot serve as class representatives).

**V. PLAINTIFFS LACK ARTICLE III STANDING FOR INJUNCTIVE RELIEF**

Plaintiffs seek four forms of injunctive relief, including, *inter alia*, an order requiring that SeaWorld “evaluate by appropriate psychological testing and behavioral history whether its existing agents and/or employees are racially bigoted” and an order requiring SeaWorld to “implement mandatory educational courses ... on the history of discrimination against minority people in America” to be provided by a “nationally acclaimed expert in the field of African and minority History and Culture.” Am. Compl. § 130(d)-(g).

Federal courts have limited jurisdiction. *Gunn v. Minton*, 568 U.S. 251, 256 (2013). And a court presumes it lacks jurisdiction “unless the contrary appears affirmatively from the record.” *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 n.3 (2006) (quoting *Renne v. Geary*, 501 U.S. 312, 316 (1991)). “[A] plaintiff must demonstrate standing separately for each form of relief

sought.” *Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000); *Freedom from Religion Found. Inc. v. New Kensington Arnold Sch. Dist.*, 832 F.3d 469, 480 (3d Cir. 2016) (“A plaintiff seeking relief must show he or she has standing for each remedy sought.” (citing *Laidlaw*, 528 U.S. at 184)). “[W]here the claim at issue is one for injunctive relief, ‘past wrongs do not in themselves amount to that real and immediate threat of injury necessary to make out a case or controversy.’” *Lundy v. Hochberg*, 91 F. App’x 739, 743 (3d Cir. 2003) (quoting *Lyons*, 461 U.S. at 103). Rather, to have standing to seek prospective injunctive relief, “the plaintiff must show that he is likely to suffer future injury from the defendant’s conduct.” *McNair v. Synapse Grp. Inc.*, 672 F.3d 213, 223 (3d Cir. 2012) (internal quotes omitted).

Here, the named Plaintiffs lack standing to pursue injunctive relief because they have not alleged that they intend to return to Sesame Place, and thus are not likely to be harmed again in a similar way. *McNair*, 672 F.3d at 225 (plaintiffs lacked standing for injunctive relief because they are not likely to be repeat customers of defendant they believe defrauded them); *In re Johnson & Johnson Talcum Powder Prods. Mktg. Sales Pracs. & Liab. Litig.*, 903 F.3d 278, 293 (3d Cir. 2018) (plaintiff lacked injunctive relief standing because she will not suffer the same alleged injury now that she knows of the practice from which she is seeking future protection). Not only do they not *allege* that they will go back, their allegations make it clear that *they will not*, given that they now believe that Sesame Place engages in “demeaning racial discrimination” against children that allegedly caused them damages to their “mental health[] and personal dignity.” *See* Am. Compl. ¶¶ 123, 128. “[S]peaking generally, the law accords people the dignity of assuming that they act rationally, in light of the information they possess.” *McNair*, 672 F.3d at 225; *see Winkworth v. Spectrum Brands, Inc.*, 2020 WL 3574687, at \*8 (W.D. Pa. June 30, 2020) (“Plaintiffs have not alleged that they will sustain future injury. Moreover, given their allegations that the Hot Rollers



are defective ... it is unreasonable to assume that Plaintiffs would sustain future injury by repurchasing the Hot Rollers” and dismissing request for injunctive relief); *Silva v. Rite Aid Corp.*, 416 F. Supp. 3d 394, 400 (M.D. Pa. 2019) (granting motion to dismiss request for injunctive relief and declining to allow plaintiff to amend to add allegations of future intent to re-purchase allegedly offending product because “[w]hen an individual suffers an injury and subsequently becomes aware of the cause of that injury, the law affords the individual the dignity of assuming that they will not act in a manner which results again in the same injury.”).

Since there is not a sufficient likelihood that named Plaintiffs will again be wronged in a similar way, they are not entitled to seek injunctive relief, on behalf of themselves or the class. *Lyons*, 461 U.S. 111 (“Absent a sufficient likelihood that he will again be wronged in a similar way, Lyons is no more entitled to an injunction than any other citizen”); *McNair*, 673 F.3d at 223-27 (because named plaintiffs lacked standing for injunctive relief, they could not pursue injunctive relief on behalf of class); *see also Goldstein v. Home Depot U.S.A., Inc.*, 609 F. Supp. 2d 1340, 1348 (N.D. Ga. 2009) (former customer of defendant who did not allege “that he plans in the future to purchase a Dryer from Defendant” lacked standing to seek injunctive relief on behalf of class of consumers who might be subjected to the allegedly illegal practice). Accordingly, the claims for injunctive relief must be dismissed and Plaintiffs should not be able to pursue a Rule 23(b)(2) injunctive relief class.

## **VI. CONCLUSION**

For the foregoing reasons, the SeaWorld Defendants respectfully request the Court grant their Motion to Dismiss and dismiss the Amended Complaint in its entirety.

Dated: November 2, 2022

Respectfully submitted,

**DUANE MORRIS LLP**

/s/ Leigh M. Skipper

Leigh M. Skipper (PA #49239)

Aleksander W. Smolij (PA #329521)

30 South 17th Street

Philadelphia, PA 19103

Tel.: (215) 979-1157

Fax: (215) 689-4939

lmskipper@duanemorris.com

awsmolij@duanemorris.com

Michelle C. Pardo (*admitted pro hac vice*)

John M. Simpson (*admitted pro hac vice*)

Rebecca E. Bazan (*admitted pro hac vice*)

901 New York Avenue NW, Suite 700 East

Washington, DC 20001

Tel.: (202) 776-7844

Fax: (202) 478-2563

mcpardo@duanemorris.com

jmsimpson@duanemorris.com

rebazan@duanemorris.com

*Attorneys for SeaWorld Parks & Entertainment, Inc.  
and SeaWorld Parks & Entertainment LLC*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>QUINTON BURNS, <i>et al.</i>,</b>	:	
	:	
<b>Plaintiffs,</b>	:	
	:	
<b>v.</b>	:	<b>CIVIL ACTION</b>
	:	
<b>SEAWORLD PARKS &amp; ENTERTAINMENT, INC.; AND SEAWORLD PARKS &amp; ENTERTAINMENT LLC,</b>	:	<b>NO. 22-cv-02941</b>
	:	
<b>Defendants.</b>	:	
	:	

**DECLARATION OF BRITTANY KENNY**

I, Brittany Kenny, declare as follows:

1. My name is Brittany Kenny. I am over the age of eighteen (18) and am competent to make this declaration. If called as a witness, I could and would competently testify to all the facts within my personal knowledge except where stated upon information and belief.
2. I am the Integrated Marketing Manager at Sesame Place Philadelphia (“Sesame Place”). I have worked at Sesame Place since 2008. As part of my employment, I have personal knowledge about the terms and conditions of tickets to Sesame Place.
3. Attached as **Exhibit 1** hereto is a true and correct copy of the Burns family June 18, 2022 tickets to Sesame Place.
4. Attached as **Exhibit 2** hereto is a true and correct copy of the Fleming family July 4, 2022 tickets to Sesame Place.
5. Attached as **Exhibit 3** hereto is a true and correct copy of the Morales family July 11, 2022 tickets to Sesame Place.

6. Attached as **Exhibit 4** hereto is a true and correct copy of the Romero family June 25, 2022 tickets to Sesame Place.

7. Attached as **Exhibit 5** hereto is a true and correct copy of Katie Valdez's Sesame Place 2021 Platinum Season Pass-EZ pay that she used to attend Sesame Place on December 29, 2021. That pass refers to EZpay terms and conditions, which are located at <https://seaworldentertainment.com/policies/terms-and-conditions/>. A true and correct copy of the EZpay terms and conditions is attached hereto as **Exhibit 6** (starting at page 4/7). Those terms and conditions have been in place since December 3, 2019, and apply to Sesame Place 2021 Platinum Season Pass –EZpay passes purchased from December 3, 2019 to present. As part of Ms. Valdez's season pass, she received free single day guest tickets. The language on the single day tickets as of December 2021 is that found, for example, on **Exhibit 3** hereto.

8. Attached as **Exhibit 7** hereto is a true and correct copy of the Willie family passes/tickets to Sesame Place used to attend Sesame Place on July 10, 2022. Lauren Willie purchased a Sesame Place Philadelphia 2022 Gold Season Pass. That pass refers to EZpay terms and conditions, a true and correct copy of which is attached hereto as **Exhibit 6** (starting at page 4/7). As part of Ms. Willie's season pass, she receives free single day guest tickets. The single day guest ticket for L.W. is included as part of **Exhibit 7**.

9. Sesame Place does not have a record of a ticket purchase or redemption for Lashonda Miles or her child M.C. on June 24, 2022, a record of a ticket purchase or redemption for Ashlee Valette or her child D.V. on June 20, 2022, or a record of a ticket purchase or redemption for M.L. (child of Katie Valdez) on December 29, 2021. This could mean that the families did not purchase tickets or attend the park on those days, or that they purchased physical tickets at Sesame Place rather than purchasing their tickets online. Attached hereto as **Exhibit 8**

is a true and correct copy of the form language for single day tickets purchased at Sesame Place in December of 2021 and June of 2022. It states, "ONE DAY TICKET. Valid Only [date]. You Paid [amount]. Valid only at Sesame Place. Non-Refundable. Upgrade this ticket to a Season Pass today!"

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

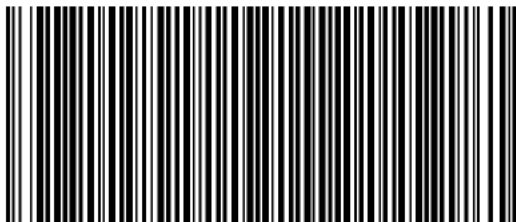
Executed November 2, 2022 at Langhorne, Pennsylvania.

  
Brittany Kenny

# Exhibit 1

# THIS IS YOUR TICKET PROCEED TO THE PARK

Sesame Place Philadelphia Two Day Ticket  
(6/18/2022) - 6/18/2022



**0721 80612 71679 9576**

**K B**

## Redemption

### THIS IS YOUR TICKET

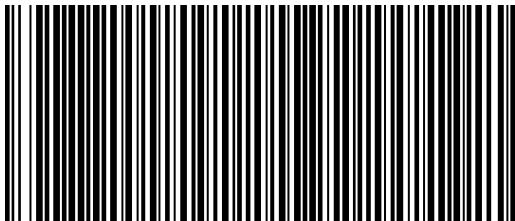
Step 1: Print this ticket or download to your phone  
Step 2: Proceed to the Park Entrance  
Step 3: Scan printed or downloaded ticket at ticket scanner for entry to the park and show Photo ID to attendant.

## Legal Terms

Valid for two visits to Sesame Place. First visit must be on the date printed on the ticket, check our website for our most up-to-date park hours. 2nd visit must be used by 1/1/2023. Does not include parking. Will be confiscated or revoked without restitution for misuse. Park may temporarily close due to capacity limitations. Park hours and content subject to change without notice. **NON-TRANSFERRABLE, NON-REFUNDABLE AND NOT FOR RESALE.**

# **THIS IS YOUR TICKET PROCEED TO THE PARK**

Sesame Place Philadelphia Two Day Ticket  
(6/18/2022) - 6/18/2022



**0772 98189 26749 6537**

**Quinton Burns**

**Redemption**

## **THIS IS YOUR TICKET**

Step 1: Print this ticket or download to your phone  
Step 2: Proceed to the Park Entrance  
Step 3: Scan printed or downloaded ticket at ticket scanner for entry to the park and show Photo ID to attendant.

**Legal Terms**

Valid for two visits to Sesame Place. First visit must be on the date printed on the ticket, check our website for our most up-to-date park hours. 2nd visit must be used by 1/1/2023. Does not include parking. Will be confiscated or revoked without restitution for misuse. Park may temporarily close due to capacity limitations. Park hours and content subject to change without notice. **NON-TRANSFERRABLE, NON-REFUNDABLE AND NOT FOR RESALE.**



# Exhibit 2

# THIS IS YOUR TICKET PROCEED TO THE PARK

Sesame Place Philadelphia Single-Day  
Ticket (7/4/2022) - 7/4/2022



1098 66515 31325 2729

O

F

## Redemption

**Step 1:** Verify your date selected and park hours prior to arrival

**Step 2:** Print this eTicket or show on your mobile device

**Step 3:** Proceed directly to the park entrance and present your eTicket and a Photo ID to enter the park.

## Legal Terms

Valid for one visit to Sesame Place on the date selected. This ticket is only valid for person listed on the Ticket. This ticket may not be transferred or resold. Tickets are nonrefundable. Ticket void if altered. In order to ensure our guests' comfort and safety, Sesame Place may be subject to capacity limitations. Admission into the park may be suspended during the day. Admission is not guaranteed. Ticket value expires 1/2/2022.

# THIS IS YOUR TICKET PROCEED TO THE PARK

Sesame Place Philadelphia General Parking



**2909 65216 39620 7447**

## Redemption

**Step 1:** Verify our days and hours of operation prior to arrival.

**Step 2:** Print this eTicket and present at the General Parking Toll Plaza.

**Step 3:** Retain parking receipt for re-entry into the lot based upon availability.

## Legal Terms

Parking voucher is valid for one vehicle for one operating day. This voucher does not guarantee parking. Parking is based on availability, it is recommended to arrive early. Not for re-sale. Non-refundable. Non-transferable. Not valid on purchase of Merchandise or Admission Tickets. Lost or Stolen Vouchers will not be replaced. Not redeemable for cash. Vouchers may not be copied. Tickets and Season Passes are non-refundable. This ***eTicket*** expires 7/5/2023 Ticket void if altered.

# THIS IS YOUR TICKET PROCEED TO THE PARK

Sesame Place Philadelphia Single-Day  
Ticket (7/4/2022) - 7/4/2022



**2909 35216 39620 7443**

## Redemption

**Step 1:** Verify your date selected and park hours prior to arrival

**Step 2:** Print this eTicket or show on your mobile device

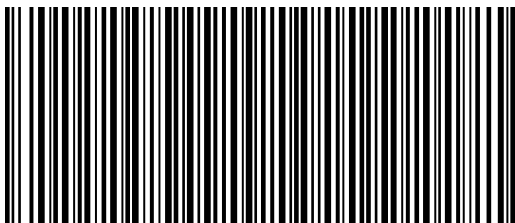
**Step 3:** Proceed directly to the park entrance and present your eTicket and a Photo ID to enter the park.

## Legal Terms

Valid for one visit to Sesame Place on the date selected. This ticket is only valid for person listed on the Ticket. This ticket may not be transferred or resold. Tickets are nonrefundable. Ticket void if altered. In order to ensure our guests' comfort and safety, Sesame Place may be subject to capacity limitations. Admission into the park may be suspended during the day. Admission is not guaranteed. Ticket value expires 1/2/2022.

# THIS IS YOUR TICKET PROCEED TO THE PARK

Sesame Place Philadelphia Single-Day  
Ticket (7/4/2022) - 7/4/2022



**2252 54302 82511 4921**

**Nathan Fleming**

## Redemption

**Step 1:** Verify your date selected and park hours prior to arrival

**Step 2:** Print this eTicket or show on your mobile device

**Step 3:** Proceed directly to the park entrance and present your eTicket and a Photo ID to enter the park.

## Legal Terms

Valid for one visit to Sesame Place on the date selected. This ticket is only valid for person listed on the Ticket. This ticket may not be transferred or resold. Tickets are nonrefundable. Ticket void if altered. In order to ensure our guests' comfort and safety, Sesame Place may be subject to capacity limitations. Admission into the park may be suspended during the day. Admission is not guaranteed. Ticket value expires 1/2/2022.

# Exhibit 3



**Sesame Place Philadelphia Single-Day Ticket (7/11/2022) - 7/11/2022**

**Confirmed Special Guest**

**ingrid morales**

voucher#: **1799 27576 53597 8534**



**Redemption**

**Step 1:** Verify your date selected and park hours prior to arrival

**Step 2:** Print this eTicket or show on your mobile device

**Step 3:** Proceed directly to the park entrance and present your eTicket and a Photo ID to enter the park.

**Legal Terms**

Valid for one visit to Sesame Place on the date selected. This ticket is only valid for person listed on the Ticket. This ticket may not be transferred or resold. Tickets are nonrefundable. Ticket void if altered. In order to ensure our guests' comfort and safety, Sesame Place may be subject to capacity limitations. Admission into the park may be suspended during the day. Admission is not guaranteed. Ticket value expires 1/2/2022.

**THIS IS  
YOUR  
TICKET**

**Proceed directly  
to park entrance**



**EXCLUSIVE OFFER**

Apply the cost of your ticket towards a Season Pass on the day of your visit only.

Visit Guest Relations today  
to upgrade your day!

**BENEFITS  
INCLUDE**



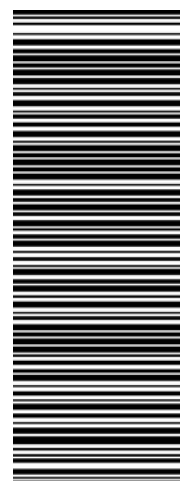
Free  
Parking



Free Guest  
Tickets



In-Park  
Discounts





**Sesame Place Philadelphia Single-Day Ticket (7/11/2022) - 7/11/2022**

**Confirmed Special Guest**



voucher#: **7414 19348 15943 3842**



**Redemption**

**Step 1:** Verify your date selected and park hours prior to arrival

**Step 2:** Print this eTicket or show on your mobile device

**Step 3:** Proceed directly to the park entrance and present your eTicket and a Photo ID to enter the park.

**Legal Terms**

Valid for one visit to Sesame Place on the date selected. This ticket is only valid for person listed on the Ticket. This ticket may not be transferred or resold. Tickets are nonrefundable. Ticket void if altered. In order to ensure our guests' comfort and safety, Sesame Place may be subject to capacity limitations. Admission into the park may be suspended during the day. Admission is not guaranteed. Ticket value expires 1/2/2022.

**THIS IS  
YOUR  
TICKET**

**Proceed directly  
to park entrance**



**EXCLUSIVE OFFER**

Apply the cost of your ticket towards a Season Pass on the day of your visit only.

Visit Guest Relations today  
to upgrade your day!

**BENEFITS  
INCLUDE**



Free  
Parking



Free Guest  
Tickets



In-Park  
Discounts







**Sesame Place Philadelphia Single-Day Ticket (7/11/2022) - 7/11/2022**

**Confirmed Special Guest**

**n**

**m**

voucher#: **1497 66994 19345 3729**



### Redemption

**Step 1:** Verify your date selected and park hours prior to arrival

**Step 2:** Print this eTicket or show on your mobile device

**Step 3:** Proceed directly to the park entrance and present your eTicket and a Photo ID to enter the park.

### Legal Terms

Valid for one visit to Sesame Place on the date selected. This ticket is only valid for person listed on the Ticket. This ticket may not be transferred or resold. Tickets are nonrefundable. Ticket void if altered. In order to ensure our guests' comfort and safety, Sesame Place may be subject to capacity limitations. Admission into the park may be suspended during the day. Admission is not guaranteed. Ticket value expires 1/2/2022.

# THIS IS YOUR TICKET

**Proceed directly  
to park entrance**



## EXCLUSIVE OFFER

Apply the cost of your ticket towards a Season Pass on the day of your visit only.

Visit Guest Relations today  
to upgrade your day!

**BENEFITS  
INCLUDE**



Free  
Parking



Free Guest  
Tickets



In-Park  
Discounts





**Sesame Place Philadelphia Single-Day Ticket (7/11/2022) - 7/11/2022**

**Confirmed Special Guest**



voucher#: **5773 98150 36449 2545**



**Redemption**

**Step 1:** Verify your date selected and park hours prior to arrival

**Step 2:** Print this eTicket or show on your mobile device

**Step 3:** Proceed directly to the park entrance and present your eTicket and a Photo ID to enter the park.

**Legal Terms**

Valid for one visit to Sesame Place on the date selected. This ticket is only valid for person listed on the Ticket. This ticket may not be transferred or resold. Tickets are nonrefundable. Ticket void if altered. In order to ensure our guests' comfort and safety, Sesame Place may be subject to capacity limitations. Admission into the park may be suspended during the day. Admission is not guaranteed. Ticket value expires 1/2/2022.

**THIS IS  
YOUR  
TICKET**

**Proceed directly  
to park entrance**



**EXCLUSIVE OFFER**

Apply the cost of your ticket towards a Season Pass on the day of your visit only.

Visit Guest Relations today  
to upgrade your day!

**BENEFITS  
INCLUDE**



Free  
Parking



Free Guest  
Tickets



In-Park  
Discounts



# Exhibit 4

# THIS IS YOUR TICKET PROCEED TO THE PARK

Sesame Place Philadelphia Single-Day  
Ticket (6/25/2022) - 6/25/2022



0791 80312 21639 9695



## Redemption

**Step 1:** Verify your date selected and park hours prior to arrival

**Step 2:** Print this eTicket or show on your mobile device

**Step 3:** Proceed directly to the park entrance and present your eTicket and a Photo ID to enter the park.

## Legal Terms

Valid for one visit to Sesame Place on the date selected. This ticket is only valid for person listed on the Ticket. This ticket may not be transferred or resold. Tickets are nonrefundable. Ticket void if altered. In order to ensure our guests' comfort and safety, Sesame Place may be subject to capacity limitations. Admission into the park may be suspended during the day. Admission is not guaranteed. Ticket value expires 1/2/2022.

# THIS IS YOUR TICKET PROCEED TO THE PARK

Sesame Place Philadelphia Single-Day  
Ticket (6/25/2022) - 6/25/2022



**5345 21190 27086 8459**

**Yoselis Romero**

## Redemption

**Step 1:** Verify your date selected and park hours prior to arrival

**Step 2:** Print this eTicket or show on your mobile device

**Step 3:** Proceed directly to the park entrance and present your eTicket and a Photo ID to enter the park.

## Legal Terms

Valid for one visit to Sesame Place on the date selected. This ticket is only valid for person listed on the Ticket. This ticket may not be transferred or resold. Tickets are nonrefundable. Ticket void if altered. In order to ensure our guests' comfort and safety, Sesame Place may be subject to capacity limitations. Admission into the park may be suspended during the day. Admission is not guaranteed. Ticket value expires 1/2/2022.

# Exhibit 5



## Admission - Sesame Place 2021 Platinum Season Pass - EZpay

### Confirmed Special Guest

**Katie Valdez**

Order#: 202103285223549

Barcode Number:

**A269 98095 26943 77364**

### Redemption

**Step 1:** Print this Season Pass or show on your mobile device.

**Step 2:** Take Season Pass to park entrance to enter park.

**Step 3:** Save this for future visits. If you would like to receive a physical pass, please visit Guest Relations or Welcome Center.

### Legal Terms

Valid at Sesame Place and SEA parks. Not valid for special ticketed events at SEA parks. Includes Free Preferred Parking at Sesame Place, based on availability. Also includes 20% discount on food, beverages, cabanas, dines and stroller rentals. A 25% discount merchandise, and photos. A 50% discount on Magic Queues. This Season Pass may not be transferred or resold. This Season Pass is only valid for the person listed above. This Season Pass is non-transferable and nonrefundable. Pass void if altered. Photo enrollment required for entry. Discounts may vary at SEA Parks. Please refer to EZpay terms and conditions. Season Pass expires on 1/2/22.

## THIS IS YOUR SEASON PASS.

Choose from the following options for future visits:

1. Access your Season Pass barcode from the Pass Member website
2. Redeem for a wallet-size Pass at kiosk

### Outside Food & Beverage Policy

No outside food, beverages, or coolers are allowed to be brought into Sesame Place, except you may bring a bottle of water or a refillable water bottle.

Exceptions may be made for guests with special dietary needs, including food allergies and baby food/formula.

Guest should contact  
**AllergenFriendlySPL@seaworld.com**  
 3 days prior to their visit to make accommodations.



# Exhibit 6



# Terms and Conditions

1. BY ENTERING THIS SITE YOU ACKNOWLEDGE AND AGREE TO THE FOLLOWING TERMS AND CONDITIONS. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT USE THIS SITE.

2. BY ENTERING THIS SITE YOU ACKNOWLEDGE AND AGREE THAT THIS SITE WILL ONLY BE CONSTRUED AND EVALUATED ACCORDING TO UNITED STATES LAW. IF YOU USE THIS SITE FROM OTHER LOCATIONS YOU ARE RESPONSIBLE FOR COMPLIANCE WITH ANY AND ALL APPLICABLE LOCAL LAWS. SEAWORLD PARKS & ENTERTAINMENT MAKES NO REPRESENTATIONS THAT THE MATERIALS CONTAINED WITHIN THIS SITE ARE APPROPRIATE FOR LOCATIONS OUTSIDE THE UNITED STATES. ANY AND ALL INFORMATION CONTAINED IN THIS SITE, INCLUDING BUT NOT LIMITED TO INFORMATION REGARDING PRODUCTS AND SERVICES, APPLIES ONLY TO THOSE PROVIDED OR OFFERED WITHIN THE UNITED STATES.

3. SeaWorld Parks & Entertainment is the copyright owner of this site and no portion of this site, including but not limited to the text, images, audio or video, may be used in any manner, or for any purpose, without SeaWorld Parks & Entertainment's express written permission, except as provided for herein. Without in any way waiving any of the foregoing rights, you may download one copy of the material on this site for your personal, non-commercial home use only, provided you do not delete or change any copyright, trademark or other proprietary notices. Modification or use of the material on this site for any other purposes violates SeaWorld Parks & Entertainment's legal rights.

4. By entering this site you acknowledge and agree that your use is at your own risk and that none of the parties involved in creating, producing, or delivering this site is liable for any direct, incidental, consequential, indirect, or punitive damages, or any other losses, costs, or expenses of any kind (including legal fees, expert fees, or other disbursements) which may arise, directly or indirectly, through the access to, use of, or browsing of this site or through your downloading of any materials, data, text, images, video or audio from this site, including but not limited to anything caused by any viruses, bugs, human action or inaction or any computer system, phone line, hardware, software or program malfunctions, or any other errors, failures or delays in computer transmissions or network connections.

5. Although the specifications, features, illustrations, equipment and other information contained in the site are based upon up-to-date information, and while SeaWorld Parks & Entertainment makes all reasonable efforts to ensure that all material on this site is correct, accuracy cannot be guaranteed and SeaWorld Parks & Entertainment makes no warranties or representations as to its accuracy. All content information and materials contained in this site are provided to you "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

6. Do not post on this site, or transmit to this site, any pornographic, obscene, profane, defamatory, libelous, threatening, unlawful or other material which could constitute or encourage conduct that would be considered a criminal offense, give rise to civil liability, promote the excessive or irresponsible consumption of alcohol, or otherwise violate any law or regulation. Notwithstanding the fact that SeaWorld Parks & Entertainment or other parties involved in creating, producing, or delivering this site, may monitor or review transmissions, posting, discussions, or chats, SeaWorld Parks & Entertainment and all parties involved in creating, producing or delivering this site, assume no responsibility or liability which may arise from the content thereof, including but not limited to claims for defamation, libel, slander, obscenity, pornography, profanity, or misrepresentation.

7. By entering this site you acknowledge and agree that any communication or material you transmit to this site or SeaWorld Parks & Entertainment, in any manner and for any reason, will not be treated as confidential or proprietary. Furthermore, you acknowledge and agree that any ideas, concepts, techniques, procedures, methods, systems, designs, plans, charts, or other materials you transmit to SeaWorld Parks & Entertainment may be used by SeaWorld Parks & Entertainment anywhere, anytime, and for any reason whatsoever.

8. By entering this site you acknowledge and agree that any name, logo, trademark, or servicemark contained on this site is owned or licensed by SeaWorld Parks & Entertainment and may not be used by you without prior written approval. SeaWorld Parks & Entertainment will aggressively enforce its intellectual property rights to the full extent of the law. Sound, graphics, charts, text, video, information, or images of places or people are either the property of SeaWorld Parks & Entertainment or used on this site with permission. Your use of any of these materials is prohibited unless specifically provided for on the site. Any unauthorized use of these materials may subject you to penalties or damages, including but not limited to those related to violation of trademarks, copyrights, privacy, and publicity rights.

9. Although this site may be linked to other sites, SeaWorld Parks & Entertainment is not, directly or indirectly, implying any approval, association, sponsorship, endorsement, or affiliation with the linked site, unless specifically stated therein. By entering this site you acknowledge and agree that SeaWorld Parks & Entertainment has not reviewed all the sites linked to this site and is not responsible for the content of any off-site pages or any other site linked to this site. Your linking to any other off-site pages or other sites is at your own risk.

10. SeaWorld Parks & Entertainment reserves the right to revise this legal information at any time and for any reason and reserves the right to make changes at any time, without notice or obligation, to any of the information contained on this site. By entering this site you acknowledge and agree that you shall be bound by any such revisions. We suggest periodically visiting this page of the site to review these terms and conditions.

11. Sponsor: SeaWorld Parks & Entertainment, 6240 Sea Harbor Drive, Orlando, FL 32821.

## VACATION PACKAGE TERMS AND CONDITIONS

The following terms and conditions ("terms and conditions" or "agreement") apply to all vacation packages sold by SeaWorld Parks & Entertainment, Inc. or its subsidiaries (collectively, "SEA") for its theme parks. All vacation packages sold in the State of Florida constitute prearranged travel sold by Sea World LLC. Sea World LLC is registered with the State of Florida as a Seller of Travel, Registration No. ST35724.

### **Charges**

All prices shown are in U.S. Dollars (\$) and include applicable taxes, fees and charges, except as otherwise noted.

Package prices may require a minimum stay of one or more nights. All package prices are subject to change due to imposition of taxes or other charges by governmental authorities. All persons on the same reservation must purchase the same vacation package.

Other charges may be incurred that are not included in the quoted package price. While not all inclusive, examples include, hotel extra-person or extra-bed charges, resort fees, gratuities, hotel energy and/or telecommunications surcharges, parking fees, telephone fees, room service, movies, mini-bar, and other incidentals.

### **Hotel Accommodations**

Hotel check-in varies by location. Two double beds are standard in the room unless otherwise stated. Charges for in-room safes, rollaway beds and cribs, plus applicable taxes, are not included in the package price and are payable directly to the hotel. Gratuities, resort fees, parking fees, laundry, telephone calls, meals, beverages, sightseeing or any other incidentals at the hotel are the responsibility of the guest. Adjacent rooms and/or connecting rooms, room locations, types of bedding and smoking preferences are on a request-only basis and subject to availability.

### **Deposits and Payments**

Payments must be made by credit card for internet sales. Accepted forms of payment are American Express®, MasterCard®, Discover® Card and Visa®.

Payment in full is required for the booking of a vacation package.

### **Travel Financing Options**

UpLift provides a service for offering closed-end installment loan products by CBW Bank ("Bank"), optimizing and fulfilling consumer rewards, perks, messaging and incentives, and performing business analytics. UpLift, Inc is licensed as a Finance Lender and Broker by the California Department of Business Oversight, license number 60DBO-49318. For further information on UpLift policies and terms, please visit [www.uplift.com](http://www.uplift.com) (<http://www.uplift.com/>).

### **Pricing of Components in the Package**

We are not able to disclose the pricing of the components within the vacation package.

### **Revisions, Cancellations and Refund Policy**

In the event of cancellation, the right to a refund is limited. We can be reached at 407-401-8477 (tel:4074018477). If a vacation package is cancelled more than 72 hours prior to 6 p.m. on the scheduled date of arrival (more than 30 days prior to the scheduled date of arrival for Discovery Cove reservations), the cost of the vacation package is refundable.

There are no refunds if the vacation package is cancelled within 72 hours of 6 p.m. of the scheduled date of arrival

(within 30 days of the scheduled date of arrival for Discovery Cove reservations). Refunds are not given on individual components of the package. Unused portions of vacation packages are not eligible for refund. All vacation packages are non-transferable.

### **Applicable Law and Responsibility**

Both parties agree that all claims, disputes and matters whatsoever arising under or in connection with your booking and these policies and procedures shall be governed by the laws of the State of Florida (without regard to conflict of laws) and shall be litigated, if at all, in and before a court located in Orange County, Florida, USA, to the exclusion of the courts of any other state or country. All proceedings to resolve or litigate a dispute in any forum shall be conducted on an individual basis between the parties and neither party shall seek to have any such action heard as a class action, private attorney general action or in any representative capacity. SEA is not responsible for any error or omission. SEA is an independent wholesaler and is not responsible for any acts or omissions by the hotel. SEA shall not be responsible or liable in any way for any loss, injury (including personal injury), or any damage caused or arising in connection with customer's travel or other services or products provided through SEA, including but not limited to, any transportation, accommodations, attractions, meals, or other services, due to any acts of God, weather, strikes, acts of Government or other authorities, wars, civil disturbances, hijacks, thefts, or any other circumstances beyond our control. The terms and conditions of the transportation providers (including all applicable tariffs) shall apply to all transportation services. Upon a deposit for, and/or purchase of a vacation package, or through an electronic acknowledgment of acceptance of these terms, the guest accepts and agrees to these terms and conditions. This agreement constitutes the final, complete and exclusive understanding between the parties with respect to its subject matter and supersedes all prior or contemporaneous agreements in regard thereto. If either party commences legal action to interpret or enforce the terms of this agreement, the prevailing party in such action shall be entitled to recover reasonable attorneys' fees and costs, including, without limitation, those costs incurred at the trial and appellate levels and in any bankruptcy, reorganization, insolvency or similar proceeding. The parties have not relied upon any promises, warranties or undertakings other than those expressly set forth in this agreement. If any provision of this agreement is deemed to be invalid or unenforceable by any court of competent jurisdiction, then the balance of this agreement shall remain enforceable, and such invalid or unenforceable provision shall be enforced by such court to the maximum possible extent.

## **EZ PAY TERMS AND CONDITIONS**

*(rev. 12/3/2019)*

By accepting these terms and conditions, I agree to pay the down payment (including any applicable taxes) and service fee, and thereafter to pay the remaining number of payments, which will be billed monthly to my credit or debit card or withdrawn from my financial institution. I may prepay my outstanding balance for the Initial Term (as defined above) at any time, but prepayment will not automatically terminate this contract unless I notify SEA of my desire to cancel my EZ Pay membership. **I UNDERSTAND THAT I AM NOT PERMITTED TO CANCEL MY EZ PAY PLAN UNTIL ALL MONTHLY PAYMENTS FOR THE INITIAL TERM HAVE BEEN MADE. IF I FAIL TO PAY ANY MONTHLY PAYMENT, THE ENTIRE REMAINING BALANCE WILL BE DUE AND PAYABLE IMMEDIATELY (acceleration not applicable to**

**Virginia residents) AND MY MEMBERSHIP MAY BE CANCELLED.** If I fail to make a payment for a period of 10 days or more after it is due, in the sole discretion of SeaWorld Parks & Entertainment, Inc. or its applicable subsidiary ("SEA"), I will be charged the costs of collecting my outstanding debt, including reasonable attorneys' fees and court costs. If I fail to make a payment for a period of 10 days or more after it is due, in the sole discretion of SEA, I may be assessed a late fee of up to 5% of each late installment (California residents: 5% late fee is not applicable. California residents may be assessed a late fee of up to \$10 if the payment is at least 10 days late or up to \$15 if the payment is at least 15 days late and may also be subject to the actual and reasonable costs of collection if they fail to notify SEA of any change of address or to communicate with SEA 45 days after failure to make a payment).

**EXCEPT FOR PASSES FOR SESAME PLACE ONLY WHICH WILL NOT AUTOMATICALLY RENEW, THIS CONTRACT WILL RENEW AUTOMATICALLY ON A MONTH-TO-MONTH BASIS FOLLOWING THE INITIAL TERM UNTIL I TERMINATE IT. I HEREBY AUTHORIZE SEA TO WITHDRAW FUNDS FROM MY FINANCIAL INSTITUTION OR CHARGE MY CREDIT OR DEBIT CARD ON FILE WITH SEA FOR ALL PAYMENTS UNDER THIS CONTRACT DURING THE INITIAL TERM AND FOR ALL PAYMENTS AFTER THE AUTOMATIC RENEWAL OF THIS CONTRACT UNTIL I TERMINATE THIS CONTRACT. THE MONTHLY PAYMENT AMOUNT FOLLOWING THE INITIAL TERM WILL EQUAL 1/12 THE THEN-CURRENT ANNUAL PASS RETAIL RATE PLUS TAX. SEA RESERVES THE RIGHT TO CHANGE THE ANNUAL PASS RATE (THEREBY CHANGING YOUR MONTHLY PAYMENT AMOUNT OF 1/12 OF THE SAME, PLUS TAX) AFTER THE EXPIRATION OF THE INITIAL TERM UPON PROVIDING YOU WITH NOT LESS THAN THIRTY (30) DAYS ADVANCE WRITTEN NOTICE OF SUCH CHANGE TO THE ANNUAL PASS RATE. TO TERMINATE THIS CONTRACT EFFECTIVE AFTER THE INITIAL TERM AND TO PREVENT AUTOMATIC MONTH-TO-MONTH RENEWAL OF THIS CONTRACT AFTER THE INITIAL TERM, PLEASE CONTACT SEA C/O SEA WORLD CONTACT CENTER, 6817 WESTWOOD BLVD., ORLANDO, Florida 32821 TEL: 877-793-7935 OR GO TO YOUR ACCOUNT PAGE AT <https://seaworld.com/end-ezpay/> (<https://seaworld.com/end-ezpay/>). I MAY CANCEL MY AUTOMATICALLY RENEWED MEMBERSHIP(S) AT ANY TIME AFTER THE INITIAL TERM HAS EXPIRED (NOT APPLICABLE TO EZ PAY PASSES FOR SESAME PLACE USAGE ONLY). IF I PERMIT THIS CONTRACT TO RENEW, IT SHALL RENEW ON A MONTH-TO-MONTH BASIS AND SEA SHALL BE ENTITLED TO CONTINUE FINANCIAL INSTITUTION WITHDRAWALS OR CREDIT OR DEBIT CARD WITHDRAWALS EACH MONTH.**

I understand that I am not permitted to contract for additional EZ Pay plans if any balance under this contract is past due, and that any payments made to SEA may be used by SEA as a set-off to settle past due balances under this contract before applying the payments to other sales transactions. In addition, regardless of the number of times a membership is used or not used, there are no refunds of amounts paid on my EZ Pay plan. I represent and warrant that I am at least 18 years of age, and I consent to the use of my personal identification information for my EZ Pay plan. Any and all disputes, claims, and causes of action arising out of or connected with this contract or the use of any park or membership **SHALL BE RESOLVED INDIVIDUALLY, WITHOUT RESORT TO ANY FORM OF CLASS ACTION.** This contract is made in the state in which the park is located and shall be governed exclusively by the substantive laws of such park state without giving effect to any conflict-of-laws rules requiring the application of the substantive law of any other jurisdiction, and, except for California residents, venue shall solely and exclusively be in a federal or state court located in such park state, and both parties hereby submit to the sole and exclusive personal jurisdiction of said courts and irrevocably waive any and all rights to object to such jurisdiction; provided, however, that for multi-state memberships, this contract is made in the state of Florida and shall be governed exclusively by the substantive laws of the state of

Florida without giving effect to any conflict-of-laws rules requiring the application of the substantive law of any other jurisdiction. If any provision of this contract is deemed to be invalid or unenforceable by any court of competent jurisdiction, then the balance of this contract shall remain enforceable, and such invalid or unenforceable provision shall be enforced by such court to the maximum possible extent. I understand and agree that any electronic signature shall have the same force and effect as a written signature.

**EZ PAY MEMBERSHIP IS NON-TRANSFERABLE, NON-REFUNDABLE, AND MAY BE REVOKED FOR MISUSE.**

**NOTICE TO BUYER -- DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO AN EXACT COPY OF THE CONTRACT YOU SIGN. KEEP IT TO PROTECT YOUR LEGAL RIGHTS.**

**I ACCEPT THE TERMS OF THIS CONTRACT. I ACKNOWLEDGE RECEIPT OF A COPY OF THIS CONTRACT. I ACKNOWLEDGE THAT I HAVE RECEIVED, READ, AND AGREE TO BE BOUND BY THE EZ PAY ORDER TERMS AND CONDITIONS.**

ACCEPTED AND AGREED: SeaWorld Parks & Entertainment, Inc. (electronic signature)

[Home \(/\)](#) / [Terms and Conditions](#)

[Conservation](#)

[Education & Entertainment](#)

[Our Company](#)

[Theme Parks](#)

[Water Parks](#)

© 2022 SeaWorld Parks & Entertainment, Inc. All Rights Reserved.

Terms and Conditions (/policies/terms-and-conditions/)

Notice of Collection  
(https://seaworldentertainment.com/policies/privacy-policy/#collection)

Privacy Policy (/policies/privacy-policy-2019/)

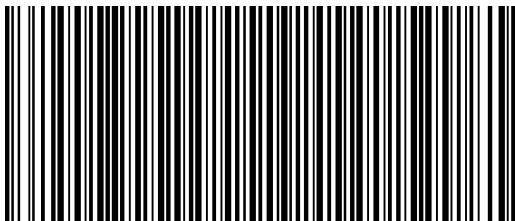
Do Not Sell My Info  
(https://seaworldentertainment.com/policies/privacy-policy/#optout)

Content License (https://seaworld.com/orlando/content-license/)

# Exhibit 7



## Sesame Place Philadelphia 2022 Gold Season Pass



**A597 44653 42836 59458**



### Redemption

**Step 1:** Print this Season Pass or show on your mobile device.

**Step 2:** Take Season Pass to park entrance to enter park.

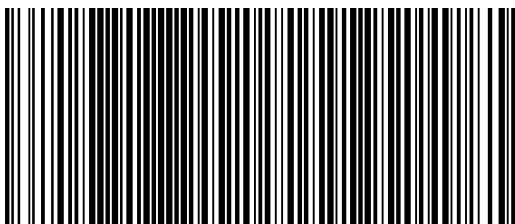
**Step 3:** Save this for future visits. If you would like to receive a physical pass, please visit Guest Relations or Welcome Center.

### Legal Terms

Valid at Sesame Place. Includes Free Preferred Parking, based on availability, Also includes 15% discount on food, beverages, cabanas, dines and stroller rentals. A 20% discount merchandise, and photos. A 30% discount on Magic Queues. This Season Pass may not be transferred or resold. This Season Pass is only valid for the person listed above. This Season Pass is non-transferable and nonrefundable. Pass void if altered. Photo enrollment required for entry. Please refer to EZpay terms and conditions. Season Pass expires on 1/2/23.

**THIS IS YOUR TICKET  
PROCEED TO THE PARK**

## Sesame Place Philadelphia 2022 Gold Season Pass



**A147 17730 25148 74238**

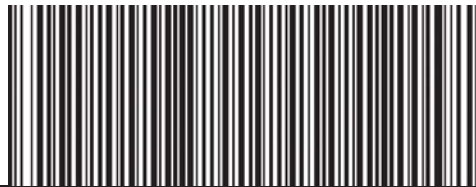
**Lauren Willie**

### Redemption

- Step 1:** Print this Season Pass or show on your mobile device.
- Step 2:** Take Season Pass to park entrance to enter park.
- Step 3:** Save this for future visits. If you would like to receive a physical pass, please visit Guest Relations or Welcome Center.

### Legal Terms

Valid at Sesame Place. Includes Free Preferred Parking, based on availability, Also includes 15% discount on food, beverages, cabanas, dines and stroller rentals. A 20% discount merchandise, and photos. A 30% discount on Magic Queues. This Season Pass may not be transferred or resold. This Season Pass is only valid for the person listed above. This Season Pass is non-transferable and nonrefundable. Pass void if altered. Photo enrollment required for entry. Please refer to EZpay terms and conditions. Season Pass expires on 1/2/23.



## Sesame Place Pass Member Guest Ticket

**Confirmed Special Guest**



voucher#: **1092 66783 18345 3729**

Pass Member Barcode:  
A147177302514874238

### Redemption

**Step 1:** Verify our hours of operations

**Step 2:** Print this eTicket or show on your mobile device

**Step 3:** Proceed directly to the park entrance and present this eTicket and a Photo ID to enter the park.

### Legal Terms

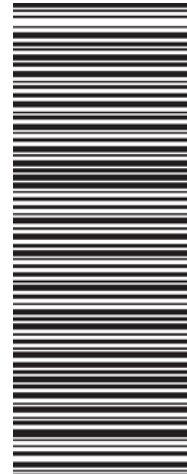
Valid for one visit to Sesame Place any operating day through January 2, 2023. This ticket is only valid for person listed on the ticket. This ticket may not be transferred or resold. Ticket value expires on 1/2/23. Tickets are nonrefundable. Ticket void if altered. In order to ensure our guests' comfort and safety, Sesame Place may be subject to capacity limitations. Admission into the park maybe suspended during the day. Admission is not guaranteed.

# THIS IS YOUR TICKET


**Proceed directly  
to park entrance**

**Thank you for your visit.  
Be sure to join us again.**

SEAWORLD PARKS  
& ENTERTAINMENT®



# Exhibit 8

 Edit Format Code
 ✕


ID: 14464

Name: 

☐ Pre-Printed  
☐ Allow Wristband Print

Location:


Ticket Stock: 


Clone 


Logo Format:

Format:
 

<RC100,105>ONE DAY TICKET  
 <F10><HW1,1>  
 <RC250,170>Valid Only  
 <LT4><RC230,145><BX110,350><F13><LT4><RC120,648>  
 <F10><HW1,1>  
 <RC250,600>You Paid  
 <RC290,640>\$@P@p  
 <F9><HW1,1>  
 <RC425,105>Valid only at Sesame Place. Non-Refundable.  
 <HW2,1>  
 <RC355,105>Upgrade this ticket to a Season Pass today!  
 <F13>@p<F10><HW1,1><RC290,210>@d<F9><RC60,225>C:@c R:@r P:@U T:@t  
 @d<RC60,18>\$@P@p

New 

Save 

Cancel 

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>QUINTON BURNS, <i>et al.</i>,</b>	:	
	:	
<b>Plaintiffs,</b>	:	
	:	
<b>v.</b>	:	<b>CIVIL ACTION</b>
	:	
<b>SEAWORLD PARKS &amp; ENTERTAINMENT, INC.; and SEAWORLD PARKS &amp; ENTERTAINMENT LLC,</b>	:	<b>NO. 22-cv-02941</b>
	:	
<b>Defendants.</b>	:	
	:	

**[PROPOSED] ORDER GRANTING MOTION TO DISMISS**

Upon consideration of Defendants SeaWorld Parks & Entertainment, Inc. and SeaWorld Parks & Entertainment LLC (collectively “Defendants”) motion to dismiss Plaintiffs’ Amended Class Action Complaint for failure to state a claim upon which relief can be granted and to dismiss Plaintiffs’ requests for injunctive relief for lack of standing, Plaintiffs’ opposition thereto, and the entire record in this matter, it is hereby:

**ORDERED** that the Motion is **GRANTED**; and it is further

**ORDERED** that Plaintiffs’ Amended Class Action Complaint is **DISMISSED**.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

**BY THE COURT:**

\_\_\_\_\_  
**WENDY BEETLESTONE, J.**

**CERTIFICATE OF SERVICE**

I, Leigh M. Skipper, certify that a true and correct copy of the foregoing Defendants SeaWorld Parks & Entertainment, Inc. and SeaWorld Parks & Entertainment LLC's Motion to Dismiss and Memorandum in Support was served using the CM/ECF system, which will send notification of such filing to counsel and parties of record electronically on November 2, 2022:

/s/ Leigh M. Skipper  
Leigh M. Skipper