IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
Philadelphia Division

QUINTON BURNS, et al.

Plaintiffs,

v.

SEAWORLD PARKS & ENTERTAINMENT, INC., et al.,

Defendants.

Case No. 2:22-cv-02941

PLAINTIFFS' MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

RELEVANT PROCEDURAL HISTORY

Plaintiffs filed their original class action complaint (ECF 1) on July 27, 2022, alleging widespread racial discrimination at the Sesame Place Philadelphia amusement park (the "Park") owned and operated by Defendants. The original pleading defined the class as follows:

> (a) All Black persons who;
> (b) Since July 27, 2018;
> (c) entered contracts with SeaWorld for admission into Sesame Place Philadelphia who;
> (d) suffered disparate treatment from SeaWorld and/or its agents and/or employees by;
> (e) ignoring with Black children while openly interacting with similarly situated white children.

ECF 1, ¶ 108. Plaintiffs amended their original pleading as a matter of course on September 28, 2022 , changing, *inter alia*, subsection (a) of the class definition from "All Black persons" to "All minority persons." ECF 25, ¶ 108.

On June 5, 2023 this Court dismissed *without prejudice* Plaintiffs' claim for negligent supervision, ECF 49, pursuant to Defendants' Motion to Dismiss (ECF Nos. 29 & 33).

Plaintiffs and Defendants engaged in discovery, including the exchange of written interrogatory answers as well as the production of thousands of pages of documents, photographs, and video footage. Further, the parties participated in approximately 40 depositions of fact and expert witnesses, including depositions of current and former employees who worked at the Park and individuals designated by Defendants to testify on their behalf pursuant to Rule 30(b)(6).[1] Discovery closed on September 11, 2023, excepting certain open discovery issues the Court has since resolved. Those open discovery issues were completed on December 29, 2023.

On November 27, 2023, Plaintiffs filed their Motion for Certification of the Class (ECF 97 and 107), whereupon Plaintiffs requested an opportunity to amend their pleading to change the class definition and reallege their negligent supervision claim that was previously dismissed without prejudice. *Id.* at pp. 2, 5 n.1.

On January 30, 2024, the Court issued an Order stating, "if Plaintiffs are seeking to amend their Complaint to change the definition of the class and to replead the negligent supervision claim, they shall, no later than February 5, 2024, file a Motion to so amend." (ECF 122).

Discovery revealed additional facts that would allow Plaintiffs to address any shortcomings in their previously pled claims for negligent supervision of Park employees. Plaintiffs seek to amend their Complaint to replead that claim. Additionally, discovery revealed discriminatory practices by Park employees in situations *other* than costume character interactions with minority Park patrons. For that reason, Plaintiffs seek leave to amend the class definition. Further, to avoid the appearance of having pled a "fail safe" class, *see* ECF 39 and 47, Plaintiffs wish to amend their class definition.

[1] While the parties worked to overcome numerous discovery disputes, not all disputes resolved, requiring the Court to appoint Amy Kurland, Esq. as special master to make recommendations to the Court. (ECF 63).

STANDARD OF REVIEW

Under Rule 15(a) of the Federal Rules of Civil Procedure, "a party may amend the party's pleadings . . . by leave of court . . . and leave shall be freely given when justice so requires." Rule 15(a). While Rule 15 liberally allows leave to amend to be "freely given," district courts have the discretion to deny a motion for leave to amend where it is apparent from the record that: (1) there is undue delay, bad faith, or dilatory motive; (2) the amendment would be futile; or (3) the amendment would prejudice the other party. *See Lake v. Arnold*, 232 F.3d 360, 373 (3d Cir. 2000).

It is within the sound discretion of the trial court to determine whether a party shall have leave to amend pleadings out of time. *See Foman v. Davis*, 371 U.S. 178, 182 (1962); *Heyl & Patterson Int'l, Inc. v. F.D. Rich Housing*, 663 F.2d 419, 425 (3d Cir. 1981). However, "[i]n the absence of any apparent or declared reason-such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the allowance of the amendment, futility of the amendment, etc.-the leave sought should, as the rule requireS, be 'freely given.'" *Foman*, 371 U.S. at 182.

Further, a request to amend a complaint that falls after the court's deadline to amend must also meet the "good cause" standard from Rule 16(b)(4). *Premier Comp Solutions v. UPMC*, 970 F.3d 316, 319 (3d Cir. 2020). " 'Good cause' exists when the [s]chedule cannot reasonably be met despite the diligence of the party seeking the extension." *ICU Medical, Inc. v. Ryman Techs., Inc.*, 674 F. Supp. 2d 574, 577 (D. Del. 2009). The Third Circuit recently clarified that the analysis under Rule 16(b)(4) must precede Rule 15(a)(2)'s "freely giv[en]" analysis. *Premier Comp*, 970 F.3d at 319.

In the Third Circuit, the touchstone for the denial of leave to amend is undue prejudice to the non-moving party. *See Heyl*, 663 F.2d at 425; *Cornell & Co., Inc. v. OSHRC*, 573 F.2d 820,

823 (1978). Merely claiming prejudice, however, is not enough to prevent the leave from being granted. *See Heyl*, 663 F.2d at 426. The non-moving party "must show that it was unfairly disadvantaged or deprived of the opportunity to present facts or evidence which it would have offered had the [moving party's] amendments been timely." *Id.* When the motion for leave to amend is made before trial begins, prejudice *vel non* generally turns on whether the non-moving party would be able, without undue burden, to conduct any additional discovery necessitated by the amendment. *See, e.g.*, *Dole v. Arco Chemical Co.*, 921 F.2d 484, 488 (3d Cir. 1990) (mere possibility that some additional discovery would be required was not unduly prejudicial).

ARGUMENT

A. Good cause exists to grant leave to amend the Complaint as Plaintiffs learned through discovery facts allowing them to cure deficiencies in their previously dismissed claim for negligent supervision.

This Court dismissed, *without prejudice*, Plaintiffs' negligent supervision claim because Plaintiffs alleged that the employees acted *within* the scope of their employment. Discovery has revealed the conduct of Defendants' employees were, in fact, *outside* of the scope of their employment as they were not hired to engage in race discrimination. Plaintiffs requested this Court allow them to amend their Complaint to properly plead a negligent supervision claim in their Reply Brief to Defendants' Opposition to Plaintiffs' Motion for Certification of the Class. (ECF 107, p. 5 n. 1). Some context is helpful.

1. Defendants' had actual knowledge of complaints of alleged racial discrimination by its employees against Park patrons.

Defendants possessed actual knowledge that their amusement park patrons were complaining on a daily basis that they were being racially discriminated against by Park personnel. This intentional racially discriminatory conduct by Defendants' employees supports a negligent supervision claim.

Cathy Valeriano, Park President of Sesame Place Philadelphia, testified as the corporate designee on behalf of both Defendants concerning written complaints received by Defendants that alleged racial discrimination by Park staff upon Park patrons. JA1385, JA1391 – JA1431.[2]

The collective written complaints of racial discrimination to Sesame Place are included in the Joint Appendix at JA1432 – JA1529. These complaints relate to racial discrimination by Sesame Place Philadelphia Park staff upon Park patrons in the form of racial profiling as well as other forms of racism at Park swimming pools, water rides, amusement rides, parades, staff assistance, and food concession lines.

In addition, Sara Tsivikis, Vice President of Human Relations at Sesame Place Philadelphia, stated she was aware of three alleged racist incidents occurring at the park. JA1041 – JA1042, JA1047 – JA1050.

Kaylah Connelly is a former employee of Sesame Place Philadelphia's Entertainment Department who, between 2017 and 2020, worked seasonally as a costume character performer. Ms. Connelly observed minority Park patrons complaining almost daily about being ignored by costumed characters during the seasonal radio shows. She also stated she observed instances where minority Park patrons were ignored by costume character performers during meet and greets. Ms. Connelly further testified minority Park patrons complained "everyday" that they were ignored by costume character performers during the Sesame Place parades. JA1064 – JA1067, JA1101 – JA1109, JA1113.

George Taylor, Defendant SeaWorld Parks & Entertainment, Inc.'s corporate designee, has been Defendants' general counsel, chief legal officer, and corporate secretary since 2010. Mr.

[2] Plaintiffs reference the Joint Appendix filed pursuant to the parties' briefing on Defendants' Motion for Summary Judgment. (ECF 108).

Taylor testified he never saw nor was ever made aware of the numerous written complaints from Park patrons sent to Sesame Place alleging race discrimination against them by park staff between 2018 and 2022. However, according to Mr. Taylor, there were six officers of SeaWorld Parks & Entertainment, Inc., who were also officers of SeaWorld Parks & Entertainment, LLC, between 2018 and 2022. Therefore, if Defendant SeaWorld Parks & Entertainment, LLC, and its officers obtained actual knowledge about complaints concerning race discrimination by Park staff, then SeaWorld Parks & Entertainment, Inc also obtained that knowledge because the officers of the two entities were the same. JA636; JA772.

2. Defendants' had actual knowledge that their teenage employees may be bringing racial biases to their jobs to be carried out upon Defendants' Park patrons.

Defendants possessed actual knowledge their employees brought actual biases to their jobs that could be acted upon to the Park patrons.

Sesame Place Philadelphia is located in Langhorne, a subdivision of Bucks County, Pennsylvania. Between 2018 and the filing of Plaintiffs' Amended Complaint in September 2022, Defendants employed teenage high school students primarily from Bucks County to work throughout its amusement park.

Barbara Simmons started working at The Peace Center, located in Langhorne, Pennsylvania, in 1987 and became Executive Director in 1991. She retired in early 2020. The mission of The Peace Center is to address conflict and violence in Bucks County and, specifically, its schools. Ms. Simmons has personally worked with every school in the 13 school districts in Bucks County. JA1128 – JA1139, JA1150 – JA1151.

Ms. Simmons produced a spreadsheet that documents her investigation of approximately 142 instances of race discrimination in Bucks County between 2016 and early 2020, over half of

which involved high schools. JA1145 – JA1150, JA1156 – JA1159. A copy of the spreadsheet is incorporated in the Joint Appendix at JA1530 – JA1544.

Ms. Simmons described the culture of racism in Bucks County as one of intolerance, discrimination, and hatred. She stated this culture existed among the administrators in the Bucks County high schools. JA1152 – JA1155, JA1165, JA1200.

Ms. Simmons discussed an occasion when Black and White Bucks County high school students were harassed merely because they went to Washington, D.C. to discuss racial incidents in public schools.

Ms. Simmons testified that people of color came to The Peace Center once per month over her entire tenure because of physical threats made against them. Ms. Simmons noted the spreadsheet does not reflect the true number of complaints about racial discrimination in Bucks County because complaints were going to other organizations as well. She stated that the Black community in Bucks County feels fear. JA1171 – JA1218.

Ms. Simmons further testified KKK flyers have been found all over Bucks County. JA1166 – JA1170, JA1208 – JA1210. Copies of the flyers are included collectively at JA1545 – JA1549. Ms. Simmons stated the KKK and the White Aryan Nation are White nationalist organizations that have been present in Bucks County for the past 25 years. JA1210.

Ms. Simmons agreed that a teenager, who discriminatorily decides who gets in a line at the Park and who does not, is an example of prejudice plus power. She added students will believe racist conduct is okay if it is not addressed by people in control. She added that, if Sesame Place ignored racist acts by its employees, it keeps the culture of racism alive and people of color will not feel safe or welcome. JA1219 – JA1221, JA1224 – JA1226. Ms. Simmons stated it is her belief

that students copy the behavior of their parents and the community in which they live. JA1222 – JA1223.

Paul Schweizer, an Events and Production Manager in Sesame Place Philadelphia's Entertainment Department, testified the majority of the Department's employees were teenagers who came from various Bucks County high schools including Neshaminy High School. JA1003 – JA1006.

Ms. Tsivikis used an existing list of high schools and colleges, possessed by Defendants, to recruit employees. Ms. Tsivikis further testified Sesame Place would call and set up recruitment sessions at Bucks County high schools at the beginning of every season. According to Ms. Tsivikis, more than 50% of the park employees were between the ages of 15 and 23. JA1043 – JA1046, JA1054 – JA1056.

Nicholas Manna has been the Director of Entertainment at Sesame Place Philadelphia since 2021. Mr. Manna also testified that, prior to 2020, there existed a connection between Sesame Place Philadelphia and Bucks County high schools. JA921.

The testimony of Mr. Manna and Ms. Tsivikis regarding Defendants recruiting relationship with Bucks County high schools infers that Defendants were aware of the many incidents of race discrimination occurring in these high schools, yet it continued with the relationship.

Ms. Connelly, a former employee of Defendants, stated Bucks County has a reputation of being a racist county. She specifically discussed why she believes her high school, which is located down the street from Bensalem in Bucks County, is racist. JA1104 – JA1109.

Ms. Valeriano testified Defendants recruited from high schools in Bucks County. She stated Defendants' Human Resources Department, in conjunction with the schools' guidance counselors, scheduled visits to the high schools for recruitment purposes. Ms. Valeriano testified

she does not know whether Defendants were made aware of incidents of race discrimination at Bucks County high schools as there is no one available to shed any light as to whether Defendants SeaWorld Parks & Entertainment, LLC, was ever made aware of these incidents of racial discrimination occurring at the Bucks County high schools from which Defendants procured their employees. *Id.* JA1555 – JA1568, JA1559, JA1585 – JA1589, JA1569 – JA1613. Nevertheless, Ms. Valeriano also testified Defendants made it their business to become familiar with the County the Park is in and to maintain a relationship with the township in which it is located. *Id.*

Defendants' inferred knowledge of these incidents of racial discrimination occurring at the very high schools from which they hired their employees, combined with their actual knowledge of allegations of their employees' racism being inflicted upon their Park patrons, demanded that the racist conduct by their employees be addressed. As set forth, *infra*, Defendants' intentional failure to do so supports Plaintiffs' §1981 claim.

3. SeaWorld's Intentional Indifference to Complaints of Racial Discrimination

Defendants, despite possessing actual and/or inferential knowledge of the racist culture from which they were hiring their employees and their actual knowledge of their employees' racial discrimination against their Park patrons, elected to do nothing to address the racial discrimination.

According to Mr. Schweizer, the costumed character performers were given wide discretion as to who they chose to interact with. JA1008. Ms. Tsivikis testified employee training on diversity, equity, and inclusion did not begin until the Fall of 2022. JA1051 – JA1053.

Ms. Connelly testified minority employees at Sesame Place were treated differently than White employees. She described the work environment at Sesame Place as "very toxic." She stated that the job caused almost every Black employee to cry. JA1625, JA1068 – JA1100, JA1110, JA1114 – JA1119.

James LeGette, an African American, worked at Sesame Place between 2012 and 2022 in its Entertainment Department as a supervisor and costumed character performer. Mr. Legette testified that, during his orientation as a new employee, he was not trained in how to deal with potential racial situations that may occur during theater shows, dining with costume characters, character "meet and greets," and the parades. Mr. LeGette's testimony creates an inference that Defendants provided no such training to any of its other employees. Mr. LeGette noted that his termination from Sesame Place was due, in part, to the color of his skin. JA1234 – JA1248.

Ms. Connelly stated she did not recall any guidance from her supervisor on how to address racial incidents should they have occurred at the Park. JA1113 – JA1116. Despite Defendants' contention, Ms. Connelly stated that it was not difficult to see through the costumes. JA1111 – JA1112.

In other words, despite possessing actual knowledge that a significant number of their Sesame Place Philadelphia amusement Park patrons were lodging written and oral complaints of their employees engaging in acts of racial discrimination against them and despite possessing actual knowledge that there may be substance to these allegations of race discrimination because their teenage employees were recruited from high schools that have a history of racist activity, Defendants intentionally developed an unwritten Park-wide policy to *ignore and dismiss these complaints of racial discrimination.*

Cathy Valeriano, testifying on Defendants' behalf, best described Defendants' Park-wide race discriminatory policy. According to Ms. Valeriano, despite the enormity of Park patron complaints of racial discrimination coming to Defendants' attention via their welcome center, social media, marketing department and call center, Defendants either made no attempt to identify the employees involved in the complaints of racial discrimination or, if identified, never

completely investigated many of the complaints; they never disciplined any employee relating to complaints of racial discrimination by Park patrons; and they never created a policy on how to interact with Park patrons. JA1386 – JA1404, JA1426.

Incredibly, Ms. Valeriano testified that *none* of the complaints of racial discrimination brought to Defendants' attention have any merit. JA1425 – JA1427. She stated that Defendants are not apologizing for the actions of their employees. *Id.* JA1429 – JA1431. Ms. Valeriano's testimony establishes a Park-wide position, endorsed and encouraged by Defendants, that no allegation of race discrimination by a Park patron needs to be dealt with in a way that ensures it will never happen again because no such allegation could *ever* be legitimate.

In light of the above, Defendants exhibited intentional indifference to the hundreds of instances of racial discrimination alleged to have been exacted upon their Park patrons by their employees. These facts support claims for negligent supervision. *See* Proposed Second Amended Complaint attached hereto as Ex. 1.

B. Good cause exists to grant leave for Plaintiffs to amend their class definition as Plaintiffs learned though discovery of pervasive discrimination at the Park that is not accounted for under the current class definition.

Plaintiffs' current pleading defines the class the same way that it did when Defendants filed their Motion to Strike:

> (a) All minority persons who;
> (b) Since July 27, 2018;
> (c) entered contracts with SeaWorld for admission into Sesame Place Philadelphia who;
> (d) suffered disparate treatment from SeaWorld and/or its agents and/or employees by;
> (e) ignoring with Black children while openly interacting with similarly situated white children.

(ECF 25, ¶ 108).

Plaintiffs seek to amend their class definition because they have learned through discovery that discriminatory acts by Defendants' employees encompassed far more than costume characters "ignoring with Black children while openly interacting with similarly situated white children." *Id.* Minorities were discriminated against at the Park's swimming pools, water rides amusement rides, parades, staff assistance booths, food concession lines, and other amenities identified above. Plaintiffs seek to redefine that class as, "all minority persons who, since July 27, 2018, either directly or as third-party beneficiaries, entered into contracts with SeaWorld by purchasing admission tickets into Sesame Place Philadelphia." Ex. 1. Such an amendment would provide a means to include all those minority individuals who purchased a ticket to the Park regardless of the type of racial discrimination suffered.

C. Good cause exists to grant leave to amend the Complaint to prevent Defendants' perceived appearance of a "fail safe" class.

Further, Plaintiffs' proposed amendment of the class would alleviate any perceived concern that the current class amounts to a "fail safe" class as Defendants contend.[3] On April 27, 2023, Defendants moved to strike Plaintiffs' class allegations, see ECF 39 and 47, arguing Plaintiffs' class, amounts to a "fail safe" class in that membership in the class may only be determined after a trial on the merits regarding whether discrimination occurred at the Park against individual, putative class members. *Id.* On May 26, 2023, Plaintiffs opposed the motion to strike the class allegations and included a request that the Plaintiffs be allowed to amend their complaint in the future should this Court find Defendants' "fail safe" argument meritorious. (ECF 44 at p. 16). The Court ruled the motion was "denied as premature." Thereafter, Plaintiffs sought permission to amend the class definition in their reply brief filed pursuant to their Motion to Certify the Class.

[3] Plaintiffs do not waive their argument contained in their Opposition to Defendants Motion to Strike Class Allegations. (ECF 44).

(ECF 107, pp. 2, 5 n.1. Plaintiffs' proposed amended Complaint does not prejudice Defendants, has not been delayed, and is not futile, allowing for leave to file under Rule 15.

1. Unfair Prejudice

"[P]rejudice to the non-moving party is the touchstone for denial of an amendment." *United States Fire Insurance Co. v. Kelman Bottles*, No. 12–2270, 2013 WL 5303261, at *8 (3d Cir. Sept. 23, 2013) (internal citations and quotations omitted). "To justify the denial of a motion to amend, the asserted prejudice must amount to more than mere inconvenience to the non-moving party," *Voilas v. General Motors Corp., et al.*, 173 F.R.D. 389, 396 (D.N.J.1997) (internal citations and quotations omitted). "[F]rustrated expectations [do not] constitute[] undue prejudice sufficient to overcome the Rule 15(a) right to amend a pleading." *See Long v. Wilson*, 393 F.3d 390, 400 (3d Cir. 2004) (internal citations and quotations omitted). In determining what constitutes unfair prejudice, courts consider whether allowing the amended pleading would (1) require the non-moving party to expend significant resources to conduct discovery and prepare for trial, (2) significantly delay resolution of the dispute, or (3) prevent a party from bringing a timely action in another jurisdiction. *Id.* (internal citations omitted).

In this instance, given Plaintiffs' proposed amendments, no additional discovery is needed to prepare for trial. The parties have exchanged substantial information prior to the close of discovery, allowing for the trial to proceed as scheduled. Additionally, there is no indication that the amendment would prevent a party from bringing a timely action in another jurisdiction. Moreover, Defendants have been on notice of the possibility that the class definition may be changed since the Court received Plaintiffs' opposition briefing regarding Defendants' Motion to Strike Class Allegations. (ECF 44, p. 16). Plaintiffs sought permission to amend the class

definition in their reply brief filed pursuant to their Motion to Certify the Class. (ECF 107, pp. 2, 5 n.1).

2. Undue Delay

In order for delay to become a legal ground for denying a motion to amend, it must result in prejudice to the non-moving party. *Long v. Wilson*, 393 F.3d 390, 401 (3d Cir. 2004). Delay alone is an insufficient ground to deny a motion to amend. *Lyon v. Goldstein*, No. 04–3458(MLC), 2006 WL 2352595, at *4 (D.N.J. Aug.15, 2006) (citing *Cureton v. Nat. 7 Collegiate Athletic Ass'n*, 252 F.3d 267, 273 (3d Cir. 2001)). "A delay becomes undue when it places an unfair burden on the non-moving party or the court." *Id.* A delay may also become undue where the moving party "has had prior opportunities to amend the pleading and has not done so." *Id.*

In this instance, Plaintiffs seek to amend their Complaint to conform with what they learned during discovery, which only recently closed considering the disputes this Court resolved in Plaintiffs' favor after the formal close of discovery. Further, for the same reasons stated above, Defendants would not be prejudiced by the change as no additional discovery is needed for the parties to proceed to trial.

3. Futility

A proposed amendment may be denied based on futility if it "would fail to state a claim upon which relief could be granted." *Shane v. Fauver*, 213 F.3d 113, 115 (3d Cir. 2000). "In assessing 'futility' the District Court applies the same standard of legal sufficiency as applies under Rule 12(b)(6)." *Id.* To survive dismissal under Rule 12(b)(6), a complaint "must contain sufficient factual matter accepted as true to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 668 (2009) (internal citation omitted). Moreover, in determining whether a

proposed amendment is futile, "the court looks only to the pleadings." *Pharmaceutical Sales & Consulting Corp. v. J. W.S. Delavau Co.*, 106 F.Supp.2d 761, 765 (D.N.J. 2000).

In this instance, Plaintiffs' proposed Second Amended Complaint includes allegations of Park-wide discriminatory practices by Defendants' employees outside the scope of their employment while interacting with Park patrons in ways *other* than dressed as costume characters. Plaintiffs' proposed pleading is not subject to dismissal under Rule 12(b)(6) and, for that reason, is not a futile pleading.

CONCLUSION

For the forgoing reasons, Plaintiffs respectfully request that the Court grant Plaintiffs leave to amend their Complaint to replead the negligent supervision claims and change the class definition.

Dated: February 5, 2024

Respectfully submitted,

MURPHY, FALCON & MURPHY

/s/ *Ronald E. Richardson*
William H. Murphy, Jr. (07985)
Andrew K. O'Connell (28168)
Malcolm P. Ruff (21595)
Ronald E. Richardson (04673)
1 South Street, 30th Floor
Baltimore, Maryland 21202
Telephone: (410) 539-6500
Facsimile: (410) 539-6599
billy.murphy@murphyfalcon.com
andrew.oconnell@murphyfalcon.com
malcolm.ruff@murphyfalcon.com
ronald.richardson@murphyfalcon.com

THE TRIAL LAW FIRM, LLC

/s/
Mart Harris (319504)
Fort Pitt Commons
445 Fort Pitt Boulevard, Suite 220

Pittsburgh, Pennsylvania 15219
Telephone: (412) 588-0030
Facsimile: (412) 265-6505
mh@tlawf.com

DUNCAN LEGAL GROUP

/s/
Jason Duncan (87946)
2001 N. Front Street
Harrisburg, PA 17102
Telephone: (717) 232-1886
Facsimile: (717) 232-4189
jaybdunc@gmail.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, on this 5th day of February 2024, that a true and correct copy of the foregoing Plaintiffs' Motion to File Second Amended Complaint was served via the Court's CM/ECF system, which will send notification of such filing to counsel and parties of record electronically.

/s/ *Ronald E. Richardson*
Ronald E. Richardson

EXHIBIT 1

MURPHY, FALCON & MURPHY
William H. Murphy, Jr. (07985)
Andrew K. O'Connell (28168)
Malcolm P. Ruff (21595)
Ronald E. Richardson (04673)
1 South Street, Suite 3000
Baltimore, Maryland 21202
Telephone: (410) 539-6500
Facsimile: (410 539-6599
billy.murphy@murphyfalcon.com
andrew.oconnell@murphyfalcon.com
malcolm.ruff@murphyfalcon.com
ronald.richardson@murphyfalcon.com

THE TRIAL LAW FIRM, LLC
Mart Harris (319504)
Fort Pitt Commons
445 Fort Pitt Boulevard, Suite 220
Pittsburgh, Pennsylvania 15219
Telephone: (412) 588-0030
mh@tlawf.com

DUNCAN LEGAL GROUP
Jason Duncan (87946)
2001 N. Front Street
Harrisburg, PA 17102
Telephone: (717) 232-1886
Facsimile: (717) 232-4189
jaybdunc@gmail.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

QUINTON BURNS, individually and as Next Friend of K.B. (a minor), and on behalf of a class of similarly situated individuals,

And

NATHAN FLEMING, individually and as Next Friend of O.F. (a minor), and on behalf of a class of similarly situated individuals,
And

Case No.:_2:22-CV-02941

SECOND AMENDED CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

LASHONDA MILES, individually and as Next Friend of M.C. (a minor), and on behalf of a class of similarly situated individuals,

And

INGRID MORALES, individually and as Next Friend of N.M. (a minor), and on behalf of a class of similarly situated individuals,

And

YOSELIS ROMERO, individually and as Next Friend of E.C. (a minor), and on behalf of a class of similarly situated individuals,

And

KATIE VALDEZ, individually and as Next Friend of M.L. (a minor), and on behalf of a class of similarly situated individuals,

And

ASHLEY VALETTE, individually and as Next Friend of D.V. (a minor), and on behalf of a class of similarly situated individuals,

And

LAUREN WILLIE, individually and as Next Friend of L.W. (a minor), and on behalf of a class of similarly situated individuals,

Plaintiffs,

v.

SEAWORLD PARKS & ENTERTAINMENT, INC. d/b/a

SEASAME PLACE PHILADELPHIA; and SEAWORLD PARKS & ENTERTAINMENT LLC d/b/a SESAME PLACE PHILADELPHIA

Defendants.

INTRODUCTION

1. This second amended class action lawsuit is brought on behalf of 100 families involving 136 children to enforce the 13th Amendment to the United States Constitution by way of 42 U.S.C. § 1981, in order to secure the rights of Plaintiffs to make and enforce contracts and to enjoy the security of persons in the same manner as white citizens.

2. Plaintiffs and Proposed Class Representatives bring this action individually and on behalf of all similarly situated persons as described in ¶ 109, *infra*.

PARTIES

1. Representative Plaintiff Quinton Burns is an adult Black citizen of the United States.

2. Representative Plaintiff K.B. is a minor Black citizen of the United States, and Representative Plaintiff Quinton Burns' child.

3. The Representative Plaintiffs ("the Burns") reside in the City of Baltimore, Maryland.

4. Representative Plaintiff Nathan Fleming is an adult Black citizen of the United States.

5. Representative Plaintiff O.F. is a minor Black citizen of the United States, and Representative Nathan Flemings' child.

6. The Representative Plaintiffs ("the Flemings") reside in York, Pennsylvania.

7. Representative Plaintiff Lashonda Miles is an adult Black citizen of the United States.

8. Representative Plaintiff M.C. is a minor Black citizen of the United States, and Representative Plaintiff Lashonda Miles' child.

9. The Representative Plaintiffs ("the Miles") reside in the City of Philadelphia, Pennsylvania.

10. Representative Plaintiff Ingrid Morales is an adult Hispanic citizen of the United States.

11. Representative Plaintiff N.M. is a minor Hispanic citizen of the United States, and Representative Ingrid Morales' child.

12. The Representative Plaintiffs ("the Morales") reside in the City of Philadelphia, Pennsylvania.

13. Representative Plaintiff Yoselis Romero is an adult Hispanic citizen of the United States.

14. Representative Plaintiff E.C. is a minor Hispanic citizen of the United States, and Representative Plaintiff Yoselis Romero's child.

15. The Representative Plaintiff ("the Romeros") reside in Stamford, Connecticut.

16. Representative Plaintiff Katie Valdez is an adult Hispanic citizen of the United States.

17. Representative Plaintiff M.L. is a minor Hispanic citizen of the United States, and Representative Katie Valdez's child.

18. The Representative Plaintiffs ("the Valdez Family") reside in the City of New York, New York.

19. Representative Plaintiff Ashley Valette is an adult Black citizen of the United States.

20. Representative Plaintiff D.V. is a minor Black citizen of the United States, and Representative Plaintiff Ashley Valette's child.

21. The Representative Plaintiffs (the Valettes") reside in West Hempstead, New York.

22. Representative Plaintiff Lauren Willie is an adult Black citizen of the United States.

23. Representative Plaintiff L.W. is a minor Black citizen of the United States, and Representative Plaintiff Lauren Willie's child.

24. The Representative Plaintiffs (the Willies") reside in the city of New York, New York.

25. Defendant SeaWorld Parks & Entertainment, Inc. d/b/a "Sesame Place Philadelphia", is a for-profit publicly traded corporation.

26. Defendant SeaWorld Parks & Entertainment LLC d/b/a "Sesame Place Philadelphia", is a for-profit limited liability company.

27. Both Defendant SeaWorld Parks & Entertainment, Inc. d/b/a "Sesame Place Philadelphia" and Defendant SeaWorld Parks & Entertainment LLC d/b/a "Sesame Place Philadelphia" are organized under the laws of the State of Delaware, and headquartered at 6240 Sea Harbor Drive, Orlando, Florida 32821, and registered with the Pennsylvania Department of

State to conduct business in Pennsylvania. In this class action lawsuit, these Defendants are collectively referred to as "SeaWorld."

28. At all times relevant, SeaWorld's agents, employees or representatives referenced herein were acting outside the course and scope of their actual or apparent authority and responsibilities as a SeaWorld employee.

29. Upon information and belief, including but not exclusively limited to the fact that the discrimination complained of in this class action lawsuit occurred during business hours, in the light of day, to several different minority children on different days such that said discrimination was caught on video numerous times, SeaWorld was aware of and subsequently ratified and adopted its employees' discriminatory actions.

JURISDICTION

30. On information and belief, aggregate claims of individual Class Members exceed $50,000,000.00 exclusive of interests, attorneys' fees and costs.

31. Jurisdiction is proper in this Court pursuant to 28 U.S.C.A § 1332(d), 1343(a)(3), 1343(a)(4), and 1367(a).

32. All conditions precedent necessary to the filing of this class action lawsuit have been met.

VENUE

33. SeaWorld, through its business of operating Sesame Place Philadelphia, has established sufficient contacts in this District such that personal jurisdiction is appropriate.

34. SeaWorld is deemed to reside in this District pursuant to 28 U.S.C § 1391.

35. Venue is proper in this District under 28 U.S.C § 1391 (b)(1) & (2).

FACTUAL ALLEGATIONS

36. On or about June 18, 2022, the Burns accepted SeaWorld's offer to purchase admission tickets to SeaWorld's amusement park, Sesame Place Philadelphia.

37. The Burns performed their contractual duties by tendering remuneration in a bargained for exchange to experience SeaWorld's Sesame Place Philadelphia attraction.

38. SeaWorld's offer which the Burns accepted included, *inter alia*, the benefit and privilege of enjoyment of the amusement rides and "exclusive Sesame Street themed entertainment" offered at Sesame Place, including but not limited to, amusement park shows featuring "Meet and Greets" with Sesame Street themed costume character performers.

39. By the terms of the contract between the Burns and SeaWorld, SeaWorld's costume character performers were obligated to not refuse to, on the basis of race "Meet and Greet" with SeaWorld's customers to include the Burns. Similarly, the Burns were entitled to SeaWorld's performance of the contract by way of its costume character performers to "Meet and Greet" with the Burns.

40. During the Burns' visit to Sesame Place, they attempted to participate in a "Meet and Greet" with SeaWorld's costume character performers dressed as Sesame Street characters "Elmo", "Ernie", "Telly Monster", & "Abby Cadabby."

41. SeaWorld's costume character performers dressed as Sesame Street characters "Elmo", "Ernie", "Telly Monster", & "Abby Cadabby" intentionally refused to perform SeaWorld's contract with the Burns and the Class by, *inter alia,* refusing to engage with them and ignoring them based on their race.

42. The Burns took videos, documenting of some of these discriminatory interactions.[1],[2]

43. Upon information and belief, including but not exclusively limited to, the fact that SeaWorld's performers readily engaged with numerous similarly situated white customers and their children who participated in the costume character performer "Meet and Greets," SeaWorld's actions, by their agents and/or employees, were intentional race discrimination.

44. SeaWorld, themselves and by their agents and/or employees, unlawfully and substantially refused to perform its contract with the Burns, which is an enumerated activity. See *Brown v. Phillip Morris, Inc.*, 250 F.3d 789, 797 (3rd Cir. 2001).

45. On or about July 4, 2022, the Flemings accepted SeaWorld's offer to purchase admission tickets to SeaWorld's amusement park, Sesame Place Philadelphia.

46. The Flemings performed their contractual duties by tendering remuneration in a bargained for exchange to experience SeaWorld's Sesame Place Philadelphia attraction.

47. SeaWorld's offer which the Flemings accepted included, *inter alia,* the benefit and privilege of enjoyment of the amusement rides and "exclusive Sesame Street themed entertainment" offered as Sesame Place, including but not limited to amusement park parades featuring Sesame Street themed costumed characters performers.

48. By the terms of the contract between the Flemings and SeaWorld, SeaWorld's costume character performers were obligated to not refuse to, on the basis of race interact with SeaWorld's customers including the Flemings. Similarly, the Flemings were entitled to

[1] This and all videos referenced herein are accessible by copying and pasting included links into a browser: https://youtu.be/-cG-I6TUIHE
[2] https://youtu.be/4LYTbMxZ_y0

SeaWorld's performance of the contract by way of its costume character performers to interact with the Flemings to the same extent they interacted with white families.

49. During the Flemings' visit to Sesame Place, they attempted to participate in a Parade with SeaWorld's costume character performer dressed as Sesame Street character "Telly Monster".

50. SeaWorld's costume character performer dressed as Sesame Street character, "Telly Monster" intentionally refused to perform SeaWorld's contract with the Flemings and the Class by, *inter alia,* refusing to engage with them because of their race.

51. The Flemings took videos, documenting of some of these discriminatory interactions.[3],[4]

52. Upon information and belief, including but not exclusively limited to, the fact that SeaWorld's performers readily engaged with numerous similarly situated white customers and their children who participated in the costume character performer Parades, SeaWorld's actions, by their agents and/or employees, were intentional race discrimination.

53. SeaWorld, themselves and by their agents and/or employees, unlawfully and substantially refused to perform its contract with the Flemings, which is and enumerated activity. See *Brown v. Phillip Morris, Inc.,* 250 F.3d 789, 797 (3rd Cir. 2001).

54. On or about June 24, 2022, the Miles accepted SeaWorld's offer to obtain admission tickets to SeaWorld's amusement park, Sesame Place Philadelphia.

55. The Miles performed their contractual duties by accepting complimentary tickets obtained by a third party in a bargained for exchange to experience SeaWorld's Sesame Place Philadelphia attraction.

[3] **https://youtu.be/lPj9MwVAzNo**
[4] **https://youtu.be/VnKItfZv8K8**

56. SeaWorld's offer which the Miles accepted, included, *inter alia,* the benefit and privilege of enjoyment of the amusement rides and "exclusive Sesame Street themed entertainment" offered at Sesame Place, including but not limited to, amusement park Parades featuring Sesame Street themed costume character performers.

57. By the terms of the contract between the Miles and SeaWorld, SeaWorld's costume performers were obligated to not refuse to, on the basis of race interact with SeaWorld's customers including the Miles. Similarly, the Miles were entitled to SeaWorld's performance of the contract by way of its costume character performers regardless of race.

58. During the Miles' visit to Sesame Place, they attempted to participate in a Parade with SeaWorld's costume character performer dressed as Sesame Street character "Rosita".

59. SeaWorld's costume character performer dressed as Sesame Street character "Rosita" intentionally refused to perform SeaWorld's contract with the Miles and the Class by, *inter alia,* refusing to engage with them and ignoring them based on their race.

60. The Miles took videos, documenting of some of these discriminatory interactions.[5]

61. Upon information and belief, including but not exclusively limited to, the fact that SeaWorld's performers readily engage with numerous similarly situated white customers and their children who participated in the costume character performer Parades, SeaWorld's actions, by their agents and/or employees, were intentional race discrimination.

62. SeaWorld, themselves and by their agents and/or employees, unlawfully and substantially refused to perform its contract with the Miles, which is an enumerated activity. See *Brown v. Phillip Morris, Inc.,* 250 F. 3d 789, 797 (3rd Cir. 2001).

[5] **https://youtube.com/shorts/Co-Uiterwfw?feature=share**

63. On or about July 11, 2022, the Morales accepted SeaWorld's offer to purchase admission tickets to SeaWorlds amusement park, Sesame Place Philadelphia.

64. The Morales performed their contractual duties by tendering remuneration in a bargained for exchange to experience SeaWorld's Sesame Place Philadelphia attraction.

65. SeaWorld's offer which the Morales accepted, included, *inter alia,* the benefit and privilege of enjoyment of the amusement rides and "exclusive Sesame Street themed entertainment" offered at Sesame Place, including but not limited to, amusement park Parades featuring Sesame Place themed costume performers.

66. By the terms of the contract between the Morales and SeaWorld, SeaWorld's costume character performers were obligated to not refuse to, on the basis of race interact with SeaWorld's customers including the Morales. Similarly, the Morales were entitled to SeaWorld's performance of the contract by way of its costume character performer regardless of race.

67. During the Morales' visit to Sesame Place, they attempted to participate in a Parade with SeaWorld's costume character performers dressed as Sesame Street characters "Big Bird", "Grover" and "Baby Bear".

68. SeaWorld's costume performers dressed as "Big Bird", "Grover" and "Baby Bear" intentionally refused to perform SeaWorld's contract with the Morales and Class by, *inter alia,* refusing to engage with them and ignoring them based on their race.

69. The Morales took videos, documenting of some of these discriminatory interactions.[6],[7]

70. Upon information and belief, including but not exclusively limited to, the fact that SeaWorld's performers readily engaged with numerous similarly situated white customers and

[6] **https://youtube.com/shorts/JgsHGKo0RVE?feature=share**
[7] **https://youtu.be/AuHoey9cq6I**

their children who participated in the costume character performer Parades, SeaWorld's actions, by their agents and/or employees, were intentional race discrimination.

71. SeaWorld, themselves and by their agents and/or employees, unlawfully and substantially refused to perform its contract with the Morales, which is an enumerated activity. See *Brown v Phillip Morris, Inc.,* 250 F.3d 789, 797 (3rd Cir. 2001).

72. On or about June 25, 2022, the Romeros accepted SeaWorld's offer to purchase admission tickets to SeaWorld's amusement park, Sesame Place Philadelphia.

73. The Romeros performed their contractual duties by tendering remuneration in a bargained for exchange to experience SeaWorld's Sesame Place Philadelphia attractions.

74. SeaWorld's offer which the Romeros accepted included, *inter alia,* the benefit and privilege of enjoyment of the amusement rides and "exclusive Sesame Street themed entertainment" offered at Sesame Place, including but not limited to, amusement park Parades featuring Sesame Street themed costume character performers.

75. By the terms of the contract between the Romeros and SeaWorld, SeaWorld's costume character performers were obligated to not refuse to, on the basis of race interact with SeaWorld's customers including the Romeros. Similarly, the Romeros were entitled to SeaWorld's performance of the contract by way of its costume character performers regardless of race.

76. During the Romeros' visit to Sesame Place, they attempted to participate in a Parade with SeaWorld's costume character performers dressed as Sesame Street characters "Zoey" and "Cookie Monster".

77. SeaWorld's costume character performers dressed as Sesame Street characters "Zoey" and "Cookie Monster" intentionally refused to perform SeaWorld's contract with the Romeros and the Class by, *inter alia,* refusing to engage with them based on their race.

78. The Romeros took videos, documenting of some of these discriminatory interactions.[8],[9]

79. Upon information and belief, including but not exclusively limited to, the fact that SeaWorld's performers readily engaged with numerous similarly situated white customers and their children who participated in the costume character performer Parades. SeaWorld's action, by their agent and/or employees, were intentional race discrimination.

80. SeaWorld, themselves and by their agents and/or employees, unlawfully and substantially refused to perform its contract with the Romeros, which is an enumerated activity. See *Brown v Phillip Morris, Inc.*, 250F.3d 789, 797 (3rd Cir. 2001).

81. On or about December 29, 2021, the Valdez family accepted SeaWorld's offer to purchase admission tickets to SeaWorld's amusement park, Sesame Place Philadelphia.

82. The Valdez family performed their contractual duties by tendering remuneration in a bargained for exchange to experience SeaWorld's Sesame Place Philadelphia attractions.

83. SeaWorld's offer which the Valdez family accepted included, *inter alia,* the benefit and privilege of enjoyment of the amusement rides and "exclusive Sesame Street themed entertainment" offered at Sesame Place, including but not limited to, amusement park Parades featuring Sesame Street themed costume character performers.

84. By the terms of the contract between the Valdez family and SeaWorld, SeaWorld's costume character performers were obligated to not refuse to, on the basis of race interact with SeaWorld's customers including the Valdez family. Similarly, the Valdez family were entitled to SeaWorld's performance of the contract by way of its costume character performers regardless of race.

---

[8] **https://youtube.com/shorts/fI8TzKcv8C0?feature=share**
[9] **https://youtube.com/shorts/2ijfvt2JKcs?feature=share**

85. During the Valdez family's visit to Sesame Place, they attempted to participate in a Parade with SeaWorld's costume character performer dressed as Sesame Street character "Abby Cadabby".

86. SeaWorld's costume character performer dressed as Sesame Street character "Abby Cadabby" intentionally refused to perform SeaWorld's contract with the Valdez family and the Class by, *inter alia,* refusing to engage with them and ignoring them based on their race.

87. The Valdez Family took videos, documenting of some of these discriminatory interactions.[10]

88. Upon information and belief, including but not exclusively limited to, the fact that SeaWorld's performers readily engaged with numerous similarly situated white customers and their children who participated in the costume character performer Parades. SeaWorld's actions, by their agents and/or employees, were intentional race discrimination.

89. SeaWorld, themselves and by their agents and/or employees, unlawfully and substantially refused to perform its contract with the Valdez family, which is an enumerated activity. See *Brown v. Phillip Morris, Inc.,* 250 F3d 789, 797 (3rd Cir. 2001).

90. On or about June 20, 2022, the Valettes accepted SeaWorld's offer to purchase admission tickets to SeaWorld's amusement park, Sesame Place Philadelphia.

91. The Valettes performed their contractual duties by tendering remuneration in a bargained for exchange to experience SeaWorld's Sesame Place Philadelphia attraction.

92. SeaWorld's offer which the Valettes accepted included, *inter alia,* the benefit and privilege of enjoyment of the amusement rides and "exclusive Sesame Street themed

[10] https://youtube.com/shorts/RYi0V6hYDEw?feature=share

entertainment" offered at Sesame Place, including but not limited to, amusement park Parades featuring Sesame Street themed costume character performers.

93. By the terms of the contract between the Valettes and SeaWorld, Sea World's costume character performers were obligated to not refuse to, on the basis of race interact with SeaWorld's customers including the Valettes. Similarly, the Valettes were entitled to SeaWorld's performance of the contract by way of its costume character performers regardless of race.

94. During the Valettes' visit to Sesame Place, they attempted to participate in a Parade with SeaWorld's costume character performer dressed as Sesame Street character "Grover".

95. SeaWorld's costume character performer dressed as Sesame Street character "Grover" intentionally refused to perform SeaWorld's contract with the Valettes and the Class by, *inter alia,* refusing to engage with them and ignoring them based on their race.

96. The Valettes took videos, documenting of some of these discriminatory interactions.[11]

97. Upon information and belief, including but not exclusively limited to, the fact that SeaWorld's performers readily engaged with numerous similarly situated white customers and their children who participated in the costume character performer Parades. SeaWorld's actions, by their agents and/or employees, were intentional race discrimination.

98. SeaWorld, themselves and by their agents and/or employees, unlawfully and substantially refused to perform its contract with the Valettes, which is an enumerated activity. See *Brown v. Phillip Morris, Inc.,* 250 F.3d 789, 797 (3rd Cir. 2001).

99. On or about July 10, 2022, the Willies accepted SeaWorld's offer to purchase admission tickets to SeaWorld's amusement park, Sesame Place Philadelphia.

[11] **https://youtube.com/shorts/uhPP-Uk4dsA?feature=share**

100. The Willies performed their contractual duties by tendering remuneration in a bargained for exchange to experience SeaWorld's Sesame Place Philadelphia attraction.

101. SeaWorld's offer which the Willies excepted included, *inter alia,* the benefit and privilege of enjoyment of the amusement rides and "exclusive Sesame Street themed entertainment" offered at Sesame Place, including but not limited to amusement park shows featuring "Meet and Greets" with Sesame Street themed costume character performers.

102. By the terms of the contract between the Willies and SeaWorld, SeaWorld's costume character performers were obligated to not refuse to, on the basis of race "Meet and Greet" with SeaWorld's customers to include the Willies. Similarly, the Willies were entitled to SeaWorld's performance of the contract by way of its costume character performers to "Meet and Greet" regardless of race.

103. During the Willies' visit to Sesame Place, they attempted to participate in a "Meet and Greet" with SeaWorld's costume character performer dressed as Sesame Street character "Rosita".

104. SeaWorld's costume character performer dressed as Sesame Street character "Rosita" intentionally refused to perform SeaWorld's contract with the Willies and the Class by, *inter alia,* refusing to engage with them based on their race.

105. The Willies took videos, documenting of some of these discriminatory interactions.[12]

106. Upon information and belief, including but not exclusively limited to, the fact that SeaWorld's performers readily engaged with numerous similarly situated white customers and

[12] **https://youtube.com/shorts/8RLdt4fRv1A?feature=share**

their children who participated in the costume character performer "Meet and Greets", SeaWorld's actions, by their agents and/or employees, were intentional race discrimination.

107. SeaWorld, themselves and by their agents and/or employees, unlawfully and substantially refused to perform its contract with the Willies, which is an enumerated activity. See *Brown v Phillip Morris, Inc.*, 250 F.3d 789, 797 (3rd Cir. 2001).

CLASS ACTION ALLEGATIONS

108. The Plaintiffs bring this lawsuit as a class action on behalf of themselves and all others similarly situated as members of the proposed Plaintiffs Class pursuant to Federal Rules of Civil Procedure 23(a), (b)(2), and/or (c)(4). This action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements of those provisions.

109. The Class that the Plaintiffs seek to represent is defined as follows:

(a) All minority persons who,

(b) since July 27, 2018,

(c) either directly or as third-party beneficiaries,

(d) entered into contracts with SeaWorld by purchasing admission tickets into Sesame Place Philadelphia.

110. Numerosity: Although the exact number of Class Members is uncertain and can only be ascertained through appropriate discovery, upon information and belief, the current number consists of 100 families involving 1136 children and, because over 1 million guests visit Sesame Place Philadelphia each year, that number is likely to increase such that joinder is impracticable. The disposition of the claims of these Class Members in a single action will provide substantial benefits to all parties and to the Court. The Class Members are readily identifiable.

111. Typicality: The Plaintiffs' claims are typical of the claims of the Class. Like all Class Members, the Plaintiffs entered into contracts with SeaWorld by way of their ticketed admission to SeaWorld's amusement park, Sesame Place Philadelphia, and therein, suffered disparate treatment from SeaWorld solely based on their race or color that unlawfully interfered with their enumerated right to make and enforce contracts in the same manner as is enjoyed by white citizens when SeaWorld and/or its agents and/or its employees refused to interact with minority children while openly interacting with white children. The Plaintiffs, like all Class Members, have been damaged by SeaWorld's misconduct in that they have incurred damages to their enumerated civil rights, have and/or will incur economic damages, and/or have or will incur non-economic damages, including but not limited to humiliation, embarrassment, mental anguish, psychological stress, depression, anxiety, loss of self-respect, post-traumatic stress, damage to their physical health, and loss of life and/or professional opportunities. Furthermore, the factual bases of SeaWorld's misconduct, that SeaWorld and/or its agents and/or its employees refused to interact with minority children while openly interacting with white children are common to all Class Members and represent a common thread of illegal impairment and infringement committed against the Class Members' civil right to contract, resulting in injury to all Class Members.

112. Commonality: There are questions of law and fact common to the Plaintiffs and the Class that predominate over any question affecting only individual Class Members. These common legal and factual issues include the following:

a) Whether there was a contractual nexus between the Class Member and the SeaWorld.

b) Whether SeaWorld, through its agents and/or employees intentionally discriminated against Class Members based on their race or color.

c) Whether SeaWorld's agents and/or employees were acting outside the scope of their apparent authority at the time of their racially motivated discriminatory conduct towards Class Members.

d) Whether SeaWorld's racially motivated discrimination against Class Members is based on a widespread pattern and practice of disparate treatment of minority citizens that is directly attributable to SeaWorld.

e) Whether SeaWorld failed to meet its duties to undertake adequate measures in hiring, supervising, and training its agents and/or employees.

f) Whether SeaWorld was aware of and/or subsequently ratified the racially based discriminatory conduct of its agents and/or employees.

113. Adequate Representation: The Plaintiffs will fairly and adequately protect the interests of the Class Members. The Plaintiffs have retained attorneys experienced in the prosecution of class actions, and the Plaintiffs intend to prosecute this action vigorously. One of the Plaintiffs' attorneys particularly, recently clarified through Third Circuit litigation that courts were too narrowly interpreting 42 U.S.C. § 1981 from 1992 through 2021, such that a cause of action can be maintained even when services were ultimately provided to the aggrieved plaintiff and therein in a case of first impression, actualized a cause of action for hostile retail environment liability under the statute with such case to be tried in this Courthouse this coming Fall. Furthermore;

(a) The interests of the Plaintiffs are consistent with and not antagonistic to the interests of the Class.

(b) The prosecutions of separate actions by individual Class Members would create a risk of inconsistent and varying adjudications with respect to individual members

of the class, and it would establish incompatible standards of conduct for the parties anticipated to oppose the class.

(c) The prosecutions of separate actions by individual Class Members would, as a practical matter, substantially impair or impede the ability of the other Class Members to preserve and protect their interests.

(d) The Plaintiffs allege that it is desirable to concentrate all litigation in one forum because all their claims arose in the same location; and consolidation of their claims will promote judicial efficiency to resolve their common questions of law and fact in one single forum.

114. Predominance and Superiority: The Plaintiffs and the Class Members have all suffered and will continue to suffer harm and damages because of Defendants' unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Absent a class action, most Class Members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy at law. It is likely that only a few Class Members could afford to seek legal redress for Defendants' misconduct. Absent a class action, Class Members will continue to incur damages, and Defendants' misconduct will continue without remedy. Class treatment of common questions of law and fact would also be a superior method to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the courts and the litigants and will promote consistency and efficiency of adjudication.

FIRST CAUSE OF ACTION

(Race Discrimination in Violation of 42. U.S.C.A. § 1981)

115. All preceding paragraphs are incorporated to this Count.

116. The Plaintiffs and Class Members are minorities, and therefore are members of a federally protected class of citizens against racial discrimination in contract pursuant to §1981.

117. The Plaintiffs and Class Members entered binding contracts with SeaWorld for admission to its amusement park, Sesame Place Philadelphia. The minor Plaintiffs are third party beneficiaries of their parents' and/or guardians' and/or other adults' contracts with SeaWorld, as the contracts at issue were for the benefit of the minor children who do not have the legal capacity to enter contracts in their own right under Pennsylvania law.

118. SeaWorld refused to perform its contract with the Plaintiffs and Class members, who each attempted to enforce the enjoyment of all benefits, privileges, terms, and conditions of their contracts with SeaWorld, which specifically included SeaWorld's promise to engage in "Meet and Greets" and Parades between its Sesame Street themed costume character performers such as "Elmo", "Ernie", "Telly Monster", "Abby Cadabby", "Grover", "Rosita", "Big Bird", "Baby Bear", "Zoey", "Cookie Monster", and the children.

119. SeaWorld, by its agents and/or employees, intentionally discriminated against the Plaintiffs and Class Members based on their race or color by intentionally choosing to interact only with white patrons and refusing to interact with the Plaintiffs or Class Members during the performance of their contracts.

120. SeaWorld is vicariously liable under the theory of *respondeat superior* for its employees' violations of § 1981 committed outside the scope of their employment against the Plaintiffs and Class Members. *See Williams v. Cloverland Farms Dairy, Inc.*, 78 F.Supp.2d 479,

485 (1999) (quoting *Fitzgerald v. Mountain States Telephone & Telegraph Co.*, 68 F.3d 1257, 1262-63 (10th Cir. 1995)). *See also*, Restatement (Second) of Agency § 219 (1957).

121. SeaWorld, by the racially motivated discriminatory conduct of its agents and/or employees, who at all times relevant acted with the scope of their employment, substantially and unreasonably impaired and infringed upon the Plaintiffs' and Class Members' enumerated right to make and enforce their contracts with SeaWorld as is enjoyed by white citizens by unilaterally changing the terms of their contract with the Plaintiffs and Class Members to exclude participation in "Meet and Greets" and Parades during the performance of the agreement, solely because of their race or color.

122. SeaWorld, by the racially motivated discriminatory conduct of its agents and/or employees, substantially and unreasonably impaired and infringed upon the Plaintiffs and Class Members' enumerated right to make and enforce their contracts with SeaWorld as is enjoyed by white citizens by creating a hostile retail environment.

123. As a direct and proximate cause of SeaWorld's actions and/or inactions, the Plaintiffs and Class Members suffered damages to their civil rights, mental health, and personal dignity.

SECOND CAUSE OF ACTION

NEGLIGENCE SUPERVISION

124. The Plaintiffs and Class Members incorporate herein by reference all preceding paragraphs of this Complaint, the same as if fully set forth hereinafter.

125. At all relevant times, Plaintiffs and Class Members were business invitees at the park, and accordingly, Defendants owed Plaintiffs' duties of care set forth in more detail below.

126. At all times relevant hereto, Defendants owed a duty to Plaintiffs to provide a park experience that is free of discrimination based upon race or color.

127. At all times relevant hereto, Defendants breached that duty by failing to exercise ordinary care to prevent the intentional harm inflicted upon Plaintiffs by their authorized agents, servants, employees, officers and/or members whose racially discriminatory conduct was committed outside the scope of their employment and/or authority in that Defendants' employees were not hired to racially discriminate against park patrons such as Plaintiffs.

128. At all times relevant hereto, the discriminatory conduct engaged in by Defendants and their employees was committed on the premises of Defendants.

129. At all times relevant hereto, Defendants knew or had reason to know of the need to control the conduct of their employees.

130. The facts supporting Plaintiffs' negligent supervision count are as follows:

a). Sesame Place Philadelphia is located in Langhorne, a subdivision of Bucks County, Pennsylvania. Six officers of Defendant SeaWorld Parks & Entertainment, Inc were also officers of Defendant SeaWorld Parks 7 Entertainment, LLC.

b). At all times relevant hereto, Defendants employed teenage high school students primarily from Bucks County to work throughout its amusement park.

c). Paul Schweizer, an Events and Production Manager in Sesame Place Philadelphia's Entertainment Department, testified the majority of the Department's employees were teenagers who came from various Bucks County high schools.

d). Sara Tsivikis, Vice President of Human Relations at Sesame Place Philadelphia, used an existing list of high schools and colleges, possessed by Defendants, to recruit employees. Ms. Tsivikis stated Sesame Place would call and set up recruitment sessions at Bucks County high schools at the beginning of every season. According to Ms. Tsivikis, more than 50% of the park employees were between the ages of 15 and 23.

e). Nicholas Manna has been the Director of Entertainment at Sesame Place Philadelphia since 2021. Mr. Manna also testified that, prior to 2020, there existed a connection between Sesame Place Philadelphia and Bucks County high schools.

f). Cathy Valeriano, Park President of Sesame Place Philadelphia, testified Defendants recruited from high schools in Bucks County. She stated Defendants' Human Resources Department, in conjunction with the schools' guidance counselors, scheduled visits to the high schools for recruitment purposes. Ms. Valeriano also testified Defendants made it their business to know about the County the park is in and to maintain a relationship with the township in which it is located.

g). Barbara Simmons started at The Peace Center, located in Langhorne, Pennsylvania, in 1987 and became Executive Director in 1991. She retired in early 2020. The mission of The Peace Center is to address conflict and violence in Bucks County and, specifically, its schools. Ms. Simmons has personally worked with every school in the 13 school districts in Bucks County.

h). Ms. Simmons produced a spreadsheet that documents her investigation of approximately 142 instances of discrimination in Bucks County between 2016 and early 2020, over half of which involved high schools.

i). Ms. Simmons described the culture of racism in Bucks County as one of intolerance, discrimination, and hatred. She stated this culture is among the administrators in the Bucks County high schools.

j). Ms. Simmons discussed an occasion when Black and White Bucks County high school students were harassed because they went to D.C. to discuss racial incidents in public schools. Ms. Simmons also testified she has seen incidents where a Latino person has acted in a discriminatory manner against a Black person.

k). Ms. Simmons testified that people of color came to The Peace Center once per month over her entire tenure because of physical threats made against them. Ms. Simmons noted the spreadsheet does not reflect the true number of complaints about racial discrimination in Bucks County because complaints were coming to other organizations as well. She stated the Black community in Bucks County feel fear.

l). Ms. Simmons further testified KKK flyers were found all over Bucks County. Ms. Simmons stated the KKK and the White Aryan Nation are White nationalist organizations that have been present in Bucks County for the past 25 years.

m). Ms. Simmons agreed that a teenager, who discriminatorily decides who gets in a line and who does not, is an example of prejudice plus power. She added

students will believe racist conduct is okay if it is not addressed by people in control. She added that, if Sesame Place ignored racist acts by its employees, it keeps the culture of racism alive and people of color will not feel safe or welcome. Ms. Simmons stated it is her belief students copy the behavior of their parents and the community in which they live.

n). Ms. Valeriano acknowledged Defendants received written complaints from park patrons alleging racial discrimination by its employees while at Sesame Place Philadelphia. These complaints covered all aspects of the park, including swimming pools, park water rides, park amusement rides, park parades, park staff assistance, and park food concession lines.

o). Sara Tsivikis stated she was aware of three alleged racist incidents occurring at the park.

p). Kaylah Connelly is a former employee of Sesame Place Philadelphia's Entertainment Department who, between 2017 and 2020, worked seasonally as a costume character performer. Ms. Connelly observed minority park patrons complaining about being ignored by costumed characters during the seasonal radio shows almost daily. She also stated she observed instances where minority park patrons were ignored by costume character performers during meet and greets. Ms. Connelly further testified minority park patrons complained they were ignored by costume character performers during the Sesame Place parades "everyday". She believes her high school, which is located down the street from Bensalem in Bucks County, is racist. She testified minority employees at Sesame Place were

treated differently than White employees. She described the work environment at Sesame Place as "very toxic". She stated the job caused almost every Black employee to cry.

q). James LeGette, an African American who worked at Sesame Place between 2012 and 2022 in its Entertainment Department as a supervisor and costumed character performer, noted that his termination from Sesame Place was due, in part, to the color of his skin.

r). According to Mr. Schweizer, the costumed character performers were given wide discretion as to who they chose to interact with.

s). Ms. Connelly stated she did not recall any guidance from her supervisor on how to address racial incidents should they have occurred at the park.

t). Kienna Childs Alexander is a putative class member who described the park as one of chaos with a lack of decorum. She stated it appeared as if a lot of teenagers were overseeing the park in many ways causing her to register a complaint with guest relations.

u). According to Ms. Valeriano, despite receiving hundreds of park patron complaints of racial discrimination via their welcome center, social media, marketing department and call center, Defendants either made no attempt to identify the employees involved in the complaints of racial discrimination or, if identified, never completely investigated many of the complaints; never disciplined any employee relating to complaints of racial discrimination by park patrons and never created a policy on how to interact with park patrons.

u). Ms. Valeriano concluded none of the complaints of racial discrimination brought to Defendants' attention have any merit. She stated Defendants are not apologizing for the actions of their employees. Ms. Valeriano's testimony establishes a park-wide position, endorsed and encouraged by Defendants, that no allegation of race discrimination by a park patron needs to be dealt with in a way that ensures it will never happen again because no such allegation could ever be legitimate.

131. Defendants, therefore, were negligent in that they negligently supervised their employees creating a park-wide environment of race discrimination that violated the civil rights of Plaintiffs.

132. By reason of the negligent supervision of Defendants, by and through their authorized agents, servants, employees, and/or officers who were acting outside the course and scope of their employment and/or authority, as aforesaid, Plaintiffs were caused to endure blatant, public and demeaning racial discrimination as more fully described in the preceding paragraphs of this Complaint.

WHEREFORE, Plaintiffs claim of Defendants sums in excess of Fifty Million Dollars ($50,000,000.00) in damages, including punitive damages, exclusive of interest and costs, pursuant to Pa.R.C.P. § 238, and bring this action to recover the same.

PRAYER FOR RELIEF

133. The Plaintiffs and Class Members are entitled to legal and equitable relief against all Defendants, including compensatory damages, consequential damages, punitive damages, specific performance, injunctive relief, attorneys' fees, costs of suit, and other relief as appropriate.

RELIEF REQUESTED

134. The Plaintiffs, on behalf of themselves and all others similarly situated, request the Court to enter judgment against Defendants, and accordingly request the following:

(a) An order certifying the proposed Class designating Plaintiffs Quinton Burns and K.B., Nathan Fleming and O.F., Lashonda Miles and M.C., Ingrid Morales and N.M., Yoselis Romero and E.C., Katie Valdez and M.L, Ashley Valette and D.V. and Lauren Willie and L.W. as named representatives of the Class, and designating the undersigned as Class Counsel;

(b) A declaration that Defendants are financially responsible for notifying all Class Members about their discriminatory conduct towards their minority patrons and offer an unconditional apology to the Class Members and to minority United States citizens;

(c) A declaration that Plaintiffs, and all minority citizens, have a federally protected right to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and/or accommodations of SeaWorld's amusement park Sesame Place Philadelphia;

(d) An order enjoining SeaWorld and its agents and/or employees from engaging in the racially discriminatory conduct alleged herein and any other racially discriminatory conduct;

(e) A further order requiring SeaWorld to implement rigorous mandatory cultural sensitivity training for its agents and/or employees so that they can better recognize, understand, and deliver an inclusive, and equitable experience to all members of the public irrespective of their race;

(f) A further order requiring SeaWorld to implement mandatory educational courses for its agents and/or employees on the history of discrimination against minority people in America provided by a mutually agreed upon nationally acclaimed expert in the field of African and minority History and Culture;

(g) A further order requiring SeaWorld to implement state of the art psychological screening methods for vetting their potential agents and/or employees to avoid hiring racially bigoted employees and agents, and to evaluate by appropriate psychological testing and behavioral history whether its existing agents and/or employees are racially bigoted who therefore should not be retained;

(h) An award to the Plaintiffs and Class Members of compensatory, actual, punitive, and statutory damages, including interest, in excess of $50,000,000.00;

(i) An award of attorneys' fees and costs as allowed by law;

(j) An award of pre-judgment and post-judgment interest as provided by law;

(k) Leave to amend the Complaint to conform to the evidence produced at trial; and

(l) Such other relief as may be appropriate under the circumstances.

DEMAND FOR JURY TRIAL

135. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of any and all issues in this action so triable of right.

Respectfully submitted,

MURPHY, FALCON & MURPHY

/s/ *William H. Murphy, Jr.*
William H. Murphy, Jr. (07985)
Andrew K. O'Connell (28168)
Malcolm P. Ruff (21595)
Ronald E. Richardson (04673)
1 South Street, Suite 3000
Baltimore, Maryland 21202
Telephone: (410) 539-6500
Facsimile: (410) 539-6599
billy.murphy@murphyfalcon.com
andrew.oconnell@murphyfalcon.com
malcolm.ruff@murphyFalcon.com
ronald.richardson@murphyfalcon.com

THE TRIAL LAW FIRM, LLC

/s/ *Mart Harris*
Mart Harris (319504)
Fort Pitt Commons
445 Fort Pitt Boulevard, Suite 220
Pittsburgh, Pennsylvania 15219
Telephone: (412) 588-0030
Facsimile: (412) 265-6505
mh@tlawf.com

DUNCAN LEGAL GROUP

/s/ *Jason Duncan*
Jason Duncan (87946)
2001 N. Front Street
Harrisburg, PA 17102
Telephone: (717) 232-1886
Facsimile: (717) 232-4189
jaybdunc@gmail.com

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
Philadelphia Division

QUINTON BURNS, et al.

Plaintiffs,

vs.

SEAWORLD PARKS & ENTERTAINMENT, INC., et al.,

Defendants.

Case No. 2:22-cv-02941

ORDER

Upon consideration of Plaintiffs' Motion for Leave to File Second Amended Complaint, and any Opposition thereto, it is this _____ day of _____, 2024, hereby,

ORDERED that Plaintiffs' Motion to File Second Amended Complaint is **GRANTED**.

_____
Judge Wendy Beetlestone