

SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release (the "Settlement Agreement" or "Agreement" or "Settlement") is made and entered into by and between SeaWorld Parks & Entertainment, Inc. ("SeaWorld" or "Defendant"), on the one hand, and Jason Herman, Joey Kratt, and Christina Lancaster ("Named Plaintiffs") on behalf of themselves individually, and on behalf of the class described below (hereinafter collectively the "Settlement Class"), on the other. This Settlement Agreement sets forth all of the rights, duties, and obligations of Named Plaintiffs on behalf of themselves and the Settlement Class and SeaWorld (hereinafter collectively the "Parties"), including the Recitals below, and all provisions of this Settlement Agreement.

This Settlement Agreement is made as of _____, 2018, and shall become effective on the Final Settlement Date, as set forth below. This Settlement Agreement is for settlement purposes only and is conditioned upon the full and final settlement of all claims against SeaWorld as more fully set forth below.

RECITALS

This Settlement Agreement is made for the following purpose and with reference to the following:

A. On December 3, 2014, Named Plaintiff Jason Herman filed a complaint against Defendant entitled *Herman v. SeaWorld Parks and Entertainment, Inc.*, Case No. 8:14-cv-03028-MSS-EAJ in the United States District Court for the Middle District of Florida Tampa Division (the "Action"). On October 15, 2015, Named Plaintiffs filed a second amended class complaint. Named Plaintiffs brought the Action individually and on behalf of a putative class of SeaWorld customers in the states of Florida, Texas, Virginia, and California. The second amended complaint is attached hereto as Exhibit A. Named Plaintiffs allege that SeaWorld breached its EZpay contract and violated the Electronic Funds Transfer Act, 15 U.S.C. § 1693 et. seq. ("EFTA") in connection with the automatic renewal of certain annual Passes (as defined below) to Defendant's parks through SeaWorld's EZpay program.

B. SeaWorld disputes the claims made in the Action both as to facts and law, denies that it violated the EFTA or breached any contract, and denies any liability to Named Plaintiffs or any member of the proposed Settlement Class, as defined further in this Settlement Agreement. By entering into this Settlement Agreement, SeaWorld does not admit any liability or wrongdoing of any kind or that any class can or should be certified, except for settlement purposes.

C. The Parties participated in mediation with Gary V. McGowan on April 18, 2018. Following the mediation, on April 20, 2018, the parties agreed to a mediator's proposal setting forth the principal terms of a resolution of the Action and thereafter formalized their settlement in this Agreement.

D. Settlement Class Counsel (as defined below) and Named Plaintiffs believe that the Action has merit and have examined and considered the benefits to be obtained under this Settlement Agreement, the risks associated with the continued prosecution of the complex and

potentially time-consuming litigation, and the likelihood of maintaining class certification and success on the merits. Settlement Class Counsel has fully investigated the facts and law relevant to the Action, and have conducted extensive discovery. Settlement Class Counsel and Named Plaintiffs have concluded that the settlement set forth in this Settlement Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class Members.

E. The Parties enter into this Settlement Agreement to avoid the further expense in time and resources of protracted litigation and to avoid the risks inherent in litigation. The Parties desire to settle the Action in its entirety with respect to all claims alleged in the second amended class complaint, or that could have been alleged in the second amended class complaint, and/or arising from or related to Settlement Class Members' purchases of Passes through SeaWorld's EZpay program during the Settlement Class Period (as defined below). The Parties intend for this Settlement Agreement to bind the Parties and all Settlement Class Members who do not opt out of the Settlement Class (as defined below).

NOW, THEREFORE, in light of the foregoing, in consideration of the terms and conditions set forth herein, which the Parties acknowledge are good and valuable consideration for this Settlement Agreement, the Parties hereby agree and stipulate, by and through their respective counsel, subject to approval by the Court, as follows:

AGREEMENT

1. DEFINITIONS.

The following section defines terms not previously defined above. Some definitions use terms that are defined later in this section.

- 1.1** The term "**Applicable Statute of Limitations Period**" shall mean one year Passes that were purchased during the following time periods: December 3, 2008 to December 3, 2014 for Virginia customers; December 3, 2009 to December 3, 2014 for California customers; December 3, 2008 to December 3, 2014 for Florida customers; and December 3, 2009 to December 3, 2014 for Texas customers.
- 1.2** The term "**Court**" means the United States District Court for the Middle District of Florida Tampa Division.
- 1.3** The "**EFTA Settlement Amount**" means \$500,000 to be distributed pro rata to the EFTA subclass members.
- 1.4** The term "**EFTA Subclass**" means all members of the Settlement Class who used a debit card to fund their EZpay contract and were charged any additional monthly payments for renewal of a pass after December 13, 2013.
- 1.5** The term "**Fairness Hearing**" means the hearing at which the Court decides whether to approve this Settlement Agreement as a fair, reasonable, and adequate settlement.

- 1.6 The term “**Final Order and Approval**” or “Final Approval Order” means an order approving the settlement of this Action as set forth in this Settlement Agreement. As described in more detail below, Named Plaintiffs, through Settlement Class Counsel, shall submit a motion for final approval of the Settlement Agreement at the Fairness Hearing and shall include a proposed Final Order and Approval that is materially identical to the form attached as Exhibit D.
- 1.7 The term “**Final Settlement Date**” shall mean the earliest of the following: (1) thirty-five (35) days after the entry of the Final Order and Approval if objections are filed and overruled, notice of entry of the order has been served, and no appeal is taken from the Final Order and Approval; or (2) if a timely appeal or motion for reconsideration is filed, thirty-five (35) days after the date of the final resolution of that appeal or motion and any subsequent appeals or petitions for review or certiorari from the Final Order and Approval, provided such appeals or reviews affirm the Final Order and Approval.
- 1.8 The term “**Internet Posting**” or “**Settlement Website**” means a website set up by the Settlement Administrator for the purpose of providing the Settlement Class with notice of the proposed settlement.
- 1.9 The term “**Notice**” means the legal notice of the proposed settlement terms, as approved by Settlement Class Counsel, Defendant’s Counsel, and the Court, to be posted to the Settlement Website pursuant to Section 3.2(b) and mailed to the Settlement Class Members pursuant to Section 3.2(c). The Notice submitted to the Court for preliminary approval must be materially identical to the form attached as Exhibit C.
- 1.10 The “**Net Settlement Amount**” is the gross Settlement Amount of \$11,500,000 less the EFTA Settlement Amount less any Court-approved service award to Named Plaintiffs and any Court-approved Settlement Class Counsel’s fees and costs as provided by this Agreement.
- 1.11 The term “**Option Form**” means the form that will be mailed to each Settlement Class Member providing options for participating in the Settlement as described in Section 3.2(e). The Option Form must be materially identical to the Form attached as Exhibit E.
- 1.12 The term “**Option Date**” means the date the Option Form is sent to Settlement Class Members as described in Section 3.2(e).
- 1.13 The term “**Option Deadline**” means the date by which a Settlement Class Member must return the Option Form if the Settlement Class member wishes to make a selection from the options set forth in the Option Form, as described in Section 3.2(e) and (f).
- 1.14 The term “**Pass**” means a one-year pass to a SeaWorld park purchased by an individual who is a member of the Settlement Class.

- 1.15 The term “**Preliminary Approval Order**” means a proposed order preliminarily approving the settlement of this Action. This order proposed to the Court must be materially identical to the form attached as Exhibit B.
- 1.16 The terms “**SeaWorld’s Counsel**” and “**Defendant’s Counsel**” mean the law firm of Polsinelli.
- 1.17 The term “**Settlement Administrator**” means Dahl Administration LLC and any successors to that entity that SeaWorld may subsequently designate, with notice to and consent from Named Plaintiffs, through Settlement Class Counsel (whose consent will not be unreasonably delayed or withheld), to administer the claims process provided for in the Settlement Agreement. By accepting the role of Settlement Administrator, the Settlement Administrator agrees to be bound by the terms of this Settlement Agreement.
- 1.18 The term “**Settlement Class**” shall mean all natural persons who purchased a one-year pass through SeaWorld’s “EZ Pay” program to one of SeaWorld’s theme parks located in the states of Florida, Texas, Virginia, or California; who were residents of the state where the park is located at the time of purchase; who purchased the pass within the Applicable Statute of Limitations Period for the respective states (as defined herein); who paid for their one-year pass in less than 12 months; and who were charged any additional monthly payments for renewal of the pass after the one-year pass was paid in full. Excluded from the Settlement Class are (a) all persons who received full refunds from SeaWorld after being charged any monthly payments for renewal of the pass after the one year pass was paid in full; (b) all persons who used their pass after the initial one-year term; (c) managers, directors, and employees of SeaWorld and members of their immediate families; (d) all agents of SeaWorld; (e) legal counsel for Plaintiffs or SeaWorld and members of their immediate families; (f) all judges assigned to hear any aspect of this litigation as well as their immediate family members; and (g) any class members in the matter of *Gargir v. SeaWorld Parks & Entertainment, Inc.*, No 37-2015-00008175-CU-MC-CTL, in the California Superior Court, San Diego County (the Gargir Action) who have released and discharged SeaWorld of any claims they may have in this case as a result of a class action settlement approved in the Gargir Action.
- 1.19 The term “**Settlement Class Counsel**” means the law firms of F & H Law Group, P.A. and Kynes, Markman & Felman, P.A.
- 1.20 “**Settlement Class Member**” refers to each individual in the Settlement Class.
- 1.21 The term “**Settlement Class Period**” means the time period from the beginning of the Applicable Statute of Limitations period to the date of the Final Approval Order.
- 1.22 The term “**Settlement Class Representatives**” or “**Representative Plaintiffs**” shall mean Named Plaintiffs.

2. SETTLEMENT PAYMENTS AND PROCEDURES.

2.1 Settlement Amount. In consideration of the releases described below, SeaWorld agrees to fund a class action settlement in the total amount of \$11,500,000 (the "Settlement Amount") by paying the Settlement Amount into an Escrow Account (the "Common Fund"). The Settlement Amount described in this Section 2.1 shall be the maximum possible amount of any payment obligation by SeaWorld, and SeaWorld shall have no further obligation to make any other payments or provide any other benefits whatsoever except as specifically provided herein. Except as provided in this Settlement Agreement, all payments to be made to members of the Settlement Class, including payments to members of the EFTA Subclass, service award for the Settlement Class Representatives, and attorney's fees and costs to Settlement Class Counsel shall be paid out of the Settlement Amount.

2.2 Relief Provided to the EFTA Subclass. The EFTA Settlement Amount will be divided among the EFTA Subclass Members *pro rata*. Pursuant to the procedures set forth in this Section 2.2 and Section 3, below, the Settlement Administrator will make a payment to each EFTA Subclass Member who does not opt out pursuant to Section 3.5. EFTA Subclass Members do not need to submit a claim to receive their *pro rata* share of the EFTA Settlement Amount.

2.3 Relief Provided to the Settlement Class. The Net Settlement Amount (the \$11,500,000 Settlement Amount less the EFTA Settlement Amount less any award of attorneys' fees and costs and a service award to the Settlement Class Representatives) will be divided among Settlement Class Members *pro rata* based on the number of Passes each class member purchased ("Per Pass Payment"). SeaWorld will determine the number of passes each class member purchased during the Applicable Statute of Limitations Period if reasonably possible. If not reasonably possible, it will be assumed that each class member purchased 1.75 passes. Pursuant to the procedures set forth in this Section 2.3 and Section 3, below, the Settlement Administrator will make a payment to each Settlement Class Member who does not opt out pursuant to Section 3.5. Settlement Class Members do not need to submit a claim to receive their *pro rata* share of the Net Settlement Amount.

(a) **Manner of Transmission of the Payment.** The Settlement Administrator shall mail a check to the most recent mailing address for the Settlement Class Member that is contained in SeaWorld's records.

(b) **Timing of Transmission of the Payment.** The Settlement Administrator shall mail a check to the Settlement Class Members at its earliest possible convenience, and in no event later than forty (40) calendar days after the Final Settlement Date.

(c) **Time to Cash Checks.** Settlement Class Members shall have ninety (90) calendar days from when the payments are first mailed to the Settlement Class Members within which to cash the payment check.

- (d) **Returned or Undelivered Checks.** In the event that the mailed check is returned or otherwise not delivered, the Settlement Administrator shall send one notice and request to cure by e-mail to the e-mail address contained in SeaWorld's records. The notices and requests for cures must be sent at the earliest possible convenience, and in no event later than seven (7) days after the Settlement Administrator's receipt of a returned or otherwise undelivered check. The Settlement Class Member shall then have fourteen (14) calendar days from the date the notice referenced in this Section 2.4(d) is provided, to contact the Settlement Administrator with updated address information.
- (e) If after proper notice, the Settlement Administrator is not able to pay a Settlement Class Member his or her Settlement Amount, the amount of that payment shall be retained in the Common Fund. Any monies that were part of the EFTA Settlement Amount and remain in the Common Fund 150 days after the payments are first mailed will be paid to the National Fish and Wildlife Foundation, an independent 501(c)(3) non-profit scientific organization created by Congress committed to conserving and renewing marine life. Any other funds remaining in the Common Fund 150 days after the payments are first mailed will be returned by the Class Administrator to Sea World.

2.4 Settlement Implementation Costs. SeaWorld shall bear the cost of notice and administration of this Settlement Agreement, including the cost of creating, printing, and mailing notice to Settlement Class Members. The Parties agree to work together in good faith to keep the costs of administering this Settlement Agreement to a minimum.

2.5 Settlement Amount to be Transmitted to Settlement Administrator.

Within ten (10) calendar days after the Final Settlement Date, SeaWorld shall send the Settlement Amount, \$11,500,000, to the Settlement Administrator for distribution pursuant to the terms of this Agreement and the Final Order and Approval.

2.6 Service Award to Settlement Class Representatives. The Settlement Class Representatives will each seek a service award not to exceed \$10,000 each for their efforts initiating the case and their role furthering the litigation and participating in its ultimate resolution. Defendant will not oppose a request that the Settlement Class Representatives each receive from the Settlement Amount a service award of \$10,000 each for their efforts in prosecuting this Action to date and through entry of the Final Approval Order. Other than the value of their individual claims as a Member of the Settlement Class, the service award ultimately ordered by the Court shall be the only additional payment to the Settlement Class Representatives under this Settlement Agreement or in connection with the Action, and Defendant shall not be liable for any additional payment to the Settlement Class Representatives. A reduction by the Court or by an appellate court of the service award, if any, will not be considered a material

modification of this Settlement Agreement, and shall not affect any of the Parties' rights and obligations under this Agreement, and shall only serve to reduce the amount of the service award payable to the Settlement Class Representatives and increase the Net Settlement Amount payable to Settlement Class Members. Any service award approved by the Court shall be transmitted by ScaWorld to the Settlement Administrator. The Settlement Administrator will issue payment to Settlement Class Counsel on behalf of the Settlement Class Representatives within thirty (30) calendar days after the Final Settlement Date.

Any service award paid to the Settlement Class Representatives shall be reported on an IRS Form 1099 and provided to the Settlement Class Representatives.

2.7 Payments to Settlement Class Counsel. Defendant will not oppose a motion by Settlement Class Counsel for attorneys' fees and costs of up to twenty-five (25) percent of the \$11,500,000 Settlement Amount, plus litigation costs of up to \$36,048.77 to be paid from the Settlement Amount. Settlement Class Counsel's motion for attorneys' fees and costs shall be filed no later than twenty-one (21) days before the deadline for objections to and exclusions from the Settlement. Defendant shall not be liable for any additional payment to Settlement Class Counsel. A reduction by the Court or by an appellate court of the fees and costs awarded to Settlement Class Counsel will not be considered a material modification of this Agreement and shall not affect any of the Parties' rights and obligations under this Settlement Agreement, and shall only serve to reduce the amount of the fees and costs payable to Settlement Class Counsel, if any, and increase the Net Settlement Amount payable to Settlement Class Members. Any attorneys' fees and costs approved by the Court shall be paid by the Settlement Administrator to Settlement Class Counsel within thirty (30) calendar days after the Final Settlement Date.

3. CLASS SETTLEMENT PROCEDURES.

3.1 Preliminary Approval and Provisional Class Certification. As soon as practicable after this Agreement is signed, the Parties shall jointly move for an order provisionally certifying the Settlement Class and preliminarily approving the settlement embodied by this Settlement Agreement. The motion shall request that the Court:

- (a) preliminarily approve this Settlement Agreement as being the product of serious, informed, arm's-length non-collusive negotiations, having no obvious deficiencies, not improperly granting preferential treatment to the proposed Settlement Class Representatives or segments of the Settlement Class, and falling within the range of possible approval;
- (b) preliminarily approve the form, method of providing notice, and content of the Notice described in Section 3.2 and attached as Exhibit C.

- (c) continue to stay all further proceedings in the Action until the Court renders a final decision on approval of the Settlement Agreement;
- (d) set the date and time of the Fairness Hearing between one hundred and twenty-five (125) and one hundred forty (140) calendar days after entry of the Preliminary Approval Order, subject to the Court's availability.

The proposed Preliminary Approval and Provisional Class Certification Order must be materially identical to the form attached as Exhibit B. Settlement Class Counsel shall have the obligation to prepare initial drafts of the motion for preliminary approval and supporting documents and to provide such drafts to SeaWorld's Counsel at least four (4) business days before filing.

3.2 Notice. Subject to the Court entering a Preliminary Approval Order that is materially identical to the form attached as Exhibit B, the Parties agree that the Settlement Administrator will provide the Settlement Class with notice of the proposed Settlement as follows.

- (a) **Settlement Class Data.** No later than thirty (30) calendar days after entry of the Preliminary Approval Order, SeaWorld shall provide the last known mailing address it has in its system for Settlement Class Members to the Settlement Administrator. The Settlement Administrator shall ensure that the information it receives from the Parties and the Settlement Class Members is secured and managed in such a way as to protect the security and confidentiality of the information.
- (b) **Notice to Federal and State Officials.** Within the time period provided under 28 U.S.C. § 1715, SeaWorld shall cause the required notifications of the Settlement to be made to the governmental entities and officials identified in the statute.
- (c) **Internet Posting.** Starting no later than thirty (30) calendar days after entry of the Preliminary Approval Order, the Settlement Administrator will operate a website solely for the purposes of providing the Settlement Class notice of the Settlement Agreement. The Settlement Website will contain the Notice, the Complaint, and the Preliminary Approval Order. Within five (5) calendar days after Settlement Class Counsel files the motion for attorneys' fees and costs, the Settlement Website will also post the fees and costs motion. The Notice will be materially identical to the form attached as Exhibit C.
- (d) **Notice.** Upon the Settlement Website being activated, and no later than fifty (50) calendar days after entry of the Preliminary Approval Order, the Settlement Administrator shall send the Notice to Settlement Class Members at the most recent address for the Settlement Class Members that is contained in SeaWorld's records. If the Notice is returned with a forwarding address, the Settlement Administrator will immediately re-mail the Notice within seven (7) calendar days. If the Notice is returned without

a forwarding address, the Settlement Administrator will immediately conduct a standard skip trace in an effort to ascertain the current address for the particular Settlement Class Member, and resend the Notice within seven (7) days of its return.

- (e) **Option Form.** Upon the Settlement Website being activated and no later than fifty (50) calendar days after entry of the Preliminary Approval Order, the Settlement Administrator shall send the Option Form to Settlement Class Members at the most recent address for the Settlement Class Members that is contained in SeaWorld's records. The Option Form will provide each class member with a choice of one of the following three options: (1) receive a check for their share of the settlement and cancel any active passes; (2) receive a credit worth at least their share of the settlement and any passes that are active as of the Option Deadline will remain active and subject to monthly renewal until the class member contacts SeaWorld to cancel the pass; or (3) receive a check for their share of the settlement and any passes that are active as of the Option Deadline will remain active and subject to monthly renewal until the class member contacts SeaWorld to cancel the pass. At SeaWorld's sole discretion, SeaWorld can add an additional in-kind or monetary benefit for those class members who choose option 2 above. If a Settlement Class Member does not return the Option Form by the Option Deadline, that class member will receive a check for their share of the settlement and any passes that are active as of the Option Deadline will remain active and subject to monthly renewal until the class member contacts SeaWorld to cancel the pass
- (f) **Option Deadline.** The Option Deadline will be the date ninety-five (95) calendar days after the date the Preliminary Approval Order is entered.

3.3 Proof of Notice. No later than seven (7) calendar days before the filing deadline for the motion in support of the Final Order and Approval, the Settlement Administrator must serve a declaration(s) on Settlement Class Counsel and SeaWorld's Counsel confirming that the Settlement Administrator provided the Settlement Class with notice of the proposed settlement in accordance with Section 3.2.

3.4 Objections. Any Settlement Class Member who has not opted out of the Settlement Class pursuant to Section 3.5, below, and who wants to object to the Settlement Agreement must mail a written objection to the Settlement Administrator, no later than ninety-five (95) calendar days after the Preliminary Approval Order, unless the Court orders otherwise. The delivery date is deemed to be the date the objection is deposited in the U.S. Mail as evidenced by the postmark. Written objections must include: (a) the name and case number of the Action, "*Herman v. SeaWorld, Inc.*, United States District Court for the Middle District of Florida Tampa Division, Case No. 8:14-cv-03028-MSS-EAJ"; (b) the full name, address, e-mail address, and telephone number of the person objecting;

(c) the words "Notice of Objection" or "Formal Objection"; and (d) in clear and concise terms, the legal and factual arguments supporting the objection, including an attestation, under the penalty of perjury, of facts demonstrating that the person objecting is a Settlement Class Member. Any Settlement Class Member that mails a written objection as described in this Section has the option to appear at the Fairness Hearing, either in person or through counsel hired at the Settlement Class Member's expense, to object to the Settlement Agreement, as long as the Settlement Class Members or their attorneys intending to make an appearance at the Fairness Hearing so indicated in their objection under a heading of "Notice of Intent to Appear." Only Settlement Class Members who timely mail objections containing Notices of Intent to Appear may speak at the Fairness Hearing. Settlement Class Members who fail to submit written objections as described in this Section will be deemed to have waived any objections and will be foreclosed from making any objections (whether by a subsequent objection, intervention, appeal, or any other process) to the Settlement Agreement and the Settlement Class Members asserting such an objection shall be bound by the final determination of the Court. Within two (2) business days of receiving any objection, the Settlement Administrator will provide copies of the objection to Settlement Class Counsel and SeaWorld's Counsel.

3.5 Opt-Out Requests. Settlement Class Members may elect to opt out of the Settlement Class and not to be bound by this Settlement Agreement. To make this election, Settlement Class Members must send a letter or postcard to the Settlement Administrator stating (a) the name and case number of the Action, "*Herman v. SeaWorld, Inc.*, United States District Court for the Middle District of Florida Tampa Division, Case No. 8:14-cv-03028-MSS-EAJ"; (b) the full name, address, e-mail address, and telephone number of the person opting out; and (c) a statement that he/she does not wish to participate in the Settlement, postmarked no later than ninety-five (95) calendar days after the Preliminary Approval Order. The delivery date is deemed to be the date the objection is deposited in the U.S. Mail as evidenced by the postmark. Settlement Class Members who timely opt out of the Settlement Class shall: (a) have no right to receive any benefits under the Settlement Agreement; (b) not be bound by the terms of Settlement Agreement; and (c) have no right to object to the terms of the Settlement Agreement or be heard at the Fairness Hearing. Any Settlement Class Member who attempts to both object to and opt out of this Settlement Agreement will be deemed to have opted out and will forfeit the right to object to this Settlement Agreement or any of its terms.

(a) **Opt-Out List.** The Settlement Administrator must serve on SeaWorld's Counsel and Settlement Class Counsel a list of Settlement Class Members who have timely and validly opted out of the Settlement Class no later than ten (10) calendar days before the filing deadline for the motion in support of the Final Order and Approval.

3.6 Final Order and Approval. Before the Fairness Hearing, the Settlement Class Representatives through Settlement Class Counsel shall apply for Court approval

of a proposed Final Order, materially identical to the form attached as Exhibit D. The Parties' counsel shall file with the Court a complete list of all Settlement Class Members who have validly and timely opted out of the Settlement Class. Settlement Class Counsel will draft the motion for final approval or application papers and provide Defendant's Counsel with drafts of the motion or application and proposed order to review at least seven (7) calendar days before the filing deadline. The motion for final approval shall be filed no later than seven (7) days before the Fairness Hearing. SeaWorld shall be permitted, but not required, to file its own brief in support of the Final Order and Approval and, in any event, will not oppose the motion for final approval of the settlement.

3.7 Action Status if Settlement Not Approved. This Settlement Agreement is being entered into for settlement purposes only. If the Court conditions its approval of either the Preliminary Approval Order or the Final Order and Approval on any modifications of this Settlement Agreement that are not acceptable to all Parties, or if the Court does not approve the Settlement Agreement or enter the Final Order and Approval, or if the Final Settlement Date does not occur for any reason, then this Settlement Agreement will be deemed null and void *ab initio*. In that event, (a) the Preliminary Approval Order and/or Final Order and Approval and all of its or their provisions will be vacated by its or their own terms, (b) the Action will revert to the status that existed before the Settlement Agreement's execution date, and (c) no term or draft of this Settlement Agreement, or any part of the Parties' settlement discussions, negotiations or documentation will have any effect or be admissible into evidence for any purpose in the Action or any other proceeding. If the Court does not approve the Settlement Agreement or enter the Final Order and Approval for any reason, or if the Final Settlement Date does not occur for any reason, SeaWorld shall retain all its rights to object to the maintenance of the Action as a class action, and nothing in this Settlement Agreement or other papers or proceedings related to the Settlement Agreement shall be used as evidence or argument by any Party concerning whether the Action may properly be maintained as a class action.

4. APPROVAL AND RELEASES.

4.1 Approval and Enforcement. The Parties agree that should the Court grant final approval of the Settlement Agreement, the order shall include a provision for the retention of the Court's jurisdiction over the Parties to enforce the terms of the order.

4.2 Settlement Class Representatives and Settlement Class Members' Release. Upon final approval of this Settlement Agreement and entry of the Final Approval Order, the Settlement Class Representatives and each Settlement Class Member, and their respective heirs, assigns, successors, agents, attorneys, executors, and representatives, shall be deemed to have, and by operation of the Final Approval Order shall have, fully, finally, irrevocably, and forever released SeaWorld, and its past or present directors, officers, managers, operators, employees, agents, insurers, owners, shareholders, investors, members, attorneys, advisors,

consultants, representatives, partners, affiliates, related companies, parents, subsidiaries, joint ventures, independent contractors, clients, divisions, predecessors, successors, and assigns (collectively, the "Released Parties"), from any and all liabilities, claims, causes of action, damages, costs, attorneys' fees, losses, or demands, whether known or unknown, existing or suspected or unsuspected, that were or reasonably could have been asserted based on the factual allegations contained in the Action, relating to or arising out of the automatic renewal of Passes purchased using EZpay during the Settlement Class Period (the "Released Claims"). The Released Claims include, but are not limited to, cross claims, third-party claims or counterclaims made by Settlement Class Representatives and/or Settlement Class Members in the Action or which could have been brought by Settlement Class Representatives or Settlement Class Members. Settlement Class Representatives and Settlement Class Members specifically acknowledge that they may hereafter discover claims presently unknown or unsuspected or facts in addition to or different from those they now know or believe to be true with respect to the matters released. Settlement Class Representatives and Settlement Class Members agree that it is their intent to fully, finally, and forever settle and release all such matters that may exist, or might have existed relating to the automatic renewal of their Passes and that they intend to release fully and finally all claims, known and unknown, suspected and unsuspected, that arose during the Settlement Class Period. Except for proceedings to enforce the terms of this Settlement Agreement, upon entry of the Final Approval Order, the Settlement Class Representatives and each Settlement Class Member shall be deemed to have, and by operation of the Final Approval Order shall have, agreed not to file, maintain, cause or knowingly permit the filing or maintenance of any lawsuit, administrative action, or other proceeding, in any state, federal or foreign court, or before any local, state, federal or foreign administrative agency, or any other tribunal, that arises from or relates to any of the Released Claims.

5. CONFIDENTIALITY.

- 5.1** Except as expressly contemplated by this agreement, the Parties agree that no public statement shall be made concerning this Settlement Agreement prior to Final Approval Order except as may be required by law for tax or accounting purposes or to effectuate the Settlement Agreement. Nothing herein shall prevent Settlement Class Counsel or Defense Counsel from making statements concerning the settlement of this matter in Court filings. Upon final approval, the Parties may, but are not required to, agree upon the form and content of a press release to issue in connection with the Settlement Agreement. Otherwise, no Party shall issue or cause to be issued any press release or other publication of any kind.
- 5.2** Notwithstanding any other provision of this Settlement Agreement, the terms, conditions, settlement amounts and all other aspects of this Settlement Agreement shall remain strictly confidential until such time as the Parties move for an order provisionally approving the Settlement Agreement pursuant to Section 3.1. If, for any reason, the Parties do not move for an order provisionally approving the

Settlement Agreement pursuant to Section 3.1, the terms, conditions, settlement amounts and all other aspects of this Settlement Agreement shall remain strictly confidential in perpetuity and will not be subject to disclosure to any person or entity other than the signatories hereto and their counsel. Additionally, the fact that the Parties conducted settlement negotiations and any proposed terms or representations made during such negotiations by any Party shall be inadmissible pursuant to Rule of Evidence 408. The Parties may share this Settlement Agreement if so required by law, and with their insurers, attorneys or accountants who will agree to be bound by this confidentiality provision. Nothing in this provision shall preclude Named Plaintiffs, Settlement Class Counsel, or Defendant's Counsel from communicating with the Court as may be necessary to enforce the Settlement Agreement and/or permit approval of the Settlement Agreement.

6. COLLATERAL ATTACK AND PRECLUSIVE EFFECT.

6.1 This Settlement Agreement shall not be subject to collateral attack by any Settlement Class Member or any recipient of the Notice after the Final Approval Order is entered. Such prohibited collateral attacks shall include, but are not limited to, allegations that the procedures for claims administration were incorrect, allegations that the Settlement Class Member failed for any reason to receive timely notice of the Action, or allegations disputing the calculation of any Settlement Class Member's individual settlement amount.

6.2 Except as provided herein, neither this Settlement Agreement nor any of its terms shall be offered or used as evidence by any of the Parties, Settlement Class Members, or their respective counsel in the Action or in any other action or proceeding; provided, however, that nothing contained in this section shall prevent this Settlement Agreement from being used, offered, or received in evidence in any proceedings to enforce, construe, or finalize the settlement and this Settlement Agreement.

6.3 To the extent permitted by law, this Settlement Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding which may be instituted, prosecuted, or attempted to invalidate, nullify, or breach this Settlement Agreement, in whole or in part. Any Released Party may file this Settlement Agreement and/or the Final Approval Order in any action that may be brought against it in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim or issue preclusion or similar defense or counterclaim in any court or administrative or other tribunal.

7. ADDITIONAL PROVISIONS.

7.1 No Admission of Liability.

- (a) The Parties understand and acknowledge that this Settlement Agreement constitutes an accord and satisfaction, and a compromise and settlement, of disputed claims. No action taken by the Parties, either previously or in connection with the negotiations or proceedings connected with this Settlement Agreement, shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, an acknowledgement or admission by any Party of any fault, liability, or wrongdoing of any kind whatsoever to any other Party, or an acknowledgement or admission that the Action is appropriate for class treatment for any purpose other than this Settlement Agreement. Neither this Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance of this Settlement Agreement is, may be deemed to be, or may be used as an admission or evidence of the validity of any claim made by the Settlement Class Representatives, Settlement Class Members, or Settlement Class Counsel.
- (b) This Settlement Agreement reflects the Parties' compromise and settlement of the disputed claims alleged in the Complaint. Its provisions, and all related drafts, communications and discussions, cannot be construed as or deemed to be evidence of an admission or concession of any point of fact or law regarding wrongdoing by SeaWorld, or matters respecting class certification, by any person or entity, and cannot be offered or received into evidence or requested in discovery in this Action or any other action or proceeding as evidence of any such admission or concession.

7.2 Cooperation to Obtain Court Approval. The Parties acknowledge that it is their intent to consummate this Settlement Agreement and agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Settlement Agreement and to exercise their best efforts to obtain preliminary and final approval from the Court. This includes, without limitation, cooperating in responding to objections, addressing any appeals or appellate issues, and obtaining any further orders from the Court as may be necessary, all in furtherance of the terms of this Settlement Agreement only, and without imposing any further obligations on any Party inconsistent with or in addition to the obligations expressly set forth in this Settlement Agreement. The Parties must execute and deliver any additional papers, documents, and other assurances, and must do any other acts reasonably necessary, to perform their obligations under this Settlement Agreement and to carry out this Settlement Agreement's expressed intent.

7.3 Extensions of Time. Unless otherwise ordered by the Court, the Parties may jointly agree in writing to reasonable extensions of time to carry out any provisions of this Settlement Agreement.

7.4 Real Parties in Interest. In executing this Settlement Agreement, the Parties warrant and represent that they, including Named Plaintiffs in hertheir

representative capacity on behalf of the Settlement Class, are the only persons having any interest in the claims asserted in this Action. Neither these claims, nor any part of these claims, have been assigned, granted, or transferred in any way to any other person, firm, or entity.

- 7.5 Voluntary Agreement.** The Parties executed this Settlement Agreement voluntarily and without duress or undue influence.
- 7.6 Binding on Successors.** This Settlement Agreement binds and benefits the Parties' respective successors, assigns, legatees, heirs, and personal representatives.
- 7.7 Parties Represented by Counsel.** The Parties acknowledge that: (a) they have been represented by independent counsel of their own choosing during the negotiation and preparation of this Settlement Agreement; (b) they have read this Settlement Agreement and are fully aware of its contents; and (c) their respective counsel fully explained to them the Settlement Agreement and its legal effect.
- 7.8 Authorization.** Each Party warrants and represents that there are no liens or claims of lien or assignments, in law or equity, against any of the claims or causes of action released by this Settlement Agreement and, further, that each Party is fully entitled and duly authorized to give this complete and final release and discharge. Each person executing this Settlement Agreement in a representative capacity represents and warrants that he or she is empowered to do so.
- 7.9 Integrated Agreement.** This Settlement Agreement and its exhibits constitutes a single, integrated written contract expressing the entire agreement of the Parties relating to the subject matter hereof, and all prior or contemporaneous agreements, understandings, representations and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any party hereto, except as provided herein. This Settlement Agreement may not be changed, altered or modified except in writing and signed by all Parties.
- 7.10 Construction and Interpretation.** Neither a Party nor any of the Parties' respective attorneys will be deemed the drafter of this Settlement Agreement for purposes of interpreting any provision in this Settlement Agreement in any judicial or other proceeding that may arise between them. This Settlement Agreement has been, and must be construed to have been, drafted by all the Parties to it, so that any rule that construes ambiguities against the drafter will have no force or effect.
- 7.11 Exhibits.** The exhibits to this Agreement are integral parts of the Agreement and Settlement and are incorporated into this Agreement as though fully set forth in the Settlement Agreement. Any inconsistency between this Settlement Agreement and the attached exhibits will be resolved in favor of this Settlement Agreement.

- 7.12 Privilege Retained.** Nothing in this Settlement Agreement, the negotiations, and the mediation relating thereto is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity, including without limitation the attorney-client privilege or work product immunity, by any Party.
- 7.13 Governing Law.** This Agreement is governed by Florida law and shall be construed in accordance with, and be governed by, the law of the State of Florida, without regard to the principles thereof regarding choice of law.
- 7.14 Grammar.** The neuter form of a pronoun shall be considered to include within its meaning the masculine and feminine forms of the pronoun, and vice versa.
- 7.15 Later Discovered Facts.** The Parties acknowledge that they may later discover facts different from or in addition to those they now know or believe to be true regarding the matters released or described in this Settlement Agreement, and, even so, they agree that the Settlement Agreement, including without limitation the releases and waivers contained herein, shall remain effective in all respects notwithstanding any later discovery of any different or additional facts. The Parties assume any and all risk of any mistake in connection with the true facts involved in the matters, disputes or controversies released or described in this Settlement Agreement or with regard to any facts now unknown to the Parties relating thereto.
- 7.16 Execution Date.** This Settlement Agreement is deemed executed on the date the Settlement Agreement is signed by all of the undersigned.
- 7.17 Counterparts.** This Settlement Agreement may be executed in counterparts, each of which constitutes an original, but all of which together constitute one and the same instrument. Several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies and PDFs of executed copies of this Settlement Agreement may be treated as originals.
- 7.18 Recitals.** The Recitals are incorporated by this reference and are part of the Settlement Agreement.
- 7.19 Severability.** If any provision of this Settlement Agreement is declared by the Court to be invalid, void, or unenforceable, the remaining provisions of this Settlement Agreement will continue in full force and effect, unless the provision declared to be invalid, void, or unenforceable is material, at which point the Parties shall attempt to renegotiate the Settlement Agreement or, if that proves unavailing, either Party can terminate the Settlement Agreement without prejudice to any Party.
- 7.20 List of Exhibits:** The following exhibits are attached to this Agreement:

Exhibit A – Second Amended Complaint

Exhibit B - [Proposed] Preliminary Approval Order

Exhibit C - Form Notice

Exhibit D - [Proposed] Final Order and Approval

Exhibit E – Option Form

Exhibit F – Retail Installment Contract

The Parties have agreed to the terms of this Agreement and have signed and dated below.


11/20/18, 2018



JASON HERMAN

Named Plaintiff

11/20/18, 2018



JOEY KRATT

Named Plaintiff

11-20-18, 2018

Christina L. Lancaster

CHRISTINA LANCASTER

Named Plaintiff

11/20/18, 2018

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11/21, 2018

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Attorneys for Plaintiffs

_____, 2018

SEAWORLD PARKS & ENTERTAINMENT, INC.

By: _____



Title: _____

G. ANTHONY TAYLOR, GC

Defendant

12/4, 2018

POLSINELLI PC

By: _____



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E-mail: cdeihl@polsinelli.com

_____, 2018

HILL, RUGH, KELLEY & MAHN, P.L.

By: _____



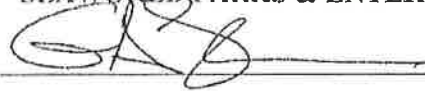
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Attorneys for Defendant

_____, 2018

SEAWORLD PARKS & ENTERTAINMENT, INC.

By:



Title:

G. ANTHONY TAYLOR, GC

Defendant

_____, 2018

POLSINELLI PC

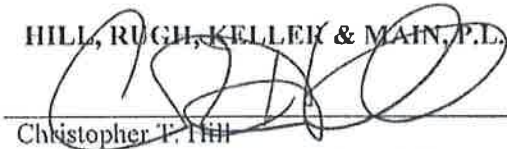
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