



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MARK KISTENMACHER,)
DERIVATIVELY AND ON BEHALF OF)
SEAWORLD ENTERTAINMENT, INC.,)
)
Plaintiff,)
)
v.)

C.A. No. 10437-VCS

JIM ATCHISON, JAMES M. HEANEY,)
DANIEL B. BROWN, MARC)
SWANSON, DAVID F.)
D’ALESSANDRO, JOSEPH P.)
BARATTA, BRUCE MCEVOY, JUDITH)
A. MCHALE, PETER F. WALLACE,)
DEBORAH THOMAS, STEPHEN A.)
SCHWARZMAN, SW DELAWARE)
L.P., SW DELAWARE A L.P., SW)
DELAWARE B L.P., SW DELAWARE)
C L.P., SW DELAWARE D L.P., SW)
DELAWARE E L.P., SW DELAWARE F)
L.P., SW DELAWARE CO-INVEST)
L.P., SW DELAWARE (GS) L.P., SW)
DELAWARE (GSO) L.P., SW CAYMAN)
LIMITED, AND THE BLACKSTONE)
GROUP L.P.,)

Defendants,)
)
And)

SEAWORLD ENTERTAINMENT, INC.,)
)
Nominal Defendant.)

STIPULATION OF COMPROMISE AND SETTLEMENT

This Stipulation of Compromise and Settlement (“Stipulation”) is made and entered into as of February 26, 2020. The parties to this litigation (each a “Party” and, collectively, the “Parties”), by and through their undersigned attorneys, have reached an agreement for the settlement of the above-captioned matter styled *Kistenmacher v. Atchison, et al.*, filed in the Court of Chancery of the State of Delaware (the “Court”), C.A. No. 10437-VCS (the “Derivative Action”) on the terms set forth below (the “Settlement”) and subject to Court approval pursuant to Court of Chancery Rule 23.1. This Stipulation is intended to fully, finally, and forever resolve, discharge, settle, and dismiss with prejudice all claims asserted in the Derivative Action and all claims relating to the transactions challenged in the Derivative Action.¹

The Parties to this Stipulation are:

1. Plaintiff Mark Kistenmacher (“Kistenmacher” or “Plaintiff”), a current stockholder of SeaWorld Entertainment, Inc. (“SeaWorld,” the “Company,” or “Nominal Defendant”), who has prosecuted the Derivative Action on behalf of SeaWorld pursuant to Court of Chancery Rule 23.1;
2. Nominal Defendant SeaWorld, a Delaware corporation;
3. Defendants Jim Atchison, James M. Heaney, Daniel B. Brown, Marc

¹ Capitalized words or terms used herein, unless otherwise defined, shall have the meanings ascribed to them in Section I hereof titled “Definitions.”

Swanson, David F. D'Alessandro, Joseph P. Baratta, Bruce McEvoy, Judith A. McHale, Peter F. Wallace, Deborah Thomas, Stephen A. Schwarzman (the "Individual Defendants"), SW Delaware L.P., SW Delaware A L.P., SW Delaware B L.P., SW Delaware C L.P., SW Delaware D L.P., SW Delaware E L.P., SW Delaware F L.P., SW Delaware Co-Invest L.P., SW Delaware (GS) L.P., SW Delaware (GSO) L.P., SW Cayman Limited (collectively, the "Selling Shareholders"); The Blackstone Group L.P., now known as The Blackstone Group Inc. ("Blackstone") (and together with SeaWorld, the Individual Defendants, and the Selling Shareholders, the "Defendants").

WHEREAS,

Summary of the Derivative Action

A. On December 8, 2014, Plaintiff initiated this Derivative Action against the Defendants by filing a Verified Shareholder Derivative Complaint, on behalf of SeaWorld, asserting claims for breaches of fiduciary duties and unjust enrichment.

B. On February 20, 2015, the Parties filed a Stipulation and Proposed Order regarding service and scheduling, providing for the filing of an amended complaint and response thereto, which the Court granted on February 25, 2015.

C. On March 30, 2015, Plaintiff filed the operative Verified Amended Shareholder Derivative Complaint ("Amended Complaint"). The Amended Complaint asserts claims for breaches of fiduciary duties, aiding and abetting

breaches of fiduciary duties, unjust enrichment, and violation of Florida Statute §517.301 against the Defendants.

D. On May 21, 2015, Defendants filed a Motion to Stay, arguing that the Derivative Action should be stayed until the resolution of the related securities class action captioned *Lou Baker v. SeaWorld Entertainment, Inc., et al.*, Case No. 3:14-cv-02129 pending in the United States District Court for the Southern District of California (the “Securities Action”).

E. On June 29, 2015, Defendants filed their Motion to Dismiss the Amended Complaint.

F. On June 30, 2015, the Parties filed a Stipulation and [Proposed] Order Regarding Scheduling on Defendants’ Motions to Dismiss and Stay, which the Court granted the same day.

G. On July 17, 2015, Plaintiff filed his opposition to the Motion to Stay. The Motion to Stay was fully briefed on July 28, 2015, with the filing of Defendants’ reply brief.

H. On August 31, 2015, Plaintiff filed his opposition to the Motion to Dismiss.

I. On September 15, 2015, oral argument was held on the Motion to Stay. Then, on September 21, 2015, former Vice Chancellor John W. Noble granted the motion and stayed the Derivative Action in favor of the Securities Action, requiring

the Parties to file periodic status reports beginning on December 15, 2015.

J. On March 15, 2017, Plaintiff filed a Motion to Lift Stay. The motion was fully briefed on June 23, 2017, with the filing of Plaintiff's reply brief.

K. On September 12, 2017, after oral argument before Vice Chancellor Joseph R. Slight, Plaintiff's Motion to Lift Stay was denied.

L. On December 6, 2019, Plaintiff sent a written settlement demand to Defendants' Counsel that included a demand for a monetary contribution to be made to SeaWorld by the rest of the Defendants and their insurers and proposed corporate governance reforms to be implemented by SeaWorld.

M. On January 17, 2020, the Parties participated in an in-person full day mediation to discuss possible resolution of the Derivative Action before mediator Jed Melnick, Esq. of JAMS (the "Mediator").

N. The Parties made substantial progress towards settlement at the mediation, but did not arrive at a resolution that day. Subsequently, the Parties continued arm's-length settlement negotiations, with the assistance of the Mediator, and ultimately agreed in principle to the material terms of the Settlement, including corporate governance reforms to be implemented by SeaWorld ("Reforms") and a cash payment of \$12.5 million by the insurer(s) for certain of the Defendants to SeaWorld to be used by the Company for general corporate purposes ("Cash Payment").

O. With substantial assistance from the Mediator, and only after agreeing in principle to the material terms of the Settlement, including the Cash Payment and the Reforms, the Parties negotiated and agreed to a sum of three million one hundred twenty-five thousand dollars (\$3,125,000) to be paid to Plaintiff's Counsel as attorneys' fees and expenses by the Individual Defendants' insurer(s) from Side A-DIC insurance policies, subject to the approval of the Court based on the benefits conferred upon SeaWorld by the Cash Payment and Reforms.

P. On February 3, 2020, the Parties executed a binding and enforceable Term Sheet memorializing the material terms and conditions of the Settlement ("Term Sheet").

Q. On February 14, 2020, the Court entered a Stipulation and Order for the Production and Exchange of Confidential Information (the "Stipulated Protective Order").

R. On February 17, 2020, Counsel for SeaWorld provided confirmatory discovery from the Securities Action to Plaintiff's Counsel pursuant to the Stipulated Protective Order.

S. The Parties believe that the Stipulation is in the best interests of SeaWorld and SeaWorld's current stockholders, and that the Stipulation confers benefits upon SeaWorld and its stockholders.

T. The members of SeaWorld's Board of Directors ("Board"), none of

whom is a Defendant in the Derivative Action, in exercising their business judgment, approved the Settlement and each of its terms, as set forth in this Stipulation, including the Cash Payment, the Reforms, and the Fee and Expense Amount (as defined in Paragraph 1.10 below), as in the best interest of SeaWorld and its stockholders.

Plaintiff's Counsel's Investigation and Research, Plaintiff's Claims, and the Benefits of the Settlement

U. Plaintiff's Counsel believe that the claims asserted in the Derivative Action have merit and that their investigation supports the claims asserted. Without conceding the merit of any of Defendants' defenses or the lack of merit of any of his own allegations, and in light of the substantial and immediate benefit Plaintiff's Counsel believe the Settlement confers on SeaWorld and its stockholders, as well as to avoid the potentially protracted time, expense, and uncertainty associated with continued litigation, Plaintiff has concluded that it is desirable that the Derivative Action be fully and finally settled in the manner, and upon the terms and conditions, set forth in this Stipulation. Plaintiff and Plaintiff's Counsel recognize the significant risk, expense, and length of continued proceedings necessary to prosecute the Derivative Action against the Defendants and have considered: (i) the attendant risks of continued litigation and the uncertainty of the outcome of the Derivative Action; (ii) the probability of success on the merits; (iii) the inherent problems of proof associated with, and possible defenses to, the claims asserted in the Derivative

Action; (iv) the desirability of permitting the Settlement to be consummated according to its terms; and (v) the expense and length of continued proceedings necessary to prosecute the Derivative Action through trial and appeals.

V. Based on Plaintiff's Counsel's thorough review and analysis of the relevant facts, allegations, defenses, and controlling legal principles, Plaintiff's Counsel believe that the settlement set forth in this Stipulation is fair, reasonable, and adequate, and confers substantial benefits upon SeaWorld and its current stockholders. Based upon Plaintiff's Counsel's evaluation as well as his own evaluation, Plaintiff has determined that the settlement is in the best interests of SeaWorld and its stockholders and has agreed to settle the Derivative Action upon the terms, and subject to the conditions, set forth herein.

Defendants' Denials of Wrongdoing and Liability

W. The Defendants make no admission of liability or any form of wrongdoing whatsoever. The Defendants deny that any of them have committed any violations of law or breaches of fiduciary duty, or aided and abetted the same, and expressly maintain that they diligently and scrupulously complied with any and all fiduciary and other legal duties.

X. Nonetheless, Defendants have concluded that further litigation of the Derivative Action would be protracted and expensive, and, taking into account the uncertainty and risks inherent in any litigation, especially in complex cases like the

Derivative Action, have determined that it is desirable and beneficial that the Derivative Action be settled in the manner and upon the terms and conditions set forth in this Stipulation. The Board has determined that it is in the best interest of SeaWorld for the Derivative Action to be settled in the manner and upon the terms and conditions set forth in this Stipulation.

Y. This Stipulation and the provisions herein shall not be deemed to be, or offered or received in evidence as, a presumption against, or a concession or an admission of any fault, liability, or wrongdoing or damage whatsoever by any Defendant.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, BY AND AMONG THE PARTIES TO THIS STIPULATION, subject to the approval of the Court pursuant to Court of Chancery Rule 23.1, that the Derivative Action shall be fully and finally compromised and settled, the Released Claims shall be released as against the Releasees, and the Derivative Action shall be dismissed with prejudice, upon and subject to the following terms and conditions of the Settlement, as follows:

I. DEFINITIONS

1.1. “Cash Payment” means the sum of twelve million five hundred thousand dollars (\$12,500,000), detailed in Section II herein, to be paid to SeaWorld

by the insurer(s) for certain of the Defendants to be used by the Company for general corporate purposes.

1.2. “Claims” means any and all claims, rights, duties, controversies, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages, losses, judgments, liabilities, allegations, arguments, and causes of action or liabilities of any kind, nature and character (including, but not limited to, claims for damages, equitable relief, interest, attorneys’ fees, expert or consulting fees, and any and all other costs, expenses or liabilities whatsoever), whether based on federal, state, local, administrative, statutory, common law, or any other law, rule or regulation, whether foreign or domestic, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured.

1.3. “Court” means the Court of Chancery of the State of Delaware.

1.4. “Current SeaWorld Stockholders” means any Person or Persons (as defined herein) who owned SeaWorld common stock as of the date of the execution of this Stipulation and continues to hold their SeaWorld common stock as of the date of the Settlement Hearing.

1.5. “Defendants’ Counsel” means Simpson Thacher & Bartlett LLP and Richards, Layton & Finger, P.A.

1.6. “Defendants’ Released Claims” means all Claims that could be asserted in any forum by any of SeaWorld, the Individual Defendants, Selling

Shareholders, and Blackstone against Plaintiff's Releasees (including known and Unknown Claims brought directly), arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the Derivative Action or the Released Claims; provided, however, that nothing herein shall in any way release, waive, impair, or restrict the rights of any Party to enforce the terms of this Settlement.

1.7. "Defendants' Releasees" means (i) each of the Defendants and their attorneys; (ii) the current and former parents, affiliates, subsidiaries, portfolio entities, successors, predecessors, partners, members, shareholders, assigns, and assignees of each of the foregoing in (i); and (iii) the current and former immediate family members, spouses, heirs, executors, estates, beneficiaries, distributees, foundations, administrators, trusts, trustees, general or limited partners or partnerships, joint ventures, affiliates, subsidiaries, officers, directors, stockholders, owners, members, representatives, employees, attorneys, financial or investment advisors, consultants, underwriters, investment banks or bankers, commercial bankers, insurers, reinsurers, excess insurers, co-insurers, advisors, principals and agents of each of the Persons listed in (i) and (ii).

1.8. "Derivative Action" means the derivative action styled as *Kistenmacher v. Atchison, et al.*, C.A. No. 10437-VCS (Del. Ch.).

1.9. “Effective Date” means the first date by which all of the events and conditions specified in Section VIII, Paragraph 8.1 herein have been met and have occurred or have been waived in writing by the Parties.

1.10. “Fee and Expense Amount” means the sum of three million one hundred twenty-five thousand dollars (\$3,125,000), detailed in Section VI, to be paid to Plaintiff’s Counsel as attorneys’ fees and expenses, by the Individual Defendants’ insurer(s) from Side A-DIC insurance policies, to the extent approved by the Court, or in the event the Court approves a lesser amount, such lesser amount.

1.11. “Final,” with respect to a court order, means the later of: (i) if there is an appeal from a court order, the date of final affirmance on appeal and the expiration of the time for any further judicial review whether by appeal, reconsideration or a petition for a *writ of certiorari* and, if *certiorari* is granted, the date of final affirmance of the order following review pursuant to the grant; or (ii) the date of final dismissal of any appeal from the order or the final dismissal of any proceeding on *certiorari* to review the order; or (iii) the expiration of the time for the filing or noticing of any appeal or petition for *certiorari* from the order (or, if the date for taking an appeal or seeking review of the order shall be extended beyond this time by order of the issuing court, by operation of law or otherwise, or if such extension is requested, the date of expiration of any extension if any appeal or review is not sought), without any such filing or noticing being made. However, any appeal

or proceeding seeking subsequent judicial review pertaining solely to the Court's award of attorneys' fees or expenses, shall not in any way delay or affect the time set forth above for the Judgment to become Final or otherwise preclude the Judgment from becoming Final.

1.12. "Judgment" means the final order and judgment to be entered by the Court, substantially in the form of Exhibit D attached hereto.

1.13. "Mediator" means Jed Melnick, Esq. of JAMS.

1.14. "Notice" means the Notice of Pendency and Proposed Settlement of Derivative Action to Current SeaWorld Stockholders, which, subject to the Court's approval, shall be substantially in the form of Exhibit B.

1.15. "Parties" means, collectively, Plaintiff (individually and derivatively on behalf of SeaWorld), and each of the Defendants.

1.16. "Person(s)" means a natural person, individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, association, joint venture, joint stock company, estate, legal representative, trust, unincorporated association, government, or any political subdivision or agency thereof, any business or legal entity, and any spouse, heir, legatee, executor, administrator, predecessor, successor, representative, or assign of any of the foregoing.

1.17. “Plaintiff’s Counsel” means The Rosen Law Firm, P.A., The Brown Law Firm, P.C., and Rigrodsky & Long, P.A.

1.18. “Plaintiff’s Releasees” means Plaintiff, Plaintiff’s Counsel, SeaWorld, and all Current SeaWorld Stockholders (solely in their capacity as SeaWorld stockholders) and each of their immediate family members, spouses, heirs, executors, administrators, successors, trustees, attorneys, personal or legal representatives, advisors, estates, assigns, and agents thereof.

1.19. “Reforms” means the corporate governance reforms that SeaWorld will implement in partial consideration for the Settlement, which are fully set forth in Exhibit A attached hereto. As a condition of the Settlement, SeaWorld shall maintain the Reforms for a period of three (3) years.

1.20. “Released Claims” means all Claims, including known and Unknown Claims, against any of the Defendants’ Releasees that (i) were asserted or could have been asserted derivatively in the Derivative Action; (ii) would have been barred by *res judicata* had the Derivative Action been fully litigated to final judgment; or (iii) could have been, or could in the future be, asserted derivatively in any forum or proceeding or otherwise against any of the Defendants’ Releasees that in any way concern or arise out of or relate to any of the subject matters, allegations, transactions, facts, occurrences, representations, statements, or omissions alleged, involved, set forth, or referred to in the Derivative Action; provided, however, that

nothing herein shall in any way release, waive, impair, or restrict the rights of any Party to enforce the terms of this Settlement.

1.21. “Releasees” means Plaintiff’s Releasees and Defendants’ Releasees.

1.22. “Scheduling Order” means the order to be entered by the Court, substantially in the form attached hereto as Exhibit C, approving the form of the notice of the Settlement to Current SeaWorld Stockholders and method of giving notice, and scheduling a Settlement Hearing to consider whether the Settlement and the Fee and Expense Amount should be finally approved.

1.23. “SEC” means the United States Securities and Exchange Commission.

1.24. “Settlement” means the settlement of the Derivative Action as documented in this Stipulation.

1.25. “Settlement Hearing” means the hearing (or hearings) at which the Court will review and assess the adequacy, fairness, and reasonableness of the Settlement set forth in this Stipulation and determine (i) whether to enter the Judgment; and (ii) all other matters properly before the Court.

1.26. “Unknown Claims” means any Claims that any Party or any Current SeaWorld Stockholder (claiming in the right of, or on behalf of, the Company) does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Claims and Defendants’ Released Claims that, if known by him, her, or it,

might have affected his, her, or its settlement with and release of the Released Claims and Defendants' Released Claims, or might have affected his, her, or its decision not to object to this Settlement. Unknown Claims include those Claims in which some or all of the facts comprising the Claim may be unsuspected, or even undisclosed or hidden. With respect to any and all Released Claims and Defendants' Released Claims, including Unknown Claims, the Parties stipulate and agree that, upon the Effective Date, they shall expressly waive, and every Current SeaWorld Stockholder shall be deemed to have, and by operation of the Judgment shall have, expressly waived the provisions, rights, and benefits of California Civil Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Parties shall expressly waive, and every Current SeaWorld Stockholder who is not a Defendant shall be deemed to have, and by operation of the Judgment shall have, expressly waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable or equivalent in effect to California Civil Code § 1542. The Parties may hereafter discover facts in addition to or different

from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims or Defendants' Released Claims, but the Parties shall expressly have, and every Current SeaWorld Stockholder shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims and Defendants' Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, reckless, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Parties acknowledge, and every Current SeaWorld Stockholder who is not a Defendant shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waivers were separately bargained for and a key element of the Settlement of which this release is a material and essential part.

II. SETTLEMENT CONSIDERATION

2.1. In consideration for the full and final release, settlement and discharge of the Released Claims and the dismissal with prejudice of the Derivative Action, the Parties have agreed to the following:

2.2. Within ninety (90) calendar days after the Effective Date, SeaWorld shall adopt and implement the Reforms set forth in Exhibit A, which shall remain in effect for no less than three (3) years.

2.3. SeaWorld, by and through the Board, acknowledges and agrees that Plaintiff's commencement, prosecution, and settlement of the Derivative Action were precipitating and material factors in the adoption of the Reforms.

2.4. SeaWorld, by and through the Board, acknowledges and agrees that the Reforms confer benefits upon SeaWorld and its stockholders.

2.5. Pursuant to the Term Sheet, the insurer(s) for certain of the Defendants have made payment of the Cash Payment to SeaWorld as contemplated by this Settlement. The payments comprising the full Cash Payment were made to SeaWorld after the Term Sheet was executed and on or before February 18, 2020. It is understood and agreed that neither SeaWorld, any Side-A insurer, nor any Defendant has or shall have any liability with respect to the payment of all or any portion of the Cash Payment.

2.6. SeaWorld, by and through the Board, acknowledges and agrees that Plaintiff's commencement, prosecution, and settlement of the Derivative Action were the exclusive cause of the Company's recovery of the Cash Payment.

III. PROCEDURE FOR APPROVAL

3.1. Promptly after execution of this Stipulation, and by no later than February 24, 2020, the Parties shall jointly submit the Stipulation together with its exhibits to the Court, and shall apply to the Court for entry of the Scheduling Order, substantially in the form attached hereto as Exhibit C.

3.2. Notice of the Settlement shall be provided to Current SeaWorld Stockholders in the manner set forth herein. Within fifteen (15) calendar days following the Court's entry of the Scheduling Order, SeaWorld shall cause the Notice to be filed or furnished with the SEC in an SEC Form 8-K at SeaWorld's cost, issue a press release with the Notice on *GlobeNewswire* with the costs to be borne by Plaintiff's Counsel, subject to reimbursement from the Fee and Expense Amount, and publish the Notice one time in *Investors' Business Daily* with the cost to be borne by Plaintiff's Counsel, subject to reimbursement from the Fee and Expense Amount. Also within fifteen (15) calendar days following the Court's entry of the Scheduling Order, SeaWorld, at SeaWorld's cost, shall publish this Stipulation and the Notice on an Internet page that SeaWorld shall create for this purpose, which shall be accessible through the date that the Court enters the Judgment via a link on the "Investor Relations" page of <http://www.seaworldentertainment.com>, the address of which shall be provided in the Notice. Plaintiff's Counsel, at their cost, shall also publish the Notice through posting on their respective firm websites.

3.3. In the event that the Court orders any other means of dissemination of notice of the Settlement to Current SeaWorld Stockholders, fifty percent (50%) of the costs of such notice shall be borne by SeaWorld and fifty percent (50%) of the costs of such notice shall be borne by Plaintiff's Counsel, subject to reimbursement from the Fee and Expense Amount.

3.4. The Parties shall request that the Court hold the Settlement Hearing to approve the Settlement, the Fee and Expense Amount, and a service award for Plaintiff at least fifty-five (55) calendar days after the Court's entry of the Scheduling Order.

IV. FINAL ORDER AND JUDGMENT; DISMISSAL OF ACTION

4.1. If the Court approves the Settlement at or following the Settlement Hearing, the Parties shall jointly and promptly request that the Court enter the Judgment in the Derivative Action.

4.2. Upon entry of the Judgment, the Derivative Action shall be dismissed in its entirety with prejudice, with Plaintiff, Defendants, and SeaWorld each to bear his, her or its own fees, costs and expenses, except as expressly provided in this Stipulation.

V. RELEASES

5.1. Upon the Effective Date, SeaWorld, Plaintiff (individually and on behalf of SeaWorld) and each Current SeaWorld Stockholder, and each of their

respective heirs, executors, administrators, trusts, trustees, estates, beneficiaries, legatees, insurers, reinsurers, predecessors, successors, and assigns (and assignees of each of the foregoing), shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Released Claims against the Defendants' Releasees. SeaWorld, Plaintiff, and each Current SeaWorld Stockholder shall be deemed to have, and by operation of the Judgment shall have, covenanted not to sue any of the Defendants' Releasees with respect to any Released Claims, and shall be permanently barred and enjoined from instituting, commencing or prosecuting the Released Claims against the Defendants' Releasees except to enforce the releases and other terms and conditions contained in this Stipulation and/or the Judgment entered pursuant thereto.

5.2. Upon the Effective Date, each of the Defendants and each of their respective heirs, executors, administrators, trusts, trustees, estates, beneficiaries, legatees, insurers, reinsurers, predecessors, successors, and assigns (and assignees of each of the foregoing) shall by operation of the Judgment have, fully, finally, and forever released, relinquished and discharged the Defendants' Released Claims against the Plaintiff's Releasees. Each of the Defendants shall by operation of the Judgment have, covenanted not to sue any of the Plaintiff's Releasees with respect to any Defendants' Released Claims, and shall be permanently barred and enjoined from instituting, commencing or prosecuting the Defendants' Released Claims

against the Plaintiffs' Releasees except to enforce the releases and other terms and conditions contained in this Stipulation and/or the Judgment entered pursuant thereto.

5.3. Nothing herein shall in any way release, waive, impair, or restrict the rights of any of the Parties to enforce the terms of the Stipulation and/or the Judgment entered pursuant thereto.

5.4. Notwithstanding anything else in the Judgment or anything else in this Stipulation, nothing herein shall release, interfere with, limit, or bar the assertion by any of the Defendants' Releasees of any claims or rights for insurance coverage under any insurance, reinsurance, or indemnity policy or any claims for advancement or indemnification from SeaWorld.

VI. PLAINTIFF'S COUNSEL'S ATTORNEYS' FEES AND EXPENSES

6.1. Within twenty (20) calendar days of the date that the Court enters an order approving the Fee and Expense Amount, the Individual Defendants shall cause their insurer(s) to pay the Fee and Expense Amount directly from the Individual Defendants' Side A-DIC insurance policies to Plaintiff's Counsel. Under no circumstances shall SeaWorld or any of the other Defendants be obligated to make the payment of all or any portion of the Fee and Expense Amount.

6.2. The Parties agree that the Fee and Expense Amount is fair and reasonable in light of the benefits conferred upon SeaWorld and Current SeaWorld Stockholders by the Settlement.

6.3. Payment of the Fee and Expense Amount in the amount approved by the Court shall constitute final and complete payment for Plaintiff's Counsel's attorneys' fees and expenses that have been incurred or will be incurred in connection with the filing and prosecution of the Derivative Action and the resolution of the claims alleged therein. Defendants and Defendants' Counsel shall have no responsibility for the allocation or distribution of the Fee and Expense Amount amongst Plaintiff's Counsel. Any dispute regarding any allocation of fees or expenses of the Fee and Expense Amount shall have no effect on the Settlement. Defendants, including SeaWorld, shall have no obligation to make any payment to any Plaintiff's Counsel other than the Fee and Expense Amount, nor shall Defendants, including SeaWorld, have any obligation to pay or reimburse any fees, expenses, costs or damages alleged or incurred by Plaintiff, by Current SeaWorld Stockholders, or any person, firm, trust, corporation, officer, director or other individual or entity in which Plaintiff has a controlling interest with respect to the Released Claims or the Derivative Action.

6.4. If, after payment of attorneys' fees and expenses, the attorneys' fees and expenses award is reversed, vacated, or reduced by final non-appealable order,

Plaintiff's Counsel shall, within ten (10) business days after receiving from SeaWorld's or Defendants' counsel or from a court of appropriate jurisdiction notice of any reduction of the attorneys' fees and expenses award by final non-appealable order, make appropriate refunds or repayments. Any refunds or repayments required pursuant to this paragraph shall be the several obligation of Plaintiff's Counsel, including their law partners and/or shareholders, to make appropriate refunds or repayments to the Settlement Fund. Each such Plaintiff's Counsel receiving an award of fees and expenses, as a condition of receiving such fees, expenses or award on behalf of itself and each partner and/or shareholder of it, agrees that: (a) such person or entity and its partners, shareholders, and/or members are subject to the jurisdiction of the Court for the purpose of enforcing the provisions of this paragraph; and (b) are severally liable for the full amount of any fees, expenses and/or costs paid to them from the Settlement Fund together with any interest earned thereon.

6.5. Except as otherwise provided in this Stipulation, each of the Parties shall bear his, her, or its own costs and attorneys' fees.

6.6. In light of the benefits that Plaintiff has helped to create for SeaWorld and Current SeaWorld Stockholders, Plaintiff shall apply for a Court-approved service award in an amount up to seven thousand five hundred dollars (\$7,500.00) (the "Service Award"), to which Defendants shall not object. The

Service Award to Plaintiff, to the extent that it is approved, shall be funded from the Fee and Expense Amount.

VII. STAY PENDING COURT APPROVAL

7.1. Pending Court approval of the Stipulation, the Parties agree that any and all proceedings in the Derivative Action other than those incident to the Settlement shall remain stayed.

7.2. Pending final determination of whether the Stipulation should be approved, all Parties to the Derivative Action (including Plaintiff, the Defendants, and SeaWorld) agree not to institute, commence, prosecute, continue, or in any way participate in, whether directly or indirectly, representatively, individually, derivatively on behalf of SeaWorld, or in any other capacity, any action or other proceeding asserting any Released Claims.

7.3. Notwithstanding Section VII, Paragraphs 7.1 and 7.2, nothing herein shall in any way impair or restrict the rights of any Party to defend this Stipulation or to otherwise respond in the event any Person objects to the Stipulation, the proposed Judgment to be entered, and/or the Fee and Expense Amount.

VIII. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION

8.1. The Effective Date of the Stipulation shall be the date on which all of the following events have occurred or have been waived in writing by all Parties:

- (a) the Court's entry of the Scheduling Order;

- (b) the Court's entry of the Judgment;
- (c) the payment of the Fee and Expense Amount to Plaintiff's Counsel;
- (d) the Judgment has become Final; and
- (e) the Derivative Action is dismissed with prejudice.

8.2. If any of the conditions specified in Section VIII, Paragraph 8.1 are not met, then the Stipulation shall be cancelled and terminated subject to Section VIII, Paragraph 8.3, (i) SeaWorld shall refund the Cash Payment to the insurer(s) that paid SeaWorld the Cash Payment, (ii) Plaintiff and Defendants shall be restored to their respective positions in the Derivative Action as of February 3, 2020, and (iii) all settlement-related agreements (other than as to confidentiality) shall be null and void unless Plaintiff's Counsel and Defendants' Counsel, on behalf of their respective clients, mutually agree in writing to proceed with the Stipulation.

8.3. Each of the Parties shall have the right to terminate the Settlement and this Stipulation as to all Parties by providing written notice of their election to do so, through counsel, to all other Parties within twenty (20) calendar days of: (i) the Court's Final refusal to approve this Stipulation, or the terms contained herein, in any material respect; (ii) the Court's Final refusal to enter the Scheduling Order in substantially the form attached as Exhibit C hereto; (iii) the Court's Final refusal to enter the Judgment in substantially the form attached as Exhibit D hereto or dismiss the Derivative Action with prejudice; (iv) the date on which the Judgment is

reversed or modified in any material respect by a Final order of the Court, the Supreme Court of Delaware, or the Supreme Court of the United States; (v) the date on which the payment of the Fee and Expense Amount in accordance with Section VI, Paragraphs 6.1-6.2 herein is not made; or (vi) the date on which the Effective Date of the Settlement cannot otherwise occur; except that such termination shall not be effective unless and until the terminating Party has, within twenty (20) calendar days of the date on which notice of the termination event has been provided to all other Parties, attempted in good faith to confer with the other Parties and/or to participate in a mediation session with the Mediator and the other Parties to attempt to remedy the issue. Notwithstanding any of the foregoing, it is not a condition of this Stipulation, the Settlement or the Judgment that the Court award any attorneys' fees and/or expenses to Plaintiff's Counsel, and any order or proceeding relating to the Fee and Expense Amount, or any appeal from any order relating thereto or reversal or modification thereof, shall not (i) operate to cancel the Stipulation, (ii) allow for the termination of the Settlement, or (iii) affect or delay the Judgment approving the Settlement from becoming Final or dismissal of the Derivative Action.

8.4. In the event that the Stipulation is not approved by the Court, or the Settlement is terminated for any reason, including pursuant to Section VIII, Paragraph 8.3 above, Plaintiff and the Defendants shall be restored to their respective positions as of February 3, 2020, and all negotiations, proceedings, documents

prepared and statements made in connection herewith shall be without prejudice to the Parties, shall not be deemed or construed to be an admission by any of the Parties of any act, matter, or proposition, and shall not be used in any manner for any purpose in any subsequent proceeding in the Derivative Action or in any other action or proceeding. In such event, the terms and provisions of the Stipulation, with the exception of Section V, Paragraphs 1.1-1.26, 8.2-8.4, 12.5-12.25 herein, shall have no further force and effect with respect to the Parties and shall not be used in the Derivative Action or in any other proceeding for any purpose, and any judgment or orders entered by the Court in accordance with the terms of the Stipulation shall be treated as vacated, *nunc pro tunc*.

IX. NO ADMISSION OF LIABILITY

9.1. It is expressly understood and agreed that neither the Settlement nor any act or omission in connection therewith is intended or shall be deemed or argued to be evidence of or to constitute an admission or concession by: (a) any of the Defendants, or any of Defendants' Releasees as to (i) the truth of any fact alleged by Plaintiff, (ii) the validity of any claims or other issues raised, or which might be or might have been raised, in the Derivative Action or in any other litigation, (iii) the deficiency of any defense that has been or could have been asserted in the Derivative Action or in any litigation, or (iv) any wrongdoing, fault, or liability of any kind by any of them, which each of them expressly denies; or (b) Plaintiff or any of the other

Plaintiff's Releasees that any of their claims are without merit, that any of the Defendants had meritorious defenses, or that damages recoverable under the Amended Complaint would not have exceeded the Settlement recovery. The Defendants and Defendants' Releasees may file this Stipulation and/or Judgment in any action that has been or may be brought against them in order to support a claim or defense based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim or in connection with any insurance litigation.

X. REPRESENTATIONS AND WARRANTIES

10.1. Plaintiff and Plaintiff's Counsel represent and warrant that: (i) Plaintiff is a stockholder of SeaWorld and was a stockholder of SeaWorld at all relevant times for purposes of maintaining standing in the Derivative Action; (ii) none of the Released Claims have been assigned, encumbered or in any manner transferred, in whole or in part, by Plaintiff or Plaintiff's Counsel; and (iii) neither Plaintiff nor Plaintiff's Counsel will attempt to assign, encumber or in any manner transfer, in whole or in part, any of the Released Claims.

10.2. Each Party represents and warrants that the Party has made such investigation of the facts pertaining to the Settlement provided for in this Stipulation,

and all of the matters pertaining thereto, and has been advised by counsel, as the Party deems necessary and advisable.

XI. BANKRUPTCY

11.1. In the event any proceedings by or on behalf of SeaWorld, whether voluntary or involuntary, are initiated under any chapter of the United States Bankruptcy Code, including any act of receivership, asset seizure, or similar federal or state law action (“Bankruptcy Proceedings”), the Parties agree to use their reasonable efforts to obtain all necessary orders, consents, releases, and approvals for effectuation of this Stipulation in a timely and expeditious manner.

11.2. In the event of any Bankruptcy Proceedings by or on behalf of SeaWorld, the Parties agree that all dates and deadlines set forth herein will be extended for such periods of time as are necessary to obtain necessary orders, consents, releases and approvals from the bankruptcy court to carry out the terms and conditions of the Stipulation.

XII. MISCELLANEOUS PROVISIONS

12.1. The Parties and their attorneys agree to use their individual and collective reasonable efforts to obtain Court approval of Stipulation. The Parties and their attorneys further agree to use their individual and collective reasonable efforts to effect, take, or cause to be taken all actions, and to do, or cause to be done, all things reasonably necessary, proper, or advisable under applicable laws, regulations,

and agreements to consummate and make effective, as promptly as practicable, the Stipulation provided for hereunder and the dismissal of the Derivative Action, including executing and delivering any further documents or instruments necessary to dismiss the Derivative Action and facilitate the performance of the obligations set forth herein. The Parties and their attorneys agree to cooperate fully with one another in seeking the Court's approval of this Stipulation and to use their reasonable efforts to effect the consummation of this Stipulation. The Parties agree that any disputes regarding this Stipulation shall be promptly submitted to the Mediator for non-binding mediation.

12.2. Any planned, proposed or actual sale, merger or change-in-control of SeaWorld shall not void this Stipulation. The Stipulation shall run to the Parties' respective successors-in-interest. In the event of a planned, proposed or actual sale, merger or change-in-control of SeaWorld, the Parties shall continue to seek court approval of the Settlement expeditiously, including, but not limited to, the Settlement terms reflected in this Stipulation and the Fee and Expense Amount.

12.3. The Parties agree that the terms of the Settlement were negotiated in good faith and at arm's-length by the Parties, with the assistance of the Mediator, and reflect a settlement that was reached voluntarily based upon adequate information and after consultation with competent legal counsel. The Parties shall not take the position that the litigation was brought or defended in bad faith. The

Parties and their respective counsel agree that, throughout the course of the litigation, all Parties and their counsel acted in good faith and shall not make any application for sanctions, with respect to any claim or defense in the Derivative Action.

12.4. While maintaining their positions that the claims and defenses asserted in the Derivative Action are, respectively, meritorious or without merit, as the case may be, Plaintiff and Plaintiff's Counsel, on the one hand, and Defendants and Defendants' Counsel, on the other, shall not make any public statements or statements to the media (whether or not for attribution) that disparage the other's business, conduct, or reputation, or that of their counsel, connected to the Derivative Action. Notwithstanding the foregoing, each of the Parties reserves their right to rebut, in a manner that such party determines to be reasonable and appropriate, any contention made in any public forum that the Derivative Action was brought or defended in bad faith or without a reasonable basis.

12.5. Whether or not the Settlement is approved by the Court, and whether or not the Settlement is consummated, the fact and terms of this Stipulation, including any exhibits attached hereto, all proceedings in connection with the Settlement, and any act performed or document executed pursuant to or in furtherance of this Stipulation or the Settlement:

- (a) shall not be offered, received, or used in any way against the Parties as evidence of, or be deemed to be evidence of, a presumption,

concession, or admission by any of the Parties with respect to the truth of any fact alleged by Plaintiff or the validity, or lack thereof, of any claim that has been or could have been asserted in the Derivative Action or in any litigation, or the deficiency, infirmity, or validity of any defense that has been or could have been asserted in the Derivative Action or in any litigation, or of any fault, wrongdoing, negligence, or liability of any of the Defendants' Releasees;

(b) shall not be offered, received, or used in any way against any of the Defendants' Releasees as evidence of, or be deemed to be evidence of, a presumption, concession, or admission of any fault, misrepresentation or omission with respect to any statement or written document approved, issued, or made by any of the Defendants' Releasees;

(c) shall not be offered, received, or used in any way against any of the Defendants' Releasees as evidence of, or be deemed to be evidence of, a presumption, concession, or admission of any liability, fault, negligence, omission or wrongdoing, or in any way referred to for any other reason as against the Defendants' Releasees, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding in any court, administrative agency, or other tribunal; and

(d) shall not be offered, received, or used in any way against any of Plaintiff's Releasees as evidence of, or be deemed to be evidence of, a

presumption, concession, or admission that any of Plaintiff's claims are without merit or that Plaintiff would not have been able to prevail on his claims at trial.

12.6. Neither this Stipulation nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Stipulation, or the Settlement, shall be admissible in any proceeding for any purpose except to enforce the terms of the Settlement; provided, however, that the Releasees may refer to the Settlement, and file this Stipulation and/or the Judgment, in any action that may be brought against them to effectuate the liability protections granted them hereunder, including, without limitation, to support a defense or claim based on principles of *res judicata*, collateral estoppel, full faith and credit, release, standing, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or claim under U.S. federal or state law or foreign law.

12.7. Nothing in this Stipulation, nor any action the Court takes regarding the approval or disapproval of the Settlement, shall alter the terms of the applicable insurance policies, or Defendants' rights under them.

12.8. The exhibits to the Stipulation are material and integral parts hereof and are fully incorporated herein by this reference.

12.9. The Stipulation may be amended or modified only by a written instrument signed by or on behalf of all the Parties or their respective successors-in-

interest. After prior notice to the Court, but without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any provisions of this Stipulation.

12.10. This Stipulation and the exhibits attached hereto represent the complete and final resolution of all disputes among the Parties with respect to the subject matter hereof, constitute the entire agreement among the Parties, and supersede any and all prior negotiations, discussions, agreements, or undertakings, whether oral or written, with respect to such matters.

12.11. The waiver by one party of any breach of the Settlement by any other party shall not be deemed a waiver of any other prior or subsequent breach of the Settlement. The provisions of the Settlement may not be waived except by a writing signed by the affected party, or counsel for that party.

12.12. The headings in the Stipulation and its exhibits are used for the purpose of convenience only and are not meant to have legal effect.

12.13. The Stipulation and the Settlement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties and the Releasees.

12.14. The Stipulation and the exhibits attached hereto shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of Delaware and the rights and obligations of the Parties to the Stipulation shall be construed and enforced in accordance with, and governed by, the internal,

substantive laws of the State of Delaware without giving effect to that State's choice of law principles. No representations, warranties, or inducements have been made to any party concerning the Stipulation or its exhibits other than the representations, warranties, and covenants contained and memorialized in such documents.

12.15. This Stipulation shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that it is the result of arm's-length negotiations among the Parties, with the assistance of the Mediator, and all Parties have contributed substantially and materially to the preparation of this Stipulation.

12.16. The terms and provisions of this Stipulation are intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights or remedies upon any other Person, except with respect to the Defendants' Releasees and Plaintiff's Releasees who are not signatories hereto, who shall be third party beneficiaries under this Stipulation and entitled to enforce the release provisions set forth in Section V of this Stipulation in accordance with their terms, but the consent of any such third-party beneficiary shall not be required to amend, modify or terminate this Stipulation.

12.17. All agreements made and orders entered during the course of the Derivative Action relating to the confidentiality of information and documents shall survive this Stipulation.

12.18. Nothing in this Stipulation, or the negotiations or proceedings relating to the Settlement, is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity, including, without limitation, the attorney-client privilege, the joint defense privilege, the accountants' privilege, or work product immunity. Further, all information and documents transmitted between Plaintiff's Counsel and Defendants' Counsel in connection with the Settlement shall be kept confidential and shall be inadmissible in any proceeding in any U.S. federal or state court or other tribunal or otherwise, in all respects in any such proceeding or forum, provided that (i) the information is not public and (ii) Counsel did not independently obtain the relevant information or document. Notwithstanding the foregoing, the Releasees may admit this Stipulation in any proceeding in order to enforce its terms.

12.19. The Parties intend that the Court retain jurisdiction for the purpose of effectuating and enforcing the terms of the Settlement.

12.20. Any notice required by this Stipulation shall be submitted by overnight mail and e-mail to each of the signatories below.

12.21. The Stipulation may be executed in one or more counterparts, including by signature transmitted via facsimile, or by a .pdf/.tif image of the signature transmitted via e-mail. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of executed counterparts shall be filed with the Court.

12.22. Each counsel or other person executing this Stipulation on behalf of any Party warrants that he or she has the full authority to bind his or her principal to this Stipulation.

12.23. Notwithstanding the entry of the Judgment, the Court shall retain jurisdiction with respect to the implementation, enforcement, and interpretation of the terms of the Stipulation, and all Parties submit to the jurisdiction of the Court for all matters relating to the administration, enforcement, and consummation of the Settlement and the implementation, enforcement, and interpretation of the Stipulation, including, without limitation, any matters relating to awards of attorneys' fees and expenses to Plaintiff's Counsel.

12.24. The Parties agree that this Stipulation, and all matters relating to its enforcement, will be subject to the continuing jurisdiction of the Court that approves the Stipulation.

12.25. Without further order of the Court, the Parties hereto may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

12.26. The following exhibits are annexed hereto and incorporated herein by reference:

- (a) Exhibit A: Corporate Governance Reforms
- (b) Exhibit B: Notice of Pendency and Proposed Settlement of Derivative Action to Current SeaWorld Stockholders;
- (c) Exhibit C: [Proposed] Scheduling Order with Respect to Notice and Settlement Hearing; and
- (d) Exhibit D: [Proposed] Final Order and Judgment.

IN WITNESS WHEREOF, IT IS HEREBY AGREED by the undersigned as
of February 26, 2020.

Dated: February 26, 2020

RIGRODSKY & LONG, P.A.

/s/ Brian D. Long

Brian D. Long (#4347)
300 Delaware Avenue, Suite 1220
Wilmington, DE 19801

THE ROSEN LAW FIRM, P.A.

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Counsel for Plaintiff

Dated: February 26, 2020

RICHARDS, LAYTON & FINGER, P.A.

/s/ Raymond J. DiCamillo

Raymond J. DiCamillo (#3188)

Daniel E. Kaprow (#6295)

920 North King Street

Wilmington, Delaware 19801

(302) 651-7700

OF COUNSEL:

**SIMPSON THACHER & BARTLETT
LLP**

Jonathan K. Youngwood

Janet A. Gochman

425 Lexington Avenue

New York, New York 10017

(212) 455-2000

Counsel for Defendants



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MARK KISTENMACHER,)
DERIVATIVELY AND ON BEHALF OF)
SEAWORLD ENTERTAINMENT, INC.,)

Plaintiff,)

v.)

C.A. No. 10437-VCS

JIM ATCHISON, JAMES M. HEANEY,)
DANIEL B. BROWN, MARC)
SWANSON, DAVID F.)
D’ALESSANDRO, JOSEPH P.)
BARATTA, BRUCE MCEVOY, JUDITH)
A. MCHALE, PETER F. WALLACE,)
DEBORAH THOMAS, STEPHEN A.)
SCHWARZMAN, SW DELAWARE)
L.P., SW DELAWARE A L.P., SW)
DELAWARE B L.P., SW DELAWARE)
C L.P., SW DELAWARE D L.P., SW)
DELAWARE E L.P., SW DELAWARE F)
L.P., SW DELAWARE CO-INVEST)
L.P., SW DELAWARE (GS) L.P., SW)
DELAWARE (GSO) L.P., SW CAYMAN)
LIMITED, AND THE BLACKSTONE)
GROUP L.P.,)

Defendants,)

And)

SEAWORLD ENTERTAINMENT, INC.,)

Nominal Defendant.)

CORPORATE GOVERNANCE REFORMS

Within ninety (90) days of issuance of an order approving the settlement of the above-referenced action (“Settlement”) by the Delaware Court of Chancery (“Court”), the Board of Directors (“Board”) of SeaWorld Entertainment, Inc. (“SeaWorld” or the “Company”) shall adopt resolutions and amend committee charters and corporate governance policies to ensure adherence to the changes, modification, and improvements to the Company’s corporate governance and business ethics practices set forth below (the “Reforms”), which shall remain in effect for no less than three (3) years.

SeaWorld, by and through the Board, acknowledges and agrees that the commencement, prosecution, and settlement of the Derivative Action¹ were precipitating and material factors in the adoption of the Reforms.

SeaWorld, by and through the Board, acknowledges and agrees that the Reforms confer benefits upon SeaWorld and its stockholders.

1. IMPROVEMENTS TO THE AUDIT COMMITTEE

SeaWorld shall adopt a resolution to amend the Audit Committee Charter. The Audit Committee Charter shall be amended as follows:

(a) The Audit Committee shall ensure that the Company is not without a registered independent auditor for more than sixty (60) days upon the

¹ The “Derivative Action” refers to the above-referenced action captioned *Kistenmacher v. Atchison, et al.* C.A. No. 10437-VCS (Del. Ch.).

resignation or termination of its current registered independent auditor; and

(b) SeaWorld shall promptly post the amended Audit Committee Charter and the composition of the Audit Committee on its website.

2. IMPROVEMENTS TO THE NOMINATING AND CORPORATE GOVERNANCE COMMITTEE

SeaWorld shall adopt a resolution to amend the Nominating and Corporate Governance Committee Charter. The amended Nominating and Corporate Governance Committee Charter shall require the following, at a minimum:

(a) The Nominating and Corporate Governance Committee shall consist of at least three (3) members, as opposed to the currently required minimum of two (2) members, who shall meet the independence requirements described herein, and who, if not already appointed, shall be appointed no later than six (6) months after the date that the Court enters an order finally approving the Settlement;

(b) The Nominating and Corporate Governance Committee shall confer with each prospective new Board member who is subject to serious consideration for nomination by the Nominating and Corporate Governance Committee prior to his or her nomination to the Board and then recommend whether such individual shall be nominated for membership to the Board. Any prospective new Board nominee, whether recommended by a shareholder or found by the Nominating and Corporate Governance Committee in the absence of a qualified shareholder nominee, shall be considered by the Nominating and Corporate Governance

Committee. This review shall require, *inter alia*, a background check of each candidate whose nomination is recommended by the Nominating and Corporate Governance Committee;

(c) Final approval of a director candidate shall be determined by the full Board. Potential disqualifying conflicts of interests to be considered shall include familial relationships with Company officers or directors and interlocking directorships;

(d) The Nominating and Corporate Governance Committee shall periodically, and no less than every two years, consult an independent corporate governance expert (which may be SeaWorld's outside counsel) for purposes of reviewing SeaWorld's director nomination processes and to assist it in identifying and evaluating potential candidates;

(e) In accordance with its duties to develop guidelines of corporate governance and recommend such principles to the Board, the Nominating and Corporate Governance Committee shall ensure that any agreed upon corporate governance guidelines are available to the public, through the Company's investor relations website or otherwise; and

(f) SeaWorld shall promptly post the amended Nominating and Corporate Governance Committee Charter and the composition of the Nominating and Corporate Governance Committee on its website.

3. IMPROVEMENTS TO THE COMPENSATION COMMITTEE CHARTER

SeaWorld shall adopt a resolution to amend the Compensation Committee Charter. The amended Compensation Committee Charter shall require the following, at a minimum:

(a) The Compensation Committee members shall meet the independence requirements specific to compensation committee membership set forth in Section 303A.02(a)(ii) of the Listed Company Manual of the New York Stock Exchange;

(b) In determining, setting, or approving annual short-term compensation arrangements, the Compensation Committee shall take into account the particular executive's performance as it relates to both legal compliance and compliance with the Company's internal policies and procedures. This shall not affect payments or benefits that are required to be paid pursuant to the Company's plans, policies, or agreements;

(c) In determining, setting, or approving termination benefits and/or separation pay to executive officers, the Compensation Committee shall take into consideration the circumstances surrounding the particular executive officer's departure and performance as it relates to both legal compliance and compliance with the Company's internal policies and procedures. This shall not affect payments or benefits that are required to be paid pursuant to the Company's plans, policies, or agreements; and

(d) SeaWorld shall promptly post the amended Compensation Committee Charter and the composition of the Compensation Committee on its website.

4. EXECUTIVE REPORTS

At each regularly scheduled Board meeting, the Company's Chief Financial Officer (or his or her designee) shall provide a report as to the Company's financial condition, including, but not limited to, an analysis of material increases in expenses, if any, and material decreases in revenues and earnings, if any, and management plans for addressing such trends.

The Chief Executive Officer and Chief Financial Officer shall make reports to the Board regarding their respective areas of responsibility at least semi-annually and shall meet at least semi-annually with the Board.

5. DIRECTOR INDEPENDENCE

At least a majority of the members of the Board shall be "independent directors," as defined in Section 303A.02 of the Listed Company Manual of the New York Stock Exchange. If the Company fails to comply with such independence requirements due to one (1) or more vacancies of the Board or if one (1) or more directors cease to be independent due to circumstances beyond their reasonable control, SeaWorld shall within a reasonable time regain compliance with such independence requirements.

Each independent director shall annually certify in writing that he or she is

independent and shall immediately inform the Board in writing of any change in his or her status.

6. IMPROVEMENTS TO THE WHISTLEBLOWER POLICY

The Company's current Whistleblower Policy, most recently revised in October 2018, shall be amended to communicate effectively that SeaWorld expects adherence to its corporate governance policies and that whistleblowing is an important tool in achieving this goal.

The Whistleblower Policy – with the endorsement of the Board and the most senior management of the Company – must notify employees, independent contractors and vendors of SeaWorld that:

(a) Pursuant to federal law, executives may be subject to criminal penalties, including imprisonment, for retaliation against whistleblowers;

(b) If a whistleblower brings his or her complaint to an outside regulator or other governmental entity, he or she will be protected by the terms of the Whistleblower Policy just as if he or she directed the complaint to the Audit Committee, General Counsel, Corporate Vice President of Internal Audit and Compliance, the telephone hotline, and/or third-party website service established by the Company for submitting whistleblower reports; and

The Company shall display on the Company's investor relations website access to the Whistleblower Policy, which policy includes information regarding its

hotline, website, and other reporting options for whistleblowers, including the address for written complaints to be sent to the Chairperson of the Audit Committee, General Counsel, and Corporate Vice President of Internal Audit and Compliance, and the Company shall make clear that it is available to assist on matters pertaining to corruption, fraud or any similar unlawful activities at SeaWorld.

The Company shall remind employees of whistleblower options and whistleblower protections in employee communications provided at least annually via the Company's intranet.

The Board shall review the Whistleblower Policy on an annual basis to ensure the Company provides annual training of employees with respect to such policy.

SeaWorld shall promptly post the amended Whistleblower Policy on its website.

7. INCREASED TRANSPARENCY

In an effort to be more transparent to investors and the public at large, the Company shall post the amended committee charters and corporate governance policies reflecting the changes discussed above on SeaWorld's website.



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MARK KISTENMACHER,)
DERIVATIVELY AND ON BEHALF OF)
SEAWORLD ENTERTAINMENT, INC.,)

Plaintiff,)

v.)

C.A. No. 10437-VCS

JIM ATCHISON, JAMES M. HEANEY,)
DANIEL B. BROWN, MARC)
SWANSON, DAVID F.)
D’ALESSANDRO, JOSEPH P.)
BARATTA, BRUCE MCEVOY, JUDITH)
A. MCHALE, PETER F. WALLACE,)
DEBORAH THOMAS, STEPHEN A.)
SCHWARZMAN, SW DELAWARE)
L.P., SW DELAWARE A L.P., SW)
DELAWARE B L.P., SW DELAWARE)
C L.P., SW DELAWARE D L.P., SW)
DELAWARE E L.P., SW DELAWARE F)
L.P., SW DELAWARE CO-INVEST)
L.P., SW DELAWARE (GS) L.P., SW)
DELAWARE (GSO) L.P., SW CAYMAN)
LIMITED, AND THE BLACKSTONE)
GROUP L.P.,)

Defendants,)

And)

SEAWORLD ENTERTAINMENT, INC.,)

Nominal Defendant.)

**NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF
DERIVATIVE ACTION**

TO: ALL OWNERS OF SEAWORLD ENTERTAINMENT, INC., (“SEAWORLD,” OR THE “COMPANY”) COMMON STOCK (TICKER SYMBOL: SEAS) AS OF FEBRUARY 26, 2020, WHO CONTINUE TO OWN SUCH SHARES THROUGH _____, 2020 (“CURRENT SEAWORLD STOCKHOLDERS”).

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT AND DISMISSAL OF STOCKHOLDER DERIVATIVE LITIGATION AND CONTAINS IMPORTANT INFORMATION REGARDING YOUR RIGHTS.

IF THE COURT APPROVES THE SETTLEMENT AND DISMISSAL OF THE DERIVATIVE ACTION, SEAWORLD STOCKHOLDERS WILL BE FOREVER BARRED FROM CONTESTING THE APPROVAL OF THE PROPOSED SETTLEMENT AND FROM PURSUING RELEASED CLAIMS.

THIS ACTION IS NOT A “CLASS ACTION.” THUS, THERE IS NO COMMON FUND UPON WHICH YOU CAN MAKE A CLAIM FOR A MONETARY PAYMENT.

PLEASE TAKE NOTICE that this action is being settled on the terms set forth in a Stipulation of Compromise and Settlement, dated February 26, 2020 (the “Stipulation”). The purpose of this Notice is to inform you of:

- the existence of the above-captioned derivative action (“Derivative Action”);
- the proposed settlement between the Plaintiff¹ and Defendants reached in the Derivative Action (the “Settlement”);
- the hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement;
- Plaintiff’s Counsel’s application for fees and expenses; and
- Plaintiff’s Service Award.

This Notice describes what steps you may take in relation to the Settlement. This Notice is not an expression of any opinion by the Court about the truth or merits of Plaintiff’s claims or Defendants’ defenses. This Notice is solely to advise you of the proposed Settlement of the Derivative Action and of your rights in connection with the proposed Settlement.

¹ All capitalized terms used in this notice, unless otherwise defined herein, are defined as set forth in the Stipulation.

Summary

On February 26, 2020, Plaintiff, SeaWorld, in its capacity as a nominal defendant, defendants Jim Atchison, James M. Heaney, Daniel B. Brown, Marc Swanson, David F. D'Alessandro, Joseph P. Baratta, Bruce McEvoy, Judith A. McHale, Peter F. Wallace, Deborah Thomas, Stephen A. Schwarzman (“Individual Defendants”), SW Delaware L.P., SW Delaware A L.P., SW Delaware B L.P., SW Delaware C L.P., SW Delaware D L.P., SW Delaware E L.P., SW Delaware F L.P., SW Delaware Co-Invest L.P., SW Delaware (GS) L.P., SW Delaware (GSO) L.P., SW Cayman Limited (“Selling Shareholders”), and The Blackstone Group L.P., now known as The Blackstone Group Inc. (“Blackstone” and collectively with SeaWorld, the Individual Defendants, and the Selling Shareholders, “Defendants”) entered into the Stipulation in the Derivative Action filed derivatively on behalf of SeaWorld, in the Court of Chancery of the State of Delaware (the “Court”). The Settlement, as documented in the Stipulation, subject to the approval of the Court, is intended by the Parties to fully, finally, and forever compromise, resolve, discharge, and settle the Released Claims and to result in the dismissal of the Derivative Action with prejudice, upon the terms and subject to the conditions set forth in the Stipulation. The proposed Settlement requires: (i) SeaWorld to adopt certain corporate governance modifications, as outlined in Exhibit A to the Stipulation (“Reforms”); (ii) certain of Defendants’ insurer(s) to pay twelve million five hundred thousand dollars (\$12,500,000) to SeaWorld to be used by the Company for general corporate purposes (“Cash Payment”); and (iii) the Individual Defendants’ insurer(s) to pay to Plaintiff’s Counsel three million one hundred twenty-five thousand dollars (\$3,125,000) from Side A-DIC insurance policies, to the extent approved by the Court, or in the event the Court approves a lesser amount, such lesser amount (“Fee and Expense Amount”) and a Service Award to Plaintiff of up to seven thousand five hundred dollars (\$7,500), to be paid from the Fee and Expense Amount.

This notice is a summary only and does not describe all of the details of the Stipulation. For full details of the matters discussed in this summary, please see the full Stipulation posted on the Company’s Investor Relations page at its website, <http://www.seaworldentertainment.com>, contact Plaintiff’s Counsel at the addresses listed below, or inspect the full Stipulation filed with the Register in Chancery Court.

What is the Lawsuit About?

The Derivative Action is brought derivatively on behalf of nominal defendant SeaWorld and alleges, among other things, that the Defendants breached their

fiduciary duties, or aided and abetted breaches of fiduciary duties, by making and/or causing SeaWorld to make false and misleading statements of material fact to the investing public that failed to disclose the negative effect of the documentary *Blackfish* and related publicity on attendance at SeaWorld locations and the Company's revenue, which allegedly damaged SeaWorld due to its being named as a defendant in other litigation, as well as by causing SeaWorld to repurchase Company stock at allegedly artificially inflated prices.

Why is there a Settlement?

The Court has not decided in favor of Defendants or Plaintiff. Instead, both sides agreed to the Settlement to avoid the distraction, costs, and risks of further litigation, and because the Settlement, including the Reforms to be adopted by SeaWorld and the Cash Payment to SeaWorld, provides substantial benefits to, and is in the best interests of, SeaWorld and its stockholders.

The members of SeaWorld's Board of Directors, none of whom is a Defendant in the Derivative Action, in exercising their business judgment, approved the Settlement and each of its terms, including the Cash Payment, the Reforms, and the Fee and Expense Amount, as in the best interest of SeaWorld and its stockholders.

Defendants deny each and every allegation of wrongdoing or liability arising out of or relating in any way to the events, conduct, statements, acts, or omissions alleged in the Derivative Action. Defendants further assert that, at all times, they acted in good faith, and in a manner they reasonably believed to be and that was in the best interests of SeaWorld and SeaWorld's stockholders. Defendants assert that they have meritorious defenses to the claims in the Derivative Action. Nonetheless, Defendants have entered into the Stipulation, without admitting or conceding any fault, liability, wrongdoing, or damage whatsoever, in order to avoid the risks inherent in any lawsuit and the burden and expense of further litigation.

The Settlement Hearing and Your Right to Object to the Settlement

On _____, 2020, the Court entered a scheduling order, which permitted the dissemination of this Notice regarding the Settlement to Current SeaWorld Stockholders (the "Scheduling Order"). The Scheduling Order further provides that the Court will hold a hearing (the "Settlement Hearing") on _____, 2020 at __:__ .m. before Vice Chancellor Joseph R. Slights III, Court of Chancery, Kent County, located at 414 Federal Street, Dover, Delaware 19901, to, among other things: (i) determine whether the proposed Settlement, including the Reforms and the Cash Payment to SeaWorld to be used by the Company for general

corporate purposes, is fair, reasonable and adequate and in the best interests of the Company and Current SeaWorld Stockholders; (ii) consider objections, if any, to the Settlement submitted in accordance with this Notice; (iii) determine whether a judgment should be entered dismissing all claims in the Derivative Action with prejudice, and releasing the Released Claims against the Released Persons; (iv) determine whether the agreed-to Fee and Expense Amount for Plaintiff's Counsel to be paid by the Individual Defendants' insurer(s) from Side A-DIC insurance policies and the Service Award for Plaintiff should be approved; and (v) consider any other matters that may properly be brought before the Court in connection with the Settlement.

Any Current SeaWorld Stockholder who wishes to object to the fairness, reasonableness, or adequacy of the Settlement as set forth in the Stipulation, or to the Fee and Expense Amount and Service Award, may file a written objection with the Court. An objector must at least fourteen (14) calendar days prior to the Settlement Hearing: (1) file with the Register in Chancery and serve upon the below listed counsel a written objection to the Settlement setting forth (a) the nature of the objection, (b) proof of ownership of SeaWorld common stock as of the date of filing the objection, including the number of shares of SeaWorld common stock held and the date of purchase, (c) any and all documentation or evidence in support of such objection, and (d) the identities of any cases, by name, court, and docket number, in which the stockholder or his, her, or its attorney has objected to a settlement in the last three (3) years; and (2) if intending to appear, and requesting to be heard, at the Settlement Hearing, he, she, or it must, in addition to the requirements of (1) above, file with the Register in Chancery and serve on the below listed counsel (a) a written notice of his, her, or its intention to appear at the Settlement Hearing, (b) a statement that indicates the basis for such appearance, (c) the identities of any witnesses he, she, or it intends to call at the Settlement Hearing and a statement as to the subjects of their testimony, and (d) any and all evidence that would be presented at the Settlement Hearing. Any objector who does not timely file and serve a notice of intention to appear in accordance with this paragraph shall be foreclosed from raising any objection to the Settlement and shall not be permitted to appear at the Settlement Hearing, except for good cause shown.

IF YOU MAKE A WRITTEN OBJECTION, IT MUST BE ON FILE WITH THE REGISTER IN CHANCERY NO LATER THAN _____, 2020. THE REGISTER IN CHANCERY'S ADDRESS IS:

Register in Chancery:
Court of Chancery of Delaware, Kent County

414 Federal Street
Dover, Delaware 19901

YOU ALSO MUST DELIVER COPIES OF THE MATERIALS TO PLAINTIFF'S COUNSEL AND DEFENDANTS' COUNSEL SO THEY ARE RECEIVED NO LATER THAN _____, 2020. COUNSEL'S ADDRESSES ARE:

Counsel for Plaintiff:

Timothy Brown
THE BROWN LAW FIRM, P.C.
240 Townsend Square
Oyster Bay, NY 11771

Phillip Kim
THE ROSEN LAW FIRM, P.A.
275 Madison Avenue, 40th Floor
New York, NY 10016

Counsel for Defendants:

Jonathan K. Youngwood
SIMPSON THACHER & BARTLETT
LLP
425 Lexington Avenue
New York, NY 10017

Raymond J. DiCamillo
RICHARDS, LAYTON & FINGER,
P.A.
920 North King Street
Wilmington, Delaware 19801

An objector may file an objection on his, her or its own or through an attorney hired at his, her or its own expense. If an objector hires an attorney to represent him, her or it for the purposes of making such objection, the attorney must serve a notice of appearance on the counsel listed above and file such notice with the Court no later than fourteen (14) calendar days before the Settlement Hearing. Any SeaWorld stockholder who does not timely file and serve a written objection complying with the above terms shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement, and any untimely objection shall be barred.

Any objector who files and serves a timely, written objection in accordance with the instructions above, may appear at the Settlement Hearing either in person or through counsel retained at the objector's expense. Objectors need not attend the Settlement Hearing, however, in order to have their objections considered by the Court.

If you are a Current SeaWorld Stockholder and do not take steps to appear in this action and object to the proposed Settlement, you will be bound by the Judgment

of the Court and will forever be barred from raising an objection to such settlement in this Derivative Action, and from pursuing any of the Released Claims.

You may obtain further information by contacting counsel for Plaintiff at: Phillip Kim, The Rosen Law Firm, P.A., 275 Madison Avenue, 40th Floor, NY 10016, Telephone: (212) 686-1060, Email: pkim@rosenlegal.com; or Timothy Brown, The Brown Law Firm, P.C., 240 Townsend Square, Oyster Bay, NY 11771, Telephone: (516) 922-5427, Email: tbrown@thebrownlawfirm.net. **Please Do Not Call the Court with Questions About the Settlement.**

BY ORDER OF THE COURT OF CHANCERY OF THE STATE OF DELAWARE:

Dated: _____

Signed: _____



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MARK KISTENMACHER,)
DERIVATIVELY AND ON BEHALF OF)
SEAWORLD ENTERTAINMENT, INC.,)

Plaintiff,)

v.)

C.A. No. 10437-VCS

JIM ATCHISON, JAMES M. HEANEY,)
DANIEL B. BROWN, MARC)
SWANSON, DAVID F.)
D'ALESSANDRO, JOSEPH P.)
BARATTA, BRUCE MCEVOY, JUDITH)
A. MCHALE, PETER F. WALLACE,)
DEBORAH THOMAS, STEPHEN A.)
SCHWARZMAN, SW DELAWARE)
L.P., SW DELAWARE A L.P., SW)
DELAWARE B L.P., SW DELAWARE)
C L.P., SW DELAWARE D L.P., SW)
DELAWARE E L.P., SW DELAWARE F)
L.P., SW DELAWARE CO-INVEST)
L.P., SW DELAWARE (GS) L.P., SW)
DELAWARE (GSO) L.P., SW CAYMAN)
LIMITED, AND THE BLACKSTONE)
GROUP L.P.,)

Defendants,)

And)

SEAWORLD ENTERTAINMENT, INC.,)

Nominal Defendant.)

[PROPOSED] SCHEDULING ORDER WITH RESPECT TO NOTICE AND SETTLEMENT HEARING

WHEREAS, the parties to the above-captioned shareholder derivative action (the “Derivative Action”) have entered into a Stipulation of Compromise and Settlement dated February 26, 2020 (the “Stipulation”), which sets forth the terms and conditions for the proposed settlement and dismissal with prejudice of the Derivative Action, subject to review and approval by this Court pursuant to the Court of Chancery Rule 23.1 upon notice to the stockholders of nominal defendant SeaWorld Entertainment, Inc. (“SeaWorld”):

NOW, upon application of the Parties, after review and consideration of the Stipulation filed with the Court and the exhibits annexed hereto,

IT IS HEREBY ORDERED this _____ day of _____, 2020 as follows:

1. This Scheduling Order with Respect to Notice and Settlement hearing (“Scheduling Order”) incorporates by reference the definitions in the Stipulation, and except where otherwise specified herein, all capitalized terms used herein shall have the same meanings as set forth in the Stipulation.

2. A hearing shall be held before this Court (the “Settlement Hearing”) on _____, 2020 at __:___.m.,¹ at the Court of Chancery, Kent County, 414 Federal Street, Dover, Delaware 19901 to: (i) determine whether the proposed

¹ The Parties respectfully request that the Settlement Hearing be scheduled at least fifty-five (55) days after entry of this Scheduling Order.

Settlement is fair, reasonable, and adequate and in the best interest of SeaWorld and its stockholders; (ii) determine whether the Court should finally approve the Stipulation and enter the Judgment as provided in the Stipulation, dismissing the Derivative Action with prejudice and extinguishing and releasing the Released Claims; (iii) consider Plaintiff's Counsel's Fee and Expense Amount application, including the Service Award to Plaintiff; (iv) hear and determine any objections to the proposed Settlement, Plaintiff's Counsel's Fee and Expense Amount and/or Plaintiff's Service Award; and (v) rule on such other matters as the Court may deem appropriate.

3. The Settlement Hearing may be adjourned by the Court from time to time without further notice to Current SeaWorld Stockholders other than by announcement at the Settlement Hearing or other adjournment thereof, or notation on the docket in the Derivative Action.

4. The Court reserves the right to approve the Settlement at or after the Settlement Hearing, with such modifications as may be consented to by the Parties, and without further notice to Current SeaWorld Stockholders. Further, the Court may render its Judgment, and order the payment of the Fee and Expense Amount, including allowing the Service Award to Plaintiff, all without further notice to Current SeaWorld Stockholders. The Court retains jurisdiction over this Derivative

Action to consider further applications arising out of or connected with the proposed Settlement.

5. The Court approves, as to form and content, the Notice, and finds that issuing the Notice through the manner set forth herein meets the requirements of due process and Court of Chancery Rule 23.1, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to Current SeaWorld Shareholders and all other Persons entitled thereto.

6. Within fifteen (15) calendar days following entry of this Scheduling Order, SeaWorld shall cause the Notice to be filed or furnished with the SEC in an SEC Form 8-K at SeaWorld's cost, issue a press release with the Notice on *GlobeNewswire* with the costs to be deducted from the Fee and Expense Amount, and publish the Notice one time in *Investors' Business Daily* with the cost to be deducted from the Fee and Expense Amount.

7. Also within fifteen (15) calendar days following entry of this Scheduling Order, SeaWorld, at SeaWorld's cost, shall publish the Stipulation and the Notice on an Internet page that SeaWorld shall create for this purpose, which shall be accessible through the date of entry of an order finally approving the Settlement via a link on the "Investor Relations" page of <http://www.seaworldentertainment.com>, the address of which shall be provided in the Notice.

8. Plaintiff's Counsel, at their cost, shall also publish the Notice through posting on their respective firm websites.

9. At least twenty-eight (28) calendar days prior to the Settlement Hearing, SeaWorld shall file an appropriate affidavit attesting to provision of the Notice in accordance with this Order.

10. Any Current SeaWorld Stockholder may object and/or appear and show cause, if he, she, or it has any concern why the Settlement should not be finally approved as fair, reasonable, and adequate, why the Judgment should not be entered thereon, and/or why the Fee and Expense Amount and the Service Award, should not be finally approved; provided, however, unless otherwise ordered by the Court, that no Current SeaWorld Stockholder shall be heard or entitled to contest the approval of the terms and conditions of the Settlement, or, if approved, the Judgment to be entered thereon approving the same, or the Fee and Expense Amount and the Service Award, unless that stockholder has, at least fourteen (14) calendar days prior to the Settlement Hearing: (1) filed with the Register in Chancery a written objection to the Settlement setting forth (a) the nature of the objection, (b) proof of ownership of SeaWorld common stock as of the date of the execution of the Stipulation and through the date of filing the objection, including the number of shares of SeaWorld common stock held and the date of purchase, (c) any and all documentation or evidence in support of such objection, and (d) the identities of any cases, by name,

court, and docket number, in which the stockholder or his, her, or its attorney has objected to a settlement in the last three (3) years; and (2) if he, she, or it intends to appear and requests to be heard at the Settlement Hearing, such stockholder must have, in addition to the requirements of (1) above, filed with the Register in Chancery (a) a written notice of such stockholder's intention to appear at the Settlement Hearing; (b) a statement that indicates the basis for such appearance; (c) the identities of any witnesses the stockholder intends to call at the Settlement Hearing and a statement as to the subjects of their testimony; and (d) any and all evidence that would be presented at the Settlement Hearing. If a Current SeaWorld Stockholder files a written objection and/or written notice of intent to appear, such stockholder must also serve copies of such notice, proof, statement, and documentation, together with copies of any other papers or briefs such stockholder files with the Court (either by hand delivery or by first class mail) at least fourteen (14) calendar days prior to the Settlement Hearing upon each of the following:

Register in Chancery:

Court of Chancery of Delaware, Kent County
414 Federal Street
Dover, Delaware 19901

Counsel for Plaintiff:

Timothy Brown
THE BROWN LAW FIRM, P.C.
240 Townsend Square
Oyster Bay, NY 11771

Phillip Kim
THE ROSEN LAW FIRM, P.A.
275 Madison Avenue, 40th Floor
New York, NY 10016

Counsel for Defendants:

Jonathan K. Youngwood
SIMPSON THACHER & BARTLETT
LLP
425 Lexington Avenue
New York, NY 10017

Raymond J. DiCamillo
RICHARDS, LAYTON & FINGER,
P.A.
920 North King Street
Wilmington, Delaware 19801

Any Current SeaWorld Stockholder or other Person who does not make his, her, or its objection in the manner provided herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the Settlement or the Fee and Expense Amount and Service Award, unless otherwise ordered by the Court, but shall be forever bound by the Judgment to be entered, the dismissal of the Derivative Action with prejudice, and any and all of the releases set forth in the Stipulation.

11. All Current SeaWorld Stockholders shall be bound by all orders, determinations, and judgments in the Derivative Action concerning the Settlement, whether favorable or unfavorable to Current SeaWorld Stockholders.

12. All papers in support of the Settlement and the Fee and Expense Amount, including any Service Award, shall be filed with the Court and served at least twenty-one (21) calendar days prior to the Settlement Hearing, and any reply papers shall be filed with the Court at least seven (7) calendar days prior to the Settlement Hearing.

13. If the Settlement is approved by the Court following the Settlement Hearing, the Court shall enter the Judgment, substantially in the form attached to the Stipulation as Exhibit D.

14. In the event that the Settlement is terminated in its entirety pursuant to the terms of Section VIII, Paragraph 8.3 of the Stipulation or the Effective Date otherwise fails to occur for any reason, the Settlement and the Stipulation shall be canceled and terminated; SeaWorld shall refund the Cash Payment to the insurer(s) that paid SeaWorld the Cash Payment; this Order shall become null and void and be without prejudice to the rights of Plaintiff or Defendants; and all proceedings in, and parties to, the Derivative Action shall revert to their status as of February 3, 2020.

15. All proceedings in this Derivative Action shall remain stayed until further order of the Court, except as may be necessary to implement the Settlement or comply with the terms of the Stipulation and this Scheduling Order. This Court retains exclusive jurisdiction over this Derivative Action, the Parties, and Plaintiff's Counsel and Defendants' Counsel to consider all further matters arising out of or connected with the Settlement.

16. Pending final determination of whether the Settlement should be approved, neither Plaintiff, Plaintiff's Counsel, nor any Current SeaWorld Stockholder or other Persons, derivatively on behalf of SeaWorld shall commence or prosecute, or in any way instigate or participate in the commencement or

prosecution of, any action or proceeding asserting any Released Claims against any of the Defendants' Releasees in any court or tribunal.

17. Whether or not the Judgment is entered, and whether or not the Settlement is consummated, the fact and terms of the Stipulation, including any exhibits attached thereto, all proceedings in connection with the Settlement, and any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement:

(a) shall not be offered, received, or used in any way against the Parties as evidence of, or be deemed to be evidence of, a presumption, concession, or admission by any of the Parties with respect to the truth of any fact alleged by Plaintiff or the validity, or lack thereof, of any claim that has been or could have been asserted in the Derivative Action or in any litigation, or the deficiency, infirmity, or validity of any defense that has been or could have been asserted in the Derivative Action or in any litigation, or of any fault, wrongdoing, negligence, or liability of any of the Defendants' Releasees;

(b) shall not be offered, received, or used in any way against any of the Defendants' Releasees as evidence of, or be deemed to be evidence of, a presumption, concession, or admission of any fault, misrepresentation or omission with respect to any statement or written document approved, issued, or made by any of the Defendants' Releasees;

(c) shall not be offered, received, or used in any way against any of the Defendants' Releasees as evidence of, or be deemed to be evidence of, a presumption, concession, or admission of any liability, fault, negligence, omission or wrongdoing, or in any way referred to for any other reason as against the Defendants' Releasees, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding in any court, administrative agency, or other tribunal; and

(d) shall not be offered, received, or used in any way against any of Plaintiff's Releasees as evidence of, or be deemed to be evidence of, a presumption, concession, or admission that any of Plaintiff's claims are without merit or that Plaintiff would not have been able to prevail on his claims at trial.

18. Neither the Stipulation nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement shall be admissible in any proceeding for any purpose except to enforce the terms of the Settlement; provided, however, that the Releasees may refer to the Settlement, and file the Stipulation and/or the Judgment, in any action that may be brought against them to effectuate the liability protections granted them hereunder, including, without limitation, to support a defense or claim based on principles of *res judicata*, collateral estoppel, full faith and credit, release, standing, good faith settlement, judgment bar

or reduction or any other theory of claim preclusion or issue preclusion or similar defense or claim under U.S. federal or state law or foreign law.

19. The Court reserves the right to adjourn the date of the Settlement Hearing or modify any other dates set forth herein without further notice to Current SeaWorld Stockholders and retains jurisdiction to consider all further applications arising out of or connection with the Settlement. The Court may approve the Settlement and any of its terms, with such modifications as may be agreed to by the Parties, if appropriate, without further notice to Current SeaWorld Stockholders.

IT IS SO ORDERED.

DATED: _____

Vice Chancellor Joseph R. Slights III



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MARK KISTENMACHER,)
DERIVATIVELY AND ON BEHALF OF)
SEAWORLD ENTERTAINMENT, INC.,)

Plaintiff,)

v.)

C.A. No. 10437-VCS

JIM ATCHISON, JAMES M. HEANEY,)
DANIEL B. BROWN, MARC)
SWANSON, DAVID F.)
D’ALESSANDRO, JOSEPH P.)
BARATTA, BRUCE MCEVOY, JUDITH)
A. MCHALE, PETER F. WALLACE,)
DEBORAH THOMAS, STEPHEN A.)
SCHWARZMAN, SW DELAWARE)
L.P., SW DELAWARE A L.P., SW)
DELAWARE B L.P., SW DELAWARE)
C L.P., SW DELAWARE D L.P., SW)
DELAWARE E L.P., SW DELAWARE F)
L.P., SW DELAWARE CO-INVEST)
L.P., SW DELAWARE (GS) L.P., SW)
DELAWARE (GSO) L.P., SW CAYMAN)
LIMITED, AND THE BLACKSTONE)
GROUP L.P.,)

Defendants,)

And)

SEAWORLD ENTERTAINMENT, INC.,)

Nominal Defendant.)

[PROPOSED] FINAL ORDER AND JUDGMENT

A hearing having been held before this Court on _____, _____ pursuant to this Court's Scheduling Order with Respect to Notice and Settlement Hearing dated _____, 2020 (the "Scheduling Order"), and upon the Stipulation of Compromise and Settlement, dated February 26, 2020 (the "Stipulation") outlining the Settlement of the above-captioned action (the "Derivative Action"), which is incorporated herein by reference, the Parties having appeared by their attorneys of record, the Court having heard and considered the submissions and evidence presented in support of the proposed Settlement, the application for the Fee and Expense Amount for Plaintiff's Counsel, and the application for a Service Award to Plaintiff, the opportunity to be heard having been given to all other persons requesting to be heard in accordance with the Scheduling Order, and the Court having determined that Notice was adequate and sufficient, and the entire matter of the proposed Settlement having been heard and considered by the Court,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, this _____ day of _____, 2020 that:

1. This Final Order and Judgment ("Judgment") incorporates by reference the definitions in the Stipulation, and except where otherwise specified herein, all capitalized terms used herein shall have the same meanings as set forth in the Stipulation.

2. This Court has jurisdiction over the subject matter of the Derivative Action, including all matters necessary to effectuate the Settlement, and over all Parties.

3. This Court finds that the Settlement set forth in the Stipulation is fair, reasonable, and adequate as to each of the Parties and Current SeaWorld Stockholders, and hereby finally approves the Settlement in all respects and orders the Parties to perform its terms to the extent the Parties have not already done so.

4. The Derivative Action, all claims contained therein, and any other Released Claims, are hereby ordered as fully, finally, and forever compromised, settled, released, discharged and dismissed on the merits and with prejudice by virtue of the proceedings herein and this Judgment. The Parties are to bear their own costs, except as otherwise provided in the Stipulation.

5. Upon the Effective Date, SeaWorld, Plaintiff (individually and on behalf of SeaWorld) and each Current SeaWorld Stockholder, and each of their respective heirs, executors, administrators, trusts, trustees, estates, beneficiaries, legatees, insurers, reinsurers, predecessors, successors, and assigns (and assignees of each of the foregoing), shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Released Claims against the Defendants' Releasees. SeaWorld, Plaintiff, and each Current SeaWorld Stockholder shall be deemed to have, and by operation of this

Judgment shall have, covenanted not to sue any of the Defendants' Releasees with respect to any Released Claims, and shall be permanently barred and enjoined from instituting, commencing or prosecuting the Released Claims against the Defendants' Releasees. Nothing herein shall in any way impair or restrict the rights of any Party to enforce the terms of the Stipulation or this Judgment.

6. Upon the Effective Date, each of the Defendants and each of their respective heirs, executors, administrators, trusts, trustees, estates, beneficiaries, legatees, insurers, reinsurers, predecessors, successors, and assigns (and assignees of each of the foregoing) shall by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Defendants' Released Claims against the Plaintiff's Releasees. Each of the Defendants shall by operation of this Judgment have, covenanted not to sue any of the Plaintiff's Releasees with respect to any Defendants' Released Claims, and shall be permanently barred and enjoined from instituting, commencing or prosecuting the Defendants' Released Claims against the Plaintiff's Releasees. Nothing herein shall in any way impair or restrict the rights of any Party to enforce the terms of the Stipulation or this Judgment.

7. The Court finds that the dissemination of the Notice to Current SeaWorld Stockholders was made in accordance with the Scheduling Order, and proof of the dissemination of the Notice was filed with the Court. The Notice provided the best notice practicable under the circumstances to all Persons entitled

to such notice, and said Notice fully satisfied the requirements of due process and Court of Chancery Rule 23.1.

8. The Court finds that the Fee and Expense Amount in the amount of three million one hundred twenty-five thousand dollars (\$3,125,000) is fair and reasonable, in accordance with the Stipulation, and finally approves the Fee and Expense Amount.

9. The Court finds that the Service Award to Plaintiff in the amount of seven thousand five hundred dollars (\$7,500) is fair and reasonable, in accordance with the Stipulation, and finally approves the Service Award, to be paid by Plaintiff's Counsel from the Fee and Expense Amount.

10. This Judgment, the facts and terms of the Stipulation, including any exhibits attached thereto, all proceedings in connection with the Settlement, and any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement:

(a) shall not be offered, received, or used in any way against the Parties as evidence of, or be deemed to be evidence of, a presumption, concession, or admission by any of the Parties with respect to the truth of any fact alleged by Plaintiff or the validity, or lack thereof, of any claim that has been or could have been asserted in the Derivative Action or in any litigation, or the deficiency, infirmity, or validity of any defense that has been or could have been asserted in the

Derivative Action or in any litigation, or of any fault, wrongdoing, negligence, or liability of any of the Defendants' Releasees;

(b) shall not be offered, received, or used in any way against any of the Defendants' Releasees as evidence of, or be deemed to be evidence of, a presumption, concession, or admission of any fault, misrepresentation or omission with respect to any statement or written document approved, issued, or made by any of the Defendants' Releasees;

(c) shall not be offered, received, or used in any way against any of the Defendants' Releasees as evidence of, or be deemed to be evidence of, a presumption, concession, or admission of any liability, fault, negligence, omission or wrongdoing, or in any way referred to for any other reason as against the Defendants' Releasees, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding in any court, administrative agency, or other tribunal; and

(d) shall not be offered, received, or used in any way against Plaintiff's Releasees as evidence of, or be deemed to be evidence of, a presumption, concession, or admission that any of Plaintiff's claims are without merit or that Plaintiff would not have been able to prevail on his claims at trial.

11. Neither the Judgment, nor the Stipulation, nor the Settlement, nor any act performed or document executed pursuant to or in furtherance thereof, shall be

admissible in any proceeding for any purpose except to enforce the terms of the Settlement; provided, however, that the Releasees may refer to the Settlement, and file the Stipulation and/or this Judgment, in any action that may be brought against them to effectuate the liability protections granted them thereunder, including, without limitation, to support a defense or claim based on principles of *res judicata*, collateral estoppel, full faith and credit, release, standing, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or claim under U.S. federal or state law or foreign law.

12. Without affecting the finality of this Judgment in any way, the Court hereby retains continuing jurisdiction over: (a) implementation of the Settlement; and (b) all Parties for the purpose of construing, enforcing, and administering the Stipulation and this Judgment, including, if necessary, setting aside and vacating this Judgment, on motion of a Party, to the extent consistent with and in accordance with the Stipulation if the Effective Date fails to occur in accordance with the Stipulation.

13. This Judgment is a final judgment and should be entered forthwith by the Register of Chancery dismissing the Derivative Action with prejudice.

IT IS SO ORDERED.

DATED: _____

Vice Chancellor Joseph R. Slight III