

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**SECURITIES AND EXCHANGE COMMISSION,**

**1:18-CV-08480**

**Plaintiff,**

**- against -**

**SEAWORLD ENTERTAINMENT AND JAMES ATCHISON,**

**ECF CASE**

**Defendants.**

**SECURITIES AND EXCHANGE COMMISSION,**

**1:18-CV-08482**

**Plaintiff,**

**- against-**

**FREDERICK D. JACOBS,**

**ECF CASE**

**Defendant.**

**DISTRIBUTION PLAN**

**I. OVERVIEW**

1. This Distribution Plan (the “Plan”) was developed by the Securities and Exchange Commission (“SEC”) in accordance with practices and procedures customary in Fair Fund administrations. This Plan provides for the distribution of a Fair Fund (the “Fair Fund”), comprised of disgorgement, prejudgment interest, and civil money penalties paid by SeaWorld Entertainment (“SeaWorld” or the “Company”); former Chief Executive Officer, James Atchison (“Atchison”); and former Vice-President of Communications, Frederick D. Jacobs (“Jacobs”) (collectively, the “Defendants”) in this proceeding.

2. As described more specifically below, the Plan seeks to compensate investors who were harmed, by the Defendants’ conduct alleged in the Complaint, in connection with misleading statements and/or omissions they made in SEC filings, earnings releases and calls, and other statements to the press regarding the impact of the documentary film, *Blackfish* on SeaWorld’s reputation and business. As calculated using the methodology detailed in the Plan of Allocation (attached as Exhibit A), investors will be compensated for their losses on shares of SeaWorld common stock (“SeaWorld stock” or the “Security”) that were purchased or acquired between

December 20, 2013 and August 12, 2014, inclusive (the “Relevant Period”).

3. The Commission has custody of the Fair Fund and shall retain control of the assets of the Fair Fund. The Court retains jurisdiction over its implementation.

## II. BACKGROUND

4. On September 18, 2018, the SEC filed a Complaint (the “Complaint”) (SW Dkt. No. 1) against SeaWorld and Atchison. The SEC alleged that the Defendants made untrue and/or misleading statements or omissions in SEC filings, earnings releases and calls, and other statements to the press regarding the impact of the documentary film *Blackfish* on the Company’s reputation and business (i.e. “*Blackfish* effect”). According to the Complaint, released in July 2013, *Blackfish* criticized SeaWorld’s treatment of its orcas (killer whales) and received significant media attention that escalated as the film became more widely distributed. The SEC alleged that, in connection with the offer and sale of SeaWorld stock, the Defendants engaged in a course of business that—by failing to disclose the *Blackfish* effect to investors—they should have known would operate as a fraud or deceit upon the purchasers of the Security. According to the Complaint, from January through March 2014, Atchison sold shares of SeaWorld stock, resulting in the inflation of the Security and allowed Atchison to avoid losses of approximately \$730,860. As alleged in the Complaint, on August 13, 2014, SeaWorld acknowledged for the first time that its declining attendance was, among other factors, partially caused by negative publicity connected to *Blackfish*. According to the Complaint, SeaWorld’s stock price fell approximately 33% following this announcement, causing a loss of approximately \$830 million in shareholder value.

5. On September 18, 2018, the SEC also filed a Complaint against Jacobs (Jacobs Dkt. No. 1). The SEC alleged that, on January 13, 2014, Jacobs made an untrue statement of material fact and/or omitted material facts from his statement just before selling his SeaWorld stock and avoided losses of approximately \$84,885.

6. On October 4, 2018, the Defendants, without admitting or denying the allegations, consented to the entry of final judgments (“Final Judgments”) against each of them that imposed a total of approximately \$5.1 million in financial remedies. The Court ordered SeaWorld to pay a civil penalty of \$4,000,000 (SW Dkt. No. 11); Atchison to pay disgorgement of \$730,860 plus prejudgment interest of \$119,323 and a civil penalty of \$150,000 (SW Dkt. No. 10); and Jacobs to pay disgorgement of \$84,885 and prejudgment interest in the amount of \$14,720 (Jacobs Dkt. No. 8).

7. The Defendants paid in full, and the funds have been deposited in a Commission designated account at the United States Department of Treasury’s Bureau of Fiscal Service for investment. Any accrued interest will be for the benefit of harmed investors.

8. On December 4, 2020, the Court entered an Order consolidating the two civil actions for the purposes of distributing the funds paid by the Defendants to harmed investors. (Dkt. No. 15).

9. On December 15, 2020, the Court entered an Order establishing a Fair Fund (the

“Fair Fund”) for the \$5,266,679.31 collected from Defendants plus accrued interest, appointing Miller Kaplan Arase LLP (“MKA”) as Tax Administrator, appointing JND Legal Administration (“JND”) as the Distribution Agent, and authorizing payment of administrative fees and expenses and tax obligations without further order of the Court (Dkt. No. 17).

### III. DEFINITIONS

As used in this Plan, the following definitions will apply:

10. **“Administrative Costs”** shall mean any administrative costs and expenses, including without limitation the fees and expenses of the Tax Administrator and the Distribution Agent, tax obligations, and investment and banking costs.

11. **“Claim Form”** means the form designed by the Distribution Agent, in consultation with the Commission staff, for the filing of claims in accordance with this Plan. The claim form will require, at a minimum, sufficient documentation reflecting any Preliminary Claimant’s purchases and dispositions of the Security during the Relevant Period such that eligibility under the Plan can be determined, tax identification and other related information from the Preliminary Claimant as determined necessary by the Distribution Agent in coordination with the Tax Administrator, and a certification that the Preliminary Claimant is not an Excluded Party.

12. **“Claim Status Notice”** means the notice sent by the Distribution Agent within sixty (60) days of the Claims Bar Date to all Preliminary Claimants that submitted a deficient Claim Form. The Claim Status Notice will provide to each Preliminary Claimant whose claim is deficient, in whole or in part, the reason(s) for the deficiency and in the event the claim is denied, the Claim Status Notice will state the reason(s) for such denial. The Claim Status Notice will also notify the Preliminary Claimant of the opportunity to cure any deficiency, request reconsideration, or dispute the determination made by the Distribution Agent and provide instructions regarding what is required to do so.

13. **“Claims Bar Date”** means the date established in accordance with this Plan by which a Preliminary Claimant’s Claim Form must be postmarked or submitted electronically in order to receive consideration under the Plan. The Claims Bar Date shall be ninety (90) days after the initial mailing of the Plan Notice. Claim Forms submitted by Preliminary Claimants postmarked or received after the Claims Bar Date will not be accepted unless the Distribution Agent is directed to do so by the Commission staff.

14. **“Claims Packet”** means the materials relevant to submitting a claim that will be provided to Preliminary Claimants who request such materials through a website or otherwise prior to the Claims Bar Date. The Claims Packet will include, at a minimum, a copy of the Plan Notice and a Claim Form (together with instructions for completion of the Claim Form).

15. **“Determination Notice”** shall mean the written notice sent by the Distribution Agent to all Preliminary Claimants who timely submitted a Claim Form notifying the Preliminary Claimant of its eligibility determination. The Determination Notice will further provide each Preliminary Claimant that is determined to be an Eligible Claimant with his, her, or its calculated

Recognized Loss. The Determination Notice will constitute the Distribution Agent's final ruling regarding the eligibility status of the claim.

16. **"Distribution Payment"** means a payment from the Fair Fund to a Payee in accordance with the terms of this Plan.

17. **"Eligible Claimant"** means a Preliminary Claimant, who is not an Excluded Party, who submitted a valid Claim Form and has suffered a Recognized Loss, as calculated in accordance with the Plan of Allocation.

18. **"Excluded Party"** shall mean:

- (a) The Defendants;
- (b) Present or former officers or directors of SeaWorld or any assigns, creditors, or controlled entities of any of the foregoing entities;
- (c) Atchison and Jacobs and their heirs, distributees, spouses, parents, dependent children, siblings, assigns, creditors, and controlled entities of any of the foregoing Persons;
- (d) Any employee or former employee of SeaWorld or any of its affiliates who has been terminated for cause or has otherwise resigned, in connection with the conduct alleged in the Complaints;
- (e) Any Person who, as of the Claims Bar Date, has been the subject of criminal charges related to the conduct alleged in the Complaints or any related Commission action;
- (f) Any firm, trust, corporation, officer, or other entity in which any of the Defendants have or had a controlling interest;
- (g) The Distribution Agent, its employees, and those Persons assisting the Distribution Agent in its role as the Distribution Agent; or
- (h) Any purchaser or assignee of another Person's right to obtain a recovery from the Fair Fund for value; provided, however, that this provision shall not be construed to exclude those Persons who obtained such a right by gift, inheritance or devise.

The Claim Form will require claimants to certify that they are not an Excluded Party. All Excluded Parties will be deemed ineligible to participate in the distribution of the Fair Fund.

19. **"Fair Fund"** means the fund created by the Court pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, for the benefit of investors harmed by Defendants' violations alleged in the Complaints.

20. “**Net Available Fair Fund**” means the Fair Fund, plus any interest or earnings, less Administrative Costs.

21. “**Payee**” means an Eligible Claimant whose Recognized Loss calculates, in accordance with the Plan of Allocation, to a distribution amount equal to or greater than \$10.00 and who will receive a Distribution Payment.

22. “**Person**” means natural individuals as well as legal entities such as corporations, partnerships, or limited liability companies.

23. “**Plan Notice**” means a written notice from the Distribution Agent to Preliminary Claimants informing them of the Fair Fund; the Plan and its eligibility requirements; explaining how to submit a claim, including instructions for any online claims process; and how to obtain a copy of the approved Plan and Claim Form by request or from the Fair Fund’s website. The Plan Notice will also be available on the Fair Fund’s website that is maintained by the Distribution Agent.

24. “**Plan of Allocation**” means the methodology used by the Distribution Agent to calculate if a Preliminary Claimant has suffered a Recognized Loss. The Plan of Allocation is attached as Exhibit A.

25. “**Preliminary Claimant**” shall mean a Person, or their lawful successors, identified by the Distribution Agent as having a possible claim to recover from the Fair Fund under this Plan, or a Person asserting prior to the Claims Bar Date that he, she, or it has a possible claim to recover from the Fair Fund under this Plan, as a result of transactions in the Security during the Relevant Period.

26. “**Recognized Loss**” means the amount of loss calculated in accordance with the Plan of Allocation.

27. “**Relevant Period**” means the period of time between December 20, 2013 and August 12, 2014, inclusive.

28. “**Security**” refers to shares of SeaWorld common stock listed on the NASDAQ, registered with the Commission, and traded under the symbol SEAS during the Relevant Period.

29. “**Summary Notice**” means the notice published in print or internet media that shall include, at a minimum, a statement of the purpose of the Fair Fund and the Plan, the means of obtaining a Claims Packet, and the Claims Bar Date. The Summary Notice will be published two (2) times and will appear within ten (10) days of the initial mailing of the Plan Notice.

30. “**Third-Party Filer**” means a third party, including without limitation a nominee, custodian, or an intermediary holding in street name, who is authorized to submit and submits a claim(s) on behalf of one or more Preliminary Claimants. Third-Party Filer does not include assignees or purchasers of claims, which are excluded from receiving Distribution Payments under

paragraph 18(h) above.

#### **IV. TAX COMPLIANCE**

31. The Tax Administrator shall handle the tax obligations of the Fair Fund. The Tax Administrator will be compensated for reasonable fees and expenses from the Fair Fund.

32. The Fair Fund constitutes a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. The Tax Administrator is the administrator of such QSF for purposes of Treas. Reg. § 1.468B-2(k)(3)(I) and shall satisfy the tax-related administrative requirements imposed by Treas. Reg. § 1.468B-2, including, but not limited to:

- (a) Obtaining a taxpayer identification number;
- (b) Requesting funds necessary for the timely payment of all applicable taxes, the payment of taxes for which the Tax Administrator has received funds, and the filing of applicable returns; and
- (c) Fulfilling any information reporting or withholding requirements imposed on distributions from the Fair Fund.

#### **V. DISTRIBUTION AGENT**

33. The Distribution Agent will be responsible for administering the Fair Fund in accordance with the Plan. This will include, among other things, taking reasonable steps to obtain accurate mailing information for Preliminary Claimants; establishing a website and staffing a call center to address inquiries regarding the Plan; disseminating the Plan Notice; preparing accountings; cooperating with the Tax Administrator appointed by the Commission to satisfy any tax liabilities and to ensure compliance with income tax reporting requirements, including but not limited to Foreign Account Tax Compliance Act (FATCA); disbursing the Fair Fund in accordance with this Plan, as ordered by the Court; and researching and reconciling errors and reissuing payments, when possible.

34. To carry out the purposes of this Plan, the Distribution Agent is authorized to make and implement immaterial changes to the Plan upon agreement of the Commission staff. If a change is deemed to be material by the Commission staff, Court approval is required prior to implementation by amending the Plan.

35. The Distribution Agent may extend any procedural deadline contained in the Plan for good cause shown, if agreed upon by the Commission staff.

36. The Distribution Agent is entitled to rely on all outstanding rules of law and Court orders. The Distribution Agent will not be liable to anyone, except the Commission on behalf of the Fair Fund for a pecuniary loss to the Fair Fund, for any action taken or omitted by the Distribution Agent in connection with the Plan and all Preliminary Claimants will have no claims

against the Distribution Agent, its employees, agents, and attorneys in connection with the Plan and the administration of the Fair Fund, and will be deemed enjoined from prosecuting or asserting any such claims, except upon a finding by this Court of gross negligence or reckless disregard of duty under this Plan.

37. The Distribution Agent is authorized to enter into agreements with third parties as may be appropriate or necessary in the administration of the Fair Fund, provided such third parties are not excluded pursuant to other provisions of this Plan. In connection with such agreements, the third parties shall be deemed to be agents of the Distribution Agent under this Plan.

38. The Distribution Agent may be removed at any time by the Court, and replaced with a successor. In the event the Distribution Agent decides to resign, it will first give written notice to the Commission staff and the Court of such intention, and such resignation will not be effective until the Court has appointed a successor. The Distribution Agent will then follow such instructions as such successor or the Court provides in turning over management of the Fair Fund.

## **VI. ADMINISTRATION OF THE FAIR FUND**

### Identification of and Notification to Preliminary Claimants

39. The Distribution Agent will, insofar as practicable, use its best efforts to identify Preliminary Claimants from a review of trading records, obtaining records from registered broker-dealers and investment advisors, and seeking information from any other source available to it. The Distribution Agent may also engage a third party firm, after consultation with and approval of the Commission staff, to assist in identifying Preliminary Claimants to maximize the participation rate of investors in the Fair Fund.

40. Within sixty (60) days after Court approval of the Plan, the Distribution Agent shall:

- (a) design and submit a Claims Packet, including the Plan Notice and the Claim Form, to the Commission staff for review and approval;
- (b) create a mailing and claim database of all Preliminary Claimants based upon information identified by the Distribution Agent;
- (c) run a National Change of Address search to retrieve updated addresses for all records in the database, thereby ensuring the mailing information for Preliminary Claimants is up-to-date;
- (d) email and/or mail a Plan Notice to each Preliminary Claimant identified by the Distribution Agent and to the Distribution Agent's list of banks, brokers, and other nominees in accordance with paragraph 45 below;
- (e) establish and maintain a website devoted solely to the Fair Fund. The Fair Fund's website, located at [www.SeaworldFairFund.com](http://www.SeaworldFairFund.com), will make



available a copy of the approved Plan; provide information regarding the claims process and eligibility requirements for participation in the Fair Fund in the form of frequently asked questions; include in downloadable form, the Claim Form and other related materials; and such other information the Distribution Agent believes will be beneficial to Preliminary Claimants;

- (f) establish and maintain a toll-free telephone number, 855-533-0228, for Preliminary Claimants to call to speak to a live representative of the Distribution Agent during its regular business hours or, outside of such hours, to hear prerecorded information about the Fair Fund. The toll-free number will be listed on all correspondence from the Distribution Agent to Preliminary Claimants as well as on the Fair Fund's website; and
- (g) establish and maintain a traditional mailing address and an email address which will be listed on all correspondence from the Distribution Agent to Preliminary Claimants as well as on the Fair Fund's website.

41. The Distribution Agent will publish the Summary Notice on the internet and/or in print media acceptable to Commission staff. The Summary Notice will be published two (2) times and the initial publication will appear within ten (10) days of the initial mailing of the Plan Notice. The second publication will appear within ten (10) days prior to the Claims Bar Date.

42. The Commission staff retains the right to review and approve any material posted on the Fair Fund's website, any material mailed, and any scripts used in connection with any communication with Preliminary Claimants.

43. In all materials that refer to the Claims Bar Date, the filing deadline will be clearly identified with the calendar date, which is ninety (90) days from the date of the initial mailing of the Plan Notice.

44. The Distribution Agent will promptly provide a Claims Packet to any Preliminary Claimant upon request made via mail, phone, or email prior to the Claims Bar Date.

45. The Distribution Agent will send by email or other means, the Plan Notice to the Distribution Agent's list of banks, brokers, and other nominees, as well as, any other institutions identified during the outreach process that may have records of the Security during the Relevant Period (collectively, the "Nominees or Custodians"). The Distribution Agent will request that these entities, to the extent that they were record holders for beneficial owners of the Security:

- (a) within fourteen (14) days of the Nominees' or Custodians' receipt of the Plan Notice, notify and send the Plan Notice to the respective beneficial owners, and, as requested, provide to the beneficial owners a Claims Packet, so that the beneficial owners may timely file a claim. The burden will be on the Nominees or Custodians to ensure the claims process information, including, if requested, the Claims Packet and other relevant materials, is properly disseminated to the beneficial owners; and/or



- (b) provide to the Distribution Agent, within fourteen (14) days of receipt of the Plan Notice, a list of last known names and addresses for all beneficial owners for whom/which they purchased, as the record holder, the Security during the Relevant Period, so that the Distribution Agent can communicate with the beneficial owners directly.

46. At the discretion of the Distribution Agent, in consultation with the Commission staff, a reasonable number of additional copies of the Claims Packet shall be made available to any Nominee or Custodian requesting it for the purpose of distribution to beneficial owners.

47. Requests to the Distribution Agent for additional copies of the Claims Packet in excess of 50 are subject to approval by the Distribution Agent, in consultation with the Commission staff.

48. Documented reasonable out-of-pocket expenses incurred by the Nominees or the Custodians, which would not have been incurred but for compliance with paragraph 45 above, shall be reimbursed from the Fair Fund. The amount of such expenses allowed will be at the discretion of the Distribution Agent, in consultation with the Commission staff. Unless otherwise determined by the Distribution Agent in consultation with the Commission staff, out-of-pocket expenses based on the following rates will be considered reasonable:

- (a) a maximum of \$0.08 per Claims Packet, plus postage at the pre-sort postage rate per Claim Packet actually mailed;
- (b) a maximum of \$0.05 per email of Summary Notice or Plan Notice and Claim Form link disseminated; or
- (c) \$0.20 per name, address, and email address provided to the Distribution Agent, up to a maximum of amount of \$1,500.00.

49. The Distribution Agent will attempt to locate any Preliminary Claimant whose mailing is returned as “undeliverable” and will document all such efforts. The Distribution Agent shall use its best efforts to make use of commercially available resources and other reasonably appropriate means to obtain updated addresses in response to “undeliverable” notices, and forward any returned mail for which an updated address is provided or obtained. The Distribution Agent will make available, upon request by the Commission staff, a list of all Preliminary Claimants whose Plan Notice have been returned as “undeliverable” due to incorrect addresses and for which the Distribution Agent has been unable to locate current addresses.

#### Filing a Claim

50. To avoid being barred from asserting a claim, on or before the Claims Bar Date, each Preliminary Claimant must submit to the Distribution Agent a properly completed Claim Form reflecting such Preliminary Claimant’s claim, together with all required supporting documentation as the Distribution Agent, in its discretion, deems necessary or appropriate to

substantiate the claim. Without limitation, this information may include third party documentary evidence of purchases and dispositions of the Security during the Relevant Period, as well as holdings of the Security at pertinent dates.

51. Electronic claims submission is strongly encouraged; the Plan Notice will include directions on how Preliminary Claimants can submit their claims electronically via the Fair Fund's website. If using the web-based claim filing option, a Preliminary Claimant must submit his, her, or its claim to the Distribution Agent by 11:59 p.m. on the Claims Bar Date. The Plan Notice will also include instructions for submission of claims if the Preliminary Claimant is unable to submit his, her, or its claim electronically.

52. The burden will be upon the Preliminary Claimant to ensure that his, her or its Claim Form has been properly and timely received by the Distribution Agent. A Claim Form that is postmarked or otherwise received after the Claims Bar Date will not be accepted unless the deadline is extended by the Distribution Agent for good cause shown, after consultation with the Commission staff.

53. All Claim Forms and supporting documentation necessary to determine a Preliminary Claimant's eligibility to receive a distribution from the Fair Fund under the terms of the Plan must be endorsed by a declaration executed by the Preliminary Claimant under penalty of perjury under the laws of the United States. The declaration must be executed by the Preliminary Claimant, unless the Distribution Agent accepts such declaration from a Person authorized to act on the Preliminary Claimant's behalf, whose authority is supported by such documentary evidence as the Distribution Agent deems necessary.

54. When submitting claims to the Fair Fund on behalf of its clients, all Third-Party Filers must use the electronic filing template provided by the Distribution Agent in this matter. Third-Party Filers that do not comply with the template and format provided by the Distribution Agent may be rejected. Third-Party Filers must also submit a signed master proof of claim and release, as well as proof of authority to file on behalf of the claimant(s) at the time the electronic file of transactions is submitted. Failure to do so may result in rejection of the claim.

55. Each Third-Party Filer must establish the validity and amount of each claim in its submission. Third-Party Filers must submit such supporting documentary evidence of purchases, dispositions, and holdings of Securities as the Distribution Agent deems necessary or appropriate to substantiate each individual claim. Without limitation, this includes the complete name of the Preliminary Claimant (beneficial account owner) and its TIN (for individuals) or EIN (for companies), sufficient contact information to confirm the identity of the beneficial owner, and documentation from the original bank, broker or other institution of purchases and dispositions of Securities (account statements, confirmations and other documentation of purchases and dispositions), as well as holdings of the Securities on pertinent dates. Documentation generated by the Third-Party Filer as well as affidavits in lieu of supporting documentation will not be accepted unless, for good cause, the Distribution Agent determines it acceptable. The Distribution Agent will have the right to request, and the Third-Party Filer will have the burden of providing to the Distribution Agent, any additional information and/or documentation deemed necessary by the Distribution Agent to substantiate the claim(s) contained in the submission. Documentation from

a Third-Party Filer that is not acceptable to the Distribution Agent will result in rejection of the affected claim(s). The determination of the Distribution Agent to reject a claim for insufficient documentation, as reflected in the Determination Notice, is final and within the discretion of the Distribution Agent.

56. The receipt of the Security by gift, inheritance, devise, or operation of law will not be deemed to be a purchase of the Security, nor will it be deemed an assignment of any claim relating to the purchase of such Security unless specifically so provided in the instrument of inheritance. The recipient of the Security as a gift, inheritance, devise or by operation of law will be eligible to file a Claim Form and participate in the distribution of the Fair Fund to the extent the original purchaser would have been eligible under the terms of the Plan. Only one claim may be submitted with regard to the same transactions in the Security, and in cases where duplicative claims are filed by the donor and donee, the donee claim will be honored, assuming it is supported by proper documentation.

57. Claims on behalf of a retirement plan covered by Section 3(3) of ERISA, 29 U.S.C. § 1002(3), which do not include Individual Retirement Accounts and such plan's participants, are properly made by the administrator, custodian or fiduciary of the plan and not by the plan's participants. The Distribution Agent will distribute any payments on such claims directly to the administrator, custodian or fiduciary of the retirement plan. The custodian or fiduciary of the retirement plan will distribute any payments received in a manner consistent with its fiduciary duties and the governing account or plan provisions.

58. The Preliminary Claimant has the burden of notifying the Distribution Agent of a change in his, her or its current address and other contact information, and ensuring that such information is properly reflected on the Distribution Agent's records.

#### Review of Claims and Deficiency Process

59. The Distribution Agent will review all claim submissions and determine the eligibility of each Preliminary Claimant to participate in the Fair Fund by reviewing claim data and supporting documentation (or the lack thereof) and verifying the claim. Each Preliminary Claimant will have the burden of proof to establish the validity and amount of his, her or its claim. The Distribution Agent will have the right to request, and the Preliminary Claimant will have the burden of providing to the Distribution Agent, any additional information and/or documentation deemed relevant by the Distribution Agent.

60. The Distribution Agent will provide a Claim Status Notice within sixty (60) days of the Claims Bar Date to each Preliminary Claimant who has filed a deficient Claim Form with the Distribution Agent. The Claim Status Notice will provide to each Preliminary Claimant whose claim is deficient, in whole or in part, the reason(s) for the deficiency (e.g., failure to provide required information or documentation). In the event the claim is denied, in whole or in part, the Claim Status Notice will state the reason(s) for such denial. The Claim Status Notice will also notify the Preliminary Claimant of the opportunity to cure any deficiency, request reconsideration, or dispute the determination made by the Distribution Agent and provide instructions regarding what is required to do so.

61. Any Preliminary Claimant with a deficient claim will have thirty (30) days from the date of the Claim Status Notice to cure any deficiencies identified in the Claim Status Notice.

62. Any Preliminary Claimant seeking reconsideration of a denied claim must advise the Distribution Agent in writing within thirty (30) days of the date of the Claim Status Notice. All requests for reconsideration must include the necessary documentation to substantiate the basis upon which the Preliminary Claimant is requesting reconsideration of his, her, or its claim.

63. The Distribution Agent will have the authority, in its sole discretion, to waive technical claim deficiencies and approve claims on a case-by-case basis, or in groups of claims.

#### Claims Eligibility Determination

64. Within one hundred twenty (120) days of the Claims Bar Date, the Distribution Agent will complete all claims determinations and send a Determination Notice to all Preliminary Claimants who timely submitted a Claim Form notifying the Preliminary Claimant of its eligibility determination. The Determination Notice will further provide to each Preliminary Claimant that is determined to be an Eligible Claimant with his, her, or its calculated Recognized Loss. The Determination Notice will constitute the Distribution Agent's final ruling regarding the eligibility status of the claim.

65. The Distribution Agent may consider disputes of an Eligible Claimant's Recognized Loss calculation, if notice of the dispute is presented in writing to the Distribution Agent within thirty (30) days of the date of the Determination Notice. The Distribution Agent will consult with Commission staff as appropriate. The Distribution Agent will notify the Eligible Claimant in writing with thirty (30) days of receiving a dispute of its determination, which will constitute the Distribution Agent's final ruling regarding the loss calculations for the claim.

#### Distribution Methodology

66. Any Preliminary Claimant, who is not an Excluded Party, who submitted a valid Claim Form and has suffered a Recognized Loss, as calculated in accordance with the Plan of Allocation, will be deemed an Eligible Claimant.

67. No Distribution Payments will be made for less than \$10.00. If an Eligible Claimant's Recognized Loss, in accordance with the Plan of Allocation, calculates to a distribution amount less than \$10.00, that Eligible Claimant will be deemed ineligible to receive a Distribution Payment and his, her, or its distribution amount will be reallocated on a *pro-rata* basis to Eligible Claimants whose distribution amounts are greater than or equal to \$10.00. All Eligible Claimants whose Recognized Loss calculates to a distribution amount equal to or greater than \$10.00 will be deemed a Payee and receive a Distribution Payment.

#### Establishment of a Reserve

68. Before determining the amount of funds available for distribution and calculating

each Payee's Distribution Payment, the Distribution Agent, in conjunction with the Tax Administrator, will establish a reserve to pay Administrative Costs and to accommodate any unexpected expenditures (the "Reserve").

69. After all disbursements and Administrative Costs are paid, any remaining amounts in the Reserve will become part of the Residual described in paragraph 95 below.

#### Preparation of the Payment File

70. Within ninety (90) days following the date of the Determination Notices described above, paragraph 64, the Distribution Agent will compile and send to the Commission staff the Payee information, including the name, address, calculated Recognized Loss, and the amount of the Distribution Payment for all Payees (the "Payee List"). The Distribution Agent will also provide a Declaration to the Commission staff, representing that the Payee List: (a) was compiled in accordance with the approved Plan; (b) is accurate as to Payees' names, addresses, Recognized Losses and amounts of their Distribution Payment; (c) includes the number of Payees compensated; (d) the percentage of the Payee's Recognized Loss being compensated by the disbursement from the Fair Fund, and if applicable, the total percentage to include all prior disbursements; (e) the total amount of funds to be disbursed; and (f) provides all information necessary to make a payment to each Payee.

#### The Escrow Account

71. Prior to the disbursement of funds from the Net Available Fair Fund, the Distribution Agent will establish an escrow account (the "Escrow Account") with a United States commercial bank that is a well-capitalized financial institution as defined by the Federal Reserve Act, Subpart D, 12 C.F.R. 208.43 and that is not unacceptable to the Commission staff (the "Bank"), pursuant to an escrow agreement (the "Escrow Agreement") to be provided by Commission staff.

72. The Distribution Agent, pursuant to the Escrow Agreement, shall also establish with the Bank a separate deposit account (*e.g.* controlled distribution account, managed distribution account, linked checking and investment account) (the "Distribution Account"), insured by the Federal Deposit Insurance Corporation ("FDIC") up to the guaranteed FDIC pass through limit. The Distribution Account shall be linked with the Escrow Account and shall be named, and records maintained, in accordance with the Escrow Agreement.

73. During the term of the Escrow Agreement, the portions of the Fair Fund transferred to the Escrow Account (the "Escrow Property"), shall be invested and reinvested in short-term U.S. Treasury securities backed by the full faith and credit of the United States Government or an agency thereof. The investment shall be, of a type and term necessary to meet the cash liquidity requirements for payments to Payees, tax obligations, and/or fees of the Tax Administrator and/or Distribution Agent, including investment or reinvestment in a bank account insured by the FDIC up to the guaranteed FDIC limit, or in money market mutual funds registered under the Investment Company Act of 1940 that invest 100% of their assets in direct obligations of the United States Government.

74. The Distribution Agent shall provide duplicate original bank and/or investment statements on any accounts established by the Distribution Agent to the Tax Administrator on a monthly basis and shall assist the Tax Administrator in obtaining mid-cycle statements, as necessary.

75. The Distribution Agent shall deposit or invest funds in the Escrow and Distribution Accounts so as to result in the maximum reasonable net return, taking into account the safety of such deposits or investments. In consultation with Commission staff, the Distribution Agent shall work with the Bank on an ongoing basis to determine an allocation of funds between the Escrow and Distribution Account.

76. All interest, dividends, and/or income earned by the Escrow Property will accrue for the benefit of the Escrow Property. All Administrative Costs associated with the Escrow and Distribution Accounts will be the responsibility of the Distribution Agent, who may be reimbursed for said costs as provided in this Plan. No such Administrative Costs may be paid to the Bank, its agents, and/or its affiliates from the Escrow Property.

#### Distribution of the Fair Fund

77. The Distribution Agent will seek to distribute the Net Available Fair Fund to all Payees only after all Claim Forms have been processed and all Preliminary Claimants whose claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to contest or cure pursuant to the procedures set forth herein.

78. Upon the Commission's staff's receipt, review, and acceptance of the Payee List and Declaration from the Distribution Agent, the Commission will petition the Court for authority to disburse funds from the Net Available Fair Fund to the Bank in accordance with the Payee List for distribution by the Distribution Agent in accordance with the Plan. The Payee List shall, upon request, be made available to the Court under seal. All disbursements will be made pursuant to a Court Order.

79. Upon issuance of an order to disburse by this Court, the Commission staff will direct the transfer of funds in accordance with the Payee List to the Bank. The Distribution Agent will then use its best efforts to commence mailing Distribution Payment checks and/or effect wire transfers within ten (10) business days of the release of the funds into the Escrow Account. All efforts will be coordinated to limit the time between the Escrow Account's receipt of the funds and the issuance of Distribution Payments.

80. All Distribution Payments will be issued by the Distribution Agent from the Distribution Account. All checks will bear a stale date of one hundred twenty (120) days from the date of issuance. Checks that are not negotiated by the stale date will be voided, and the Bank will be instructed to stop payment on those checks. A Payee's claim will be extinguished if he, she, or it fails to negotiate his, her or its check by the stale date, and the funds will remain in the Fair Fund, except if a check reissue has been requested before the stale date, such request is governed by paragraph 89.



81. All payments will be preceded or accompanied by a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a statement that the tax treatment of the distribution is the responsibility of each Payee and that the Payee should consult his, her or its tax advisor for advice regarding the tax treatment of the distribution; (c) a statement that checks will be void and cannot be reissued after one hundred twenty (120) days from the date the original check was issued; and (d) contact information for the Distribution Agent for questions regarding the Distribution Payment. The letter or other mailings to Payees characterizing a Distribution Payment will be submitted to the Tax Administrator and Commission staff for review and approval.

82. All Distribution Payments, either on their face or in the accompanying mailing, will clearly indicate that the money is being distributed from the Fair Fund established by the Court to compensate investors for harm as a result of securities law violations.

83. Distribution Payments must be made by check or electronic payment payable to the Payee (the beneficial account owner). A Third-Party Filer shall not be the payee of any Distribution Payment check or electronic Distribution Payment. Any other payment arrangement must be discussed with the Distribution Agent in consultation with the Commission staff and must be authorized by the Payee. Compensation to a Third-Party Filer for its services may not be paid or deducted from the Distribution Payment.

84. If, after discussion with the Distribution Agent in consultation with the Commission staff, and authorization by the Payee(s), a Distribution Payment is to be made to a Third-Party Filer to distribute to the Payee(s), the Third-Party Filer will be required to complete a certification, which will require it, at a minimum, to attest that any distribution to the custodian, trustee, or investment professional representing multiple potentially eligible beneficial owners, will be allocated for the benefit of current or former pooled investors and not for the benefit of management. The certification form will be available on the Fair Fund website and upon request from the Distribution Agent. All such Third-Party Filers must have an auditable mechanism available to the Distribution Agent and the Commission staff to confirm that each Payee received the Distribution Payment directed to them.

85. The submission of a Claim Form and the receipt and acceptance of a Distribution Payment by a Payee is not intended to be a release of a Payee's rights and claims against any party.

86. Electronic or wire transfers may be utilized at the discretion of the Distribution Agent to transfer approved Distribution Payments to filers of claims on behalf of twenty (20) or more Payees. Wire transfers will be initiated by the Distribution Agent using a two-party check and balance system, whereby completion of a wire transfer will require an authorization by two members of the Distribution Agent's senior staff.

87. At the discretion of the Distribution Agent, certain costs that were not factored into the Reserve, such as bank fees for the return of a payment, may reduce the Payee's Distribution Payment. In such situations, the Distribution Agent will immediately notify the Tax Administrator of the reduction in the Distribution Payment.



Post Distribution; Handling of Returned or Uncashed Checks; and Reissues

88. The Distribution Agent shall use its best efforts to make use of commercially available resources and other reasonably appropriate means to locate all Payees whose checks are returned to the Distribution Agent as “undeliverable.” If new address information becomes available, the Distribution Agent will repackage the distribution check and send it to the new address. If new address information is not available after a diligent search (and in no event no later than one hundred twenty (120) days after the initial mailing of the original check) or if the distribution check is returned again, the check shall be voided and the Distribution Agent shall instruct the issuing financial institution to stop payment on such check. If the Distribution Agent is unable to find a Payee’s correct address, the Distribution Agent, in its discretion, may remove such Payee from the distribution and the allocated Distribution Payment will remain in the Fair Fund for distribution, if feasible, to the remaining Payees.

89. The Distribution Agent will reissue checks to Payees upon the receipt of a valid, written request from the Payee prior to the initial stale date. In cases where a Payee is unable to endorse a Distribution Payment check as written (e.g., name changes, IRA custodian changes, or recipient is deceased) and the Payee or a lawful representative requests the reissuance of a Distribution Payment check in a different name, the Distribution Agent will request, and must receive, documentation to support the requested change. The Distribution Agent will review the documentation to determine the authenticity and propriety of the change request. If, in the discretion of the Distribution Agent, such change request is properly documented, the Distribution Agent will issue an appropriately redrawn Distribution Payment to the requesting party. Reissued checks will be void at the later of one hundred twenty (120) days from issuance of the original check or sixty (60) days from the reissuance, and in no event will a check be reissued after one hundred twenty (120) days from the date of the original issuance without the approval of Commission staff.

90. The Distribution Agent will make reasonable efforts to contact Payees who have failed to negotiate their Distribution Payment check and take appropriate action to follow up on the status of uncashed checks at the request of Commission staff. The Distribution Agent may reissue such checks subject to the time limits detailed herein.

Administrative Costs

91. Pursuant to the Court’s Order entered December 15, 2020, the Distribution Agent will be entitled to reasonable administrative fees and expenses in connection with the administration and distribution of the Fair Fund (including any such fees and expenses incurred by agents, consultants or third parties retained by the Distribution Agent in furtherance of its duties), which shall be paid from the Fair Fund. The Distribution Agent will invoice all fees and expenses for the administration and distribution of the Fair Fund on a quarterly basis directly to Commission staff, for payment from the Fair Fund without further Court Order.

92. Pursuant to the Court’s Order entered on December 15, 2020, the Tax Administrator will invoice all taxes and fees and expenses for the tax administration of the Fair

Fund directly to Commission staff, for payment from the Fair Fund without further Court Order.

93. Any other Administrative Costs shall be paid from the Fair Fund, pursuant to a Court Order. All Administrative Costs will be reflected in the final accounting referenced below.

#### Disposition of Undistributed Funds

94. If funds remain following the initial distribution, the Distribution Agent, in consultation with the Commission staff, may seek subsequent distribution(s) of any available remaining funds. All subsequent distributions shall be made in a manner consistent with this Plan and pursuant to a Court Order.

95. A residual will be established for any amounts remaining after the final disbursement to Payees from the Fair Fund and the payment of all Administrative Costs (the “Residual”). The Residual may include funds from, among other things, amounts remaining in the Reserve, distribution checks that have not been cashed, checks that were not delivered or were returned to the Commission, and tax refunds received due to the Fair Fund’s overpayment of taxes.

96. . Once the Distribution Agent, in consultation with the Commission staff, deems further distribution of the Fair Fund to investors infeasible, the Distribution Agent will direct any uncashed Distribution Payments to be voided, and return any funds remaining in the Escrow and Distribution Accounts to the SEC to become part of the Residual.

97. All funds remaining in the Residual that are infeasible to distribute to investors will be held by the Commission pending a final accounting. Upon completion of the final accounting, the SEC staff will file a motion with this Court to approve the final accounting, which will include a recommendation as to the final disposition of the Residual, consistent with Sections 21(d)(3), (5), and (7) and *Liu v SEC*, 140 S.Ct. 1936 (2020).<sup>1</sup> If distribution of the Residual to investors is infeasible, the SEC staff may recommend the transfer of the Residual to the general fund of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act.<sup>2</sup>

#### Filing of Reports and Accountings

98. The Distribution Agent shall provide to the Commission staff, who will file with the Court, a progress report, pursuant to and in a format to be provided by the Commission staff, within forty-five (45) days of Court approval of this Plan, and shall provide additional progress reports within twenty (20) days after the end of every quarter thereafter, and a final report when its duties are completed.

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<sup>1</sup> 15 U.S.C. §§ 78u(d)(3), (5), and (7). Section 21(d)(7) was added to the Exchange Act by Section 6501(a) of the National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, enacted January 1, 2021. The relevant provisions of the NDAA apply “to any action or proceeding that is pending on, or commenced on or after, the date of” the NDAA’s enactment. NDAA, Section 6501(b).

<sup>2</sup> Section 21F(g)(3) of the Exchange Act, 15 U.S.C. § 78u-6(g)(3), provides, in relevant part, that any monetary sanction of \$200 million or less collected by the SEC in any judicial action brought by the SEC under the securities laws that is not added to a disgorgement fund or Distribution Fund or otherwise distributed to victims, plus investment income, shall be deposited or credited into the SEC investor Protection Fund.

99. The progress reports shall inform the Court and the Commission staff of the activities and status of the Fair Fund during the relevant reporting period, and once funds are transferred to the Bank it will specify, at a minimum: (a) the location of the account(s) comprising the Fair Fund; and (b) an interim accounting of all monies in the Fair Fund as of the most recent month-end, including the value of the account(s), all monies earned or received into the account(s), funds distributed to Payees, and any monies expended from the Fair Fund to satisfy any fees, costs, taxes and other expenses incurred in the implementation of this Plan.

100. Upon completion of all distributions to Payees and payment of all Administrative Costs, pursuant to the procedures described above, the Distribution Agent will submit to the Commission staff a final accounting, on a standardized form provided by the Commission staff. The Distribution Agent will also submit a report to the Commission staff containing the final distribution statistics regarding distributions to individuals and entities, and such other information requested by the Commission staff. Upon completion of the final accounting, the SEC staff will file a motion with this Court to approve the final accounting, which will include a recommendation as to the disposition of the Residual, consistent with *Liu v. SEC*, 140 S. Ct. 1936 (2020) and Section 21(d)(7) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78(u)(d)(7).<sup>3</sup> If distribution of the Residual to investors is infeasible, the Commission may recommend the transfer of the Residual to the general fund of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act.<sup>4</sup>

#### Receipt of Additional Funds

101. Should any additional funds be received pursuant to Commission or Court order, agreement, or otherwise, prior to the Court’s termination of the Fair Fund, such funds will be added to the Fair Fund and distributed, if feasible, in accordance with the Plan.

#### Wind-down and Document Retention

102. The Distribution Agent will shut down the website, P.O. Box and customer service telephone line(s) established specifically for the administration of the Fair Fund six (6) months after the transfer of any remaining funds to the Commission, or at such earlier time as the Distribution Agent determines with the concurrence of the Commission staff.

103. The Distribution Agent will retain all materials submitted by Preliminary Claimants in either paper or electronic form for a period of six (6) years from the date of approval of a final fund accounting. Materials maintained in electronic form must be accessible and readable for the duration of retention. Pursuant to the Commission staff’s direction, the Distribution Agent will

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<sup>3</sup> Section 21(d)(7) was added to the Exchange Act by Section 6501(a) of the National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, enacted January 1, 2021. The relevant provisions of the NDAA apply to “any action or proceeding that is pending on or commenced on or after the date of” the NDAA’s enactment. NDAA, Section 6501(b).

<sup>4</sup> Section 21F(g)(3) of the Exchange Act, 15 U.S.C. §78u-6(g)(3), provides, in relevant part, that any monetary sanction of \$200 million or less collected by the SEC in any judicial action brought by the SEC under the securities laws that is not added to a disgorgement fund or Fair Fund or otherwise distributed to victims, plus investment income, shall be deposited or credited into the SEC Investor Protection Fund.

either turn over to the Commission or destroy all materials, including documents in any media, upon expiration of this period.

Termination of the Fair Fund

104. Once the Commission staff has reviewed and accepted the final accounting, the Commission will petition the Court for an order, as appropriate, approving the final accounting, discharging the Distribution Agent, disposing of the Residual, and terminating the Fair Fund. The SEC staff will file a motion recommending the termination of the Fair Fund and the discharge of the Distribution Agent after all of the following have occurred:

- (a) A final report and accounting has been submitted to and approved by the Court;
- (b) All Administrative Costs have been paid; and
- (c) The Court has approved the SEC staff's recommendation as to the final disposition of the Residual consistent with Sections 21(d)(3), (5), and (7)<sup>5</sup> and *Liu v. SEC*, 140 S. Ct. 1936 (2020).

105. Once the Fair Fund has been terminated, no further claims will be allowed and no additional payments will be made whatsoever.

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<sup>5</sup> *Id.* see footnote 1.

## Exhibit A

### PLAN OF ALLOCATION

This Plan of Allocation is designed to compensate investors based on their losses on SeaWorld common stock (the “Security”) purchased or acquired between December 20, 2013 and August 12, 2014, inclusive (the “Relevant Period”) due to the misconduct of the Defendants. Investors who did not purchase or acquire shares of the Security during the Relevant Period or who are an Excluded Party<sup>1</sup> are ineligible to recover under this Plan. Artificial inflation in the price of the Security over various date ranges surrounding corrective disclosures and average closing prices of the Security have been calculated by the Commission’s economists and are reflected in Table A and Table B, respectively.

The Distribution Agent will calculate the amount of loss for each share of the Security purchased or acquired during the Relevant Period (“Recognized Loss per Share”) as follows:

For each share of the Security purchased or acquired between December 20, 2013 and August 12, 2014, inclusive, and

- A. Sold prior to the opening of trading on August 13, 2014, the Recognized Loss per Share is \$0.00.
- B. Sold after the opening of trading on August 13, 2014 and prior to the close of trading on November 10, 2014 (the “Lookback Period”) the Recognized Loss per Share is the *least of*:
  1. the amount of inflation per share on the purchase/acquisition date as set forth in Table A below; or
  2. the purchase/acquisition price *minus* the sale price; or
  3. the purchase/acquisition price *minus* the moving average closing price of the Securities on the sale date as set forth in Table B below.
- C. Held as of the close of trading on November 10, 2014, the Recognized Loss per Share is the *lesser of*:
  1. the amount of inflation per share on the purchase/acquisition date as set forth in Table A below; or
  2. the purchase/acquisition price *minus* \$19.34, the average closing price of the Security between August 13, 2014 and November 10, 2014, as shown on the last row in Table B below.

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<sup>1</sup> All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Plan.

If the Recognized Loss per Share calculates to a negative number, reflecting a gain, the Recognized Loss per Share on such shares will be \$0.00.

All prices mentioned in the calculations exclude all taxes, fees and commissions. Purchases/acquisitions and sales shall be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement” or “payment” date.

### **Additional Provisions**

FIFO Methodology: Transactions for a Preliminary Claimant who made multiple purchases/acquisitions and sales of the Security during the Relevant Period will be matched according to the first-in, first-out (“FIFO”) method. The earliest sales during the Relevant Period will be matched first against any holdings at the opening of the Relevant Period. Once the beginning holdings have all been matched, or in the event there are no beginning holdings, then any further sales will be matched against the earliest Relevant Period purchases/acquisitions and chronologically thereafter.

Acquisitions: The receipt or grant of the Security to the Preliminary Claimant by gift, devise, inheritance, or operation of law during the Relevant Period is not considered an eligible purchase if the original purchase did not occur during the Relevant Period. Shares acquired outside the Relevant Period will be excluded from the calculation of the Recognized Loss.

Options and Derivatives: SeaWorld common stock is the only security eligible for recovery under this Plan. Option contracts to purchase or sell the Security are not securities eligible for recovery under the Plan. With respect to the Security purchased or sold through the exercise of an option, the purchase/sale date is the exercise date of the call and the assignment date of the put, and the purchase/sale price is the strike price of the call at the time of exercise and the strike price of the put at the time of assignment. Transactions in the Security during the Relevant Period that are pursuant to, or in connection with, a swap or another derivative will not be eligible for a recovery and will be excluded from the Recognized Loss calculation.

Short Sales: If the sale date for a share falls before the purchase date, then the share has a Recognized Loss per Share of \$0.00. The date of covering a short sale is deemed to be the date of purchase of the Security and the date of a short sale is deemed to be the date of sale of the Security. The earliest Relevant Period purchases will be matched against any short position existing on the date prior to the start of the Relevant Period, and not be entitled to a recovery, until that short position is fully covered.

Recognized Loss: Recognized Loss will be the sum of the Recognized Loss per Share, as calculated above, on all shares of the Security purchased or acquired during the Relevant Period. If the Recognized Loss calculates to a negative number, reflecting a gain, then the Recognized Loss will be \$0.00.

Market Loss Limitation: If a Preliminary Claimant’s actual market loss on shares of the Security purchased/acquired during the Relevant Period is less than his, her or its Recognized Loss, then the Preliminary Claimant’s Recognized Loss shall be limited to the actual market loss amount.

If the actual market loss calculates to a negative number, reflecting a gain, then the Preliminary Claimant's Recognized Loss will be \$0.00. The actual market loss will be calculated as (a) the total purchase amount for shares of the Security purchased/acquired during the Relevant Period,<sup>2</sup> less (b) the sales proceeds from shares of the Security purchased/acquired during the Relevant Period and sold during the Relevant Period or during the Lookback Period,<sup>3</sup> and (c) the holding value on the remaining of those shares, which for purposes of this calculation will be \$19.34 per share, the moving average price as of the last day of the Lookback Period.<sup>4</sup>

Eligible Claimant: A Preliminary Claimant, who is not an Excluded Party, who submitted a valid Claim Form and has suffered a Recognized Loss, as calculated above, will be deemed an Eligible Claimant.

Allocation of Funds: If the Net Available Fair Fund is equal to or exceeds the sum of Recognized Losses of all Eligible Claimants, each Eligible Claimant's distribution amount will equal his, her or its Recognized Loss, plus "Reasonable Interest" if applicable. If the Net Available Fair Fund is less than the sum of the Recognized Losses of all Eligible Claimants, each Eligible Claimant's distribution amount will equal his, her or its "*Pro Rata Share*" of the Net Available Fair Fund (and no Reasonable Interest). In either case, the distribution amount will be subject to the "Minimum Distribution Amount."

Reasonable Interest: If the Net Available Fair Fund exceeds that necessary to pay all Eligible Claimants their Recognized Losses in full, the Distribution Agent, in consultation with the Commission staff, may include interest in the distribution amount to compensate for the time value of money on Recognized Losses. Reasonable Interest will be calculated using the Short-term Applicable Federal Rate plus three percent (3%), compounded quarterly from the end of the Relevant Period through the approximate date of the disbursement of the funds. If there are insufficient funds to pay Reasonable Interest in full to all Eligible Claimants, each Eligible Claimant's Reasonable Interest amount will be his, her or its *Pro Rata Share* of the excess funds.

Pro Rata Share: A *Pro Rata Share* computation is intended to measure Eligible Claimants' Recognized Losses against one another. An Eligible Claimant's *Pro Rata Share* will be calculated as the ratio of his, her, or its Recognized Loss to the sum of Recognized Losses of all Eligible Claimants.

Minimum Distribution Amount: The Minimum Distribution Amount will be \$10.00 (inclusive of Reasonable Interest, if any). An Eligible Claimant whose distribution amount is less than the Minimum Distribution Amount will be deemed ineligible to receive a Distribution Payment and his, her, or its distribution amount will be reallocated on a *pro-rata* basis to Eligible

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<sup>2</sup> Purchases during the Relevant Period to cover short positions will be included in the calculation of actual market loss if the purchase is matched to a short sale during the Relevant Period. Purchases/acquisitions that are not eligible for recovery will not be considered for purposes of calculating the actual market loss.

<sup>3</sup> Sales of the Security during the Relevant Period will be matched first against the opening position and the proceeds of such sales will not be considered for purposes of calculating the actual market loss. Short sales will be considered for purposes of calculating the actual market loss.

<sup>4</sup> Any open short positions at the end of the Lookback Period will be ignored for purposes of calculating the actual market loss.



Claimants whose distribution amounts are greater than or equal to the Minimum Distribution Amount.

Payee: An Eligible Claimant whose distribution amount equals or exceeds the Minimum Distribution Amount will be deemed a Payee and will receive a Distribution Payment for their distribution amount.

Prior Recovery: To avoid payment of a windfall, the Distribution Payment will be no larger than the Payee's Recognized Loss minus the amount of any compensation for the loss that resulted from the conduct described in the Order that was received from another source (*e.g.*, class action settlement), to the extent known by the Distribution Agent. Reasonable Interest, if awarded, may be added to such Distribution Payment.

**Table A: SeaWorld Common Stock Inflation Schedule**

<b>Date Range</b>	<b>Inflation per Share</b>
December 20, 2013 – August 12, 2014	\$7.52
On or after August 13, 2014	\$0.00

**Table B: SeaWorld Common Stock Average Closing Price, August 13, 2014 – November 10, 2014**

<b>Date</b>	<b>Average Closing Price from August 13, 2014 to Date Shown</b>	<b>Date</b>	<b>Average Closing Price from August 13, 2014 to Date Shown</b>	<b>Date</b>	<b>Average Closing Price from August 13, 2014 to Date Shown</b>
8/13/2014	\$18.90	9/12/2014	\$19.95	10/13/2014	\$19.74
8/14/2014	\$18.45	9/15/2014	\$19.98	10/14/2014	\$19.70
8/15/2014	\$18.52	9/16/2014	\$20.00	10/15/2014	\$19.66
8/18/2014	\$18.62	9/17/2014	\$20.02	10/16/2014	\$19.62
8/19/2014	\$18.63	9/18/2014	\$20.04	10/17/2014	\$19.58
8/20/2014	\$18.69	9/19/2014	\$20.06	10/20/2014	\$19.54
8/21/2014	\$18.73	9/22/2014	\$20.07	10/21/2014	\$19.51
8/22/2014	\$18.92	9/23/2014	\$20.07	10/22/2014	\$19.48
8/25/2014	\$19.06	9/24/2014	\$20.08	10/23/2014	\$19.46
8/26/2014	\$19.20	9/25/2014	\$20.07	10/24/2014	\$19.45
8/27/2014	\$19.35	9/26/2014	\$20.06	10/27/2014	\$19.43
8/28/2014	\$19.45	9/29/2014	\$20.05	10/28/2014	\$19.42
8/29/2014	\$19.55	9/30/2014	\$20.02	10/29/2014	\$19.42
9/2/2014	\$19.62	10/1/2014	\$19.99	10/30/2014	\$19.41
9/3/2014	\$19.66	10/2/2014	\$19.96	10/31/2014	\$19.40
9/4/2014	\$19.70	10/3/2014	\$19.93	11/3/2014	\$19.40
9/5/2014	\$19.74	10/6/2014	\$19.91	11/4/2014	\$19.39
9/8/2014	\$19.79	10/7/2014	\$19.87	11/5/2014	\$19.37
9/9/2014	\$19.82	10/8/2014	\$19.85	11/6/2014	\$19.37
9/10/2014	\$19.87	10/9/2014	\$19.81	11/7/2014	\$19.35
9/11/2014	\$19.92	10/10/2014	\$19.78	11/10/2014	\$19.34