

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Case No.: 14-cv-02129-MMA-AGS

LOU BAKER, Individually and on
Behalf of All Others Similarly Situated,

**JUDGMENT AND ORDER OF
DISMISSAL**

Plaintiff,

v.

SEAWORLD ENTERTAINMENT,
INC., *et al.*,

Defendants.

In accordance with this Court’s Order granting Plaintiffs’ Motion for Final Approval of Class Action Settlement (Doc. No. 521) and Motion for Attorneys’ Fees and Litigation Expenses (Doc. No. 522), the Court hereby **APPROVES** the parties’ Settlement Agreement and **ORDERS** the parties to implement the Settlement Agreement according to its terms and conditions and this Court’s Final Order.¹

///

///

¹ This Order and Judgment hereby adopts and incorporates by reference the terms and conditions of the Settlement Agreement, together with the definitions used therein.

1 1. **Jurisdiction** – The Court has jurisdiction over the subject matter of the
2 Action, and all matters relating to the Settlement, as well as personal jurisdiction over all
3 of the Parties and each of the Class Members.

4 2. **Incorporation of Settlement Documents** – This Judgment incorporates and
5 makes a part hereof: (a) the Stipulation filed with the Court on February 11, 2020; and (b)
6 the Postcard Notice, the Notice, and the Summary Notice, all of which were filed with the
7 Court on June 17, 2020.

8 3. **Notice and Plan of Allocation** – The Court finds that the dissemination of
9 the Postcard Notice, the posting of the Notice on the Settlement Website, and the
10 publication of the Summary Notice: (a) were implemented in accordance with the
11 Preliminary Approval Order; (b) constituted the best notice practicable under the
12 circumstances; (c) constituted notice that was reasonably calculated, under the
13 circumstances, to apprise Class Members of (i) the effect of the Settlement Agreement
14 (including the Releases to be provided thereunder); (ii) Class Counsel’s motion for
15 attorneys’ fees and Litigation Expenses; (iii) Class Members’ right to object to any aspect
16 of the Settlement, the Plan of Allocation and/or Class Counsel’s motion for attorneys’
17 fees and Litigation Expenses; and (iv) Class Members’ right to appear at the Settlement
18 Fairness Hearing; (d) constituted due, adequate, and sufficient notice to all persons and
19 entities entitled to receive notice of the Settlement Agreement; and (e) satisfied the
20 requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States
21 Constitution (including the Due Process Clause), the Private Securities Litigation Reform
22 Act of 1995, 15 U.S.C. §§ 77z-1, 78u-4, as amended, and all other applicable law and
23 rules.

24 a. The Court hereby approves the proposed Plan of Allocation. The Court has
25 jurisdiction to enter this Order approving the proposed Plan of Allocation,
26 and over the subject matter of the Action and all Parties to the Action,
27 including all Class Members.
28

1 b. Notice of Class Representatives’ motion for approval of the proposed Plan
2 of Allocation was given to all Class Members who or which could be
3 identified with reasonable effort. The form and method of notifying the
4 Class of the motion for approval of the proposed Plan of Allocation satisfied
5 the requirements of Rule 23 of the Federal Rules of Civil Procedure, the
6 United States Constitution (including the Due Process Clause), the Private
7 Securities Litigation Reform Act of 1995 (15 U.S.C. §§ 77z-1, 78u-4), as
8 amended, and all other applicable law and rules, constituted the best notice
9 practicable under the circumstances, and constituted due and sufficient
10 notice to all persons and entities entitled thereto.

11 c. More than 16,500 copies of the Postcard Notice and 4,400 copies of the
12 Notice were mailed to potential Class Members and nominees, and the
13 Notice which included the Plan of Allocation was posted on the Settlement
14 Website, and there are no objections to the Plan of Allocation.

15 d. The Court hereby finds and concludes that the formula for the calculation of
16 the claims of Claimants as set forth in the Plan of Allocation provides a fair
17 and reasonable basis upon which to allocate the proceeds of the Net
18 Settlement Fund among Class Members with due consideration having been
19 given to administrative convenience and necessity.

20 e. The Court hereby finds and concludes that the Plan of Allocation is, in all
21 respects, fair and reasonable to the Class. Accordingly, the Court hereby
22 approves the Plan of Allocation proposed by Class Representatives.

23 f. Any appeal or any challenge affecting this Court’s approval of the Plan of
24 Allocation shall in no way disturb or affect the finality of the Judgment.

25 4. **CAFA Notice** – The Court finds that the notice requirements set forth in the
26 Class Action Fairness Act of 2005, 28 U.S.C. § 1715, to the extent applicable to the
27 Action, have been satisfied.
28

1 5. **Final Settlement Approval and Dismissal of Claims** – Pursuant to, and in
2 accordance with, Rule 23(e)(2) of the Federal Rules of Civil Procedure, this Court hereby
3 fully and finally approves the Settlement set forth in the Stipulation in all respects
4 (including, without limitation, the amount of the Settlement, the Releases provided for
5 therein, and the dismissal with prejudice of the claims asserted against Defendants in the
6 Action), and finds that the Settlement is, in all respects, fair, reasonable, and adequate to
7 the Class. Specifically, the Court finds that (a) Class Representatives and Class Counsel
8 have adequately represented the Class; (b) the Settlement was negotiated by the Parties at
9 arm’s length; (c) the relief provided for the Class under the Settlement is adequate taking
10 into account the costs, risks, and delay of trial and appeal, the proposed means of
11 distributing the Settlement Fund to the Class, and the proposed attorneys’ fee award; and
12 (d) the Settlement treats members of the Class equitably relative to each other. The
13 Parties are directed to implement, perform, and consummate the Settlement in accordance
14 with the terms and provisions contained in the Stipulation.

15 6. The Action and all of the claims asserted against Defendants in the Action
16 by Class Representatives and the other Class Members are hereby dismissed **with**
17 **prejudice** as to all Defendants. The Parties shall bear their own costs and expenses,
18 except as otherwise expressly provided in the Stipulation.

19 7. **Binding Effect** – The terms of the Stipulation and of this Judgment shall be
20 forever binding on Defendants, Class Representatives, and all other Class Members
21 (regardless of whether or not any individual Class Member submits a Claim Form or
22 seeks or obtains a distribution from the Net Settlement Fund), as well as their respective
23 successors and assigns. The persons and entities listed on Exhibit 1 hereto are excluded
24 from the Class pursuant to request and are not bound by the terms of the Stipulation or
25 this Judgment.

26 8. **Releases** – The Releases set forth in paragraphs 5 and 6 of the Stipulation,
27 together with the definitions contained in paragraph 1 of the Stipulation relating thereto,
28

1 are expressly incorporated herein in all respects. The Releases are effective as of the
2 Effective Date. Accordingly, this Court orders that:

3 (a) Without further action by anyone, and subject to paragraph 9 below,
4 upon the Effective Date of the Settlement, Class Representatives and each of the other
5 Class Members, on behalf of themselves, and their respective heirs, executors,
6 administrators, trusts, trustees, estates, beneficiaries, legatees, insurers, reinsurers,
7 predecessors, successors, and assigns (and assignees of each of the foregoing), in their
8 capacities as such, shall be deemed to have, and by operation of law and of this Judgment
9 shall have, fully, finally, and forever compromised, settled, released, resolved,
10 relinquished, waived, and discharged each and every Released Plaintiffs' Claim against
11 Defendants and the other Defendants' Releasees, and shall forever be barred and enjoined
12 from prosecuting any or all of the Released Plaintiffs' Claims against any of the
13 Defendants' Releasees; and

14 (b) Without further action by anyone, and subject to paragraph 9 below,
15 upon the Effective Date of the Settlement, Defendants, on behalf of themselves, and their
16 respective heirs, executors, administrators, trusts, trustees, estates, beneficiaries, legatees,
17 insurers, reinsurers, predecessors, successors, and assigns (and assignees of each of the
18 foregoing), in their capacities as such, shall be deemed to have, and by operation of law
19 and of this Judgment shall have, fully, finally, and forever compromised, settled,
20 released, resolved, relinquished, waived, and discharged each and every Released
21 Defendants' Claim against Class Representatives and the other Plaintiffs' Releasees, and
22 shall forever be barred and enjoined from prosecuting any or all of the Released
23 Defendants' Claims against any of the Plaintiffs' Releasees. This Release shall not apply
24 to any person or entity who submitted a request for exclusion from the Class in
25 connection with the Class Notice as listed on Exhibit 1 hereto.

26 9. Notwithstanding paragraphs 8(a) – (b) above, nothing in this Judgment shall
27 bar any action by any of the Parties to enforce or effectuate the terms of the Stipulation or
28 this Judgment.

1 10. **Bar Order** – Upon the Effective Date, to the fullest extent permitted by law,
2 (i) all persons shall be permanently enjoined, barred and restrained from commencing,
3 instituting, prosecuting, or maintaining any claims, actions, or causes of action for
4 contribution, indemnity or otherwise against any of Defendants’ Releasees seeking as
5 damages or otherwise the recovery of all or part of any liability, judgment or settlement
6 which they pay or are obligated to pay or agree to pay to the Plaintiffs’ Releasees arising
7 out of, relating to or concerning any acts, facts, statements or omissions that were or
8 could have been alleged in the Action, both known and Unknown Claims, whether
9 arising under state, federal or foreign law, as claims, cross-claims, counterclaims, third-
10 party claims or otherwise, in the Court or any other federal, state, or foreign court, or in
11 any arbitration proceeding, administrative agency proceeding, tribunal, or any other
12 proceeding or forum; and (ii) all Defendants’ Releasees shall be permanently enjoined,
13 barred and restrained from commencing, instituting, prosecuting, or maintaining any
14 claims, actions, or causes of action for contribution, indemnity or otherwise against any
15 persons seeking as damages or otherwise the recovery of all or part of any liability,
16 judgment or settlement which they pay or are obligated to pay or agree to pay to the
17 Plaintiffs’ Releasees arising out of, relating to, or concerning any acts, facts, statements
18 or omissions that were or could have been alleged in the Action, both known and
19 Unknown Claims, whether arising under state, federal or foreign law, as claims, cross-
20 claims, counterclaims, third-party claims or otherwise, in the Court or any other federal,
21 state, or foreign court, or in any arbitration proceeding, administrative agency
22 proceeding, tribunal, or any other proceeding or forum; ***provided that*** clauses (i) and (ii)
23 of this Paragraph shall not be construed to modify, amend, or supersede any agreements
24 between or among the Defendants’ Releasees with respect to claims between or among
25 those Defendants’ Releasees, including, without limitation, any claims for contractual or
26 other indemnification rights, nor limit the Defendants’ ability to pursue insurance
27 recoveries against their insurers for claims relating to this Action, including the
28 Settlement Amount and legal fees and costs incurred in connection with the Action. The

1 foregoing barred claims shall not include claims that arise out of or relate to a cause of
2 action that has been or may be asserted by any person or entity who previously submitted
3 a request for exclusion from the Class in connection with the Class Notice as set forth on
4 Exhibit 1 hereto.

5 11. Any final verdict or judgment that may be obtained by or on behalf of the
6 Class against any person or entity subject to the bar order set forth in paragraph 10 above
7 shall, pursuant to 15 U.S.C. §78u-4(f)(7)(B), be reduced by the greater of (a) an amount
8 that corresponds to the percentage of responsibility of the Defendants for common
9 damages; or (b) the amount paid by or on behalf of Defendants and Former Defendants to
10 the Class or a Class Member for common damages.

11 12. **Rule 11 Findings** – The Court finds and concludes that the Parties and their
12 respective counsel have complied in all respects with the requirements of Rule 11 of the
13 Federal Rules of Civil Procedure in connection with the institution, prosecution, defense,
14 and settlement of the Action.

15 13. **No Admissions** – Neither this Judgment, the Stipulation (whether or not
16 consummated), including the exhibits thereto and the Plan of Allocation contained therein
17 (or any other plan of allocation that may be approved by the Court), the negotiations
18 leading to the execution of the Stipulation, nor any proceedings taken pursuant to or in
19 connection with the Stipulation and/or approval of the Settlement (including any
20 arguments proffered in connection therewith):

21 (a) shall be offered against any of the Defendants’ Releasees as evidence of,
22 or construed as, or deemed to be evidence of any presumption, concession, or admission
23 by any of the Defendants’ Releasees with respect to the truth of any fact alleged by Class
24 Representatives or the validity of any claim that was or could have been asserted or the
25 deficiency of any defense that has been or could have been asserted in this Action or in
26 any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind
27 of any of the Defendants’ Releasees or in any way referred to for any other reason as
28 against any of the Defendants’ Releasees, in any arbitration proceeding or other civil,

1 criminal, or administrative action or proceeding, other than such proceedings as may be
2 necessary to effectuate the provisions of the Stipulation;

3 (b) shall be offered against any of the Plaintiffs' Releasees, as evidence of,
4 or construed as, or deemed to be evidence of any presumption, concession, or admission
5 by any of the Plaintiffs' Releasees that any of their claims are without merit, that any of
6 the Defendants' Releasees had meritorious defenses, or that damages recoverable under
7 the Second Amended Complaint would not have exceeded the Settlement Amount or
8 with respect to any liability, negligence, fault, or wrongdoing of any kind, or in any way
9 referred to for any other reason as against any of the Plaintiffs' Releasees, in any
10 arbitration proceeding or other civil, criminal, or administrative action or proceeding,
11 other than such proceedings as may be necessary to effectuate the provisions of the
12 Stipulation; or

13 (c) shall be construed against any of the Releasees as an admission,
14 concession, or presumption that the consideration to be given hereunder represents the
15 amount which could be or would have been recovered after trial; *provided, however*, that
16 the Parties and the Releasees and their respective counsel may refer to it to effectuate the
17 protections from liability granted hereunder or otherwise to enforce the terms of the
18 Settlement, and may file the Stipulation and/or this Judgment in any action in order to
19 support a defense, claim, or counterclaim based on principles of res judicata, collateral
20 estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of
21 claim preclusion or issue preclusion or similar defense or counterclaim.

22 14. **Retention of Jurisdiction** – Without affecting the finality of this Judgment
23 in any way, this Court retains continuing and exclusive jurisdiction over:

24 (a) the Parties for purposes of the administration, interpretation, implementation, and
25 enforcement of the Settlement; (b) the disposition of the Settlement Fund; (c) any motion
26 for an award of attorneys' fees and/or Litigation Expenses by Class Counsel in the Action
27 that will be paid from the Settlement Fund; (d) any motion to approve the Plan of
28

1 Allocation; (e) any motion to approve the Class Distribution Order; and (f) the Class
2 Members for all matters relating to the Action.

3 15. Separate orders shall be entered regarding approval of a plan of allocation
4 and the motion of Class Counsel for an award of attorneys’ fees and reimbursement of
5 Litigation Expenses. Such orders shall in no way affect or delay the finality of this
6 Judgment and shall not affect or delay the Effective Date of the Settlement.

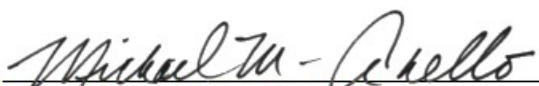
7 16. **Modification of the Stipulation** – Without further approval from the Court,
8 Class Representatives and Defendants are hereby authorized to agree to and adopt such
9 amendments or modifications of the Stipulation or any exhibits attached thereto to
10 effectuate the Settlement that: (a) are not materially inconsistent with this Judgment; and
11 (b) do not materially limit the rights of Class Members in connection with the Settlement.
12 Without further order of the Court, Class Representatives and Defendants may agree to
13 reasonable extensions of time to carry out any provisions of the Stipulation.

14 17. **Termination of Settlement** – If the Settlement is terminated as provided in
15 the Stipulation or the Effective Date of the Settlement otherwise fails to occur, this
16 Judgment shall be vacated, rendered null and void, and be of no further force and effect,
17 except as otherwise provided by the Stipulation, and this Judgment shall be without
18 prejudice to the rights of Class Representatives, the other Class Members, and
19 Defendants, and the Parties shall revert to their respective positions in the Action as of
20 February 3, 2020, as provided in the Stipulation.

21 18. **Entry of Final Judgment** – There is no just reason to delay the entry of this
22 Judgment as a final judgment in this Action. Accordingly, the Clerk of the Court is
23 expressly directed to immediately enter this final judgment and terminate this Action.

24 **IT IS SO ORDERED AND ADJUDGED.**

25
26 DATE: July 24, 2020

27 
28 HON. MICHAEL M. ANELLO
United States District Judge