

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
CIVIL DIVISION**

**MEIBEL SABOYA DIAZ,**

**Plaintiff,**

vs.

**CASE NO.: 2023-CA-000499**

**SEAWORLD PARKS &  
ENTERTAINMENT LLC, D/B/A  
BUSCH GARDENS,**

**DIVISION: E**

**Defendant.**

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**DEFENDANT SEAWORLD PARKS & ENTERTAINMENT LLC'S ANSWER  
AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT**

Defendant SeaWorld Parks & Entertainment LLC ("SeaWorld") hereby files its Answer and Defenses to Plaintiff's Complaint and states:

1. SeaWorld admits that Plaintiff is seeking damages in excess of the jurisdictional requirements of this Court; otherwise, denied.
2. SeaWorld admits that at all times material hereto it was authorized to do business, and was doing business, in the State of Florida.
3. SeaWorld admits that at all times material hereto it owned and operated the Busch Gardens theme park located at 10165 McKinley Drive, Tampa, Florida.
4. SeaWorld admits that Plaintiff Meibel Saboya Diaz claims to have been injured on SeaWorld's premises on November 2, 2019.
5. Each and every remaining allegation of the Complaint not expressly admitted herein is severally denied.

## DEFENSES AND AFFIRMATIVE DEFENSES

For its defenses and affirmative defenses SeaWorld would show:

6. At the time and place complained of Plaintiff Meibel Saboya Diaz so carelessly and negligently conducted herself as to cause or contribute to the occurrence of the incident alleged in Plaintiff's Complaint, together with any alleged resultant injuries, thus barring or reducing proportionately all claims for damages against SeaWorld.

7. Any claimed injuries or damages sustained by Plaintiff Meibel Saboya Diaz at the time and place alleged in the Complaint were caused solely by the negligence, fault, omissions, or want of care on the part of a person, persons, entity, or entities for whose conduct SeaWorld bears no responsibility. Said acts or omissions were the proximate cause of Plaintiff's alleged injuries and damages, thus barring or reducing proportionately all claims for damages against SeaWorld. SeaWorld reserves the right to amend this affirmative defense prior to trial as such culpable parties are identified. *Florida Statute* § 768.81(3); *Fabre v. Marin*, 623 So.2d 1182 (Fla. 1993); and *Mesmer v. Teacher's Ins. Co.*, 588 So.2d 610 (Fla. 5th DCA 1991). Pursuant to the aforementioned case law, SeaWorld will specifically identify said parties and discovery is ongoing as to this issue.

8. Plaintiff Meibel Saboya Diaz knew of the conditions alleged in the Complaint, realized and appreciated said conditions, and had a reasonable opportunity to avoid said alleged dangerous conditions, but voluntarily and knowingly exposed herself to said conditions. Said actions on the part of Plaintiff proximately caused or contributed to the alleged accident and injuries complained of, thus barring or reducing proportionately all claims for damages against SeaWorld.

9. No dangerous or unsafe condition existed at the time and place where Plaintiff Meibel Saboya Diaz was allegedly injured or, if such condition did exist, it had not existed for

such a period of time as to have provided actual or constructive notice thereof to SeaWorld, as a result of which SeaWorld is not liable for any damages sustained by Plaintiff.

10. Plaintiff's claims fail on the basis that she cannot demonstrate that SeaWorld had actual or constructive knowledge of the alleged condition sufficiently prior to the accident to allow it to take reasonable measures to correct the situation. Florida Statutes Section 768.0755 requires Plaintiff to prove actual or constructive knowledge on the part of the business establishment in all cases involving foreign transitory substances. To the extent Plaintiff's claims are premised on the mode of operation theory, Section 768.0755 also precludes recovery on that basis.

11. In the event it is determined that the premises or conditions described in Plaintiff's Complaint were unreasonably dangerous or defective, which allegations SeaWorld specifically and expressly denies, SeaWorld affirmatively states that Plaintiff knew or should have known of the existence of these conditions or premises described in the Complaint, and realized, appreciated and assumed the possibility of injury as a result.

12. Plaintiff was provided with adequate and appropriate warnings.

13. The alleged condition complained of was an open and obvious condition, thus barring or reducing proportionately all claims for damages against SeaWorld.

14. The injuries and losses complained of by Plaintiff occurred either prior to or subsequent to the incident referred in the Complaint; alternatively, said injuries and losses are in no way related to the incident referred to in the Complaint, thus barring or reducing proportionately all claims for damages against SeaWorld.

15. Intervening or superseding acts occurred that were unforeseeable occurrences causing the injuries or damages alleged in the Complaint, and such intervening or superseding causes bar or reduce proportionately Plaintiff's claims for damages against SeaWorld.

16. Plaintiff failed to mitigate her damages, if any.

17. The provisions of § 768.81, Florida Statutes, are applicable to any recovery by Plaintiffs against SeaWorld.

18. SeaWorld is entitled to a set-off from any recovery against it in the amount of any settlement or other payment made to or on behalf of Plaintiff arising out of the incident which is the subject of this lawsuit.

19. SeaWorld is entitled to a set-off from any recovery against it to the extent of any insurance payments paid or payable to or on behalf of Plaintiff arising out of the incident which is the subject of this lawsuit.

20. SeaWorld is entitled to a set-off from any recovery against it to the extent of all collateral sources and all benefits received by or paid or payable on behalf of Plaintiff arising out of the incident which is the subject of this lawsuit.

21. Plaintiff's claims are barred in whole or in part by the doctrine(s) of estoppel.

22. Plaintiff's Complaint fails to state a cause of action against SeaWorld.

23. SeaWorld reserves the right to file, upon completion of its investigation and discovery, such additional defenses and affirmative defenses as may be appropriate.

WHEREFORE, Defendant SeaWorld Parks & Entertainment LLC, having fully answered the Complaint, prays that judgment be entered in its favor and against Plaintiff as to all claims advanced by Plaintiff against SeaWorld, prays that costs be taxed against Plaintiff, and for such other relief as the Court may deem appropriate.

**DEMAND FOR JURY TRIAL**

Defendant SeaWorld respectfully demands a trial by jury of all issues so triable as a matter of right.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing has been furnished to Amy K. Kenyon, Esq., Kenyon Law Group, P.L.L.C., 1215 Manatee Avenue West, Suite 105, Bradenton, FL 34205 via e-mail to [eservice@kenyonlawfirm.com](mailto:eservice@kenyonlawfirm.com) (Attorneys for Plaintiff), this 23rd day of February, 2023.

s/ Carie L. Hall

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ROBERT L. BLANK, B.C.S.

Florida Bar No. 0948497

E-mail: [rblanksecy@rumberger.com](mailto:rblanksecy@rumberger.com) (primary)

E-mail: [docketingtpa@rumberger.com](mailto:docketingtpa@rumberger.com) (secondary)

CARIE L. HALL, ESQUIRE

Florida Bar No. 0098984

E-mail: [chall@rumberger.com](mailto:chall@rumberger.com) (primary)

E-mail: [docketingtpa@rumberger.com](mailto:docketingtpa@rumberger.com) and  
[challsecy@rumberger.com](mailto:challsecy@rumberger.com) (secondary)

RYAN S. BROWN, ESQUIRE

Florida Bar No. 1003210

E-mail: [rbrown@rumberger.com](mailto:rbrown@rumberger.com) (primary)

E-mail: [docketingtpa@rumberger.com](mailto:docketingtpa@rumberger.com) and  
[rbrownsecy@rumberger.com](mailto:rbrownsecy@rumberger.com) (secondary)

RUMBERGER, KIRK & CALDWELL, P.A.

100 North Tampa Street, Suite 2000

Post Office Box 3390

Tampa, Florida 33601-3390

Telephone: (813) 223-4253

Telecopier: (813) 221-4752

*Attorneys for SeaWorld Parks & Entertainment LLC*