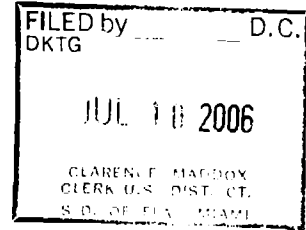


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 06-20772-CIV-Highsmith/McAliley



ARLIN VALDEZ-CASTILLO

Plaintiff,

vs.

BUSCH ENTERTAINMENT CORPORATION
d/b/a BUSCH GARDENS TAMPA BAY,
BOYKIN MIAMI HOTEL, L.P.,
BOYKIN MANAGEMENT COMPANY, LLC, and
CONSERVATION AMBASSADORS, INC. f/k/a
ZOO TO YOU WILDLIFE EDUCATION, INC. f/k/a
WILDLIFE ON WHEELS, INC.

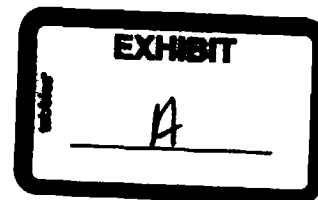
Defendants.

**FIRST AMENDED COMPLAINT FOR DAMAGES
AND DEMAND FOR JURY TRIAL**

The Plaintiff, ARLIN VALDEZ-CASTILLO ("Valdez" or "Plaintiff") sues the Defendants, BUSCH ENTERTAINMENT CORPORATION d/b/a BUSCH GARDENS TAMPA BAY ("BUSCH GARDENS"), BOYKIN MIAMI HOTEL, L.P. ("BOYKIN HOTEL"), BOYKIN MANAGEMENT COMPANY, LLC ("BOYKIN MANAGEMENT") and CONSERVATION AMBASSADORS, INC. f/k/a ZOO TO YOU WILDLIFE EDUCATION, INC. f/k/a WILDLIFE ON WHEELS, INC. ("WOW"), and states as follows:

JURISDICTION, VENUE AND THE PARTIES

1. This is an action for damages in an amount in excess of \$75,000.00, exclusive of interest and costs, between citizens of different states, and otherwise within the jurisdiction of this Court under 28 U.S.C.A. §1332(a).



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2. Venue is proper in Miami-Dade County as the incident giving rise to each cause of action stated herein occurred in Miami-Dade County.

3. At all material times, Valdez was and is a resident of Miami-Dade County, Florida and is sui juris.

4. At all material times, BUSCH GARDENS, was a Delaware corporation with its principal place of business in the State of Missouri, authorized to do business in the State of Florida and doing business as an entertainment facility located in Hillsborough County, Florida, which includes a zoo. At all material times, employees and/or representatives of BUSCH GARDENS conducted business in Miami, Miami-Dade County, Florida, to wit, they traveled to Miami for business or promotional purposes.

5. At all material times, BOYKIN HOTEL was an Ohio limited partnership, with its principal place of business in the State of Ohio, which owned, operated and/or maintained real property in Miami, Miami-Dade County, Florida, commonly referred to as the Hampton Inn, located at 3620 NW 79th Avenue, Miami, Florida ("The Hampton Inn").

6. At all material times, BOYKIN MANAGEMENT was an Ohio limited liability company, with its principal place of business in the State of Ohio, authorized to do business in the State of Florida, which operated and maintained The Hampton Inn.

7. At all material times, VALDEZ was an employee of BOYKIN HOTEL and/or BOYKIN MANAGEMENT, acting within the course and scope of said employment.



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8. At all material times, WOW was a California Corporation, with its principal place of business in the State of California, doing business in the State of Florida as a traveling exhibition of zoo animals and zoo workers.

GENERAL ALLEGATIONS

9. In February 2004, employees and/or representatives of BUSCH GARDENS and WOW stayed overnight as guests at The Hampton Inn for multiple consecutive days.

10. During the time that the employees and/or representatives of BUSCH GARDENS and WOW stayed overnight as guests at The Hampton Inn, such persons from BUSCH GARDENS and/or WOW kept certain wild, zoo animals with them in their hotel rooms, including, monkeys, reptiles and birds ("the zoo animals").

11. At all material times, the zoo animals were owned, kept and controlled by BUSCH GARDENS and/or WOW.

12. At all times material to this Complaint, The Hampton Inn had a "No pets" policy.

13. As a housekeeper at The Hampton Inn, Valdez was required and/or ordered by her employer to clean those rooms in which zoo animals were kept by employees and/or representatives of BUSCH GARDENS and WOW.

14. While cleaning said rooms, Valdez was exposed to and/or came in contact with the zoo animals and/or their dander, urine, feces, excrement and odor.

15. Following her exposure to the zoo animals and/or their dander, urine, feces, excrement and odor, Valdez developed various physical and emotional problems,



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including severe, painful and debilitating skin lesions about her torso, extremities and face, fatigue, headaches, depression and she now develops new, open sores/lesions upon contact with certain animals and insects which she did not experience prior to her exposure to the zoo animals ("The Injury").

16. Valdez made a claim for workers' compensation benefits against her employer for injuries and damages arising out of the exposure to the zoo animals, however, said claim has been denied in its entirety.

17. By its denial of workers' compensation benefits, Valdez' employer is estopped from defending this action on the basis of entitlement to workers' compensation immunity under Florida Statute §440.11. See Byerley v. Citrus Publishing, Inc., 725 So. 2d 1230 (Fla. 5th DCA 1999).

18. Shortly after VALDEZ gave notice to her employer, BOYKIN HOTEL and/or BOYKIN MANAGEMENT, that she had suffered injury from her exposure to the zoo animals for which she was claiming workers' compensation benefits, VALDEZ was forced to resign or fired.

COUNT I – NEGLIGENCE OF BUSCH GARDENS

Plaintiff restates and incorporates the allegations of paragraphs 1 through 18 above as though fully set forth herein:

19. BUSCH GARDENS, by and through its agents, servants and/or employees owed a duty to handle and keep its zoo animals in a reasonably safe condition and free from defects and conditions that would render them dangerous and unsafe to Plaintiff or present an unreasonable risk of harm to Plaintiff.



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20. BUSCH GARDENS, by and through its agents, servants and/or employees, owed a duty to exercise reasonable care to protect the Plaintiff, by inspection or other affirmative acts from the danger of any reasonably foreseeable injury occurring from the reasonably foreseeable exposure to its zoo animals and/or their dander, urine, feces, excrement and odor.

21. BUSCH GARDENS, by and through its agents, servants and/or employees, owed a duty to warn the Plaintiff, of any dangerous, unsafe or concealed perils associated with exposure to its zoo animals and/or their dander, urine, feces, excrement and odor.

22. BUSCH GARDENS, by and through its agents, servants and/or employees, created and/or allowed a dangerous condition and/or a concealed peril to exist in their zoo animals causing injury to the Plaintiff.

23. BUSCH GARDENS, by and through its agents, servants and/or employees, had actual knowledge of the dangerous condition, or in the alternative, let the dangerous condition exist for a sufficient length of time so that the Defendant had constructive knowledge and should have known of the dangerous condition by conducting proper and reasonable inspection of its zoo animals prior to the Plaintiff being injured.

24. BUSCH GARDENS, by and through its agents, servants and/or employees, breached its duty owed to the Plaintiff and was negligent by:

- (a) creating a dangerous condition and/or failing to correct the aforementioned dangerous condition;



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- (b) failing to warn or otherwise notify Plaintiff of this aforementioned condition;
- (c) failing to properly and adequately care for, handle, keep, clean up after and maintain its zoo animals in a reasonably safe condition;
- (d) exposing Plaintiff to a dangerous condition which was known to, or which should have been known to, BUSCH GARDENS;
- (e) failing to properly inspect its zoo animals prior to exposing Plaintiff to same;
- (f) failing to require any parties that BUSCH GARDENS may have contracted with to provide the zoo animals, including WOW, to give proof of the health and safety of the animals provided, including, but not limited to all necessary permits issued by the State of Florida; and/or,
- (g) failing to require any parties that BUSCH GARDENS may have contracted with to care for the zoo animals, including WOW, to demonstrate that such party had personnel sufficient to care for and clean up after the zoo animals provided.

25. As a direct and proximate result of the carelessness and negligence of BUSCH GARDENS, by and through its agents, servants and/or employees, Plaintiff has suffered past, present and future bodily injuries and resulting pain and suffering, disability, disfigurement, scarring, mental anguish, loss of capacity to enjoy life, loss of enjoyment of life, the expenses of medical treatment, aggravation of a pre-existing condition, past lost earnings and loss of the ability to earn money in the future. The



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losses are either permanent or continuing in their nature and Plaintiff will suffer from such losses in the future.

WHEREFORE, Plaintiff demands judgment against BUSCH GARDENS for compensatory damages in an amount in excess of the minimum jurisdictional limits of this Court, exclusive of interest and costs, taxable costs and any other relief deemed appropriate by the Court.

COUNT II – STRICT LIABILITY AGAINST BUSCH GARDENS

Plaintiff restates and incorporates the allegations of paragraphs 1 through 18 above as though fully set forth herein:

26. As the owner and keeper of the zoo animals, BUSCH GARDENS, is absolutely liable for the damages they cause. See, Sharp v. Levine, 528 So. 2d 1369 (Fla. 3rd DCA 1988)

27. As a direct and proximate result of Plaintiff's contact with and exposure to the zoo animals and their dander, urine, feces, excrement and odor, Plaintiff has suffered past, present and future bodily injuries and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity to enjoy life, loss of enjoyment of life, the expenses of medical treatment, aggravation of a pre-existing condition, past lost earnings and loss of the ability to earn money in the future. The losses are either permanent or continuing in their nature and Plaintiff will suffer from such losses in the future.



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WHEREFORE, Plaintiff demands judgment against BUSCH GARDENS for compensatory damages in an amount in excess of the minimum jurisdictional limits of this Court, exclusive of interest and costs, taxable costs and any other relief deemed appropriate by the Court.

COUNT III – NEGLIGENCE OF BOYKIN HOTELS

Plaintiff restates and incorporates the allegations of paragraphs 1 through 18 above as though fully set forth herein:

28. BOYKIN HOTELS, by and through its agents, servants and/or employees owed a duty to maintain the subject premises in a reasonably safe condition, free from defects and conditions that would render it dangerous and unsafe for Plaintiff or present an unreasonable risk of harm to Plaintiff.

29. BOYKIN HOTELS, by and through its agents, servants and/or employees, owed a duty to warn the Plaintiff, of any dangerous, unsafe or concealed perils existing on its premises, including those regarding the subject zoo animals.

30. BOYKIN HOTELS, by and through its agents, servants and/or employees, created and/or allowed a dangerous condition and/or a concealed peril to exist within its premises causing injury to the Plaintiff.

31. BOYKIN HOTELS, by and through its agents, servants and/or employees, had actual knowledge of the dangerous condition, or in the alternative, should have known of the dangerous condition by conducting proper and reasonable inspection prior to the Plaintiff being injured.



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32. BOYKIN HOTELS, by and through its agents, servants and/or employees, breached its duty owed to the Plaintiff and was negligent by:

- (a) creating a dangerous condition and/or failing to correct the aforementioned dangerous condition;
- (b) failing to warn or otherwise notify Plaintiff of this aforementioned condition;
- (c) failing to properly and adequately maintain the premises in a reasonably safe condition;
- (d) breaching its own internal pet policy;
- (e) failing to adequately investigate the safety and health of the zoo animals before allowing or requiring that Plaintiff be exposed to same; and/or,
- (f) failing to properly inspect the premises prior to exposing Plaintiff to the conditions that existed in the rooms.

33. As a direct and proximate result of the carelessness and negligence of BOYKIN HOTELS, by and through its agents, servants and/or employees, Plaintiff has suffered past, present and future bodily injuries and resulting pain and suffering, disability, disfigurement, scarring, mental anguish, loss of capacity to enjoy life, loss of enjoyment of life, the expenses of medical treatment, aggravation of a pre-existing condition, past lost earnings and loss of the ability to earn money in the future. The losses are either permanent or continuing in their nature and Plaintiff will suffer from such losses in the future.

WHEREFORE, Plaintiff demands judgment against BOYKIN HOTELS for compensatory damages in an amount in excess of the minimum jurisdictional limits of



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this Court, exclusive of interest and costs, taxable costs and any other relief deemed appropriate by the Court.

COUNT IV – NEGLIGENCE OF BOYKIN MANAGEMENT

Plaintiff restates and incorporates the allegations of paragraphs 1 through 18 above as though fully set forth herein:

34. BOYKIN MANAGEMENT, by and through its agents, servants and/or employees owed a duty to operate and maintain the subject premises in a reasonably safe condition and free from defects and conditions that would render it dangerous and unsafe for Plaintiff or present an unreasonable risk of harm to Plaintiff.

35. BOYKIN MANAGEMENT, by and through its agents, servants and/or employees, owed a duty to warn the Plaintiff, of any dangerous, unsafe or concealed perils existing on its premises, including those regarding the subject zoo animals.

36. BOYKIN MANAGEMENT, by and through its agents, servants and/or employees, created and/or allowed a dangerous condition and/or a concealed peril to exist within its premises causing injury to the Plaintiff.

37. BOYKIN MANAGEMENT, by and through its agents, servants and/or employees, had actual knowledge of the dangerous condition, or in the alternative, should have known of the dangerous condition by conducting proper and reasonable inspection prior to the Plaintiff being injured.

38. BOYKIN HOTELS, by and through its agents, servants and/or employees, breached its duty owed to the Plaintiff and was negligent by:



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- (a) creating a dangerous condition and/or failing to correct the aforementioned dangerous condition;
- (b) failing to warn or otherwise notify Plaintiff of this aforementioned condition;
- (c) failing to properly and adequately maintain the premises in a reasonably safe condition;
- (d) breaching its own internal pet policy;
- (e) failing to adequately investigate the safety and health of the zoo animals before allowing or requiring that Plaintiff be exposed to same; and/or,
- (f) failing to properly inspect the premises prior to exposing Plaintiff to the conditions that existed in the rooms.

39. As a direct and proximate result of the carelessness and negligence of BOYKIN MANAGEMENT, by and through its agents, servants and/or employees, Plaintiff has suffered past, present and future bodily injuries and resulting pain and suffering, disability, disfigurement, scarring, mental anguish, loss of capacity to enjoy life, loss of enjoyment of life, the expenses of medical treatment, aggravation of a pre-existing condition, past lost earnings and loss of the ability to earn money in the future. The losses are either permanent or continuing in their nature and Plaintiff will suffer from such losses in the future.

WHEREFORE, Plaintiff demands judgment against BOYKIN MANAGEMENT for compensatory damages in an amount in excess of the minimum jurisdictional limits of this Court, exclusive of interest and costs, taxable costs and any other relief deemed appropriate by the Court.



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**COUNT V – VIOLATION OF §440.205 OF FLORIDA’S WORKERS’
COMPENSATION ACT AGAINST BOYKIN HOTEL AND BOYKIN MANAGEMENT**

Plaintiff restates and incorporates the allegations of paragraphs 1 through 18 above as though fully set forth herein:

40. This is a claim against BOYKIN HOTEL and/or BOYKIN MANAGEMENT for violations of Florida Statutes, §440.205, Florida's Workers Compensation Act (the "Act").

41. The Injury suffered by VALDEZ is covered under the Act and should have been accepted as compensable by BOYKIN HOTEL and/or BOYKIN MANAGEMENT.

42. VALDEZ timely reported the Injury to BOYKIN HOTEL and BOYKIN MANAGEMENT and requested medical care.

43. Shortly after said reporting and request for care, VALDEZ was fired.

44. VALDEZ has performed and/or satisfied all conditions precedent on her part to be performed and/or BOYKIN HOTEL and BOYKIN MANAGEMENT have otherwise waived such conditions by their actions.

45. Pursuant to Florida Statute §440.34, VALDEZ is entitled to her attorney's fees and costs for bringing this action. VALDEZ has retained the undersigned law firm and is obligated thereby to pay for her fees and costs incurred herein.

46. VALDEZ is a protected member under the Act since she was employed by BOYKIN HOTEL and/or BOYKIN MANAGEMENT at the time she suffered work related



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injuries covered under the Act and during a period when she claimed compensation benefits under the workers' compensation laws.

47. BOYKIN HOTEL and/or BOYKIN MANAGEMENT violated the Act based upon their actions as described in the above-referenced paragraphs causing damages to VALDEZ.

48. BOYKIN HOTEL and/or BOYKIN MANAGEMENT's conduct after VALDEZ suffered the injury covered under the Act was intentional, willful and malicious in violation of §440.205, Florida Statutes.

49. BOYKIN HOTEL and/or BOYKIN MANAGEMENT employees and/or agents acted within the course and scope of their authority or such acts were otherwise ratified by BOYKIN HOTEL and/or BOYKIN MANAGEMENT.

50. As a direct and proximate result of BOYKIN HOTEL and/or BOYKIN MANAGEMENT's conduct described above, VALDEZ has been damaged in that she suffered significant emotional distress.

WHEREFORE, VALDEZ respectfully requests this Court enter a judgment awarding her all such legal, equitable and monetary relief against BOYKIN HOTEL and/or BOYKIN MANAGEMENT as will effectuate the purpose of the Act and which are available under the Act, including but not limited to compensatory damages, prejudgment interest, taxable costs and a reasonable award of attorneys fees pursuant to the Act.



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COUNT VI – NEGLIGENCE OF WOW

Plaintiff restates and incorporates the allegations of paragraphs 1 through 18 above as though fully set forth herein:

51. WOW, by and through its agents, servants and/or employees owed a duty to handle and keep its zoo animals in a reasonably safe condition and free from defects and conditions that would render them dangerous and unsafe to Plaintiff or present an unreasonable risk of harm to Plaintiff.

52. WOW, by and through its agents, servants and/or employees, owed a duty to exercise reasonable care to protect the Plaintiff, by inspection or other affirmative acts from the danger of any reasonably foreseeable injury occurring from the reasonably foreseeable exposure to its zoo animals and/or their dander, urine, feces, excrement and odor.

53. WOW, by and through its agents, servants and/or employees, owed a duty to warn the Plaintiff, of any dangerous, unsafe or concealed perils associated with exposure to its zoo animals and/or their dander, urine, feces, excrement and odor.

54. WOW, by and through its agents, servants and/or employees, created and/or allowed a dangerous condition and/or a concealed peril to exist in their zoo animals causing injury to the Plaintiff.

55. WOW, by and through its agents, servants and/or employees, had actual knowledge of the dangerous condition, or in the alternative, let the dangerous condition exist for a sufficient length of time so that the Defendant had constructive knowledge



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and should have known of the dangerous condition by conducting proper and reasonable inspection of its zoo animals prior to the Plaintiff being injured.

56. WOW, by and through its agents, servants and/or employees, breached its duty owed to the Plaintiff and was negligent by:

- (a) creating a dangerous condition and/or failing to correct the aforementioned dangerous condition;
- (b) failing to warn or otherwise notify Plaintiff of this aforementioned condition;
- (c) failing to properly and adequately care for, handle, keep, clean up after and maintain its zoo animals in a reasonably safe condition;
- (d) exposing Plaintiff to a dangerous condition which was known to, or which should have been known to, WOW;
- (e) failing to obtain all required licenses and permits for the zoo animals as required by the State of Florida; and/or,
- (f) failing to properly inspect its zoo animals prior to exposing Plaintiff to same.

57. As a direct and proximate result of the carelessness and negligence of WOW, by and through its agents, servants and/or employees, Plaintiff has suffered past, present and future bodily injuries and resulting pain and suffering, disability, disfigurement, scarring, mental anguish, loss of capacity to enjoy life, loss of enjoyment of life, the expenses of medical treatment, aggravation of a pre-existing condition, past lost earnings and loss of the ability to earn money in the future. The losses are either



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permanent or continuing in their nature and Plaintiff will suffer from such losses in the future.

WHEREFORE, Plaintiff demands judgment against WOW for compensatory damages in an amount in excess of the minimum jurisdictional limits of this Court, exclusive of interest and costs, taxable costs and any other relief deemed appropriate by the Court.

COUNT VII – STRICT LIABILITY AGAINST WOW

Plaintiff restates and incorporates the allegations of paragraphs 1 through 18 above as though fully set forth herein:

58. As the owner and keeper of the zoo animals, WOW, is absolutely liable for the damages they cause. See, Sharp v. Levine, 528 So. 2d 1369 (Fla. 3rd DCA 1988)

59. As a direct and proximate result of Plaintiff's contact with and exposure to the zoo animals and their dander, urine, feces, excrement and odor, Plaintiff has suffered past, present and future bodily injuries and resulting pain and suffering, disability, disfigurement, scarring, mental anguish, loss of capacity to enjoy life, loss of enjoyment of life, the expenses of medical treatment, aggravation of a pre-existing condition, past lost earnings and loss of the ability to earn money in the future. The losses are either permanent or continuing in their nature and Plaintiff will suffer from such losses in the future.

WHEREFORE, Plaintiff demands judgment against WOW for compensatory damages in an amount in excess of the minimum jurisdictional limits of this Court,



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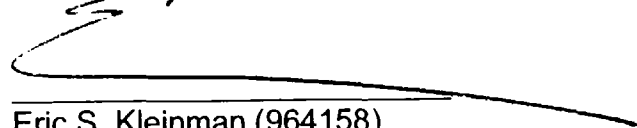
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exclusive of interest and costs, taxable costs and any other relief deemed appropriate by the Court.

DEMAND FOR JURY TRIAL

The Plaintiff demand trial by jury of all issues so triable.

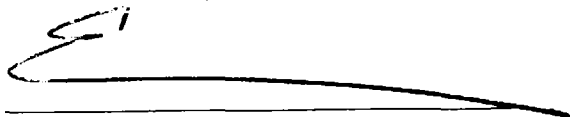
Respectfully submitted,



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**Counsel for Plaintiff/Arlin
Valdez-Castillo**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail this 7 day of July, 2006 on all counsel or parties of record on the attached service list.



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