

IN THE CIRCUIT COURT OF THE NINTH  
JUDICIAL CIRCUIT IN AND FOR ORANGE  
COUNTY, FLORIDA

CASE NO.: 2024-CA-001616-O

JEFFREY J. PICCOLO AS PERSONAL  
REPRESENTATIVE OF THE ESTATE OF  
KANOKPORN TANGSUAN, DECEASED,

Plaintiff,

vs.

GREAT IRISH PUBS FLORIDA, INC., A  
FLORIDA CORPORATION D/B/A RAGLAN  
ROAD IRISH PUB AND RESTAURANT  
AND WALT DISNEY PARKS AND  
RESORTS U.S., INC., A FLORIDA  
CORPORATION D/B/A DISNEY SPRINGS,

Defendants.

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**PLAINTIFF'S RESPONSE IN OPPOSITION TO  
DEFENDANT, WALT DISNEY PARKS AND RESORTS U.S., INC.'S  
MOTION TO COMPEL ARBITRATION AND STAY CASE**

Plaintiff, JEFFREY J. PICCOLO as Personal Representative of the Estate of KANOKPORN TANGSUAN, Deceased, by and through the undersigned attorneys, files this Response in Opposition to Defendant, WALT DISNEY PARKS AND RESORTS U.S., INC.'s ("WDPR"), Motion to Compel Arbitration and Stay Case and states:

**BACKGROUND**

This is an action for wrongful death brought by Jeffrey Piccolo, as the Personal Representative of the Estate of his deceased wife, Kanokporn Tangsuan. Plaintiff's Complaint (attached as Exhibit A) alleges that on the evening of October 5, 2023, Kanokporn Tangsuan, her

husband, and her mother had dinner at Co-Defendant, GREAT IRISH PUBS FLORIDA, INC., A FLORIDA CORPORATION D/B/A RAGLAN ROAD IRISH PUB AND RESTAURANT (“Raglan Road”), a restaurant located at Disney Springs. Disney Springs is an outdoor dining/shopping and entertainment complex, owned by and/or in the possession and control of WDPR that is open to and marketed to the public by WDPR. Ms. Tangsuan, a medical doctor visiting from New York, knew she had a severe allergy to dairy and nuts. Ms. Tangsuan and her family therefore chose to eat at Raglan Road in Disney Springs, because both WDPR and Raglan Road advertised and represented to the public that food allergies and/or the accommodation of persons with food allergies was a top priority and that patrons/guests could consult with a chef and/or special diets trained Cast Member before placing a food order. Ms. Tangsuan believed that WDPR would have proper safeguards to protect patrons such as herself from food allergens. Ms. Tangsuan and her husband specifically questioned the waiter at Raglan Road on numerous occasions about the ability to receive allergen-free food and were assured that her order would be allergen free. However, shortly after consuming her dinner, Ms. Tangsuan suffered a severe acute allergic reaction to the food served at Raglan Road, from which she died. The medical examiner’s investigation determined that her cause of death was anaphylaxis due to elevated levels of dairy and nut in her system.

On November 6, 2023, the probate court appointed Ms. Tangsuan’s husband, Jeffrey Piccolo, to serve as personal representative of her estate.<sup>1</sup> As stated in Florida Statutes Section 768.20, only the Personal Representative may bring a wrongful death action on behalf of the

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<sup>1</sup> A copy of the Letters of Administration is attached as Exhibit ‘B’.

estate's statutory survivors, and therefore Plaintiff filed this wrongful death action against Raglan Road and WDPR on February 22, 2024.

On April 11, 2024, counsel for WDPR entered its appearance in the case. Shortly thereafter, WDPR began voluntarily participating in this litigation by serving separate Rule 1.351(e) requests for documents on Plaintiff and on its co-defendant, Raglan Roads. WDPR then filed its Answer and Affirmative Defenses to the Complaint, without raising any argument that this case was subject to an arbitration agreement. In fact, WDPR included a 'Prayer for Relief' in its Answer, further demonstrating its voluntary participation in these proceedings.

Nonetheless, on June 3, 2024, WDPR filed the instant Motion to Compel Arbitration and Stay Proceedings, in which it argues that the Estate of Ms. Tangsuan must arbitrate its claims because: 1) Mr. Piccolo, in his individual capacity back in 2019, allegedly agreed to arbitrate any dispute against WDPR by signing up for a Disney+ account on his PlayStation, and 2) Mr. Piccolo, in his individual capacity prior to his wife's passing, used the WDPR website to purchase tickets to Epcot (which were never used).

WDPR's argument is fatally flawed for numerous independent reasons, as detailed below, and the Court should deny the Motion in its entirety.

### **SUMMARY OF PLAINTIFF'S ARGUMENT**

As an initial matter, Defendant WDPR has waived its alleged right to seek arbitration by filing its Answer without raising arbitration as an affirmative defense and by serving two separate Requests for Copies under Rule 1.351(e). *Lions Gables Realty, Ltd. V. Randall Mechanical, Inc.*, 65 So. 3d (Fla. 5th DCA 2011) (holding that the totality of the circumstances showed that the

defendant had participated in merits discovery and waived any claim to arbitration by serving two requests for copies under Rule 1.351).

Second, even if WDPR had not waived its rights, it is attempting to enforce an agreement that it never signed against a party who also never signed. Specifically, the plaintiff in this wrongful death case is Jeffrey Piccolo, as Personal Representative of the Estate of Kanokporn Tangsuan, not Jeffrey Piccolo, individually. *See* Fla. Stat. § 768.20 (stating that only a decedent's personal representative may bring a wrongful death action on behalf of the survivors). In its Motion, WDPR nonetheless improperly attempts to negate this distinction by making the preposterous argument that when Jeffrey Piccolo, individually, allegedly signed himself up for a free trial of Disney+ back in 2019 or bought Epcot tickets in 2023, he somehow bound the non-existent Estate of Kanokporn Tangsuan (his wife, who was alive at both times) to an arbitration agreement buried within certain terms and conditions. WDPR does not explain how it is possible for Mr. Piccolo individually to bind an Estate that did not exist, which is not surprising as there is not a single authority in Florida that would support such an inane argument.

Third, even if the Court were to consider the substantive part of WDPR's untimely Motion, it is based on the incredible argument that any person who signs up for a Disney+ account, even free trials that are not extended beyond the trial period, will have forever waived the right to a jury trial enjoyed by them and any future Estate to which they are associated, and will instead have agreed (on behalf of other survivors and the estate itself) to arbitrate any and all disputes against any and all Disney entities and affiliates, no matter how far removed from use of the Disney+ streaming service, including personal injury and wrongful death claims. As can be seen from the prior sentence, this argument borders on the surreal.

Finally, in asserting that the Estate of Kanokporn Tangsuan's wrongful death claim must be submitted to arbitration, WDPR relies on three documents allegedly agreed to by Jeffrey Piccolo in his individual capacity years ago: 1) a Disney+ Subscriber Agreement and 2) Disney Terms of Use (both of which Mr. Piccolo purportedly assented to while creating a Disney+ free trial account in 2019), and 3) the My Disney Experience Terms and Conditions (to which Mr. Piccolo allegedly consented when he accessed the Walt Disney World Website to purchase tickets to Epcot in 2023). In addition to the reasons stated above, there simply is no valid agreement to arbitrate any claims raised in this lawsuit by the Estate of Kanokporn Tangsuan because:

1. Even assuming that Ms. Tangsuan's Estate is bound by the arbitration provision in the Disney+ Subscriber Agreement with Mr. Piccolo, the terms of the agreement make it clear that Mr. Piccolo was only potentially agreeing to arbitrate claims concerning the Disney+ streaming service. The Disney+ Subscriber Agreement on its face establishes that there was no agreement to arbitrate injury claims against other Disney entities.
2. The arbitration provision in the Disney Terms of Use is also unenforceable because Mr. Piccolo would have had no actual or inquiry notice of the Disney Terms of Use. By WDPR's own admission, the Disney+ registration webpage did not expressly reference the Disney Terms of use, nor did it provide a visible hyperlink to the Disney Terms of Use.
3. The arbitration provision in the Disney Terms of Use is not valid or enforceable because it conflicts with the My Disney Experience Terms and Conditions in a manner that renders it ambiguous. Specifically, the Disney Terms of Use provide for arbitration of all disputes and requires the parties to submit to the jurisdiction of New York Courts. In contrast, the My Disney Experience Terms

and Conditions do not contain an arbitration provision but rather expressly contemplate that the parties may file lawsuits and requires those suits to be filed in Orange County Florida and to be governed by Florida law.

4. The My Disney Experience Terms and Conditions expressly provides that they will apply in the event they conflict with Disney Terms of Use. Because of the conflict noted above, the My Disney Experience Terms, which do not contain an arbitration clause, are the only terms which could arguably apply to this lawsuit, and Plaintiff has complied with those terms by filing suit in Orange County Florida.
5. A valid Agreement to arbitrate does not exist because the arbitration clauses upon which WDPR rely are unconscionable.

For these and the foregoing reasons, Defendant WDPR's motion should be denied.

### **ALLEGED FACTS APPLICABLE TO THE MOTION**

#### **A. The Disney+ Account**

On November 29, 2019, Mr. Piccolo allegedly signed up for a free trial of Disney+ via a PlayStation game console. Disney+ is a subscription based streaming entertainment service offering movies, television shows and concerts. Mr. Piccolo believes that he canceled the subscription prior to the expiration of the free trial because he has been unable to locate any charges associated with a Disney+ account after that date.<sup>2</sup>

According to WDPR's representative, to create a Disney+ account, a user would enter their email address into the registration webpage, which contained a Disney Registration

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<sup>2</sup> Plaintiff will be submitting an Affidavit from Mr. Piccolo in support of this Response in Opposition under separate cover.

Acknowledgment describing the conditions to which the user was assenting. *See* Sami Morgan Declaration at ¶ 6, attached as Exhibit C. The Disney Registration Acknowledgment stated: “By clicking ‘Agree & Continue,’ you agree to our Subscriber Agreement and acknowledge that you have read our Privacy Policy.” *Id.* Both the terms “Subscriber Agreement” and “Privacy Policy” were underlined and were in blue font to indicate that they were clickable hyperlinks. *Id.*

Importantly, by WDPR’s own admission through the Morgan Declaration, the acknowledgement Mr. Piccolo allegedly agreed to by clicking “Agree & Continue,” made absolutely no mention of the Disney Terms of Use and provided no hyperlink to the Disney Terms of Use. *See* Exhibit C, at ¶6. It only mentioned and provided links to the “Subscriber Agreement” and “Privacy Policy,” not to the Disney Terms of Use. *Id.* Thus, Jeffrey Piccolo would have had no notice, actual or otherwise, of the Disney Terms of Use. The hyperlink to the Disney Terms of Use was buried within the middle of a paragraph half-way down the first page of the Disney+ Subscriber Agreement, which itself was a hyperlink on the Disney+ registration webpage. *See* Exhibit C, at ¶¶ 6-11; *see also* the Disney+ Subscriber Agreement, attached as Exhibit D. An unreferenced hyperlink buried within another hyperlinked document does not constitute notice. Accepting the facts of the Morgan Declaration as true for purposes of this Response in Opposition, Mr. Piccolo simply did not agree to the Disney Terms of Use on behalf of himself, and certainly not on behalf of his wife or her estate, when he clicked ‘Agree & Continue,’ on the Disney+ registration webpage, which by WDPR’s own admission, would only have acknowledged his assent to be bound by the Subscriber Agreement and Privacy Policy, not the Disney Terms of Use.

Furthermore, had he agreed to be bound by the Subscriber Agreement, Mr. Piccolo would clearly have only been agreeing to arbitrate his own individual claims *arising from his use of the*

*Disney+ service.* The arbitration provision in the Disney+ Subscriber Agreement specifically limits the definition of dispute to controversies concerning the Disney+ Service and the Disney+ Subscriber Agreement:

“Dispute” includes any dispute, action, or other controversy, whether based on past, present, or future events, between you and us **concerning the Disney+ Service, ESPN+ Service, or this Agreement**, whether in contract, tort, warranty, statute, regulation, or other legal or equitable basis.

*See* Exhibit D, at p.11 (emphasis supplied). Furthermore, the Disney+ Service is defined by the Subscriber Agreement to include:

The Disney+ website, application and associated content and services.

*See* Exhibit D, at p.1.

There is simply no reading of the Disney+ Subscriber Agreement, the only Agreement Mr. Piccolo allegedly assented to in creating his Disney+ account, which would support the notion that he was agreeing on behalf of his wife or her estate, to arbitrate injuries sustained by his wife at a restaurant located on premises owned by a Disney theme park or resort from which she died. Frankly, any such suggestion borders on the absurd. Indeed, the Disney+ Subscriber Agreement was only between Mr. Piccolo and Disney+, not WDPR or any other Disney Affiliates. The Agreement states:

Disney DTC LLC (“Disney+”) and BAMTech, LLC (“ESPN+”)(collectively, “we”, “us” “our”) welcome you to the Disney+ Service and/or ESPN+ Service.<sup>3</sup> *See* Exhibit D, at p.1.

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<sup>3</sup> The Declaration of Sami Morgan incorrectly states that the Disney+ Subscriber Agreement is between Disney DTC and/or its affiliates, by erroneously quoting language from the Disney Terms of Use, rather than the Disney+ Subscriber Agreement. *See* Exhibit C, at ¶ 9.



In contrast, the Disney Terms of Use, of which Mr. Piccolo had no notice and to which he never assented when creating his Disney+ account, provide as follows:

Disney DTC LLC and/or its affiliates and subsidiaries (collectively, "Disney DTC") are pleased to provide to you their sites, software, applications, content, products and services ("Disney Services"), which may be branded Disney, ABC, ESPN, Marvel, Pixar, Lucasfilm, FX or another brand owned or licensed by Disney DTC. These terms govern your use and our provision of the Disney Services on which these terms are posted, as well as Disney Services we make available on third-party sites and platforms if these terms are disclosed to you in connection with your use of the Disney Services.

This is a contract (1) between you and Disney DTC LLC, as a Delaware limited liability company doing business at 500 South Buena Vista Street, Burbank, California 91521, USA, or (2) between you and any different service provider identified for a particular Disney Service. *See* Disney Terms of Use, attached as Exhibit E, at p. 1.

Disney+ and ESPN+ are the only parties to the Disney+ Subscriber Agreement and neither entity has been named as a Defendant in this action.

**B. The Walt Disney World website and the My Disney Experience mobile app**

As part of its bid to deprive the Estate of Kanokporn Tangsuan of its right to a jury trial, WDPR next contends that on September 15, 2023, Jeffrey Piccolo accepted the My Disney Experience Terms and Conditions applicable to the Walt Disney World website (Disneyworld.disney.go.com) and the My Disney Experience mobile app, which are dedicated to the Walt Disney World Parks and Resorts. *See* WDPR's Motion at p. 4-5, and the Declaration of Peter Streit, attached as Exhibit F, at ¶9. WDPR and the Streit Declaration incorrectly state that Mr. Piccolo had already consented to Disney Terms of Use in November of 2019 when he created his Disney+ account. *See* WDPR's Motion at p. 4, citing ¶ 7 of the Streit Declaration. As noted above, Mr. Piccolo would have had no notice, actual or otherwise, of the Disney Terms of Use,

nor would he have seen or consented to those terms when he allegedly created his Disney+ account.<sup>4</sup>

When Mr. Piccolo allegedly assented to the My Disney Experience Terms and Conditions in September of 2023, he would not have been asked to acknowledge or assent to the Disney Terms of Use because he had allegedly already allegedly assented to those terms when creating his Disney+ account. *See* Exhibit F, at ¶ 8.<sup>5</sup> Thus, at no time would Mr. Piccolo have been given notice of the Disney Terms of Use, nor would he have consented to those terms.

WDPR desperately clings to Mr. Piccolo's purported consent to the Disney Terms of Use in November of 2019, because the My Disney Experience Terms and Conditions he allegedly consented to in 2023 do not contain an arbitration provision. While Plaintiff maintains that none of Disney's Terms and Conditions apply to the claims raised in this wrongful death action, it should be noted that the only terms which could even arguably apply, would be the My Disney Experience Terms and Conditions, because they govern the use of the My Disney Experience Website and/or the My Disney Experience Mobile Application.<sup>6</sup> *See* My Disney Experience Terms and Conditions, attached as Exhibit H.

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<sup>4</sup> This is important because it is the Disney Terms of Use which contain a very broad arbitration provision that purportedly applies to all disputes with any Disney affiliate, and upon which WDPR attempts to rely in arguing that this case must be arbitrated.

<sup>5</sup> Specifically, the Streit Declaration explains that when a Disney Account holder attempts to login to the Walt Disney World website or My Disney Experience App, if they had not previously consented to Disney Terms of Use they would be confronted by two check boxes and hyperlinks, one agreeing to the Disney Terms of Use and the other agreeing to the My Disney Experience Terms and Conditions. *See* Exhibit F, at ¶8. However, if an account holder had previously consented to the Disney Terms of Use, they would only be confronted with one checkbox and hyperlink agreeing to the My Disney Experience Terms and Conditions. *Id.* Apparently, it was the second login procedure that applied to Mr. Piccolo, because the Streit Declaration does not assert that Mr. Piccolo consented to the Disney Terms of Use in September of 2023.

<sup>6</sup> Indeed, WDPR argues that Plaintiff alleges that he and his wife relied on representations about allergen free foods on the Walt Disney World website in choosing to dine at Raglan Road. WDPR also argues that Mr. Piccolo used the website to purchase theme park tickets on October 1, 2023. *See* Declaration of Zachary Varnes, attached as Exhibit

While the My Disney Experience Terms and Conditions lack an arbitration clause, they do expressly acknowledge the right of the parties to file lawsuits:

You agree that any claim, action or lawsuit (collectively, "Action") arising out of these Terms, reservations and bookings, and/or all packages, products and services provided in connection with the reservations and bookings (including without limitation, components such as park admissions, RF Devices, entitlements to access Lightning Lane entrances, photos and other media, and room accommodations) (collectively, "Terms, Reservations and Products") must be filed and maintained exclusively in any court in Orange County, Florida having subject matter jurisdiction. You also hereby submit to the personal jurisdiction of such courts for the purposes of litigating any such Action. You agree these Terms, Reservations and Products shall be governed by and construed in accordance with the laws of the State of Florida, without giving effect to any principles of conflicts of law. *See* Exhibit H, under section titled "General Provisions."

The aforementioned provision governing lawsuits directly conflicts with the arbitration clause in the Disney Terms of Use, which provides for arbitration of all disputes and requires the parties to submit to the exclusive jurisdiction of the federal or state courts located in either Los Angeles, California or the borough of Manhattan, New York, New York:

You and Disney DTC agree to arbitrate, as provided below, all disputes between you (including any related disputes involving The Walt Disney Company or its affiliates), that are not resolved informally, except disputes relating to the ownership or enforcement of intellectual property rights. "Dispute" includes any dispute, action, or other controversy, whether based on past, present, or future events, between you and us concerning the Disney Services or this Agreement, whether in contract, tort, warranty, statute, regulation, or other legal or equitable basis. ....

Arbitration may be conducted in person, through the submission of documents, by phone, or online. Proceedings that cannot be conducted through the submission of documents, by phone, or online, will take place in either Los Angeles, California or the borough of Manhattan, New York, New York, whichever is more convenient for you; provided, however, that if circumstances prevent you from traveling to Los

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G. Of note, those tickets were never used because Ms. Tangsuan died two days before she and her husband were supposed to visit Epcot. *Id.* WDPR was kind enough to refund the cost of those nonrefundable tickets but explained to Mr. Piccolo that it was not guaranteed he would receive this type of exception in the future. *Id.*

Angeles or New York, JAMS may hold an in-person hearing in your hometown area. You and Disney DTC agree to submit to the exclusive jurisdiction of the federal or state courts located in either Los Angeles, California or the borough of Manhattan, New York, New York, whichever is more convenient for you, in order to compel arbitration, to stay proceedings pending arbitration, or to confirm, modify, vacate, or enter judgment on the award entered by the arbitrator.

See Exhibit E at Section 7, titled "Binding Arbitration and Class Action Waiver." Furthermore, with respect to claims not subject to arbitration, the Disney Terms of Use provide that venue and jurisdiction lies in New York:

you agree that any action at law or in equity arising out of or relating to these terms or the Disney Services that is not subject to arbitration shall be filed, and that venue properly lies, only in the state or federal courts located in the borough of Manhattan, New York, New York, United States of America and you consent and submit to the personal jurisdiction of such courts for the purposes of litigating such action. *Id.*

Even if Mr. Piccolo had consented to the Disney Terms of Use, which he did not, and his consent was binding on his wife's estate, which it is not, the discrepancies between the Disney Terms of Use and the My Disney Experience Terms and Conditions create a glaring ambiguity, rendering the arbitration provision in the Disney Terms of Use unenforceable. More importantly, the My Disney Experience Terms and Conditions expressly provide that they will apply in the event they directly conflict with the Disney Terms of Use:

If you do not agree to these Terms, you may not use the Site/App. These Terms apply in addition to, and not in lieu of, the Disney Terms of Use found here: <http://disneytermsofuse.com/>. **In the event these Terms directly conflict with the applicable foregoing Disney Terms of Use, these Terms will prevail.** (Emphasis supplied). See Exhibit F, at p.1, under the section titled "PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY."

The fact that the My Disney Experience Terms and Conditions apply in the event they conflict with the Disney Terms of Use is confirmed by the Disney Terms of Use.

Supplemental terms and conditions may apply to some Disney Services, such as rules for a particular competition, content, software, application, service or other activity, .... Any supplemental terms and conditions are in addition to these terms and, in the event of a conflict, the supplemental terms will prevail over these terms. See Exhibit D, Section 1, titled "Contract between You and Us."

## ARGUMENT

### I. **Walt Disney Public Parks waived its non-existent right to arbitration through its voluntary participation in these proceedings.**

There are three elements for the court to consider in ruling on a Motion to Compel Arbitration of a given dispute: (1) whether a valid agreement to arbitrate exists; (2) whether an arbitrable issue exists; and (3) whether the right to arbitration was waived. *Laizure v. Avante at Leesburg, Inc.*, 109 So. 3d 752, 757 (Fla. 2013); *Seifert v. US Home Corporation*, 750 So. 2d 633, 636 (Fla. 1999).

Turning to the third element, an alleged right to arbitrate may be waived through voluntary actions. See *Lion Gables Realty Ltd. v. Randall Mech., Inc.*, 65 So. 3d 1098, 1100 (Fla. 5th DCA 2011). "In determining whether a party has waived this right, the essential question is whether, under the totality of the circumstances, the defaulting party has acted inconsistently with the arbitration right. *Id.* (internal quotations omitted) (citing *Nat'l Found. For Cancer Research v. A.G. Edwards & Sons*, 821 F. 2d 772, 774 (D.C. Cir. 1987)). In Florida, it is well-established that a party's participation in discovery on the merits before moving to compel arbitration constitutes a waiver of any alleged right to arbitration. *Id.*; see also *Green Tree Servicing, LLC v. McLeod*, 15 So.3d 682, 688 (Fla. 2d DCA 2009) (holding that participating in merits discovery waived a claimed right to arbitration and noting that both "the Third District and **the Fifth District have unequivocally held that propounding discovery related to the merits of pending litigation**

**before moving to compel arbitration results in a waiver of the right to arbitration.”)**  
(emphasis added).

In *Lion Gables Realty*, the Fifth DCA affirmed a trial court's decision that a defendant's participation in merits discovery resulted in a waiver of any alleged right to arbitration. The discovery at issue involved the service of two requests for copies under Rule 1.351. *Id.* at 1101. These requests for copies sought documents from (it appears) four separate non-parties, and the document requests at issue were noted to be expansive. *Id.*

Here, Defendant WDPR served two comprehensive requests for copies under Rule 1.351(e) nearly six weeks before filing the subject motion.<sup>7</sup> In one request, WDPR requested that its co-defendant produce “every document produced in response” to the 14 separate non-parties. The categories of documents at issue concerned issues of both liability and damages and included substantial medical records in this wrongful death action. In the other request, WDPR requested that Plaintiff produce “every document produced in response” to a subpoena served on NYU Langone, an out-of-state entity. Moreover, not only did Defendant WDPR request discovery from all other parties in this case before filing the instant motion, but it also filed its Answer to the Complaint without raising an alleged right to arbitration as an affirmative defense.<sup>8</sup>

The facts underlying the Fifth DCA's decision in *Lions Gables Realty* are on all fours with this case, and therefore Defendant WDPR has waived any claimed right to arbitration.

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<sup>7</sup> Copies of Defendant WDPR's April 22, 2024 Requests for Copies are attached as Composite Exhibit 'I'.

<sup>8</sup> A copy of Defendant WDPR's April 25, 2024 Answer is attached as Exhibit 'J'.

**II. Walt Disney Public Parks is Attempting to Enforce an Alleged Arbitration Agreement against the Estate of Tangsuan Kanokporn, despite the fact that neither are signatories to that Agreement**

Even assuming that Defendant WDPR had not waived any claimed right to arbitrate by participating in this case for months, its Motion should be denied because there is no agreement to arbitrate as neither party to this action is a signatory to the alleged arbitration agreement at issue. *See Laizure*, 109 So. 3d at 757 (stating that the court must determine whether an agreement to arbitrate exists when ruling on a motion to compel arbitration). In considering whether a valid agreement exists, the Court may consider any defense existing under the state law of contracts. *Powertel v. Bexley*, 743 So. 2d 570 (Fla. 1st DCA 1999) (“Thus, an arbitration clause can be defeated by any defense existing under the state law of contracts.”). The party seeking to enforce an arbitration agreement bears the burden of establishing the existence of an enforceable agreement. *Mattamy Florida LLC v. Reserve at Loch Lake Homeowners Ass’n, Inc.*, 2022 WL 143432 (Fla. 5<sup>th</sup> DCA May 6, 2022); *Palm Garden of Healthcare Holdings, Inc. v. Haydu*, 209 So. 3d 636, 638-39 (Fla. 5<sup>th</sup> DCA 2017); *Steve Owren, Inc. v. Connolly*, 877 So. 2d 918, 920 (Fla. 4<sup>th</sup> DCA 2004). Here, Defendants have not and cannot meet this burden.

For purposes of the subject motion, the parties to this action are Jeffrey Piccolo, in his capacity as Personal Representative of the Estate of Tangsuan Kanokporn, and Walt Disney Parks and Resorts U.S., Inc., a Florida Corporation d/b/a Disney Springs, neither of which are signatories to the alleged agreement. *But see Stalley v. Transitional Hosp. Corp. of Tampa*, 44 So.3d 627, 629 (Fla. 2d DCA 2010) (recognizing that generally “only the actual parties to the arbitration agreement can be compelled to arbitrate”); *American Intern Group, Inc., v. Cornerstone Businesses, Inc.*, 872 So. 2d 333 (Fla. 2d DCA 2004) (recognizing that arbitration agreements are

generally regarded as personal covenants, binding only the parties who enter into the agreement) *Bank of America, N.A. v. Beverly*, 183 So. 3d 1099 (Fla. 4<sup>th</sup> DCA 2015) (standing for the proposition courts should generally avoid engaging in the interpretation of the agreements of other parties in order to require nonparties to arbitrate). Thus, given that Florida law is clear that “a non-signatory to a contract containing an arbitration agreement ordinarily cannot compel a signatory to submit to arbitration”, *Roman v. Atl. Coast Constr. & dev., Inc.*, 44 So. 3d 222, 224 (Fla. DCA 4<sup>th</sup> 2010) (internal quotations omitted), **it naturally follows that a non-signatory to an agreement cannot enforce that agreement against another non-signatory.**

To the extent that Defendant WDPR attempts to end-run Florida law by pointing out that Mr. Piccolo, in his individual capacity, is a survivor of the estate, that argument is unavailing for a variety of reasons, not the least of which is that in addition to the decedent not signing the agreement herself, Mr. Piccolo is not the only survivor whose claim is being pursued by the Personal Representative. The Estate of Tangsuan Kanokporn is also a survivor, *see* Complaint at para. 43, and it never signed any alleged arbitration agreement. Thus, the Estate cannot be forced to arbitrate its loss of net accumulations claim (or any other claim). *See Sovereign Healthcare of Tampa, LLC v. Estate of Yarawasky*, 150 So. 3d 873, 878 (Fla. 2d DCA 2014) (quoting *Seifert v. U.S. Home Corp.*, 760 So. 2d 633, 636 (Fla. 1999)) (recognizing that a party may not “be forced to submit a dispute to arbitration that the party did not intend and agree to arbitrate.”). Finally, even assuming *arguendo* that Mr. Piccolo consented to the arbitration agreements in his individual capacity, he has not, nor could he assert any individual claims in this lawsuit. Under Florida's Wrongful Death Act, a wrongful death action can only be brought by the decedent's personal



representative, who recovers damages for the benefit of the estate and any survivors. *See Fla. Stat. § 768.20.*<sup>9</sup>

In the context of nursing home cases, Florida courts have repeatedly held that a resident's estate will not be bound by an arbitration agreement signed by a spouse or other family member in their individual capacity. *See Sovereign Healthcare of Tampa, LLC v. Estate of Yarawsky, ex rel. Yarawsky*, 150 So. 3d 873 (Fla. 2d DCA 2014) (resident's estate was not bound by an arbitration provision in a nursing home residency agreement which had been signed by resident's wife in her individual capacity as the responsible party); *McKibbin v. Alterra Health Care Corp.*, 977 So. 2d 612, 613 (Fla. 2d DCA 2008) (holding that the resident's estate was "not bound to arbitrate because [the resident] did not sign the residency agreement that contained the arbitration agreement and her son, who signed the residency agreement, did not have the authority to bind [the resident] to arbitrate"); *Blankfeld v. Richmond Health Care, Inc.*, 902 So. 2d 296, 300–01 (Fla. 4th DCA 2005) (en banc) (holding that resident's estate was not bound by arbitration clause within admissions agreement because the agreement was signed by resident's son; resident's son was at best a health care proxy who could make only decisions related to healthcare and was not authorized to waive his mother's "right to trial by jury, to waive common law remedies, or to agree to modify statutory duties").

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<sup>9</sup> Florida courts, in holding that an estate and survivors are bound by a decedent's agreement to arbitrate, have noted that the nature of a wrongful death cause of action in Florida is derivative with the estate and heirs standing in the shoes of the decedent for purposes of enforcing agreements to arbitrate. *Laizure v. Avante at Leesburg, Inc.*, 109 So. 3d 752 (Fla. 2013); *see also Spivey v. Teen Challenge of Florida, Inc.*, 122 So. 3d 986 (Fla. 1<sup>st</sup> DCA 2013). Defendant is attempting to do the opposite by binding the estate to an arbitration agreement allegedly consented to by Mr. Piccolo in his individual capacity.

Thus, Defendant WDPR's motion should be denied because it cannot enforce an agreement that neither party to this action has signed and that the Estate of Tangsuan Kanokporn never signed.

**III. Assuming arguendo that an arbitration agreement consented to by Mr. Piccolo in his individual capacity could bind his wife's Estate or apply to his recovery as a survivor, there is no valid agreement to arbitrate between WDPR and Mr. Piccolo.**

**A. The Disney+ Subscriber Agreement does not constitute an agreement to arbitrate claims related to Mr. Piccolo wife's death.**

Plaintiff acknowledges the case law cited by WDPR in which "clickwrap" agreements containing waivers and arbitration clauses are routinely upheld by courts.<sup>10</sup> Furthermore, assuming the statements in Sami Morgan's Declaration are true, the Disney+ Subscriber Agreement would constitute a "clickwrap" agreement, because Mr. Piccolo would have been required to click an "Agree & Continue" button stating: "By clicking 'Agree & Continue,' you agree to our Subscriber Agreement and acknowledge that you have read our Privacy Policy." *See* Exhibit C. Furthermore the "Subscriber Agreement" and "Privacy Policy" were underlined and were in blue font to indicate that they were clickable hyperlinks. *Id.*

However, a review of the Disney+ Subscriber Agreement establishes that Mr. Piccolo could not agree to arbitrate claims related to his wife's death by clicking "Agree & Continue." The arbitration provision in the Disney+ Subscriber Agreement limits the definition of "dispute" to controversies concerning the Disney+ Service and the Disney+ Subscriber Agreement:

"Dispute" includes any dispute, action, or other controversy, whether based on past, present, or future events, between you and us concerning the Disney+ Service, ESPN+ Service, or this Agreement, whether in contract, tort, warranty, statute, regulation, or other legal or equitable basis. *See* Exhibit D.

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<sup>10</sup> Clickwrap agreements require the user to affirmatively click or check a box indicating agreement with terms and conditions which are disclosed on the website or provided in a conspicuous hyperlink. *See Vitacost.com, Inc. v. McCants*, 210 So. 3d 761, 762 (Fla. 4th DCA 2017).

Furthermore, the Disney+ Service is defined by the Subscriber Agreement to include:

“... the Disney+ website, application and associated content and services.”

There is simply no reading of the Disney+ Subscriber Agreement which would support the notion that Mr. Piccolo agreed to arbitrate claims arising from injuries sustained by his wife at a restaurant located on premises owned by a Disney theme park or resort which ultimately led to her death. In making this argument, Plaintiff is not requesting this Court to determine whether an arbitrable issue exists, which WDPR contends must be determined by the arbitrator pursuant to the agreement. Plaintiff is merely citing the Agreement's definition of dispute for the proposition that there was no agreement to arbitrate any claims other than those arising from the Disney+ service. There was simply no meeting of the minds, and it is this Court which must determine whether a valid agreement to arbitrate exists.<sup>11</sup>

Furthermore, the Disney+ Subscriber Agreement was only between Mr. Piccolo and Disney+, not with WDPR or any other Disney Affiliates. The Agreement states:

Disney DTC LLC (“Disney+”) and BAMTech, LLC (“ESPN+”)(collectively, “we”, “us” “our”) welcome you to the Disney+ Service and/or ESPN+ Service.<sup>12</sup>  
*See Exhibit D.*

Because WDPR is not a signatory to the Disney+ Subscriber Agreement, it cannot enforce the arbitration provision contained therein. Generally, a non-signatory to an arbitration agreement

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<sup>11</sup> The Florida Supreme Court has acknowledged there is some overlap in the analysis of whether a valid written agreement to arbitrate exists and whether an arbitrable issue exists, noting: “[w]e recognize that the issue could be framed in terms of whether a valid written agreement to arbitrate exists, or alternatively, whether the arbitration provision in question covers the tort action filed here. Fortunately, we believe, the analysis to resolve either question is essentially the same. It is something of a chicken and egg situation as to which comes first.” *See Seifert v. U.S. Home Corp.*, 750 So. 2d 633, 636 at FN2 (Fla. 1999).

<sup>12</sup> In contrast the Disney Terms of Use expressly identifies Disney DTC LLC's “affiliates and subsidiaries” as parties to whom the agreement applies. *See Exhibit E.*

cannot compel a signatory to submit to arbitration. *Lash & Goldbert LLP v. Clarke*, 88 So. 3d 426, 427-28 (Fla. 4<sup>th</sup> DCA 2012); *Roman v. Atl. Coast Constr. & Dev., Inc.*, 44 So. 3d 222, 224 (Fla. 4<sup>th</sup> DCA 2010). There are limited exceptions to this rule where “a non-signatory agent can compel arbitration ‘when the claims relate directly to the contract and the signatory is relying on the contract to assert its claims against the non-signatory’” and where a signatory to the contract containing the arbitration clause alleges substantially interdependent and concerted misconduct by both the non-signatory and one or more of the signatories. *See Roman*, 44 So. 3d at 224; *see also Kolsky v. Jackson Square, LLC*, 28 So. 3d 965, 969 (Fla. 3<sup>d</sup> DCA 2010); *Rolls–Royce PLC v. Royal Caribbean Cruises LTD.*, 960 So. 2d 768, 771 (Fla. 3<sup>d</sup> DCA 2007); *Armas v. Prudential Secs., Inc.*, 842 So. 2d 210, 212 (Fla. 3<sup>d</sup> DCA 2003). These exceptions do not apply here. First, as noted above, Plaintiff’s claims do not directly relate to any term or provision of the Disney+ Subscriber Agreement nor does Plaintiff rely on the contract to assert his claims against WDPR. Furthermore, Plaintiff does not allege any substantially interdependent and concerted misconduct by both the non-signatory (WDPR) and one or more of the signatories (Disney DTC LLC (“Disney+”) and BAMTech, LLC (“ESPN+”). Moreover, there is simply no nexus whatsoever between an agreement to watch television programming and the death of Ms. Tangsuan.

**B. The Disney Terms of Use to which Mr. Piccolo allegedly agreed when he created a Disney+ account constitute an unenforceable “browsewrap” agreement because it was not conspicuous enough to provide notice to consumers.**

Florida courts have recognized two main types of internet contracts, clickwrap agreements and browsewrap agreements. *MetroPCS Commc'ns, Inc. v. Porter*, 273 So. 3d 1025, 1028 (Fla. 3<sup>d</sup> DCA 2018) (citing *Vitacost.com, Inc. v. McCants*, 210 So. 3d 761, 762 (Fla. 4<sup>th</sup> DCA 2017)). “A ‘clickwrap’ agreement occurs when a website directs a purchaser to the terms and conditions of

the sale and requires the purchaser to click a box to acknowledge that they have read those terms and conditions.” *Id.* (quoting *Vitacost*, 210 So. 3d at 762). “A ‘browsewrap’ agreement occurs when a website merely provides a link to the terms and conditions and does not require the purchaser to click an acknowledgement during the checkout process. The purchaser can complete the transaction without visiting the page containing the terms and conditions.” *Id.* (quoting *Vitacost*, 210 So. 3d at 762).

Courts generally enforce clickwrap agreements. *Vitacost*, 210 So. 3d at 762. However, browsewrap agreements will only be enforced when the purchaser has actual knowledge of the terms and conditions, or when the hyperlink to the terms and conditions is conspicuous enough to put a reasonably prudent person on inquiry notice. *MetroPCS*, 273 So. 3d at 1028 (citing *Vitacost*, 210 So. 3d at 762). For example, in *Vitacost*, a case involving enforcement of an arbitration agreement connected to an internet sale of dietary supplements which allegedly caused injury, the Court refused to enforce a browsewrap agreement that was at the very bottom of a webpage and could only be seen if the purchaser first scrolled through multiple pages of products to reach the bottom of the screen. *Vitacost*, 210 So. 3d at 763; *see also*, *Goldstein v. Fandango Media, LLC*, No. 9:21-CV-80466-RAR, 2021 WL 6617447, at \*3 (S.D. Fla. July 27, 2021)(refusing to enforce arbitration clause where hyperlink to terms and conditions were placed below the button to complete purchase in question rather than above, noting that consumers could not be expected to read below the conspicuous “purchase” button and finding that the hyperlink’s font size and inconspicuous typeface did not provide sufficient notice); *Tejon v. Zeus Networks, LLC*, No. 24-CV-20498-PCH, 2024 WL 1293757, at \*3 (S.D. Fla. Mar. 26, 2024)(browsewrap agreement set out through hyperlink during process for a user's creation of a subscription to a website offering

pre-recorded videos, which included an arbitration provision, was not enforceable because it did not put user on inquiry notice of terms and conditions where the hyperlink and related text were both in light gray font, not blue, and the hyperlink was underlined but not displayed in all capital letters, and hyperlink was placed beneath, rather than above, the two large bright red subscription buttons).

If a hyperlink that is found at the bottom of a webpage or which is placed beneath a “purchase” or “subscription” button has been found by courts to be too inconspicuous to provide inquiry notice, then the Disney Terms of Use which were not referenced on the Disney+ registration page nor supplied in a conspicuous hyperlink, but were instead buried within the supplied hyperlink to the Disney+ Subscriber Agreement, certainly cannot provide notice.

According to the Declaration of Sami Morgan, the Disney+ Registration Acknowledgment described the conditions to which the user was assenting as follows: “By clicking ‘Agree & Continue,’ you agree to our Subscriber Agreement and acknowledge that you have read our Privacy Policy.” *See* Exhibit C, at ¶6. Both the terms “Subscriber Agreement” and “Privacy Policy” were underlined and were in blue font to indicate that they were clickable hyperlinks. *Id.* Importantly, by WDPR’s own admission, the acknowledgement Mr. Piccolo would have agreed to by clicking “Agree & Continue,” made absolutely no mention of the Disney Terms of Use and provided no hyperlink to the Disney Terms of Use. *Id.* It only mentioned and provided links to the “Subscriber Agreement” and “Privacy Policy.” Thus, Mr. Piccolo would have had no notice, actual or otherwise, of the Disney Terms of Use. The hyperlink to the Disney Terms of Use was buried within the middle of a paragraph half-way down the first page of the Disney+ Subscriber

Agreement,<sup>13</sup> which itself was a hyperlink in the Disney+ registration webpage. An unreferenced hyperlink buried within another hyperlinked document does not constitute notice. Mr. Piccolo simply did not agree to the Disney Terms of Use on behalf of himself, and certainly not on behalf of his wife or her estate, when he clicked 'Agree & Continue,' on the Disney+ registration webpage, which by WDPR's own admission, would have only acknowledged his assent to be bound by the Disney+ Subscriber Agreement and Privacy Policy, not the Disney Terms of Use, which were neither mentioned nor hyperlinked on the Disney+ registration page.

**C. Even assuming arguendo that Mr. Piccolo is bound by the Disney Terms of Use, the arbitration agreement contained therein cannot be enforced because it conflicts with the My Disney Experience Terms and Conditions.**

Even assuming that Mr. Piccolo or his wife's estate is bound by the Disney Terms of Use, the arbitration agreement contained therein cannot be enforced because it directly conflicts with the My Disney Experience Terms and Conditions, rendering the agreements ambiguous and unenforceable. The My Disney Experience Terms and Conditions do not contain an arbitration provision and expressly acknowledge the right of the parties to file lawsuits:

You agree that any claim, action or lawsuit (collectively, "Action") arising out of these Terms, reservations and bookings, and/or all packages, products and services provided in connection with the reservations and bookings (including without limitation, components such as park admissions, RF Devices, entitlements to access Lightning Lane entrances, photos and other media, and room accommodations) (collectively, "Terms, Reservations and Products") must be filed and maintained exclusively in any court in Orange County, Florida having subject matter jurisdiction. You also hereby submit to the personal jurisdiction of such courts for the purposes of litigating any such Action. You agree these Terms, Reservations and Products shall be governed by and construed in accordance with the laws of the State of Florida, without giving effect to any principles of conflicts of law.

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<sup>13</sup> Courts have noted that hyperlinked text must be sufficiently set apart from the surrounding text. *See Berman v. Freedom Financial Network, LLC*, 30 F. 4<sup>th</sup> 849, 857 (9<sup>th</sup> Cir. 2022).

This provision governing lawsuits, which requires lawsuits to be governed by Florida law and filed in Orange County Florida, directly conflicts with the arbitration clause in the Disney Terms of Use, which provides for arbitration of all disputes and requires the parties to agree to submit to the exclusive jurisdiction of the federal or state courts located in either Los Angeles, California or the borough of Manhattan, New York, New York:

You and Disney DTC agree to arbitrate, as provided below, all disputes between you (including any related disputes involving The Walt Disney Company or its affiliates), that are not resolved informally, except disputes relating to the ownership or enforcement of intellectual property rights. "Dispute" includes any dispute, action, or other controversy, whether based on past, present, or future events, between you and us concerning the Disney Services or this Agreement, whether in contract, tort, warranty, statute, regulation, or other legal or equitable basis. ....

Arbitration may be conducted in person, through the submission of documents, by phone, or online. Proceedings that cannot be conducted through the submission of documents, by phone, or online, will take place in either Los Angeles, California or the borough of Manhattan, New York, New York, whichever is more convenient for you; provided, however, that if circumstances prevent you from traveling to Los Angeles or New York, JAMS may hold an in-person hearing in your hometown area. You and Disney DTC agree to submit to the exclusive jurisdiction of the federal or state courts located in either Los Angeles, California or the borough of Manhattan, New York, New York, whichever is more convenient for you, in order to compel arbitration, to stay proceedings pending arbitration, or to confirm, modify, vacate, or enter judgment on the award entered by the arbitrator.

Furthermore, with respect to claims not subject to arbitration, the Disney Terms of Use provide that venue and jurisdiction lies in New York.

you agree that any action at law or in equity arising out of or relating to these terms or the Disney Services that is not subject to arbitration shall be filed, and that venue properly lies, only in the state or federal courts located in the borough of Manhattan, New York, New York, United States of America and you consent and submit to the personal jurisdiction of such courts for the purposes of litigating such action.



These competing and irreconcilable dispute resolution provisions, which contemplate different remedies and the application of different laws, are inherently ambiguous and establish that there was no meeting of the minds, and therefore no valid agreement to arbitrate exists. *Basulto v. Hialeah Automotive*, 141 So. 3d 1145, 1156, 1156 (Fla. 2014) is instructive. In *Basulto*, the Florida Supreme Court approved a trial court's finding that no valid arbitration agreement existed where there were irreconcilable conflicts between multiple jury waivers and arbitration clauses signed by consumers at a car dealership. Those conflicts were described by the trial court as follows:

The Court concludes as a matter of law that no valid agreement to arbitrate exists in this case. This conclusion is based on the Court's finding of fact that the various jury waiver and arbitration clauses which [the buyers] were required to sign were conflicting in their essential provisions and, taken together, provided for three separate and distinct means of dispute resolution. One of the clauses at issue provided for jury waiver and (presumably) trial in a court of law. Another provision required arbitration by a single arbitrator. Another provision required arbitration by a panel of three arbitrators. In addition, the methods for selecting arbitrators were conflicting as well as what law or procedure would govern the arbitration proceeding. Each of the competing dispute resolution provisions at issue contemplates the enforcement of a different remedy whose terms and conditions are irreconcilable with the terms and conditions of each of the other conflicting provisions. This Court accordingly concludes as a matter of law that there was no meeting of the minds with respect to the terms by which the [the dealership] intended the parties to be bound. There is accordingly no valid agreement for this Court to enforce.

*Id.* at 1150.

More importantly, the My Disney Experience Terms and Conditions expressly provide that they will apply in the event they directly conflict with the Disney Terms of Use:

If you do not agree to these Terms, you may not use the Site/App. These Terms apply in addition to, and not in lieu of, the Disney Terms of Use found here: <http://disneytermsofuse.com/>. **In the event these Terms directly conflict with the applicable foregoing Disney Terms of Use, these Terms will prevail.** (Emphasis supplied).

The fact that the My Disney Experience Terms and Conditions apply in the event they conflict with the Disney Terms of Use is confirmed by the Disney Terms of Use.

Supplemental terms and conditions may apply to some Disney Services, such as rules for a particular competition, content, software, application, service or other activity, .... Any supplemental terms and conditions are in addition to these terms and, in the event of a conflict, the supplemental terms will prevail over these terms.

**IV. A Valid Agreement to Arbitrate Does Not Exist Because the Agreement(s) Are Procedurally and Substantively Unconscionable.**

Unconscionable and unfair arbitration clauses, like unconscionable contracts, are unenforceable. *See Steinhardt v. Rudolph*, 422 So. 2d 884 (Fla. 3d DCA 1982); *Palm Beach Motor Cars Limited, Inc. v. Jeffries*, 885 So. 2d 990, 992 (Fla. 4th DCA 2004). To support a determination of unconscionability, however, the court must find that the contract is both procedurally and substantively unconscionable. *See Powertel Inc. v. Bexley*, 743 So. 2d 570 (Fla. 1st DCA 1999); *Belcher v. Kier*, 558 So. 2d 1039 (Fla. 2d DCA 1990); *Complete Interiors v. Behan*, 558 So. 2d 48 (Fla. 5th DCA 1990).

The procedural component of unconscionability relates to the manner in which the contract was entered, and it involves consideration of such issues as the relative bargaining power of the parties and their ability to know and understand the disputed contract terms. Procedural unconscionability requires consideration of whether there “was an absence of meaningful choice on the part of one of the parties.” *Steinhart v. Rudolph*, 422 So. 2d 884, 889 (Fla. 3d DCA 1982). Thus, the court focuses on whether the parties had a reasonable opportunity to understand the terms of the contract and had a meaningful choice in accepting it. *Prieto v. Healthcare and Retirement Corp. of America*, 919 So. 2d 531, 532-33 (Fla. 3d DCA 2005); *see also Blankfeld v. Richmond Health Care, Inc.*, 902 So. 2d 296, 299 (Fla. 4th DCA 2005). Meaningful choice is determined by

all the surrounding circumstances. *Fotomat Corp. v. Chanda*, 464 So. 2d 626, 629 (Fla. 5th DCA 1985). For example, the court might find that a contract is procedurally unconscionable if important terms were “hidden in a maze of fine print and minimized by deceptive sales practices.” *Powertel*, 743 So. 2d at 574 (quoting *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445, 449 (D.C. Cir. 1965)).

In contrast, the substantive component focuses on the agreement itself. As the court explained in *Kohl v. Bay Colony Club Condominium, Inc.*, 398 So. 2d 865, 868 (Fla. 4th DCA 1981), a case is made out for substantive unconscionability by showing that “the terms of the contract are unreasonable and unfair.” *Id.* at 868. A substantively unconscionable agreement is one that “no man in his senses and not under delusion would make on the one hand, and as no honest and fair man would accept on the other.” *See AMS Staff Leasing, Inc. v. Taylor*, 158 So. 3d 682, 688 (Fla. 4<sup>th</sup> DCA 2015). Substantive unconscionability considers whether the contract terms themselves are so outrageously unfair as to shock the judicial conscience. *See FL–Carrollwood Care, LLC v. Gordon*, 72 So.3d 162, 165 (Fla. 2d DCA 2011).

**A. The Arbitration Agreement/s are procedurally unconscionable.**

There is no bright-line test for unconscionability. Rather, the court looks at a number of relevant factors in considering whether a contract is procedurally unconscionable. *See Gainesville Health Care Center, Inc. v. Weston*, 857 So. 2d 278, 284 (Fla. 1st DCA 2003). The factors that have been recognized in Florida case law, and which support a finding of procedural unconscionability herein, include the lack of any explanation regarding the arbitration clause, the failure to provide Plaintiffs an opportunity to review the arbitration clause, and the extent to which the agreement is a contract of adhesion.

There is no showing that Mr. Piccolo was given any explanation of the arbitration clauses in The Disney+ Subscriber Agreement. Moreover, there is no showing that the arbitration clauses would apply to the death of Ms. Tangsuan. The so-called binding arbitration provision was merely contained in a link. With respect to the Disney Terms of Use, the link was not even referenced or hyperlinked on the Disney+ registration page. It was buried within another document that was hyperlinked. Once the links to either of the agreements were clicked, the links merely direct the customer to agreements which contained the binding arbitration provision amongst many pages of other terms and conditions. There was no mention or warning on the internet screen of the Disney+ registration page noting that the terms contained any binding arbitration provision or required a waiver of the consumer's legal rights.

In *Palm Beach Motor Cars Ltd., Inc. v. Jeffries*, 885 So. 2d 990 (Fla. 4th DCA 2004), Jeffries sued Motor Cars for selling her a defective car. Motor Cars filed a motion to compel arbitration based upon an arbitration clause included in "barely readable print" on the back of the sales contract. The Fourth District Court of Appeal affirmed a finding of procedural unconscionability, since the sales staff did not alert Jeffries to the existence of the arbitration clause or ask her to initial next to the clause. 885 So. 2d at 992-93; *see also Prieto v. Healthcare and Retirement Corp. of America*, 919 So. 2d 531, 533 (Fla. 3d DCA 2005) (fact that arbitration agreement was included in a package of numerous documents which plaintiff was asked to sign, and the terms of the agreement were never explained to her, proves procedural unconscionability). Undeniably, there is no way Plaintiff had a reasonable opportunity to understand the terms of the binding arbitration provision or any meaningful choice in accepting it.

The fact that the contract involved in this case is an adhesion contract should factor into the unconscionability analysis. *Powertel* demonstrates the significance of uneven bargaining power in the unconscionability analysis. “Although not dispositive of this point, it is significant that the arbitration clause is an adhesion contract. Generally, an adhesion contract is defined as a ‘standardized contract form offered to consumers of goods and services on essentially [a] ‘take it or leave it’ basis without affording [the] consumer [a] realistic opportunity to bargain and under such conditions that [the] consumer cannot obtain [the] desired product or services except by acquiescing in the form contract.’” *Powertel*, 743 So. 2d at 574 (quoted in *Fonte v. AT&T Wireless Servs., Inc.*, 903 So. 2d 1019, 1025 n.2 (Fla. 4th DCA 1995)). The webpage box allegedly clicked on by the Plaintiff is clearly a type of pre-printed form. A consumer has no ability to “x” out the arbitration provision, nor does the form contract provide for any bargaining by the consumer. These circumstances further support a finding of procedural unconscionability.<sup>14</sup>

**B. The Arbitration Agreement(s) are substantively unconscionable.**

The binding arbitration provision in the Disney Terms of Use purports to apply to any dispute a consumer has with any of Disney's affiliates or subsidiaries for all time.<sup>15</sup> The notion that terms agreed to by a consumer when creating a Disney+ free trial account would forever bar that consumer's right to a jury trial in any dispute with any Disney affiliate or subsidiary, is so outrageously unreasonable and unfair as to shock the judicial conscience, and this Court should

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<sup>14</sup> Plaintiff acknowledges that other Florida cases make clear that having almost unilateral bargaining power, or using a pre-printed form, does not necessarily establish an adhesion contract or procedural unconscionability. *See Fonte v. AT&T Wireless Servs., Inc.*, 903 So. 2d 1019, 1026 (Fla. 4th DCA 2005). Plaintiff points to these circumstances as merely one of many factors establishing unconscionability.

<sup>15</sup> The Binding Arbitration provision in the Disney Terms of Use contains a survival clause which states: “The provisions of these terms which by their nature should survive the termination of these terms shall survive termination.” *See* Exhibit E.

not enforce such an agreement. In effect, WDPR is explicitly seeking to bar its 150 million Disney+ subscribers from ever prosecuting a wrongful death case against it in front of a jury even if the case facts have nothing to do with Disney+. The same can be said of the conflicting Disney Terms of Use and My Disney Experience agreements.

Additionally, the arbitration provisions WDPR seeks to enforce provide that arbitration will be administered in accordance with JAMS Mediation, Arbitration and ADR Services in accordance with JAMS Streamlined Arbitration Rules. The Streamlined Jams rules provide that the parties will only have 14 days to conduct discovery. “The Parties and the Arbitrator will make every effort to conclude the document and information exchange process within fourteen (14) calendar days after all pleadings or notices of claims have been received. The necessity of additional information exchange shall be determined by the Arbitrator based upon the reasonable need for the requested information” See Rule 13 at <https://www.jamsadr.com/rules-streamlined-arbitration>. Furthermore, the JAMS discovery protocols state: JAMS arbitrators strive to enhance the chances for limited, efficient discovery. See <https://www.jamsadr.com/arbitration-discovery-protocols>. The discovery protocols also note that deposition discovery in arbitration can become extremely expensive, wasteful and time-consuming if not carefully regulated. *Id.* Florida courts have held that an arbitration agreement which restricts access to discovery necessary to prove the plaintiff's case was substantively unconscionable. *Prieto, supra* 919 So. 2d at 533 (Fla. 3d DCA 2005).

WHEREFORE, for the reasons set forth above, this Court should enter an Order Denying Defendant, WALT DISNEY PARKS AND RESORTS U.S., INC.'s Motion to Compel Arbitration and Stay Case and requests that the Court award Plaintiffs reasonable fees and costs in having to respond to this motion.

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via E-Serve to all Counsel on the attached list, this 2<sup>nd</sup> day of August 2024.

*/s/ Brian R. Denney*

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IN THE CIRCUIT COURT OF THE NINTH  
JUDICIAL CIRCUIT IN AND FOR  
ORANGE COUNTY, FLORIDA

CASE NO:

JEFFREY J. PICCOLO as Personal  
Representative of the estate of KANOKPORN  
TANGSUAN, Deceased,

Plaintiff,

vs.

GREAT IRISH PUBS FLORIDA, Inc., a  
Florida corporation d/b/a RAGLAN ROAD  
IRISH PUB AND RESTAURANT and WALT  
DISNEY PARKS AND RESORTS U.S., Inc.,  
a Florida corporation d/b/a DISNEY  
SPRINGS,

Defendants.

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### **COMPLAINT**

COMES NOW the Plaintiff, JEFFREY J. PICCOLO as Personal Representative of the estate of KANOKPORN TANGSUAN, Deceased, and hereby sues the Defendants, GREAT IRISH PUBS FLORIDA, Inc., a Florida corporation d/b/a RAGLAN ROAD IRISH PUB AND RESTAURANT and WALT DISNEY PARKS AND RESORTS U.S., Inc., a Florida corporation d/b/a DISNEY SPRINGS, and alleges:

1. This is an action for damages which exceeds the sum of Fifty Thousand Dollars (\$50,000.00) and is being brought pursuant to the Florida Wrongful Death Act, Florida Statutes §768.16 — §768.26.

2. At all times material hereto, JEFFREY J. PICCOLO was legally married to KANOKPORN TANGSUAN.

Case No.:  
Complaint

3. JEFFREY J. PICCOLO was appointed the Personal Representative of the estate of KANOKPORN TANGSUAN in Orange County, Florida (hereinafter "THE ESTATE OF KANOKPORN TANGSUAN").

4. At all times material hereto, JEFFREY J. PICCOLO was and is a resident of the State of New York.

5. At all times material hereto, GREAT IRISH PUBS FLORIDA, Inc., d/b/a RAGLAN ROAD IRISH PUB AND RESTAURANT (hereinafter "RAGLAN ROAD"), was and is a Florida corporation duly organized and existing under the laws of the State of Florida with a principal place of business located in Orange County, Florida.

6. At all times material hereto, Defendant, RAGLAN ROAD, was and is conducting substantial business in the State of Florida and specifically, Orange County, Florida.

7. At all times material hereto, Defendant WALT DISNEY PARKS AND RESORTS U.S., INC. d/b/a DISNEY SPRINGS, (hereinafter "DISNEY") was and is a Florida corporation duly organized and existing under the laws of the State of Florida with a principal place of business located in Orange County, Florida.

8. At all times material hereto, Defendant, DISNEY, was and is conducting substantial business in the State of Florida and specifically, Orange County, Florida.

9. Upon information and belief, Defendant, DISNEY, was the owner and/or beneficial owner, and in possession, custody and control of the premises located at 1486 Buena Vista Drive, Orlando, Orange County, Florida 32830 known and marketed to the public as "Disney Springs."

Case No.:  
Complaint

10. Disney Springs is an outdoor dining, shopping and entertainment complex located at/on DISNEY property.

11. Upon information and belief, DISNEY had control over the menu of food offered, the hiring and/or training of the wait staff, and the policies and procedures as it pertains to food allergies at DISNEY SPRINGS restaurants, such as RAGLAN ROAD.

12. Upon information and belief, DISNEY and/or RAGLAN ROAD were responsible for the serving of food containing allergens to KANOKPORN TANGSUAN at RAGLAN ROAD.

13. DISNEY advertises and represents to the public that food allergies and/or the accommodation of persons with food allergies is a top priority at its parks and resorts, including DISNEY SPRINGS and that patrons/guests may consult with a chef or special diets trained Cast Member before placing an order, and at all times material, Plaintiff relied upon these representations in selecting DISNEY SPRINGS/RAGLAN ROAD for dinner.

14. DISNEY publicly promotes DISNEY SPRINGS as part of WALT DISNEY PARKS AND RESORTS U.S., INC., and at all times material, Plaintiff relied upon these representations in selecting DISNEY SPRINGS/RAGLAN ROAD for dinner.

15. RAGLAN ROAD advertises and represents to the public that food allergies and/or the accommodation of persons with food allergies is a top priority and that patrons/guests may consult with a chef or special diets trained Cast Member before placing an order, and at all times material, Plaintiff relied upon these representations in selecting DISNEY SPRINGS/RAGLAN ROAD for dinner.

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16. At all times material, KANOKPORN TANGSUAN was highly allergic to dairy and nuts.

17. Venue is proper in Orange County Circuit Court because the facts giving rise to this action occurred in Orange County, Florida.

**FACTS GIVING RISE TO THE ALLEGATIONS**

18. On or about the evening of October 5, 2023, KANOKPORN TANGSUAN, her spouse, JEFFREY PICCOLO and JEFFREY PICCOLO's mother, Jackie Piccolo, entered RAGLAN ROAD located within DISNEY SPRINGS for dinner.

19. KANOKPORN TANGSUAN and JEFFREY PICCOLO chose to eat at RAGLAN ROAD in DISNEY SPRINGS because they believed that DISNEY would have proper safeguards to protect patrons such as KANOKPORN TANGSUAN from food allergens. This belief was based upon representations made by DISNEY and RAGLAN ROAD.

20. At all times material, KANOKPORN TANGSUAN was a medical doctor at NYU Langone in New York and knew she had a severe allergy to dairy and nuts.

21. On October 5, 2023, KANOKPORN TANGSUAN and her family were seated at RAGLAN ROAD restaurant in DISNEY SPRINGS. When the waiter came to the table, KANOKPORN TANGSUAN and her husband, JEFFREY PICCOLO, advised the waiter that she had severe food allergies and required allergen free food.

22. KANOKPORN TANGSUAN and JEFFREY PICCOLO questioned the waiter about various items on the menu to confirm whether they had allergens in them or not.

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23. KANOKPORN TANGSUAN's waiter went to ask the chef whether certain foods could be made allergen free and then he returned to KANOKPORN TANGSUAN's table and confirmed that they could. He also guaranteed KANOKPORN TANGSUAN and JEFFREY PICCOLO that RAGLAN ROAD would prepare allergen free food for KANOKPORN TANGSUAN.

24. To be absolutely sure that allergen free food would be served, KANOKPORN TANGSUAN and JEFFREY PICCOLO questioned the waiter several more times to confirm the food KANOKPORN TANGSUAN was ordering was allergen free. The waiter unequivocally assured them that the food would be allergen free.

25. KANOKPORN TANGSUAN ordered the following items from the menu based on the waiter's guarantee that these food items would be allergen free: "Sure I'm Frittered (V)", "Scallop Forest", "This Shepherd Went Vegan (V)", and "Onion Rings".

26. When the waiter returned with KANOKPORN TANGSUAN's food, some of the items did not have allergen free flags in them and KANOKPORN TANGSUAN and JEFFREY PICCOLO once again questioned the waiter who, once again, guaranteed the food being delivered to KANOKPORN TANGSUAN was allergen free.

27. KANOKPORN TANGSUAN and her family consumed their meals at RAGLAN ROAD and at approximately 8:00 p.m., KANOKPORN TANGSUAN and Jackie Piccolo decided to go shopping at DISNEY SPRINGS while JEFFREY PICCOLO returned to their room with their leftover food.

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28. KANOKPORN TANGSUAN and Jackie separated to shop at different stores for a short while and at approximately 8:45 p.m., KANOKPORN TANGSUAN entered Planet Hollywood while suffering from a severe acute allergic reaction to the food served at RAGLAN ROAD.

29. KANOKPORN TANGSUAN began having severe difficulty breathing and collapsed to the floor.

30. 911 was called at approximately 8:46 p.m., and the dispatcher was advised by the 911 caller that KANOKPORN TANGSUAN was suffering from a severe allergic reaction and had emergently self-administered an epi-pen.

31. Meanwhile, Jackie Piccolo had attempted to call KANOKPORN TANGSUAN to meet back up with her, but KANOKPORN TANGSUAN did not answer.

32. Jackie Piccolo returned to the hotel to meet JEFFREY PICCOLO and during that time, Jackie Piccolo called KANOKPORN TANGSUAN again. This time, a person answered stating that KANOKPORN TANGSUAN was taken to a hospital and advised Jackie Piccolo to get to the hospital right away.

33. JEFFREY PICCOLO and Jackie Piccolo frantically rushed to the hospital where KANOKPORN TANGSUAN had been rushed to.

34. JEFFREY PICCOLO and Jackie Piccolo were put into a small room and were left wondering about KANOKPORN TANGSUAN's condition.

35. JEFFREY PICCOLO was later informed that his beloved wife, KANOKPORN TANGSUAN, had died.

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36. The medical examiner's investigation determined that KANOKPORN TANGSUAN's cause of death was as a result of anaphylaxis due to elevated levels of dairy and nut in her system.

**COUNT I**  
**NEGLIGENCE AGAINST GREAT IRISH PUBS FLORIDA, INC., A FLORIDA CORPORATION D/B/A RAGLAN ROAD IRISH PUB AND RESTAURANT**

37. Plaintiff adopts and re-alleges paragraphs one (1) through thirty-six (36) and all of their subparts as if fully set forth herein.

38. Defendant, RAGLAN ROAD, owed a duty of care to its invitees/guests to ensure that food that was designated as allergen free and/or food that was requested to be prepared allergen free, was in fact free from allergens that would cause death or serious physical harm to guests with food allergies, such as KANOKPORN TANGSUAN, after being advised that she had a severe allergy to dairy and nuts.

39. KANOKPORN TANGSUAN and JEFFREY PICCOLO relied upon the RAGLAN ROAD's employees, agents, apparent agents, servants, waiters and/or staff's guarantee that the food served to KANOKPORN TANGSUAN at RAGLAN ROAD was allergen free.

40. At all times, RAGLAN ROAD is liable for the negligence of its employee cast-members, waiters, waitresses, chefs, managers, agents and/or apparent agents including, but not limited to, the employee cast-members, waiters, waitresses, chefs, and/or managers serving KANOKPORN TANGSUAN and her family.

41. Notwithstanding the duties owed, RAGLAN ROAD, breached its duties to KANOKPORN TANGSUAN, deceased, in the following ways:

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- a. RAGLAN ROAD failed to educate, train, and/or instruct its employees, waiters, waitresses, chefs, managers, workers, and/or cast-members to make sure food, indicated as allergen free and/or requested to be made allergen free, was in fact free of allergens;
- b. RAGLAN ROAD's employees, waiters, waitresses, chefs, managers, workers, and/or cast-members failed to warn KANOKPORN TANGSUAN that there were allergens in the food she ordered, prior to her consuming it;
- c. RAGLAN ROAD's employees, waiters, waitresses, chefs, managers, workers, and/or cast-members failed to prepare KANOKPORN TANGSUAN's food free of allergens as they said they would, as she and her husband requested multiple times;
- d. RAGLAN ROAD's employees, waiters, waitresses, chefs, managers, workers, and/or cast-members failed to prepare KANOKPORN TANGSUAN's food free of allergens as she and her husband requested multiple times, and
- e. RAGLAN ROAD's employees, waiters, waitresses, chefs, managers, workers, and/or cast-members failed to follow its own policies and procedures with respect to food preparation and/or food service at their restaurant.

42. As a direct and proximate result of the negligence of Defendant, RAGLAN ROAD, KANOKPORN TANGSUAN died.

43. As a direct and proximate result of the negligence of Defendant, RAGLAN ROAD, the estate of KANOKPORN TANGSUAN, and her survivor, JEFFREY PICCOLO, have incurred all the damages provided by Florida Wrongful Death Act, §768.21, Florida Statutes. The survivor of the estate of KANOKPORN TANGSUAN is JEFFREY PICCOLO, her spouse. The damages suffered include, but not limited to:

- a. mental pain and suffering, both past and future;



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- b. lost support and services, both past and future;
- c. loss of companionship and protection
- d. funeral expenses;
- e. loss of net accumulations to the estate, both past and future;
- f. medical expenses;
- g. loss of income.

WHEREFORE, Plaintiff, JEFFREY J. PICCOLO, as Personal Representative of the estate of KANOKPORN TANGSUAN, deceased, demands judgment for damages against Defendant, GREAT IRISH PUBS FLORIDA, Inc., a Florida corporation d/b/a RAGLAN ROAD IRISH PUB AND RESTAURANT, in excess of \$50,000.00 plus costs, post-judgment interest, and further demands trial by jury on all issues so triable.

**COUNT II**  
**NEGLIGENCE AGAINST WALT DISNEY PARKS AND RESORTS U.S., INC., A**  
**FLORIDA CORPORATION D/B/A DISNEY SPRINGS**

44. Plaintiff adopts and re-alleges paragraphs one (1) through thirty-six (36) and all of their subparts as if fully set forth herein.

45. Upon information and belief, Defendant, DISNEY, was the owner and/or beneficial owner, and in possession, custody and control of the premises located at 1486 Buena Vista Drive, Orlando, Orange County, Florida 32830 known and marketed to the public as “Disney Springs”.

46. Upon information and belief, DISNEY had control and/or right of control over the menu of food offered, the hiring and/or training of the wait staff, and the policies and procedures as it pertains to food allergies at DISNEY SPRINGS restaurants, such as RAGLAN ROAD.

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47. KANOKPORN TANGSUAN and JEFFREY PICCOLO relied upon the DISNEY and/or RAGLAN ROAD's employees, agents, apparent agents, servants, waiters and/or staff's guarantee that the food served to KANOKPORN TANGSUAN at RAGLAN ROAD was allergen free.

48. Defendant, DISNEY, owed a duty of care to its invitees/guests to ensure that food, that was designated as allergen free and/or food that was requested to be prepared allergen free, was in fact free from allergens that would cause death or serious physical harm to guests with food allergies, such as KANOKPORN TANGSUAN.

49. At all times, DISNEY is liable for the negligence of its employee cast-members, waiters, waitresses, chefs, managers, agents, and/or apparent agents at RAGLAN ROAD including, but not limited to, the employee cast-members, waiters, waitresses, chefs, and/or managers serving KANOKPORN TANGSUAN and her family.

50. Notwithstanding the duties owed, DISNEY, breached its duties to KANOKPORN TANGSUAN, deceased, in the following ways:

- a. DISNEY failed to educate, train, and/or instruct its employees, waiters, waitresses, chefs, managers, workers, and/or cast-members to make sure food, indicated as allergen free on the menu and/or food requested to be made allergen free, was in fact free of allergens;
- b. DISNEY's employees, waiters, waitresses, chefs, managers, workers, and/or cast-members failed to warn KANOKPORN TANGSUAN that there were allergens in the food she ordered, prior to her consuming it;
- c. DISNEY's employees, waiters, waitresses, chefs, managers, workers, and/or cast-members failed to prepare KANOKPORN

TANGSUAN's food free of allergens as they said they would, as she and her husband requested multiple times;

- d. DISNEY's employees, waiters, waitresses, chefs, managers, workers, and/or cast-members failed to prepare KANOKPORN TANGSUAN's food free of allergens as she and her husband requested multiple times, and
- e. DISNEY's employees, waiters, waitresses, chefs, managers, workers, and/or cast-members failed to follow its own policies and procedures with respect to food preparation and/or food service at RAGLAN ROAD.

51. As a direct and proximate result of the negligence of Defendant, DISNEY, KANOKPORN TANGSUAN died.

52. As a direct and proximate result of the negligence of Defendant, DISNEY, the estate of KANOKPORN TANGSUAN, and her survivor, JEFFREY PICCOLO, have incurred all the damages provided by Florida Wrongful Death Act, §768.21, Florida Statutes. The survivor of the estate of KANOKPORN TANGSUAN is JEFFREY PICCOLO, her spouse. The damages suffered include, but not limited to:

- a. mental pain and suffering, both past and future;
- b. lost support and services, both past and future;
- c. loss of companionship and protection;
- d. funeral expenses;
- e. loss of net accumulations to the estate, both past and future;
- f. medical expenses;
- g. loss of income.

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WHEREFORE, Plaintiff, JEFFREY J. PICCOLO, as Personal Representative of the estate of KANOKPORN TANGSUAN, deceased, demands judgment for damages against Defendant, WALT DISNEY PARKS AND RESORTS U.S., Inc., a Florida corporation d/b/a DISNEY SPRINGS, in excess of \$50,000.00 plus costs, post-judgment interest, and further demands trial by jury on all issues so triable.

**COUNT III**  
**NEGLIGENCE CLAIM FOR AGENCY AGAINST WALT DISNEY PARKS AND RESORTS U.S., INC., A FLORIDA CORPORATION D/B/A DISNEY SPRINGS**

53. Plaintiff adopts and re-alleges paragraphs one (1) through forty-three (43) and all of their subparts as if fully set forth herein.

54. Defendant, DISNEY controlled the actions and/or had the right to control the actions of Defendant, RAGLAN ROAD's employees, waiters, waitresses, chefs, managers, workers, and/or cast-members, as follows:

- a. By controlling or having the right to control the menu of food items served at RAGLAN ROAD;
- b. By controlling or having the right to control the hiring and/or training of RAGLAN ROAD's employees, waiters, waitresses, chefs, managers, workers, and/or cast-members;
- c. By controlling or having the right to control the protocols and/or policies and procedures as it relates to the serving of food containing allergens at the RAGLAN ROAD restaurant;
- d. By controlling or having the right to control the protocols and/or policies and procedures as it relates to patrons/customers requesting food from the menu to be made/cooked without allergens at the RAGLAN ROAD restaurant, and

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- e. By controlling or having the right to control Defendant, RAGLAN ROAD's adherence to DISNEY's policies and procedures.

55. At all times material hereto, Defendant DISNEY, by and through its agents, servants, and/or employees, owed a duty to KANOKPORN TANGSUAN, to serve her food that did not contain allergens, as she and her husband requested multiple times.

56. Notwithstanding the duty undertaken, Defendant, DISNEY, by and through its agents working at RAGLAN ROAD located in DISNEY SPRINGS, did or failed to do one or more of the following acts, inter alia:

- a. DISNEY failed to educate, train, and/or instruct its agents at RAGLAN ROAD, including but not limited to, employees, waiters, waitresses, chefs, managers, workers, and/or cast-members to make sure food, indicated as allergen free on the menu and/or food requested to be made allergen free, was in fact free of allergens;
- b. DISNEY's agents, including but not limited to, employees, waiters, waitresses, chefs, managers, workers, and/or cast-members at RAGLAN ROAD failed to warn KANOKPORN TANGSUAN that there were allergens in the food she ordered, prior to her consuming it;
- c. DISNEY's agents, including but not limited to, employees, waiters, waitresses, chefs, managers, workers, and/or cast-members at RAGLAN ROAD failed to prepare KANOKPORN TANGSUAN's food free of allergens as they said they would, as she and her husband requested multiple times;
- d. DISNEY's agents, including but not limited to, employees, waiters, waitresses, chefs, managers, workers, and/or cast-members at RAGLAN ROAD failed to prepare KANOKPORN TANGSUAN's food free of allergens as she and her husband requested multiple times, and
- e. DISNEY's agents, including but not limited to, employees, waiters, waitresses, chefs, managers, workers, and/or cast-members at

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RAGLAN ROAD failed to follow its own policies and procedures with respect to food preparation and/or food service at RAGLAN ROAD.

57. As a direct and proximate result of the negligence of Defendant, DISNEY, KANOKPORN TANGSUAN died.

58. As a direct and proximate result of the negligence of Defendant, DISNEY, the estate of KANOKPORN TANGSUAN, and her survivor, JEFFREY PICCOLO, have incurred all the damages provided by Florida Wrongful Death Act, §768.21, Florida Statutes. The survivor of the estate of KANOKPORN TANGSUAN is JEFFREY PICCOLO, her spouse. The damages suffered include, but not limited to:

- a. mental pain and suffering, both past and future;
- b. lost support and services, both past and future;
- c. loss of companionship and protection;
- d. funeral expenses;
- e. loss of net accumulations to the estate, both past and future;
- f. medical expenses;
- g. loss of income.

WHEREFORE, Plaintiff, JEFFREY J. PICCOLO, as Personal Representative of the estate of KANOKPORN TANGSUAN, deceased, demands judgment for damages against Defendant, WALT DISNEY PARKS AND RESORTS U.S., Inc., a Florida corporation d/b/a DISNEY SPRINGS, in excess of \$50,000.00 plus costs, post-judgment interest, and further demands trial by jury on all issues so triable.

**COUNT IV**  
**NEGLIGENCE CLAIM FOR APPARENT AGENCY AGAINST WALT**  
**DISNEY PARKS AND RESORTS U.S., INC., A FLORIDA**  
**CORPORATION D/B/A DISNEY SPRINGS**

59. Plaintiff adopts and re-alleges paragraphs one (1) through thirty-six (36) and thirty-seven (37) through forty-three (43) and all of their subparts as if fully set forth herein.

60. At all times material, Defendant DISNEY had a duty independently, and by and through its apparent agents to provide food without allergens to KANOKPORN TANGSUAN, as she and her husband requested multiple times.

61. Defendant DISNEY is at all times vicariously liable for the negligent acts of its apparent agents, including by not limited to Defendant RAGLAN ROAD's employees, waiters, waitresses, chefs, managers, workers, and/or cast-members acting within the course and scope of their apparent agency.

62. At all material times, Defendant DISNEY acknowledged and represented that RAGLAN ROAD's employees, waiters, waitresses, chefs, managers, workers, and/or cast-members would act on behalf of Defendant DISNEY.

63. Defendant DISNEY made aforesaid acknowledgements and representations on their website regarding their commitment to providing allergen free food and/or accommodating patrons/customers with allergen free food at all of DISNEY's properties, including DISNEY SPRINGS, where the RAGLAN ROAD restaurant resides.

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64. Defendant, RAGLAN ROAD's employees, waiters, waitresses, chefs, managers, workers, and/or cast-members served food on or about the premises exclusively owned, maintained and/or controlled by Defendant, DISNEY.

65. Defendant DISNEY's actions and expressions caused or allowed KANOKPORN TANGSUAN and JEFFREY PICCOLO to believe that the Defendant RAGLAN ROAD's employees, waiters, waitresses, chefs, managers, workers, and/or cast-members were an apparent agent(s) of Defendant DISNEY.

66. KANOKPORN TANGSUAN and JEFFREY PICCOLO relied upon the representations of Defendant, DISNEY regarding the safety of the food at DISNEY SPRINGS/RAGLAN ROAD and chose to eat at RAGLAN ROAD in DISNEY SPRINGS based upon those representations.

67. KANOKPORN TANGSUAN and JEFFREY PICCOLO relied upon the representations of Defendant DISNEY such that the Defendant DISNEY created the appearance of an apparent agency relationship with the Defendant RAGLAN ROAD and its employees, waiters, waitresses, chefs, managers, workers, and/or cast-members.

68. KANOKPORN TANGSUAN and JEFFREY PICCOLO's reliance on Defendant DISNEY's representations caused detriment and/or death as follows:

- a. KANOKPORN TANGSUAN died after consuming food containing allergens at RAGLAN ROAD;
- b. KANOKPORN TANGSUAN would not have eaten at RAGLAN ROAD if she knew that RAGLAN ROAD's employees, waiters, waitresses, chefs, managers, workers, and/or cast-members were not an actual agent(s) or employee(s) such that DISNEY would be vicariously liable for the negligent treatment rendered by



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RAGLAN ROAD's employees, waiters, waitresses, chefs, managers, workers, and/or cast-members.

69. Notwithstanding the duty undertaken, Defendant, DISNEY, by and through its apparent agents working at RAGLAN ROAD located in DISNEY SPRINGS, did or failed to do one or more of the following acts, inter alia:

- a. DISNEY failed to educate, train, and/or instruct its apparent agents at RAGLAN ROAD, including but not limited to, employees, waiters, waitresses, chefs, managers, workers, and/or cast-members to make sure food, indicated as allergen free on the menu and/or food requested to be made allergen free, was in fact free of allergens;
- b. DISNEY's apparent agents, employees, waiters, waitresses, chefs, managers, workers, and/or cast-members at RAGLAN ROAD failed to warn KANOKPORN TANGSUAN that there were allergens in the food she ordered, prior to her consuming it;
- c. DISNEY's apparent agents, including but not limited to, employees, waiters, waitresses, chefs, managers, workers, and/or cast-members at RAGLAN ROAD failed to prepare KANOKPORN TANGSUAN's food free of allergens as they said they would, as she and her husband requested multiple times;
- d. DISNEY's apparent agents, including but not limited to, employees, waiters, waitresses, chefs, managers, workers, and/or cast-members at RAGLAN ROAD failed to prepare KANOKPORN TANGSUAN's food free of allergens as she and her husband requested multiple times, and
- e. DISNEY's apparent agents, including but not limited to, employees, waiters, waitresses, chefs, managers, workers, and/or cast-members at RAGLAN ROAD failed to follow its own policies and procedures with respect to food preparation and/or food service at RAGLAN ROAD.

70. As a direct and proximate result of the negligence of the apparent agents of Defendant, DISNEY, including but not limited to, employees, waiters, waitresses, chefs,

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managers, workers, and/or cast-members at RAGLAN ROAD, KANOKPORN TANGSUAN died.

71. As a direct and proximate result of the negligence of the apparent agents of Defendant, DISNEY, including but not limited to, employees, waiters, waitresses, chefs, managers, workers, and/or cast-members at RAGLAN ROAD, the estate of KANOKPORN TANGSUAN, and her survivor, JEFFREY PICCOLO, have incurred all the damages provided by Florida Wrongful Death Act, §768.21, Florida Statutes. The survivor of the estate of KANOKPORN TANGSUAN is JEFFREY PICCOLO, her spouse. The damages suffered include, but not limited to:

- a. mental pain and suffering, both past and future;
- b. lost support and services, both past and future;
- c. loss of companionship and protection;
- d. funeral expenses;
- e. loss of net accumulations to the estate, both past and future;
- f. medical expenses;
- g. loss of income.

WHEREFORE, Plaintiff, JEFFREY J. PICCOLO, as Personal Representative of the estate of KANOKPORN TANGSUAN, deceased, demands judgment for damages against Defendant, WALT DISNEY PARKS AND RESORTS U.S., Inc., a Florida corporation d/b/a DISNEY SPRINGS, in excess of \$50,000.00 plus costs, post-judgment interest, and further demands trial by jury on all issues so triable.

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DATED this 22<sup>nd</sup> day of February 2024.

/s/ Brian R. Denney  
Brian R. Denney  
Florida Bar No.: 299730  
Attorney E-Mail: brd@searcylaw.com and  
dzarate@searcylaw.com  
Primary E-Mail: \_bdenneyteam@searcylaw.com  
Searcy Denney Scarola Barnhart & Shipley, PA  
Post Office Drawer 3626  
West Palm Beach, FL 33402  
Phone: (561) 686-6300 Work  
Fax: (561) 383-9509  
Attorney for Plaintiff

EXHIBIT B

IN THE CIRCUIT COURT OF THE  
9<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR  
ORANGE COUNTY, FLORIDA

File No.: 2023-CP-003551-O  
Probate Division: 09

IN RE: THE ESTATE OF  
KANOKPORN TANGSUAN,

Deceased.

**LETTERS OF ADMINISTRATION**

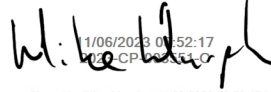
**WHEREAS**, KANOKPORN TANGSUAN, a resident of Orange County, died on October 5, 2023 owning assets in the State of Florida; and

**WHEREAS**, JEFFREY J. PICCOLO has petitioned this Court to be appointed *Personal Representative* of the Estate of the *Decedent* and has performed all acts prerequisite to issuance of *Letters of Administration* in the Estate;

**NOW, THEREFORE**, I, the undersigned Circuit Judge, declare JEFFREY J. PICCOLO to be duly qualified under the laws of the State of Florida to act as *Personal Representative* of the Estate of KANOKPORN TANGSUAN, with full power to administer the Estate according to law; to ask, demand, sue for, recover and receive the property of the *Decedent*; to pay the debts of the *Decedent* as far as the assets of the Estate will permit and the law directs; and to make distribution of the Estate according to law.

**These Letters of Administration expire one year from the date of issue.**

DONE AND ORDERED in Orange County, FL on the date shown on the electronic signature.



eSigned by Mike Murphy 11/06/2023 08:52:17 V33NM6Bp

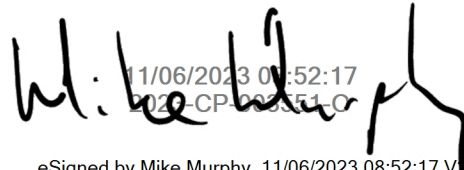
MIKE MURPHY  
Circuit Judge

**If there are parties not receiving service through the Florida Courts' e-filing portal, counsel must serve a copy of this Order via U.S. Mail to the non e-filing parties and file a certificate of service in the court file no later than 3 days from the date of this Order. (Failure to comply may impact the finality of this Order as those who do not receive the order.)**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was filed with the Clerk of the Court on the date indicated by the electronic signature by using the Florida Courts E-Filing Portal System. Accordingly, a copy of the foregoing is being served on this day to all attorney(s)/interested parties identified on the ePortal Electronic Service List, via transmission of Notices of Electronic Filing generated by the ePortal System.

11/06/2023 08:52:17  
2023-CP-00351-0



eSigned by Mike Murphy 11/06/2023 08:52:17 V.3NM6Bp

**Electronic Service List**

Adam S Gumson <bkd@jupiterlawcenter.com>, <cah@jupiterlawcenter.com>, <kbb@jupiterlawcenter.com>

ADAM SCOTT GUMSON Esquire <asg@jupiterlawcenter.com>

# EXHIBIT C

## IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA

JEFFREY J. PICCOLO, as Personal  
Representative of the ESTATE OF  
KANOKPORN TANGSUAN, deceased,

CIRCUIT CIVIL DIVISION

Plaintiff,

CASE NO.: 2024-CA-001616-O

vs.

GREAT IRISH PUBS FLORIDA, INC., a  
Florida corporation d/b/a RAGLAN ROAD  
IRISH PUB AND RESTAURANT and  
WALT DISNEY PARKS AND RESORTS  
U.S., INC., a Florida corporation d/b/a  
DISNEY SPRINGS,

Defendants.

\_\_\_\_\_/

### **DECLARATION OF SAMI MORGAN IN SUPPORT OF WALT DISNEY PARKS AND RESORTS U.S., INC.'S MOTION TO COMPEL ARBITRATION AND STAY CASE**

I, Sami Morgan, declare and state as follows:

1. I am over the age of 18 and am competent to make this declaration. I have personal knowledge of each fact stated in this declaration.
2. I am a Manager of Product Management for Disney Streaming Services, including Disney+, under the name "Disney Streaming." As a Manager of Product Management, I have knowledge of the direct billing subscription enrollment process for users enrolling in Disney Streaming Services and creating accounts through the Disney website.
3. In the normal course of business, Disney Streaming maintains records regarding the subscription enrollment and registration processes over time and individual customers'

subscription plans. As a Manager of Product Management, I have access to and am familiar with the subscription enrollment and activation records, which are maintained in the ordinary course of business.

4. At the request of counsel, I reviewed the subscription enrollment and registration records that Disney Streaming maintains in the regular course of business, and was able to identify the dates on which Plaintiff Jeffrey J. Piccolo created a Disney+ account.

5. I have located a Disney+ account created by Mr. Piccolo on November 29, 2019 using the email address [spanglezeus1988@gmail.com](mailto:spanglezeus1988@gmail.com).

6. To create a Disney+ account as of November 29, 2019, a user would go directly to the Disney+ website ([www.disneyplus.com](http://www.disneyplus.com)). Next the user would reach the registration webpage, which asked the user to enter their email address. Immediately above the “Agree & Continue” button was the Disney Registration Acknowledgment, which described the conditions to which the user was assenting. The Disney Registration Acknowledgment stated in part, “By clicking ‘Agree & Continue,’ you agree to our Subscriber Agreement and acknowledge that you have read our Privacy Policy.” Both the terms “Subscriber Agreement” and “Privacy Policy” were underlined and were in blue font to indicate that they were clickable hyperlinks. The user would not have been able to create a Disney+account without clicking the "Agree" button.

7. The Subscriber Agreement was hyperlinked, allowing for the individual to click and follow the link to a webpage displaying the Subscriber Agreement.

8. The Subscriber Agreement governing Disney+ accounts on November 29, 2019, is attached as **Exhibit A**.

9. At the outset, the Subscriber Agreement provides:

Disney DTC LLC and/or its affiliates and subsidiaries (collectively, “Disney DTC”) are pleased to provide to you their sites, software, applications, content, products and services (“Disney Services”), which may be branded Disney, ABC, ESPN, Marvel, Pixar, Lucasfilm, FX or another brand owned or licensed by Disney DTC. These terms govern your use and our provision of the Disney Services on which these terms are posted, as well as Disney Services we make available on third-party sites and platforms if these terms are disclosed to you in connection with your use of the Disney Services. PLEASE READ THESE TERMS CAREFULLY BEFORE USING THE DISNEY SERVICES. BY USING THE DISNEY SERVICES YOU AGREE TO BE BOUND BY THESE TERMS

10. WDPR is an affiliate of Disney DTC LLC.

11. The Subscriber Agreement also provides:

THIS AGREEMENT WILL GOVERN YOUR USE OF THE DISNEY+ AND ESPN+ SERVICES. WHEN YOU CREATE A DISNEY+ OR ESPN+ ACCOUNT, YOU ALSO AGREE TO THE WALT DISNEY COMPANY’S TERMS OF USE, AVAILABLE AT [WWW.DISNEYTERMSOFUSE.COM](http://WWW.DISNEYTERMSOFUSE.COM) AND AT THE END OF THIS AGREEMENT WHICH GOVERN YOUR USE OF OTHER DISNEY SERVICES.

12. WWW.DISNEYTERMSOFUSE.COM was underlined and in blue to indicate that it is a clickable hyperlink.

13. The Disney Terms of Use in existence as of November 29, 2019, is attached as

**Exhibit B.**

14. The Disney Terms of Use provide:

PROCEEDINGS TO RESOLVE OR LITIGATE A DISPUTE IN ANY FORUM WILL BE CONDUCTED ON AN INDIVIDUAL BASIS. Neither you nor Disney DTC will seek to have a dispute heard as a class action or private attorney general action or in any other proceeding in which either party acts or proposes to act in a representative capacity. No arbitration or proceeding can be combined with another without the prior written consent of all parties to the arbitrations or proceedings.



You and Disney DTC agree to arbitrate, as provided below, all disputes between you (including any related disputes involving The Walt Disney Company or its affiliates), that are not resolved informally, except disputes relating to the ownership or enforcement of intellectual property rights. “Dispute” includes any dispute, action, or other controversy, whether based on past, present, or future events, between you and us concerning the Disney Services or this Agreement, whether in contract, tort, warranty, statute, regulation, or other legal or equitable basis. You and Disney DTC empower the arbitrator with the exclusive authority to resolve any dispute relating to the interpretation, applicability or enforceability of these terms or the formation of this contract, including the arbitrability of any dispute and any claim that all or any part of this Agreement are void or voidable.

SIGNATURE PAGE FOLLOWS

Faint, illegible text at the top of the page, possibly a header or title.

STATE OF MICHIGAN

□

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on May 31, 2024.

A handwritten signature in black ink, appearing to read 'Sami Morgan', written over a horizontal line.

SAMI MORGAN

# Disney+ and ESPN+ Subscriber Agreement

Updated: November 12, 2019

Disney DTC LLC (“**Disney+**”) and BAMTech, LLC (“**ESPN+**”)(collectively, “**we**”, “**us**” “**our**”) welcome you to the Disney+ Service and/or ESPN+ Service. The “**Disney+ Service**” includes the Disney+ website, application and associated content and services. The “**ESPN+ Service**” includes the ESPN+ website, application and associated content and services.

**PLEASE READ THIS SUBSCRIBER AGREEMENT (“SUBSCRIBER AGREEMENT”, OR “AGREEMENT”) CAREFULLY BEFORE USING THE DISNEY+ SERVICE OR ESPN+ SERVICE.**

**THIS AGREEMENT WILL GOVERN YOUR USE OF THE DISNEY+ AND ESPN+ SERVICES. WHEN YOU CREATE A DISNEY+ OR ESPN+ ACCOUNT, YOU ALSO AGREE TO THE WALT DISNEY COMPANY’S TERMS OF USE, AVAILABLE AT [WWW.DISNEYTERMSOFUSE.COM](http://WWW.DISNEYTERMSOFUSE.COM) AND AT THE END OF THIS AGREEMENT WHICH GOVERN YOUR USE OF OTHER DISNEY SERVICES.**

You agree to the Subscriber Agreement by clicking “Agree & Continue” or other industry standard mechanism during the Disney+ and/or ESPN+ registration process and ratify your agreement when you use any aspect of the Disney+ Service or ESPN+ Service. If you do not agree to the Subscriber Agreement, you may not use the Disney+ Service or ESPN+ Service. We may amend this Agreement. Any such amendment will be effective thirty (30) days following either our dispatch of a notice to you or our posting of the amendment on the Disney+ Service or ESPN+ Service. If you do not agree to any change to the Subscriber Agreement, you must discontinue using the Disney+ Service and ESPN+ Service. Our customer service representatives are not authorized to modify any provision of the Subscriber Agreement, either verbally or in writing.

**ANY DISPUTE BETWEEN YOU AND US, EXCEPT FOR SMALL CLAIMS, IS SUBJECT TO A CLASS ACTION WAIVER AND MUST BE RESOLVED BY INDIVIDUAL BINDING ARBITRATION. PLEASE READ THE ARBITRATION PROVISION IN THIS AGREEMENT AS IT AFFECTS YOUR RIGHTS UNDER THIS CONTRACT.**

## List of Sections

1. User Eligibility and Registration
2. Subscription Terms
3. Copyright License Grant and Restrictions
4. Usage Terms

5. Use and Sharing of Certain Information
6. Suspension and Termination
7. Binding Arbitration and Class Action Waiver
8. Additional Provisions

## 1. USER ELIGIBILITY AND REGISTRATION

- a. Eligibility and Age Limitations. Only residents of the countries where we offer the Disney+ Service and/or ESPN+ Service (collectively, the "**Territory**") are eligible to register for a Disney+ or ESPN+ account. This Subscriber Agreement governs for residents of the United States and all U.S. territories. You must be 18 years of age, or the age of majority in your state or territory of residence, to purchase the Disney+ Service and/or ESPN+ Service. The Disney+ Service and ESPN+ Service are provided to individuals for their personal, noncommercial use only. Companies, associations and other groups may not register for a Disney+ or ESPN+ account or use the Disney+ Service or ESPN+ Service. **Individuals under the age of 13 are not eligible for a Disney+ or ESPN+ account and are not permitted to provide personal information to Disney+ or ESPN+.**
- b. Registration. Only individuals that have registered for a Disney+ and/or ESPN+ account, provide certain information (e.g., a valid email address), and agree to the Subscriber Agreement are eligible to use the Disney+ Service and/or ESPN+ Service. You are solely responsible for maintaining the confidentiality and security of your username and password and for all activities that occur on or through your Disney+ and ESPN+ accounts. However, if you allow others to access your Disney+ or ESPN+ account, this Agreement, as well any specific consents you may have provided, also applies to their access, use, and disclosure of information. You agree to immediately notify Disney+ or ESPN+ of any unauthorized access to your Disney+ or ESPN+ account. Disney+ and ESPN+ will not be responsible for any losses arising from the unauthorized use of your Disney+ or ESPN+ accounts.
- c. Notices. Any notices Disney+ or ESPN+ delivers to you may be made as follows: (i) by email to the last email address provided by you or (ii) by posting a notice on the Disney+ Service or ESPN+ Service. You agree to provide and maintain accurate, current and complete information, including your contact information for notices and other communications from us. You agree not to impersonate or misrepresent your affiliation with any person or entity, including using another person's username, password or other account information, or another person's name or likeness, or provide false details for a parent or guardian. You agree that we may take steps to verify the accuracy of information you provide.

## 2. SUBSCRIPTION TERMS

- a. Subscription and Auto-Renewal. Your subscription to the Disney+ Service and/or ESPN+ Service includes enrollment into an ongoing/recurring payment plan. Your subscription(s) will automatically renew at the end of the disclosed billing period, unless cancelled in accordance with the instructions for cancellation

below. Payment will be charged to your chosen payment method at confirmation of purchase and at the start of every new billing period, unless cancelled. We reserve the right to change our pricing. In the event of a price change, we will attempt to notify you thirty (30) days in advance of the change by sending an email to the email address you have registered for your account. If you do not wish to accept a price change, you may cancel your subscription in accordance with the instructions included in that email and below. If you do not cancel your subscription after the price change takes effect and prior to the start of your new subscription period, your subscription will be renewed at the price in effect at the time of the renewal, without any additional action by you, and you authorize us to charge your payment method for these amounts. We will not be able to notify you of any changes in applicable taxes. You are responsible for all third-party Internet access charges and taxes in connection with your use of the Disney+ Service and/or ESPN+ Service. Please check with your Internet provider for information on possible Internet data usage charges.

- b. Free Trials. Your Disney+ Service and/or ESPN+ Service subscription(s) may begin with a free trial. Availability of a free trial is not guaranteed and, if one is available, is only available on the specified terms of the free trial to those who have not previously used one for the Disney+ Service or ESPN+ Service. Your first payment will be charged to your chosen payment method immediately following the free trial, unless cancelled in accordance with the instructions for cancellation below. You can cancel your subscription at any time before the end of your free trial. We provide notice of the terms of the free trial at the time you register and you will not receive a separate notice that your free trial is about to end or has ended, or that your paid subscription has begun.
- c. Cancellation and Refund Policy. You can cancel your subscription at any time before the end of the current billing period or free trial. Cancellation will take effect at the end of the current billing period or free trial. To cancel your Disney+ subscription, navigate to [www.disneyplus.com/account/cancel-subscription](http://www.disneyplus.com/account/cancel-subscription) and click "Complete Cancellation." You may cancel your ESPN+ subscription, by logging in to your account on [www.espn.com](http://www.espn.com), emailing us at [support@espnplus.com](mailto:support@espnplus.com), or calling Customer Support at [1-800-727-1800](tel:1-800-727-1800). If you subscribed via a third party (e.g. an app store such as iTunes, Google Play, Amazon Store, or Roku), please visit our Help Center for instructions on how to cancel. Cancellation will only take effect at the end of your current billing period (or end of your free trial), and you will still be able to access Disney+ or ESPN+ until then. We do not refund or credit for partially used billing periods.
- d. Payment Details. We will keep your detailed payment information, such as credit card number and expiry date, on file. We may share your payment information within The Walt Disney Company (e.g., Hulu, Marvel, Pixar, etc.), if you consent to such sharing during the purchase process. You are responsible for keeping your payment details up-to-date by changing the details in your account settings. Where your details change or are due to expire, we may obtain or receive from your payment provider updated payment details including your card number, expiry date and CVV (or equivalent). This enables us to continue to provide you access to the Disney+ Service and/or ESPN+ Service. You authorize us to

continue to charge your card using the updated information. If a payment is not successfully authorized due to expiration, insufficient funds, or otherwise, we may suspend or terminate your subscription. You also agree that we may charge your payment method on file if you decide to restart your Disney+ or ESPN+ subscription.

- e. Subscriptions Obtained Through Third Parties. If you obtain a Disney+ Service or ESPN+ subscription via a third party (e.g., an app store), that subscription is also subject to the third party's terms, and the provisions in this Subscriber Agreement concerning subscription purchase, billing, cancellation/refunds, and payment do not apply to that subscription to the extent this Subscriber Agreement conflicts with the applicable third party's terms. For subscriptions obtained via a third party, your billing relationship will be directly with the applicable third party. Any fees charged for your Disney+ Service or ESPN+ Service will be billed by the applicable third party using the payment information you have provided to such third party. To cancel a Disney+ Service or ESPN+ Service subscription obtained via a third party, please follow the cancellation instructions set out by the applicable third party. You can visit our [Help Center](#) for instructions on how to cancel a Disney+ Service or ESPN+ Service subscription obtained via a third party.
- f. Bundled Subscription Options. We may offer a Disney+ Service or ESPN+ Service subscription bundled with other subscription services, including subscriptions to third-party products and services, e.g., a wireless plan. Notice of the terms of the bundled subscription options will be provided to you at the time you register. Third-party subscriptions, products, and services are governed by terms of use issued by those third parties.
- g. Hulu, Disney+, ESPN+ Bundle Offer Terms and Conditions. Disney+ is pleased to offer eligible subscribers with access to each of Hulu (Hulu's ad-supported plan), Disney+, and ESPN+ ("**Bundled Services**") for \$12.99/month plus applicable taxes, that represents a discounted price, as compared to the retail price of each plan when purchased separately ("**Bundle**"). By purchasing the Bundle through Disney, you also agree to the Hulu Terms of Use, which are incorporated by reference and govern your use of the Hulu service and can be found at <https://www.hulu.com/terms>.

This promotional offer may be modified or terminated at any time. There is no free trial for the Bundle.

- 1. **Eligibility Criteria.** The Bundle is only available to residents of the United States and certain U.S. territories and who are 18 years of age (or the age of majority in your state or territory of residence). If you subscribe to the Bundle and are under 18 years of age (or the age of majority in your state or territory of residence), you will be unable to activate your Hulu subscription, and your Bundle subscription may be cancelled without notice.
  - a. **Existing Hulu Subscribers.** You are not eligible to purchase the Bundle if you subscribe to Hulu through Spotify, or if you subscribe to Hulu pursuant to a promotional offer (unless explicitly permitted by the terms of your promotion or otherwise allowed by Hulu or Disney). If you already have any eligible Hulu

subscription (purchased through or received from Hulu or any third-party other than Spotify) when you purchase the Bundle, you may keep and manage that subscription. You will continue to be billed by Hulu or such third-party that currently bills you for that Hulu subscription. You must subscribe to the Bundle with the same email address as associated with your existing Hulu subscription for Disney to provide you with a monthly credit against the Bundle price in an amount equal to the then-current retail price of Hulu's ad-supported plan (currently \$5.99) for as long as you maintain that separate Hulu subscription. If you cancel or otherwise lose access to your separate Hulu subscription, or if you change your Hulu account e-mail address to be different than your Bundle e-mail address, your subscription to the Bundle will be automatically cancelled. If you cancel your Bundle subscription, however, your separate Hulu subscription will continue unchanged.

- b. Existing ESPN+ or Disney+ Subscribers. If you already have an ESPN+ or Disney+ subscription when you purchase the Bundle, you may keep and manage that pre-existing subscription. You will continue to be billed by Disney or such third-party that currently bills you for that pre-existing subscription. If you have been given access to Disney+ on a gratis basis from a third party (e.g., Verizon), you may continue to take advantage of that promotional offer and purchase the Bundle. You must subscribe to the Bundle with the same email address as associated with your ESPN or Disney+ account (if you have an ESPN+ subscription through a third-party platform and did not create an ESPN account, please see section 1(c) below\*\*) for Disney to provide you with a credit against the Bundle price in an amount equal to the effective monthly price for your pre-existing subscription or promotional offer for the duration of that offer. If you cancel or otherwise lose access to your pre-existing subscription or promotional offer, you will be charged \$12.99 per month for the Bundle and you will continue to have access to Disney+, ESPN+ and Hulu.

\*\* If you are an existing ESPN+ subscriber through a third-party platform, and have not created an ESPN account, we are not able to identify you as an existing subscriber when you subscribe to the Bundle. You are responsible for managing your ESPN+ subscription. If you have questions or need assistance, please contact Disney+ Customer Service.

2. Hulu Activation. If you are already a Hulu subscriber, no activation is required. If you are not already a Hulu subscriber, after you subscribe to the Bundle, you will need to click on the link in your purchase confirmation to create a separate account on Hulu and activate your Hulu subscription.
3. Data Sharing. By subscribing to the Bundle, you agree that certain account information (e.g., your e-mail address) will be provided to each Bundled Service for purposes of assessing your eligibility for the Bundle, activating, administering, improving your experience with the Bundle and each Bundled Service, and communicating with you about the Bundle and each Bundled Service. Any such account information received by the Bundled Services will be subject to each Bundled Service provider's respective Privacy Policy which can be found here: <https://privacy.thewaltdisneycompany.com/en/current-privacy-policy>  
<https://hulu.com/privacy>

4. **Separate Apps.** You will need to access each Bundled Service through its respective website or application to access the content available on that Bundled Service, and subject to the availability of features and functionalities (e.g., number of permitted simultaneous content streams, content resolution, geographic limitations for access, temporary downloads) for that Bundled Service.
5. **Limited Offerings.** If you subscribe to the Bundle without maintaining a separate subscription to Hulu, you will not be able to switch your Hulu plan or purchase add-ons offered by Hulu. For example, if you subscribe to the Bundle, you will not be able to switch to the Hulu + Live TV or Hulu (No Ads) plans through your existing Bundle subscription. However, if you maintain a separate Hulu subscription as a Bundle subscriber, you will be able to manage that subscription to the extent permitted by the terms of that separate subscription.
6. **Cancellation.** You may cancel the Bundle at any time, effective as of the end of your current billing cycle. If you cancel the Bundle and did not have a pre-existing subscription, you will lose access to all Bundled Services. If you cancel the Bundle but maintain a separate Hulu subscription or pre-existing Disney+ or ESPN+ subscription, you must independently cancel those subscriptions.
  - h. ESPN+ may also offer one-time pay per view events. You will be charged for pay per view events at the time of purchase to your chosen payment method.

### 3. **COPYRIGHT LICENSE GRANT AND RESTRICTIONS**

- a. **License.** Within the Territory and subject to the terms and conditions in this Subscriber Agreement, Disney+ and/or ESPN+ grants you a limited, personal use, non-transferable, non-assignable, revocable, non-exclusive and non-sublicensable right to do the following:
  - i. Install and make non-commercial, personal use of the Disney+ Service or ESPN+ Service; and
  - ii. stream or temporarily download copyrighted materials, including but not limited to movies, television shows, other entertainment or informational programming, trailers, bonus materials, images, and artwork (the **"Disney+ Content"** or **"ESPN+ Content"**) that are available to you from the Disney+ Service or ESPN+ Service.

This is a license agreement and not an agreement for sale or assignment of any rights in the Disney+ Content or ESPN+ Content or the Disney+ Service or ESPN+ Service. The purchase of a license to stream or temporarily download any Disney+ Content or ESPN+ Content does not create an ownership interest in the Disney+ Content or ESPN+ Content. Such Disney+ Content or ESPN+ Content, including the copyrights, trademarks, service marks, trade names, trade dress and other intellectual property rights in the Disney+ Content or ESPN+ Content, are owned by The Walt Disney Company, its affiliates and/or other licensors, and is protected by the copyright laws of the United States, as well as other intellectual property laws and treaties.



- b. Restrictions on Your Use of the Disney+ Content and ESPN+ Content. You agree that as a condition of your license, you may not and agree not to:
- i. circumvent or disable any content protection system or digital rights management technology used in connection with the Disney+ Service or ESPN+ Service to control access to the Disney+ Content or ESPN+ Content;
  - ii. copy the Disney+ Content or ESPN+ Content (except as expressly permitted by this Subscriber Agreement);
  - iii. rebroadcast, transmit or perform the Disney+ Content or ESPN+ Content available via the Disney+ Service and/or ESPN+ Service;
  - iv. create derivative works of the Disney+ Content or ESPN+ Content; or
  - v. allow third parties to violate the above restrictions.
- c. Restrictions on Your Use of the Disney+ Service and ESPN+ Service. You agree that as a condition of your license, you may not and agree not to:
- i. move, decompile, reverse-engineer, disassemble, or otherwise reduce to human-readable form the Disney+ Service or ESPN+ Service and/or the video player(s), underlying technology, any digital rights management mechanism, device, or other content protection or access control measure incorporated into the video player(s);
  - ii. modify the Disney+ Service or ESPN+ Service, including, but not limited to, by removing identification, copyright or other proprietary notices from the Disney+ Content or ESPN+ Content or the Disney+ Service and/or ESPN+ Service;
  - iii. access or use the Disney+ Service or ESPN+ Service in a manner that suggests an association with our products, services or brands;
  - iv. use the Disney+ Service or ESPN+ Service for any commercial or business related use or in any commercial establishment or area open to the public (e.g., lobby, bar, restaurant, diner, stadium, casino, club, cafe, theater, etc.) or build a business utilizing the Disney+ Content or ESPN+ Content or Disney+ Service or ESPN+ Service, whether or not for profit;
  - v. create derivative works of any Disney owned components of the Disney+ Service or ESPN+ Service, any updates, or any part thereof, except as and only to the extent that any foregoing restriction is prohibited by applicable law;
  - vi. bypass, modify, defeat, tamper with or circumvent any of the functions or protections of the Disney+ Service or ESPN+ Service;
  - vii. access, monitor or copy, or permit another person or entity to access, monitor or copy, any element of the Disney+ Service or ESPN+ Service using a robot, spider, scraper or other automated means or manual process without our express written permission;
  - viii. damage, disable, overburden or impair the Disney+ Service or ESPN+ Service;
  - ix. use the Disney+ Service or ESPN+ Service in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with this Subscriber Agreement;

- x. share your login credentials with third parties; or
  - xi. otherwise allow third parties to violate the above restrictions.
- d. Violations. Any attempt to perform any of the restrictions listed in Sections 3(b) and 3(c) above is a violation of the rights of Disney+, ESPN+, and the copyright holder.

#### 4. USAGE TERMS

- a. Disney+ and ESPN+ Compatible Devices. Use of the Disney+ Service and ESPN+ Service requires compatible devices, and certain software may require periodic updates, and your use of the Disney+ Service and/or ESPN+ Service may be affected by the performance of these elements. You can access Disney+ Content and ESPN+ Content with almost any Internet-connected computer or through the Disney+ or ESPN+ application available for certain mobile or other devices (Internet connection required) (each, a "**Compatible Device**"). For specifics concerning supported devices, operating systems, web browsers and optimal streaming support please visit our Help Center. You can add a Compatible Device to your Disney+ and/or ESPN+ accounts by downloading the Disney+ and/or ESPN+ application(s) to the Compatible Device and by signing into your Disney+ and/or ESPN+ account(s) through the application.
- b. Internet Connection. You must have a high speed Internet connection in order to access and use certain aspects of the Disney+ Service and ESPN+ Service.
- c. Streaming Disney+ Content and/or ESPN+ Content. Disney+ Content can be streamed through the Disney+ Service over an active Internet connection. Up to four (4) concurrent streams are allowed for each Disney+ account at any time. ESPN+ Content can be streamed through the ESPN+ Service over an active Internet connection. Up to three (3) concurrent streams are allowed for each ESPN+ account at any time. The number of concurrent streams available for use may change from time to time at our discretion.
- d. Downloading Disney+ Content or ESPN+ Content. Disney+ Content and ESPN+ Content may be available for temporary download for offline viewing on certain Compatible Devices. Downloads are limited to a maximum of ten (10) Compatible Devices for each of the Disney+ Service and ESPN+ Service. You will not be permitted to download to an additional device once the maximum of ten (10) Compatible Devices has been reached for that service. You must connect your Compatible Device to the Internet and access the Disney+ Service and/or ESPN+ Service at least once every thirty (30) days for your downloaded Disney+ Content or ESPN+ Content to remain available for offline viewing. The length of time that certain temporary downloads remain available to you for offline viewing may change from time to time at our discretion.
- e. Profiles. Disney+ offers the option to personalize use of the Disney+ Service through the creation of one or more profiles under one account. You may designate a profile as a Kid profile, which will restrict viewing of certain Disney+ Content from within that profile. Please visit our Help Center if you would like more information about Kid profiles.

- f. Disney+ Content Availability. Certain Disney+ Content available through the Disney+ Service subscription may not be available in all countries or territories within the Territory. Geographic restrictions will be enforced according to the location from which you are accessing the Disney+ Service, and we may use different technologies and methods to verify your geographic location
- g. ESPN+ Content Availability and Blackouts. . ESPN+ Content is only available in the United States. Certain live sporting events and other content available through the ESPN+ Service subscription may be subject to blackouts. For example, if you are in a home television territory of a team participating in a game, then the game may be blacked-out for viewing or live viewing as part of your ESPN+ Service subscription (or other applicable third-party service). Blackouts will be enforced according to the location from which you are accessing the ESPN+ Service or the applicable third-party services, and we may use different technologies and methods to verify your location. If you do not enable location access on your device, you will not be able to access the ESPN+ Service. Subscriptions to third-party products and services that you purchase or access through your ESPN+ service subscription will also be subject to specific blackout policies of the applicable sports leagues (e.g., Major League Baseball). Such policies may be made available or communicated to you in connection with your purchases of league-specific content. The blackout policies for services available via ESPN+ are available in the ESPN+ FAQs.
- h. Future Unavailability. It is possible that the Disney+ Service, ESPN+ Service, and/or some or all Disney+ Content or ESPN+ Content may not be available for streaming or downloading at any given time including (i) during any maintenance or update periods; (ii) any power or server outages; (iii) as a result of war, riots, strikes, social unrest; or (iv) as a result of other matters beyond the control of us or third parties. Disney+ and/or ESPN+ will take reasonable efforts to provide you with as much prior notice as possible; however, Disney+ and ESPN+ shall have no liability to you in such event. There may be times when we have to remove certain features or functionality and/or devices or platforms from being able to access Disney+ and/or ESPN+. We will do our best to let you know of any of these changes, usage rules and restrictions, but you acknowledge that we may do so in our sole discretion at any time without notice. You also agree that we will not be liable to you for any modification, suspension or discontinuance of the Disney+ Service and/or ESPN+ Service, although if you are a subscriber and we suspend or discontinue your subscription to the Disney+ Service and/or ESPN+ Service, we may, in our sole discretion, provide you with a credit, refund, discount or other form of consideration. However, if we terminate your account or suspend or discontinue your access to the Disney+ Service and/or ESPN+ Service due to your violation of the Subscriber Agreement, then you will not be eligible for any such credit, refund, discount or other consideration.
- i. Promotional and Experimental Features. In our continued assessment of the Disney+ Service and ESPN+ Service, we may from time to time, with respect to any or all of our users, experiment or otherwise offer certain features or other elements of the Disney+ Service and/or ESPN+ Service, including promotional features, user interfaces, plans and pricing. Your use of any updates,

modifications to, or replacement versions of Disney+ and/or ESPN+ shall be governed by this Subscriber Agreement and any additional terms you agree to when you install such update, modification, or replacement version.

## **5. USE AND SHARING OF CERTAIN INFORMATION**

For more information about our collection, use, and sharing of your information please refer to our [PRIVACY POLICY](#), which is incorporated herein by this reference.

Disney+ and ESPN+ reserve the right to, and you agree that Disney+ and/or ESPN+ may, release your details to system administrators at other sites and to law enforcement agencies in order to assist them in resolving security incidents and violations of law.

## **6. SUSPENSION AND TERMINATION**

You agree that Disney+ and/or ESPN+ may, in its sole discretion and without notice or liability to you, restrict, suspend, or terminate your access to part or all of the Disney+ Service, ESPN+ Service, and to any Disney+ Content or ESPN+ Content if Disney+ believes you are using or have used the Disney+ Service and/or ESPN+ Service in violation of the Subscriber Agreement or applicable law or regulations or in any manner other than for their intended purpose and in accordance with all other guidelines and requirements applicable thereto. Without limiting the foregoing, Disney+ and/or ESPN+ may restrict or suspend your access to your Disney+ and/or ESPN+ account(s) for cause and upon reasonable notice to you, which may be communicated electronically, which cause includes but is not limited to (a) requests from law enforcement or other government authorities, (b) unexpected technical issues or problems, or (c) if Disney+ and/or ESPN+ reasonably believes that your Disney+ or ESPN+ account has been created fraudulently, your Disney+ or ESPN+ account has been accessed fraudulently, or anyone uses your Disney+ or ESPN+ account to commit fraud or for any purpose other than its intended purpose and in accordance with all of the requirements applicable thereto. Disney+ and ESPN+ also reserve the right, after notice to you, to terminate any Disney+ or ESPN+ account that remains inactive for one year (failure to log in to your Disney+ or ESPN+ account will constitute inactivity for purposes of this Agreement).

You agree that Disney+ and ESPN+ will not be liable to you or to any third party for any such restriction, suspension, or termination of your access to your Disney+ or ESPN+ account or content.

UPON TERMINATION OF YOUR DISNEY+ OR ESPN+ ACCOUNT, WHETHER TERMINATED BY DISNEY+, ESPN+, OR AT YOUR REQUEST (OTHER THAN A CANCELLATION OF YOUR SUBSCRIPTION, IN WHICH CASE YOUR SUBSCRIPTION WILL CONTINUE TO THE END OF THE BILLING PERIOD), YOU WILL IMMEDIATELY LOSE THE RIGHT TO ACCESS STREAMED CONTENT THROUGH THE DISNEY+ SERVICE AND/OR ESPN+ SERVICE AND WITHIN A

LIMITED PERIOD WILL LOSE THE RIGHT TO VIEW DISNEY+ CONTENT OR ESPN+ CONTENT DOWNLOADED WITHIN THE DISNEY+ SERVICE OR ESPN+ SERVICE.

## 7. BINDING ARBITRATION AND CLASS ACTION WAIVER

PROCEEDINGS TO RESOLVE OR LITIGATE A DISPUTE IN ANY FORUM WILL BE CONDUCTED ON AN INDIVIDUAL BASIS. Neither you nor Disney+ nor ESPN+ will seek to have a dispute heard as a class action or private attorney general action or in any other proceeding in which either party acts or proposes to act in a representative capacity. No arbitration or proceeding can be combined with another without the prior written consent of all parties to the arbitrations or proceedings.

You and Disney+ and/or ESPN+ agree to arbitrate, as provided below, all disputes between you (including any related disputes involving The Walt Disney Company or its affiliates), that are not resolved informally, except disputes relating to the ownership or enforcement of intellectual property rights. “**Dispute**” includes any dispute, action, or other controversy, whether based on past, present, or future events, between you and us concerning the Disney+ Service, ESPN+ Service, or this Agreement, whether in contract, tort, warranty, statute, regulation, or other legal or equitable basis. You and Disney+ and/or ESPN+ empower the arbitrator with the exclusive authority to resolve any dispute relating to the interpretation, applicability or enforceability of these terms or the formation of this contract, including the arbitrability of any dispute and any claim that all or any part of this Subscriber Agreement are void or voidable.

a. In the event of a dispute, you or Disney+ or ESPN+ must send to the other party a notice of dispute, which is a written statement that sets forth the name, address, and contact information of the party giving the notice, the facts giving rise to the dispute, and the relief requested. You must send any notice of dispute to Disney+ or ESPN+, 500 South Buena Vista Street, Burbank, California 91521-7620, USA, Attention: Legal. We will send any notice of dispute to you at the contact information we have for you. You and Disney+ and/or ESPN+ will attempt to resolve a dispute through informal negotiation within sixty (60) days from the date the notice of dispute is sent. After that sixty (60) day period and not before, you or we may commence an arbitration proceeding. You may instead litigate a dispute in small claims court if the dispute meets the requirements to be heard in small claims court, whether or not you negotiated informally first.

b. If you, Disney+, and/or ESPN+ do not resolve a dispute by informal negotiation or in small claims court, the dispute shall be resolved by binding arbitration before a neutral arbitrator whose decision will be final except for a limited right of appeal under the U.S. Federal Arbitration Act. YOU ARE GIVING UP THE RIGHT TO LITIGATE A DISPUTE IN COURT BEFORE A JUDGE OR JURY. Arbitration will be administered by JAMS Mediation, Arbitration and ADR Services (“**JAMS**”) in accordance with the JAMS Streamlined Arbitration Rules and Procedures (the “**JAMS Rules**”). The JAMS Rules and instructions about how to initiate an arbitration are available at [www.jamsadr.com](http://www.jamsadr.com) or 1-800-352-5267. Arbitration may be conducted in person, through the submission of

documents, by phone, or online. Proceedings that cannot be conducted through the submission of documents, by phone, or online, will take place in either Los Angeles, California or the borough of Manhattan, New York, New York, whichever is more convenient for you; provided, however, that if circumstances prevent you from traveling to Los Angeles or New York, JAMS may hold an in-person hearing in your hometown area. You and Disney+ agree to submit to the exclusive jurisdiction of the federal or state courts located in either Los Angeles, California or the borough of Manhattan, New York, New York, whichever is more convenient for you, in order to compel arbitration, to stay proceedings pending arbitration, or to confirm, modify, vacate, or enter judgment on the award entered by the arbitrator. The arbitrator may award damages to you individually as a court could, including declaratory or injunctive relief, but only to the extent required to satisfy your individual claim.

In accordance with the JAMS Rules, the party initiating the arbitration (either you or Disney+ or ESPN+) is responsible for paying the filing fee. However, if the arbitrator issues you an award of damages and: (a) that award is greater than the amount of our last written settlement offer; or (b) if we did not make a settlement offer, then in addition to paying for any JAMS Case Management Fees and all professional fees for the arbitrator's services, we will reimburse you for the filing fees you incurred.

Except as provided above with respect to jurisdiction in Los Angeles, California and Manhattan, New York, New York, nothing in this arbitration provision shall be construed as consent by Disney+, ESPN+, or their affiliates to the jurisdiction of any other court with regard to disputes, claims or controversies unrelated to the Disney+ Service, ESPN+ Service, or this Agreement.

## **8. ADDITIONAL PROVISIONS**

- a. You understand and agree that the Disney+ Content and ESPN+ Content you receive through the Disney+ Service and/or ESPN+ Service is intended for informational and entertainment purposes only; it does not constitute legal, financial, professional, medical or healthcare advice or diagnosis and cannot be used for such purposes.
- b. Content Subjectivity. Disney+ Content and ESPN+ Content tends to elicit varying reactions among different people. You may come across Disney+ Content or ESPN+ Content that you find offensive, indecent, explicit or objectionable. Also, content ratings, types, genres, categories, and/or descriptions are provided as suggestions to help with navigation and for informational purposes. We do not guarantee that you will agree with them. You acknowledge these risks and your responsibility for making your own choices regarding what Disney+ Content or ESPN+ Content is appropriate for your family.
- c. Photosensitivities. Disney+ Content and ESPN+ Content may contain some flashing lights sequences or patterns which may affect users who are susceptible to photosensitive epilepsy or other photosensitivities. Additionally, 4K UHD HDR content versions enable greater brightness and color saturation which may also affect users.

- d. Content Quality. We use various technologies to provide you with an optimal viewing experience. For example, HD quality is available for certain Disney+ Content and ESPN+ Content and 4K Ultra HD quality is available for certain Disney+ Content. That said, the playback quality of Disney+ Content or ESPN+ Content, including resolution, may be affected by the format of the Disney+ Content or ESPN+ Content, your location, the speed, bandwidth and specific terms of your Internet service, and the devices used, among other factors. The time it takes you to begin viewing Disney+ Content or ESPN+ Content will vary based on a number of factors, including your location, Internet bandwidth, the number of devices simultaneously connecting to the same network, the Disney+ Content or ESPN+ Content you have selected, and the configuration of the device you are using. As a result, we are unable to make any warranties about the Disney+ Content and ESPN+ Content in these respects.
- e. Third-Party Services and Content. The Disney+ Service or ESPN+ Service may integrate, be integrated into, or be provided in connection with third-party services and content. We do not control those third-party services and content. You should read the terms of use, agreements and privacy policies that apply to such third-party services and content. If you access the Disney+ Service and/or ESPN+ Service using a third-party service or device (for example, an Apple iOS, Android or Microsoft Windows-powered device) then Apple Inc., Google, Inc. or Microsoft Corporation, respectively, or another such company that offers a third-party service or device, shall be a third-party beneficiary to this contract. However, these third-party beneficiaries are not a party to this contract. You agree that your access to the Disney+ Service and/or ESPN+ Service using these devices also shall be subject to the usage terms set forth in the applicable third-party beneficiary's terms of service.
- f. Mobile Networks. When you access the Disney+ Service and/or ESPN+ Service through a mobile network, your network or roaming provider's messaging, data and other rates and fees will apply. Downloading, installing or using the Disney+ Service and/or ESPN+ Service may be prohibited or restricted by your network provider and the Disney+ Service and/or ESPN+ Service may not work with your network provider or device.
- g. Submissions and Unsolicited Ideas Policies. Our policy does not allow us to accept or consider unsolicited creative ideas, suggestions or materials. In connection with anything you submit to us, whether or not solicited by us, you agree that creative ideas, suggestions or other materials you submit are not being made in confidence or trust and that no confidential or fiduciary relationship is intended or created between you and us in any way, and that you have no expectation of review, compensation or consideration of any type. Disney+ and/or ESPN+ does not claim ownership over any ideas, suggestions, or other materials submitted; however, as to such materials, you grant us a non-exclusive, sublicensable, irrevocable and royalty-free worldwide license under all copyrights, trademarks, patents, trade secrets, privacy and publicity rights and other intellectual property rights to use, reproduce, transmit, display, create derivative works, or otherwise exploit them for any purpose without limit as to time, manner and frequency of use, without further notice to you, with or without

attribution, and without the requirement of permission from or payment to you or any other person or entity.

h. Contact Information.

You may contact Disney+ as follows:

by phone at: 888-905-7888

by email at: [help@disneyplus.com](mailto:help@disneyplus.com)

You may contact ESPN+ as follows:

by phone at: 1-[800-727-1800](tel:800-727-1800)

by email at: [support@espnplus.com](mailto:support@espnplus.com)

i. DISCLAIMERS OF WARRANTY; LIABILITY LIMITATION. YOU

ACKNOWLEDGE AND AGREE TO THE ESSENTIAL CONDITION THAT THE DISNEY+ CONTENT AND ESPN+ CONTENT AS WELL AS THE DISNEY+ SERVICE AND ESPN+ SERVICE ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND. TO THE FULLEST EXTENT PERMITTED BY LAW, DISNEY+, ESPN+, AND THEIR AFFILIATES, LICENSORS, AGENTS, AND SERVICE PROVIDERS (COLLECTIVELY, THE "**DISNEY+ AND ESPN+ PARTIES**") EACH EXPRESSLY DISCLAIMS ANY WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, COMPLETENESS, AVAILABILITY, SECURITY, COMPATIBILITY, SATISFACTORY QUALITY AND NONINFRINGEMENT, AND THEIR EQUIVALENTS UNDER THE LAWS OF ANY JURISDICTION. YOU ALSO ACKNOWLEDGE AND AGREE THAT THE DISNEY+ AND ESPN+ PARTIES DO NOT WARRANT THAT THE CONTENT AND THE DISNEY+ SERVICE AND/OR ESPN+ SERVICE WILL BE WITHOUT ERRORS, VIRUSES OR OTHER HARMFUL COMPONENTS. THE DISNEY+ AND ESPN+ PARTIES DO NOT WARRANT OR OTHERWISE STATE THAT THE DISNEY+ CONTENT AND/OR ESPN+ CONTENT AND THE DISNEY+ SERVICE AND/OR ESPN+ SERVICE WILL MEET YOUR REQUIREMENTS. YOU AND NOT THE DISNEY+ AND ESPN+ PARTIES ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION OCCASIONED BY USE OF THE DISNEY+ CONTENT AND/OR ESPN+ CONTENT AND THE DISNEY+ SERVICE AND/OR ESPN+ SERVICE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU.

TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, IN NO EVENT SHALL THE DISNEY+ AND ESPN+ PARTIES BE LIABLE FOR ANY PERSONAL INJURY, OR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING LOST PROFITS AND PROPERTY DAMAGE, EVEN IF WE WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, THAT RESULT FROM THE USE OF, OR INABILITY TO USE THE DISNEY+ CONTENT AND/OR ESPN+ CONTENT OR THE DISNEY+ AND/OR ESPN+ SERVICES, HOWEVER CAUSED. NOR SHALL WE BE HELD LIABLE FOR DELAY OR FAILURE IN PERFORMANCE



RESULTING FROM CAUSES BEYOND OUR REASONABLE CONTROL. IN NO EVENT SHALL OUR TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION EXCEED ONE THOUSAND U.S. DOLLARS (US \$1,000). THE LIABILITY LIMITATIONS IN THIS SECTION APPLY UNDER ANY LEGAL THEORY (TORT, CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY OR OTHERWISE) EVEN IF THE DISNEY+ AND ESPN+ PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

- j. Choice of Forum. You agree that any action at law or in equity arising out of or relating to this Agreement that is not subject to arbitration shall be filed, and that venue properly lies, only in the state or federal courts located in the borough of Manhattan, New York, New York, United States of America and you consent and submit to the personal jurisdiction of such courts for the purposes of litigating such action.
- k. Choice of Law. This Agreement is governed by and construed in accordance with the laws of the State of New York and the laws of the United States, without giving effect to any conflict of law principles.
- l. Severability. If any provision of this Agreement shall be unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from the Agreement and shall not affect the validity and enforceability of any remaining provisions.
- m. Survival. The provisions of this Agreement which by their nature should survive the termination of this Agreement shall survive such termination.
- n. Entire Agreement. This Subscriber Agreement and the provisions referenced herein, constitute the entire agreement between you and Disney+ and/or ESPN+ pertaining to the subject matter hereof and supersedes all prior or other arrangements, understandings, negotiations and discussions, whether oral or written. No waiver of any of the provisions of the Subscriber Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

# English – Disney Terms of Use

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Last Updated: SEPTEMBER 26, 2019

Disney DTC LLC and/or its affiliates and subsidiaries (collectively, “Disney DTC”) are pleased to provide to you their sites, software, applications, content, products and services (“Disney Services”), which may be branded Disney, ABC, ESPN, Marvel, Pixar, Lucasfilm, FX or another brand owned or licensed by Disney DTC. These terms govern your use and our provision of the Disney Services on which these terms are posted, as well as Disney Services we make available on third-party sites and platforms if these terms are disclosed to you in connection with your use of the Disney Services. PLEASE READ THESE TERMS CAREFULLY BEFORE USING THE DISNEY SERVICES. BY USING THE DISNEY SERVICES YOU AGREE TO BE BOUND BY THESE TERMS.

ANY DISPUTE BETWEEN YOU AND US, EXCEPT FOR SMALL CLAIMS, IS SUBJECT TO A CLASS ACTION WAIVER AND MUST BE RESOLVED BY INDIVIDUAL BINDING ARBITRATION. PLEASE READ THIS AGREEMENT IN ITS ENTIRETY, INCLUDING THE ARBITRATION PROVISION BELOW.

NOTHING IN THESE TERMS IS INTENDED TO AFFECT YOUR RIGHTS UNDER THE LAW IN YOUR USUAL PLACE OF RESIDENCE THAT CAN NOT BE ALTERED BY THESE TERMS. IF THERE IS A CONFLICT BETWEEN THOSE RIGHTS AND THESE TERMS, YOUR RIGHTS UNDER APPLICABLE LOCAL LAW WILL PREVAIL.

## 1. Contract between You and Us

This is a contract (1) between you and Disney DTC LLC, as a Delaware limited liability company doing business at 500 South Buena Vista Street, Burbank, California 91521, USA, or (2) between you and any different service provider identified for a particular Disney Service.

You must read and agree to these terms (the “Agreement”) before using the Disney Services. If you do not agree, you may not use the Disney Services. These terms describe the limited basis on which the Disney Services are made available to you and supersede prior agreements or arrangements.

Supplemental terms and conditions may apply to some Disney Services, such as rules for a particular competition, content, software, application, service or other activity, or terms that may accompany certain territories, content, products or software accessible through the Disney Services. If applicable, such supplemental terms and conditions will be disclosed to you in connection with such competition, content, product, software, application, service or activity. Any supplemental terms and conditions are in addition to these terms and, in the event

of a conflict, the supplemental terms will prevail over these terms. If you do not agree to the supplemental terms and conditions disclosed, you must not use the applicable Disney Service.

We may change these terms at any time. Any such amendment will be effective thirty (30) days following either our dispatch of a notice to you or our posting of the amended terms. You are responsible for periodically reviewing the terms for updates and amendments. By continuing to use the Disney Services you will be deemed to have agreed to and accepted any amendments. If you do not agree to any change to these terms, you must discontinue using the Disney Services. Our customer service representatives are not authorized to modify any provision of these terms, either verbally or in writing.

We may immediately terminate this contract with respect to you (including your access to the Disney Services) if you fail to comply with any provision of these terms.

## **2. The Disney Services**

The Disney Services are for your personal, noncommercial use and are intended for informational and entertainment purposes only. They do not constitute legal, financial, professional, medical or healthcare advice or diagnosis and cannot be used for such purposes. To support smooth operation of the Disney Services across wide geographic areas, aspects of certain activities, such as game play, may be simulated to avoid delays.

The Disney Services are our copyrighted property or the copyrighted property of our licensors or licensees and all trademarks, service marks, trade names, trade dress and other intellectual property rights in the Disney Services are owned by us or our licensors or licensees. Except as we specifically agree in writing, no element of the Disney Services may be used or exploited in any way other than as part of the Disney Services offered to you. You may own the physical media on which elements of the Disney Services are delivered to you, but we retain full and complete ownership of the Disney Services. We do not transfer title to any portion of the Disney Services to you.

### Content and Software License

If a Disney Service is configured to enable the use of software, content, virtual items or other materials owned or licensed by us, we grant you a limited, non-exclusive, non-sublicensable, non-transferable license to access and use such software, content, virtual item or other material for your personal, noncommercial use only, only for as long as each Disney Service is made available by us, with no right to reproduce, distribute, communicate to the public, make available to the public, or transform any Disney Service in any media format or channel now known or hereafter devised (except as may be expressly described or contemplated within the Disney Service).

You may not: circumvent or disable any content protection system or digital rights management technology used with any Disney Service; decompile, reverse engineer, disassemble or otherwise reduce any Disney Service to a human-readable form; remove identification, copyright or other proprietary notices; or access or use any Disney Service in an unlawful or unauthorized manner

or in a manner that suggests an association with our products, services or brands. You may not access or use any Disney Service in violation of United States export control and economic sanctions [requirements](#). By acquiring services, content or software through the Disney Services, you represent and warrant that your access to and use of the services, content or software will comply with those requirements.

#### Disclaimers and Limitation on Liability

THE DISNEY SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE.” WE DISCLAIM ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES NOT EXPRESSLY SET OUT IN THESE TERMS TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

FOR HELP, PLEASE REFER TO THE HELP SECTION OF THE APPLICABLE DISNEY SERVICE FOR ASSISTANCE IF DIGITAL CONTENT SUPPLIED VIA A DISNEY SERVICE IS NOT WORKING PROPERLY. We will not be liable for damage which could have been avoided by following our advice to apply an update offered to you free of charge or for damage which was caused by you failing to correctly follow installation instructions or to have in place the minimum system requirements advised by us.

We shall not be liable for delay or failure in performance for causes beyond our control or any other damage which does not result from a breach of our obligation.

We are not liable for business losses. We only supply the products for domestic and private use. If you use the products for any commercial, business or re-sale purpose we will have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.

WE ARE NOT RESPONSIBLE FOR ANY LACK OF FUNCTIONALITY OR FAILURE TO PROVIDE ANY PART OF THE DISNEY SERVICE, OR ANY LOSS OF CONTENT OR DATA THAT IS DUE TO: YOUR EQUIPMENT, DEVICES, OPERATING SYSTEM OR INTERNET CONNECTION, YOUR FAILURE TO COMPLY WITH SPECIFIED COMPATIBILITY REQUIREMENTS OR THE CONSEQUENCES OF YOU CHANGING YOUR EQUIPMENT, DEVICE, OPERATING SYSTEM OR INTERNET CONNECTION.

WE SHALL NOT BE LIABLE TO YOU FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS AND PROPERTY DAMAGE, EVEN IF WE WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, NOR SHALL WE BE HELD LIABLE FOR DELAY OR FAILURE IN PERFORMANCE RESULTING FROM CAUSES BEYOND OUR REASONABLE CONTROL.

IN NO EVENT SHALL OUR TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION EXCEED ONE THOUSAND U.S. DOLLARS (US \$1,000).

### Changes to the Disney Services

The Disney Services are constantly evolving and will change over time. If we make a material change to the Disney Services, we will provide you with reasonable notice as described above and you will be entitled to terminate this contract prospectively by no longer using the Disney Services.

### Additional Restrictions on Use of the Disney Services

We do not allow uses of the Disney Services that are commercial or business-related, or that advertise or offer to sell products or services (whether or not for profit), or that solicit others (including solicitations for contributions or donations). You agree not to knowingly or recklessly introduce a virus or other harmful component, or otherwise tamper with, impair or damage any Disney Service or connected network, or interfere with any person or entity's use or enjoyment of any Disney Service. You agree not to use any software or device that allows automated gameplay, expedited gameplay, or other manipulation of gameplay or game client and you agree not to cheat or otherwise modify a Disney Service or game experience to create an advantage for one user over another. Additionally, you agree not to access, monitor or copy, or permit another person or entity to access, monitor or copy, any element of the Disney Services using a robot, search engine, "spider," "scraper," or other automated means or manual process without our express written permission.

### Third-Party Services and Content

The Disney Services may integrate, be integrated into, or be provided in connection with third-party services and content. We do not control those third-party services and content. You should read the terms of use agreements and privacy policies that apply to such third-party services and content.

If you access a Disney Service using an Apple iOS, Android or Microsoft Windows-powered device or Microsoft Xbox One, Apple Inc., Google, Inc. or Microsoft Corporation, respectively, shall be a third-party beneficiary to this contract. However, these third-party beneficiaries are not a party to this contract and are not responsible for the provision or support of the Disney Services. You agree that your access to the Disney Services using these devices also shall be subject to the usage terms set forth in the applicable third-party beneficiary's terms of service.

### Mobile Networks

When you access the Disney Services through a mobile network, your network or roaming provider's messaging, data and other rates and fees will apply. Downloading, installing or using certain Disney Services may be prohibited or restricted by your network provider and not all Disney Services may work with your network provider or device.

## Affiliate Advertising Programs

Disney DTC is a participant in affiliate advertising programs designed to provide a means for sites to earn advertising fees by advertising and linking to third party retail sites.

### **3. Your Content and Account**

#### User Generated Content

The Disney Services may allow you to communicate, submit, upload or otherwise make available text, chats, images, audio, video, competition entries or other content (“User Generated Content”), which may be accessible and viewable by the public. Access to these features may be subject to age restrictions. You may not submit or upload User Generated Content that is defamatory, harassing, threatening, bigoted, hateful, violent, vulgar, obscene, pornographic, or otherwise offensive or that harms or can reasonably be expected to harm any person or entity, whether or not such material is protected by law.

In most instances, we do not claim ownership to your User Generated Content; however, you grant us a non-exclusive, sublicensable, irrevocable and royalty-free worldwide license under all copyrights, trademarks, patents, trade secrets, privacy and publicity rights and other intellectual property rights for the full duration of those rights to use, reproduce, transmit, print, publish, publicly display, exhibit, distribute, redistribute, copy, index, comment on, modify, transform, adapt, translate, create derivative works based upon, publicly perform, publicly communicate, make available, and otherwise exploit such User Generated Content, in whole or in part, in all media formats and channels now known or hereafter devised (including in connection with the Disney Services and on third-party sites and platforms), in any number of copies and without limit as to time, manner and frequency of use, without further notice to you, without attribution (to the extent this is not contrary to mandatory provisions of applicable law), and without the requirement of permission from or payment to you or any other person or entity. You agree that submission of User Generated Content does not establish any relationship of trust and confidence between you and us, and that you have no expectation of compensation whatsoever (except as may be specifically stated in the provisions of the Disney Services in connection with the submission, or arising from it).

You represent and warrant that your User Generated Content conforms to these terms and that you own or have the necessary rights and permissions including, without limitation, all copyrights, music rights and likeness rights (with respect to any person) contained in the User Generated Content, without the need for payment to any other person or entity, to use and exploit, and to authorize us to use and exploit, your User Generated Content in all manners contemplated by these terms. You agree to indemnify and hold us and our subsidiary and affiliated companies, and each of their respective employees and officers, harmless from any demands, loss, liability, claims or expenses (including attorneys’ fees), made against us by any third party arising out of or in connection with our use and exploitation of your User Generated Content resulting from your breach of any warranty, representation or other provision of these terms or any applicable supplemental terms. You also agree not to enforce any moral rights, ancillary rights or similar rights in or to the User Generated Content against us or our licensees,

distributors, agents, representatives and other authorized users, and agree to procure the same agreement not to enforce from others who may possess such rights.

To the extent that we authorize you to create, post, upload, distribute, publicly display or publicly perform User Generated Content that requires the use of our copyrighted works, we grant you a non-exclusive license to create a derivative work using the specifically referenced copyrighted works as required for the sole purpose of creating the materials, provided that such license shall be conditioned upon your assignment to us of all rights worldwide in the work you create for the duration of copyright in the User Generated Content, in all formats and media known or unknown to date, including for use on Disney Services and on third party sites and platforms. If such rights are not assigned to us, your license to create derivative works using our copyrighted works shall be null and void.

We may monitor, screen, post, remove, modify, store and review User Generated Content or communications sent through a Disney Service, at any time and for any reason, including to ensure that the User Generated Content or communication conforms to these terms, without prior notice to you. We are not responsible for, and do not endorse or guarantee, the opinions, views, advice or recommendations posted or sent by users.

### Accounts

Some Disney Services permit or require you to create an account to participate or to secure additional benefits. You agree that any information you provide and maintain is accurate, current and complete, including your contact information for notices and other communications from us and your payment information. You agree not to impersonate or misrepresent your affiliation with any person or entity, including using another person's username, password or other account information, or another person's name or likeness, or provide false details for a parent or guardian. You agree that we may take steps to verify the accuracy of information you provide, including contact information for a parent or guardian.

We have adopted and implemented a policy that provides for the termination, in appropriate circumstances, of the accounts of users who are repeat infringers of copyright. In addition, we may suspend or terminate your account and your ability to use the Disney Services if you engage in, encourage, or advocate for illegal conduct or if you fail to comply with these terms or any supplemental terms.

### Passwords and Security

You agree that you will not share your account or account information with others. You are responsible for taking reasonable steps to maintain the confidentiality of your username and password, and you are responsible for all activities under your account that you can reasonably control. You agree to promptly notify us of any unauthorized use of your username, password or other account information, or of any other breach of security that you become aware of involving your account or the Disney Services.

The security, integrity and confidentiality of your information are extremely important to us. We have implemented technical, administrative and physical security measures that are designed to protect your information from unauthorized access, disclosure, use and modification.

#### **4. Paid Transactions**

##### Identity of Seller

Sales are made by Disney DTC or the seller identified at the time of sale, if different. If you have questions about your order, please contact the seller at the address provided and they will assist you. Some digital storefronts on the Disney Services are operated by third parties and, in that case, different or additional sale terms may apply, which you should read when they are presented to you.

##### Digital Content and Virtual Items

We may make applications, games, software or other digital content available on the Disney Services for you to license for a one-time fee. When purchasing a license to access such material from a Disney Service, charges will be disclosed to you on the Disney Service before you complete the license purchase.

Your purchase of a virtual item or in-game currency is a payment for a limited, non-assignable license to access and use such content or functionality in the Disney Services with no right to reproduce, distribute, communicate to the public, make available to the public or transform any Disney Service via any online media, in any media format or channel now known or hereafter devised (except as may be expressly described or contemplated within the Disney Service). Virtual items (including characters and character names) or in-game currency purchased or available to you in the Disney Services can only be used in connection with the Disney Services where you obtained them or where they were developed by you as a result of game play. These items are not redeemable or subject to refund and cannot be traded outside of the Disney Services for money or other items for value. We may modify or discontinue virtual items or in-game currency at any time.

##### Digital Movie Codes

Digital codes originally packaged in a combination disc + code package (a package that includes a DVD, Blu-Ray, and/or 4K/UHD disc(s) and a digital code) may not be sold separately and may be redeemed only by an individual who obtains the code in the original combination disc + code package, or by a family member of that individual. Digital codes are not authorized for redemption if sold separately. You may use digital movie codes to obtain licensed access to digital movies only as specifically authorized under these terms and conditions and the terms and conditions of the participating provider of digital content through which you access or download the digital movie. Digital movie codes sold, distributed, purchased, or transferred in a manner inconsistent with these terms and conditions are subject to being invalidated.



**Digital Movie Code Returns.** If you do not agree to the above terms and conditions for redeeming a digital movie code obtained by you or a family member in an original combination disc + code package, you may return the combination disc + code package to Disney for a refund subject to the conditions provided at this [link](#).

### Subscriptions

Some Disney Services require paid subscriptions to access. By signing up for a subscription, you agreed that your subscription will be automatically renewed and, unless you cancel your subscription, you authorized us to charge your payment method for the renewal term. The period of auto-renewal will be the same as your initial subscription period unless otherwise disclosed to you at the time of sale. The renewal rate will be no more than the rate for the immediately prior subscription period, excluding any promotional and discount pricing, unless we notify you of a rate change prior to your auto-renewal, in which case you will have the right to cancel the renewal of your subscription. From time to time, we may offer a free trial subscription for a Disney Service. If you register for a free trial subscription, we will begin to bill your account when the free trial subscription expires, unless you cancel your subscription before that time.

When you subscribe to a Disney Service (other than semi-annual and annual subscriptions), you have the right to cancel your contract within fourteen (14) days from the date the transaction is concluded and you will receive a full refund of the subscription fee paid. For semi-annual and annual subscriptions, if notice of cancellation is received within the first thirty (30) days following the first day of initial billing, you will receive a refund of the subscription fee paid. If we refund your subscription fee, you will still be obligated to pay other charges incurred by you in the course of using the Disney Service prior to the date of cancellation. If you pay a periodic subscription fee for a Disney Service, we will provide you with reasonable notice of changes to the fees or billing methods in advance of their effective date and you will be able to cancel your subscription prior to such change. If you subscribed online, we will give you the option of cancelling the subscription online.

### The Order Process

You will have the opportunity to review and confirm your order, including delivery address (if applicable), payment method and product details. We will send to you a notice when we accept your order and our acceptance will be deemed complete and for all purposes to have been effectively communicated to you at the time we send the notice. At such time, the contract for sale will be made and become binding on both you and us. The risk of loss in any goods you purchase and the responsibility to insure them passes to you when the relevant goods are delivered.

We reserve the right to refuse or cancel any order prior to delivery. Some situations that may result in your order being cancelled include system or typographical errors, inaccuracies in product or pricing information or product availability, fairness among customers where supplies are limited, or problems identified by our credit or fraud departments. We also may require additional verification or information before accepting an order. We will contact you if any portion of your order is cancelled or if additional information is required to accept your order. If

your order is cancelled after we have processed your payment but prior to delivery, we will refund your payment.

### Payments and Billing

When you provide payment information, you represent and warrant that the information is accurate, that you are authorized to use the payment method provided, and that you will notify us of changes to the payment information. We reserve the right to utilize third party payment card updating services to obtain current expiration dates on credit cards and debit cards.

### Right of Cancellation; Return of Goods

You may have the right to cancel an order placed for a Disney Service - depending on the nature of the Disney Service. Please read the following information carefully so you understand your right of cancellation.

If you wish to cancel, you must do so by following the cancellation instructions for the particular Disney Service. A sample cancellation form is available [here](#).

### *Cancelling Subscriptions*

Please see the information above on the process for cancelling subscriptions in our *Subscriptions* section.

### *Digital Content*

When you purchase a license to access digital content or virtual items, you will be given an opportunity to consent to delivery at the time of purchase. By consenting to delivery, you acknowledge that you have lost the right to cancel. License purchase fees paid for digital content are non-refundable.

### *Physical Goods*

You have the right, within thirty (30) days from the date of your receipt of physical goods, to cancel our contract with you and return the goods. This right does not apply to goods stated by us on the Disney Services to be non-returnable, including but not limited to:

- Any products with a seal, where the seal is broken, such as audio and video recordings, computer software, and CD's, DVD's or other physical media that have been supplied in sealed packaging; and
- Personalized items.

### *Personalized Goods*

We reserve the right to refuse personalized orders at our discretion. Inappropriate use of our personalization service will cause your order to be cancelled and any payment refunded.

These cancellation rights are separate and in addition to your rights should any item we supply be faulty.

If you are returning goods that are not faulty, you may be required to pay for the cost of returning the goods to us and we may deduct a reasonable amount if you use the goods.

#### Pricing; Taxes

We may revise the pricing for products and services we offer. When you place your order, we estimate the applicable tax and include that estimate in the total for your convenience. Except to the extent required under applicable tax laws, the actual tax amount that will be applied to your order and charged to your payment method is based on calculations on the date of shipment, regardless of when the order was placed.

#### International Shipping; Customs

When ordering goods for delivery to countries other than the country where the seller is located, you may have to pay import duties and taxes levied. These and any additional charges for customs clearance must be borne by you. For goods shipped internationally, please note that any manufacturer warranty may not be valid; manufacturer service options may not be available; manuals, instructions and safety warnings may not be in destination country languages; the goods and accompanying materials may not be designed in accordance with destination country standards, specifications, and labeling requirements; and the goods may not conform to destination country voltage (requiring use of an adapter or converter). You are responsible for assuring the goods can be lawfully imported to the destination country. When ordering from us, the recipient is the importer of record and must comply with all laws and regulations of the destination country.

### **5. Competitions**

Competitions that you enter on a Disney Service may have supplemental rules and/or conditions, but the following general rules apply absent contrary terms in any supplemental rules or conditions for the competition. If there are rules or conditions for a competition and such rules or conditions conflict with these terms, the provisions contained in the rules and conditions govern and control the competition.

#### Entries

Your competition entry is User Generated Content and subject to all provisions of these terms that govern your submission and our use of your User Generated Content. We may disqualify entries that are late, misdirected, incomplete, corrupted, lost, illegible or invalid or where appropriate parental consent was not provided. Competition entries are limited to one per person and entries via agents or third parties or the use of multiple identities are not permitted. Use of automated entries, votes or other programs is prohibited and all such entries (or votes) will be disqualified.

We reserve the right to modify, suspend, cancel or terminate a competition or extend or resume the entry period or disqualify any participant or entry at any time without giving advance notice. We will do so if it cannot be guaranteed the competition can be carried out fairly or correctly for technical, legal or other reasons, or if we suspect that any person has manipulated entries or results, provided false information or acted unethically. If we cancel or terminate a competition, prizes may be awarded in any manner we deem fair and appropriate consistent with local laws governing the competition.

### Eligibility

To enter a competition, the competition must be open to residents in your country and you must be a registered user of the Disney Services and have an active account with current contact information. No purchase is necessary to enter a competition and a purchase will not improve your chances of winning. Competitions are not open to our employees (or their immediate families) or anyone else professionally associated with the competition. If you are under age 18 (or under the age of majority under applicable law) and the competition is open to you, we may need your parent or guardian's consent before we can accept your entry. We reserve the right to request proof of identity or to verify eligibility conditions and potential winning entries, and to award any prize to a winner in person. Competitions are void where prohibited or restricted by law. Potential winners who are residents in jurisdictions where competitions require an element of skill may be required to answer a mathematical test in order to be eligible to win a prize.

### Prizes

No cash or alternative prizes are available, except that we (or the party providing a prize) reserve the right to substitute a similar prize of equal or greater value. Prizes cannot be transferred (except to a child or other family member) or sold by winners. Only the number of prizes stated for the competition is available to be won and all prizes will be awarded provided a sufficient number of eligible entries are received and prizes are validly claimed by the date provided in connection with the competition, after which no alternate winners will be selected or unclaimed prizes awarded. Unless otherwise disclosed in the prize description prior to entry, winners are responsible for all costs and expenses associated with claiming a prize. All taxes are solely the responsibility of each winner, although we reserve the right to withhold applicable taxes and each winner agrees to complete any required tax forms.

Your acceptance of a prize constitutes agreement to participate in reasonable publicity related to the competition and grants us an unconditional right to us to use your name, town or city and state, province or country, likeness, prize information and statements by you about the competition for publicity, advertising and promotional purposes subject to applicable law and regulations, all without additional permission or compensation. As a condition of receiving a prize, winners (or their parents or guardians) may be required to sign and return an affidavit of eligibility, liability release and publicity release.

## **6. Additional Provisions**

### Submissions and Unsolicited Ideas Policies

Our long-standing company policy does not allow us to accept or consider unsolicited creative ideas, suggestions or materials. In connection with anything you submit to us – whether or not solicited by us – you agree that creative ideas, suggestions or other materials you submit are not being made in confidence or trust and that no confidential or fiduciary relationship is intended or created between you and us in any way, and that you have no expectation of review, compensation or consideration of any type.

### Claims of Copyright Infringement

Notifications of claimed copyright infringement and counter notices must be sent to our designated agent:

Lance R. Griffin  
The Walt Disney Company  
500 South Buena Vista Street  
Burbank, California 91521, USA  
Phone: +1 818-560-1000  
Fax: +1 818-560-4299  
Email: [designated.agent@dig.twdc.com](mailto:designated.agent@dig.twdc.com)

We are only able to accept notices in the languages in which these terms are made available by us.

We will respond expeditiously to claims of copyright infringement committed using the Disney Services that are reported to our Designated Copyright Agent, identified above, in accordance with the U.S. Digital Millennium Copyright Act of 1998 (“DMCA”) or, as applicable, other laws. With respect to Disney Services hosted in the United States, these notices must include the required information set forth in the DMCA and described in detail [here](#).

## **7. BINDING ARBITRATION AND CLASS ACTION WAIVER**

PROCEEDINGS TO RESOLVE OR LITIGATE A DISPUTE IN ANY FORUM WILL BE CONDUCTED ON AN INDIVIDUAL BASIS. Neither you nor Disney DTC will seek to have a dispute heard as a class action or private attorney general action or in any other proceeding in which either party acts or proposes to act in a representative capacity. No arbitration or proceeding can be combined with another without the prior written consent of all parties to the arbitrations or proceedings.

You and Disney DTC agree to arbitrate, as provided below, all disputes between you (including any related disputes involving The Walt Disney Company or its affiliates), that are not resolved informally, except disputes relating to the ownership or enforcement of intellectual property rights. “Dispute” includes any dispute, action, or other controversy, whether based on past,

present, or future events, between you and us concerning the Disney Services or this Agreement, whether in contract, tort, warranty, statute, regulation, or other legal or equitable basis. You and Disney DTC empower the arbitrator with the exclusive authority to resolve any dispute relating to the interpretation, applicability or enforceability of these terms or the formation of this contract, including the arbitrability of any dispute and any claim that all or any part of this Agreement are void or voidable.

- A. In the event of a dispute, you or Disney DTC must send to the other party a notice of dispute, which is a written statement that sets forth the name, address, and contact information of the party giving the notice, the facts giving rise to the dispute, and the relief requested. You must send any notice of dispute to Disney DTC, 500 South Buena Vista Street, Burbank, California 91521-7620, USA, Attention: Legal. We will send any notice of dispute to you at the contact information we have for you. You and Disney DTC will attempt to resolve a dispute through informal negotiation within sixty (60) days from the date the notice of dispute is sent. After that sixty (60) day period and not before, you or we may commence an arbitration proceeding. You may instead litigate a dispute in small claims court if the dispute meets the requirements to be heard in small claims court, whether or not you negotiated informally first.
  
- B. If you and Disney DTC do not resolve a dispute by informal negotiation or in small claims court, the dispute shall be resolved by binding arbitration before a neutral arbitrator whose decision will be final except for a limited right of appeal under the U.S. Federal Arbitration Act. **YOU ARE GIVING UP THE RIGHT TO LITIGATE A DISPUTE IN COURT BEFORE A JUDGE OR JURY.** Arbitration will be administered by JAMS Mediation, Arbitration and ADR Services (“JAMS”) in accordance with the JAMS Streamlined Arbitration Rules and Procedures (the “JAMS Rules”). The JAMS Rules and instructions about how to initiate an arbitration are available at [www.jamsadr.com](http://www.jamsadr.com) or 1-800-352-5267. Arbitration may be conducted in person, through the submission of documents, by phone, or online. Proceedings that cannot be conducted through the submission of documents, by phone, or online, will take place in either Los Angeles, California or the borough of Manhattan, New York, New York, whichever is more convenient for you; provided, however, that if circumstances prevent you from traveling to Los Angeles or New York, JAMS may hold an in-person hearing in your hometown area. You and Disney DTC agree to submit to the exclusive jurisdiction of the federal or state courts located in either Los Angeles, California or the borough of Manhattan, New York, New York, whichever is more convenient for you, in order to compel arbitration, to stay proceedings pending arbitration, or to confirm, modify, vacate, or enter judgment on the award entered by the arbitrator. The arbitrator may award damages to you individually as a court could, including declaratory or injunctive relief, but only to the extent required to satisfy your individual claim.

Except as provided above with respect to jurisdiction in Los Angeles, California and Manhattan, New York, New York, nothing in this arbitration provision shall be construed as consent by Disney DTC or its affiliates to the jurisdiction of any other court with regard to disputes, claims or controversies unrelated to the Disney Services or this Agreement.

### Choice of Forum

For all Disney Services NOT provided by The Walt Disney Company Limited the following shall apply:

Except to the extent required under applicable local law which requires that venue be in the country of your residence, you agree that any action at law or in equity arising out of or relating to these terms or the Disney Services that is not subject to arbitration shall be filed, and that venue properly lies, only in the state or federal courts located in the borough of Manhattan, New York, New York, United States of America and you consent and submit to the personal jurisdiction of such courts for the purposes of litigating such action.

### Choice of Law

For all Disney Services NOT provided by The Walt Disney Company Limited the following shall apply:

Except to the extent that applicable local law requires that the law to be applied for contracts of this type be that of the country of your residence, these terms are governed by and construed in accordance with the laws of the State of New York and the laws of the United States, without giving effect to any conflict of law principles.

### Severability

If any provision of these terms shall be unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from these terms and shall not affect the validity and enforceability of any remaining provisions.

### Survival

The provisions of these terms which by their nature should survive the termination of these terms shall survive such termination.

### Waiver

No waiver of any provision of these terms by us shall be deemed a further or continuing waiver of such provision or any other provision, and our failure to assert any right or provision under these terms shall not constitute a waiver of such right or provision.

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
IN AND FOR ORANGE COUNTY, FLORIDA

JEFFREY J. PICCOLO, as Personal  
Representative of the ESTATE OF  
KANOKPORN TANGSUAN, deceased,

CIRCUIT CIVIL DIVISION

Plaintiff,

CASE NO.: 2024-CA-001616-O

vs.

GREAT IRISH PUBS FLORIDA, INC., a  
Florida corporation d/b/a RAGLAN ROAD  
IRISH PUB AND RESTAURANT and  
WALT DISNEY PARKS AND RESORTS  
U.S., INC., a Florida corporation d/b/a  
DISNEY SPRINGS,

Defendants.

\_\_\_\_\_/

**DECLARATION OF PETER STREIT IN SUPPORT OF WALT DISNEY PARKS AND  
RESORTS U.S., INC.'S MOTION TO COMPEL ARBITRATION AND STAY CASE**

I, Peter Streit, declare and state as follows:

1. I am over the age of 18 and am competent to make this declaration. I have personal knowledge of the facts stated in this declaration.
2. I am a Director of Product Management on the Identity Product team for Disney Entertainment & Sports LLC, which is an affiliate of Walt Disney Parks and Resorts U.S., Inc. (“WDPR”).
3. As part of my role, I am familiar with the consent process in which users with Disney accounts consent to various terms of use when accessing Disney websites and mobile applications, including, among others, the Walt Disney World website and the My Disney Experience (“MDX”) mobile application, which are dedicated to Walt Disney World parks and resorts.



4. A Disney account is an account an individual can create to access, log into, and interact with a variety of different Disney websites and mobile applications.

5. I am familiar with the process for capturing when a Disney account user accepts and agrees to various terms of use, including the Disney Experience Terms and Conditions and Disney Terms of Use.

6. I have located a Disney account created by Mr. Piccolo on November 29, 2019 when he created a Disney+ account using the email address [spanglezeus1988@gmail.com](mailto:spanglezeus1988@gmail.com).

7. I reviewed the business records that are maintained in the regular course of business and was able to identify that Jeffrey Piccolo consented to the Disney Terms of Use on November 29, 2019 when he registered his Disney+ account.

8. If a Disney account holder who creates a Disney account on a platform or website other than the Walt Disney World website ([disneyworld.disney.go.com](http://disneyworld.disney.go.com)) or the MDX application attempts to login to the Walt Disney World website or the MDX application, then there are only two possible login methods that the account holder can follow to complete the login. Either method would require a user to accept the terms of use. These processes are as follows:

a. If the account holder had not previously consented to the Disney Terms of Use (e.g., via a checkbox during a prior registration or login to another Disney application or webpage), then the individual would be directed to one version of a webpage (*see Exhibit A*), which would prompt the individual to “review & accept Walt Disney World terms.” The page includes two checkboxes. The first checkbox says, “By continuing, I agree to the Terms of Use.” The “Terms of Use” is hyperlinked to the Disney Terms of Use. The second checkbox says, “I have read and agree to the My Disney Experience Terms and Conditions.” The My Disney Experience terms and conditions is hyperlinked.

Below that is a blue button that says “Agree & Continue”. Both checkboxes must be selected before the individual can select the Agree & Continue button. This was also the process as it existed on September 15, 2023.

b. If the account holder had previously consented to the Disney Terms of Use in a prior login, then the individual would be required to consent to the My Disney Experience Terms and Conditions during that login. During the login process, after the individual authenticates the email address associated with the Disney account, the individual would then be directed to a second page (*see Exhibit B*), which would prompt the individual to “review & accept Walt Disney World terms.” The same page includes a single checkbox stating, “I have read and agree to the My Disney Experience Terms and Conditions.” Below that is a blue button that says “Agree & Continue.” The My Disney Experience terms and conditions is hyperlinked. The checkbox must be selected before the individual can select the Agree & Continue button. This was also the process as it existed on September 15, 2023.

9. I reviewed the business records that are maintained in the regular course of business and was able to identify that Jeffrey Piccolo accepted the My Disney Experience Terms and Conditions on September 15, 2023.

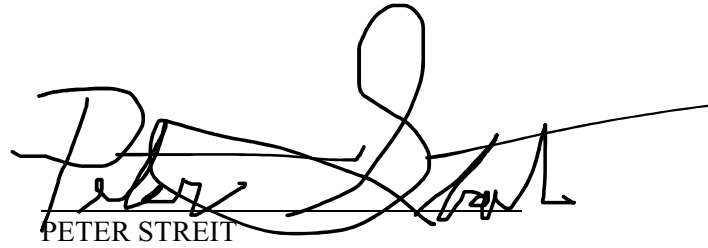
10. A true and correct copy of the My Disney Experience Terms and Conditions as they existed on September 15, 2023 is attached hereto as **Exhibit C**.

11. A true and correct copy of the Disney Terms of Use in effect on September 15, 2023 is attached hereto as **Exhibit D**.

SIGNATURE PAGE FOLLOWS

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on May 31, 2024.



PETER STREIT

# EXHIBIT G

## IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA

JEFFREY J. PICCOLO, as Personal  
Representative of the ESTATE OF  
KANOKPORN TANGSUAN, deceased,

CIRCUIT CIVIL DIVISION

Plaintiff,

CASE NO.: 2024-CA-001616-O

vs.

GREAT IRISH PUBS FLORIDA, INC., a  
Florida corporation d/b/a RAGLAN ROAD  
IRISH PUB AND RESTAURANT and  
WALT DISNEY PARKS AND RESORTS  
U.S., INC., a Florida corporation d/b/a  
DISNEY SPRINGS,

Defendants.

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**DECLARATION OF ZACHARY VARNES IN SUPPORT OF WALT DISNEY PARKS  
AND RESORTS U.S., INC.'S MOTION TO COMPEL ARBITRATION AND STAY  
CASE**

I, Zachary Varnes, declare and state as follows:

1. I am over the age of 18 and am competent to make this declaration. I have personal knowledge of each fact stated in this declaration.
2. I am a Zachary Varnes. I am a Financial Analyst for Disney Destinations, LLC (“Disney Destinations”), an affiliate of Walt Disney Parks and Resorts U.S., Inc. In my role, I have knowledge of the guest service applications used to track, among other things, guest ticketing and reservation information.
3. I reviewed ticketing and reservation information for Jeffrey Piccolo, who has a MyDisney account with the email address [spanglezeus1988@gmail.com](mailto:spanglezeus1988@gmail.com). Disney Destination’s records maintained in the ordinary course of business indicate that Mr. Piccolo added two “managed guests” by the name of Jacqueline Piccolo and Kanokporn Tangsuan (Dr.) A true and

accurate representation reflecting Mr. Piccolo's managed guests, as reflected in the guest service suite, is attached as **Exhibit A**.

4. Disney Destination's records also indicate that Mr. Piccolo purchased three Walt Disney World theme park tickets on October 1, 2023. A true and correct copy of Mr. Piccolo's ticket information is attached as **Exhibit B**. The tickets included access to WDW and covered access for Mr. Piccolo and two managed guests, Jacqueline Piccolo and Kanokporn Tangsuan (Dr.).

SIGNATURE PAGE FOLLOWS

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on May 31, 2024.



ZACHARY VARNES

# My Disney Experience Terms and Conditions

Updated as of: *July 27, 2022*

Welcome to the My Disney Experience Website or the My Disney Experience Mobile Application (collectively referred to as the “Site/App”) relating to features we sometimes refer to as MyMagic+. The Site/App is designed to enhance your visit to the *Walt Disney World* Resort, and certain other operations within the Walt Disney Parks and Resorts business segment in the U.S. (each a “Resort”), and provide a more immersive and personalized experience. The Site/App is operated by the group of U.S. companies within the Walt Disney Parks and Resorts business segment of The Walt Disney Company (“Parks and Resorts Businesses,” “we,” “us” or “our”) and is a service offered in the U.S. only.

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## ***PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY.***

These terms and conditions (“Terms”) govern your use of the Site/App. Not all benefits and features are available to all guests, and access to many benefits and features requires the purchase of valid park admission, a stay at a select *Walt Disney World* Resort hotel, purchase and use of a MagicBand or MagicBand+ (“MagicBands”), and/or a valid Disney account.

By using the Site/App or by clicking a box that states that you accept or agree to the My Disney Experience Terms and Conditions, you signify your agreement to the these Terms for yourself and for all persons (including minors) for whom you are purchasing or otherwise securing benefits and/or managing those benefits and entitlements such as tickets, attraction access, and MagicBands (your “Party”). You represent that you have all necessary rights and consents to agree to these Terms on behalf of your Party. If you do not agree to these Terms, you may not use the Site/App. These Terms apply in addition to, and not in lieu of, the Disney Terms of Use found here: <http://disneytermsofuse.com/>. In the event these Terms directly conflict with the applicable foregoing Disney Terms of Use, these Terms will prevail. Without limiting other rights and remedies available to us, if you fail to comply with these Terms we may immediately terminate this contract with you and/or delete your

Disney account or any of the features in your account, including dining reservations, photos and other digital content.

## **YOUR PRIVACY IS IMPORTANT TO US.**

To provide you with the features and benefits of the Site/App, we need to collect information from you through our Site/App, and through your experience at our Resorts.

Please review our Privacy Policy found here:

<https://privacy.thewaltdisneycompany.com/en/current-privacy-policy> for details regarding the collection and use of your personal information. You can also see answers to frequently asked questions about privacy at the Resorts at

<https://privacy.thewaltdisneycompany.com/en/resortfaqs/>.

## **SITE/APP REGISTRATION AND TRAVEL AGENTS:**

- To access certain features of the Site/App, you will need to create and be signed in to your Disney account.
- You must meet certain age requirements to create a Disney account and to use certain features. Many features and functions on the Site/App are only available to adults.
- If you are a travel agent, you agree: (1) to set up separate Disney accounts for business and personal use, each with a different email address, (2) when conducting travel agent services through the Site/App, you are the cardholder for any credit card saved to your profile and you will not save a client's credit card account information to any of your Disney accounts, (3) when making a reservation for a client who is a Friend (as defined in "Family and Friends" below), you confirm that the Friend has granted you the authority to make a reservation on his/her behalf, and that you will communicate to such Friend all of the relevant charges and rules associated with the reservation, including but not limited to credit card guarantees and prepayment obligations, and (4) that you will not use any information obtained by connecting to your client via the Site/App Family and Friends feature for any purpose other than to make dining reservations through the Site/App.

## **FAMILY AND FRIENDS**

- The Family and Friends feature allows you to assign or match benefits and certain Resort products and services purchased (such as ticket entitlements) to your family and friends and plan activities for them (such as dining reservations) when you are logged in. The number of guests on your family and friends list may be limited.



- When a family member or friend accepts your invitation, that person can see certain information about you, including, for example: your full name, your character photo, your entire trip itinerary (or, at your option, just activities you have in common), your Disney PhotoPass photos, videos and other digital content, your age (up to “18+”) and the first and last names, ages (up to “18+”) and character photos of those on your family and friend list (at your option – you can elect to keep this private). Family and friends who are on your reservation will also be able to view your reservation information. You can change your sharing permissions at any time.
- Your family and friends will have the ability to plan activities for you and modify activities, without notice to you. You can create a profile for a family member or friend who does not have his or her own Disney account. By doing so, you are not creating a Disney account for that person; instead, you are providing information about that guest in order to add him or her to your family and friends list so that you can book activities on that person’s behalf. The names of guests you identify as part of your Party when booking certain benefits (such as dining reservations) through the Site/App are automatically added to your account as family and friends.
- If you create your own Disney account and connect with someone who used to manage you as a family or friend, the activities that person previously planned for you will be added to your itinerary, and the family and friends they approved to connect with you will be added to your family and friends list.
- If someone you’ve been planning for as a family or friend has their own Disney account, you can invite them to connect with you so that all of the entitlements and activities you have purchased and planned for them will be associated with their Disney account, and you will no longer control their family and friend list or profile.
- When making a reservation or creating a profile for a family member or friend, you represent and warrant that you have consent and authority to make a reservation on his/her behalf and provide his/her personal information to us.
- You acknowledge that by sending and/or accepting an invitation to become a family or friend, you authorize that family or friend to plan and modify activities for you, without notice to you. We are not liable or responsible for the conduct of the family or friends you choose to connect with on the Disney (including travel agents), including their planning or modifying activities on your behalf, or for a family or friend’s use of any information you chose to share with the family or friend (including travel agents).

## **RADIO FREQUENCY CARDS AND MAGICBANDS**

- We use radio frequency technology-enabled cards and MagicBands (“RF Devices”) to enhance your experience at Walt Disney World Resort. Your RF Device may be used in many ways, including entry to the parks (valid admission required), for guests of Disney Resort hotels to access your room and make purchases (charged to your payment card on file at your Disney Resort hotel) at select locations during your stay; to redeem Lightning Lane selections; and for activating any Memory Maker entitlements. Your RF Device is unique to you and the benefits you have purchased. You are responsible for keeping your RF Device safe and secure. MagicBands are intended for use in the U.S. only.
- MagicBands contains an HF radio frequency device and a transmitter which sends and receives RF signals through a small antenna inside the MagicBands. Each RF Card contains a passive HF radio frequency chip. MagicBand+ products also contain a Bluetooth chip that can permit communication with other Bluetooth-enabled devices (if you choose to pair your MagicBand+ product with such devices), as well as with sensors at our Resorts. Some of your benefits will be unlocked by "touching" your MagicBands or card to short-range reader touch points located at the Resort, including access to your Disney Resort hotel room, entry to a Disney theme park or making purchases at select Resort locations. For security purposes, you may also be required to provide additional authentication information to enable certain functions, such as using the Ticket Tag service or providing a PIN. Additional information about the operation and use of RF Devices can be found at:  
<https://disneyworld.disney.go.com/faq/my-disney-experience/frequency-technology/>
- If you have a medical device and have questions about your medical device and RF technology, we encourage you to seek the guidance of the manufacturer of your device and your physician.
- RF Devices are not transferable. If your RF Device includes park admission entitlements, it is a non-transferrable ticket and must be used by the same person on all days.
- Each RF Device linked to your Disney account or linked to a family or friend by you may be used to access certain other entitlements also linked to your Disney account or linked to a family or friend by you, such as park admission, and touch to pay (if available). You are responsible for keeping your RF Devices safe and secure. We are not responsible for any unauthorized use of RF Devices.
- Title to the MagicBands shall pass to you in the United States. If the MagicBands are to be sent by courier, we will deliver the MagicBands to the courier in the United States for delivery to you for receipt of and customs clearance of the MagicBands. The

MagicBands are your sole obligation and responsibility once given to the courier for delivery. Consequently, you shall bear all risk of loss and shall be responsible for any duty cost, value-added tax and any other custom charges and expenses associated with the clearance of any MagicBands in the country of delivery.

- To get answers to frequently asked questions regarding how the RF Devices work and your privacy, go to <https://privacy.thewaltdisneycompany.com/en/resortfaqs/>
- MagicBands are intended for use in the United States only.

### **LINK AN EXISTING RESERVATION**

- You may find and link existing dining reservations and Resort room or package reservations, which include stays at select Walt Disney World Resort hotels, to your Disney account. To link your reservations, you must be logged into your Disney account.
- Certain reservations booked online will automatically appear in the Site/App when you log in; however, your reservation information might not appear immediately after booking. If your reservation information does not appear within 24 hours of booking, then you may use this feature to add it manually.

### **ONLINE CHECK-IN SERVICE**

- Online-check-in service is only available for guests with reservations at Disney Resort hotels. Online check-in service allows you to provide a credit card to be used for room expenses and incidental charges (such as food and merchandise), rental fees and other miscellaneous charges during your stay. The credit card that you provide during online check-in will be associated with your RF Device and will be used to make touch to pay purchases, as discussed above in “Radio Frequency Cards and MagicBands”. Using your RF Device to touch to pay at designated Resort locations will create a charge to your Disney Resort hotel room folio, which will be settled to your credit card provided during online check-in or check-in at the front desk of the hotel. When making purchases using your RF Device, you may be required to enter a personal identification number (PIN) to verify your identity.
- You are responsible for maintaining the confidentiality of your PIN. You should not share your PIN with anyone. If you share your PIN with other people, you are fully responsible for their actions. You must inform us immediately if there is any reason to believe that your PIN has, or is likely to, become known to someone other than you or is being, or is likely to be, used in an unauthorized way.

- Guests ages 10 years and older on your reservation will automatically be given charging privileges. Charging privileges can be changed at the front desk of your Resort hotel.

### **STORING A CREDIT CARD TO YOUR PROFILE**

- You have the ability to store a credit card in My Profile in the Site/App if you are an adult. This credit card may be, but is not necessarily, the same credit card you may provide during online check-in or at the front desk for room charges and incidentals. Your Site/App Profile stored credit card is not associated with or used for the touch to pay purchases you make with your RF Device unless you also provide that card during online check-in or at the front desk.
- You must sign in to your Disney account in order to add or edit your credit card information. You can remove or edit your stored credit card information at any time.
- For your convenience, if you save a credit card to your profile in your Disney account, your credit card information will be stored in your Disney account until you change or remove it.
- You represent and warrant that you are the authorized user of the payment card stored in your account Profile.

### **MOBILE DEVICE NOTIFICATIONS**

- If you use our Mobile Application, you may also sign up to receive vacation notifications as push notifications (“Mobile Device Notifications”) on your mobile device. You may sign in to your account and visit the Mobile Device Notifications page to customize which push notifications you receive. Your most recent preferences will remain active with your Disney account and will be applied to subsequent Walt Disney World Resort visits associated with your Disney account. You may sign in to the Mobile Application with your Disney account and change your Mobile Device Notifications preferences at any time.
- Your Mobile Device Notifications preferences will only apply to the communications listed on the Mobile Device Notifications preference page in the Mobile Application. They will not affect other communications from us (such as email, text messages, or transaction confirmations) or from other members of The Walt Disney Family of Companies. For information on how you can modify other communications permissions you may have provided for members of The Walt Disney Family of Companies, please see the “Communication Choices” section of our Privacy Center found here: <http://disneyprivacycenter.com/>.

- Message and data rates may apply.

## **DINING**

- You must register and sign in to your Disney account to arrange dining experiences online.
- For credit card guarantees or for payment of a dinner show or other pre-paid dining experience, we'll charge the credit card you stored in My Profile, unless you provide us with a new form of payment at the time you arrange the dining experience.

## **MEMORY MAKER**

- The Memory Maker terms can be found at the following URL:  
<https://mydisneyphotopass.disney.go.com/memory-maker-terms/>.

## **RESORT MAPS**

- The Site/App provides you with maps of the Resort. You may also receive directions to various destinations in our Resort when you use the Mobile Application and allow the Mobile Application to access your location.
- Your use of maps in the Site/App is at your sole risk. Location data, directions and travel time may not be accurate. Do not use maps in a way that distracts you from your surroundings or prevents you from obeying laws and Park rules.
- Your use of the Resort Maps is also governed by the Google Maps Terms and privacy policy found here: [http://maps.google.com/help/terms\\_maps.html](http://maps.google.com/help/terms_maps.html).

## **GENERAL PROVISIONS**

You agree that any claim, action or lawsuit (collectively, "Action") arising out of these Terms, reservations and bookings, and/or all packages, products and services provided in connection with the reservations and bookings (including without limitation, components such as park admissions, RF Devices, entitlements to access Lightning Lane entrances, photos and other media, and room accommodations) (collectively, "Terms, Reservations and Products") must be filed and maintained exclusively in any court in Orange County, Florida having subject matter jurisdiction. You also hereby submit to the personal jurisdiction of such courts for the purposes of litigating any such Action. You agree these Terms, Reservations and Products shall be governed by and construed in accordance with the laws of the State of Florida, without giving effect to any principles of conflicts of law.

## **DISCLAIMER/MODIFICATIONS**

As the Site/App will evolve over time, there may be periods during which certain benefits and features are made available on a limited basis to a select audience. Availability of Site/App benefits and features is subject to change without notice. At any time, we may amend these Terms (including by modification, deletion and/or addition of any portion thereof). If we make a material amendment to these Terms, we will notify you of such amendment by sending you an e-mail to the last e-mail address associated with your Disney account, by sending you a message in your Disney account, and/or by posting notice of such amendment on the Site/App by including a notation next to the link to these Terms that states "Updated as of [applicable date]." Any such amendment to these Terms will be effective as of the date the modified or replacement Terms are posted to the Site/App, and such modified or replacement Terms will govern your use of the Site/App on and after the date the modified or replacement Terms are posted. We advise you not to use this Site/App (including the camera) while driving, walking, or when being distracted or disoriented from your surroundings as it could be hazardous.

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
IN AND FOR ORANGE COUNTY, FLORIDA**

JEFFREY J. PICCOLO, as Personal  
Representative of the ESTATE OF  
KANOKPORN TANGSUAN, deceased,

CIRCUIT CIVIL DIVISION

Plaintiff,

CASE NO.: 2024-CA-001616-O

vs.

GREAT IRISH PUBS FLORIDA, INC., a  
Florida corporation d/b/a RAGLAN ROAD  
IRISH PUB AND RESTAURANT and  
WALT DISNEY PARKS AND RESORTS  
U.S., INC., a Florida corporation d/b/a  
DISNEY SPRINGS,

Defendants.

**REQUEST FOR COPIES**

Defendant Walt Disney Parks and Resorts U.S., Inc. (“WDPR”) requests, pursuant to Florida Rule of Civil Procedure 1.351(e), that Defendant Great Irish Pubs Florida, Inc. provide the undersigned with legible copies of every document produced in response to the subpoenas served on the entities referenced below. WDPR will provide reimbursement for reasonable copying charges, if any.

1. Advent Health Celebration  
ATTN: Health Information Management  
400 Celebration Place  
Celebration, FL 34747
2. Advent Health Celebration  
ATTN: Billing Department  
400 Celebration Place  
Celebration, FL 34747
3. Advent Health Celebration  
ATTN: Radiology  
400 Celebration Place Celebration, FL 34747

4. Reedy Creek Fire Services  
651 E. Buena Vista Drive  
Lake Buena Vista, FL 32830
5. Savannah Bee Company  
1600 E. Buena Vista Drive, #C08  
Lake Buena Vista, FL 32830
6. The Coca-Cola Company  
c/o Registered Agent: CT Corporation System  
1200 S. Pine Island Road  
Plantation, FL 33324
7. Stargazers Bar  
1506 E. Buena Vista Drive  
Orlando, FL 32830
8. YeSake Kiosk  
1503 E. Buena Vista Drive, West Side D12  
Lake Buena Vista, FL 32830
9. Chicken Guy, LLC  
c/o Registered Agent: Michael Neukamm  
301 E. Pine Street, Suite 1400  
Orlando, FL 32801
10. Sprinkles  
1676 E. Buena Vista Drive  
Lake Buena Vista, FL 32830
11. Gideon's Bakehouse, Inc.  
c/o Registered Agent: Steven J. Lewis  
671 Garden Commerce Parkway, Bldg 200, Suite 130  
Winter Garden, FL 34787
12. Morimoto Asia  
1600 E. Buena Vista Drive  
Lake Buena Vista, FL 32830
13. Planet Hollywood, LLC  
301 E. Pine Street Suite 1400  
Orlando, FL 32801
14. The Polite Pig  
1536 E. Buena Vista Drive  
Orlando, FL 32830



Dated: April 22, 2024

Respectfully Submitted,

**WHITE & CASE LLP**

*/s/ Raoul G. Cantero*

Raoul G. Cantero

Florida Bar No. 552356

David W. Rifkin

Florida Bar No. 1011579

Southeast Financial Center

200 S. Biscayne Blvd., Suite 4900

Miami, Florida 33131-2352

Telephone: (305) 371-2700

Facsimile: (305) 358-5744

[rcantero@whitecase.com](mailto:rcantero@whitecase.com)

[drifkin@whitecase.com](mailto:drifkin@whitecase.com)

*Counsel for Defendant*

*Walt Disney Parks and Resorts U.S., Inc.*

**CERTIFICATE OF SERVICE**

I CERTIFY that on April 22, 2024, a copy of the foregoing was filed and served via Florida's e-Filing Portal on the following:

Brian R. Denney  
David P. Vitale Jr.  
**Searcy Denney Scarola Barnhart & Shipley, P.A.**  
Post Office Drawer 3626  
West Palm Beach, FL 33402  
Telephone: (561) 686-6300  
Facsimile: (561) 383-9509  
brd@searcylaw.com  
dzarate@searcylaw.com  
bdenneyteam@searcylaw.com  
dvitale@searcylaw.com  
vitaleteam@searcylaw.com

*Counsel for Plaintiff Jeffrey J. Piccolo, etc.*

Todd R. Ehrenreich  
Kelly L. Kesner  
**Lewis Brisbois Bisgaard & Smith LLP**  
2 Alhambra Plz, Suite 1110  
Coral Gables, FL 33134  
Telephone: (786) 353-0210  
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kelly.kesner@lewisbrisbois.com  
gisselle.rodriguez@lewisbrisbois.com  
mia.fernandez@lewisbrisbois.com  
cristina.prieto@lewisbrisbois.com

*Counsel for Defendant Great Irish Pubs Florida, Inc. d/b/a Raglan Road Irish Pub and Restaurant*

Nicholas P. Dareneau  
**Lewis Brisbois Bisgaard & Smith LLP**  
401 East Jackson Street, Suite 3400  
Tampa, Florida 33602  
Telephone: (813) 739-1900  
Facsimile: (813) 739-1919  
nicholas.dareneau@lewisbrisbois.com  
verna.boyd@lewisbrisbois.com

*Counsel for Defendant Great Irish Pubs Florida, Inc. d/b/a Raglan Road Irish Pub and Restaurant*

BY: /s/ Raoul G. Cantero  
Raoul G. Cantero

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
IN AND FOR ORANGE COUNTY, FLORIDA**

JEFFREY J. PICCOLO, as Personal  
Representative of the ESTATE OF  
KANOKPORN TANGSUAN, deceased,

CIRCUIT CIVIL DIVISION

Plaintiff,

CASE NO.: 2024-CA-001616-O

vs.

GREAT IRISH PUBS FLORIDA, INC., a  
Florida corporation d/b/a RAGLAN ROAD  
IRISH PUB AND RESTAURANT and  
WALT DISNEY PARKS AND RESORTS  
U.S., INC., a Florida corporation d/b/a  
DISNEY SPRINGS,

Defendants.

**REQUEST FOR COPIES**

Defendant Walt Disney Parks and Resorts U.S., Inc. (“WDPR”) requests, pursuant to Florida Rule of Civil Procedure 1.351(e), that Plaintiff Jeffrey Piccolo, as Personal Representative of the Estate of Kanokporn Tangsuan, provide the undersigned with legible copies of every document produced in response to the subpoena served on the entity referenced below. WDPR will provide reimbursement for reasonable copying charges, if any.

1. NYU Langone – Attn: Employee and Labor Relations Dept.  
105 East 17<sup>th</sup> Street – Fourth Floor  
New York, NY 10003

Dated: April 22, 2024

Respectfully Submitted,

**WHITE & CASE LLP**

*/s/ Raoul G. Cantero*

Raoul G. Cantero

Florida Bar No. 552356

David W. Rifkin

Florida Bar No. 1011579

Southeast Financial Center

200 S. Biscayne Blvd., Suite 4900

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[rcantero@whitecase.com](mailto:rcantero@whitecase.com)

[drifkin@whitecase.com](mailto:drifkin@whitecase.com)

*Counsel for Defendant*

*Walt Disney Parks and Resorts U.S., Inc.*

**CERTIFICATE OF SERVICE**

I CERTIFY that on April 22, 2024, a copy of the foregoing was filed and served via Florida's e-Filing Portal on the following:

Brian R. Denney  
David P. Vitale Jr.  
**Searcy Denney Scarola Barnhart & Shipley, P.A.**  
Post Office Drawer 3626  
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dzarate@searcylaw.com  
bdenneyteam@searcylaw.com  
dvitale@searcylaw.com  
vitaleteam@searcylaw.com

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*Counsel for Defendant Great Irish Pubs Florida, Inc. d/b/a Raglan Road Irish Pub and Restaurant*

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nicholas.dareneau@lewisbrisbois.com  
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*Counsel for Defendant Great Irish Pubs Florida, Inc. d/b/a Raglan Road Irish Pub and Restaurant*

BY: /s/ Raoul G. Cantero  
Raoul G. Cantero

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
IN AND FOR ORANGE COUNTY, FLORIDA

JEFFREY J. PICCOLO, as Personal  
Representative of the ESTATE OF  
KANOKPORN TANGSUAN, deceased,

CIRCUIT CIVIL DIVISION

Plaintiff,

CASE NO.: 2024-CA-001616-O

vs.

GREAT IRISH PUBS FLORIDA, INC., a  
Florida corporation d/b/a RAGLAN ROAD  
IRISH PUB AND RESTAURANT and  
WALT DISNEY PARKS AND RESORTS  
U.S., INC., a Florida corporation d/b/a  
DISNEY SPRINGS,

Defendants.

\_\_\_\_\_ /

**DEFENDANT WALT DISNEY PARKS AND RESORTS U.S., INC.'S  
ANSWER AND AFFIRMATIVE DEFENSES**

Defendant Walt Disney Parks and Resorts U.S., Inc. (“WDPR”) files its Answer and Affirmative Defenses to the Complaint filed by Plaintiff Jeffrey Piccolo, as Personal Representative of the Estate of Kanokporn Tangsuan, on February 22, 2024.

**ANSWER**

1. In response to paragraph 1, WDPR admits this purports to be an action for damages in excess of \$50,000.00, exclusive of attorney’s fees, interest, and costs.
2. WDPR is without knowledge sufficient to admit or deny the allegations in paragraph 2, and the allegations are therefore denied.
3. WDPR is without knowledge sufficient to admit or deny the allegations in paragraph 3, and the allegations are therefore denied.

4. WDPR is without knowledge sufficient to admit or deny the allegations in paragraph 4, and the allegations are therefore denied.

5. The allegations in paragraph 5 are directed at Defendant Great Irish Pubs Florida, Inc. and do not require a response from WDPR.

6. The allegations in paragraph 6 are directed at Defendant Great Irish Pubs Florida, Inc. and do not require a response from WDPR.

7. In response to paragraph 7, WDPR admits only that it is a Florida Corporation organized under the laws of Florida and conducts business in Orange County, Florida.

8. In response to paragraph 8, WDPR admits only that it conducts business in Orange County, Florida.

9. In response to paragraph 9, WDPR admits only that it owns the land located at 1486 Buena Vista Drive, Orlando, Orange County, Florida 32830.

10. WDPR admits the allegations in paragraph 10.

11. WDPR denies the allegations in paragraph 11.

12. WDPR denies the allegations directed towards WDPR in paragraph 12. The remaining allegations in paragraph 12 are directed at Defendant Great Irish Pubs Florida, Inc. and do not require a response from WDPR.

13. WDPR denies the allegations in paragraph 13.

14. WDPR denies the allegations in paragraph 14.

15. The allegations in paragraph 15 are directed at Defendant Great Irish Pubs Florida, Inc. and do not require a response from WDPR.

16. WDPR is without knowledge sufficient to admit or deny the allegations in paragraph 16, and the allegations are therefore denied.

17. In response to paragraph 17, WDPR admits only that venue is purportedly proper in Orange County, Florida.

**FACTS GIVING RISE TO THE ALLEGATIONS**

18. WDPR is without knowledge sufficient to admit or deny the allegations in paragraph 18, and the allegations are therefore denied.

19. WDPR denies the allegations in paragraph 19.

20. WDPR is without knowledge sufficient to admit or deny the allegations in paragraph 20, and the allegations are therefore denied.

21. WDPR is without knowledge sufficient to admit or deny the allegations in paragraph 21, and the allegations are therefore denied.

22. WDPR is without knowledge sufficient to admit or deny the allegations in paragraph 22, and the allegations are therefore denied.

23. WDPR is without knowledge sufficient to admit or deny the allegations in paragraph 23, and the allegations are therefore denied.

24. WDPR is without knowledge sufficient to admit or deny the allegations in paragraph 24, and the allegations are therefore denied.

25. WDPR is without knowledge sufficient to admit or deny the allegations in paragraph 25, and the allegations are therefore denied.

26. WDPR is without knowledge sufficient to admit or deny the allegations in paragraph 26, and the allegations are therefore denied.

27. WDPR is without knowledge sufficient to admit or deny the allegations in paragraph 27, and the allegations are therefore denied.



28. WDPR is without knowledge sufficient to admit or deny the allegations in paragraph 28, and the allegations are therefore denied.

29. WDPR is without knowledge sufficient to admit or deny the allegations in paragraph 29, and the allegations are therefore denied.

30. In response to paragraph 30, WDPR admits that 911 was called. WDPR is otherwise without knowledge sufficient to form a belief as to the truth of the allegations in paragraph 30 and therefore denies those allegations. The 911 telephone recording speaks for itself and WDPR directs the Court to that recording for its contents.

31. WDPR is without knowledge sufficient to admit or deny the allegations in paragraph 31, and the allegations are therefore denied.

32. WDPR is without knowledge sufficient to admit or deny the allegations in paragraph 32, and the allegations are therefore denied.

33. WDPR is without knowledge sufficient to admit or deny the allegations in paragraph 33, and the allegations are therefore denied.

34. WDPR is without knowledge sufficient to admit or deny the allegations in paragraph 34, and the allegations are therefore denied.

35. WDPR is without knowledge sufficient to admit or deny the allegations in paragraph 35, and the allegations are therefore denied.

36. In response to paragraph 36, WDPR admits only that a medical examiner's investigation was performed. WDPR is otherwise without knowledge sufficient to form a belief as to the truth of the allegations in paragraph 36 and therefore denies those allegations. The medical examiner's report speaks for itself and WDPR directs the Court to that report for its contents and findings.

**COUNT I**  
**NEGLIGENCE AGAINST GREAT IRISH PUBS FLORIDA, INC. A FLORIDA CORPORATION D/B/A RAGLAN ROAD IRISH PUB AND RESTAURANT**

37. WDPR answers paragraph 37 by re-alleging and incorporating by reference the responses to paragraphs 1-36.

38. The allegations in paragraphs 38-43, including the listed sub-paragraphs, are directed at Defendant Great Irish Pubs Florida, Inc. and do not require a response from WDPR.

The allegations in the WHEREFORE clause are directed at Defendant Great Irish Pubs Florida, Inc. and do not require a response from WDPR.

**COUNT II**  
**NEGLIGENCE AGAINST WALT DISNEY PARKS AND RESORTS U.S., INC. A FLORIDA CORPORATION D/B/A DISNEY SPRINGS**

44. WDPR answers paragraph 44 by re-alleging and incorporating by reference the responses to paragraphs 1-36.

45. In response to paragraph 45, WDPR admits only that it owns the land located at 1486 Buena Vista Drive, Orlando, Orange County, Florida 32830, a portion of which is subject to a lease agreement between WDPR and Great Irish Pubs Florida, Inc. (the “Lease”). The Lease speaks for itself. For example, the Lease states that Great Irish Pubs Florida, Inc. is responsible for the “Management and operation of the Premises” including hiring its own employees and making any decisions to “recruit, train, supervise, direct, discipline, and if necessary, discharge personnel working at the Premises” and “develop the food and beverage offering and all menus or offering sheets to be used.” WDPR denies the remaining allegations in paragraph 45.

46. WDPR answers paragraph 46 by re-alleging and incorporating by reference the response to paragraph 45.

47. WDPR answers the allegations directed towards WDPR in paragraph 47 by re-alleging and incorporating by reference the response to paragraph 45. The remaining allegations in paragraph 47 are directed at Defendant Great Irish Pubs Florida, Inc. and do not require a response from WDPR.

48. WDPR answers paragraph 48 by re-alleging and incorporating by reference the response to paragraph 45. Paragraph 48 is denied to the extent it misstates Florida law.

49. WDPR answers paragraph 49 by re-alleging and incorporating by reference the response to paragraph 45. Paragraph 49 is denied to the extent it misstates Florida law.

50. WDPR answers paragraph 50, including the listed sub-paragraphs, by re-alleging and incorporating by reference the response to paragraph 45. Paragraph 50 is denied to the extent it misstates Florida law.

51. WDPR denies the allegations in paragraph 51.

52. WDPR denies the allegations in paragraph 52, including the listed sub-paragraphs. Section 768.21, Florida Statutes speaks for itself and WDPR directs the Court to the statute for its contents.

WDPR denies that Plaintiff is entitled to recover the relief sought in the WHEREFORE clause. The Court should dismiss Plaintiff's claim in its entirety and with prejudice, and Plaintiff should take nothing from WDPR.

**COUNT III**  
**NEGLIGENCE CLAIM FOR AGENCY AGAINST WALT DISNEY PARKS AND RESORTS U.S., INC. A FLORIDA CORPORATION D/B/A DISNEY SPRINGS**

53. WDPR answers paragraph 53 by re-alleging and incorporating by reference the responses to paragraphs 1-43.

54. In response to paragraph 54, WDPR admits only that it owns the land located at 1486 Buena Vista Drive, Orlando, Orange County, Florida 32830, a portion of which is subject to the Lease between WDPR and Great Irish Pubs Florida, Inc. The Lease speaks for itself. For example, the Lease states that Great Irish Pubs Florida, Inc. is responsible for the “Management and operation of the Premises” including hiring its own employees and making any decisions to “recruit, train, supervise, direct, discipline, and if necessary, discharge personnel working at the Premises” and “develop the food and beverage offering and all menus or offering sheets to be used.” The Lease also states that “nothing in this Lease . . . shall be construed or deemed to create, or to express an intent to create, a partnership, joint venture, fiduciary, franchise, business opportunity, employment or agency relationship of any kind or nature whatsoever between the parties.” WDPR denies the remaining allegations in paragraph 54, including the listed sub-paragraphs.

55. WDPR answers paragraph 55 by re-alleging and incorporating by reference the response to paragraph 54. Paragraph 55 is denied to the extent it misstates Florida law.

56. WDPR answers paragraph 56, including the listed sub-paragraphs, by re-alleging and incorporating by reference the response to paragraph 54. Paragraph 56 is denied to the extent it misstates Florida law.

57. WDPR denies the allegations in paragraph 57.

58. WDPR denies the allegations in paragraph 58, including the listed sub-paragraphs. Section 768.21, Florida Statutes speaks for itself and WDPR directs the Court to the statute for its contents.

WDPR denies that Plaintiff is entitled to recover the relief sought in the WHEREFORE clause. The Court should dismiss Plaintiff’s claim in its entirety and with prejudice, and Plaintiff should take nothing from WDPR.

**COUNT IV**  
**NEGLIGENCE CLAIM FOR APPARENT AGENCY AGAINST WALT**  
**DISNEY PARKS AND RESORTS U.S., INC. A FLORIDA**  
**CORPORATION D/B/A DISNEY SPRINGS**

59. WDPR answers paragraph 59 by re-alleging and incorporating by reference the responses to paragraphs 1-43.

60. In response to paragraph 60, WDPR admits only that it owns the land located at 1486 Buena Vista Drive, Orlando, Orange County, Florida 32830, a portion of which is subject to the Lease between WDPR and Great Irish Pubs Florida, Inc. The Lease speaks for itself. For example, the Lease states that Great Irish Pubs Florida, Inc. is responsible for the “Management and operation of the Premises” including hiring its own employees and making any decisions to “recruit, train, supervise, direct, discipline, and if necessary, discharge personnel working at the Premises” and “develop the food and beverage offering and all menus or offering sheets to be used.” The Lease also states that “nothing in this Lease . . . shall be construed or deemed to create, or to express an intent to create, a partnership, joint venture, fiduciary, franchise, business opportunity, employment or agency relationship of any kind or nature whatsoever between the parties.” WDPR denies the remaining allegations in paragraph 60.

61. WDPR answers paragraph 61 by re-alleging and incorporating by reference the response to paragraph 60. Paragraph 61 is denied to the extent it misstates Florida law.

62. WDPR answers paragraph 62 by re-alleging and incorporating by reference the response to paragraph 60. Paragraph 62 is denied to the extent it misstates Florida law.

63. WDPR answers paragraph 63 by re-alleging and incorporating by reference the response to paragraph 60. The referenced website speaks for itself and WDPR directs the Court to that website for its contents.

64. In response to paragraph 64, WDPR admits only that it owns the land located at 1486 Buena Vista Drive, Orlando, Orange County, Florida 32830, and otherwise answers paragraph 64 by re-alleging and incorporating by reference the response to paragraph 60.

65. WDPR answers paragraph 65 by re-alleging and incorporating by reference the response to paragraph 60.

66. WDPR answers paragraph 66 by re-alleging and incorporating by reference the response to paragraph 60.

67. WDPR answers paragraph 67 by re-alleging and incorporating by reference the response to paragraph 60.

68. WDPR answers paragraph 68, including the listed sub-paragraphs, by re-alleging and incorporating by reference the response to paragraph 60.

69. WDPR answers paragraph 69, including the listed sub-paragraphs, by re-alleging and incorporating by reference the response to paragraph 60.

70. WDPR denies the allegations in paragraph 70.

71. WDPR denies the allegations in paragraph 71, including the listed sub-paragraphs. Section 768.21, Florida Statutes speaks for itself and WDPR directs the Court to the statute for its contents.

WDPR denies that Plaintiff is entitled to recover the relief sought in the WHEREFORE clause. The Court should dismiss Plaintiff's claim in its entirety and with prejudice, and Plaintiff should take nothing from WDPR.

**GENERAL DENIAL**

WDPR denies each and every allegation and legal conclusion in the Complaint not expressly admitted herein.

**AFFIRMATIVE DEFENSES**

WDPR asserts the following affirmative defenses to Plaintiff's Complaint.

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred in whole or in part because WDPR was not in possession or control of the premises, which was leased to Great Irish Pubs Florida, Inc. at the time of the incident.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred in whole or in part because WDPR had no notice or knowledge, actual or otherwise, of the alleged dangerous conditions existing on the leased premises at the time of the incident.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred in whole or in part because any alleged act or representation of WDPR, or failure to act by it, was not the proximate cause of Plaintiff's alleged damages.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred in whole or in part because Plaintiff has not incurred any compensable damages based on any acts or omissions by WDPR and any alleged damages are speculative and cannot be determined with reasonable certainty.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred in whole or in part because Plaintiff is not entitled to the damages alleged under the Florida Wrongful Death Act, §§ 768.16-768.26, Fla. Stat.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred in whole or in part to the extent that Plaintiff's injuries, if any, are the result of unforeseeable, independent, intervening, and/or superseding causes that broke the causal chain between WDPR's alleged negligence and Plaintiff's purported damages.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred in whole or in part because Plaintiff failed to mitigate or avoid the damages alleged and failed to take all reasonable measures and precautions necessary to prevent and/or minimize them.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred in whole or in part because the injuries and damages alleged were caused or contributed to by the negligence of third parties and any damages awarded must be proportionately reduced based on such parties' percentage of fault under section 768.81, Florida Statutes, and *Fabre v. Marin*, 623 So. 2d 1182 (Fla. 1993).

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred in whole or in part because Plaintiff's comparative negligence was the legal cause of the subject incident and contributed to or caused the injuries and damages alleged, and any damages awarded must be proportionately reduced based on Plaintiff's percentage of fault under section 768.81, Florida Statutes, and *Fabre v. Marin*, 623 So. 2d 1182 (Fla. 1993).

**TENTH AFFIRMATIVE DEFENSE**

WDPR is entitled to a set off for any payments received by Plaintiff from any third parties, collateral sources, or settlement payments pursuant to sections 46.015, 768.041, and 768.76, Florida Statutes, and Florida common law.



**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred in whole or in part because WDPR is not directly or indirectly liable to Plaintiff for the actions of any third parties or individuals under any theories of agency, apparent agency, vicarious liability, alter ego, or any other theory of imputed or indirect liability.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred in whole or in part because WDPR did not control Great Irish Pubs Florida, Inc. or its business operations within the leased premises on the date of the incident.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred in whole or in part because WDPR did not authorize Great Irish Pubs Florida, Inc. to act on WDPR's behalf, including on the date of the incident.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred in whole or in part because WDPR did not make any representations alleged in the Complaint to Plaintiff regarding Great Irish Pubs Florida, Inc. and therefore Plaintiff could not rely on such representations or change positions based on them.

**RESERVATION OF RIGHTS**

WDPR reserves the right to amend this Answer to assert any additional affirmative defenses arising from any applicable law or facts that may be revealed during discovery.

**PRAYER FOR RELIEF**

WHEREFORE, WDPR requests judgment as follows: (1) that the Court dismiss the Complaint and order that Plaintiff take nothing by way of its Complaint; and (2) that the Court enter a final judgment in favor of WDPR.

Dated: April 25, 2024

Respectfully Submitted,

**WHITE & CASE LLP**

/s/ Raoul G. Cantero

Raoul G. Cantero

Florida Bar No. 552356

David W. Rifkin

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**CERTIFICATE OF SERVICE**

I CERTIFY that on April 25, 2024, a copy of the foregoing was filed and served via

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