

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
BUFFALO REGIONAL OFFICE

---

In the Matter of

Assurance No. 20-032

**Investigation by LETITIA JAMES,  
Attorney General of the State of New York, of**

Apex Parks Group LLC,

Respondent.

---

**ASSURANCE OF DISCONTINUANCE**

The Office of the Attorney General of the State of New York (“OAG”) commenced an investigation of Apex Parks Group LLC (“Apex”) pursuant to New York Executive Law § 63(12) regarding Apex’s sale of season passes and associated goods and services for the 2020 season at Fantasy Island, in light of Apex’s decision to permanently close Fantasy Island. This Assurance of Discontinuance (“Assurance”) contains the findings of the OAG’s investigation and the relief agreed to by the OAG and Apex, whether acting individually or through its employees, directors, officers, representatives, agents, affiliates, parents, subsidiaries, shareholders or otherwise (“Respondent,” and together with the OAG, the “Parties”).

**OAG’s FINDINGS**

1. Apex is a Delaware limited liability company with its principal place of business located at 18575 Jamboree Road, Suite 600, Irvine, CA 92612.
2. Apex owns and operated an amusement park known as Fantasy Island, located at 2400 Grand Island Boulevard, Grand Island, NY 14072 (“Fantasy Island”). Apex acquired Fantasy Island in May 2016.

3. In February 2020, Apex announced that Fantasy Island would be permanently closed.

4. On February 21, 2020, the OAG sent Apex a letter requesting that Apex confirm that consumers who purchased season passes, meal plans and other goods and services for the now-canceled 2020 season at Fantasy Island would receive full refunds.

5. On February 27, 2020, Apex sent the OAG a letter stating that “[i]t is our full intent to communicate with season pass holders in the near future,” but which did not confirm Apex’s intention to provide consumers a full refund.

6. Thereafter, the OAG opened an investigation into Apex pursuant to Executive Law § 63(12).

7. On March 6, 2020, the OAG issued subpoenas to Apex and the Fantasy Island park manager.

8. Thereafter, Apex expressed its desire to provide full refunds to all consumers who purchased season passes, meal plans and other goods and services for the 2020 season at Fantasy Island.

9. Apex received nearly half a million dollars in payments from consumers for goods and services, such as season passes and meal plans, for the 2020 season at Fantasy Island.

10. The OAG has received over 500 complaints from consumers seeking refunds for goods and services purchased from Apex for the 2020 season at Fantasy Island.

11. Respondent does not contest the OAG’s findings recited in paragraphs 1-10 above.

12. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to

Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of Executive Law § 63(12) based on the conduct described above, and upon the effective date of this Assurance the OAG will discontinue its investigation.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

**RELIEF**

13. Consumer Refunds and Restitution: As of the effective date of this Assurance, Respondent represents that the OAG has been provided with funds sufficient to provide full and complete refunds to all persons who purchased season passes, meal plans, and any other goods and services for the 2020 season at Fantasy Island. Provided, however, that refunds shall not be paid to consumers who have already received a full and complete refund due to a chargeback initiated by the consumer. As of the effective date of this Assurance, Respondent represents that the total amount of consumer refunds owed, less chargebacks, is \$424,848.07.

14. Cooperation: Respondent agrees to cooperate with the OAG and to promptly provide documents and things requested by the OAG to assist the OAG in providing the consumer refunds and restitution contemplated by paragraph 13.

15. Costs

- a. Respondent shall pay the costs of the OAG's investigation in the amount of \$2,000, as would be allowable in an action pursuant to CPLR 8303(a)6.
- b. Payment shall be made by certified check or bank draft, which shall be made payable to the "State of New York", and shall reference Assurance No. 20-032; payments shall be addressed to the attention of AAG Christopher L. Boyd, State of New York, Office of the Attorney General, Buffalo Regional Office, 350 Main Street, Suite 300A, Buffalo, New York 14202.

## MISCELLANEOUS

### Subsequent Proceedings.

16. Respondent expressly agrees and acknowledges that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to its terms, and agrees and acknowledges that in such event:

- a. any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;
- b. the OAG may use statements, documents or other materials produced or provided by Respondent prior to or after the effective date of this Assurance;
- c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondent irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue.
- d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

17. If a court of competent jurisdiction determines that the Respondent has violated the Assurance, the Respondent shall pay to the OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs, in addition to any other penalties, damages, restitution or other relief awarded.

### Effects of Assurance:

18. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

19. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

20. Any failure by the OAG to insist upon the strict performance by Respondent of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by the Respondent.

Communications:

21. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. , and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to the Respondent, to: Zachary S. Brez

If to the OAG, to: Christopher L. Boyd, or in his absence, to the person holding the title of Assistant Attorney General in Charge, Buffalo Regional Office.

Representations and Warranties:

22. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by the Respondent and the OAG's own factual investigation as set forth in Findings, paragraphs 1-10 above. The Respondent represents and warrants that it has not made any material representations to the OAG that are inaccurate or

misleading. If any material representation by Respondent is later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

23. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the Respondent in agreeing to this Assurance.

24. The Respondent represents and warrants, through Respondent's signature below, that the terms and conditions of this Assurance are duly approved.

25. Respondent shall not be liable for any errors or omissions made by the OAG in disbursing the restitution funds as provided for in paragraph 13.

General Principles:

26. Unless a term limit for compliance is otherwise specified within this Assurance, the Respondent's obligations under this Assurance are enduring. Nothing in this Agreement shall relieve Respondent of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

27. Respondent agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in the Assurance or creating the impression that the Assurance is without legal or factual basis.

28. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that the Respondent violates the Assurance after its effective date.

29. This Assurance may not be amended except by an instrument in writing signed on behalf of each of the Parties to this Assurance.

30. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or

unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

31. Respondent acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

32. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

33. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

34. This Assurance may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

35. The effective date of this Assurance shall be April 7, 2020.

LETITIA JAMES  
Attorney General of the State of New York  
350 Main Street, Suite 300 A  
Buffalo, NY 14202

By: Christopher L. Boyd  
Christopher L. Boyd, Esq.  
Assistant Attorney General



Apex Parks Group LLC  
Respondent

By: Zach Brez

Its: Attorney



Zachary S. Brez, Attorney for Respondent



### Statement of Corporate Authority

I am the Attorney of Apex Parks Group LLC and have authority to execute the foregoing Assurance of Discontinuance on its behalf. I have executed the aforesaid instrument with the consent and authority of the above-referenced company and those responsible for the acts of said entities and duly acknowledge the same. I subscribed my name understanding the provisions thereof and entered into it knowingly and willingly.

A handwritten signature in blue ink is written over a solid black horizontal line. The signature is stylized and appears to be the initials 'ZP' followed by a long horizontal stroke.