



Avalon Golden Inn, Inc., t/a Golden Inn )  
 Hotel and Resort )  
 Oceanfront and 78<sup>th</sup> Street )  
 Avalon, NJ 08202 )  
 Defendants )

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**NOTICE TO DEFEND**

**NOTICE**

"You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

"YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

**LAWYER REFERRAL SERVICE**  
 1 Reading Center  
 Philadelphia, PA 19107  
 238-6333"

**AVISO**

"Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días, de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

"LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELÉFONO A LA OFICINA CUYA DIRECCIÓN SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

**SERVICIO DE REFERRIDO LEGAL**  
 1 Reading Center  
 Filadelfia, PA 19107  
 Telefono: 238-6333"



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**CIVIL ACTION COMPLAINT**  
**2S Premises Liability**

1. Plaintiff, Suzanne M. Peirce, is an adult individual residing at the above captioned address.

2. Defendant, Tom Burgoyne, is an adult individual who works as the “Phillie Phanatic,” a mascot of the Philadelphia Phillies baseball team, at the above-captioned address.

3. Defendant, Matt Mehler, is an adult individual who works as the “Phillie Phanatic,” a mascot of the Philadelphia Phillies baseball team, at the above-captioned address.

4. Defendant, The Phillies, is a Pennsylvania Limited Partnership that, at all relevant times hereto, owned and operated the Philadelphia Phillies baseball team at the above-captioned address and employed Tom Burgoyne, Matt Mehler or another currently unknown and unnamed individual to play the role of the “Phillie Phanatic.” At all times material hereto, either Tom Burgoyne or Matt Mehler or another currently unknown and unidentified individual playing the role of the “Phillie Phanatic” (hereinafter, “the Phillie Phanatic”) was acting as a servant, agent and employee of The Phillies, within the scope of his employment and in furtherance of the interests of his employer.

5. Defendant, Avalon Golden Inn, Inc., is the owner and operator of the Golden Inn Hotel and Resort at the above captioned address. At all times material hereto, it conducted business in the City of Philadelphia and Commonwealth of Pennsylvania.

6. On or about July 17, 2010, plaintiff was a guest of the Golden Inn Hotel and Resort, where she was attending his sister's wedding. The Phillie Phanatic was entertaining resort guests at the hotel pool by engaging in various antics. During his comic routine, the Phillie Phanatic approached plaintiff, who was seated in a lounge chair, picked up her chair and threw plaintiff and her chair into the pool.

7. As a result of being thrown into the hotel pool, plaintiff suffered severe and permanent injuries to her head, neck, back, body, arms and legs, bones, muscles, tendons, ligaments, nerves and tissues of her head, neck, back, arms and legs, including, but not limited to, a herniated L5-S1 disc, aggravation and/or exacerbation of all known and unknown pre-existing medical conditions, internal injuries of an unknown nature, severe aches, pains, mental anxiety and anguish, and a severe shock to her entire nervous system and other injuries, the full extent of which is not yet known.

8. Due to all the foregoing, the Plaintiff has been compelled, in order to effectuate a cure for the aforesaid injuries, to expend large sums of money for medicine and medical attention and may be required to expend additional sums for the same purpose in the future, all to her great financial detriment and loss.

9. Due to all the foregoing, Plaintiff has been prevented from her usual and daily activities and duties and may be so prevented for an indefinite time in the future, all to her great financial detriment and loss.

10. Due to all the foregoing, the Plaintiff has suffered physical pain, mental anguish and humiliation and loss of life's pleasures, and she may continue to suffer same for an indefinite time in the future.

**COUNT ONE**  
**Plaintiff v. Phillies**

11. Plaintiff repeats each and every allegation of all preceding paragraphs, with the same force and effect as if set forth here at length.

12. The Defendant, The Phillies, by its servant, agent and employee, the Phillie Phanatic, was negligent, and said negligence consisted of the following:

- a. Failing to observe the proper precautions when entertaining the hotel pool guests;
- b. Failing to make appropriate observations;
- c. Violating the standard of care of a reasonably prudent entertainer under the circumstances;
- d. Negligently failing to consider the risks inherent in throwing a patron into a pool;
- e. Failing to consider the possible harm that could be occasioned by a patron who might be thrown into a pool;
- f. Failing to warn plaintiff that he was about to throw her into the pool;
- g. Failing to give plaintiff the option of not engaging in such an activity;
- h. Leading plaintiff to believe that he would not throw her into the pool and, thereby causing her to lower her guard and relax her vigilance under the circumstances;
- i. Failing to consider the depth of the pool;
- j. Throwing plaintiff into water that was too shallow under the circumstances;
- k. Throwing plaintiff in such a manner and into a pool of such depth that injury would likely occur;

1. Engaging in a course of conduct of assault, battery, physical harassment and/or unlawful and/or offensive touching of innocent third parties, without right, privilege or consent to do so.

13. As a direct and proximate result of the negligence of defendant, The Phillies, by its servant, agent and employee, the Phillie Phanatic, plaintiff suffered severe and painful bodily injuries as aforesaid.

WHEREFORE, plaintiff, Suzanne M. Peirce, demands judgment against defendants, The Phillies, Tom Burgoyne, and Matt Mehler, jointly, severally and in the alternative, for damages, interest, delay damages, costs of suit and such other relief as is just and proper.

**COUNT TWO**  
**Plaintiff v. The Phillies**  
**Punitive Damages**

14. Plaintiff repeats each and every allegation of all preceding paragraphs, with the same force and effect as if set forth here at length.

15. At the aforesaid time and place, the Phillie Phanatic, while acting as a servant, agent and employee of defendant, The Phillies, engaged in intentional, willful, outrageous, reckless and wanton conduct in that he engaged in a course of assault, battery, physical molestation, physical harassment and/or unlawful and offensive touching of a third party without the right, privilege or consent to do.

16. The defendant, The Phillies, encouraged and ratified the conduct of the Phillie Phanatic by promoting his activities, rewarding them, and failing to discourage him from engaging in them even after other innocent third parties have complained of them and sustained injuries as a result thereof.

17. The defendant, The Phillies, have failed to supervise the Phillie Phanatic and, in fact, have encouraged his reckless antics, his invasion of the personal integrity of others, and his dangerous behavior.

18. The acts and omissions of The Phillies, individually and by its servant, agent and employee, the Phillie Phanatic, were of such an outrageous nature as to demonstrate reckless indifference to the rights of others, thus entitling plaintiff to recover punitive damages from them.

WHEREFORE, plaintiff, Suzanne M. Peirce, demands judgment against defendants, The Phillies, Tom Burgoyne and Matt Mehler, jointly, severally and in the alternative, for punitive damages.

**COUNT THREE**  
**Plaintiff v. Avalon Golden Inn, Inc.**

19. Plaintiff repeats each and every allegation of all preceding paragraphs, with the same force and effect as if set forth here at length.

20. The Defendant, Avalon Golden Inn, Inc., owned and operated the Golden Inn Hotel and Resort at which plaintiff was a paying customer and a business invitee.

21. At the aforesaid time and place, defendant, Avalon Golden Inn., Inc., was negligent, and its negligence consisted of the following:

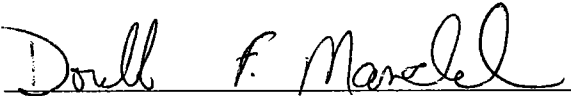
- a. Failing properly to monitor and supervise the activities of the Phillie Phanatic;
- b. Permitting dangerous activities to be conducted on its premises by the Phillie Phanatic;

- c. Failing to promulgate standards, regulations and rules for the Phillie Phanatic's activities;
- d. Failing to provide appropriate lifeguard protection;
- e. Permitting antics such as those engaged in by the Phillie Phanatic to be conducted at a pool when, in the exercise of appropriate discretion, it knew or should have known that these activities would reasonably result in personal injury;
- f. Failing to warn plaintiff of dangerous activities;
- g. Permitting dangerous activities to be conducted on its premises;
- h. Failing to use due care under the circumstances.

22. As a direct and proximate result of the negligence of defendant, Avalon Golden Inn., Inc., plaintiff suffered severe and painful bodily injuries as aforesaid.

WHEREFORE, plaintiff, Suzanne M. Peirce, demands judgment against defendant, Avalon Golden Inn., Inc., for damages, interest, delay damages, costs of suit and such other relief as is just and proper.

**DONALD F. MANCHEL & ASSOCIATES**

By:   
Donald F. Manchel, Esquire  
Attorney for Plaintiff

**VERIFICATION**

**SUZANNE PEIRCE**, being duly sworn according to law, deposes and says that the facts set forth in the foregoing material are true and correct to the best of her knowledge, information belief.

This statement is made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Dated: 6/7/12

  
**SUZANNE PEIRCE**