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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

TILIKUM, KATINA, CORKY, KASATKA,  
and ULISES, five orcas,

Plaintiffs,

by their Next Friends, People for the Ethical  
Treatment of Animals, Inc., Richard “Ric”  
O’Barry, Ingrid N. Visser, Ph.D., Howard  
Garrett, Samantha Berg, and Carol Ray,

vs.

SEA WORLD PARKS &  
ENTERTAINMENT, INC. and SEA  
WORLD, LLC,

Defendants.

CASE NO. 11cv2476 JM(WMC)

ORDER GRANTING MOTION TO  
DISMISS

Defendants Sea World Parks & Entertainment, Inc. and Sea World, LLC, (collectively “Sea World”) move to dismiss the complaint pursuant to Rule 12(b)(1) and Rule 12(b)(6) of the Federal Rules of Civil Procedure. Plaintiffs, five orca whales, Tilikum, Katina, Corky, Kasatka and Ulises, acting by their Next Friends, People for the Ethical Treatment of Animals, Inc., Richard “Ric” O’Barry, Ingrid N. Visser, Ph.D., Howard Garrett, Samantha Berg, and Carol Ray (collectively “Next Friends”), oppose the motion. For the reasons set forth below, the court dismisses the action with prejudice and instructs the Clerk of Court to close the file.

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## BACKGROUND

1  
2 On October 25, 2011, Next Friends commenced this action by filing a complaint for  
3 declaratory and injunctive relief, seeking a declaration that the named wild-captured orcas are being  
4 “held by the Defendants in violation of Section One of the Thirteenth Amendment to the Constitution  
5 of the United States, which prohibits slavery and involuntary servitude.” (Compl. ¶1).

6 Plaintiffs are members of the *Orcinus orca* or “killer whale” species, the largest species of the  
7 dolphin family. (Compl. ¶10). Plaintiffs are allegedly being “held captive” by Sea World at their  
8 entertainment facilities in Orlando, Florida, and San Diego, California. (Compl. ¶¶1, 5). Next Friends  
9 generally allege that the orcas, captured by Sea World off the coasts of British Columbia and Iceland,  
10 engage in many complex social, communicative, and cognitive behaviors. (Compl. ¶10-18). Next  
11 Friends allege that the confinement of the orcas in barren concrete tanks negatively impacts them in  
12 many ways, including the suppression of “Plaintiffs’ cultural traditions and deprives them of the  
13 ability to make conscious choices and of the environmental enrichment required to stimulate Plaintiffs  
14 mentally and physically for their well-being.” (Compl. ¶19). Next Friends identify that the orcas live  
15 substantially shortened lives in captivity (8.5 years in captivity versus up to 65 years in the wild),  
16 experience distress because of the concrete, acoustically reflective tank walls, and allegedly “display  
17 physiological and behavioral abnormalities indicative of psychological distress and emotional  
18 disturbance.” (Compl. ¶¶19-27).

19 In broad brush, Next Friends allege that Plaintiff orcas “were born free and lived in their  
20 natural environment until they were captured and torn from their families.” (Compl. ¶31). While in  
21 captivity, the orcas often suffer severe distress. (Compl. ¶¶32-66). The unnatural conditions under  
22 which the orcas are held in captivity - “[d]eprived of liberty, forced to live in grotesquely unnatural  
23 conditions and perform tricks,” (Compl. ¶55) - has resulted in “extreme physiological and mental  
24 stress and suffering while, at the same time, Defendants and their predecessors have reaped millions  
25 of dollars in profits from their slavery and involuntary servitude.” (Compl. ¶¶ 46, 55,62, 66).

26 Based upon the above generally described conduct, Next Friends contend that the retention of  
27 the orcas in captivity violates the slavery and involuntary servitude provisions of the Thirteenth  
28 Amendment (the first and second causes of action, respectively). Next Friends contend that the orcas

1 are being held as slaves because they are (1) held physically and psychologically captive; (2) without  
2 the means of escape; (3) separated from their homes and families; (4) unable to engage in natural  
3 behaviors and determine their own course of action or way of life; (5) subjugated to the will and  
4 desires of Sea World; (6) confined in unnatural, stressful and inadequate conditions; and (7) subject  
5 to artificial insemination or sperm collection for the purposes of involuntary breeding. (Compl. ¶106).

6 On January 24, 2012, the court granted the application of Center for the Expansion of  
7 Fundamental Rights, Inc. (“CEFR”) to appear as amicus curiae. (Ct. Dkt. 21). While the court  
8 permitted CEFR to file a memorandum, the court denied its request to present oral argument.

## 9 DISCUSSION

### 10 Legal Standards

11 Whether the court treats Sea World’s motion as one arising under either Rule 12(b)(1)  
12 (dismissal for lack of subject matter jurisdiction) or Rule 12(b)(6) (dismissal for failure to state a  
13 claim), the “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to  
14 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662 (2009) (quoting Bell Atlantic  
15 Corp. v. Twombly, 550 U.S. 544, 570 (2007)). Rule 12(b)(1) of the Federal Rules of Civil Procedure  
16 provides that a complaint may be dismissed for “lack of jurisdiction over the subject matter.”  
17 Fed.R.Civ.P. 12(b)(1). In considering a motion to dismiss for lack of subject matter jurisdiction, “no  
18 presumptive truthfulness attaches to plaintiff’s allegations, and the existence of disputed material facts  
19 will not preclude the court from evaluating for itself the merits of jurisdictional claims.” Augustine  
20 v. United States, 704 F.2d 1074, 1077 (9th Cir. 1983).

21 Sea World argues that Plaintiffs lack Article III standing to bring this action and, alternatively,  
22 Next Friends lack capacity to bring this action Pursuant to Rule 17 of the Federal Rules of Civil  
23 Procedure. To satisfy Article III,

24 a plaintiff “must show that (1) it has suffered an ‘injury in fact’ that is (a) concrete and  
25 particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury  
26 is fairly traceable to the challenged action of the defendant; and (3) it is likely, as  
opposed to merely speculative, that the injury will be redressed by a favorable  
decision.”

27 Cetacean Community v. Bush, 386 F.3d 1169, 1174 (9th Cir. 2004) (quoting Friends of the Earth, Inc.  
28 v. Laidlaw Env'tl. Sys. (TOC), Inc., 528 U.S. 167, 180–81 (2000)). An action brought by a plaintiff

1 who lacks standing is not a “case or controversy” under Article III, resulting in the court’s lack of  
 2 subject matter jurisdiction to entertain the action. Id. (quoting Steel Co. v. Citizens for a Better  
 3 Environment, 523 U.S. 83, 101 (1998)).<sup>1</sup> In the absence of an applicable statute authorizing Plaintiffs  
 4 to bring a private right of action, whether Plaintiffs suffer a cognizable constitutional injury turns on  
 5 whether the Thirteenth Amendment affords any legal protection to Plaintiffs.<sup>2</sup>

### 6 **Applicability of the Thirteenth Amendment to Plaintiffs**

7 At the outset, the court notes that Next Friends recognize that the issues raised are of first  
 8 impression and that there are no authorities applying the Thirteenth Amendment to non-persons. Next  
 9 Friends “are asking the Court to find that the specific acts of domination, exploitation, and coercion  
 10 to which they [the orcas] are subjected are repugnant to the Thirteenth Amendment.” (Oppo. at  
 11 p.2:11-13). For the reasons set forth below, the court concludes that the Thirteenth Amendment only  
 12 applies to “humans” and therefore affords no redress for Plaintiffs’ grievances. As Plaintiffs lack  
 13 standing to bring a Thirteenth Amendment claim, the court dismisses the action for lack of subject  
 14 matter jurisdiction. See Citizens for a Better Environment, 523 U.S. at 94 (“Without jurisdiction the  
 15 court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases  
 16 to exist, the only function remaining to the court is that of announcing the fact and dismissing the  
 17 cause.”)

18 The court begins its inquiry into the Thirteenth Amendment by looking at the Amendment’s  
 19 plain and ordinary meaning, historical context, and judicial interpretations. See United States v.  
 20 Classic, 313 U.S. 299, 317-18 (1941) (“we turn to the words of the Constitution read in their historical  
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22 <sup>1</sup> The court notes that while “[a]nimals have many legal rights, protected under both federal  
 23 and state laws” which provide for the humane treatment and criminalizing cruelty to animals, only  
 24 human beings have standing to bring such actions. Cetacean, 386 F.3d at 1175. “It is obvious that  
 25 an animal cannot function as a plaintiff in the same manner as a juridically competent human being.”  
Id. at 1176. Next Friends cite no statute authorizing Plaintiffs to bring a private right of action.  
 Instead, Next Friends contend that they have constitutional standing under the Thirteenth Amendment.

26 <sup>2</sup> The court similarly concludes, for purposes of Rule 17, that whether Next Friends may bring  
 27 this action on behalf of Plaintiffs turns on whether Next Friends are “entitled under the substantive  
 28 law to enforce the right sued upon.” United States v. City of New York, 129 S.Ct. 2230, 2235 (2009).  
 The Rule 17 inquiry, like the standing inquiry, requires the court to determine whether the substantive  
 law, the Thirteenth Amendment, affords Plaintiff any relief. As discussed herein, the substantive law  
 sued upon - - the Thirteenth Amendment - - affords no redress to Plaintiffs.

1 setting as revealing the purpose of its framers, and in search for admissible meanings of its words  
2 which, in circumstances of their application, will effectuate those purposes”): Rhode Island v.  
3 Massachusetts, 37 U.S. 657, 723 (1938).

4 At the conclusion of the Civil War, the institution of slavery perished. “It perished as a  
5 necessity of the bitterness and force of the conflict.” Slaughter-House Cases, 83 U.S. 36, 68 (1872).

6 Enacted in 1865, the Thirteenth Amendment provides:

7 1. Neither slavery nor involuntary servitude, except as a punishment for crime,  
8 whereof the party shall have been duly convicted, shall exist within the United States  
9 or any place subject to their jurisdiction.

9 2. Congress shall have power to enforce this article by appropriate legislation.

10 U.S. Const. Amend. XIII. This court’s inquiry is straight-forward. The only reasonable interpretation  
11 of the Thirteenth Amendment’s plain language is that it applies to persons, and not to non-persons  
12 such as orcas. Both historic and contemporary sources reveal that the terms “slavery” and  
13 “involuntary servitude” refer only to persons. In 1864, the term “slavery” was defined as “[t]he  
14 condition of a slave; the state of entire subjection of one person to the will of another.” Noah Webster,  
15 A Dictionary of the English Language, 1241 (G. & C. Merriam Co. 1864). The Supreme Court, in  
16 the Slaughter-House Cases, made clear that the phrase “servitude” applies only to persons. The  
17 Supreme Court noted that the term “servitude” is qualified by the term “involuntary” - “which can  
18 only apply to human beings.” Slaughter-House Cases, 83 U.S. at 69. The clear language and  
19 historical context reveal that only human beings, or persons, are afforded the protection of the  
20 Thirteenth Amendment.

21 Further support that the Thirteenth Amendment applies only to persons is found in the  
22 qualifying phrase “except as a punishment for crime.” The Supreme Court noted that the “punishment  
23 for crime” language “gives an idea of the class of servitude” or slavery that is meant by the  
24 Amendment. Id. As only persons are subject to criminal convictions, the Amendment was designed  
25 to apply to persons. In commenting on the applicability of the Thirteenth Amendment, the Supreme  
26 Court noted that “this grand yet simple declaration of personal freedom of all the human race,” 83 U.S.  
27 at 69, brought to an end to institutionalized slavery in the United States.

28 The court notes that the Emancipation Proclamation issued by President Lincoln on January

1 1, 1863 provides further support that the terms “slavery” and “involuntary servitude” apply only to  
2 persons. The Proclamation states, in relevant part,

3 . . . all persons held as slaves within any State or designated part of a State, the people  
4 whereof shall then be in rebellion against the United States, shall be then,  
5 thenceforward, and forever free; and the Executive Government of the United States,  
6 including the military and naval authority thereof, will recognize and maintain the  
7 freedom of such persons, and will do no act or acts to repress such persons, or any of  
8 them in any efforts they may make for their actual freedom. (Emphasis added).

9 In sum, the court concludes, based upon the plain language of the Thirteenth Amendment, its  
10 historical context, and judicial interpretations, that the Thirteenth Amendment does not afford  
11 Plaintiffs any relief as non-humans. As there are no circumstances under which Plaintiffs can state  
12 a Thirteenth Amendment claim, the court dismisses the action under Rule 12(b)(1) for lack of subject  
13 matter jurisdiction.

14 In the main, Next Friends recognize that the Thirteenth Amendment only applies to persons.  
15 In arguing for the creation of new rights for the orcas, Next Friends identify that constitutional  
16 principles have been extended over the years to apply to changing times and conditions. (Oppo. at  
17 pp. 7:13 - 11:27). Next Friends cite numerous authorities in the context of the right to privacy, *i.e.*  
18 Griswold v. Connecticut, 381 U.S. 479 (1965), the separate but equal doctrine, *i.e.* Brown v. Board  
19 of Education, 347 U.S. 483 (1954), sex discrimination, *i.e.* United States v. Virginia, 518 U.S. 515,  
20 531 (1996), and the evolution of constitutional protections for criminal defendants, *i.e.* Thompson v.  
21 Oklahoma, 487 U.S. 815 (1988); Miranda v. Arizona, 384 U.S. 436 (1966). The primary difficulty  
22 with Next Friends’ argument for the expansion of the scope of the Thirteenth Amendment is that the  
23 Amendment is not reasonably subject to an expansive interpretation. For example, the above cited  
24 authorities challenged the Fourteenth Amendment’s “due process” or “equal protection” clauses, or  
25 the Eighth Amendment’s cruel and unusual punishment clause. As noted by Next Friends, what  
26 constitutes “due process,” “equal protection,” or “cruel and unusual punishment,” are fundamental  
27 constitutional concepts subject to changing conditions and evolving norms of our society. *See*  
28 Missouri v. Holland, 252 U.S. 416, 433-34 (1920). However, that is not the case with the Thirteenth  
Amendment.

Unlike the other constitutional amendments relied upon by Next Friends, the Thirteenth

1 Amendment targets a single issue: the abolition of slavery within the United States. The  
2 Amendment's language and meaning is clear, concise, and not subject to the vagaries of conceptual  
3 interpretation - "Neither slavery nor involuntary servitude. . . shall exist within the United States or  
4 any place subject to their jurisdiction." As "slavery" and "involuntary servitude" are uniquely human  
5 activities, as those terms have been historically and contemporaneously applied, there is simply no  
6 basis to construe the Thirteenth Amendment as applying to non-humans.

7 **Standing**

8 The Constitution limits the federal judicial power to designated "cases" and "controversies."  
9 U.S. Const., Art III, §2. SEC v. Medical Committee for Human Rights, 404 U.S. 403 (1972) (federal  
10 courts may only entertain matters that present a "case" or "controversy" within the meaning of Article  
11 III). As indicated above, a party invoking federal jurisdiction has the burden to show the likelihood  
12 that the alleged injury will "be redressed by a favorable decision." Lujan v. Defenders of Wildlife,  
13 504 U.S. 555, 561 (1992); Friends of the Earth, 528 U.S. at 181. Here, there is no likelihood of  
14 redress under the Thirteenth Amendment because the Amendment only applies to humans, and not  
15 orcas. Because Plaintiffs are without standing to bring this action, no "case" or "controversy" exists  
16 and this court lacks subject matter jurisdiction. Accordingly, this case is dismissed under Rule  
17 12(b)(1).


18 **CONCLUSION**

19 Even though Plaintiffs lack standing to bring a Thirteenth Amendment claim, that is not to say  
20 that animals have no legal rights; as there are many state and federal statutes affording redress to  
21 Plaintiffs, including, in some instances, criminal statutes that "punish those who violate statutory  
22 duties that protect animals." Cetacean, 386 F.3d at 1175. While the goal of Next Friends in seeking  
23 to protect the welfare of orcas is laudable, the Thirteenth Amendment affords no relief to Plaintiffs.

24 In sum, the court dismisses the action with prejudice for lack of subject matter jurisdiction.  
25 The Clerk of Court is instructed to close the file.

26 **IT IS SO ORDERED.**

27 DATED: February 8, 2012

28   
Hon. Jeffrey T. Miller  
United States District Judge