UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MAHALA AULT, STACIE RHEA and DAN WALLACE,

Plaintiffs,

-vs- **Case No. 6:07-cv-1785-Orl-31KRS**

WALT DISNEY WORLD CO.,

Defendant.

ORDER

This matter came before the Court without oral argument upon consideration of the parties' Agreed Motion for Leave to Amend Plaintiffs' First Amended Complaint ("Agreed Motion for Leave to Amend") (Doc. 77).

I. Background

Plaintiffs, Mahala Ault, Stacie Rhea and Dan Wallace (collectively, "Plaintiffs"), bring this class action, on behalf of themselves and others similarly situated, against Defendant, Walt Disney World, Co. ("Disney"), for alleged violations of Title III of the Americans with Disabilities Act, 42 U.S.C. § 12182, *et seq*. ("the ADA").

Specifically, Plaintiffs allege that they are disabled and rely primarily on the Segways, as opposed to wheelchairs or scooters, for their mobility. A Segway is a two-wheeled, self-balancing, motorized transportation device upon which an individual must stand in order to ride. Disney generally prohibits the use of Segways by visitors at all of its Florida and California theme parks

(the "Parks"), but permits visitors to use wheelchairs or scooters. Plaintiffs allege that Disney's prohibition on Segways has the effect of denying them the full use and enjoyment of the Parks in contravention of the ADA.

In their Agreed Motion for Leave to Amend, the parties seek leave for Plaintiffs to file a Second Amended Complaint which, *inter alia*, would broaden Plaintiffs' proposed class definition. More particularly, Plaintiffs' new class definition would include "All persons who: (1) claim to have a mobility impairment or disability; and (2) who have brought, intend to bring or may in the future bring a Segway or other two-wheeled vehicle into the Walt Disney World Resort or the Disneyland Resort" (Doc. 77-2, ¶ 49).[1]

While Disney denies the material allegations in the proposed Second Amended Complaint, it has agreed to permit Plaintiffs leave to amend for purposes of the Court granting preliminary approval to the parties' proposed settlement.[2]

III. Analysis

The parties contend that courts have routinely allowed the scope of claims in a case to be broadened by amending the complaint at the time of settlement (Doc. 77 at 2) (relying, *inter alia*, on *Lipuma v. Am. Express Co.*, 406 F. Supp. 2d 1298, 1316 (S.D. Fla. 2005). Thus, the parties now seek to include not only Disney's Florida Parks, but also its California Parks, in their

[1]The class definition originally proposed by Plaintiffs in their First Amended Complaint included: "Those individuals who: (1) suffer from a mobility disability; (2) who rely upon a Segway PT for assistance with their mobility; and (3) who have or who intend to visit The Magic Kingdom, Epcot, Disney-MGM Studios and/or Disney's Animal Kingdom" (Doc. 49, ¶ 49).

[2]Which has been filed separately in conjunction with the parties' Joint Motion for Conditional Class Certification (Doc. 79).

proposed class definition. They also, however, now seek to include not only those who suffer from a mobility disability and rely upon a Segway for assistance with their mobility, but those who simply claim to suffer from a mobility disability and/or intend to bring a Segway or other-two wheeled vehicle to Disney's Parks. *Compare* (Doc. 77-2, ¶ 49) *with* (Doc. 49, ¶ 49). In addition, then, to those who are truly disabled and require a Segway, the newly proposed class definition would reasonably include: (1) individuals who are not actually disabled, but only claim to be disabled; (2) persons who have a mobility disability but do not require standing; and (3) individuals who simply wish to bring any type of two-wheeled vehicle into the Parks (including, e.g., a bicycle or motorized scooter).

Apart from the parties' inclusion of both Disney's Florida and California Parks, the class definition in the proposed Second Amended Complaint is too broad. As a threshold matter, the parties' newly proposed class definition is no longer tethered to the ADA. The ADA generally prohibits places of public accommodation from discriminating against individuals because of their disabilities. More particularly, the ADA defines such discrimination to include:

> a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities...
>
> [Or] a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services...

42 U.S.C. § 12182(b)(2)(A)(ii) and (iii).

The parties' newly proposed class definition fails, *inter alia*, to distinguish between disabled class members who actually rely on a Segway for assistance with their mobility and those who, while disabled, might simply prefer to use a Segway rather than some other sort of auxiliary

device which Disney does not prohibit (e.g., a wheelchair). While the former might be entitled to some relief under the ADA, the latter would not. In short, the parties have not sufficiently limited the class to a particular group of disabled individuals that may have experienced, or could experience, unlawful discrimination at Disney's Parks. *See*, *e.g.*, *Access Now Inc. v. Walt Disney World Co.*, 211 F.R.D. 452, 454 (M.D. Fla. 2001).

Courts must be vigilant to ensure that a certified class is properly constituted. *Powers v. Hamilton County Pub. Defender Comm'n*, 501 F.3d 592, 619 (6th Cir. 2007). In this regard, District Courts are permitted to limit or modify class definitions to provide necessary precision. *Id*. (citing *In re Monumental Life Ins. Co.*, 365 F.3d 408, 414 (5th Cir. 2004). To this end, the Court proposes the following class definition:

> Those individuals who: (1) suffer from a mobility disability; (2) who rely upon a Segway or substantially similar stand-up mobility device for assistance with their mobility; and (3) who intend to visit the Walt Disney World Resorts or the Disneyland Resorts.

This definition sufficiently limits the proposed settlement class to a cohesive unit which could warrant class action treatment.

III. Conclusion

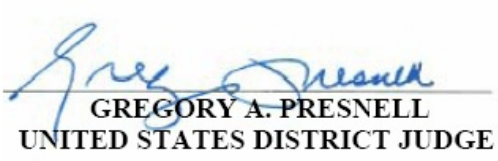
Based on the foregoing, it is hereby **ORDERED** that the Agreed Motion for Leave to Amend Plaintiffs' First Amended Complaint (Doc. 77) is **DENIED without prejudice**.

The parties are free to adopt the Court's suggested class definition (or some similar definition) and re-file their Agreed Motion for Leave to Amend, Joint Motion for Class Certification, and Joint Stipulation of Settlement and Release after incorporating the new class definition.

DONE and **ORDERED** in Chambers, Orlando, Florida on December 12, 2008.

Copies furnished to:

Counsel of Record
Unrepresented Party



GREGORY A. PRESNELL
UNITED STATES DISTRICT JUDGE