**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

MAHALA AULT, STACIE RHEA, and DAN WALLACE, **Plaintiffs,** **v.** **WALT DISNEY WORLD CO.,** **Defendant.**	**CASE NO. 6:07-CV-1785-GAP-KRS**

UNOPPOSED MOTION BY THE ATTORNEYS GENERAL OF FLORIDA, ILLINOIS, TENNESSEE, ALASKA, ARIZONA, COLORADO, CONNECTICUT, HAWAII, IOWA, KANSAS, MASSACHUSETTS, MICHIGAN, MISSOURI, NEW HAMPSHIRE, NEW JERSEY, NEW MEXICO, NORTH DAKOTA, OKLAHOMA, OREGON, UTAH, VERMONT, WASHINGTON, AND WEST VIRGINIA FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE, WITH MEMORANDUM OF LAW

Consistent with the time frame established in this Court's April 27, 2009 Order for the objections of the States, the Attorneys General of Florida, Illinois, Tennessee, Alaska, Arizona, Colorado, Connecticut, Hawaii, Iowa, Kansas, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma, Oregon, Utah, Vermont, Washington, and West Virginia (collectively, the "Attorneys General"), respectfully move this Court for leave to file the attached Brief Amicus Curiae in Opposition to the Proposed Settlement.

As part of the Consumer Class Action Bill of Rights contained in CAFA, the Attorneys General are also the default state officials upon whom notices of proposed class action settlements are to be served. 28 U.S.C. §§ 1715(a)(2); 1715(b). While enforcement mechanisms vary across the States, generally speaking the Attorneys General are the primary enforcers of state disability access laws, many of which are more expansive in scope than the ADA and allow for monetary relief in contrast to the private right of action under the ADA. *See, e.g., Turner v. Assoc. of Am. Medical Colleges*, 167 Cal. App. 4th 1401, 1410 (Cal. App. 1 Dist. 2008) (stating that ADA standards are a "floor" under state law).

Through CAFA, Congress sought to give appropriate federal and state officials both notice and adequate time to review a proposed class action settlement to provide independent oversight and an added check against inequitable settlements. *See* S. Rep. 109-14 (2005), *as reprinted in* 2005 U.S.C.C.A.N. 3, 32. If the Defendant's counsel complies with CAFA and submits notice to the States within ten (10) days of filing of the proposed settlement, the Attorneys General frequently contact class and defense counsel soon after receiving notice of a proposed settlement (and, thus, well in advance of the final fairness hearing) to see if the parties are willing to change provisions that the Attorneys General find objectionable. *See* Catherine M. Sharkley, *CAFA Settlement Notice Provision: Optimal Regulatory Policy?* 156 U. PA. L. REV.1971, 1988-1990 (2008) (describing both formal and informal actions taken by state attorneys general). These include, among other things, stipulations from the parties that limit the reach of releases, changes to an overly-expansive definition of class member, improvements to notice sent to unnamed class members, and expanded injunctive relief that better protects unnamed class members.

On occasion, the Attorneys General object to a proposed class action settlement that they find does not constitute a fair, adequate, and reasonable settlement. *See, e.g., Figueroa v. Sharper Image Corp.*, 517 F.Supp.2d 1292 (S.D. Fla. 2007). The Attorneys General, who have no financial stake in the litigation, request leave to file the attached brief both to preserve their ability to conduct meaningful oversight over proposed class action settlements and to protect residents who stand to be adversely affected by the approval of the proposed settlement.[1]

WHEREFORE, the Attorneys General respectfully request the Court enter an Order allowing the filing of the attached Brief Amicus Curiae.

[1] Pursuant to M.D. Fla. L.R. 3.01(g), undersigned counsel has conferred with counsel for each of the named parties and is authorized to state that the parties do not oppose the granting of this motion.

DATED: May 29, 2009

Respectfully submitted,[2]

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CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2009, I electronically filed the foregoing with the Clerk of this Court by using the CM/ECF system. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants:

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UNITED STATES DISTRICT COURT
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MAHALA AULT, STACIE RHEA, and DAN WALLACE,	)	
Plaintiffs,	)	
v.	)	**CASE NO. 6:07-CV-1785-GAP-KRS**
WALT DISNEY WORLD CO.,	)	
Defendant.	)	

***AMICUS CURIAE* BRIEF OF THE ATTORNEYS GENERAL OF FLORIDA, ILLINOIS, TENNESSEE, ALASKA, ARIZONA, COLORADO, CONNECTICUT, HAWAII, IOWA, KANSAS, MASSACHUSETTS, MICHIGAN, MISSOURI, NEW HAMPSHIRE, NEW JERSEY, NEW MEXICO, NORTH DAKOTA, OKLAHOMA, OREGON, UTAH, VERMONT, WASHINGTON, AND WEST VIRGINIA IN OPPOSITION TO THE PROPOSED SETTLEMENT**

INTRODUCTION

The Attorneys General of the States of Florida, Illinois, Tennessee, Alaska, Arizona, Colorado, Connecticut, Hawaii, Iowa, Kansas, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma, Oregon, Utah, Vermont, Washington, and West Virginia (collectively, the –Attorneys General”), in their capacity as *amici curiae*, make a special appearance[1] to urge this Court to reject the proposed Joint Stipulation of Settlement and Release (Doc. 82-1) in this case or, in the alternative, hold that unnamed class members in states not properly served with notice may choose not to be bound by the settlement as a result of Defendant's failure to provide notice to the appropriate state officials as required by the Class Action Fairness Act of 2005 (–CAFA”). The Attorneys General, who have no financial stake in the litigation, submit this brief both to preserve their ability to conduct meaningful oversight over proposed class action settlements as intended by CAFA and to protect residents within their respective states who stand to be adversely affected by the approval of the proposed settlement.

The Attorneys General respectfully submit that the proposed settlement is overbroad and contrary to the Americans with Disabilities Act (–ADA”) and comparable state laws, many of which include remedies, such as monetary relief, that are not available under the ADA.[2] The only purported benefit of the proposed settlement to unnamed class members,

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[1] The Attorneys General are not submitting to the Court's jurisdiction except as *amici* and the submission of this brief is without prejudice to their ability to enforce and investigate claims related to the issues under dispute.

[2] *See, e.g.,* Cal. Civ. Code §§ 51(f) and 54.1(d) (making a violation of the ADA a violation of the Unruh Civil Rights Act and the Disabled Persons Act); *Californians for Disability Rights v. Mervyn's, LLC,* 165 Cal. App. 4th 571, 584 (Cal. App. 1 Dist. 2008) (acknowledging that plaintiff whose ADA rights are violated may seek damages under California state law).

namely the potential use of one of at least fifteen (15) four-wheeled, electrically-powered, stand-up vehicles ("ESVs") at a Disney Resort, is suspect because it requires class members to pay money for each day of use, is available to certain members of the general public who do not fall within the class at the same price, was part of a Disney plan decided on months before the named parties agreed to settlement terms, and amounts to an illegal surcharge to subsidize ADA and state law compliance. This lack of benefit to unnamed class members stands in stark contrast to the agreed upon relief afforded to the named class representatives and to class counsel, which though modest in the aggregate, is not justified because of the paucity of relief proposed for unnamed class members.

Moreover, Defendant, who specifically negotiated a term of the proposed settlement allowing it to unilaterally terminate the settlement following an objection by a state or other governmental official, has failed to provide the Attorneys General with a meaningful opportunity to review and respond to the proposed settlement as required by CAFA. Instead of submitting the proposed settlement within ten (10) days after it was filed on December 26, 2008, Defendant waited one hundred and eighteen (118) days to send the required notice to *some* of the Attorneys General — after the originally-scheduled final fairness hearing that was only rescheduled at the Court's initiative and after the April 10, 2009 objection deadline. In short, Defendant's failure to provide proper notice has undermined the ability of *all* States to act as an effective check against this inequitable settlement.

STATEMENT OF FACTS

On September 30, 2008, months before the parties reduced their proposed settlement to writing, Defendant filed a Declaration of Peter Cardinali (Doc. 72-3) as part of its opposition to Plaintiffs' (Contested) Motion for Class Certification under Fed. R. Civ. P. 23. Mr. Cardinali states in his declaration, the following:

> In order to provide an additional service to guests while maintaining consistent safety practices, [Disney] has designed, constructed and tested a prototype standing vehicle intended for use within the Walt Disney World Resort. We anticipate that production models will be available for guest use at the Walt Disney World Resort on or around April 1, 2009.

(Doc. 72-3 at ¶6).

On December 5, 2008, and later on December 26, 2008, the named parties submitted a Joint Stipulation of Settlement and Release (Docs. 79-1 and 82-1), which the Court preliminarily approved on January 5, 2009. (Doc. 83). As part of the proposed settlement agreement, Defendant negotiated the following provision:

> In addition to the rights under paragraph 19, [Disney] shall also have the right to unilaterally render the entire Stipulation of Settlement voidable and unenforceable if any federal, *state* or local regulatory or self-regulatory organization, other administrative body or government official *objects* to the terms of this Stipulation of Settlement, threatens to take any regulatory or legal action against [Disney] based on the allegations in this case, or requires any material modification to this Stipulation of Settlement.

(Doc. 82-1, ¶ 20) (italics added).

As part of the preliminary approval of the proposed settlement, the Final Fairness Hearing was originally set for March 31, 2009. (Doc. 85). After considering the various objections, the Court *sua sponte* postponed the fairness hearing (Doc. 116) and reset it for June 3, 2009. (Doc. 143). Because of recent filings, the hearing will continue through June 5th if necessary. (Doc. 170). On April 23, 2009, one hundred and eighteen (118) days *after* filing the proposed settlement, *after* the originally scheduled fairness hearing, and *after* the April 10 objection deadline, Defendant submitted notice of the proposed settlement to *some* of the Attorneys General electronically, including to generic email addresses. *See*, *e.g.*, Collective Ex. A.

Defendant has acknowledged that it failed to supply timely notice as required by CAFA but nevertheless insists that there has been no prejudice as a result. (Doc. 146 at 2-3). In its April 27, 2009 Order, the Court found that Disney's failure to comply with 28 U.S.C. § 1715(b) did not result in any actual prejudice but ordered Defendant to provide proof of its compliance with CAFA. (Doc. 149). Defendant's Notice of Compliance with 28 U.S.C. § 1715(b) states that, on April 23, 2009, ~~"it~~ provided individualized notices of the proposed class action settlement in this action to the Attorney General *in all 50 States and the District of Columbia* and to the United States Attorney General." (Doc. 165) (italics added). The Notice does not describe how notice was sent or provide other evidence as to how this notice was allegedly effectuated. Several states still have *not* received notice from Defendant. *See*, *e.g.,* Collective Ex. A, Aff. of Ashley Davis at ¶8 (Florida), Aff. of Lawrence Otero at ¶3 (New Mexico), Aff. of Jane Wheeler at ¶4 (Oklahoma), and Aff. of Howard McCoach at ¶4 (New Jersey).

ARGUMENT

I. THE PROPOSED SETTLEMENT DOES NOT CONSTITUTE A FAIR, ADEQUATE, AND REASONABLE SETTLEMENT UNDER FEDERAL RULE OF CIVIL PROCEDURE 23(e).

In *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984), the Eleventh Circuit identified six (6) factors for district courts to use in assessing whether a proposed settlement in a class action case is fair, reasonable, and adequate under Federal Rule of Civil Procedure 23(e)(2). These factors include the following: (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair, adequate, and reasonable; (4) the complexity, expense, and duration of the litigation; (5) the substance and amount of opposition to the settlement; and, (6) the stage of the proceedings at which the settlement was achieved. *Id.* at 986.

The Attorneys General respectfully submit that the proposed settlement in this case fails to pass muster under the *Bennett* factors, as expressed in greater detail by other objectors, and thus warrants rejection of the proposed settlement in and of itself.[4] In the interests of brevity and time, the Attorneys General, while adopting the objections filed by the United States Department of Justice, have chosen to largely focus on points not previously raised by other objectors.

The proposed settlement prohibits the use of Segways and does not allow exemptions for people with disabilities, yet the Americans With Disabilities Act of 1990, § 3 *et seq.,* 42 U.S.C. § 12102 *et seq*., (―ADA") specifically requires places of public accommodation, like Disney Resorts, to make reasonable modifications in their policies for people with disabilities. *See also* 28 C.F.R. § 36.302(a). In addition, the settlement effectively sets in stone Disney's policy of charging for daily access to mobility devices even though it violates the ADA's prohibition of imposing surcharges on people with disabilities. *See* 28 C.F.R. § 36.301(c). This policy is akin to a movie theater telling individuals who use hearing aids that

[4] *See* Doc. 100-1 at 2 (objecting because of, among other things, procedural flaws that violate due process, because judicial endorsement of the proposed settlement would undermine the effectiveness of the Department's current Title III rulemaking efforts, and because the substantive terms of the agreement are

hearing aids are prohibited, but that the theater will provide its own hearing aids for a charge if the individual would like to enjoy the movie.

The Attorneys General recognize that this Court found Plaintiffs' likelihood of success at trial was questionable in its January 5, 2009 Order, based on Plaintiffs' apparent difficulty in proving that their requested injunctive relief is necessary to afford access to Disney Parks. (Doc. 83) (citing *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 688 (2001)). Further, the Attorneys General recognize that the range of possible recovery is limited by Plaintiffs' demand for solely declaratory and injunctive relief and applicable statutory authority. *See* 42 U.S.C. § 12188(a). However, the Attorneys General submit that Plaintiff's interpretation of the *PGA* decision, which was incorporated in the Court's Order conditionally approving the proposed class settlement, is misplaced for several reasons.

First, the Court's January 5th Order merely cites the *PGA* decision in the context of Plaintiffs “conceding” that (i) they would have difficulty carrying their burden at trial of establishing that Segways were “necessary [for them] to afford access to Disney's Parks” and, consequently that (ii) “[p]laintiffs' likelihood of success at trial is questionable.” *Compare* Doc. 83 at 10 *with* Doc. 82 at 11. A proper reading of the *PGA* decision, however, does not support this concession. As the United States Supreme Court itself noted, the “narrow dispute” was whether requiring the Professional Golfers' Association (“PGA”) to modify its policy of not allowing golf carts during certain portions of tournaments for a golfer whose disability limited his ability to walk would “fundamentally alter the nature” of these tournaments. *PGA,* 532 U.S. at 682. The analysis and holding in *PGA* is limited to the

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fundamentally unfair to absent class members).

―fundamental alteration" affirmative defense in Title III of the ADA. *See* 42 U.S.C. §12182(b)(2)(A)(ii); 28 C.F.R. §36.302(a). Any discussion by the Court regarding the ―necessity" of any particular modification under Title III of the ADA is simply *dicta*. Indeed, the majority opinion expressly noted that the ―[P]etitioner [PGA] does *not* contest that a golf cart is a reasonable modification that is necessary if Martin is to play in its tournaments." *PGA*, 532 U.S. at 682 (italics added).

Second, it is beyond question that the Court's holding is limited to Title III of the ADA. *Id.* at 664-73 (discussing procedural history and noting that respondent-plaintiff Martin's suit was exclusively premised on PGA's violation of Title III of the ADA). Thus, whatever may be said concerning the scope of the *PGA* decision regarding requisite modifications to policies under Title III of the ADA, this decision plainly has no bearing on whether Disney's policy banning Segways – which is enshrined in perpetuity in the proposed settlement – violates *state or local* disability laws, claims that the proposed settlement purports to release. *See* Doc. 82-1, ¶13. While state laws concerning disability vary among the states, several state laws are more expansive than the ADA in establishing standards and in allowing plaintiffs to sue for monetary or statutory damages.[5] The Attorneys General are

[5] *See, e.g.,* Cal. Civ. Code §§ 51(f) and 54.1(d) (making a violation of the ADA a violation of the Unruh Civil Rights Act and the Disabled Persons Act); *Turner v. Assoc. of Am. Medical Colleges*, 167 Cal. App. 4th 1401, 1410 (Cal. App. 1 Dist. 2008) (stating that ADA standards are a ―floor" under state law); and *Californians for Disability Rights v. Mervyn's, LLC*, 165 Cal. App. 4th 571, 584 (Cal. App. 1 Dist. 2008) (stating that plaintiffs may now seek damages under California law for ADA violations). *See also* 775 ILCS 5/10-104(B)(1) (Illinois Human Rights Act prohibits discrimination on the basis of disability and provides for a $10,000 fine against first-time offenders, $25,000 for second-time offenders, and $50,000 per violation for anyone who violates the Act three or more times); N.J.S.A. §§ 10:5-12, 10:5-13 (defines disability much more broadly than the ADA does; states that ―all remedies available in common law tort actions shall be available to prevailing plaintiffs."); MASS. CONST. ART. AMEND. 114 (provides ―[n]o otherwise qualified handicapped individual shall, solely by reason of his handicap, be excluded from the participation in, denied the benefits of, or be subject to discrimination under any program or activity within the commonwealth); Mass. G. L. c. 93, §§ 103(a), 103(b),

aware of no finding made by this Court in its January 5th Order or otherwise concerning Plaintiffs' likelihood of success at trial for any potential claims under the state and local disability laws of each state in which a class member resides, but such claims are nonetheless released under the proposed settlement. Although Defendant has alleged the proposed settlement does not release state or local disability claims for monetary damages, the proposed settlement's release is unclear. *Compare* Doc. 131 at 4 (stating the release is limited to claims for injunctive and declaratory relief) *with* Doc. 82-1. Indeed, while the proposed settlement seems to at first blush not release monetary claims, by only releasing those for injunctive and declaratory relief, it then releases such monetary claims by adding "*and any and all* claims and causes of action" under state or local disability law. (Doc. 82-1, ¶13) (italics added). The Attorneys General respectfully submit that it would be erroneous to approve a proposed class action settlement that forever waives claims class members may have under these state and local disability laws, especially given Defendant's expansion.[6]

Third, the Attorneys General do not agree that the availability of other personal devices, such as scooters, absolves Defendant of its duty to provide reasonable modifications in policy, as suggested in the Court's January 5th Order conditionally approving the proposed class settlement. In that Order, this Court noted that:

> As they themselves concede, Plaintiffs must prove that their requested injunctive relief is necessary to afford access to Disney's Parks (Doc. 82 at 11) (citing PGA Tour, Inc. v.

and 103(d) (statutory provision enforcing Amendment 114; includes compensatory and exemplary damages in addition to attorneys' fees and costs of litigation); Fla. Stat. §§ 760.07, 760.11(5).

[6] *See* Pete Werner, *Disney to Build Resort in Maryland*, available at www.wdwinfo.com/news/General_Disney_News/Disney_to_build_resort_in_Maryland.htm (last visited May 26, 2009).

> Martin, 532 U.S. 661, 688 (2001). All the named plaintiffs in this case testified that they were able to use wheelchairs or scooters. Indeed, Ms. Ault, for instance testified that she had visited Disney's Parks on numerous occasions by using a three-wheeled scooter. (Doc. 72-7 at 25). Accordingly, the Court could easily conclude that Plaintiffs simply prefer the Segway to other types of mobility devices and that such preference, as a matter of law, need not be accommodated under the ADA.

Doc. 83 at 11.

The position of the Attorneys General on this issue is consistent with the Preamble to the Title III regulations, in which the United States Department of Justice gives the following example of a reasonable modification in policies:

> a parking facility would be required to modify a rule barring all vans or all vans with raised roofs, if an individual who uses a wheelchair-accessible van wishes to park in that facility, and if overhead structures are high enough to accommodate the height of the van.

28 C.F.R. § 36.302, App. B. According to this example, a parking facility owner cannot escape the reasonable modification requirement simply by saying that the device chosen by the person with a disability (in this case, a wheelchair-accessible van) is not ―necessary" because they could use an alternative, such as riding an accessible bus over to the site. Generally speaking, an agency's interpretation of its own regulations is persuasive, if not controlling, unless it is plainly erroneous or inconsistent with the regulations. *See Auer v. Robbins*, 519 U.S. 452, 461 (1997); *see also Disabled Rights Action Comm. v. Las Vegas Events, Inc.*, 375 F.3d 861 (9th Cir. 2004) (deferring to the Department of Justice's reasonable interpretation of the statute under *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 843-44 (1984)).

Moreover, individuals with disabilities choose to use Segways over scooters and motorized wheelchairs for very understandable reasons. Scooters and motorized wheelchairs are extremely heavy, difficult to travel with, and expensive. For certain people with disabilities, including those with severe circulatory problems, it is detrimental to sit for long periods of time. Some individuals with disabilities also find that Segways are less degrading because these mobility devices allow these individuals to be at eye-level with ambulatory people. Finally, despite ADA's mandate that the built environment be accessible to individuals with disabilities, many barriers still exist that prohibit wheelchair access. Because Segways take up much less space, they are an important option for individuals with disabilities.

Ignoring these considerations, it would be reasonable to assume that a settlement that affords some relief to class members would be preferable to an outcome in which the class members receive no relief. However, having no settlement is preferable to the terms of this proposed settlement. If the settlement was rejected today, class members would be in a *better* position than if the proposed settlement was approved. If the settlement was rejected, individuals would still be able to rent ESVs from Disney Resorts for a daily rental fee and would not be subject to the broad release contained in the proposed settlement. As noted by the United States Department of Justice, Defendant had made the decision to purchase the ESVs independent of settlement discussions. (Doc. 100-1, at 19); *see also* Doc. 72-4, ¶6.

Moreover, if the settlement was rejected, individuals would not be subject to the settlement's broad release that purports to release, among other things:

> *any and all claims and causes of action* arising out of or predicated upon allegations that [Defendant's] actions or decisions relating to the use of Segways or other two-wheeled devices at the Disney Resorts do not comply with the ADA *or any other federal, state, or local law or similar disability rights statute or regulation*.[7]

(Doc. 82-1, ¶13) (italics added). Further, the settlement release:

> [I]ncludes claims which a Settlement Class Member does not know or suspect to exist in his or her favor against the Released Parties as of the date of final court approval of this settlement. The Settlement Class, and each member thereof, and the Named Plaintiffs each waives *all* rights and benefits afforded by any statutory law as to unknown claims, and does so understanding the significance of that waiver.

(Doc. 82-1, ¶9) (italics added).

Further, the release provisions would apply to those relying on a Segway or substantially similar device for mobility assistance who *intend* to visit Defendant's resorts in the *future*. (Doc. 82-1, ¶5). While the Attorneys General contend that no settlement between private parties can restrict their civil law enforcement ability, other actors will inevitably point to the proposed settlement agreement, if approved, as precedent, will seek to settle along the same terms, or will attempt to assert that the provisions bar subsequent state enforcement.

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[7] The quoted language stands independent of the preceding part of the sentence limiting "actions of any and every kind or nature" to injunctive or declaratory relief for "any issue ever raised in this case" discussed above. (Doc. 82-2, ¶13). *See also* Proposed Settlement at ¶18(c) (stating "[t]he Parties will submit a proposed final order . . . dismissing this case on the merits and with prejudice and permanently barring all Settlement Class Members from prosecuting against [Disney] or its present or former parent companies, subsidiaries, affiliates, shareholders, officers, directors, employees, partners, agents, representatives, attorneys, insurers, and any other successors and assigns, any individual or class claims which were or could be asserted in this case, *including without limitation* any claims for declaratory or injunctive relief arising out of the acts, facts, transactions, occurrences, representation, or omissions set forth in the Complaint and subsequent amended complaints.") (italics added).

Not only do class members make an expansive release of claims under the proposed settlement, they would receive the benefit provided by the proposed settlement without it. Indeed, class members will be able to rent an ESV on the same terms as everyone else. *See* Doc. 82-1, ¶12(b). Moreover, the proposed settlement does not set allow class members to reserve an ESV prior to their visit to ensure availability or guarantee storage of Segways that unnamed class members may unwittingly bring to Defendant's Resorts.

The named class representatives, class counsel, and Defendant are the only ones who stand to benefit under the proposed settlement. Named class representatives receive a $4,000 incentive award despite the fact that they are not entitled to any monetary relief under their own Complaint and under the remedies available under the private right of action under Title III. *See* 42 U.S.C. § 12188(a). In the aggregate, class counsel stand to receive $70,000 plus any reasonable attorneys' fees and costs awarded to Ms. Ault's counsel, who has requested $114,850.13. (Doc. 82-1, ¶12(c); Doc. 93, at 8). While there is some value in the settlement to Disney in concluding the litigation with the named plaintiffs to avoid further litigation costs, most of the value of the settlement to Disney – and therefore its willingness to pay attorneys' fees and incentive payments – comes from the broad release as applied to unnamed class members. While approximately $200,000 is not an amount that shocks the conscience, it is unjustified based on the lack of any meaningful relief afforded to unnamed class members.

As to the number and substance of objections, ordinarily a low percentage of objections points to the reasonableness of a proposed settlement while a high percentage of objections signals that a proposed settlement is not fair or reasonable. *Figueroa v. Sharper*

Image Corp., 517 F.Supp.2d 1292, 1328 (S.D. Fla. 2007) (internal citations omitted). Here, the difficulty in providing sufficient notice to the large class (Doc. 83), directly impacts the number of objections lodged by unnamed class members. In spite of this impediment, a large number of objectors have filed objections with this Court. Some of the Attorneys General received notices indicating that, while Defendant was unaware of specific class members, it estimated the number of class members in a given state to be between one (1) and five (5) individuals. *See* Collective Ex. A, Aff. of Rachel Kemp. Applying this to all fifty (50) states, a substantial number of estimated class members filed objections individually or through representative groups (94 of 250, or 37.6%). Even ignoring this aspect of the proposed settlement, the Southern District of Florida has recognized that courts should consider the vigor and substance of the objections of governmental entities when assessing this *Bennett* factor. *Id*. at 1328. In *Sharper Image Corp*., few class members objected to the settlement, but the district court recognized:

> What distinguishes this case from other class actions, however, is the singular appearance of the Attorneys General of thirty-five states and the District of Columbia, representing hundreds of thousands, if not millions, of eligible class members. Appearing as *amicus curiae* on behalf of their citizens, the Attorneys General have objected at every turn to each version of the parties' proposed coupon settlement. The Attorneys General of Florida, Idaho, Illinois, Tennessee, Vermont, and the District of Columbia continue to object to the final version. [T]he vigor and substance of the objections presented counsels against a finding favorable to the parties on this *Bennett* factor.

Id. at 1328. This makes sense from a policy perspective as well given the relatively high transaction costs associated with filing an objection. The Attorneys General respectfully submit that the Court should reach a similar conclusion in this case given the vigor and substance of the state and federal governmental entities who have objected to this settlement.

II. SELECT UNNAMED CLASS MEMBERS CAN CHOOSE NOT TO BE BOUND BY THE SETTLEMENT IN THOSE STATES NOT PROPERLY SERVED WITH ADEQUATE NOTICE BY DEFENDANT AS REQUIRED BY CAFA

The Attorneys General respectfully request that the proposed settlement be rejected. Should the Court approve the settlement, the Attorneys General alternatively submit that select unnamed class members can choose not to be bound by the settlement in those states not properly served with adequate notice by Defendant, as required by CAFA. In its April 27, 2009 Order, this Court gave state officials ninety (90) days after service of notice to file an objection, stated that it would wait ninety (90) days after service of state officials to enter an order concerning the proposed settlement, and found that Defendant's admitted failure to provide timely notice under CAFA resulted in no actual prejudice. (Doc. 149).

A. Defendant Is Required to Serve Timely Notice of Proposed Class Action Settlement to Appropriate State Officials

Through CAFA, Congress expressly imposed a requirement that certain state and federal officials be served with notice of proposed class action settlements. *See* 28 U.S.C. § 1715; *see also Miedema v. Maytag Corp.*, 450 F.3d 1322, 1329 (11th Cir. 2006). Besides provisions expanding the grounds of removal to federal court, the notice requirement to appropriate federal and state officials is the singular defining component of CAFA. As part of the Consumer Class Action Bill of Rights contained in the CAFA, each Defendant participating in a proposed settlement is required to serve upon the appropriate state official[8] of each state in which a class member resides, a notice of the proposed settlement, as well as additional documents and information *not later than ten (10) days after a proposed settlement of a class action is filed in court*.[9] *See* 28 U.S.C. § 1715(b).

“[S]ection 1715 is designed to ensure that a responsible state and/or federal official receives information about proposed class action settlements and *is in a position to react*” and “ha[s] an opportunity to *get involved*.” S. REP. NO. 109-14 (2005), *as reprinted in* 2005 U.S.C.C.A.N. 3, 32, 33 (“Senate Report”) (italics added). Indeed, Section 1715(d) prevents final approval of a settlement until at least ninety (90) days after the *last* date on which any appropriate official was served with CAFA notice. *See* 28 U.S.C. § 1715(d). The required waiting period exists to afford the Attorneys General “at least ninety (90) days to review the proposed settlement and decide what (if any) action to take.” Senate Report at 35.

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[8] “Appropriate State Official” is defined as “the person in the State who has the primary regulatory or supervisory responsibility with respect to the defendant, or who licenses or otherwise authorizes the defendant to conduct business in the State, if some or all of the matters alleged in the class action are subject to regulation by that person. If there is no primary regulator, supervisor, or licensing authority, or the matters alleged in the class action are not subject to regulation or supervision by that person, then the appropriate State official shall be the State attorney general.” 28 U.S.C. § 1715(a)(2).

[9] These other documents and information include: (1) a copy of the complaint and any materials filed with the complaint and any amended complaints, (2) notice of any scheduled judicial hearing in the class action, (3) any proposed or final notification to class members of—(A)(i) the members' rights to request exclusion from the class action; or (ii) if no right to request exclusion exists, a statement that no such right exists; and (B) a proposed settlement of a class action; (4) any proposed or final class action settlement; (5) any settlement or other agreement contemporaneously made between class counsel and counsel for the defendants; (6) any final judgment or notice of dismissal; (7)(A) if feasible, the names of class members who reside in each State and the estimated proportionate share of the claims of such members to the entire settlement to that State's appropriate State official; or (B) if the provision of the information under subparagraph (A) is not feasible, a reasonable estimate of the number of class members residing in each State and the estimated proportionate share of the claims of such members to the entire settlement; and (8) any written judicial opinion relating to the materials described under subparagraphs (3) through (6). *See* 28 U.S.C. § 1715(b).

Aside from the legislative history, the importance of notice to state and federal officials is shown by the statute itself. Under CAFA, a class member can refuse to comply with and choose not to be bound by a class action settlement agreement if the class member demonstrates that the notice required by 28 U.S.C. § 1715(b) has not been provided. *See* 28 U.S.C. § 1715(e). In addition, the earliest date that an order granting final approval of a proposed settlement can be entered is based not on the schedules of the named parties and the court, but rather on when the appropriate state and federal officials receive notice of the proposed settlement. *Id*. at § 1715(d).

Similarly, while CAFA's notice provisions are primarily directed at those who have the responsibility of regulating a defendant or the subject matter of a class action, the notice of a proposed class action to appropriate state officials who have potential class members in their state is required regardless of whether the matters alleged in the class action are subject to regulation by the appropriate state officials. *See* 28 U.S.C. § 1715(b) and 28 U.S.C. § 1715(a)(2) (designating state attorneys general as the default state official for notice purposes). While CAFA does not require the States to take any action as a result of the notices, *see* 28 U.S.C. § 1715(f), the Attorneys General have used the information contained in the notices to attempt to improve proposed settlements. *See* Catherine M. Sharkley, *CAFA Settlement Notice Provision: Optimal Regulatory Policy?* 156 U. PA. L. REV.1971, 1988-1990 (2008) (describing both formal and informal actions taken by state attorneys general).

Requiring that appropriate state and federal officials receive notice of a proposed settlement within ten (10) days of filing ensures that state and federal officials are in a position to react early on if they identify problems with a proposed settlement. Aside from formal objections, the Attorneys General frequently contact class and defense counsel soon after receiving notice of a proposed settlement (and, thus, well in advance of the final fairness hearing) to see if the parties are willing to change provisions that the Attorneys General find objectionable. These include, among other things, stipulations from the parties that limit the reach of releases, changes to an overly-expansive definition of class member, improvements to notice sent to unnamed class members, and expanded injunctive relief that better protects unnamed class members.

While the Attorneys General understand the Court's reticence to add further delays to a full docket, they respectfully submit that waiting to enter the Order until ninety (90) days after service does not provide an adequate remedy for untimely notice and inadequate service. A failure to provide notice to the Attorneys General shortly after filing does not allow them a meaningful opportunity to weigh-in on fundamental aspects of a proposed settlement such as the adequacy of notice to unnamed class members, which are approved through a preliminary approval hearing.

The remedy of waiting ninety (90) days after service of notice to appropriate state and federal officials to enter an order places the Attorneys General in the awkward position of attempting to reverse the inertia of litigation if these officials find an aspect of settlement objectionable. An example of this awkwardness is vividly seen in the case that Defendant cited in its April 23, 2009 Notice. In *Battaline v. Advest, Inc.*, No. 06-569, 2008 U.S. Dist. LEXIS 77164, at *1 (W.D. Pa. Oct. 1, 2008), the district court *had already signed the settlement order* when notices were sent to federal and state officials. There, the court stated:

> Unless an objection from a federal or state officials is received prior to the expiration of the 90-day period following the date that notices are sent, this Court's Judgment in this matter, which was originally entered on September 16, 2008, shall become effective automatically at the end of the 90-day period without further action by the parties or this Court.

Id at 2.[10] This has the effect of reducing CAFA's service of notice requirement to a mere formality and the oversight function of the Attorneys General to almost an afterthought, rather than the central component that Congress envisioned. The Attorneys General do not suggest that this Court, or any other, would fail to give due consideration to arguments they make after a final fairness hearing or, as in *Battaline*, after entry of the order approving the settlement. Instead, the Attorneys General merely acknowledge that the realities of litigation as a result of such late input place a court in the awkward position of choosing to conclude a case on an already full docket or start from scratch based on the late-filed objections from appropriate state or federal officials who did not have the benefit of their right to a full ninety (90) day review period.

While courts and motivated, unnamed objecting class members provide crucial oversight to objectionable proposed settlements or settlement terms, Congress sought, through CAFA's notice provisions, to add a separate level of oversight with officials who are well-versed in a particular subject matter. In short, a ninety (90) day hold on entry of the final approval order does not advance the interests of judicial economy, nor does it serve the

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[10] Defendant's reliance on *D.S. ex rel. S.S. v. New York City Dep't. of Educ.*, 255 F.R.D. 59, 80 (E.D.N.Y. 2008), is similarly misplaced. While the settlement required review by state and federal education officials, the settlement was *with* a government agency who was a party and *who had primary responsibility* of providing access to high school education, which was the subject matter of the class's complaint.

oversight function of the Attorneys General and other appropriate officials of "clientless litigation" that Congress sought to advance through CAFA's service of notice requirements.

B. Defendant Has Failed to Comply with CAFA's Notice Requirements to State Officials.

Defendant sent notice of the proposed class action settlement to some of the Attorneys General one hundred and eighteen (118) days after the filing of the proposed settlement with this Court, after the originally scheduled final fairness hearing, and after the amended April 10, 2009 objection deadline. While Defendant's counsel has certified that notice of the settlement was sent to the Attorneys General of all fifty (50) states and the District of Columbia, several states have reported that they were never served with notice. *See, e.g.,* Collective Ex. A, Aff. of Ashley Davis at ¶8 (Florida), Aff. of Lawrence Otero at ¶3 (New Mexico), Aff. of Jane Wheeler at ¶4 (Oklahoma), and Aff. of Howard McCoach at ¶4 (New Jersey).

Defendant's "Notice of Compliance" (Doc. 165) does not specify how notice was provided but merely asserts that notice was accomplished. Other district courts have held that the mere assertion that notice has been provided to appropriate state and federal officials is insufficient in itself and must be accompanied by more proof. *See*, *e.g.*, *True v. Am. Honda Motor Co.*, No. EDCV-07-287-VAP, 2009 WL 838284, at *11 (C.D. Cal. Mar. 25, 2009) (stating in the order denying preliminary approval, "[n]evertheless, the Court requires proof the letters were timely sent before it can make the finding requested by the Plaintiffs.")

While CAFA does not expressly state how service is to be accomplished,[11]

[11] *See* 28 U.S.C. § 1715(b) ("[E]ach defendant that is participating in the proposed settlement shall serve upon

Defendant's use of electronic mail, including to generic email addresses, to effectuate notice is plainly insufficient, as evidenced by the number of states who have reported receiving no notice whatsoever. Although the Attorneys General have found no case determining the propriety of email service in a CAFA case, a case from the Ninth Circuit makes clear that email service is ineffective unless the rules specifically provide for this method of service. *Calderon v. IBEW Local 47*, 508 F.3d 883, 884 (9th Cir. 2007) (where the rules do not allow or the Court has not ordered the case to be part of an experimental electronic service program and the recipient party has not consented to email service of notice of show-cause hearings, neither the party nor his lawyer may be deemed to have received proper notice and no actions may be taken against their interests.) Moreover, service via email is not acceptable under Federal Rule of Civil Procedure 5(b) unless the recipient consents in writing and, even if consented to, is ineffective if the serving party learns that it did not reach the recipient. *See* Fed. R. Civ. P. 5(b)(2)(E). No state has authorized email service in this case. Moreover, the Florida Attorney General notified Defendant on May 18, 2009 that it had not received any CAFA notice. <u>See</u> Collective Ex. A., Aff. of Ashley Davis (Florida).

In this case, CAFA does not provide for service by email, no order exists making non-parties subject to an electronic filing program, and the Attorneys General did not agree to receive CAFA notices by email. For this reason alone, it is proper to find that Defendant, despite its claim of compliance, has not in fact complied with the statutory service requirements. It is also proper to find that the remedy for such failure is to allow all class

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the appropriate State official of each State in which a class member resides and the appropriate Federal official, a notice of the proposed settlement . . .").

members who demonstrate that the required notice was not properly provided to their state official the right to refuse to comply with and not be bound by final settlement orders which, in part, rely on Defendant's claim of compliance with Section 1715(b).

The insufficient manner in which notice was effectuated is especially troubling given the terms of the proposed settlement. Notably, Defendant was so concerned with objections from governmental entities that it negotiated a provision within the Proposed Settlement Agreement allowing it to unilaterally render the entire settlement voidable if a federal, state or local regulatory organization objected. (Doc. 82-1, ¶20). In addition, Defendant specifically asked named Plaintiffs to agree to a gag provision that prohibited them from issuing a press release, initiating any contact with the media, responding to any media inquiry or having any communications with the media about the case. (Doc. 82-1, ¶12(g)).[12]

C. CAFA Requires Notice to Government Officials at a Meaningful Time.

28 U.S.C. § 1715(e)(1) enables a class member to choose not to be bound by a settlement agreement if the class member can demonstrate that the notice required under subsection 1715(b) has not been provided. Specifically, subsection 1715(e)(2) states:

> A class member may not refuse to comply with and may choose to be bound by a settlement agreement or consent decree under [subsection 1715(e)(1)] if the notice required under subsection (b) was directed to the appropriate official and to either the State attorney general or the person that has primary regulatory, supervisory, or licensing authority over the defendant.

It is the position of the Attorneys General that this provision requires service of notice to be

[12] The named parties recently asked for permission to dispense with the gag provision (Doc. 189), likely

provided at a meaningful time.

One could make the argument that the remedies set forth in subsection 1715(e) apply only if the notice itself is withheld and do not apply if the timing or service requirements of the notice are violated. Such a reading is inconsistent with other provisions within CAFA and would severely undercut the purpose of CAFA's notice provision as providing a tool for independent oversight by governmental officials on behalf of affected, unnamed class members. Under such a reading, defense counsel could withhold notice to government officials, schedule the final fairness hearing, wait to see if any class members came forward after entry of the proposed settlement, and only provide notice of the class action to government officials after the fact if any class member subsequently came forward and asserted that he was not bound by the settlement. Such a reading of CAFA would fail to provide the Attorneys General or other state or federal officials a meaningful opportunity to review and respond as appropriate.

Moreover, because the notice is designed to allow government officials to review independently proposed settlements in order to protect unnamed class members, the reading of subsection 1715(e) that the Attorneys General suggest is consistent with the body of law requiring notice of such proposed settlements to unnamed class members at meaningful times and in a meaningful manner.[13] To be clear, the Attorneys General do not contend that the remedies provided in subsection 1715(e) should be applied uncompromisingly in all

expecting media inquiries as a result of this filing.

[13] *See*, *e.g.*, *Pettway v. Am. Cast Iron Pipe Co.*, 576 F.2d 1157, 1169 (5th Cir. 1978) (stating "[t]he law accords special protections, primarily procedural in nature, to individual class members whose interests may be compromised in the settlement process. These protections include notice, ensuring that class members know when their rights are being compromised, and an opportunity to voice objections to the settlement.").

instances of technical non-compliance with the timing requirements of the notice in subsection 1715(b), as, for example, where service of notice has been made eleven (11) days after the filing of the proposed settlement. Such an application would be inconsistent with the Congressional record on this provision, which makes clear that ~~a~~ settlement should not be undermined because of a defendant's innocent error about which federal or state officials should have received the required notice in a particular case." Senate Report at 35.

But here, Defendant's non-compliance has been substantial rather than technical. After Defendant specifically negotiated a provision enabling it to back out of the proposed settlement if a state or other official objects, and also specifically negotiated a provision restricting named Plaintiffs' use of any media that might alert the Attorneys General or other governmental officials to the settlement, Defendant served the notice on some but not all of the Attorneys General (apparently via e-mail) one hundred and eighteen (118) days after filing the proposed settlement agreement and after the April 10 amended deadline for objections. But for this Court's *sua sponte* rescheduling of the final fairness hearing, Defendant may never have provided notice until after the final fairness hearing, if at all.

CONCLUSION

For the foregoing reasons, the Attorneys General respectfully request that the Court reject the Joint Stipulation and Release in its entirety or, in the alternative, hold that all class members who demonstrate the required notice was not properly served can choose not to be bound by the settlement as a result of Defendant's substantial non-compliance with CAFA's provisions governing service of notice to state officials.

DATED: May 29, 2009

Respectfully submitted,[14]

BILL McCOLLUM
Attorney General

By and Through:

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[14] This brief is supported by Attorneys General Richard A. Svobodny of Alaska, Terry Goddard of Arizona, John Suthers of Colorado, Richard Blumenthal of Connecticut, Mark Bennett of Hawaii, Tom Miller of Iowa, Steve Six of Kansas, Martha Coakley of Massachusetts, Mike Cox of Michigan, Chris Koster of Missouri, Kelly Ayotte of New Hampshire, Anne Milgram of New Jersey, Gary King of New Mexico, Wayne Stenehjem of North Dakota, W.A. Drew Edmondson of Oklahoma, John Kroger of Oregon, Mark Shurtleff of Utah, William Sorrell of Vermont, Rob McKenna of Washington, and Darrell McGraw of West Virginia.

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Attorney General
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By and Through:

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*Special Admission Application to Follow

COLLECTIVE EXHIBIT A

TO BRIEF *AMICUS CURIAE* OF THE ATTORNEYS GENERAL OF FLORIDA, ILLINOIS, TENNESSEE, ALASKA, ARIZONA, COLORADO, CONNECTICUT, HAWAII, IOWA, KANSAS, MASSACHUSETTS, MICHIGAN, MISSOURI, NEW HAMPSHIRE, NEW JERSEY, NEW MEXICO, NORTH DAKOTA, OKLAHOMA, OREGON, UTAH, VERMONT, WASHINGTON, AND WEST VIRGINIA IN OPPOSITION TO THE PROPOSED SETTLEMENT

Contents:

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MAHALA AULT, STACIE RHEA, and DAN WALLACE,	)	
Plaintiffs,	)	**CASE NO. 6:07-CV-1785-GAP-KRS**
v.	)	
WALT DISNEY WORLD CO., Defendant.	)	

AFFIDAVIT OF ASHLEY DAVIS

STATE OF FLORIDA

COUNTY OF LEON

I, Ashley Davis, having been duly sworn, hereby depose and say with personal knowledge:

1. I am an individual and a resident of the State of Florida and make this Affidavit as part of the Attorneys General brief *amicus curiae*.

2. I am employed with the Florida Attorney General's Office as an Assistant Attorney General.

3. The Florida Attorney General's Office receives hundreds of notices every year of proposed class action settlements pursuant to the Class Action Fairness Act of 2005 ("CAFA").

4. For over a year, I have received, collected, reviewed, and routed all such CAFA notices as part of my employment duties.

5. I have never received any notice required by CAFA via electronic mail ("email").

6. I reviewed this Court's April 27, 2009 Order, directing Defendant to file certification of its compliance with CAFA and identify the dates on which CAFA notice was served on the "appropriate state and federal officials." See Doc. 149, ¶ 2.

7. I reviewed Defendant's certification that it served CAFA notice on April 23, 2009 on the Attorneys General of all fifty (50) states and the District of Columbia, and the U.S. Attorney General. See Doc. 165.

8. I have never received any CAFA notice of this proposed settlement via regular or overnight mail. A search of our email records did not confirm Defendant's certification that this office had received notice on or after April 23, 2009. The search included the "Correspondence Database" that contains all emails to this office's general email address, ag.mccollum@myfloridalegal.com, as well as inquiries to the Executive Assistant to the Florida Attorney General McCollum.

9. I spoke with Defendant's counsel, Kerry Scanlon, on May 19, 2009 and informed him that this office had not received CAFA notice via any means. Mr. Scanlon stated that this office had received CAFA notice on April 23, 2009 at the general office

email address, ag.mccollum@myfloridalegal.com. He promised to forward me documentation of this office's receipt of such an email.

10. I have not received the documentation promised by Mr. Scanlon.

11. The above is true and correct to the best of my knowledge and belief.

Ashley Davis

Ashley Davis

Sworn to and subscribed before me

this 29th day of May, 2009.

NOTARY PUBLIC

Carol Bryant

My Commission expires: December 1, 2009

✓(personally Known)

CAROL BRYANT
MY COMMISSION # DD 495958
EXPIRES: December 1, 2009
Bonded Thru Pichard Insurance Agency

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MAHALA AULT, STACIE RHEA, and DAN WALLACE, **Plaintiffs,** **v.** **WALT DISNEY WORLD CO.,** **Defendant.**	**CASE NO. 6:07-CV-1785-GAP-KRS**

AFFIDAVIT OF HOWARD J. McCOACH

STATE OF NEW JERSEY

COUNTY OF MERCER

I, Howard J. McCoach, having been duly sworn, hereby depose and say with personal knowledge:

1. I am an individual and a resident of the State of New Jersey, and make this Affidavit as part of the Attorneys General brief *amicus curiae*.

2. I am employed with the New Jersey Attorney General's Office in the Department of Law & Public Safety, Division of Law.

3. As part of my employment duties, I am tasked with receiving, collecting, and routing proposed class action settlements sent to our office pursuant to the Class Action Fairness Act of 2005. In this capacity, I have not received notice of the within class action settlement as required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(b).

4. I have also confirmed that the New Jersey Attorney General's Office has not received notice of this class action as of this date. I made inquiry of several officials of the Office of Attorney General (OAG) to whom such notice may have been routed before ultimately coming to me. These officials confirmed that the OAG has not received the appropriate notice.

5. The above is true and correct to the best of my knowledge and belief.

Howard J. McCoach

Sworn to and subscribed before me

this 26th day of May, 2009.

NOTARY PUBLIC

My Commission expires: 11/12/2009

JANICE RUTHERFORD
ID # 2321729
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 11/12/2009

STATE OF NEW MEXICO)
)ss
COUNTY OF BERNALILLO)

AFFIDAVIT

LAWRENCE OTERO, BEING FIRST DULY SWORN, DEPOSES AND STATES UPON HIS OATH THAT:

1. I am currently employed as an Assistant Attorney General with the New Mexico Attorney General's Office.

2. I have made due inquiry amongst certain staff, who are believed to have knowledge as to the receipt or non-receipt of a Class Action Fairness Act's required notice of proposed settlement in the matter of: Mahala Ault, Stacie Rhea, and Dan Wallace, Plaintiffs v. Walt Disney World Co., Defendant; Case No. 6:07-CV-1785-GAP-KRS.

3. To the Best of my knowledge, the Office of the Attorney General of the State of New Mexico has not as of to date, received a Class Action Fairness Act Notice regarding a proposed settlement in the matter mentioned herein.

Lawrence Otero - Affiant

The foregoing was sworn to and subscribed before me on May 22nd, 2009, by Stuart Bluestone.

Notary Public

My commission expires: 2/28/2012

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MAHALA AULT, STACIE RHEA, and DAN WALLACE, Plaintiffs,	))))	
v.	))	**CASE NO. 6:07-cv-1785-GAP-KRS**
WALT DISNEY WORLD CO., Defendant.	)))	

AFFIDAVIT OF
JANE F. WHEELER

STATE OF OKLAHOMA

COUNTY OF OKLAHOMA

I, Jane F. Wheeler, being duly sworn, deposes and states:

1. that I am the Director of the Consumer Protection Unit at the Oklahoma Attorney General's Office;

2. that the Consumer Protection Unit receives and reviews notices sent to the Oklahoma Attorney General pursuant to requirements of the Class Action Fairness Act (CAFA);

3. that I sent an electronic mail message to all employees in the office asking whether anyone had received notice of a settlement in the above-referenced case;

4. that I asked the staff in the Consumer Protection Unit assigned to receive mail and file notices to search for a notice of settlement in the above-referenced case,

5. that I asked the information technology department to search for any notices in the above-referenced case that may have been received through electronic mail;

6. that, as of May 19, 2009, a CAFA notice has not been found.

The above is true and correct to the best of my knowledge and belief.

Jane F. Wheeler
JANE F. WHEELER

Sworn to and subscribed before me

this 22nd day of May, 2009.

NOTARY PUBLIC

Tonya L. Lawson

My commission expires:

TONYA L. LAWSON
NOTARY
02013668
EXP. 09/02/10
PUBLIC
STATE OF OKLAHOMA

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MAHALA AULT, STACIE RHEA, and DAN WALLACE,	)	
Plaintiffs,	)	**CASE NO.**
v.	)	**6:07-CV-1785-GAP-KRS**
WALT DISNEY WORLD CO., Defendant.	)	

AFFIDAVIT OF JUDY ZEPRUN KALMAN

STATE OF MASSACHUSETTS

COUNTY OF SUFFOLK

I, Judy Zeprun Kalman, having been duly sworn, hereby depose and say with personal knowledge:

1. I am an individual and a resident of the State of Massachusetts and make this Affidavit as part of the Attorneys General brief *amicus curiae*.

2. I am the Deputy General Counsel in the Massachusetts Attorney General's Office.

3. As part of my duties, I field, triage, and coordinate many of our Office's responses in multi-state matters. Occasionally, these duties will involve receiving, collecting, and routing proposed class action settlements sent to our office pursuant to the Class Action

Fairness Act of 2005. There are a few other people in the Office to whom such notices will be directed; notices of class action settlements can be handled by the relevant Bureaus, as well.

4. I determined through our correspondence handler that the Office received electronically the notice of proposed settlement in the above captioned case on April 23, 2009. The notice was e-mailed to the Massachusetts AGO Correspondence e-mail box.

5. I checked with the other people in the Office to whom such notices might be directed in order to determine whether they had received any other notice of settlement of this case. Each of the persons who responded indicated they did not receive any other notice, either electronic or hard copy.

5. The above is true and correct to the best of my knowledge and belief.

Judy Zeprun Kalman

Sworn to and subscribed before me

this 27th day of May 2009.

NOTARY PUBLIC

Sherrie L Costa

My Commission expires: 8·14·09

Judy Zeprun Kalman personally appeared before me, and proved his/her identification through satisfactory evidence, which were personal knowledge to be the person whose name is signed on the preceding or attached document in my presence. on this 27th day of May 2009

Sherrie L. Costa
Notary Public

Commonwealth of Massachusetts
My Commission Expires August 14, 2009

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MAHALA AULT, STACIE RHEA, and DAN WALLACE, **Plaintiffs,** **v.** **WALT DISNEY WORLD CO.,** **Defendant.**	**CASE NO.** **6:07-CV-1785-GAP-KRS**

AFFIDAVIT OF DEBORAH DAY EMERSON

STATE OF HAWAII)
)
CITY AND COUNTY OF HONOLULU)

I, Deborah Day Emerson, having been duly sworn, hereby depose and say with personal knowledge:

1. I am an individual and a resident of the State of Hawaii, and make this Affidavit as part of the Attorneys General brief *amicus curiae*.

2. I am the supervising deputy attorney general of the Commerce and Economic Development Division of the Department of the Attorney General for the State of Hawaii.

3. As part of my employment duties, I am tasked with receiving, collecting, and routing proposed class action settlements sent to our office pursuant to the Class Action Fairness Act of 2005.

4. The proposed settlement in the above captioned case was sent via e-mail dated April 23, 2009 to the department's generic e-mail address. The e-mailed memo was addressed to our attorney general, Mark Bennett. I do not recall when I received or reviewed the electronic form but the e-mail in paper form was forwarded to me by the staff person who is responsible for monitoring and responding to the generic e-mail address and was received in my division on April 27, 2009.

5. The above is true and correct to the best of my knowledge and belief.

DEBORAH DAY EMERSON

Subscribed and sworn to before me
this 20th day of May, 2009.

Print Name:
Notary Public, State of Hawaii Gale Kamitono

My commission expires: 3/29/2012.

GALE KAMITONO NOTARY PUBLIC 92-206 STATE OF HAWAII

NOTARY PUBLIC CERTIFICATION
Gale Kamitono First Judicial Circuit
Doc. Description Affidavit of Deborah Day Emerson
Mahala Ault, et al v. Walt Disney World, 6:07-CV-1785-GAP-KRS
No. of Pages 2 Date of Doc. 5/20/09
Notary Signature Date 5/20/09

GALE KAMITONO NOTARY PUBLIC 92-206 STATE OF HAWAII

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MAHALA AULT, STACIE RHEA, and DAN WALLACE, **Plaintiffs,** **v.** **WALT DISNEY WORLD CO.,** **Defendant.**	**CASE NO.** **6:07-CV-1785-GAP-KRS**

AFFIDAVIT OF ON BEHALF OF THE STATE OF ILLINOIS

I, Roger P. Flahaven, having been duly sworn, hereby depose and state as follows:

1. I am an attorney licensed to practice law in the State of Illinois since 1980, and submit this Affidavit as part of the Attorneys General brief *amicus curiae*.

2. I am the Deputy Attorney General, Civil Litigation for the Office of the Attorney General of Illinois.

3. As part of my duties, I am tasked with reviewing and routing proposed class action settlements sent to this Office pursuant to the Class Action Fairness Act of 2005.

4. On or about April 23, 2009, this Office received via e-mail a Class Action Fairness Act notice in the above-captioned matter.

5. The State of Illinois has not agreed to accept service of Class Action Fairness Act notices via e-mail.

6. The foregoing is true and correct to the best of my knowledge, information and belief.

FURTHER AFFIANT SAYETH NOT.

Roger P. Flahaven

Roger P. Flahaven

SUBSCRIBED and SWORN to before me
this 27th day of May, 2009.

Eva Stachon
NOTARY PUBLIC

OFFICIAL SEAL
EVA STACHON
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 4-2-2013

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MAHALA AULT, STACIE RHEA, and DAN WALLACE, **Plaintiffs,** **v.** **WALT DISNEY WORLD CO.,** **Defendant.**	**CASE NO.** **6:07-CV-1785-GAP-KRS**

AFFIDAVIT OF RACHEL KEMP

STATE OF TENNESSEE

COUNTY OF DAVIDSON

I, Rachel Kemp, having been duly sworn, hereby depose and say with personal knowledge:

1. I am an individual and a resident of the State of Tennessee, and make this Affidavit as part of the Attorneys General brief *amicus curiae*.

2. I am employed with the Tennessee Attorney General's Office.

3. I received the e-mail and the attachments denoted in the e-mail on April 23, 2009. A true and accurate copy of the e-mail I received in this matter is attached as Exhibit 1 to my affidavit.

4. The above is true and correct to the best of my knowledge and belief.

Rachel Kemp

RACHEL KEMP

Sworn to and subscribed before me

this 27 day of May, 2009.

NOTARY PUBLIC

My Commission expires: 8/23/2011

JEREMY S. HARWELL STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY, TENN.

My Commission Expires AUG. 23, 2011

EXHIBIT 1 TO AFFIDAVIT OF RACHEL KEMP

From: kscanlon@kayescholer.com [mailto:kscanlon@kayescholer.com]
Sent: Thursday, April 23, 2009 8:14 PM
To: Rachel Kemp
Subject: Notice of Proposed Class Action Settlement
Importance: High

Notice of Proposed Class Action Settlement

TO: The Honorable Robert E. Cooper

Attorney General
State of Tennessee
500 Charlotte Ave.
Nashville, TN 37243

FROM: Walt Disney World Co.

DATE: April 23, 2009

Pursuant to the Class Action Fairness Act, 28 U.S.C. Sec. 1715(b), Walt Disney World Co. ("Worldco"), through its attorneys Kaye Scholer LLP, hereby provides notice to you of a proposed settlement reached in Ault v. Walt Disney World Co., Case No. 6:07-CV-1785-GAP-KRS (M.D. Fla.). Included in this email are copies of certain documents from that case, including but not limited to the original and two amended complaints filed by the plaintiffs; the notice of proposed settlement to be sent out to identified class members on May 1, 2009, which includes information on the fairness hearing set for June 3 and possibly June 4, 2009 in Orlando, Florida; the proposed class action settlement, and scheduling notices and judicial opinions relating to these materials.

At this time Worldco does not have the names of any potential class members known to it to reside in your state. Worldco also does not have a reliable basis for determining or estimating the number of such potential members, but it is believed possible that between 1 and 5 such potential members may reside in your state.

There is no settlement fund in this case and, as the Court-approved notice to class members states, "Plaintiffs have not sought, nor are they entitled to, any monetary relief in this case." The only class-wide claims in this case are for injunctive relief, and all class members are similarly situated in that regard. There is therefore no basis on which to estimate the proportionate share of the claims that the total number of estimated potential class members in your state have to the entire settlement, a concept that appears to have no applicability to this case.

(See attached file: attachments.zip)

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MAHALA AULT, STACIE RHEA, and DAN WALLACE, **Plaintiffs,** **v.** **WALT DISNEY WORLD CO.,** **Defendant.**	**CASE NO.** **6:07-CV-1785-GAP-KRS**

AFFIDAVIT OF DOUGLAS D. WALSH

STATE OF WASHINGTON

COUNTY OF KING

I, Douglas D. Walsh, having been duly sworn, hereby depose and say with personal knowledge:

1. I am an individual and a resident of the State of Washington, and make this Affidavit as part of the Attorneys General brief *amicus curiae*.

2. I am employed with the Washington State Attorney General's Office.

3. As part of my employment duties, I am tasked with receiving, collecting, and routing proposed class action settlements sent to our office pursuant to the Class Action Fairness Act of 2005.

4. We received the proposed settlement in the above captioned case on April 23, 2009 via email attachment.

5. The above is true and correct to the best of my knowledge and belief.

Douglas W. Walsh

[NAME OF AFFIANT]

Sworn to and subscribed before me

this Twenty-sixth day of May, 2009.

NOTARY PUBLIC

Margaret Farmer

My Commission expires: 5·28·12

MARGARET A. FARMER
COMMISSION EXPIRES
NOTARY
PUBLIC
5-28-12
STATE OF WASHINGTON

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MAHALA AULT, STACIE RHEA, and DAN WALLACE, **Plaintiffs,** **v.** **WALT DISNEY WORLD CO.,** **Defendant.**	**CASE NO. 6:07-CV-1785-GAP-KRS**

STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

AFFIDAVIT OF LYNETTE R. BAKKER

I, Lynette R. Bakker, of lawful age, being first duly sworn upon oath, depose and state:

1. I am an individual and a resident of the State of Kansas, and make this Affidavit as part of the Attorneys General brief *amicus curiae*.
2. I am an Assistant Attorney General for the State of Kansas currently assigned to the Consumer Protection and Antitrust Division.
3. As part of my employment duties, I am tasked with receiving, collecting, and routing proposed class action settlements sent to our office pursuant to the Class Action Fairness Act of 2005.

4. Our Office received the proposed settlement in the above captioned case on April 23, 2009 via an email sent to Attorney General Steve Six's email address.

5. The above is true and correct to the best of my knowledge and belief.

Lynette R. Bakker

Lynette R. Bakker

Sworn to and subscribed before me

this 13th day of May, 2009.

NOTARY PUBLIC

AMBER R. CAPOUN
Notary Public~State Of Kansas
MY APPT EXP: 08/09/12

Amber R. Capoun

My Commission expires: 08/09/12

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MAHALA AULT, STACIE RHEA, and DAN WALLACE, Plaintiffs, v. WALT DISNEY WORLD CO., Defendant.	CASE NO. 6:07-CV-1785-GAP-KRS

AFFIDAVIT OF DAVID A. RIENZO

STATE OF NEW HAMPSHIRE

COUNTY OF MERRIMACK

I, David A. Rienzo, having been duly sworn, hereby depose and say with personal knowledge:

1. I am an individual and a resident of the State of New Hampshire, and make this Affidavit as part of the Attorneys General brief *amicus curiae*.

2. I am employed with the New Hampshire Attorney General's Office.

3. As part of my employment duties, I am tasked with receiving, collecting, and routing proposed class action settlements sent to our office pursuant to the Class Action Fairness Act of 2005.

4. We received via e-mail the proposed settlement in the above captioned case in April 2009.

5. The above is true and correct to the best of my knowledge and belief.

DAVID A. RIENZO

Sworn to and subscribed before me

this 20th day of May, 2009.

NOTARY PUBLIC

M. Kristin Apicella

My Commission expires: 4/27/11

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