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18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**
20 **WESTERN DIVISION**

21 CARI SHIELDS, AMBER BOGGS
22 and TERESA STOCKTON, on behalf
23 of themselves and all others similarly
24 situated,

25 Plaintiffs,

26 vs.

27 WALT DISNEY PARKS AND
28 RESORTS US, INC., DISNEY
ONLINE, INC., DOES 1-10,
INCLUSIVE,

Defendants.

Case No.: No. 10-cv-5810

Assigned to the Honorable Dolly M.
Gee

NOTICE OF MOTION AND MOTION
FOR CLASS CERTIFICATION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF

HEARING DATE: April 11, 2011
TIME:
COURT:

1 TO: ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN:

2 PLEASE TAKE NOTICE THAT on April 11, 2011, at 9:30 a.m. or at such
3 other date and time as may be ordered by the Court, in Courtroom 7 of the above
4 captioned Court, located at 312 N. Spring St., Los Angeles, California, 90012,
5 Plaintiffs in this matter will and hereby do move for an order certifying the classes
6 as proposed below; for appointment of Cari Shields, Amber Boggs and Teresa
7 Stockton as class representatives; and for appointment of Anthony Anderson
8 Benton Dogali and Eugene Feldman to act as class counsel for plaintiff classes.
9 This motion is made following a meeting between counsel for the parties pursuant
10 to Local Rule 7-3 which occurred on February 7, 2011.

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INCLUSIVE,

Defendants.

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MOTION FOR CLASS
CERTIFICATION

Hearing Date: April 11, 2011

Time:

1 been, or upon visiting in the future will not be provided signage, menus or
2 schedules in an alternative format, such as Braille and/or large print and
3 were not read, in full, the menus, at the theme parks, hotels, restaurants, and
4 shops in Disneyland/California Adventure in California or the Walt Disney
5 World Resort in Florida.

6 3. PLAINTIFF MAP CLASS: All visually impaired individuals considered to
7 have a physical disability, as that term is defined in 42 U.S.C. § 12102 and
8 California Government Code Section 12926 who have not been or who upon
9 visiting in the future will not be provided maps in an alternative format, such
10 as Braille and/or large print, at the theme parks, hotels, restaurants, and
11 shops in Disneyland/California Adventure in California or the Walt Disney
12 World Resort in Florida.

13 4. PLAINTIFF KENNEL CLASS: All visually impaired individuals
14 considered to have a physical disability, as that term is defined in 42 U.S.C.
15 § 12102 and California Government Code Section 12926 who have either
16 (1) paid a fee for the use of a kennel for his/her service animal at
17 Disneyland/California Adventure in California or the Walt Disney World
18 Resort in Florida; (2) been deterred from visiting Disneyland/California
19 Adventure in California or the Walt Disney World Resort in Florida on
20 account of the kennel fee for his/her service animal; (3) been deterred from
21 visiting Disneyland/California Adventure in California or the Walt Disney
22 World Resort in Florida and its theme parks, hotels, restaurants, and shops
23 on account of there being no reasonable designated areas for service animals
24 to defecate; or (4) been deterred from visiting Disneyland/California
25 Adventure in California or the Walt Disney World Resort in Florida and its
26 theme parks by refusing to allow service animals to be tied to any locations
27 within the theme parks while the visually impaired owner is using park rides,
28

1 or who will suffer such deterrence from, or treatment upon, visiting the
2 Resorts in the future.

3 5. PLAINTIFF AUDIO DESCRIPTION DEVICE CLASS: All visually
4 impaired individuals considered to have a physical disability, as that term is
5 defined in 42 U.S.C. § 12102 and California Government Code Section
6 12926 who have used or attempted to use, or who will upon future visits use
7 or attempt to use, an audio description device at Disneyland/California
8 Adventure in California or the Walt Disney World Resort in Florida and
9 been deprived of the full use and enjoyment of the device.

10 6. PLAINTIFF COMPANION TICKET CLASS: All visually impaired
11 individuals considered to have a physical disability, as that term is defined in
12 42 U.S.C. § 12102 and California Government Code Section 12926 who
13 have paid for, or who will upon future visits be required to pay for, an
14 additional ticket for a companion or aide to assist the visually impaired
15 individual to utilize the accommodations at Disneyland/California
16 Adventure in California or the Walt Disney World Resort in Florida.

17 7. PLAINTIFF PARADE CLASS: All visually impaired individuals
18 considered to have a physical disability, as that term is defined in 42 U.S.C.
19 § 12102 and California Government Code Section 12926 who have
20 experienced discrimination, or who will upon future visits experience
21 discrimination, due to Defendants' policy of excluding persons with
22 disabilities, other than wheelchair users, from preferential locations to stand
23 or sit during the parades and shows at Disneyland/California Adventure in
24 California or the Walt Disney World Resort in Florida.

25 8. PLAINTIFF LOCKER CLASS: All visually impaired individuals
26 considered to have a physical disability, as that term is defined in 42 U.S.C.
27 § 12102 and California Government Code Section 12926 who have been or
28 who will upon future visits be unable to utilize a locker at

1 Disneyland/California Adventure in California or the Walt Disney World
2 Resort in Florida.

3 9. PLAINTIFF WEBSITE CLASS: All visually impaired individuals
4 considered to have a physical disability, as that term is defined in 42 U.S.C.
5 § 12102 and California Government Code Section 12926 who have been or
6 who will in the future be unable to access one or more of the websites
7 maintained by Defendants such as www.disney.go.com and were or will be
8 denied equal access to Defendants' theme parks, hotels, restaurants and
9 stores and the numerous goods, services and benefits offered to the public
10 through DEFENDANTS' websites.

11 10. PLAINTIFF PARKING CLASS: All visually impaired individuals
12 considered to have a physical disability, as that term is defined in 42 U.S.C.
13 § 12102 and California Government Code Section 12926, who were or will
14 in the future be customers of the theme parks, hotels, restaurants, and shops
15 at Disneyland/California Adventure in California and were or will be denied
16 equal treatment due to Defendants' failure to comply with accessible parking
17 provisions of the Americans with Disabilities Act Accessibility Guide
18 ("ADAAG"), Americans with Disabilities Act and/or Title 24 of the
19 California Code of Regulations. Additionally, Defendants' parking structure
20 and parking lot at Disneyland are violating the following provisions of the
21 ADAAG: 4.6.2, 4.1.2, 4.1.3, 4.7.7, 4.29.2 and 4.29.5; all so as to violate the
22 Americans with Disabilities Act and Title 24 of the California Code of
23 Regulations.

24
25 Plaintiffs further request that the Court appoint the Named Plaintiffs Cari
26 Shields, Amber Boggs, and Teresa Stockton as class representatives, and the law
27 firms of Forizs and Dogali, P.A. and Eugene Feldman, P.C. as class counsel.
28

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Exhibit A, Part I -	Cari Shields Deposition, Vol. I
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1 **MEMORANDUM OF POINTS AND AUTHORITES**

2 **I. BACKGROUND**

3 **A. NATURE OF THE ACTION**

4 This class action arises from the Defendant Walt Disney Parks and Resorts
5 US, Inc.’s and Defendant Disney Online, Inc.’s (collectively “Defendants”) failure
6 to make the goods and services they provide to the public accessible to visually
7 impaired persons, and for their adoption of policies and procedures that unlawfully
8 discriminate against visually impaired guests.

9 **B. CAUSES OF ACTION ALLEGED**

10 The First Amended Complaint (“FAC”) asserts causes of action to enjoin
11 violations of the following statutes:

- 12
- | | | |
|----|-----------|---|
| 13 | Count I | Americans with Disabilities Act (42 U.S.C. § 12131, <i>et. seq.</i>) (“ADA”) |
| 14 | | |
| 15 | Count II | Unruh Civil Rights Act (California Civil Code § 51 and § |
| 16 | | 52, <i>et. seq.</i>) (“Unruh Act”) |
| 17 | Count III | California Disabled Persons Act (California Civil Code § |
| 18 | | 54, <i>et. seq.</i>) (“CDPA”) |
- 19

20 **C. FACTS**

21 **i. Named Plaintiffs**

22 The Named Plaintiffs in this case are Cari Shields (“Shields”), Amber Boggs
23 (“Boggs”) and Teresa Stockton (“Stockton”). All are visually impaired individuals
24 who qualify as disabled under the ADA, CDPA and the Unruh Act. Shields is an
25 annual pass holder for the Disneyland Resort in California, which consists of
26 Disneyland and California Adventure. Ex. A at 55. Shields has also visited the
27 Walt Disney World Resort in Florida, consisting of the Magic Kingdom, Epcot, the
28 Animal Kingdom and Hollywood Studios. Ex. A at 50, 57. Shields utilizes the

1 services of a service animal to help guide her. *See* ex. A at 11; Ex. D at Resp. # 4.
2 Furthermore, Shields has been to the Disneyland Resort numerous times in the last
3 two years and to the Walt Disney World Resort one time in the last two years. Ex.
4 A at 50-51, 57; Ex. D at Resp. #6, Resp. #8. Shields intends to visit the
5 Disneyland Resort and the Walt Disney World Resort in the future. Ex. A at 50-51
6 (WDW).

7 Boggs, along with her visually impaired husband, Richard Boggs, and their
8 two children, are annual pass holders at the Disneyland Resort. Ex. B at 112-13.
9 Like Shields, Boggs utilizes a service animal to assist her. Ex. B at 56; Ex. E at
10 Resp. # 4. Boggs has been to the Disneyland Resort numerous times in the last
11 two years. Ex. E at Resp. # 8. Boggs also intends to visit the Disneyland Resort in
12 the future and possibly the Walt Disney World Resort. Ex. B at 69.

13 Stockton, with her sighted husband, Mark Stockton, has visited the Walt
14 Disney World Resort two times in the last two years. Ex. F at Resp. #8. Stockton
15 also uses a service animal to assist her. Ex. C at 68; Ex. F at Resp. #4. Stockton
16 intends to visit the Disneyland Resort and the Walt Disney World Resort in the
17 future. Ex. C at 159 (DL).

18 **ii. Defendants**

19 The Defendants are Walt Disney Company affiliates which provide theme
20 park and resort accommodations and services in the United States. Specifically,
21 Defendant Walt Disney Parks and Resorts US, Inc. owns and operates the theme
22 parks, restaurants and resorts at the Disneyland Resort and the Walt Disney World
23 Resort. Defendant Disney Online operates portions of the Disney websites, of
24 which visually impaired guests, such as the Named Plaintiffs, should be able to
25 search for information on the Disney theme parks, restaurants and resorts.

26 **D. SUMMARY OF APPLICABLE LAW**

27 **i. Americans with Disabilities Act**

28 The ADA was enacted in 1990 to ensure that:

1 No individual shall be discriminated against on the basis of disability
2 in the full and equal enjoyment of the goods, services, facilities,
3 privileges, advantages, or accommodations of any place of public
4 accommodation by any person who owns, leases (or leases to), or
5 operates a place of public accommodation.

6 42 U.S.C. §12182(a). Public accommodations include places of lodging,
7 establishments serving food or drink, and parks and other places of recreation. 42
8 U.S.C. §12181(7).

9 The discrimination Congress intended to prevent in passing the ADA,
10 includes segregation, exclusion, and denial of benefits, services and opportunities
11 that are as effective and meaningful to people with disabilities as they are to others.
12 H.R. Rep. No. 101-485, at 302 (1990), 1990 WL 125563, *8. The ADA was
13 designed to protect against not only intentional discrimination, but against “the
14 construction of transportation, architectural, and communication barriers or the
15 adoption or application of standards, criteria, practices or procedures that are based
16 on thoughtlessness or indifference—that discrimination resulting from benign
17 neglect.” H.R. Rep. No. 101-485, at 302 (1990), 1990 WL 125563, *8.

18 Discrimination under the ADA includes denial of the opportunity to
19 participate in or benefit from the “goods, services, facilities, privileges,
20 advantaged, or accommodations of an entity.” 42 U.S.C. §12182(b)(1)(i). It is also
21 discriminatory to offer an individual or class of individuals an opportunity to
22 participate in or benefit from those goods, services, facilities, privileges,
23 advantages or accommodations which is not equal to that offered to other
24 individuals. 42 U.S.C. §12182(b)(1)(ii). Under the ADA, an entity must make
25 reasonable modifications to its policies, practices and procedures in order to ensure
26 that its goods, services, facilities, privileges advantages and accommodations can
27 be afforded to individuals with disabilities, and must provide auxiliary aids and
28 services where necessary. 42 U.S.C. §12182(b)(2)(A)(ii)-(iii). The auxiliary aids

1 required to be provided include “qualified readers, taped texts, audio recordings,
2 Brailled materials, large print materials or other effective methods of making
3 visually delivered materials available to individuals with visual impairments”
4 28 C.F.R. §36.303(b)(2). An entity must also remove architectural barriers and
5 structural communication barriers. 42 U.S.C. §12182(b)(2)(A)(iv).

6 **ii. The Unruh Civil Rights Act**

7 Section 51 of the California Civil Code (the “Unruh Act”) provides that all
8 persons in California are free and equal no matter their sex, race, color, religion,
9 ancestry, national origin, disability or medical condition, and are entitled to the full
10 and equal accommodations, advantages, facilities, privileges, or services in all
11 business establishments of every kind whatsoever.

12 Section 52 of the Civil Code provides that whoever denies, aids or incites a
13 denial, or makes any discrimination or distinction contrary to section 51, is liable
14 for each and every offense. Section 51(f) of the Civil Code provides that any
15 violation of the right of any individual under the ADA shall also be considered a
16 violation of the Unruh Act.

17 Defendants’ violations of the rights protected by the Unruh Act entitle
18 Named Plaintiffs and the members of the proposed classes to receive injunctive
19 relief and attorneys’ fees, as provided for in Civil Code 52.

20 **iii. The California Disabled Persons Act**

21 The provisions of Civil Code §§ 54, *et. seq.* (the “CDPA”) guarantees, inter
22 alia, that all persons with disabilities, including the visually impaired, shall have
23 the same full and equal access as other members of the general public to the
24 services, facilities and advantages of public accommodations within the
25 jurisdiction of the State of California. Cal. Civ. Code § 54.1(a)(1). Section 54(c)
26 of the Civil Code provides that any violation of the right of any individual under
27 the ADA shall also be considered a violation of the CDPA.

1 Defendants' violations of the rights protected by the CDPA entitle Named
2 Plaintiffs and the members of the proposed classes to receive injunctive relief and
3 attorneys' fees, as provided for in Civil Code § 54.3.

4 **E. THE PROPOSED CLASSES**

5 Named Plaintiffs are requesting certification of the following Classes to
6 adjudicate the causes of action asserted in the FAC.

7 **PLAINTIFF DISNEY CHARACTER CLASS:** All visually impaired
8 individuals considered to have a physical disability, as that term is defined in 42
9 U.S.C. § 12102 and California Government Code Section 12926, who were or will
10 become customers of the theme parks, hotels, restaurants, and shops at
11 Disneyland/California Adventure in California or the Walt Disney World Resort in
12 Florida and who were or will in the future be denied interaction and equal
13 treatment by Disney employees dressed as Disney characters.

14 **PLAINTIFF SIGNAGE CLASS:** All visually impaired individuals
15 considered to have a physical disability, as that term is defined in 42 U.S.C. §
16 12102 and California Government Code Section 12926 who have not been, or
17 upon visiting in the future will not be provided signage, menus or schedules in an
18 alternative format, such as Braille and/or large print and were not read, in full, the
19 menus, at the theme parks, hotels, restaurants, and shops in Disneyland/California
20 Adventure in California or the Walt Disney World Resort in Florida.

21 **PLAINTIFF MAP CLASS:** All visually impaired individuals considered to
22 have a physical disability, as that term is defined in 42 U.S.C. § 12102 and
23 California Government Code Section 12926 who have not been or who upon
24 visiting in the future will not be provided maps in an alternative format, such as
25 Braille and/or large print, at the theme parks, hotels, restaurants, and shops in
26 Disneyland/California Adventure in California or the Walt Disney World Resort in
27 Florida.

1 PLAINTIFF KENNEL CLASS: All visually impaired individuals
2 considered to have a physical disability, as that term is defined in 42 U.S.C. §
3 12102 and California Government Code Section 12926 who have either (1) paid a
4 fee for the use of a kennel for his/her service animal at Disneyland/California
5 Adventure in California or the Walt Disney World Resort in Florida; (2) been
6 deterred from visiting Disneyland/California Adventure in California or the Walt
7 Disney World Resort in Florida on account of the kennel fee for his/her service
8 animal; (3) been deterred from visiting Disneyland/California Adventure in
9 California or the Walt Disney World Resort in Florida and its theme parks, hotels,
10 restaurants, and shops on account of there being no reasonable designated areas for
11 service animals to defecate; or (4) been deterred from visiting
12 Disneyland/California Adventure in California or the Walt Disney World Resort in
13 Florida and its theme parks by refusing to allow service animals to be tied to any
14 locations within the theme parks while the visually impaired owner is using park
15 rides, or who will suffer such deterrence from, or treatment upon, visiting the
16 Resorts in the future.

17 PLAINTIFF AUDIO DESCRIPTION DEVICE CLASS: All visually
18 impaired individuals considered to have a physical disability, as that term is
19 defined in 42 U.S.C. § 12102 and California Government Code Section 12926 who
20 have used or attempted to use, or who will upon future visits use or attempt to use,
21 an audio description device at Disneyland/California Adventure in California or
22 the Walt Disney World Resort in Florida and been or will be deprived of the full
23 use and enjoyment of the device.

24 PLAINTIFF COMPANION TICKET CLASS: All visually impaired
25 individuals considered to have a physical disability, as that term is defined in 42
26 U.S.C. § 12102 and California Government Code Section 12926 who have paid
27 for, or who will upon future visits be required to pay for, an additional ticket for a
28 companion or aide to assist the visually impaired individual to utilize the

1 accommodations at Disneyland/California Adventure in California or the Walt
2 Disney World Resort in Florida.

3 **PLAINTIFF PARADE CLASS:** All visually impaired individuals
4 considered to have a physical disability, as that term is defined in 42 U.S.C. §
5 12102 and California Government Code Section 12926 who have experienced
6 discrimination, or who will upon future visits experience discrimination, due to
7 Defendants' policy of excluding persons with disabilities, other than wheelchair
8 users, from preferential locations to stand or sit during the parades and shows at
9 Disneyland/California Adventure in California or the Walt Disney World Resort in
10 Florida.

11 **PLAINTIFF LOCKER CLASS:** All visually impaired individuals
12 considered to have a physical disability, as that term is defined in 42 U.S.C. §
13 12102 and California Government Code Section 12926 who have been or who will
14 upon future visits be unable to utilize a locker at Disneyland/California Adventure
15 in California or the Walt Disney World Resort in Florida.

16 **PLAINTIFF WEBSITE CLASS:** All visually impaired individuals
17 considered to have a physical disability, as that term is defined in 42 U.S.C. §
18 12102 and California Government Code Section 12926 who have been or who will
19 upon future visits be unable to access one or more of the websites maintained by
20 Defendants such as www.disney.go.com and were or will be denied equal access to
21 Defendants' theme parks, hotels, restaurants and stores and the numerous goods,
22 services and benefits offered to the public through DEFENDANTS' websites.

23 **PLAINTIFF PARKING CLASS:** All visually impaired individuals
24 considered to have a physical disability, as that term is defined in 42 U.S.C. §
25 12102 and California Government Code Section 12926, who were or will in the
26 future be customers of the theme parks, hotels, restaurants, and shops at
27 Disneyland/California Adventure in California and were or will be denied equal
28 treatment due to Defendants' failure to comply with accessible parking provisions

1 of the Americans with Disabilities Act Accessibility Guide (“ADAAG”),
2 Americans with Disabilities Act and/or Title 24 of the California Code of
3 Regulations. Additionally, Defendants’ parking structure and parking lot at
4 Disneyland are violating the following provisions of the ADAAG: 4.6.2, 4.1.2,
5 4.1.3, 4.7.7, 4.29.2 and 4.29.5; all so as to violate the Americans with Disabilities
6 Act and Title 24 of the California Code of Regulations.

7 **II. ARGUMENT**

8 **A. THE CLASS DEFINITIONS**

9 The above-recited Class Definitions are slightly expanded from the express
10 language of the FAC. Specifically, each definition is expanded to expressly
11 encompass future, unknown victims of Disney’s misconduct, rather than only
12 implicitly encompassing them. Plaintiffs’ complaint was always intended to
13 encompass future victims, as it seeks purely prospective injunctive relief, which
14 necessarily benefits the broader class of visually impaired Disney visitors. (Class
15 Counsel also expressly advised the Court at the December 6, 2010 case
16 management conference that the complaint seeks purely injunctive relief for the
17 class, and seeks to correct Disney’s systemic policies and procedures). The Class
18 Definitions in the FAC, which appear expressly to refer to existing victims, and the
19 Prayer for Relief in the FAC, which calls for prospective changes to Disney’s
20 policies and facilities which benefit the entire visually impaired community rather
21 than only Plaintiffs themselves, cannot be reconciled.⁴ Plaintiffs ask the Court,
22 upon certifying the Classes, to certify them in the only manner which logically
23 interprets and enforces the meaning of their complaint.

24
25
26 ⁴ Undersigned counsel apologizes to the Court for this ambiguity and thanks
27 defense counsel for bringing the issue to the undersigned’s attention at the Meet
28 and Confer which occurred in advance of this Motion.

1 It is within the Court's authority to amend the class definitions. *Kamar v.*
2 *Radio Shack Corp.*, 254 F.R.D. 387, 391, n.2 (C.D. Cal. 2008); *Williams v. City of*
3 *Antioch*, 2010 WL 3632197, *7 (N.D. Cal. Sept. 2, 2010); *Hagen v. City of*
4 *Winnemucca*, 108 F.R.D. 61, 64 (D. Nev. 1985); *see also In re TFT-LCD (Flat*
5 *Panel) Antitrust Litigation*, 267 F.R.D. 583, 590-91 (N.D. Cal. 2010) (granting
6 certification of a class broader than pled in the complaint).⁵

7 In addition to Plaintiffs' suggestion that the Class Definitions should be
8 clarified to include the future victims who are intended beneficiaries of the Prayer
9 for Relief, two substantive changes to the Class Definitions are suggested. First, as
10 to the Parking Class, discovery has shown no basis for Plaintiffs to represent
11 visually impaired persons who have visited or will visit parking facilities at Walt
12 Disney World Resort - only Disneyland Resort. None of the Named Plaintiffs has
13 experienced a parking-related violation at Walt Disney World Resort. A reduced
14 Parking Class definition should be adopted, limiting the Parking Class to
15 Disneyland Resort.

16 Second, the Parade Class must include "shows", including exhibitions and
17 the like, as well as parades. Disney offers many shows which are similar in nature
18 to parades, so that they can be said to already be encompassed by the Parade Class
19 definition. But should Disney propose that the term "parade" is too narrow to
20 include shows, the Class Definition should be amended to reflect the evidence.
21 The evidence establishes that Disney discriminates against its visually impaired
22 guests not only at parades, but at light and laser shows and similar events. *See Ex.*
23 *A at 213-14; Ex. B at 290-92.*

24
25 ⁵ Even if the Class Definitions are not clarified and approved as requested, this
26 Memorandum demonstrates *infra* that sufficient numerosity exists for each Class
27 anyway, as to prior and existing victims of Disney's discrimination, known and
28 unknown, so that the existing Class Definitions will support Rule 23 certification.

1 **B. THE CLASS ACTIONS**

2 Class actions have the main purpose of promoting judicial economy by
3 preventing multiple suits on the same issue and protecting individuals with small
4 claims who might otherwise not be able to bring their claims individually. *Park v.*
5 *Ralph’s Grocery Store*, 254 F.R.D. 112, 117 (C.D. Cal. 2008); *Siddiqi v. Regents*
6 *of the Univ. of California*, 2000 WL 33190435, *4 (N.D. Cal. Sept. 6, 2000).

7 To certify a class the proponent must show that all of the elements in Federal
8 Rule of Civil Procedure 23(a) are satisfied as well as demonstrating that the class
9 action sufficiently satisfies one of the categories of Federal Rule of Civil Procedure
10 23(b). Fed. R. Civ. P. 23. This burden is not heavy. *Irwin v. Mascott*, 96 F. Supp.
11 2d 968, 971-72 (N.D. Cal. 1999). In making the determination of whether to
12 certify a class the Court must take the allegations made in the complaint as true and
13 only analyze whether the asserted claims are appropriate for resolution as a class.
14 *Nat’l Fed’n of the Blind v. Target Corp.*, 582 F. Supp. 2d 1185, 1190, 1193 (N.D.
15 Cal. 2007). Additionally, the Court cannot address the merits of the substantive
16 claims made by the class. *Eisen v. Carlisle & Jacqueline*, 417 U.S. 156, 177-78,
17 94 S. Ct. 2140, 40 L. Ed. 2d 732(1974); *Target Corp.*, 582 F. Supp. 2d at 1190,
18 1193; *Siddiqi*, 2000 WL 33190435 at *3, *8; *Bates v. United Parcel Service*, 204
19 F.R.D. 440, 443 (N.D. Cal. 2001).

20 When the class sought to be certified is for violations of civil rights, as is the
21 case here, the Rule 23 requirements must be read liberally. *Charles v. Dalton*,
22 1996 WL 53633, *2 (N.D. Cal. Jan. 31, 1996); *Adams v. Pinole Point Steel Co.*,
23 1994 WL 515347, *2 (N.D. Cal. May 18, 1994). Additionally, when class
24 certification is sought under Rule 23(b)(2), as in this action, class certification
25 requirements are relaxed. *Joyce v. City and County of San Francisco*, 1994 WL
26 443464, *8 (N.D. Cal. Aug. 14, 1994). And if there is any doubt concerning class
27 certification, the court should err in favor of certification. *Baghdasarian v.*
28 *Amazon.com, Inc.*, 258 F.R.D. 383, 386 (C.D. Cal. 2009); *Nat’l Organization on*

1 *Disability v. Tartaglione*, 2001 WL 1258089, *1 (E.D. Pa. Oct. 22, 2001); *Ceaser*
2 *v. Pataki*, 2000 WL 1154318, *4 (S.D.N.Y. Aug. 14, 2000); *see Colorado Cross-*
3 *Disability Coalition v. Taco Bell Corp.*, 184 F.R.D. 354, 356 (D. Colo. 1999).

4 If there are multiple classes or subclasses to be certified, as is the case here,
5 each class must independently meet Rule 23 class action requirements. *See Bates*,
6 204 F.R.D. at 443. Therefore, this Memorandum first addresses Rule 23
7 requirements generally across the spectrum of ten classes, then addresses Rule 23
8 concerns which may specifically apply to individual proposed classes. Because the
9 Named Plaintiffs have established each class requirement as to each proposed
10 class, the Court should GRANT this Motion.

11 **i. Requirements of Rule 23(a)**

12 Rule 23(a) requires that: (1) the class be so numerous that joinder is
13 impracticable; (2) there are questions of law or fact common to the class; (3) the
14 claims of the Named Plaintiffs be typical of the claims of the class; and (4) the
15 Named Plaintiffs will fairly and adequately protect the interests of the class. Fed.
16 R. Civ. P. 23(a)(1)-(4).

17 **a. Numerosity**

18 Numerosity requires a showing that the number of class members is such
19 that joinder is impracticable. Fed. R. Civ. P. 23(a)(1). This showing only requires
20 impracticability, not impossibility. *Bates*, 204 F.R.D. at 444; *Siddiqi*, 2000 WL
21 33190435 at *4.

22 Exact numbers need not be alleged to sufficiently demonstrate numerosity.
23 *Target Corp.*, 582 F. Supp. 2d at 1199; *Moeller v. Taco Bell Corp.*, 220 F.R.D.
24 604, 608 (N.D. Cal. 2004); *Arnold v. United Artists Theatre Circuit, Inc.*, 158
25 F.R.D. 439, 448 (N.D. Cal. 1994) *modified* 158 F.R.D. 439 (adding that the class
26 cannot be amorphous). Presumptively, 40 or more class members will satisfy
27 numerosity. *Mazza v. American Honda Motor Co.*, 254 F.R.D. 610, 617 (C.D. Cal.
28 2008). Additionally, when the proposed class includes future, unknown members,

1 joinder is inherently impracticable and numerosity is met regardless of class size.
2 *Jordan v. County of Los Angeles*, 669 F.2d 1311, 1320 (9th Cir. 1982) *rev'd on*
3 *other grounds*, 459 U.S. 810, 103 S. Ct. 35, 74 L. Ed. 2d 48 (1982); *Siddiqi*, 2000
4 WL 33190435 at *4; *Nat'l Ass'n of Radiation Survivors v. Walters*, 111 F.R.D.
5 595, 599 (N.D. Cal. 1986); *Int'l Molders' and Allied Workers' Local Union No.*
6 *164 v. Nelson*, 102 F.R.D. 457, 461 (N.D. Cal. 1983).

7 In determining whether numerosity exists the court should consider the
8 geographic diversity of the class members. *Park*, 254 F.R.D. at 120; *Moeller*, 220
9 F.R.D. at 608; *Bates*, 204 F.R.D. at 444. The court should also consider the
10 relative ease or difficulty of identifying the class members. *Park*, 254 F.R.D. at
11 120; *Moeller*, 220 F.R.D. at 608.

12 When necessary the court can use census data to determine whether
13 numerosity has been met. *Moeller*, 220 F.R.D. at 608 n.8; *see e.g. Park*, 254
14 F.R.D. at 120; *Target Corp.*, 582 F. Supp. 2d at 1199; *see also Colo. Cross-*
15 *Disability Coal.*, 184 F.R.D. at 357-58 (“[c]ensus data are frequently relied on by
16 courts in determining the size of the proposed class”). Additionally the court may
17 examine statistical data. *E.g. Target Corp.*, 582 F. Supp. 2d at 1199; *Moeller*, 220
18 F.R.D. at 608; *see also Ass'n for Disabled Ams v. Amoco Oil, Co.*, 211 F.R.D. 457,
19 462 (S.D. Fla. 2002); *Access now, Inc. v. AHM CGH, Inc.*, 2000 WL 1809979, *2
20 (S.D. Fla. July 12, 2000). And the court may make common sense assumptions to
21 support the finding of numerosity. *Moeller*, 220 F.R.D. at 608; *see also Neiberger*
22 *v. Hawkins*, 208 F.R.D. 301, 313 (D. Colo. 2002); *Alexander v. Novello*, 210
23 F.R.D. 27, 33 (E.D.N.Y. 2002); *Tartaglione*, 2001 WL 1258089 at *1; *Colo.*
24 *Cross-Disability Coal.*, 184 F.R.D. at 358. Finally, numerosity may be satisfied
25 and the class action permitted to proceed based on estimates as to the size of the
26 proposed class. *Mazza*, 254 F.R.D. at 617; *Alexander v. Novello*, 210 F.R.D. 27,
27 33 (E.D.N.Y. 2002).

1 Furthermore, because the proposed classes seek exclusively injunctive or
2 declaratory relief under Rule 23(b)(2) the numerosity requirement is specifically
3 relaxed. *Sueoka v. United States*, 101 Fed. Appx. 649, 653, 2004 WL 1042541,
4 **2 (9th Cir. May 5, 2004); *see also Mutli-Ethnic Immigrant Workers Organizing*
5 *Network v. City of Los Angeles*, 246 F.R.D. 621, 631 (C.D. Cal. 2007).

6 (i) *All Proposed Classes Are So Numerous that Joinder is*
7 *Impracticable*

8 All of the proposed classes are sufficiently numerous to meet the
9 requirement of Rule 23(a)(1) because joinder of all the class members would be
10 impracticable. Numerosity is specifically met because all of the proposed classes
11 include future, unknown members, which inherently makes joinder impracticable.
12 *Jordan*, 669 F.2d at 1320; *Siddiqi*, 2000 WL 33190435 at *4; *Nat'l Ass'n of*
13 *Radiation Survivors*, 111 F.R.D. at 599; *Int'l Molders' and Allied Workers' Local*
14 *Union No. 164*, 102 F.R.D. at 461. However, to give the Court an impression of the
15 sheer size of the proposed classes, the following is provided.

16 Exact numbers are not needed to satisfy numerosity, *Target Corp.*, 582 F.
17 Supp. 2d at 1199, and such can be satisfied through estimates as to the amount of
18 class members. *Mazza*, 254 F.R.D. at 617. This is even more true in this case
19 where the Rule 23 requirements, and specifically numerosity, are relaxed because
20 this is a civil rights class action seeking purely injunctive relief under Rule
21 23(b)(2). *See Charles*, 1996 WL 53633 at *3; *Joyce*, 1994 WL 443464 at *8;
22 *Sueoka*, 101 Fed. Appx. At 653. Additionally courts have regularly relied on
23 statistics, such as census data, to extrapolate estimates and determine that
24 numerosity has been met. *See Moeller*, 220 F.R.D. at 608; *Park*, 254 F.R.D. at
25 120; *Target Corp.*, 582 F. Supp. 2d at 1199.

26 According to the July 2009 report of the United States Census Bureau, 307
27 million persons live in the United States. Ex. J at Table 1, pg. 1. 25.1 million
28 visually impaired persons live in the United States. National Center for Health

1 Statistics, National Health Interview Survey, 2008. Ex. L at 36. In other words,
2 roughly 8% of all Americans are visually impaired.

3 According to Themed Entertainment Association/AECOM Economics 2009
4 Theme Index, The Global Attractions Attendance Report, the Walt Disney World
5 Resort had over 47 million (47,513,000) visitors in 2009, while the Disneyland
6 Resort had over 21 million (21,950,000) visitors in 2009.⁶ Ex. I at 11.

7 After the complaint in this action was filed, Greg Hale, who is Worldwide
8 Vice President of Safety and Accessibility for Defendant Disney World Parks and
9 Resorts, publicly stated that of the more than 100,000 persons per day who visit
10 Walt Disney World, the number who are disabled “ ... [is] well into the thousands
11 every day”. Albright, M., *St. Petersburg Times*, June 22, 2010, Ex. K.

12 Furthermore, Bob Minnick, also of Disney Parks’ Worldwide Safety &
13 Accessibility Department gave a presentation on “Accessibility Design
14 Considerations” for the disabled, stating that in 1997 there were 3.5 million to 4.5
15 million visually impaired persons in the United States, “equal to the population of
16 South Carolina”. Ex. S. This presentation establishes that not only have
17 Defendants long been aware of the population of visually impaired persons, but
18 also that a large number of visually impaired persons visit Disney’s resorts. A
19 more recent article approved by Mr. Minnick recites that about 60 million disabled
20 persons live in the United States, that more than 20 million American families
21 include at least one disabled person, and that more than 40,000 “Disney Vacation
22 Club” member families include a disabled person. Ex. R. These Disney-endorsed
23 statistics, combined with census data provided above, demonstrate that the number
24 of visually impaired persons who visit Disney’s resorts is substantial – well beyond
25 the modest threshold required under Rule 23. Additionally, using the Disney-
26 endorsed number of 60 million disabled Americans it can be calculated that

27
28 ⁶ Plaintiffs have requested attendance documentation from Defendants which
Disney has refused to provide citing proprietary, trade secret objections.

1 roughly 41% of all disabled persons in the United States are visually impaired
2 (25.1 million of 60 million).

3 Although Defendants have failed to provide data on the issue, through
4 census data it can be estimated that roughly 3,760,000 million (8% of 47 million)
5 visually impaired persons visited the Walt Disney World Resort in 2009, and
6 roughly 1,680,000 million (8% of 21 million) visually impaired persons visited the
7 Disneyland Resort in 2009. Or, in the alternative, Mr. Hale's admission can be
8 used to estimate that even if only 1,000 disabled persons visited the Walt Disney
9 World Resort daily, 410 of those would be visually impaired (41% of 1,000). And
10 because the Disneyland Resort attendance is roughly 44% of the Walt Disney
11 World Resort attendance (21 million versus 47 million in 2009), the daily visually
12 impaired attendance at the Disneyland Resort would be 180 (44% of 410).
13 Keeping in mind that because this is a civil rights class action and additionally that
14 only injunctive relief is being sought, which requires a liberal or relaxed
15 application of Rule 23 requirements, this data, along with common sense
16 assumptions, leads to the obvious conclusion that numerosity for each of the
17 proposed classes is met.

18 Additionally, in the Plaintiffs' Request to Produce, the Defendants were
19 specifically asked to provide any record of communications between visually
20 impaired persons and Defendants for the years 2006 to present. In the less than
21 1250 pages⁷ of discovery documents provided to date there can be found 41
22 communications from visually impaired persons who visited the resorts and
23 communicated with Disney concerning their experience.⁸ Of the 41

24
25 ⁷ Excluding 5% of which have been redacted and another 20% of which are
26 redundant copies of the same documents.

27 ⁸ Whether this collection constitutes the universe of complaints is unknown because
28 Disney continues an endless process of incrementally and chaotically releasing
documents to Plaintiffs. See the section, *infra*: Defendants are Estopped from
Contesting Certification Due to Their Systematic Refusal to Provide Discovery.

1 communications from visually impaired persons, other than the Named Plaintiffs,
2 two are neutral in content, four are positive in content and the remaining 35
3 complain of deficiencies in Defendants’ meeting of the needs of the visually
4 impaired.⁹ See Composite Ex. O. Complaints that specifically relate to particular
5 proposed Classes are addressed *infra*.

6 Here, common sense and the evidence set forth herein indicates that the
7 proposed classes are sufficiently large to satisfy the numerosity requirement. And
8 even if the Court decides to only allow certification as to past and present victims
9 of the Defendants’ discriminatory policies and actions, Mr. Hale’s admission and
10 the cited census data specifically demonstrate that such a class is sufficiently large
11 to satisfy numerosity.

12 ***b. Commonality***

13 Commonality requires that there be questions of law or fact common to the
14 class. Fed. R. Civ. P. 23(a)(2). Commonality is permissively construed and “all
15 questions of fact and law need not be common to satisfy the rule”. *Hanlon v.*
16 *Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998); *Dominguez v.*
17 *Schwarzenegger*, 2010 WL 2348659, *4 (N.D. Cal. Jun 8, 2010); *Moeller*, 220
18 F.R.D. at 608. In fact, commonality is satisfied when the class members have
19 common legal issues but varying facts, or if they share common facts seek relief
20 based on different legal remedies. *Hanlon*, 150 F.3d at 1019; *Dominguez*, 2010
21 WL 2348659 at *4; *Target Corp.*, 582 F. Supp. 2d at 1200; *Bates*, 204 F.R.D. at
22 445.

23 Commonality is a “minimal” requirement. *Hanlon*, 150 F.3d at 1020;
24 *Moeller*, 220 F.R.D. at 608; *Bates*, 204 F.R.D. at 445. It is a qualitative test, as

26 The cited figure does not include test groups that Disney compensated and escorted
27 around the parks to test market their audio descriptive device in 2010 nor articles
28 Disney commissioned concerning use of the Park by the visually impaired.

⁹Note: some visitors had multiple complaints.

1 opposed to a quantitative one, and can be satisfied with only one common,
2 significant issue of law or fact. *Dukes v. Wal-Mart Inc.*, 509 F.3d 1168, 1177 (9th
3 Cir. 2007); *Mazza*, 254 F.R.D. at 618.

4 In considering whether commonality is satisfied, central decision-making is
5 a factor “weighing heavily towards a finding of commonality, if it does not
6 establish commonality outright”. *Moeller*, 220 F.R.D. at 610. Also, in civil rights
7 suits, commonality is satisfied where a system-wide practice or policy that affects
8 all of the class members is challenged. *Armstrong v. Davis*, 275 F.3d 849, 868 (9th
9 Cir. 2001) (abrogated on different grounds); *Dominguez*, 2010 WL 2348659 at *5;
10 *see also Arnold*, 158 F.R.D. at 448 (commonality “met by the alleged existence of
11 common discriminatory practices”); *Siddiqi*, 2000 WL 33190435 (“[f]acial
12 discrimination allegations also raise common issues of law and fact that are
13 appropriate for class-wide adjudication”).

14 *c. Typicality*

15 Typicality requires the claims of the Named Plaintiffs to be typical of the
16 claims of the class members. Fed. R. Civ. P. 23(a)(3). This is a permissive
17 standard, so that the Named Plaintiffs’ claims need not be identical to those of the
18 absent class members, but only “reasonably co-extensive” with them. *Hanlon*, 150
19 F.3d at 1020; *Dominguez*, 2010 WL 2348659 at *6; *Bates*, 204 F.R.D. at 446;
20 *Siddiqi*, 2000 WL 33190435 at *7.

21 To be typical the Named Plaintiffs must have the same interests and suffer
22 the same injuries as the absent class members. *Target Corp.*, 582 F. Supp. 2d at
23 1201; *Bates*, 204 F.R.D. at 446; *Arnold*, 158 F.R.D. at 449. The injuries need not
24 be identical to those of the absent class members, only similar, resulting from the
25 “same injurious course of conduct”. *Armstrong*, 275 F.3d at 869; *Moeller*, 220
26 F.R.D. at 611.

1 ***d. Adequacy of Representation***

2 Adequacy of representation requires that the Named Plaintiffs will fairly and
3 adequately protect the interests of the class. Fed. R. Civ. P. 23(a)(4). To establish
4 adequacy the Named Plaintiffs must show that they and their counsel have no
5 conflicts of interest with the absent class members, and that they will vigorously
6 prosecute the action on behalf of the class. *Hanlon*, 150 F.3d at 1020; *Dominguez*,
7 2010 WL 2348659 at *7; *Target Corp.*, 582 F. Supp. 2d at 1202; *Moeller*, 220
8 F.R.D. at 611; *Bates*, 204 F.R.D. at 447. Additionally, adequacy of representation
9 is generally presumed unless there is evidence to the contrary. *In re Madison*
10 *Associates*, 183 B.R. 206, 207 (Bkrtcy. C.D. Cal. 1995); *see also Marcus v.*
11 *Kansas, Dept. of Revenue*, 206 F.R.D. 509, 512 (D. Kan. 2002); *Access Now, Inc.*,
12 2000 WL 1809979 at 4 (citing *Cook v. Rockwell Int'l Corp.*, 151 F.R.D. 378 (D.
13 Colo. 1993).

14 The Named Plaintiffs and Class Counsel adequately represent the class and
15 will continue to do so. The Named Plaintiffs are more than adequate class
16 representatives and their interests align with the classes they wish to represent,
17 having no antagonistic interests. The Named Plaintiffs have taken this action and
18 their associated responsibilities very seriously. Andy Dogali's Declaration
19 describes in detail the extent to which each of the Named Plaintiffs have been
20 actively involved in this action, including fully participating in the discovery
21 process: attending depositions, responding to discovery requests and remaining
22 abreast of the case status. Ex. M.

23 The undersigned attorneys' Declarations outline that they have no
24 antagonistic interests, and outlines their qualifications and experience to act as
25 Class Counsel. Ex. M; Ex. N. Class Counsel consists of Andy Dogali of Forizs &
26 Dogali, P.A. and Eugene Feldman of Eugene Feldman Attorney at Law. The
27 Dogali and Feldman Declarations demonstrate substantial qualifications and
28 experience in class actions and complex litigation, including civil rights and ADA

1 litigation. Ex. M; Ex. N. Class Counsel have also demonstrated diligence thus far
2 in the action, as they have been staunch advocates for the Named Plaintiffs and the
3 absent class members. Thus far, Class Counsel has appeared before the Court,
4 engaged in multiple depositions, and has diligently attempted to obtain records and
5 disclosures from Disney, diligently reviewing the materials Disney has chosen thus
6 far to provide. In other class actions courts have found Class Counsel adequate, and
7 prior adequacy findings are persuasive support for finding adequacy here. *See In*
8 *re Live Concert Antitrust Litigation*, 246 F.R.D. 98, 120 (C.D. Cal. 2007); *see also*
9 *Ladegaard v. Hard Rock Concrete Cutters, Inc.*, 2000 WL 1774091, *5 (N.D. Ill.
10 Dec. 1, 2000) (stating prior adequacy findings are persuasive for subsequent
11 adequacy findings).

12 As both Named Plaintiffs and Class Counsel have done commendable,
13 competent work in this action, the adequacy of representation requirement is
14 satisfied as to each of the proposed classes.

15 **ii. Requirements of Rule 23(b)(2)**

16 A properly certified class must fit into one of the categories contained in
17 Rule 23(b). The proposed classes here meet the requirements contained under
18 Rule 23(b)(2) and Plaintiffs seek Rule 23(b)(2) certification.

19 To satisfy the requirements of Rule 23(b)(2) the Named Plaintiffs must show
20 that “the party opposing the class has acted or refused to act on grounds that apply
21 generally to the class”, thus making injunctive or declaratory relief appropriate.
22 Fed. R. Civ. P. 23(b)(2). Civil rights class actions are “prime examples” of Rule
23 23(b)(2) cases. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 614, 117 S. Ct.
24 2231, 138 L.E. 2d 689 (1997); *Moeller*, 220 F.R.D. at 613. Some courts have even
25 stated that section (b)(2) was specifically designed to facilitate civil rights class
26 actions. *See Moeller*, 220 F.R.D. at 613; *Arnold*, 158 F.R.D. at 452. Rule 23(b)(2)
27 certification is also appropriate where injunctive or declaratory relief is the primary
28

1 or exclusive relief sought. Fed. R. Civ. P. 23(b)(2); *Dominguez*, 2010 WL
2 2348659 at *7.

3 Rule 23(b)(2) is satisfied when the class members' complaints arise from
4 patterns or practices generally applicable to the entire class, even if not all of the
5 class members have been harmed by the challenged actions. *Bates*, 204 F.R.D. at
6 447 (citing *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998)). Additionally,
7 there is no "need" requirement for class certification in the Ninth Circuit and courts
8 will not refuse to certify a class under Rule 23(b)(2) purely because the injunctive
9 relief requested could also be accomplished through an individual suit. *Park*, 254
10 F.R.D. at 122-23; *Ollier v. Sweetwater Union High School Dist.*, 251 F.R.D. 564,
11 565-66 (S.D. Cal. 2008); *see also McMillon v. Hawaii*, 261 F.R.D. 536, 547-48 (D.
12 Hawaii 2009).

13 The case at hand is a civil rights case where the Named Plaintiffs, and each
14 of the proposed classes as a whole, complain of class-wide discrimination by the
15 Defendants for the failure to accommodate visually impaired guests at their parks,
16 restaurants, resorts and websites. The relief sought by the Named Plaintiffs and
17 each of the proposed classes is exclusively injunctive. *See* FAC. Certification
18 under Rule 23(b)(2) is appropriate for each of the proposed classes.

19 **C. ALTERNATIVELY, DEFENDANTS ARE ESTOPPED FROM**
20 **CONTESTING CERTIFICATION DUE TO THEIR**
21 **SYSTEMATIC REFUSAL TO PROVIDE DISCOVERY**

22 Named Plaintiffs have requested specific data from the Defendants relating
23 to visually impaired attendance at the Resorts, as well as specific data relating to
24 each of the proposed classes. *See* Ex. P. However, despite the issues being placed
25 directly before Disney prior to the depositions of its Rule 30(b)(6) corporate
26 representatives, Disney shed no light on the number of visually impaired persons
27 who visit the Resorts or the websites. *See* Ex. H at 45; Ex. G at 17-18.
28 Specifically, Defendant Walt Disney Parks and Resorts US, Inc.'s corporate

1 representative, Mr. Jones, could not testify as to the number of visually impaired
2 visitors to the Disneyland Resort, stating this is not something Defendants track or
3 monitor. Ex. G at 17. Disney had performed no diligent effort to see whether the
4 information might be available somewhere, despite having been tasked to do so by
5 the Rule 30(b)(6) notice. Ex. G at 17. Disney acknowledged that its ignorance and
6 failed diligence would be the same for the Walt Disney World Resort, and that
7 neither resort maintains or possesses any information on the number of visually
8 impaired persons who ride the theme park rides or visit the Resort restaurants. Ex.
9 G at 18.

10 In addition, despite one focus of the deposition being upon complaints
11 received by Disney from members of the visually impaired community, Mr. Jones,
12 testifying as Disney, admitted he did not know how many complaints exist, only
13 that he knows some exist because he had seen some which had been given to him
14 by counsel, but that an unknown number of others exist which he, as Disney, knew
15 nothing about because Disney's lawyers were in control of rolling them out and had
16 not yet shared them with him. Ex. G at 27-32.

17 As of this date, it is still unknown whether Disney has produced all the
18 customer complaints in its possession which relate to its lack of accommodations
19 for visually impaired patrons. Disney has released information in response to
20 discovery requests at an outlandishly slow pace, and with an absurd level of
21 disorder. Of what Disney says is perhaps a 45,000-document universe of
22 responsive materials, Disney has thus far produced approximately 1,250 pages,
23 encompassing substantially fewer distinct documents due to redundant copies. The
24 production of these items has occurred in haphazard incremental releases. No
25 production or disclosure has been correlated to any specific discovery request -
26 rather, Disney simply occasionally provides another few hundred pages of
27 documents with no indication of the request to which they are responsive.
28 Documents are routinely redacted, with no privilege description or log. Over the

1 last three and one-half months, leading up to the deadline for this Motion,
2 Defendants rolled out about 350 pages of documents per month. And because the
3 production is also non-specific, in that Disney has yet to specify the requests to
4 which any produced documents pertain, Plaintiffs have spent many hours
5 attempting to decipher the relevance of the documents produced. Disney's
6 production of records has proceeded as described below:

7 8 TIMELINE OF DISNEY NON-DISCLOSURE

9 10/06/10 Plaintiffs share draft 30(b)(6) notice with Disney
10 10/27/10 Request for Production to Disney Parks and Resorts and Disney
11 Online;
12 11/04/10 Plaintiff serves formal 30(b)(6) notice on Disney
13 01/11/11 First installment of produced documents, 70 pages produced;
14 01/13/11 Second installment of produced documents, 44 pages produced;
15 01/13/11 30(b)(6) deposition of Mark Jones, Disney doesn't know
16 whether more complaints exist - lawyer has them
17 01/14/11 Third installment of produced documents, 147 pages produced;
18 01/21/11 Fourth installment of produced documents, 24 pages produced;
19 02/03/11 Fifth installment of produced documents, 542 pages produced;
20 02/04/11 Sixth installment of produced documents, 10 pages produced;
21 02/07/11 Seventh installment of produced documents, 410 pages
22 produced.
23

24 Disney's recalcitrant disclosures are not limited to documents. Disney's
25 approach to the deposition process is the same. When Disney was asked for
26 information relating to any perceived basis for objecting to Plaintiffs' adequacy to
27 represent the classes, or to the typicality or commonality of Plaintiffs' claims,
28 Disney refused to answer the questions on the ground that its counsel had

1 instructed Disney not to answer.¹⁰ Ex. G at 127. Disney should not be permitted to
2 conceal facts relating to certification behind a blanket assertion of an inapplicable
3 privilege, only to spring them upon Plaintiffs for the first time during motion
4 practice.

5 Further, the Walt Disney Parks and Resorts representative testified that he
6 had no understanding as to the nature of the Named Plaintiffs' complaints. Ex. G
7 at 24, 26. As to certain of the classes, such as the Parking Class, he also refused to
8 answer deposition questions, on Disney's counsel's instruction, as to any
9 understanding Disney might have of the general nature of the Named Plaintiffs'
10 complaints, asserting that Disney's understanding is protected by the attorney-
11 client privilege. Ex. G at 117-119. The Disney Online representative gave the
12 same testimony – he had no knowledge of the Named Plaintiffs' individual
13 complaints, and any general understanding he had received came from counsel so
14 he refused, on the instruction of Disney's attorney, to answer questions. Ex. H at
15 56-58. If Disney has no baseline understanding of the Plaintiffs' complaints, how
16 can it possibly propose that those complaints are not typical or common in
17 comparison to anyone else's claims? Presumably, if Disney possesses any evidence
18 with which to contest typicality or commonality, its stratagem has been to first
19 reveal the information during motion practice. Again, Disney should not be
20 permitted to refuse to conduct proper discovery, concealing facts behind
21 preposterous assertions of privilege, and to thereafter reveal the concealed facts as
22 or after certification briefs are filed.

23 Defendants' failure to timely disclose information that is solely within their
24 control, and which would allow Named Plaintiffs to more thoroughly demonstrate
25

26 ¹⁰ Specifically, defense counsel instructed Disney not to answer any questions
27 regarding paragraphs 21, 22 and 23 of the 30(b)(6) notice, which expressly relate,
28 respectively, to any bases for objecting to adequacy of the representatives, to the
typicality and commonality of their claims, and to adequacy of class counsel.

1 numerosity, commonality, typicality and adequacy, should create an estoppel
2 against asserting that Named Plaintiffs have failed to carry their Rule 23(a) burden
3 for the proposed classes. *See Wise v. Calvary Portfolio Servs, L.L.C.*, 2010 WL
4 3724249, *4 (D. Conn. Sept. 15, 2010) (“Defendant is not free to decline to
5 provide to Plaintiff information which she requested, and to which only it has
6 access, and then to argue that her motion for class certification must be denied
7 absent that information”); *see also Castro v. Collecto, Inc.* 256 F.R.D. 534, 540
8 (W.D. Tex. 2009) (“Defendants cannot be permitted to deny numerosity by failing
9 to respond to reasonable discovery requests”); *Ventura v. New York City Health
10 and Hospitals Corp.*, 125 F.R.D. 595, 599 (S.D.N.Y. 1989) (“Plaintiff’s lack of
11 knowledge as to the exact number of affected persons is no a bar to maintaining a
12 class action, when defendants have the means to identify those persons at will”).

13 **D. PLAINTIFF DISNEY CHARACTER CLASS**

14 **i. Numerosity**

15 As more fully explained above, this class contains future, unknown members
16 thus inherently making joinder impracticable and satisfying numerosity. *See*
17 *Jordan*, 669 F.2d at 1320; *Siddiqi*, 2000 WL 33190435 at *4; *Nat’l Ass’n of*
18 *Radiation Survivors*, 111 F.R.D. at 599; *Int’l Molders’ and Allied Workers’ Local*
19 *Union No. 164*, 102 F.R.D. at 461. Additionally, through census data and common
20 sense it can be estimated that the number of class members is over 1 million just
21 for 2009. *See* “Numerosity” section above at pages 13-16. In addition, the record
22 already establishes four victims of this flavor of Disney discrimination during 2009
23 (Cari Shields, Amber Boggs, Rick Boggs and Teresa Stockton).

24 **ii. Commonality**

25 The “minimal” requirement of commonality is easily satisfied for this class.
26 Especially considering that even one common issue of fact or law is sufficient for
27 commonality. *Dukes*, 509 F.3d at 1177; *Mazza*, 254 F.R.D. at 618.

28 For this class, the common issues of law and fact include:

- Whether Defendants and its entities maintain a policy of refusing to allow costumed Disney characters to interact with visually impaired guests with service animals at the Disneyland Resort and Walt Disney World Resort (“Resorts”) as asserted in the FAC;
- Whether Defendants’ policy of refusing to allow costumed Disney characters to interact with visually impaired guests with service animals at the Resorts is a violation of the ADA, CDPA and/or Unruh Act as asserted in the FAC.

Therefore the commonality requirement of Rule 23(a)(2) has been satisfied as to the Plaintiff Disney Character Class.

iii. Typicality

Named Plaintiffs satisfy the Rule 23(a)(3) typicality requirement because they are all members of the Plaintiff Disney Character Class, have the same interests as absent class members and are suffering the same injuries as absent class members. *See Target Corp.*, 582 F. Supp. 2d at 1201. Named Plaintiffs are all visually impaired persons considered to have a physical disability as such is defined in 42 U.S.C. § 12102 and the California Government Code Section 12926. *See* FAC at 3-5. Named Plaintiffs are also interested in seeking accommodations from Defendants under the ADA, Unruh Act and/or CDPA. *See* FAC.

Shields has attended the Resorts and experienced the Defendants’ discriminatory actions and policies when she was refused interaction with costumed Disney characters because of her service animal. Ex. A at 159, 168-70, 172-74, 178-81. Additionally, Shields has been told at least five times of the Defendants’ discriminatory costume Disney character interaction policy. Ex. A at 168-81.

Boggs has attended the Disneyland Resort and experienced the Defendants’ discriminatory actions and policies when she was refused interaction with costumed Disney characters because of her service animal. Ex. B at 159-60, 166-

1 69. Boggs may visit Walt Disney World Resort in the summer of 2011. Ex. B at
2 69.

3 Stockton has attended the Walt Disney World Resort and experienced the
4 Defendants' discriminatory actions and policies when she was refused interaction
5 with costumed Disney characters because of her service animal. *See* Ex. F at Resp.
6 # 10.

7 **E. PLAINTIFF SIGNAGE CLASS**

8 **i. Numerosity**

9 As more fully explained above, this class contains future, unknown members
10 thus inherently making joinder impracticable and satisfying numerosity. *See*
11 *Jordan*, 669 F.2d at 1320; *Siddiqi*, 2000 WL 33190435 at *4; *Nat'l Ass'n of*
12 *Radiation Survivors*, 111 F.R.D. at 599; *Int'l Molders' and Allied Workers' Local*
13 *Union No. 164*, 102 F.R.D. at 461. Additionally, through census data and common
14 sense it can be estimated that the number of class members is over 1 million just in
15 2009. *See* "Numerosity" section above at pages 13-16.

16 In addition to the four victims in 2009 already established by the record
17 (Cari Shields, Amber Boggs, Rick Boggs and Teresa Stockton), Defendants have
18 also produced three complaints that relate to the lack of signage, menus or
19 schedules in an alternative format, such as Braille and/or large print, as well as not
20 being read menus in full upon request. *See* ex. O.

21 **ii. Commonality**

22 The "minimal" requirement of commonality is easily satisfied for this class.
23 Especially considering that even one common issue of fact or law is sufficient for
24 commonality. *Dukes*, 509 F.3d at 1177; *Mazza*, 254 F.R.D. at 618.

25 For this class, the common issues of law and fact include:

- 26 • Whether the Defendants and its entities failed to provide Braille
27 and/or large print signage and/or schedules within the Resorts so as to
28

1 orient visually impaired patrons as to the locations of rides,
2 restaurants and facilities and times for shows as asserted in the FAC;

- 3 • Whether Defendants and its entities failed to provide menus in
4 accessible alternative formats such as Braille and/or large print as
5 asserted by the FAC;
- 6 • Whether Defendants and its entities failed to read the menus, in full, to
7 visually impaired guests upon request as asserted by the FAC;
- 8 • Whether Defendants' and its entities failure to provide signage, menus
9 or schedules in an alternative format, such as Braille and/or large print
10 at Resorts is in violation of the ADA, CDPA and/or Unruh Act as
11 asserted in the FAC;
- 12 • Whether Defendants' and its entities failure to train employees to read
13 menus in full to visually impaired guests when there is a lack of a
14 Braille and/or large print menu at the Resorts is a violation of the
15 ADA, CDPA and/or Unruh Act as asserted in the FAC.

16 Therefore the commonality requirement of Rule 23(a)(2) has been satisfied
17 as to the Plaintiff Signage Class.

18 **iii. Typicality**

19 Named Plaintiffs satisfy the Rule 23(a)(3) typicality requirement because
20 they are all members of the Plaintiff Signage Class, have the same interests as
21 absent class members and are suffering the same injuries as absent class members.
22 *See Target Corp.*, 582 F. Supp. 2d at 1201. Named Plaintiffs are all visually
23 impaired persons considered to have a physical disability as such is defined in 42
24 U.S.C. § 12102 and the California Government Code Section 12926. *See FAC* at
25 3-5. Named Plaintiffs are also interested in seeking accommodations from
26 Defendants under the ADA, Unruh Act and/or CDPA. *See FAC*. Additionally, all
27 Named Plaintiffs are capable of reading Braille. Ex. A at 41-42; Ex. B at 85-86;
28 Ex. C at 88-89.

1 Shields has attended the Resorts and experienced the Defendants'
2 discriminatory actions and policies due to a lack of signage, menus or schedules in
3 an alternative format, such as Braille and/or large print. Ex. A at 209-11; Ex. D at
4 Resp. # 11. Additionally, Shields has not been read menus in full, despite
5 requesting for such. Ex. A at 144-45; Ex. D at Resp. #12.

6 Boggs has attended the Disneyland Resort and experienced the Defendants'
7 discriminatory actions and policies due to a lack of signage, menus or schedules in
8 an alternative format, such as Braille. Ex. B at 213-15; Ex. E at Resp. # 10.
9 Additionally, Boggs has not been read menus in full, despite requesting for such.
10 Ex. B at 264-67; Ex. E at Resp. # 11.

11 Stockton has attended the Walt Disney World Resort and experienced the
12 Defendants' discriminatory actions and policies due to a lack of signage, menus or
13 schedules in an alternative format, such as Braille. Ex. C at 148-49; Ex. F at Resp.
14 # 11. Additionally, Stockton has not been read menus in full, despite requesting
15 for such. Ex. C at 149, 154-55; Ex. F at Resp. # 12.

16 **F. PLAINTIFF MAP CLASS**

17 **i. Numerosity**

18 As more fully explained above, this class contains future, unknown members
19 thus inherently making joinder impracticable and satisfying numerosity. *See*
20 *Jordan*, 669 F.2d at 1320; *Siddiqi*, 2000 WL 33190435 at *4; *Nat'l Ass'n of*
21 *Radiation Survivors*, 111 F.R.D. at 599; *Int'l Molders' and Allied Workers' Local*
22 *Union No. 164*, 102 F.R.D. at 461). Additionally, through census data and
23 common sense it can be estimated that the number of class members is over 1
24 million just in 2009. *See* "Numerosity" section above at pages 13-16.

25 In addition, the record already establishes four victims in 2009 (Cari Shields,
26 Amber Boggs, Rick Boggs and Teresa Stockton)

1 **ii. Commonality**

2 The “minimal” requirement of commonality is easily satisfied for this class.
3 Especially considering that even one common issue of fact or law is sufficient for
4 commonality. *Dukes*, 509 F.3d at 1177; *Mazza*, 254 F.R.D. at 618.

5 For this class, the common issues of law and fact include:

- 6 • Whether Defendants failed to provide Braille maps in a portable
7 format as asserted by the FAC;
- 8 • Whether Defendants failed to provide Braille maps at a reasonable
9 number of locations within the Resorts as asserted by the FAC;
- 10 • Whether Defendants’ failure to provide Braille maps in a portable
11 format and/or at a reasonable number of locations within the Resorts
12 is in violation of the ADA, CDPA and/or Unruh Act as asserted in the
13 FAC.

14 Therefore the commonality requirement of Rule 23(a)(2) has been satisfied
15 as to the Plaintiff Map Class.

16 **iii. Typicality**

17 Named Plaintiffs satisfy the Rule 23(a)(3) typicality requirement because
18 they are all members of the Plaintiff Map Class, have the same interests as absent
19 class members and are suffering the same injuries as absent class members. *See*
20 *Target Corp.*, 582 F. Supp. 2d at 1201. Named Plaintiffs are all visually impaired
21 persons considered to have a physical disability as such is defined in 42 U.S.C. §
22 12102 and the California Government Code Section 12926. *See* FAC at 3-5.
23 Named Plaintiffs are also interested in seeking accommodations from Defendants
24 under the ADA, Unruh Act and/or CDPA. *See* FAC. Additionally, all Named
25 Plaintiffs are capable of reading Braille. Ex. A at 41-42; Ex. B at 85-86; Ex. C at
26 88-89.

1 Shields has attended the Resorts and experienced the Defendants'
2 discriminatory actions and policies due to a lack of portable maps in an alternative
3 format, such as Braille and/or large print. Ex. A at 117; 119; Ex. D at Resp. # 13.

4 Boggs has attended the Disneyland Resort and experienced the Defendants'
5 discriminatory actions and policies due to a lack of portable maps in an alternative
6 format, such as Braille. Ex. E at Resp. # 12.

7 Stockton has attended the Walt Disney World Resort and experienced the
8 Defendants' discriminatory actions and policies due to a lack of portable maps in
9 an alternative format, such as Braille. Ex. F at Resp. # 13.

10 **G. PLAINTIFF KENNEL CLASS**

11 **i. Numerosity**

12 As more fully explained above, this class contains future, unknown members
13 thus inherently making joinder impracticable and satisfying numerosity. *See*
14 *Jordan*, 669 F.2d at 1320; *Siddiqi*, 2000 WL 33190435 at *4; *Nat'l Ass'n of*
15 *Radiation Survivors*, 111 F.R.D. at 599; *Int'l Molders' and Allied Workers' Local*
16 *Union No. 164*, 102 F.R.D. at 461). Additionally, through census data and
17 common sense it can be estimated that the number of class members is over 1
18 million just in 2009. *See* "Numerosity" section above at pages 13-16.

19 In addition to the four victims in 2009 already established by the record
20 (Cari Shields, Amber Boggs, Rick Boggs and Teresa Stockton), Defendants have
21 also produced four complaints that relate to the kennel charge for service animals,
22 the lack of designated areas for service animals to defecate, or the policy refusing
23 to allow service animals be tied and left unattended. *See ex. O.*

24 **ii. Commonality**

25 The "minimal" requirement of commonality is easily satisfied for this class.
26 Especially considering that even one common issue of fact or law is sufficient for
27 commonality. *Dukes*, 509 F.3d at 1177; *Mazza*, 254 F.R.D. at 618.

28 For this class, the common issues of law and fact include:

- 1 • Whether it was lawful for the Defendants to charge a \$20 fee for the
2 use of kennel facilities at the Resorts for service animals as asserted
3 by the FAC;
- 4 • Whether the Defendants were legally required to have designated
5 areas with the Resorts for service animals to defecate or to be tied up
6 while visually impaired owners used the rides as asserted by the FAC;
- 7 • Whether the Defendants' practice of charging visually impaired guests
8 a \$20 kennel fee for their service animal while visiting the Resorts is a
9 violation of the ADA, CDPA and/or Unruh Act as asserted in the
10 FAC;
- 11 • Whether Defendants are in violation of the ADA, DCPA and/or
12 Unruh Act for failure to designate reasonable areas for visually
13 impaired guests' service animals to defecate within the Resorts, which
14 results in deterring visually impaired guests from visiting the Resorts
15 as asserted in the FAC;
- 16 • Whether Defendants' policy of refusing to allow service animals to be
17 tied to any location within the Resorts and left unattended is a
18 violation of the ADA, CDPA and Unruh Act as asserted by the FAC;
- 19 • Whether any combination of the above described policies or practices
20 is a violation of the ADA, CPA and/or Unruh Act as asserted in the
21 FAC.

22 Therefore the commonality requirement of Rule 23(a)(2) has been satisfied
23 as to the Plaintiff Kennel Class.

24 **iii. Typicality**

25 Named Plaintiffs satisfy the Rule 23(a)(3) typicality requirement because
26 they are all members of the Plaintiff Kennel Class, have the same interests as
27 absent class members and are suffering the same injuries as absent class members.
28 *See Target Corp.*, 582 F. Supp. 2d at 1201. Named Plaintiffs are all visually

1 impaired persons considered to have a physical disability as such is defined in 42
2 U.S.C. § 12102 and the California Government Code Section 12926. *See* FAC at
3 3-5. Named Plaintiffs are also interested in seeking accommodations from
4 Defendants under the ADA, Unruh Act and/or CDPA. *See* FAC. Additionally, all
5 Named Plaintiffs own service animals which accompany them to the Resorts. *See*
6 ex. A at 11; Ex. B at 56; Ex. C at 68.

7 Shields has attended the Disneyland Resort and experienced the Defendants'
8 discriminatory actions and policies for the use of her service animal through a
9 charge for kenneling, Ex. A at 98-99; Ex. D at Resp. # 14 (at least 20 times), a lack
10 of designated areas for animal defecation, Ex. A at 103, and through a policy of
11 preventing the service animal to be tied to any location and left unattended while
12 Shields uses a ride, Ex. A at 113-15. Additionally, Shields has been informed on
13 numerous occasions of the Defendants' discriminatory policies on designated
14 animal defecations areas, Ex. A at 103-06.

15 Boggs has attended the Disneyland Resort and experienced the Defendants'
16 discriminatory actions and policies for the use of her service animal through a lack
17 of designated areas for animal defecation, Ex. B at 230-31, 238-39, 246, and
18 through a policy of preventing the service animal to be tied to any location and left
19 unattended while Boggs uses a ride, Ex. B at 126-29. Additionally, Boggs has
20 been informed on numerous occasions of the Defendants' discriminatory policies
21 on designated animal defecations areas. Ex. B at 227-29, 237-41, 246.

22 Stockton has attended the Walt Disney World Resort and experienced the
23 Defendants' discriminatory actions and policies for the use of her service animal
24 through a charge for kenneling, Ex. C at 145-46, and a lack of designated areas for
25 animal defecation, Ex. F at Resp. # 16.

H. PLAINTIFF AUDIO DESCRIPTION DEVICE CLASS

i. Numerosity

As more fully explained above, this class contains future, unknown members thus inherently making joinder impracticable and satisfying numerosity. *See Jordan*, 669 F.2d at 1320; *Siddiqi*, 2000 WL 33190435 at *4; *Nat'l Ass'n of Radiation Survivors*, 111 F.R.D. at 599; *Int'l Molders' and Allied Workers' Local Union No. 164*, 102 F.R.D. at 461). Additionally, through census data and common sense it can be estimated that the number of class members is over 1 million just in 2009. *See* "Numerosity" section above at pages 13-16.

In addition to the five victims in 2009-2010 already established by the record (Cari Shields, Amber Boggs, Rick Boggs, Chris Snyder and Teresa Stockton), Defendants have also produced five complaints that relate to deprivation of the full use and enjoyment of the audio description device due to malfunctions. *See ex. O.*

Additionally, Mr. Jones testified that just in 2010, approximately 100 devices were used by guests at the Disneyland Resort, though he could not distinguish between use by the visually and hearing impaired. Ex. G at 19.

ii. Commonality

The "minimal" requirement of commonality is easily satisfied for this class. Especially considering that even one common issue of fact or law is sufficient for commonality. *Dukes*, 509 F.3d at 1177; *Mazza*, 254 F.R.D. at 618.

For this class, the common issues of law and fact include:

- Whether the audio description devices are reasonably accessible to the visually impaired;
- Whether the Defendants' failure to provide audio description devices at the Resorts that are reasonably accessible to the visually impaired is a violation of the ADA, CDPA and/or Unruh Act as asserted in the FAC.

1 Therefore the commonality requirement of Rule 23(a)(2) has been satisfied
2 as to the Plaintiff Audio Description Device Class.

3 **iii. Typicality**

4 Named Plaintiffs satisfy the Rule 23(a)(3) typicality requirement because
5 they are all members of the Plaintiff Audio Description Device Class, have the
6 same interests as absent class members and are suffering the same injuries as
7 absent class members. *See Target Corp.*, 582 F. Supp. 2d at 1201. Named
8 Plaintiffs are all visually impaired persons considered to have a physical disability
9 as such is defined in 42 U.S.C. § 12102 and the California Government Code
10 Section 12926. *See* FAC at 3-5. Named Plaintiffs are also interested in seeking
11 accommodations from Defendants under the ADA, Unruh Act and/or CDPA. *See*
12 FAC.

13 Shields has attended the Disneyland Resort and used or attempted to use an
14 audio description device and has been deprived of the full use and enjoyment of
15 the device due to insufficiency or malfunctions. Ex. A at 122, 128-31.

16 Boggs has attended the Disneyland Resort and used or attempted to use an
17 audio device and has been deprived of the full use and enjoyment of the device due
18 to insufficiency or malfunctions. Ex. B at 221-24; Ex. E at Resp. # 13.
19 Additionally, Boggs has experienced the audio description device automatically
20 shut down and has been unable to restart the system without sighted help. Ex. B at
21 224.

22 Stockton has attended the Walt Disney World Resort and use or attempted to
23 use an audio description device and has been deprived of the full use and
24 enjoyment of the device due to insufficiency or malfunctions. Ex. C at 105-08.

25 **I. PLAINTIFF COMPANION TICKET CLASS**

26 **i. Numerosity**

27 As more fully explained above, this class contains future, unknown members
28 thus inherently making joinder impracticable and satisfying numerosity. *See*

1 *Jordan*, 669 F.2d at 1320; *Siddiqi*, 2000 WL 33190435 at *4; *Nat’l Ass’n of*
2 *Radiation Survivors*, 111 F.R.D. at 599; *Int’l Molders’ and Allied Workers’ Local*
3 *Union No. 164*, 102 F.R.D. at 461). Additionally, through census data and
4 common sense it can be estimated that the number of class members is over 1
5 million just in 2009. *See* “Numerosity” section above at pages 13-16.

6 In addition to the five victims in 2009-2010 already established by the
7 record (Cari Shields, Amber Boggs, Rick Boggs, Chris Snyder and Teresa
8 Stockton), Defendants have also produced seven complaints that relate to the the
9 Defendants’ policy of requiring the purchase an additional ticket for a companion
10 or aide to assist a visually impaired person to utilize the accommodations at the
11 Resorts. *See ex. O*.

12 **ii. Commonality**

13 The “minimal” requirement of commonality is easily satisfied for this class.
14 Especially considering that even one common issue of fact or law is sufficient for
15 commonality. *Dukes*, 509 F.3d at 1177; *Mazza*, 254 F.R.D. at 618.

16 For this class, the common issues of law and fact include:

- 17 • Whether the Defendants are legally required to provide a free or
18 discounted ticket to the aide or companion of a visually impaired
19 guest to the Resorts as a reasonable accommodation as asserted in the
20 FAC;
- 21 • Whether Defendants’ practice of requiring visually impaired guests to
22 purchase an additional ticket, at full price, for a companion or aide to
23 assist them utilize the accommodations at the Resorts is a violation of
24 the ADA, CDPA and/or Unruh Act as asserted in the FAC;
- 25 • Whether Defendants’ practice of not providing a Disney employee to
26 act as a companion or aide to visually impaired guests at the Resorts is
27 a violation of the ADA, CDPA and/or Unruh Act as asserted in the
28 FAC;

- Whether a combination of any of the above described practices is a violation of the ADA, CDPA and/or Unruh Act as asserted in the FAC.

Therefore the commonality requirement of Rule 23(a)(2) has been satisfied as to the Plaintiff Companion Ticket Class.

iii. Typicality

Named Plaintiffs satisfy the Rule 23(a)(3) typicality requirement because they are all members of the Plaintiff Companion Ticket Class, have the same interests as absent class members and are suffering the same injuries as absent class members. *See Target Corp.*, 582 F. Supp. 2d at 1201. Named Plaintiffs are all visually impaired persons considered to have a physical disability as such is defined in 42 U.S.C. § 12102 and the California Government Code Section 12926. *See FAC* at 3-5. Named Plaintiffs are also interested in seeking accommodations from Defendants under the ADA, Unruh Act and/or CDPA. *See FAC*.

Shields has attended the Disneyland Resort and experienced the Defendants' discriminatory actions and policies by being required to purchase a ticket for a companion or aide to assist her in utilizing the Disneyland Resort. Ex. A at 206, 208.

Boggs has attended the Disneyland Resort and experienced the Defendants' discriminatory actions and policies by being required to purchase a ticket for a companion or aide to assist her in utilizing the Disneyland Resort. Ex. B at 113-14, 117, 278-79; Ex. E at Resp. # 14. In fact, Boggs has purchased an additional annual pass to accommodate companions and aides during her visits to the Disneyland Resort. Ex. B at 113-14, 118; Ex. E at Resp. # 14.

Stockton has attended the Walt Disney World Resort and experienced the Defendants' discriminatory actions and policies by being required to purchase a ticket for a companion or aide to assist her in utilizing the Walt Disney World Resort. Ex. F at Resp. #19.

1 **J. PLAINTIFF PARADE CLASS**

2 **i. Numerosity**

3 As more fully explained above, this class contains future, unknown members
4 thus inherently making joinder impracticable and satisfying numerosity. *See*
5 *Jordan*, 669 F.2d at 1320; *Siddiqi*, 2000 WL 33190435 at *4; *Nat’l Ass’n of*
6 *Radiation Survivors*, 111 F.R.D. at 599; *Int’l Molders’ and Allied Workers’ Local*
7 *Union No. 164*, 102 F.R.D. at 461). Additionally, through census data and
8 common sense it can be estimated that the number of class members is over 1
9 million just in 2009. *See* “Numerosity” section above at pages 13-16.

10 In addition, the record already establishes four victims in 2009 (Cari Shields,
11 Amber Boggs, Rick Boggs and Teresa Stockton).

12 **ii. Commonality**

13 The “minimal” requirement of commonality is easily satisfied for this class.
14 Especially considering that even one common issue of fact or law is sufficient for
15 commonality. *Dukes*, 509 F.3d at 1177; *Mazza*, 254 F.R.D. at 618.

16 For this class, the common issues of law and fact include:

- 17 • Whether Defendants and its entities maintained a policy at parades
18 and shows that only wheelchair users are allowed to use the area
19 designated for handicapped guests and not guests with other
20 disabilities such as visual impairments as asserted in the FAC;
- 21 • Whether Defendants’ policy of excluding visually impaired guests
22 from preferential locations to stand or sit during parades and shows at
23 the Resorts is a violation of the ADA, CDPA and/or Unruh Act as
24 asserted in the FAC.

25 Therefore the commonality requirement of Rule 23(a)(2) has been satisfied
26 as to the Plaintiff Parade Class.

1 **iii. Typicality**

2 Named Plaintiffs satisfy the Rule 23(a)(3) typicality requirement because
3 they are all members of the Plaintiff Parade Class, have the same interests as
4 absent class members and are suffering the same injuries as absent class members.
5 *See Target Corp.*, 582 F. Supp. 2d at 1201. Named Plaintiffs are all visually
6 impaired persons considered to have a physical disability as such is defined in 42
7 U.S.C. § 12102 and the California Government Code Section 12926. *See FAC* at
8 3-5. Named Plaintiffs are also interested in seeking accommodations from
9 Defendants under the ADA, Unruh Act and/or CDPA. *See FAC*. Additionally, all
10 Named Plaintiffs have inquired into being permitted to use preferential locations to
11 stand or sit during parades and/or shows. Ex. A at 213-14; Ex. B at 135-37; 290-
12 92; Ex. C at 133-34.

13 Shields has attended the Disneyland Resort and experienced the Defendants’
14 discriminatory actions and policies through being excluded from preferential
15 locations to stand or sit during parades and shows. Ex. D at Resp. # 20; Ex. A at
16 212-14.

17 Boggs has attended the Disneyland Resort and experienced the Defendants’
18 discriminatory actions and policies through being excluded from preferential
19 locations to stand or sit during parades and shows. Ex. B at 135-37, 290-92.

20 Stockton has attended the Walt Disney World Resort and experienced the
21 Defendants’ discriminatory actions and policies through being excluded from
22 preferential locations to sit or stand during parades. Ex. C at 133-34.

23 **K. PLAINTIFF LOCKER CLASS**

24 **i. Numerosity**

25 As more fully explained above, this class contains future, unknown members
26 thus inherently making joinder impracticable and satisfying numerosity. *See*
27 *Jordan*, 669 F.2d at 1320; *Siddiqi*, 2000 WL 33190435 at *4; *Nat’l Ass’n of*
28 *Radiation Survivors*, 111 F.R.D. at 599; *Int’l Molders’ and Allied Workers’ Local*

1 *Union No. 164*, 102 F.R.D. at 461). Additionally, through census data and
2 common sense it can be estimated that the number of class members is over 1
3 million just in 2009. *See* “Numerosity” section above at pages 13-16.

4 In addition, the record already establishes four victims in 2009 (Cari Shields,
5 Amber Boggs, Rick Boggs and Teresa Stockton).

6 Also, the Corporate Representative for Defendant Walt Disney Parks and
7 Resorts US, Inc., Mr. Jones, was also unable to estimate for any definitive period
8 in 2010 the number of visually impaired people who tried to use the lockers. Ex. G
9 at 110. However, Mr. Jones was the one who received and reviewed guest
10 complaints from the visually impaired from the Parks’ guest communication teams.
11 Ex. G at 20.

12 **ii. Commonality**

13 The “minimal” requirement of commonality is easily satisfied for this class.
14 Especially considering that even one common issue of fact or law is sufficient for
15 commonality. *Dukes*, 509 F.3d at 1177; *Mazza*, 254 F.R.D. at 618.

16 For this class, the common issues of law and fact include:

- 17 • Whether it was lawful for Defendants and its entities to rent lockers
18 for use to guests which are inaccessible to persons with visual
19 impairments because the lockers: 1) utilize an inaccessible touch-
20 screen; 2) have no attendant to assist the visually impaired; and 3)
21 provide only a printed receipt with the combination to open the rented
22 locker;
- 23 • Whether Defendants’ locker system, which is inaccessible to visually
24 impaired guests, is a violation of the ADA, CDPA and/or Unruh Act
25 as asserted in the FAC.

26 Therefore the commonality requirement of Rule 23(a)(2) has been satisfied
27 as to the Plaintiff Locker Class.

1 **iii. Typicality**

2 Named Plaintiffs satisfy the Rule 23(a)(3) typicality requirement because
3 they are all members of the Plaintiff Locker Class, have the same interests as
4 absent class members and are suffering the same injuries as absent class members.
5 *See Target Corp.*, 582 F. Supp. 2d at 1201. Named Plaintiffs are all visually
6 impaired persons considered to have a physical disability as such is defined in 42
7 U.S.C. § 12102 and the California Government Code Section 12926. *See FAC* at
8 3-5. Named Plaintiffs are also interested in seeking accommodations from
9 Defendants under the ADA, Unruh Act and/or CDPA. *See FAC*.

10 Shields has attended the Disneyland Resort and experienced the Defendants’
11 discriminatory actions and policies through an inability to use the touch-screen
12 locker system at the Disneyland Resort. Ex. A at 199-201, 203.

13 Boggs has attended the Disneyland Resort and experienced the Defendants’
14 discriminatory actions and policies through an inability to use the touch-screen
15 locker system at the Disneyland Resort. Ex. B at 275-77; Ex. E at Resp. # 16.

16 Stockton has attended the Walt Disney World Resort and experienced the
17 Defendants’ discriminatory actions and policies through an inability to use the
18 touch-screen locker system at the Walt Disney World Resort. Ex. C at 157-58.

19 **L. PLAINTIFF WEBSITE CLASS**

20 In *National Federation of the Blind v. Target Corp.* a class of visually
21 impaired persons was certified to pursue remedies under the ADA, Unruh Act and
22 CDPA for the inaccessibility of the website Target.com. 582 F. Supp. 2d 1185
23 (N.D. Cal. 2008). The court in *Target* held that complaints that the inaccessibility
24 of the Target website prevented visually impaired persons from enjoying the goods
25 and services available at the Target stores was sufficient for the purpose of class
26 certification under the ADA, Unruh Act and CDPA. *Id.* at 1195-96. The
27 allegations ranged from having to go elsewhere to find the sought after information
28 to increased time and expense caused by the inaccessibility of the website. *Id.* at

1 1194. Significant is also the court's rejection of Target's assertion that they
2 accommodated visually impaired shoppers through other means, such as in-person
3 and phone assistance. *Id.* at 1195. The court held such assertions to be affirmative
4 defenses and not proper for consideration at the class certification stage. *Id.*

5 Similar to the class in *Target*, Plaintiff Website Class alleges that one or
6 more of the Defendants' websites, such as www.disney.go.com, is inaccessible to
7 the visually impaired. Such inaccessibility prevents class members, including
8 Named Plaintiffs, from equal access to the goods, services and benefits offered by
9 Defendants to the public through Defendants' websites. Additionally, the
10 inaccessible websites cause the class members, including Named Plaintiffs, to seek
11 the information elsewhere, and causes increased time and expense. Therefore,
12 class certification to pursue remedies under the ADA, Unruh and/or CDPA is
13 appropriate for the inaccessibility of Defendants' websites.

14 Additionally, in *Enyart v. National Conference of Bar Examiners, Inc.*, the
15 Court ruled that a reasonable accommodation to make computer-based information
16 accessible to the visually impaired is compatibility with screen reader software. ---
17 F.R.D. ---, 2011 WL 9735 (9th Cir. Jan. 4, 2011). Therefore, not only is the
18 inaccessibility of the Defendants' websites ripe for class-wide resolution, but the
19 complaint that such sites are not compatible with screen reader software shows that
20 that Defendants have not made a reasonable accommodation for the visually
21 impaired.

22 **i. Numerosity**

23 As more fully explained above, this class contains future, unknown members
24 thus inherently making joinder impracticable and satisfying numerosity. *See*
25 *Jordan*, 669 F.2d at 1320; *Siddiqi*, 2000 WL 33190435 at *4; *Nat'l Ass'n of*
26 *Radiation Survivors*, 111 F.R.D. at 599; *Int'l Molders' and Allied Workers' Local*
27 *Union No. 164*, 102 F.R.D. at 461). Additionally, through census data and
28

1 common sense it can be estimated that the number of class members is over 1
2 million just in 2009. *See* “Numerosity” section above at pages 13-16.

3 In addition to the four victims in 2009 already established by the record
4 (Cari Shields, Amber Boggs, Rick Boggs and Teresa Stockton), Defendants have
5 also produced three complaints that relate to the inaccessibility of the Defendants’
6 websites. *See ex. O.*

7 Additionally, the Corporate Representative for Defendant Disney Online,
8 Inc., Mr. Davis, was able to report the Defendants’ Park website, as an aggregate,
9 was visited by at least 2.96 million unique IP addresses in the month of December,
10 2010. Ex. H at 43. And that the total aggregate number of unique number of IP
11 addresses visiting all Defendants’ websites has been over 30.7 million. Ex. H at 45.
12 Considering that roughly 1.5 million visually impaired persons have regular access
13 to the internet, *see* Ex. Q (National Federation of the Blind), it can be determined
14 through estimates and common sense that a sufficient number of visually impaired
15 persons have and will visit the Defendants’ websites to satisfy numerosity.

16 Furthermore, in Bob Minnick’s presentation (Ex. S), it was presented that
17 persons with disabilities do more planning and booking of accommodations via the
18 internet than the general population. Thus further supporting numerosity.

19 **ii. Commonality**

20 The “minimal” requirement of commonality is easily satisfied for this class.
21 Especially considering that even one common issue of fact or law is sufficient for
22 commonality. *Dukes*, 509 F.3d at 1177; *Mazza*, 254 F.R.D. at 618.

23 For this class, the common issues of law and fact include:

- 24 • Whether Defendants maintain one or more websites including
25 www.disney.go.com that are not fully accessible for persons with
26 visual impairments utilizing screen reader software which prevents
27 visually impaired persons from enjoying equal access to the
28 Defendants’ theme parks, hotels, restaurants and stores and the

1 numerous goods, services and benefits offered to the public through
2 Defendants' websites;

- 3 • Whether Defendants' failure to cause websites maintained by
4 Defendants, such as www.disney.go.com, to be fully accessible to the
5 visually impaired is a violation of the ADA, CDPA and Unruh Act as
6 asserted in the FAC.

7 Therefore the commonality requirement of Rule 23(a)(2) has been satisfied
8 as to the Plaintiff Website Class.

9 **iii. Typicality**

10 Named Plaintiffs satisfy the Rule 23(a)(3) typicality requirement because
11 they are all members of the Plaintiff Website Class, have the same interests as
12 absent class members and are suffering the same injuries as absent class members.
13 *See Target Corp.*, 582 F. Supp. 2d at 1201. Named Plaintiffs are all visually
14 impaired persons considered to have a physical disability as such is defined in 42
15 U.S.C. § 12102 and the California Government Code Section 12926. *See FAC* at
16 3-5. Named Plaintiffs are also interested in seeking accommodations from
17 Defendants under the ADA, Unruh Act and/or CDPA. *See FAC*. Additionally, all
18 Named Plaintiffs have regular access to the internet. Ex. A at 31; Ex. B at 90; Ex.
19 C at 71.

20 Shields, Boggs and Stockton have all attempted to and experienced an
21 inability to access one or more of the Defendants' websites, and the goods, services
22 and benefits those websites offer. Ex. A at 35-36; Ex. B at 177-78, 182-83; Ex. C
23 at 77-79.

24 **M. PLAINTIFF PARKING CLASS**

25 **i. Numerosity**

26 As more fully explained above, this class contains future, unknown members
27 thus inherently making joinder impracticable and satisfying numerosity. *See*
28 *Jordan*, 669 F.2d at 1320; *Siddiqi*, 2000 WL 33190435 at *4; *Nat'l Ass'n of*

1 *Radiation Survivors*, 111 F.R.D. at 599; *Int'l Molders' and Allied Workers' Local*
2 *Union No. 164*, 102 F.R.D. at 461). Additionally, through census data and
3 common sense it can be estimated that the number of class members is over 1
4 million just in 2009. *See* "Numerosity" section above at pages 13-16.

5 In addition the record already establishes three victims in 2009 (Cari
6 Shields, Amber Boggs and Rick Boggs).

7 **ii. Commonality**

8 The "minimal" requirement of commonality is easily satisfied for this class.
9 Especially considering that even one common issue of fact or law is sufficient for
10 commonality. *Dukes*, 509 F.3d at 1177; *Mazza*, 254 F.R.D. at 618.

11 For this class, the common issues of law and fact include:

- 12 • Whether Defendants' parking structures and parking lot at the
13 Disneyland Resort is a violation of the ADA, CPDA and/or Unruh Act
14 as asserted in the FAC.

15 Therefore the commonality requirement of Rule 23(a)(2) has been satisfied
16 as to the Plaintiff Parking Class.

17 **iii. Typicality**

18 Shields and Boggs satisfy the Rule 23(a)(3) typicality requirement because
19 they are all members of the Plaintiff Parking Class, have the same interests as
20 absent class members and are suffering the same injuries as absent class members.
21 *See Target Corp.*, 582 F. Supp. 2d at 1201. Additionally, in suits where disabled
22 persons are challenging the architectural design of physical barriers and their legal
23 permissibility, the interests, injuries and claims of all the class members are
24 identical, meaning that any class member could satisfy typicality. *Moeller*, 220
25 F.R.D. at 611.

26 Shields and Boggs are visually impaired persons considered to have a
27 physical disability as such is defined in 42 U.S.C. § 12102 and the California
28 Government Code Section 12926. *See* FAC at 3-4. Shields and Boggs are also

1 interested in seeking accommodations from Defendants under the ADA, Unruh Act
2 and/or CDPA. *See* FAC.

3 Shields and Boggs have attended the Disneyland Resort and have been
4 denied equal treatment due to the Defendants' failure to comply with accessible
5 parking provisions. Ex. A at 28-30; *see ex.* B at 147, 150; Ex. E at Resp. # 18.

6 **N. SHOULD THE COURT DENY THIS MOTION, THE DENIAL**
7 **SHOULD BE WITHOUT PREJUDICE**

8 Plaintiffs have not previously moved for class certification. Should the
9 Court find that Plaintiffs have not yet met the requirements of Rule 23(a) or Rule
10 23(b), the Court should approve certification in part, and with respect to those
11 requirements the Court may deem not yet satisfied, deny the motion for class
12 certification without prejudice, with leave to re-file after additional discovery is
13 conducted. When evidence is insufficient, federal courts routinely deny such
14 motions without prejudice and permit the parties to conduct further discovery.
15 *E.g., Jasper v. C.R. England, Inc.*, 2009 WL 873360, *7 (C.D. Cal. March 30,
16 2009); *Berndt v. California Dept. of Corrections*, 2010 WL 20353255, *4 (N.D.
17 Cal. May 19, 2010); *Wall v. Leavitt*, 2007 WL 4239575, *1 (E.D. Cal. Dec. 3,
18 2007). Additionally, when some requirements of Rule 23 are met, but not all,
19 federal courts grant such motions in part for those requirements that have been
20 met. *E.g. Cole v. Asurion Corp.*, 267 F.R.D. 322 (C.D. Cal. 2010); *Menagerie*
21 *Productions v. Citysearch*, 2009 WL 3770668, *19 (C.D. Cal. November 9, 2009);
22 *Brazil v. Dell Inc.*, 2010 WL 5387831 (N.D. Cal. Dec. 21, 2010). Should the Court
23 be inclined to deny certification at this time, Plaintiffs request additional time to
24 undertake discovery, along with leave to file a renewed motion for certification.

25 **III. CONCLUSION**

26 All of the Classes meet each prerequisite for certification found in Rule
27 23(a)(1): numerosity, commonality, typicality and adequacy of representation.
28

1 Likewise, the Classes qualify for certification under Rule 23(b)(2). The Court
2 should GRANT this Motion for Class Certification.

3
4 **CERTIFICATE OF SERVICE**

5 I hereby certify that on February 14, 2011, a copy of the foregoing was filed
6 electronically. Notice of this filing will be sent by operation of the Court's
7 electronic filing system to all parties indicated on the electronic filing receipt.
8 Parties may access this filing through the Court's system.

9 Respectfully Submitted,

10
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