

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

A.L., by and through D.L., as Next
Friend, Parent and Natural Guardian;
D.L., Individually,

Plaintiffs,

Case No. 6:14-cv-1544-Orl-22GJK

v.

WALT DISNEY PARKS AND RESORTS
US, INC.

Defendant.

_____ /

PLAINTIFF A.L.'S TRIAL BRIEF

Plaintiff A.L. by and through D.L., as his Next Friend, Parent and Natural Guardian, provides the following brief of evidence, authorities and argument to be presented at the trial of this cause.

I. Nature of the Action

“I do think someone needs to admit the new system does not work for Autism families. All disabilities are not equal.”

Betty Lowery, Manager, Community Relationships, Walt Disney World Community Relations, February 10, 2014.

Plaintiff asserts a single cause of action against the Defendant: Count 1: Violation of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §12311 *et seq.* Plaintiff seeks all relief permitted under the ADA, including any injunctive relief the Court may fashion.

Generally, Plaintiff alleges that prior to October of 2013 Disney admirably accommodated him during his trips to Disney’s theme parks. Until that time, Disney allowed

A.L. to access its attractions via Disney's "FastPass" lines, which typically offer reduced wait times in comparison to Disney's "Standby" lines. This allowance accommodated A.L.'s special need, in that due to his disability he is unable to endure idle wait times of more than a few minutes at a time, and he is unable to be diverted from a particular routine or order of experience without substantially destabilizing him and creating a risk of meltdown or self-harm. Disney's twenty-year history of accommodating A.L.'s special need ended on October 9, 2013, when Disney implemented a new disability policy which Disney calls its "Disability Access Service," or "DAS."

Plaintiff shall prove that the DAS is inherently discriminatory, and shall further show that, even if the DAS is not inherently discriminatory, it does not accommodate A.L.'s own special need, because it provides no assurance that A.L. will be able to experience Disney's attractions with manageable wait times, or in a tolerable sequence. For this reason, when A.L. visited Disney's Magic Kingdom in December of 2013, he advised Disney through his mother the DAS would not accommodate his special needs, requested a reasonable modification which would accommodate his special needs, and was refused. A.L. asserts that he would absolutely return to the Disney theme parks but for Disney's discriminatory DAS policy and Disney's refusal to permit a reasonable modification of the DAS.

A.L. seeks a permanent injunction requiring that he be permitted to access Disney's theme park attractions via Disney's "FastPass" lines, or that other relief be ordered by the Court which would accommodate his special needs, such as requiring Disney to award him a certain number of passes on each visit which would entitle him to accelerated access to Disney's attractions, or to simply order Disney to ensure that he will not be required to wait more than 10 to 15 minutes to experience any attraction during his visit.

II. Elements of Plaintiff's Claim

Plaintiff must prove the following in order to prevail on his claim:

- A. **Public Accommodation.** Plaintiff will establish that Disney's theme parks are "public accommodations" within the meaning of the ADA.
- B. **Person with a Disability.** Plaintiff will establish that he is a person with a disability within the meaning of the ADA.
- C. **Discrimination**
 - Disney's Access Policy does not Accommodate. Plaintiff will establish that the DAS is inherently violative of the ADA. In that event, the DAS simply cannot be applied to him in the first instance, and he need not request a modification of it.
 - A.L. Requested a Reasonable Modification. Should Plaintiff fail to adequately establish that the DAS is inherently discriminatory, Plaintiff will show that he requested a reasonable modification of the DAS which would have accommodated his disability, and that Disney refused the modification.
- D. **Remedies.** Plaintiff will show that injunctive relief is available which can be ordered by the Court and which would cause Disney's accommodation of A.L. to comply with the Americans with Disabilities Act.

III. Public Accommodation

Effectively, the ADA expressly provides that Disney's theme parks are "public accommodations":

The following private entities are considered public accommodations for purposes of this subchapter, if the operations of such entities affect commerce—

** * **

*(1) a park, zoo, **amusement park**, or other place of recreation;*

42 U.S.C. §12181(7)(B) (emphasis added). Several courts have addressed Disney's theme parks in the ADA context, each time determining them to be public accommodations under ADA. *Ault v. Walt Disney World Co.*, 692 F.3d 1212, 1215 (11th Cir. 2012) (DOJ regulation in relation to ADA and mobility devices "requires a public accommodation, such as Disney Resorts, to 'make reasonable modifications in its policies'"); *Baughman v. Walt Disney World Co.*, 685 F.3d 1131, 1135 (9th Cir. 2012); *Shields v. Walt Disney Parks & Resorts US, Inc.*, 279 F.R.D. 529, 548 (C.D. Cal. 2011).

IV. Person With a Disability

42 U.S.C. §12102(1)(A) provides in pertinent part:

The term "disability" means, with respect to an individual – a physical or mental impairment that substantially limits one or more major life activities of such individual.

42 U.S.C. §12102(2)(A) defines "major life activities" thus:

For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

Many courts have determined that persons with autism are persons with disabilities under ADA. *See, e.g., Shankar v. United States Dep't of Homeland Sec.*, 2014 WL 523960, *7 (N.D. Cal. 2014); *Jakubowski v. Christ Hosp.*, 2009 WL 2407766, *8 (S.D. Ohio 2009) aff'd sub nom., 627 F.3d 195 (6th Cir. 2010); *Morgenthal v. AT & T*, 1999 WL 187055 (S.D. N.Y. 1999); *Glaser v. Gap Inc.*, 994 F. Supp. 2d 569, 575 (S.D. N.Y. 2014). Similar rulings abound under the Fair Housing Act, the Individuals with Disabilities Education Act, and the Rehabilitation Act, each of

which applies a similar definition. See, e.g., *Rodriguez v. Vill. Green Realty, Inc.*, 788 F.3d 31, 35 (2d Cir. 2015) (FHA); *Mark H. v. Hamamoto*, 620 F.3d 1090, 1097 (9th Cir. 2010) (Rehabilitation Act).

The ADA is implemented and enforced through regulations enacted by the Department of Justice. 42 U.S.C. §12134. For Title III of the ADA which relates to public accommodations, such regulations are codified at 28 C.F.R. §§36.101 *et seq.* The Department of Justice's implementing regulations are entitled to great weight and deference before the Court. *Bragdon v. Abbott*, 524 U.S. 624, 646, 118 S. Ct. 2196, 2208 (1998); *Kornblau v. Dade County*, 86 F.3d 193, 194 (11th Cir. 1996); *Alboniga v. Sch. Bd. of Broward County Fla.*, 2015 WL 541751, *12-13 (S.D. Fla. 2015); *Larsen v. Carnival Corp.*, 2002 WL 31345612, *4 (S.D. Fla. 2002). Citing other federal regulations regarding autism, one district court has stated:

There are varying degrees of severity for individuals afflicted with autism which can be categorized with three main types: High functioning autism, mild autism and severe autism. "Federal regulations define autism as a 'developmental disability significantly effecting verbal and non-verbal communication and social interaction, generally evident before age 3, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.'" *Parents League for Effective Autism Services v. Jones-Kelly*, 339 Fed. Appx. 542 (6th Cir. 2009) (quoting 34 C.F.R. § 300.8(C)(1)(i)). There are various treatments that may help ease the symptoms of severe autism, including Applied Behavior Analysis ("ABA"), speech therapy, physical therapy and play therapy.

Young v. Ohio, 2013 WL 146365, *1 (S.D. Ohio 2013).

Plaintiff A.L. has severe autism. His treating neurologist, in support of A.L.'s need for a "reduced ride wait time," advises that A.L. suffers substantial impairment of at least the following major life activities: "Caring for One's Self;" "Learning;" "Performing Manual Tasks;" "Speaking;" "Walking" and, in the category of "Other" major life activities, she advises:

“[A.L.] does not have the capability to understand wait times, going to an attraction without going on the attraction, & has difficulty transitioning & moving out of a routine. The accommodations requested would allow him to participate & allow for enjoyment.” P.Exh.443.

A.L.’s condition is such that he must experience activities in a certain order or sequence. Disruption of an established routine will subject him to the risk of a sensory meltdown. He does not merely want or prefer to go in a certain order: “it’s more than a preference, actually. It is a biologically driven mechanism there around not being able to change and the need to stay with a consistent routine.” James Dep. 111:12-16. He is incapable of killing or biding time waiting for one experience by doing something outside of his established routine: “In autism it’s not a preference. It’s a disorder... It’s not willful. It’s a brain-based driven need for sameness.” James Dep. 165: 11-12, 22-23.

Should Disney be required to accommodate A.L., he intends to return to the Disney theme parks, particularly Magic Kingdom.

V. Disney’s Disability Accessibility Policy is Inherently Discriminatory

A. The DAS Exclusively Addresses Waiting in Line; As a Matter of Policy, Disney has No Mechanism for Reducing Waiting Time

The DAS is expressly intended not to reduce wait times for any guest. In fact, it is intended to achieve precisely the opposite; the DAS was always intended, above all else, to equalize wait times. P.Exh.142 With its DAS program, Disney simply eliminated any mechanism it ever possessed for accommodating a guest whose issue is waiting time, not waiting in line.

Disney touts its DAS as cleverly creating a “virtual” wait. Of course, there is nothing “virtual” about the wait – it is a genuine wait. At most, the DAS creates a “virtual line.” Disney

continues to refuse to acknowledge that many guests with moderate to severe autism, including A.L., do not ask for a modification that relieves them of waiting *in line* – they ask for one that reduces the waiting *time*. Disney can achieve this accommodation by simply allowing access to Disney’s Fastpass lines for guests with developmental disorders, or by adopting any other mechanism for allowing accelerated access, such as providing a guest with a finite number of passes for entry to the Fastpass lines, or by simply adopting a maximum wait time policy for a guest based upon the guest’s special need.

1. The DAS is an Impermissible “One Size Fits All” Disability Policy

The DAS purports to be something that, by definition, cannot exist: a one-size-fits-all disability accommodation policy. Disney unequivocally insists that the DAS admirably accommodates each and every disabled person, including Plaintiff and those like him, without any modification.

It has become axiomatic that when a disabled person proposes that his or her special need is not adequately accommodated by a facility’s accommodations policy, the facility must perform an individualized assessment of the disabled person’s special need and make any reasonable modification of the policy which will reasonably accommodate the disabled person.

As the Supreme Court recently made clear in *PGA Tour, Inc. v. Martin*, in considering a Title III claim, “an individualized inquiry must be made to determine whether a specific modification for a particular person’s disability would be reasonable under the circumstances as well as necessary for that person, and at the same time not work a fundamental alteration” to Defendant’s business. *See PGA Tour, Inc. v. Martin*, 532 U.S. 661, 688, 121 S.Ct. 1879, 149 L.Ed.2d 904 (2001). *See also Staron v. McDonald’s Corp.*, 51 F.3d 353, 356 (2d Cir.1995) (“Whether a particular modification is ‘reasonable’ involves a fact-specific, case-by-case inquiry that considers, among other factors, the effectiveness of the modification in light of the nature of the disability in question and the cost to the organization to implement it.”).

Larsen v. Carnival Corp., 2002 WL 31345612, at *5 (S.D. Fla. 2002). Accord, *Concerned Parents To Save Dreher Park Ctr. v. City of W. Palm Beach*, 884 F. Supp. 487, 488-89 (S.D. Fla. 1994) (“Any finding of an ADA violation requires proof as to each individual claimant. In addition, the relief afforded to each claimant would require an individualized assessment of what measures the City must take in order to comply with the ADA on a case-by-case basis”); *Ass’n for Disabled Americans, Inc. v. Integra Resort Mgmt., Inc.*, 385 F. Supp. 2d 1272, 1278 (M.D. Fla. 2005) (“Title III requires a public accommodation to make an individualized inquiry as to whether a specific modification for a particular person's disability would be reasonable and necessary for that person, and yet not work a fundamental alteration,” citing *PGA Tour v. Martin*, 532 U.S. at 688); *D’Amico v. New York State Bd. of Law Examiners*, 813 F. Supp. 217, 221 (W.D. N.Y. 1993) (“An individual analysis must be made with every request for accommodations and the determination of reasonableness must be made on a case by case basis”).

As the Second Circuit has stated:

Although neither the ADA nor the courts have defined the precise contours of the test for reasonableness, it is clear that the determination of whether a particular modification is “reasonable” involves a fact-specific, case-by-case inquiry that considers, among other factors, the effectiveness of the modification in light of the nature of the disability in question and the cost to the organization that would implement it. *See D’Amico*, 813 F.Supp. at 221-22 (holding that allowing a law student with a vision disorder four days to take the bar exam was a reasonable accommodation); *cf. Vande Zande*, 44 F.3d at 542 (stating that, to be “reasonable,” the cost of an accommodation should not be disproportionate to the benefit); *Tuck v. HCA Health Servs. of Tennessee, Inc.*, 7 F.3d 465, 471 (6th Cir. 1993) (“Issues involving ... reasonable accommodation [under the Rehabilitation Act] are primarily factual issues.”).

Staron v. McDonald’s Corp., 51 F.3d 353, 356 (2d Cir.1995).

Applying all these principles, the Southern District outlined the parties' burdens in a reasonable modification case. The plaintiff must initially show that he or she requested a modification that was necessary for full and equal enjoyment and that the modification was reasonable. The burden then shifts to the defendant to show that the requested modification would necessitate a fundamental alteration of the defendant's business.

As part of this reasonableness inquiry, federal courts have considered the effectiveness or feasibility of the proposed modification and whether it imposes undue costs or administrative burdens on the defendant. *DeBord v. Board of Educ. of the Ferguson-Florissant Sch. Dist.*, 126 F.3d 1102, 1106 (8th Cir.1997); *Staron v. McDonald's Corp.*, 51 F.3d 353, 356 (2d Cir.1995).

At all times, however, plaintiff bears the ultimate burden of persuasion on the issue of reasonableness. *Johnson*, 116 F.3d at 1059. If, and only if, plaintiff meets this burden, defendant bears the burden of proving that under the particular circumstances, the requested modification would fundamentally alter the nature of the goods or services being offered. *Id.*

Larsen v. Carnival Corp., 242 F. Supp. 2d 1333, 1342-43 (S.D. Fla. 2003).

No different or lesser standard exists for disabilities in the nature of developmental disorders. That is, a person with a developmental disorder such as autism is entitled to the same individualized assessment as are other persons with disabilities. *Alumni Cruises, LLC v. Carnival Corp.*, 987 F. Supp. 2d 1290, 1307 (S.D. Fla. 2013) (plaintiff organization, d/b/a "Autism on the Seas," provides cruise experiences for persons with developmental disorders; "[plaintiffs'] requests are specific enough to allow Carnival to be able to assess the proposed modifications, the difficulty of accomplishing them, the cost of implementation, and the effect of the proposed modifications on the economic operation of Carnival").

Disney's suggestion that it can unilaterally implement a one-size-fits-all disability policy, one for which Disney need not consider or recognize any modifications, is simply contrary to law and logic. Disney is required to make individualized assessments, and to consider and

implement individualized modifications that are reasonable. One court, considering an autistic plaintiff's reasonable modification claim, put it thus:

“Reasonableness is not a constant.” *Wynne v. Tufts Univ. Sch. of Med.*, 976 F.2d 791, 795 (1st Cir.1992). Therefore, the issue here is what is reasonable given the specific facts of Mr. Hahn's circumstances. The issue is not what would be reasonable in a general sense, but what would be reasonable given the individualized facts before the court. *Zukle v. Regents of the Univ. of California*, 166 F.3d 1041, 1048 (9th Cir.1999).

Hahn ex rel. Barta v. Linn County., IA, 130 F. Supp. 2d 1036, 1052 (N.D. Iowa 2001).

B. Disney Admits that the DAS is a “One Size Fits All” Disability Policy

In response to an administrative complaint made by a similar-situated claimant with a materially indistinguishable discrimination claim, Disney said:

DAS... offers the opportunity to completely avoid waiting in line throughout the day to *all* persons with autism or other cognitive disabilities. It does not matter how severe or mild the autism is because a DAS holder has the right to not wait in *any* traditional queue, which all other guests must do on every ride. The fact that this right is also provided to guests with mild forms of [autism] does not mean that a different accommodation is required for persons with more severe impairments. Like the wheelchair ramp or the video captioning device, one solution has been found in DAS that completely eliminates waiting at an attraction for *all* guests with [autism] regardless of how severe or mild their disability is. When the opportunity for access offered by an accommodation is *complete*, there is no need to differentiate between persons with different degrees of impairment.

K.S., A.S. v. Disney, FCHR case no. 201500097, Disney response, March 19, 2015. P.Exh.36.

C. The Florida Commission on Human Relations Agrees that the DAS is an Impermissible “One Size Fits All” Disability Policy

On at least five occasions involving similarly-situated guests with discrimination claims that are materially indistinguishable from A.L.'s, the State of Florida Commission on Human Relations has found that Disney's DAS is discriminatory because it is a blanket policy which

does not address the particular needs of individual guests. In all five decisions, the Commission's "Summary of Investigative Findings" states as follows:

Complainant alleged that her son was denied the full enjoyment of the public accommodation and the findings of this investigation support that allegation. While an accommodation was offered, it was a blanket accommodation that did not take into account the nuances between various disabilities or the fact that Complainant's son's disability required more assistance than other cognitive disabilities. The accommodations offered would not allow him to enjoy the park as it was intended to be enjoyed by all other patrons. In addition, there was no effort by Respondent to determine a suitable accommodation for her son which would allow him to fully enjoy the park.

J.W.B., N.F.B., V.J.B. adv. Disney, FCHR complaint no. 201401404, February 13, 2015.¹

D. No Exceptions to the DAS are Given as Accommodations; They are "Recovery Tools" Only, for Combative Guests

On April 16, 2015, Mr. Riggs, Area Manager for Magic Kingdom Guest Relations, spelled out the entire DAS issuance process as follows:

The current DAS process is the same as it has been since it was rolled out in October 2013...

Below are the steps involved in the issuance of a DAS card:

- Guest visits Guest Relations declaring they have a challenge waiting in attraction queue lines
- GR Cast Members explains options which may include renting and utilizing a Wheelchair
- If Guest explains that challenge is not mobility in nature but cognitive or anxiety related, a DAS card is offered
- Guest are informed that the DAS card offers them a virtual wait that is comparable in time to what other Guests would be waiting
- GR Cast Member instructs the Guest utilizing a DAS card on how to use it
 - Guest selects the attraction they wish to visit
 - Guest shows DAS card to attraction's greeter

¹ The other complaints in which FCHR reached precisely the same conclusion regarding a complainant with autism are: *R.J.R.G., G.M.G., J.M.G. adv. Disney*, FCHR case no. 201401540, February 13, 2015; *H.K.H., M.W.P., K.J.L. adv. Disney*, FCHR case no. 201401438, February 13, 2015; *J.L.B., C.M.B., H.M.B. adv. Disney*, FCHR case no. 201401469, February 13, 2015; *A.J.M., O.M.M., L.M.M., M.M. adv. Disney*, FCHR case no. 201401312, February 13, 2015. Copies of the FCHR determinations can be found at P.Exh.37.

- The attraction's greeter will write the attraction's name on the card, the current wait time and the time for the Guest to return, and then initials the card (the return time will be minus 10 minutes from the actual wait time)²
- Any party member may visit an attraction and obtain a return time (Guest for whom the DAS card was issued must be present at the return time for the Guest and their party to enter the attraction)
- A picture is taken of the Guest for whom the DAS card is for and the picture is printed on the DAS card to be issued
- GR Cast Member reviews the terms and conditions of the card, has the Guest sign the card, and then gives the Guest their card
- If a Guest being issued a DAS card expresses concerns over if the DAS card will meet all their needs the GR Cast Member will look for other options to assist the Guest. These options may include itinerary planning for the Guest, writing in the first attraction to be visited on the DAS card, issuing attraction re-ads, and thoroughly explaining the FastPass+ system.

P.Exh.38. Unless a guest complains, they are sent on their way before the final step is ever reached, and after at least once being told, as D.L. was told, that the DAS is “all we have to offer” to a guest like her son. P.Exh.150.

Parents of the disabled guest commonly express concern or grief that the DAS will not accommodate their child, because they know the child will not be able to process or handle the rejection of being sent away from a ride or being unable to experience the attractions in the hard-wired predetermined sequence.

When a guest pushes back an amount deemed sufficient by the Guest Relations employee, the employee will then frequently award to the guest “re-admit” passes, which are passes that allow use of the Fastpass lines. Re-admit passes are *not* given to guests as a disability accommodation or as a modification of the DAS to accommodate a guest’s special need. Rather, re-admit passes are always given merely as a “recovery tool” with which Disney employees can help someone having a bad experience recover from their bad time and hopefully have a good

²This 10-minute buffer was added as part of the DAS after the date of A.L.’s visit to the Magic Kingdom.

one. Disney Corp. Dep. 116:6-15; Riggs Dep. 73:5-76:8 (Magic File is a recovery file; FastPasses and re-admits once granted are “never automatic” on a repeat visit; the guest must go through the same process on each visit). When a guest is given a re-admit pass in an effort to recover the guest’s favor, the Disney Guest Relations personnel typically advise the guest that the re-admit passes are a “one-time only” accommodation. Riggs Dep. 76:9-77:1; P.Exh.423 (“Can you tell me if we will still be able to provide Guests with the FastPasses moving forward? There is some info being communicated to Guests who really have needs that it is a one-time courtesy.”); P.Exh.410 (“another example of where Guests are being told the FastPasses are one time exceptions. And see the note about riding multiple times – I think we talked (sic) this, but it’s not being operationalized”). That is, even though the guest’s disability is permanent, the recovery tool is not – the guest will need to go through the same process on his or her next visit. Consistent with this policy, each award of re-admit passes in Guest Relations is recorded in each guest’s “Magic File,” but it is recorded as a one-time recovery tool, not as an entitlement that will be available on any future visit, and not as a disability accommodation. Riggs Dep. 73:5-77:1; Disney Corp. Dep. 68:5-15 (re-admit pass is tool to potentially recover or assist a disabled guest, though it is “not specifically for a guest with disabilities;” Disney has no tool to help reduce wait time for a guest); 126:21-127 (re-admits are not an entitlement beyond DAS); P.Exh.42 (“our time should be spent developing a strong service recovery approach, and apply it when necessary regardless of the individual’s needs”) (emphasis added); P.Exh.49 (“I have concerns on developing a special process for Autism. We should really try to develop this process so it addresses the needs of the majority of our guest (sic) including those who have

autism. Our goal will be to meet this requirement.”)³ When additional re-admit passes are occasionally awarded as a recovery tool, the number is not determined by any assessment of a guest’s special need; instead, rote “compensation formulas” are used. P.Exh.203, p. 1017784.

In the early stages Disney tracked that 95 percent of disabled guests received the DAS and nothing else. P.Exh.39 Since that time, Disney believes the figure has increased and that about 60 percent of DAS holders also receive up to three re-admit passes. Disney Corp. Dep. 125:16-126:7. This trend is consistent with directives from Disney management:

Effective as of [01/24/2014), if, while speaking to a Guest regarding the DAS process, you decide that you would like or there is a need to provide them with something, please feel free to provide **up to** 3 FastPasses or Re-Ads for their first park visit only. This offering is meant to assist Guests in making up some of the time they will be spending in Guest Relations to go through the process of obtaining a DAS card.

P.Exh.40 (emphasis original). Clearly, the additional FastPasses and/or re-admit passes are not being extended as a disability accommodation, and no flexibility at all exists to do anything other than offer the DAS, along with up to 3 re-admit passes to guests who complain. P.Exh.41. (Across the variety of potential cognitive issues which guests might raise, “script” for responses is identical, including the reluctant last step of extending up to 3 re-admit passes); “[Guest Relations is] supposed to stick to the DAS as it is designed to work. She mentioned many issues with other Guests trying to get more FastPasses. They are telling them they may not be able to continue giving them the FP moving forward.” P.Exh.423; (draft of the “flow of our different transaction types, and the order in which we are pulling our tools out of the toolbox. Please note that reads is the last tool to be used.”) P.Exh.197, p. 1014609

³ Prudent and good faith practice in disabilities accommodation would call for Disney to note the existence of the disability in the “Magic File” along with an entitlement on future visits to whatever additional service may have assisted the guest during a particular visit. See, e.g., DOJ guide: “Access To Medical Care For Individuals With Mobility Disabilities”, http://www.ada.gov/medcare_mobility_ta/medcare_ta.htm, *3 (where medical facility accommodates exam table wait time for disabled patient, “[a]ccessibility needs should be noted in the patient's chart so the provider is prepared to accommodate the patient on future visits as well.”)

If Disney proposes that it is not performing meaningful individualized assessments because it is for some reason prohibited from having a detailed conversation, or asking meaningful questions, about a guest's disability, the authority for such a stated or feigned position is unclear. *See Burriola v. Greater Toledo YMCA*, 133 F. Supp. 2d 1034, 1037 (N.D. Ohio 2001) (consideration of child with autism's ability to succeed in YMCA programs with reasonable modifications required detailed discussion of child's needs); *Mucci v. Rutgers*, 2011 WL 831967, *22 (D. N.J. 2011) (Plaintiff delayed submitting information in response to college's requests for medical information regarding disability, and ultimately submitted inadequate information to support reasonable modification); *United States adv. West End YMCA*, DOJ Complaint No. 202-12C0298 (DOJ action against YMCA which failed to make reasonable modifications to permit child with autism to participate; DOJ settlement permits YMCA, in response to future requests for reasonable modifications, to request "medical documentation relating to the child's disability and any necessary modifications"). P.Exh.65. If the concern is that Disney's staff is incapable of engaging in a cogent discussion about autism, the concern is unavailing; perhaps the staff needs autism-specific training. *See United States adv. Beginning Montessori Academy* (Title III enforcement action against educational facility for denial of access to autistic child without individualized assessment; DOJ settlement calls for autism-specific training of staff). P.Exh.66. Disney employees in the parks and Guest Relations receive no training specific to persons with disabilities. Riggs Dep. 17-18.; Jones Dep. 121: 13-21.

When A.L. visited Magic Kingdom on December 19, 2013, there was no way for D.L. to have any level of confidence or assurance that as they arrived at each attraction in the order prescribed by A.L.'s routine, they would be permitted to enter the attraction within a manageable amount of time. She was prepared to wait perhaps 10 or 15 minutes at any attraction, because

doing so is not uncommon when using the Fastpass lines. She knew she and her son could visit a few more attractions using the “one-time only” re-admit passes that had been given to them to help recover their good time and not as a disability accommodation. But the only certainty was that within a short period of time they would exhaust those passes and A.L. would be in a meltdown situation at a time and location within the park that could not be predicted. D.L. Aff. ¶25-26, Ex.F.

Further, in addition to having no ability to predict any wait times in advance, and thus having no ability to foresee any challenges they would face, her past experience indicated that the actual wait times she would face would be substantially longer than 10 or 15 minutes. See P.Exh.31, at AL0004778 (average wait time of attractions 09/10-09/11).

E. Guest Complaints

The public outcry against the DAS, particularly from the autism community, establishes that the DAS does not accommodate families in which a person has moderate to severe autism.

Disney’s argument that the DAS perfectly accommodates all persons with cognitive impairments is refuted by the volume of the public outcry to the contrary which Disney chooses to ignore. One month after the DAS rollout, the complaint volume still looked like this:

Regarding our earlier conversation about DAS current state ... Volume is heavy. We are still getting complaints from non-Guests as well as questions from pre-arrival Guests asking how it is going to work for their family. We are also getting substantial volume from post departure Guests who were upset with the process. Depending on the circumstances, we ARE providing ticket refunds (irate Guests who claim they are never coming back). And we are providing refunds to Passholders.

P.Exh.129.

During the latter several months of 2013, Disney received *thousands* of complaint letters and *thousands* of telephone calls regarding the DAS. A negligible percentage of the

communications were anything other than negative.⁴ P.Exh.220; P.Exh.216 (Disney also received pre-release petition with more than 33,000 signatures); P.Exh.84 (Disney Public Affairs memo: “As you all are well aware, we are hearing A LOT of concern from the autism community”).

The overall volume of complaints is especially profound in light of the percentage of the audience from which the complaints originate.

The complaints cannot be dismissed as bizarre or eccentric or wholly removed from A.L.’s and D.L.’s experience. Numerous complaints exist from guests whose experience was similar to A.L.’s and D.L.’s. P.Exh. 275; 273; 255; 245; 239; 232; 215.

F. Operational Discrimination

The discrimination which is inherent in the DAS exists not only in its design but in its implementation. That is, there can be no argument that the discrimination which is built into the DAS’s structure is rendered harmless by the flexibility and compassion with which the DAS is applied in the field. Disney’s employees’ application and enforcement of the DAS perfectly mirrors the DAS’s innate lack of consideration for Plaintiff’s disability.

1. Inconsistency of DAS Issuance

Disney does not consistently award DAS cards in the first instance. Consequently, assuming a DAS card provides any benefit at all, A.L. cannot even be certain he will receive one on his next visit or any future visit. Numerous examples exist of Disney inexplicably denying DAS cards to disabled individuals. See P.Exh.231; 244; 253.

⁴ The precise transaction numbers of communications are not recited here to prevent unnecessary redaction and sealed filings; they are listed in the exhibit which will be filed with the Court and which may become the subject of a motion to file under seal.

The DAS, standing alone, is nothing. At most, it entitles the bearer of a DAS card to make an appointment to visit a single attraction at a future time. The bearer's disability has utterly no significance in determining the appointment time; the appointment time is entirely a function of Disney's crowd management of its non-disabled guests for that attraction at the moment the appointment is made. The disabled guest's appointment time is determined by how many non-disabled guests want to visit an attraction at the same moment.

Also as outlined above, Disney frequently gives additional "re-admit" passes to DAS holders. These passes are not disability accommodation tools; they are "recovery tools," meaning they only become available to a disabled person who creates a ruckus in Guest Relations. At the time of his December 19, 2013 visit, A.L. received four of these passes. While Disney repeatedly insists that re-admit passes are not disability accommodations, Disney argues that disabled persons who possess them must be estopped from arguing discrimination. In application, re-admit passes are not awarded to guests in recognition of a guest's disability; they are awarded only to create an estoppel defense for Disney. In other words, if a guest asks Disney to modify its accessibility policy by giving some assurance that the guest will be able to enter the attractions within manageable and predictable wait times, Disney will refuse, asserting that the request is unreasonable or will fundamentally alter Disney's business. If the guest does not quietly accept the rejection of the request, Disney will then throw a few re-admit passes at the guest and assert that the passes are a reasonable modification for that guest even while denying that they were given to accommodate the guest's disability.

With the DAS, Disney purports to provide a time-dependent accommodation for a person whose disability requires time independence. But re-admit passes provide access without regard for time. For this reason, in concept, re-admit passes can accommodate the special needs of A.L.

and persons like him. Disney's insistence that re-admit passes are not part of Disney's disability policy should preclude Disney from arguing otherwise to this Court. Even so, should the Court consider Disney's argument that A.L. should be estopped from arguing that he was discriminated against on account of his disability because he accepted four passes which are unrelated to his disability, the argument must fail.

Even if re-admit passes were considered part of Disney's disability accessibility policy, the "policy" is arbitrarily and unpredictably applied, for several reasons. First, passes are only made available to guests who make negative noise; guests who become squeaky wheels get grease. The "policy" is unavailable to a guest who simply accepts the DAS and goes about his or her business in an effort to use it. Second, Disney purports to systemically enforce a cap of three readmit passes per guest. The three-pass cap is arbitrary because: 1) the chosen number bears no relation to the disability the passes might be said hypothetically to accommodate; 2) if passes were actually intended to accommodate A.L.'s special need, they would need to be awarded in considerably larger numbers, with the number being determined by an individualized assessment of the disabled guest; 3) the incremental cost of awarding a larger number of passes to a particular guest is effectively zero; and 4) Disney routinely awards much larger numbers of passes to its guests, with the number being largely a function of how much disruption the guest causes in Guest Relations. Third, because Disney refuses to acknowledge that awarded passes are connected to a guest's disability, they are awarded as "one time only;" the guest must begin each day in the park with an unnerving visit to Guest Relations to again make negative noise in order to receive the non-accommodation which are the passes. This is true even though Disney can and often does enter into the guest's permanent file a code reflecting that the guest has autism, a disorder which certainly will not disappear before the guest's next visit.

As noted, re-admit passes might, conceivably, accommodate A.L.'s time-related disability, if an adequate number of passes were awarded. As D.L. will testify to the Court, the entire process of predicting and managing A.L.'s behaviors depends upon being able to predict and manage his routine. The four passes which were given to A.L. to get D.L. out of Guest Relations and not to accommodate A.L.'s disability would be adequate only to allow D.L. to predict A.L.'s experience for four attractions. She could have no idea what might face them, perhaps two hours later, as they approached the next attraction. If at that point A.L. might be met with an hour-long wait to enter an attraction, he would surely suffer a debilitating reaction, perhaps a meltdown. Just as she could not predict when during the evening that would happen, she could not predict where in the park it would happen; she could find herself at a location particularly removed from any area she might use to calm A.L., or particularly far from anywhere to which she might remove him – an important consideration for D.L. since A.L. stands 6'6" tall and weighs about 300 pounds.

Disney did not engage in a dialogue with D.L. about how many passes might be adequate to give her the assurance that she could manage A.L.'s behaviors during the evening. She asked simply for assurance that A.L. would be permitted to enter each attraction within a few minutes, perhaps 10 or 15, of his arrival. A guest cannot be expected to specifically request this modification in the form of passes because Disney systemically denies that passes are awarded to accommodate disabilities. D.L.'s situation was slightly different because she had had a pre-visit dialogue with Mark Jones, Disney's Manager of Domestic Services for Guests with Disabilities, and already knew that Disney was awarding 3 fast pass tickets to persons who griped in Guest Relations, and that even this willingness was temporary – Disney was giving extra passes only for a short period of transition as the DAS was introduced.

At the end of D.L.'s miserable experience in Guest Relations, she received four passes (apparently having pushed back enough to justify a fourth non-accommodation) and was told "this is all we have to offer." At a later date – too late to be of any use for her visit – Disney asked D.L. how many passes would be sufficient. She said she did not know but that ten passes might be enough to create the assurance she needs that A.L. will not be left to idly wait at some unpredictable time and place during the evening. P.Exh.150. Of course, because D.L. was also told that passes are awarded "one time only," she can have no confidence that any passes will be awarded to her on any visit – three, four, ten, or some other number.

If Disney is permitted to argue that the re-admit passes it gives to guests for reasons other than their disability can preclude guests from arguing discrimination based upon their disability, the Court must examine the arbitrariness with which Disney actually gives out the re-admit passes. By default, guests who do not push back get none, and guests who push back get "up to 3", both figures being determined without regard for the guest's disability or requested modification. Also by default, the guests are told not to expect passes on any future trip. Even so, Disney frequently awards far more passes than three, and sometimes assures guests they are an "entitlement" which the guest can expect on his or her next visit. At least three other victims of Disney's discrimination will testify at trial that: 1) their initial experience in Guest Relations was materially the same as D.L.'s; 2) the DAS is meaningless and useless to them as an accommodation for their son's disability; 3) a small number of additional passes did not, during prior visits, accommodate their son's disability; and 4) for reasons related more to the volume of their protest than to the severity of their son's disability, they have received far more than 3 passes during their recent visits to the parks. Even so, they have little or no assurance that they

will receive the same number again, on their next visit. They only know that they may receive them if they start their day with the negative experience of a Guest Relations confrontation.

2. Guest Relations

i. Guest Relations Wait Times

The DAS is further discriminatory in its implementation because, in order to determine whether a DAS will be provided at all, or whether additional “recovery tools” will be provided after a confrontation, the guest must begin her day with a time-consuming visit to Guest Relations. Historically, parents and caregivers accompanying guests with autism knew they could reasonably predict their disabled companion’s day, and thus reasonably predict and manage her behaviors. They did not start their day with this registration process, which consumes an unpredictable amount of time and which can create enormous stimulation for the disabled guest, especially since the experience may entail confrontation between Disney and the parent or caregiver. Notwithstanding Disney’s contrary assertions, long wait times, and much longer “transaction times” in Guest Relations are not uncommon. See P.Exh.210 (Graph of “DAS Incremental Transaction Times” in Guest Relations depicts unjustifiable mid-day transaction times at Hollywood Studios and Epcot, and simply absurd, *enormous* mid-day times at Magic Kingdom, Disneyland, and Disney’s California Adventure⁵); P.Exh.211 (“very common to have a 30 minute wait at Guest Relations on a typical Sunday”).

ii. One Time Only

The DAS is further discriminatory in its implementation because Disney requires its guests to re-register as a disabled guest with each visit to the Disney parks. An initial DAS

⁵ The precise transaction times are not recited here to prevent unnecessary redaction and sealed filings; they are listed in the exhibit which will be filed with the Court and which may become the subject of a motion to file under seal.

issuance does not create a presumption of a future DAS issuance, even though Disney's electronic record which is accessed on each visit by the Guest Relations personnel, will reflect, when Disney's employees choose to record the information, that the guest has previously received an accommodation – a fact which definitely will not change between visits. Similarly, any passes or other “recovery tools” received during a prior visit are recorded in the system and are readily seen by the Guest Relations personnel on any subsequent visit, but will not be repeated for the guest unless a confrontation occurs. P.Exh.212. (“We will explain to the Guest the FPs are a one time good will gesture for lost time as we will be asking them to visit GR for their DAS card when they arrive at the Park.”)

Disney has never explained why, once a guest with autism has successfully registered, Disney requires the guest to submit to the Guest Relations disability-registration process *again* on his or her next visit. Disney's MAGIC database which is accessed by Guest Relations personnel includes specific codes which are internally used to identify guests – at least those who complain. P.Exh.214 (MAGIC code: “Autism Impacts”); P.Exh.257 (“Incident Case Raw Data 9/21/13-12/1/13 includes entries re: “Autism Impacts”).

iii. Photo Issues

The DAS is further discriminatory because it requires Disney's disabled guests to sit for a photograph, while non-disabled guests need not do so. Importantly, the photograph is not required for any disability-related purpose. It is only intended to deter or prevent malingerers from falsely obtaining DAS cards, assuming they would go to such trouble only to obtain, in effect, one extra Fastpass ticket. The photo is not taken for any purpose related to disability accommodation. P.Exh.20 (DAS includes “a registration process (with photo)”).

iv. Cast member offensiveness

The DAS's implementation has created a change in Disney's employees' demeanor which should be of particular concern to Disney. Disney's incessant rants about "abuse" has created in its Guest Relations employees an institutional disdain toward persons who visit Guest Relations, as directed by Disney, to register themselves and request an accommodation for their disability, and in Disney's attractions employees, who commonly view guests carrying DAS cards as persons who are trying to game the system. P.Exh.204 ("Guest Perception Surrounding Cast Behavior: Data Based on MAGIC Incidents dated: 09/29/13 through 05/17 /14"); P.Exh.396 ("We need a major dose of sensitivity training to roll out with these changes to make sure our cast don't take this as a mandate to "clamp down on abusers" and treat [Guests with Disabilities] in any inappropriate way as we will be extremely exposed on this and our [Guests with Disabilities] will take even hints of this as offensive."); P.Exh.391 ("...our Cast are already sending negative signals to our Guests about GACs – giving them the impression that they are all trying to take advantage of the system").

v. Lack of training

Separate from an institutional belief that disabled persons should be ashamed of themselves for utilizing whatever disability program Disney offers, the decline in the compassion shown by Disney's employees toward Disney's disabled guests appears to be attributable to inadequate training. Disney employees in the parks and Guest Relations receive no training specific to persons with disabilities. Riggs Dep. 17-18; Jones Dep. 121: 13-21.

vi. Advance Communications

Disney's disability policy, whatever it may be, is discriminatory because it cannot be determined prior to actually visiting the park. Disney refuses to discuss, in advance, any

accommodations or modifications which might be made for an individual. Any guest who calls or writes to discuss or to request possible reasonable modifications is told to show up at Guest Relations for information.⁶ For out of town visitors, it is impossible to request a reasonable modification of Disney's accessibility policy without actually investing in an entire vacation, traveling to Lake Buena Vista, buying Disney passes for admission through the front gates, and visiting Guest Relations. Local visitors must, at a minimum, buy passes for admission into the park in order to visit Guest Relations. Of course, all visitors will then find that no exceptions or reasonable modifications of the DAS will be provided. If they should sufficiently argue about the refusal to consider any request for reasonable modification, they may be given up to the 3 re-admit passes, which they will be told are not a disability accommodation and are given "one time only." Not only does Disney refuse to consider or extend any reasonable modifications as required by the ADA, it requires guests to spend substantial monies prior to learning that their request for a reasonable modification never would have been honored in the first place.

⁶ Guests are sometimes also told to check Disney's webpage relating to disability access. On doing so, the guest will find:

- What services are available for Guests unable to tolerate long waits at attractions due to their disabilities?
- A. Walt Disney World theme parks provide numerous accommodations for Guests with disabilities, including our Disability Access Service.
- The Disability Access Service allows Guests with disabilities—as well as an allotted number of people from his or her party—to schedule a return time at a specific attraction that is comparable to the wait time when they first arrive at that attraction.
- ***For more information, guests should visit the Guest Relations Lobby*** located near the entrance of each of the four theme parks.
- To learn more about the Disability Access Service, please download the official guide in PDF format.

Should the guest download the linked guide, he or she will find nothing more than another referral to Guest Relations:

- A Disability Access Service Card will be issued at Guest Relations...
- What will Disney Parks do if a Guest is concerned the DAS Card doesn't meet their needs?
- ... ***Guests should visit Guest Relations to discuss their individual needs.***

[https://disneyworld.disney.go.com/faq/guests-with-disabilities/attraction-access/;](https://disneyworld.disney.go.com/faq/guests-with-disabilities/attraction-access/)

<https://wdpromedia.disney.go.com/media/wdpro-assets/dlr/help/guest-services/guests-with-disabilities/Disney-Parks-Disability-Access-Service-Card.pdf> (emphasis added)

As discussed more fully in the succeeding section of this brief, Disney's disabilities professionals contemporaneously argued not only that advance communications should be provided to prospective disabled guests, but that their DAS card should be "pre-loaded" with a number of attractions the guest could visit without suffering a substantial wait time.

G. Defendant's Admissions: Disney Always Knew the DAS Would Not Accommodate A.L. and Persons Like Him

Disney cannot be heard to argue that the DAS is not innately discriminatory, because Disney knew, in advance of releasing the program, that it would not accommodate A.L. and persons like him. Plaintiff will prove at the trial before the Court, using Disney's own business records, that Disney knew the DAS would not accommodate persons with cognitive impairments such as A.L.'s – conditions which impair their ability to appreciate the concept of time, or appreciate that waiting for something in the present will produce something worthwhile in the future.

In the spring of 2012, when Disney first empanelled an internal group to study replacement of the GAC, Disney had for many years employed a group of persons known as its Services for Guests with Disabilities team. Disney did not place the newly commissioned panel under the stewardship of its Services for Guests with Disabilities team, but instead placed it in the hands of one of its industrial engineers whose focus is crowd management, Alison Armor.

From the outset, the disabilities personnel advised the industrial engineers that the "dance card" concept which was being considered to replace the GAC would not accommodate persons with autism. As the disabilities personnel continued to raise these concerns through 2012 and into early 2013, the concerns increasingly fell on deaf ears. Eventually, by about May of 2013, the industrial engineers simply no longer included the bothersome disabilities personnel in the

discussions. From that point until the DAS rollout in October of 2013, the effort was shepherded by the industrial engineers who reported directly to Disney’s executive team with little input from the disabilities team. It is now clear that Disney’s disabilities personnel accurately predicted the DAS would disproportionately impact the autism community in comparison to all other disabilities. Disney’s disabilities personnel never wavered in advising Disney’s industrial engineers that the needs of Disney’s autistic guests were being ignored.

Disney knew exactly what would happen to autism families who visited the parks on October 9, 2013 and thereafter. The complete story of Disney’s own internal knowledge, which Disney chose to ignore, is below. (Within the following table, “IE” refers to industrial engineering; “SGD” refers to the department previously known as “Services for Guests with Disabilities”.)

| Date | Sender/Group | Recipient/Group | The Message |
|----------------|---------------------|------------------------|---|
| April 16, 2012 | Armor/IE | All | Study group empanelled to “review and streamline our attraction access policies” flowing from a “work stream generated by an ECV Strategy project” P.Exh.4. |
| May 30, 2012 | Jones/SGD | Guest Rel. | Thanks for inviting SGD to the discussion... <i>“My biggest concern with the discussion going on about the “future” of the GAC is how a new policy/process/dance card will impact those who need the degree of service that some of the GAC stamps have traditionally offered (in particular, with Autism... when I say Autism, I mean those Guests who truly have no concept of time and “coming back later” to an attraction).”</i> P.Exh.7 |
| May 31, 2012 | Carr/Guest Rel. | Jones/SGD | Guest Relations appreciates the input, but it would be best to let the industrial engineers lead the discussion. P.Exh.7 |
| June 12, 2012 | Jones/SGD | Armor/IE | SGD Suggests team meeting with |

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| | | | Autism Speaks about GAC study. P.Exh.299 |
| June 14, 2012 | Armor/IE | Jones/SGC | Industrial engineers reject idea of early meeting with Autism Speaks about GAC study. P.Exh.390 |
| May 15, 2013 | Jones/SGD | Evans/IE | "I certainly support many of the items/ideas we have discussed in our GAC strategy meetings over the past several months, however, <i>the one concern I want to again raise related to the "no more GAC's" shift is the impact it will most definitely have on one of the major audiences GAC's were intended for... those with cognitive disabilities such as Autism... where the concept of "time" or "waiting" is an issue.</i>" P.Exh.385 |
| May 15, 2013 | Minnick/SGD | SGD | "We should back away from changes like doctor's notes that will potentially embarrass those that truly need the service. <i>I just hope that we don't over react to an instance of abuse to a service that has served thousands of deserving Guests in a positive way.</i>" P.Exh.407 |
| May 17, 2013 | Hale/SGD | Armor/IE | "[Attached] is what our [SGD] team drafted to state their concerns/issues in a constructive way... <i>Guests with Autism will be the most impacted group as the concept of "time" or "waiting" (even if done virtually via the "dance card") is challenging for many with this disability.</i>" P.Exh.382 |
| May 23, 2013 | Minnick/SGD | Armor/IE | "We feel strongly that we need an attraction by attraction analysis done that spells out how we will plan to deliver an equivalent (or better) service than we do today for our Guests with disabilities so that we don't risk reducing accessibility as we try and create "equal access" for everyone to our attractions. I don't know if anyone has started work on that front, but [SGD] need[s] to be part of the effort." P.Exh.384 |

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| May 23, 2013 | Jones/SGD | SGD | “[Appears these GAC meetings will now occur with all groups appropriate to the issue, and will include discussion of how any new system] will impact each major disability category (mobility, visual, hearing, cognitive) at every attraction.” P.Exh.381 |
| June 6, 2013 | Appleton/DLR | SGD | Important that Jones/SGD attend the GAC meetings. P.Exh.418 |
| June 15, 2013 | Jones/SGD | Meeting notes | <p><i>“SGD’s Continued Concerns That Were Not Addressed...”</i></p> <p>-Park Ops (Alison in particular) continues to state "there is no appetite [for] any kind of service or green light card beyond what has already been discussed". Bottom line ... <i>if we</i> (SGD), Guest Comm, Meg/George/Michael, or Legal, based on discussions with a particular Guest, felt offering <i>a service beyond telling the Guest to use a DAS card, regular FastPass, or standby queue was necessary, we would have NOTHING to offer</i></p> <p><i>-How to handle Guests with certain types of Autism where waiting in line is not a reasonable on their disability and what our "fall back" plan might be if this becomes a bigger issue.</i> I had even sent the Kings Island follow up piece to both Alison and Todd on Thursday evening with a note stating that it might be worth discussing for a bit in yesterday's session, however, it was not addressed at all.” P.Exh.394</p> |
| June 15, 2013 | Hale/SGD | SGD | <p>“We need to list specific significant directions that we don't agree with...</p> <p><i>1. We need to maintain an override process for any custom accommodation...</i></p> <p><i>2. We should consider having a Guest Relations manual process similar Kings Island and our FASTPASS plus process where guest with Autism that states they can't go to an attraction</i></p> |

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| | | | <p><i>and then come back without a melt down could get 3 or 4 FASTPASS times pre scheduled.</i></p> <p>3. [REDACTED]</p> <p>4. We need a major dose of sensitivity training to roll out with these changes to make sure our cast don't take this as a mandate to "clamp down on abusers" and treat GWD in any inappropriate way as we will be extremely exposed on this and our GWD will take even hints of this as offensive. P.Exh.396</p> |
| June 15, 2013 | Jones/SGD | | In addition to the DAS card, Guests visiting the parks with non-apparent disabilities (including Autism) would be encouraged to use the standard FastPass process and standby queues (there would be no other alternatives for these Guests). P.Exh.396 |
| June 15, 2013 | Minnick/SGD | SGD | "I also agree with Mark about needing an additional tool for service recovery." P.Exh.396 |
| June 17, 2013 | Jones/SGD | SGD | "I'm in the process of framing up some possible ideas for what our strategy might need to be if/when we find ourselves in a situation that requires us to modify our DAS card process for those on the Autism spectrum." P.Exh.425 |
| June 18, 2013 | Minnick/SGD | Meeting notes | Meeting of SGD and Park Ops with Autism Speaks... "Autism Speaks suggested 3-4 attractions up front on the DAS card would be an acceptable alternative to our GAC". P.Exh.304 |
| June 28, 2013 | Evans/IE | Armor/IE | Attaches "Back-up plan for Autistic Guest;" "let me know your thoughts" P.Exh.16 |
| June 28, 2013 | Evans/IE | Park Ops leaders | Attaches for discussion Back-up plan for Autistic Guest. P.Exh.395 |
| June 30, 2013 | Jones/SGD | SGD | "Back-up plan for Autistic Guest" "seems like a 'reasonable' approach [need] finer details". P.Exh.395 |
| July 3, 2013 | Jones/SGD | Evans/IE | SGD generally supports the manual back-up plan at both DLR and WDW; |

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| | | | as electronic pass system “becomes fully available at WDW (and eventually at DLR), we could then revisit this and determine and update/replacement strategy.” P.Exh.433. |
| July 4, 2013 | Jones/SGD | SGD | <i>“My 2 cents everyone... Based on how this whole process has gone with Park Ops, I believe we all can agree that “feedback/comments/suggestions” are not really being considered with a whole lot of weight from anyone. Park Ops is also wanting this to be “their” project with all facets being their idea.”</i> P.Exh.431 |
| July 4, 2013 | Appleton/DLR | Jones/SGD | <i>“I think we agree it is not perfect and we have proposed our best suggestions and should let them run their organization as we are a client. They will only change after they personally experience the issues first hand.”</i> P.Exh.387 |
| July 6, 2013 | Park Ops | IE | <i>“[W]e do not believe we should launch a separate process for [autism].”</i> P.Exh.386 |
| July 6, 2013 | Gossett/Park Ops | IE | <i>“I too think it is a slippery slope to single out one disability. I think our time should be spent developing a strong service recovery approach, and apply it when necessary <u>regardless the of the individual’s needs.</u>”</i> P.Exh.386 |
| July 22, 2013 | Jones/SGD | Armor/IE | SGD asks IE: When will the executives take up the new plan? P.Exh.412 |
| July 23, 2013 | Armor/IE | Jones/SGD | <i>“This has already gone to Tom and the site Presidents to get approval for implementation, we will probably be giving updates on timeline and pertinent details.”</i> P.Exh.412 |
| August 12, 2013 | Minnick/SGD | Armor/IE | <i>“...our Cast are already sending negative signals to our Guests about GACs – giving them the impression that they are all trying to take advantage of the system”.</i> P.Exh.391 |
| August 28, 2013 | Appleton/DKR | Armor/IE | “[Understand executives met and] discussed the new DAS and overall training that our cast members receive |

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| | | | on disability awareness...it was determined that the only awareness training for now would be for Guest Relations CMs. Do you know if there has been any other discussion on how we can update the Cast on disability awareness"? P.Exh.93 |
| September 4, 2013 | Armor/IE | Britton/Park Ops | "Got a VM from Bob Minnick with the Guests with Disabilities team. He voiced his considerable concern (and Greg's as well) that we are not going to be the industry leader in providing service above and beyond our competitors anymore. My sense is that <i>they are primarily displeased that there will not be a formal exceptions process to pre-fill the card.</i> I'm hoping you had a chance to connect with Greg. I'm getting the impression from them that they still think we can make "course corrections" (their choice of wording!) and do the exceptions process." P.Exh.388 |
| September 19, 2013 | Jones/IE | IE | "In my call yesterday with Alison and Todd, I again asked the question about how we (SGD) can authorize service accommodations beyond the DAS card. Alison and Todd... did say that we could, at any time, enter a "service" for a particular Guest into MAGIC (the database Guest Relations and other areas use to keep track of Guest situations/service recovery, etc.)... Todd assured me they would reinforce that any entries we make into MAGIC need to be honored by Guest Relations. Reasonable solution I guess (we'll need to see how this works out though)." P.Exh.393 |
| September 25, 2013 | Haines, Public Affairs | Various | "I am trying to pull together a call for a small group of us to discuss the changes to the GAC/DAS policy. As you all are well aware, we are hearing A LOT of concern from the autism community - which I know you all anticipated. To |

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| | | | help manage these concerns, we want to better understand how we arrived at the new process.” P.Exh.298 |
| September 28, 2013 | Mark Jones | | Re: Park Ops conference call: <i>“We brought up the call center/pre-validating idea (short or long term) and Alison immediately said “this is not the place to talk this, it was discussed yesterday amongst senior leadership, and there’s not really an appetite for this.” Not sure why, but this is the same broken record type response we’ve gotten for months when bringing up something.”</i> P.Exh.405 |
| October 2, 2013 | Jones/SGD | IE | Asks Armor/Evans (IE) to confirm that among autism-related scenarios <i>“that the more common process a Guest Relations CM would follow would from #4 (offer Re-Admission passes without any kind of “cap” based on the circumstances and the Guests’s service needs).”</i> P.Exh.420. |
| DAS Released at both WDW and DLR | | | |
| October 24, 2013 | Hale-Jones/SGD | IE | SGD proposes a survey of DAS performance at both WDW and DLR. P.Exh.427 |
| October 24, 2013 | Armor/IE | All | We do not support a survey of DAS performance, at least not for 3-6 months. P.Exh.427 |
| November 1, 2013 | Manangu/Guest Communications | Guest Communications | <i>“[Guest complains that the] week before DHS only gave him 2 Re-ads although my file for him stated 4. Today, he was told the re-entry passes were given once and they expired. I called Alison. She tells me it is a case by case basis and they are supposed to stick to the DAS as it is designed to work. She mentioned many issues with other Guests trying to get more FastPasses. They are telling them they may not be able to continue giving them the FP moving forward.”</i> P.Exh.423 |
| November 5, 2013 | Manangu/Guest Communications | SGD | <i>“Can you tell me if we will still be able to provide Guests with the FastPasses</i> |

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| | s | | moving forward? <i>There is some info being communicated to Guests who really have needs that it is a one-time courtesy.</i> ” P.Exh.423 |
| November 6, 2013 | Jones/SGD | Manangu/Guest Communications | I believe your team and my team are under the same understanding that Park Ops needs (and has agreed) to honor any and all information we enter in Magic including “ongoing provisions” of reads/ FP’s for those who need it above and beyond the DAS card. Please copy Maureen and I on your note and I can then add to it as we’ll ultimately need to engage Alison Armor from Park Ops and her new leader to remind them of our “agreement.” P.Exh.423 |
| November 6, 2013 | Heather Havey | | <i>“Alison/ Todd- another example of where Guests are being told the FastPasses are one time exceptions. And see the note about riding multiple times- I think we talked this, but it’s not being appropriately operationalized.”</i> P.Exh.410 |
| November 6, 2013 | Minnick/SGD | Armor/IE | “Were you planning to have the IE come back and measure to see if we have had an impact with the DAS vs. GAC in terms of ride capacity impact?” P.Exh.383 |
| November 11, 2013 | Armor/IE | SGD | “Once we get our full-time data collectors on-board in the next few weeks, we will start to think about how to do a more studies of FP redemption. We need these studies for many reasons and DAS is just one. The hard part is that we don’t have very comprehensive historical GAC data to compare.” P.Exh.424 |
| November 12, 2013 | Jones/SGD | SGD | <i>“I’m hearing rumors/grumblings that some Guests are being told at Guest Relations on both coasts that their reads/FP’s above and beyond the DAS Card are “one time exceptions” and they should not expect to receive them during their next visit –OR- during a follow up visit, these Guests</i> |

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| | | | <i>are not receiving readds/FP's (or are receiving a lesser number of readds/FP's that they did during the first visit). If any of this is, in fact, true and is happening more often than not, we will need to revisit this with Park Ops as their "agreement" with us was that readds/FP's would eternally be a part of the landscape for those Guests who need this service beyond what the DAS Card can offer."</i> P.Exh.429 |
| January 9, 2014 | Jones/SGD | Hale/SGD | "I think DAS is working for many of our Guests but, as you mentioned, <i>there is a still that percentage of guests with autism and other disabilities who are potentially being undeserved. I am also aware that each site as well as each park in Florida has their own thoughts around re-ads and what is appropriate.</i> P.Exh.406 |
| January 20, 2014 | Kricorian | Various | "[L]eadership asked us to put the DAS Guest Research on hold. If/when the project is reactivated, we can pick up where we left off with this team. If you hear anything directly from DLR/WDW site leadership about wanting the project to be reactivated, please let us know." P.Exh.409 |
| January 21, 2014 | Hale/SGD | SGD | "I don't recall [the decision to stop the DAS performance survey work] being discussed in any meetings I was in. I have been pushing that <i>we need to keep measuring how we are doing against the original goal (eliminating ghost riders) as well as our DAS performance.</i> " P.Exh.409 |
| February 10, 2014 | Lowery/Community Relations | Jones/SGD | "Just a heads up, in the autism community, some conversation now is that unless you "know somebody who can pull strings" the new DAS is a nightmare and just to stay away. Jacob, I don't blame you for doing what you need to do for these folks. I just hope it works out for them. But <i>I do think someone needs to admit the new</i> |

| | | | |
|-------------------|-----------|----------------------------|--|
| | | | <i>system does not work for Autism families. All disabilities are not equal.</i> " P.Exh.436 |
| February 10, 2014 | Jones/SGD | Lowery/Community Relations | "I hear you and am aware of the challenges the Autism community continues to face." P.Exh.436 |
| February 20, 2014 | Hale/SGD | SGD | In discussions that did not include SGD, executives have rejected our proposal "of exploring a pre-assigned DAS card." P.Exh.435 |
| February 11, 2014 | Jones/SGD | Hale/SGD | "Not sure how much you know about this one Greg but I will say that my continuing to be the "poster child" for our responses about an unfavorable service is getting old." P.Exh.306 |
| February 18, 2014 | Hogan/SGD | Jones/SGD | "Were you aware Guest Comm is no longer able to set up Guests with Cognitive Disabilities with anything in advance? They are sending them to Guest Relations for assistance." P.Exh.202 |
| February 26, 2014 | Jones/SGD | SGD | "ABSOLUTELY agree Greg that we need a customized "Option 3" (Guests able to choose their own attractions and order) as I'm uncertain how many of those guests with Autism-related concerns are really going to benefit from a "locked in" set of 4 attractions. I'll see if I can find a few letters to support this in the next day. Option 1 states this service "would be used for Guests who need additional help planning their day" and one of the "advantages" listed for both options is "Allows Guests to plan their days" however, based on what we're hearing from our Autism families, this is NOT what they want if it means WE dictate the attractions/ order of the attractions they visit. Bottom line in my opinion... <i>if this solution is being done mainly to serve the Autism Community, it falls short as written/ proposed and will not solve the issue at hand.</i> " P.Exh.400 |

| | |
|------------|---|
| June, 2014 | Within days of the unsuccessful mediation of this case, Jones and the other SGD personnel who previously reported to Hale are restructured, and now report to Armor/IE. |
|------------|---|

H. Disney should Not be Heard to Argue that the DAS Actually Accommodates, Because the DAS was Not Created to Accommodate

Disney's argument that the DAS accommodates disabled persons such as A.L. must be discredited because *disability accommodation is not the purpose for which the DAS created*. If the DAS should actually accommodate any disabled person, it does so only serendipitously. The DAS was created with many objectives in mind, none of which was creating a tailored and highly accommodating disability policy.

Disney's prior Guest Assistance Card was not replaced for any reason related to its functionality; the GAC was hugely accommodating. Disney's records reveal the actual reasons for replacing a functional accommodation policy with a dysfunctional one.

1. "Abuse"

Disney's most oft-cited reason for abandoning its prior GAC program in favor of the DAS is "abuse" of the DAS. Disney has not produced any quantification of this prior "abuse." Disney has furnished evidence that an *infinitesimal* percentage of Walt Disney World guests carried a GAC.⁷ P.Exh.5. But Disney has never even speculated as to how many of these GAC holders were actually abusing it. In discussing "abuse" Disney cites, as an example, its count of "ghost riders." Ghost riders are the extent to which persons riding a ride exceed the number of distinct ticketholders riding a ride. Disney cites high "ghost rider" counts to show that some GAC holders must have been repeatedly riding certain popular attractions. But for many guests with autism, whose routine behaviors lead them to be colloquially deemed "repeat riders," this is

⁷ The precise infinitesimal percentage is contained in the exhibit which will be filed under seal. The unredacted exhibit is also before the Court under seal, as Exhibit 2 to Plaintiff's Memorandum of Authorities in Support of Motion for Summary Judgment.

precisely the accommodation they sought in obtaining the GAC in the first place. Their pre-wired need is to visit one attraction over and over, and that is precisely the need the GAC accommodated. Apparently Disney deems such a user of its accommodation to be an “abuser” of the accommodation, though the disabled person is doing absolutely nothing improper or inconsistent with issuance of the GAC in the first instance.

For whatever reason, Disney appeared to favor, above perhaps all else, the concept of “equalizing wait times.” When considering the possibility of creating a “pre-populated DAS card” with three or four rides pre-entered onto it for autism families, an idea espoused by Disney’s disabilities team but rejected by Disney’s industrial engineers, Sarah Riles of Disney noted that her initial reason for disfavoring the concept was that it would “not equalize the wait time for all Guest [sic] which was a guiding principle.” See P.Exh.142

At the outset of the GAC study group which created the DAS, the group’s goals were clearly stated:

Attraction Access Objectives

- Readdress the current GAC Card process and how Guests traveling in Wheelchairs or Mobility Scooters are handled at Attractions at the US Based Parks.
- Create a new Processes [sic] to address the accessibility issues while not granting preferential wait time. *Equal wait time for all Guests.*
- Where applicable leverage the FASTPASS systems.

P.Exh.5 (May 2012; emphasis added)

Within the first two months the order of the “Objectives” changed:

Attraction Access Objectives

- *Equalize the wait time for all Guests* by creating new processes to address the attraction accessibility issues while not granting preferential wait time via an expedited back door process.

- Where applicable leverage the FASTPASS systems and queues.
- Review the current GAC Card process and recommended improvements in process for issuance and tactical delivery at the attractions.

P.Exh.6 (July 2012 draft; emphasis added). P.Exh.35 (team “Objective”: “Create a new process to address the queue accessibility issues while *equalizing wait time for all Guests*”)

P.Exh.80 (team “Goal”: “*Equalize wait time*”).

While Disney has never explained why this over-riding principle should hold such importance, the reason seems clear: Disney wanted to increase the wait times of its disabled guests to make the DAS less attractive to abusers. One Disney executive, when describing the DAS (under a once-contemplated name of DAC), noted that one category of fraudster would be “[t]hose getting a DAC that do not truly have a disability. The registration process will not be able to catch abuse on this category. At least we will realize the improvement that the guests in this category will be equalized in their wait time as others.” See P.Exh.20

2. ECVs

Disney initially formed its committee to study the GAC because Disney was experiencing rapid growth of electronic convenience vehicles (ECVs) in the Disneyland Resort. A.L. Mot., Ex. 1-2. Due to the close proximity of the enormous population of visitors in southern California, the proportion of guests who are local visitors is much higher than is true for Walt Disney World. Disneyland is convenient for nearby residents to attend on a frequent basis, while Walt Disney World is much more of a destination location. As a result, Disneyland was seeing enormous growth in frequently-visiting guests using ECVs. See P.Exh.5, 6.

3. Ghost Riders

Disney’s industrial engineers have historically hated the fact that “ghost riders” exist to prevent precise tracking of guest activities. Because three to four times as many GACs were

issued as DAS, the DAS would serve to simply reduce the number of guest activities which could not be tracked. See Hale, January 21, 2014: “I don’t recall [the decision to stop the DAS performance survey work] being discussed in any meetings I was in. I have been pushing that *we need to keep measuring how we are doing against the original goal (eliminating ghost riders) as well as our DAS performance.*” P.Exh.409. Obviously, eliminating ghost riders and the DAS are two different things, and the DAS performance was not “the” original goal, if it was a goal at all. P.Exh.383 (inquiring whether now one-month post-DAS the Disney industrial engineers will now study whether “we have had an impact with the DAS vs. GAC in terms of ride capacity impact?”)

4. Tour Guides

With the DAS, Disney also sought to eliminate a then-growing phenomenon of outside tour guides who could compete with Disney’s own escort services. P.Exh.48; Riggs Dep. 25:18-27:24; Disney Corp. Dep. 54-57. When considering the possibility of creating a “pre-populated DAS card” with three or four rides pre-entered onto it for autism families, an idea espoused by Disney’s disabilities team but rejected by Disney’s industrial engineers, Jenny Sweetman of Disney noted several reasons for disfavoring the concept that it “would also make the DAS card more popular with our unauthorized tour groups.” P.Exh.141.

I. Disney’s Assertion that the DAS “Virtual Wait” is Equal to the Wait Times of Non-Disabled Guests is False: Disney Posts False Wait Times for its Attractions

The entire concept of Disney’s “virtual” wait and the DAS is that the disabled guest is required to wait just as long as non-disabled guests. However, what Disney has not publicly disclosed is that the posted “wait times” at each ride are deliberately posted by Disney in times which may or may not reflect the actual wait times. P.Exh.31 at AL0004778-4779 (“Actual

Standby Wait Time” vs. “Posted Standby Wait Time”. Disney posts false wait times to manipulate crowds as they move through the parks, deterring them from visiting certain attractions while steering them toward others. This means a disabled guest who uses the DAS is given a virtual wait time which may not reflect the actual wait time; rather, it reflects an arbitrary wait time which Disney posts for the crowd, intending guests to rely upon it as genuine and redirect themselves to attractions Disney deems beneficial at that moment. P.Exh.43 (Disney admits that actual standby wait times are inconsistent with posted times, that Disney’s “wait time model” is inaccurate, that more data is needed to “generate an accurate model,” and that only then will Disney be able to “post and (sic) accurate wait and thus put an appropriate time on DAS cards.”) Even more troubling is the fact that Disney is posting absurdly high wait times with knowledge that DAS users will be given the same false times. See P.Exh.44 (Disney control personnel are uncomfortable with being instructed to post “crazy high wait times” such as to post a 150-minute wait time at Peter Pan when the actual wait time was only 35 minutes (which is deemed “not acceptable no matter what”), to post an 80-minute wait time on Pirates of the Caribbean when the actual wait time was only 40 minutes, and to post absurd wait times whenever operations staff direct them to “post us at a stupid high wait time so people will stop getting in line.” There is no way to know whether a particular guest’s DAS wait time is the same as the actual wait time, and it appears DAS holders are actually waiting longer than non-disabled guests. Disney’s posting higher wait times than the public genuinely experiences is systemic. P.Exh.31.

J. Disney's Assertions Regarding DAS Performance Should be Discounted as a Result of Data Manipulation

Disney's records establish that Disney has made a conscious effort to create a record which is skewed in favor of supporting the DAS.

On November 13, 2014, Meagan Lane, Arrival Experience Manager, expressed a concern to the Manager of Guest Relations that "It seems like we may just want to let the CM know that statements like the above aren't the best thing to put into a legal notes field that could be subpoenaed in court." P.Exh.320

Disney's Guest Communications group, the group which responds to guest complaints, *specifically avoids putting Disney's responses to DAS complainants in writing*, thus skewing the available evidence relating to the handling of guest complaints. For example, one guest communication of March 9, 2015 explained that the guest herself has autism and that talking by telephone created anxiety for her, which led her to hope she could receive a response by email. The internal instant messaging between two of Disney's Guest Communications personnel shows how uncomfortable they found the notion of putting a response in writing:

Hook, Kayleigh [11 :47 AM]:

question for you when your not busy .. ive got a pre arrival DAS that cant be answered through the standard ... i sent an invite and she replied that she only wants to communicate through email what is a nice way to respond to that

Michelena, Justin [11 :48 AM]:

maybe, something like unfortunatley, I am unable to provide you with the requested information at this time. Please visit Guest relations upon arrival? im assuming it was something you dont want to put in writing

Hook, Kayleigh [11 :49 AM]:

alright, ill draft something similar:)

no its not. she wants to know about gettign her tickets refunded if he has a meltdown

P.Exh.324

The situation arose again a month later when Guest Communications received a similar message, which the Disney employee pasted into an internal discussion as follows:

Hook, Kayleigh [9:44 AM]:

I am a 23 year old diagnosed with autism. I also have very severe anxiety and ADHD. Not only is it hard to wait in long lines, but it is also difficult for me to understand the concept of time as well. If I ever went to Disney World, I know the DAS card would not work for me at all. I was curious to know what else can be done to make sure both needs get accommodated properly for me when I do. Also, I prefer to discuss this through email as my special needs prohibit me from talking on the phone too.

uhh ??? what am i gonna do with that since she cant talk on the phone

Michelena, Justin [9:45 AM]:

oh boy ...

I would send it to Leslie

see what se says

because I wouldnt feel comfortable putting this in an email

P.Exh.205.

Once details of the DAS were released, two weeks before it was implemented, Disney started receiving a huge volume of complaints. A leader of Disney's Guest Communications group gave this instruction to the team:

...the messages below are the only approved messages we have. If you have outstanding Guest mail on this topic - please leverage the message points below to respond verbally. Do not, at this point, put this information in writing.

P.Exh.214 (Havey email September 24, 2013).

VI. A.L. Requested a Reasonable Modification

Plaintiff A.L. visited Walt Disney World with his mother D.L. and, as required by Disney, began the day by reporting to Disney's Guest Relations location. At Guest Relations A.L.'s mother told the Disney employee that her son has autism and that his disability prevents him from experiencing the park in the same fashion as other guests. A.L.'s disability prevents him from being able to "browse" or idly kill time. Consequently, instead of browsing the park in

an unrehearsed and adventurous manner, his disability requires him to experience only certain Disney attractions, and only in a precise order. The Disney employee ignored everything A.L.'s mother tried to explain, and ignored all facts and science relating to persons with severe autism. Though D.L. had raised her then-21-year-old son since birth, the Disney employee insisted that D.L.'s knowledge of her own son's special needs was simply wrong, and insisted on trying to give D.L. a lesson in how to re-organize A.L.'s routine and day.⁸

D.L. will testify (consistent with her MSJ affidavit) that the Disney employee then outlined the DAS and how it operates. D.L. specifically explained that the DAS will not accommodate her son's special need, and explained why. She was concerned about the order or sequence in which A.L. could experience the park attractions. After extensive complaints and efforts to make Disney's Guest Relations personnel understand that the DAS would not work for her son, she was given four additional "re-admit" passes to allow access to the parks' Fastpass lines.

A. Disney Accommodated A.L. for 20 Years

For decades, with few exceptions, Disney's accommodation of A.L. and other persons with moderate to severe autism was the finest in the country. From 1992 through most of 2013, Disney accommodated guests like A.L. with a program Disney called the "Guest Assistance Card" ("GAC") in the 1990s and 2000s. During those years, A.L. visited the Disney parks many times, and he was admirably accommodated. With a GAC, a Disney guest was generated to access Disney's attractions through Disney's "Fastpass" lines. Fastpass lines are otherwise reserved for guests who make appointments to visit the attractions. The ability to make Fastpass

⁸ Disney employees, even those in Guest Relations who are charged with doling out DASs, are not trained in the needs of families with autism. This may explain their preposterous efforts to engage autism families in discussions of "itinerary planning," as if they can suddenly educate an autism parent as to how to change an autistic child's unchangeable routine. Riggs Dep. 59:12-60:14.

line appointments typically expires early on any given day of a Disney park visit, because the number of appointments is limited and guests consume the available appointment times at the beginning of the day. The Fastpass lines do not permit *immediate* access to the attractions, because even guests who make appointments must usually wait a few minutes to enter an attraction at the appointment time.⁹

Disney admirably accommodated A.L. for the first twenty years of his life, by providing exactly the accommodation he first requests here – access to Disney’s Fastpass lines. History proves the modification – which in the past was the principal accommodation, not a modification – is readily achievable. See *Burriola v. Greater Toledo YMCA*, 133 F. Supp. 2d 1034, 1037 (N.D. Ohio 2001) (court accepted as evidence that child with autism, if given reasonable modifications, could succeed in YMCA program, fact that YMCA had been able to accommodate him for over twenty months in the past, prior to failing to do so).

B. Disney Regularly Provides the Same Accommodations to Others

After the unfortunate experience of A.L.’s visit to the Magic Kingdom in December of 2013, Disney asked D.L. how many extra re-admit passes might accommodate A.L.’s special need. D.L. replied that she was not certain but that perhaps ten (10) passes per person might be adequate. P.Exh.150. A.L. and D.L. cannot be certain this number would be adequate. They have had no opportunity to find out because Disney has never communicated an actual willingness to provide this many passes.

As it turns out, Disney frequently gives this many extra re-admission passes to other similarly-situated guests. Disney has not explained why those persons or their disabilities are

⁹ Disney’s disability programs historically provided other limited or ride-specific accommodations, such as access through an alternate entry. Alternate-entry access and other limited or ride-specific accommodations were more common at Disneyland than at Walt Disney World, as many of the California attractions were built long before the Florida attractions.

“more deserving” of passes than D.L. is. Tellingly, Disney has provided substantial quantities of passes to others with no discernible impact to its business. Disney has offered no evidence to show that each time Disney has made such an award its business has collapsed into a fundamentally altered version of its former self. A number of witnesses can testify for Plaintiff to establish that Disney has in fact awarded large numbers of passes to many guests. These include Plaintiff’s witnesses H.M. (10 passes per person per visit); C.M. (10 passes per person); M.G. (8 passes with special membership; 8 more “one time only”).

Disney’s own records disclose similar awards to other guests. P.Exh.46 (“The last time we did this, we just gave them a MagicBand with 30 non-standard FastPass+ entitlements.”).¹⁰

C. Providing the Requested Modification Would Cost Disney *Nothing*

As outlined in the below discussion of Disney’s fundamental alteration defense, Disney has offered no evidence that permitting a guest with autism to enter through a particular line, or giving that guest passes with which to do so, presents any cost burden to Disney. Nor would inferring the existence of any such burden be logical. There is simply no cost differential between awarding 4 extra passes to A.L. and awarding him a dozen.

D. Other Disney Facilities Adequately Accommodate A.L.’s Special Need

At the trial of this cause, D.L. will attest that other Disney-related facilities, outside its theme parks, have no trouble accommodating A.L.’s special need. She will also attest that Disney has shown an ability to accommodate A.L.’s special need in some of its theme parks, such as Epcot (but with no commitment to do so in the future), though not at Magic Kingdom or Hollywood Studios.

¹⁰ It is impossible to say how many similar occasions of similar awards exist, because Disney policy prohibits its Guest Communications personnel from placing such information in writing. See the Data Manipulation section of this Brief.

E. Disney's Competitors Adequately Accommodate A.L.'s Special Need

At the trial of this cause, D.L. will further attest that Disney's competitors – other theme park operators – also seem to have little trouble accommodating A.L.'s special need. Because of D.L.'s position in the central Florida autism community, Mark Jones of Disney specifically reached out to D.L. as a resource, seeking information about how Disney's central Florida competitors accommodate A.L.'s disability, and she provided same. See P.Exh.145 No logical distinction between Disney's ability to do so and another theme park operator's ability to do so is evident.

F. Disney Should Not be Heard to Argue that the Requested Modification was Unreasonable Because Disney Never Assessed It

When D.L. and A.L. visited the Magic Kingdom and report to Guest Relations to obtain a DAS, Disney performed no bona fide individualized assessment of A.L.'s special need or of Disney's ability to reasonably modify the DAS to accommodate him.

VII. Disney Cannot Prove the Requested Modification would Require a Fundamental Alteration

Disney will have the burden of establishing that the cost of implementing A.L.'s requested modification, of allowing him access to the Fastpass lines, or perhaps awarding his family sufficient extra passes to be able to follow a routine of experience with manageable incremental wait times. *Larsen v. Carnival Corp.*, 242 F. Supp. 2d 1333, 1342-43 (S.D. Fla. 2003) (“defendant bears the burden of proving that under the particular circumstances, the requested modification would fundamentally alter the nature of the goods or services being offered”). Disney cannot meet its burden.

Surely there can be nothing unique about an amusement park. In addition to being specifically enumerated in the definitional list of public accommodations, the Department of

Justice has issued the following opinion more than twenty years ago: “[Under ADA] an amusement park may be required to modify its policies to allow an individual with a disability to be admitted to an attraction without waiting in line, if delay would prevent the individual from participating in the service because of the nature of the disability.” DOJ letter III-4.2000 #65, May 14, 1993. P.Exh.64.

A. Disney Has no Proof as to Burden or Monetary Cost

Disney cannot say whether a particular requested modification would accommodate guests such as A.L. because it has never studied the issue. Hale Dep. 35:24-36:2 (“Has Disney ever performed a study or analysis of how guests with developmental disorders, including autism, experience the parks? I'm not aware of a study like that, no.”); Jones Dep. 67:15-19 (unaware of any study of disparate impact of DAS on persons within the autism spectrum).

Nor can Disney say how much providing the requested modification would cost. Hale Dep. 36:3-21 (Disney has no data regarding the number of visitors who have developmental disorders, or the number of DAS cards which are issued to such persons); Jones Dep. 96:5 (Disney does not know or track how many disabled persons visit the parks each day); Disney Corp. Dep. 47-48 (Disney has never studied the monetary cost of continuing the GAC program); 49, 51 (Disney cannot answer: the extent to which providing GAC access to A.L., or to guests with cognitive impairments, would require fundamental alteration of services Disney provides); 49-50 (impossible for Disney to determine the cost of providing GAC access to A.L., or to any single person, or to guests with autism); 120:24-121:24 (impossible for Disney to know cost of giving one re-admit pass in addition to DAS; same for five readmit passes); 163:18-164:1 (Disney has not studied percentage of guests who have autism, or developmental disorders, or cognitive impairments). Although Disney cannot know the cost of granting readmits to a guest

for whom the DAS is inadequate, a Guest Relations employee would be scrutinized for promising a guest four re-admits, permanently, or for giving ten re-admits for a single day. Disney Corp. Dep. 161:11-162:20. Disney's technological cost is insignificant, as it commonly adds re-admit passes to guests' Magic Files, and can easily do so even if the passes are deemed "entitlements." P.Exh.46 ("The last time we did this, we just gave them a MagicBand with 30 non-standard FastPass+ entitlements.").

Disney simply cannot show that modifying its accessibility policy to accommodate A.L.'s special need – to simply use the Fastpass lines at Disney parks, just as he did for the first 20 years of his life – would entail a cost which is disproportionate to the benefit to be provided.

B. The So-Called "Abuse" Phenomenon Does Not Support Disney's Fundamental Alteration Defense

Disney cannot say what GAC "abuse" was costing, especially since Disney never created a system for reporting "abuse." Riggs Dep. 30:22-31:15. "We don't have very comprehensive historical GAC data". P.Exh.424 In short, Disney has:

- No proof of the cost of past "abuse";
- No proof of the cost of future "abuse" which might have otherwise occurred;
- No proof of the existence of any "abuse" by persons with cognitive impairments; and
- No proof of any "abuse" by A.L. or D.L.

As discussed above in this Brief's general discussion of "abuse," if Disney had commissioned a study of abuse costs, the results would likely be unavailing for Disney's current purposes. A very small percentage of Disney's guests ever carried a Guest Assistance Card, and there exists no reason to assume that a large percentage of those GAC holders were anything other than "really" disabled.

VIII. Remedies, and Conclusion

Disney has repeatedly advised that it has not made material changes to the DAS and has no plans to do so. Consequently, D.L. knows that A.L.'s and D.L.'s experience will be materially the same if they should visit the Magic Kingdom again in the future. This being the case, the Court should enter an order enjoining Disney to comply with applicable law when providing A.L. with access to Disney's theme parks.

Notwithstanding Disney's common refrain which tends to mischaracterize Plaintiff's pleas for fair treatment under ADA, Plaintiff is not demanding that Disney reinstate its GAC program, for himself or for anyone else. Nor is he demanding immediate access to anything. Nor is he demanding that Disney adopt an entire disability program tailored specifically to A.L. The relief need not be so grandiose.

In light of the foregoing arguments and authorities, Plaintiff A.L., by and through his mother, D.L., as his Next Friend, Parent and Natural Guardian, asks this Honorable Court to enter judgment in his favor as follows:

- Finding that Disney's past discrimination against Plaintiff, and Disney's present accessibility system along with Disney's refusal to modify Disney's accessibility procedures, establishes beyond question that, should Plaintiff return to Disney's theme parks, Disney will fail and refuse to reasonably and lawfully accommodate him in accordance with the Americans with Disabilities Act; and further
- Ordering that Plaintiff is entitled to injunctive relief pursuant to the Americans with Disabilities Act; and further
- Ordering Disney to provide access for A.L. to its attractions through Disney's Fastpass lines, as those lanes permit access for A.L. within a manageable amount of

time consistent with the special need dictated by A.L.'s disability, which is a limit of about 10 or 15 minutes at any attraction; alternatively, the Court might order Disney to award to A.L. extra "re-admission" passes of a number tailored to the individualized assessment of A.L.'s special need; and further

- Enjoining Disney to adopt appropriate training procedures which will educate Disney's personnel to provide an ADA-compliant experience for A.L. during his future visits to the Disney parks; and further
- Retaining jurisdiction over this matter to:
 - Adjudicate any disputes regarding Disney's compliance with the Court's injunction order;
 - Assess attorneys' fees and costs; and
 - Provide any other relief the Court may deem proper.

Plaintiff thanks the Court for its attention and looks forward to appearing at the trial of this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via Electronic Mail this 29th day of January, 2016 to:

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