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TO: Families of Disney Guests with Substantial Cognitive Impairments

FROM: Andy Dogali

RE: Disney's Discrimination Against Guests with Autism; A Brief Discussion

The Plaintiffs allege that in October of 2013 Disney abandoned its prior disability policy, the Guest Assistance Card "GAC." The GAC worked admirably for many years for all members of the disability community. In October of 2013 Disney implemented its new "Disability Access System" ("DAS"). The DAS creates a horrible experience for Disney's guests with moderate to severe cognitive impairments, such as those arising from autism and similar developmental disorders.

Disney's theme parks typically have two separate lines for admission into its more popular attractions: Standby lines, for persons who choose to walk up to the attraction and wait in line, without a reserved time; and Fastpass lines, for persons who are given an appointment to visit the attraction at a particular time during the day. On a constant basis through each day, Disney controls the number of Fastpass admissions it permits for each attraction. The Fastpass reservation concept gives guests the option of visiting attractions without enduring the Standby lines, which can exceed two hours in wait time on peak days, for some attractions. Each guest gets three potential Fastpass times. They are available for reservation 60 days in advance for certain guests, 30 days for other guests, and, to the extent there are any left on the day of the visit, they are available for booking during the day. It is common for high-demand attraction Fastpass times to be fully booked long before the day of anyone's visit, so they are often unavailable for same-day visitors.

Under the GAC, Disney permitted disabled persons to use its Fastpass lines along with non-disabled guests who had Fastpass reservations. Doing so accommodated a disabled guest in two ways: 1) It relieved the disabled guest of the physical burden of waiting in the line itself; and 2) It relieved the disabled guest of the temporal burden of idly waiting a long period of time for entry into the attraction. With the DAS, Disney retained the first accommodation and abandoned the second.

Concurrent with implementing the DAS, Disney improved most of its standby lines so that they are now wheelchair-accessible. This means that persons with mobility impairments must wait the same length of time in line as non-disabled guests. This leaves a much smaller pool of disabled guests to accommodate. With mobility-impaired guests eliminated from Disney's disability access policy, the DAS was principally intended to be used by guests with cognitive impairments.

The DAS is an ineffective accommodation because most persons with moderate to severe cognitive impairments lack the capacity to understand the concept of time. For these guests, waiting some period of time in the present to receive a benefit at some time in the future (going on a ride) simply does not compute. "Waiting" now is simply doing nothing now; it is not doing something now in anticipation of doing something later. Persons with moderate to severe autism do not get and keep "appointments" for anything. As a director of California's Association of Regional Center Agencies put it:

[F]or some families with a member with a developmental disability, the issue is not waiting in a line, but simply waiting. Individuals with either autism or certain other developmental disabilities are both fundamentally attached to routine and not always able to understand waiting. It is not a matter of learning. It can be the case that the very nature of the disability makes waiting an impossibility.

Similarly, the Mayor of Temecula, California, writing on behalf of at least nine local governments, wrote to Disney just prior to Disney's rollout of its new policy:

Disneyland commendably accommodates guests with disabilities by providing special access to rides without the need to schedule a "return time," and this is critical to children on the Autism Spectrum who have limited to no ability to comprehend the concept of "returning or waiting for a designated time," especially within a theme park's stimulating environment...Under Disney's proposed new Accessibility program, Special Needs' children would be required to visit a kiosk before each ride to be given a designated boarding time equal to the current wait-time of the ride's line (upwards to 75 minutes)...This seemingly simple ride-rearrangement may be tolerable for certain disabilities; however, is a traumatic ordeal for Autistic children, harrowing/humiliating for their families, and will be undoubtedly disturbing to other park visitors who will witness these physical meltdowns. Children on the Autism Spectrum have limited to no verbal skills, and do not have the cognitive ability to comprehend or fully process a "return time or wait time."

The Florida Council on Human Relations has received dozens of complaints about Disney's program. FCHR has issued findings regarding 13 of the claims, and for all 13 claims

FCHR found probable cause to believe Disney discriminated against the guest by creating a blanket disability policy which does not permit exceptions for particular guests' special needs.

Readmission Passes

Under ADA, when a disabled person visits a public accommodation such as a Disney park, the guest inquires as to the facility's general disability policy. Where something about the guest's disability makes the general accommodation policy inadequate, the guest is expect to request a modification of the policy, one tailored to the guest's special need. If the requested modification is reasonable, the facility must provide it, so long as the modification would not require a fundamental alteration of the facility's business.

For these plaintiff families, the DAS is useless, because, at most, it accommodates a guest whose disability limits where they can wait. It does nothing for a guest whose disability limits how long they can wait.

One service accommodation offered by Disney which does accommodate a time-related disability is the "readmission pass." A re-admission pass simply gives a guest the right to use a Fastpass lines to access the attractions, which is exactly the accommodation which nearly all the Plaintiffs requested. But Disney has always refused to state that re-admission passes are available to a guest due to the guest's disability. Instead, Disney insists the passes are only a "recovery tool" which is available to help a guest who is having a bad time to recover and have a good time.

There has always been evidence that Disney's industrial engineers convinced Disney's disabilities professionals to go along with the DAS concept by assuring them of one thing: guests who came to the parks with autism would be given readmission passes. Disney did not want to publicly announce that readmission passes were available on account of a guest's disability, expecting that an epidemic of fraudster faux-autism guests would swarm the park claiming to be disabled and demanding readmission passes.

Intentional Discrimination

An unusual aspect of these cases, in comparison to other ADA access disputes, is the fact that Disney knew its DAS would create a horrible experience for autism families. The plaintiffs' evidence includes dozens of internal Disney communications in which Disney expressly acknowledged that autism families would not be accommodated by the DAS, and Disney rolled it out anyway. The following is a brief summary relating to intentional discrimination.

As the DAS concept was being developed, from the spring of 2012 through the summer of 2013, Disney employed a team of persons whose entire job was to address Services for

Guests with Disabilities (“SGD”). The SGD personnel repeatedly warned Disney’s Industrial Engineers (“IE”) and Operations (“Ops”) personnel that the DAS would not accommodate the needs of persons with substantial cognitive impairments, such as many persons with moderate to severe autism:

My biggest concern with the discussion...is how a new policy/process/dance card will impact... (in particular, [guests] with Autism...when I say Autism, I mean those Guests who truly have no concept of time and “coming back later” to an attraction. [Jones/SGD, May 30, 2012]

SGD never stopped pushing Disney’s IE/Ops personnel to recognize that the DAS would fail guests who could not understand the concept of waiting:

The one concern I want to again raise...is the impact it will most definitely have on...those with cognitive disabilities such as Autism...where the concept of “time” or “waiting” is an issue. [Jones/SGD, May 15, 2013]

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. [Hale/SGD, May 17, 2013]

SGD's Continued Concerns That Were Not Addressed [include]... How to handle Guests with certain types of Autism where waiting in line is not a reasonable [sic] on their disability and what our "fall back" plan might be if this becomes a bigger issue. [Jones/SGD, June 15, 2013]

Before and after the DAS was released, Disney’s SGD disabilities professionals argued that an opportunity to make advance arrangements should be offered to guests with autism, by giving those guests an opportunity to “pre-load” the DAS card with a number of attractions the guest could visit without suffering a substantial wait time. Autism Speaks, with whom Disney communicated for purpose of saying it had consulted with the autism community, suggested precisely the same approach. Absent a pre-loaded card, SGD pushed for creation of some other back-up plan to grant exceptions for cognitively-impaired guests who need it. All these proposals to mitigate the discriminatory impact of the DAS were rejected.

We need to list specific significant directions that we don't agree with...We need to maintain an override process for any custom accommodation...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). [Hale/SGD, June 15, 2013 (emphasis added)]

I also agree... about needing an additional tool for service recovery. [Minnick/SGD, June 15, 2013]

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. [Jones/SGD, June 17, 2013]

"Back-up plan for Autistic Guest" seems like a 'reasonable' approach. [Jones/SG, June 30, 2013]

SGD generally supports the manual back-up plan at both DLR and WDW. [Jones/SG, July 3, 2013]

The engineers and operations personnel consistently chose their own business concerns over SGD's disability-oriented concerns.

[W]e do not believe we should launch a separate process for [autism]. [Sweetman/Ops, July 6, 2013]

I think our time should be spent developing a strong service recovery approach, and apply it when necessary regardless of the individual's needs. [Gossett/Ops, July 6, 2013 (emphasis added)]

[SGD is] primarily displeased that there will not be a formal exceptions process to pre-fill the card. [Armor/IE – September 4, 2013]

Ultimately, the SGD personnel realized the IE/Ops personnel were absorbed with profits and not guest service, and particularly not disabled guest service, and simply did not intend to listen to disability-focused input.

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. [Jones/SGD, June 15, 2013]

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. [Jones/SGD, July 4, 2013]

They will only change after they personally experience the issues first hand. [Appleton/DLR to SGD, July 4, 2013]

Ultimately, after thousands of complaints were received by Disney:

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 (emphasis added)]