

KAYE | SCHOLER LLP

1 RHONDA TROTTER (State Bar No. 169241)  
2 Email address: rtrotter@kayescholer.com  
3 KAYE SCHOLER LLP  
4 1999 Avenue of the Stars, Suite 1700  
5 Los Angeles, California 90067  
6 Telephone: (310) 788-1000  
7 Facsimile: (310) 788-1200

8 Attorneys for Defendant  
9 Walt Disney Parks and Resorts U.S., Inc.

10 **UNITED STATES DISTRICT COURT**  
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

12 A.L., et al.,

13 Plaintiffs,

14 v.

15 WALT DISNEY PARKS AND  
16 RESORTS U.S., INC.,

17 Defendant.

Case No. 2:14-cv-03327-R-RZ

**MEMORANDUM OF LAW IN  
SUPPORT OF WALT DISNEY  
PARKS AND RESORTS U.S.,  
INC.'S MOTION TO TRANSFER  
VENUE**

18  
19 Pursuant to 28 U.S.C. § 1404(a) (“Section 1404(a)”), defendant Walt Disney  
20 Parks and Resorts U.S., Inc. (“Disney”), by and through its attorneys, hereby moves  
21 to transfer this case to the U.S. District Court for the Middle District of Florida.

22 **PRELIMINARY STATEMENT**

23 This case challenges the steps Disney has taken to accommodate persons  
24 with autism and other cognitive disabilities at the Walt Disney World Resort  
25 (“WDW”) in Florida and the Disneyland Resort in California, referred to generally  
26 as the Disability Access Service or “DAS.” Notably, 24 of the 26 plaintiffs  
27 (including the lead plaintiff A.L.) who brought this case in California *only* complain  
28 of experiences in Florida. Similarly, 24 of the 26 do *not* reside in California;  
indeed, most of them live in Florida or in other east coast states. Because nearly *all*

1 of the park visits described in the 171-page Complaint allegedly took place in  
 2 Florida and not California, virtually all of the Disney employees who sought to  
 3 accommodate the plaintiffs and whose alleged actions are described in the  
 4 Complaint also work and live in Florida, not California. In short, plaintiffs had  
 5 almost no contact with Disneyland or California. Accordingly, this Court should  
 6 transfer venue.

### 7 ARGUMENT

8 Section 1404(a) specifically authorizes transfer of this action to the Middle  
 9 District of Florida by providing, “[f]or the convenience of parties and witnesses, in  
 10 the interest of justice, a district court may transfer any civil action to any other  
 11 district or division where it might have been brought.” 28 U.S.C. § 1404(a); *see*  
 12 *also Ventress v. Japan Airlines*, 486 F.3d 1111, 1118 (9th Cir. 2007). The purpose  
 13 of this section is “to prevent the waste ‘of time, energy and money’ and ‘to protect  
 14 litigants, witnesses and the public against unnecessary inconvenience and  
 15 expense.’” *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964) (internal citations  
 16 omitted). This case could have been brought in the Middle District of Florida  
 17 because defendant resides in Florida and most of the events giving rise to plaintiffs’  
 18 claims occurred there, and the factors used in the Ninth Circuit in assessing a  
 19 motion to transfer under 1404(a) weigh heavily in favor of transferring this case to  
 20 the Middle District of Florida.

#### 21 I. VENUE IS PROPER IN THE MIDDLE DISTRICT OF FLORIDA

22 The threshold question under Section 1404(a) is whether this case could  
 23 originally have been brought in the Middle District of Florida. *See* 28 U.S.C.  
 24 § 1404(a). Venue is proper in any judicial district in which “a substantial part of  
 25 the events or omissions giving rise to the claim occurred” or “any judicial district in  
 26 which any defendant is subject to the court’s personal jurisdiction with respect to  
 27 such action.” 28 U.S.C. §§ 1391(b)(2), (b)(3). For purposes of venue, a  
 28 corporation “shall be deemed to reside . . . in any judicial district in which such

1 defendant is subject to the court’s personal jurisdiction with respect to the civil  
2 action in question.” 28 U.S.C. § 1391(c)(2).

3 In the instant case, plaintiffs claim that Disney’s DAS card program violates  
4 the Americans with Disabilities Act (“ADA”) and state law because it allegedly  
5 failed to accommodate their special needs when they visited Disney’s theme parks.  
6 Compl. ¶¶ 1, 30, 36.<sup>1</sup> From the face of the Complaint alone, there can be no dispute  
7 that the overwhelming center of gravity in this case is in Florida.

8 Disney is subject to personal jurisdiction in Florida because it is a Florida  
9 corporation which maintains its principal place of business in Orange County,  
10 Florida, and because it owns and operates the four theme parks at WDW in Florida.  
11 Compl. ¶ 3. Thus, this case could have (and should have) been brought in the  
12 Middle District of Florida for the oldest and most common of reasons -- almost all  
13 of the events giving rise to plaintiffs’ claims occurred in Florida and Disney is  
14 subject to personal jurisdiction there. *See* 28 U.S.C. §§ 1391(a)(3), (b)(2). That it  
15 was brought in California can only be due to some perceived tactical advantage  
16 plaintiffs saw in filing in this Court.

17 **II. THE RELEVANT SECTION 1404(a) FACTORS WEIGH**  
18 **HEAVILY IN FAVOR OF TRANSFER**

19 Once it is established that the action could have been brought in the proposed  
20 transferee forum, the court must determine whether “the convenience of the  
21 parties,” “convenience of the witnesses” and “the interests of justice” make transfer  
22 appropriate. 28 U.S.C. § 1404(a); *Los Angeles Mem. Coliseum Comm. v. National*  
23 *Football League*, 89 F.R.D. 497, 499 (C.D. Cal. 1981), *aff’d*, 726 F.2d 1381 (9th  
24 Cir. 1984). In making such determination, courts will consider private and public  
25 interest factors which affect the convenience of the forum. *Decker Coal Co. v.*

26  
27 <sup>1</sup> Disney categorically and absolutely denies those allegations. *See generally* Dkt.  
28 40, Def.’s Answer.

1 *Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986). California courts  
2 have determined that the private factors include “[t]he relative ease of access to  
3 sources of proof [and the] availability of compulsory process for attendance of  
4 unwilling, and the cost of obtaining attendance of willing, witnesses . . . and all  
5 other practical problems that make trial of a case easy, expeditious and  
6 inexpensive.” *Los Angeles Mem. Coliseum Comm.*, 89 F.R.D. at 499; *see also*  
7 *Decker Coal*, 805 F.2d at 843. The public interest factors include “the local interest  
8 in having localized controversies decided at home [and] the interest in having the  
9 trial of a diversity case in a forum that is at home with the law that must govern the  
10 action. . . .” *Decker Coal*, 805 F.2d at 843 (internal citations omitted).

11 “The Court is to interpret these factors broadly, and to apply them to the  
12 particular facts of each individual case.” *Paaluhi v. U.S.*, No. 05-3997, 2006 WL  
13 5671235, at \*1 (C.D. Cal. Feb. 1, 2006). Not all of these factors carry the same  
14 weight, and the main focus under Section 1404(a) is to determine the location of the  
15 center of gravity of the litigation. *Id.* at \*2 (finding that transferring venue was  
16 warranted because “the majority of the operative facts” took place in the transferee  
17 forum). Thus, the most important factors are the convenience of the parties and  
18 witnesses, which necessarily incorporates the locus of operative facts and events.  
19 As shown below, these factors weigh heavily in favor of transfer, and therefore the  
20 Court should transfer this case to the Middle District of Florida. *See Eye Laser*  
21 *Care Center, LLC v. MDTV Medical News Now, Inc.*, No. 03-cv-371, 2007 WL  
22 2873782, at \*1-2 (S.D. Cal. Sept. 28, 2007) (granting transfer where “most” of  
23 plaintiffs’ claims were based upon operative facts that occurred in the transferee  
24 forum even though one of the plaintiffs resided in the chosen forum).

25 **A. Plaintiffs’ Choice of Forum Is Entitled to Little Weight**

26 Ordinarily, a plaintiff’s choice of forum is afforded significant weight under  
27 Section 1404(a). *Metz v. United States Life Ins. Co.*, 674 F. Supp. 2d 1141, 1147  
28 (C.D. Cal. 2009). However, “a foreign plaintiff’s [forum] choice deserves less

1 deference than the forum choice of a domestic plaintiff.” *Saleh v. Titan Corp.*, 361  
2 F.Supp.2d 1152, 1158 (C.D. Cal. 2005) (citing *Ravelo Monegro v. Rosa*, 211 F.3d  
3 509, 514 (9th Cir. 2000)); *see also In re Apple, Inc.*, 602 F.3d 909, 913 (8th Cir.  
4 2010) (foreign plaintiff’s choice of forum “entitled to substantially less deference”  
5 because there is less reason to assume convenience in a foreign forum). A  
6 plaintiff’s choice of forum is entitled to even less deference if most of the operative  
7 facts in the case took place outside the chosen forum. *See F.T.C. v. Watson*  
8 *Pharmaceuticals, Inc.*, 611 F.Supp.2d 1081, 1089 (C.D. Cal. 2009) (granting  
9 transfer where “most important operative facts” occurred in transferee forum);  
10 *Paaluhi*, 2006 WL 5671235, at \*2 (concluding that “the fact that *most of the*  
11 *operative facts* in the case took place outside of this forum, leads the Court to attach  
12 minimal weight to plaintiff’s choice of forum”) (emphasis added); *Saleh*, 361  
13 F.Supp. 2d at 1160 (transferring venue where the chosen forum did not have a  
14 “substantial relation to plaintiff’s action”).

15 Here, the plaintiffs overwhelmingly reside in Florida or in states which are  
16 much closer to Florida than California and their claims arise from alleged facts and  
17 circumstances arising in Florida. In fact, the DAS card program was primarily  
18 designed by Disney employees at WDW in Florida, and its implementation  
19 (including employee training) at the WDW theme parks took place in Florida. *See*  
20 Declaration of Alison Armor (“Armor Decl.”) ¶ 6. When only a very small  
21 percentage of the plaintiffs has any significant connection with the chosen forum,  
22 the Court should disregard their choice of forum. *See, e.g., Yesford v. City of*  
23 *McFarland*, No. 11-10115, 2012 WL 762554, at \*3 (C.D. Cal. Mar. 8, 2012)  
24 (granting motion to transfer from the Central District to the Eastern District of  
25 California where one of two plaintiffs and none of the defendants resided in the  
26 chosen forum); *Adachi v. Carlyle/Galaxy San Pedro L.P.*, 595 F.Supp.2d 1147,  
27 1151-52 (S.D. Cal. 2009) (granting motion to transfer where only one of 239  
28 prospective class members was a resident in the Southern District of California).

1 Further undermining the weight afforded to plaintiffs' choice of forum in this  
 2 case is its similarity to a class action. The Ninth Circuit, like other courts, has  
 3 noted that "when an individual brings a derivative suit or represents a class, the  
 4 named plaintiff's choice of forum is given less weight." *Lou v. Belzberg*, 834 F.2d  
 5 730, 739 (9th Cir. 1987). A plaintiff's choice of forum is traditionally discounted  
 6 in representative suits because the "accidental residence" of a named plaintiff does  
 7 not necessarily bear any relationship to the case's center of gravity. *See Koster v.*  
 8 *Am. Lumbermens Mut. Cas. Co.*, 330 U.S. 518, 524-25 (1947); *see also*  
 9 *McCormack v. Safeway Stores, Inc.*, 2012 WL 5948965, at \*4 (N.D. Cal. Nov. 28,  
 10 2012) (noting that "a fundamental principle underpinning the § 1404(a) analysis is  
 11 that litigation should proceed in that place where the case finds its 'center of  
 12 gravity.'"). The Ninth Circuit's reasoning similarly applies to this multi-plaintiff  
 13 case where the 26 named plaintiffs come from eight different states across the  
 14 country, and 24 of them are foreign plaintiffs.

15 The plaintiffs have strong connections with Florida and all but two of them  
 16 assert claims related to their visit (or attempted visit) to WDW<sup>2</sup> in Florida.<sup>3</sup> Those  
 17 claims account for more than 90% of the allegations in the complaint.<sup>4</sup> In fact,  
 18 other than plaintiff T.P. and his mother, none of the plaintiffs resides in California,  
 19 visited Disney's theme parks in California, or claims to have been injured in  
 20

21 \_\_\_\_\_  
 22 <sup>2</sup> While D.L.J. claims that she "would be inclined to visit Disneyland and Walt  
 23 Disney World Parks" with her children, C.M.J. and D.M.J., the family vacation  
 24 they planned in September 2014 -- which she refers to as a "trial-and-error trip to  
 Florida" -- is to visit WDW in Florida. *See* Compl. ¶¶ 510, 517, 521, 530, 537,  
 542.

25 <sup>3</sup> *See* Compl. ¶¶ 78, 101, 121, 193, 234, 257, 291, 345, 362, 410, 510, 530, 559,  
 26 577, 628.

27 <sup>4</sup> Out of 574 paragraphs in plaintiffs' individual cause of action section of the  
 28 complaint, only 53 paragraphs relate to events that allegedly occurred in California.

1 California.<sup>5</sup> In short, the residence in this District of just two plaintiffs cannot  
 2 possibly make California the center of gravity of this case, and should not be  
 3 allowed to prevent transfer when all of the other relevant Section 1404(a) factors  
 4 weigh heavily in favor of transferring this case to the Middle District of Florida.  
 5 Under these extreme circumstances, plaintiffs' choice of forum is entitled to little  
 6 weight.

7 **B. The Middle District of Florida Is More Convenient for the Parties**

8 When considering the convenience of the parties, the relevant starting point  
 9 is the residence of the parties. Here, nearly half of the plaintiffs currently reside in  
 10 Florida and all but two of them were visiting or planning to visit WDW in Florida  
 11 when their alleged claims arose. In fact, transfer is almost certain to make litigation  
 12 more convenient for *plaintiffs*, because it would result in far less travel for them to  
 13 attend depositions and the trial, instead of having to travel across the country to  
 14 California. Thus, transferring this case to the Middle District of Florida would  
 15 clearly reduce travel time and costs, and would not impose any additional  
 16 inconvenience on plaintiffs collectively.

17 The Middle District of Florida is also more convenient for Disney. Disney  
 18 has its principal place of business in Florida and WDW is located in the Middle  
 19 District of Florida. Dkt. 1, Compl. ¶ 3. In fact, the Disney employees who  
 20 interacted with the plaintiffs who visited WDW undoubtedly either live or work in  
 21 Florida or both. *See* Armor Decl. ¶ 12. Litigating in the Middle District of Florida  
 22 would also facilitate the collection of evidence because most of the key documents  
 23 relating to plaintiffs' allegations would be located there. *Id.* ¶ 14. Therefore, the  
 24

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25 <sup>5</sup> On the other hand, 12 plaintiffs live in Florida and are a short drive from WDW.  
 26 Compl. ¶¶ 73, 97, 181, 352, 397 & 568. The remaining plaintiffs are from six  
 27 different states (Connecticut, Ohio, Pennsylvania, South Carolina, Virginia and  
 28 Michigan), and traveled to Florida to visit WDW. *See* Compl. ¶¶ 119, 231, 247,  
 282, 332, 506, 526, 547, 617.

1 convenience of the parties factor strongly favors transfer to the Middle District of  
2 Florida.

3 **C. The Middle District of Florida Is a More Convenient Forum**  
4 **for the Witnesses**

5 The relative convenience of witnesses, particularly non-party witnesses, is  
6 often recognized as “the most important factor” to be considered in ruling on a  
7 motion to transfer venue under Section 1404(a). *Saleh*, 361 F.Supp.2d at 1161; *A.J.*  
8 *Industries, Inc. v. United States District Court*, 503 F. 2d 384, 389 (9th Cir. 1974).  
9 In evaluating the convenience of the witnesses, the court “must consider not simply  
10 how many witnesses each side has and the location of each, but . . . the importance  
11 of the witnesses.” *Saleh*, 361 F.Supp.2d at 1161.

12 To the extent the employees with whom plaintiffs interacted are currently  
13 employed at WDW, they work or reside in Florida, and are likely to testify  
14 regarding the facts and circumstances surrounding plaintiffs’ allegations. Armor  
15 Decl. ¶ 12.<sup>6</sup> In fact, the Complaint specifically identifies an employee, Justin  
16 Patterson (Compl. ¶ 260), who works and lives in Florida. Armor Decl. ¶ 13.  
17 Other witnesses who will be of central importance to the resolution of plaintiffs’  
18 claims are senior management employees from WDW’s Guest Relations, Guest  
19 Communications, Standards and Auditing, and Operations departments, all of  
20 whom work and reside in Florida. *Id.* ¶¶ 5, 7-11. These witnesses are familiar with  
21 the development, implementation and/or administration of the DAS card program at  
22 WDW. *Id.*

23 Furthermore, plaintiffs themselves will likely testify in this case and may  
24 choose to call their family members, friends, medical providers, and other  
25 individuals to testify about plaintiffs’ alleged disabilities, purported injuries and the

26 \_\_\_\_\_  
27 <sup>6</sup> If these witnesses are no longer employed at Disney, their residence in Florida  
28 along with this District’s inability to compel their attendance at trial only lends  
further support to this motion. *See infra* Section II.D.



1 experiences they allegedly had while visiting Disney's theme parks, both prior to  
 2 and after Disney's implementation of the DAS card system. Given that almost half  
 3 of the plaintiffs reside in Florida, it is likely that an equivalent percentage of  
 4 witnesses also reside there and would not have to travel a long distance for  
 5 deposition and trial if this case were transferred to the Middle District of Florida.  
 6 On the other hand, if this case remains in this District, all of the witnesses for the 24  
 7 foreign plaintiffs will likely have to travel across the country for deposition and  
 8 trial.

9 Transfer is thus appropriate because on this most important factor, the bottom  
 10 line is that the vast majority of witnesses in this case would be required to travel  
 11 great distances to participate in this case if it remains in this District.

12 **D. The Availability of Process to Compel Testimony Favors Transfer**

13 The witnesses who are likely to give testimony concerning plaintiffs'  
 14 experiences at the parks will be current and former Disney employees. These  
 15 witnesses mostly reside in Florida or work at Disney's WDW resort in Florida.  
 16 *Armor Decl.* ¶ 12.<sup>7</sup> Because park employee positions are often short-term, several  
 17 of these employees will no longer work at Disney by the time they are asked to  
 18 testify at trial. *Id.* As a result, these potential non-party witnesses, most of whom  
 19 are likely to be from Florida or at least from states closer to Florida than California,  
 20 could not be compelled to testify in this District.

21 Based on plaintiffs' claims, there are numerous witnesses who are not subject  
 22 to compulsory process in this District, such as family members and friends who  
 23 accompanied plaintiffs during their visits to Disney's theme parks, as well as  
 24 medical providers who are familiar with plaintiffs' disabilities. The majority of  
 25

26 \_\_\_\_\_  
 27 <sup>7</sup> The Disney employees who interacted with T.P. and his mother during their visit  
 28 to Disneyland likely work or live in California. But this small number of potential  
 witnesses in California is far outweighed by the number of witnesses in Florida.

1 these witnesses are likely to reside in Florida. Therefore, the availability of process  
 2 to compel the attendance of these witnesses at trial weighs in favor of transferring  
 3 this case to the Middle District of Florida. *See, e.g., Blankenship v. Medtronic,*  
 4 *Inc.*, 2013 WL 3322031, at \*4 (C.D. Cal. June 7, 2013) (granting transfer even  
 5 though potential non-party witnesses were located in California because the nature  
 6 of plaintiff's claims meant that the majority of non-party witnesses were likely to be  
 7 residents of transferee forum); *Dawson v. Medtronic, Inc.*, 2013 WL 3322040, at \*3  
 8 (C.D. Cal. Mar. 8, 2013).

9 **E. Nearly All of the Plaintiffs Contractually Agreed to Litigate**  
 10 **This Case in Florida**

11 24 of the 26 plaintiffs either visited or attempted to visit WDW in Florida.<sup>8</sup>  
 12 By purchasing a ticket or annual pass to visit WDW, these plaintiffs have already  
 13 agreed to litigate this case in Florida.<sup>9</sup> Specifically, the terms and conditions for the  
 14 tickets and annual passes for WDW include a forum selection clause, which  
 15 provides that "all claims for injury or loss arising incident to presence on [WDW]  
 16 property *shall be litigated in Florida.*" Armor Decl. ¶¶ 15-16, Exhibits A and B  
 17 (standard RFID ticket and annual pass for WDW). While the Disneyland annual  
 18 passes purchased by plaintiff S.P. for herself and her son, T.P., would have  
 19 included a forum selection clause that provides for their claims to be litigated in  
 20 California, all of the other plaintiffs who purchased a ticket or annual pass to visit  
 21 WDW have agreed to litigate their claims in Florida.

22  
 23 <sup>8</sup> *See* Compl. ¶¶ 78, 101, 121, 193, 234, 257, 291, 345, 362, 410, 510, 530, 559,  
 24 577, 628.

25 <sup>9</sup> Of the 24 foreign plaintiffs, three plaintiffs -- who have asserted only ADA  
 26 claims against Disney -- allege that they either cancelled their trip to WDW or  
 27 refused to visit WDW because of the DAS card program. *See* Compl. ¶¶ 240, 346,  
 28 559. Therefore, it is unclear from plaintiffs' complaint whether these three  
 plaintiffs purchased a ticket or annual pass to visit WDW.

1 A forum selection clause is “a significant factor that figures centrally in a  
 2 district court’s calculus” in determining whether to transfer venue. *See Stewart*  
 3 *Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988). In fact, courts treat “a forum  
 4 selection clause . . . as a manifestation of the parties’ preferences as to a convenient  
 5 forum.” *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 880 (3d Cir. 1995). Where,  
 6 as here, there is a valid forum selection clause, the burden shifts to plaintiffs to  
 7 demonstrate “why they should not be bound by their contractual choice of forum.”  
 8 *Id.* Not only does this “significant factor” negate any deference given to plaintiffs’  
 9 choice of forum, but it also prevents the plaintiffs who visited WDW from  
 10 contending that transfer is inconvenient to them. Thus, Disney’s forum selection  
 11 clause supports transferring this case to the Middle District of Florida.

12 **F. The Middle District of Florida Is More Familiar with Florida Law**

13 Although this is not a diversity case, the majority of plaintiffs’ claims are  
 14 likely to be based on state law. Plaintiffs’ complaint contains 57 causes of action  
 15 under federal and state law; however, only 16 of them involve federal law under the  
 16 ADA. Of the remaining 41 state law claims, 35 (61% of plaintiffs’ total claims)  
 17 involve the application of Florida law on negligent infliction of emotional distress,  
 18 intentional infliction of emotional distress, and breach of contract. As a result, a  
 19 substantial portion of plaintiffs’ case requires familiarity with Florida law.<sup>10</sup>

20 While federal courts in California and Florida are equally well-acquainted  
 21 with the law governing plaintiffs’ claims under the ADA, most of the state law  
 22 claims in this litigation will involve questions of Florida tort and contract law with  
 23

24 <sup>10</sup> Since the filing of this lawsuit, several individuals -- many of whom appear to be  
 25 the named plaintiffs in this case -- have filed administrative complaints with the  
 26 Florida Commission on Human Relations. Therefore, it is likely that plaintiffs will  
 27 at some point seek to amend their complaint to include disability discrimination  
 28 claims under Florida law, which only further supports transferring this case to the  
 Middle District of Florida.

1 which Florida courts have unique familiarity. This factor too weighs in favor of  
2 transfer to Florida. *See, e.g., Blankenship*, 2013 WL 3322031, at \*3 (transferring  
3 case to Missouri where only one of plaintiff’s claims alleged violations of  
4 California law, and the majority of plaintiff’s causes of action arose under Missouri  
5 law); *Kierstead v. Experian Information Solutions, Inc.*, 2011 WL 1375361, at \*2  
6 (C.D. Cal. Apr. 11, 2011) (finding that the complaint’s inclusion of a defamation  
7 claim under Maine law weighed in favor of transfer to Maine although plaintiff’s  
8 primary cause of action was under federal law).

9 **CONCLUSION**

10 For the foregoing reasons, Disney respectfully requests that the Court grant  
11 its motion and transfer this action to the Middle District of Florida.

12  
13 Dated: July 30, 2014

Respectfully submitted,

14  
15 /s/ Rhonda Trotter

Rhonda Trotter

16  
17 Counsel for Defendant Walt Disney Parks  
18 and Resorts U.S., Inc.  
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KAYE | SCHOLER LLP

**CERTIFICATE OF SERVICE**

I hereby certify that on July 30, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all Counsel of Record.

/s/ Rhonda Trotter  
Rhonda Trotter

KAYE | SCHOLER<sub>LLP</sub>

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