

DOGALI LAW GROUP, P.A.

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

A.L., and through D.L., et al.,

Case No.: 14-cv-3327

Plaintiffs,

v.

**MEMORANDUM OF LAW IN  
SUPPORT OF PLAINTIFFS'  
MOTION FOR LEAVE TO FILE  
AMENDMENT TO COMPLAINT**

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

**Hon. Manuel L. Real**

Defendant.

\_\_\_\_\_ /

Plaintiffs A.L., and others, through undersigned counsel and pursuant to Rule 15 of the Federal Rules of Civil Procedure, the Local Rules of this Court, and applicable law, move to amend their complaint to

1 include additional new, similarly-situated plaintiffs. In support of the  
2 motion Plaintiffs provide the following memorandum.

3  
4 **I. BACKGROUND**

5 Plaintiffs bring an extensive complaint which generally asserts that  
6 in October of 2013 Defendant Walt Disney Parks and Resorts US, Inc.  
7 ("Disney") implemented a new accessibility system, ostensibly for the  
8 purpose of accommodating disabled persons in its theme parks. (Doc. 1-1-  
9 4). Plaintiffs allege that while the system, known as Disney's Disability  
10 Access Service ("DAS"), might adequately accommodate persons with  
11 certain disabilities, it does entirely the opposite for persons with cognitive  
12 impairments, such as persons with autism and similar disorders. For  
13 persons with cognitive impairments, the DAS has not only made the  
14 Disney Parks experience less than equal, it has made it downright awful.

15 The existing Complaint includes 26 Plaintiffs, encompassing 14  
16 families. Specifically, the Plaintiffs include 16 disabled individuals through  
17 their guardians, and 10 of the guardians also seek relief in their individual  
18 capacities. Nine of the Guardian Plaintiffs are mothers of the Disabled  
19 Plaintiffs; one is a grandmother. One of the Guardian Plaintiffs comes to  
20 this Court having already been appointed by another court as the plenary  
21 legal guardian for her disabled child. For the others, this Court has granted  
22 their motions to act as guardian ad litem (Doc. 17-19, 21-29, 30-32).

23 After the initial Complaint was filed, undersigned counsel received  
24 an outpouring of phone calls and emails from victims and their families,  
25 similarly situated to the 26 existing Plaintiffs. These communications  
26 came from persons who were victims of the same discrimination of which  
27 Plaintiffs complain; outrageous refusals to accommodate the needs of  
28 certain disabled persons as a result of Disney's DAS, at both the Walt

1 Disney World Resort in Florida and the Disneyland Resort in California.  
2 Most of the victims wanted to offer cheers of support and witness  
3 assistance; some were in search of counsel. Ultimately, the undersigned  
4 counsel agreed to represent many of them. The existing Plaintiffs now  
5 move for leave to add many of the similarly-situated victims as Plaintiffs in  
6 the present case. The proposed amendment would add 69 plaintiffs to the  
7 action, encompassing 30 families. The new plaintiffs would include 36  
8 disabled plaintiffs and 33 family members.

9 A copy of the proposed Amendment to Complaint is attached as  
10 Exhibit 1 to this Motion.

## 11 **II. ARGUMENT**

### 12 **1. Summary of Argument**

13 In relevant part, Rule 15(a)(2) of the Federal Rules of Civil  
14 Procedure, provides, “a party may amend its pleading only with the  
15 opposing party’s written consent or the court’s leave. ***The court should***  
16 ***freely give leave when justice so requires.***” Fed. R. Civ. Pro. 15(a)(2)  
17 (emphasis added). This policy is “to be applied with extreme liberality.”  
18 *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001)  
19 (quoting *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079  
20 (9th Cir. 1990)). In determining whether a motion to leave to amend  
21 should be granted, Courts consider the following factors, as espoused by  
22 the United States Supreme Court in *Foman v. Davis*, 371 U.S. 178 (1962):  
23 (1) undue prejudice to the opposing party; (2) undue delay; (3) bad faith  
24 or dilatory motive; (4) futility of amendment; and (5) whether the movant  
25 has previously amended a pleading. *Id.* at 183; See *Eminence Capital, LLC v.*  
26 *Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003); see also *Daniels v.*  
27 *Community Lending, Inc.*, 2014 WL 1923229, at \*2 (S.D. Cal. May 14, 2014)  
28 (“In determining whether to allow an amendment, a court considers

1 whether there is ‘undue delay,’ ‘bad faith,’ ‘undue prejudice to the  
2 opposing party,’ or ‘futility of amendment.’”) Furthermore:

3  
4 [n]ot all of the factors merit equal weight. As this  
5 circuit and others have held, it is the consideration  
6 of prejudice to the opposing party that carries the  
7 greatest weight...***Absent prejudice, or a strong  
8 showing of any of the remaining Foman factors,  
9 there exists a presumption under Rule 15(a) in  
10 favor of granting leave to amend.***

11 *Eminence Capital*, 316 F.3d at 1052 (emphasis added).

12 When weighed in the present case, the *Foman* factors support  
13 granting leave to add the new plaintiffs to this action because: the action is  
14 in the infantile stages of litigation; Disney faces no undue prejudice;  
15 Plaintiffs have not delayed in bringing the proposed amendment; Plaintiffs  
16 have not acted with bad faith or dilatory motive; and, Plaintiffs have not  
17 previously amended any pleadings in this action. See *Mason v. Pepsico, Inc.*,  
2011 WL 166258 (C.D. Cal. 2011).

## 18 **2. Disney Will Not be Prejudiced**

19 According to the Ninth Circuit, “while district courts should consider  
20 all of the factors delineated above, one factor carries the greatest weight:  
21 the consideration of prejudice to the opposing party.” *Kohler v. Presidio  
22 Intern., Inc.* 2011 WL 686060, at \*1 (C.D. Cal. 2011); See *DCD Programs,  
23 Ltd. v. Leighton*, 833 F.2d 183,185 (9th Cir. 1987). Prejudice is the  
24 “touchstone of the inquiry under rule 15(a).” *Lone Star Ladies Inv. Club v.  
25 Schlotzsky’s Inc.*, 238 F.3d 363, 368 (5th Cir. 2001); *Howey v. United States* ,  
26 481 F.2d 1187, 1190 (9th Cir. 1973) (stating that “the crucial factor is the  
27 resulting prejudice to the opposing party”). Absent prejudice, there exists  
28 a presumption under Rule 15(a) in favor of granting leave to amend.

1 *Kohler*, 2011 WL 686060, at \*1 (also stating “this presumption exists in the  
2 absence of a strong showing of any of the remaining *Forman* factors.”)  
3 Moreover, as the Ninth Circuit has stated, “[b]ald assertions of prejudice  
4 cannot overcome the strong policy reflected in Rule 15(a) to ‘facilitate a  
5 proper disposition on the merits.’” *Hurn v. Ret. Fund Trust of Plumbing,*  
6 *Heating & Piping Indus. of S. California*, 648 F.2d 1252, 1254 (9th Cir.  
7 1981) (internal citations omitted).

8 Disney would face no undue prejudice were leave to amend granted  
9 because this action remains in the infantile stages of litigation. Beyond  
10 initial Rule 26 disclosures, there has been no discovery. There have been  
11 no substantive motions. In fact, the Joint Report of Early Meeting and Rule  
12 26(f) Discovery Plan (“Plan”) was filed a mere three days ago, two of  
13 which were a weekend. (Doc. 48) In this Plan, amendment of the  
14 pleadings, including a specific reference to *this* motion, is addressed. (Doc.  
15 48). Plaintiffs explicitly describe the amendment and point out in Section  
16 III that the amendment only seeks to add parties without materially  
17 altering the general factual allegations. The proposed amendment does  
18 not introduce new theories of relief. Those allegations remain unchanged.

19 Additionally, the proposed amendment would not affect this Court’s  
20 jurisdiction; said jurisdiction would still rely on a question of federal law.  
21 28 U.S.C. §12131, *et. seq.* Supplemental jurisdiction over the new plaintiffs’  
22 state law causes of action would remain proper in this Court pursuant to  
23 28 U.S.C. §1367.

24 In addition, no prejudice to Disney exists because Disney faces a  
25 lawsuit or multiple lawsuits by the new plaintiffs in any event, whether in  
26 this lawsuit or a separate one(s). The assumption is inescapable that  
27 Disney would in fact prefer that its witnesses give singular depositions in  
28 lieu of scattered, multiple ones. In fact, Disney would likely benefit by the

1 creation of one lawsuit rather than two, for the same reason that the  
2 Plaintiffs will: the combined action will save resources in a case which is  
3 destined to be quite expensive for all concerned. See, *Falcon v. Scottsdale*  
4 *Ins. Co.*, 2006 WL 2434227 (E.D. Wash. 2006) (joinder was warranted  
5 because, *inter alia*, the amendment would conserve judicial resources and  
6 reduce the risk of inconsistent results).

### 7 8 **3. No Delay Exists**

9 Plaintiffs did not delay in bringing this proposed amendment  
10 because Plaintiffs were not aware of the existence of the new plaintiffs  
11 until after the complaint was filed. See, e.g. *E.E.O.C. v. Boeing Co.*, 843 F.2d  
12 1213, 1222 (9th Cir. 1988) (relevant to evaluating the delay issue is  
13 whether the moving party knew or should have known the facts and  
14 theories raised by the amendment in the original pleading). Moreover,  
15 undersigned counsel needed time to: factually investigate each of the  
16 potential claims; confer with each client about retention of counsel;  
17 evaluate the viability of each person's claim, and of the viability of the  
18 particular actions they might bring; provide recommendations regarding  
19 these evaluations to the clients; draft the proposed counts for relief on  
20 behalf of each client; confer with each client about the specific draft  
21 allegations; identify the appropriate guardian ad litem for each disabled  
22 plaintiff; prepare the guardian ad litem petitions for filing immediately  
23 upon filing of suit; and, file the instant motion. See Fed. R. Civ. Pro., R. 11,  
24 infra.

25 Even if some fractional delay is alleged to have occurred, delay alone  
26 is insufficient to justify the denial of a motion requesting leave to amend.  
27 *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987).



1           **4. No Bad Faith or Dilatory Motive Exists**

2           As stated above, Plaintiffs were unaware of the identities of  
3 additional victims of Disney's discrimination until after the Complaint was  
4 filed. Immediately upon filing of the complaint, there was an outpouring of  
5 similarly-situated complainants, many of whom were interested in filing  
6 suit against Disney. After, undersigned counsel began a diligent  
7 investigation into the allegations of these new plaintiffs, which even at the  
8 outset were analogous to the claims of the existing plaintiffs. Surely four  
9 months is a reasonable amount of time to investigate hundreds of  
10 complaints of discrimination to ultimately determine 69 of the outcries to  
11 be appropriate to warrant addition to the complaint.<sup>1</sup> It follows logically  
12 that Plaintiffs had no way of knowing of the existence of the new plaintiffs  
13 until after the complaint was filed. Following this same logic, Plaintiffs  
14 seek leave to add these new plaintiffs *after* the complaint has been filed,  
15 and after a diligent investigation of the new plaintiffs' claims has been  
16 conducted. It would defy logic were Plaintiffs to have been aware of the  
17 new plaintiffs at the time of filing the complaint, and not, by virtue of their  
18 then existing knowledge, included the new plaintiffs in the complaint.  
19 Because this amendment flows logically and naturally from the complaint,  
20 there exists no evidence that Plaintiffs acted with bad faith or dilatory  
21 motive.

22           **5. The Amendment is Not Futile**

23           Futility is simply not in issue. If the original Plaintiffs have viable  
24 claims, it is very likely the additional claims will as well. *Forman*, 371 U.S.  
25 at 182 ("If the underlying facts or circumstances relied upon by a plaintiff  
26 may be a proper subject of relief, he ought to be afforded an opportunity

27 <sup>1</sup> About 280 families which include a disabled victim contacted the undersigned.  
28 If amended, 44 of these families will be Plaintiffs.

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1 to test his claim on the merits.”). Accordingly, Plaintiffs should be afforded  
2 an opportunity to test their claims on the merits by addition of the new  
3 plaintiffs.

4 **6. No Prior Amendments**

5 Plaintiffs have not previously amended a pleading, or sought leave  
6 from this Court to amend a pleading.

7 **7. Statement of Local Rule 7-3 Compliance**

8 Plaintiffs note the following in accordance with Local Rule 7-3. At  
9 the early meeting of counsel which occurred in person on August 8, 2014,  
10 the undersigned advised Disney of the intention to file suit on behalf of the  
11 additional plaintiffs. Disney expressed no position at that time. On  
12 Tuesday, August 19, 2014, the undersigned advised Disney that the new  
13 suit for the additional plaintiffs would take the form of an amendment to  
14 the instant action. On Thursday, August 21, Disney advised that such  
15 motion would be opposed. Such opposition was reaffirmed on Friday,  
16 August 22, when the parties’ Joint Report of Early Meeting of Counsel was  
17 finalized and filed (Doc. 48).

18  
19 **III. CONCLUSION**

20 Leave to file the proposed Amendment to the Complaint is proper in  
21 that Disney faces no undue prejudice, Plaintiffs did not delay in bringing  
22 this proposed amendment, there exists no bad faith or dilatory motive,  
23 and Plaintiffs have not previously amended any pleadings in this action.  
24 Accordingly, Plaintiffs respectfully request this Court grant leave to file  
25 their Amendment to the Complaint.



**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true copy of the foregoing Proof of Service has been electronically filed with the Clerk of the Court pursuant to Local Rule 5-4.1 and General Order No. 10-07 regarding Electronic Case Filing in the U.S. District Court, Central District of California by using the CM/ECF system which will send a copy of the documents to counsel of record pursuant to Local Rule 5-3.2.1 to:

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this 27<sup>th</sup> day of August, 2014.

/s/ Andy Dogali  
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