

STEARNS WEAVER MILLER  
WEISSLER ALHADEFF & SITTERSON, P.A.

**FILED**  
SEP 10 2010  
IN THE OFFICE OF  
BOARD OF COUNTY COMMISSIONERS  
SUMTER COUNTY, FLORIDA  
Jay B. Shapiro  
150 West Flagler Street, Suite 2200  
Miami, FL 33130  
Direct: (305) 789-3229  
Fax: (305) 789-2664  
Email: jshapiro@stearnsweaver.com

September 8, 2010

*Via U.S. Certified Mail*

Commissioner Chair Doug Gilpin  
Sumter County Board of Commissioners  
910 N. Florida St., Suite 201  
Bushnell, Florida 33513

Derrill L. McAteer, Esq.  
Attorney for Sumter County  
Hogan Law Firm  
P.O. Box 485  
Brooksville, Florida 34605

**RE: *Monroe County et al. v. Priceline.com, et al***  
**Case No. 09-10004-Civ-Moore/Simonton**  
**United States District Court for the Southern District of Florida**

Dear Class Member:

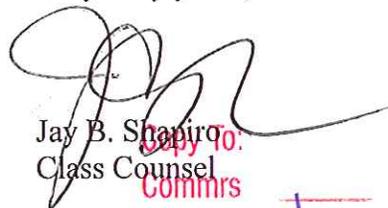
You are a member of the certified class in the above-referenced action. In connection therewith, enclosed please find:

- (1) A Notice of Class Action Settlement and Hearing ("Class Notice"); and
- (2) A copy of the Court's September 3, 2010 Order ("Order") preliminarily approving the settlement that has been reached in the lawsuit.

Please review the Class Notice and Order carefully, as they set forth a number of important matters and deadlines that may affect your legal rights as a class member.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Jay B. Shapiro  
Class Counsel

Copy To:  
Comms \_\_\_\_\_  
Co Atty \_\_\_\_\_  
Co Fin \_\_\_\_\_  
Other \_\_\_\_\_  
Pub Wks Div \_\_\_\_\_  
Bldg & Dev Div \_\_\_\_\_  
Admin Div \_\_\_\_\_  
Com Svcs Div \_\_\_\_\_

JBS/mrt  
Enclosures

#463126 v1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-10004-CIV-MOORE/SIMONTON

THE COUNTY OF MONROE, FLORIDA,  
individually and on behalf of others similarly situated,

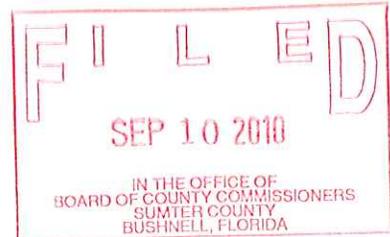
Plaintiff,

v.

PRICELINE.COM INCORPORATED;  
TRAVELWEB LLC; TRAVELOCITY.COM LP;  
SITE59.COM, LLC; EXPEDIA, INC;  
HOTELS.COM, L.P.; HOTWIRE, INC.;  
TRIP NETWORK, INC. d/b/a CHEAP TICKETS;  
and ORBITZ, LLC,

Defendants.

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**NOTICE OF CLASS ACTION SETTLEMENT AND HEARING**

To: The County Commissioners and County Attorneys of all Counties within the State of Florida that have enacted a tourist development tax under the authority of Section 125.0104, Florida Statutes, and who have not previously opted-out of the certified class in the above-styled action. (*via certified mail, return receipt requested*)

*PLEASE READ THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR LEGAL RIGHTS.*

This is a notice that a settlement has been reached in the civil action, *The County of Monroe Florida v. Priceline.com, Inc. et al.*, Case No. 09-10004-CIV-MOORE/SIMONTON, in the United States District Court for the Southern District of Florida (the "Lawsuit").

**1. WHY YOU ARE RECEIVING THIS NOTICE OF SETTLEMENT**

The Court has preliminarily approved the settlement on behalf of a previously certified Class consisting of:

All counties within the State of Florida that have enacted a tourist development tax under authority of § 125.0104, Florida Statutes.

You are receiving this Notice because you fall within this Class definition and you did not request exclusion from the Class when you were sent notice, on April 9, 2010, of the Court's decision to certify the Lawsuit as a class action.

In the Lawsuit, Monroe County alleged that Priceline.com, Inc., Travelweb L.L.C., Travelocity.com, L.P., Site59.com L.L.C., Expedia, Inc., Hotels.com L.P., Hotwire Inc., Trip Network Inc. (d/b/a Cheaptickets.com), and Orbitz LLC (collectively "Defendants") failed to collect and remit the full amount of tourist development taxes due to those Florida counties that have enacted a tourist development tax pursuant to the authority granted to them in Section 125.0104, Florida Statutes ("TDTs"). Specifically, Monroe County asserted that the Defendants charge customers (and remit to the hotels) a "tax recovery charge" which is sufficient only to cover the TDTs on the wholesale rate that the Defendants pay to the hotels, rather than on the full retail rate which the Defendants' customers are actually charged for the room. Monroe County sought to recover the unpaid TDTs on behalf of itself and on behalf of all other Class member counties. Defendants assert that the TDT is applicable only on the amounts that hotels receive for the renting, leasing, or letting of their accommodations, but that the TDT is not applicable to compensation that Defendants receive for their travel reservation services. Defendants deny Monroe County's characterization of Defendants' business operations and amounts charged to customers and deny that they owe additional TDTs to Monroe County and the Class member counties because all applicable TDT has already been paid by the hotels.

To avoid the further expense and uncertainty of continued litigation, and without any admission of wrongdoing or any liability for any taxes claimed in the Lawsuit by Defendants, the parties have agreed to settle the Lawsuit on the terms provided in the parties' Master Settlement Agreement, which was executed on August 2, 2010 (the "Settlement").

Counsel for Monroe County and the Class ("Class Counsel") have thoroughly investigated the facts, analyzed the applicable law, conducted extensive discovery and analysis of Defendants' business operations, and considered such other sources of information as they deemed necessary to evaluate the fairness of the Settlement. Based on Class Counsel's analysis of the facts and the law, as well as their evaluation of the substantial and immediate benefits which the Settlement confers upon the Class, Class Counsel have determined that the Settlement is fair, reasonable, and adequate, and in the best interests of the Class. The Settlement was reached as a result of extensive, arm's length negotiations between Class Counsel and Defendants' counsel over the course of several weeks. Furthermore, the Settlement has been approved by the Monroe County Board of County Commissioners.

The key terms of the Settlement are summarized below and have been preliminarily approved by the Court. If the Settlement receives final court approval, it will affect your legal rights as described below.

## **2. BENEFITS UNDER THE SETTLEMENT**

If the Settlement is finally approved, the Defendants have agreed to pay the following dollar amounts into a Settlement Fund:

- Expedia Parties (Expedia, Inc., Hotels.com, L.P., Hotwire, Inc., Hotels.com, and TravelNow.com, Inc.) will pay a total of \$4,950,000;
- Travelocity Parties (Travelocity.com LP and Site59.com LLC) will pay a total of \$625,000;
- Priceline Parties (priceline.com Incorporated and Travelweb LLC) will pay a total of \$600,000; and
- Orbitz Parties (Orbitz, LLC and Trip Network, Inc (d/b/a Cheap Tickets)) will pay a total of \$325,000.

Collectively, therefore, the Defendants will pay a total of six and one half million dollars (\$6,500,000) into the Settlement Fund. As reflected in the Master Settlement Agreement, the Defendants are not admitting liability for any taxes claimed in this Lawsuit, are not making any payments that may be characterized as payments of past or future taxes, and the Settlement reflects a compromise of disputed claims.

Class Counsel believe that the Settlement is fair, reasonable and adequate, and recommend the Settlement on that basis. In the Lawsuit, the damages expert retained by Plaintiff and Class Counsel conducted a detailed analysis of every hotel transaction conducted by Defendants in each of the Class member counties in order to determine the total amount of TDTs that were allegedly owed to the Class member counties, assuming that Plaintiff could establish liability for those allegedly unpaid TDTs. Based on that analysis, Plaintiff's expert calculated the total amount of TDTs claimable by Plaintiff and the Class through March 31, 2010 to be \$6,367,695.23<sup>1</sup>, exclusive of interest and statutory penalties.

Below is a chart reflecting: (1) the amount of TDTs that Plaintiff's damage expert determined were claimable by each Class member county through March 31, 2010 based on Defendants' applicable hotel transactions in that county during that time period, exclusive of interest and penalties; and (2) the amount of the total gross settlement sum *allocable* to each Class member, based on Defendants' hotel transactions applicable to that county:

<u>County</u>	<u>TDTs Alleged To Be Owed</u>	<u>Settlement Allocation<sup>2</sup></u>
BAKER	\$148.55	\$166.60
BRADFORD	\$1449.59	\$1,495.05
CITRUS	\$9130.17	\$9,241.67
CLAY	\$16,750.82	\$17,610.23
COLLIER	\$996,215.39	\$1,008,506.68

<sup>1</sup> The \$6,367,695.23 does not include any estimate as to the amount of TDTs that might allegedly be due, if at all, during the Two Year Period or Three Year Period following July 1, 2010 for which the Defendants will not be obligated to remit TDTs in the Class member counties, as further described in Paragraph 3 of this Notice.

<sup>2</sup> This amount does not reflect deductions for Court-awarded attorneys' fees, costs, and any incentive award to Monroe County.

<u>County</u>	<u>TDTs Alleged To Be Owed</u>	<u>Settlement Allocation<sup>2</sup></u>
COLUMBIA	\$8200.28	\$8,672.57
DUVAL	\$659,918.41	\$692,443.62
FRANKLIN	\$149.83	\$149.83
GADSDEN	\$769.54	\$804.48
GILCHRIST <sup>3</sup>	\$0.00	\$0.00
GLADES	\$0.00	\$0.00
HAMILTON	\$209.63	\$215.36
HENDRY	\$340.23	\$371.67
HERNANDO	\$8304.31	\$9,224.72
HIGHLANDS	\$3547.63	\$3,774.59
HOLMES	\$0.00	\$0.00
INDIAN RIVER	\$59,895.66	\$61,171.65
JACKSON	\$234.72	\$3,872.45
JEFFERSON	\$430.57	\$447.86
LAKE	\$80,401.03	\$80,968.18
LEVY	\$360.01	\$401.65
MADISON	\$875.96	\$936.95
MARTIN	\$44,216.73	\$45,909.81
MIAMI-DADE	\$2,069,917.60	\$2,108,427.43
MONROE	\$1,947,223.24	\$1,973,725.34
OKEECHOBEE	\$1,530.56	\$1,754.17
PUTNAM	\$1,223.26	\$1,307.09
SAINT LUCIE	\$71,374.38	\$73,413.82
SANTA ROSA	\$26,576.89	\$27,135.60
SARASOTA	\$351,254.52	\$363,987.31
SUMTER	\$2576.75	\$2,628.27
SUWANNEE	\$210.31	\$216.25
TAYLOR	\$935.90	\$1,018.98
<b>TOTAL:</b>	<b>\$6,367,695.23</b>	<b>\$6,500,000.00</b>

The above Settlement Allocation amounts reflect the Class members' pro-rata share of the gross Settlement Fund before any deductions for Court-awarded attorneys' fees, costs, and any incentive award to Monroe County.

**NOTE: NO ONE WILL RECEIVE ANY BENEFITS DESCRIBED IN THIS NOTICE UNLESS THE SETTLEMENT IS FINALLY APPROVED BY THE COURT.**

<sup>3</sup> While Gilchrist, Glades, and Holmes counties are members of the Class as defined by this Court, discovery in the Lawsuit did not reveal any transactions in those counties that resulted in any allegedly unpaid TDTs.

### 3. RELEASES AND OBLIGATIONS UNDER THE SETTLEMENT

If the Settlement is approved, you will give up and release all known or unknown claims based upon the Defendants' alleged failure to collect, pay, and/or remit TDTs pursuant to any TDT ordinances enacted pursuant to the authority granted by Section 125.0104 of the Florida Statutes that are at issue in the Lawsuit and any applicable interest, penalties, and/or other additions to that TDT. Defendants are not being released from the payment of any taxes other than TDTs that may allegedly be due.

In addition, you agree that, for a period of two years following July 1, 2010 (the "Two Year Period"), no TDTs are or will be due and owing by the Expedia Parties, the Travelocity Parties, or the Orbitz Parties to you under the ordinances in effect at the time of the Lawsuit or under any amended or different ordinance that may be enacted to assess, levy, or collect TDTs. You agree that you will not circumvent the terms of the Settlement by seeking to enforce or apply any new tax or amended ordinance against the Expedia Parties, the Travelocity Parties, or the Orbitz Parties that is, in form or substance, a TDT or the functional equivalent of a TDT. You further agree not to bring suit against the Expedia Parties, the Travelocity Parties, or the Orbitz Parties or otherwise attempt to collect, assess, or offset any such TDTs during or relating to such Two Year Period, and during such period the Expedia Parties, the Travelocity Parties, and the Orbitz Parties shall have no obligation to register as a dealer for the payment of TDTs. The same terms and conditions of this paragraph shall also apply to the Priceline Parties, with the exception that the "Two Year Period" shall be for a period of three years (the "Three Year Period").

With respect to Miami-Dade and Duval Counties, which each are currently parties to separate lawsuits with Defendants involving the collection of TDTs and certain other taxes enacted pursuant to the authority granted by Section 125.0104 of the Florida Statutes, the Master Settlement Agreement provides that each of those counties' claims for the collection of TDTs (but not those counties' claims for any other taxes at issue in those lawsuits) will be withdrawn or dismissed from those lawsuits.

The claims that you are releasing against these Defendants if the Settlement is approved are described in more detail in the Master Settlement Agreement. You may obtain a free copy by (1) contacting Class Counsel using the contact information provided below; or (2) obtaining a copy from the Court file using the Court's electronic PACER docket website.

You further agree to refrain from issuing any press releases regarding the Settlement, and in any communication with the media relating to the terms of the Settlement, you agree to state in words and in substance that the Settlement is intended to compromise disputed claims, that the Defendants are not admitting any liability for any taxes claimed in the Lawsuit, and that any payments made are not payments of any past or future tax. You also agree that you will not (except in any litigation, administrative or legislative matter or proceeding), for the Two Year Period, and in the case of the Priceline parties, the Three Year Period, publicly describe the Defendants as having rented, leased, or let hotel rooms or having received or receiving consideration for renting, leasing, or letting under the Current Ordinances. You also agree not to provide, show a copy of the Master Settlement Agreement, nor disclose the terms of that

agreement, to any person for the purpose of inducing or discussing potential litigation, or to defend litigation based thereon, unless required by law, subpoena, or order of Court to do so.

**4. ATTORNEYS' FEES AND EXPENSES, AND INCENTIVE AWARD TO THE REPRESENTATIVE PLAINTIFF**

The Court has certified the following attorneys as Class Counsel:

Jay B. Shapiro, Esq.  
Zachary Bower, Esq.  
Abigail E. Corbett, Esq.  
Gerald E. Greenberg, Esq.  
STEARNS WEAVER MILLER  
WEISSLER ALHADEFF &  
SITTERSON, P.A.  
150 West Flagler Street  
Suite 2200 – Museum Tower  
Miami, FL 33130  
Telephone: (305) 789-3200

Tod Aronovitz, Esq.  
ARONOVITZ LAW  
777 Brickell Avenue, Suite 850  
Miami, FL 33131  
Telephone: (305) 372-2772

Paul M. Weiss, Esq.  
Richard J. Burke, Esq.  
FREED & WEISS LLC  
111 West Washington Street, Suite 1331  
Chicago, IL 60602  
Telephone: (312) 220-0000

James E. Cecchi, Esq.  
CARELLA, BYRNE, CECCHI  
OLSTEIN, BRODY & AGNELLO, P.C.  
5 Becker Farm Rd.  
Roseland, NJ 07068  
Telephone: (973) 994-1700

At the final fairness hearing, Class Counsel will ask the Court for an award of attorneys' fees not to exceed 33.3% of the total recovery, plus incurred expenses, for Class Counsel's role in bringing this Lawsuit and for obtaining the benefits in the Settlement for the Class. Because of the extensive discovery in this case, including the need to retain a qualified expert to analyze over 20,000,000 merchant hotel transactions by Defendants and calculate the amount of TDTs that were allegedly recoverable on behalf of the Class based on those transactions, Class counsel has also incurred approximately \$500,000 in out of pocket expenses litigating this action. Class Counsel will also ask the Court to award an incentive award from the total Settlement Fund to Monroe County, not to exceed the amount of \$65,000, in recognition of Monroe County's efforts as the lead plaintiff in this Lawsuit.

**5. HEARING ON THE SETTLEMENT**

The Court will hold a final fairness hearing on January 6, 2011 at 10:00 a.m. in Courtroom 13-1 of the United States District Court for the Southern District of Florida located at Wilkie D. Ferguson, Jr. United States Courthouse, 400 North Miami Avenue, 13th floor, Miami, Florida 33128, to determine whether the Settlement should be approved as fair, adequate and reasonable. At this final fairness hearing, the Court will also determine the amount of attorneys' fees to be awarded to Class Counsel from the Settlement Fund. The hearing may be continued without further notice. You may appear at the hearing, individually or through your own counsel,

but only if you have submitted a proper objection under the procedure described in Section 6 below.

## 6. YOUR RIGHT TO OBJECT TO THE SETTLEMENT

A Class member may object to the fairness, adequacy, or reasonableness of any portion of the Settlement or the Order and Final Judgment to be entered approving the Settlement. You may also separately object to Class Counsels' application for an award of attorneys' fees, expenses and an incentive award to Monroe County.

Any objection must be in writing and must state the name and case number of this Lawsuit (*County of Monroe v. Priceline.com Incorporated, et al.*, Case No. 09-10004-CIV-MOORE/SIMONTON). Any objection also must include: (a) your name, address, telephone number, and signature; (b) the Class member county which you represent; (c) each specific reason for any objections; and (d) any legal authority for such objection. Your failure to file and deliver a timely written objection will preclude you from objecting at the final approval hearing.

Any objection with respect to the fairness, adequacy, or reasonableness of any portion of the Settlement ("Settlement Objection") must be submitted no later than November 8, 2010 in the manner and method set forth below. Any objection directed to Class Counsels' application for an award of attorneys' fees, expenses and an incentive award to Monroe County ("Fee And Expense Objection") must be submitted no later than December 10, 2010, in the manner and method set forth below.

Any Settlement Objection or Fee And Expense Objection, as defined above, must be sent, via certified mail, to the Clerk of the Court at the following address within the respective time periods set forth above:

United States District Court Clerk's Office  
United States District Court for the Southern District of Florida  
Wilkie D. Ferguson, Jr. United States Courthouse  
400 North Miami Avenue, 8th floor  
Miami, Florida 33128

In addition, any Settlement Objection or Fee And Expense Objection must be served on *all* counsel listed below within the respective time periods set forth above:

### Class Counsel

Jay B. Shapiro, Esq.  
STEARNS WEAVER MILLER WEISSLER  
ALHADEFF & SITTERSON, P.A.  
150 West Flagler Street  
Suite 2200 – Museum Tower  
Miami, FL 33130  
Telephone: (305) 789-3200

### Counsel for Defendants

Steven E. Siff, Esq.  
McDERMOTT WILL & EMERY LLP  
201 S. Biscayne Blvd., Ste. 2200  
Miami, Florida 33131  
Telephone: (305) 358-3500  
(*Counsel for Defendants Orbitz, LLC and Trip  
Network, Inc. (d/b/a CheapTickets.com)*)

Timothy J. Koenig, Esq.  
FELDMAN KOENIG HIGHSMITH & VAN  
LOON, P.A.  
3158 Northside Drive  
Key West, Florida 33040-8025  
Telephone: (305) 296-8851

*(Counsel for Defendants Expedia, Inc.,  
Hotels.com, L.P., Hotwire, Inc., priceline.com  
Incorporated, Travelweb LLC, Site59.com,  
LLC, and Travelocity.com LP)*

## 7. EXCLUSION FROM THE SETTLEMENT

The Court has discretion to decide whether an individual Class member will have the ability to request exclusion pursuant to Rule 23 of the Federal Rules of Civil Procedure. Exclusion is different from an objection. If the Court grants the exclusion, that Class member will no longer be a member of Class, will not receive any of the benefits obtained in the Settlement, and will not release the Defendants from any claims. Class members filing objections to the Settlement are still members of the Class and are still entitled to Class benefits if the Settlement is approved. The filing of a Request For Exclusion does not mean that the Court will grant the request, and Class Counsel and counsel for Defendants reserve the right to object to any request for exclusion.

Any request to be excluded from the Class must be in writing and must state the name and case number of this Lawsuit (*County of Monroe v. Priceline.com Incorporated, et al.*, Case No. 09-10004-CIV-MOORE/SIMONTON). The Request For Exclusion must include: (a) your name, address, telephone number, and signature; (b) the Class member county which you represent; (c) each specific reason for requesting exclusion; and (d) any legal authority for such exclusion. Your failure to file and deliver a timely written Request For Exclusion will preclude you from requesting exclusion from the Settlement.

Any Request For Exclusion must be sent, via certified mail, to the Clerk of the Court no later than November 8, 2010 at the following address:

United States District Court Clerk's Office  
United States District Court for the Southern District of Florida  
Wilkie D. Ferguson, Jr. United States Courthouse  
400 North Miami Avenue, 8th floor  
Miami, Florida 33128

In addition, your Request For Exclusion must be served on *all* counsel listed below no later than November 8, 2010:

Class Counsel

Jay B. Shapiro, Esq.  
STEARNS WEAVER MILLER WEISSLER  
ALHADEFF & SITTERSON, P.A.  
150 West Flagler Street  
Suite 2200 – Museum Tower  
Miami, FL 33130  
Telephone: (305) 789-3200

Counsel for Defendants

Steven E. Siff, Esq.  
McDERMOTT WILL & EMERY LLP  
201 S. Biscayne Blvd., Ste. 2200  
Miami, Florida 33131  
Telephone: (305) 358-3500  
*(Counsel for Defendants Orbitz, LLC and Trip  
Network, Inc. (d/b/a CheapTickets.com))*  
Timothy J. Koenig, Esq.  
FELDMAN KOENIG HIGHSMITH & VAN  
LOON, P.A.  
3158 Northside Drive  
Key West, Florida 33040-8025  
Telephone: (305) 296-8851

*(Counsel for Defendants Expedia, Inc.,  
Hotels.com, L.P., Hotwire, Inc., priceline.com  
Incorporated, Travelweb LLC, Site59.com,  
LLC, and Travelocity.com LP)*

Any party seeking to respond to any request for exclusion will do so no later than November 22, 2010. The Court will endeavor to rule prior to the final hearing on whether any exclusions, if requested, will be allowed.

**8. HOW TO GET MORE INFORMATION**

Certain of the pleadings and other records in the Lawsuit may be examined during regular office hours at the United States District Court Clerk's Office (address provided above). Additional information, including other documents pertaining to the Lawsuit and the Settlement, may be obtained by contacting Class Counsel at their respective addresses provided above.

The terms of the Settlement will not become effective unless and until the Settlement receives final approval from the Court and any appeals have been concluded. If the Settlement is not approved, you will not receive the benefits described in this Notice, and the Lawsuit will continue.

**PLEASE DO NOT CALL THE COURT OR THE COURT CLERK REGARDING THE SETTLEMENT.**

Date: September 8, 2010

BY THE COURT:

K. MICHAEL MOORE,  
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

Case No. 09-10004-MOORE/SIMONTON

THE COUNTY OF MONROE, FLORIDA,  
individually and on behalf of others  
similarly situated,

Plaintiff,

vs.

PRICELINE.COM, INC., et al.,

Defendants.



\_\_\_\_\_/

**ORDER GRANTING PRELIMINARY APPROVAL OF CLASS SETTLEMENT  
AGREEMENT**

THIS CAUSE came before the Court upon Plaintiff's Motion for Preliminary Approval of Class Settlement Agreement (dkt # 201).

UPON CONSIDERATION of the Motion, the Supplemental Briefing (dkt # 211), the pertinent portions of the record, and being otherwise fully advised in the premises, the Court enters the following Order.

## I. BACKGROUND

### A. Factual Background<sup>1</sup>

Plaintiff, the County of Monroe, Florida (“Monroe”) brings this action on behalf of a class<sup>2</sup> of Florida counties that have enacted tourist development taxes (“TDT”), and that allegedly have not received the amounts due from Defendants—various online travel companies (“OTCs”),<sup>3</sup>—under those tax laws. This action is one of many lawsuits filed around the country by municipalities and counties alleging that the OTCs have failed to remit taxes due under local TDT ordinances.

The heart of the instant dispute is whether the OTCs “rent, lease or let for consideration” hotel space, and whether they are “the person receiving the consideration for the lease or rental,” such that they are covered by the TDT Ordinance. Monroe alleges that Defendants’ actions are covered by the ordinance and that the OTCs have violated the Ordinance by failing to remit taxes on online room reservation transactions.

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<sup>1</sup> The facts are undisputed unless otherwise noted. Additionally, unless noted, they are taken from the Parties’ Statements of Undisputed Facts filed in relation to the Parties’ respective summary judgment motions. See Plaintiff’s Statement of Undisputed Facts in Support of Its Motion for Summary Judgment (dkt # 138) (“Pl. S.F.”); Defendants’ Response to Plaintiff’s Statement of Undisputed Facts (dkt # 154) (“Def. Resp. to Pl. S.F.”); Defendants’ Statement of Undisputed Facts (dkt # 144) (“Def. S.F.”); Plaintiff’s Response to Defendants’ Statement of Undisputed Facts (dkt # 161) (“Pl. Resp. to Def. S.F.”). This Court incorporates by reference the exhibits cited therein.

<sup>2</sup> The Class in this matter was certified on March 15, 2010. See Order Granting Motion for Class Certification (dkt # 103). Of the 59 potential Class Members counties, 26 counties opted out of the lawsuit while 33 have remained in the lawsuit.

<sup>3</sup> The Defendants in this action are Priceline.com Inc., Travelweb L.L.C., Travelocity.com L.P., Site59.com L.L.C., Expedia Inc., Hotels.com L.P., Hotwire Inc., Trip Network Inc. (d/b/a Cheaptickets.com), and Orbitz L.L.C.

The OTCs host websites that offer a variety of travel related services, including airline, car rental, and hotel reservations. Def. S.F. ¶¶ 22-23; Pl. Resp. to Def. S.F. ¶¶ 22-23. The OTCs assist travelers in placing reservations by providing customers with information and options including vacancies, hotel ratings and reviews, and rates. Def. S.F. ¶¶ 23, 28-29; Pl. Resp. to Def. S.F. ¶¶ 23, 28-29.

The OTCs assist customers in securing hotel rooms in two ways: through an “Agency Model” and through a “Merchant Model.” Pl. S.F. ¶ 4; Def. Resp. to Pl. S.F. ¶ 4. Only the sales made using the Merchant Model are the subject of the present dispute. Where an Agency Model is used, the OTCs are given commissions from hotels for assisting in locating and booking online reservations. Pl. S.F. ¶ 5; Def. Resp. to Pl. S.F. ¶ 5. Under this model, the customer pays the consideration for the transaction directly to the hotel upon arrival. Pl. S.F. ¶ 6; Def. Resp. to Pl. S.F. ¶ 6.

By contrast, under the Merchant Model, the customer utilizes an OTC’s website to search for available rooms and rates at various hotels, the availability of which is known to the OTC through the hotels’ reservation computer systems. Def. S.F. ¶ 38; Pl. Resp. to Def. S.F. ¶ 38. When the reservation is made, the customer is charged by the OTC for both the net amount for the reservation and a mark-up. Def. S.F. ¶ 33; Pl. Resp. to Def. S.F. ¶ 33. The OTC then gives the net cost of the reservation to the hotel, and keeps the mark-up as a “facilitation fee.” Pl. S.F. ¶¶ 9-11; Def. Resp. to Pl. S.F. ¶¶ 9-11; Def. S.F. ¶ 37; Pl. Resp. to Def. S.F. ¶ 37. The OTCs only charge the customer and remit to the hotel TDTs on the net amount. Pl. S.F. ¶ 12; Def. Resp. to Pl. S.F. ¶ 12. This marked-up amount is what lies at the center of this dispute, because it is this amount that is never taxed, and which the County believes should be taxed. The customer sees only the combined “Marked-Up Rate” and does not see the breakdown of the net

rate and the mark-up. Pl. S.F. ¶ 14; Def. Resp. to Pl. S.F. ¶ 14. In these transactions, the hotels maintain the physical structures where the guests stay. Def. S.F. ¶ 13; Pl. Resp. to Def. S.F. ¶ 13. They establish policies as to who may stay in a room, room availability, net rate of rent, and length of stay requirements. Def. S.F. ¶¶ 13-17; Pl. Resp. to Def. S.F. ¶¶ 13. The OTCs state that they do not have the right or ability to require any hotel to make any accommodation available. Def. S.F. ¶ 50; Pl. Resp. to Def. S.F. ¶ 50.

Many of the rooms are sold using an “opaque model” in which customers do not know the name of the hotel they are purchasing a room from and in exchange for this anonymity receive “steep[ly] discount[ed]” rates not “offered by hotels through other distribution channels.” Def. S.F. ¶ 25; Pl. Resp. to Def. S.F. ¶ 25. According to the OTCs, the hotels have control over the net price charged by the OTCs. Def. S.F. ¶ 17; Pl. Resp. to Def. S.F. ¶ 17. However, Monroe has offered evidence suggesting that the net rate must be lower than the amount charged through certain other channels. Pl. Resp. to Def. S.F. ¶ 17. Monroe also offered evidence suggesting that the hotels have no control over the mark-up amount charged by the OTCs. Id. The OTCs do not suffer any penalty if specific rooms are not booked in a hotel. Def. S.F. ¶ 53; Pl. Resp. to Def. S.F. ¶ 53.

B. Procedural Background

On January 12, 2009, Monroe initiated this action by filing a Complaint (dkt # 1). Defendants filed a Motion to Dismiss (dkt # 15) on March 27, 2009. Monroe filed an Amended Complaint (dkt # 23) on May 28, 2009. The Amended Complaint alleged: a TDT Ordinance violation (Count I); conversion (Count II); unjust enrichment (Count III), and sought injunctive relief (Count IV). On June 1, 2009, the OTCs filed a Motion to Dismiss the Amended Complaint (dkt # 24). The Motion to Dismiss alleged that Monroe had failed to state a claim and

that injunctive relief was inappropriate. On December 17, 2009, this Court entered an Order granting in part and denying in part the Motion to Dismiss. See Order Granting in Part Motion to Dismiss (dkt # 42), 2009 WL 4890664 (S.D. Fla. Dec. 17, 2009). The Motion was granted only insofar as the claim for injunctive relief was dismissed. Id.

On July 1, 2010, the Parties notified the Court that they had reached a settlement. On August 2, 2010, Monroe moved to preliminarily approve the settlement. See Motion for Preliminary Approval of Settlement (dkt # 201).

C. Settlement Terms

Monroe's Proposed Settlement would provide the Class with \$6,500,000.00. This amount would be disbursed to the counties based on the amount of TDTs that were allegedly due to each county, with the amounts ranging from \$0 for three counties to \$2,108,427.43 for Miami-Dade County. According to Monroe, these figures were derived from calculation by an expert witness who determined that \$6,367,695.23 in TDTs were owed to the Class.<sup>4</sup> This expert also broke down the TDTs owed, such that the Parties could tell how much was owed to each County. These figures reflect alleged lost taxes revenue from sometime in 1999 through March 31, 2010. Further, Class Counsel would be eligible to apply to the Court for a "reasonable attorney fee" to be taken out of the settlement fund, not to exceed 33% of the fund, plus

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<sup>4</sup> Monroe's Motion to Preliminarily Approve the Settlement is supported by a paucity of admissible evidence. The Parties are reminded that "[s]tatements by counsel in briefs are not evidence." Ladner v. Litespeed Mfg. Co., 537 F. Supp. 2d 1206, 1217 (N.D. Ala. 2008). Here, while the Court has exercised its discretion in looking elsewhere in the docket to admissible evidence discussing the facts of the case, no such evidence exists in the record relating to the facts surrounding the settlement negotiations. Most critically, in justifying the settlement figures Monroe relied heavily on the alleged TDTs owed to the Class as a whole as well as to individual Class Members, but no admissible evidence exists in the record demonstrating the veracity of these figures. However, rather than delaying this litigation by requesting supplemental briefing on this point, the Court believes the better method is to assume these figures to be correct for purposes of this motion, and delay the requirement for showing evidence until the earlier of when an objection arises to the settlement or when the Parties move for final approval of the settlement.

expenses. Finally, the OTCs would be released from paying any TDTs for the next two years, except Defendant Priceline.com, who would receive a release for three years.

## II. REQUEST TO PRELIMINARILY APPROVE SETTLEMENT

A settlement will be certified so long as it is “fair, adequate and reasonable and is not the product of collusion between the parties.” Bennett v. Behring Corp., 737 F.2d 982, 986 (11th Cir. 1984). The Eleventh Circuit has

identified the following factors as relevant to our review of whether a class settlement’s terms are fair, reasonable and adequate: (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.

In re CP Ships Ltd. Sec. Litig., 578 F.3d 1306, 1318 (11th Cir. 2009) (quoting Bennett, 737 F.2d at 986).

In the present action, these factors point strongly towards preliminary approval of the settlement.

### A. Absence of Collusion Between the Parties

Both sides of this litigation have, throughout this litigation, advocated for their clients forcefully, effectively, and unequivocally. The Court has observed no evidence of collusion. Thus, this factor favors approving the settlement.

### B. Fairness, Adequacy and Reasonableness Factors

#### 1. Likelihood of Success

As noted above, the OTCs’ liability or non-liability in this case turns on whether various identical TDT Ordinances apply to them. Courts have reached contrary outcomes when determining whether such ordinances applied to OTCs in cases around the country. Compare,

e.g., Pitt County v. Hotels.com, L.P., 553 F.3d 308, 313 (4th Cir. 2009) (OTCs not subject to municipal TDT ordinance); City of Orange v. Hotels.com, No. 1:06-CV-413, 2007 WL 2787985, at \*5 (E.D. Tex. Sept. 21, 2007) (same); Louisville/Jefferson County Metro Gov't v. Hotels.com L.P., No. 3:06-CV-480-R, 2008 WL 4500050, at \*5 (W.D. Ky. Sept. 30, 2008) (same); with City of Goodlettsville v. Priceline.com, 605 F. Supp. 2d 982, 997-98 (M.D. Tenn. 2009) (denying OTCs' motion to dismiss and concluding that they were subject to a municipal TDT ordinance); Leon County v. Hotels.com, et al., No. 06-21878-CIV-HUCK, 2006 WL 3519102, at \*1 (S.D. Fla. Dec. 6, 2006) (same); Expedia, Inc. v. City of Columbus, 681 S.E. 2d 122, 127-29 (Ga. 2009) (concluding that OTCs were subject to Georgia municipal TDT ordinance). The divergent opinions in this area of the law can be explained in part by the wording of individual TDT Ordinances. However, predicting how a particular TDT Ordinance will be interpreted by a court can be difficult, and reasonable jurists may disagree on a given interpretation. Thus, the summary judgment motions in this case could have been reasonably decided either way. Regardless of the outcome, the losing party would inevitably have appealed and the Eleventh Circuit may have reversed any decision. In sum, the likelihood of success in this case is unknowable, with the only certainty being protracted litigation. This factor suggests that settlement would be beneficial in creating certainty and in accelerating the point at which the Class Members would obtain a recovery.

## 2. The Possible Range of Recovery

The least possible recovery for the Class is zero, which would be the result if they lost the liability portion of the case. The largest possible recovery is less clear. Monroe suggests that the total recovery available to the Class based on lost TDTs is \$6,367,695.23, exclusive of potential interest and penalties such as punitive damages. This understates the collective

Plaintiffs' potential recovery because it does not reflect the sizable value of the two to three years that the OTCs are released from paying further TDTs. The value of these years is difficult to quantify, however, as even if the Class won this litigation definitively, the value of those years could be influenced by countless factors, from a drop in tourism due to the recent oil spill to a change in the Counties' ability to collect TDTs due to state or federal legislation. Thus, perhaps unsurprisingly, Monroe does not attempt to estimate the value of these years. This factor, standing alone, weighs neither in favor or against settlement.

### 3. The Range of Settlements that are Reasonable

Given the many uncertainties that surround the existence of liability in this litigation, the potential range of reasonable settlements is broad. The \$6,367,695.23 in actual damages is a useful starting point because it is the amount that the Class is most likely to recover if successful in the litigation. In such a scenario, the Class would also gain the value of the released years, but even if these years are worth several million dollars, a Class Representative could still reasonably settle the claim for significantly below the \$6,367,695.23 figure, given the significant possibility that the Class's recovery could be nothing if this case proceeded. In determining the reasonable range of settlements, the Court gives little weight to the potential for punitive damages as these damages were significantly more speculative than the actual damages caused by lost revenue or by the released future damages.

As to the reasonable range of settlements of the individual class members, disbursements based on the respective amount of TDT owed is a reasonable and fair manner in which to allocate the settlement funds. Although some counties will receive small sums under this method, it is doubtful that a larger sum would have been obtained if the suit was brought individually. Thus, the Court finds that a settlement for \$6,500,000.00, including the proposed

allocations of these settlement funds, is within the range of reasonable settlements. Therefore, this factor favors approving the settlement.

4. Complexity, Expense and Duration of Litigation

This case is complex, expensive and lengthy. In addition to presenting close legal questions, this case was made complex by the sheer amount of discovery that was necessary. According to Monroe, over the past year and a half the Parties have exchanged around “a hundred thousand pages of documents,” taken more than 20 depositions and engaged in detailed summary judgement motions. See Motion for Preliminary Approval at 1. Expert witness costs to determine the amount owed under the TDTs alone amounted to over \$400,000.00. Id. at 5 n.5. Moreover, had the Parties not settled, this case would have either been decided on summary judgment or at trial, followed by an inevitable appeal – the expenses of which can be saved by settling. Thus, this factor points in favor of approving the preliminary settlement.

5. Substance of, and Opposition to, the Settlement

While no opposition to the settlement has yet been raised by Class Members, the Court sua sponte raised the issue of enforceability of a settlement that exempts Parties from future taxes created by the Counties. The Court raised two questions for supplemental briefing: (1) whether class counsel has authority to settle on these terms even though it will have the effect of allowing the current Monroe County Board of Commissioners to prevent the future Monroe County Board from enforcing future tax laws against the OTCs, and (2) whether class counsel has the authority to bind absent class members to an agreement that causes them to relinquish benefits that are not the direct subject of the litigation. The Court now finds the Parties have the authority to bind both future iterations of the Monroe County Board and the absent Class Members through the settlement.

a. Binding Future Monroe County Boards

The Eleventh Circuit has held that where, in the course of litigation, governmental parties agree to a settlement that is reasonable, fair and constitutional, that this settlement will be binding on future iterations of that governmental party. See Stovall v. City of Cocoa, Fla., 117 F.3d 1238, 1242-43 (11th Cir. 1997) (City Council cannot repudiate prior consent decree); Allen v. Ala. State Bd. of Educ., 816 F.2d 575, 577 (11th Cir.1987) (settlement agreement was binding upon the Alabama State Board of Education). Here, as discussed above, this settlement is within the realm of reasonable and fair settlements. Importantly, there is a legitimate dispute being resolved between adverse parties, and there exists no indication that the settlement is being done as a method of precluding the effectiveness of the future legislative process. See Abramson v. Fla. Psychological Ass'n, 634 So. 2d 610, 612 (Fla. 1994) (upholding settlement by government agency where settlement was made in good faith and there existed “no suggestion of any collusion”). Further, there is no indication that the settlement is unconstitutional. Thus, the Parties have the authority to bind future iterations of the Monroe County Board through the terms of the settlement.

b. Binding Absent Class Members

The Supreme Court has held that

[i]n order to achieve a comprehensive settlement that would prevent relitigation of settled questions at the core of a class action, a court may permit the release of a claim based on the identical factual predicate as that underlying the claims in the settled class action even though the claim was not presented and might not have been presentable in the class action.

Matsushita Elec. Indus. Co. v. Epstein, 516 U.S. 367, 376-77 (1996). Similarly, a Fifth Circuit case that is binding<sup>5</sup> on this Court held that

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<sup>5</sup> Fifth Circuit cases from before the creation of the Eleventh Circuit are binding precedent on this Court. See Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

a court may release not only those claims alleged in the complaint and before the court, but also claims which could have been alleged by reason of or in connection with any matter or fact set forth or referred to in the complaint. And it has been held that even when the court does not have power to adjudicate a claim, it may still approve release of that claim as a condition of settlement of an action before it.

In re Corrugated Container Antitrust Litig., 643 F.2d 195, 221 (5th Cir. 1981) (internal quotations and brackets omitted); cf. In re Gen. Am. Life Ins. Co. Sales Practices Litig., 357 F.3d 800, 805 (8th Cir. 2004) (“There is no impropriety in including in a settlement a description of claims that is somewhat broader than those that have been specifically pleaded. In fact, most settling defendants insist on this.”). This is true of claims of absent class members. In re Corrugated Container Antitrust Litig., 643 F.2d at 221. This also includes future claims. Ass’n for Disabled Ams., Inc. v. Amoco Oil Co., 211 F.R.D. 457, 471-72 (S.D. Fla. 2002) (collecting cases). Here, Monroe seeks to release the OTCs from future claims for payment of TDTs arising out of the same factual predicate as the claims discussed in the Complaint. Thus, the Parties has the authority to release these future claims and the Court has the authority to approve a settlement containing such a release.

c. Conclusion

For the above reasons, the Court finds that the Parties have the authority to execute this settlement. Further, because the substance of the settlement otherwise is fair and reasonable, this factor favors approving the preliminary settlement.

6. The Stage of Litigation

This case has been proceeding for over a year and an extensive amount of discovery has occurred during that time. A Motion to Dismiss was decided, which helped clarify the issues and bargaining positions of the party. Additionally, the preliminary settlement was reached on the eve of trial. Thus, the Parties were in an excellent position to be aware of the facts of the

case that could influence their bargaining strengths and weaknesses in negotiating a settlement.

Thus, the stage of litigation points in favor of approving the preliminary settlement.

C. The Preliminary Settlement is Approved

The factors set out by the Eleventh Circuit overwhelmingly suggest that this settlement should be approved. Thus, based upon a consideration of the above factors, the Court finds that Monroe's proposal to settle this claim is fair, adequate and reasonable and is not the product of collusion between the parties. Therefore, the preliminary settlement is approved.

D. Second Opt Out

Pursuant to Federal Rule of Civil Procedure 23(e)(4), the Court "may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so." This decision is left to the discretion of the district court. Denney v. Deutsche Bank AG, 443 F.3d 253, 271 (2d Cir. 2006). Because the Court finds the settlement to be fair, adequate and reasonable, it sees no reason to provide a second opt out opportunity at this point.<sup>6</sup> The exceptions to this finding are the three class members (Holmes, Gilchrist, and Glades) who are receiving \$0 under the settlement, who may opt out upon request. Not only would these counties not be receiving consideration for dismissing the case, they would also be releasing the OTCs from liability for future taxes without receiving any benefit. This is inherently unfair and unreasonable.<sup>7</sup>

**V. CONCLUSION**

Based on the foregoing, it is ORDERED AND ADJUDGED as follows

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<sup>6</sup> The Court may, of course, revisit this issue on a case by case basis if valid objections are raised to individual settlement amounts.

<sup>7</sup> Monroe makes clear in its Motion that it does not object to these Counties being excluded from the Class.

**Preliminary Approval of Settlement**

1. The Court grants preliminary approval of the Proposed Class Settlement (Ex. A to dkt # 201), as the Court finds the proposed settlement fair, reasonable, adequate, and not a product of collusion, subject to further consideration at the Fairness Hearing provided for below.

**Notice to Potential Class Members**

2. The form of Notice provided in Exhibit 1 of Plaintiff Joint Motion (dkt # 213) is approved.

3. Plaintiff shall arrange to have notice sent to all class members in the proposed form by first class mail, postage prepaid within ten (10) days of this order. Class Members Holmes, Gilchrist, and Glades Counties may opt out from the Class by requesting automatic exclusion anytime before November 8, 2010. All other class members shall have until November 8, 2010, to request exclusion from Class and/or to object to the fairness of the settlement. These requests for exclusion will not be automatically granted and must include reasons for requesting exclusion from the proposed settlement. All requests for exclusion and Objections should be filed with the Court and sent to Class Counsel. Class Counsel may respond to any Objections or requests for exclusion. Such responses shall be filed with the Court by November 22, 2010.

4. Within twenty days (20) of this Order, Class Counsel shall file with the Court a sworn statement attesting to compliance with the provisions of paragraph 3.

5. A Fairness Hearing will be held before this Court on January 6, 2011 at 10:00 a.m. Any class member may appear at the hearing. However, to preserve this ability to appear, the Class Member must, in a filing postmarked by November 8, 2010 (a) notify the Court of its intent to appear, and (b) include with this notice a statement indicating its Objections to the settlement and any evidence the class member would like the Court to consider at the fairness hearing. Any

class member who fails to object in the manner provided above will be deemed to have waived their ability to object to the Proposed Class Settlement.

6. All papers in support of final approval of the Settlement Agreement and Class Counsel's fee, expense and incentive award application must be filed by December 1, 2010. Any Objections to this award must be filed by December 10, 2010. Any Reply to these Objections by Class Counsel shall be filed by December 15, 2010.

7. The Notice to be provided to class members as set forth in paragraphs 2 and 3 is found to be the best means of providing notice practicable under the circumstances and, when completed, shall constitute due and sufficient notice of the Class Certification, the Proposed Settlement and the Fairness Hearing to all persons affected by and/or entitled to participate in the class action and settlement reached by the parties, in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.

8. The Parties have until January 14, 2011 to file a motion for approval of the settlement.

DONE AND ORDERED in Chambers at Miami, Florida, this 3rd day of September, 2010.

Kevin Michael Moore

Digitally signed by Kevin Michael Moore  
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email=k\_michael\_moore@flsd.uscourts.gov, c=US  
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K. MICHAEL MOORE  
UNITED STATES DISTRICT JUDGE

cc: All counsel of record