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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Date: October 19, 2010

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

Agenda Item No. 12(A)(1)

From: George M. Burgess
County Manager

Resolution No. R-1062-10

R. A. Cuevas, Jr.
County Attorney

Subject: Resolution Regarding Proposed Settlement in Federal Class Action
Monroe County v. Priceline.com, Inc. U.S. Dist. Ct. Case No. 09-10004-CIV-Moore.

Background

Online travel companies ("OTCs") have been actively engaged in the online booking of hotel rooms in Miami-Dade County to consumers. OTCs have been remitting less than the full amount of bed taxes due to the County based on the "room rates" listed on their websites. The County has assessed the OTCs for the omitted taxes and the OTCs challenged this administrative assessment by filing state court lawsuits.[1]

A case addressing the same issues was filed in our local federal court by Monroe County. In March of this year the federal court certified the case as a class action for all Florida counties. We elected to hold the pending state cases in abeyance and proceed in the federal case because the judge handling the case was a highly respected jurist, his preliminary rulings were favorable to our position on the issues, and the federal case was set for trial.

The class counsel has since reached a proposed settlement with the OTCs on behalf of all the counties in the class. (A copy is attached). The court has preliminarily approved the settlement, "finding the settlement to be fair, adequate and reasonable", subject to objections and/or requests to opt out by members of the class.

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the proposed settlement of the lawsuit.

Miami-Dade County's gross allocation under the proposed settlement is $2,108,427.43, an amount slightly greater than the total amount of the outstanding tourist development taxes (TDTs). If the district court approves class counsel's request for attorney's fees and costs reimbursement, then the County will net approximately $1.2 million. Additionally, the settlement requires the counties to forego the collection of the disputed TDTs from the OTCs for the next two to three years. Last year, the state legislature considered and almost passed amnesty legislation, and is fully expected to again take up, and may well pass, such legislation next year.

The district court has preliminarily approved the settlement, and indicated that it was not inclined to allow class members to opt out.

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[1] The bed taxes at issue in the state proceedings consist of a 3% Tourist Development Tax (TDT) and a 3% Convention Development Tax (CDT). While the operative provisions of the two taxes are the same, only the TDT is involved in the *Monroe County* federal class action suit.

MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: October 19, 2010

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 12(A)(1)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

__✓__ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 12(A)(1)
10-19-10

RESOLUTION NO. R-1062-10

RESOLUTION PROVIDING DIRECTIONS TO COUNTY ATTORNEY REGARDING PROPOSED SETTLEMENT IN THE FEDERAL CLASS ACTION IN *MONROE COUNTY v. PRICELINE.COM, INC.*, CASE NO. 09-1004-CIV-MOORE

WHEREAS, on March 15, 2010, the federal district court certified a class in *Monroe County v. Priceline.com, Inc., et al.,* Case No. 09-1004-Civ-Moore of "all counties within the State of Florida that have enacted a tourist development tax of §125.0104, Florida Statutes"; and

WHEREAS, at the time the class was certified in *Monroe County* Miami-Dade County was engaged in recently commenced state court proceedings involving the same issue; namely, whether on-line travel companies (OTCs) are required to pay locally assessed bed taxes; and

WHEREAS, on May 24, 2010, the County elected to become a class member in the *Monroe County* case because the judge handling the case is a highly respected jurist whose preliminary rulings were consistent with the County's interpretation of the bed tax laws and the action was set for trial beginning July 19, 2010; and

WHEREAS, shortly before the scheduled trial a proposed settlement agreement was reached between counsel for the class and the OTCs; and

WHEREAS, the district court has preliminarily approved the proposed settlement, "finding the settlement to be fair, adequate and reasonable", subject to requests to opt out of the class and a fairness hearing to consider any objections by class members; and

WHEREAS, under the proposed settlement Miami-Dade County's gross allocation is $2,108,427.43, an amount slightly greater than the claimed amount of past due tourist development taxes; and

WHEREAS, last year the state legislature almost passed legislation granting online travel companies amnesty from the collection and payment of bed taxes, and is again expected to take up, and may well pass, such legislation this year,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that the Board hereby directs the County Attorney to take all actions necessary for Miami-Dade County to fully participate in the settlement proceeds of the class settlement agreement preliminarily approved by the federal district court in *Monroe County v. Priceline.com, Inc., et al.,* Case No. 09-1004-Civ-Moore.

The foregoing resolution was offered by Commissioner **Audrey M. Edmonson** , who moved its adoption. The motion was seconded by Commissioner **Sally A. Heyman** and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman **aye**
Jose "Pepe" Diaz, Vice-Chairman **absent**

Bruno A. Barreiro	**aye**	Audrey M. Edmonson	**aye**
Carlos A. Gimenez	**absent**	Sally A. Heyman	**aye**
Barbara J. Jordan	**aye**	Joe A. Martinez	**absent**
Dorrin D. Rolle	**aye**	Natacha Seijas	**aye**
Katy Sorenson	**aye**	Rebeca Sosa	**nay**
Sen. Javier D. Souto	**absent**		

The Chairperson thereupon declared the resolution duly passed and adopted this 19th day of October, 2010. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **DIANE COLLINS**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Robert A. Duvall

MASTER SETTLEMENT AGREEMENT

This Master Settlement Agreement ("Agreement") is made this 2nd day of August 2010 between, on the one hand, the County of Monroe, Florida (the "County"), individually and on behalf of 32 other Florida counties, which are members of a certified class ("the Class")[1] (collectively, the "Plaintiffs") and, on the other hand, Defendants Expedia, Inc., Hotels.com, L.P., Hotwire, Inc., Hotels.com, and TravelNow.com, Inc. (the "Expedia parties"); Defendants priceline.com Incorporated and Travelweb LLC (the "Priceline parties"); Defendants Travelocity.com LP and Site59.com LLC (the "Travelocity parties"); and Defendants Orbitz, LLC and Trip Network, Inc. d/b/a Cheaptickets.com (incorrectly named as "Trip Network, Inc. d/b/a/Cheap Tickets") (the "Orbitz parties") (the Expedia parties, the Priceline parties, the Travelocity parties, and the Orbitz parties may be collectively referred to herein as the "Defendants").

WHEREAS, Plaintiffs and the Defendants are currently involved in litigation in an action styled *The County of Monroe, Florida, etc. v. Priceline.com, et. al.*, Case No. 09-10004-CIV-MOORE/SIMONTON pending in the United States District Court for the Southern District of Florida (the "Action");

WHEREAS, Plaintiffs and the Defendants desire to settle the Action on the terms and conditions set forth herein;

WHEREAS, Plaintiffs and the Defendants previously reached agreements in principle to settle the Action; that the Expedia parties, the Priceline parties and the Travelocity parties documented the material terms of such agreements in separately

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[1] The County of Monroe represents a class consisting of the Counties of Baker, Bradford, Citrus, Clay, Collier, Columbia, Duval, Franklin, Gadsden, Gilchrist, Glades, Hamilton, Hendry, Hernando, Highlands, Holmes, Indian River, Jackson, Jefferson, Lake, Levy, Madison, Martin, Miami-Dade, Monroe, Okeechobee, Putnam, St. Lucie, Santa Rosa, Sarasota, Sumter, Suwannee, and Taylor.

executed Memoranda of Understanding ("MOUs") between those parties[2]; and counsel for Plaintiffs and counsel for the Orbitz parties documented the material terms of those parties' settlement in an email dated July 1, 2010;

WHEREAS, the previously executed MOUs between Plaintiffs and the Expedia parties, the Priceline parties and the Travelocity parties and the July 1, 2010 email between Plaintiffs and the Orbitz parties expressly contemplated that the parties would thereafter enter into a comprehensive settlement agreement resolving the Action;

WHEREAS, the parties intend that this Agreement constitute a final, binding settlement agreement resolving the Action on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, Plaintiffs and the Defendants (and each of them) agree, subject to Court approval in accordance with Rule 23(e) of the Federal Rules of Civil Procedure, as follows:

1. Subject to and conditioned on Final Approval of this Agreement as set forth in paragraph 18 below, each Defendant agrees to pay the following dollar amounts to the Class on behalf of itself, care of counsel for the Class (the "Settlement Payments") within 10 days of Final Approval:

A. The Expedia parties: $4,950,000.00

B. The Travelocity parties: $625,000.00

C. The Priceline parties: $600,000.00; and

D. The Orbitz parties: $325,000.00

[2] The effective date of the Expedia MOU is July 1, 2010; the effective date of the Travelocity and Priceline MOUs is June 25, 2010.

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2. Plaintiffs acknowledge that the above sums are the only consideration to be paid by each Defendant for the Released Claims (as defined below) and in connection with this Agreement. No Defendant shall be liable for any other Defendant's amount as set forth in Paragraph 1.

3. Effective upon the last to occur of all the events set forth in paragraph 18 below, Plaintiffs hereby completely and irrevocably release and forever discharge each of the Defendants and their respective present or former, successor, direct or indirect, parents, subsidiaries, affiliates, agents, legal representatives, insurers, employees, officers, directors, and shareholders (the "Released Parties"), of and from any and all past, present or future causes of action, claims, demands, expenses, damages or losses, of whatever kind or nature, known or unknown, including, without limitation, by audit or assessment, that were asserted or could have been asserted in the Action, in law or equity, based upon each of the Defendants' alleged failure to collect, pay and/or remit Tourist Development Taxes pursuant to Monroe County Code Section 23-197(a) or other substantially similar Tourist Development Tax Ordinances of other members of the Class enacted pursuant to the authority granted by § 125.0104 of the Florida Statutes that are at issue in the Action, and any applicable interest, penalties and/or additions to tax ("TDTs") (collectively, the "Released Claims"). Defendants similarly release and discharge Plaintiffs from any claim, demand, etc. that could have been asserted against Plaintiffs in the Action, by counterclaim or otherwise, including any claim for attorneys' fees or expenses. In connection with the releases given herein, each Defendant represents that it has provided transactional data to Plaintiffs reflecting all merchant hotel transactions conducted by such Defendant within the counties comprising the Class

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through March 31, 2010. Each Defendant, on behalf of itself and its respective released parties, represents that it has not intentionally excluded any merchant hotel transactions by that Defendant from any transactional data it has provided to Plaintiffs.

4. Because Miami-Dade County's TDT claim against the Defendants is also included in Miami-Dade's claim for assessment against the Defendants which is at issue in the action consolidated on March 28, 2010 under the caption *Hotwire, Inc. v. Miami-Dade County, Florida and Florida Dept. of Revenue,* Case No. 2009 CA 4977 (the "Miami-Dade Assessment Claim"), the parties agree to take appropriate steps, at the appropriate time, but in any event prior to payment of the settlement amounts provided by Paragraph 1 above to ensure that Miami Dade County's TDT claim against the Defendants (which has been asserted and which is being released in this Action) is withdrawn from the Miami-Dade Assessment Claim. Likewise, because Duval County's TDT claim against the Defendants is also included in the City of Jacksonville's case (on behalf of Duval County) against the Defendants (which is at issue in *City of Jacksonville, in and for Duval County v. Hotels.com, L.P., et al.*, Case No. 2006-CA-005393-XXXX-MA (the "Duval Action")), the parties agree to take appropriate steps at the appropriate time, but in any event prior to payment of the settlement amounts provided by Paragraph 1 above to ensure that Duval County's TDT claim against the Defendants (which has been asserted and which is being released in this Action) is withdrawn and/or dismissed from the Duval Action. The parties further agree to take appropriate steps at the appropriate time, but in any event prior to payment of the settlement amounts provided by Paragraph 1 above to ensure the withdrawal and/or dismissal of the claims by or on behalf of any member of the Class that are, by the terms set forth herein, being released

in this Action and that are being asserted or could be asserted by or against the Defendants in connection with any case, assessment, or other proceeding or action. Similarly, the Defendants shall withdraw their own claims or defenses pertaining to Plaintiffs' released claims that are withdrawn or dismissed.

5. Upon receipt of the payments referenced in paragraph 1, the County, for itself and on behalf of the Class, shall cause the dismissal with prejudice of all claims in the Action against the Defendants by filing a Notice of Dismissal in the form attached hereto as Exhibit A. The dismissal with prejudice shall not be and is not a judgment on the merits of any claim brought, but is in furtherance of settlement only. Each party is to bear its own costs and attorneys' fees.

6. Plaintiffs acknowledge, following sufficient discovery and investigation by counsel, and in consideration of the payment referenced in paragraph 1, 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 the Class under the ordinances in effect at the time of the Action ("Current Ordinances"), or any amended or different ordinance that may be enacted. Plaintiffs agree that they will not circumvent the release by seeking to enforce or apply any new tax or amended ordinance to the Expedia parties, the Travelocity parties or the Orbitz parties that is, in form or substance, a TDT or a functional equivalent of a TDT. No Class member shall 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 with any taxing authority

in the Class for the payment of TDTs. The execution and existence of this Agreement is not, and shall not be, used as evidence that a nexus exists between the Class and the Expedia parties, the Travelocity parties or the Orbitz parties. Plaintiffs represent that this release of claims and this covenant not to sue the Expedia parties, the Travelocity parties or the Orbitz parties relating to the Two Year Period is and will be enforceable as against Plaintiffs and Plaintiffs' successor governmental entities and representatives. Nothing in this Agreement shall be construed to extend the Class' release of future claims or covenant not to sue the Expedia parties, the Travelocity parties or the Orbitz parties beyond the Two Year Period.

7. Plaintiffs acknowledge, following sufficient discovery and investigation by counsel, and in consideration of the payment referenced in paragraph 1, that for a period of three years following July 1, 2010 (the "Three Year Period"), no TDTs are or will be due and owing by the Priceline parties under the Current Ordinances, or any amended or different ordinance that may be enacted. Plaintiffs agree that they will not circumvent the release by seeking to enforce or apply any new tax or amended ordinance to the Priceline parties, that is, in form or substance, a TDT or a functional equivalent of a TDT. No Class member shall bring suit against the Priceline parties or otherwise attempt to collect, assess or offset any such TDTs during or relating to such Three Year Period, and during such period the Priceline parties shall have no obligation to register as a dealer with any taxing authority in the Class for the payment of TDTs. The execution and existence of this Agreement is not, and shall not be, used as evidence that a nexus exists between the Class and the Priceline parties. Plaintiffs represent that this release of claims and this covenant not to sue the Priceline parties relating to the Three Year Period is and

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will be enforceable as against Plaintiffs and Plaintiffs' successor governmental entities and representatives. Nothing in this Agreement shall be construed to extend the Class' release of future claims or covenant not to sue the Priceline parties beyond the Three Year Period.

8. The County acknowledges, for itself and on behalf of the Class, that: (a) it has consulted with its legal counsel regarding the terms and conditions of this Agreement; (b) it is entering into this Agreement voluntarily and with an understanding that it is releasing the Released Claims; (c) it has the authority to enter into the Agreement; (d) no other persons or entities have or have had any interest in the claims which are now being released; and (e) it has not sold, transferred or assigned its claims to any other person or entity prior to entering this Agreement.

9. The parties acknowledge that each side takes a different view of the facts and law related to this case. The parties agree that this Agreement is based on the parties' stated desire to compromise this dispute and is not an indication that either side has expressed agreement with the other side's view of the facts or law.

10. The parties agree that how this Agreement is described and communicated is of importance. The parties agree not to characterize this Agreement to anyone that it constitutes any kind of admission that tax is owed, or that the Settlement Payments to be made hereunder are for the payment of past or future taxes or to satisfy any asserted liability. Rather, the parties agree to describe the Settlement Payments by the Defendants as consideration for the compromise and release of disputed claims. Nothing in this Agreement, however, shall prevent either party from describing the fairness, reasonableness or adequacy of this Agreement relative to the potential liability and

damages at issue in this case. The parties agree that a portion of the Settlement Payments represent consideration for a release of claims and a covenant not to sue for TDTs relating to the Two Year Period (and in the case of the Priceline parties, the Three Year Period). Plaintiffs, and their counsel, will not use this Agreement to interfere, impede or prejudice the Defendants' position in other hotel tax litigation. Plaintiffs and their counsel 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.

11. The Plaintiffs agree that they will refrain from issuing any press releases regarding this Agreement. Further, in any communication with the media relating in any way to the terms of the settlement or otherwise intended for publication through the media, the parties shall state in words or in substance that the settlement is intended to compromise disputed claims, that Defendants are not admitting any liability for any taxes claimed in the litigation, and that any payments made are not payment of any past or future tax.

12. The Plaintiffs, and the attorneys for the Plaintiffs, further agree not to provide, show a copy of this Agreement, nor disclose the terms of this 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.

13. The parties have agreed to enter into this Agreement in order to put to rest the uncertainty and expense of continued litigation. The parties acknowledge, following

sufficient discovery and investigation by counsel, that this Agreement resolves disputed claims and that the resolution of such claims is not an admission of liability or responsibility by any party.

14. As soon as reasonably practical after the date of execution of this Agreement by all parties hereto and, in no event later than August, 2, 2010 (unless such date is extended by the Court), Plaintiffs will submit to the Court a motion for preliminary approval of this Agreement in accordance with Rule 23(e) of the Federal Rules of Civil Procedure. The motion will include a proposed form of and method and date of dissemination of notice to the Class Members (the "Notice"). Plaintiffs agree that the Defendants will have an opportunity to review and approve the Notice. The Notice shall inform the Class of: (a) the settlement reflected in this Agreement; (b) a hearing at which the Court will consider final approval of this Agreement; (c) the opportunity to object to the settlement reflected in this Agreement as provided by Fed. R. Civ. P. 23(e), and the deadline for doing so; (d) Plaintiffs' reservation of the right to object to any Class member's request for exclusion, if appropriate under the circumstances; and (e) a proposed method and plan of allocation and distribution of the Settlement Payments. The parties agree to request that the other Class member counties not be afforded a second opportunity to request exclusion from the Action, except that with respect to those Class member counties that Plaintiff has determined have no recoverable damages in this case, and therefore will not be receiving any distribution of the Settlement Payments, Plaintiff will not request that such counties not be afforded a second opportunity to request exclusion from this Action, and need not object to any such request for exclusion if lodged with the Court.

15. The parties will, simultaneously with the execution of this Agreement, execute an Opt-Out Agreement that will be filed under seal with the Court, which Opt Out Agreement will be effective only if, notwithstanding the parties' objections to a second opt-out opportunity, the Court decides to afford Class members such an opportunity pursuant to Fed.R.Civ.P. 23(e)(4). In the event the Court so decides, notwithstanding the parties' objections to a second opt-out opportunity, Plaintiffs' counsel will, within 10 business days after the date fixed by the Court to object to or request exclusion from the settlement reflected in this Agreement, furnish Defendants and the Court with a complete list of those Class members who have requested exclusion. The amount of the Settlement Payments will thereafter be reduced pro rata to reflect the amount attributable to the Class member(s) who have been granted permission by the Court to opt out and, further, this Agreement may then be terminated by any party to this Agreement as to that party, at the request of that party, if the Court grants requests for exclusion by Class members that, in the aggregate, exceed the Opt-Out Amount (as that term is defined in the Opt-Out Agreement).

16. In the event that the Court preliminarily approves the settlement set forth in this Agreement, Plaintiffs, in accordance with Rule 23 of the Federal Rules of Civil Procedure, will provide notice of the settlement and preliminary approval to the Class, along with the date of the hearing the Court schedules to consider the fairness, adequacy and reasonableness of the proposed settlement. Plaintiffs will take all necessary and appropriate steps to ensure that Plaintiffs provide such notice in accordance with the Court's order.

17. In connection with Final Approval of the settlement set forth in this Agreement, Plaintiffs will also seek entry of a final order by the Court, the text of which Plaintiffs and Defendants will agree upon, including provisions:

a. Approving fully and finally this Agreement and its terms as being a fair, reasonable and adequate settlement as to the Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms;

b. Directing that the Action be dismissed with prejudice upon payment by Defendants of the Settlement Payments in accordance with this Agreement, with the parties to bear their own fees and costs (Plaintiffs' counsel will be seeking an award of fees and costs to be paid from the Settlement Payments); and

c. Reserving continuing and exclusive jurisdiction over the settlement and this Agreement, including the administration and consummation of the settlement, to the Court.

18. The settlement set forth in this Agreement is conditioned upon each of the following: (a) the entry of a final order in connection with this settlement (i) approving fully and finally the terms and conditions set forth in this Agreement, (ii) providing for the dismissal with prejudice of the Action against the Defendants and approving the grant of a release by the Class to the Defendants of the Released Claims as set forth herein, and (iii) reserving continuing and exclusive jurisdiction over this Agreement, including the administration and consummation of the terms and conditions of this Agreement; (b) the inclusion in the final order of a provision enjoining all members of the Class from

asserting any of the Released Claims; (c) such final order and dismissal of the Action being affirmed on appeal or such final order and dismissal not being subject to appeal or review (or further appeal or review) by lapse of time or otherwise ("Final Approval"); and (d) the payment of the Settlement Payments as set forth in paragraph 1 above.

19. If the Court enters an order refusing to approve this Agreement, or if the Court, in approving the Agreement, materially modifies it, or if this Agreement is materially modified or set aside on appeal, or if the Court finally approves and enters final judgment on the basis of this Agreement and appellate review is sought and, on such review, such final judgment is not affirmed in all material respects, then either of the parties shall have the option to rescind this Agreement in its entirety. A modification or reversal on appeal of any award of attorneys' fees and expenses to Plaintiff's counsel shall not be deemed a material modification of this Agreement or a reversal of a final judgment that gives rise to a right to rescind this Agreement.

20. Class Counsel may make an application for attorneys' fees and expenses to be heard in connection with the Final Approval of the settlement set forth in this Agreement, seeking an award of reasonable attorneys' fees (not to exceed 33.3% of the total common fund, comprised of the Settlement Payments (the "Common Fund") and, in addition, for reimbursement of expenses. Attorneys' fees and expenses consistent with this paragraph that are approved by the Court shall be paid out of the Common Fund to Class Counsel within ten (10) days after funding the Settlement Payments by Defendants. Class Counsel shall be solely responsible for allocating any payment made pursuant to this provision amongst those lawyers who assisted in the prosecution of this action.

21. Monroe County, or Class Counsel on its behalf, may make an application for a reasonable incentive award to be paid out of the Common Fund in an amount not to exceed Sixty Five Thousand ($65,000.00) Dollars, to be heard in connection with the Final Approval of the settlement set forth in this Agreement. Defendants will not take a position either supporting or opposing such application.

22. The parties agree that any agreement on or approval of an award of attorneys' fees and expenses to Plaintiffs' counsel shall not be a condition to Final Approval of this Agreement. The parties also agree that each party shall be solely responsible for payment of its own attorneys' fees and expenses and that neither party shall bear any responsibility for the other party's fees and expenses. Any failure of the Court to approve a request by Plaintiffs' counsel for fees and expenses from the Class, in whole or in part, shall have no impact on the effectiveness of the settlement set forth in this Agreement, provided however, that the Defendants, and their counsel, shall not take any action, directly or indirectly, to: (i) inhibit, impede or delay preliminary or Final Approval of this Agreement; or (2) object to, inhibit, impede or delay any application for or award of attorneys' fees and expenses to Plaintiffs' counsel.

23. This Agreement, as well as the terms or conditions thereof, or any draft thereof, or discussion, negotiation, documentation, or other part or aspect of the parties' settlement discussions, shall not be admissible in evidence except to enforce its terms.

24. Any breach or claimed breach of this Agreement by any individual Defendant to the Action shall be assertable only against that particular breaching Defendant, and not against any non-breaching Defendant or Defendants as a group. Similarly, any breach or claimed breach of this Agreement by any individual Class

member shall be assertable against only that particular breaching Class member, and not against any non-breaching Class member or against the Class as a group. No non-breaching party shall have any liability for a breach by any other individual party.

25. Each of the undersigned signatories to this Agreement covenant and represent that they are fully authorized to enter into and execute this Agreement on behalf of their respective entities. This Agreement (including each of the rights and obligations set forth herein) shall be binding upon, and inure to, the benefit of the respective present or former, successor, direct or indirect family members, parents, subsidiaries, affiliates, agents, representatives, officials, insurers, employees, officers, directors, and shareholders of the undersigned. Additionally, to the extent not inconsistent with the specific provisions of this Agreement, any reference in this Agreement to the Expedia parties, the Travelocity parties, the Priceline parties the Orbitz parties or the Class (as those terms are defined herein) shall be a reference to the present or former, successor, direct or indirect, family members, parents, subsidiaries, affiliates, agents, legal representatives, insurers, employees, officers, directors, and shareholders of those entities.

26. Each party has cooperated in the drafting and preparation of this Agreement, and it shall be construed according to the plain meaning of its language and not for or against any party.

27. This Agreement shall be governed by and interpreted according to the substantive laws of the state of Florida without regard to its choice of law or conflict of laws principles.

28. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument. A signature page to this Agreement delivered by email or facsimile shall be considered an original signature page.

Date:

2nd day of August, 2010

The County of Monroe, Florida

By: _____
Title: Chief Asst. County Attorney

Date:

___ day of _____, 2010

Expedia, Inc.

By: _____
Title: _____

Date:

___ day of _____, 2010

Hotels.com, L.P.

By: _____
Title: _____

Date:

___ day of _____, 2010

Hotwire, Inc.

By: _____
Title: _____

Date:

___ day of _____, 2010

Hotels.com

By: _____
Title: _____

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28. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument. A signature page to this Agreement delivered by email or facsimile shall be considered an original signature page.

Date:
2nd day of _____, 2010

The County of Monroe, Florida

By: _____
Title: _____

Date:
2nd day of August, 2010

Expedia, Inc.

By: Ky E. Weaver
Title: SVP, Deputy General Counsel & Asst. Secretary

Date:
2nd day of August, 2010

Hotels.com, L.P.

By: Ky E. Weaver
Title: SVP & Asst. Secretary

Date:
2nd day of August, 2010

Hotwire, Inc.

By: Ky E. Weaver
Title: SVP & Assistant Secretary

Date:
2nd day of August, 2010

Hotels.com

By: Ky E. Weaver
Title: SVP & Asst. Secretary

Date:

2nd day of August, 2010

TravelNow.com, Inc.

By: Cathy E. Weaver
Title: SVP & Asst. Secretary

Date:

___ day of _____, 2010

Priceline.com Incorporated

By: _____
Title: _____

Date:

___ day of _____, 2010

Travelweb LLC

By: _____
Title: _____

Date:

___ day of _____, 2010

Travelocity.com LP

By: _____
Title: _____

Date:

___ day of _____, 2010

Site59.com LLC

By: _____
Title: _____

Date:

___ day of _____, 2010

Orbitz, LLC

By: _____
Title: _____

Date:

Date:

___ day of _____, 2010

TravelNow.com, Inc.

By: _____
Title: _____

Date:

2 day of August, 2010

Priceline.com Incorporated

By: Peter J. Millones
Title: General Counsel

Date:

2 day of August, 2010

Travelweb LLC

By: Peter J. Millones
Title: General Counsel, Priceline.com Incorporated

Date:

___ day of _____, 2010

Travelocity.com LP

By: _____
Title: _____

Date:

___ day of _____, 2010

Site59.com LLC

By: _____
Title: _____

Date:

___ day of _____, 2010

Orbitz, LLC

By: _____
Title: _____

Date:

_____

Date:

___ day of _____, 2010

TravelNow.com, Inc.

By: _____
Title: _____

Date:

___ day of _____, 2010

Priceline.com Incorporated

By: _____
Title: _____

Date:

___ day of _____, 2010

Travelweb LLC

By: _____
Title: _____

Date:

2 day of August, 2010

Travelocity.com LP

By: Jonathon Perker
Title: SVP + GC

Date:

2 day of August, 2010

Site59.com LLC

By: Jonathon Perker
Title: SVP + GC

Date:

___ day of _____, 2010

Orbitz, LLC

By: _____
Title: _____

Date:

_____

Date:

___ day of _____, 2010

TravelNow.com, Inc.

By: _____
Title: _____

Date:

___ day of _____, 2010

_____
Priceline.com Incorporated

By: _____
Title: _____

Date:

___ day of _____, 2010

_____
Travelweb LLC

By: _____
Title: _____

Date:

___ day of _____, 2010

_____
Travelocity.com LP

By: _____
Title: _____

Date:

___ day of _____, 2010

_____
Site59.com LLC

By: _____
Title: _____

Date:

2nd day of August, 2010

Craig Sommerschein
Orbitz, LLC

By: Craig Sommerschein
Title: Senior Litigation Counsel

Date:

Craig Sommerschein

2nd day of August, 2010

Trip Network, Inc. d/b/a
Cheaptickets.com

By: Craig Sonnenschein
Title: Senior Litigation Counsel

EXHIBIT A

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

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

Plaintiff,

v.

PRICELINE.COM INCORPORATED, et al.,

Defendants.
_____/

CASE NO. 09-10004-CIV
MOORE/SIMONTON

NOTICE OF DISMISSAL

Comes now Plaintiff, the County of Monroe, Florida, individually and on behalf of others similarly situated, pursuant to FRCP 41(a)(1)(A)(ii), and the parties having resolved the dispute between them, hereby enters this notice of dismissal by agreement, dismissing with prejudice its claims against all current and former Defendants, including specifically Expedia, Inc., Hotels.com, L.P., Hotwire, Inc., Hotels.com, and TravelNow.com, Inc.; Defendants priceline.com Incorporated and Travelweb LLC; Defendants Travelocity.com LP and Site59.com LLC ; and Defendants Orbitz, LLC and Trip Network, Inc d/b/a Cheaptickets.com, with the Court retaining jurisdiction to enforce the terms of the parties' Master Settlement Agreement.

DATED: _____, 2010 Respectfully submitted,

By: _____

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