

## **NOTICE OF PENDENCY OF CLASS ACTION**

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 (via certified mail, return receipt requested)**

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

### **YOU HAVE NOT BEEN SUED.**

This is a notice that you have been certified by the Court as a member of a plaintiff class (the "Class") in the civil action, *The County of Monroe Florida v. Priceline.com, Inc. et al.*, Case No. 09-10004-CIV-MOORE/SIMONTON, now pending in the United States District Court for the Southern District of Florida (the "Lawsuit").

The purpose of this Notice is to explain to you:

1. What the Lawsuit is About.
2. Your Rights as a Class Member and How to Assert Those Rights.
3. Why Is This Notice Being Sent To Me.
4. Further Court Proceedings.
5. How to Get More Information.

#### **1. WHAT THE LAWSUIT IS ABOUT**

##### **A. Summary Of The Claims Asserted In The Lawsuit**

In the Lawsuit, Monroe County alleges 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 L.L.C. (collectively "Defendants") have failed to pay the full amount of the tourist development taxes (the "Taxes") due to Monroe County and the other class member Counties that have enacted a Tourist Development Tax pursuant to the authority granted in Section 125.0104, Florida Statutes. Monroe County asserts, on behalf of itself and all other counties who have a Tourist Development Tax pursuant to the authority granted in Section 125.0104, Florida Statutes, that the Defendants charge customers (and remit to the hotels) a "tax recovery charge" which is sufficient only to cover the tax on the wholesale rate, rather than on the full retail rate which the customers are actually charged. Monroe County seeks to recover unpaid Tourist Development Taxes on behalf of itself and on behalf of all other Florida counties who have enacted a Tourist Development Tax under Section 125.0104, Florida Statutes., and to direct Defendants to pay Taxes in the future based upon the price they charge to their customers.

## **B. Current Status Of The Lawsuit**

This lawsuit was initiated by Monroe County in the United States District Court for the Southern District of Florida on January 12, 2009. The Complaint, as originally filed, asserted claims under Monroe County Code Section 23-197(a), which contains Monroe County's Tourist Development Tax enacted pursuant to Section 125.0104, Florida Statutes. The Complaint also asserted claims against the Defendants for conversion, unjust enrichment, and permanent injunction. Pursuant to an order dated December 17, 2009, the Court denied Defendants' motion to dismiss Monroe County's claims under Monroe County Code Section 23-197(a), and further denied Defendants' motion to dismiss the claims for conversion and unjust enrichment. The Court granted Defendants' motion to dismiss the County's claim for permanent injunction. On March 15, 2010, the Court entered an order determining that this action may proceed as a class action, and certified a class consisting of "All counties within the State of Florida that have enacted a tourist development tax under the authority of Section 125.0104, Florida Statutes." In that order, the Court also rejected Defendants' contention that Monroe County or any of the other class member Counties were required to exhaust administrative or other remedies before proceeding with this Lawsuit.

Because the Court has decided that the Lawsuit should proceed as a Class Action, it has ordered this Notice be sent to you. The Court has not yet ruled on the merits of the claims raised in the Lawsuit. Defendants deny all allegations of wrongdoing and liability asserted in the Lawsuit. Defendants contend that they have no obligation to pay the Taxes.

### **2. YOUR RIGHTS AS A CLASS MEMBER AND HOW TO ASSERT THOSE RIGHTS**

The Court certified a Class defined as :

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

It is estimated that the number of Class members is 59 counties. The Court has certified as Class Representative Monroe County, Florida. Monroe County will be seeking relief on behalf of itself and all members of the Class. The Court has appointed the following firms as Class Counsel: Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.; Aronovitz Law; Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C.; and Freed & Weiss. You have the right to hire your own attorney and unless you retain your own counsel to enter an appearance on your behalf, you will be represented by Class Counsel. Class Counsel will not directly charge Class members to represent them. In the event of a judgment in favor of the Class in this case, Class Counsel will apply to the Court for payment of reasonable attorneys' fees and costs which might be deducted from the funds recovered before net proceeds are distributed to the Class Members.

## **Your options**

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### **Option 1 – Do nothing**

If you do nothing, then you will remain a member of the Class. You will be bound by any judgment, favorable or unfavorable, which is rendered on behalf of the Class. In the event of a favorable judgment, you will share in the recovery. In the event of an unfavorable judgment, you may be precluded from bringing the same or similar claims on your own behalf. In the event of a settlement of the Lawsuit, you will be able to share in the settlement proceeds and be bound by the terms of the settlement, subject to Court approval.

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### **Option 2 -- Opt Out**

In order to exclude yourself from the Class, you must make a written request to opt out and send it to Class Counsel and counsel for Defendants, at the addresses set forth below, so as to be received **no later than 45 days from the date of this notice**. If you exclude yourself from the Class, you will not be entitled to receive any money recovered by the Class, and you will not be bound by any settlement or favorable or unfavorable judgment in the Lawsuit with respect to damages. If you request exclusion on behalf of any entity other than yourself, you must state your legal authority to execute the request on behalf of that entity or other individual.

### *Counsel for the Class*

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**3. WHY WAS THIS NOTICE SENT TO YOU**

Public records indicate that you enacted a tourist development tax under authority of § 125.0104, Florida Statutes and are, therefore, a member of the Class. This notice is being sent to you pursuant to Fed.R.Civ.P. 23(c)(2)(B), which requires that, upon the certification of a class pursuant to Fed.R.Civ.P. 23(b)(2), notice be sent to all class members who can be identified with certain information relating to the lawsuit and class members rights.

**4. FURTHER COURT PROCEEDINGS**

This class action is presently set for trial beginning July 19, 2010. This date may be adjourned by the Court without further notice to the Class.

**5. HOW TO GET MORE INFORMATION**

If you need additional information, you should call or write to Class Counsel at the addresses set forth above.

**PLEASE DO NOT CALL THE COURT OR THE COURT CLERK OR DEFENDANT.**

BY THE COURT:

Date: \_\_\_\_\_, 2010

K. MICHAEL MOORE,  
UNITED STATES DISTRICT JUDGE