

1 Timothy P. Fox – Cal. Bar No. 157750
2 Sarah M. Morris, *Pro Hac Vice*
3 CIVIL RIGHTS EDUCATION AND
4 ENFORCEMENT CENTER
5 104 Broadway, Suite 400
6 Denver, CO 80203
(303) 757-7901
tfox@creeclaw.org
smorris@creeclaw.org

Bill Lann Lee – Cal Bar. No. 108452
Julie Wilensky – Cal. Bar No. 271765
Joshua Davidson – Cal. Bar No. 275168
LEWIS, FEINBERG, LEE & JACKSON, P.C.
476 9th Street
Oakland, CA 94612
(510) 839-6824
blee@lewisfeinberg.com
jwilensky@lewisfeinberg.com
j davidson@lewisfeinberg.com

7 Julia Campins – Cal. Bar No. 238023
8 Hillary Benham-Baker – Cal. Bar No.265019
9 CAMPINS BENHAM-BAKER, LLP
10 8 California #703
11 San Francisco, CA 94111
(415) 373-5333
julia@cbbllp.com
hillary@cbbllp.com

Kevin W. Williams, *Pro Hac Vice*
COLORADO CROSS-DISABILITY COALITION
655 Broadway #775
Denver, CO 80203
(303) 839-1775
kwilliams@ccdconline.org

12 *Attorneys for Plaintiffs and the Proposed*
13 *Class*

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND DIVISION

17
18 THE CIVIL RIGHTS EDUCATION AND
19 ENFORCEMENT CENTER, on behalf of
20 itself, and ANN CUPOLO-FREEMAN and
21 KENNETH KILGORE, on behalf of
22 themselves and a proposed class of
similarly situated persons defined below,

23 Plaintiffs,

24 v.

25 ASHFORD HOSPITALITY TRUST,
26 INC.,

27 Defendant.
28

Case No. 4:15-cv-00216-DMR

**PLAINTIFFS’ MOTION TO CONSIDER
WHETHER CASES SHOULD BE
RELATED AND/OR CONSOLIDATED
FOR PRE-TRIAL PURPOSES ONLY**

**The Honorable Donna M. Ryu
Courtroom 4, 3rd Floor
Hearing Date: May 14, 2015
Hearing Time: 11:00 a.m.**

NOTICE OF MOTION & RELIEF SOUGHT

On May 14, 2015, at 11:00 a.m., before the Honorable Donna M. Ryu, Plaintiffs will move for an order treating as related and consolidating this case for pretrial purposes only with two others also filed the same day in the Northern District of California as detailed below.

POINTS AND AUTHORITIES IN SUPPORT OF MOTION

Pursuant to Civil L.R. 3-12¹ and 7-2, and Fed. R. Civ. P. 42, Plaintiffs in the cases of *CREEC et al. v. Hospitality Properties Trust*, No. 3:15-cv-00221 (“*HPT*”), and *CREEC et al. v. RLJ Lodging Trust*, No. 4:15-cv-00224 (“*RLJ*”), respectfully submit this motion in this case, *CREEC et al. v. Ashford Hospitality Trust, Inc.*, No. 4:15-cv-00216-DMR (“*Ashford*”), to consider whether these three cases should be related and/or consolidated for pre-trial purposes only. All three cases are filed in this district, and all complaints are attached to this motion as Exhibits 1-3. *HPT* is assigned to Judge Jon S. Tigar, and *RLJ* to Judge Yvonne Gonzalez Rogers. As required by Civil L.R. 3-12(b), Plaintiffs are filing this motion in the lowest-numbered case, *Ashford*. Plaintiffs have discussed this motion with all three defendants, and understand that at least two such defendants oppose it.

I. BACKGROUND

The three cases were all filed by the same group of attorneys on January 15, 2015 in this district, and no discovery has yet taken place in any of the cases. All of these cases are based on alleged failures to provide required wheelchair-accessible transportation by owners and/or operators of hotels. The plaintiffs are CREEC, Ann Cupolo-Freeman and Kenneth Kilgore in all three actions, and Ruthee Goldkorn in two of the three (*HPT* and *RLJ*). *Ashford* Compl. ¶¶ 9-11, 25; *HPT* Compl. ¶¶ 9-12, 30; *RLJ* Compl. ¶¶ 9-12, 34. All seek certification of the identical class

¹ Civil L.R. 3-12 provides that a motion to consider whether cases should be related should be an administrative motion pursuant to Civil L.R. 7-11. Because in addition to relation under Civil L.R. 3-12, Plaintiffs are also seeking consolidation pursuant to Fed. R. Civ. P. 42, Plaintiffs have filed this motion as a duly noticed motion pursuant to Civil L.R. 7-2.

1 of persons, all allege violations of the identical federal and state statutes and regulations, and all
 2 seek the same relief.

3 The three defendants are substantially similar types of entities -- publicly traded real estate
 4 investment trusts that own and/or operate hotels throughout the United States, including
 5 California. *Ashford* Compl. ¶ 12; *HPT* Compl. ¶ 13; *RLJ* Compl. ¶ 13. The answers filed by the
 6 three defendants demonstrate that they are asserting a number of common defenses, including for
 7 example:
 8

- 9 • Plaintiffs have failed to mitigate their damages, *Ashford* Answer at 8; *HPT* Answer
 10 ¶ 15, at 8; *RLJ* Answer ¶ 61;
- 11 • Plaintiffs are estopped by their own conduct, *Ashford* Answer at 9; *HPT* Answer
 12 ¶ 13, at 10; *RLJ* Answer ¶ 64;
- 13 • Plaintiffs lack standing, *Ashford* Answer at 12; *HPT* Answer ¶ 18, at 11; *RLJ*
 14 Answer ¶ 71;
- 15 • The alleged violations are the fault of third parties, *Ashford* Answer at 2; *HPT*
 16 Answer ¶ 8, at 9; *RLJ* Answer ¶ 77.

17 All defendants assert that the proposed class does not meet the requirements of Rule 23.
 18 *Ashford* Answer at 11-12; *HPT* Answer ¶ 4, at 7; *RLJ* Answer ¶ 34. At least two of the defendants
 19 have indicated that they will object to any discovery requests seeking information concerning
 20 hotels covered by the putative class but not specifically identified in the complaints.
 21

22 **II. TREATMENT AS RELATED CASES FOR PRETRIAL PURPOSES ONLY IS**
 23 **APPROPRIATE.**
 24

25 These actions meet the definition of “related cases” provided in Civil Local Rule 3-12(a):

26 An action is related to another when:

- 27 (1) The actions concern substantially the same parties, property, transaction or event; and
- 28 (2) It appears likely that there will be an unduly burdensome duplication of labor and
 expense or conflicting results if the cases are conducted before different Judges.

1 First, the parties in all three cases are substantially the same. CREEC, Ms. Freeman and
2 Mr. Kilgore are plaintiffs in all cases, and Ms. Goldkorn is a plaintiff in two of the cases.
3 Plaintiffs in all three seek certification of identical classes consisting of individuals who use
4 wheelchairs or scooters for mobility who have been, or in the future will be, denied the full and
5 equal enjoyment of transportation services offered to guests at hotels owned and/or operated by
6 each of the three Defendants because of the lack of equivalent accessible transportation services
7 at those hotels. *Ashford* Compl. ¶ 25; *HPT* Compl. ¶ 30; *RLJ* Compl. ¶ 34. Additionally, each
8 Defendant is a similar type of entity.
9

10 It also “appears likely that there will be an unduly burdensome duplication of labor and
11 expense or conflicting results if the cases are conducted before different Judges.” Civil L.R. 3-
12 12(a)(2). Indeed, a very significant dispute has already arisen. At least two of the defendants
13 have indicated that they will oppose any discovery concerning hotels covered by the putative
14 class but not specifically identified in the complaint. There is no need for this same issue to be
15 decided by multiple courts.
16

17 Discovery has not yet commenced, but it is virtually certain that relating these cases will
18 be more efficient than keeping them separate. For example, the issue of whether the proposed
19 representative plaintiffs are adequate for purposes of Rule 23 involves discovery that will be
20 common among the cases, such as discovery concerning the nature of the representative
21 plaintiffs’ disabilities and their willingness to serve as representative plaintiffs for the class.
22

23 Further, because all three cases involve identical provisions of state and federal law, the
24 discovery requests and resulting disputes will be similar among the cases, including discovery on
25 topics such as the purchase and lease history of vans, the equivalent transportation services
26 provided by each defendant, etc. Determination of these pre-trial issues by three different judges,
27 in three different actions, would be unduly burdensome, inefficient, and risks conflicting results.
28

1 Finally, it would be more efficient to have one court address discovery disputes
2 concerning the common defenses raised by the three defendants, such as discovery relating to
3 whether the plaintiffs have standing in this case, whether they have mitigated their damages, and
4 potentially discovery concerning third parties allegedly responsible for the violations.

5 Thus, Plaintiffs request that all three cases be treated as related and be assigned to proceed
6 for pre-trial issues only before the judge assigned to *Ashford*, Magistrate Judge Ryu.

7 As a procedural matter, if this motion is granted, the cases will proceed before Magistrate
8 Judge Ryu for pre-trial purposes and return to the Judges currently assigned to them for
9 dispositive motion and trial purposes.
10

11 **III. CONSOLIDATION FOR PRETRIAL PURPOSES ONLY IS APPROPRIATE.**

12 In addition to treatment as related cases, Plaintiffs respectfully request consolidation of all
13 three cases – also for pre-trial purposes only – pursuant to Fed. R. Civ. P. 42. Rule 42(a) provides
14 that, “[i]f actions before the court involve a common question of law or fact, the court may: (1)
15 join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3)
16 issue any other orders to avoid unnecessary cost or delay.” “District courts have broad discretion
17 under this rule to consolidate cases pending in the same district,” and may do so “for purposes of
18 discovery and pre-trial proceedings only.” *Chelsea, LLC v. Regal Stone, Ltd.*, No. 07-5800 SC,
19 2009 WL 250479, at *2 (N.D. Cal. Feb. 3, 2009) (citing *Investors Research Co. v. U.S. Dist.*
20 *Court for Cent. Dist. of Cal.*, 877 F.2d 777, 777 (9th Cir. 1989)); *see also* § 2382 Consolidation—
21 When Permissible, 9A Fed. Prac. & Proc. Civ. § 2382 (3d ed.) (“Consolidation of actions in their
22 pretrial stage, under many circumstances, will be a desirable administrative technique and is
23 within the power of the court.”). “In deciding whether to consolidate actions under Rule 42(a),
24 the court must balance the savings of time and effort consolidation will produce against any
25
26
27
28

1 inconvenience, delay, or expense that it would cause.” *Chelsea*, 2009 WL 250479, at *2 (citing
2 *Huene v. U.S.*, 743 F.2d 703, 704 (9th Cir. 1984)).

3 Consolidation would “not merge the suits into a single cause, or change the rights of the
4 parties, or make those who are parties in one suit parties in another.” *Geddes v. United Fin. Grp.*,
5 559 F.2d 557, 561 (9th Cir. 1977) (citation omitted). Rather, consolidation for pretrial purposes
6 only would allow this Court to efficiently manage a number of common discovery issues that
7 have, or will, arise in this case, which are set forth in detail above.

8
9 These efficiencies outweigh any inconvenience, delay, or expense on the part of
10 Defendant, which is negligible. The risk of delay is reduced, the expenses of litigation will likely
11 be reduced, and no inconvenience results simply by assigning pre-trial matters in this case to
12 Judge Ryu, a result permitted by case law and the Federal Rules of Civil Procedure themselves.
13 See *Chelsea, LLC*, 2009 WL 250479, at *2, 3 (permitting consolidation for discovery and pre-trial
14 purposes only); Fed. R. Civ. P. 72. Inconvenience, delay, and expense is further reduced by
15 having one judge issue determine all pre-trial issues in the first instance.
16

17 Plaintiffs therefore submit that this is an instance meriting exercise of the court’s broad
18 discretion to consolidate and request that these cases be consolidated for pre-trial purposes only.

19 **IV. CONCLUSION**

20 Accordingly, Plaintiffs respectfully request that *Ashford*, *HPT*, and *RLJ* be related and/or
21 consolidated for pre-trial purposes only with the lowest-numbered case, *Ashford*, and proceed
22 before the judge assigned to that case, Magistrate Judge Ryu.
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: March 25, 2015

Respectfully Submitted,

CIVIL RIGHTS EDUCATION AND
ENFORCEMENT CENTER

By: /s/ Sarah M. Morris
Sarah M. Morris

*Attorneys for Plaintiffs and the Proposed
Class*

Certificate of Service

I hereby certify that on March 25 2015, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following email address:

Nolan S. Armstrong

nolan.armstrong@mcnamaralaw.com

Counsel for Ashford Hospitality Trust

I hereby further certify that on March 25, 2015, I mailed and emailed the foregoing document to the following:

David Howard Raizman

david.raizman@ogletreedeakins.com

Christopher Frank Wong

christopher.wong@ogletreedeakins.com

Ki’Jhana R. Friday

kijhana.Friday@ogletreedeakins.com

400 S. Hope St., Ste. 1200

Los Angeles, CA 90071

Counsel for Hospitality Properties Trust

Helen Lee Greenberg

helen.greenberg@lewisbrisbois.com

333 Bush St., Ste. 1100

San Francisco, CA 94104

Counsel for RLJ Lodging Trust

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

/s/ Marissa McGarry

Marissa McGarry

Paralegal

Civil Rights Education and Enforcement Center