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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

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

Plaintiffs,

v.

23 ASHFORD HOSPITALITY TRUST,
24 INC.,

25 Defendant.

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

**UNOPPOSED NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

The Honorable Donna M. Ryu
Courtroom 4, 3rd Floor
Hearing Date: March 10, 2016
Hearing Time: 11:00 a.m.

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NOTICE IS GIVEN that on March 10, 2016, at 11:00 a.m., or as soon thereafter as the matter may be heard in the above-entitled Court, Plaintiffs will and do move the Court to finally approve the Settlement Agreement (“Settlement” or “Settlement Agreement”) (attached to the Proposed Final Approval Order (“Proposed Order”) as Exhibit A) between Plaintiffs, on behalf of themselves and Class, and Defendant Ashford, by and through their respective counsel. Concurrently with this Motion, Plaintiffs are submitting a Motion for Attorneys’ Fees. This unopposed Motion is based on the Settlement Agreement, the Memorandum of Points and Authorities in support of this Motion, the Declarations of Julia Campins and Julie Wilensky in Support of the Unopposed Motion, and all other papers filed in this action.

DATED: February 4, 2016

CAMPINS BENHAM-BAKER, LLP
/s/Julia Campins
Julia Campins
Attorneys for Plaintiffs and the Settlement
Class

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF UNOPPOSED**
2 **MOTION FOR FINAL APPROVAL OF SETTLEMENT AGREEMENT**

3 The parties in this injunctive-relief class action, which involves alleged violations of the
4 Americans with Disabilities Act and California state law concerning provision of wheelchair-
5 accessible transportation by hotels, have reached a settlement agreement that provides substantial
6 benefits to the class.

7 Specifically, this Settlement ensures that the approximately 54 Ashford hotels that
8 currently provide transportation to hotel guests (“Ashford Hotels” or “Hotels”), and those Hotels
9 owned or acquired by Ashford that will provide transportation in the future, will also provide
10 equivalent accessible transportation to Class Members. The Plaintiffs did not bring claims for
11 damages, and do not waive damages claims for the Class with this settlement; instead they are
12 achieving full compliance with the law as requested in the Complaint. For these and other
13 reasons discussed below, Plaintiffs’ Counsel, who are experienced disability rights and class
14 action practitioners, believe this Settlement—negotiated at arm’s length over more than three
15 months with the assistance of a mediator who is a retired federal Magistrate Judge—to be a fair,
16 adequate, and reasonable resolution of the claims against Defendant. Accordingly, pursuant to
17 Federal Rule of Civil Procedure 23(e), Plaintiffs request that the Court enter final approval of the
18 proposed Settlement Agreement.¹

19 **BACKGROUND**

20 **I. Legal Background**

21 As explained in Plaintiffs’ Motion for Preliminary Approval and this Court’s Order
22 Granting Preliminary Approval, transportation services provided by hotels are covered by the
23 ADA regulations applicable to “private entities not primarily engaged in the business of
24 transporting people,” which include “[s]huttle systems and other transportation services operated
25 by privately-owned hotels.” *See* 49 C.F.R. § 37.37(b); *see also* 28 C.F.R. § 36.310(c). The
26 regulations generally require a hotel that offers transportation services to purchase accessible

27 ¹ In Docket Numbers 78 through 81, Plaintiffs have filed a Motion for Attorneys’ Fees and Costs.
28

1 vehicles or to provide equivalent transportation services to persons with disabilities. *See* 49
2 C.F.R. §§ 37.101 & 37.171. Whether the hotel must purchase accessible vehicles, or instead
3 provide equivalent transportation services, depends upon the capacity of the vehicle and whether
4 the hotel operates a fixed route transportation system (i.e., providing transportation between fixed
5 locations such as an airport shuttle service) or a demand responsive system (i.e., providing
6 transportation to any place a guest would like to go within a certain radius of the hotel). 49
7 C.F.R. § 37.105.

8 **II. Factual Background**

9 **A. The Parties and Proceedings**

10 As explained in Plaintiffs Motion for Preliminary Approval, Dkt. No. 66, Ashford
11 Hospitalities Trust is a real estate investment trust (REIT), which owns approximately 125 hotels
12 nationwide. Since Plaintiffs filed their Motion for Preliminary Approval, they have received
13 updated ownership and transportation information from Ashford, indicating that Ashford actually
14 owns 54 hotels that provide transportation services to guests.² Dkt. No. 66-1.

15 **B. Order Directing Notice**

16 Plaintiffs proposed—and the Court ordered—sending class notice by email to hundreds of
17 disability organizations, as well as any individuals with whom CREEC had communicated
18 regarding problems with Ashford hotel transportation. Dkt. No. 75 at 10-11.

19 Plaintiffs complied with the Court's order. On December 21, 2015, they sent class notice
20 by email to 655 organizations and 43 individuals. Where the organizations lacked email
21 addresses or where there were multiple locations, and one of those locations lacked an email
22 address, Plaintiffs also sent class notice through first class mail. Plaintiffs continued their efforts
23 to resend returned emailed and mailed notice. Ultimately, Plaintiffs have been unable to reach

24 _____
25 ² Ashford's discovery responses indicated that 73 hotels provided such services. It has
26 since informed Plaintiffs that, of those 73, at 14 Ashford has either discontinued transportation
27 services (effective no later than 1/1/16) or incorrectly included the hotel in the amended
28 interrogatory responses. An additional 5 only have transportation services as part of an
arrangement with nearby theme parks, and the transportation is provided and controlled
exclusively by the theme parks, not the hotels. Declaration of Julia Campins in Support of
Motion for Final Approval ¶ 8.

1 only 4 organizations and 1 individual. Declaration of Julie Wilensky in Support of Motion for
2 Final Approval (Wilensky Decl.) ¶¶ 5-7.

3 **C. Responses to the Notice**

4 As of the date of filing of this Motion, no class members have filed any objections to the
5 proposed settlement, or have contacted Class Counsel to express dissatisfaction with any aspect
6 of the proposed settlement, including the amount Plaintiffs' Counsel will request for attorneys'
7 fees and costs. Declaration of Julia Campins in Support of Motion for Final Approval (Campins
8 Decl.) ¶ 3. The only responses Plaintiffs have received have been requests for information (such
9 as the locations of relevant Ashford hotels or the Notice in an alternate format), congratulations
10 from a class member, and a blog posting informing followers of that blog regarding the
11 Settlement. Wilensky Decl. ¶ 8.

12 **D. Terms of the Settlement**

13 The terms of the Proposed Settlement Agreement are set forth in the Settlement
14 Agreement, a copy of which is attached as Exhibit A to the Proposed Final Approval Order. The
15 Court summarized the Settlement Agreement in its Order Granting Preliminary Approval, Dkt
16 No. 75, at 3-4. Plaintiffs also provided a detailed summary in their Motion for Preliminary
17 Approval, Dkt. No. 66, at 18-20.

18 **ARGUMENT**

19 **I. The Court Should Finally Certify the Class**

20 The Court conditionally certified the Settlement Class in the Order granting preliminary
21 approval. *See* Order at 5-9 (Dkt. No. 75). The Court should confirm the certification of the
22 Settlement Class as final, as the Class meets all of the requirements of Rule 23(a) and Rule
23 23(b)(2). As the Court has already found, the class satisfies the requirements of Rule 23(a)
24 because it is so numerous that joinder is impracticable, there are questions of law and fact
25 common to the class, the claims of the named Plaintiffs are typical of the claims of the class, and
26 the named Plaintiffs will fairly and adequately protect the interests of the class. Additionally,
27
28

1 satisfying Rule 23(b)(2), class members complain of a pattern or practice that is generally
2 applicable to the class as a whole.

3 **II. The Court Should Grant Final Approval of the Agreement**

4 “[V]oluntary conciliation and settlement are the preferred means of dispute resolution,”
5 especially in complex class actions. *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615,
6 625 (9th Cir. 1982). Class action lawsuits readily lend themselves to compromise because of the
7 difficulties of proof, the uncertainties of the outcome and the typical length of the litigation. As a
8 result, “there is a strong judicial policy that favors settlements, particularly where complex class
9 action litigation is concerned.” *In re Synacor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008).

10 To approve a proposed settlement of a class action under Federal Rule of Civil Procedure
11 23(e), the Court must find that the proposed settlement is “fair, adequate and reasonable,”
12 recognizing that “‘it is the settlement taken as a whole, rather than the individual component
13 parts, that must be examined for overall fairness.’” *Staton v. Boeing Co.*, 327 F.3d 938, 960 (9th
14 Cir. 2003) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (internal
15 alterations omitted)).

16 When determining whether to grant final approval, “the court’s intrusion upon what is
17 otherwise a private consensual agreement negotiated between the parties to a lawsuit must be
18 limited to the extent necessary to reach a reasoned judgment that the agreement is not the product
19 of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement,
20 taken as a whole, is fair, reasonable and adequate to all concerned.” *Officers for Justice*, 688 F.2d
21 at 625. The Court should balance “the strength of plaintiffs’ case; the risk, expense, complexity,
22 and likely duration of further litigation; the risk of maintaining class action status throughout the
23 trial; the amount offered in settlement; the extent of discovery completed, and the state of the
24 proceedings; the experience and views of counsel . . . and the reaction of the class members to the
25 proposed settlement.” *Id.* The list of factors is not exclusive, and “those factors not relevant to
26 [a] case [may be] omitted.” *Churchill Village, L.L.C. v. Gen. Electric*, 361 F.3d 566, 576 n.7 (9th
27 Cir. 2004).
28

A. The Settlement Will Benefit the Class

1
2 The Court is asked to evaluate the strength of Plaintiffs' case. Here, Plaintiffs' case is
3 strong, but so is the scope of the relief in the Settlement Agreement. The "amount offered in
4 settlement" by Ashford is a good result for the class. Because the Settlement will provide
5 substantial injunctive relief to the Class, it is an appropriate resolution of this case and the Court
6 should finally approve the Settlement. By means of this Settlement Agreement, all Ashford
7 hotels that provide transportation services to guests will provide either a wheelchair-accessible
8 vehicle or truly equivalent accessible transportation. The hotels will be held accountable through
9 a monitoring process that ensures that each hotel is monitored at least three times, and the
10 monitoring will increase if any hotel is found out of compliance at any time during the term of the
11 Agreement. The monitoring consists both of calls to the hotels to verify that they are providing
12 the required services and that they are providing accurate information with respect to those
13 services, and in-person visits to a random selection of the hotels that purport to provide equivalent
14 accessible transportation through a third-party transportation provider. After three infractions by
15 a particular hotel, Ashford has committed to either discontinue all transportation services at the
16 hotel, or to purchase an accessible vehicle for use at that hotel so that there can be no further
17 difficulties in providing equivalent accessible transportation through a third-party transportation
18 provider. The Settlement Agreement therefore creates a multistage process to ensure the best
19 chance that, by the end of three-year term of the agreement (if not before), all Ashford hotels that
20 provide transportation to guests will provide equivalent accessible transportation to the members
21 of the class. Dkt. No.75 at 3-4, 10.

22 All that the class releases in exchange for these measures and this monitoring are
23 *injunctive* relief claims through the date of preliminary approval (December 18, 2015). *Cf.*
24 *Hanlon*, 150 F.3d at 1027 (noting that the class achieved injunctive relief and monitoring but
25 retained the right to challenge other allegedly unlawful actions, and weighing that trade in favor
26 of approval of the settlement). In light of the substantial relief and comprehensive monitoring
27 scheme, final approval of the Settlement Agreement is appropriate.
28

B. In the Absence of a Settlement, this Litigation Could Continue for Many Years.

1
2 Another factor supporting approval of a proposed settlement is “the likely duration of
3 further litigation.” *See Staton*, 327 F.3d at 959. In similar cases that do not resolve through such
4 early settlement, there can be considerable expense, such as multiple experts, contested motions
5 for class certification, summary judgment, and extensive discovery disputes. These adversarial
6 proceedings present risk, expense, complexity, and can drag the litigation on for multiple years.
7 *Campins Decl.* ¶ 5. For example, although Ashford did not contest liability, it could have
8 contested the type of injunctive relief available or class certification. Although Plaintiffs believe
9 that class certification is warranted, if litigation continued, there would be a risk that class
10 certification might not have been maintained through trial. In contrast, here Plaintiffs were able
11 to garner substantial injunctive relief for the class and bind Ashford to a productive resolution that
12 will begin to see results immediately.

C. The Settlement Was Reached Through Well Informed, Arm’s Length Negotiations After a Thorough Investigation of Claims.

13
14 Even though this case resolved at an early stage, the parties exchanged crucial
15 information, permitting them to discuss both the relevant case facts and the possible solutions.
16 Although the case settled early in formal discovery, Plaintiffs had extensive information in
17 mediation followed by formal discovery that enabled them to make a thorough assessment of the
18 class’s claims. *Campins Decl.* ¶ 4. Therefore, Plaintiffs were “appropriately informed in
19 negotiating a settlement.” *Villegas v. J.P. Morgan Chase & Co.*, CV 09–00261 SBA (EMC),
20 2012 WL 5878390, at *6 (N.D. Cal, Nov. 21, 2012).

21 Moreover, Plaintiffs and Ashford engaged in lengthy negotiations, through a mediator,
22 over several months and via in-person and telephonic meetings as well as by email. *See, e.g.*,
23 *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 366 (S.D.N.Y. 2002) (finding that the
24 negotiations leading to a class action settlement had been at arm’s length in part because they had
25 occurred over several months and had involved several in-person meetings). Plaintiffs satisfied
26 themselves that they had sufficient information to craft an effective settlement. Although they
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1 have just begun the monitoring phase, so far they continue to believe that the process arrived at
2 was appropriate for the task. Campins Decl. ¶ 6.

3 **D. The Reaction of the Class Supports Approval of the Settlement.**

4 As of the date of filing, there have been no objections or complaints from any members of
5 the class. The only direct communication Plaintiffs have received has been a congratulatory
6 email from a class member. Wilensky Decl. ¶ 8. Based on the reception in the community,
7 Plaintiffs believe that the class is pleased with the result achieved. Campins Decl. ¶ 7.

8 **E. The Recommendations of Experienced Counsel Favor Approval of the
9 Settlement.**

10 In appraising the fairness of a proposed settlement, “[t]he recommendations of plaintiffs’
11 counsel should be given a presumption of reasonableness.” *Boyd v. Bechtel Corp.*, 485 F. Supp.
12 610, 622 (N.D. Cal. 1979); *see also In re Omnivision Techs. Inc.*, 559 F. Supp. 2d 1036, 1043
13 (N.D. Cal. 2008); *Nat’l Rural Telecomm. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal.
14 2004) (noting counsel are “most closely acquainted with the facts of the underlying litigation”);
15 *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980) (“[T]he fact that
16 experienced counsel involved in the case approved the settlement after hard-fought negotiations is
17 entitled to considerable weight.”).

18 Here, the class is represented by counsel with significant experience in both disability
19 access cases and class actions, and these counsel firmly support approval of the Agreement.
20 Campins Declaration in Support of Preliminary Approval (Dkt. No. 67) ¶¶ 7-8.

21 **CONCLUSION**

22 For the reasons above, Plaintiffs respectfully request that the Court grant the Proposed
23 Final Approval Order filed concurrently.

24
25 Dated: February 4, 2016

Respectfully Submitted,

26 By: /s/Julia Campins
27 Julia Campins
28 Hillary Benham-Baker

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