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13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 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,

21 Plaintiffs,

23 v.

24 ASHFORD HOSPITALITY TRUST,  
25 INC.,

26 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.<sup>1</sup>

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           <sup>1</sup> 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.<sup>2</sup> 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 <sup>2</sup> 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,  
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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).

**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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