Timothy P. Fox – Cal. Bar No. 157750
Sarah M. Morris, *Pro Hac Vice*
CIVIL RIGHTS EDUCATION AND ENFORCEMENT CENTER
104 Broadway, Suite 400
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
CIVIL RIGHTS EDUCATION AND ENFORCEMENT CENTER.
2120 University Ave.
Berkeley, CA 94704
(510) 431-8484
blee@creeclaw.org
jwilensky@creeclaw.org

Julia Campins – Cal. Bar No. 238023
Hillary Benham-Baker – Cal. Bar No. 265019
CAMPINS BENHAM-BAKER, LLP
935 Moraga Road, Suite 200
Lafayette, CA 94549
(415) 373-5333
julia@cbbllp.com
hillary@cbbllp.com

Kevin W. Williams, *Pro Hac Vice*
COLORADO CROSS-DISABILITY COALITION
1385 S. Colorado Boulevard, Suite 610-A
Denver, CO 80222
(303) 839-1775
kwilliams@ccdconline.org

Attorneys for Plaintiffs and the Proposed Class

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

THE CIVIL RIGHTS EDUCATION AND ENFORCEMENT CENTER, on behalf of itself, and ANN CUPOLO-FREEMAN, RUTHEE GOLDKORN, And JULIE REISKIN, on behalf of themselves and a proposed class of similarly situated persons defined below,

Plaintiffs,

v.

HOSPITALITY PROPERTIES TRUST,

Defendant.

Case No. 3:15-cv-00221-JST

REPRESENTATIVE PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

The Honorable Jon S. Tigar
Courtroom 9, 19th Floor
Hearing Date: January 14, 2015
Hearing Time: 2:00 p.m.

NOTICE IS GIVEN that on January 14, at 2:00 p.m., or as soon thereafter as the matter may be heard in the above-entitled Court, Plaintiffs Ann Cupolo-Freeman, Ruthee Goldkorn, and Julie Reiskin ("Representative Plaintiffs") will and move the Court to certify the following Rule 23(b)(2) class:

> Individuals who use wheelchairs or scooters for mobility who, since January 15, 2013, have been, or in the future will be, denied the full and equal enjoyment of transportation services offered to guests at hotels owned and/or operated by Hospitality Properties Trust because of the lack of equivalent accessible transportation services at those hotels.

In addition, the Representative Plaintiffs request that they be appointed as representatives of this class, and that undersigned counsel be appointed as class counsel.

This motion is based on the Memorandum of Points and Authorities in support of the Motion, the declarations and documents submitted in support, and all other papers filed in this action.

DATED: November 12, 2015

CIVIL RIGHTS EDUCATION AND ENFORCEMENT CENTER

/s/ Timothy P. Fox
Timothy P. Fox
Attorneys for Plaintiffs and the Proposed Class

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

FEDERAL STATUTES

FEDERAL RULES

REGULATIONS

OTHER AUTHORITIES

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF REPRESENTATIVE PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

This lawsuit challenges the systemic failure of Defendant Hospitality Properties Trust ("HPT"), which owns many hotels throughout the country, to ensure that its hotels providing transportation to guests also provide equivalent wheelchair-accessible transportation, as the ADA requires. This lawsuit seeks no monetary damages. As explained below, Plaintiffs have presented significant evidence that more than 90% of HPT's hotels that provide transportation to guests are in violation of the ADA because they do not provide equivalent accessible transportation to guests who use wheelchairs. This is not surprising in light of HPT's admission that, in order to safeguard tax advantages that it receives as a real estate investment trust, it "has not set any uniform or other policies or required any particular practices with respect to shuttle services" at the hotels that it owns. Because HPT -- in the face of widespread violations of ADA transportation regulations at its hotels -- has chosen to do nothing to try to bring those hotels into compliance, it has "refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole" and thus this case presents the classic scenario for certification of an injunctive-only class under Rule 23(b)(2).

BACKGROUND

I. Legal Background

Transportation services provided by hotels are covered by ADA regulations applicable to "private entities not primarily engaged in the business of transporting people," which include "[s]huttle systems and other transportation services operated by privately-owned hotels." *See* 49 C.F.R. § 37.37(b).

Hotels must purchase accessible vehicles or, in lieu of purchasing accessible vehicles, must at least provide equivalent accessible transportation services, if they offer either of the following types of transportation: (1) a fixed route transportation system (defined as a transportation system "on which a vehicle is operated along a prescribed route according to a

fixed schedule")[1] using vehicles purchased or leased after August 25, 1990; or (2) a demand responsive system (defined as any transportation system "which is not a fixed route system," also colloquially called "on demand").[2] *See* 49 C.F.R. §§ 37.101 & 37.171. Whether the hotel must purchase accessible vehicles, or instead provide equivalent transportation services, depends upon the capacity of the vehicle and whether the hotel operates a

The appendix to the regulations provides this helpful chart:

PRIVATE ENTITIES "NOT PRIMARILY ENGAGED"

System type	Vehicle capacity	Requirement
Fixed Route	Over 16	Acquire accessible vehicle.
Fixed Route	16 or less	Acquire accessible vehicle, or equivalency.
Demand Responsive	Over 16	Acquire accessible vehicle, or equivalency.
Demand Responsive	16 or less	Equivalency--see § 37.171.

Section 37.105 sets forth the equivalent service standard and provides as follows:

> [A] fixed route system or demand responsive system, when viewed in its entirety, shall be deemed to provide equivalent service if the service available to individuals with disabilities, including individuals who use wheelchairs, is provided in the most integrated setting appropriate to the needs of the individual and is equivalent to the service provided other individuals with respect to the following service characteristics:
>
> (a) (1) Schedules/headways (if the system is fixed route);
> (2) Response time (if the system is demand responsive);
> (b) Fares;
> (c) Geographic area of service;
> (d) Hours and days of service;
> (e) Availability of information;
> (f) Reservations capability (if the system is demand responsive);
> (g) Any constraints on capacity or service availability;

[1] 49 C.F.R. § 37.3.
[2] *Id.*.

> (h) Restrictions priorities based on trip purpose (if the system is demand responsive).

49 C.F.R. § 37.105.

In addition, ADA regulations require that each "private entity which operates a fixed route or demand responsive system shall ensure that personnel are trained to proficiency, as appropriate to their duties, so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service in a respectful and courteous way, with appropriate attention to the difference among individuals with disabilities." 49 C.F.R. § 37.173. This requires that:

> every employee of a transportation provider who is involved with service to persons with disabilities must have been trained so that he or she knows what needs to be done to provide the service in the right way. *When it comes to providing service to individuals with disabilities, ignorance is no excuse for failure.* While there is no specific requirement for recurrent or refresher training, there is an obligation to ensure that, at any given time, employees are trained to proficiency. An employee who has forgotten what he was told in past training sessions, so that he or she does not know what needs to be done to serve individuals with disabilities, does not meet the standard of being trained to proficiency. Third, training must be appropriate to the duties of each employee.

49 C.F.R. § Pt. 37, App. D (emphasis added).

The regulations establish the following principles relevant to this case. First, a hotel that offers on-demand transportation services, or fixed-route transportation services using vehicles purchased or leased after August 25, 1990, must, at a minimum, provide equivalent transportation services in wheelchair-accessible vehicles to people who use wheelchairs or scooters. Second, the factors defining equivalency demonstrate that equivalent really means equivalent. If a nondisabled person can decide on the spur of the moment to take a hotel shuttle to a nearby attraction, and that shuttle is available every 30 minutes, then a wheelchair-accessible shuttle must be available to people who use wheelchairs or scooters on equivalent notice. Similarly, if a nondisabled person can board a hotel airport shuttle, free of charge, without having to make any advance arrangements for that shuttle, an accessible shuttle must be available without charge to persons with disabilities, and they must not be required to arrange for the transportation themselves or to call in advance to schedule it. Third, the regulations require equivalency in the

"availability of information" concerning accessible and inaccessible transportation services. Thus, if a hotel employee answering the phone provides information concerning inaccessible transportation services, then that employee must be able to provide the same level of information concerning accessible transportation services. Finally, even if a hotel provides accessible transportation services, if a hotel employee who responds to public inquiries from potential customers is not aware of those services, or states that no such transportation services exist, this violates the ADA requirement that employees be trained to proficiency.

II. Factual Background

A. Events Leading Up To This Lawsuit.

In October 2013, Representative Plaintiff Ruthee Goldkorn, a member of the Civil Rights Education and Enforcement Center ("CREEC"), contacted CREEC about a difficult experience she had with hotel shuttle services at a hotel near Chicago. Declaration of Ruthee Goldkorn ("Goldkorn Decl.") ¶ 6. As a result, CREEC began an investigation into hotel compliance with ADA regulations governing accessible transportation services. Declaration of Timothy P. Fox in Support of Motion for Class Certification ("Fox Decl.") ¶ 3. The investigation revealed widespread noncompliance, including by hotels owned by HPT. CREEC's attempts to resolve these issues with HPT before litigation were unsuccessful. Fox Decl. ¶ 4 & Ex. 2 (T. Fox letter to HPT).

B. HPT

As set forth below, Plaintiffs' expert has called virtually all of the HPT hotels that provide transportation services to guests. These calls demonstrate that more than 90% of those hotels are in violation of ADA regulations covering hotel transportation services.

1. HPT: Background Information

HPT is a publicly traded real estate investment trust ("REIT") that, according to its most recent quarterly report filed with the Securities and Exchange Commission, owned 302 hotels as of September 30, 2015. Declaration of Marissa McGarry ("McGarry Decl.") Ex. 2 at 9.

Approximately 142 of these hotels provide transportation services to guests,[3] and these hotels are spread among 29 states. *See* McGarry Decl. ¶¶ 4-5.

HPT stated in its discovery responses that it does not, for the most part, have information concerning the number of persons who use transportation services at its hotels, or even the number of persons who have stayed at each of its hotels. In its interrogatory responses, however, it stated that at one hotel in Chicago, approximately 250 guests per year request accessible transportation. McGarry Decl. Ex. 1 at 38, no. 9.

In addition, according to data submitted by HPT to the Securities and Exchange Commission, its hotels have 45,864 rooms, and the average occupancy rate of those hotels over the last three months was 79.5%. McGarry Decl. Ex. 2 at 39. Thus on any given day, there are at least 36,000 people staying at HPT hotels (and this doesn't include rooms with more than one guest). According to HPT's discovery responses, 47% of HPT hotels provide transportation services to guests. Thus on any given day, a rough estimate is that approximately 17,000 people are staying at HPT hotels that provide transportation services to guests.

As a REIT, HPT receives favorable tax treatment under various provisions of the Internal Revenue Code, and one of its primary defenses in this case -- a defense that is common to the claims of every member of the class -- relies on certain of these provisions. Specifically, HPT argues, in an expert report and elsewhere, that pursuant to 26 U.S.C. § 856, 26 C.F.R. § 1.856-4 and related provisions (together the "REIT tax provisions"), it will lose its favorable tax treatment if it takes actions that could be construed as "managing" or "operating" any of the hotels it owns, and that ensuring that equivalent accessible transportation services are provided at its hotels would constitute management or operation of those hotels. *See generally* McGarry Decl. Ex. 3 (HPT's Class Certification Expert Witness Disclosure).

Two consequences flow from HPT's position. First, HPT does not directly manage its hotels, but rather enters into contracts with management companies to do so. *See* McGarry Decl.

[3] Although HPT's interrogatory responses identified 162 such hotels, that list included one hotel in Canada and three duplicates. In addition, calls by Plaintiffs' expert revealed that 16 of these hotels no longer offer transportation services. Declaration of Michael Quinn ("Quinn Decl.") Ex. A ("Pls.' Expert Report"), at 4 & ex. 1, Hotels 130-45.

Ex. 1 at 3 ("HPT. . . does not operate any of the hotel properties that it owns and, instead, contracts with multiple third-party management companies, each of which is responsible for operations at their managed hotels . . .").

Second, HPT has done *nothing* to ensure that its hotels comply with the ADA's equivalent accessible transportation mandate. HPT admits it "has not set any uniform or other policies or required any particular practices with respect to shuttle services, if any, offered at such hotels." McGarry Decl. Ex. 4 at 3. HPT simply "requires each of its management companies to comply with all laws in their fulfillment of their management agreement obligations." *Id*. It has produced no evidence that it has ever attempted to enforce these compliance-with-law provisions against any of its management companies to require that they come into compliance with ADA transportation regulations.

C. Evidence of HPT's Systemic Violations of ADA Requirements.

Plaintiffs, through their expert Dr. Michael Quinn, have called 138 of the 142 HPT hotels that provide transportation services to hotel guests.[4] The details of those calls are discussed below. In summary, 128 hotels -- more than 90% of the HPT hotels that provide transportation services -- violate the ADA's equivalent transportation requirements. Significantly, based on HPT's interrogatory responses, every one of these 128 hotels is subject to the ADA's requirements because each hotel either provides demand responsive transportation services, or provides fixed route transportation services using vehicles purchased or leased after August 25, 1990.

1. Violations of the equivalent transportation requirement.

i. Calls to hotels.

Dr. Quinn, a professor at Pennsylvania State University who teaches hotel management courses and has significant experience and knowledge concerning the hotel industry, called 138 HPT hotels that provide transportation services. Pls.' Expert Report at 1-2, 4. He called each hotel at least once. As explained in his report, when he called hotels, he took on the role of a "mystery

[4] Dr. Quinn did not call the four remaining HPT hotels that provide transportation to guests because they were identified by HPT in supplemental discovery responses after the deadline for expert reports had passed, and after Plaintiffs had served Dr. Quinn's expert report on HPT.

shopper," a role commonly used by hotels to check the quality of the services they provide to guests. *Id*. at 2-4. In that role, he began each call by inquiring about general transportation services provided by the hotel, including whether the hotel provided any transportation services to guests. *Id.* at 4. If so, he asked for the schedules and response times, fares, geographical areas of service, and hours and days of the transportation services. *Id.*

Dr. Quinn then turned to questions concerning accessible transportation services, including whether the hotel offered any accessible transportation services for guests who use wheelchairs or scooters. *Id.* If the hotel employee stated that accessible transportation was offered, Dr. Quinn then asked for the schedules and response times, fares, geographical areas of service, and hours and days of service for the accessible transportation. *Id.* Some of the hotels called by Dr. Quinn stated that they relied on third parties to provide accessible transportation. Dr. Quinn called several of these third parties to determine whether they had the capability of providing equivalent transportation services. *Id.* at 6.

Dr. Quinn's calls demonstrated that 128[5] of the 138 hotels that he called are in violation of ADA regulations because they do not provide equivalent accessible transportation services. *Id.* at 4-5. Descriptions of these calls, excerpts from HPT's discovery responses establishing ADA coverage based on the type of transportation service provided by the hotel, and other data establishing violations at these hotels have been submitted in support of this motion. These documents and data are summarized in the "Summary Table" attached as Exhibit 1 to the Fox Declaration, and the information contained in that Table is described in paragraph 6 in that declaration.

Together these documents and information demonstrate the following:

Most HPT hotels that provide transportation services to their guests simply do not provide any accessible transportation services: Putting aside whether accessible transportation services are actually equivalent, the most basic ADA requirement is that covered hotels that provide transportation services to their guests must at least provide some form of accessible transportation

[5] One other hotel called by Dr. Quinn, the Crowne Plaza LAX, also did not provide equivalent accessible transportation, but HPT has not stated what type of transportation service that hotel provides and so Plaintiffs have not counted that hotel in their list of noncompliant hotels.

services. HPT hotels systematically violate this essential requirement. Of the 138 hotels called by Dr. Quinn that -- based on HPT's interrogatory responses -- are indisputably required to provide equivalent accessible transportation to their guests, 101 hotels stated during at least one call with Dr. Quinn that they do not provide *any* accessible transportation services. *See* Summary Table, Hotels 1-101.

Lack of equivalency concerning cost of transportation services: ADA regulations require that the fare charged for accessible transportation services be equivalent to that charged for inaccessible transportation services. 49 C.F.R. § 37.105(b). Employees of eight hotels covered by the equivalent transportation requirements told Dr. Quinn that they provide complimentary transportation services that are inaccessible, but that guests who need accessible transportation services must pay for those services. *See* Summary Table, Hotels 114-21.

Lack of equivalency concerning advance notice: ADA regulations require that the headway and response time for accessible transportation services be equivalent to that for inaccessible transportation services. 49 C.F.R. § 37.105(a). Employees of eight hotels covered by the equivalent transportation requirements told Dr. Quinn that guests who need accessible transportation services were required to provide more advanced notice than guests who can use inaccessible transportation services. *See* Summary Table, Hotels 122-29. For example, the employee at the Hyatt Place Fort Wayne told Dr. Quinn that guests must give 24 hours advance notice for inaccessible transportation, but that guests who require accessible transportation must contact the hotel one to one and a half weeks in advance. *Id.*, Hotel 124.

Lack of equivalency concerning the availability of information: The ADA requires equivalence in the availability of information concerning accessible and inaccessible transportation services. 49 C.F.R. § 37.105(e). At least 11 hotels violated this requirement. *See* Summary Table, Hotels 102-13. For example, on several occasions, Dr. Quinn spoke with employees who were able to give specific details about inaccessible transportation services provided by the hotels, but had no idea even what company to call to find accessible transportation services. *See* Summary Table, Hotels 102, 105, 106, 110.

ii. Calls to third parties.

Dr. Quinn contacted several of the third parties identified by hotels as providing accessible transportation, and these calls are also described in the Summary Table. These calls demonstrated that many of these third parties do not have the capability to provide transportation services equivalent to the transportation services provided by the hotel to nondisabled guests.

For example:

- The employee at the Staybridge Suites in Vancouver, Washington stated that the hotel would arrange and pay for accessible transportation from a company called Vancouver Cab. However, that cab company stated that it does not have any wheelchair accessible vehicles. Summary Table, Hotel 93.
- The employee at the Hyatt Place Dallas North Galleria stated that the hotel would arrange and pay for accessible transportation from Yellow Cab, but that cab company informed Dr. Quinn that they do not provide accessible transportation. *Id.* at Hotel 108.
- The employee at the Hyatt Place Indianapolis Airport stated that the hotel would arrange and pay for accessible transportation from Indy Airport Taxi. That company, however, does not provide accessible transportation. *Id.* at Hotel 109.
- Guests at the Residence Inn Charleston do not need to call in advance to use the hotel's inaccessible transportation services. However, the third party that the hotel relies on to provide accessible transportation services, C&H Taxi, requires two days' advance notice. *Id.* at Hotel 128.

2. Violations of ADA training requirements.

As set forth above, the ADA requires private entities that provide transportation services to train every employee who is involved with service to persons with disabilities so that "he or she knows what needs to be done to provide the service in the right way. When it comes to providing service to individuals with disabilities, ignorance is no excuse for failure." 49 C.F.R. § Pt. 37, App. D.

Here, Dr. Quinn's calls demonstrate that employees of many HPT hotels have not received the training required by the ADA to be able to provide equivalent accessible transportation services. For example, employees of several hotels that said they provided accessible transportation during Dr. Quinn's first call, but during a second call, stated that the hotel did not provide accessible transportation. *See* Summary Table, Hotels 7, 8, 19, 21, 93 & 101. The inconsistent and inaccurate information reveals, at the very least, a lack of training.

D. The Representative Plaintiffs.

The Representative Plaintiffs are Julie Reiskin, Ruthee Goldkorn, and Ann Cupolo Freeman.[6] As set forth in their declarations, each has a background in disability advocacy. Declaration of Julie Reiskin ("Reiskin Decl.") ¶ 3; Goldkorn Decl. ¶ 3; Declaration of Ann Cupolo Freeman ("Cupolo Freeman Decl.") ¶ 3. All are members of CREEC. Reiskin Decl. ¶ 3; Goldkorn Decl. ¶ 3. Cupolo Freeman Decl. ¶ 3. They all are people with disabilities who use wheelchairs for mobility. Reiskin Decl. ¶ 5; Goldkorn Decl. ¶ 4; Cupolo Freeman Decl. ¶ 4. Ms. Reiskin, Ms. Goldkorn, and Ms. Cupolo Freeman travel frequently and often stay in hotels. Reiskin Decl. ¶ 6; Goldkorn Decl. ¶ 5; Cupolo Freeman Decl. ¶ 5. They agreed to be testers in this case, to check to see if HPT hotels that provide transportation services also provide accessible transportation services. Reiskin Decl. ¶ 9; Goldkorn Decl. ¶ 8; Cupolo Freeman Decl. ¶ 7. Each Representative Plaintiff called at least one hotel owned by HPT on at least one occasion. Ms. Cupolo Freeman also called a third party provider of transportation at one of the hotels. These calls are described in the accompanying declarations. In sum, each was told that the hotels provided transportation to guests, but did not provide equivalent accessible transportation. Reiskin Decl. ¶¶10-13; Goldkorn Decl. ¶¶ 10-11; Cupolo Freeman Decl. ¶¶ 9-12. If the Representative Plaintiffs are accurately informed that the hotels provide accessible transportation services that are actually equivalent, they intend to stay at these hotels and use those services. They will do as testers. Reiskin Decl. ¶ 14; Goldkorn Decl. ¶ 12; Cupolo Freeman Decl. ¶ 13. Ms. Reiskin's brother and his family live in the Bay Area, and she will travel to the Bay Area in the future to visit them. Reiskin Decl. ¶¶ 6, 14. At such time, she will stay at an HPT hotel, if she is

[6] Associational plaintiff CREEC does not seek to be a class representative under Rule 23.

accurately informed that the hotel provides equivalent transportation to guests who use wheelchairs. Reiskin Decl. ¶ 14. None of the Representatives is seeking monetary damages in this case. Reiskin Decl. ¶ 15; Goldkorn Decl. ¶ 13; Cupolo Freeman Decl. ¶ 14.

ARGUMENT

To certify the proposed class in this case, this Court must determine whether the Representative Plaintiffs have standing to assert injunctive claims, and whether the proposed class meets the requirements of Rule 23. *See, e.g.*, *Armstrong v. Davis*, 275 F.3d 849, 860, 868 (9th Cir. 2001). As set forth below, both of these prerequisites are easily met here.

I. The Representative Plaintiffs Have Standing to Seek Injunctive Relief.

To have standing to seek injunctive relief, a plaintiff must demonstrate that she has suffered an injury in fact, and that she faces a "real and immediate threat of repeated injury" in the future. *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 946 (9th Cir. 2011).

> [A] plaintiff can demonstrate sufficient injury to pursue injunctive relief when discriminatory architectural barriers deter him from returning to a noncompliant accommodation. Just as a disabled individual who intends to return to a noncompliant facility suffers an imminent injury from the facility's "existing or imminently threatened noncompliance with the ADA," a plaintiff who is deterred from patronizing a store suffers the ongoing "actual injury" of lack of access to the store.

Id. at 950.

The Representative Plaintiffs have standing to pursue injunctive relief: (1) they called HPT hotels and were told by the hotels that although they do provide inaccessible transportation, they do not provide equivalent accessible transportation;[7] (2) as a result, the Representative Plaintiffs are deterred from patronizing those hotels; and (3) they will patronize the hotels once the hotels provide equivalent accessible transportation, and the Plaintiffs are accurately informed of this when they contact the hotels to inquire about equivalent accessible transportation. Reiskin Decl. ¶¶ 10-14; Goldkorn Decl. ¶¶ 10-12; Cupolo Freeman Decl. ¶¶ 9-13. Under *Chapman*, the Representative Plaintiffs have standing to seek injunctive relief against HPT.

[7] Once the representative plaintiffs were told by the hotels that they do not provide accessible transportation, the plaintiffs were not required to make the futile gesture of actually staying at the hotel and experiencing the lack of accessible transportation. *See, e.g.*, *Pickern v. Holiday Quality Foods Inc.*, 293 F.3d 1133, 1136 (9th Cir. 2002).

With respect to their intent to return, Ms. Reiskin travels often, has traveled to the Bay Area in the past, will do so in the future to visit her family, and will stay at the hotels she called once they provide equivalent wheelchair-accessible transportation services. Reiskin Decl. ¶¶ 6, 14. She thus has standing to seek injunctive relief. *See, e.g.*, *D'Lil v. Best Western Encina Lodge & Suites*, 538 F.3d 1031, 1037 (9th Cir. 2008) (holding that standing exists under the ADA "where a plaintiff demonstrates an intent to return to the geographic area where the accommodation is located and a desire to visit the accommodation if it were made accessible.").

In addition, all three Representative Plaintiffs have standing as "testers," *i.e.*, people whose purpose in attempting to patronize a defendant's establishment is "to determine whether defendant engaged in unlawful practices." *Tandy v. City of Wichita*, 380 F.3d 1277, 1285 (10th Cir. 2004) (holding that testers have standing under title II of the ADA). As such, their purpose in calling HPT hotels was to determine whether those hotels comply with ADA transportation requirements, and if those hotels in the future actually provide equivalent accessible transportation services, they intend to stay at the hotels and test those services.

The two federal appellate courts that have addressed this issue have both concluded, based on the statutory language of title III, that testers do have standing under that statute. *See Houston v. Marod Supermarkets, Inc.*, 733 F.3d 1323 (11th Cir. 2013); *Colo. Cross Disability Coal. v. Abercrombie & Fitch Co.*, 765 F.3d 1205, 1211-12 (10th Cir. 2014). Both courts relied on the language of the enforcement provision of title III, which provides relief to "any person" who is being subjected to discrimination on the basis of disability, as demonstrating that standing exists for anyone who has suffered an invasion of the legal interest protected by title III "regardless of his or her motivation in encountering that invasion." *Colo. Cross Disability Coalition*, 765 F.3d at 1211; *Houston*, 733 F.3d at 1332. In addition, *Houston* relied on 42 U.S.C. §§ 12182(a) and 12182(b)(2)(A)(iv), the substantive statutory provision at issue there, and held that the "legal right created by [these provisions] *does not* depend on the motive behind Plaintiff Houston's attempt to enjoy the facilities of the Presidente Supermarket. The text of §§ 12182(a) and

12182(b)(2)(A)(iv) provides no basis for the suggestion that Plaintiff Houston's motive is relevant to this legal right." 733 F.3d at 1332 (emphasis in original).

District courts in the Ninth Circuit and elsewhere have reached the same conclusion. *See, e.g.*, *Molski v. Price*, 224 F.R.D. 479, 484 (C.D. Cal. 2004) (holding that plaintiff whose motive for visiting a service station was in part "to check on the station's ADA compliance" had standing under title III); *Molski v. Arby's Huntington Beach*, 359 F. Supp. 2d 938, 947-48 (C.D. Cal. 2005) (same); *Klaus v. Jonestown Bank & Trust Co. of Jonestown, PA*, No. 1:12-CV-2488, 2013 WL 4079946, at *7 (M.D. Pa. Aug. 13, 2013) ("[N]umerous courts have rejected the notion that test plaintiffs, or other serial litigants, forfeit their own standing to sue for discrimination in Title III accessibility cases."); *Betancourt v. Federated Dept. Stores*, 732 F. Supp. 2d 693, 710 (W.D. Tex. 2010) ("Thus, a disabled tester who experiences the discrimination prohibited by the ADA has standing to seek relief.").

Although the Ninth Circuit itself has not yet directly addressed tester standing under title III, two of its decisions on closely-related topics strongly suggest that it would join the Tenth and Eleventh Circuits and find that testers have standing under title III. First, the Ninth Circuit in *Chapman* held that courts must "take a broad view of constitutional standing in civil rights cases, especially where, as under the ADA, private enforcement suits 'are the primary method of obtaining compliance with the Act.'" 631 F.3d at 946. Granting standing to testers is consistent with this approach.

Second, *Smith v. Pacific Properties and Development Corp.*, 358 F.3d 1097 (9th Cir. 2004), considered whether disability testers have standing to seek injunctive relief under the Fair Housing Act. In *Smith*, a nonprofit organization established a program to test whether multi-family housing developments were in compliance with the FHA. *Id.* at 1099. One of the testers used a wheelchair, and in his role as a tester, he identified several architectural barriers in violation of the FHA, and the nonprofit organization subsequently brought suit against the developer of the property. *Id.* The plaintiffs conceded that the tester did not have any interest in actually purchasing or renting property. The developer moved to dismiss, arguing in part that the

tester lacked standing, and the district court granted that motion. On appeal, the Ninth Circuit reversed. The court began by noting that "[t]esters have played a long and important role in fair housing enforcement . . ." *Id.* at 1102. It then examined the language of the FHA, and held that it was sufficiently broad to provide standing to testers. *Id.* at 1104.

The Ninth Circuit's holding in *Smith* that disability testers have standing under the FHA strongly indicates that it would join the Tenth and Eleventh Circuits and hold that disability testers have standing under title III. This conclusion is bolstered by the analysis employed in *Smith*, which was identical to the analysis applied by the courts in *Houston* and *Colorado Cross Disability Coalition*. In all three cases, the courts' analysis focused on the language of the relevant statutes; significantly, the FHA language that caused the court in *Smith* to uphold tester standing is virtually identical to the title III language on which *Houston* and *Colorado Cross Disability Coalition* relied. For example, the FHA enforcement provision at issue in *Smith*, like the enforcement provision of title III, provided relief to "any person," and the Ninth Circuit relied on that phrase to find tester standing under the FHA. *Smith*, 358 F.3d at 1102. This strongly suggests that the Ninth Circuit would reach the same conclusion when interpreting the identical language in the title III enforcement provision. Similarly, the Ninth Circuit in *Smith* analyzed the substantive FHA provision at issue in that case to determine whether it included language indicating any intent to limit its protections based on the motive of the plaintiff, and concluded that there was no such limitation, thus supporting a finding of tester standing. *Smith*, 358 F.3d at 1103-04. Again, this mirrors the analysis conducted by the Eleventh Circuit in *Houston* to find tester standing under title III.

For these reasons, the Representative Plaintiffs in this case have standing as testers to seek injunctive relief against HPT.

II. The Proposed Class Meets Rule 23.

The Representative Plaintiffs seek certification of the following class:

> Individuals who use wheelchairs or scooters for mobility who, since January 15, 2013, have been, or in the future will be, denied the full and equal enjoyment of transportation services offered to guests at hotels owned and/or operated by Hospitality Properties Trust because of the lack of equivalent accessible transportation services at those hotels.

This class should be certified if it meets all of the requirements of Rule 23(a), at least one of the provisions of Rule 23(b), and Rule 23(g), which governs appointment of class counsel. *See, e.g.*, *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003). Here, Plaintiffs seek certification pursuant to Rule 23(b)(2). In addition, some courts have required that the class definition be precise, objective, and presently ascertainable.[8]

Plaintiffs establish below that the class is ascertainable and meets the requirements of Rule 23. As an overview, however, the Ninth Circuit and numerous district courts in this Circuit have certified classes of individuals with disabilities challenging alleged violations of the ADA.[9] These include, for example:

- *Armstrong v. Davis*, 275 F.3d at 869-70, 879 (9th Cir. 2001) (affirming the certification of a class of prisoners and parolees with sight, hearing, learning, developmental, and mobility disabilities);
- *Park v. Ralph's Grocery Co.*, 254 F.R.D. 112 (C.D. Cal. 2008) (certifying class of persons with mobility disabilities suing for alleged violations of architectural accessibility requirements at a grocery store chain);
- *Californians for Disability Rights, Inc. v. Cal. Dep't of Transp.*, 249 F.R.D. 334 (N.D. Cal. 2008) (certifying class of persons with mobility and/or vision disabilities suing due to barriers along outdoor designated pedestrian walkways throughout the state of California which are owned and/or maintained by the California Department of Transportation);
- *Nat'l Fed'n of the Blind v. Target Corp.*, 582 F. Supp. 2d 1185 (N.D. Cal. 2007) (certifying class of persons with visual impairments suing for alleged violations of accessibility requirements at online store);
- *Moeller v. Taco Bell Corp.*, No. C 02-5849 PJH, 2012 WL 3070863, at *1 (N.D. Cal. July 26, 2012) (certifying for injunctive relief class of persons with mobility disabilities suing for alleged violations of architectural accessibility requirements at a fast food chain);

[8] *See, e.g.*, *O'Connor v. Boeing N. Am., Inc.*, 184 F.R.D. 311, 319 (C.D. Cal. 1998). A number of courts have held that the ascertainment requirement does not apply to class actions seeking only injunctive relief under Rule 23(b)(2). *See, e.g.*, *Shelton v. Bledsoe*, 775 F.3d 554, 563 (3d Cir. 2015) ("[A]scertainability is not a requirement for certification of a(b)(2) class seeking only injunctive and declaratory relief . . . ."). The Ninth Circuit has not yet ruled on this issue.

[9] Plaintiffs are not seeking certification concerning the California claims because those California allegations are based on ADA violations, and the ADA provides Plaintiffs with the entire injunctive relief sought.

- *Siddiqi v. Regents of the Univ. of Cal.*, No. C 99-0790 SI, 2000 WL 33190435, at *11 (N.D. Cal. Sept. 6, 2000) (certifying classes of deaf and hard of hearing students suing for alleged violations of federal law);

- *Berlowitz v. Nob Hill Masonic Mgmt., Inc.*, No. C-96-01241 MHP, 1996 WL 724776, at *1, 5 (N.D. Cal. Dec. 6, 1996) (certifying class consisting of all persons in California with physical disabilities suing for alleged violations of architectural accessibility requirements at a concert arena);

- *Arnold v. United Artists Theatre Circuit, Inc.*, 158 F.R.D. 439, 460 (N.D. Cal. 1994), *modified*, 158 F.R.D. 439, 443, 460 (1994) (certifying a class of disabled persons who used wheelchairs or who walked using aids suing for alleged violations of architectural accessibility requirements of the ADA and the CDPA).

This case shares the relevant qualities with those cases such that it is equally appropriate for class certification.

A. The Proposed Class Is Ascertainable.

In Rule 23(b)(2) class actions, "it is often the case that any relief obtained on behalf of the class is injunctive and therefore does not require distribution to the class. Because 'defendants are legally obligated to comply [with any relief the court orders] . . . it is usually unnecessary to define with precision the persons entitled to enforce compliance.'" Newberg on Class Actions § 3:7 (5th ed.) (citation omitted). Identification of individual class members is not required; to the contrary, the fact that class members are difficult or impossible to identify individually supports class certification under Rule 23(b)(2). *See, e.g.*, Committee's Notes to Rule 23(b)(2) (stating that Rule 23(b)(2) is intended to address "various actions in the civil-rights field where a party is charged with discriminating unlawfully against a class, usually one whose members are incapable of specific enumeration.").

Here, the class is clearly defined to identify the relevant time period (beginning January 15, 2013), the people who are included in the class (persons who use wheelchairs or scooters for mobility), what those people must have experienced (denial of full and equal enjoyment of transportation services because of the lack of equivalent accessible transportation services), and where those experiences must have occurred (at hotels owned and/or operated by HPT). A number of courts have found any ascertainability requirement met by similar class definitions. *See, e.g.*, *Nat'l Fed'n of the Blind v. Target Corp.*, No. C 06-01802 MHP, 2007 WL 1223755, at

*4 (N.D. Cal. Apr. 25, 2007) (finding ascertain ability requirements met by class defined as "All legally blind individuals in the United States who have attempted to access Target.com and as a result have been denied access to the enjoyment of goods and services offered in Target stores").

B. The Proposed Class Meets the Requirements of Rule 23(a).

Rule 23(a) establishes four prerequisites for class action litigation, which are: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation.

1. The proposed class satisfies the numerosity requirement.

Rule 23(a)(1) requires that "the class is so numerous that joinder of all members is impracticable." Several factors are relevant to the court's determination that the joinder of all the members is impracticable, including the size of the class, location of class members, difficulty in identifying those class members, and size of each class member's claim. *See* 7A Fed. Prac. & Proc. Civ. § 1762 (3d ed.). In analyzing these factors, a court may make common sense assumptions and reasonable inferences. *See, e.g.*, *Californians for Disability Rights*, 249 F.R.D. at 347; *Colo. Cross Disability Coal.*, 765 F.3d at 1215. Finally, "the numerosity requirement is relaxed" where, as here, the class seeks only injunctive relief. *Arnott v. U.S. Citizenship & Immig. Servs.*, 290 F.R.D. 579, 586 (C.D. Cal. 2012) (citing *Sueoka v. United States*, 101 Fed. Appx. 649, 653 (9th Cir. 2004)).

The class is numerous. Numerosity does not require a plaintiff to establish the exact number of persons in the class. *Bates v. United Parcel Serv.*, 204 F.R.D. 440, 444 (N.D. Cal. 2001) (citing *Arnold*, 158 F.R.D. at 448). A class or subclass with more than 40 members "raises a presumption of impracticability [of joinder] based on numbers alone." *Hernandez v. Cnty. of Monterey*, 305 F.R.D. 132, 152-53 (N.D. Cal. 2015). Courts "regularly rely on" census data in making numerosity determinations. *Californians for Disability Rights*, 249 F.R.D. at 347; *see also Arnold*, 158 F.R.D. at 448.

Here, there are a number of reasons to conclude that this class has significantly more than 40 members. First, approximately 250 people each year request accessible transportation at just one of the more than 100 hotels at issue here. McGarry Decl. Ex. 1 at 38, no. 9.

In addition, this case involves a large number of facilities (142 hotels) at which approximately 17,000 people stay each day. Census figures demonstrate that more than 3.6 million people use wheelchairs for mobility in the United States. McGarry Decl. Ex. 5 (July 2012 U.S. Census Bureau report on Americans with disabilities). If just 15 of those 3.6 million wheelchair users each year stayed at, or were deterred from staying at, the covered hotels since 2013, the numerosity requirement is met. As a matter of common sense, joinder is impracticable based on the size of the class alone. Nevertheless there are a number of other factors establishing numerosity.

The class is geographically dispersed. Joinder may be impracticable where a class is geographically dispersed. *See, e.g.*, *Evans v. Linden Research, Inc.*, No. C 11-01078 DMR, 2012 WL 5877579, at *10 (N.D. Cal. Nov. 20, 2012). Here, the proposed class is geographically dispersed, covering hotels in 29 states.

Class members are difficult or impossible to identify. That members of the proposed class are difficult to identify individually supports a finding that joinder is impracticable. *See id.*; *see also Park*, 254 F.R.D. at 120.

The class includes future class members. The fact that the class includes future, unknowable class members supports a finding of numerosity. *Hernandez,* 305 F.R.D. at 153.

For these reasons, the proposed class meets the numerosity requirement.

2. The proposed class satisfies the commonality requirement.

Rule 23(a)(2) requires that "there are questions of law or fact common to the class." This requirement is "construed permissively," and "[a]ll questions of fact and law need not be common to satisfy the rule." *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 981 (9th Cir. 2011). Here, commonality exists for at least two independent reasons: (1) there are important questions of law and fact common to all class members that can be resolved in one stroke; and (2) there is significant proof that HPT operates under a general practice or policy of discrimination.

Commonality exists because there are significant issues common to all class members that can be resolved in this case. Commonality exists where there is a common issue "of such a nature

that it is capable of classwide resolution -- which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). "Even a single common question will do." *Id.* at 2556 (quotations omitted). Thus, "[w]here the circumstances of each particular class member vary but retain a common core of factual or legal issues with the rest of the class, commonality exists." *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1029 (9th Cir. 2012).

Here, there are a number of issues central to each class member's claim that can be resolved on a classwide basis, most notably concerning the impact, if any, of 26 U.S.C. § 856 and 26 C.F.R. § 1.856-4 -- the REIT tax provisions -- on Defendant's obligations under the ADA. As set forth above, Defendant argues that the REIT tax provisions do not allow it to operate or manage its hotels and thus prevent it from ensuring that transportation services at those hotels comply with the ADA. These provisions thus raise a number of questions common to every class member, including:

- Do the REIT tax provisions actually cause a real estate investment trust to lose its favorable tax status simply by modifying its hotel practices and procedures to comply with the ADA?
- If so, is this a defense to claims brought under the ADA?
- Even if these provisions are interpreted to preclude this Court from ordering any relief that might constitute "operating" or "managing" hotels, are there other measures that this Court can order HPT to take to comply with the ADA? For example, HPT claims that its management agreements require hotel managers to comply with the law, and thus this Court could order HPT to take all measures permitted by its contract to force management companies to comply with the ADA, or to terminate those contracts. Or the Court could order Defendant to purchase wheelchair-accessible vans for its hotels.

Another question common to all class members is whether the evidence of HPT's violations of the ADA are sufficient to warrant a classwide, systemic injunction.[10] These types of issues establish commonality. *See, e.g.*, Newberg on Class Actions § 3:27 (5th ed.) ("A claim that the opposing party 'has acted or refused to act on grounds that apply generally to the class' necessarily presents a common question of fact; similarly, a claim that injunctive or declaratory relief is appropriate for the class as a whole presents a common question of law.").

Finally, HPT's alleged (and admitted) failure to put in place any practices or policies to ensure compliance with ADA hotel transportation regulations creates an issue common to the class. *See, e.g.*, *Parsons v. Ryan*, 754 F.3d 657, 664, 678 (9th Cir. 2014) (affirming certification of a class based on common questions that included the defendant's alleged failure to comply with legal requirements concerning provision of medication, treatment, and other medical care to prisoners); *Holmes v. Godinez*, No. 11 C 2961, 2015 WL 5920750, at *30-32 (N.D. Ill. Oct. 8, 2015) (finding commonality requirement met where defendant failed to have in place policies and practices required by the ADA).

Commonality exists because there is significant proof that HPT operates under a general practice or policy of discrimination. Commonality exists where there is "significant proof" that a defendant operated under a general practice or policy of discrimination. *Wal-Mart*, 131 S. Ct. at 2553. In *Wal-Mart*, the Court cited *Teamsters v. United States*, 431 U.S. 324 (1977), as an example of a case in which the "significant proof" standard was met. *Wal-Mart*, 131 S. Ct. at 2556. In *Teamsters*, the evidence demonstrated that the defendant had subjected roughly one in eight, or less than 13%, of class members, to discrimination. *See id.*; *see also Holmes*, 2015 WL 5920750, at *32 (finding significant proof standard was met by evidence that approximately 9% of class members were subject to discrimination).

[10] The answer is unquestionably yes—more than 90% of HPT's hotels that provide transportation services to guests are in violation of ADA regulations requiring equivalent accessible transportation. The Ninth Circuit has repeatedly affirmed entry of systemic injunctions on far less comprehensive evidence. *See, e.g.*, *Oregon Advocacy Ctr. v. Mink*, 322 F.3d 1101, 1122 n.13 (9th Cir. 2003) (affirming entry of injunction covering jails in 36 counties based only on evidence concerning jails and seven counties).

Here, Plaintiffs have offered "significant proof" that HPT operates under a general practice or policy of discrimination: more than 90% (128) of the 142 HPT hotels that offer transportation services were violating the ADA transportation regulations. This far exceeds the evidence found sufficient in *Teamsters*. It also far exceeds the evidence necessary to warrant a systemic injunction. *See supra* n.10. Indeed, HPT admits that, based on its status as a REIT, it has not even attempted to put in place practices or policies to ensure compliance with ADA transportation regulations. The fact that virtually all of its hotels are thus in violation of those regulations is not surprising, and easily establishes commonality.

Finally, that individual class members may have experienced violations in different ways -- some may have been told that no accessible transportation is provided, others may have had to wait longer for accessible transportation than nondisabled guests wait, and/or some class members may have been told that they must pay for accessible transportation whereas the hotel provides inaccessible transportation at no cost -- does not defeat commonality where, as here, Plaintiffs allege a systemwide practice of discrimination. *See, e.g.*, *Armstrong*, 275 F.3d at 868 (Rejecting argument that "a wide variation in the nature of the particular class members' disabilities precludes a finding of commonality," and holding that "commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members."); *Marilley v. Bonham*, No. C-11-02418-DMR, 2012 WL 851182, at *4 (N.D. Cal. Mar. 13, 2012) ("Neither factual differences between the proposed class members nor the plurality of implicated statutes defeats commonality where class members share such a common question."); *Shields v. Walt Disney Parks and Resorts US, Inc.*, No. CV 10-05810 DMG (JEMx), 2011 WL 7416335, at *25 (C.D. Cal. June 29, 2011) (holding that the variety of communication preferences among the visually impaired class members did not defeat class certification because "[a]n injunction applicable to all class members could include multiple remedial measures to remedy the violation of a common right."); *Lane v. Kitzhaber*, 283 F.R.D. 587, 598 (D. Or. 2012) ("As in other cases certifying class actions under the ADA and Rehabilitation Act, commonality exists even where class members are not identically situated.")

3. The claims of the representative plaintiffs satisfy the typicality requirement.

Rule 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." The purpose of the requirement "is to assure that the interest of the named representative aligns with the interests of the class. Typicality is satisfied when each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability." *Covillo v. Specialtys Cafe*, No. C-11-00594 DMR, 2013 WL 5781574, at *6 (N.D. Cal. Oct. 25, 2013) (citations and internal quotation marks omitted). Numerous courts have held that the typicality requirement is met in cases like this one involving alleged violations of title III of the ADA. *See, e.g.*, *Arnold*, 158 F.R.D. at 450; *Park*, 254 F.R.D. at 121.

The Representative Plaintiffs' claims, like those of members of the class, all arise from the same course of events—Defendant's failure to provide equivalent accessible transportation. Likewise, the Representative Plaintiffs' claims, like those of the members of the class, rest on identical legal theories and arguments. The typicality requirement is met.

4. The proposed representatives meet the adequate representation requirement.

The final requirement of Rule 23(a), adequate representation, requires that the proposed representatives do not have conflicts of interest with the proposed class. Fed. R. Civ. P. 23(a)(4); *Bates*, 204 F.R.D. at 447; Newberg on Class Actions § 3.58 (5th ed.) ("All that is required [to fulfill the adequate representation requirement] – as the phrase 'absence of conflict' suggests – is sufficient similarity of interest such that there is no affirmative antagonism between the representative and the class.").

Neither the Representative Plaintiffs nor their counsel has conflicts of interest with the proposed class. All Representative Plaintiffs are members of the class that they seek to represent and all seek to remedy alleged violations of the ADA. They also seek the same relief as the class: comprehensive injunctive relief that ensures HPT's compliance with the law. None of the Representative Plaintiffs seeks any monetary damages.

5. The proposed class counsel meet the requirements of Rule 23(g).

In addition, class counsel meet the requirements of Rule 23(g), which requires the Court to appoint class counsel based on the following factors: (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class. These factors weigh decisively towards appointing the proposed class counsel in this case.

Attached are declarations demonstrating the adequacy of the proposed class counsel in this case: Tim Fox, Sarah Morris, Bill Lann Lee, Julie Wilensky, Julia Campins, Hillary Benham-Baker, and Kevin Williams. Together these attorneys have litigated dozens of class actions, including numerous class actions under the ADA and other disability rights statutes. The attorneys and their firms and organizations have been appointed as class counsel, having been found by the relevant courts to meet the adequate representation requirements under Rule 23.

Counsel are thoroughly familiar with the ADA, having litigated not only class actions under that statute, but also numerous individual cases as well. They have thoroughly investigated this case, calling nearly every HPT hotel that provides transportation to its guests, calling third parties that HPT relies on to provide accessible transportation, and reviewing numerous documents and discovery responses provided by HPT during discovery. They have the resources to litigate this case, as they have done with numerous similar class actions in the past.

C. The Proposed Class Satisfies Rule 23(b)(2).

Certification under Rule 23(b)(2) is proper where "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." The Supreme Court in *Wal-Mart* recognized that "'[c]ivil rights cases against parties charged with unlawful, class-based discrimination are prime examples' of what (b)(2) is meant to capture." 131 S. Ct. at 2557 (citation omitted). Rule 23(b)(2) is satisfied where "'class members complain of a pattern or

practice that is generally applicable to the class as a whole.'" *Rodriguez v. Hayes*, 591 F.3d 1105, 1125 (9th Cir. 2010) (quoting *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998)).

Numerous courts have certified classes under Rule 23(b)(2) alleging violations of title III. *See, e.g.*, *Shields,* 279 F.R.D. at 557-60; *Colo. Cross Disability Coal.*, 765 F.3d at 1217.

Here, Plaintiffs allege that HPT has a practice of not providing equivalent accessible transportation services at hotels it owns that generally provide transportation services to guests. Indeed, HPT has admitted in its discovery responses that it does nothing to ensure that its hotels comply with ADA transportation requirements. Plaintiffs seek only injunctive and declaratory relief. Because this civil rights case involves allegations that HPT "has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief" is appropriate for the class as a whole, the class meets the requirements of Rule 23(b)(2).

CONCLUSION

For the reasons above, Plaintiffs respectfully request that the Court GRANT this motion, certify the proposed class, appoint Plaintiffs Ann Cupolo Freeman, Ruthee Goldkorn, and Julie Reiskin as Class Representatives, and appoint the Civil Rights Education & Enforcement Center, Campins Benham-Baker LLP, and Colorado Cross-Disability Coalition as Class Counsel.

Dated: November 12, 2015

Respectfully Submitted,

By: /s/ Timothy P. Fox

Timothy P. Fox – Cal. Bar No. 157750
Sarah M. Morris, *Pro Hac Vice*
CIVIL RIGHTS EDUCATION AND ENFORCEMENT CENTER
104 Broadway, Suite 400
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
CIVIL RIGHTS EDUCATION AND ENFORCEMENT CENTER
2120 University Ave.
Berkeley, CA 94704
(510) 431-8484
blee@creeclaw.org
jwilensky@creeclaw.org

Julia Campins
Hillary Benham-Baker
CAMPINS BENHAM-BAKER, LLP
935 Moraga Road, Suite 200
Lafayette, CA 94549
(415) 373-5333
julia@cbbllp.com
hillary@cbbllp.com

Kevin W. Williams, *Pro Hac Vice*
COLORADO CROSS-DISABILITY COALITION
1385 S. Colorado Boulevard, Suite 610-A
Denver, CO 80222
(303) 839-1775
kwilliams@ccdconline.org

Attorneys for Plaintiffs and the Proposed Class