UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND 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,

Plaintiffs,

v.

RLJ LODGING TRUST,

Defendant.

Case No. 15-cv-0224-YGR

~~[AMENDED~~ ~~PROPOSED]~~ ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND CERTIFICATION OF SETTLEMENT CLASS

DEADLINES AS MODIFIED BY THE COURT

BACKGROUND

In this proposed class action, Plaintiffs allege that Defendant RLJ Lodging Trust, which owns approximately 127 hotels nationwide, approximately 42 of which provide transportation to guests, has violated requirements set forth under the Americans with Disabilities Act and California state law governing provision of accessible transportation by hotels. The parties have now reached a proposed settlement. They seek certification of a settlement class, preliminary approval of the settlement, approval of the form of notice and notice dissemination plan, and the setting of additional deadlines related to the final approval process. For the reasons below, the Court GRANTS the motion.

I. Legal Background

Transportation services provided by hotels are covered by the 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."[1]

Under Department of Transportation regulations, these requirements apply to entities that "operate" hotel transportation services,[2] and the regulations broadly define "operate" to include "the provision of transportation service by a public or private entity itself or by a person under a contractual or other arrangement or relationship with the entity." 49 C.F.R. § 37.3. In addition, the Department of Justice has explicitly incorporated these regulations to cover public accommodations that provide transportation services, thus extending their coverage to any entity that owns, operates, leases or leases to a place of public accommodation (including hotels) that provides transportation services to guests.[3]

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[1] *See* 49 C.F.R. § 37.37(b); 28 C.F.R. § 36.310(a)(2). The ADA explicitly prohibits covered entities such as RLJ from "directly, or through contractual, licensing, or other arrangements," engaging in actions otherwise prohibited by title III. 42 U.S.C. § 12182(b)(1)(A)(i); *see also Botosan v. Paul McNally Realty*, 216 F.3d 827, 833 (9th Cir. 2000) (holding that a "landlord has an independent obligation to comply with the ADA that may not be eliminated by contract").

[2] *See* 49 C.F.R. §§ 37.101 & 37.171.

[3] 28 C.F.R. § 36.310(c) (stating that hotels and other public accommodations not primarily engaged in the business of transportation that provide transportation services "shall comply with the requirements pertaining to vehicles and transportation systems in the regulations issued by the Secretary of Transportation pursuant to section 306 of the Act."); *see also* 28 C.F.R. § 36.104

The regulations generally require a hotel that offers transportation services to purchase accessible vehicles or to provide wheelchair-accessible transportation services to persons with disabilities that are equivalent to the inaccessible transportation services they provide their guests. *See* 49 C.F.R. §§ 37.101 & 37.171. Section 37.105 sets forth the equivalent service standard and identifies a number of characteristics that must be equivalent. The regulations also require that personnel be trained to proficiency. 49 C.F.R. § 37.173.

II. Factual Background

A. RLJ

RLJ Lodging Trust ("RLJ") is a publicly traded real estate investment trust (REIT) that owns approximately 127 hotels nationwide, approximately 43 of which provide transportation services to their guests and are therefore subject to the ADA transportation requirements.

B. Plaintiffs' Investigation

Before filing this lawsuit, Plaintiff Civil Rights Education and Enforcement Center ("CREEC") and several of its members who have mobility disabilities and use wheelchairs called numerous RLJ hotels to investigate whether there were ADA violations and to confirm that the alleged violations of the ADA were widespread.[4] McGarry Decl. ¶¶ 5-6. Plaintiff CREEC's efforts to resolve the ADA violations before filing suit were unsuccessful. First Am. Compl. ¶ 35, Dkt. No. 50. The complaint specifically identified 14 RLJ hotels allegedly in violation of the transportation requirements. Compl. ¶¶ 14-30, Dkt. No. 1. Plaintiffs seek classwide injunctive relief. Plaintiffs do not seek damages on behalf of the class or the individual named Plaintiffs.

The parties participated in early Court-mandated mediation through a private mediator, retired Magistrate Judge James Larson of JAMS. The parties exchanged extensive information to enable a thorough investigation of Plaintiffs' claims. In addition to reviewing documents and information provided by RLJ, Plaintiffs conducted additional investigation of their claims before

(defining "public accommodation" as "a private entity that owns, leases (or leases to), or operates a place of public accommodation").

[4] Plaintiff CREEC does not seek to represent a class or be designated as a class representative.

mediation, including follow-up calls to RLJ hotels made by the Named Plaintiffs and calls made by Plaintiff CREEC to third-party transportation providers identified by certain RLJ hotels.

C. Negotiations and Settlement

An in-person mediation session was held on June 30, 2015. The parties continued to negotiate by phone and email for approximately five months afterwards. Wilensky Decl. ¶¶ 13-14. All parties have been represented throughout these negotiations by counsel with substantial experience in both disability rights and class action litigation. The parties reached full agreement on the injunctive relief before beginning to negotiate attorneys' fees and costs. *Id* ¶ 15. On November 5, 2015, the parties executed a Memorandum of Understanding memorializing material terms, and all parties and counsel executed the Settlement Agreement on November 20, 2015. *Id* ¶¶ 16-17.

DISCUSSION

I. The Proposed Settlement Class Is Certified

To certify the proposed settlement class in this case, this Court must determine whether the Named 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). Both of these prerequisites are met here.

A. The Named 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 Named Plaintiffs, Ann Cupolo Freeman, Ruthee Goldkorn, and Julie Reiskin, have standing to pursue injunctive relief: (1) they called RLJ Hotels and were told by the Hotels that although they do provide inaccessible transportation, they do not provide equivalent accessible transportation;[5] (2) as a result, the Named 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. First Am. Compl. ¶¶ 14-29. Under *Chapman*, the Named Plaintiffs have standing to seek injunctive relief against RLJ.

Plaintiffs here called the RLJ hotels at least in part 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 RLJ hotels was in part to determine whether those hotels comply with ADA transportation requirements. Under well-established law, plaintiffs who otherwise have standing to seek injunctive relief under title III do not lose that standing because their motive in patronizing a place of public accommodation is to test for compliance with title III.

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

[5] Once the Named Plaintiffs were told by the hotels that they do not provide accessible transportation, they 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).

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.

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), upheld disability tester standing to seek injunctive relief under the Fair Housing Act, which has virtually identical language to title III of the ADA. 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 Court holds that the Named Plaintiffs in this case have standing as testers to seek injunctive relief against RLJ.

B. The Proposed Settlement Class Meets the Requirements of Rule 23.

Named Plaintiffs seek certification of the following class for settlement purposes only:

> All individuals who use wheelchairs or scooters for mobility who, from January 15, 2013 to the date of preliminary approval of the Settlement, have been denied the full and equal enjoyment of transportation services offered to guests at Hotels owned and/or operated by RLJ because of the lack of equivalent accessible transportation services at those Hotels.

Although RLJ does not oppose this motion, this Court still must determine that the proposed class 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).

1. The Proposed Settlement Class Is Ascertainable.

The Ninth Circuit has not yet ruled on whether Rule 23 requires that a class be ascertainable. To the extent this may be a requirement, however, it is met here. 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, the people who are included in the class (persons who use wheelchairs or scooters for mobility), what those people

must have experienced or will experience (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 RLJ). 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 ascertainability requirement met by class defined as "[a]ll 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").

2. The Proposed Settlement 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.

i. 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, Inc. v. Cal. Dep't of Transp.*, 249 F.R.D. 334, 347 (N.D. Cal. 2008); *Colo. Cross Disability Coal. v. Abercrombie & Fitch Co.*, 765 F.3d 1205, 1215 (10th Cir. 2014). 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 v. United Artists Theatre Circuit, Inc.*, 158 F.R.D. 448 (N.D. Cal. 1994)). 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, this case involves a large number of facilities covered by the class at which thousands of people stay each day. In addition, census figures demonstrate that millions of people use wheelchairs for mobility in the United States. If just 15 of those millions of wheelchair users each year stayed at, or were deterred from staying at, one of the RLJ Hotels at issue 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. RLJ owns hotels located in 22 states and Washington, D.C.

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 v. Ralph's Grocery Co.*, 254 F.R.D. 112, 120 (C.D. Cal. 2008).

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

ii. 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). "Even a single common question will do," as long as it is "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, 2556 (2011) (internal quotation marks 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).

Commonality exists where a defendant allegedly failed to have in place practices or policies required by law. *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 provide medication, treatment, and other medical care to prisoners).

Here, there are a number of legal and factual issues central to each class member's claim that can be resolved on a classwide basis, including:

- Whether the Hotels provide transportation services to guests?
- Whether the Hotels provide transportation services to guests who use wheelchairs or scooters for mobility?
- Whether the transportation services provided to guests who use wheelchairs or scooters for mobility are "equivalent" under the ADA and applicable regulations?

These types of issues establish commonality. *See, e.g.*, Newberg on Class Actions § 3:27 (5th ed. 2013) ("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.").

That individual class members may have experienced alleged 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 & 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.").

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

iv. 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' suggest – is sufficient similarity of interest such that there is no affirmative antagonism between the representative and the class.").

Neither Named Plaintiffs nor their counsel has conflicts of interest with the proposed class. All three Named 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 RLJ's compliance with the law. None of the Named Plaintiffs seeks any monetary damages.

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

In addition, Plaintiffs' 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.

Here, proposed class counsel have litigated dozens of class actions, including numerous class actions under the ADA and other disability rights statutes. The attorneys and their organizations and firms 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 many RLJ hotels that provide transportation to its guests, calling third parties that RLJ relies on to provide accessible transportation, and reviewing documents provided by RLJ during the mediation process. Counsel have the resources to litigate this case. If this settlement is not approved, Plaintiffs' counsel assert that they have the resources to continue to litigate this case vigorously on behalf of the proposed class.

3. The Proposed Settlement 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 RLJ has a practice of not providing equivalent accessible transportation services at Hotels it owns that generally provide transportation services to guests, and plaintiffs seek only injunctive and declaratory relief. Because this civil rights case involves allegations that RLJ "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).

II. The Proposed Settlement Is Preliminarily Approved

The terms of the Proposed Settlement Agreement are set forth in the Settlement Agreement. The following summarizes the principal terms of the Settlement:

A. Injunctive Relief

Plaintiffs and RLJ have negotiated a comprehensive scheme for injunctive relief.[6] The injunctive relief of the Settlement Agreement requires RLJ Hotels to comply with the regulations described above. The Settlement Agreement sets forth what compliance means, with specific attention to ensuring that any third-party transportation providers used by RLJ Hotels to provide equivalent accessible transportation truly do provide such *equivalent* accessible transportation. Settlement Agreement ¶ 5 & 5.a. Moreover, the Settlement Agreement explicitly requires that *accurate* information be provided to potential hotel guests, so that no guests are erroneously deterred. *Id.* ¶ 5.c. RLJ will provide information to Plaintiffs regarding the current status of the Hotels that provide transportation services to their guests, as well as any applicable third-party transportation providers.[7] *Id.* ¶ 4. Finally, RLJ will notify all management companies—the companies that directly manage RLJ's Hotels—about the Settlement Agreement and the management companies' obligations under the ADA, as well as any Hotel's non-compliance with either. *Id.* ¶ 6.

To ensure that RLJ Hotels come into compliance, the Settlement provides a multistage monitoring process that involves both a third-party monitor and monitoring by Plaintiffs' Counsel. First, the third-party monitor will contact up to 50% of RLJ Hotels that provide transportation services to guests every four months for the first two years of the Settlement Agreement's term to test their compliance. *Id.* ¶ 7.b. Subsequent monitoring cycles will also include Hotels that failed to provide accurate information or equivalent accessible services during the previous cycle. *Id.* ¶ 7.c. This stepped-up monitoring ensures that problem Hotels are closely

[6] The Complaint seeks only injunctive relief and attorneys' fees and costs. The Settlement Agreement does not provide for any monetary damages, and releases individual damages claims only for the individual Named Plaintiffs through the date of preliminary approval. The proposed recovery to the class is in all other requests identical to the recovery to the individual Named Plaintiffs.

[7] RLJ is not required to provide this information for four RLJ-owned hotels operated by Sage Hospitality Resources, LLC, whose transportation services are at issue in another lawsuit brought by Plaintiff CREEC pending in the District of Colorado: Marriott Denver International Airport, Embassy Suites Irvine California, Courtyard Portland City Center, and Renaissance Pittsburgh. Settlement Agreement ¶ 4.e. The Release does not cover any claims regarding accessible transportation at these hotels. *Id.* ¶ 15.c.

monitored. Second, the monitor will send a tester to 15% of the Hotels who, during those telephone conversations, claim to have equivalent accessible transportation to confirm that the Hotel does indeed provide equivalent, accessible transportation. *Id.* ¶ 7.b. Finally, any Hotel found to be out of compliance during the first two years of monitoring will be subjected to a third year of monitoring unless it can prove that it has purchased its own accessible transportation vehicle. *Id.* ¶ 7.d. Hotels whose non-compliance is confined to inaccurate information will be subjected to the third year of monitoring only if they were found to be out of compliance a second time. *Id.* ¶ 7.d. This comprehensive monitoring program is thorough and addresses the issues that Plaintiffs have uncovered during their investigation.

RLJ will continue to provide information to Plaintiffs' Counsel throughout this process. *Id.* ¶ 7.e. Additionally, RLJ will provide notices to the hotel managers of their hotels' non-compliance. After three instances of non-compliance, RLJ has committed to either discontinuing transportation services at that particular Hotel, purchasing a wheelchair-accessible vehicle for use at that Hotel, or taking other action to address non-compliance that will be acceptable to Plaintiffs' Counsel. *Id.* ¶ 8.c. This final part of the monitoring and compliance process closes the loop so that all hotels should be in full compliance with the ADA by the end of the third year of the Settlement Agreement, if not long before. Future management agreements between RLJ and the hotel management companies must include a requirement that the hotel managers comply with accessible transportation requirements under the ADA. Settlement Agreement ¶ 8.d.

The parties have agreed that Progressive Management Resources, Inc. (PMR) will be the third-party monitor. RLJ will pay the monitor's fees and costs. Settlement Agreement ¶ 7.f.

Plaintiffs' Counsel will also be involved in monitoring. Settlement Agreement ¶ 7.b.i. They will do so through any members of the class that visit RLJ hotels as well as through monitoring by Plaintiffs' Counsel of the third-party transportation providers that hotels use to provide transportation to disabled guests to ensure that the services provided by the third parties are actually equivalent to the services provided to guests without disabilities. In addition, Plaintiffs' Counsel will review monitoring reports by PMR, and raise issues as needed with RLJ.

Finally, the parties have also agreed to a multi-stage dispute resolution process in which disputes that the parties cannot resolve themselves will be brought to a mediator, and if the disputes cannot be resolved in mediation, they can be brought to the Court for resolution during the term of the Settlement Agreement. *See id.* ¶ 14.

B. Class Release

The Settlement Agreement releases claims for injunctive or declaratory relief on behalf of the Class through the date of preliminary approval. *See id.* ¶ 15.a. It does not release any claims on behalf of class members for monetary damages, other than by the three named plaintiffs. *See id*. Nor does it release any claims against management companies for RLJ Hotels.[8] *See id.* ¶ 15.

C. The Proposed Settlement Merits Preliminary Approval.

Rule 23(e) requires a district court to determine whether a proposed class action settlement is "fundamentally fair, adequate, and reasonable." *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003). At final approval, this involves an analysis of a number of different factors. *See, e.g., id*. Preliminary approval is an initial assessment of the fairness of the proposed settlement on the basis of written submissions and presentations from the settling parties.

Preliminary approval of a settlement and notice to the proposed class is appropriate: "[i]f [1] the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, [2] has no obvious deficiencies, [3] does not improperly grant preferential treatment to class representatives or segments of the class, and [4] falls with the range of possible approval." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (citing Manual for Complex Litigation, Second § 30.44 (1985)). "In addition, '[t]he court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer, or is presumptively valid.'" *Id.* (citing Newberg on Class Actions § 11.25 (1992)).

[8] Also, as noted above, Plaintiffs and the Class do not release any claims regarding accessible transportation at four RLJ Hotels operated by Sage Hospitality Resources, LLC, a defendant in a similar pending lawsuit brought by CREEC.

Here, the proposed Settlement easily satisfies the preliminary approval requirements. The proposed Settlement appears to be an excellent result, reached after thorough investigation and extensive negotiations and with assistance of a JAMS mediator who is a retired federal Magistrate Judge. No class representatives or segments of the class are receiving any preferential treatment.

The Settlement will provide substantial injunctive relief to the Class. By means of this Settlement Agreement, RLJ Hotels that provide transportation services to guests will provide either a wheelchair-accessible vehicle or truly equivalent wheelchair-accessible transportation through a third party. The Hotels will be held accountable through a robust monitoring process covering each Hotel, and the monitoring will increase if any Hotel is found out of compliance at any time during the term of the Agreement. The monitoring consists both of calls to the Hotels to verify that the Hotels are providing the required services and providing accurate information with respect to those services, and in-person visits to a random selection of the Hotels that purport to provide equivalent accessible transportation through a third-party transportation provider. After three instances of noncompliance by a particular Hotel, RLJ will either discontinue all transportation services at the Hotel, purchase an accessible vehicle for use at that Hotel so that there can be no further difficulties in providing equivalent accessible transportation through a third-party transportation provider, or take other action to address the non-compliance acceptable to Plaintiffs' Counsel.

The Court holds that the settlement appears to be the product of serious, informed, non-collusive negotiations, it has no obvious deficiencies, it does not improperly grant preferential treatment to class representatives or segments of the class, and falls well within the range of possible approval.

D. The Proposed Form of Notice and Notice Plan Satisfy Due Process and Are Approved.

Under Federal Rule of Civil Procedure 23(e)(1), the court "must direct notice in a reasonable manner to all class members who would be bound by a propos[ed settlement]." Class members are entitled to receive "the best notice practicable" under the circumstances. *Burns v.*

Elrod, 757 F.2d 151, 154 (7th Cir. 1985) (citing Fed. R. Civ. P. 23(c)(2)). Notice is satisfactory "if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (internal citation and quotation marks omitted). "The hallmark of the notice inquiry . . . is reasonableness." *Lucas v. Kmart Corp.*, 234 F.R.D. 688, 696 (D. Colo. 2006) (citing *Sollenbarger v. Mountain States Telephone & Telegraph Co.*, 121 F.R.D. 417, 436 (D.N.M. 1988)); *see also, e.g.*, *Tulsa Professional Collection Servs., Inc. v. Pope*, 485 U.S. 478 (1988).

The notice standard is satisfied here. Plaintiffs plan to disseminate notice through known disability advocacy groups, which is the most reasonable manner to ensure that class members receive word of the settlement. In addition, Plaintiffs will post the notice on CREEC's website and provide the notice to people with disabilities who contacted CREEC about problems with accessible hotel transportation. This is not a case where there is a list of shareholders of a company, employees, or purchasers of a product that can be obtained through reasonable efforts. To the contrary, the parties are not aware of any available list of individuals who use wheelchairs or scooters and patronize RLJ hotels. The parties believe that one could not be created without significant time and expense. Under such circumstances, individual notice is not required. *Lucas*, 234 F.R.D. at 696 (citing *Sollenbarger*, 121 F.R.D. at 437 (publication notice sufficient to subgroup of class when efforts required for creating list of individuals would be excessive under the circumstances). *Compare* Fed. R. Civ. P. 23(c)(2)(B) (regarding *individual* notice for classes certified under Rule 23(b)(3)) *to* Fed. R. Civ. P. 23(c)(2)(A) and 23(e)(1) (discussing "reasonable" and "appropriate" notice).

The proposed notice describes the Settlement Class, summarizes the proposed settlement, and explains to class members their right to object and be heard in open court. The Court approves the form of notice and the proposed plan of dissemination as the "best notice practicable" under the circumstances.

CONCLUSION

As set forth above, the Court holds as follows:

1. The following class is certified for settlement purposes only, having satisfied the requirements of Rule 23(a) and Rule 23(b)(2) of the Federal Rules of Civil Procedure:

   a. All individuals who use wheelchairs or scooters for mobility who, from January 15, 2013 to the date of preliminary approval of the Settlement, have been denied the full and equal enjoyment of transportation services offered to guests at Hotels owned and/or operated by RLJ because of the lack of equivalent accessible transportation services at those Hotels.

2. The court appoints Named Plaintiffs Ann Cupolo Freeman, Ruthee Goldkorn, and Julie Reiskin as Class Representatives.

3. The Court appoints the following as Class Counsel: Civil Rights Education and Enforcement Center (CREEC) and its attorneys Timothy P. Fox, Sarah Morris, Bill Lann Lee, and Julie Wilensky; Campins Benham-Baker, LLP and its attorneys Julia Campins and Hillary Benham-Baker; and Colorado Cross-Disability Coalition and its attorney Kevin Williams.

4. The proposed Settlement Agreement is preliminarily approved. (Exhibit A)

5. The Court approves the form of the proposed notice and notice dissemination plan. (Exhibit B)

6. The Court sets the following deadlines:

- **Notice Deadline:** Plaintiffs will issue notice to the class not more than 10 days after today's date ("Notice Deadline"), or February 4, 2016;
- **Deadline for Motion for Attorneys' Fees**: 30 days after the Notice Deadline, or March 7, 2016.
- **Deadline to submit Objections to the Settlement**: 60 days after the Notice Deadline, or April 4, 2016.
- **Deadline for Motion for Final Approval**: 35 days before the Final Approval hearing, or March 29, 2016.

- **Deadline for Reply in Support of Final Approval or Supp. Mem. in Support of Mot. for Attorneys' Fees**: April 19, 2016.
- **Final Approval Hearing:** May 3, 2016.

IT IS SO ORDERED.

Dated: January 25, 2016

Hon. Yvonne Gonzalez Rogers
U.S. District Judge