IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Christine M. Arguello

Civil Action No. 14-cv-03111-CMA-KLM

JULIE REISKIN, et al., on behalf of herself and others similarly situated,

Plaintiffs,

v.

REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado,

Defendant.

ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT, PLAINTIFFS' UNOPPOSED MOTION FOR REASONABLE ATTORNEYS' FEES AND COSTS AND ENTRY OF JUDGMENT OF DISMISSAL WITH PREJUDICE

This matter is before the Court on Plaintiffs' Motion for Final Approval of Class Action Settlement Agreement ("Final Motion") (Doc. # 157) and Plaintiffs' Unopposed Motion for Reasonable Attorneys' Fees and Costs ("Fees Motion") (Doc. # 156). Defendant Regional Transportation District ("RTD") does not oppose either motion. The Court conducted a Final Approval Hearing[1] on July 10, 2017. After careful review and consideration of the Class Settlement Agreement ("Agreement") (Doc. # 151-1), the Final Motion, the Fees Motion, the argument and/or evidence presented at the Final

[1] In addition to the terms defined in this Order, the Court incorporates by reference all terms defined in the Settlement Agreement (Doc. # 151-1), which shall have the same meaning for purposes of this Order as they do in the Agreement.

Approval Hearing, all documents filed in this case to date, and the interests of the Settlement Class Members, the Court hereby approves of the Agreement and grants the Final Motion in its entirety.[2]

BACKGROUND

I. Litigation and Proposed Settlement

In this case, Plaintiffs alleged that Defendant RTD's light rail service and light rail vehicles ("LRVs") did not comply with Title II of the Americans with Disabilities Act ("ADA" or "Title II"), 42 U.S.C. § 12131 *et seq.*, and Section 504 of the Rehabilitation Act ("Section 504"), 29 U.S.C. § 794 *et seq.*, and their implementing regulations.

In the putative class action that led to the proposed class settlement before the Court, Plaintiffs alleged RTD had violated requirements set forth under the ADA and Section 504 governing the design and construction of light rail vehicles as they are used by individuals with disabilities who use wheelchairs and mobility devices. Plaintiffs alleged issues pertaining to signage on the LRVs that are required by the regulations pertaining to individuals who use wheelchairs and mobility devices. Plaintiffs also alleged that RTD had failed to properly instruct and train its LRV operators to follow regulatory instructions regarding asking non wheelchair or mobility aid using riders to move from the wheelchair and mobility device area as set forth in the regulations.

RTD denies all of Plaintiffs' allegations regarding violations of the ADA and Section 504, but, nevertheless, the Parties resolved their claims in a class settlement

[2] This Court also still has pending before it the Fees Motion, which, along with this motion was heard at the July 10, 2017 Final Fairness Hearing and is addressed in this Order below. *See* Order (Doc. # 155) at 3.

agreement (“Agreement”) without proceeding to trial.

The complete terms of the Agreement are set forth as Exhibit 1 to Representative Plaintiffs’ Unopposed Motion for Certification of a Class for Settlement Purposes Only and Preliminary Approval of Class Settlement Agreement (“Preliminary Motion”) (Doc. #151-1), attached to that motion as Exhibit 1. This Court approved the Preliminary Motion in its Order, entered April 3, 2017 (Doc. #155).

A. Injunctive Relief

The Agreement provides a comprehensive scheme for injunctive relief, requiring RTD to retrofit 172 light rail vehicles to be more accessible to individuals who use wheelchairs and mobility devices. *See* Exhibit 1 to the Preliminary Motion, Agreement, at II.A and Ex. B. The Agreement requires RTD to retrofit a certain number of LRVs over time, so that all existing LRVs are retrofitted within five years of the Final Settlement Date. *Id.* at II.A. RTD will provide a status report to Class Counsel on the progress of this process. *Id.* Certain representatives of Plaintiffs and Class Counsel may view retrofitted LRVs within twelve months from the Final Settlement Date to take measurements and photographs to assess compliance. *Id.* RTD will also ensure that the next 29 LRVs added to its service after execution of the Agreement will also provide greater accessibility than the current vehicles as set forth in Exhibit C to the Agreement. *Id.* at II.B. Again, certain representatives of Plaintiffs and Class Counsel will have an opportunity view the vehicles to ensure compliance. *Id.*

RTD shall have a policy directing that operators providing Light Rail Service shall not discriminate against riders who use wheelchairs or other mobility devices and the

policy will provide training and retraining to its light rail operators, supervisors of light rail operators, and light rail controllers, and a representative of CCDC will have an opportunity to review training materials. *Id.*at II.C.

The Parties have agreed to a Pre-Litigation Procedure, which any Named Plaintiff or any Settlement Class Member working with or at the behest of any Named Plaintiff involving accessibility issues must comply with prior to initiating litigation against RTD. *Id.* at II.D. As part of the pre-litigation framework, RTD will establish a unique e-mail address to receive and respond to written notices from persons who believe they have a legal claim against RTD concerning accessibility for individuals who use wheelchairs or mobility devices. *Id.*

The Parties agreed to quarterly meetings to promote a constructive dialogue concerning issues related to the ADA concerning Light Rail Service. *Id.* at II.E.

B. Released Claims

The Settlement Agreement defines the class as “All Persons in Colorado who are qualified individuals with disabilities, who use wheelchairs (as that term is defined by 49 C.F.R. § 37.3), and who have used, currently use, or may in the future use the Regional Transportation District’s Light Rail Service (“Class”).” Agreement at 6 ¶ 18. The Court certified this class for settlement purposes only on April 3, 2017. Upon the Final Settlement Date, Plaintiffs and the Settlement Class Members shall “release acquit, and forever discharge RTD from any and all liability arising from the Released Claims, and shall not institute, maintain, or assert any claims against RTD based on the Released Claims.” Agreement at 23 ¶ 1. The Release of Claims is explained in detail at

Agreement at 23-25, ¶ XI.

DISCUSSION

"The settlement of a class action may be approved where the Court finds that the settlement is fair, reasonable, and adequate." *Tuten v. United Airlines, Inc.*, 41 F.Supp.3d 1003, 1007 (D. Colo. May 19, 2014) (citing *Rutter & Wilbanks Corp. v. Shell Oil*, 314 F.3d 1180, 1186 (10th Cir. 2002)). "The Court reviews a proposed class action settlement by considering four factors: (1) whether the proposed settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) the judgment of the parties that the settlement is fair and reasonable." *Id*. (citing *Gottlieb v. Wiles*, 11 F.3d 1004, 1014 (10th Cir. 1993)).

I. Final Determination as to Whether Agreement is Fair, Reasonable and Adequate.

A. The Agreement was Fairly and Honestly Negotiated

The Court finds that the class settlement reflected in the Agreement was fairly and honestly negotiated. In this case, the Parties litigated vigorously and at arm's length. There is no indication that the settlement was the product of collusion. Additionally, the parties "vigorously advocated their respective positions throughout the pendency of the case." *See Lucas v. Kmart Corp.*, 234 F.R.D. 688, 693 (D. Colo. 1999) (internal citation omitted). The case involved intensive discovery, including the review of thousands of pages of documents. It also included expert witness reports. Depositions were taken of nearly all of the plaintiffs and both parties took Rule 30(b)(6) depositions. Numerous

motions were filed and responded to, including well-briefed dispositive motions. *Rhodes v. Olson Associates, P.C.*, 308 F.R.D. 664, 667 (D. Colo. 2015).

B. There are Serious Questions of Law and Fact that Exist that Could Significantly Impact this Case if it were Further Litigated.

The Court finds that this case involved serious questions of law and fact, which placed the ultimate outcome of the litigation in doubt. It is clear from the extensive briefing in this case that the Parties believe strongly in their opposing positions regarding a number of legal and factual questions in this case. This is also a case of first impression. No court in this jurisdiction or elsewhere has published an opinion concerning the issues of the size of wheelchair and mobility impairment spaces on LRVs and issues of maneuverability into those spaces. The same is true of the issues regarding the appropriateness of signage and the conduct of LRV operators. In contrast to the risk of moving forward in this case and possibly losing with respect to the issues raised, the Class will benefit immensely by having existing LRVs and certain subsequent LRVs provide the accessibility and maneuverability the Plaintiffs seek. The provisions requiring that RTD provide notice of its progress and that there be meetings between the parties regarding ongoing success of the Agreement also weigh heavily in favor of determining that this Agreement far outweighs the potential of continued lengthy litigation. Plaintiffs did not seek monetary damages, but these questions of injunctive relief could have been decided for or against either Party.

C. Whether the Value of an Immediate Recovery Outweighs the Mere Possibility of Future Relief after Protracted and Expensive Litigation

The Court determines that the value of certain and timely recovery to the Settlement Class Members provided for in the Agreement outweighs the mere possibility of future relief through further litigation. In this case, there remain several undecided motions that could have resulted in the Parties needing to proceed toward trial and, potentially, appeal. As stated above, this case involved many questions that have not been determined by other courts before, leaving the ultimate decisions regarding injunctive relief in question and possibly subject to appeal. In this settlement, Plaintiffs and the Settlement Class Members will be assured that greater accessibility on the LRVs will begin soon after the Final Approval is granted.

D. The Judgment of the Parties that the Settlement is Fair and Reasonable.

The Court agrees with the judgment of the Parties that the class settlement detailed in the Agreement is fair and reasonable. In appraising the fairness of a proposed settlement, "[t]he recommendations of plaintiffs' counsel should be given a presumption of reasonableness." *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979); *see also In re Omnivision Techs. Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008); *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980) ("[T]he fact that experienced counsel involved in the case approved the settlement after hard-fought negotiations is entitled to considerable weight"). Class counsel are experienced in class action disability rights litigation. *See generally* Declarations of Kevin W. Williams and Amy Robertson, attached as exhibits to the Preliminarily Motion. Weight is given to Class Counsel's favorable judgment as to the merits, fairness and reasonableness of

the settlement. At the hearing, Class Counsel provided their judgment as to the merits, fairness and reasonableness of the settlement. *Id.* (citing *Marcus v. Kan. Dep't of Revenue*, 209 F.Supp.2d 1179, 1183 (D. Kan.2002); *Saunders v. Berks Credit & Collections, Inc.*, No. CIV. 00–3477, 2002 WL 1497374, at *10 (E.D. Pa. July 11, 2002). In addition, by executing the Agreement, Defendant has demonstrated that it agrees that the settlement is fair and reasonable as well. Furthermore, as noted below, no Settlement Class Member has requested to be excluded from the settlement or objected to the settlement on any basis.

II. Approval of Class Notice Procedures

For any class certified under Rule 23(b)(3), courts must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language:

> (i) the nature of the action;
> (ii) the definition of the class certified;
> (iii) the class claims, issues, or defenses;
> (iv) that a class member may enter an appearance through an attorney if the member so desires;
> (v) that the court will exclude from the class any member who requests exclusion;
> (vi) the time and manner for requesting exclusion; and
> (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2).

Here, the Court finds that the Parties complied with the Class Notice Procedures detailed in the Agreement and approved by this Court in its ruling on the Preliminary Motion. Order on Preliminary Motion at 2. The Parties provided notice of this settlement through numerous physical postings, website postings, mailed letters, and e-mail

communications. No requests for exclusion or objections were received. *See* Peterson Decl. at 1 ¶¶, 4, 5; Ha Decl. at 1-2, ¶¶ 4, 5; Fuller Decl. at 2, ¶ 8.

Consistent with its prior Order, the Court finds that the Class Notice Procedures employed by the Parties: (1) were reasonable and the best practicable notice under the circumstances; (2) reasonably apprised Settlement Class Members of the pendency of this litigation and the Agreement, including their rights to exclude themselves or object to the Agreement and of the Final Approval Hearing; (3) constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (4) satisfied the requirements of the Federal Rules of Civil Procedure and the requirements of due process under the Colorado and United States Constitutions, and the requirements of any other applicable rules or laws. The Court further finds that, as of the Final Settlement Date, any Settlement Class Member who failed to exclude themselves or object has waived the right to object or otherwise intervene, and is barred from raising any issues as to the Agreement or this final judgment in this or any other proceeding, including on appeal.

III. Attorneys' Fees Determination

Plaintiffs filed an Unopposed Motion for Attorneys' Fees on June 9, 2017 (Doc. #156) ("Fees Motion"). This Court takes notice that the request for fees was submitted on June 9, 2017, and additional work has been performed by Plaintiffs' Counsel since that time. In the Fees Motion, Class Counsel provided extensive information regarding the backgrounds of counsel and the other timekeepers in this case. *See* Fees Motion at 7-8 and *see generally* Williams Decl. (Doc. #156-2); Robertson Decl. (Doc. #156-7),

attached thereto. Counsel for Plaintiffs provided the Court with detailed breakdowns of the time spent on this case and what their rates are for conducting this sort of practice, which is contingent upon being the prevailing party or reaching a settlement agreement; the Plaintiffs were not paid an hourly rate for this litigation. *Id.* Counsel for the Plaintiffs kept contemporaneous time records, and then calculated their lodestar rate by multiplying the hours worked by the rates charged; they then exercised billing judgment to reduce charges that may have been unnecessary. *Id.* at 8 and Declarations to Fees Motion. According to the records submitted, the lodestar fee amounts for Plaintiffs' counsel in this case were $609,196.20 for CCDC and $49,493 for CREEC for a total of $658,689.20. CCDC also claims $15,186.72 in costs in this case. The Parties have agreed that, subject to this Court's approval, Defendant will pay Plaintiffs' counsel $375,000 to resolve these fees and costs to be made in three payments as detailed in the Agreement.

"Attorneys' fees are properly calculated by determining the 'lodestar' -- the number of hours reasonably expended multiplied by reasonable hourly rates -- and then adjusting the lodestar figure, if appropriate, by considering one or more of the factors in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)," (the "*Johnson* Factors*"). In re Davita Healthcare Partners, Inc.*, No. 12-CV-2074-WJM-CBS, 2015 WL 3582265, at *4 (D. Colo. June 5, 2015) (citing *Anchondo v. Anderson, Crenshaw & Assocs., L.L.C.*, 616 F.3d 1098, 1102–04 (10th Cir. 2010) and *Homeward Bound, Inc. v. Hissom Mem'l Ctr.*, 963 F.2d 1352, 1355–56 (10th Cir. 1992)). The lodestar method yields a fee that is presumptively appropriate. *See Perdue v. Kenny A. ex rel. Winn*, 559

U.S. 542, 552 (2010).

The Fees Motion addressed each of the *Johnson* factors as applicable to this case. Fees Motion at 10-14. This Court finds that $375,000, paid as set forth in the Agreement, is eminently reasonable payment for fees and costs in this case. The amount of work that was required of Plaintiffs' Counsel, coupled with the reasonableness of their proposed rates as set forth in the Fees Motion would likely yield a lodestar payment greater than $375,000.

IV. The Proposed Class Is Certified for Purposes of Final Approval.

In the Preliminary Order, this Court certified the proposed class for settlement purposes only and found "the class definition meets all purposes needed for the class in this case." Preliminary Order at 2. In the Preliminary Motion, Plaintiffs set forth the reasons why this proposed class meets all of the requirements of Rule 23. Also, for the reasons set forth in the Preliminary Motion, this Court appointed the Class Representatives and appointed Class Counsel. This Court certifies the proposed class for purposes of final approval of the settlement.

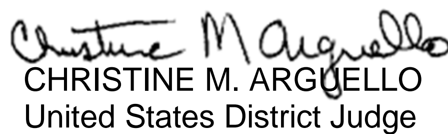
CONCLUSION

For the reasons stated above, the Court concludes that the Class Settlement Agreement is fair, reasonable, and adequate. Plaintiffs' Unopposed Motion for Final Approval of the Class Action Settlement is GRANTED. For the reasons set forth in the motion submitted (Doc. # 156), Plaintiffs' Unopposed Motion for Attorneys' Fees and Costs is also GRANTED, and the Court awards $375,000 to Plaintiffs' Counsel for attorneys' fees and costs. The Court enters the Settlement Agreement as an Order of

the Court and, by operation of this entry of final judgment, the Court dismisses this action with prejudice as to all claims and all Parties. Without in any way affecting the finality of this judgment, the Court maintains jurisdiction for the limited purpose of resolving disputes that require Court intervention as set forth in Section X of the Settlement Agreement.

DATED July 11, 2017

BY THE COURT:



CHRISTINE M. ARGUELLO
United States District Judge