

Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

No. 2:15-cv-01608 - BJR

CONRAD REYNOLDSON, STUART
PIXLEY, and DAVID WHEDBEE, on behalf
of themselves and all others similarly situated,

Plaintiffs,

v.

CITY OF SEATTLE, a public entity,

Defendant.

JOINT MOTION FOR ORDER: (1)
GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; (2) GRANTING
CERTIFICATION OF SETTLEMENT
CLASS; (3) DIRECTING NOTICE TO
THE CLASS; AND (4) SETTING DATE
FOR FAIRNESS HEARING

CLASS ACTION

NOTE ON MOTION CALENDAR:
JULY 17, 2017

Plaintiffs Conrad Reynoldson, Stuart Pixley, and David Whedbee (“Plaintiffs”) and Defendant City of Seattle (the “City”) request preliminary approval of a settlement that provides extensive injunctive relief to a class of tens of thousands of people with mobility disabilities (“Settlement Class” or “Class Members”) who use the City’s pedestrian facilities while eliminating the risk of duplicative litigation. The proposed Consent Decree (“Consent Decree” or “Decree”) that embodies the parties’ settlement¹ requires the City, in conjunction with third

¹ The proposed Consent Decree is attached as Exhibit A to the Declaration of Timothy P. Fox in Support of Joint Motion for Preliminary Approval of Settlement (“Fox Decl.”).

1 parties, to install or remediate 1,250 curb ramps per year for the eighteen-year term of the Decree
2 (“Compliance Period”). The Consent Decree makes allowances for minor variations to this
3 schedule, but it guarantees the installation or remediation of 22,500 curb ramps during the
4 Compliance Period, and requires that those curb ramps will meet the 2010 Americans with
5 Disabilities Act (“ADA”) Standards for Accessible Design (“2010 ADA Standards”), or any
6 subsequently adopted federal disability access standards that apply to the pedestrian rights-of-
7 way during the Compliance Period. In meeting this requirement, when the City alters roadways
8 or pedestrian facilities, it will install curb ramps where missing and upgrade curb ramps where
9 present but noncompliant. Similarly, where streets are altered by utilities, other public entities,
10 or private developers, curb ramps will be installed or remediated. As a result of these provisions,
11 nearly \$300 million dollars will be spent installing and remediating curb ramps in the City that
12 comply with federal and state disability access laws. Fox Decl. ¶ 34.
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15 The Consent Decree also provides that the City will improve its system for Class
16 Members to request that curb ramps be installed or repaired at specific locations, and that the
17 City will make its best efforts to investigate those requests within 30 days of receipt and fulfill
18 the requests within twelve months of receipt. In addition, the Consent Decree requires that the
19 City maintain its ADA Coordinator position within the Seattle Department of Transportation
20 (“SDOT”).² The Decree also includes effective mechanisms for reporting, monitoring, and
21 dispute resolution to ensure that the City complies with its obligations to the Class throughout
22 the term of the Decree.
23

24 The Consent Decree is the result of more than three years of factual investigation and
25 arms-length negotiation. The parties reached agreement after four formal mediation sessions
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27 ² SDOT first hired its dedicated ADA Coordinator in March 2015. The City had employed a Citywide ADA
Coordinator prior to this date.

1 under the supervision of Teresa A. Wakeen, and many in-person and telephone negotiations
2 between counsel.

3 The proposed class action settlement embodied in the Consent Decree is fair, adequate,
4 and reasonable. It satisfies all of the criteria for preliminary settlement approval under Rule 23
5 of the Federal Rules of Civil Procedure. Accordingly, the parties ask that the Court: (i)
6 preliminarily approve the settlement; (ii) certify the proposed Settlement Class and appoint the
7 Named Plaintiffs as Settlement Class Representatives and Plaintiffs' attorneys as Settlement
8 Class Counsel; (iii) approve the proposed form of the class notice and distribution plan; and (iv)
9 set a fairness hearing.
10

11 I. BACKGROUND

12 On January 17, 2014, Plaintiffs' Counsel sent a letter to the offices of the Seattle City
13 Attorney and SDOT alleging that the City lacked adequate curb ramps that comply with
14 applicable requirements of federal and Washington State disability rights laws. Fox Decl. ¶ 13.
15 The letter proposed that the parties work cooperatively to resolve these problems as an
16 alternative to litigation. *Id.* On February 19, 2014, the parties signed an agreement to toll the
17 statute of limitations for all claims under federal and state law based on the City's alleged failure
18 to provide adequate curb ramps for people with mobility disabilities. *Id.* ¶ 14. For nearly two
19 years, the parties exchanged information and documents pertaining to the status of existing curb
20 ramps in the City's pedestrian rights-of-way, the City's ongoing and future construction and
21 remediation of curb ramps in the City's pedestrian rights-of-way, the identification of locations
22 where the installation or remediation of curb ramps remained necessary, and the City's past and
23 present policies concerning curb ramps. *Id.* at ¶ 17. Plaintiffs' Counsel created a database to be
24 able to analyze all of this information in the aggregate. *Id.* at ¶ 8. Plaintiffs' Counsel also
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1 conducted in-person inspections of various curb ramps and sidewalk corners in Seattle’s
2 pedestrian rights-of-way in order to substantiate Plaintiffs’ position regarding Seattle’s
3 noncompliant sidewalk corners and curb ramps. *Id.* at ¶ 9. Although negotiations were
4 productive, the parties ultimately did not reach a resolution while avoiding litigation. *Id.*

5
6 On October 8, 2015, Plaintiffs filed a putative class action in this Court. (ECF No. 1.)
7 They alleged, on behalf of themselves and all others similarly situated, that the City had failed
8 and was failing to install and maintain curb ramps that are necessary to make its pedestrian
9 rights-of-way readily accessible to individuals with mobility disabilities in violation of Title II of
10 the Americans with Disabilities Act (“ADA”), Section 504 of the Rehabilitation Act of 1973
11 (“Section 504”), and the Washington Law Against Discrimination, 49 Wash. Rev. Code
12 §§ 49.60.010 *et seq.* (“WLAD”). Plaintiffs also alleged that the City had violated and was
13 violating the ADA, Section 504, and WLAD by failing to install or remediate curb ramps in
14 conjunction with new construction and alteration of streets, bus stops, and sidewalks. *Id.* ¶ 1.

15
16 On January 12, 2016, the City answered, denying liability and asserting that the City had
17 complied with and was continuing to comply with its obligations under the ADA, Section 504
18 and all other similar statutes and that the City’s services, programs and activities, when viewed
19 in their entirety are accessible to persons with disabilities. (ECF No. 22). The City further
20 answered that at the time the Complaint was filed, the City was engaged in an ADA Self-
21 Evaluation, which was comprised of a City-wide survey of the attributes of its known curb ramps
22 conducted by an outside consultant (“KFH Survey”). Plaintiffs had been involved in designing
23 the parameters of the KFH Survey before they filed this case.

24
25 On April 25, 2016, the parties filed a stipulated motion for class certification under
26 Federal Rule of Civil Procedure 23(b)(2). (ECF No. 29.) On May 2, 2016, the Court granted the
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1 motion, certifying a Class defined as:

2 All persons (including residents of and/or visitors to the City of Seattle) with any
3 mobility disability, who, at any time prior to judgment in this action, have been
4 denied full and equal access to the City of Seattle’s pedestrian right of way due to
5 the lack of a curb ramp or a curb ramp that was damaged, in need of repair, or
6 otherwise in a condition not suitable or sufficient for use.

7 (ECF No. 30.)

8 Since filing this case, Plaintiffs have served the City with two sets of interrogatories, two
9 sets of requests for production of documents, and three sets of requests for admission. Fox Decl.

10 ¶ 17. The purpose of these discovery requests was to clarify the scope of the City’s obligations
11 under the ADA, Section 504, and WLAD, as well as identify future work needed to ensure
12 compliance with these statutes. *Id.* As part of the discovery process, the City collected over 2.5
13 terabytes (TB) of data from SDOT, and provided to Plaintiffs voluminous information regarding
14 the City’s past, present, and future work to improve accessibility in the pedestrian rights-of-way.
15 *Id.* The City also provided Plaintiffs full and unrestricted access to SDOT’s asset management
16 database (“Hansen”) and the complete results of the KFH Survey. Finally, the City voluntarily
17 made SDOT staff available to the Plaintiffs on multiple occasions to provide information and
18 training on use of the Hansen database and other technical issues. *Id.*

19 Beginning on May 24, 2016, the parties participated in four mediation sessions under the
20 supervision of Mediator Teresa A. Wakeen. These mediations and the accompanying
21 negotiations were time- and resource-intensive for both parties and ultimately succeeded in
22 resolving this action. *Id.* ¶ 18.

23
24 **II. SUMMARY OF PROPOSED SETTLEMENT**

25 The Consent Decree, attached in full as Exhibit 1 to the Declaration of Timothy P. Fox,
26 includes the following negotiated and agreed-upon terms:
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1 **A. Certification of the Settlement Class**

2 The parties stipulate to a Settlement Class for injunctive relief under Rules 23(a) and
3 (b)(2) of the Federal Rules of Civil Procedure, defined as:

4 all persons (including residents of and/or visitors to the City of Seattle) with any
5 mobility disability, who, at any time prior to judgment in this Action, have been
6 denied full and equal access to the City's pedestrian right of way due to the lack
7 of a curb ramp or a curb ramp that was damaged, in need of repair, or otherwise in
a condition not suitable or sufficient for use.

8 Ex. 1 at 9. This definition is identical to that of the certified Class and therefore does not expand
9 the class membership or legal claims that this Court has previously certified. It is therefore
10 appropriate for class certification under Rules 23(a) and (b)(2).

11 **B. Injunctive Relief**

12 **1. Installation and Remediation of Curb Ramps**

13 **a. New Construction and Alteration**

14 Under the Consent Decree, when the City performs construction or alteration of its
15 roadways or pedestrian facilities, the City (and applicable third parties such as utility providers
16 or private developers) will install curb ramps that are missing and upgrade curb ramps that do not
17 comply with applicable disability access standards at all locations affected by the project.

18 Decree §§ V.3.1, 3.2; 28 C.F.R. § 35.151(a), (b). The only exceptions arise where the City can
19 demonstrate that installation or upgrade is structurally impracticable, in conjunction with new
20 construction, *see* 28 C.F.R. § 35.151(a)(2), or technically infeasible, in conjunction with
21 alteration of an existing facility, *see* 28 C.F.R. § 35.151(b)(2). Decree V.2.1, V.2.2. When
22 construction projects that affect the pedestrian rights-of-way occur, the City will ensure that
23 accessible temporary routes are provided and have appropriate signage directing persons with
24 mobility disabilities to such accessible temporary routes. *Id.* § 2.3. The City will also use its
25 best efforts to ensure that all third-party construction, alteration, and development projects
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1 affecting pedestrian facilities are performed in compliance with disability access standards. *Id.* §
2 2.4.

3 If, at any point, the City determines that installation or remediation of a curb ramp is
4 structurally impracticable or technically infeasible, it will ensure that a curb ramp is installed or
5 remediated such that it complies with accessibility laws to the maximum extent feasible. *Id.* §§
6 3.1, 3.7, 5.4. A determination of structural impracticability or technical infeasibility must be
7 supported by adequate documentation. *Id.* § 4.3.
8

9 **b. Annual Commitment**

10 The Consent Decree requires the installation or remediation of a certain number of curb
11 ramps in the City in each calendar year (the “Annual Commitment”). The Annual Commitment
12 includes curb ramps installed or remediated in conjunction with new construction and alteration
13 of roadways and pedestrian facilities, as well as those installed or remediated in response to
14 requests made by persons with mobility disabilities. *Id.* The Annual Commitment also includes
15 the installation of new Accessible Curb Ramps and remediation of existing non-Compliant curb
16 ramps anywhere within the City by the City or by any third-party, and includes curb ramps that
17 are remediated or installed pursuant to the Curb Ramp Request System. *Id.* For the period
18 commencing July 1, 2017 and ending on December 31, 2017, and the period commencing
19 January 1, 2035 and ending on July 1, 2035, the Annual Commitment is 625 ramps. For all
20 calendar years in between January 1, 2018 and December 31, 2034, the Annual Commitment is
21 1250 ramps. Decree § V.3.1.
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24 The Consent Decree permits the City to install and remediate curb ramps ahead of this
25 schedule. If it does so, it may bank up to a total of 625 curb ramps, which it may then credit to a
26 later calendar year. *Id.* § 3.2. In addition, if the City experiences unexpected delays in major
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1 capital improvement projects based on factors outside of the City's control, it may install or
2 remediate up to 225 fewer than the Annual Commitment of curb ramps, but it must make up the
3 deficit within two years. *Id.*

4 As a result of these provisions, nearly \$300 million dollars will be spent to install and
5 remediate curb ramps in accordance with federal and state disability access laws. Fox Decl. ¶
6 34.
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8 **2. Prioritization and Transition Plan**

9 Apart from the curb ramps that it installs and remediates in conjunction with new
10 construction and alterations in roadways and pedestrian facilities, the City will prioritize curb
11 ramp installation and remediation based on their proximity to the following locations:

- 12 a. Government offices, facilities, and schools (including the pedestrian rights of way
13 adjacent to facilities owned or operated by the City, and the paths of travel
14 leading from such adjacent pedestrian rights of way to the primary entrances to
15 such facilities);
16
17 b. Transportation corridors;
18
19 c. Hospitals, medical facilities, assisted living facilities and other similar facilities;
20
21 d. Places of public accommodation such as commercial and business zones;
22
23 e. Facilities containing employers; and
24
25 f. Residential neighborhoods.

26 *See* 28 C.F.R. § 35.150; Decree § V.3.5.

27 Under the Consent Decree, the City will create a Transition Plan pursuant to 28 C.F.R. §
35.150(d). *See also* 45 C.F.R. § 84.22(e). The Transition Plan will identify specific projects and
specific curb ramps to be installed and remediated in fulfillment of the City's Annual

1 Commitment under the Consent Decree. Decree § V.3.6. The Transition Plan will be updated
2 periodically to specifically identify additional projects and curb ramps to fulfill the City's
3 Annual Commitment. The Transition Plan and updates to the Transition Plan will follow the
4 order of priorities set out above and also incorporate input from Plaintiffs, Class Members, and
5 government agencies, such as the Washington State Department of Transportation, Sound
6 District, or Seattle school districts. *Id.*

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8 **3. Curb Ramp Request Program**

9 Throughout the eighteen-year Compliance Period, the City will maintain a procedure for
10 residents to request installation, remediation, and maintenance of curb ramps. Decree § V.5.1.
11 Within thirty days of the effective date of the Consent Decree, the parties will agree upon both
12 the form for submitting requests, and the method or methods for submitting requests, including
13 through an easily locatable and accessible form on the City's website that complies with the Web
14 Content Accessibility Guidelines, a toll-free telephone number, electronic mail, standard mail,
15 and/or other non-onerous methods for making requests. The City will document receipt of each
16 curb ramp request, assign each request a specific identification number (or other identifying
17 information), and log the request into a software program or other electronic system that records
18 the requestor's name and contact information, the date of the request, and the location of the
19 requested curb ramp installation or repair. By no later than thirty days from the effective date of
20 the Consent Decree, the City will update its current website to describe the methods for making
21 curb ramp requests and the process and timeline for fulfilling those requests. *Id.* § V.5.6.

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24 Within 15 days of receipt, the City will notify requestors that their requests have been
25 received. *Id.* § V.5.2. The City will use its best efforts to investigate each request within 30 days
26 of receipt. *Id.* § V.5.3. With limited exceptions, the City will use its best efforts to install or
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1 repair each requested curb ramp within twelve months of receiving the request. *Id.* § V.5.4.

2 **4. ADA Coordinator**

3 Throughout the Term, SDOT will employ an ADA Coordinator who will assist in
4 developing the Transition Plan and implementing the Consent Decree. *Id.* § V.1.2. The
5 individual selected as the ADA Coordinator will have qualifications comparable to the
6 following: (i) experience in evaluating or assisting public entities in evaluating the accessibility
7 of facilities under Title II of the ADA and Section 504; (ii) knowledge of current federal and
8 state accessibility standards; (iii) a minimum of five (5) years' experience in providing ADA
9 consulting services related to accessible facilities; and (iv) a degree in civil engineering, urban
10 planning, or architecture. *Id.* § V.1.1. SDOT hired a dedicated ADA Coordinator in March of
11 2015, approximately one year into the parties' settlement negotiations.
12

13 **5. Reporting**

14 On an annual basis during the first quarter of each year of the Decree, the ADA
15 Coordinator will report to the parties, in writing, regarding the status of the City's compliance
16 with the Consent Decree. Decree § V.7.1. As a component of its annual report, the City shall
17 provide access to the following information, including remote access to the City's databases and
18 data management programs, if applicable: (a) a list that identifies the curb ramps that will be
19 installed or remediated for the coming year, and those that were installed or remediated during
20 the past year; (b) access to documentation regarding determinations that a particular curb ramp
21 was structurally impractical, technically infeasible, or made accessible to the maximum extent
22 feasible; (c) a description of all curb ramp requests made during the past year; (d) access to
23 photographs of all curb ramps that were installed or remediated over the previous year; (e) access
24 to photographs of all curb ramp locations that the City contends were subject to structural
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1 impracticability or technical infeasibility defenses; and (f) all complaints and grievances received
2 by the Seattle Department of Transportation or the City ADA Coordinator related to curb ramps.

3 *Id.*

4 **C. Monitoring**

5 Throughout the Term, Plaintiffs and Plaintiffs' Counsel may conduct periodic inspections
6 of the City's curb ramp drawings and designs, and copies of such drawings and designs will be
7 provided to Plaintiffs and Plaintiffs' Counsel upon reasonable request. Decree § V.7.3.

8 Plaintiffs and Plaintiffs' Counsel may also inspect work being done in the City's pedestrian
9 rights-of-way to install accessible curb ramps or to remediate existing curb ramps in order to
10 monitor compliance with the Consent Decree. *Id.* Any review by Plaintiffs and/or their Counsel
11 shall be undertaken in a manner to assure it will not unreasonably interfere with the City's
12 operations. Throughout the Term, Plaintiffs may request to meet with the City to discuss the
13 City's efforts to implement the Consent Decree and attempt to resolve any disputes regarding its
14 implementation or enforcement. *Id.* § V.7.2.

15 The City will pay Plaintiffs' Counsel their reasonable attorneys' fees, expenses, and costs
16 for work performed during the Compliance Period that is reasonably necessary to monitor,
17 implement, and administer the Consent Decree, subject to the following limitations: for the first
18 year ending December 31, 2018, up to a cap of \$40,000; for the second year ending December
19 31, 2019, up to a cap of \$40,000; for years 3 to 18 including January 1, 2020 through the end of
20 the Term, up to a cap of \$20,000 per year. *Id.* § VI.2.2.

21 **D. Dispute Resolution**

22 Enforcement of the Consent Decree will be subject to the continuing jurisdiction of this
23 Court. *Id.* § V.9.3. If either party believes that a dispute exists relating to any violation of or
24

1 failure to perform any of the provisions, that party will first provide a written statement
2 describing the alleged breach, after which the other party will have 15 business days to provide a
3 written response and 45 days to cure the alleged breach. *Id.* § V.9.1. At that point, if the party
4 alleging a breach is not satisfied, the parties will meet and confer in person or by telephone, and
5 the other party will have an additional thirty days to cure. *Id.* If the parties are unable to resolve
6 the dispute informally, they will engage in good faith efforts to resolve it through mediation. *Id.*
7 § V.9.2. The City will pay Plaintiffs' Counsel their reasonable attorneys' fees, expenses, and
8 costs incurred in resolving disputes, subject to a cap of \$50,000 per dispute. Should the Parties
9 mediate a dispute, they shall evenly split any fees paid to the mediator. *Id.* § VI.2.5.

11 **E. Release of Claims**

12 In exchange for the injunctive relief proposed in the Agreement, Plaintiffs have agreed to
13 release any injunctive, declaratory, or nonmonetary claims against the City that were brought,
14 could have been brought, or could be brought now or in the future by the Settlement Class
15 relating to or arising from any of the City's alleged actions, omissions, incidents, or conduct
16 related to the installation, remediation, repair or maintenance of curb ramps in the City's
17 pedestrian right-of-way at any time prior to the effective date of the Consent Decree through the
18 end of the Term. *Id.* § VIII.1. The release does not apply to claims related to monetary
19 damages, personal injuries, or property damage with respect to unnamed Class Members. *Id.* It
20 also does not apply to components of the City's sidewalk system other than curb ramps. *Id.* §
21 V.2.
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24 **F. Awards to Named Plaintiffs and Class Counsel's Attorneys' Fees, Expenses, and**
25 **Costs**

26 Subject to Court approval after an application by Plaintiffs, the City will pay each of the
27 Named Plaintiffs \$5,000 in consideration for their release of claims and in recognition of the

1 services they rendered to the Class. *Id.* § VII.1. The City agrees that, if the Court grants
2 preliminary and final approval of the Consent Decree, Plaintiffs are prevailing parties for the
3 purposes of awarding reasonable attorneys' fees and costs. Plaintiffs will move separately for an
4 award of reasonable attorneys' fees, costs, and expenses in the amount of \$1,400,000, pursuant
5 to Rule 23(h) of the Federal Rules of Civil Procedure. The City shall not oppose Plaintiffs'
6 motion.
7

8 **III. LEGAL ARGUMENT**

9 **A. Class Certification Has Already Been Granted and Remains Appropriate.**

10 Under Rule 23(a) of the Federal Rules of Civil Procedure, a class is appropriate for
11 certification if it meets four requirements: (1) numerosity; (2) commonality; (3) typicality; and
12 (4) adequacy of representation. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir.
13 1998).
14

15 The Court previously certified a Class in its May 2, 2016 order, defined as:
16 All persons (including residents of and/or visitors to the City of Seattle) with any
17 mobility disability, who, at any time prior to judgment in this action, have been
18 denied full and equal access to the City of Seattle's pedestrian right of way due to
the lack of a curb ramp or a curb ramp that was damaged, in need of repair, or
otherwise in a condition not suitable or sufficient for use.

19 (ECF No. 30.) The Settlement Class definition set forth in the Consent Decree is identical and
20 therefore does not impact the satisfaction of the Rule 23(a) and 23(b)(2) requirements.

21 The proposed Settlement Class continues to meet the requirements of numerosity,
22 commonality, typicality, and adequacy of representation. The Settlement Class is still comprised
23 of tens of thousands of persons with mobility disabilities who, like the Named Plaintiffs, have
24 encountered inaccessible curb ramps throughout the City's pedestrian right-of-way and seek
25 indivisible injunctive relief. The Supreme Court has observed that such civil rights class actions
26 are particularly well-suited for certification under Rule 23(b)(2). *See Wal-Mart Stores, Inc. v.*
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1 *Dukes*, 564 U.S. 338, 361 (2011) (citing *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614
2 (1997)). Accordingly, the parties respectfully request that the Court certify the Class for
3 settlement purposes under Rule 23(b)(2).

4 **1. The Court Should Appoint the Named Plaintiffs to Represent the Settlement**
5 **Class.**

6 Rule 23 requires that “the representative parties will fairly and adequately protect the
7 interests of the Class.” Fed. R. Civ. P. 23(a)(4). To satisfy this element, named plaintiffs must
8 establish that they do not have a conflict of interest with the Settlement Class. *Hanlon*, 150 F.3d
9 at 1021. Here, there is no conflict of interest between the Named Plaintiffs and the proposed
10 Settlement Class. Furthermore, the Named Plaintiffs have ably prosecuted the interests of the
11 Class since the commencement of this action in 2014. (*See* Fox Decl. ¶¶ 14-8; ECF Nos 29-5 ¶¶
12 8-10, 29-6 at 9-11, 29-7 at 8-10.)

14 **2. The Court Should Appoint Class Counsel to Represent the Settlement Class.**

15 Class Counsel meet the adequacy requirement under Rule 23. Class Counsel have
16 extensive experience in disability class actions and understand the law applicable to this case.
17 (*See generally* Declaration of Timothy P. Fox in Support of Joint Motion for Class Certification
18 (ECF 29-4); Declaration of Linda M. Dardarian in Support of Joint Motion for Class
19 Certification (ECF 29-2); Declaration of David Carlson in Support of Joint Motion for Class
20 Certification (ECF 29-3). Class Counsel have diligently investigated, evaluated, litigated, and
21 negotiated the claims asserted in this case. *Id.* Class Counsel have also invested substantial
22 resources in this case to protect the interests of the Class. *Id.* at ¶ 18. Thus, the Court should
23 appoint Plaintiffs’ Counsel as Settlement Class Counsel pursuant to Rule 23(g).
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1 **B. The Class Action Settlement Embodied in the Consent Decree Is Fair and**
2 **Reasonable and Should Be Granted Preliminary Approval.**

3 Judicial approval of a class action settlement under Rule 23 generally involves three
4 steps. First, at the preliminary approval hearing, the parties “submit the proposed terms of
5 settlement and the judge makes a preliminary fairness evaluation.” Federal Judicial Center,
6 Manual for Complex Litigation (4th ed. 2004), § 21.632 (“Manual”). Second, if preliminary
7 approval is granted, the class representatives must disseminate notice of the proposed settlement
8 to affected class members. *Id.* § 21.633. Third, the court conducts a final approval hearing, at
9 which class members may be heard regarding the settlement, and at which evidence and
10 argument concerning fairness, adequacy, and reasonableness of the settlement are presented. *Id.*
11 § 21.634. This procedure safeguards class members’ procedural due process rights and enables
12 the court to fulfill its role as the guardian of class interests. *See* Newberg on Class Actions, §
13 13.39 (5th ed. 2016) (“Newberg”).

14
15 The law favors compromise and settlement of class action lawsuits. *See, e.g., Churchill*
16 *Vill. L.L.C. v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004); *Class Plaintiffs v. City of Seattle*,
17 955 F.2d 1268, 1276 (9th Cir. 1992); *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615,
18 625 (9th Cir. 1982). The Ninth Circuit recognizes the “overriding public interest in settling and
19 quieting litigation . . . particularly . . . in class action suits” *Van Brokhorst v. Safeco Corp.*,
20 529 F.2d 943, 950 (9th Cir. 1976); *see also In re Synacor ERISA Litig.*, 516 F.3d 1095, 1101 (9th
21 Cir. 2008) (“There is a strong judicial policy that favors settlements, particularly where complex
22 class action litigation is concerned.”).

23
24 “[T]he decision to approve or reject a settlement is committed to the sound discretion of
25 the trial judge because [s]he is exposed to the litigants and their strategies, positions, and proof.”

26
27 *Hanlon*, 150 F.3d at 1026 (internal citations and quotations omitted). This determination

1 involves a balancing of several factors, including: the strength of the plaintiff's claims; the likely
2 risks and expenses involved in further litigation; the risk of maintaining class action status
3 throughout trial; the value offered in settlement; the extent of discovery and other litigation
4 completed; the experience and views of counsel; and the views of class members toward the
5 settlement. *See Pelletz v. Weyerhaeuser Co.*, 255 F.R.D. 537, 542 (W.D. Wash. 2009).

6
7 At the preliminary approval stage, the Court need only find that the proposed settlement
8 is within the "range of reasonableness" such that it is appropriate to disseminate notice to the
9 class and schedule a fairness hearing. 5 Newberg § 13.15; *see also Arthur v. Sallie Mae, Inc.*,
10 2012 WL 90101, at *9 (W.D. Wash. 2012); *Carter v. Anderson Merchs., LP*, Nos. EDCV 08-
11 00025-VAP (OPx), EDCV 09-0216-VAP (OPx), 2010 WL 144067, at *4 (C.D. Cal. Jan. 7,
12 2010); *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079-80 (N.D. Cal. 2007).

13 Preliminary approval of a proposed class action settlement is appropriate where the settlement
14 "appears to be the product of serious, informed, non-collusive negotiations, has no obvious
15 deficiencies, [and] does not improperly grant preferential treatment to class representatives or
16 segments of the class" *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d at 1079 (internal
17 citations and quotations omitted); *see also* Manual § 21.62 (preliminary approval involves an
18 initial evaluation of the reasonableness and adequacy of settlement; reasonableness turns on
19 "analysis of the class allegations and claims and the responsiveness of the settlement to those
20 claims," while adequacy involves a "comparison of the relief granted to what class members
21 might have obtained without using the class action process").

22
23
24 **1. The Settlement Is Entitled to a Presumption of Fairness.**

25 Where a settlement is the product of arms-length negotiations conducted by experienced
26 class counsel, the Court begins its analysis with a presumption that the settlement is fair and
27

1 reasonable. *See* 5 Newberg § 13.45; *Dunakin v. Quigley*, 2017 WL 123011, at *2 (W.D. Wash.
2 2017); *Nat'l Rural Telecomm's Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).
3 Thus, at this stage, so long as the settlement falls into the range of possible approval — giving
4 deference to the result of the parties' arms-length negotiations and the judgment of experienced
5 counsel following sufficient investigation and discovery — the presumption applies and the
6 settlement should be preliminarily approved.
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8 First, the parties reached the Consent Decree after four formal mediation sessions under
9 the supervision of Teresa A. Wakeen and many in-person and telephone negotiations between
10 counsel. Negotiations took place over the course of more than three years.

11 Second, Class Counsel have extensive experience litigating and settling disability rights
12 class actions and other complex matters. (*See* Fox Decl. ¶ 41; Declaration of Timothy P. Fox in
13 Support of Joint Motion for Class Certification (ECF 29-4); Declaration of Linda M. Dardarian
14 in Support of Joint Motion for Class Certification (ECF 29-2); Declaration of David Carlson in
15 Support of Joint Motion for Class Certification (ECF 29-3). They have diligently investigated
16 the factual and legal issues raised in this action for over three years. (Fox Decl. ¶¶ 5-12.) As
17 noted above, extensive discovery, both formal and informal, has allowed the parties to assess the
18 strengths and weaknesses of the claims herein and the benefits of the Consent Decree. (*Id.*)
19 Class Counsel are confident that the relief achieved by the proposed settlement is sufficient to
20 address the concerns identified in the Complaint. (*Id.* ¶¶ 35-7.) Thus, the fact that qualified,
21 well-informed counsel endorse the Consent Decree as being fair, reasonable, and adequate
22 weighs in favor of preliminary approval. *See True v. Am. Honda Motor Co.*, 749 F. Supp. 2d
23 1052, 1078-79 (C.D. Cal. 2010); *Nat'l Rural Telecomm's Coop.*, 221 F.R.D. at 528.
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1 **2. The Settlement Is Fair Given the Benefits to the Class and the Risks**
2 **Associated with Continued Litigation.**

3 The significant benefits that the Settlement Class will enjoy under the Consent Decree,
4 considered in light of the risks of litigation, support preliminary approval.

5 ***i. The Settlement Will Result in Substantial Benefits to the Class.***

6 Under the Settlement, 1,250 curb ramps in the City will be installed or remediated every
7 year for the next eighteen years. The Consent Decree makes allowances for minor variations to
8 this schedule, but it guarantees the installation or remediation of 22,500 curb ramps during the
9 Term, a commitment that substantially exceeds past rates of curb ramp construction in the City.
10 Fox Decl. ¶ 34. In meeting this requirement, when the City alters roadways or pedestrian
11 facilities, it will install curb ramps where missing and upgrade curb ramps where present but
12 noncompliant. Similarly, where streets are altered by utilities, other public entities, or private
13 developers, curb ramps will be installed or remediated. As a result of these provisions, nearly
14 \$300 million dollars will be spent installing and remediating curb ramps in the City in
15 compliance with federal and state disability access laws. *Id.* In addition, the City's curb ramp
16 request system will enable Class Members to have input on the locations of the curb ramps that
17 the City will install and remediate. *Id.* ¶ 2. Class Counsel are confident that the curb ramp
18 installation and remediation required by the Consent Decree is sufficient to provide for a system
19 of curb ramps that, when viewed in its entirety, will be readily accessible to persons with
20 mobility impairments. *Id.* ¶ 10.

21 Thus, the Consent Decree will provide injunctive relief that is reasonably calculated to
22 effectuate the repairs necessary to make the City's curb ramps accessible to persons with
23 mobility disabilities. This is an excellent result for the Settlement Class, and it is unlikely that
24 this Court would order greater relief. (Fox Decl. ¶ 32.) In comparison, courts routinely approve
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1 class action settlements in which the value of class relief is much less than what could have been
2 obtained at trial. *See, e.g., In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403,
3 at *2 (C.D. Cal. June 10, 2005) (a proposed settlement should not “be judged against a
4 hypothetical or speculative measure of what might have been achieved”) (quoting *Officers for*
5 *Justice*, 688 F.2d at 625)); *Rinky Dink, Inc. v. World Business Lenders, LLC*, 2016 WL 4052588,
6 at *5 (W.D. Wash. 2016) (“a cash settlement amounting to only a fraction of the potential
7 recovery will not per se render the settlement ... unfair”) (citing *Officers for Justice*, 688 F.2d at
8 628). Accordingly, the substantial benefits to the Settlement Class weigh in favor of preliminary
9 approval of the Consent Decree.
10

11 ***ii. The Litigation Risks Support Preliminary Approval.***

12 The potential risks attending further litigation support preliminary approval. “Estimates
13 of what constitutes a fair settlement figure are tempered by factors such as the risk of losing at
14 trial, the expense of litigating the case, and the expected delay in recovery (often measured in
15 years).” *Schaffer v. Litton Loan Servicing, LP*, No. CV 05-07673 MMM (JCx), 2012 WL
16 10274679, at *11 (C.D. Cal. Nov. 13, 2012). Litigation and trial of this matter would require the
17 expenditure of significant resources by the Parties and the Court, including resources and time
18 spent on fact and expert discovery, further analysis of data, depositions of Class Members, City
19 employees, and experts. Additional resources would be required to complete post-trial briefing
20 and resolve any appeals. Fox Decl. ¶ 39. In short, this Settlement obviates the need for further
21 costly and time-consuming litigation that will be better spent on increasing accessibility.
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24 In addition, this case presents several novel issues that the City raised in its Answer to
25 Plaintiffs’ Complaint or in settlement negotiations, which could be resolved against Plaintiffs.
26 Those novel issues include the City’s alleged liability for and its defenses to claims that the City
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1 failed to provide program access to its pedestrian rights-of-way under the ADA and Section 504,
2 and whether the City can be held liable for curb ramp accessibility claims dating back to 1977,
3 the effective date of Section 504. Accordingly, there is real risk associated with continued
4 litigation. Fox Decl. ¶ 40. Here, proceeding to trial, along with possible appeals, could delay
5 resolution of this matter by several years. Fox Decl. ¶ 41. By contrast, under the Consent
6 Decree, improvements will begin immediately after the Court grants final approval. *See* Decree
7 Definition I; Fox Decl. ¶ 41. By December 31, 2017, 625 curb ramps in the City will have been
8 installed or remediated under the terms of the Decree. Decree § V.3.1. Given the importance of
9 the accessibility of the City’s pedestrian rights-of-way to Class Members’ lives, the difference
10 between the possibly long delay involved in continued litigation and the immediate
11 improvements promised by the Consent Decree is an important consideration. The risks of
12 continued litigation therefore weigh in favor of preliminary approval. Fox Decl. ¶ 42.

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15 **C. The Proposed Notice Satisfies Due Process and Should Be Approved.**

16 Rule 23(e) of the Federal Rules of Civil Procedure provides that “notice of the proposed
17 dismissal or compromise shall be given to all members of the Class in a manner that the court
18 directs.” Due process requires that interested parties be provided with notice reasonably
19 calculated under the circumstances to apprise them of the pendency of the action and afford them
20 an opportunity to present their objections. *See Mullane v. Cent. Hanover Bank & Tr. Co.*, 339
21 U.S. 306, 314 (1950). Notice is satisfactory “if it ‘generally describes the terms of the settlement
22 in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and
23 be heard.’” *Churchill Vill.*, 361 F.3d at 575 (quoting *Mendoza v. Tucson Sch. Dist. No. 1*, 623
24 F.2d 1338, 1352 (9th Cir. 1980)). Additionally, notice must be reasonably calculated to reach
25 interested parties. *Mullane*, 339 U.S. at 318.
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1 The notice standard is satisfied here. Within 30 days after issuance of the Preliminary
2 Approval Order, the City will cause notice of the settlement to be published for four (4)
3 consecutive weeks in the following papers of general circulation: *The Seattle Times* in English,
4 *El Mundo* in Spanish, *Seattle Chinese Post* in Chinese, and *Northwest Vietnamese News* in
5 Vietnamese. Such notice will include: (i) a brief statement of the *Reynoldson* Action, the
6 settlement embodied in the Consent Decree, and the claims released by the Settlement Class; (ii)
7 the date and time of the Fairness Hearing and/or Final Approval Hearing of the proposed
8 Consent Decree; (iii) the deadline for submitting objections to the proposed Consent Decree; and
9 (iv) the web page, address, and telephone and fax numbers that may be used to obtain a copy of
10 the Notice of Settlement (substantially in the form attached to the Consent Decree as Exhibit
11 “B”) in English, Spanish, Chinese and Vietnamese, or alternative accessible formats for
12 individuals with visual impairments. The City will pay the costs for the publication of the notice.
13 Within ten days after the issuance of the Preliminary Approval Order, Class Counsel will cause a
14 copy of the Notice of Settlement to be provided to a list of organizations that serve individuals
15 with Mobility Disabilities. The list of organizations is Exhibit “C” to the Consent Decree.

18 Finally, within 20 days after the issuance of the Preliminary Approval Order, each firm
19 making up Class Counsel will post on its website a copy of the Notice of Settlement in English,
20 Spanish, Chinese and Vietnamese, and in an accessible electronic format that can be recognized
21 and read by software commonly used by individuals with visual impairments to read web pages.
22 The City will likewise post a copy of the Notice of Settlement on the City’s official website
23 (www.seattle.gov) for four consecutive weeks, and will make the notice available in English,
24 Spanish, Chinese and Vietnamese.
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1 The parties have developed this proposed plan for distribution of the notice taking into
 2 account the breadth and magnitude of the Settlement Class. Distribution of the notice through
 3 publication in multiple languages in multiple local newspapers and posting on multiple
 4 accessible websites, coupled with facilitating the direct mailing or emailing of the notice to
 5 individual members of the Settlement Class by those organizations that serve them, will ensure
 6 that the notice reaches the maximum number of members of the Settlement Class in the most
 7 efficient and cost-effective manner. The proposed form of notice and the proposed distribution
 8 plan will fairly apprise members of the Settlement Class of the settlement and their options with
 9 respect thereto, and fully satisfy due process requirements for a Rule 23(b)(2) settlement class
 10 with no opt-out rights. The Court should approve the proposed notice and direct that it be
 11 distributed.
 12

13 **D. The Court Should Approve the Proposed Scheduling Order, Including Setting a**
 14 **Date for the Fairness Hearing.**

15 Once a court grants preliminary approval and notice is provided, the court conducts a
 16 “fairness hearing,” at which all interested parties have an opportunity to be heard. At such a
 17 hearing, the court conducts a substantive evaluation of the proposed settlement to determine
 18 whether it is “fundamentally fair, adequate, and reasonable.” *See Officers for Justice*, 688 F.2d
 19 at 625; *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 319 (C.D. Cal. 2016) (citing *Staton v.*
 20 *Boeing Co.*, 327 F.3d 938, 980 (9th Cir. 2003)).
 21

22 The parties propose the following schedule:

Case Event	Date
Preliminary Approval Order Issued	To be determined by the Court
Plaintiffs Distribute Notice to Organizations	Within 10 days after entry of order granting preliminary approval
City and Plaintiffs’ Counsel Post Notices on Website	Within 20 days after entry of order granting preliminary approval

1 2	Initial Publication of Settlement Notice in The Seattle Times, El Mundo, Seattle Chinese Post, and Northwest Vietnamese News	Within 30 days after entry of order granting preliminary approval
3 4 5	Deadline for Plaintiffs to file Motion for Attorneys' Fees, Expenses, and Costs, and Application for Service Awards to Named Plaintiffs	14 days prior to the deadline for Class Member objections
6	Deadline for Objections by Class Members	Within 45 days after initial publication of Settlement Notice
7 8	Deadline for Class Counsel and/or the City to respond to any timely-filed objections	5 days before Fairness Hearing
9	Fairness Hearing	To be determined by the Court (requested for first week of October)
10	Final Approval	To be determined by the Court

11 IV. CONCLUSION

12 For the foregoing reasons, the parties respectfully request that this Court: (1) grant
13 preliminary approval of the Consent Decree; (2) certify the proposed Settlement Class and
14 appoint Named Plaintiffs and their counsel as proper representatives of the Settlement Class; (3)
15 approve and direct the publication of the class notice proposed by the Parties; and (4) schedule a
16 fairness hearing for final approval of the Consent Decree.
17

18 RESPECTFULLY SUBMITTED this 17th day of July, 2017.

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