IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LIBERTY RESOURCES, INC., et al.	:	CIVIL ACTION
	:	
v.	:	
	:	
CITY OF PHILADELPHIA	:	NO. 19-3846

MEMORANDUM

Bartle, J. May 1, 2023

Plaintiffs[1] brought this class action against the City of Philadelphia in which they allege disability discrimination in the installation, alteration, and maintenance of Philadelphia sidewalk curb ramps in violation of Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12131 et seq.[2] The court certified a class for injunctive relief only under Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure. The parties have now reached a settlement.

The court granted preliminary approval of the proposed settlement and thereafter held a hearing on its fairness,

1. Plaintiffs include three organizations that advocate for the rights of individuals with disabilities: Liberty Resources, Inc.; Disabled in Action of Pennsylvania, Inc.; and Philadelphia ADAPT. There are also four individual plaintiffs with disabilities affecting mobility: Tony Brooks, Liam Dougherty, Fran Fulton, and Louis Olivo.

2. Plaintiffs further allege the City has violated Section 504 of the Rehabilitation Act, 29 U.S.C. §§ 794 et seq. The court has treated these claims as coterminous because claims under both laws are subject to the same "substantive standards for determining liability." McDonald v. Pa. Dep't of Pub. Welfare, 62 F.3d 92, 95 (3d Cir. 1995).

reasonableness, and adequacy pursuant to Rule 23(e)(2). Before the court is the joint motion of plaintiffs and the City for final approval of the settlement agreement. Plaintiffs have also filed an unopposed motion for an award of attorneys' fees and costs.

I

Plaintiffs initiated this action to compel the City to comply with the ADA by curing inaccessible conditions at intersections with missing or defective curb ramps. Title II of the ADA provides, "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Regulations interpreting this provision impose certain burdens on public entities in maintaining sidewalk accessibility. Under 28 C.F.R § 35.151, when a public entity resurfaces a street, at adjoining intersections they are required to install ADA-compliant curb ramps where none exist and upgrade noncompliant curb ramps. In addition, 28 C.F.R. § 35.133 requires public entities to maintain its existing curb ramps in a condition that ensures they are accessible.

Nearly thirty years ago, at the inception of the ADA, this court ordered the City to install sidewalk curb ramps at

intersections when it resurfaces the adjoining streets. Kinney v. Yerusalim, 812 F. Supp. 547, 553 (E.D. Pa.), aff'd, 9 F.3d 1067 (3d Cir. 1993); see also Kinney v. Yerusalim, Civ. A. No. 92-4101 (E.D. Pa. May 23, 1994) (Doc. # 27). The City followed this practice until 2014, when it started the "Curb Ramp Partnership Program." Under that program, the City stopped upgrading curb ramps as a matter of course during street resurfacings. Instead, the City visually inspected and installed curb ramps only at locations where citizens requested them. The City earmarked approximately $3.2 million, twenty percent of its annual street resurfacing budget, for curb ramp installation. The City estimated that it would cost on average $7,500 to install a new curb ramp or upgrade an existing one. At that rate, plaintiffs estimated that it would have taken almost 170 years for the City to upgrade every curb ramp in its street network.

Plaintiffs commenced this action on August 26, 2019. Sometime in early 2020, in response to this lawsuit, the City revised its policy again and reverted to installing curb ramps on streets with every resurfacing. Nonetheless, plaintiffs contended that thousands of curb ramps remained missing or defective.

II

The parties fiercely litigated this case until the eve of trial. At the outset, the court granted the motion of the City to dismiss plaintiffs' complaint to the extent plaintiffs claimed the City was liable on a theory of denying "program access" under 28 C.F.R. §§ 35.149, 35.150(a). The court also dismissed plaintiffs' claims for injunctive relief to compel the City to undertake a Self-Evaluation and create a Transition Plan under 28 C.F.R. §§ 35.105, 35.150(d). See Liberty Resources, Inc. v. City of Philadelphia ("Liberty Resources I"), Civ. A. No. 19-3846, 2020 WL 3642484 (E.D. Pa. July 6, 2020).

The court then certified the following class under Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure:

> all persons with disabilities or impairments that affect their mobility--including, for example, people who use wheelchairs or other mobility devices, as well as those who are blind or have low vision--and who use or will use pedestrian rights of way in the City of Philadelphia.

Liberty Resources, Inc. v. City of Philadelphia ("Liberty Resources II"), Civ. A. No. 19-3846, 2020 WL 3816109 (E.D. Pa. July 7, 2020).

Plaintiffs and the City conducted significant discovery. The City produced voluminous records that detailed the locations of thousands of allegedly defective or missing curb ramps, the dates and locations of street resurfacing work,

and the City's policies on curb ramp installation. Plaintiffs supplied discovery as well. The parties each engaged expert witnesses, and they served detailed reports. The parties fully briefed a motion to compel filed by the City regarding documents on which one of the plaintiffs' expert relied in producing his expert report.

The parties then filed cross-motions for partial summary judgment. The court granted the City's motion in part and denied the plaintiffs' motion. See Liberty Resources, Inc. v. City of Philadelphia ("Liberty Resources III"), Civ. A. No. 19-3846, 2021 WL 4989700 (E.D. Pa. Oct. 27, 2021). Relevant here, the court held that plaintiffs would need to establish the City's liability as to each specific noncompliant curb ramp and could not simply allege that the City's policies on curb ramp installation, alteration, and maintenance were unlawful. See id. at *4-5.

Trial in this action was scheduled for February 2022. The parties filed motions in limine as well as responses in opposition. Less than two weeks before trial was to commence, the parties filed a joint motion to stay trial so that they could engage in settlement negotiations. The parties spent much of 2022 negotiating this settlement.

Eventually, on October 14, 2022, the parties filed a joint motion for preliminary approval of the present settlement.

The court granted that motion on October 19, 2022. In doing so, the court found that the proposed method of disseminating notice of the settlement--publishing the relevant information on the City's website and in local English- and Spanish-language newspapers as well as distributing the notice to local disability rights organizations--was reasonable under Rule 23(e)(1). See Doc. # 144, at 7-8. The City then served notice on the appropriate state and federal officials pursuant to the Class Action Fairness Act. See 28 U.S.C. § 1715(d).[3] The court has been advised by the parties that the 90-day waiting period has now expired and no objections have been served by any of these officials.

A group of five individuals objected to the present settlement agreement. They also filed a motion to intervene in

3. Under the Class Action Fairness Act, "[a]n order giving final approval of a proposed settlement may not be issued earlier than 90 days after" the defendant has served notice of the settlement on the "appropriate State official of each State in which a class member resides and the appropriate Federal official." 28 U.S.C. § 1715(b), (d). Pursuant to this statute, the City served notice on the Pennsylvania Attorney General and the United States Department of Justice on October 18, 2022. The City did not serve notice on officials in the remaining 49 states and the U.S. territories until January 19, 2023. For this reason, the court deferred resolving the joint motion for final approval of settlement agreement until at least 90 days after the City served notice on the officials in those states. This court has routinely found that § 1715 is satisfied as long as the federal, state, and territorial officials are provided notice and an opportunity to be heard, which has occurred here. E.g., In re Processed Egg Prod. Antitrust Litig., 284 F.R.D. 249, 258 n.12 (E.D. Pa. 2012).

this action, which the court denied. See Liberty Res., Inc. v. City of Philadelphia, Civ. A. No. 19-3846, 2023 WL 2588167, at *1 (E.D. Pa. Mar. 21, 2023). The court, however, agreed to defer ruling on their objections until it reviewed the present motion.

The joint motion of the parties for final approval of their settlement agreement was filed on January 23, 2023. The court then held a hearing on the fairness of the proposed settlement agreement on February 7, 2023, at which the objectors presented argument.

III

Objectors first contend that the class in this case should not have been certified because it does not meet the commonality requirement of Rule 23(a)(2), that is, there are no "questions of law or fact common to the class." This court found that the commonality requirement was satisfied because plaintiffs' claims "give rise to numerous questions of law and fact that will be common to the class as a whole, including whether the City's policies and practices have resulted in its failure to provide compliant, accessible curb ramps whenever the City resurfaces or alters streets." Liberty Resources II, 2020 WL 3816109, at *3. The objectors primarily contend that establishing the City's liability for each noncompliant curb ramp is a "site-specific inquiry that involves unique questions

of fact and law" because there are "a wide variety of potential ADA violations involving the construction/remediation of curb cuts."

Assuming without deciding that objectors have the right to object to challenge the court's certification of the class at this stage,[4] this objection does not have merit. There are questions of law and fact with answers that are common to all class members and unaffected by an individual class member's circumstances. Whether the City has failed to install curb ramps after resurfacing streets is one of them. Similarly, whether the City has failed to maintain existing curb ramps in operable conditions is a question with an answer that is applicable to the class as a whole. Finding these issues to satisfy commonality is consistent with the long-standing principle that commonality may be "based primarily on the fact that defendant's conduct is central to the claims of all class members irrespective of their individual circumstances and the disparate effects of the conduct." Baby Neal v. Casey, 43 F.3d

4. The court has already denied objectors' motion to intervene in this matter. See Liberty Res., Inc. v. City of Philadelphia, Civ. A. No. 19-3846, 2023 WL 2588167 (E.D. Pa. Mar. 21, 2023). The class in this matter has been certified for nearly three years. Moreover, the order the court entered granting the joint motion for preliminary approval of class settlement invited objections only to "aspect[s] of the proposed settlement agreement." See Doc. # 143, at 9. Nonetheless, the court will address all objections in the abundance of caution.

48, 56–57 (3d Cir. 1994); see also Remick v. City of Philadelphia, Civ. A. No. 20-1959, 2022 WL 742707, at *8–9 (E.D. Pa. Mar. 11, 2022), appeal dismissed, No. 22-8013, 2022 WL 4365713 (3d Cir. July 21, 2022). Commonality is not defeated simply because curb ramps violate different ADA regulations or because class members do not uniformly encounter the same noncompliant curb ramps in the same manner.

Objectors cite two opinions addressing class certification in ADA actions in which our Court of Appeals held that commonality was not satisfied. The classes in both cases are distinguishable from the certified class in this action. First, objectors cite Mielo v. Steak 'n Shake Operations, Inc., 897 F.3d 467 (3d Cir. 2018). That case concerned accessibility barriers within the facilities of a chain fast food restaurant. The accessibility barriers in the district court's certification order included any possible physical feature of a restaurant that violated the ADA, including inaccessible parking spaces, aisles, tables, and seating. In addition, the class included all persons who had or would encounter an accessibility barrier at any restaurant location throughout the United States.

The Court of Appeals reversed the district court's order granting class certification. It held that commonality was not established because of "just how large the potential universe of ADA violations covered by [the] broad class

definition." Id. at 488. Even if the class had been limited to those who experienced accessibility barriers in the restaurants' parking lots, the variety of different ADA violations "harm[ed] class members in materially different ways" such that they did not present a common contention capable of classwide resolution:

> A class member, for example, complaining that "accessible" parking signage was "mounted less than 60 inches above the finished surface o[f] the parking area," has experienced harm different from that of a class member complaining that "[t]he surfaces of one or more access aisles had slopes exceeding 2.1%."

Id. at 490 (citation omitted). However, in a footnote, the Court indicated that if the class definition were "limited to slope-related injuries occurring within a parking facility," it would be "much more likely" to satisfy the commonality requirement. Id. at 490 n.23.

The certified class in this action is similarly limited. It includes only persons who will encounter accessibility issues as to curb ramps. Accessible curb ramp design is governed by uniform standards. Liberty Resources III, 2021 WL 4989700, at *2-4. It is true that these standards vary from curb ramp to curb ramp, depending on factors such as when the adjoining street was most recently altered or whether there are site-specific constraints bearing on feasibility. Id. at *4. However, the range of potential ADA violations that could

arise at curb ramps is far narrower than those asserted in Steak 'n Shake.

Objectors also rely on Allen v. Ollie's Bargain Outlet, Inc., 37 F.4th 890 (3d Cir. 2022). In that case, the district court had certified a class of all persons who had encountered or would encounter "access barriers in interior paths of travel" within any of defendant's bargain stores throughout the United States. Id. at 902. The Court of Appeals reversed on two grounds the district court's determination that commonality had been satisfied. First, the Court held that the plaintiffs could not represent a class of all persons who had encountered accessibility barriers at defendant's stores throughout the United States because plaintiffs only supplied reliable evidence of the defendant's policies at Pennsylvania locations. Relying on Steak 'n Shake, the court further held that the class of all individuals affected by access barriers in interior paths of travel was too broad to satisfy commonality:

> In Steak 'n Shake, we warned against the broad term "accessibility barriers," as it sweeps in a broad array of potential claims with little in common. The same is true here. Some "access barriers" are fixtures, like pillars, fixed tables, or aisle shelves. . . . Plaintiffs have not shown that Ollie's has any centralized blueprint or policy that requires stores to build narrow aisles or place pillars, tables, and shelving in the middle of the way.

Id. at 903.

Again, the class here is much more limited than the class our Court of Appeals rejected in Ollie's Bargain Outlet. First, this pending action is distinguishable because it geographically limited. It includes only individuals who encountered or will encounter accessibility barriers within Philadelphia. Second, unlike the varying regional policies of the defendant's stores in Ollie's Bargain Outlet, there is no dispute that all the alleged ADA curb ramp violations at issue in this case are products of the City of Philadelphia's common policy or practice. Third, the possible ADA violations that may arise from an inaccessible or nonexistent curb ramp is less diverse than the violations that may occur from all accessibility barriers in all aspects of the interior of a bargain store.

In sum, objectors have not demonstrated that the class was improperly certified.

Objectors also contend that plaintiffs lack standing to maintain this action under Article III of the constitution based on the Supreme Court's recent ruling in TransUnion LLC v. Ramirez, 141 S. Ct. 2190 (2021). Specifically, they contend plaintiffs' complaint is deficient because it "does not state when Plaintiffs suffered an injury - as required in regard to what curb cuts except in a few intersections." In objectors' view, the named plaintiff's allegations concerning the injuries

they personally have suffered are "not enough to confer standing to file a class action lawsuit involving over thousands of intersections."

Objectors erroneously conflate the Article III standing analysis with the Rule 23 class certification requirements. In class actions, the court focuses its standing inquiry "solely on the class representative(s)." Steak 'n Shake, 897 F.3d at 478. TransUnion did not disrupt this basic tenet of class action litigation. Rather, the crux of TransUnion is that a plaintiff cannot prove that he or she has standing simply by alleging that the defendant has violated a statutory right established by Congress. The Court merely reiterated the principle that standing requires an injury that amounts to "concrete harm." 141 S. Ct. at 2214.

There can be no doubt, and objectors do not dispute, that the individual class representatives here have alleged concrete injuries. In their complaint, they identified the specific intersections they traverse, the curb ramp barriers they face along those routes, and the particularized injuries they suffered due to these barriers, which include physical injury, delay and inconvenience, and fear. These concrete allegations of injury are all that is necessary for them to demonstrate standing to maintain this action as class representatives.

Plaintiffs need not allege that they have suffered concrete injuries at every intersection with a noncompliant curb ramp in the City of Philadelphia. For example, although our Court of Appeals held that the class in Steak 'n Shake was improperly certified, it nonetheless explained that plaintiffs' allegations of accessibility issues in the restaurants they encountered were enough to confer Article III standing to sue over accessibility issues in all the defendant's restaurants. See 897 F.3d at 479–80. Here, plaintiffs have standing to litigate the similar claims of absent class members which all derive from the City's policies on curb ramp installation, alteration, and repair. Requiring plaintiffs to allege the accessibility issues at every barrier subject to the same policy would needlessly throw a hurdle in the way of efforts to obtain meaningful widespread relief from pervasive disability discrimination. "The effect of such a rule would be piecemeal compliance. . . . This not only would be inefficient, but impractical." Steger v. Franco, Inc., 228 F.3d 889, 894 (8th Cir. 2000).

Finally, objectors assert that that this lawsuit did not need to be maintained as a class action. This objection appears to be nothing more than a generalized grievance with the class action mechanism. It is without merit.

IV

A class action under Rule 23 may be settled "only with the court's approval." Fed. R. Civ. P. 23(e). Before approving a settlement, the court must hold a hearing and find that the settlement agreement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). Whether a settlement agreement should be approved is "left to the sound discretion of the district court." In re Nat'l Football League Players Concussion Injury Litig., 821 F.3d 410, 436 (3d Cir. 2016) (quoting In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions, 148 F.3d 283, 299 (3d Cir. 1998)).

The court considers two sets of factors in assessing the fairness of a settlement agreement. First, the court analyzes the pertinent elements set forth in Rule 23(e)(2):

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:
>
> > (i) the costs, risks, and delay of trial and appeal;
> >
> > (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> >
> > (iii) the terms of any proposed award of attorney's fees, including timing of payment; and

> (iv) any agreement required to be identified under Rule 23(e)(3); and
>
> (D) the proposal treats class members equitably relative to each other.

Second, the court considers the "traditional" factors that our Court of Appeals delineated in Girsh v. Jepson, 521 F.2d 153, 157 (3d Cir. 1975):

> (1) the complexity, expense, and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

There is an "overriding public interest in settling class action litigation." In re Warfarin Sodium Antitrust Litig., 391 F.3d 516, 535 (3d Cir. 2004). Settlement is particularly favored "in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation." Id. (quoting In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig., 55 F.3d 768, 784 (3d Cir. 1995)). As such, the court is "hesitant to undo an agreement that has resolved a hard-fought, multi-year

litigation" such as this one. In re Baby Prod. Antitrust Litig., 708 F.3d 163, 175 (3d Cir. 2013).

To further this policy of favoring settlement, our Court of Appeals has instructed district courts to apply a presumption of fairness to a proposed settlement when "(1) the settlement negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected." Warfarin, 391 F.3d at 535. As explained in greater detail below, the parties conducted negotiations at arm's length with the able assistance of Magistrate Judge Elizabeth T. Hey and reached this settlement after exchanging extensive discovery and taking numerous depositions. Counsel for both parties are experienced in this type of litigation. Finally, only five individuals objected to the settlement in contrast to the massive size of the certified class. Thus, the court finds that the presumption of fairness applies here.

V

The court next considers whether the settlement is fair under the Rule 23(e)(2) considerations.

First, the court finds that the class representatives and class counsel have adequately represented the class throughout the litigation. See Fed. R. Civ. P. 23(e)(2)(A). In

reviewing plaintiffs' motion for class certification, the court determined that, for the purposes of Rule 23(a)(4), the class representatives would fairly and adequately protect the interests of the class. Liberty Resources II, 2020 WL 3816109, at *3. The court also found that class counsel had the experience and competence to litigate this matter. See id.

The inquiry into the adequacy of representation at the final settlement approval stage under Rule 23(e)(2)(A) requires an additional review of class counsel's "actual performance . . . acting on behalf of the class." Fed R. Civ. P. 23(e)(2) Advisory Committee Notes. Critical to this inquiry is whether class counsel had an "adequate information base," considering the "nature and amount of discovery," which informed the decision to agree to the settlement. Id.

The parties, as noted above, have conducted extensive fact and expert discovery. Class counsel represents that the City produced over 7,000 pages of documents and produced three City officials for depositions. Class counsel engaged three expert witnesses, including two architectural experts who each surveyed curb ramps and assessed their compliance with technical accessibility standards. They also deposed both of the City's rebuttal expert witnesses. The court is satisfied that class counsel's decision to settle was adequately informed by this voluminous discovery. Accordingly, the court finds that class

counsel has adequately represented the interests of the certified class in this action.

The court next considers whether the proposed settlement was "negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(B). The parties were ready to try this case. After the court's October 27, 2021 ruling on the cross-motions for summary judgment, each side filed motions in limine and oppositions. It was not until two weeks before trial that the parties jointly sought a stay in proceedings to facilitate settlement agreement. The great extent of adversarial proceedings that took place in this action prior to that stay cannot be disputed.

In addition, the parties engaged in extensive settlement negotiations, which began as early as October 2019. In addition to the numerous discussions among counsel, the parties participated in eight settlement conferences before Magistrate Judge Hey. "The participation of an independent mediator in settlement negotiations virtually ensures that the negotiations were conducted at arm's length and without collusion between the parties." Taha v. Bucks Cnty., Civ. A. No. 12-6867, 2020 WL 7024238, at *4 (E.D. Pa. Nov. 30, 2020) (cleaned up); see also Fed. R. Civ. P. 23(e)(2) Advisory Committee Notes. Finally, the court notes that the parties did not negotiate the amount of class counsel's proposed attorney's

fees award until after they agreed on the substance of the settlement. The court finds the settlement agreement was negotiated at arm's length.

The court must also consider whether "the relief provided for the class is adequate." Fed R. Civ. P. 23(e)(2)(C). The Rule sets forth nonexhaustive factors to guide this determination. The pertinent ones here are "the costs, risks, and delay of trial and appeal" as well as "the terms of any proposed award of attorney's fees, including timing of payment."[5] Id.

The settlement will provide significant relief to individuals with disabilities that affect their mobility. It will allow them to navigate Philadelphia's streets in a safer manner. Under the agreement, the City will install and remediate 10,000 curb ramps over a fifteen-year period. It has agreed to complete 2,000 ramps every three years, with tri-annual cumulative milestones in addition to transparent annual progress reporting requirements. It will implement a system whereby Philadelphia residents may submit requests for the City to cure inaccessible curb ramps. In addition, the agreement

5. Because of the nature of the solely injunctive relief sought in this class action, the inapplicable factors under Rule 23(e)(2)(C) are "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims" and "any agreement required to be identified under Rule 23(e)(3)."

sets aside funding for class counsel to monitor the City's compliance, and this court will retain jurisdiction for purposes of enforcement. In sum, the agreement requires the City to prioritize curb ramp accessibility so that class members can more easily access jobs, schools, and other aspects of community life.

The objectors disagree that the relief provided under this settlement is adequate. The crux of their objection is that the fifteen-year term of the agreement is too long. They contend that 28 C.F.R. § 35.150 obligates the City to complete this work within three years. Thus, they argue that this settlement "nullifies" that regulation. They also argue that the fifteen-year term is unreasonably long when compared with other ADA pedestrian accessibility settlements with three-year terms that the United States Department of Justice has reached with other cities.

The court overrules the objections to the adequacy of the relief provide under the agreement. First, objectors are incorrect that § 35.150 requires a shorter term for this agreement. Section 35.150 does not govern the new construction or alteration of curb ramps. Liberty Resources I, 2020 WL 3642484, at *3-5. Instead, the regulation compels public entities to make accessible their "services, programs, or activities" and to create a "transition plan" whereby a public

entity must conduct a self-assessment of the condition of its pedestrian facilities and create a remediation plan. In granting the City's motion to dismiss partially the plaintiffs' complaint, the court ruled that the regulation does not apply because sidewalk curb ramps are not a service, program, or activity, and that the ADA does not permit a private right of action to force the City to create a transition plan. See id. Rather, the pertinent regulations on installation and maintenance of sidewalk curb ramps, §§ 35.133, 35.151, do not impose any time limits on public entities.

Second, the court finds that the fifteen-year period is substantively reasonable. Objectors reference settlements reached between cities and the Department of Justice with three-year terms, such as with Atlanta, Detroit, and Milwaukee,[6] but those agreements are inapposite. None of those agreements was the product of federal court litigation. The enforcement mechanism of those agreements provides that the Department of Justice must file a separate lawsuit. Furthermore, those

6. Settlement Agreement Between the United States of America and Atlanta, Georgia Under the Americans with Disabilities Act, https://archive.ada.gov/atlanta_pca/atlanta_sa.htm (Dec. 10, 2009); Settlement Agreement Between the United States of America and City of Detroit, Michigan, https://archive.ada.gov/detroitmi.htm (Feb. 27, 2004); Settlement Agreement Between the United States of America and the City of Milwaukee, Wisconsin, https://archive.ada.gov/milwaukeeriverwlk.htm (July 6, 2006).

agreements permit the cities to request extensions for compliance which may "not be unreasonably withheld or delayed." See, e.g., Settlement Agreement Between the United States of America and Atlanta, Georgia Under the Americans with Disabilities Act, https://archive.ada.gov/atlanta_pca/atlanta_sa.htm (Dec. 10, 2009). Rather, the parties have identified settlements in several similar ADA pedestrian accessibility class actions with compliance terms that range from twelve to twenty years.[7] The court finds that the private enforcement settlements are comparable and that the fifteen-year period is reasonable by comparison.

Further, the relief provided under the settlement is adequate when weighed against the burdens that would be placed on the parties if this case were to be tried. "Legal complexity" and "factual complexity . . . weigh in favor of settlement." William B. Rubenstein, 4 Newberg and Rubenstein on Class Actions § 13:52 (6th ed. 2022). This case was rife with

7. Consent Decree, Muehe v. City of Boston, Civ. A. No. 21-11080 (D. Mass. July 2, 2021), Doc. No. 12-2, at 61 (over twelve years); Consent Decree, Hines v. City of Portland, Civ. A. No. 18-869 (D. Or. Sept. 27, 2018), Doc. No. 40-1, at 14 (twelve years); Amended Final Judgment and Order Approving Class Action Settlement, Reynoldson v. City of Seattle, Civ. A. No. 15-1608 (W.D. Wash. Nov. 1, 2017) (eighteen years), Doc. No. 61, 4-5; Settlement Agreement and Release of Claims, Ochoa v. City of Long Beach, Civ. A. No. 14-4307 (C.D. Cal. Mar. 10, 2017), ECF No. 145-2, at 47-48 (twenty years).

legal and factual complexity. For example, the court noted the complexity of the legal framework for ADA claims related to curb ramp installation, alteration, and maintenance in its summary judgment opinion:

> A public entity's obligation to install curb ramps, and the applicable design standard, varies depending on when the adjoining street was altered or constructed. . . . [Section] 35.151 affords public entities certain defenses, and the availability of those defenses depends on site-specific factors such as feasibility, which is measured by the existing physical or site constraints at the time of construction. Section 35.151 also provides for different design requirements for curb ramps installed in different time periods.

Liberty Resources III, 2021 WL 4989700, at *4 (citations and internal quotation marks omitted).

In addition, "to prove violations of § 35.151, plaintiffs must prove violations as to specific curb ramps at specific intersections." Id. at *5. That is, they could not hold the City liable on the basis that its "general policies do not conform to the regulation." Id. at *4. Thus, trial in this matter would have necessitated factual findings on hundreds of individual curb ramps. The settlement avoids undue strain on the resources of the court as well as those of class counsel and the City.

The court must take into account "the terms of any proposed award of attorney's fees, including timing of payment."

Fed. R. Civ. P. 23(e)(2)(C)(iii). Here, the court scrutinizes whether there has been "a tradeoff between merits relief and attorney's fees." William B. Rubenstein, 4 Newberg and Rubenstein on Class Actions § 13:54 (6th ed. 2022). As explained further below, plaintiffs seek $949,178.93 in attorney's fees, which is a reasonable award in light of the time and effort class counsel expended in maintaining this action. In fact, the fee award is a significant reduction from the lodestar. This is a class action in which only injunctive relief was sought. The fee award does not impact the relief that the settlement agreement provides.[8] In addition, the parties represent that they only began to negotiate the attorney fee award amount after they had reached an agreement on the substantive aspects of the settlement. For all these reasons, the court has no doubt that the substance and the timing of the attorney's fee award under the settlement weighs in favor of approval.

The final factor is whether the settlement "treats class members equitably relative to each other." Fed. R. Civ.

8. Under the settlement, the City will also pay class counsel's fees and costs for work necessary to monitor the City's compliance with the agreement for its fifteen-year duration. Those fees are capped at $60,000 per each three-year compliance period. The court finds that these fees are reasonable given the broad nature of the injunctive relief under the settlement.

P. 23(e)(2)(D). Here, the injunctive relief provided under the settlement affects all class members equally. E.g., Sourovelis v. City of Philadelphia, 515 F. Supp. 3d 343, 358 (E.D. Pa. 2021). Furthermore, the court notes that the settlement's release of claims treats unnamed class members even more favorably than it treats the named plaintiffs. For all plaintiffs, the release precludes any new injunctive and declaratory relief actions over curb ramps during the settlement's fifteen-year term. However, the settlement agreement only prohibits the named plaintiffs from bringing lawsuits for monetary damages.[9] To the extent this factor is relevant, it too weighs in favor of approval of the settlement.

VI

The court will finally review the settlement under the relevant Girsh factors.[10] Because this class action seeks only

9. Objectors contend the settlement's release of claims "negates the rights of any disabled person in Philadelphia from filing suit under the ADA or Pennsylvania law to better their own personal circumstances by having accessible streets." However, the settlement does not preclude money damages claims by unnamed class members. Furthermore, the settlement requires the City to provide a mechanism by which members of the public can report noncompliant curb ramps and to report in a transparent manner its progress in complying with the curb ramp installation, alteration, and maintenance milestones. Accordingly, the agreement will provide adequate alternative avenues for individuals with disabilities affecting mobility to seek forward-looking relief.

10. The factors that are irrelevant for present purposes are: "(4) the risks of establishing damages"; "(7) the ability of the

injunctive relief, certain Girsh factors are inapposite. Many of the relevant factors overlap with the Rule 23(e)(2) factors set forth above. For example, as to Girsh factors 1 and 4--"the complexity, expense, and likely duration of the litigation"; and "the risks of establishing liability"--the court reiterates its finding under Rule 23(e)(2)(C): the settlement eschews the factual and legal complexities in litigating the City's liability for noncompliant curb ramps, which will conserve the resources of the parties and of the court. Similarly, the court's finding under Rule 23(e)(2)(A) also mirrors the analysis under the third Girsh factor, "the stage of the proceedings and the amount of discovery completed." In making this settlement, the parties were informed by voluminous discovery and were otherwise prepared to try the case.

The court must consider Girsh factor 2, "the reaction of the class to the settlement." This requires the court to look to "the number and vociferousness of the objectors" in context with the size of the class. Chester Upland Sch. Dist. v. Pennsylvania, 284 F.R.D. 305, 325 (E.D. Pa. 2012) (quoting Gen. Motors, 55 F.3d at 812). As mentioned above, five

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defendants to withstand a greater judgment"; "(8) the range of reasonableness of the settlement fund in light of the best possible recovery"; and "(9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation."

individuals in a single filing raise objections to the fairness of the settlement. In their class certification motion, plaintiffs established numerosity by "cit[ing] data from the United States Census Bureau indicating that more than 143,000 non-institutionalized Philadelphia residents have an ambulatory disability and more than 49,000 non-institutionalized Philadelphia residents have a vision disability." Liberty Resources II, 2020 WL 3816109, at *3. In addition, the class includes not only Philadelphia residents but also individuals who reside elsewhere and "who use or will use pedestrian rights of way in the City of Philadelphia." Id. at *2. A settlement is more likely to be fair when, as here, the small number of objectors pales in comparison to the overall size of this class. Williams v. City of Philadelphia, Civ. A. No. 08-1979, 2016 WL 3258377, at *4 (E.D. Pa. June 13, 2016) (citing In re Cendant Corp. Litig., 264 F.3d 201, 235 (3d Cir. 2001)). Furthermore, the court notes that five class members, including three named plaintiffs, have submitted declarations voicing support for the settlement. The court finds that the reaction of the class weighs in favor of approving the settlement.

The Sixth Girsh factor assesses "the risks of maintaining the class action through the trial." The City has not challenged the certification of plaintiff's class during this litigation. Moreover, because the class does not exclude

individuals based on their residence outside of Philadelphia, it is unlikely that plaintiffs will cease to remain members of the class. When "there is no apparent reason why the Court would decertify or modify the class at any time during the litigation . . . the sixth Girsh factor is neutral." Ripley v. Sunoco, Inc., 287 F.R.D. 300, 313 (E.D. Pa. 2012).

Based on the considerations under Rule 23(e)(2) and under Girsh, the court finds that the settlement in this matter is fair, reasonable, and adequate. The relief provided is clearly in the public interest. Accordingly, the court will grant the joint motion of the parties for final approval of the settlement agreement.

V

The court must also review the unopposed motion of plaintiffs for attorney's fees and nontaxable costs. After negotiations, the City has agreed to pay to plaintiffs an award of $1,100,000, which includes $949,178.93 in attorney's fees and $150,821.07 in costs.

Prevailing parties in certified class actions brought under the ADA may recover attorney's fees and nontaxable costs. See Fed. R. Civ. P. 23(h); 42 U.S.C. § 12205. "When a court approves a settlement agreement and retains jurisdiction, there is a judicially-sanctioned material alteration in the legal relationship of the parties sufficient to confer prevailing

party status on the plaintiff under fee-shifting statutes, such as the ADA . . . ." Jimmie v. Dep't of Pub. Welfare of Pa., Civ. A. No. 09-1112, 2010 WL 4977331, at *2 (M.D. Pa. Dec. 2, 2010) (quoting Truesdell v. Phila. Hous. Auth., 290 F.3d 159, 164-65 (3d Cir. 2002)). Here, the court has approved a settlement agreement under which the City has agreed to take on additional obligations with respect to curb ramp installation, alteration, and maintenance. Moreover, the court will retain jurisdiction for the purpose of enforcement of the agreement. Accordingly, plaintiffs are the prevailing party in this action and are entitled to recover reasonable attorney's fees and nontaxable costs.

The court must next determine the reasonable value of the time class counsel spent in litigating this matter. Our Court of Appeals has instructed that courts should apply the lodestar formula when reviewing fee petitions in actions primarily seeking injunctive relief such as this one. E.g., Adam X. v. N.J. Dep't of Corr., Civ. A. No. 17-188, 2022 WL 621089, at *10 (D.N.J. Mar. 3, 2022) (citing Gen. Motors, 55 F.3d at 821). Under the lodestar formula, the court will multiply the "reasonable hourly rate" by the "number of hours reasonably expended." E.g., Loughner v. Univ. of Pittsburgh, 260 F.3d 173, 177 (3d Cir. 2001).

An attorney's reasonable hourly rate is "the "prevailing market rate[ ] in the relevant community" of an attorney with "experience and skill" comparable to that of the prevailing party's attorney. Id. at 180. The court finds that the hourly rates that class counsel seek are reasonable.[11] They are generally in line with the Community Legal Services attorney fee schedule,[12] which "has been approvingly cited by the Third Circuit as being well developed and has been found by the Eastern District of Pennsylvania to be a fair reflection of the prevailing market rates in [the] Philadelphia [legal market]." Maldonado v. Houstoun, 256 F.3d 181, 187 (3d Cir. 2001) (cleaned up). Moreover, other courts in geographic areas with similar market attorney rates have recently awarded fees to class counsel at comparable rates to those which class counsel seeks in this action. See Adam X., 2022 WL 621089, at *11. Accordingly, the court finds that class counsel seeks fees at hourly rates that are reasonable.

11. Plaintiffs seek fees for the work of thirteen Disability Rights Advocates staff members. Their hourly rates range from $275 for paralegals to $835 for the organization's director of litigation who has practiced for nearly thirty years. See Doc. # 152-3, at 7-8.

12. See Attorney Fees, Community Legal Services of Philadelphia, https://clsphila.org/about-community-legal-services/attorney-fees/ (Jan. 19, 2023).

The court must also determine how many hours class counsel reasonably expended on this matter. The court has reviewed the billing records that class counsel submitted with its motion. Here, plaintiffs contend that class counsel spent 3,377 hours of work on this matter spanning from November 2017, when they began investigating pedestrian conditions in Philadelphia, through April 2022, when the parties reached agreement on the substantive terms of the settlement. Class counsel represent that they completed nearly 1,500 hours which, for various reasons, it does not seek attorney's fees. This action has been pending for nearly four years. Given the breadth of this action's subject matter and the amount of adversarial litigation that took place up until the settlement agreement, the number of hours class counsel spent is reasonable.

Based on the foregoing findings, class counsel's lodestar is $1,627,563. As mentioned above, class counsel and the City have agreed to a proposed award of $1,100,000, which includes $949,178.93 in fees along with $150,821.07 in costs. The settled fee amount represents an approximate 41.7% discount from the lodestar. Suffice it to say, attorneys for plaintiffs have agreed to forgo fees for a significant number of hours expended, which "provides additional support for the requested attorney's fees." Blofstein v. Michael's Fam. Rest., Inc., Civ.

A. No. 17-5578, 2019 WL 3288048, at *11 (E.D. Pa. July 19, 2019).[13]

Finally, the court must determine whether the nontaxable costs that plaintiffs seek through their fee petition are recoverable. Class counsel asserts that the total sum of their nontaxable costs expended on this matter was $150,821.07. This figure includes money expended for valid purposes including, among other things, expert witness fees, legal research, travel to visit clients and to attend court, and postage and delivery services. Courts have routinely awarded costs to prevailing parties in ADA actions for each of these types of expenditures. See, e.g., Central Bucks Sch. Dist. v. Q.M., Civ. A. No. 22-1128, 2022 WL 17339037, at *16-18 (E.D. Pa. Nov. 29, 2022). The court finds the costs are all recoverable and otherwise reasonable.

13. Objectors cursorily accuse class counsel of seeking a fee award that is too high, effectively insinuating that class counsel are self-dealing at the expense of class members. As mentioned above, the parties did not begin to negotiate attorney's fees until after they reached an agreement on the substance of the settlement. Because this is an injunctive relief-only class action, there is no risk that the fee award will detract from any class member's recovery. Finally, class counsel seek a significantly discounted fee award. This objection is baseless.