UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

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

Plaintiffs,

v.

RLJ LODGING TRUST,

Defendant.

Case No. 15-cv-0224-YGR

~~[PROPOSED]~~ ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND GRANTING PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS

AS MODIFIED BY THE COURT

Plaintiffs Civil Rights Education and Enforcement Center ("CREEC"), Ann Cupolo Freeman, Ruthee Goldkorn, and Julie Reiskin ("Named Plaintiffs") filed unopposed motions for approval of a class action settlement and for an award of attorneys' fees and costs. (Dkt. Nos. 74, 69.) The Court held a hearing on the motions on May 3, 2016. Having carefully considered the papers and for the reasons discussed below, the Court **GRANTS** final approval of the proposed class settlement and **AWARDS** attorneys' fees and costs to Class Counsel.

I. BACKGROUND

A. Litigation History

In this class action, Plaintiffs seek declaratory and injunctive relief for alleged violations of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12181 *et seq*., and California's Unruh Civil Rights Act, Cal. Civ. Code § 51 *et seq*., regarding the provision of wheelchair-accessible transportation by hotels. Plaintiff CREEC is a civil rights organization based in Colorado and California. CREEC's mission includes "ensuring that persons with disabilities participate in our nation's civic life without discrimination . . . ." (Dkt. No. 50 ¶ 9.) Plaintiffs Cupolo Freeman, Reiskin, and Goldkorn are CREEC members who each have disabilities within the meaning of the ADA and California law and use wheelchairs for mobility. Defendant RLJ Lodging Trust ("RLJ") is a real estate investment trust that owns approximately 127 hotels nationwide, approximately 42 of which provide transportation services to guests. (Dkt. No. 67 at 1.)

Transportation services provided by hotels are covered by the ADA regulations applicable to "private entities not primarily engaged in the business of transporting people," which include "[s]huttle systems and other transportation services operated by privately-owned hotels."[1] Under Department of Transportation regulations, these requirements apply to entities that "operate"

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

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

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

In their amended complaint, Plaintiffs allege two claims against RLJ: 1) disability discrimination under the ADA, 42 U.S.C. § 12182(a), for failing to ensure that transportation services at its hotels comply with the ADA's accessible transportation requirements; and 2) violation of California Civil Code section 51(b) for denying Plaintiffs and the class members' rights to full and equal accommodations, advantages, facilities, privileges, or services offered at RLJ's hotels. (Dkt. No. 50 ¶¶ 42-55.) Plaintiffs seek declaratory relief and a permanent injunction requiring RLJ to comply with the ADA and the Unruh Act, as well as an award of reasonable attorneys' fees and costs. Plaintiffs do not seek damages on behalf of the class or the Named Plaintiffs. *Id.* at 10-11.

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

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

B. Mediation and Settlement

Early in the litigation, the parties participated in mediation in San Francisco with retired Magistrate Judge James Larson of JAMS. The parties exchanged extensive information to enable a thorough investigation of the class's claims. Dkt. No. 67 (Prelim. Approval Order) at 2. Plaintiffs' counsel analyzed documents and other information RLJ produced, including information about the transportation services offered to guests without disabilities at each RLJ hotel, and the transportation services, if any, offered to guests with disabilities of the RLJ hotels identified in the complaint, including the names of third-party transportation providers used to provide such services. (Dkt. No. 56 ¶¶ 8-12.) Plaintiffs also analyzed the relevant portions of the management agreements for the RLJ hotels identified in the Complaint. (*Id.* ¶ 11.) As part of the information exchange for mediation, Plaintiffs produced documents regarding the Named Plaintiffs' and other testers' calls to RLJ hotels. (*Id.* ¶ 9.)

Following the mediation, the parties continued to negotiate a potential injunctive settlement, while engaging in additional factual investigation. The individual Named Plaintiffs made additional calls to the RLJ hotels they had called before filing suit to test whether the transportation for guests with disabilities was in compliance with the ADA. Plaintiffs' counsel also called third-party transportation providers identified by certain RLJ hotels to evaluate whether those companies could provide wheelchair-accessible services equivalent to the transportation services provided to guests without disabilities, and did outreach to potential class members. (Dkt. No. 70 ¶ 16.)

From July through November 2015, the parties continued negotiating the injunctive relief terms of the settlement. (*Id.* ¶ 17.) The parties reached full agreement on injunctive relief before negotiating attorneys' fees and costs. (*Id.* ¶ 18.) On November 5, 2015, the parties executed a memorandum of understanding memorializing the material terms of the settlement, and subsequently executed a long-form agreement. (*Id.* ¶ 19.) Following the preliminary approval hearing on January 12, 2016, the parties modified the proposed agreement and executed the

operative Settlement Agreement on January 22, 2016. (Dkt. No. 65-1.) The Court granted preliminary approval of the proposed Settlement on January 25, 2016. (Dkt. No. 67.)

C. The Settlement Agreement

The terms of the proposed settlement are set forth in the Settlement Agreement. (Dkt. No. 67-1, "Agreement.") The principal terms of the settlement are summarized below:

1. Injunctive Relief

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

To ensure that RLJ hotels come into compliance, the Settlement provides for a multistage monitoring process involving both a third-party monitor and monitoring by Plaintiffs' counsel.

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

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

First, the third-party monitor will contact up to 50% of RLJ hotels that provide transportation services to guests every four months for the first two years of the Settlement Agreement's term to test their compliance. (*Id.* ¶ 7.b.) Subsequent monitoring cycles will also include hotels that failed to provide accurate information or equivalent accessible services during the previous cycle. (*Id.* ¶ 7.c.) This stepped-up monitoring ensures that so-called problem hotels are more closely monitored. Second, the monitor will send a tester to 15% of the hotels who, during those telephone conversations, claim to have equivalent accessible transportation to confirm that the hotel does indeed provide equivalent, accessible transportation. (*Id.* ¶ 7.b.) Finally, any hotel found to be out of compliance during the first two years of monitoring will be subjected to a third year of monitoring unless it can prove that it has purchased its own accessible transportation vehicle. (*Id.* ¶ 7.d.) Hotels whose non-compliance is confined to inaccurate information will be subjected to the third year of monitoring only if they are found to be out of compliance a second time. (*Id.* ¶ 7.d.) This comprehensive monitoring program is thorough and addresses the issues that Plaintiffs have uncovered during their investigation.

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

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

Plaintiffs' counsel will also be involved in monitoring. (*Id.* ¶ 7.b.i.) They will do so through any members of the class who visit RLJ hotels as well as through their own monitoring of the third-party transportation providers used by RLJ hotels to ensure that the services provided by the third parties are actually equivalent to the services provided to guests without disabilities. In addition, Plaintiffs' counsel will review monitoring reports by PMR, and raise issues as needed with RLJ.

Finally, in the event of a dispute the parties cannot resolve on their own, the parties agreed to a multi-stage process by which the dispute is first brought to a mediator, and if the dispute cannot be resolved in mediation, the parties will bring the dispute to the Court for resolution during the term of the Settlement Agreement. (*See id.* ¶ 14.)

2. Class Release

The Settlement Agreement releases claims for injunctive or declaratory relief on behalf of the class through the date of preliminary approval, or January 25, 2016. (*See id.* ¶ 15.a.) It does not release any claims for monetary damages on behalf of class members, other than the claims for monetary damages of the three Named Plaintiffs. (*See id.* ¶ 15.b.) Nor does it release any claims of class members or the three Named Plaintiffs against management companies for RLJ hotels.[6] (*See id.* ¶ 15.c.)

3. Attorneys' Fees and Costs

The Settlement Agreement provides that Class Counsel will seek, and RLJ will not oppose, an award of reasonable attorneys' fees and costs up $135,000, subject to Court approval. (*Id.* ¶ 11.a.) The award of fees will compensate Class Counsel for work performed in connection with this action, including "ensuring that the Settlement is implemented, and monitoring and evaluating compliance with the Settlement . . . ." (*Id.*)

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[6] As noted above, Plaintiffs and the class do not release any claims regarding accessible transportation at four RLJ hotels operated by Sage Hospitality Resources, LLC, a defendant in a similar pending lawsuit brought by CREEC.

D. Notice to the Class

Plaintiffs proposed, and the Court ordered, dissemination of the class notice by email to known disability advocacy groups and independent living centers, as well as to individuals with disabilities who have communicated with CREEC about accessible hotel transportation and/or this lawsuit. Consistent with the notice plan, CREEC posted the notice, Settlement Agreement, and related case documents on the page of its website identified in the notice, and sent the class notice to 650 disability-related organizations and 41 individuals. (Dkt. No. 74-1 ¶¶ 2-5.) CREEC made efforts to redeliver returned notices and ultimately reached all but four organizations and two individuals it attempted to reach. (*Id.* ¶ 4.)

II. CLASS CERTIFICATION

For the reasons set forth in the Court's order granting preliminary approval, the Court confirms that the proposed settlement class meets the requirements of Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure. (*See* Dkt. No. 67.) The Court further confirms the appointment of Ann Cupolo Freeman, Ruthee Goldkorn, and Julie Reiskin as class representatives, and the appointment of Plaintiffs' counsel as Class Counsel.

The Settlement Class is defined as:

> All individuals who use wheelchairs or scooters for mobility who, from January 15, 2013 to the date of preliminary approval of the Settlement [January 25, 2016], have been denied the full and equal enjoyment of transportation services offered to guests at Hotels owned and/or operated by RLJ because of the lack of equivalent accessible transportation services at those Hotels.

(*Id.* at 7-13.)

III. FINAL APPROVAL OF SETTLEMENT

The Court approves the proposed settlement as a "fair, reasonable, and adequate" resolution of this litigation. Fed. R. Civ. P. 23(e)(2); *Officers for Justice v. Civil Serv. Com'n of City and Cnty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). The Ninth Circuit has recognized the "strong judicial policy that favors settlements, particularly where complex class action litigation is concerned." *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). In evaluating a proposed class action settlement, "[i]t is the settlement taken as a whole,

rather than the individual component parts, that must be examined for overall fairness…." *Staton v. Boeing Co.*, 327 F.3d 938, 960 (9th Cir. 2003) (alteration in original) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)).

When determining whether to grant final approval, "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Officers for Justice*, 688 F.2d at 625. A court should balance "the strength of plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel . . . ; and the reaction of the class members to the proposed settlement." *Id.* The list of factors a court should consider is not exclusive, and "those factors not relevant to the case [may be] omitted." *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 576 n.7 (9th Cir. 2004). "Not all of these factors will apply to every class action settlement," and in certain circumstances, "one factor alone may prove determinative in finding sufficient grounds for court approval." *Nat'l Rural Telecomms. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 525-26 (C.D. Cal. 2004) (citing *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993)).

Here, the Court has evaluated the proposed settlement for overall fairness under the relevant factors and concludes that the settlement merits approval. The extensive injunctive relief, combined with robust monitoring, is an excellent result for the class, and is a fair and adequate resolution of this case. The risk, duration, and expense of continued litigation in the absence of a settlement also supports approval. Although the parties reached this settlement before the Court was faced with resolving the parties' claims on the merits, RLJ stated in the parties' joint case management statement that it anticipated filing a motion to limit the scope of discovery to four hotels, that it would oppose a motion for class certification, and that it would move for judgment

on the pleadings and summary judgment. (Dkt. No. 25 at 4, 6.) Even if the Plaintiffs ultimately were to prevail on the merits, by reaching this settlement at an early stage in the litigation, Plaintiffs have obtained substantial injunctive relief for the class on a much shorter time frame than otherwise possible.

In addition, although this case resolved early in the litigation, the parties exchanged crucial information, permitting them to discuss both the relevant facts and possible frameworks for injunctive relief. In particular, Plaintiffs obtained extensive information from RLJ in mediation, which, combined with their own investigation, enabled them to make a thorough assessment of the class's claims. The settlement is the product of extensive negotiations and was reached with the assistance of a JAMS mediator who is a retired federal magistrate judge. The views of counsel, whom the Court has noted have "substantial experience in both disability rights and class action litigation," (Dkt. No. 67 at 3) also support approval. Finally, no class members objected to the proposed settlement, which also supports approval.

In sum, the Court concludes that when viewed as a whole, the proposed settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e). Therefore, the Court **GRANTS** final approval to the class settlement.

IV. ATTORNEYS' FEES AND COSTS

Rule 23(h) provides that "[i]n a certified class action, the court may award reasonable attorneys' fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). Courts have an independent obligation, however, "to ensure that the award, like the settlement itself, is reasonable, even if the parties have already agreed to an amount." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011) (citations omitted).

The ADA provides for an award of reasonable attorneys' fees and costs to prevailing parties. 42 U.S.C. § 12205. The Ninth Circuit has approved the "lodestar" method for calculating a reasonable attorneys' fee in "class actions brought under fee-shifting statutes (such as federal civil rights, securities, antitrust, copyright, and patent acts), where the relief sought – and obtained – is often primarily injunctive in nature and thus not easily monetized, but where the

legislature has authorized the award of fees to ensure compensation for counsel undertaking socially beneficial litigation." *In re Bluetooth*, 654 F.3d at 941.

The Court determines the lodestar by multiplying the number of hours reasonably expended on the matter by a reasonable hourly rate. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983); *Jordan v. Multnomah Cty.*, 815 F.2d 1258, 1262 (9th Cir. 1987). The lodestar should be calculated by using hourly rates that are the "rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation." *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008). "Generally, when determining a reasonable hourly rate, the relevant community is the forum in which the district court sits." *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 454-55 (9th Cir. 2010) (quoting *Camacho*, 523 F.3d at 979). In calculating the lodestar, it is appropriate for Class Counsel to use their current hourly rates at the time of the fee motion. *See, e.g., In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1305 (9th Cir. 1994) (noting that "[f]ull compensation requires charging current rates for all work done during the litigation, or by using historical rates enhanced by an interest factor"); *Blackwell v. Foley*, 724 F. Supp. 2d 1068, 1078 (N.D.Cal. 2010) (noting that plaintiff's counsel in ADA case were "entitled to receive their *current* hourly rates as compensation for the delay in payment"). Although the Court presumes that the lodestar represents a reasonable fee, the Court may adjust it upward or downward to reflect "a host of reasonableness factors, including the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment." *In re Bluetooth*, 654 F.3d at 942 (internal quotations omitted). "Foremost among these considerations, however, is the benefit obtained for the class." *Id*.

Plaintiffs request a fee award of $128,467.70, and reimbursement of $6,532.30 for costs, for a total of $135,000. This amount includes fees for work performed in connection with this lawsuit as well as fees for future monitoring and evaluating compliance with the settlement. According to Class Counsel, as of March 1, 2016, counsel's lodestar is $144,110.50, reflecting 246.3 hours. (Dkt. No. 70 ¶ 8.) The lodestar reflects the exercise of billing judgment to omit

51.3 hours, and does not include time worked after March 1, 2016 relating to obtaining final approval of the settlement or monitoring, which will continue for three years after final approval. (*Id.*) The requested amount, $128,467.70, represents 89.1% of counsel's lodestar. (*Id.*) Counsel have requested their current rates for 2016, and submitted a detailed description of the work performed by counsel in this case, including a breakdown of time spent on various categories of tasks in the litigation, as well as an itemized list of costs. Class Counsel have extensive experience litigating complex civil rights class actions, and the supporting declaration of Linda Dardarian, a partner at a civil rights law firm in Oakland, California, confirms that the rates used by Class Counsel are reasonable market rates. (Dkt. No. 71.)

The Court finds that the hourly rates requested are in line with the market rates charged by attorneys and paralegals of similar experience, skill, and expertise practicing in the Northern District of California. In addition, the number of hours that Class Counsel spent on this case was reasonable in light of the issues presented in this litigation and the extensive injunctive relief obtained for the Class. Class Counsel have reasonably accounted for and eliminated potentially unnecessary and duplicative hours. No class member objected to the fee request. The Court therefore concludes that the attorneys' fees requested are reasonable. Accordingly, the Court **AWARDS** Class Counsel $128,467.70.

Class Counsel are also entitled to reimbursement of reasonable expenses. Fed. R. Civ. P. 23(h). Class Counsel's out-of-pocket costs total $6,532.30. The Court has examined the expenses incurred by Class Counsel and concludes that they are reasonable and of the type that would normally be charged by an attorney to a fee-paying client. *See Grove v. Wells Fargo Fin. Cal., Inc.*, 606 F.3d 577, 580 (9th Cir. 2010). The Court therefore **AWARDS** Class Counsel $6,532.30 in expenses.

V. CONCLUSION

For the reasons above, the Court **APPROVES** the settlement and **AWARDS** Class Counsel $128,467.70 in attorneys' fees and reimbursement of $6,532.30 in costs. The Court enters the Settlement Agreement (Dkt. No. 67-1) as an order of the Court and will retain jurisdiction during

the term of the Settlement Agreement over the parties, the lawsuit, and the settlement for purposes of enforcing the Settlement Agreement.

This Order terminates Docket Numbers 69, 74.

IT IS SO ORDERED.

Dated: May 3, 2016

Hon. Yvonne Gonzalez Rogers
United States District Court Judge