

United States District Court
Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ARTIE LASHBROOK,
Plaintiffs,

v.

CITY OF SAN JOSE,
Defendant.

Case No. 20-cv-01236-NC

**ORDER GRANTING FINAL
APPROVAL OF CLASS
ACTION SETTLEMENT;
AWARDING ATTORNEYS'
FEES AND SERVICE AWARD;
JUDGMENT**

Re: Dkt. Nos. 20, 21, 22

The Parties have applied to the Court for an order finally approving the settlement of this action in accord with the Proposed Consent Decree (“Decree”), which sets forth the terms and conditions of a proposed settlement and dismissal of the action with prejudice, with the Court retaining jurisdiction to enforce the Decree throughout its term. Plaintiff Artie Lashbrook also moves for an award of attorneys’ fees and a service award pursuant to the parties’ Decree. Having read the papers submitted and carefully considered the arguments and relevant legal authority, and good cause appearing, the Court GRANTS the Parties’ Joint Motion for Final Approval of Class Action Settlement, Lashbrook’s Motion for Service Award and Motion for Attorneys’ Fees.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. On September 2, 2020, the Court conducted a final hearing to approve the Decree.

1 2. The Court finds that the parties provided notice to the Class in substantially
2 the manner and form preliminarily approved by the Court. *See* Dkt. No. 14. The
3 Settlement Notice, as ordered and implemented, was reasonably calculated under the
4 circumstances to apprise the Settlement Class Members of the pendency of this action, all
5 material elements of the proposed Settlement, and their opportunity (a) to submit written
6 objections to the Settlement, and (b) to appear at the Fairness Hearing to object to or
7 comment on the Settlement. The Settlement Notice was reasonable and the best notice
8 practicable to all Settlement Class Members and complied with the Federal Rules of Civil
9 Procedure, due process, and all other applicable laws and rules. A full and fair opportunity
10 has been afforded to the members of the Settlement Class to participate during the Fairness
11 Hearing, and all other persons wishing to be heard have been heard.

12 3. On May 27, 2020, this Court granted the Parties' Joint Motion for Class
13 Certification, preliminarily certifying a class for declaratory and injunctive relief. *See* Dkt.
14 Nos. 10, 14. The Court found, for purposes of settlement only, that the requirements of
15 Rule 23 of the Federal Rules of Civil Procedure are met by the Settlement Class: (a)
16 joinder of all Settlement Class Members in a single proceeding would be impracticable, if
17 not impossible, because of their numbers and dispersion; (b) there are questions of law and
18 fact common to the Settlement Class; (c) Lashbrook's claims are typical of the claims of
19 the Settlement Class that he seeks to represent for purposes of settlement; (d) Lashbrook
20 has fairly and adequately represented the interests of the Settlement Class and will
21 continue to do so; (e) Lashbrook and the Settlement Class are represented by qualified,
22 reputable counsel who are experienced in preparing and prosecuting class actions,
23 including those involving the allegations made in the Complaint; and (f) the City acted or
24 refused to act on grounds that apply generally to the Settlement Class, so that final
25 declaratory and injunctive relief is appropriate to the Settlement Class. Accordingly, the
26 Court preliminarily certified the following Settlement Class pursuant to Federal Rule of
27 Civil Procedure 23(a) and (b)(2):

28 All persons (including residents of and/or visitors to the City of San Jose)

1 with any Mobility Disability, who, at any time prior to the Court granting
2 final approval of the Consent Decree, have been denied full and equal access
3 to the City’s pedestrian right of way due to the lack of a curb ramp or a curb
4 ramp that was damaged, in need of repair, or otherwise in a condition not
5 suitable or sufficient for use.

6 Pursuant to Federal Rule Civil Procedure 23(c)(1)(B), the Court also appointed
7 Lashbrook and his counsel as representatives of the Settlement Class.

8 4. For the reasons stated above, the Court finds that class certification is
9 therefore an appropriate method for protecting the interests of the Settlement Class and
10 resolving the common issues of fact and law arising out of the Lashbrook’s claims while
11 also eliminating the risk of duplicative litigation. Accordingly, the Court hereby makes
12 final its earlier provisional certification of the Settlement Class and further confirms the
13 appointment of the Class Representative and Class Counsel to represent the Settlement
14 Class, as set forth above.

15 5. The Court grants final approval of the Settlement set forth in the Consent
16 Decree and finds, after considering all of the factors set forth in Federal Rule of Civil
17 Procedure 23(e)(2), that it is fair, reasonable, adequate, and in the best interests of the
18 Settlement Class as a whole. The Settlement, which was negotiated at arm’s length, offers
19 Settlement Class members comprehensive injunctive relief regarding all of the claims in
20 Lashbrook’s Complaint, and treats Settlement Class members equitably relative to each
21 other. The Court grants final approval of the release of the City from the Released Claims
22 as set forth in the Consent Decree.

23 6. To summarize, the Decree requires the City of San Jose to remediate all
24 missing and non-compliant curb ramps by 2038. It requires the City to allocate a
25 minimum amount of money per year towards its construction and remediation obligations,
26 while reaching certain milestones in ramp construction and remediation. In the event the
27 City is unable to appropriate the required annual monetary commitment, the Decree
28 requires the City to make up the shortfall in subsequent years, preempt the shortfall in

1 previous years, or maintain an agreed-upon average rate of ramp construction and
2 remediation. The City is also required to maintain a Curb Ramp Request Program and
3 comply with reporting and monitoring requirements. In exchange, Lashbrook and
4 members of the Class agree to release all injunctive, declaratory, or non-monetary claims
5 related to the City’s alleged actions or omissions relating to the remediation or
6 construction of curb ramps. However, unnamed members of the Class do not release
7 claims for monetary damages, personal injuries, or property damages. Lashbrook releases
8 all of his monetary claims related to his personal encounters with non-compliant curb
9 ramps in exchange for a damages payment of \$50,000.

10 7. The Court finds that the Decree is fair, adequate and reasonable to all
11 potential Class Members. The Parties have conducted an extensive evaluation of the
12 merits such that Counsel for both Parties are able to reasonably evaluate their respective
13 positions. Settlement will also avoid substantial additional costs to all Parties, as well as
14 avoid the delay and the risks presented by further prosecution of issues either in the current
15 or separate litigation proceedings which are addressed by the Decree. The results achieved
16 by the Decree are also in line with approved consent decrees in similar cases. *See, e.g.*,
17 Dkt. No. 10-1 (“Dardarian Decl.”), Ex. 8 (order granting preliminary approval of consent
18 decree in *Hines v. City of Portland*, Case No. 3:18-cv-00869-HZ (D. Or. June 4, 2019)).

19 8. The Court also finds that the Decree has been reached as the result of good
20 faith, prolonged, serious, and non-collusive arms-length negotiations. The Parties reached
21 the Decree after six years of out-of-court negotiations. At the preliminary approval
22 hearing, the parties represented that they contested the merits of the class claims and
23 engaged in extensive discovery and information sharing over the six-year period before
24 reaching the Decree.

25 9. The Court further finds that the City’s Annual Commitment, which requires
26 the installation or remediation of 27,621 Non-Compliant Curb Ramps by the end of 2038,
27 as set forth in the Consent Decree is proper and reasonably calculated based on the
28 available information to ensure and maintain accessibility of the pedestrian right of way

United States District Court
Northern District of California

1 located in the City of San Jose to persons with Mobility Disabilities. Accordingly, the
2 Settlement shall be consummated in accordance with the terms and conditions of the
3 Consent Decree

4 10. No Class Member has objected to the Settlement. The absence of any
5 objections further supports the Settlement’s final approval.

6 11. Lashbrook and all Settlement Class Members (and their respective heirs,
7 assigns, successors, executors, administrators, agents and representatives) are conclusively
8 deemed to have released and forever discharged the City from all Released Claims as set
9 forth in the Consent Decree. Specifically, Lashbrook and members of the Class agree to
10 release all injunctive, declaratory, or non-monetary claims related to the City’s alleged
11 actions or omissions relating to the remediation or construction of curb ramps. Unnamed
12 members of the Class do not release claims for monetary damages, personal injuries, or
13 property damages. *See* Dkt. No. 22-1, Ex. 1 §§ 18, 19. Lashbrook and all Settlement
14 Class Members are bound by this Judgment.

15 12. The benefits described in the Consent Decree are the only consideration,
16 fees, costs and expenses that the City shall be obligated to give to any party or entity,
17 including without limitation the Class Representative, Settlement Class Members, and
18 Class Counsel in connection with the claims released in the Consent Decree and/or the
19 payment of attorneys’ fees, costs, and expenses in this action.

20 13. The Consent Decree and this Judgment are not admissions of liability or fault
21 by the City, or a finding of the validity of any claims in this action or of any wrongdoing or
22 violation of law by the City. The Consent Decree is not a concession by the Parties and, to
23 the fullest extent permitted by law, neither this Judgment, nor any of its terms or
24 provisions, nor any of the negotiations connected with it, shall be offered as evidence or
25 received in evidence in any pending or future civil, criminal, or administrative action or
26 proceeding to establish any liability of, or admission by the City.

27 14. Notwithstanding the foregoing, nothing in this Judgment shall be interpreted
28 to prohibit the use of this Judgment to consummate or enforce the Consent Decree or

1 Judgment, or to defend against the assertion of Released Claims in any other proceeding,
2 or as otherwise required by law.

3 15. The Court approves Lashbrook's requested service award of \$5,000. The
4 Court finds that the requested award of \$5,000 is reasonable and appropriate compensation
5 for the work and risk undertaken by spearheading this litigation as the class representative.
6 *See, e.g., In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) (approving
7 \$5,000 to two plaintiff representatives of 5,400 potential class members in \$1.75 million
8 settlement); *Hopson v. Hanesbrands, Inc.*, No. 08-cv-0844-EDL, 2009 WL 928133, at *10
9 (N.D. Cal. Apr. 3, 2009) (approving \$5,000 award to one member of 217-member class
10 from \$408,420 settlement amount).

11 16. The Court also approves Lashbrook's requested attorneys' fees and costs. As
12 the prevailing party in this disability rights class action, Lashbrook is entitled to recover
13 his reasonable attorneys' fees, costs and expenses. See 42 U.S.C. § 12205 (ADA
14 prevailing party is entitled to "a reasonable attorney's fee, including litigation expenses,
15 and costs"); 29 U.S.C. § 794a(b) (Section 504 prevailing party is entitled to "a reasonable
16 attorney's fee as part of the costs").

17 17. The Court finds that the hourly rates claimed by Class Counsel are
18 reasonable and within the market range of hourly rates charged by attorneys of comparable
19 experience, reputation and ability for similar litigation. *See Chalmers v. City of Los*
20 *Angeles*, 796 F.2d 1205, 1210-11 (9th Cir. 1986). Specifically, Class Counsel request the
21 following rates:

Name	Position	Rates
Linda M. Dardarian	Partner	\$945
Amy Robertson	Co-Executive Director	\$895
Tim Fox	Co-Executive Director	\$895
Andrew P. Lee	Partner	\$750
Sarah Morris	Staff Attorney	\$520
Beth Holtzman	Associate	\$415

1	Scott G. Grimes	Senior Paralegal	\$325
2	Stuart Kirkpatrick	Paralegal	\$285
3	Marissa McGarry	Paralegal	\$265
4	Arielle Milkman	Paralegal	\$265
5	Ana Diaz	Paralegal	\$265
6	Sophie Breene	Paralegal	\$265

7 18. Reviewing Class Counsel's declarations, the Court also finds that the
8 1,266.80 hours expended by Class Counsel in investigating the case and negotiating,
9 settling, and obtaining court approval of the Consent Decree are reasonable.

10 19. Lashbrook's costs and out-of-pocket expenses are recoverable. *See* 42
11 U.S.C. § 12205; *Lovell v. Chandler*, 303 F.3d 1039, 1058 (9th Cir. 2002). Through July 7,
12 2020, Class Counsel incurred \$2,925.59 in documented litigation costs and expenses. The
13 declarations of Class Counsel and accompanying exhibits and the record in this case
14 demonstrate that these costs and expenses were reasonable and necessary for the pursuit
15 and resolution of this case.

16 20. Accordingly, the Court approves a total of \$725,253.09 in attorneys' fees,
17 costs, and litigation expenses.

18 21. In accordance with the terms of the Consent Decree, the Court reserves
19 exclusive and continuing jurisdiction over Lashbrook, the Settlement Class Members, the
20 City, and the Consent Decree throughout the term of the Consent Decree, for the sole
21 purpose of supervising the implementation, enforcement, construction, and interpretation
22 of the Consent Decree and this Judgment. In that regard, any challenges to the Consent
23 Decree's terms or implementation, whether under state or federal law, shall be subject to
24 the exclusive and continuing jurisdiction of this Court. All parties have consented to the
25 jurisdiction of a magistrate judge. *See* Dkt. Nos. 7, 9.

26 22. The Clerk is directed to enter this Judgment and terminate Case No. 20-cv-
27 01236-NC.

IT IS SO ORDERED.

Dated: September 2, 2020



NATHANAEL M. COUSINS
United States Magistrate Judge

United States District Court
Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28