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**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION**

ALLEN HINES, TESS RAUNIG, and
CAROLEZOOM, on behalf of themselves
and all others similarly situated,

Plaintiffs,

vs.

CITY OF PORTLAND,

Defendant.

Civil Action No. 3:18-cv-00869-HZ

**PLAINTIFFS' UNOPPOSED MOTION
FOR CLASS REPRESENTATIVES'
SERVICE AWARDS; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

CASE No. 3:18-cv-00869-HZ
PLS.' UNOPPOSED MTN. FOR SERVICE AWARDS AND MEM. P. & A.

I. MOTION

Plaintiffs move the Court to approve service awards of \$5,000 per person to Class Representatives Allen Hines, Tess Raunig, and CaroleZoom for their significant contributions to the Class in the investigation, negotiation, and resolution of this case pursuant to the Court's June 4, 2018 Order (1) Granting Preliminary Approval of Settlement; (2) Granting Certification of Settlement Class; (3) Directing Notice to the Class; and (4) Setting Date for Fairness Hearing. ECF No. 25. These awards are reasonable and appropriate given each Class Representative's time and effort in this matter, the substantial benefit they have conferred on the Class, and their release of claims that are not released by the Class. Defendant City of Portland ("the City") does not oppose the requested service awards.

II. FACTUAL BACKGROUND

Plaintiffs represent a class of "all persons (including residents of and/or visitors to the City of Portland) with any Mobility Disability, who, at any time prior to court judgment granting Final Approval to [the] Consent Decree have been denied full and equal access to the City'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" (the "Class"). Fox Decl., Ex. 1 ("Consent Decree") § II.R., ECF No. 12. This Court appointed each of the Plaintiffs as a Class Representative on June 4, 2018, after finding that each had claims typical of the claims of the Class and would fairly and adequately protect the Class' interests. Order ¶ 1, ECF No. 25.

Plaintiffs CaroleZoom and Tess Raunig began working on this case in February 2016 and Plaintiff Allen Hines in April 2016. Hines Decl. ¶ 2, filed herewith; Raunig Decl. ¶ 2, filed herewith; CaroleZoom Decl. ¶ 2, filed herewith. Plaintiffs each use a wheelchair or scooter for mobility and live in or visit Portland regularly. Hines Decl. ¶¶ 3-4; Raunig Decl. ¶¶ 3-4;

CaroleZoom Decl. ¶¶ 3-4. During the investigation stage of this case, Plaintiffs each spent many hours discussing with Class Counsel and identifying locations in the City's pedestrian right of way where curb ramps are missing, in disrepair, or otherwise insufficient for use by individuals with mobility disabilities. Hines Decl. ¶ 8 (estimating fifteen hours devoted to investigation); Raunig Decl. ¶ 9 (estimating six hours devoted to investigation); CaroleZoom Decl. ¶ 9 (estimating three hours devoted to investigation). Plaintiffs recalled specific instances in which their movement around the City or their social activity was impaired by the City's failure to upgrade and maintain the City's curb ramps. Hines Decl. ¶ 8; CaroleZoom Decl. ¶ 9; Raunig Decl. ¶ 9. Plaintiff CaroleZoom additionally provided Class Counsel with photographs indicating the geolocation of missing curb ramps and notes about each location. CaroleZoom Decl. ¶ 10 (estimating three hours). Plaintiffs also spent time reaching out and talking to other people with mobility disabilities in Portland about their experiences with the lack of accessible curb ramps and explaining the impact of the case. Hines Decl. ¶ 12 (estimating ten hours on outreach); Raunig Decl. ¶ 11 (estimating 2.5 hours on outreach); CaroleZoom Decl. ¶ 14 (estimating ten hours of outreach).

Plaintiffs have faced significant barriers in their personal and professional lives due to the inaccessible curb ramps in the areas in which they visit, live, and work. Hines Decl. ¶¶ 3-6; Raunig Decl. ¶¶ 4-6; CaroleZoom Decl. ¶¶ 4, 5. Plaintiffs are frequently inconvenienced by having to navigate these barriers and must backtrack or take different routes to get to their intended destinations, which wastes time and has caused them stress, fear, frustration, and anxiety. Hines Decl. ¶¶ 4-6; Raunig Decl. ¶ 6; CaroleZoom Decl. ¶ 6. Plaintiffs have also risked their physical safety and well-being when they encountered barriers—Plaintiffs have often been forced to travel in the street with vehicular traffic when they have been unable to access the

sidewalk or crosswalk because of curb ramps that are missing entirely or are non-compliant with disability access specifications. Hines Decl. ¶¶ 5-6; Raunig Decl. ¶¶ 4-6; CaroleZoom Decl. ¶¶ 5-6. Riding in the street causes Plaintiffs stress, and for Plaintiff CaroleZoom, riding in the street has caused her to suffer extreme anxiety. CaroleZoom Decl. ¶ 5. Plaintiffs have frequently risked tipping over and falling out of their wheelchairs when riding on curb ramps that are too steep, damaged, or have concrete lips that are too tall to navigate over. Hines Decl. ¶ 6; Raunig Decl. ¶ 4; CaroleZoom Decl. ¶ 6. On one occasion, Plaintiff Raunig pitched forward out of their (Plaintiff Raunig prefers to use gender-neutral pronouns) wheelchair and into the street because a curb ramp was broken, which continues to cause them anxiety when they use their wheelchair to navigate on sidewalks and crossings around Portland. Raunig Decl. ¶ 4. Plaintiffs are forced to avoid going to certain neighborhoods and feel isolated from their social networks and left out of social situations. Hines Decl. ¶ 6; Raunig Decl. ¶ 6. Plaintiff Raunig's depression and anxiety are exacerbated by their feeling of confinement due to the lack of mobility imposed by inaccessible curb ramps around Portland. Raunig Decl. ¶ 7.

Each Plaintiff and Class Representative brought this case in order to improve accessibility of the City of Portland's pedestrian right of way, on behalf of themselves and all other residents and visitors with mobility disabilities, through this action to substantially increase the number and location of accessible curb ramps around Portland. Hines Decl. ¶ 7; Raunig Decl. ¶ 8; CaroleZoom Decl. ¶ 8.

Plaintiffs have contributed significantly to the successful resolution of this case. In addition to their time investigating the case and working with Class Counsel to present these claims to the City, Plaintiffs participated in the initial negotiation session with the City on November 14, 2016, during which they provided details about the inaccessibility of the City's

pedestrian right of way, raised questions, and evaluated the City's settlement positions. Hines Decl. ¶ 9; Raunig Decl. ¶ 12; CaroleZoom Decl. ¶¶ 11-12. Plaintiffs were available and responsive by phone and email to answer Class Counsel's questions or to discuss the status of the negotiations throughout the sixteen-month negotiation of this settlement. Hines Decl. ¶ 9 (estimating total of twenty-five hours spent on traveling to, preparing for, and attending negotiation sessions); Raunig Decl. ¶ 12 (estimating total of twelve hours spent on traveling to, preparing for, and attending negotiation sessions); CaroleZoom Decl. ¶ 11 (estimating total of fifteen hours spent on preparing for and attending negotiation sessions).

Once the Parties reached a final settlement, Plaintiffs carefully reviewed the settlement terms to ensure that they were fair, adequate and reasonable and provided meaningful relief to the class throughout each year of the Consent Decree. Hines Decl. ¶ 10 (estimating five hours reviewing the Consent Decree and related documents); Raunig Decl. ¶ 13 (estimating one hour of reviewing the Consent Decree and related documents); CaroleZoom Decl. ¶ 13 (estimating five hours reviewing the Consent Decree and related documents). Plaintiffs Hines and CaroleZoom also submitted the names of disability rights organizations that represent or serve the interests of individuals with mobility disabilities to provide notice to the Settlement Class. Hines Decl. ¶ 10; CaroleZoom Decl. ¶ 13.

Plaintiffs Hines and Raunig, who are residents of Portland, attended in-person and testified at the May 16, 2018 Portland City Council meeting during which the Council voted to approve an ordinance approving the Consent Decree. Hines Decl. ¶ 11 (estimating six hours preparing for, traveling to, and attending meeting); Raunig Decl. ¶ 16 (estimating four hours preparing for, traveling to, and attending meeting). Though Plaintiff CaroleZoom lives out of state, she reached out to notify community members about the meeting so that they could attend

and provide feedback to the Council. CaroleZoom Decl. ¶ 14. Plaintiffs Hines and Raunig also spent time on a press statement for public outreach related to the settlement. Hines Decl. ¶ 10; Raunig Decl. ¶ 15.

Plaintiffs took their roles as Class Representatives seriously, staying up to date with Class Counsel through phone calls and emails about upcoming deadlines and the status of the case. Hines Decl. ¶ 13; Raunig Decl. ¶ 19; CaroleZoom Decl. ¶ 15. Plaintiffs continue to be available to assist in the implementation of the Consent Decree over the twelve years that it will be in effect. Hines Decl. ¶ 14; Raunig Decl. ¶ 21; CaroleZoom Decl. ¶ 17.

In total, Plaintiffs have spent nearly 140 hours investigating this case, working with Class Counsel on negotiation positions and strategy, involving their communities in this lawsuit and its resolution, and bringing this case to a successful resolution. Hines Decl. ¶ 14 (estimating 61 total hours); Raunig Decl. ¶ 20 (estimating 34 to 39 total hours); Zoom Decl. ¶ 16 (estimating 35-40 total hours). These numbers do not account for the many additional hours Plaintiffs will spend over the course of the next twelve years educating their communities about the Settlement and working with the City to resolve any issues that may arise.

Under the Consent Decree, the City has agreed to install, update, and maintain curb ramps over the next twelve years to make its pedestrian right of way readily accessible to individuals with mobility disabilities. Fox Decl. ¶¶ 29, 31. The Consent Decree provides that Plaintiffs could apply for service awards for up to \$5,000 each. Consent Decree § VI.A. In exchange, Plaintiffs agreed to a general release of injunctive relief and their individual damages claims against the City, whereas the class members preserve their damages claims. *Id.* at § VII.A & C. Specifically, the release states in relevant part that all class members, including the Named Plaintiffs:

Effective upon entry of judgment on Final Approval of the Consent Decree by the District Court and in consideration for the City's commitments set forth in the Consent Decree, each of the Plaintiffs and Class Members, on behalf of themselves and their respective heirs, assigns, successors, executors, administrators, agents, and representatives ("Releasing Parties") will, upon the Effective Date, fully and finally release, acquit, and discharge the City from any and all claims, allegations, demands, charges, complaints, actions, lawsuits, rights, liabilities, losses, injuries, obligations, disputes and causes of action of any kind, and whether known or unknown, suspected or unsuspected, asserted or unasserted, or actual or contingent, for injunctive, declaratory, or other non-monetary relief, however described, that were brought, could have been brought, or could be brought now or in the future by the Releasing Parties relating to or arising from any of the City's alleged actions, omissions, incidents, or conduct related to the installation, remediation, repair, or maintenance of curb ramps in the City's pedestrian right of way at any time prior to the Effective Date and through the end of the Term of the Agreement (the "Released Claims").

Id. at § VII.A. The release includes only claims related to curb ramps and does not release claims related to the City's sidewalk system other than curb ramps. *Id.* at § VII.B. In addition to the injunctive relief claims that all Class Members release, Named Plaintiffs additionally release their damages claims. *Id.* at § VII.C.

These service awards were negotiated after the parties resolved all injunctive relief issues in the Consent Decree. Dardarian Decl. in Supp. of Pls.' Mot. for Award of Reasonable Attorneys' Fees, Costs, & Expenses ("Dardarian Decl.") ¶ 35. The City does not oppose these awards. *Id.*

Without Plaintiffs' time and effort dedicated to gathering and presenting evidence and coming forward to represent the interests of all persons with mobility disabilities who seek full and equal access to Portland's pedestrian right of way, the Parties may not have reached such an excellent result for the Class.

III. THE SERVICE AWARDS ARE REASONABLE AND SHOULD BE APPROVED.

Plaintiffs request reasonable service awards in the amount of \$5,000 to each of the three Class Representatives to compensate them for their time and effort representing the Class and

achieving positive results on behalf of the Class and to compensate for their general release of claims.

Service awards, or incentive awards, are typical in class action cases. *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009). These awards “are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and sometimes, to recognize their willingness to act as a private attorney general.” *Id.*

The requested service awards are well within the range of awards approved in class action settlements. *See, e.g., In re Mego Fin. Corp. Sec. Lit.*, 213 F.3d 454, 457, 463 (9th Cir. 2000) (affirming a district court’s grant of an incentive award of \$5,000 to each plaintiff for a \$1.725 million settlement); *Hetherington v. Omaha Steaks, Inc.*, No. 3:13-cv-02152-SI, 2016 WL 4374947, at *3 (D. Or. Aug. 12, 2016) (awarding \$10,000 as a service award to the class representative); *In re Galena Biopharma, Inc. Sec. Litig.*, Nos. 3:14-cv-00367-SI, 3:14-cv-00382, 2016 WL 3457165, at *12 (D. Or. June 24, 2016) (approving \$5,000 service awards for four named plaintiffs in one action and two named plaintiffs in the other); *Clifton v. Babb Const. Co.*, No. 6:13-cv-1003 MC, 2014 WL 5018897, at *3 (D. Or. Oct. 1, 2014) (approving service awards of \$4,500 to three named plaintiffs and \$6,500 to the lead named plaintiff).

In exercising its discretion to grant an incentive award, a district court will consider “the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, [and] the amount of time and effort the plaintiff expended in pursuing the litigation.” *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003) (ellipses and citation omitted).

Plaintiffs spent considerable time in the investigation of this case, detailing for Class Counsel the numerous ways the City's failure to maintain curb ramps had impaired their ability to move throughout the City. Hines Decl. ¶ 8; Raunig Decl. ¶ 9; CaroleZoom Decl. ¶ 9. Plaintiffs have been actively involved at each step of the case for over two years, from investigation to negotiation to approval of the Consent Decree. Hines Decl. ¶¶ 7-14; Raunig Decl. ¶¶ 8-21; CaroleZoom Decl. ¶¶ 8-16. As a result of Plaintiffs' efforts, the City will be required to build or fix 1,500 curb ramps per year for the next twelve years where it had previously only addressed about 750 ramps per year—a spectacular result for the Class, valued at approximately \$113 million. *See* Consent Decree § V.C.4; Dardarian Decl. ¶ 10.

In exchange for their service awards, Plaintiffs have agreed to release specified claims against the City. Consent Decree § VII. Unlike the rest of the class, Plaintiffs agreed to release any claims for monetary relief against the City arising from the subject of the lawsuit, including any damages claims that arise under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973. *See* Consent Decree § VII.C. *See also A.G. v. Paradise Valley Unified Sch. Dist. No. 69*, 815 F.3d 1195, 1204 (9th Cir. 2016) (damages available under Title II of the ADA and Section 504 where plaintiff demonstrates that defendant knew that a harm to plaintiff's federally protected rights is substantially likely but failed to act on that knowledge). Plaintiffs' additional release of claims for damages supports their requested service awards. *See Willner v. Manpower Inc.*, No. 11-cv-02846-JST, 2015 WL 3863625, at *9 (N.D. Cal. June 22, 2015) (factoring into the approval of a \$7,500 incentive award the broad general release the named plaintiff signed); *Boring v. Bed Bath & Beyond of Cal. L.L.C.*, No. 12-cv-05259-JST, 2014 WL 2967474, at *3 (N.D. Cal. June 30, 2014) (approving a \$7,500 incentive

award where the named plaintiff traveled to and attended the mediation that resulted in settlement and signed a general release broader than the release that applies to the class).

Plaintiffs' requested service awards are reasonable in light of the time and effort they have expended on this case, the risks they assumed as named plaintiffs, the excellent results they achieved on behalf of the Class, their general release of claims, and the awards granted to plaintiffs in similar cases.

IV. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that this Court award Plaintiffs Hines, Raunig, and CaroleZoom with service awards of \$5,000 each.

Dated: July 24, 2018

Respectfully submitted,

s/Linda M. Dardarian

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