

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-03111-CMA-KLM

JULIE REISKIN, et al.,

Plaintiffs,

v.

REGIONAL TRANSPORTATION DISTRICT,

Defendant.

**REPORTER'S TRANSCRIPT
(Fairness Hearing)**

Proceedings before the HONORABLE CHRISTINE M. ARGUELLO, Judge, United States District Court, for the District of Colorado, commencing at 2:00 p.m. on the 10th day of July, 2017, Alfred A. Arraj United States Courthouse, Denver, Colorado.

A P P E A R A N C E S

FOR THE PLAINTIFFS:

KEVIN W. WILLIAMS and ANDREW C. MONTOYA, Colorado Cross-Disability Coalition Legal Program, 1385 S. Colorado Boulevard, Suite 610-A, Denver, CO 80222
AMY FARR ROBERTSON, Civil Rights Education & Enforcement Center, 104 Broadway, Suite 400, Denver, CO 80203

FOR THE DEFENDANT:

JESSICA L. FULLER and MICHAEL D. PLACHY, Lewis Roca Rothgerber Christie LLP - Denver, 1200 17th St., One Tabor Center, Suite 3000, Denver, CO 80202
JENNIFER M. ROSS-AMATO, Regional Transportation District - Department of General Counsel, 1600 Blake St., Denver, CO 80202

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JULY 10, 2017

(Proceedings commence at 2:00 p.m.)

THE COURT: You may be seated.

Court calls Civil Action No. 14-cv-03111-CMA,
encaptioned Julie Reiskin, et al v. Regional
Transportation District.

Counsel, would you please enter your appearances.

MR. WILLIAMS: Good afternoon, Your Honor. I am
Kevin Williams, on behalf of the plaintiffs. And with me
at counsel table is Amy Robertson, of the Civil Rights
Education and Enforcement Center, and Andrew Montoya, with
my office. And our legal assistant.

And, Your Honor, if it is okay with the Court, may
I address all of my argument from counsel table?

THE COURT: You may.

MS. FULLER: Good afternoon, Your Honor, Jessica
Fuller appearing on behalf of the defendant, Regional
Transportation District. And with me at counsel table is
Jennifer Ross-Amato, Deputy General Counsel for RTD, and
also Michael, from my office, appearing for the defendant.

THE COURT: All right. Good afternoon.

Well, we are here today for the final fairness
hearing in this case. And I have before me the unopposed
motion for an order to grant the Plaintiffs' Motion for
Final Approval of Class Action Settlement Agreement and

1 the unopposed motion for attorney fees.

2 For purposes of building the record, I'd like to go
3 through some of the history. And, you know, essentially,
4 because there has been a lot of work performed in this
5 case, I think it just makes it more interesting, so I am
6 going to go through some of the history.

7 2-and-a-half years ago, November of 2014,
8 plaintiffs, who are individuals who used wheelchairs for
9 mobility, and the Colorado Cross0Disability Coalition, or
10 CCDC, filed suit against the Regional Transportation
11 District, or RTD, alleging violations of Title II of the
12 ADA and Section 504 of the Rehabilitation Act with regard
13 to the RTD's light rail operations.

14 Specifically, plaintiffs allege that the RTD
15 violated requirements set forth under the ADA and Section
16 504 governing the design and construction of light rail
17 vehicles, which I will refer to as LRVs, as they are used
18 by individuals with disabilities who employ wheelchairs
19 and mobility devices.

20 Plaintiffs further allege that RTD failed to
21 properly instruct and train its LRV operators to follow
22 regulatory instructions regarding asking passengers to
23 move from the wheelchair and mobility device locations, as
24 set forth in the regulation.

25 A number of Motions to Dismiss and a Motion for

1 Summary Judgment were filed in this case, but all were
2 denied without prejudice when the parties represented to
3 this Court that they had reached a settlement.

4 After reaching a settlement agreement, the parties
5 filed their unopposed motion to certify the class and for
6 preliminary approval of class settlement agreement on
7 November 14, 2016.

8 In April of this year, the Court granted the
9 motion, preliminarily certified the class, and approved
10 the settlement agreement, and set today's final fairness
11 hearing. The Court further ordered that the parties'
12 proposed notice procedures set forth in the preliminary
13 agreement commence on or before April 17, 2017.

14 The preliminary agreement certified by the Court
15 defines the class as "All persons in Colorado who are
16 qualified individuals with disabilities who use
17 wheelchairs, as that term is defined by 49 C.F.R. Section
18 37.3, and who have used, currently used, or may in the
19 future use the Regional Transportation District's light
20 rail service.

21 According to the parties' motion for final
22 approval, notice was mailed, e-mailed, and posted in
23 accordance with the Court's order and the agreement. The
24 notice provided that any request for exclusion regarding
25 damages were to be provided on or before May 17, 2017, and

1 that objections to the settlement were required to be
2 filed with the Court on or before June 16, 2017.

3 As I understand it, no requests for exclusion from
4 the damages provision were received before or after May
5 17, 2017. Is that correct?

6 MR. WILLIAMS: That is correct, Your Honor.

7 THE COURT: All right. The parties have not -- you
8 did indicate, I had in here, the parties have indicated
9 that notification was, indeed, provided to the United
10 States Attorney General and to the Attorney General for
11 the State of Colorado pursuant to the *Class Action*
12 *Fairness Act*, 28 United States Code Section 1715(b).

13 And I asked you to bring proof of that here. So I
14 don't need -- I just need to make sure it is clear on the
15 record. If you could just state on the record what notice
16 was provided.

17 MS. FULLER: Absolutely, Your Honor. Notice was
18 timely provided under CAFA, which requires that notice
19 goes out within 10 days of the motion for preliminary
20 approval. So it was actually last November of 2016, I
21 believe November 21st, to be specific, where notice was
22 provided.

23 The enclosures are quite voluminous for each
24 notice, which is why they weren't physically filed in
25 connection with the motion for final approval. But they

1 are here, to the extent the Court would like them.

2 THE COURT: I just wanted to make sure we had that
3 on the record.

4 MS. FULLER: I will also add, Your Honor, no
5 response of any kind, no objection or other response or
6 inquiry was received in response to these notices.

7 THE COURT: All right. Very good.

8 Well, the settlement agreement, itself, provides a
9 comprehensive scheme for injunctive relief which requires
10 the RTD to retrofit 172 light rail vehicles so that all
11 existing light rail vehicles are retrofitted within 5
12 years of the final settlement date to make them more
13 accessible to individuals who use wheelchairs and mobility
14 devices.

15 RTD is also to provide a status report to class
16 counsel on the progress of this conversion. Certain
17 representatives of the plaintiffs and the class counsel
18 may view retrofitted LRVs within 12 months from the final
19 settlement date to take measurements and photographs to
20 assess the compliance.

21 RTD will also ensure that the next 29 LRVs added to
22 its service after execution of this agreement will provide
23 greater accessibility than the current vehicles set forth
24 in Exhibit C to the agreement.

25 RTD shall also have a policy directing that

1 operators providing light rail service shall not
2 discriminate against riders who use wheelchairs or other
3 mobility devices. And the policy will provide training
4 and retraining of its light rail operators, supervisors of
5 light rail operators, and light rail controllers, and a
6 representative of the CCDC will have an opportunity to
7 review the training material.

8 The parties have also agreed to a pre-litigation
9 procedure, which any named plaintiff or any settlement
10 class member must comply with prior to initiating
11 litigation against the RTD.

12 As part of the pre-litigation framework, RTD will
13 establish a unique e-mail address to receive and respond
14 to written notices from persons who believe they have a
15 legal claim against RTD regarding accessibility for
16 individuals who use wheelchairs or mobility devices.

17 Additionally, the parties agree to quarterly
18 meetings to promote a constructive dialog concerning
19 issues related to the ADA concerning light rail services.

20 This hearing was set to make the final
21 determination as to, one, whether this action satisfies
22 the applicable prerequisites for class action treatment
23 under Rule 23 of the Federal Rules of Civil Procedure.

24 Two, whether the proposed settlement is fair,
25 reasonable, and adequate, and should be approved by this

1 Court.

2 Three, whether plaintiffs and counsel for
3 plaintiffs have adequately represented the settlement
4 class for purposes of entering into and implementing the
5 settlement.

6 Four, whether the final order and judgment
7 approving class action should be entered, dismissing the
8 action on the merits and with prejudice.

9 Five, whether the notice and the notice methodology
10 implemented pursuant to the settlement agreement
11 constitutes the best practice notice -- I am sorry, the
12 best practicable notice, and it was notice that was
13 reasonably calculated under the circumstances to apprise
14 class members of the pendency of this action and their
15 rights to object and their right to appear at this
16 hearing.

17 Whether the methodology was reasonable and
18 constituted due adequate sufficient notice to all persons
19 entitled to receive notice and met all applicable
20 requirements of the Federal Rules of Civil Procedure, the
21 United States Constitution, and the rules of the court and
22 any other applicable laws.

23 And, finally, whether the Court should approve the
24 attorney fees which were agreed upon in the settlement.

25 I do intend to address these issues, but in a

1 slightly different order than the ones I just stated. So
2 that you have a roadmap, first I am going to examine
3 whether Rule 23 requirements are met. Then I am going to
4 discuss the notice procedures and the terms of the
5 settlement before moving on to plaintiffs' motion for
6 attorney fees.

7 And during my iteration of this hearing, I will be
8 stopping to ask questions and to have you flesh out the
9 record just a bit more so we have a complete record.

10 So, with respect to final determination as to
11 Federal Rule of Civil Procedure 23(a), this Court is
12 required to make a final determination as to whether the
13 class certification is appropriate under Rule 23(a). That
14 rule provides that one or more members of the class may
15 sue or be sued as representative parties on behalf of all
16 members only if four factors; numerosity, common questions
17 of law or fact, typicality, and fair and adequate
18 representation by the representative party are met.

19 The parties must show that this case falls into one
20 of the three categories set forth in Rule 23(b), and the
21 Court finds that each of these factors have been met on
22 the record before this Court.

23 With respect to the first 23(a) factor, in this
24 case it is met. The parties must show that the class is
25 so numerous that joinder of all members is impracticable.

1 Plaintiffs have described a putative class that could
2 number into the tens of thousands.

3 Second and third, there are numerous questions of
4 law or fact common to the class, and the claims of the
5 representative plaintiffs are typical of the claims of the
6 class. Specifically, some of the claims involve whether
7 the access to and usability of the accessible seating areas
8 of the existing LRVs meets the requirements of the ADA and
9 Section 504.

10 Whether the access to the planned new LRVs will
11 meet the requirements of the ADA and Section 504.

12 Whether RTD policy regarding ensuring access for
13 class members to the accessible seating areas complies
14 with the ADA and Section 504.

15 Finally, the representative party is required to
16 "fairly and adequately protect the interests of the
17 class." In the Tenth Circuit, the adequacy of
18 representation depends on resolution of two questions.
19 First, do the named plaintiffs and their counsel have any
20 conflicts of interest with other class members? And,
21 second, will the named plaintiffs and their counsel
22 prosecute the action vigorously on behalf of the class?

23 The representative plaintiffs in this case do have
24 common interests with members of the putative class.
25 Representative plaintiffs are long-time Denver residents

1 who use wheelchairs and other mobility aids. The
2 representative plaintiffs are all users of RTD's light
3 rail service on a regular basis. Many use public
4 transportation as their only means of getting around the
5 city. They are all members of the proposed class, and
6 they seek a common remedy, which will be provided through
7 the actions required of RTD in the settlement agreement in
8 this case.

9 The Court discerns that there is no conflict of
10 interest among these representatives. As for the adequacy
11 of class counsel's representation, plaintiffs' counsel are
12 experienced in the field of disability rights litigation,
13 and have litigated and worked on class actions in the
14 past, including those with monitoring provisions and the
15 type of dispute at issue here.

16 Regarding the requirements of 23(b), this case was
17 initially certified under Rule 23(b)(3), which allows for
18 class certification if "the Court finds that the questions
19 of law or fact common to the member of the class
20 predominate over any questions affecting only individual
21 members, and that a class action is superior to other
22 available methods for the fair and efficient adjudication
23 of the controversy."

24 Where common questions "predominate," a class
25 action can achieve economies of time, effort, and expense

1 as compared to separate lawsuits; permit adjudication that
2 cannot be economically litigated on an individual basis,
3 and avoid inconsistent outcomes.

4 Plaintiffs meet Rule 23(b)(3)'s predominance
5 requirement for the same reasons they meet the commonality
6 and typicality requirements; namely, the questions of law
7 or fact common to the members of this class predominate
8 over individual issues.

9 Additionally, a class action is a superior method
10 to adjudicate this case. No class member has demonstrated
11 an interest in prosecuting a claim individually. There
12 are no other cases against defendant involving the issues
13 presented in this case by a proposed class member, and
14 this forum is desirable, as the proposed class contains
15 Colorado residents only, and the facts are very
16 straightforward.

17 So now I can move on to the discussion of the
18 adequacy of the notice provided to the class members, as
19 well as the fairness, adequacy, and reasonableness of the
20 settlement terms.

21 For classes certified under Rule 23(b)(3),
22 Subsection (c)(2)(B) requires the Court to direct class
23 members the best notice that is practicable under the
24 circumstances, including individual notice to all members
25 who can be identified through reasonable effort.

1 The notice must clearly and concisely state in
2 plain, easily understood language, the nature of this
3 action; the definition of the class certified; the class
4 claims, issues, or defenses; that a class member may enter
5 an appearance through an attorney if it desires; that the
6 Court will exclude from the class any member who requests
7 exclusion; the time and manner for requesting exclusion;
8 and the binding effect of the class judgment on -- binding
9 effect of a class judgment on members under Rule 23(c)(3).

10 This Court has reviewed the substance of the Notice
11 to ensure that it complied with this rule and provided
12 sufficient information regarding the terms of the
13 settlement, including proposed payments to lawyers, the
14 right to hiring of an independent attorney, and the
15 consequences of participating, opting out, or objecting to
16 the settlement.

17 The Notice plan was executed in accordance with
18 this Court's order, and the class members had over a month
19 to lodge objection. The Court finds that the objection
20 window afforded more than enough time to allow class
21 members to respond to the notice.

22 In determining whether notice to a class member
23 comports with due process, actual notice to each party
24 intended to be bound by the adjudication of the action is
25 not required. Rather, the Court's inquiry focuses on

1 whether the class members were provided with the best
2 notice practicable under the circumstances, including
3 individual notice to all members who can be identified
4 through reasonable effort.

5 Ultimately, this Court must ensure that the notices
6 mailed to class member "were sufficient to flush out any
7 objections that might arise to the fairness of the
8 settlement."

9 The Court finds that the notice mechanism here
10 complied with Rule 23's requirements, as it was the "best
11 notice practicable under the circumstances," and the
12 parties met their obligation to identify all of the class
13 members they could through "reasonable effort."

14 Defendant mailed and e-mailed the notice to ten
15 disability rights organizations throughout Colorado,
16 requesting that they post it widely. Plaintiff CCDC and
17 co-counsel CREEC, posted the notice on their respective
18 websites and distributed through their e-mail alert
19 systems. RTD also posted notice on its website and at the
20 light rail stations and ticket sales outlets in conformity
21 with the Agreement and this Court's Order.

22 The Court believes that all of these efforts to
23 locate disabled RTD riders were reasonably calculated to
24 apprise the class members of their right to participate or
25 object to the proposed settlement, and their right to

1 appear at the final fairness hearing today. The notice
2 and notice plan were thus adequate under the circumstances
3 and do satisfy the requirements of Federal Rule of Civil
4 Procedure 23(e) and due process.

5 With respect to the settlement terms, the authority
6 to approve a settlement of a class action is within the
7 trial court's discretion. Rule 23(e)(2) of the Federal
8 Rules of Civil Procedure provides that the parties must
9 show that the proposed class action settlement is "fair,
10 reasonable, and adequate."

11 In assessing whether a proposed settlement is fair,
12 reasonable, and adequate, the Court considers a number of
13 things, including the following: Whether the proposed
14 settlement is fairly and honestly negotiated. Whether
15 serious questions of law and fact exist, placing the
16 ultimate outcome of the litigation in doubt. Whether the
17 value of an immediate recovery outweighs the mere
18 possibility of future relief after protracted and
19 expensive litigation. And, finally, the judgment of the
20 parties that the settlement is fair and reasonable.

21 That is from Rutter & Wilbanks Corp v. Shell Oil
22 Company, 314 F.3d 1180, Tenth Circuit, 2002.

23 The Motion for Preliminary Approval, as well as the
24 Motion for Final Approval, indicates that the parties
25 "vigorously litigated" this matter for nearly 3 years

1 prior to reaching a settlement, including engaging in
2 extensive discovery, filing and defending numerous
3 dispositive motions.

4 I do have a few questions, and this is where I
5 would like for you all to supplement the record. Some of
6 this you have already discussed in the Motion for
7 Preliminary and Final Approval, but I like to put those on
8 the record. So some of the questions -- and I will let
9 you all decide how you want to take it.

10 Who conducted or led the negotiations for this
11 settlement?

12 How were those negotiations conducted, and over
13 what period of time?

14 Were attorney fees negotiated separately from the
15 class relief?

16 What other discovery would you need if you took
17 this case to trial?

18 Are there outstanding uncertainties?

19 Is there anything else that you want to add to the
20 record about the nature of the settlement negotiations?

21 So, with that, I will leave it to whomever wishes
22 to take the lead.

23 MR. WILLIAMS: Thank you, I will go ahead, Your
24 Honor.

25 Settlement negotiations started -- honestly, the

1 time frame was a little odd. I had some health
2 conditions. And Amy Robertson, thankfully was able to
3 join Andrew Montoya in the beginning settlement
4 negotiations. And I believe at that same time, and
5 perhaps you can -- opposing counsel can provide me with
6 the date, but RTD hired an outside firm. And at that time
7 settlement negotiations continued in earnest.

8 We had tried prior to that to mediate the case
9 unsuccessfully. As the Court knows, numerous motions were
10 filed, I think, on both sides. And we were unsuccessful.
11 And I think at the time that Mr. Montoya, Ms. Robertson,
12 and the outside firm for RTD met, then the case really
13 shifted from litigation to settlement negotiations.

14 So the settlement negotiations went on for -- I
15 apologize, I will ask my co-counsel, if I may --

16 THE COURT: You may.

17 MR. WILLIAMS: -- to just speak to the time frame,
18 if you can.

19 MS. ROBERTSON: So I got involved early in January
20 of 2016, and we met almost immediately after that time and
21 sort of set up the framework for settlement. We first
22 entered into a Memorandum of Understanding that guided us
23 through the rest of the settlement process. So the
24 parties agreed on the basic pieces of it.

25 And then from that point to signature was still

1 another 6 to 8 months of fine tuning the settlement and
2 getting everyone on board. So the settlement process,
3 itself, was fairly lengthy.

4 THE COURT: All right.

5 MR. WILLIAMS: I would say, I don't know if I have
6 all of your questions in order, but I will do my best.

7 The injunctive relief -- I think this is one of the
8 most important aspects of the settlement agreement, and it
9 is an important aspect in any settlement agreement we
10 participate in. The injunctive relief portion of the
11 agreement was all managed, resolved, and settled prior to
12 any discussion of the attorney fees at all.

13 And, so, as far as monetary amounts goes, that was
14 taken care of, settled, resolved prior to attorney fees.

15 THE COURT: If you went to trial, what would be
16 some of the outstanding uncertainties?

17 MR. WILLIAMS: At this point, the issues really
18 were legal, I think, and pending before the Court. Both
19 sides had motions.

20 THE COURT: It was just taking up my time.

21 MR. WILLIAMS: Lots of your time, probably. And,
22 really, I think it was our view, both sides' view, and
23 that is part of why, when there were serious legal issues
24 in doubt, as there were, we both took very separate
25 positions on that issue.

1 And, so, that is probably one of the most important
2 factors considering whether this case -- whether this
3 settlement is fair, adequate, and reasonable. We would
4 have -- you would have been reviewing and ruling on a
5 large number of motions.

6 Additional questions, I am sorry?

7 THE COURT: Do you have any additional information
8 you would like to put on the record?

9 MR. WILLIAMS: I think -- I guess I want to say, on
10 behalf of plaintiffs' counsel, the plaintiffs in this
11 case, the class members and everyone involved, the most
12 important thing that is happening as a result of this
13 settlement agreement is that the LRVs, as we have all come
14 to know them, will be made accessible or more accessible
15 than they are now.

16 I think that is the most important thing to our
17 class members. And we thank RTD for agreeing to do that.

18 THE COURT: Ms. Fuller?

19 MS. FULLER: Yes, Your Honor. We will just briefly
20 confirm what you've already heard from plaintiffs'
21 counsel. We did become involved in this case in January
22 of 2016, around the same time Ms. Robertson did. Prior to
23 that, the parties had participated in mediation, and it
24 was unsuccessful. And then counsel picked up where that
25 discussion left off, and through an arms-length

1 negotiations, which were detailed, in person, many
2 redlines exchanged by e-mail, conferences by phone, and
3 additional meetings, we put together the settlement over
4 several months in that fashion.

5 The fees were absolutely negotiated separately. We
6 made sure all benefits to the class were nailed down and
7 agreed upon before we entered phase two of these
8 negotiations.

9 In addition, I will just echo what you have already
10 heard, which is the dispositive motions, I think,
11 reflected there were still significant uncertainties in
12 the case and differing opinions on key issues of liability
13 and legal questions that were uncertain should the case
14 have proceeded to trial.

15 THE COURT: All right. Very good.

16 Well, the Court is satisfied that this settlement
17 was the product of real arms-length negotiations of
18 experienced counsel who were well versed in the legal and
19 factual issues presented by this case, and that there was
20 no collusion. Accordingly, this factor weighs in favor of
21 approval of the settlement.

22 Second, the presence of serious questions of law or
23 fact argues in favor of settlement because settlement does
24 create a certainty of some recovery. The Court finds that
25 such questions did exist in this case. And I really thank

1 you all for settling this, because I was looking at
2 spending, you know, literally probably hundreds of hours
3 trying to figure out which is the way to go with this,
4 because I think it is a very novel -- there are very novel
5 issues involved.

6 There are no published decisions regarding the
7 design or construction of LRVs. Plaintiffs raised novel
8 issues concerning the obligations of LRV operators with
9 respect to requesting individuals who are in the
10 designated wheelchair and mobility aid areas to move when
11 an individual using a wheelchair or mobility aid boards
12 the vehicle and whether the signage was appropriate.

13 All of these issues appear to be untested in other
14 jurisdictions, as well. So I think you may be leading the
15 way on this. And so these were novel issues.

16 The defendant's efforts at having this case
17 dismissed, decided on summary judgment, and its use of
18 expert witness testimony, demonstrates its strong belief
19 that plaintiffs' positions were not correct on those
20 issues because they were novel and not interpreted
21 elsewhere.

22 With respect to the third factor; whether the value
23 of the immediate recovery outweighs the mere possibility
24 of future relief after protracted and expensive
25 litigation. The Court finds that in light of the risks of

1 further litigation, the value of this immediate recovery
2 outweighs the mere possibility of future relief.

3 Following settlement, the defendant has agreed to
4 retrofit all existing LRVs. This will be completed no
5 later than 60 months from final settlement date, on a
6 schedule set forth in the agreement. Had the parties
7 tried this case before this Court on the question of
8 accessibility of the LRVs, it could have taken
9 significantly longer before this case would be resolved.

10 And although in my court we make every attempt, and
11 we generally succeed in getting cases tried quickly,
12 inevitably, even if the class members were to have
13 prevailed at trial, there is a possible appeal, so
14 resolution could be actually delayed for years.

15 This settlement serves the interest of the class.
16 Although there is no financial recovery here, the
17 injunctive relief agreed to by RTD is substantial and will
18 go a long way toward providing the accommodations that
19 every RTD rider deserves.

20 On the fourth issue, whether the parties believe
21 the settlement was fair and reasonable, this is an element
22 that the Courts provide considerable weight to the
23 judgment of experienced counsel in making that
24 determination.

25 The Court believe such deference is warranted in

1 this case because the parties have submitted evidence
2 regarding their extensive experience, particularly in the
3 disability rights arena, as well as evidence indicating
4 that they had obtained a thorough understanding of the
5 strengths and weaknesses of this case through motions
6 practice, discovery, and their past experience with
7 similar cases.

8 It also is notable that no class member has
9 objected to the settlement. The attitude of absent class
10 members, expressed either directly or indirectly by their
11 failure to object after notice or high level of
12 participation in the proposed settlement program, is an
13 additional factor on which district courts may place
14 emphasis in determining fairness.

15 It is proper, in my mind, "to take the bird in the
16 hand instead of a prospective flock in the bush,"
17 particularly when that flock might disappear given the
18 real litigation risks in this case. Therefore, the Court
19 concludes that the terms of this settlement are fair,
20 reasonable, and adequate.

21 That brings us to the attorney fees. Rule 23(h)
22 permits a court to award reasonable attorney fees and
23 non-taxable costs that are authorized by the parties'
24 agreement. Here, the parties have settled for a specific
25 amount of attorney fees and costs; \$375,000, to be

1 disbursed in three payments.

2 Nonetheless, even though there is an agreement, the
3 Court is required under CAFA to evaluate whether this
4 represents a reasonable attorney fee. In cases in which
5 the prevailing party does not obtain a common fund, but
6 the fees are otherwise authorized by the statute, the
7 primary method used in by courts in assessing attorney
8 fees award is the lodestar approach.

9 Plaintiff does have the burden to show that all
10 hours for which compensation is requested would be
11 reasonably billed to a paying client.

12 Under the Tenth Circuit precedent, the Court
13 analyzes 12 factors, which I will not go through. You all
14 are very familiar with them. I am very familiar with
15 them.

16 I will say here that plaintiffs' counsel submitted
17 detailed billing records and affidavits describing the
18 experience of the attorneys who worked on this dispute and
19 what was actually done and how much time was devoted
20 thereto.

21 This Court has reviewed the entirety of that record
22 in detail and has no trouble concluding that the hours
23 billed and the rates billed are reasonable. The lodestar
24 calculation actually would be almost twice what was agreed
25 to; \$673,000 -- actually, \$673,875.92.

1 So, an award of \$375,000 represents a substantial
2 discount, especially in light of the complexity of the
3 issues in this suit, the length of the litigation, the
4 novelty of the legal issues, and the relative
5 undesirability of the case on one side, and the excellence
6 of the outcome achieved on behalf of the class.

7 And I will tell you, and I don't get to say this
8 often -- and I think I have this reputation as being the
9 ogre of judges when it comes to attorney fees. Because
10 some will come before me and I say, wait a minute, that
11 seems overbearing.

12 I want to tell you -- I want to thank you for
13 submitting what I consider to be such a reasonable request
14 for attorney fees. You all did a tremendous job here, and
15 you didn't overreach trying to gain something. You just
16 did an excellent job, and I wanted to thank you for that.

17 MR. WILLIAMS: Thank you, Your Honor.

18 THE COURT: So, consistent with the record, I am
19 going to enter the parties' proposed final order approving
20 the settlement, which will be docketed immediately
21 following this hearing.

22 I don't know if you have anything else you would
23 like to put on the record.

24 MR. WILLIAMS: Your Honor, on behalf of plaintiffs,
25 we do not. And I thank you very much, for you completely

1 destroyed my entire outline.

2 THE COURT: I am sorry.

3 MS. FULLER: Thank you very much, Your Honor.

4 Thank you for your time. An thank you to the plaintiffs
5 and plaintiffs' counsel for the cooperation and hard work
6 putting this deal together.

7 THE COURT: Very good. Well, I would love to have
8 you -- I like to welcome people to my courtroom. I don't
9 see you all very often. I still have about 20 minutes
10 before my next hearing, but I would like to invite you
11 back to chambers. That is sort of my way of reaching out
12 my hand to you and welcoming you to my courtroom.

13 And so even though the case is over, I would like,
14 if you wish to come back, I would invite you to come back
15 to chambers and just talk, when I am not sitting up here
16 on the throne, with my black robe on, and we can talk,
17 people to people.

18 MR. WILLIAMS: Your Honor, may I ask if Julie
19 Reiskin and Douglas Howey, the class representatives may
20 also come back?

21 THE COURT: They may come back. That is fine.

22 So I look forward to seeing you all after the
23 break.

24 (Proceedings conclude at 2:33 p.m.)

25

R E P O R T E R ' S C E R T I F I C A T E

I, Darlene M. Martinez, Official Certified Shorthand Reporter for the United States District Court, District of Colorado, do hereby certify that the foregoing is a true and accurate transcript of the proceedings had as taken stenographically by me at the time and place aforementioned.

Dated this 15th day of July, 2017.

s/Darlene M. Martinez

RMR, CRR