IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

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

JULIE REISKIN et al. on behalf of themselves and others similarly situated,

Plaintiffs,

v.

REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado,

Defendant.

PLAINTIFFS' UNOPPOSED MOTION FOR REASONABLE ATTORNEYS' FEES AND COSTS

Plaintiffs, by and through their counsel, respectfully submit this Unopposed Motion for Reasonable Attorneys' Fees and Costs.

This class action was preliminarily approved by this Court on April 3, 2017 (Doc. #155). That settlement agreement stated: "Subject to Court approval, RTD agrees to pay Class Counsel the following amounts, inclusive of all attorneys' fees, costs, expenses, and gross receipts tax: $125,000 within thirty (30) calendar days of the Final Settlement Date; $125,000 by no later than March 1, 2018; and $125,000 by no later than March 1, 2019." As demonstrated by the attached timesheets (attached to the Declarations of Kevin W. Williams and Amy

Robertson), the time Class Counsel devoted to this case through Final Approval far exceeds the total amount Class Counsel agreed to in settlement. This Motion respectfully requests that this Court approve an award of fees and costs for the agreed-upon amount and in the installments as set forth in the Settlement Agreement ("Agreement") pursuant to Federal Rules of Civil Procedure 23(h) and 54(d)(2). Pursuant to D.C.COLO.LCivR 7.1(a), counsel for Plaintiffs has conferred in good faith with counsel for Defendant and is authorized to state that Defendant does not oppose the relief requested herein, specifically the award of fees and costs to Class Counsel in the amount of $375,000 per the terms and conditions in the Agreement.

Overview

On October 18, 2014, Plaintiffs brought this class action lawsuit challenging the size, locations, and maneuvering clearances of seating for passengers who use wheelchairs and other mobility devices on RTD's light rail trains. Plaintiffs also challenged the policies RTD used with respect to its light rail operators in connection with seating for passengers who use wheelchairs and mobility devices, and certain aspects of the signage requirements under the regulations found in 49 C.F.R., part 38. The Parties resolved the case after over two years of litigation, which included: two days of Plaintiffs' extensively measuring dimensions for getting on and off light rail trains and into designated seating areas for individuals who use wheelchairs and mobility devices; expert

witness time and RTD's expert witness report; the addition of eighteen Plaintiffs in three Amended Class Action Complaints; the depositions of nearly all of the individual Plaintiffs, as well as Fed. R. Civ P. 30(b)(6) depositions of RTD and CCDC, each involving several individuals; two motions to dismiss; cross-motions for summary judgment; Plaintiffs' Motion to Strike Expert Witness Disclosure and Accompanying Report; the review of over 9,760 RTD documents and Plaintiffs' 7,149 documents; numerous disclosures and discovery requests and responses; two days of mediation; including preparation of mediation statements and materials and all pleadings related to efforts to resolve this case in order to reach Final Approval.

During settlement discussions, the Parties agreed to a dollar figure of $375,000 through Final Approval of the Class Action Settlement. *See* Agreement at 18, § VI.A.1. Subject to Court approval, RTD agrees to pay Class Counsel that amount "inclusive of all attorneys' fees, costs, expenses, and gross receipts tax in the following increments: $125,000 within thirty (30) calendar days of the Final Settlement Date; $125,000 by no later than March 1, 2018; and $125,000 by no later than March 1, 2019." *Id*.

As required by the Agreement and pursuant to Fed. R. Civ. P. 23(e)(1), the Parties posted the Class Notice substantially similar to Exhibit D of the Agreement as follows: (1) RTD posted the notice on all mini-high ramps at each station providing Light Rail Service in a location easily visible to passengers; (2)

at RTD ticket sales outlets at Denver Union Station, Civic Center and two locations in Boulder; (3) the Special Discount Card location at 1600 Blake Street. RTD, CCDC[1] and CREEC[2] parties posted the Class Notice on their respective websites. The Class Notice was sent via U.S. Mail in a form substantially similar to Exhibit E to the Agreement to no more than ten Colorado disability rights organizations listed in the Agreement. CCDC and CREEC emailed notice to their members. *See* Agreement at 14-16, § IV.

CCDC received several inquiries regarding the Class Notice, but no one sent a request for exclusion from the Agreement. *See* Agreement at 16, § V. That deadline passed on May 17, 2017. To date, the Parties are unaware of any written objections filed with the Court. Agreement at 17, § V.C. That deadline is June 16, 2017.

Background

The present case began because CCDC received numerous complaints about the difficulties individuals who use wheelchairs and mobility devices were having getting into the designated wheelchair and mobility spaces that are

[1] Kevin Williams, Legal Program Director, and Andrew Montoya, staff attorney, are co-counsel for the Class Plaintiffs in this case. They both work for the Colorado Cross-Disability Coalition ("CCDC") Legal Program. CCDC is a nonprofit membership organization whose mission it is to ensure social justice for people with all types of disabilities. Williams Decl. 1 ¶¶ 3-4, 6-7.

[2] Amy Robertson, co-counsel for the Class Plaintiffs, is a Co-Executive Director of the Civil Rights Education and Enforcement Center ("CREEC"). A portion of its membership are persons with disabilities who use light rail service. Robertson Decl. 1 ¶¶ 3, 5, 14.

required on light rail vehicles ("LRVs"). *See* 49 C.F.R. § 38.83(a)(1); *see also* 49 C.F.R. §38.77(c). Plaintiffs also alleged that they had received complaints about the arrangement of priority seating signs for persons who use wheelchairs and mobility devices, *see* 49 C.F.R. §38.75(a)-(b), and that light rail operators were refusing to ask passengers who use strollers, bicycles and other large equipment to move from the areas designated for individuals who use wheelchairs and mobility devices to allow individuals who use wheelchairs and mobility devices to use those areas. RTD denies and continues to deny these allegations.

Although Plaintiffs did not file their Motion for Class Certification before settlement was reached, this Court gave preliminary approval to the Settlement Class as defined in the Agreement in its Order Granting Plaintiffs' Unopposed Motion for Certification of a Class for Settlement Purposes Only and Preliminary Approval of Settlement Agreement ("Preliminary Approval Order") (Doc. #155) at 2. That Settlement Class is defined as follows:

> [A]ll Persons in Colorado who are qualified individuals with disabilities who use Wheelchairs, as that term is defined below, who have used, currently use, or may in the future use RTD's Light Rail Service. The Settlement Class shall not include any Persons who timely elect to exclude themselves from this Settlement.

See Agreement at 6, § I; Preliminary Approval Order at 2 ("This Court certifies the proposed class for settlement purposes only. The class definition meets all purposes needed for the class in this case."). Pursuant to the Agreement at 6-10, ¶¶ II.A-C., RTD has agreed to the following:

1. RTD agrees to retrofit its existing 172 light rail vehicles ("LRVs") in a manner substantially in accordance with Exhibit B [to the Agreement] ("Retrofit Project") to be completed no later than sixty months from the Final Settlement Date on a schedule set forth in the Agreement.

2. Every twelve (12) months from the Final Settlement Date and until completion of the Retrofit Project, RTD will provide a status report to Class Counsel on the progress of the Retrofit Project regarding the number of LRVs retrofitted to date and work expected to be completed in the next twelve months.

3. Two Representative Plaintiffs, Class Counsel, and one Paralegal will have the opportunity to view one (1) retrofitted LRV pursuant to the Retrofit Project within twelve (12) months from the Final Settlement Date and take measurements and photographs to assess whether the retrofitted LRV complies with the Agreement.

4. The next twenty-nine (29) new LRVs that RTD adds to its Light Rail Service ("New LRV") will be substantially similar in design to the vehicle depicted in Exhibit C of the Agreement. In these New LRVs, the flooring within the designated spaces for passengers using mobility devices will depict the International Symbol of Accessibility.

5. Inspections of these vehicles will be permitted in the same way as the existing LRVs.

6. RTD will provide training to all of its Light Rail Operators and refresher training. CCDC members will be able to provide comments concerning the new training and refresher training materials.

Plaintiffs, in return, agree that if any Named and Representative Plaintiff, including CCDC and any other Settlement Class Member working with or at the behest of any Named or Representative Plaintiff, including CCDC (collectively, "Complainant(s)") must comply with pre-litigation provisions that require meeting with and conferring with RTD prior to filing any lawsuit concerning any of its

services related to accessibility.

Counsel

As noted above, the class in this case is represented by the undersigned attorney, Kevin Williams, and Andrew Montoya, both of the Colorado Cross-Disability Coalition Legal Program. Amy Robertson, of the Civil Rights Education and Enforcement Center ("CREEC"), assisted with settlement negotiations. Mr. Williams, lead counsel in this case, received his J.D. in 1996 from the University of Denver Law School and has over 20 years of litigation experience, including litigating class-action civil rights cases during all of that time. Williams Decl. 4-5 ¶¶ 18-22 and n.1. Undersigned counsel is the recipient of many awards for his work both as a student and as a civil rights attorney. *Id.* 6 ¶ 22. Andrew Montoya received his J.D. from Florida Coastal School of Law in 2010 and has worked for CCDC litigating civil rights cases, including class action cases since that time. *Id.* at 2 ¶ 7. Mr. Montoya also worked as the Legal Program Assistant for CCDC before attending law school for two years, working on disability rights cases with Mr. Williams, including class action cases. *Id*. Amy Robertson, is the Co-Executive Director of CREEC, a Denver civil rights nonprofit, a former shareholder in Fox and Robertson, P.C., also a civil rights law firm, and received her J.D. from Yale Law School in 1988, clerked for a United States District Court Judge and has more than 27 years of litigation experience, the past 20 years of which litigating class action civil rights cases. Robertson Decl. 3 ¶¶ 14-18. The majority of Ms. Robertson's practice has been devoted to disability rights issues and class-action

litigation. *See, e.g. id*. at 4 ¶¶ 19-20. Tram Ha is the Legal Program Assistant for CCDC, and she has worked in that capacity for one year. She graduated with a Bachelor of Arts degree with a Distinction in History-Philosophy from Colorado College in 2014. Williams Decl. at 2 ¶ 7; prior to Ms. Ha, Lauren Haefliger was the Legal Program Assistant for CCDC. Ms. Haefliger graduated from Wheaton College with a Bachelor of Arts degree, *summa cum laude,* in English in 2013. *Id.* at 2-3 ¶ 7.

The Lodestar

Class Counsel's billing records reflect the exercise of billing judgment. They do not include time spent addressing the media, although in class action cases, courts have found that media discussions are compensable as a way to reach out to potential class members. *Paeste v. Gov't of Guam*, 624 Fed. Appx. 488, 491 (9th Cir. 2015). In addition, Class Counsel have endeavored to prevent any sort of block billing by meticulously keeping contemporaneous time records and, therefore, not lumping all of Counsel's time into one lengthy time period. Following that initial exercise of billing judgment, Exhibit 2 to the Williams Declaration shows the time that was removed from the CCDC Legal Program billing record. In addition, after exercising further billing judgment, Class Counsel reduced the total lodestar by five percent.

Finally, Class Counsel incurred $15,186.72 in out-of-pocket costs, including filing fees, deposition costs, and all other costs as set forth in the billing spreadsheet. Williams Decl. at 3 ¶ 9 & Ex. 1; and CREEC had no costs in this case.

Counsel's lodestar $609,196.20 (CCDC) and $49,493.00 (CREEC), and their

out-of-pocket costs ($15,186.72) total $673,875.92. Class Counsel's fees and costs far exceed the $375,000 agreed to by the Parties. As a result, this Court should find that the fees and costs agreed upon by the parties are fair and reasonable in this case.

ARGUMENT

Pursuant to Paragraph VI of the Agreement, Defendants agreed to pay Class Counsel a reasonable amount of attorneys' fees and costs in the amount of $375,000, to be paid in three disbursements as set forth in the Agreement. Class Counsel now respectfully request that this Court approve this amount pursuant to Federal Rule of Civil Procedure 23(h), which permits the Court to award "reasonable attorney's fees and nontaxable costs that are authorized by . . . the parties' agreement."

A. Class Counsel's Attorneys' Fees Are Reasonable.

"Attorneys' fees are properly calculated by determining the 'lodestar' -- the number of hours reasonably expended multiplied by reasonable hourly rates -- and then adjusting the lodestar figure, if appropriate, by considering one or more of the factors in *Johnson v. Georgia Highway Express, Inc*., 488 F.2d 714 (5th Cir. 1974)," (the "*Johnson* Factors"). *In re Davita Healthcare Partners, Inc.,* No. 12-CV-2074-WJM-CBS, 2015 WL 3582265, at *4 (D. Colo. June 5, 2015) (citing *Anchondo v. Anderson, Crenshaw & Assocs*., *L.L.C.*, 616 F.3d 1098, 1102–04 (10th Cir. 2010) and *Homeward Bound, Inc. v. Hissom Mem'l Ctr*., 963 F.2d 1352, 1355–56 (10th Cir. 1992)). The lodestar method yields a fee that is presumptively appropriate. *See Perdue v. Kenny A*. *ex rel. Winn*, 559 U.S. 542, 552 (2010). The *Johnson* Factors are:

> (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill required to perform the service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee;
> (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorney; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

Johnson, 488 F.2d at 717–19, *quoted in In re Davita Healthcare*, 2015 WL 3582265, at *4 n.1. Class Counsel's lodestar is itself a reasonable fee for litigation that achieved an excellent result for the class in securing changes to the existing LRVs and to the new LRVs RTD will be adding to its fleet. Class Counsel's adjusted lodestar -- following billing judgment including a discount to that time -- is $673,875.92. The amount Class Counsel agreed to in settlement of this case with Defendants is considerably less. Ultimately, $375,000 for Class Counsel's reasonable fees and costs is eminently reasonable, especially in light of the *Johnson* Factors.

B. The Johnson Factors

1. The Time and Labor Required; Time Limitations Imposed by Circumstances; Undesirability of the Case.

A review of Class Counsel's billing records reveals that the time they spent on this matter was reasonable. *See* Williams Decl. at 4 ¶ 11 and Ex. 1. Indeed, as explained above, Class Counsel exercised billing judgment to delete certain categories of time from the records and an additional 5% of the time spent by the other practicing attorneys.

As detailed above, the remaining time was necessary to achieve the excellent results achieved in this litigation. *Cf. In re Crocs, Inc. Sec. Litig.*, No. 07-cv-02351-PAB-KLM, 2014 WL 4670886, at *2 (D. Colo. Sept. 18, 2014) (holding 3,877.45 hours reasonable in a securities class action with significant investigation, unsuccessful opposition to a motion to dismiss, and briefing to the Tenth Circuit). In particular, class members all will receive greater accessibility in both existing and new LRVs, a great result, which required extensive litigation before settlement was reached. Defendant litigated this case tenaciously, as demonstrated by its Motions to Dismiss and Summary Judgment, all of which required intensive time and labor by Class Counsel to respond to. Defendant took the depositions of nearly all of the Plaintiffs, and the Parties took Rule 30(b)(6) depositions of several individuals and spent days in mediation before arriving at a settlement agreement. "The Tenth Circuit has long accepted the proposition that one of the factors useful in evaluating the reasonableness of the number of attorney hours in a fee request is 'the responses necessitated by the maneuvering of the other side.'" *Robinson v. City of Edmond*, 160 F.3d 1275, 1284 (10th Cir. 1998) (quoting *Ramos v. Lamm*, 713 F.2d 546, 554 (10th Cir. 1983)); *see also City of Riverside v. Rivera*, 477 U.S. 561, 580 n.11 ("The government cannot litigate tenaciously and then be heard to complain about the time necessarily spent by the plaintiff in response" (citation omitted)).

Because Plaintiffs were not in a position to pay the hourly rate of lawyers for the work done in this case, the case obviously is undesirable to most attorneys. Class

Counsel bore the risk of demonstrating they were the prevailing party in order to collect fees. *See, e.g.,* 42 U.S.C. § 12205; *Lucas v. Kmart Corp*., CIV.A. 99-01923, 2006 WL 2729260, at *7 (D. Colo. July 27, 2006)("Given the significant risk that the plaintiffs would recover nothing for their efforts, this result more than justifies the requested fee.").

2. The Novelty and Difficulty of the Questions.

This is a case of first impression. Nowhere are there published decisions regarding the design and construction of LRVs. Plaintiffs also raised novel issues concerning the obligations of LRV operators with respect to requesting that individuals who are in the designated wheelchair and mobility aid areas to move when an individual using a wheelchair or mobility aid board the vehicle and whether the signage was appropriate. All of these issues are untested in other jurisdictions. As such, the questions were novel. The Defendant's efforts at having this case dismissed, decided on summary judgment, and its use of expert witness testimony demonstrate its strong belief that Plaintiffs' positions were incorrect on these issues because they were novel and not interpreted elsewhere.

3. The Skill Required; Experience, Reputation and Ability of Attorneys.

The present litigation raised complex questions of LRV accessibility and class-action law, bringing into play Class Counsel's skills and experience in these arenas. Ms. Robertson and Mr. Williams have extensive experience in civil rights class-actions. *See* Robertson Decl. ¶ 19 and Williams Decl. ¶ 21. This specialized knowledge "facilitated

and promoted the settlement of this action" and thus supports the request for attorneys' fees. *Tuten v. United Airlines, Inc.*, 41 F. Supp. 3d 1003, 1008-09 (D. Colo. 2014); *Anderson v. Merit Energy Co*., 07-CV-00916-LTB-BNB, 2009 WL 3378526, at *3 (D. Colo. Oct. 20, 2009) (significant fee awards permitted when Class Counsel's knowledge and experience significantly contributed to a fair and reasonable settlement of this litigation).

4. The Preclusion of Other Employment; Contingent Fee.

Both CREEC and the CCDC are very small organizations. Robertson Decl. ¶ 14; Williams Decl. ¶ 6. The need to devote hundreds of hours over a two-year period to a single litigation precluded the attorneys and staff in those organizations from taking other cases. In addition, Class Counsel accepted this case on a contingent fee basis, incurring the risk of non- payment. Both factors support a substantial fee award. *Tuten*, 41 F. Supp. 3d at 1009; *Lucas v. Kmart Corp*., CIV.A. 99-01923, 2006 WL 2729260, at *7 (D. Colo. July 27, 2006).

C. Class Counsel's Rates Are Reasonable

The rates that attorneys and staff charged in this case are reasonable based on the Colorado Bar Association 2012 Economic Survey ("Survey"). Williams Decl. at 7 ¶ 24 (Survey shows for attorneys practicing for over 20 years in the area of civil rights, the rates sought in this case are reasonable.).[3]

D. Class Counsel's Costs Are Reasonable.

[3] Class Counsel are entitled to recover all of the fees incurred in this case at 2017 rates. *Missouri v. Jenkins*, 491 U.S. 274, 283 (1989).

Class Counsel incurred out-of-pocket costs. Williams Decl. 3 ¶ 9 and Ex.1. The types of costs billed are all recognized in this jurisdiction. *St. Paul Sober Living, LLC v. Bd. of Cty. Comm'rs, Garfield Cty., Colo*., 11-CV-00303-RBJ-MEH, 2013 WL 5303484, at *10 (D. Colo. Sept. 17, 2013); *Rekstad v. First Bank Sys., Inc*., 97-N-1315, 1999 WL 33263930, at *3 (D. Colo. July 6, 1999). Plaintiffs incurred costs for court reporters, deposition transcripts, filing fees, couriers, certified mailing, mediation, expert witness costs and others listed in the billing report. Williams Decl. at 3 ¶ 9 & Ex. 1.

E. The Parties Have Provided Adequate Notice

Rule 23(h)(1) requires that notice of the fee petition be provided to the class. In this Court's order granting preliminary approval, the Court approved the form of notice proposed by the Plaintiffs in the Agreement. Order Granting Preliminary Approval (Doc. #155) at 2. As explained above in the Overview at 2-3, the Parties provided notice in accordance with the terms of the Agreement.

Conclusion

For the reasons set forth above, Plaintiffs respectfully request that this Court award Class Counsel their reasonable attorneys' fees and costs in the amount of $375,000 to be paid as set forth in the Agreement.

Respectfully submitted,

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Dated: June 9, 2017

CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2017, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following email address:

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