UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CELERINA NAVARRO, JANET STEVENS, ARMANDO COVARRUBIAS, EVELYN ESTRADA, ALMA ALDACO, and all others similarly situated,

Plaintiffs,

v.

THE CITY OF MOUNTAIN VIEW,

Defendant.

Case No. 5:21-cv-05381-NC

ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFYING SETTLEMENT CLASS, APPROVING NOTICE, AND SETTING DATES FOR FINAL APPROVAL

Date: November 2, 2022
Time: 1:00 p.m.
Place: Remote (Zoom)
Judge: Hon. Nathanael Cousins

I. INTRODUCTION

Before the Court is Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement. Plaintiffs filed this action in 2021 alleging that two recently-enacted ordinances restricting when and where oversized vehicles ("OSVs") could park violated the state and federal constitutional and statutory rights of Plaintiffs and other people living in OSVs. Defendant, City of Mountain View does not admit these allegations, and does not concede liability. Following extensive negotiations that took place over more than nine months, the Parties have reached a Settlement Agreement ("Agreement") that is in the best interest of all Parties and satisfies the requirements of Federal Rule of Civil Procedure 23. The Agreement ensures OSV residents have at least three miles of parking available to them in the City, and will receive notice prior to towing of their vehicular homes.

Plaintiffs now ask that the Court enter an order (1) granting preliminary approval of the Agreement; (2) provisionally certifying the proposed settlement class and appointing Plaintiffs' attorneys as class counsel, pending final approval; (3) approving the Parties' proposed form of notice and direct notice to the class; and (4) setting deadlines for notice, objections, and a final fairness hearing. Defendant City of Mountain View ("Defendant" or "City") has separately joined this motion, and a hearing on this matter was held on November 2, 2022.

Having presided over the proceedings in the above-captioned action and having reviewed all of the arguments, pleadings, records, and papers on file, the Court finds and orders as follows:

II. FINDINGS

A. Final Approval of the Parties' Proposed Agreement is Likely and is Preliminarily Approved.

Federal Rule of Civil Procedure 23(e) conditions the settlement of any class action on court approval, which is intended to ensure that the proposed settlement is "fair, adequate, and free from collusion." Pre-certification settlements, such as this one, are

subject to a "higher level of scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required."[1] *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) (discussing higher standard).

In making a final fairness determination on a class settlement, a Court will approve a settlement between parties if Parties have "shown that the court *will likely be able* to…" approve the proposed settlement under the Rule 23(e)(2) factors. Fed. R. Civ. P. 23(e)(1)(B) (emphasis added). These factors consist of: (1) whether the class was adequately represented; (2) whether the proposed settlement was negotiated at arm's length; (3) whether the relief provided for the class is adequate, taking into account the costs, risks, and delay of trial and appeal, the terms of any proposed award of attorneys' fees, and other facts; and (4) whether the proposal treats class members equitably relative to one another. Fed. R. Civ. P. 23(e)(2); *see also Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012). At the preliminary approval stage, the Parties must "show that the court will likely be able to" approve their proposed settlement under these new Rule 23(e)(2) factors. Fed. R. Civ. P. 23(e)(1)(B); *see also In re MyFord Touch Consumer Litig.*, No. 13-CV-03072-EMC, 2019 WL 1411510, at *4 (N.D. Cal. Mar. 28, 2019) (discussing new standard).

Having considered these factors and examined the settlement process for subtle signs of collusion, the Court finds that final approval is likely. The Parties' agreement is thus preliminarily approved.

The Court considers each factor below:

1. Plaintiffs and Their Counsel Have Adequately Represented the Class

In determining whether a class has been adequately represented, courts consider

[1] Before approving such settlements, courts must look not only for explicit evidence of collusion, but also for more "subtle signs" of self-interest, including (1) whether class counsel will receive "disproportionate distribution of the settlement," (2) whether the defendant has agreed not to object to class counsel's fee request, and (3) whether unclaimed funds will revert to the defendant. *Bluetooth*, 654 F.3d at 946. This "more exacting" review is intended to ensure that "class representatives and their counsel do not secure a disproportionate benefit" at the expense of other class members. *Roes 1-2 v. SFBSC Mgmt., LLC*, No. 17-17079, 2019 WL 6721190, at *10 (9th Cir. Dec. 11, 2019) (citation and internal quotations omitted).

the same "adequacy of representation" questions that are relevant to class certification. *See MyFord Touch*, 2019 WL 1411510 at *8; *O'Connor v. Uber Techs., Inc.*, No. 13-CV-03826-EMC, 2019 WL 1437101, at *6 (N.D. Cal. Mar. 29, 2019). In that context, courts ask whether 1) "named plaintiffs and their counsel have any conflicts of interest with other class members," and 2) whether "the named plaintiffs and their counsel [will] prosecute the action vigorously on behalf of the class." *Sali v. Corona Reg'l Med. Ctr.*, 889 F.3d 623, 634 (9th Cir. 2018) (citation omitted); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998); Fed. R. Civ. P. 23(a)(4). Adequate representation of counsel is generally presumed in the absence of contrary evidence. *Californians for Disability Rights, Inc. v. California Dep't of Transp.*, 249 F.R.D. 334, 349 (N.D. Cal. 2008); *see* 1 William B. Rubenstein, *Newberg on Class Actions* § 3:55 (5th ed. Supp. 2019). Having reviewed the Parties' proposed agreement and all related submissions, the Court finds that Plaintiffs and their counsel have adequately represented the class. This factor weighs in favor of preliminary approval.

2. The Proposed Settlement Was Negotiated at Arm's Length

The Court finds that the Agreement was negotiated at arm's length. While no presumption of fairness attaches to settlements achieved through arms-length negotiations, *see Roes 1-2*, 2019 WL 6721190 at *10, such negotiations do weigh in favor of approval.[2] Fed. R. Civ. P. 23(e)(2)(B). This Agreement was reached after more than nine months of arm's-length negotiations, including exchanges of written proposals, numerous in-person conferences among counsel, and numerous settlement conferences under the supervision of United States Magistrate Judge Susan van Keulen. As the Advisory Committee has recognized, "the involvement of a neutral or court-affiliated mediator or facilitator . . . may bear on whether [negotiations] were conducted in a

[2] The considerations encompassed by new Rule 23(e)(b)(2) overlap with those contemplated by "certain *Hanlon* factors, such as the non-collusive nature of negotiations, the extent of discovery completed, and the stage of proceedings." *In re Extreme Networks, Inc. Sec. Litig.*, No. 15-CV-04883-BLF, 2019 WL 3290770, at *7 (N.D. Cal. July 22, 2019) (citing *Hanlon*, 150 F.3d at 1026).

manner that would protect and further the class interests." Advisory Committee Notes to 2018 Amendments, Fed. R. Civ. P. 23(e)(2). Parties have shown that their Agreement is a product of a procedurally fair and neutral process. *See, e.g., In re Tableware Antitrust Litig.*, 484 F. Supp. 2d at 1079-80 (granting preliminary approval of class action settlement where the agreement was a product of "serious, informed, non-collusive negotiations" conducted by experienced counsel over an "extended period of time"). This factor weighs in favor of preliminary approval.

3. The Parties' Agreement Provides Adequate Relief to Plaintiffs and The Class

Under Rule 23(e)(2)(C), a court must consider whether "the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3)." Fed. R. Civ. P. 23(e)(2)(C). Here, Plaintiffs have shown that the Agreement is fair, adequate and reasonable to the proposed Settlement Class. It achieves significant relief for the proposed class, provides certainty to the class in guaranteeing that they will have somewhere to continue to park and live in Mountain View, and mitigates the risks of further litigation. Attorneys' fees have been left for final approval. All relevant factors here weigh in favor of approval.

4. The Parties' Agreement Treats All Class Members Equitably

After review of the Parties' proposed settlement, and as described above, all named plaintiffs and class members will receive exactly the same injunctive relief: a map that shows where they may lawfully park, at least three miles of available parking for their OSVs, at least 72 hours' notice via citation prior to towing of their OSVs, a guaranteed process to request accommodations, and a dispute resolution process. Because the Parties' Agreement treats Plaintiffs and all other "class members equitably relative to each other," the Court finds that this factor weighs in favor of preliminary

approval and, in consideration of all the other factors, grants preliminary approval of the settlement. *See* Fed. R. Civ. P. 23(e)(2)(D). The Court further notes that the Named Plaintiffs do not receive any special treatment or incentive awards under the Agreement.

B. The Proposed Settlement Class Satisfies All Applicable Rule 23 Requirements and is Conditionally Certified.

To grant preliminary approval, the court determines whether the proposed class is proper for settlement purposes, and, if so, preliminarily certifies the class. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). To support class certification, a court must find each of Rule 23(a)'s four requirements has been satisfied: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation. In addition to these requirements, "parties seeking class certification must show that the action is maintainable under Rule 23(b)(1), (2), or (3)." *Id.* at 614.

Here, the proposed class is defined as "all persons who resided or sought to reside in an oversized vehicle within the City of Mountain View at any time beginning from December 18, 2020, through the conclusion of the Effective Period of this Agreement" (the "Proposed Settlement Class" or "Proposed Class"). This settlement class is defined slightly differently from the class originally proposed in Plaintiffs' complaint. *See* ECF 1, ¶ 17.[3] However, these differences are incidental and the result of negotiations. There are no material differences from the class as pled and no prejudice to any class member. Any differences are immaterial.

The Court finds that this proposed class meets the requirements of Rules 23(a) and 23(b)(2), and it is hereby conditionally certified pending final approval. The Proposed Class meets all requirements of Rule 23(a), and the Court reviews each factor as follows:

1. The Settlement Class is Sufficiently Numerous

Rule 23(a) requires that a settlement class be "so numerous that joinder of all

[3] Court acknowledges that Plaintiffs no longer seek certification of a "disability subclass," as proposed in their Complaint. Parties' Agreement provides the same relief to all class members, including class members with disabilities.

members is impracticable." Fed. R. Civ. P. 23(a)(1). Especially when plaintiffs seek only injunctive and declaratory relief, "the numerosity requirement is relaxed and plaintiffs may rely on the reasonable inference arising from plaintiffs' other evidence that the number of unknown and future members of [the] proposed [class] . . . is sufficient to make joinder impracticable." *Sueoka v. United States*, 101 F. App'x 649, 653 (9th Cir. 2004).

Here, Plaintiffs are seeking only injunctive and declaratory relief and therefore the Court may consider reasonable inferences of numerosity evidence. Plaintiffs have shown through surveys conducted by the City of Mountain View that the total number of inhabited vehicles parked in the City's streets varies between 200-300 more than enough to meet the numerosity requirement. The Court finds that the Proposed Settlement Class is sufficiently numerous that joinder of all Settlement Class members in a single proceeding would be impracticable.

2. The Settlement Class Satisfies Commonality

Rule 23(a) requires the existence of "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). Commonality is satisfied where the plaintiff alleges the existence of "common contentions" such that "determination of [their] truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Each proposed class member is similarly impacted by the City-wide ordinances and related enforcement policies and practices.[4] Compl. ¶¶ 16-19. Any findings of law would apply to individual plaintiffs

[4] This case raised numerous common questions of law and fact, including: (1) whether the Ordinances prevented Class Members from residing in or traveling to the City of Mountain View; (2) whether the Ordinances were justified by a compelling government interest; (3) whether the Ordinances were narrowly tailored to serve any such compelling government interest; (4) whether Named Plaintiffs and other Class Members had any practically available alternative to sheltering in their OSVs in Mountain View; (5) whether the Ordinances violated one or more constitutional or statutory provisions; (6) whether Named Plaintiffs and other Class Members were at risk that their OSVs, along with their personal belongings, will be impounded by the City without sufficient notice; and (7) whether Named Plaintiffs and other Class Members were entitled to equitable relief, including system-wide policy changes, to address the alleged constitutional and statutory violations associated with the Ordinances and their enforcement. Compl. ¶ 19.

and class members equally. Additionally, the Parties' Agreement allows for sufficient parking in the City for OSV residents, and therefore is "capable of class wide resolution" that will affect all the putative class members. *See Wal-Mart*, 564 U.S. at 350.

The Court finds that there are questions of law and fact common to the Settlement Class.

3. The Named Plaintiffs' Claims are Typical

The third element of Rule 23(a) requires that the claims of the representative parties are typical of each class member. Fed. R. Civ. P. 23(a)(3). Because typicality overlaps with commonality, a finding of commonality usually supports a finding of typicality. *See Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982) (commonality and typicality requirements frequently "merge"). For reasons similar to those stated above, the Court finds that Plaintiffs' claims are typical of the claims of the Settlement Class that they seek to represent for the purposes of settlement.

4. Named Plaintiffs and Class Counsel are Adequate Representatives

The final element of Rule 23(a) requires that the "representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). To satisfy this element, the Named Plaintiffs and their counsel must not have any conflicts of interest with the other class members, and the named plaintiffs and their counsel must pursue the action vigorously on the class's behalf. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998). Here, Plaintiffs shown that there exist no conflicts between the Named Plaintiffs and other Class members. The Parties' Agreement provides the same injunctive relief for them and every member of the proposed class; and Named Plaintiffs have vigorously represented the class and pursued this outcome on behalf of the Settlement Class. Class counsel is experienced in litigating class actions and impact cases involving civil rights violations of the most vulnerable members of society including other similar civil rights class actions and class actions challenging government policies impacting unhoused populations.

Thus, the Court finds that Plaintiffs have fairly and adequately represented the

interest of the Settlement Class and will continue to do so. Accordingly, the Court hereby conditionally appoints counsel as class counsel, and named plaintiffs Celerina Navarro, Janet Stevens, Armando Covarrubias, Evelyn Estrada, and Alma Aldaco as representatives of the Settlement Class.[5]

5. The Proposed Settlement Satisfies Rule 23(b)(2)

This class satisfies Rule 23(b)(2), which requires that defendant "has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole."

Here, Plaintiffs and proposed Class seeks only injunctive relief addressed to the Ordinances, which, as stated above, apply generally to the class, and injure each Class Member in the same or substantially similar ways. Additionally, all Plaintiffs and all members of the proposed Class will benefit from the guaranteed three miles of OSV parking capacity, clear map of where OSV parking is possible, modified enforcement practices, and other certainties that the Agreement provides. Certification under Rule 23(b)(2) is thus granted.

C. The Parties' Proposed Notice Is Approved.

Notice to a settlement class certified under Rule 23(b)(2) is within the Court's discretion. Fed. R. Civ. P. 23(c)(2)(a), (e)(1). Notice provided under Rule 23(e) must "generally describe[ ] the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." *Lane*, 696 F.3d at 826 (alteration in original) (quoting *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 962 (9th Cir. 2009)). The Court finds that the Parties' proposed form of notice meets this standard, and complies with the Northern District's Procedural Guidance For Class Action Settlements. The notice attached as Exhibit 4 to the Declaration of Erin Neff in Support of the Motion for Preliminary Approval is thus approved as to form. The Parties

[5] Gabriel Rangel Jaime is not named as a class representative as he is no longer represented by counsel and has not shown his adequacy as a class representative. He is not prejudiced by this decision because he is a class member and therefore obtaining the same relief as any other named plaintiff or class member

may make non-substantive changes to this notice—such as to insert dates and times consistent with this Order, as well as website addresses—without further approval from this Court.

D. The Court adopts the Parties' proposed distribution plan as follows: (1) Within 20 days of this order, the City will conspicuously place a copy of the court-approved notice on each OSV parked within the City; will cause notice to be published in periodicals of general circulation in the City and surrounding communities, the City's website, at the Mountain View Public Library, and at the Mountain View City Hall; (2) Within 20 days of this order, Plaintiffs will provide information concerning the Settlement to local non-profit organizations that provides services to unhoused individuals and individuals living in OSVs in the City and surrounding communities. The City Will Provide Notice to Federal and State Officials as Required by CAFA.

The Court orders the City to provide notice to members of the proposed Class and notice of the Parties' proposed Agreement to appropriate federal and state officials, as required under 28 U.S.C. § 1715. Aside from the notice provisions of 28 U.S.C. § 1715(b) and the requirement that such notice be given at least 90 days before this Court grants final approval, 28 U.S.C. § 1715(d), the substantive provisions of CAFA do not apply to this injunctive relief settlement.

E. The Parties' Proposed Schedule and Deadlines Are Approved.

The Court hereby preliminarily approves the settlement and proposed Notice and certifies the settlement class. In accordance with the above, the Court adopts the following schedule for the delivery of notice, receipt of objections, and filing of motions for final approval and request for approval award of attorneys' fees and costs:

- The City to provide notice as required by CAFA: within 10 days of the filing of this motion;
- Parties to provide notice to the class: within 20 days of the Court preliminarily approving the settlement (including approval of the proposed notice plan and the proposed form of notice);
- Fairness Hearing to be held by this Court: February 15, 2023 at 1 p.m. by

Zoom conference; the hearing shall be to determine whether the Parties' Settlement Agreement shall be granted final approval and the amount of any award of attorneys' fees and costs incurred by Plaintiffs' counsel;

- Deadline to file any Objections to the Settlement with the Court: January 20, 2023;
- Deadline for the Parties to file responses to Objections: February 1, 2023;
- Deadline for Plaintiffs to file their Motion for Final Approval of Settlement, along with any declarations of provision of notice: December 22, 2022;
- Deadline for Plaintiffs to file their Motion for Award of Attorneys' Fees and Costs: December 16, 2022.
    - If Plaintiffs' Motion for Award of Attorneys' Fees and Costs is opposed, deadline for the City to file its Opposition: January 12, 2023.
    - Deadline for Plaintiffs to file any Reply: January 26, 2023.

IT IS SO ORDERED.

DATED: November 2, 2022

Judge Nathanael Cousins