UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	SACV 15-01332 AG (DFMx)	Date	July 18, 2018
Title	KENNETH GLOVER ET AL. v. CITY OF LAGUNA BEACH ET AL.		

Present: The Honorable	ANDREW J. GUILFORD	
Lisa Bredahl	Not Present	
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	

Proceedings: **[IN CHAMBERS] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

This lawsuit, started in August 2015, presents challenging issues about the treatment of disabled, homeless persons in Laguna Beach, California by Defendants, the Laguna Beach Police Department (or "LBPD") and the City of Laguna Beach. Last year, Plaintiffs successfully certified a class, and both sides achieved partial success on their cross summary judgment motions. Finally, after many months of negotiations, the parties reached a settlement agreement in March 2018. Plaintiffs now move for preliminary approval of the class action settlement. Their motion is unopposed. At this time in history, Orange County is challenged to provide basic shelter for its homeless. In this case, Plaintiffs are fighting about the quality of such shelter.

The Court GRANTS Plaintiffs' motion for preliminary approval of the class action settlement. (Dkt. Nos. 238, 239.)

1. BACKGROUND

The central issue presented in Plaintiffs' operative, second amended complaint concerns policies of the City and the LBPD, which Plaintiffs allege discriminate against disabled homeless persons. Some of Plaintiffs' supporting allegations follow. Responding to an earlier lawsuit about Laguna Beach Municipal Code provisions that criminalized sleeping in public places, the City created an "Alternate Sleeping Location" (or "ASL") for its homeless population. Plaintiffs describe the ASL as "a congregate shelter-like facility, which sleeps 45

individuals . . . ." (Second Am. Compl., Dkt. No. 109 at ¶ 6, 53–54.) The ASL has been praised for providing some relief to the homeless crisis that confronts Orange County. *See, e.g.*, Claudia Koerner, *City, Public Partner on Homelessness*, ORANGE COUNTY REGISTER (Nov. 15, 2010, 12:25 PM), https://www.ocregister.com/2010/11/15/city-public-partner-on-homelessness-in-laguna-beach/.

Most homeless persons in Laguna Beach are disabled and chronically homeless, some are allegedly unable to use the ASL because of their disabilities and overcrowding. (*Id.* at ¶¶ 6, 48.) In this action, Plaintiffs sought "uniform injunctive and declaratory relief" regarding allegedly discriminatory policies applicable to the class as a whole. (*See* Order Granting Class Certification, Dkt. No. 203 at 8; Request for Relief, Dkt. No. 109 at ¶¶ 1–9.) The Court certified a class under Federal Rule of Civil Procedure 23(b)(2). (*See* Order Granting Class Certification, Dkt. No. 203 at 8–9.) The class is defined as follows.

> All homeless persons who reside or will reside in the geographic area of Laguna Beach who have a mental and/or physical disability as defined under section 504 of the Rehabilitation Act and Americans with Disabilities Act and who have been, or are likely to be, cited for violations of California Penal Code section 647(e), Laguna Beach Municipal Code section 8.30.030 and/or Laguna Beach Municipal Code section 18.05.020.

(*Id.* at 3.)

The complaint alleges that different factors prevent disabled people from using the ASL. Some examples follow. The ASL gives priority to individuals the City considers "residents" and organizes a nightly lottery for any remaining spots, which prevents many disabled persons from taking shelter at the ASL. (Second Am. Compl., Dkt. No. 109 at ¶¶ 64–65.) Even when disabled individuals get inside the ASL, they may not be able or allowed to spend the whole night there because of their disabilities. (*Id.* at ¶ 66.) In the last few years, at least five homeless persons have died or been seriously injured along the road where the ASL is located, and at least one class member suffered injuries that turned into an additional disability. (*Id.* at ¶¶ 9, 14, 71.) Plaintiffs allege multiple instances where class members who weren't able to get a spot at the ASL or who went outside during the night were cited by the LBPD for sleeping outdoors, including for sleeping on the beach and in the ASL parking lot. (*See, e.g.*, *id.* at

¶¶ 14–15, 19, 23.)

Plaintiffs claim that Defendants' policies and practices violate the Americans with Disabilities Act, commonly referred to as the "ADA," and the Rehabilitation Act. (Second Am. Compl., Dkt. No. 109 at ¶¶ 81–106.) The Court found that the law required it to grant Plaintiffs summary judgment regarding part of those claims, though the Court had concerns about rigidly applying ADA dictates to homeless shelters. (Order re Mots. for Summ. J., Dkt. No. 204 at 2.) The complaint also stated constitutional claims, under Article I, Sections 7 and 17 of the California Constitution and the Eighth and Fourteenth Amendments to the United States Constitution, but the Court granted Defendants summary judgment on those claims. (*Id.*; Second Am. Compl., Dkt. No. 109 at ¶¶ 107–110.) Soon after the Court's summary judgment rulings, the parties began the negotiations that led to the proposed settlement agreement.

2. LEGAL STANDARD

Courts may only approve a settlement agreement that is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). Review of a proposed settlement generally involves two separate hearings. Federal Judicial Center, Manual for Complex Litigation, § 21.632 (4th ed. 2004). First comes the preliminary approval hearing, where the court makes a preliminary fairness evaluation. *Id.* Then the court holds a final approval hearing, where it "takes a closer look at the proposed settlement, taking into consideration objections and any other further developments in order to make a final fairness determination." *True v. Am. Honda Motor Co.*, 749 F. Supp. 2d 1052, 1062 (C.D. Cal. 2010).

To determine whether a settlement agreement is fair, reasonable, and adequate, courts must consider various factors, including (1) the strength of plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed, and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003) (citation omitted). "This is by no means an exhaustive list of relevant considerations." *Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). "The relative degree of importance to be attached to any particular factor will depend upon and be dictated

by the nature of the claim(s) advanced, the type(s) of relief sought, and the unique facts and circumstances presented by each individual case." *Id.* "It is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness, and the settlement must stand or fall in its entirety." *Staton*, 327 F.3d at 960 (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)).

But at the preliminary approval stage, "a court determines whether a proposed settlement is 'within the range of possible approval' and whether or not notice should be sent to class members." *True*, 749 F. Supp. 2d at 1063; *see also* 4 W. Rubenstein, Newberg on Class Actions § 13:10 (5th ed.) (the primary objective a court at the preliminary approval stage is "to establish whether to direct notice of the proposed settlement to the class, invite the class's reaction, and schedule a final fairness hearing.") A "full fairness analysis is unnecessary." *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 665 (E.D. Cal. 2008). The "settlement need only be *potentially* fair." *Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007) (emphasis in original). If the proposed settlement "appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval," the court should grant preliminary approval of the class and direct notice of the proposed settlement to the class. *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (citation omitted).

At any rate, "the decision to approve or reject a settlement is committed to the sound discretion of the trial judge." *Hanlon*, 150 F.3d at 1026. Ultimately, "[s]trong judicial policy favors settlements." *Churchill Vill., LLC. v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004) (omission and quotation marks omitted) (quoting *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

3. ANALYSIS

The Court now reviews factors concerning the proposed settlement.

3.1 Whether the Proposed Settlement Is Within the Range of Possible Approval

3.1.1 Serious Arm's-Length Negotiations

The parties' proposed settlement is the product of repeated and elaborate negotiations. In late 2016, the parties were unable to reach an agreement despite two day-long settlement conferences before Magistrate Judge McCormick. (Settlement Confs. Mins., Dkt. Nos. 146, 169.) But following the Court's rulings on class certification and summary judgment, the parties returned before Judge McCormick and renewed their settlement efforts. (*See* Mot., Dkt. No. 238 at 3.) Between July 2017 and February 2018, Judge McCormick held three settlement conferences, lasting four to eight hours. (Settlement Confs. Mins., Dkt. Nos. 214, 224, 235.) Each time, the parties were represented by experienced counsel. (*See id.*) The negotiations, though "contentious," were "informed at every step by experts and other stakeholders." (Mot., Dkt. No. 238 at 10.) Further, "as part of these negotiations and in the course of litigating the matter, the [parties] exchanged voluminous discovery." (*Id.* at 3.) The parties executed the proposed settlement agreement one month before this case was set for trial. (*See* Joint Notice of Settlement and Stip. to Vacate Trial, Dkt. No. 236; Proposed Settlement Agreement, Dkt. No. 238-1 at PageID 5017–21.) Judge McCormick deserves thanks and praise for his tireless work on the settlement.

The cost of trying a class action can be extremely high, and may be even higher after over two years of active litigation. And with partial victories on each side, the outcome of this lawsuit was unsure. Then there's the possibility of one or several appeals, adding to the uncertainty and the rest.

Meanwhile, each side has a lot at stake in this lawsuit. A class victory could leave Defendants bound by a rigid injunction, coming at a cost that would be difficult to estimate. Further, a permanent injunction would likely limit the ability of the City and the LBPD to make other policy decisions and to adapt to the changing needs of the Laguna Beach community. On the plaintiff side, continued litigation would necessarily delay any potential relief to vulnerable class members who need it. Yet in the end, the class could leave trial without obtaining anything more than it got on summary judgment. In short, each side had significant incentives to resolve this dispute.

The parties have worked diligently with each other and with others to avoid the risks and costs of further litigation. The Court finds that the proposed settlement is the product of serious, informed, non-collusive negotiations.

3.1.2 Fairness, Reasonableness, and Appropriateness

The proposed agreement imposes significant obligations on all parties. Broadly stated, Defendants have agreed to notable but nuanced policy changes in exchange for a broad release of class member claims for equitable relief. Further, all parties have agreed to pay their own costs and attorney fees.

Defendants' obligations under the agreement are explained in considerable detail in ten of the agreement's thirteen pages, and in the agreement's five exhibits. At this stage, Defendants' obligations sufficiently appear to provide "indivisible" relief benefitting the class as a whole, as appropriate in a Rule 23(b)(2) class action. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011). And their obligations substantially answer the allegations in Plaintiffs' complaint. Some of the major issues addressed in the agreement are illustrated in the table that follows.

LBPD Covenants
Revisions to the LBPD Training Bulleting on the enforcement of California Penal Code Section 647(e), which prohibits lodging on public property, to explain that "[m]erely sleeping on public property, without more, does not constitute lodging." (Proposed Settlement, Dkt. No. 238-1 at § 3.Q & Ex. E.)
Revisions to the LBPD Training Bulleting on the enforcement of California Penal Code Section 647(e), which prohibits lodging on public property, to instruct officers to "exercise progressive enforcement," and to "avoid[]" citation or arrest when people are illegally lodging because they were turned away from the ASL. (*Id.*)

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City Covenants
Expansion of the responsibilities of the City's "ADA Coordinator." (Proposed Settlement, Dkt. No. 238-1 at § 3.B.)
Adoption of rules and expectations of the guests and staff at the ASL, to be posted at the ASL. (*Id.* at § 3.I.)
Installation of a ramp or lift on the van for transportation to and from the ASL. (*Id.* at § 3.P.)

In the proposed agreement, the City also agrees to remedies that go beyond the strict scope of this lawsuit, reflecting concerns with chronic homelessness and the City's own "commitment to end homelessness in the City of Laguna Beach . . . ." (*See, e.g.,* Proposed Settlement, Dkt. No. 238-1 at §§ 3.A, 3.F–3G.) For example, the City has agreed to adopt a resolution

> affirming [that] commitment . . ., expressing support for the County of Orange's 10-Year Plan to End Homelessness, encouraging the County to fully fund and implement the plan, and encouraging other municipalities within Orange County to express a similar commitment with regard to their own communities and support for the County's plan.

(*Id.* at § 3.A(1).) The City further promises to advertise municipal job openings at the ASL, and to have the ASL stay open for three hours during the day for "drop-in day services," like showering, available to any homeless person. (*Id.* at §§ 3.F, 3G(5).)

Meanwhile, the class will express its appreciation for the services provided by the City and the ASL.

> Class Counsel will write and submit an op-ed article to be considered for publication by the Orange County Register, commending the City and the Friendship Shelter (the current operator of the ASL) for establishing the shelter, for resolving this litigation, for their ongoing efforts to serve individuals

> experiencing homelessness, and for their commitment to end homelessness within the City of Laguna Beach.

(*Id.* at § 3.B.)

The Court is mindful that the proposed agreement leaves wide discretion to the City regarding the implementation of its covenants. But flexibility is necessary to the long-term success of the agreement, considering possible future changes in circumstances and the presence of governmental participants. And of course, the City's exercise of its discretion will be limited by the covenant of good faith and fair dealing implicit in every contract. *See Carma Developers, Inc. v. Marathon Dev. Cal., Inc.*, 2 Cal. 4th 342, 371–73 (1992); *Comunale v. Traders & General Ins. Co.*, 50 Cal. 2d 654, 658 (1958); *Cal. Lettuce Growers v. Union Sugar Co.*, 45 Cal. 2d 474, 484 (1955).

"[T]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Hanlon*, 150 F.3d at 1027. The Court finds that this standard is sufficiently satisfied at this stage in the case, and that the proposed settlement is within the range of possible approval.

Still, the Court's tentative order instructed the parties to be prepared to discuss any concerns the Court raised at the hearing. In particular, the parties were told to be ready to answer the Court's questions about the mailing of complaints suggested in Exhibit B to the proposed agreement, and about the release described in Section 5.A of the proposed agreement. At the hearing, forceful statements by Plaintiffs' counsel caused the Court to conclude that it need not be further concerned.

3.1.3 Notice

"The court must direct notice in a reasonable manner to all class members who could be bound by" a proposed settlement, in all types of class actions. *See* Fed. R. Civ. P. 23(e)(1). Members of a Rule 23(b)(2) class, though unable to opt out, are still "entitled to voice their

concerns with the court prior to final approval." 4 W. Rubenstein, Newberg on Class Actions § 4:26 (5th ed.) "Notice is satisfactory if it 'generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.'" *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 962 (9th Cir. 2009) (quoting *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)).

Providing meaningful notice of the proposed settlement to disabled, homeless individuals presents several challenges. Those challenges concern both the distribution and the content of the notice.

Regarding distribution, the prevailing methods used to deliver notice of settlement—mail and email—would be inadequate in this case. So the parties have agreed to concurrently use three other methods. First, within ten days of the Court's preliminary approval order, the parties will post copies of the notice in both English and Spanish, "on a bulletin board or equivalent," at the ASL, the Laguna Beach City Hall, the LBPD, the Laguna Beach branch of the County of Orange public library, and at the transportation hub in the Laguna Beach downtown area. (*See* Mot., Dkt. No. 238 at 11–12; Proposed Order, Dkt. No. 238-4 at ¶ 4.) The parties are also seeking permission from private organizations that work with the homeless to post the notice at local facilities operated by those organizations. (Mot., Dkt. No. 238 at 12 n.5; Kohn Decl., Dkt. No. 238-3 at ¶ 5.) Second, the parties intend to make the notice available in English and in Spanish on both the City website and the ACLU of Southern California website. (*See* Mot., Dkt. No. 238 at 11–12; Proposed Order, Dkt. No. 238-4 at ¶ 4.) Finally, "Class Counsel will travel to Laguna Beach on at least three occasions to distribute copies of the Notice to individuals experiencing homelessness who congregate in Laguna Beach in the mornings to receive donations of coffee from humanitarians." (Mot., Dkt. No. 238 at 12.)

The Court finds that these methods reflect the parties' and counsel's experience interacting with the Laguna Beach homeless population, and their commitment to successfully delivering notice of the proposed settlement. The Court further finds that these methods are well calculated to reach class members.

Regarding content, this Court has long expressed concern in class actions that the notice provided be clear, concise, and readable, avoiding legalese. This Court also closely examines releases for fairness and propriety.

Here, the notice and release provisions have been part of a very complex negotiation over a long period of time with very experienced counsel. Counsel's statements at the hearing confirmed the propriety of the resulting documents.

3.2 Remaining Issues

Plaintiffs ask that the Court set a deadline for filing objections and a date for the final fairness hearing. (*See* Mot., Dkt. No. 238 at 13; Proposed Order, Dkt. No. 238-4 at ¶¶ 5–6.) The Court discussed scheduling at the hearing. Consistent with the timelines in the motion and proposed order, the deadline for filing objections is **September 17, 2018**, and the final fairness hearing will be held on **November 5, 2018**. (*See* Proposed Order, Dkt. No. 238-4 at ¶¶ 3, 5–6.)

At least 14 days before the final fairness hearing, the parties will file a motion for final approval of the proposed settlement, along with any supporting documents and any objections or other responses from class members.

4. DISPOSITION

The Court GRANTS Plaintiffs' motion for preliminary approval of the class action settlement. (Dkt. Nos. 238, 239.)

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