

United States District Court  
Northern District of California

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ARTIE LASHBROOK,  
Plaintiffs,

v.

CITY OF SAN JOSE,  
Defendant.

Case No. 20-cv-01236-NC

**ORDER GRANTING  
PRELIMINARY APPROVAL  
OF CLASS ACTION  
SETTLEMENT**

Re: Dkt. No. 10

The Parties have applied to the Court for an order preliminarily approving the settlement of this action in accord with the Proposed Consent Decree (“Decree”), which sets forth the terms and conditions of a proposed settlement and dismissal of the action with prejudice, with the Court retaining jurisdiction to enforce the Decree throughout its term. Having read the papers submitted and carefully considered the arguments and relevant legal authority, and good cause appearing, the Court GRANTS the Parties’ Joint Motion for Preliminary Approval of Class Action Settlement.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. This Court grants the Parties’ Joint Motion for Class Certification, certifying a class for declaratory and injunctive relief. The Court finds, for purposes of settlement only, and conditioned upon the entry of this Order and the Final Judgment and Order Approving Settlement, that the requirements of Rule 23 of the Federal Rules of Civil

United States District Court  
Northern District of California

1 Procedure are met by the Settlement Class: (a) joinder of all Settlement Class Members in  
2 a single proceeding would be impracticable, if not impossible, because of their numbers  
3 and dispersion; (b) there are questions of law and fact common to the Settlement Class; (c)  
4 Plaintiff's claims are typical of the claims of the Settlement Class that he seeks to represent  
5 for purposes of settlement; (d) Plaintiff has fairly and adequately represented the interests  
6 of the Settlement Class and will continue to do so; (e) Plaintiff and the Settlement Class  
7 are represented by qualified, reputable counsel who are experienced in preparing and  
8 prosecuting class actions, including those involving the allegations made in the Complaint;  
9 and (f) the City acted or refused to act on grounds that apply generally to the Settlement  
10 Class, so that final declaratory and injunctive relief is appropriate to the Settlement Class.  
11 Accordingly, the Court hereby certifies the following Settlement Class pursuant to Federal  
12 Rule of Civil Procedure 23(a) and (b)(2):

13 All persons (including residents of and/or visitors to the City of San Jose)  
14 with any Mobility Disability, who, at any time prior to the Court granting  
15 final approval of the Consent Decree, have been denied full and equal access  
16 to the City's pedestrian right of way due to the lack of a curb ramp or a curb  
17 ramp that was damaged, in need of repair, or otherwise in a condition not  
18 suitable or sufficient for use.

19 Pursuant to Federal Rule Civil Procedure 23(c)(1)(B), the Court appoints named  
20 Plaintiff and his counsel as representatives of the Settlement Class.

21 2. The Decree requires the City of San Jose to remediate all missing and non-  
22 compliant curb ramps by 2038. It requires the City to allocate a minimum amount of  
23 money per year towards its construction and remediation obligations, while reaching  
24 certain milestones in ramp construction and remediation. In the event the City is unable to  
25 appropriate the required annual monetary commitment, the Decree requires the City to  
26 make up the shortfall in subsequent years, preempt the shortfall in previous years, or  
27 maintain an agreed-upon average rate of ramp construction and remediation. The City is  
28 also required to maintain a Curb Ramp Request Program and comply with reporting and

1 monitoring requirements. In exchange, Plaintiff and members of the Class agree to release  
2 all injunctive, declaratory, or non-monetary claims related to the City's alleged actions or  
3 omissions relating to the remediation or construction of curb ramps. However, unnamed  
4 members of the Class do not release claims for monetary damages, personal injuries, or  
5 property damages. Plaintiff Artie Lashbrook releases all of his monetary claims related to  
6 his personal encounters with non-compliant curb ramps in exchange for a damages  
7 payment of \$50,000.

8 3. The Court hereby preliminarily approves the Decree. The Court finds on a  
9 preliminary basis that the Decree is fair, adequate and reasonable to all potential Class  
10 Members. It further appears that extensive evaluation of the merits has been conducted  
11 such that Counsel for the Parties are able to reasonably evaluate their respective positions.  
12 It also appears to the Court that settlement at this time will avoid substantial additional  
13 costs to all Parties, as well as avoid the delay and the risks presented by further prosecution  
14 of issues either in the current or separate litigation proceedings which are addressed by the  
15 Decree. The results achieved by the Decree are also in line with approved consent decrees  
16 in similar cases. *See, e.g.*, Dkt. No. 10-1 ("Dardarian Decl."), Ex. 8 (order granting  
17 preliminary approval of consent decree in *Hines v. City of Portland*, Case No. 3:18-cv-  
18 00869-HZ (D. Or. June 4, 2019)).

19 4. The Court also finds that the Decree has been reached as the result of good  
20 faith, prolonged, serious, and non-collusive arms-length negotiations. The Parties reached  
21 the Decree after six years of out-of-court negotiations. At the preliminary approval  
22 hearing, the parties represented that they contested the merits of the class claims and  
23 engaged in extensive discovery and information sharing over the six-year period before  
24 reaching the Decree.

25 5. The Court hereby approves, as to form and content, the proposed Notice,  
26 attached as Exhibit C to the Decree. The Court finds that the distribution of the Notice in  
27 the manner and form set forth in the Decree meets the requirements of due process and  
28 Federal Rules of Civil Procedure 23(c)(2) and 23(e). This Notice is the best practicable

1 under the circumstances, and shall constitute due and sufficient notice to all persons  
2 entitled thereto. The Parties shall submit declarations to the Court as part of their Motion  
3 for Final Approval of the Class Action Settlement confirming compliance with the notice  
4 provisions of the Decree.

5 6. A hearing on final approval of the Decree (“Fairness Hearing”) shall be held  
6 before the Court, as set forth below, to determine all necessary matters concerning the  
7 Decree, including whether the proposed Decree’s terms and conditions are fair, adequate,  
8 and reasonable, and whether the Decree should receive final approval by the Court, as well  
9 as to rule on Class Counsel’s motion requesting an award of reasonable attorneys’ fees,  
10 costs and expenses.

11 7. Any Settlement Class Member may object to this Consent Decree by filing,  
12 no later than **August 14, 2020** (the “Objection Deadline”), written objections with the  
13 Court. Any Settlement Class Member may object to any aspect of the proposed Consent  
14 Decree either on their own or through an attorney hired at their expense. Any Settlement  
15 Class Member who wishes to object to the proposed Consent Decree may file a written  
16 statement of objection no later than the Objection Deadline. Such statement should  
17 include: (a) the name, address, and, if available, telephone number and e-mail address of  
18 the Class Member objecting, (b) if represented by counsel, the name, address, telephone  
19 number and e-mail address of the Class Member’s counsel; (c) a statement identifying the  
20 specific grounds for the Class Member’s objection; and (d) a statement of whether the  
21 objection applies to the Class Member, to a specific subset of the class, or to the entire  
22 class.

23 8. Any Class Member who wishes to object to the proposed Decree may also  
24 present objections at the Fairness Hearing.

25 9. The procedures and requirements for filing objections in connection with the  
26 Fairness Hearing are intended to ensure the efficient administration of justice and the  
27 orderly presentation of any Settlement Class Members’ objection to the Decree, in  
28 accordance with the due process rights of all Settlement Class Members.

1           10.     Class Counsel shall provide copies of any objections to Defendant’s counsel  
2 within two (2) court days of receipt. Class Counsel shall also file any objections with the  
3 Court no less than ten (10) calendar days before the Fairness Hearing.

4           11.     Pending the Fairness Hearing, all proceedings in this Action, other than  
5 proceedings necessary to carry out and enforce the terms and conditions of the Decree and  
6 this Order, are hereby stayed. Additionally, the Court enjoins all Settlement Class  
7 Members from asserting or maintaining any claims to be released by the Decree until the  
8 date of the Fairness Hearing.

9           12.     In accordance with the above, the Court adopts the following schedule:

10           a.     Within ten (10) calendar days after entry of the Order Granting  
11 Preliminary Approval, Class Counsel shall mail, via U.S. mail and/or email, the Notice in  
12 the form of Exhibit C to the Decree to all organizations identified in Exhibit E to the  
13 Decree.

14           b.     Within twenty (20) calendar days after entry of the Order Granting  
15 Preliminary Approval, Notice in the form of Exhibit C to the Decree shall be posted by  
16 Class Counsel on a case-specific website established by Class Counsel. The websites will  
17 have copies of the Notice in English, Spanish, and Vietnamese. In addition, the websites  
18 will provide information about how Settlement Class Members may obtain a copy of the  
19 Consent Decree. The City shall post the Notice on the City of San Jose’s official website,  
20 where it shall remain posted for four (4) consecutive weeks. The website will also make a  
21 copy of the Notice available in English, Spanish, and Vietnamese.

22           c.     Commencing within thirty (30) calendar days after entry of the Order  
23 Granting Preliminary Approval, the City shall cause to be published Notice in the form of  
24 Exhibit C to the proposed Consent Decree in The San Jose Mercury News once each week  
25 for four (4) consecutive weeks.

26           d.     Each Class Member shall be given a full opportunity to object to the  
27 proposed Settlement and Class Counsel’s request for an award of reasonable attorneys’  
28 fees, expenses, and costs, and to participate at the Fairness Hearing. Any Class Member

1 seeking to object to the proposed Settlement may submit an objection to the District Court  
2 in writing, via regular mail or filed in person.

3 e. No later than **July 10, 2020**, Plaintiff shall file a Motion for an Award  
4 of Reasonable Attorneys' Fees, Expenses, and Costs. The hearing on that Motion shall be  
5 concurrent with the Fairness Hearing.

6 f. The Parties shall file a Joint Motion for Final Approval and may  
7 respond to objections, if any, no later than five (5) calendar days prior to the Fairness  
8 Hearing. On the same date, the Parties shall also file statements of compliance with notice  
9 requirements.

10 g. The Fairness Hearing shall be held on **September 2, 2020 at 1:00**  
11 **p.m.** in Courtroom 5 of the above-referenced Court. The hearing will be conducted  
12 publicly via video conference through Zoom. Additional access details will be published  
13 by the Court before the hearing.

14 13. In the event the Court does not grant final approval of the Settlement, or for  
15 any reason the Parties fail to obtain a Final Judgment and Order Approving Settlement as  
16 contemplated by the Decree, or the Decree is terminated pursuant to its terms for any  
17 reason, or the Effective Date does not occur for any reason, then the Decree and all orders  
18 and findings entered in connection with the Decree and the Settlement shall become null  
19 and void and be of no further force and effect whatsoever, shall not be used or referred to  
20 for any purpose whatsoever, and shall not be admissible or discoverable in this or any  
21 other proceeding.

22 This Order shall not be construed or used as an admission, concession, or  
23 declaration by or against the City of any fault, wrongdoing, breach, or liability. It shall not  
24 be deemed to be a stipulation as to the propriety of class certification, or any admission of  
25 fact or law regarding any request for class certification, in any other action or proceeding,  
26 whether or not involving the same or similar claims.

27 Nor shall this Order be construed or used as an admission, concession, or  
28 declaration by or against Plaintiff or the other Settlement Class Members that their claims

1 lack merit or that the relief requested is inappropriate, improper, or unavailable, or as a  
2 waiver by any Party of any defenses or claims he, she, or it may have in the Action or in  
3 any other proceeding.

4 Relevant dates are summarized below:

5 <b>Deadline to File Written Objections to</b> 6 <b>Proposed Decree</b>	<b>August 14, 2020</b>
7 <b>Deadline for Plaintiff’s Motion for</b> 8 <b>Attorneys’ Fees</b>	<b>July 10, 2020</b>
9 <b>Date of Fairness Hearing</b>	<b>September 2, 2020, at 1:00 p.m.</b>

10  
11 **IT IS SO ORDERED.**

12  
13 Dated: May 27, 2020

14   
 15 \_\_\_\_\_  
 16 NATHANAEL M. COUSINS  
 17 United States Magistrate Judge  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25  
 26  
 27  
 28

United States District Court  
Northern District of California