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United States District Court  
Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

COMMUNITY RESOURCES FOR  
INDEPENDENT LIVING, et al.,

Plaintiffs,

v.

MOBILITY WORKS OF CALIFORNIA,  
LLC, et al.,

Defendants.

Case No. [18-cv-06012-JSW](#)

**ORDER GRANTING MOTION FOR  
PRELIMINARY APPROVAL AND  
SETTING DEADLINE TO FILE  
MOTIONS AND SETTING FINAL  
APPROVAL HEARING**

Re: Dkt. No. 53

Now before the Court for consideration is the unopposed motion for preliminary approval of a class action settlement. The Court has considered the parties’ papers, including the supplemental brief filed on March 4, 2020, relevant legal authority, and the record in this case, and it finds the motion suitable for disposition without oral argument. *See* N.D. Civ. L.R. 7-1(b). The Court VACATES the hearing set for March 13, 2020, and it HEREBY GRANTS the motion.

**BACKGROUND**

On October 1, 2018, Plaintiffs, Community Resources for Independent Living (“CRIC”), Dorene Giacomini (“Ms. Giacomini”), and Stuart James (“Mr. James”) (collectively “Plaintiffs”) filed this class action lawsuit against Mobility Works of California, LLC, and WMK, LLC (collectively “Mobility Works”). Plaintiffs allege that Mobility Works is one of the country’s largest providers of wheelchair accessible vehicles for sale or rent, and a major installer of adaptive devices. According to Plaintiffs, Mobility Works employed two policies that discriminated against drivers with disabilities. (Compl. ¶¶ 1-2, 27-31.)

First, Plaintiffs alleged that Mobility Works would not install hand controls or other

1 adaptive devices in rental cars when drivers with disabilities needed and requested them.<sup>1</sup> (*Id.* ¶¶  
2 1-2, 27-28.) Second, Plaintiffs alleged that before Mobility Works would install such devices in a  
3 vehicle, it required people with disabilities who needed them to undergo unnecessary and  
4 burdensome “certification” courses that were not imposed on any nondisabled drivers. (*Id.* ¶¶ 1-2,  
5 29-31.)

6 Mobility Works does not admit these allegations, and does not concede liability. The  
7 parties engaged in nearly a year of negotiations, which included two private mediation sessions,  
8 multiple telephonic meetings, and several settlement proposals from each side and reached an  
9 agreement on a proposed class-wide settlement.

10 Plaintiffs now ask that the Court enter an order (1) granting preliminary approval of their  
11 Agreement; (2) provisionally certifying their proposed settlement class and appointing Plaintiffs’  
12 attorneys as class counsel; (3) approving the parties’ proposed form of notice and directing notice  
13 to the class; and (4) setting all associated deadlines.

#### 14 ANALYSIS

15 Federal Rule of Civil Procedure 23(e) conditions the settlement of any class action on  
16 court approval, which is intended to ensure that the proposed settlement is “fair, adequate, and free  
17 from collusion.” Pre-certification settlements, such as this one, are subject to a “higher level of  
18 scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required.” *In re*  
19 *Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011).

20 When evaluating a motion for preliminary approval, Rule 23 now requires courts to  
21 consider: (1) whether the class was adequately represented; (2) whether the proposed settlement  
22 was negotiated at arm’s length; (3) whether the relief provided for the class is adequate, taking  
23 into account the costs, risks, and delay of trial and appeal, the terms of any proposed award of  
24 attorneys’ fees, and other factors; and (4) whether the proposal treats class members equitably  
25 relative to one another. Fed. R. Civ. P. 23(e)(2); *see also Lane v. Facebook, Inc.*, 696 F.3d 811,  
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27 <sup>1</sup> Such devices include: hand controls, which allow drivers to accelerate or brake using their  
28 hands instead of their feet; steering knobs, which allow for one-handed steering; and pedal  
extensions, which allow drivers whose feet would not otherwise reach the pedals to drive.

1 819 (9th Cir. 2012) (discussing factors set forth in *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026  
2 (9th Cir. 1998)). At the preliminary approval stage, the parties must “show that the court will  
3 likely be able to” approve their proposed settlement under these new Rule 23(e)(2) factors. Fed.  
4 R. Civ. P. 23(e)(1)(B); *see also In re MyFord Touch Consumer Litig.*, No. 13-CV-03072-EMC,  
5 2019 WL 1411510, at \*4 (N.D. Cal. Mar. 28, 2019).

6 The Court has considered these factors and has examined the settlement process for subtle  
7 signs of collusion, and the Court finds that final approval is likely. Accordingly, the Court  
8 preliminarily approves the parties’ agreement. The Court now turns to the other Rule 23(e)  
9 factors.

10 First, the Court must consider whether the class representatives and class counsel have  
11 adequately represented the class. This requires the Court to consider the same “adequacy of  
12 representation” questions that are relevant to class certification. *See, e.g., MyFord Touch*, 2019  
13 WL 1411510 at \*8. First, “[d]o the representative plaintiffs and their counsel have any conflicts of  
14 interest with other class members.” *Staton v. Boeing, Co.*, 327 F.3d 938, 957 (9th Cir. 2003).  
15 There is no evidence in the record to suggest that is the case here. Second, “will the representative  
16 plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” *Id.* Based on  
17 the record presented, the Court concludes that Plaintiffs and their counsel have adequately  
18 represented the class, and this factor weighs in favor of preliminary approval.

19 Second, the Court considers whether the settlement was negotiated at arms-length,  
20 although that does not give rise to a presumption that the settlement is fair. *See, e.g., Roes, I-2 v.*  
21 *SFBSC Mgmt. LLP*, 944 F.3d 1035, 1049 & n. 12 (9th Cir. 2019). However, “the involvement of  
22 a neutral or court-affiliated mediator or facilitator . . . may bear on whether [negotiations] were  
23 conducted in a manner that would protect and further the class interests.” Advisory Committee  
24 Notes to 2018 Amendments, Fed. R. Civ. P. 23(e)(2). Here, the parties participated in two  
25 mediation sessions before neutrals, in addition to conducting other negotiations. The Court  
26 concludes this factor weighs in favor of preliminary approval.

27 Third, the Court considers whether the relief provided to the class is adequate, in light of  
28 the factors set forth in Rule 23(e)(2)(C)(i)-(iv). Plaintiffs obtained relief in the form of policy

1 changes, which they contend was a primary goal in bringing suit. They also address the risks they  
 2 could have faced if they had litigated this case to trial. The Court also notes that the parties did  
 3 not address the issue of fees until after they had resolved matters relating to the substantive relief  
 4 to be afforded to the class. The Court concludes that the relevant factors weigh in favor of  
 5 preliminary approval.

6 Finally, the Court considers whether “the proposal treats class members equitably relative  
 7 to each other.” Fed. R. Civ. P. 23(d). Pursuant to the settlement, Plaintiffs and all class members  
 8 will receive exactly the same injunctive relief. The settlement does provide that the individual  
 9 plaintiffs may be awarded \$2,000 as a service award, but unlike the absent class members, they are  
 10 releasing their damages claims.<sup>2</sup> The Court concludes this factor weighs in favor of preliminary  
 11 approval.

12 The parties seek preliminary approval of the following nationwide settlement class:

13 [A]ll people with disabilities who need Adaptive Equipment to  
 14 operate a vehicle, and who have used or attempted to use  
 15 Defendants’ rental or installation services between October 1, 2016  
 16 and Final Approval, as well as all such individuals who will use or  
 attempt to use Defendants’ rental or installation services throughout  
 the Settlement Term.

17 This settlement class is defined slightly differently from the class originally proposed in  
 18 Plaintiffs’ complaint. (Compl. ¶ 53.) However, given the nature of Plaintiffs’ claims, the uniform  
 19 injunctive relief at issue (which will apply to all potential customers who need adaptive equipment  
 20 equally), and the limited scope of the Agreement’s release clause (which is limited only to claims  
 21 actually brought and settled in this action, and does not affect potential damages claims of anyone  
 22 other than Plaintiffs), the Court concludes the differences are immaterial.

23 The Court concludes that this proposed class meets the requirements of Rules 23(a) and  
 24 23(b)(2), and it is hereby conditionally certified pending final approval. Ms. Giacomini and Mr.  
 25 James are hereby conditionally appointed as representatives of the class, and Disability Rights  
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27 <sup>2</sup> The Court is not expressing any opinion on whether it would approve these awards. It  
 28 references them for purposes of addressing a difference in how Plaintiffs and absent class  
 members may be treated.

1 Advocates is conditionally appointed as class counsel. If the parties' Settlement Agreement is not  
2 ultimately approved by this Court, this conditional certification and all related appointments will  
3 be vacated.

4 On March 4, 2020, the parties submitted a revised form of notice, which included  
5 information about the service awards. Under Rule 23(e), the notice must "generally describe[] the  
6 terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and  
7 to come forward and be heard." *Lane*, 696 F.3d at 826 (alteration in original) (quoting *Rodriguez*  
8 *v. W. Publ'g Corp.*, 563 F.3d 948, 962 (9th Cir. 2009)). The Court finds that the parties' revised  
9 proposed form of notice meets this standard, and complies with the Northern District's Procedural  
10 Guidance For Class Action Settlements. The notice submitted on March 4, 2020 as Exhibit A to  
11 the parties Supplemental Brief (Dkt. No. 56-1) is approved as to form. The parties may make non-  
12 substantive changes to this notice—such as to insert dates and times consistent with this Order, as  
13 well as website addresses—without further approval from this Court.

14 The Court ORDERS that notice to the class will be given as follows:

- 15 (1) Within 15 days of this order, class counsel will create a settlement website, and will  
16 post the notice, Settlement Agreement, and other relevant case materials on this  
17 website. This website—which can be a subdomain of their main [www.dralegal.org](http://www.dralegal.org)  
18 page—along with all relevant links, will be maintained for a period up to and including  
19 the last day for class members to file objections to the settlement.
- 20 (2) Within 15 days of this order, class counsel will also 1) prominently display a link to the  
21 notice and other settlement information on the front page of their website  
22 ([www.dralegal.org](http://www.dralegal.org)), in a way that does not require users to scroll; 2) distribute it via  
23 their Facebook and Twitter feeds; 3) send it to all subscribers of their newsletter; and 4)  
24 submit it to the California Foundation of Independent Living Centers, the National  
25 Disability Rights Network, and the National Council on Independent Living, with a  
26 request that it be shared broadly.
- 27 (3) Within 15 days this order, Defendants will also 1) post the notice on their own website  
28 ([www.mobilityworks.com](http://www.mobilityworks.com)), with a link prominently displayed on the front page in a

1 way that does not require users to scroll; 2) distribute it via their Facebook and Twitter  
 2 feeds; 3) send it by email directly to individuals who were Mobility Works customers  
 3 between October 1, 2016 and the present, for whom Defendants have email contact  
 4 information on file; and 4) pay for the one-time publication of an announcement, with a  
 5 link to the notice, in the online newsletter and print edition of *NewMobility* magazine.  
 6 The mobilityworks.com notice page, along with all relevant links, will be maintained  
 7 for a period up to and including the last day for class members to file objections to the  
 8 settlement.<sup>3</sup>

9 The Court ORDERS that the final approval hearing (the “Fairness Hearing”) shall be held  
 10 on Friday, May 22, 2020 at the United States District Courthouse, 1301 Clay Street, Courtroom 5,  
 11 Oakland, California, 94612 at 9:00 a.m.

12 Plaintiffs shall file their motion for attorneys’ fees and costs and for incentive awards by  
 13 no later than April 13, 2020, and they shall file a motion for final approval by no later than April  
 14 17, 2020.

15 The Court may continue the Fairness Hearing without further notice to the Settlement  
 16 Class (except those who have filed timely objections and notices of intent to appear at the Fairness  
 17 Hearing or otherwise have entered appearances).

18 Members of the Settlement Class may register their objections to the Settlement  
 19 Agreement by filing written objections with this Court. Objections and accompanying verification  
 20 must be received within 60 days of this Order, *i.e.* by May 5, 2020. Members of the Settlement  
 21 Class who also wish to appear at the Fairness Hearing and object to the Settlement Agreement in  
 22 person must first file written objections and therein indicate their intent to appear at the Fairness  
 23 Hearing. Any Settlement Class member who does not make his or her objection in the manner  
 24 provided for in this Order shall be deemed to have waived such objection.

25 All responses to objections shall be filed with the Court and served by mail on the parties’  
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27 <sup>3</sup> Mobility Works attests, through counsel, that it complied with all applicable notice  
 28 provisions of the Class Action Fairness Act, 28 U.S.C. sections 1715(a), (b), and (d) on February  
 13, 2020. (Declaration of Kelly M. Fox, ¶¶ 2-7, Ex. A.)

1 counsel and on any objectors no later than fourteen (14) days before the Fairness Hearing, *i.e.* by  
2 Friday, May 8, 2020. If the parties require additional time, the Court will entertain a request to  
3 continue this deadline and the final approval hearing.

4 At least fourteen (14) days before the final approval hearing, the parties' counsel shall file  
5 a joint declaration attesting that they each disseminated the Notice as set forth in this Order.

6 **IT IS SO ORDERED.**

7 Dated: March 6, 2020

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10 JEFFREY S. WHITE  
11 United States District Judge

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United States District Court  
Northern District of California