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11  
12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 COMMUNITY RESOURCES FOR  
15 INDEPENDENT LIVING, a California non-  
16 profit corporation, on behalf of itself;  
17 DORENE GIACOPINI, an individual, on  
18 behalf of herself and all others similarly  
19 situated; STUART JAMES, an individual, on  
20 behalf of himself and all others similarly  
21 situated;

22 Plaintiffs,

23 v.

24 MOBILITY WORKS OF CALIFORNIA,  
25 LLC., a California limited liability  
26 corporation; and WMK, LLC., an Ohio limited  
27 liability corporation;

28 Defendants.

**Case No. 4:18-cv-06012-JSW**

**PLAINTIFFS' UNOPPOSED MOTION  
FOR FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT**

Date: May 22, 2020  
Time: 9:00 a.m.  
Place: Zoom Webinar  
Judge: Hon. Jeffrey S. White

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27  
28

**TABLE OF CONTENTS**

I. Introduction..... 1

II. Argument. .... 2

    A. Plaintiffs have achieved excellent relief for the class, and the changes they fought for will benefit drivers with disabilities nationwide..... 3

        1. The potential costs, risks, and delays associated with trial and appeal weigh in favor of approval..... 4

        2. The terms of the Parties’ proposed attorneys’ fee award also weigh in favor of approval. .... 6

    B. Plaintiffs and their counsel have adequately represented the settlement class. .... 6

    C. The Parties’ agreement is the product of arms-length negotiations..... 8

    D. The Parties’ agreement treats all class members equitably. .... 9

    E. The Parties provided notice of their proposed settlement to the class, and there have been no objections to date..... 10

III. Conclusion. .... 11

IV. One Page Summary..... 12

**TABLE OF AUTHORITIES**

**Cases**

*Am. Council of the Blind v. Astrue*,  
No. C05-04696 WHA, 2008 WL 4279674 (N.D. Cal. Sept. 11, 2008)..... 7

*Californians for Disability Rights, Inc. v. California Dep't of Transp.*,  
249 F.R.D. 334 (N.D. Cal. 2008)..... 7

*Chun-Hoon v. McKee Foods Corp.*,  
716 F. Supp. 2d 848 (N.D. Cal. 2010) ..... 10

*Engel v. Worthington*,  
60 Cal. App. 4th 628 (1997) ..... 6

*Hanlon v. Chrysler Corp.*,  
150 F.3d 1011 (9th Cir. 1998) ..... 4, 7

*In re Anthem, Inc. Data Breach Litig.*,  
327 F.R.D. 299 (N.D. Cal. 2018)..... 5

*In re Bluetooth Headset Prod. Liab. Litig.*,  
654 F.3d 935 (9th Cir. 2011) ..... 2, 6

*In re Extreme Networks, Inc. Sec. Litig.*,  
No. 15-CV-04883-BLF, 2019 WL 3290770 (N.D. Cal. July 22, 2019)..... 3, 8

*In re Mego Fin. Corp. Sec. Litig.*,  
213 F.3d 454 (9th Cir. 2000) ..... 9

*In re MyFord Touch Consumer Litig.*,  
No. 13-CV-03072-EMC, 2019 WL 1411510 (N.D. Cal. Mar. 28, 2019) ..... 6

*In re Pac. Enterprises Sec. Litig.*,  
47 F.3d 373 (9th Cir. 1995) ..... 5

*In re Tableware Antitrust Litig.*,  
484 F. Supp. 2d 1078 (N.D. Cal. 2007) ..... 8

*In re Tableware Antitrust Litig.*,  
No. C-04-3514 VRW, 2007 WL 4219394 (N.D. Cal. Nov. 28, 2007)..... 8

*Karczewski v. DCH Mission Valley LLC*,  
862 F.3d 1006 (9th Cir. 2017) ..... 5

*Lane v. Facebook, Inc.*,  
696 F.3d 811 (9th Cir. 2012) ..... 2, 3

*Morales v. City of San Rafael*,  
108 F.3d 981 (9th Cir. 1997) ..... 6

*Morales v. City of San Rafael*,  
96 F.3d 359 (9th Cir. 1996) ..... 6

1	<i>Morales v. Whole Foods Mkt., Inc.</i> , No. C 12-01072 CRB, 2013 WL 3967639 (N.D. Cal. July 31, 2013).....	6
2		
3	<i>O'Connor v. Uber Techs., Inc.</i> , No. 13-CV-03826-EMC, 2019 WL 1437101 (N.D. Cal. Mar. 29, 2019) .....	6
4	<i>Officers for Justice v. Civil Serv. Comm'n of City &amp; Cty. of S.F.</i> , 688 F.2d 615 (9th Cir. 1982) .....	5
5		
6	<i>Perdue v. Kenny A. ex rel. Winn</i> , 559 U.S. 542 (2010).....	6
7	<i>Rodriguez v. W. Publ'g Corp.</i> , 563 F.3d 948 (9th Cir. 2009) .....	8
8		
9	<i>Roes 1-2 v. SFBSC Mgmt.</i> , LLC, No. 17-17079, 2019 WL 6721190 (9th Cir. Dec. 11, 2019).....	2, 8
10	<i>Sali v. Corona Reg'l Med. Ctr.</i> , 889 F.3d 623 (9th Cir. 2018) .....	7
11		
12	<b>Statutes</b>	
13	42 U.S.C. § 12205.....	6
14	Cal. Civ. Code § 52(a) .....	6
15	<b>Rules</b>	
16	Advisory Committee Notes to 2018 Amendments, Fed. R. Civ. P. 23(e)(2) .....	3, 8
17	Fed. R. Civ. P. 23(a)(4).....	7
18	Fed. R. Civ. P. 23(e)(2).....	2
19	Fed. R. Civ. P. 23(e)(2)(B) .....	8
20	Fed. R. Civ. P. 23(e)(2)(C) .....	3
21	Fed. R. Civ. P. 23(e)(2)(C)(i).....	4
22	Fed. R. Civ. P. 23(e)(2)(D) .....	10
23	<b>Treatises</b>	
24	1 William B. Rubenstein, <i>Newberg on Class Actions</i> § 3:55 (5th ed. Supp. 2019).....	7
25		
26		
27		
28		

1 **NOTICE OF MOTION AND MOTION**

2 PLEASE TAKE NOTICE THAT at **9:00 a.m. on May 22, 2020** or as soon thereafter as  
3 the matter may be heard, Plaintiffs Community Resources for Independent Living, Dorene  
4 Giacopini, and Stuart James (collectively “Plaintiffs”) will move the Court for entry of an order  
5 (1) granting final approval of their proposed class-wide settlement agreement (the “Agreement”),  
6 submitted herewith as Ex. 1 to the Betouliere Declaration, (2) finding that adequate notice was  
7 provided to the Settlement Class; and (3) dismissing this suit with prejudice, while retaining  
8 jurisdiction to enforce the Parties’ Agreement and resolve any disputes that might arise.<sup>1</sup> The  
9 motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points  
10 and Authorities, the concurrently filed declarations and exhibits, all pleadings and papers on file  
11 in this action, and any oral argument this Court permits. Defendants Mobility Works of  
12 California, LLC and WMK, LLC (collectively “Defendants” or “Mobility Works”) will  
13 separately join this motion.

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. Introduction.**

16 As this Court is aware, after nearly a year of negotiations—including two private  
17 mediation sessions, multiple telephonic meetings, and several settlement proposals from each  
18 side—the Parties have reached agreement on a proposed class-wide settlement that will resolve  
19 every issue raised in Plaintiffs’ Complaint.<sup>2</sup> The policy and practice changes contained in this  
20 Agreement will ensure that people with disabilities who need hand controls or other adaptive  
21 devices will be able to rent and drive Mobility Works’ rental vans independently, and that  
22 licensed drivers who need adaptive equipment can generally forego the company’s prior  
23 “certification” requirements, provided they can verify their ability to use the equipment they

24 \_\_\_\_\_  
25 <sup>1</sup> At this hearing, Plaintiffs will also move the Court for entry of an order approving the agreed-  
26 upon award of \$150,000 in reasonable attorneys’ fees and costs contained in § 6 of the Parties’  
27 proposed settlement, as well the award of \$2,000 to Plaintiffs Stuart James and Dorene  
28 Giacopini, intended to compensate them for services rendered to the settlement class. *See* ECF  
No. 59.

<sup>2</sup> Defendants do not admit Plaintiffs’ allegations or concede liability, and nothing in this motion  
should be construed as an admission of liability or a waiver of any arguments or defenses any  
Party might raise in the future, should final approval not be granted.

1 request. *See* Betouliere Decl., Ex. 1 (“Settlement”) at §§ 3.2.1, 3.3.2, 3.3.4.

2 On March 6, 2020, this Court issued an Order preliminarily approving this Agreement,  
3 finding that final approval was likely, and directing notice to the settlement class. ECF No. 58 at  
4 3, 5. The Parties subsequently disseminated notice, and Plaintiffs have received no objections as  
5 of this writing. Betouliere Decl. ¶¶ 38-43. Plaintiffs now respectfully request that the Court issue  
6 an order (1) granting final approval of their Agreement; (2) finding that adequate notice was  
7 provided to the class; and (3) dismissing this suit with prejudice, while retaining jurisdiction to  
8 enforce the Agreement and resolve any disputes that might arise during its term.

## 9 **II. Argument.**

10 Federal Rule of Civil Procedure 23(e) conditions the settlement of any class action on  
11 court approval, which is intended to ensure that the proposed settlement is “fair, adequate, and  
12 free from collusion.” *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012) (citation and  
13 internal quotation marks omitted); *see also* Fed. R. Civ. P. 23(e)(2). Pre-certification settlements,  
14 such as this one, are subject to a “higher level of scrutiny for evidence of collusion or other  
15 conflicts of interest than is ordinarily required.”<sup>3</sup> *In re Bluetooth Headset Prod. Liab. Litig.*, 654  
16 F.3d 935, 946 (9th Cir. 2011) (discussing higher standard).

17 In making a final fairness determination, Rule 23 now requires courts to consider: (1)  
18 whether the class was adequately represented; (2) whether the proposed settlement was  
19 negotiated at arm’s length; (3) whether the relief provided for the class is adequate, taking into  
20 account the costs, risks, and delay of trial and appeal, the terms of any proposed award of  
21 attorneys’ fees, and other factors; and (4) whether the proposal treats class members equitably  
22 relative to one another.<sup>4</sup> Fed. R. Civ. P. 23(e)(2); *see also Lane*, 696 F.3d at 819 (discussing pre-  
23

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24 <sup>3</sup> Before approving such settlements, courts must look not only for explicit evidence of collusion,  
25 but also for more “subtle signs” of self-interest, including (1) whether class counsel will receive  
26 “disproportionate distribution of the settlement,” (2) whether the defendant has agreed not to  
27 object to class counsel’s fee request, and (3) whether unclaimed funds will revert to the  
28 defendant. *In re 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, \*10 (9th Cir. Dec. 11, 2019) (citation and internal quotations omitted).

<sup>4</sup> These new Rule 23(e)(2) factors are not intended to “displace” any factors currently used” by  
Ninth Circuit courts, “but instead aim to focus the court and attorneys on ‘the core concerns of

1 amendment *Hanlon* factors). When considering these questions, courts must be careful to  
2 “evaluate the fairness of a settlement as a whole, rather than assessing its individual  
3 components,” while remaining mindful that “the question whether a settlement is fundamentally  
4 fair within the meaning of Rule 23(e) is different from the question whether the settlement is  
5 perfect in the estimation of the reviewing court.” *Lane*, 696 F.3d at 818-19.

6 In this case all Rule 23(e) factors weigh in favor of final approval, and the Parties’  
7 Agreement should be approved.

8 **A. Plaintiffs have achieved excellent relief for the class, and the changes they**  
9 **fought for will benefit drivers with disabilities nationwide.**

10 In evaluating the substantive fairness of a proposed settlement, courts consider whether  
11 “the relief provided for the class is adequate,” taking into account “the costs, risks, and delay of  
12 trial and appeal,” “the terms of any proposed award of attorneys’ fees,” and other factors. Fed. R.  
13 Civ. P. 23(e)(2)(C). Here, Plaintiffs have achieved a remarkable result on behalf of themselves  
14 and the class, and all relevant factors weigh in favor of approval.<sup>5</sup>

15 Plaintiffs’ filed this case to address two issues: 1) Mobility Works’ alleged refusal to  
16 install hand controls or other adaptive devices in rental cars; and (2) its alleged imposition of  
17 unnecessary and burdensome “certification” requirements on drivers with disabilities. ECF No 1.  
18 at ¶¶ 1-2, 27-31. *Id.* at ¶¶ 1-2, 29-31. The Parties’ proposed settlement will completely and  
19 conclusively resolve both issues, to the benefit of drivers with disabilities nationwide. *See*  
20 *Betouliere Decl.* ¶¶ 27-33.

21 Under this Agreement, Mobility Works will install hand controls and other adaptive  
22 equipment in any available rental vehicle upon request, at no charge to customers – meaning that  
23 people with disabilities who need such devices will be able to rent and drive Mobility Works

24 procedure and substance that should guide the decision whether to approve the proposal.” *In re*  
25 *Extreme Networks, Inc. Sec. Litig.*, No. 15-CV-04883-BLF, 2019 WL 3290770, \*6 (N.D. Cal.  
26 July 22, 2019) (discussing and quoting advisory committee’s note to 2018 amendment). The  
27 amended rule “therefore directs the parties to present the settlement to the court in terms of a  
shorter list” of factors that “should always matter” when making this decision. Advisory  
Committee Notes to 2018 Amendments, Fed. R. Civ. P. 23(e)(2).

28 <sup>5</sup> Because this case concerns a (b)(2) class and Plaintiffs did not bring, litigate, settle, or release  
any damages claims, Rule 23(e)(2)(C)(ii) does not apply. Rule 23(e)(2)(C)(iii) is similarly  
inapplicable. *See Betouliere Decl.* ¶ 27.

1 vans independently, where before they were allegedly forced to either rely on a nondisabled  
2 driver, or to forego using the company’s rental services entirely. Settlement at § 3.3.2. In  
3 addition, Mobility Works will now allow drivers who need adaptive equipment installed in any  
4 vehicle to forego the prior “certification” requirement, provided that they have a valid license  
5 and can attest to their experience using the equipment they have requested. *Id.* at §§ 3.2.1, 3.3.4.  
6 These changes will dramatically improve class-member access to Defendants’ services.

7 In addition to the core policy changes described above, the Parties’ proposed Agreement  
8 will ensure that potential customers are well-aware of these new policies, and that they are  
9 consistently implemented by Mobility Works employees. *Id.* at § 3.5.1 (publication); *id.* at §§  
10 3.4, 3.5.2, 3.6.1 (employee training and implementation). The Agreement also contains  
11 provisions to monitor settlement compliance—including semi-annual submission of customer  
12 complaints to Plaintiffs’ counsel—and to ensure that any disputes that arise during its two-year  
13 term are promptly resolved. *Id.* at §§ 3.6.1.2, 3.6.2 (monitoring); *id.* at § 4 (dispute resolution);  
14 *id.* at § 5.1 (term). Finally, for all members of the proposed class other than Plaintiffs, the  
15 Agreement will only release the declaratory and injunctive claims brought and settled in this  
16 action—these class members’ potential damages claims will not be affected, and nor will any  
17 claims that might accrue after the expiration of the settlement’s term. *Id.* at § 8.

18 This comprehensive settlement involving the nations’ largest provider of wheelchair  
19 accessible vehicles—to Plaintiffs’ knowledge, the first-of-its-kind—will benefit class members  
20 for years to come, and should serve as a model for the rest of the wheelchair accessible vehicle  
21 industry. *See* Betouliere Decl. ¶ 30.

22 1. The potential costs, risks, and delays associated with trial and appeal  
23 weigh in favor of approval.

24 In considering “the costs, risks, and delay of trial and appeal,” Fed. R. Civ. P.  
25 23(e)(2)(C)(i), courts in the Ninth Circuit evaluate “the strength of the plaintiffs’ case; the risk,  
26 expense, complexity, and likely duration of further litigation; [and] the risk of maintaining class  
27 action status throughout the trial.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.  
28 1998).



1 In the course of developing this case and drafting the complaint, Plaintiffs learned that  
2 while there was a recent Ninth Circuit decision suggesting that installation of adaptive devices  
3 was presumptively reasonable for a large company like Mobility Works that has spare adaptive  
4 devices on hand, regularly installs them, and employs many mechanics with the necessary  
5 expertise,<sup>6</sup> there was—to their knowledge—no federal caselaw that directly addressed the  
6 questions raised in this case. This meant that victory was far from assured. *Betouliere Decl.* ¶ 34.  
7 And, even if Plaintiffs had won a contested motion for class certification, prevailed on the merits,  
8 and fought off any appeals, that process would likely have taken years and cost hundreds of  
9 thousands of additional dollars in attorneys’ fees and costs. *Id.* at ¶ 35. All the while, Plaintiffs  
10 and other drivers with disabilities who wanted to make full use of Mobility Works’ services  
11 would have been waiting for relief. *Id.*

12 In the experience of Plaintiffs’ counsel, the end result of protracted litigation would  
13 probably have been no better: in settling, Plaintiffs have achieved the exact policy and practice  
14 changes they sought, and all that this Court would likely have ordered if they had prevailed.<sup>7</sup>  
15 *Betouliere Decl.* at ¶ 36.

16 In short, the potential costs, risks, and delay associated with trial and appeal weigh  
17 strongly in favor of final approval—particularly when considered in concert with the excellent  
18 and timely relief achieved. *See In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 318 (N.D.  
19 Cal. 2018) (granting final approval where “further litigation would have been costly and  
20 uncertain and would have detrimentally delayed any potential relief for the Class,” whereas the  
21 relief provided by settlement was “timely, certain, and meaningful”).

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24 <sup>6</sup> *See Karczewski v. DCH Mission Valley LLC*, 862 F.3d 1006, 1017 (9th Cir. 2017).

25 <sup>7</sup> Even if this were not so, courts routinely approve class action settlements in which the value of  
26 class relief is less than could potentially have been obtained at trial, based on their recognition  
27 that a proposed agreement is “not to be judged against a hypothetical or speculative measure of  
28 what might have been achieved,” and that “it is the very uncertainty of outcome in litigation . . .  
that induce[s] consensual settlements.” *Officers for Justice v. Civil Serv. Comm’n of City & Cty.  
of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982); *see also In re Pac. Enterprises Sec. Litig.*, 47 F.3d  
373, 378 (9th Cir. 1995) (noting that “[p]arties represented by competent counsel are better  
positioned than courts to produce a settlement that fairly reflects each party’s expected outcome  
in litigation”).

2. The terms of the Parties’ proposed attorneys’ fee award also weigh in favor of approval.

The statutes at issue in this case allow prevailing plaintiffs to recover their reasonable fees and costs. *See* 42 U.S.C. § 12205 (ADA); Cal. Civ. Code § 52(a) (Unruh). Under the Unruh Act, such an award is mandatory. *Engel v. Worthington*, 60 Cal. App. 4th 628, 632-35 (1997); *Morales v. Whole Foods Mkt., Inc.*, No. C 12-01072 CRB, 2013 WL 3967639, \*2 (N.D. Cal. July 31, 2013). However, in the context of a class settlement, “courts have an independent obligation to ensure that” any award of fees and costs “is reasonable, even if the parties have already agreed to an amount.”<sup>8</sup> *In re Bluetooth*, 654 F.3d at 941.

Here, Defendants have agreed to pay Plaintiffs a total of \$150,000 to compensate them for attorneys’ fees, expenses and costs incurred through final approval. *See* Betouliere Decl., Ex. 1 (“Settlement”) at § 6. The reasonableness of this award is the subject of a separate motion for attorneys’ fees and costs that is also before the Court, incorporated herein by reference. *See* ECF No. 59. For the purposes of this motion, Plaintiffs note only that their full lodestar of **\$200,208** is the presumptively reasonable attorneys’ fee,<sup>9</sup> and that this amount is far greater than the agreed-upon \$150,000 fee and cost award in this case. *See* ECF No. 59 at ¶¶ 5-11 (discussing lodestar).

**B. Plaintiffs and their counsel have adequately represented the settlement class.**

In determining whether a class has been adequately represented, courts consider the same “adequacy of representation” questions that are relevant to class certification. *See In re MyFord Touch Consumer Litig.*, No. 13-CV-03072-EMC, 2019 WL 1411510, \*8 (N.D. Cal. Mar. 28, 2019); *O’Connor v. Uber Techs., Inc.*, No. 13-CV-03826-EMC, 2019 WL 1437101, \*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*

<sup>8</sup> While such awards are not formally approved until the final approval hearing, class counsel must “include information about the fees they intend to request and their lodestar calculation in their motion for preliminary approval.” *See* Northern District Proc. Guidance for Class Action Sett. ¶ 6.

<sup>9</sup> *See Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010); *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), *amended by* 108 F.3d 981 (9th Cir. 1997).

1 *Reg'l Med. Ctr.*, 889 F.3d 623, 634 (9th Cir. 2018) (citation omitted); *Hanlon*, 150 F.3d at 1020;  
2 Fed. R. Civ. P. 23(a)(4). Adequate representation of counsel is generally presumed in the  
3 absence of contrary evidence. *Californians for Disability Rights, Inc. v. California Dep't of*  
4 *Transp.*, 249 F.R.D. 334, 349 (N.D. Cal. 2008); see 1 William B. Rubenstein, *Newberg on Class*  
5 *Actions* § 3:55 (5th ed. Supp. 2019). Neither Plaintiffs nor their counsel have any known  
6 conflicts with the proposed class. Betouliere Decl. ¶ 4; see also ECF No. 53-4 (“James Decl.”) at  
7 ¶ 5; ECF No. 53-3 (“Giacopini Decl.”) at ¶ 5.

8 Plaintiffs are directly affected by the policies and practices that they brought this case to  
9 change, see ECF No. 1 at ¶¶ 32-52, 57, and they sought the same relief for themselves and the  
10 class: changes to Mobility Works’ policies and practices that will allow drivers with disabilities  
11 to have “full and equal enjoyment” of the company’s rental, sale, and installation services. James  
12 Decl. ¶¶ 2-4, Giacopini Decl. ¶¶ 2-4; see also *Am. Council of the Blind v. Astrue*, No. C05-  
13 04696 WHA, 2008 WL 4279674, \*6 (N.D. Cal. Sept. 11, 2008) (holding that where Plaintiffs do  
14 not seek monetary damages, “[t]he potential for any conflict or collusion is . . . minimal”). By  
15 ensuring that people who need adaptive devices to drive can get them, without having to  
16 complete unnecessary “certifications,” this is exactly what the Parties’ Agreement will provide.

17 Plaintiffs Giacopini and James have vigorously pursued this outcome on behalf of the  
18 settlement class: they have knowledge of the case and of their duties as class representatives,  
19 have participated actively in settlement negotiations, and were willing to continue to prosecute  
20 this action if necessary. James Decl. ¶¶ 5-7, Giacopini Decl. ¶¶ 5-7. Similarly, Plaintiffs’  
21 Counsel has acted vigorously on behalf of the class, through both litigation and arms-length  
22 settlement negotiations. Betouliere Decl. ¶¶ 13-24 (history of litigation and negotiations), 34-36  
23 (rationale for not pursuing further litigation); see also *Hanlon*, 150 F.3d at 1021 (vigorous  
24 representation measured by “competency of counsel and . . . an assessment of the rationale for  
25 not pursuing further litigation”).

26 Plaintiffs’ attorneys have served as class counsel in numerous and varied disability rights  
27 cases across the country. Betouliere Decl. ¶¶ 4-12 (discussing competency of counsel). Based on  
28 their experience litigating disability claims, the policy and practice changes and other provisions

1 contained in the Parties' Agreement will effectively ensure that Plaintiffs and the class have full  
2 and equal access to Mobility Works' rental and installation services, making further litigation  
3 unnecessary. Betouliere Decl. ¶¶ 26-36; *see also Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948,  
4 965 (9th Cir. 2009) ("this circuit has long deferred to the private consensual decision[s]" of  
5 parties represented by "experienced counsel"). Thus, the Court should find that this Rule  
6 23(e)(2) factor weighs in favor of approval.

7 **C. The Parties' agreement is the product of arms-length negotiations.**

8 The Parties' proposed Agreement is the product of nearly a year of arms-length  
9 negotiations, including two sessions before neutral mediators. Betouliere Decl. ¶¶ 13-24. While  
10 no presumption of fairness attaches to settlements achieved through arms-length negotiations,  
11 *see Roes 1-2*, 2019 WL 6721190 at \*10, such negotiations do weigh in favor of approval.<sup>10</sup> Fed.  
12 R. Civ. P. 23(e)(2)(B). And, as the Advisory Committee has recognized, "the involvement of a  
13 neutral or court-affiliated mediator or facilitator . . . may bear on whether [negotiations] were  
14 conducted in a manner that would protect and further the class interests." Advisory Committee  
15 Notes to 2018 Amendments, Fed. R. Civ. P. 23(e)(2). Where, as here, an agreement is the  
16 product of "serious, informed, non-collusive negotiations" conducted by experienced counsel  
17 over an "extended period of time," courts routinely find that approval is appropriate. *See, e.g., In*  
18 *re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079-80 (N.D. Cal. 2007) (preliminary  
19 approval order); *In re Tableware Antitrust Litig.*, No. C-04-3514 VRW, 2007 WL 4219394, \*3  
20 (N.D. Cal. Nov. 28, 2007) (granting final approval, and holding that "extended negotiations that  
21 culminated in the settlement indicate that the agreement here was reached in a procedurally  
22 sound manner").

23 In accordance with a schedule approved by this Court, ECF No. 16, the Parties began  
24 settlement discussions in mid-January of 2019, and on the 30th of that month Plaintiffs sent  
25 Defendants a letter describing the exact policy and practice changes they sought. Betouliere  
26

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27 <sup>10</sup> The considerations encompassed by new Rule 23(e)(b)(2) overlap with those contemplated by  
28 "certain *Hanlon* factors, such as the non-collusive nature of negotiations, the extent of discovery  
completed, and the stage of proceedings." *In re Extreme*, 2019 WL 3290770, at \*7 (citing  
*Hanlon*, 150 F.3d at 1026).

1 Decl. ¶ 15. Defendants responded to that letter in April 2019, and over the ensuing months the  
2 Parties exchanged several more letters concerning possible settlement. *Id.* at ¶ 16. However, as  
3 the Parties were not close to agreement on several key terms, Plaintiffs simultaneously prepared  
4 for trial and pursued necessary discovery, including through review of produced documents,  
5 interrogatory responses, and a day-long 30(b)(6) deposition of Defendants’ designee.<sup>11</sup> *Id.* at ¶  
6 17.

7 On May 31, 2019, the Parties conducted a full-day mediation with their appointed  
8 Northern District panel mediator, Michael J. Loeb. At this mediation, the Parties were able to  
9 agree on the core substantive terms of a settlement pertaining to injunctive relief, which were  
10 memorialized in a signed memorandum of understanding; to conserve resources, they also  
11 agreed to stay discovery and litigation while working out the remaining details. *See* ECF Nos.  
12 38-39; Betouliere Decl. ¶¶ 18-19. The Parties exchanged draft settlement agreements and  
13 engaged in related calls and correspondence over the next several months; by November 1, 2019,  
14 they had resolved all major substantive issues and achieved a near-complete settlement draft.  
15 Betouliere Decl. ¶ 20. On November 4, 2019, having reached agreement on injunctive relief for  
16 Plaintiffs and the proposed class, Plaintiffs sent Defendants an attorneys’ fee demand. *Id.* at ¶ 21.  
17 Shortly thereafter the Parties engaged in a further mediation session with Mr. Daniel Ben-Zvi of  
18 ADR Services, Inc. that led to the resolution of all remaining issues, including attorneys’ fees  
19 and costs and incentive awards for Plaintiffs Giacomini and James. *See id.* at ¶¶ 22-24; ECF No.  
20 45. The Parties’ proposed agreement was fully executed on January 28, 2020. Betouliere Decl. at  
21 ¶ 24.

22 **D. The Parties’ agreement treats all class members equitably.**

23 Under the Parties’ proposed settlement, Plaintiffs and all proposed class members will  
24 receive exactly the same injunctive relief. Settlement at § 3. Indeed, the only thing Plaintiffs get  
25

26  
27 <sup>11</sup> Even if Plaintiffs had not conducted such discovery, this would not necessarily be a bar to final  
28 approval. “[I]n the context of class action settlements, formal discovery is not a necessary ticket  
to the bargaining table;” what matters is that the parties “have sufficient information to make an  
informed decision about settlement.” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th  
Cir. 2000), *as amended* (June 19, 2000) (internal quotation marks omitted).

1 that Settlement Class members do not is a small \$2,000 incentive award, meant to compensate  
2 them for their considerable efforts advocating on behalf of the class, including time spent  
3 engaging in discussions with counsel regarding goals and strategy; reviewing and providing feedback  
4 on all pleadings, settlement drafts, proposals, and related correspondence; and participating actively  
5 in the Parties’ successful JAMS mediation with Mr. Loeb.<sup>12</sup> *See* Settlement at § 7; Betouliere Decl.  
6 at ¶ 37. The reasonableness of these awards is addressed in Plaintiffs’ pending motion for  
7 attorneys’ fees and costs, incorporated herein by reference. *See* ECF No. 59 at ¶¶ 12-13;

8 Because the Parties’ Agreement treats Plaintiffs and all other “class members equitably  
9 relative to each other,” the Court should find that this factor weighs in favor of approval. *See*  
10 Fed. R. Civ. P. 23(e)(2)(D).

11 **E. The Parties provided notice of their proposed settlement to the class, and**  
12 **there have been no objections to date.**

13 In its March 6, 2020 order, this Court approved the Parties’ proposed form of notice.  
14 Plaintiffs have disseminated the notice as set forth in that order (with the exception of a short  
15 delay in newsletter publication)<sup>13</sup> and it is Plaintiffs’ understanding that Defendants have  
16 complied with all applicable terms. Betouliere Decl. ¶¶ 38-41. A joint declaration regarding  
17 dissemination of notice will be filed by or before May 8, 2020, in accordance with this Court’s  
18 order.

19 As of this writing, Plaintiffs have received no objections to the Parties’ proposed  
20 Agreement. Betouliere Decl. ¶¶ 42-43. Such “absence of a negative reaction[] strongly supports  
21 settlement.” *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010).  
22 That said, the Court’s May 5, 2020 deadline for submitting objections has not yet passed. *See*  
23 ECF No. 58 at ¶ 6. If Plaintiffs receive any objections between now and May 5th, they will  
24 respond as already ordered by this Court. *See id.*

25  
26  
27 <sup>12</sup> This modest incentive award is further justified because named Plaintiffs, unlike members of  
the settlement class, are releasing their damages claims. Settlement at § 8.3.

28 <sup>13</sup> This delay—attributable to the ongoing COVID-19 pandemic—is explained more fully in the  
accompanying declaration of Sean Betouliere in support of this motion. Betouliere Decl. ¶ 40.

1 **III. Conclusion.**

2 In consideration of the above, Plaintiffs respectfully request that this Court enter an order  
3 (1) granting final approval of their Agreement; (2) finding that adequate notice was provided to  
4 the class; and (3) dismissing this suit with prejudice, while retaining jurisdiction to enforce the  
5 Agreement and resolve any disputes that might arise during its term. A proposed order is filed  
6 concurrently with this motion.

7  
8 DATED: April 17, 2020

Respectfully submitted,

9  
10 DISABILITY RIGHTS ADVOCATES

11 

12  
13 \_\_\_\_\_  
Sean Betouliere  
Attorneys for Plaintiffs

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1 **ONE PAGE SUMMARY OF ARGUMENT**

2 On March 6, 2020, this Court issued an Order preliminarily approving the Parties’  
3 Agreement, finding that final approval was likely, and directing notice to the settlement class.  
4 ECF No. 58 at 3, 5. The Parties subsequently disseminated notice, and Plaintiffs have received  
5 no objections as of this writing. Betouliere Decl. ¶¶ 38-43. Plaintiffs now respectfully request  
6 that the Court issue an order (1) granting final approval of their Agreement; (2) finding that  
7 adequate notice was provided to the class; and (3) dismissing this suit with prejudice, while  
8 retaining jurisdiction to enforce the Agreement and resolve any disputes that might arise during  
9 its term.

10 Federal Rule of Civil Procedure 23(e) conditions the settlement of any class action on  
11 court approval, which is intended to ensure that the proposed settlement is “fair, adequate, and  
12 free from collusion.”<sup>14</sup> *Lane*, 696 F.3d at 819; *see also* Fed. R. Civ. P. 23(e)(2). In making a  
13 final fairness determination, Rule 23 now requires courts to consider: (1) whether the class was  
14 adequately represented; (2) whether the proposed settlement was negotiated at arm’s length; (3)  
15 whether the relief provided for the class is adequate, taking into account the costs, risks, and  
16 delay of trial and appeal, the terms of any proposed award of attorneys’ fees, and other factors;  
17 and (4) whether the proposal treats class members equitably relative to one another. Fed. R. Civ.  
18 P. 23(e)(2); *see also Lane*, 696 F.3d at 819 (discussing pre-amendment *Hanlon* factors). When  
19 considering these questions, courts must be careful to “evaluate the fairness of a settlement as a  
20 whole, rather than assessing its individual components,” while remaining mindful that “the  
21 question whether a settlement is fundamentally fair within the meaning of Rule 23(e) is different  
22 from the question whether the settlement is perfect in the estimation of the reviewing court.”  
23 *Lane*, 696 F.3d at 818-19.

24 In this case all Rule 23(e) factors weigh in favor of final approval, and the Parties’  
25 Agreement should be approved.

26  
27 <sup>14</sup> Pre-certification settlements, such as this one, are subject to a “higher level of scrutiny for  
28 evidence of collusion or other conflicts of interest than is ordinarily required.” *In re Bluetooth*,  
654 F.3d at 946. For details regarding what this higher level of scrutiny entails, please see  
footnote 3, above.

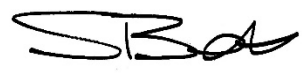


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DATED: April 17, 2020

Respectfully submitted,

DISABILITY RIGHTS ADVOCATES



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Sean Betouliere  
Attorneys for Plaintiffs

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6 Attorneys for Plaintiffs

7  
8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 COMMUNITY RESOURCES FOR  
11 INDEPENDENT LIVING, a California non-  
12 profit corporation, on behalf of itself;  
13 DORENE GIACOPINI, an individual, on  
14 behalf of herself and all others similarly  
15 situated; STUART JAMES, an individual, on  
16 behalf of himself and all others similarly  
17 situated;

15 Plaintiffs,

16 v.

17 MOBILITY WORKS OF CALIFORNIA,  
18 LLC., a California limited liability  
19 corporation; and WMK, LLC., an Ohio  
20 limited liability corporation;

20 Defendants.

**Case No. 4:18-cv-06012-JSW**

**DECLARATION OF SEAN  
BETOULIERE IN SUPPORT OF  
PLAINTIFFS MOTION FOR FINAL  
APPROVAL**

Judge: Hon. Jeffrey S. White

1 I, Sean Betouliere, declare:

2 1. I am an attorney admitted to practice law in California, a member of the bar  
3 of this Court, and counsel of record for Plaintiffs. I have been an attorney of record on  
4 this case since its inception. I have personal knowledge of the matters set forth herein,  
5 and if called as a witness I could competently testify to them. I make this declaration in  
6 support of Plaintiffs' Motion For Final Approval.

7 2. Attached hereto as **Exhibit 1** is a true and correct copy of the proposed class-wide  
8 settlement agreement ("Agreement") entered into between Plaintiffs Community Resources for  
9 Independent Living, Dorene Giacomini, and Stuart James ("Plaintiffs") and Defendants Mobility  
10 Works of California, LLC and WMK, LLC ("Defendants" or "Mobility Works").

11 3. Attached hereto as **Exhibit 2** is a true and correct copy of the finalized notice of  
12 class settlement.

### 13 **Experience And Qualifications Of Class Counsel**

14 4. Class counsel Disability Rights Advocates ("DRA," "Plaintiffs' Counsel," or  
15 "Class Counsel") is a 501(c)(3) non-profit public interest organization exclusively dedicated to  
16 advancing the civil rights of people with disabilities. DRA engages in class action and impact  
17 litigation on behalf of clients who face discrimination or other violations of civil rights or federal  
18 statutory protections, and it does not charge clients for these services. DRA is generally  
19 acknowledged to be one of the leading disability rights legal organizations in the country. To the  
20 best of our knowledge, DRA has no conflicts of interest with the proposed class, and we have  
21 prosecuted this action vigorously on their behalf.

22 5. DRA has served as lead counsel in over 100 disability civil rights class action  
23 cases across the United States, and has specialized expertise in class action litigation concerning  
24 access to transportation and public accommodations for people with disabilities. Cases where  
25 DRA has served as class counsel and successfully represented classes of people with disabilities  
26 include, among others:

- 27 a) *Cole v. County of Santa Clara*, No. 5:16-cv-06594-LHK (N.D. Cal.), a class-action on  
28 behalf of jail inmates with mobility disabilities. This case resulted in a consent decree

1 requiring Santa Clara County to modify its policies, procedures, and facilities to  
2 accommodate the needs of inmates with mobility disabilities.

3 b) *Nat'l Fed'n of the Blind v. Uber Techs., Inc.*, 3:14-cv-04086-NC, a class-action regarding  
4 Uber's failure to ensure that blind people with guide dogs had equal access to its  
5 transportation services. This case resulted in a settlement agreement through which Uber  
6 agreed to inform drivers of their obligation to accept customers with service animals, to  
7 improve its driver training on this subject, to impose appropriate disciplinary measures,  
8 and to promptly respond to all customer complaints regarding settlement compliance.

9 c) *Ochoa v. City of Long Beach*, 2-14-CV-04307-DSF-FFM (C.D. Cal.), a class-action  
10 challenging the failure of the City of Long Beach to ensure that its sidewalks, crosswalks,  
11 curb ramps and other pedestrian routes were accessible to people with mobility  
12 disabilities. The case resulted in a settlement agreement that will provide approximately  
13 \$200 million in accessibility improvements to the City's pedestrian routes over the next  
14 30 years, as well as policy changes to ensure that the City complies with its new  
15 construction and maintenance obligations.

16 d) *G.F. v. Contra Costa County*, No. C-13-03667 SBA (N.D. Cal), a class-action against  
17 Contra Costa County and Contra Costa County Office of Education challenging  
18 disproportionate use of isolation on youth with disabilities, and inadequate education  
19 services for youth with disabilities in county juvenile hall. This case resulted in a  
20 comprehensive settlement reducing use of isolation on youth with disabilities, and in  
21 various educational reforms.

22 e) *Lighthouse for the Blind and Visually Impaired v. Redbox Automated Retail, LLC*, C12-  
23 00195-PJH (N.D. Cal.), a California class action on behalf of blind individuals denied  
24 access to Redbox's touchscreen video rental kiosks. The case resulted in a class  
25 settlement wherein Redbox agreed to make software and hardware modifications to all of  
26 its over 4,000 kiosks in California, to make them independently operable by blind and  
27 low-vision persons.  
28

- 1 f) *Taxis For All Coalition v New York City Taxi and Limousine Com'n*, 11-cv-0237-GBD  
2 (S.D.N.Y.), a class-action against the commission that regulates all of the yellow cabs in  
3 New York City. This case achieved a class settlement increasing the number of  
4 wheelchair accessible cabs over a five year period from 231 when the case began to  
5 7,000.
- 6 g) *Gray v. Golden Gate National Recreation Area*, 3:14-cv-00511, 3:08-cv-00072-EDL  
7 (N.D. Cal.), a class-action against the Golden Gate National Recreation Area and the  
8 National Park Service resulting in a comprehensive class settlement agreement and  
9 access improvements to one of the Nation's largest national parks, including significant  
10 access improvements for the blind and low-vision community.
- 11 h) *National Federation of the Blind v. Target Corp.*, 452 F. Supp. 2d 946 (N.D. Cal. 2006);  
12 582 F. Supp. 2d 1185 (N.D. Cal. 2007), a nationwide class action on behalf of blind and  
13 low-vision individuals denied access to Target's consumer website. The Target case was  
14 among the first in the nation to establish the application of disability rights laws to the  
15 internet, resulting in a class settlement agreement requiring changes to Target's website  
16 to provide access for visually-impaired users, as well as \$6 million in damages for a  
17 California subclass.
- 18 i) *Californians for Disability Rights, Inc. v. California Department of Transportation*, 249  
19 F.R.D. 440 (N.D. Cal. 2001), a statewide class action brought on behalf of people with  
20 mobility and vision disabilities seeking to make thousands of miles of sidewalks under  
21 Caltrans' jurisdiction accessible. The case settled during trial in 2010 with Caltrans  
22 agreeing to commit over one billion dollars towards removal of pedestrian access barriers  
23 impacting the ability of class members to travel from place to place; at the time, this was  
24 the largest settlement ever achieved in a case involving architectural access for people  
25 with disabilities.

26 6. The DRA lawyers responsible for handling this case have extensive experience  
27 litigating similar cases.  
28

1           7.       Stuart Seaborn, Managing Director of Litigation at DRA, oversees DRA’s  
2 litigation team in this case. Mr. Seaborn has specialized in the use of litigation to advance the  
3 public interest for the past twenty years, and for the last sixteen years has focused almost  
4 exclusively on cases impacting the rights of persons with disabilities. Mr. Seaborn has also  
5 taught courses on disability law and litigation at UC Davis King Hall School of Law, and is  
6 currently an adjunct professor at UC Hastings School of Law in San Francisco, where he teaches  
7 disability rights law.

8           8.       Mr. Seaborn has served as lead counsel on variety of disability-rights class actions  
9 and other systemic cases on behalf of people with disabilities. Representative cases where he has  
10 served as class counsel or lead counsel include the following:

- 11       a) *Ochoa v. City of Long Beach*, (Case No. 2-14-CV-04307-DSF-FFM, discussed above.
- 12       b) *United Spinal Ass’n v. Bd. of Elections of the City of New York*, 882 F. Supp. 2d 615  
13       (S.D.N.Y. 2012), *aff’d sub nom. Disabled in Action v. Bd. of Elections of the City of New*  
14       *York*, 752 F.3d 189 (2d Cir. 2014), a city-wide challenge to the inaccessibility of polling  
15       sites for persons with mobility and vision disabilities. The case resulted in the first  
16       decision by a circuit court to hold that the Americans with Disabilities Act (“ADA”)  
17       requires public entities to affirmatively provide the same private and independent voting  
18       experience to disabled voters that they provide to the general population of non-disabled  
19       voters.
- 20       c) *Lighthouse for the Blind and Visually Impaired v. Redbox Automated Retail, LLC*, C12-  
21       00195-PJH (N.D. Cal.), discussed above.
- 22       d) *California Council of the Blind v. County of Alameda*, (985 F. Supp. 2d 1229), County-  
23       wide litigation challenging Alameda County’s failure to provide functioning accessible  
24       voting machines to blind voters on election day; the case resulted in the first district court  
25       decision to find that the Americans with Disabilities Act requires a secret ballot for blind  
26       voters where provided to sighted voters.
- 27       e) *Gray v. Golden Gate National Recreation Area*, Case Nos. 3:14-cv-00511 EDL and 3:08-  
28       cv-00722 EDL, discussed above.

- 1 f) *Phillips et al. v City of New York et al.*, 1:11-cv-06685 (KPF)(S.D.N.Y.), litigation  
2 challenging the New York City Police Department’s blanket ban on the use of hearing  
3 aids by uniformed police officers, which resulted in a settlement agreement requiring the  
4 NYPD to evaluate officers using hearing aids on a case-by-case basis.
- 5 g) *Legal Services for Prisoners with Children et al. v. Gregory Ahern et al.*, (Case No.  
6 RG1265266; Alameda County Superior Court), systemic litigation challenging the  
7 inaccessibility of the services, programs and facilities at the third largest jail in  
8 California. The litigation resulted in a settlement agreement that included system-wide  
9 architectural improvements and updated disability identification, tracking and  
10 accommodations policies.
- 11 h) *Mental Health & Wellness Coalition et al. v Stanford University*, Case No. 5:18-cv-  
12 02895-NC (N.D. Cal), a challenge to leave of absence and reasonable accommodation  
13 policies at Stanford University on behalf of students with mental health disabilities. The  
14 case resulted in a settlement agreement requiring significant changes to Stanford’s leave  
15 of absence policies and practices, all of which will help ensure that students experiencing  
16 mental health crises have access to appropriate accommodations and services and are not  
17 unnecessarily excluded from campus and housing.
- 18 i) *Napper v. Cnty. of Sacramento*, No. 2:10-cv-0119 JAM-EFM (E.D. Cal), a class action  
19 challenging county-wide cuts to outpatient mental health services. The case resulted in a  
20 consent decree maintaining funding for outpatient services throughout Sacramento  
21 County.

22 9. Prior to joining DRA, Mr. Seaborn had a solo civil rights practice and worked as a  
23 litigator at Disability Rights California. Mr. Seaborn started his career as a trial attorney at the  
24 San Francisco Regional Office of the Antitrust Division of the U.S. Department of Justice, after  
25 earning his J.D. from the UCLA School of Law in 1998 and his B.A. from the University of  
26 California, Berkeley in 1995.

27 10. Thomas Zito is a Supervising Attorney at DRA, and has been involved in this  
28 case in an advisory capacity. Mr. Zito is a 2010 graduate of Northeastern University School of

1 Law and is admitted to the bars of California (2015) and the Commonwealth of Massachusetts  
2 (2010). He has been litigating complex civil-rights cases for his entire career, and has been class  
3 counsel or lead counsel in several cases, including *Lewis v. Silvertree Mohave Homeowners*  
4 *Assn.*, No. 16-cv-03581-WHA (N.D.Cal.) (class action involving discrimination against resident  
5 children and families, which settled for significant injunctive relief and more than \$800,000 in  
6 damages to the class); *Huynh v. Harasz*, No. 14-cv-02367-LHK (N.D. Cal) (class action on  
7 behalf of Section 8 voucher holders with disabilities which settled for significant injunctive relief  
8 and \$3.2 million in damages to the class); *California Apartment Association v. City of Mountain*  
9 *View*, No. 16-CV-304253 (Santa Clara Sup. Ct.) (successfully defending a challenge to a voter  
10 approved rent stabilization program in Mountain View, California); and *CBIA v. City of San*  
11 *Jose*, 61 Cal.4th 435 (2015) *cert denied* 136 S.Ct. 928 (Feb 29, 2016) (successfully defending  
12 challenge to an inclusionary zoning ordinance).

13 11. I am a Staff Attorney at DRA, and a 2015 graduate of Berkeley Law. In addition  
14 to managing all day-to-day aspects of this case, I have been counsel in multiple class action  
15 lawsuits since joining DRA as a fellowship attorney in 2015. These include *Smith, et al. v. City*  
16 *of Oakland*, No. 4:19-cv-05398-JST (N.D. Cal) (class action challenging lack of accessible  
17 housing subject to City's rent control program); *Senior and Disability Action, et al. v. San*  
18 *Francisco Bay Area Rapid Transit Authority, et al.*, No. 3:17-cv-01876-LB (N.D. Cal) (class  
19 action regarding the accessibility of BART's subway system, including failure to maintain  
20 elevators); *S.G, et al. v. City of Los Angeles*, No. CV17-09003-JAK-PJW (C.D. Cal.) (class  
21 action on behalf of schoolchildren with disabilities, whose needs were not considered when city  
22 approved major construction); and *Ochoa v. City of Long Beach*, No. 2:14-cv-04307-DSF-FFM,  
23 (C.D. Cal.) (class action regarding accessibility of sidewalks and other pedestrian pathways). I  
24 also recently negotiated a settlement in *California Foundation for Independent Living Centers, et*  
25 *al. v. County of Sacramento*, No. 2:12-CV-03056-KJM-GGH, (E.D. Cal.) that will result in  
26 significant changes to the emergency preparedness plan at Sacramento International Airport and  
27 help ensure that people with disabilities are not left behind when disaster strikes. During law  
28 school, I served as an extern to Magistrate Judge Donna M. Ryu in the Northern District of



1 California, and interned with Disability Rights California and the Disability Rights Program of  
2 Legal Aid at Work (formerly the Legal Aid Society Employment Law Center).

3 12. Jessica Agatstein was a Fellowship Attorney at DRA until November of 2019. In  
4 addition to her work on this case, Ms. Agatstein served as counsel in several other class action  
5 cases during her time at DRA, including *Smith, et al. v. City of Oakland*, No. 4:19-cv-05398-JST  
6 (N.D. Cal), discussed above, and *Fraihat, et al. v. U.S. Immigration and Customs Enforcement,*  
7 *et al.*, No. 5:19-CV-01546 JGB-SHKx, a nationwide class action challenging discriminatory  
8 conditions of detention in ICE facilities. Prior to her fellowship, Ms. Agatstein served as a law  
9 clerk to Justice Goodwin Liu on the California Supreme Court, and to Judge Marsha S. Berzon in  
10 the Ninth Circuit Court of Appeals. Ms. Agatstein is a 2016 graduate of Yale Law School.

### 11 **History of Litigation and Settlement Negotiations**

12 13. The proposed Settlement Agreement in this case is a fair and reasonable  
13 resolution of class claims resulting from nearly a year of detailed, good faith, arms-length  
14 negotiations. These negotiations included several telephonic settlement discussions, a day long  
15 mediation session before court-appointed JAMS mediator Michael Loeb, the exchange of  
16 numerous written proposals and settlement drafts, and a second mediation before ADR Services  
17 mediator Daniel Ben-Zvi to resolve final details, including fees and costs.

18 14. In August 2018, I sent Mobility Works a prelitigation letter on behalf of Plaintiffs,  
19 asking that the company revise its discriminatory policies regarding customer “certification” and  
20 the installation of adaptive devices in rental vehicles. Mobility Works did not respond to this  
21 letter. As a result, Plaintiffs decided to pursue litigation, and filed this case in October of 2018.

22 15. In accordance with a schedule approved by this Court, ECF No. 16, the Parties  
23 began settlement discussions in mid-January of 2019, and on the 30<sup>th</sup> of that month Plaintiffs  
24 sent Defendants a letter describing the exact policy and practice changes they sought.

25 16. Defendants responded to that letter in April 2019, and over the ensuing months  
26 the Parties exchanged several more letters concerning possible settlement.

27 17. However, because the Parties were not close to agreement on several key terms,  
28 Plaintiffs simultaneously prepared for trial and pursued necessary discovery, including through

1 review of produced documents and interrogatory responses, and a day-long Rule 30(b)(6)  
2 deposition of Defendants' corporate designee.

3 18. On May 31, 2019, the parties conducted a full-day mediation with their appointed  
4 Northern District mediator, Michael J. Loeb, which was attended by Plaintiffs Giacopini and  
5 James, Defendants' corporate designee, and attorneys from both parties. Plaintiff Dorene  
6 Giacopini also represented organizational Plaintiff Community Resources for Independent  
7 Living (CRIL) at this mediation in her capacity as the President of CRIL's Board of Directors,  
8 because Ron Halog—the organization's then-Executive Director—was unable to attend.

9 19. At this mediation, the Parties were able to agree on the core substantive terms of a  
10 settlement, which were memorialized in a signed memorandum of understanding. To conserve  
11 resources, they also agreed to seek a stay of discovery and litigation while working out the  
12 remaining details. This stay was subsequently granted by the Court. *See* ECF Nos. 38-39.

13 20. The Parties exchanged settlement agreement drafts and engaged in related calls  
14 and correspondence over the next several months, and by November 1, 2019 they had resolved  
15 all major substantive issues and achieved a near-complete settlement draft. The Parties did not  
16 engage in any negotiations regarding attorneys' fees or costs during this period, and Plaintiffs  
17 took the position that any such discussions would have to wait until after resolution of all  
18 substantive relief for Plaintiffs and the class.

19 21. On November 4, 2019, having reached agreement on all major substantive issues,  
20 Plaintiffs sent Defendants an attorneys' fee demand. On November 12, 2019 the Parties engaged  
21 in a further mediation session with Mr. Daniel Ben-Zvi of ADR Services, Inc., which focused  
22 primarily on the issue of Plaintiffs' reasonable attorneys' fees and costs. The settlement terms  
23 regarding a \$2,000 incentive award to Plaintiffs' Giacopini and James were also finalized during  
24 this session.

25 22. At the conclusion of that mediation, Mr. Ben-Zvi presented the Parties with a  
26 mediators' proposal that encompassed the resolution of all remaining issues, including an award  
27 of \$150,000 to cover Plaintiffs' reasonable attorneys' fees and costs through final approval.  
28

1           23.     On November 14, 2019, Plaintiffs received an email from Mr. Ben-Zvi stating  
2 that both Parties had accepted that proposal. *See* ECF. No. 45.

3           24.     The Parties’ proposed agreement was fully executed on January 28, 2020.

4           25.     Aside from the memorandum of understanding regarding substantive injunctive  
5 relief discussed above, the Parties have not engaged in any supplemental or separate agreements  
6 in connection with this proposed settlement.

7                   **In The Judgement of Class Counsel, The Parties’ Proposed Agreement Achieves An**  
8                   **Excellent Result For Plaintiffs And The Class.**

9           26.     I and my co-counsel at DRA view the Parties’ proposed Agreement as a fair,  
10 adequate, and reasonable compromise of the disputed issues at the heart of this case.

11           27.     Plaintiffs’ filed this case to address two issues: 1) Mobility Works’ alleged refusal  
12 to install hand controls or other adaptive devices in rental cars; and (2) its alleged imposition of  
13 unnecessary and burdensome “certification” requirements on drivers with disabilities. ECF No 1.  
14 at ¶¶ 1-2, 27-31. *Id.* at ¶¶ 1-2, 29-31. The Parties’ proposed settlement completely and  
15 conclusively resolves both of these issues, and achieves the exact sort of policy and practice  
16 change that Plaintiffs’ sought when they filed this case. Given this, Plaintiffs and their counsel  
17 determined that further litigation was not necessary, and would not be in the best interests of  
18 either Plaintiffs or the class.

19           28.     Under the Parties’ proposed agreement, Mobility Works will install hand controls  
20 and other adaptive equipment in any available rental vehicle upon request, at no charge to  
21 customers – meaning that people with disabilities who need such devices will be able to rent and  
22 drive Mobility Works vans independently, where before they were allegedly forced to either rely  
23 on a nondisabled driver, or to forego using the company’s rental services entirely. *See* Betouliere  
24 Decl., Exhibit 1 (Agreement) at § 3.3.2. Customers can request rentals with adaptive equipment  
25 through the all normal methods, *id.* at § 3.3.6, and in most locations, Mobility Works will  
26 perform adaptive device installations with as little as 48 hours advance notice, which is  
27 consistent with the policies of most major car rental companies. *Id.* at § 3.3.3  
28

1           29.     In addition, Mobility Works will now allow drivers who need adaptive equipment  
2 installed in any vehicle to forego the prior “certification” requirement, if they either 1) have a  
3 valid license and can attest to their experience using the equipment they have requested or 2)  
4 have a valid license with an endorsement or restriction regarding type of adaptive equipment  
5 they have requested. *Id.* at §§ 3.2.1, 3.3.4. While “certification” remains one way by which  
6 customers can demonstrate that they are able to use the equipment they have requested, Mobility  
7 Works cannot prefer it over either of the new methods described above. *Id.* at § 3.3.5.

8           30.     These changes will dramatically improve class-member access to Defendants’  
9 services, and Plaintiffs believe that this comprehensive settlement involving the nations’ largest  
10 provider of wheelchair accessible vehicles—to the best of class counsel’s knowledge, the first-  
11 of-its-kind—will benefit class members for years to come, and should serve as a model for the  
12 rest of the wheelchair accessible vehicle industry.

13           31.     In addition to the core policy changes described above, the Parties’ proposed  
14 agreement will ensure that potential customers are well-aware of these new policies, and that  
15 they are consistently implemented by Mobility Works employees. *Id.* at § 3.5.1 (publication); *id.*  
16 at §§ 3.4, 3.5.2, 3.6.1 (employee training and implementation). To ensure compliance with these  
17 provisions, Plaintiffs counsel will review proposed revisions to all relevant documents. *Id.* at §  
18 3.5.4 Mobility Works will also submit evidence of training completion to Plaintiffs counsel on a  
19 yearly basis. *Id.* at § 3.6.1.2.

20           32.     The agreement also contains provisions to monitor settlement compliance  
21 (including semi-annual submission of customer complaints to class counsel), and to ensure that  
22 any disputes that arise during its two-year term are promptly resolved. *Id.* at § 3.6.1.2; 3.6.2  
23 (monitoring); *id.* at § 4 (dispute resolution); *id.* at § 5.1 (term). This Court will retain jurisdiction  
24 to enforce the settlement and resolve disputes during this time. *Id.* at §§ 2.9, 5.1.

25           33.     Finally, with respect to class members *other than* Plaintiffs Giacomini, James, and  
26 CRIL, the agreement will only release the declaratory and injunctive claims brought and settled  
27 in this action—these class members’ potential damages claims will not be affected, and nor will  
28 any claims that might accrue after the expiration of the settlement’s term. *Id.* at § 8.

1       **In The Judgement Of Class Counsel, The Potential Costs, Risks, and Delays Associated**  
2       **With Trial and Appeal Weigh In Favor Of Approving The Parties’ Settlement**

3           34.     In the course of developing this case and drafting the complaint, Plaintiffs learned  
4     that while there was a recent Ninth Circuit decision suggesting that installation of adaptive  
5     devices was presumptively reasonable for a large company like Mobility Works that has spare  
6     adaptive devices on hand, regularly installs them, and employs many mechanics with the  
7     necessary expertise,<sup>1</sup> there was—to our knowledge—no federal caselaw that directly addressed  
8     the questions raised in this case. This meant that victory was far from assured.

9           35.     Further, even if Plaintiffs had won a contested motion for class certification,  
10    prevailed on the merits, and fought off any appeals, that process would likely have taken years  
11    and cost hundreds of thousands of additional dollars in attorneys’ fees and costs. All the while,  
12    Plaintiffs and other drivers with disabilities who wanted to make full use of Mobility Works’  
13    services would have been waiting for relief.

14          36.     In the experience of class counsel, the end result of such protracted litigation  
15    would probably have been no better: in settling, Plaintiffs have achieved the exact policy and  
16    practice changes they sought. In the experience of class counsel, further litigation would likely  
17    not have resulted in greater or more effective relief.

18       **Proposed Class Representatives Stuart James and Dorene Giacomini Were Crucial**  
19       **Participants In This Action, And Their Modest Incentive Award Is Warranted**

20          37.     Subject to this Court’s approval, Defendants have agreed to pay Plaintiffs  
21    Giacomini and James \$2,000 each, as compensation for their considerable efforts on behalf of the  
22    class. Agreement § 7. This term was finalized with the assistance of mediator Daniel Ben-Zvi  
23    after all other substantive settlement terms had been resolved. Proposed class representatives and  
24    individual Plaintiffs Stuart James and Dorene Giacomini are both people with mobility  
25    disabilities who—like the class they seek to represent—use hand controls and other assistive  
26    devices to drive, and were deterred from using Mobility Works’ services as a result of the  
27    discrimination alleged. Both Mr. James and Ms. Giacomini were active participants in this action

28       \_\_\_\_\_  
<sup>1</sup> See *Karczewski v. DCH Mission Valley LLC*, 862 F.3d 1006, 1017 (9th Cir. 2017).

1 and (based on their estimation and my own knowledge) devoted in excess of 20 hours to it—  
2 engaging in multiple discussions with counsel regarding goals and strategy; reviewing and  
3 providing feedback on all pleadings, settlement drafts, proposals, and related correspondence;  
4 and participating actively in the Parties’ successful JAMS mediation with Mr. Loeb. Moreover,  
5 as long-time drivers and users of adaptive equipment, they provided class counsel with crucial  
6 input regarding what policy and practice changes were possible, and what would be needed to  
7 provide effective relief to the class. Their input and effort is reflected throughout the Parties’  
8 proposed agreement. Finally, in negotiating this settlement on behalf of the class, both Mr. James  
9 and Ms. Giacomini gave up their right to pursue damages against Mobility Works (a right that is  
10 retained by every other member of the class).

11 **The Parties Provided Notice Of Their Proposed Settlement To The Class, And**  
12 **There Have Been No Objections To Date**

13 38. Within 15 days of this Court’s March 6, 2020 Order, class counsel created a  
14 settlement website, located at [dralegal.org/mobilityworks-settlement/](http://dralegal.org/mobilityworks-settlement/), which contains the  
15 approved and finalized class notice, a copy of the full proposed Settlement Agreement, a copy of  
16 this Courts’ order granting preliminary approval, a copy of Plaintiffs’ original class action  
17 complaint, and a copy of Plaintiffs’ motion for reasonable attorneys’ fees, costs, and incentive  
18 awards. Plaintiffs’ motion for final approval will also be posted on this site, and the site will be  
19 maintained at least until the May 5, 2020 deadline for class members to submit objections.

20 39. Within 15 days of this Court’s March 6, 2020 order, class counsel also 1)  
21 prominently displayed a link to the above-described settlement website on the front page of their  
22 website ([www.dralegal.org](http://www.dralegal.org)), in a way that did not require users to scroll; 2) distributed it via  
23 their Facebook and Twitter feeds; and 3) submitted it to the California Foundation of  
24 Independent Living Centers, the National Disability Rights Network, and the National Council  
25 on Independent Living, with a request that it be shared broadly.

26 40. The fourth component of this Court’s approved distribution plan—sending the  
27 above-described information to all subscribers of class counsel’s newsletter—was delayed  
28 slightly, because DRA personnel responsible for newsletter publication were working urgently to

1 transition all staff to remote work in compliance with the state and county shelter-in-place orders  
2 issued in response to COVID-19. However, a newsletter announcement with a link to the above-  
3 described settlement website was disseminated to all newsletter subscribers on the morning of  
4 March 25, 2020, three business days after this Court's March 21, 2020 deadline. Class counsel  
5 apologizes for this delay.

6 41. Class counsel has been informed and believes that Defendants have complied  
7 with all notice distribution provisions of this Court's preliminary approval order.

8 42. As of this writing, class counsel has received several inquiries from class  
9 members regarding the Parties' proposed agreement, but no objections.

10 43. That said, the Court's May 5, 2020 deadline for submitting objections has not yet  
11 passed. If class counsel receive any objections between the date of this writing and May 5th, they  
12 will respond as already ordered by this Court.

13  
14 I declare under penalty of perjury under the laws of the United States and the State of  
15 California that the foregoing is true and correct, to the best of my knowledge.

16  
17  
18 DATED: April 17, 2020

Respectfully submitted,

19  
20 DISABILITY RIGHTS ADVOCATES

21 

22 \_\_\_\_\_  
23 Sean Betouliere  
24 Attorneys for Plaintiffs

25  
26  
27  
28

Exhibit 1:  
Executed  
Settlement  
Agreement



## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement,” “Settlement,” or “Agreement”) is made between Mobility Works of California, LLC, and WMK, LLC (collectively, “Defendants”), and Community Resources for Independent Living (“CRIL”), Dorene Giacomini, Stuart James, and the Settlement Class (collectively, “Plaintiffs”). Collectively, these individuals and entities are referred to as the “Parties.”

WHEREAS, Plaintiffs, represented by Disability Rights Advocates (“DRA” or “Plaintiffs’ Counsel”), filed a lawsuit styled *Community Resources for Independent Living, et al. v. Mobility Works of California, LLC, et al.*, Case No. 4:18-cv-06012-JSW, in the United States District Court for the Northern District of California, Oakland Division on October 1, 2018 (the “Lawsuit”);

WHEREAS, Plaintiffs alleged in the Lawsuit that Defendants’ conduct violated the Americans with Disabilities Act, 42 U.S.C. §§ 12181 *et seq.*, and the Unruh Civil Rights Act, Cal. Civ. Code §§ 51 *et seq.*;

WHEREAS, the Parties have engaged in fact discovery; exchanged extensive settlement communications; participated in a day-long mediation before mediator Michael Loeb, at which they were able to agree on the core terms of a settlement; and participated in a half-day mediation before mediator Daniel Ben-Zvi, during which they came to an agreement regarding the monetary component of the settlement;

WHEREAS, the Parties now wish to effect a complete resolution and settlement of all claims and controversies relating to the allegations in the Lawsuit, believing settlement to be in their respective best interests in light of the expense and uncertainty of litigation, and without admission of any liability, fact, claim or defense, on the terms and conditions set forth herein;

NOW, THEREFORE, in exchange for the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### 1. Definitions

When used in this Settlement Agreement or any of its Exhibits, the following terms should be read to have the following meanings. All other terms shall be interpreted according to their plain and ordinary meanings, unless otherwise noted.

- 1.1. “Adaptive Equipment” means and refers to any equipment used as a driving aid by people with disabilities. In the context of Customer rentals of vehicles with Adaptive Equipment, the term refers specifically to pedal extensions, spinner knobs, push-rock hand controls, push-pull hand controls, push-right-angle hand controls, and/or push-twist hand controls.

- 1.2. “Class Counsel” means and refers to the nonprofit corporation Disability Rights Advocates, and all duly licensed attorneys who are employees thereof.
- 1.3. “Customer” means and refers to any person who purchases or expresses interest in purchasing any service or product from Mobility Works.
- 1.4. “Dispute” means and refers to each and every dispute that may arise out of this Settlement Agreement and/or its Exhibits, including, but not limited to, disputes concerning the interpretation, implementation, monitoring, and modification of this Settlement Agreement, or the Parties’ compliance with its terms. All Disputes shall be resolved using the Dispute Resolution Procedure outlined in Section 4.
- 1.5. “Fairness Hearing” means the hearing to be held by the District Court, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, to determine whether the settlement set forth in this Settlement Agreement should be approved.
- 1.6. “Final Approval” means the order by the District Court, after notice and the holding of the Fairness Hearing, granting approval of this Settlement Agreement under Rule 23(e) of the Federal Rules of Civil Procedure. The hearing at which such Final Approval is considered or granted, should a hearing be held, will be called the “Final Approval Hearing.”
- 1.7. “Mobility Works” means and refers to WMK, LLC and its subsidiary entities nationwide.
- 1.8. “Preliminary Approval” means the preliminary approval of this Settlement Agreement by the District Court.
- 1.9. “Released Claims” means and refers to all claims released in Section 8.1.
- 1.10. “Rural Location” means and refers to any Mobility Works showroom that employs a single mechanic and that is more than 50 miles away from any other Mobility Works showroom.
- 1.11. “Settlement Class” means and refers to all people with disabilities who need Adaptive Equipment to operate a vehicle, and who have used or attempted to use Defendants’ rental or installation services between October 1, 2016 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.

## **2. Procedures for Class Settlement**

- 2.1. Prior to Final Approval, the Parties’ only obligations under this Settlement Agreement will be those set forth in this Section (Section 2).

- 2.2. **Court Approval:** This Settlement Agreement will be subject to approval by the District Court. However, nothing in this Settlement Agreement will be deemed to authorize the District Court to change or modify any of its terms. The Parties agree that any change, modification, or rejection of any of the provisions of this Settlement Agreement by the District Court or any other court will constitute a material modification of this Settlement Agreement, will prevent the Judgment from becoming Final, and will give any Party the right to terminate this Settlement Agreement in its entirety.
- 2.3. **Preliminary Approval:** Within thirty (30) days of circulating the fully executed Settlement Agreement, the Parties will jointly submit a request to the District Court for Preliminary Approval of this Settlement Agreement, along with a request for an order from the District Court.
- 2.4. **Conditional Certification of the Settlement Class:** The Parties agree that the Settlement Class will be conditionally certified, in accordance with the terms of this Settlement Agreement, solely for purposes of effectuating this Settlement Agreement. Defendants do not consent, and Class Counsel and Plaintiffs agree that Defendants will not be deemed to have consented to, the certification of the Settlement Class for any other purpose.
- 2.5. **No Opt-Out:** The Parties agree that the Settlement Class will be certified in accordance with the standards applicable under Rule 23(b)(2) of the Federal Rules of Civil Procedure and that, accordingly, no Settlement Class member may opt out of any of the provisions of this Settlement Agreement.
- 2.6. **Notice:** The Parties will jointly request approval by the District Court of notice to the Settlement Class consistent with this Section. Following the District Court's issuance of the Preliminary Approval Order, the Parties will provide notice of the proposed Settlement Agreement, advising the members of the Settlement Class of the terms of the proposed Settlement Agreement and their right to object to the proposed Settlement Agreement. This Notice of Settlement will be provided as set forth in **Exhibit A** to this Agreement.
- 2.7. **Fairness Hearing:** The Parties will jointly request that the District Court schedule and conduct a Fairness Hearing to decide whether Final Approval of the Settlement Agreement will be granted.
- 2.8. **Objections:** Members of the Settlement Class will have an opportunity to object to the proposed Settlement Agreement but may not opt out. The Parties will request that the District Court order the following objection procedure:
  - 2.8.1. Any Settlement Class member may object to this Settlement Agreement by filing, within sixty (60) days after the District Court has issued the Preliminary Approval Order, written objections with the

District Court, with a copy of such objections served concurrently on Class Counsel by messenger delivery, FedEx or other overnight carrier delivery, First Class U.S. Mail delivery, and/or email. Any Settlement Class member may also appear at the Court's Fairness Hearing.

2.8.2. With respect to any and all objections to this Settlement Agreement received by Class Counsel, Class Counsel will provide a copy of each objection to counsel of record for Defendants, by electronic-mail delivery, within two (2) court days after receipt of such objection.

2.8.3. Responses by Class Counsel and/or Defendants to any timely filed objections will be filed with the District Court no less than five (5) days before the Fairness hearing, or as otherwise ordered by the Court.

## 2.9. **Final Approval:**

2.9.1. The Parties agree that, upon Final Approval, the Settlement Agreement will be binding on the parties and the District Court will enter the Judgment under Rule 54(b) of the Federal Rules of Civil Procedure dismissing the Lawsuit with prejudice subject to Judge Jeffrey S. White retaining jurisdiction to (i) enforce the terms of the Settlement Agreement; and (ii) resolve any Dispute regarding compliance with this Settlement Agreement as described in Section 4.

2.9.2. Defendants will not assert, after the Judgment has become Final, that Judge Jeffrey S. White lacks jurisdiction to enforce the terms of this Settlement Agreement nor will it raise any jurisdictional defense to any enforcement proceedings permitted under the terms of this Settlement Agreement.

2.9.3. If the District Court denies the Parties' request to enter the Judgment and this Settlement Agreement does not receive Final Approval, or if this Settlement Agreement does not become Final for any reason in accordance with its terms: (i) this Settlement Agreement will be null and void and of no force and effect; (ii) nothing in this Settlement Agreement will be deemed to prejudice the position of any of the Parties with respect to any matter; and (iii) neither the existence of this Settlement Agreement, nor its contents, will be admissible in evidence, referred to for any purpose in any litigation or proceeding, or be deemed an admission by Defendants of any fault, wrongdoing, or liability.

## 3. **Substantive Terms**

3.1. Unless otherwise specified, all terms in this Section (Section 3) shall become effective on the date of Final Approval.

**3.2. Adaptive Equipment in Existing Vehicles and Vehicles for Purchase Policy:**

3.2.1. To the extent Mobility Works requires Customers seeking to have Adaptive Equipment installed in a vehicle they own or a vehicle they are purchasing to provide certain information regarding their ability to use the requested Adaptive Equipment, Mobility Works will accept any of the following forms of proof that a Customer is able to use purchased Adaptive Equipment as an independently sufficient form of proof:

3.2.1.1. A valid driver's license without an endorsement or restriction regarding the use of Adaptive Equipment, combined with a written statement and signature indicating that the Customer has experience using the requested Adaptive Equipment, or substantially similar Adaptive Equipment;

3.2.1.2. A valid driver's license with an endorsement or restriction regarding the use of the requested Adaptive Equipment or substantially similar Adaptive Equipment; or

3.2.1.3. Other forms of proof as Mobility Works deems appropriate, including, for example, written documentation by a medical professional, a driver trainer, or a Certified Driver Rehabilitation Specialist.

3.2.2. Mobility Works will not require any Customer to provide an evaluation or other documentation from a medical professional, driver trainer, or Certified Driver Rehabilitation Specialist regarding experience with requested or purchased Adaptive Equipment if the Customer can provide the forms of proof listed in Subsections 3.2.1.1 or 3.2.1.2 of this Agreement. Mobility Works will not prefer any one form of proof described in Section 3.2.1 and its Subsections over any other independently sufficient form of proof described in that Section and its Subsections.

**3.3. Adaptive Equipment in Rental Vehicles Policy:**

3.3.1. Section 3.3 and its subsections shall only apply in a given state or at a given Mobility Works location if Mobility Works offers rental vehicles to customers in that state or at that location.

3.3.2. Mobility Works will, upon request, and at no charge to Customers, install in any available rental vehicle the following Adaptive Equipment: pedal extensions, spinner knobs, push-rock hand controls, push-pull hand controls, push-right-angle hand controls, and/or push-twist hand

controls.

- 3.3.3. Mobility Works will install or make available any Adaptive Equipment listed in the immediately preceding paragraph in an available rental vehicle with 48 hours' advance notice, or in a shorter amount of time if reasonably possible, except in Rural Locations. In Rural Locations, Mobility Works will install or make available such Adaptive Equipment in an available rental vehicle with 72 hours' advance notice, or in a shorter amount of time if reasonably possible.
- 3.3.4. To the extent Mobility Works requires Customers seeking to rent a vehicle with Adaptive Equipment to provide certain information regarding their ability to use the requested Adaptive Equipment, Mobility Works will accept any of the following forms of proof that a rental vehicle Customer is able to use Adaptive Equipment as an independently sufficient form of proof:
  - 3.3.4.1. A valid driver's license without an endorsement or restriction regarding the use of Adaptive Equipment, combined with a written statement and signature indicating that the Customer has experience using the requested Adaptive Equipment or substantially similar Adaptive Equipment;
  - 3.3.4.2. A valid driver's license with an endorsement or restriction regarding the use of the requested Adaptive Equipment or substantially similar Adaptive Equipment; or
  - 3.3.4.3. Other forms of proof as Mobility Works deems appropriate, including, for example, written documentation by a medical professional, a driver trainer, or a Certified Driver Rehabilitation Specialist.
- 3.3.5. Mobility Works will not require any rental vehicle Customer to provide an evaluation or other documentation from a medical professional, driver trainer, or Certified Driver Rehabilitation Specialist regarding experience with requested Adaptive Equipment if the Customer can provide the forms of proof listed in Subsections 3.3.4.1 or 3.3.4.2 of this Agreement. Mobility Works will not prefer any one form of proof described in Section 3.3.4 and its Subsections over any other independently sufficient form of proof described in that Section and its Subsections.
- 3.3.6. Mobility Works will ensure that customers can reserve a rental vehicle with the Adaptive Equipment listed in this section through each system by which customers can generally reserve rental vehicles, including through a web request form and through calling Mobility Works' rental

line. Mobility Works will develop and publish an updated web form for rental vehicle reservations, compliant with this Agreement as soon as possible, but no later than 180 days following the date of Final Approval of this Agreement. Mobility Works will develop and disseminate a guide for over-the-phone reservations including Adaptive Equipment, compliant with this Agreement as soon as possible, but no later than 180 days following the date of Final Approval of this Agreement.

3.3.7. For all rental vehicle reservations, Customers must indicate that they have the ability to use the requested vehicle and, if applicable, the requested Adaptive Equipment.

3.3.8. This agreement does not limit Mobility Works' right or ability to install any other equipment in rental vehicles if requested, in addition to the types of Adaptive Equipment listed in Section 3.3.2 of this Agreement. This Agreement does not require Mobility Works to install any types of Adaptive Equipment in rental vehicles that are not listed in Section 3.3.2.

#### **3.4. Training**

3.4.1. Mobility Works will ensure all current employees who interact with Customers with respect to the sale or rental of vehicles are trained on its policies consistent with Sections 3.2 and 3.3 of this Settlement Agreement as soon as possible, but no later than 180 days following the date of Final Approval of this Agreement.

3.4.2. Once policies consistent with Sections 3.2 and 3.3 of this Agreement are developed, Mobility Works will train new employees who interact with Customers with respect to the sale or rental of vehicles on those policies in the normal course of new employee training, and, in any event, no later than thirty (30) days following the new employee's first date of employment.

#### **3.5. Publication and Incorporation of Policies**

3.5.1. Mobility Works will publish its policies regarding installation of Adaptive Equipment in existing vehicles, vehicles for purchase, and rental vehicles, consistent with Sections 3.2 and 3.3 of this Agreement, on its website as soon as possible, but no later than 180 days following the date of Final Approval of this Agreement. Such revised policies shall also be posted prominently at each Mobility Works showroom location as soon as possible, but no later than 180 days following the date of Final Approval of this Agreement.

3.5.2. Mobility Works will incorporate its policies regarding Adaptive Equipment in existing vehicles, vehicles for purchase, and rental vehicles, consistent with Sections 3.2 and 3.3 of this Agreement, into relevant internal handbooks, checklists, and training guides, including but not limited to its Administrator's Playbook as soon as possible, but no later than 180 days following the date of Final Approval of this Agreement. Mobility Works shall inform Plaintiffs of any intended change in its policies, handbooks, reservation request forms, checklists, or training guides concerning the Substantive Terms of this Agreement (§ 3, *et seq.*) during the term of this Agreement, and Mobility Works shall provide Plaintiffs with redline versions of such documents. Plaintiffs will keep such documents confidential and will provide any comments on such documents within fifteen (15) days of receiving such documents; such documents shall not be published or disseminated until either (i) Plaintiffs provide comments or (ii) fifteen (15) days have passed.

### 3.6. **Monitoring and Implementation**

#### 3.6.1. Policy Implementation

3.6.1.1. Mobility Works will create a training program regarding its new policies (which may be found in Sections 3.2 & 3.3 above), which will be available to its employees on its web portal. Mobility Works will maintain records of its employees' certificates of completion of the training program and will ensure its ability to generate reports documenting the employees that have completed the training program.

3.6.1.2. Defendants will submit evidence of training completion every twelve (12) months throughout the Term.

#### 3.6.2. Monitoring Component

3.6.2.1. When posting and publishing its new policies as described in § 3.5.1 of this Agreement, Mobility Works will include a phone number with an indication that if an individual believes the policy is not being fully complied with, the individual should call the phone number to make a report.

3.6.2.2. Mobility Works will direct all reports to a select few individuals, who will be tasked with completing a form documenting both the complaint and how the issue was resolved.

3.6.2.3. Mobility Works will submit evidence of any complaints lodged by way of these completed forms to Plaintiffs' Counsel, starting



180 days from the Effective Date, and continuing on a bi-annual basis throughout the term. Any sensitive, personal information included on these forms will be redacted, but Mobility Works will make a good faith effort to inquire into affected individuals' permission to provide their names and contact information to Plaintiffs' Counsel, upon Plaintiffs' Counsel's request. Mobility Works will provide Plaintiffs' Counsel with the names and contact information of any individuals who provide such consent. Mobility Works will also keep a record of all communications with affected individuals, so that its compliance with these terms can be verified in the event of a dispute.

#### **4. Dispute Resolution Procedure**

4.1. If any disputes arise as to compliance with this Agreement, the Parties agree to resolve the dispute according to the following procedure:

4.1.1. **Step One – Notice:** One Party will send a letter to counsel for the other Party concerning any dispute, and the Parties will meet and confer in a good faith effort to resolve the identified dispute.

4.1.2. **Step Two – Mediation:** If the Parties are unable to resolve their dispute through meet and confer negotiations within twenty-one (21) days of receipt of the letter raising the dispute, the dispute shall be submitted to mediation before a Magistrate Judge for the U.S. District Court for the Northern District of California or another mutually agreeable mediator.

4.1.3. **Step Three – Resolution by District Court:** If the Parties are unable to resolve a dispute through Step Two, they shall submit the dispute for resolution by the Federal District Court for the Northern District of California. The Parties may seek to recover reasonable fees and costs in connection with proceedings under Step Two and Step Three, in accordance with applicable law.

#### **5. Term of Agreement**

5.1. This Settlement Agreement shall be in effect from the date of Final Approval until two (2) years from that date (the "Term"). Judge Jeffrey S. White will have continuing jurisdiction to enforce this Settlement Agreement throughout the Term.

#### **6. Attorneys' Fees and Costs Through Final Approval**

6.1. With respect to attorneys' fees and costs that Plaintiffs incurred from the inception of this matter through Final Approval, and the payment thereof by

Defendants, the Parties agree to the following in this Section as a complete resolution of the issue.

- 6.2. Defendants agree that, conditioned upon the District Court granting Final Approval of this Settlement Agreement, and the Judgment becoming Final, Plaintiffs are prevailing parties for purposes of awarding reasonable attorneys' fees, expenses, and costs.
- 6.3. Defendants agree to pay Class Counsel's reasonable attorneys' fees, litigation expenses, and costs in the total amount of \$150,000 for Class Counsel's fees, expenses, and costs through Final Approval. The amount of fees will be included in the notice to the class and subject to review and Approval by the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure.
- 6.4. Class Counsel's reasonable attorneys' fees, litigation expenses, and costs will be paid within 90 days after: (i) the District Court has issued a written order granting Final Approval of this Settlement Agreement; and (ii) the Judgment has become Final.
- 6.5. Defendants' payment of the amounts for reasonable attorneys' fees, expenses, and costs pursuant to Sections 6.1 through 6.5. will be in full and complete satisfaction of any and all claims for attorneys' fees, expenses, and costs incurred by Plaintiffs and Class Counsel in this Lawsuit, and Plaintiffs (on behalf of themselves and the Settlement Class) and Class Counsel expressly waive any right to recover any additional attorneys' fees, expenses, and costs in connection with this Lawsuit or this Settlement Agreement, except for those attorneys' fees, expenses, and costs incurred as a result of the Dispute Resolution Procedure described in Section 4.

## **7. Service Awards**

- 7.1. Within thirty (30) days after Final Approval of this Agreements, Defendants shall:
  - 7.1.1. Pay the sum of \$2,000 to each of the Named Plaintiffs, Dorene Giacobini and Stuart James, for services rendered to the Settlement Class.

## **8. Released and Unreleased Claims**

- 8.1. **Released Claims:** Conditioned upon and subject to Final Approval by the Court and Defendants' compliance with the terms of this Settlement Agreement, Plaintiffs and the Settlement Class release Defendants, their successors in interest, assigns, parents and subsidiaries, divisions, and any and all current, future, or former directors, employees, officers, agents, or attorneys from any and all claims that were brought in this Lawsuit. This

release of claims will apply and be binding upon Plaintiffs (including members of the Settlement Class). This release will not apply to any claims that accrue after the expiration of the Term.

- 8.2. **Waiver of Rights Under Civil Code § 1542:** Conditioned upon and subject to Final Approval by the Court and Defendants' compliance with the terms of this Settlement Agreement, with respect to the claims released in Section 8.1, Plaintiffs James, Giacomini, and CRIL further expressly waive and relinquish all rights and benefits afforded by Section 1542 of the Civil Code of the State of California, which states, "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."
- 8.3. **Unreleased Claims:** The above-described release does not apply to any claims to enforce the terms of this Settlement Agreement, and nothing in this Settlement Agreement shall be interpreted as a release of any claims for damages on behalf of the Settlement Class. **Expressly excluded from this provision are named plaintiffs Dorene Giacomini, Stuart James, and CRIL, each of whom do expressly and forever release any and all claims for damages that were or could have been brought in the Lawsuit.** Plaintiffs do not release any claims that were not, or could not have been, brought in this Lawsuit.

## 9. Additional Terms

- 9.1. **Governing Law:** This Agreement shall be governed in all respects by the law of the State of California.
- 9.2. **Entire Agreement:** This Agreement, and the documents attached to or expressly referred to in this Settlement Agreement, constitute the final and complete written expression and exclusive statement of all the agreements, conditions, promises, representations, and covenants between the parties with respect to the matters set forth in this Settlement Agreement. No representations, warranties, or promises have been made or relied upon by any party hereto, other than those contained herein. This Agreement supersedes any and all other prior agreements or drafts, either written or oral, between the parties with respect to the subject matter hereof. This Agreement cannot be amended, modified, or supplemented except by a written document signed by all of the Parties and approved by the District Court.
- 9.3. **No Other Representation:** Each of the Parties represents and agrees that, in executing this Settlement Agreement, they have relied solely on the statements expressly set forth in this Agreement and has placed no reliance

whatsoever on any statement, representation, or promise of any other Party or person or entity not expressly set forth in this Agreement, or upon the failure of the other Party or person or entity to make any statement, representation, or disclosure of anything whatsoever. The Parties have included this provision to preclude any claim that any Party was in any way fraudulently induced to execute this Settlement Agreement, and to preclude the introduction of parole evidence to vary, interpret, supplement, or contradict the terms of this Agreement.

- 9.4. **Execution in Counterparts:** This Agreement may be executed in counterparts, each of which may be executed and delivered via facsimile or PDF electronic delivery with the same validity as if it were an ink-signed document and each of which shall be effective and binding on the Parties as of the Effective Date. Each such counterpart shall be deemed an original and, when taken together with other signed counterparts, shall constitute one and the same Agreement.
- 9.5. **Advice of Counsel and Voluntary Agreement:** The Parties hereto represent that they have read this Agreement carefully in its entirety and are satisfied that they understand and agree to all its provisions; that this Settlement Agreement has been voluntarily entered into; that they have received independent advice from their respective attorneys with respect to the advisability of executing this Settlement Agreement; and that any and all investigation and analysis of the facts deemed necessary or desirable have been conducted prior to the execution of this Settlement Agreement.
- 9.6. **Power and Authority to Execute:** Each of the Parties hereto represent that they have the power and the authority to execute and deliver this Agreement and to perform the obligations hereunder, and that each person executing this Agreement on each Party's behalf has been authorized to sign on behalf of the respective Party and to bind each to the terms of this Agreement.
- 9.7. **Binding Effect:** All of the terms and provisions of this Settlement Agreement will be binding upon and will inure to the benefit of the Parties and their heirs, successors, and assigns.
- 9.8. **Construction:** The Parties acknowledge and agree that this Agreement has been jointly drafted by all Parties hereto as a result of arm's length negotiations among the Parties. Because all Parties have contributed to the preparation of this Agreement, it shall not be construed more strictly against one party than another. Any rule of law, including, without limitation, Section 1654 of the California Civil Code, that would require interpretation of any ambiguities or uncertainties in this Settlement Agreement against one of the Parties will have no application and is hereby expressly waived. Where required by context, the plural includes the singular and the singular includes the plural.

9.9. **Notices:** Any notice or communication provided under this Agreement shall be made in writing and shall be delivered or sent by electronic mail or First Class U.S. Mail to the addresses below, or to such other addresses as may be specified in writing by any Party to the other Party (provided that ten (10) days' written notice of such designation is provided to all other Parties in accordance with the terms of this Section).

9.9.1. To Plaintiffs:

Sean Betouliere  
Disability Rights Advocates  
2001 Center Street, Fourth Floor  
Berkeley, CA 94704  
sbetouliere@dralegal.org

9.9.2. To Defendants:

Melissa T. Daugherty  
Lewis Brisbois Bisgaard & Smith, LLP  
633 West 5<sup>th</sup> St., Suite 4000  
Los Angeles, CA 90071  
Melissa.Daugherty@lewisbrisbois.com

IN WITNESS WHEREOF, the Parties hereto have approved and executed this Settlement Agreement on the dates set forth opposite their respective signatures.

**EXECUTED by the Parties as follows:**

Dated: January 15, 2020

WMK, Inc. and MobilityWorks of California, LLC,  
Defendants.

By:

Eric H. Mendel  
Title: Chief Operating Officer / President

Dated: \_\_\_\_\_, 2020

Community Resources for Independent Living,  
Plaintiff.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 2020

By: \_\_\_\_\_

Dorene Giacomini, Plaintiff, individually and  
as a representative of the Settlement Class

9.9. **Notices:** Any notice or communication provided under this Agreement shall be made in writing and shall be delivered or sent by electronic mail or First Class U.S. Mail to the addresses below, or to such other addresses as may be specified in writing by any Party to the other Party (provided that ten (10) days' written notice of such designation is provided to all other Parties in accordance with the terms of this Section).

9.9.1. To Plaintiffs:

Sean Betouliere  
Disability Rights Advocates  
2001 Center Street, Fourth Floor  
Berkeley, CA 94704  
sbetouliere@dralegal.org

9.9.2. To Defendants:

Melissa T. Daugherty  
Lewis Brisbois Bisgaard & Smith, LLP  
633 West 5<sup>th</sup> St., Suite 4000  
Los Angeles, CA 90071  
Melissa.Daugherty@lewisbrisbois.com

IN WITNESS WHEREOF, the Parties hereto have approved and executed this Settlement Agreement on the dates set forth opposite their respective signatures.

**EXECUTED by the Parties as follows:**

Dated: \_\_\_\_\_, 2020 WMK, Inc. and MobilityWorks of California, LLC,  
Defendants.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: January 27, 2020 Community Resources for Independent Living,  
Plaintiff.

By: P. Michael Galvan  
Title: Platinum Executive Director

Dated: \_\_\_\_\_, 2020 By: \_\_\_\_\_  
Dorene Giacopini, Plaintiff, individually and  
as a representative of the Settlement Class

- 9.9. **Notices:** Any notice or communication provided under this Agreement shall be made in writing and shall be delivered or sent by electronic mail or First Class U.S. Mail to the addresses below, or to such other addresses as may be specified in writing by any Party to the other Party (provided that ten (10) days' written notice of such designation is provided to all other Parties in accordance with the terms of this Section).

9.9.1. To Plaintiffs:

Sean Betouliere  
Disability Rights Advocates  
2001 Center Street, Fourth Floor  
Berkeley, CA 94704  
sbetouliere@dralegal.org

9.9.2. To Defendants:

Melissa T. Daugherty  
Lewis Brisbois Bisgaard & Smith, LLP  
633 West 5<sup>th</sup> St., Suite 4000  
Los Angeles, CA 90071  
Melissa.Daugherty@lewisbrisbois.com

IN WITNESS WHEREOF, the Parties hereto have approved and executed this Settlement Agreement on the dates set forth opposite their respective signatures.

**EXECUTED by the Parties as follows:**

Dated: \_\_\_\_\_, 2020 WMK, Inc. and MobilityWorks of California, LLC,  
Defendants.

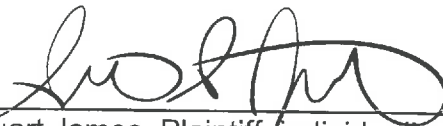
By: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 2020 Community Resources for Independent Living,  
Plaintiff.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: JANUARY 16, 2020 By: Dorene Giacomini  
Dorene Giacomini, Plaintiff, individually and  
as a representative of the Settlement Class

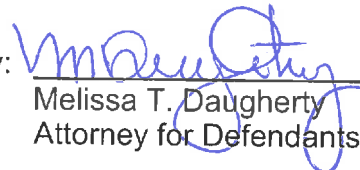
Dated: January 10, 2020

By:   
Stuart James, Plaintiff, individually and as a  
representative of the Settlement Class.

**APPROVED AS TO FORM:**

Dated: January 28, 2020

Lewis Brisbois Bisgaard & Smith LLP

By:   
Melissa T. Daugherty  
Attorney for Defendants

Dated: January 10, 2020

DISABILITY RIGHTS ADVOCATES

By:   
Sean Betouliere  
Attorney for Plaintiffs



**Exhibit 2:  
Published Notice  
To Settlement  
Class**

## **NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT**

**TO:** All people with disabilities who need hand controls or other adaptive devices to operate a vehicle, and who have been or are deterred from purchasing or renting a vehicle from Mobility Works (website located at: [www.mobilityworks.com](http://www.mobilityworks.com)), or from using the company's adaptive equipment installation services. **The settlement described below may affect your rights — please read this notice carefully.**

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### **I. PURPOSE OF THIS NOTICE**

The purpose of this notice is to inform members of the proposed settlement class about a proposed settlement that would resolve the class action lawsuit entitled *Community Resources for Independent Living, et al. v. Mobility Works of California, LLC, et al.*, Case No. 4:18-cv-06012-JSW (N.D. Cal). Plaintiffs filed this class action lawsuit in October 2018, alleging that Mobility Works — one of the country's largest providers of wheelchair accessible vehicles for sale or rent, and a major installer of adaptive devices — employed two policies that discriminated against drivers with disabilities. First, Plaintiffs alleged that Mobility Works would not install hand controls or other adaptive devices in rental cars when drivers with disabilities needed and requested them. Second, Plaintiffs alleged that before Mobility Works would install such devices in a vehicle, it required people with disabilities who needed them to undergo unnecessary and burdensome “certification” courses that were not imposed on any nondisabled drivers.

Defendants deny Plaintiffs' allegations, deny that Plaintiffs' requested policy changes are required under the law, and do not admit any liability in connection to this lawsuit. However, after nearly a year of negotiations, the Parties have reached an agreement on a proposed class-wide settlement that would resolve Plaintiffs' lawsuit. This settlement must be approved by the Court. The proposed Settlement Agreement itself, and all related documents, can be found at <https://dralegal.org/mobilityworks-settlement/>, or by contacting class counsel pursuant to the information in Section VII below.

### **II. SUMMARY OF THE PROPOSED SETTLEMENT**

Pursuant to the parties' Settlement Agreement, Mobility Works will install hand controls and certain other adaptive equipment<sup>1</sup> in available rental vehicles upon request and at no charge to customers, provided that they possess a valid license and can verify their ability to use the requested equipment. Mobility Works will also provide licensed drivers who need adaptive equipment installed in any vehicle with two alternatives to the prior “certification” requirement, including the ability to submit a signed statement regarding their ability to use the equipment requested.

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<sup>1</sup> In the context of customer rentals of vehicles with adaptive equipment, the term adaptive equipment refers specifically to pedal extensions, spinner knobs, push-rock hand controls, push-pull hand controls, push-right-angle hand controls, and/or push-twist hand controls only.

In addition to the policy changes described above, the Parties' proposed agreement will ensure that information regarding these new policies is easily accessible to potential customers, and that the policies are consistently implemented by Mobility Works employees. The Settlement Agreement also contains provisions to ensure settlement compliance, and to ensure that any disputes that arise during its two-year term are promptly resolved. For example, when publishing its new policies, Mobility Works will include a phone number for settlement-related complaints and will submit evidence of any such complaints to Plaintiffs' attorneys subject to the terms outlined in the Settlement Agreement.

Finally, the Parties' agreement provides that Disability Rights Advocates, the attorneys who represented Plaintiffs and the class, will receive \$150,000 as compensation for their work on the case and expenses incurred, and that individual Plaintiffs Dorene Giacopini and Stuart James will receive \$2,000 each, to compensate them for time spent advocating on behalf of the class. While the Parties negotiated these award amounts with the assistance of a neutral mediator, any awards (including the amounts) must still be approved by the Court.

### **III. WHO IS IN THE CLASS?**

The proposed settlement class consists of "all persons with disabilities who need Adaptive Devices to operate a vehicle, and who have used or attempted to use Mobility Works' rental or installation services between October 1, 2016 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." If you (1) have a disability, (2) need hand controls or other adaptive devices to drive, and (3) have used or attempted to use Defendants' services between October 1, 2016 and the present, you are a member of the class.

### **IV. THE EFFECT OF THE SETTLEMENT ON THE RIGHTS OF CLASS MEMBERS**

All class members will be bound by the terms of the Settlement Agreement. If the settlement is approved, all class members will release any and all claims for injunctive relief (e.g., policy or practice changes) against Mobility Works related to the installation of adaptive devices in vehicles Mobility Works offers for rent or sale, or in customers' existing vehicles, that arose before the Settlement Agreement becomes effective. In other words, this agreement will only release the claims actually brought and settled in Plaintiffs' case — **class members' potential monetary (damages) claims against Mobility Works will not be affected, and nor will any claims for discrimination that might take place after the expiration of the settlement's two-year term.**

### **V. OBJECTING TO THE SETTLEMENT**

You can ask the Court to deny approval of this settlement by filing an objection with the Court. **You cannot ask the Court to order a different settlement; the Court can only approve or deny this proposed settlement.** If the Court denies approval, any settlement changes necessary for approval may not be made, and the lawsuit may continue.

If you wish to object to the proposed settlement you must do so in writing. You may also appear at the fairness hearing for final approval of the settlement, either in person or through your own attorney. But if you wish to appear and present your objection orally at the fairness hearing, you must first submit a written objection and in your written objection you must indicate your intention to appear and be heard at the fairness hearing. If you appear through your own attorney, you are responsible for paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (*Community Resources for Independent Living, et al. v. Mobility Works of California, LLC, et al.*, Case No. 4:18-cv-06012-JSW), (b) be submitted to the Court either by mailing them to the Clerk of the Court for the United States District Court for the Northern District of California, 1301 Clay Street, Suite 400 S, Oakland, CA 94612, or by filing them in person at any location of the United States District Court for the Northern District of California, and (c) be received **on or before May 5, 2020**.

The fairness hearing for this settlement is tentatively set for **May 22, 2020 at 9:00 a.m.**, in Courtroom 5, on the Second Floor of the United States Courthouse at 1301 Clay Street in Oakland, California. However, these details may change – please check the settlement website at <https://dralegal.org/mobilityworks-settlement/> for any changes.

## **VI. FURTHER INFORMATION**

This notice only summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the Settlement Agreement itself, available at <https://dralegal.org/mobilityworks-settlement/>. Alternatively, you may request a copy of the Settlement Agreement by contacting Class Counsel using the information in Section VII, below; accessing the Court docket in this case through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>; or visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 1301 Clay Street, Suite 400 S, Oakland, CA 94612, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

To obtain a copy of this notice in alternate accessible formats, contact Class Counsel using the information below.

## **VII. CONTACT INFORMATION**

Please do not contact the Court, the Court clerk’s office, or Defense Counsel with questions about this settlement. Any questions must be directed to Class Counsel, who can be contacted by phone, mail, or email as follows:

Sean Betouliere  
Disability Rights Advocates  
2001 Center Street, Fourth Floor  
Berkeley, CA 94704  
[sbetouliere@dralegal.org](mailto:sbetouliere@dralegal.org)  
(510)-665-8644

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

COMMUNITY RESOURCES FOR  
INDEPENDENT LIVING, a California non-  
profit corporation, on behalf of itself;  
DORENE GIACOPINI, an individual, on  
behalf of herself and all others similarly  
situated; STUART JAMES, an individual, on  
behalf of himself and all others similarly  
situated;

Plaintiffs,

v.

MOBILITY WORKS OF CALIFORNIA,  
LLC., a California limited liability  
corporation; and WMK, LLC., an Ohio  
limited liability corporation;  
Defendants.

**Case No. 4:18-cv-06012-JSW**

**[PROPOSED] ORDER GRANTING  
FINAL APPROVAL, DISMISSING  
CASE, AND RETAINING  
JURISDICTION TO ENFORCE CLASS  
SETTLEMENT**

Judge: Hon. Jeffrey S. White

1 **I. INTRODUCTION**

2 Plaintiffs filed this class action lawsuit in October 2018, alleging that Mobility Works—  
3 one of the country’s largest providers of wheelchair accessible vehicles for sale or rent, and a  
4 major installer of adaptive devices<sup>1</sup>—employed two policies that discriminated against drivers  
5 with disabilities. *See* ECF No. 1 at ¶¶ 1-2, 27-31. First, Plaintiffs alleged that Mobility Works  
6 would not install hand controls or other adaptive devices in rental cars when drivers with  
7 disabilities needed and requested them. *Id.* at ¶¶ 1-2, 27-28. Second, Plaintiffs alleged that before  
8 Mobility Works would install such devices in a vehicle, it required people with disabilities who  
9 needed them to undergo unnecessary and burdensome “certification” courses that were not  
10 imposed on any nondisabled drivers. *Id.* at ¶¶ 1-2, 29-31.

11 Defendants do not admit these allegations, and do not concede liability. However, after  
12 nearly a year of negotiations—including two private mediation sessions, multiple telephonic  
13 meetings, and several settlement proposals from each side—the Parties have reached agreement  
14 on a proposed class-wide settlement (the “Agreement”).

15 On March 6, 2020, this Court issued an Order preliminarily approving this Agreement,  
16 finding that final approval was likely, and directing notice to the settlement class. ECF No. 58 at  
17 3, 5. The Parties subsequently disseminated notice, and have received no objections.

18 Plaintiffs now ask that the Court enter an order (1) ) granting final approval of their  
19 Agreement (2) finding that adequate notice was provided to the Settlement Class; and (3)  
20 dismissing this suit with prejudice, while retaining jurisdiction to enforce the Parties’ Agreement  
21 and resolve any disputes that might arise during its term. Defendants do not oppose Plaintiffs’  
22 motion, and a hearing on this matter was held on May 22, 2020.<sup>2</sup>

23  
24  
25 <sup>1</sup> Such devices include hand controls, which allow drivers to accelerate or brake using their  
26 hands instead of their feet; steering knobs, which allow for one-handed steering; and pedal  
27 extensions, which allow drivers whose feet would not otherwise reach the pedals to drive.

28 <sup>2</sup> Plaintiffs have also filed a motion for reasonable attorneys’ fees, costs, and incentive awards  
(the “Fee Motion”), which seeks approval of the amounts contained in the Parties’ Agreement, as  
well as a finding that the work and rates underlying Plaintiffs’ lodestar were reasonable, ECF  
No. 59. This motion was also heard on May 22, 2020, and will be the subject of a separate order.

1 Having presided over the proceedings in the above-captioned action and considered all  
2 the arguments, pleadings, records, and papers on file, this Court finds and orders as follows:

3 **II. FINDINGS**

4 **A. The Parties' Agreement Is Fair, Adequate, And Free From Collusion. It Is**  
5 **Approved.**

6 Federal Rule of Civil Procedure 23(e) conditions the settlement of any class action on  
7 court approval, which is intended to ensure that the proposed settlement is “fair, adequate, and  
8 free from collusion.” *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012) (citation and  
9 internal quotation marks omitted); *see also* Fed. R. Civ. P. 23(e)(2). Pre-certification settlements,  
10 such as this one, are subject to a “higher level of scrutiny for evidence of collusion or other  
11 conflicts of interest than is ordinarily required.”<sup>3</sup> *In re Bluetooth Headset Prod. Liab. Litig.*, 654  
12 F.3d 935, 946 (9th Cir. 2011) (discussing higher standard).

13 In making a final fairness determination, Rule 23 now requires courts to consider: (1)  
14 whether the class was adequately represented; (2) whether the proposed settlement was  
15 negotiated at arm’s length; (3) whether the relief provided for the class is adequate, taking into  
16 account the costs, risks, and delay of trial and appeal, the terms of any proposed award of  
17 attorneys’ fees, and other factors; and (4) whether the proposal treats class members equitably  
18 relative to one another.<sup>4</sup> Fed. R. Civ. P. 23(e)(2); *see also Lane*, 696 F.3d at 819 (discussing pre-

19  
20 <sup>3</sup> Before approving such settlements, courts must look not only for explicit evidence of collusion,  
21 but also for more “subtle signs” of self-interest, including (1) whether class counsel will receive  
22 “disproportionate distribution of the settlement,” (2) whether the defendant has agreed not to  
23 object to class counsel’s fee request, and (3) whether unclaimed funds will revert to the  
24 defendant. *In re Bluetooth*, 654 F.3d. at 946. This “more exacting” review is intended to ensure  
25 that “class representatives and their counsel do not secure a disproportionate benefit” at the  
26 expense of other class members. *Roes I-2 v. SFBSC Mgmt., LLC*, No. 17-17079, 2019 WL  
27 6721190, at \*10 (9th Cir. Dec. 11, 2019) (citation and internal quotations omitted).

28 <sup>4</sup> These new Rule 23(e)(2) factors are not intended to “displace” any factors currently used” by  
Ninth Circuit courts, “but instead aim to focus the court and attorneys on ‘the core concerns of  
procedure and substance that should guide the decision whether to approve the proposal.’” *In re*  
*Extreme Networks, Inc. Sec. Litig.*, No. 15-CV-04883-BLF, 2019 WL 3290770, at \*6 (N.D. Cal.  
July 22, 2019) (discussing and quoting advisory committee’s note to 2018 amendment). The  
amended rule “therefore directs the parties to present the settlement to the court in terms of a  
shorter list” of factors that “should always matter” when making this decision. Advisory  
Committee Notes to 2018 Amendments, Fed. R. Civ. P. 23(e)(2).

1 amendment *Hanlon* factors).<sup>5</sup> When considering these questions, courts must be careful to  
2 “evaluate the fairness of a settlement as a whole, rather than assessing its individual  
3 components,” while remaining mindful that “the question whether a settlement is fundamentally  
4 fair within the meaning of Rule 23(e) is different from the question whether the settlement is  
5 perfect in the estimation of the reviewing court.” *Lane*, 696 F.3d at 818-19.

6 Having considered these factors and examined the settlement process for subtle signs of  
7 collusion, the Court finds that final approval is appropriate. The Parties’ agreement is approved.

8 1. The Parties’ Agreement Will Provide Excellent Relief To Plaintiffs And  
9 The Class.

10 In evaluating the substantive fairness of a proposed settlement, courts consider whether  
11 “the relief provided for the class is adequate,” taking into account “the costs, risks, and delay of  
12 trial and appeal,” “the terms of any proposed award of attorneys’ fees,” and other factors. Fed. R.  
13 Civ. P. 23(e)(2)(C). Here, Plaintiffs have achieved a remarkable result on behalf of themselves  
14 and the class, and all relevant factors weigh in favor of approval.<sup>6</sup>

15 As discussed above, Plaintiffs’ filed this case to address two issues: 1) Mobility Works’  
16 alleged refusal to install hand controls or other adaptive devices in rental cars; and (2) its alleged  
17 imposition of unnecessary and burdensome “certification” requirements on drivers with  
18 disabilities. ECF No 1. at ¶¶ 1-2, 27-31. *Id.* at ¶¶ 1-2, 29-31. The Parties’ proposed settlement  
19 will completely and conclusively resolve both issues, to the benefit of drivers with disabilities  
20 nationwide.

---

21  
22 <sup>5</sup> These new Rule 23(e)(2) factors are not intended to “displace’ any factors currently used” by  
23 Ninth Circuit courts, “but instead aim to focus the court and attorneys on ‘the core concerns of  
24 procedure and substance that should guide the decision whether to approve the proposal.’” *In re*  
25 *Extreme Networks, Inc. Sec. Litig.*, No. 15-CV-04883-BLF, 2019 WL 3290770, at \*6 (N.D. Cal.  
26 July 22, 2019) (discussing and quoting advisory committee’s note to 2018 amendment). The  
27 amended rule “therefore directs the parties to present the settlement to the court in terms of a  
28 shorter list” of factors that “should always matter” when making this decision. Advisory  
Committee Notes to 2018 Amendments, Fed. R. Civ. P. 23(e)(2).

<sup>6</sup> Because this case concerns a (b)(2) class and Plaintiffs did not bring, litigate, settle, or release  
any damages claims, Rule 23(e)(2)(C)(ii) does not apply. Rule 23(e)(2)(C)(iii) is similarly  
inapplicable, because no separate agreement has been made in connection with the Parties’  
proposed settlement.



1 Under this Agreement, Mobility Works will install hand controls and other adaptive  
2 equipment in any available rental vehicle upon request, at no charge to customers – meaning that  
3 people with disabilities who need such devices will be able to rent and drive Mobility Works  
4 vans independently, where before they were allegedly forced to either rely on a nondisabled  
5 driver, or to forego using the company’s rental services entirely. Settlement at § 3.3.2. In  
6 addition, Mobility Works will now allow drivers who need adaptive equipment installed in any  
7 vehicle to forego the prior “certification” requirement, provided that they have a valid license  
8 and can attest to their experience using the equipment they have requested. *Id.* at §§ 3.2.1, 3.3.4.

9 In addition to the core policy changes described above, the Parties’ Agreement will  
10 ensure that potential customers are well-aware of these new policies, and that they are  
11 consistently implemented by Mobility Works employees. *Id.* at § 3.5.1 (publication); *id.* at §§  
12 3.4, 3.5.2, 3.6.1 (employee training and implementation). The Agreement also contains  
13 provisions to monitor settlement compliance—including semi-annual submission of customer  
14 complaints to Plaintiffs’ counsel—and to ensure that any disputes that arise during its two-year  
15 term are promptly resolved. *Id.* at §§ 3.6.1.2, 3.6.2 (monitoring); *id.* at § 4 (dispute resolution);  
16 *id.* at § 5.1 (term). Finally, for all members of the proposed class other than Plaintiffs, the  
17 Agreement will only release the declaratory and injunctive claims brought and settled in this  
18 action—these class members’ potential damages claims will not be affected, and nor will any  
19 claims that might accrue after the expiration of the settlement’s term. *Id.* at § 8.

20 ***a. The Potential Costs, Risks, And Delays of Trial and Appeal Also***  
21 ***Weigh In Favor Of Approval.***

22 In considering “the costs, risks, and delay of trial and appeal,” Fed. R. Civ. P.  
23 23(e)(2)(C)(i), courts in the Ninth Circuit evaluate “the strength of the plaintiffs’ case; the risk,  
24 expense, complexity, and likely duration of further litigation; [and] the risk of maintaining class  
25 action status throughout the trial.” *Hanlon*, 150 F.3d at 1026.

26 As Plaintiffs’ point out, victory in this case was far from assured. And, even if Plaintiffs  
27 had won a contested motion for class certification, prevailed on the merits, and fought off any  
28

1 appeals, that process would likely have taken years and cost hundreds of thousands of additional  
2 dollars in attorneys' fees and costs. All the while, Plaintiffs and other drivers with disabilities  
3 who wanted to make full use of Mobility Works' services would have been waiting for relief.  
4 Moreover, the end result would have been no better: in settling, Plaintiffs achieved the exact  
5 policy and practice changes they sought.

6 In short, the potential costs, risks, and delay associated with trial and appeal weigh  
7 strongly in favor of final approval—particularly when considered in concert with the excellent  
8 and timely relief achieved. *See In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 318 (N.D.  
9 Cal. 2018) (granting final approval where “further litigation would have been costly and  
10 uncertain and would have detrimentally delayed any potential relief for the Class,” whereas the  
11 relief provided by settlement was “timely, certain, and meaningful”).

12 ***b. The Terms Of The Parties' Proposed Attorneys' Fee Award Also***  
13 ***Weigh In Favor Of Approval.***

14 The statutes at issue in this case allow prevailing plaintiffs to recover their reasonable  
15 fees and costs. *See* 42 U.S.C. § 12205 (ADA); Cal. Civ. Code § 52(a) (Unruh). Under the Unruh  
16 Act, such an award is mandatory. *Engel v. Worthington*, 60 Cal. App. 4th 628, 632-35 (1997);  
17 *Morales v. Whole Foods Mkt., Inc.*, No. C 12-01072 CRB, 2013 WL 3967639, at \*2 (N.D. Cal.  
18 July 31, 2013). However, in the context of a class settlement, “courts have an independent  
19 obligation to ensure that” any award of fees and costs “is reasonable, even if the parties have  
20 already agreed to an amount.”<sup>7</sup> *In re Bluetooth*, 654 F.3d at 941.

21 Here, Defendants have agreed to pay Plaintiffs a total of \$150,000 to compensate them  
22 for attorneys' fees, expenses and costs incurred through final approval. *See* Betouliere Decl., Ex.  
23 1 (“Settlement”) at § 6. The reasonableness of this award is the subject of Plaintiffs' separate Fee  
24 Motion, which is also before the Court. *See* ECF No. 59. The Court finds that this award is  
25 reasonable; the rationale for this finding is discussed in a separate order granting Plaintiffs' Fee

26 <sup>7</sup> While such awards are not formally approved until the final approval hearing, class counsel  
27 must “include information about the fees they intend to request and their lodestar calculation in  
28 their motion for preliminary approval.” *See* Northern District Proc. Guidance for Class Action  
Sett. ¶ 6.

1 Motion.

2 2. Plaintiffs And Their Counsel Have Adequately Represented The Class.

3 In determining whether a class has been adequately represented, courts consider the same  
4 “adequacy of representation” questions that are relevant to class certification. *See MyFord*  
5 *Touch*, 2019 WL 1411510 at \*8; *O'Connor v. Uber Techs., Inc.*, No. 13-CV-03826-EMC, 2019  
6 WL 1437101, at \*6 (N.D. Cal. Mar. 29, 2019). In that context, courts ask whether 1) “named  
7 plaintiffs and their counsel have any conflicts of interest with other class members” and 2)  
8 whether “the named plaintiffs and their counsel [will] prosecute the action vigorously on behalf  
9 of the class.” *Sali v. Corona Reg'l Med. Ctr.*, 889 F.3d 623, 634 (9th Cir. 2018) (citation  
10 omitted); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998); Fed. R. Civ. P.  
11 23(a)(4). Adequate representation of counsel is generally presumed in the absence of contrary  
12 evidence. *Californians for Disability Rights, Inc. v. California Dep't of Transp.*, 249 F.R.D. 334,  
13 349 (N.D. Cal. 2008); *see* 1 William B. Rubenstein, *Newberg on Class Actions* § 3:55 (5th ed.  
14 Supp. 2019). Having reviewed the Parties’ proposed agreement and all related submissions, the  
15 Court finds that Plaintiffs and their counsel have adequately represented the class. This factor  
16 weighs in favor of approval.

17 3. The Parties’ Agreement Is The Product of Arms-Length Negotiations.

18 While no presumption of fairness attaches to settlements achieved through arms-length  
19 negotiations, *see Roes 1-2*, 2019 WL 6721190 at \*10, such negotiations do weigh in favor of  
20 approval.<sup>8</sup> Fed. R. Civ. P. 23(e)(2)(B). And, as the Advisory Committee has recognized, “the  
21 involvement of a neutral or court-affiliated mediator or facilitator . . . may bear on whether  
22 [negotiations] were conducted in a manner that would protect and further the class interests.”  
23 Advisory Committee Notes to 2018 Amendments, Fed. R. Civ. P. 23(e)(2).

24  
25  
26 <sup>8</sup> The considerations encompassed by new Rule 23(e)(b)(2) overlap with those contemplated by  
27 “certain *Hanlon* factors, such as the non-collusive nature of negotiations, the extent of discovery  
28 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).

1 In considering this Rule 23 factor, the Court notes the following uncontested facts  
2 regarding the course of this case and the Parties' negotiations:

3 In accordance with a schedule approved by this Court, ECF No. 16, the Parties began  
4 settlement discussions in mid-January of 2019, and on the 30th of that month Plaintiffs sent  
5 Defendants a letter describing the exact policy and practice changes they sought. Defendants  
6 responded to that letter in April 2019, and over the ensuing months the Parties exchanged several  
7 more letters concerning possible settlement. However, as the Parties were not close to agreement  
8 on several key terms, Plaintiffs simultaneously prepared for trial and pursued necessary  
9 discovery, including through review of produced documents, interrogatory responses, and a day-  
10 long 30(b)(6) deposition of Defendants' designee.<sup>9</sup>

11 On May 31, 2019, the Parties conducted a full-day mediation with their appointed  
12 Northern District panel mediator, Michael J. Loeb. At this mediation, the Parties were able to  
13 agree on the core substantive terms of a settlement pertaining to injunctive relief, which were  
14 memorialized in a signed memorandum of understanding; to conserve resources, they also  
15 agreed to stay discovery and litigation while working out the remaining details. The Parties  
16 exchanged draft settlement agreements and engaged in related calls and correspondence over the  
17 next several months; by November 1, 2019, they had resolved all major substantive issues and  
18 achieved a near-complete settlement draft. On November 4, 2019, having reached agreement on  
19 injunctive relief for Plaintiffs and the proposed class, Plaintiffs sent Defendants an attorneys' fee  
20 demand. Shortly thereafter the Parties engaged in a further mediation session with Mr. Daniel  
21 Ben-Zvi of ADR Services, Inc. that led to the resolution of all remaining issues, including  
22 attorneys' fees and costs and incentive awards for Plaintiffs Giacopini and James. The Parties'  
23 Agreement was fully executed on January 28, 2020.

24  
25  
26 <sup>9</sup> Even if Plaintiffs had not conducted such discovery, this would not necessarily be a bar to final  
27 approval. "[I]n the context of class action settlements, formal discovery is not a necessary ticket  
28 to the bargaining table;" what matters is that the parties "have sufficient information to make an  
informed decision about settlement." *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th  
Cir. 2000), *as amended* (June 19, 2000) (internal quotation marks omitted).

1           Where, as here, an agreement is the product of “serious, informed, non-collusive  
2 negotiations” conducted by experienced counsel over an “extended period of time,” courts  
3 routinely find that approval is appropriate. *See, e.g., In re Tableware Antitrust Litig.*, 484 F.  
4 Supp. 2d 1078, 1079-80 (N.D. Cal. 2007) (granting preliminary approval); *In re Tableware*  
5 *Antitrust Litig.*, No. C-04-3514 VRW, 2007 WL 4219394, at \*3 (N.D. Cal. Nov. 28, 2007)  
6 (granting final approval, and holding that “extended negotiations that culminated in the  
7 settlement indicate that the agreement here was reached in a procedurally sound manner”). This  
8 factor weighs in favor of approval.

9           4.       The Parties’ Agreement Treats All Class Members Equitably.

10           Under the Parties’ Agreement, Plaintiffs and all class members will receive exactly the  
11 same injunctive relief. Indeed, the only thing Plaintiffs get that Settlement Class members do not  
12 is a small \$2,000 incentive award, meant to compensate them for their time spent advocating on  
13 behalf of the class.<sup>10</sup>

14           Because the Parties’ Agreement treats Plaintiffs and all other “class members equitably  
15 relative to each other,” the Court finds that this factor weighs in favor of approval. *See Fed. R.*  
16 *Civ. P. 23(e)(2)(D).*

17           **B. Adequate Notice Of The Parties’ Proposed Settlement Has Been Provided To**  
18 **The Class, And There Have Been No Objections.**

19           Notice to a settlement class certified under Rule 23(b)(2) is within the Court’s discretion.  
20 *Fed. R. Civ. P. 23(c)(2)(a), (e)(1).* Notice provided under Rule 23(e) must “generally describe[ ]  
21 the terms of the settlement in sufficient detail to alert those with adverse viewpoint to investigate  
22 and to come forward and be heard.” *Lane*, 696 F.3d at 826 (alteration in original) (quoting  
23 *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 962 (9th Cir. 2009)).

24           The Parties affirm that they have disseminated notice to the class in accordance with this  
25 Courts’ March 6, 2020 order, with the exception of dissemination to subscribers of class’  
26 counsel’s newsletter, which was delayed by three business days as a consequence of disruptions

27 <sup>10</sup> The Court finds that this modest incentive award is reasonable; the rationale for this decision is  
28 discussed in a separate order approving Plaintiffs’ Fee Motion.

1 caused by COVID-19. The Court finds that this delay—though regrettable—does not affect the  
2 adequacy of notice, as those newsletter subscribers still received notice of the proposed  
3 settlement over 40 days in advance of this Court’s May 5, 2020 deadline for class member  
4 objections.

5 No objections have been submitted. Such “absence of a negative reaction[] strongly  
6 supports settlement” approval. *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852  
7 (N.D. Cal. 2010).

8 **C. Plaintiffs’ Complaint Is Dismissed, And The Court Retains Jurisdiction To**  
9 **Enforce The Parties’ Agreement.**

10 The Parties’ proposed Agreement is approved. In accordance the terms of that  
11 Agreement, which is attached hereto as **Exhibit 1** and expressly incorporated herein, Plaintiffs’  
12 case is dismissed with prejudice. However, the Court retains jurisdiction to enforce the Parties’  
13 Agreement and resolve any disputes that might arise during its term. Should this Court become  
14 unavailable during the term of the Agreement, the Parties shall request that another judge be  
15 assigned authority over this matter.

16 IT IS SO ORDERED.

17 DATED: \_\_\_\_\_, 2020

18 \_\_\_\_\_  
19 Judge Jeffrey White  
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Exhibit 1:  
Executed  
Settlement  
Agreement

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement,” “Settlement,” or “Agreement”) is made between Mobility Works of California, LLC, and WMK, LLC (collectively, “Defendants”), and Community Resources for Independent Living (“CRIL”), Dorene Giacomini, Stuart James, and the Settlement Class (collectively, “Plaintiffs”). Collectively, these individuals and entities are referred to as the “Parties.”

WHEREAS, Plaintiffs, represented by Disability Rights Advocates (“DRA” or “Plaintiffs’ Counsel”), filed a lawsuit styled *Community Resources for Independent Living, et al. v. Mobility Works of California, LLC, et al.*, Case No. 4:18-cv-06012-JSW, in the United States District Court for the Northern District of California, Oakland Division on October 1, 2018 (the “Lawsuit”);

WHEREAS, Plaintiffs alleged in the Lawsuit that Defendants’ conduct violated the Americans with Disabilities Act, 42 U.S.C. §§ 12181 *et seq.*, and the Unruh Civil Rights Act, Cal. Civ. Code §§ 51 *et seq.*;

WHEREAS, the Parties have engaged in fact discovery; exchanged extensive settlement communications; participated in a day-long mediation before mediator Michael Loeb, at which they were able to agree on the core terms of a settlement; and participated in a half-day mediation before mediator Daniel Ben-Zvi, during which they came to an agreement regarding the monetary component of the settlement;

WHEREAS, the Parties now wish to effect a complete resolution and settlement of all claims and controversies relating to the allegations in the Lawsuit, believing settlement to be in their respective best interests in light of the expense and uncertainty of litigation, and without admission of any liability, fact, claim or defense, on the terms and conditions set forth herein;

NOW, THEREFORE, in exchange for the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### 1. Definitions

When used in this Settlement Agreement or any of its Exhibits, the following terms should be read to have the following meanings. All other terms shall be interpreted according to their plain and ordinary meanings, unless otherwise noted.

- 1.1. “Adaptive Equipment” means and refers to any equipment used as a driving aid by people with disabilities. In the context of Customer rentals of vehicles with Adaptive Equipment, the term refers specifically to pedal extensions, spinner knobs, push-rock hand controls, push-pull hand controls, push-right-angle hand controls, and/or push-twist hand controls.



- 1.2. “Class Counsel” means and refers to the nonprofit corporation Disability Rights Advocates, and all duly licensed attorneys who are employees thereof.
- 1.3. “Customer” means and refers to any person who purchases or expresses interest in purchasing any service or product from Mobility Works.
- 1.4. “Dispute” means and refers to each and every dispute that may arise out of this Settlement Agreement and/or its Exhibits, including, but not limited to, disputes concerning the interpretation, implementation, monitoring, and modification of this Settlement Agreement, or the Parties’ compliance with its terms. All Disputes shall be resolved using the Dispute Resolution Procedure outlined in Section 4.
- 1.5. “Fairness Hearing” means the hearing to be held by the District Court, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, to determine whether the settlement set forth in this Settlement Agreement should be approved.
- 1.6. “Final Approval” means the order by the District Court, after notice and the holding of the Fairness Hearing, granting approval of this Settlement Agreement under Rule 23(e) of the Federal Rules of Civil Procedure. The hearing at which such Final Approval is considered or granted, should a hearing be held, will be called the “Final Approval Hearing.”
- 1.7. “Mobility Works” means and refers to WMK, LLC and its subsidiary entities nationwide.
- 1.8. “Preliminary Approval” means the preliminary approval of this Settlement Agreement by the District Court.
- 1.9. “Released Claims” means and refers to all claims released in Section 8.1.
- 1.10. “Rural Location” means and refers to any Mobility Works showroom that employs a single mechanic and that is more than 50 miles away from any other Mobility Works showroom.
- 1.11. “Settlement Class” means and refers to all people with disabilities who need Adaptive Equipment to operate a vehicle, and who have used or attempted to use Defendants’ rental or installation services between October 1, 2016 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.

## **2. Procedures for Class Settlement**

- 2.1. Prior to Final Approval, the Parties’ only obligations under this Settlement Agreement will be those set forth in this Section (Section 2).

- 2.2. **Court Approval:** This Settlement Agreement will be subject to approval by the District Court. However, nothing in this Settlement Agreement will be deemed to authorize the District Court to change or modify any of its terms. The Parties agree that any change, modification, or rejection of any of the provisions of this Settlement Agreement by the District Court or any other court will constitute a material modification of this Settlement Agreement, will prevent the Judgment from becoming Final, and will give any Party the right to terminate this Settlement Agreement in its entirety.
- 2.3. **Preliminary Approval:** Within thirty (30) days of circulating the fully executed Settlement Agreement, the Parties will jointly submit a request to the District Court for Preliminary Approval of this Settlement Agreement, along with a request for an order from the District Court.
- 2.4. **Conditional Certification of the Settlement Class:** The Parties agree that the Settlement Class will be conditionally certified, in accordance with the terms of this Settlement Agreement, solely for purposes of effectuating this Settlement Agreement. Defendants do not consent, and Class Counsel and Plaintiffs agree that Defendants will not be deemed to have consented to, the certification of the Settlement Class for any other purpose.
- 2.5. **No Opt-Out:** The Parties agree that the Settlement Class will be certified in accordance with the standards applicable under Rule 23(b)(2) of the Federal Rules of Civil Procedure and that, accordingly, no Settlement Class member may opt out of any of the provisions of this Settlement Agreement.
- 2.6. **Notice:** The Parties will jointly request approval by the District Court of notice to the Settlement Class consistent with this Section. Following the District Court's issuance of the Preliminary Approval Order, the Parties will provide notice of the proposed Settlement Agreement, advising the members of the Settlement Class of the terms of the proposed Settlement Agreement and their right to object to the proposed Settlement Agreement. This Notice of Settlement will be provided as set forth in **Exhibit A** to this Agreement.
- 2.7. **Fairness Hearing:** The Parties will jointly request that the District Court schedule and conduct a Fairness Hearing to decide whether Final Approval of the Settlement Agreement will be granted.
- 2.8. **Objections:** Members of the Settlement Class will have an opportunity to object to the proposed Settlement Agreement but may not opt out. The Parties will request that the District Court order the following objection procedure:
  - 2.8.1. Any Settlement Class member may object to this Settlement Agreement by filing, within sixty (60) days after the District Court has issued the Preliminary Approval Order, written objections with the

District Court, with a copy of such objections served concurrently on Class Counsel by messenger delivery, FedEx or other overnight carrier delivery, First Class U.S. Mail delivery, and/or email. Any Settlement Class member may also appear at the Court's Fairness Hearing.

2.8.2. With respect to any and all objections to this Settlement Agreement received by Class Counsel, Class Counsel will provide a copy of each objection to counsel of record for Defendants, by electronic-mail delivery, within two (2) court days after receipt of such objection.

2.8.3. Responses by Class Counsel and/or Defendants to any timely filed objections will be filed with the District Court no less than five (5) days before the Fairness hearing, or as otherwise ordered by the Court.

## 2.9. **Final Approval:**

2.9.1. The Parties agree that, upon Final Approval, the Settlement Agreement will be binding on the parties and the District Court will enter the Judgment under Rule 54(b) of the Federal Rules of Civil Procedure dismissing the Lawsuit with prejudice subject to Judge Jeffrey S. White retaining jurisdiction to (i) enforce the terms of the Settlement Agreement; and (ii) resolve any Dispute regarding compliance with this Settlement Agreement as described in Section 4.

2.9.2. Defendants will not assert, after the Judgment has become Final, that Judge Jeffrey S. White lacks jurisdiction to enforce the terms of this Settlement Agreement nor will it raise any jurisdictional defense to any enforcement proceedings permitted under the terms of this Settlement Agreement.

2.9.3. If the District Court denies the Parties' request to enter the Judgment and this Settlement Agreement does not receive Final Approval, or if this Settlement Agreement does not become Final for any reason in accordance with its terms: (i) this Settlement Agreement will be null and void and of no force and effect; (ii) nothing in this Settlement Agreement will be deemed to prejudice the position of any of the Parties with respect to any matter; and (iii) neither the existence of this Settlement Agreement, nor its contents, will be admissible in evidence, referred to for any purpose in any litigation or proceeding, or be deemed an admission by Defendants of any fault, wrongdoing, or liability.

## 3. **Substantive Terms**

3.1. Unless otherwise specified, all terms in this Section (Section 3) shall become effective on the date of Final Approval.

**3.2. Adaptive Equipment in Existing Vehicles and Vehicles for Purchase Policy:**

3.2.1. To the extent Mobility Works requires Customers seeking to have Adaptive Equipment installed in a vehicle they own or a vehicle they are purchasing to provide certain information regarding their ability to use the requested Adaptive Equipment, Mobility Works will accept any of the following forms of proof that a Customer is able to use purchased Adaptive Equipment as an independently sufficient form of proof:

3.2.1.1. A valid driver's license without an endorsement or restriction regarding the use of Adaptive Equipment, combined with a written statement and signature indicating that the Customer has experience using the requested Adaptive Equipment, or substantially similar Adaptive Equipment;

3.2.1.2. A valid driver's license with an endorsement or restriction regarding the use of the requested Adaptive Equipment or substantially similar Adaptive Equipment; or

3.2.1.3. Other forms of proof as Mobility Works deems appropriate, including, for example, written documentation by a medical professional, a driver trainer, or a Certified Driver Rehabilitation Specialist.

3.2.2. Mobility Works will not require any Customer to provide an evaluation or other documentation from a medical professional, driver trainer, or Certified Driver Rehabilitation Specialist regarding experience with requested or purchased Adaptive Equipment if the Customer can provide the forms of proof listed in Subsections 3.2.1.1 or 3.2.1.2 of this Agreement. Mobility Works will not prefer any one form of proof described in Section 3.2.1 and its Subsections over any other independently sufficient form of proof described in that Section and its Subsections.

**3.3. Adaptive Equipment in Rental Vehicles Policy:**

3.3.1. Section 3.3 and its subsections shall only apply in a given state or at a given Mobility Works location if Mobility Works offers rental vehicles to customers in that state or at that location.

3.3.2. Mobility Works will, upon request, and at no charge to Customers, install in any available rental vehicle the following Adaptive Equipment: pedal extensions, spinner knobs, push-rock hand controls, push-pull hand controls, push-right-angle hand controls, and/or push-twist hand

controls.

- 3.3.3. Mobility Works will install or make available any Adaptive Equipment listed in the immediately preceding paragraph in an available rental vehicle with 48 hours' advance notice, or in a shorter amount of time if reasonably possible, except in Rural Locations. In Rural Locations, Mobility Works will install or make available such Adaptive Equipment in an available rental vehicle with 72 hours' advance notice, or in a shorter amount of time if reasonably possible.
- 3.3.4. To the extent Mobility Works requires Customers seeking to rent a vehicle with Adaptive Equipment to provide certain information regarding their ability to use the requested Adaptive Equipment, Mobility Works will accept any of the following forms of proof that a rental vehicle Customer is able to use Adaptive Equipment as an independently sufficient form of proof:
  - 3.3.4.1. A valid driver's license without an endorsement or restriction regarding the use of Adaptive Equipment, combined with a written statement and signature indicating that the Customer has experience using the requested Adaptive Equipment or substantially similar Adaptive Equipment;
  - 3.3.4.2. A valid driver's license with an endorsement or restriction regarding the use of the requested Adaptive Equipment or substantially similar Adaptive Equipment; or
  - 3.3.4.3. Other forms of proof as Mobility Works deems appropriate, including, for example, written documentation by a medical professional, a driver trainer, or a Certified Driver Rehabilitation Specialist.
- 3.3.5. Mobility Works will not require any rental vehicle Customer to provide an evaluation or other documentation from a medical professional, driver trainer, or Certified Driver Rehabilitation Specialist regarding experience with requested Adaptive Equipment if the Customer can provide the forms of proof listed in Subsections 3.3.4.1 or 3.3.4.2 of this Agreement. Mobility Works will not prefer any one form of proof described in Section 3.3.4 and its Subsections over any other independently sufficient form of proof described in that Section and its Subsections.
- 3.3.6. Mobility Works will ensure that customers can reserve a rental vehicle with the Adaptive Equipment listed in this section through each system by which customers can generally reserve rental vehicles, including through a web request form and through calling Mobility Works' rental

line. Mobility Works will develop and publish an updated web form for rental vehicle reservations, compliant with this Agreement as soon as possible, but no later than 180 days following the date of Final Approval of this Agreement. Mobility Works will develop and disseminate a guide for over-the-phone reservations including Adaptive Equipment, compliant with this Agreement as soon as possible, but no later than 180 days following the date of Final Approval of this Agreement.

3.3.7. For all rental vehicle reservations, Customers must indicate that they have the ability to use the requested vehicle and, if applicable, the requested Adaptive Equipment.

3.3.8. This agreement does not limit Mobility Works' right or ability to install any other equipment in rental vehicles if requested, in addition to the types of Adaptive Equipment listed in Section 3.3.2 of this Agreement. This Agreement does not require Mobility Works to install any types of Adaptive Equipment in rental vehicles that are not listed in Section 3.3.2.

#### **3.4. Training**

3.4.1. Mobility Works will ensure all current employees who interact with Customers with respect to the sale or rental of vehicles are trained on its policies consistent with Sections 3.2 and 3.3 of this Settlement Agreement as soon as possible, but no later than 180 days following the date of Final Approval of this Agreement.

3.4.2. Once policies consistent with Sections 3.2 and 3.3 of this Agreement are developed, Mobility Works will train new employees who interact with Customers with respect to the sale or rental of vehicles on those policies in the normal course of new employee training, and, in any event, no later than thirty (30) days following the new employee's first date of employment.

#### **3.5. Publication and Incorporation of Policies**

3.5.1. Mobility Works will publish its policies regarding installation of Adaptive Equipment in existing vehicles, vehicles for purchase, and rental vehicles, consistent with Sections 3.2 and 3.3 of this Agreement, on its website as soon as possible, but no later than 180 days following the date of Final Approval of this Agreement. Such revised policies shall also be posted prominently at each Mobility Works showroom location as soon as possible, but no later than 180 days following the date of Final Approval of this Agreement.

3.5.2. Mobility Works will incorporate its policies regarding Adaptive Equipment in existing vehicles, vehicles for purchase, and rental vehicles, consistent with Sections 3.2 and 3.3 of this Agreement, into relevant internal handbooks, checklists, and training guides, including but not limited to its Administrator's Playbook as soon as possible, but no later than 180 days following the date of Final Approval of this Agreement. Mobility Works shall inform Plaintiffs of any intended change in its policies, handbooks, reservation request forms, checklists, or training guides concerning the Substantive Terms of this Agreement (§ 3, *et seq.*) during the term of this Agreement, and Mobility Works shall provide Plaintiffs with redline versions of such documents. Plaintiffs will keep such documents confidential and will provide any comments on such documents within fifteen (15) days of receiving such documents; such documents shall not be published or disseminated until either (i) Plaintiffs provide comments or (ii) fifteen (15) days have passed.

### 3.6. **Monitoring and Implementation**

#### 3.6.1. Policy Implementation

3.6.1.1. Mobility Works will create a training program regarding its new policies (which may be found in Sections 3.2 & 3.3 above), which will be available to its employees on its web portal. Mobility Works will maintain records of its employees' certificates of completion of the training program and will ensure its ability to generate reports documenting the employees that have completed the training program.

3.6.1.2. Defendants will submit evidence of training completion every twelve (12) months throughout the Term.

#### 3.6.2. Monitoring Component

3.6.2.1. When posting and publishing its new policies as described in § 3.5.1 of this Agreement, Mobility Works will include a phone number with an indication that if an individual believes the policy is not being fully complied with, the individual should call the phone number to make a report.

3.6.2.2. Mobility Works will direct all reports to a select few individuals, who will be tasked with completing a form documenting both the complaint and how the issue was resolved.

3.6.2.3. Mobility Works will submit evidence of any complaints lodged by way of these completed forms to Plaintiffs' Counsel, starting

180 days from the Effective Date, and continuing on a bi-annual basis throughout the term. Any sensitive, personal information included on these forms will be redacted, but Mobility Works will make a good faith effort to inquire into affected individuals' permission to provide their names and contact information to Plaintiffs' Counsel, upon Plaintiffs' Counsel's request. Mobility Works will provide Plaintiffs' Counsel with the names and contact information of any individuals who provide such consent. Mobility Works will also keep a record of all communications with affected individuals, so that its compliance with these terms can be verified in the event of a dispute.

#### **4. Dispute Resolution Procedure**

4.1. If any disputes arise as to compliance with this Agreement, the Parties agree to resolve the dispute according to the following procedure:

4.1.1. **Step One – Notice:** One Party will send a letter to counsel for the other Party concerning any dispute, and the Parties will meet and confer in a good faith effort to resolve the identified dispute.

4.1.2. **Step Two – Mediation:** If the Parties are unable to resolve their dispute through meet and confer negotiations within twenty-one (21) days of receipt of the letter raising the dispute, the dispute shall be submitted to mediation before a Magistrate Judge for the U.S. District Court for the Northern District of California or another mutually agreeable mediator.

4.1.3. **Step Three – Resolution by District Court:** If the Parties are unable to resolve a dispute through Step Two, they shall submit the dispute for resolution by the Federal District Court for the Northern District of California. The Parties may seek to recover reasonable fees and costs in connection with proceedings under Step Two and Step Three, in accordance with applicable law.

#### **5. Term of Agreement**

5.1. This Settlement Agreement shall be in effect from the date of Final Approval until two (2) years from that date (the "Term"). Judge Jeffrey S. White will have continuing jurisdiction to enforce this Settlement Agreement throughout the Term.

#### **6. Attorneys' Fees and Costs Through Final Approval**

6.1. With respect to attorneys' fees and costs that Plaintiffs incurred from the inception of this matter through Final Approval, and the payment thereof by



Defendants, the Parties agree to the following in this Section as a complete resolution of the issue.

- 6.2. Defendants agree that, conditioned upon the District Court granting Final Approval of this Settlement Agreement, and the Judgment becoming Final, Plaintiffs are prevailing parties for purposes of awarding reasonable attorneys' fees, expenses, and costs.
- 6.3. Defendants agree to pay Class Counsel's reasonable attorneys' fees, litigation expenses, and costs in the total amount of \$150,000 for Class Counsel's fees, expenses, and costs through Final Approval. The amount of fees will be included in the notice to the class and subject to review and Approval by the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure.
- 6.4. Class Counsel's reasonable attorneys' fees, litigation expenses, and costs will be paid within 90 days after: (i) the District Court has issued a written order granting Final Approval of this Settlement Agreement; and (ii) the Judgment has become Final.
- 6.5. Defendants' payment of the amounts for reasonable attorneys' fees, expenses, and costs pursuant to Sections 6.1 through 6.5. will be in full and complete satisfaction of any and all claims for attorneys' fees, expenses, and costs incurred by Plaintiffs and Class Counsel in this Lawsuit, and Plaintiffs (on behalf of themselves and the Settlement Class) and Class Counsel expressly waive any right to recover any additional attorneys' fees, expenses, and costs in connection with this Lawsuit or this Settlement Agreement, except for those attorneys' fees, expenses, and costs incurred as a result of the Dispute Resolution Procedure described in Section 4.

## **7. Service Awards**

- 7.1. Within thirty (30) days after Final Approval of this Agreements, Defendants shall:
  - 7.1.1. Pay the sum of \$2,000 to each of the Named Plaintiffs, Dorene Giacobini and Stuart James, for services rendered to the Settlement Class.

## **8. Released and Unreleased Claims**

- 8.1. **Released Claims:** Conditioned upon and subject to Final Approval by the Court and Defendants' compliance with the terms of this Settlement Agreement, Plaintiffs and the Settlement Class release Defendants, their successors in interest, assigns, parents and subsidiaries, divisions, and any and all current, future, or former directors, employees, officers, agents, or attorneys from any and all claims that were brought in this Lawsuit. This

release of claims will apply and be binding upon Plaintiffs (including members of the Settlement Class). This release will not apply to any claims that accrue after the expiration of the Term.

- 8.2. **Waiver of Rights Under Civil Code § 1542:** Conditioned upon and subject to Final Approval by the Court and Defendants' compliance with the terms of this Settlement Agreement, with respect to the claims released in Section 8.1, Plaintiffs James, Giacomini, and CRIL further expressly waive and relinquish all rights and benefits afforded by Section 1542 of the Civil Code of the State of California, which states, "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."
- 8.3. **Unreleased Claims:** The above-described release does not apply to any claims to enforce the terms of this Settlement Agreement, and nothing in this Settlement Agreement shall be interpreted as a release of any claims for damages on behalf of the Settlement Class. **Expressly excluded from this provision are named plaintiffs Dorene Giacomini, Stuart James, and CRIL, each of whom do expressly and forever release any and all claims for damages that were or could have been brought in the Lawsuit.** Plaintiffs do not release any claims that were not, or could not have been, brought in this Lawsuit.

## 9. Additional Terms

- 9.1. **Governing Law:** This Agreement shall be governed in all respects by the law of the State of California.
- 9.2. **Entire Agreement:** This Agreement, and the documents attached to or expressly referred to in this Settlement Agreement, constitute the final and complete written expression and exclusive statement of all the agreements, conditions, promises, representations, and covenants between the parties with respect to the matters set forth in this Settlement Agreement. No representations, warranties, or promises have been made or relied upon by any party hereto, other than those contained herein. This Agreement supersedes any and all other prior agreements or drafts, either written or oral, between the parties with respect to the subject matter hereof. This Agreement cannot be amended, modified, or supplemented except by a written document signed by all of the Parties and approved by the District Court.
- 9.3. **No Other Representation:** Each of the Parties represents and agrees that, in executing this Settlement Agreement, they have relied solely on the statements expressly set forth in this Agreement and has placed no reliance

whatsoever on any statement, representation, or promise of any other Party or person or entity not expressly set forth in this Agreement, or upon the failure of the other Party or person or entity to make any statement, representation, or disclosure of anything whatsoever. The Parties have included this provision to preclude any claim that any Party was in any way fraudulently induced to execute this Settlement Agreement, and to preclude the introduction of parole evidence to vary, interpret, supplement, or contradict the terms of this Agreement.

- 9.4. **Execution in Counterparts:** This Agreement may be executed in counterparts, each of which may be executed and delivered via facsimile or PDF electronic delivery with the same validity as if it were an ink-signed document and each of which shall be effective and binding on the Parties as of the Effective Date. Each such counterpart shall be deemed an original and, when taken together with other signed counterparts, shall constitute one and the same Agreement.
- 9.5. **Advice of Counsel and Voluntary Agreement:** The Parties hereto represent that they have read this Agreement carefully in its entirety and are satisfied that they understand and agree to all its provisions; that this Settlement Agreement has been voluntarily entered into; that they have received independent advice from their respective attorneys with respect to the advisability of executing this Settlement Agreement; and that any and all investigation and analysis of the facts deemed necessary or desirable have been conducted prior to the execution of this Settlement Agreement.
- 9.6. **Power and Authority to Execute:** Each of the Parties hereto represent that they have the power and the authority to execute and deliver this Agreement and to perform the obligations hereunder, and that each person executing this Agreement on each Party's behalf has been authorized to sign on behalf of the respective Party and to bind each to the terms of this Agreement.
- 9.7. **Binding Effect:** All of the terms and provisions of this Settlement Agreement will be binding upon and will inure to the benefit of the Parties and their heirs, successors, and assigns.
- 9.8. **Construction:** The Parties acknowledge and agree that this Agreement has been jointly drafted by all Parties hereto as a result of arm's length negotiations among the Parties. Because all Parties have contributed to the preparation of this Agreement, it shall not be construed more strictly against one party than another. Any rule of law, including, without limitation, Section 1654 of the California Civil Code, that would require interpretation of any ambiguities or uncertainties in this Settlement Agreement against one of the Parties will have no application and is hereby expressly waived. Where required by context, the plural includes the singular and the singular includes the plural.

9.9. **Notices:** Any notice or communication provided under this Agreement shall be made in writing and shall be delivered or sent by electronic mail or First Class U.S. Mail to the addresses below, or to such other addresses as may be specified in writing by any Party to the other Party (provided that ten (10) days' written notice of such designation is provided to all other Parties in accordance with the terms of this Section).

9.9.1. To Plaintiffs:

Sean Betouliere  
Disability Rights Advocates  
2001 Center Street, Fourth Floor  
Berkeley, CA 94704  
sbetouliere@dralegal.org

9.9.2. To Defendants:

Melissa T. Daugherty  
Lewis Brisbois Bisgaard & Smith, LLP  
633 West 5<sup>th</sup> St., Suite 4000  
Los Angeles, CA 90071  
Melissa.Daugherty@lewisbrisbois.com

IN WITNESS WHEREOF, the Parties hereto have approved and executed this Settlement Agreement on the dates set forth opposite their respective signatures.

**EXECUTED by the Parties as follows:**

Dated: January 15, 2020

WMK, Inc. and MobilityWorks of California, LLC,  
Defendants.

By:

Eric H. Mendel  
Title: Chief Operating Officer / President

Dated: \_\_\_\_\_, 2020

Community Resources for Independent Living,  
Plaintiff.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 2020

By: \_\_\_\_\_

Dorene Giacomini, Plaintiff, individually and  
as a representative of the Settlement Class

9.9. **Notices:** Any notice or communication provided under this Agreement shall be made in writing and shall be delivered or sent by electronic mail or First Class U.S. Mail to the addresses below, or to such other addresses as may be specified in writing by any Party to the other Party (provided that ten (10) days' written notice of such designation is provided to all other Parties in accordance with the terms of this Section).

9.9.1. To Plaintiffs:

Sean Betouliere  
Disability Rights Advocates  
2001 Center Street, Fourth Floor  
Berkeley, CA 94704  
sbetouliere@dralegal.org

9.9.2. To Defendants:

Melissa T. Daugherty  
Lewis Brisbois Bisgaard & Smith, LLP  
633 West 5<sup>th</sup> St., Suite 4000  
Los Angeles, CA 90071  
Melissa.Daugherty@lewisbrisbois.com

IN WITNESS WHEREOF, the Parties hereto have approved and executed this Settlement Agreement on the dates set forth opposite their respective signatures.

**EXECUTED by the Parties as follows:**

Dated: \_\_\_\_\_, 2020 WMK, Inc. and MobilityWorks of California, LLC,  
Defendants.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: January 27, 2020 Community Resources for Independent Living,  
Plaintiff.

By: P. Michael Galvan  
Title: Platinum Executive Director

Dated: \_\_\_\_\_, 2020 By: \_\_\_\_\_  
Dorene Giacopini, Plaintiff, individually and  
as a representative of the Settlement Class

- 9.9. **Notices:** Any notice or communication provided under this Agreement shall be made in writing and shall be delivered or sent by electronic mail or First Class U.S. Mail to the addresses below, or to such other addresses as may be specified in writing by any Party to the other Party (provided that ten (10) days' written notice of such designation is provided to all other Parties in accordance with the terms of this Section).

9.9.1. To Plaintiffs:

Sean Betouliere  
Disability Rights Advocates  
2001 Center Street, Fourth Floor  
Berkeley, CA 94704  
sbetouliere@dralegal.org

9.9.2. To Defendants:

Melissa T. Daugherty  
Lewis Brisbois Bisgaard & Smith, LLP  
633 West 5<sup>th</sup> St., Suite 4000  
Los Angeles, CA 90071  
Melissa.Daugherty@lewisbrisbois.com

IN WITNESS WHEREOF, the Parties hereto have approved and executed this Settlement Agreement on the dates set forth opposite their respective signatures.

**EXECUTED by the Parties as follows:**

Dated: \_\_\_\_\_, 2020 WMK, Inc. and MobilityWorks of California, LLC,  
Defendants.

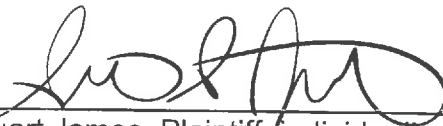
By: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 2020 Community Resources for Independent Living,  
Plaintiff.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: JANUARY 16, 2020 By: Dorene Giacopini  
Dorene Giacopini, Plaintiff, individually and  
as a representative of the Settlement Class

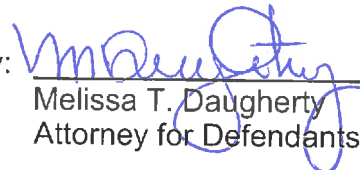
Dated: January 10, 2020

By:   
Stuart James, Plaintiff, individually and as a  
representative of the Settlement Class.

**APPROVED AS TO FORM:**

Dated: January 28, 2020

Lewis Brisbois Bisgaard & Smith LLP

By:   
Melissa T. Daugherty  
Attorney for Defendants

Dated: January 10, 2020

DISABILITY RIGHTS ADVOCATES

By:   
Sean Betouliere  
Attorney for Plaintiffs