UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

EASTERN PARALYZED VETERANS ASSOCIATION n/k/a UNITED SPINAL ASSOCIATION, Plaintiff, -against- THE CITY OF NEW YORK, Defendant.	No. 94 cv 0435 (GBD) (KNF)
CENTER FOR INDEPENDENCE OF THE DISABLED, NEW YORK; DUSTIN JONES; MYRNA DRIFFIN; on behalf of themselves and all others similarly situated, Plaintiffs, -against- THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF TRANSPORTATION, and POLLY TROTTENBERG, in her official capacity as Commissioner of the New York City Department of Transportation, Defendants.	No. 14 cv 5884 (GBD) (KNF)

PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AGREEMENT

DISABILITY RIGHTS ADVOCATES
Co-Class Counsel for the Plaintiff Class
& Counsel for CIDNY et al.
655 Third Avenue, 14th Floor
New York, NY 10017-5621
Tel: (212) 644-8644
Fax: (212) 644-8636

BROACH & STULBERG LLP
Class Counsel for the Plaintiff Class
& Counsel for EPVA n/k/a USA
One Penn Plaza, Suite 2601
New York, NY 10119
Tel: (212) 268-1000
Fax: (212) 947-6010

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

I. PRELIMINARY STATEMENT

Eastern Paralyzed Veterans Association n/k/a United Spinal Association ("EPVA"), as Class Representative of the Plaintiff Class herein and Plaintiff Class Representative in *Eastern Paralyzed Veterans Association n/k/a United Spinal Association v. City of New York*, 94 CV 0435 (GBD) (KNF) ("the EPVA action"), and Center for Independence of the Disabled ("CIDNY"), as Co-Plaintiff Class Representative of the Plaintiff Class herein and Plaintiff in *Center for Independence of the Disabled New York, et al. v. City of New York, et al.*, 14 CV 5884 (GBD) (KNF) ("the CIDNY action"), and all Objectors in the EPVA action, jointly request that the Court grant final approval of the Settlement Agreement and Release of Claims ("the Agreement"), which was preliminarily approved by this Court's Order dated March 19, 2019 ("the Preliminary Approval Order") (Dkt. # 223). (Copies of the Agreement and the Preliminary Approval Order are annexed hereto as Exhibits ["Ex."] A and B, respectively). The City of New York, Defendant in both the EPVA action and the CIDNY action, consents to this Court granting final approval of the Agreement.

As set forth below and in the papers submitted in support of the motion for preliminary approval, the Agreement provides a comprehensive plan for making New York City's approximately 162,000 street corners fully accessible to people with disabilities, including those with mobility and vision impairments. The Agreement requires, among other things: City-wide surveys of all street corners and pedestrian ramps, conducted using laser technology; completion of pedestrian ramp installations at all street corners remaining to be ramped; upgrades of all pedestrian ramps that do not comply with state and federal Accessibility Laws; ongoing maintenance and repair of pedestrian ramps; a complaint program enabling Plaintiff Class members to report pedestrian ramps that need to be installed, upgraded, or repaired; oversight by

an independent Monitor to ensure transparency and accountability; and creation of a Pedestrian Ramp Program Unit at the City's Department of Transportation ("DOT"), headed by an Associate Deputy Commissioner. The Agreement sets schedules for: (a) completing installations of pedestrian ramps at standard corners by Fiscal Year ("FY") 2021; (b) completing installations of pedestrian ramps at complex corners by FY2030; (c) completing upgrades of non-compliant pedestrian ramps at standard corners by FY2034; and (d) completing upgrades of non-compliant pedestrian ramps at complex corners at the rate of approximately 815 corners per fiscal year starting in FY2035. As set forth below, the Agreement also contains provisions for pedestrian ramp-related recordkeeping and reporting, staff training, and conflict resolution, with the Court maintaining jurisdiction over the Agreement during its term and any extension.

Plaintiffs submit, with Defendants' consent, that the Agreement is fair, reasonable, and adequate to protect the interests of Plaintiff Class members, to resolve all claims in the EPVA and CIDNY actions, and to resolve all objections in the EPVA action. Further, as detailed in the accompanying Declarations of Robert B. Stulberg, Esq. of Broach & Stulberg, LLP ("B&S"), Michelle Caiola, Esq. of Disability Rights Advocates ("DRA"), and Sherrill Kurland, Esq. of the New York City Law Department, the parties have timely complied with all notice requirements set forth in the Court's March 19, 2019 Preliminary Approval Order, and have received only one objection to the Agreement, which was left on DRA's voicemail from a caller who later said he believed the Agreement would result in fewer pedestrian ramps in the City. Accordingly, Plaintiff Class Representatives, Plaintiffs in the EPVA and CIDNY actions, and Objectors in the EPVA action, submit that the Settlement Agreement will provide Plaintiff Class members with a comprehensive, carefully crafted program that will protect their basic civil right to be able to safely and reliably cross the City's streets. For this reason and for the other reasons set forth

herein, Movants respectfully request, with the consent of Defendants, that the Court grant final approval of the Agreement, consistent with the proposed Order Granting Final Approval of Settlement of Class Action Lawsuits annexed to the Agreement as Ex. A ("the proposed Final Approval Order"). (*See* Ex. A hereto at Ex. A).

II. BACKGROUND INFORMATION

The EPVA action was filed on January 26, 1994, alleging, among other things, that the City of New York ("the City") had failed to install pedestrian ramps at all of its corners, as required by Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131, *et seq*. ("the ADA"), thus making streets and sidewalks inaccessible to the disabled. On August 27, 2002, EPVA and the City entered into a Stipulation, which was "so-ordered" by the Honorable U.S. District Court Judge Thomas P. Griesa on September 10, 2002 ("the 2002 Stipulation"). The 2002 Stipulation certified (a) the Plaintiff Class, consisting of "qualified individuals with a disability," as defined in [the ADA], "who use or seek to use pedestrian ramps in the City," (b) EPVA as Plaintiff Class Representative, and (c) Broach & Stulberg, LLP as Plaintiff Class Counsel. The 2002 Stipulation required the City to install pedestrian ramps at all corners lacking ramps, and to spend hundreds of millions of dollars to accomplish that goal. Pursuant to the 2002 Stipulation, the City: installed pedestrian ramps throughout the five boroughs; amended its Pedestrian Ramp Transition Plan to recite its financial and operational commitments to those installations; and established, with EPVA, a Working Group ("the Working Group") to share relevant data, and a dispute resolution process to address conflicts. The Court retained jurisdiction to decide disputes that the parties could not resolve. In 2005, EPVA became known

as United Spinal Association ("USA").[1]

Subsequently, EPVA n/k/a USA, through the Working Group, raised concerns about the need to: complete the installation of pedestrian ramps at the corners remaining to be ramped; upgrade those pedestrian ramps that were not ADA-compliant; and improve the City's system for responding to pedestrian ramp-related complaints.

The CIDNY action was filed on July 30, 2014, alleging, among other things, that the City had violated Title II of the ADA, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, *et seq*., and the New York City Human Rights Law § 8-107 *et seq*., by failing to install and maintain pedestrian ramps in Community Boards 1, 2 and 3 in Manhattan. CIDNY brought the action on behalf of a putative class of "all persons with mobility and/or vision disabilities who use or will use New York City pedestrian rights-of-way in Lower Manhattan." CIDNY sought to be appointed as Class Representative in the CIDNY action, and its counsel, DRA, sought to be appointed as Class Counsel in that action.

On January 28, 2016, EPVA n/k/a USA and the City entered into a So Ordered Stipulation Resolving Disputes ("the 2016 Stipulation"), which was "so-ordered" by Judge Griesa on February 11, 2016. On May 31, 2016, the Honorable U.S. District Judge George B. Daniels held a Fairness Hearing concerning the 2016 Stipulation, at which counsel for the City, counsel for EPVA n/k/a USA, and counsel for several disability rights organizations with objections to the 2016 Stipulation[2] were heard. Following the Fairness Hearing, the Court

[1] On March 4, 2019 (Doc. No. 217), this Court granted the joint motion of EPVA and the City to amend the caption of the EPVA action to change the Plaintiff Class Representative's name to "Eastern Paralyzed Veterans Association n/k/a United Spinal Association." For purposes of this motion, EPVA will be referred to as "EPVA n/k/a USA".

[2] American Council of the Blind, Harlem Independent Living Center, Center for Independence of the Disabled New York, Bronx Independent Living Services, United for Equal Access, Inc., Brooklyn Center for Independence of the Disabled, American Council of the Blind of New York, Inc., and Disabled in Action of Metropolitan New York, Inc. ("Objectors").

appointed a Special Master to evaluate the 2016 Stipulation. On August 1, 2017, the Special Master issued his report containing the evaluation. Thereafter, counsel for the City, counsel for EPVA n/k/a USA and the Plaintiff Class, and counsel for CIDNY and the other Objectors engaged in extensive, arms-length, good faith discussions, which included dozens of in-person and telephonic negotiation sessions, and mediation sessions conducted by the Honorable U.S. Magistrate Judge Kevin N. Fox. As a result of those discussions, on March 13, 2019, the parties filed with this Court a proposed Settlement Agreement and Release of Claims and a Letter Motion for Preliminary Approval of the Settlement Agreement.

On March 19, 2019, this Court held a hearing and issued the Preliminary Approval Order. That Order affirmed the certification of the Plaintiff Class, which, as set forth in the 2002 Stipulation and Paragraph I(U) of the Agreement, consists of qualified individuals with a disability as defined in the ADA, who use or seek to use the City's pedestrian ramps. (Ex. B at ¶ 1; Ex. A at ¶ I(U)). That Order further affirmed the appointment of EPVA n/k/a USA as Class Representative of the Plaintiff Class and B&S, or its successor, as Class Counsel for the Plaintiff Class, and appointed CIDNY as Co-Class Representative of the Plaintiff Class and DRA as Co-Class Counsel for the Plaintiff Class. (*Id*.).

The Preliminary Approval Order also set forth the requirements for provision of notice to the Plaintiff Class members, including the form and content of the notices (Ex. A at ¶ 3), and the method, scope and timing of their distribution (*id.* at ¶¶ 4, 10(a)-(c)). It further provided that Plaintiff Class members wishing to object to the Agreement (a) must submit their objections in writing or by leaving a message no later than 14 days before the Fairness Hearing (*id.* ¶ 10(d)), and (b) may present those objections in person during the Fairness Hearing, scheduled for July 23, 2019, at 10:30 a.m. (*id.* ¶ 10(d), (g)).

Plaintiffs and Defendant have since complied with all notice requirements outlined in the Preliminary Approval Order, as more fully set forth in the Declarations of Michelle Caiola, Esq., Robert B. Stulberg, Esq., and Sherrill Kurland, Esq., attached hereto as Ex. C, D, and E, respectively, and the affidavits of Nichole Altmix, James Jenkins, Alison Bloom, and Lenny Brown, attached hereto as Ex. F, G, H and I, respectively. Specifically, Class Counsel and Co-Class Counsel posted the Notice of Settlement on their websites for public review within twenty days after entry of the Preliminary Approval Order (Stulberg Dec. at ¶ 3; Caiola Dec. at ¶ 5), and Co-Class Counsel distributed the Notice of Settlement to each of the objecting organizations in the EPVA lawsuit within fourteen days after entry of the Preliminary Approval Order (Caiola Dec. at ¶ 4). The City posted the Notice of Settlement to its website for public review within twenty days after entry of the Preliminary Approval Order (Altmix Aff. at ¶¶ 2-3), published the Notice of Settlement in English and Spanish-language newspapers within thirty days after entry of the Preliminary Approval Order (Bloom Aff. at p. 1, Brown Aff. at p. 1)., In addition, pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715(b), Notice of Settlement was served upon the Attorney General of the United States and on all state Attorneys General within ten days after the filing of the proposed Agreement with this Court (Jenkins Aff. at ¶¶ 2-4; Kurland Dec. at ¶ 2).

During the notice and objection period, running from March 19, 2019 through July 9, 2019,[3] Class Counsel received only one objection to the Agreement (Stulberg Dec. at ¶ 4; Caiola Dec. at ¶¶ 6-7): on May 31, 2019, DRA received a voicemail from an individual who stated that he was a disabled veteran and that he objected to the Agreement (Caiola Dec. at ¶ 6). On June

[3] The Preliminary Approval Order provides that "[a]ny Class Member seeking to object to the proposed Settlement may submit an objection to Class Counsel in writing, via regular or electronic mail, or by leaving a message with their objection via telephone, and/or Video Relay Service 14 days prior to the Fairness Hearing." (Ex. B at ¶ 10(d)).

20, 2019, DRA spoke with that individual, who confirmed that he was a member of the Plaintiff Class and that his objection pertained to the Agreement (*Id.*). He said that the basis of his objection was that he believed the Settlement Agreement would result in fewer pedestrian ramps on New York City streets (*Id.*).

III. SUMMARY OF THE SETTLEMENT AGREEMENT

A. Key Improvements to the City's Pedestrian Ramp Program

Movants respectfully refer the Court to the Agreement (Ex. A) for a full recitation of its terms. For the Court's convenience, Movants provide the following summary of those terms.

The Agreement commits the City to ongoing, widespread accessibility improvements to its pedestrian ramps through City-wide surveys, scheduled installations and upgrades, complaint remediation, ongoing maintenance, sharing of information, and third-party monitoring. The stated purpose of the Agreement is, as stated in Section 4 (Ex. A at II (4)), "the implementation of a program that will result in the mutually advantageous, efficient and expeditious (a) installation of pedestrian ramps at all remaining locations that do not have pedestrian ramps where pedestrian walkways cross curbs, (b) Upgrade of all pedestrian ramps that require upgrading in order to comply with the Accessibility Laws, and (c) ongoing maintenance of all pedestrian ramps in order to keep them in compliance with the Accessibility Laws, as described in Section 12."

The Accessibility Laws that will govern the Agreement are, with one exception, "all state and federal accessibility laws and regulations requiring, promoting and/or encouraging equal or improved access to persons with disabilities, including…the ADA and all of its implementing regulations and technical requirements which are existing and current at the

time of any pedestrian ramp installation or Upgrade…and the Rehabilitation Act of 1973, 29 U.S.C. §§ 790 *et seq.* and all of its implementing regulations and design standards." (Ex. A at I (A)). For installation or upgrade of detectable warning surfaces for persons with vision disabilities, the City will follow guidelines set forth in the Public Right of Way Accessibility Guidelines ("PROWAG"), found at https://www.access-board.gov/guidelines-and-standards/streets-sidewalks/public-rights-of-way/proposed-rights-of-way-guidelines. (Ex. A at II (10)).

Following is a summary of the Agreement's key pedestrian ramp program requirements:

The Agreement requires the City to survey all street corners across the five boroughs using laser technology to determine how many currently require pedestrian ramp installations and/or upgrades. (Ex. A at II (9 *et seq.*)). The survey data collection is to be completed no later than October 2019. (Ex. A at II (9.3.1)). The results of the survey will be used by the City to target future pedestrian ramp upgrades and installations, information gathered from the survey will be made publicly available, and the City's assessment of each pedestrian ramp's compliance with Accessibility Laws and the schedule for installation and upgrade of pedestrian ramps will be set forth in an updated Transition Plan. (Ex. A at II (9.1, 9.3, 9.4, 18.1)). The Agreement requires the City to conduct two additional City-wide surveys during the term of the Agreement in order to assess the status of pedestrian ramps in the City. (Ex. A at II (9.3.2)). The first of those surveys must be conducted by the close of Fiscal Year ("FY") 2033, while the second must be conducted by the close of FY2046. (*Id.*).

The Agreement sets out long-term and short-term deadlines to be met for installation of all remaining missing pedestrian ramps and upgrading of all non-compliant pedestrian

ramps. The City is committing to installing and upgrading pedestrian ramps at specified rates. Overall, installations of remaining standard pedestrian ramps (at approximately 424 corners) will be completed by the close of FY2021, and installations of remaining complex pedestrian ramps (at approximately 2,736 corners) will be completed by the close of FY2030. (Ex. A at II (11.4.1-2)). Upgrades of non-compliant standard pedestrian ramps (at approximately 108,590 corners) will be completed by the close of FY2032. (Ex. A at II (11.4.3)). Upgrades of non-compliant complex pedestrian ramps at approximately 5,500 corners will be completed by the close of FY2034, and upgrades of the remaining non-compliant complex pedestrian ramps (at approximately 10,500 corners) will be completed at the rate of approximately 815 corners per Fiscal Year, starting in FY2035. (Ex. A at II (11.4.4)). These installations and upgrades will be accomplished through various means of construction, including but not limited to, in connection with the City's roadway resurfacing operations, in connection with complaints made by members of the public, and through prioritization criteria. (Ex. A at II (9.5, 13, 14)).

In addition to these installations and upgrades, the Agreement requires the City to maintain its pedestrian ramps as required by the Accessibility Laws, both during and after the term of the Agreement, so that members of the Plaintiff Class will be able to access those pedestrian ramps safely and independently. (Ex. A at II (12.2)). The maintenance will be performed on an ongoing, indefinite and regular basis, as required by the Accessibility Laws. *(Id.)*

The Agreement also requires the City to install or upgrade pedestrian ramps at both standard and complex corners in accordance with the Accessibility Laws whenever it resurfaces an adjacent roadway and pedestrian ramp installations or upgrades are required

adjacent to the resurfaced roadway. (Ex. A at § II (13)).

The Agreement commits the City to maintaining a pedestrian ramp complaint program in order to allow members of the general public to request installation or upgrade of a pedestrian ramp. (Ex. A at II (14.1)). The complaint program will require the City to permanently install or upgrade complained-of pedestrian ramps as needed as soon as possible, and to dedicate a construction crew to respond to such complaints at standard corners. (Ex. A at II (14.3.3)). The City also will provide temporary accessible solutions at complained-of corners, as appropriate and compliant with the Accessibility Laws. For complaints received prior to March 15, 2019, the City will provide temporary accessible solutions, as appropriate and compliant with the Accessibility Laws, by March 15, 2019. (Ex. A at II (14.3.4)). For complaints received after March 15, 2019, the City will provide temporary repairs, as appropriate and compliant with the Accessibility Laws, within 45 days of receiving the complaint. (Ex. A at II (14.3.2-3)).

The City will employ an Associate Deputy Commissioner to head the Pedestrian Ramp Program Unit at the City's Department of Transportation, to ensure that all implementation-related tasks are carried out. (Ex. A at II (19.1)).

The Agreement requires additional oversight of the implementation by an independent Monitor for a period of up to 15 years. (Ex. A at II (22.2.3)). The Monitor's duties will encompass assessing, among other things: the surveying process; the progress with installing and upgrading pedestrian ramps; the pedestrian ramp maintenance program; and the pedestrian ramp complaint program. (Ex. A at II (22.1)). The Monitor will conduct semi-annual reviews for the first five years, to be followed by annual reviews for the remainder of the monitoring period. (Ex. A at II (22.4.1)). Each compliance assessment by the Monitor

will be reported to the Court, Plaintiff Class Counsel, and the City's counsel within 30 days of the annual review. *(Id.)*

The City will provide the Monitor and Class Counsel with access to relevant, non-privileged information and documents necessary to assess compliance. (Ex. A at II (19.3, 21.2, 22.1, 22.3)). In addition, the City will maintain a detailed record of all pedestrian ramp installations or upgrades requested, planned, scheduled, performed and completed under the Agreement. (Ex. A at The City also will maintain an accessible website containing, among other things, the locations of existing ramps, the City's assessment of ramp compliance with the Accessibility Laws, and the planned interim schedules for ramp installations and upgrades. (Ex. A at

The Agreement provides for training of existing staff and new hires who are involved in ensuring compliance with the Accessibility Laws governing pedestrian ramps. (Ex. A at II (20)).

The Agreement also provides detailed conflict resolution mechanisms, both in the event that the Monitor concludes that the City is not complying with the Agreement, and in the event of a dispute between the Plaintiff Class Representatives and the City. (Ex. A at II (23 *et seq.*)). The Agreement provides that if a conflict cannot be resolved between the Monitor and the City and/or between the Plaintiff Class Representatives and the City, the parties may move the Court to enforce or seek relief from the Agreement. (Ex. A at II (23.4)). Under the Agreement, the Court will have continuing jurisdiction over the Agreement during its term and during any extension of the term granted by the Court. (Ex. A at II (7)).

B. Release of Claims

The Agreement resolves and releases, up until the end of its term (i.e., the date on which

all scheduled installations and upgrades are completed), all claims for injunctive, declaratory or other relief that were brought, could have been brought, or could be brought in the future alleging that, during the period of January 26, 1994 through the term of the Agreement, persons with qualified disabilities were denied access to, excluded from participation in, or denied the benefits of the City's pedestrian ramps. The Agreement does not provide for any monetary relief to the Plaintiff Class, does not release any damages for personal injury claims that Plaintiff Class members may have, and does not release claims relating to midblock barriers, snow removal, or accessibility barriers that remain in or come into existence after the expiration of the implementation period.

C. Reasonable Attorneys' Fees, Costs and Expenses

Plaintiffs and the City have not yet reached an agreement with respect to the amount of reasonable attorneys' fees, costs, and expenses to be paid. Absent an agreement between the parties, Plaintiffs will seek an order from the Court requiring the City to pay Plaintiffs' counsel and Objectors' counsel for all reasonable attorneys' fees and costs incurred commencing on certain specified dates through final approval of the Agreement by the Court. Plaintiff Class Counsel, as well as the Monitor discussed above, also will be entitled to reasonable fees and expenses for implementation of the Agreement. Any award of attorneys' fees, costs and expenses must be approved by the Court as fair and reasonable.

IV. THE SETTLEMENT AGREEMENT MERITS FINAL APPROVAL

Plaintiff Class Representatives, Plaintiff Class Counsel, and Plaintiffs' and Objectors' counsel have concluded that the terms and conditions of the proposed Agreement are fair, reasonable, adequate, and in the best interests of the Plaintiff Class. In reaching this conclusion,

Counsel have considered the benefits of the settlement, the possible outcomes of continued litigation of these issues, and the expense and length of continued litigation.

A non-exhaustive list of factors must be considered when determining when a proposed class action settlement is substantively fair, reasonable, and adequate so as to warrant approval. *See City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000). These factors address: (1) the litigation's complexity, expense, and likely duration; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks for plaintiffs of establishing liability; (5) the risks for plaintiffs of establishing damages; (6) the risks for plaintiffs of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement in light of the best possible recovery; and (9) the range of reasonableness of the settlement to a possible recovery in light of all the attendant risks of litigation. *Id.*

For the following reasons, Plaintiff Class Representatives, Plaintiff Class Counsel, and Plaintiffs' and Objectors' counsel respectfully submit that each of these factors strongly favors final approval of the Agreement.

A. The Complexity, Expense, and Likely Duration of the Litigation Support Granting Final Approval of the Agreement

The first *Grinnell* factor strongly favors approval of the Agreement because the negotiated-for recovery is "substantial," "tangible" and "present," whereas further proceedings would likely be "complex" and "protracted." *In re Am. Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 425 (S.D.N.Y. 2001) (stating that the first *Grinnell* factor favors approval "[w]here a settlement results in "substantial and tangible present recovery, without the attendant risk . . . . [of] further complex and protracted proceedings"); *Slomovics v. All for a Dollar, Inc.*,

906 F. Supp. 146, 149 (E.D.N.Y. 1995) (noting that when litigation has the potential "to result in great expense and to continue for a long time . . . settlement is in the best interest of the Class"). The Agreement provides immediate and comprehensive relief for all claims asserted by parties in both actions by establishing a systemic plan for the City to install, upgrade and maintain pedestrian ramps at all approximately 162,000 street corners across the five boroughs. (Ex. A at § II.) Moreover, the Agreement (a) expressly provides that all work accomplished will comply with state and federal standards, including provisions designed to ensure accessibility for blind members of the Class; (b) sets forth a meaningful avenue for addressing complaints received from members of the public; and (c) ensures the existence of a monitoring mechanism to provide transparency and accountability.

By contrast, litigation through verdict would be complex and costly, and would significantly delay relief. Indeed, litigation of two actions might be required in this case, as the City has been separately sued by EPVA n/k/a USA and CIDNY, and the complex history of these actions is a sufficient indicator of the considerable time and resources that would need to be expended in order to resolve the underlying issues via litigation. Further, there is no discernible benefit that the continued litigation of either action might provide that the parties have not already achieved through this Agreement. For all of these reasons, the first *Grinnell* factor strongly supports approving the Agreement.

B. Class Members Almost Unanimously Favor Approval of the Agreement

The second *Grinnell* factor – how Class members react to the Agreement – strongly favors final approval by the Court. "If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc*., 396 F.3d 96, 118 (2d Cir. 2005). Here, the Agreement has the support of many of New York City's most prominent disability rights organizations, nine of which have signed the

Agreement.[4] *See* Ex. A at 46-55. Further, as discussed above, Plaintiffs have received only one objection to the Agreement from a Class member, and that objector believed that the Agreement would result in the removal of pedestrian ramps on street corners. Thus, the Plaintiff Class "appears to be overwhelmingly in favor of the Settlement," and "the absence of substantial opposition is indicative of class approval." *Wal-Mart Stores, Inc.*, 396 F.3d at 118.

C. The Proceedings Have Reached an Advanced Stage, and Extensive Discovery Has Been Completed

The third *Grinnell* factor weighs in favor of granting final approval if the record developed by the parties through discovery and other stages of litigation is sufficiently extensive to permit the court to evaluate an agreement's merits. *See, e.g., In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 176 (S.D.N.Y. 2000) (internal quotation marks omitted), *aff'd sub nom* ("it is enough for the parties to have engaged in sufficient investigation of the facts to enable the Court to intelligently make . . . an appraisal of the Settlement"); *see also D'Amato v. Deutsche Bank*, 236 F.3d 78 (2d Cir. 2001); *In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 382 (S.D.N.Y. 2013) (holding that the third *Grinnell* factor favors granting settlement if the Plaintiff Class "had more than enough information to make an informed and intelligent decision").

As is evident from the litigation and settlement history referenced above, the parties have engaged in substantial discovery and fact-finding over the course of decades, including extensive motion practice, review of electronic and non-electronic documents, numerous depositions, and

[4] The signatory organizations include Plaintiff Class Representative United Spinal Association, Co-Plaintiff Class Representative Center for Independence of the Disabled, New York, American Council of the Blind, Harlem Independent Living Center, Bronx Independent Living Services, United for Equal Access, Brooklyn Center for Independence of the Disabled, American Council for the Blind of New York, and Disabled In Action of Metropolitan New York.

exchange of data and positions in mediation and settlement conferences. As such, the parties entered into and engaged in negotiations equipped with all the information required to resolve the disputed issues in a reasonable and thoughtful manner. Thus, the third *Grinnell* factor favors granting final approval of the Agreement.

D. The Risks of Establishing Liability Favor Approval of the Agreement

The fourth *Grinnell* factor – the risks for Plaintiffs of establishing liability – also weighs in favor of final approval of the Agreement. Further prosecution of the EPVA and CIDNY lawsuits would involve substantial risks due to the complexity of each case, in addition to the uncertainties of litigation. *See In re PaineWebber Ltd. P'ships Litig*., 171 F.R.D. 104, 126 (S.D.N.Y.) ("Litigation inherently involves risks"), *aff'd*, 117 F.3d 721 (2d Cir. 1997). Program access lawsuits under Title II of the ADA are by their nature challenging, and are particularly so in this instance, given the fact-intensive nature of the EPVA and CIDNY cases, and the complex quilt-work of statutes, regulations, guidances and technical requirements that govern accessibility to public programs and facilities. In view of these circumstances, there is little doubt that the risks involved in protracted litigation are outweighed by the benefits of the comprehensive settlement negotiated by the parties.

E. The Risks of Establishing a Remedy Favor Approval of the Agreement

The fifth *Grinnell* factor -- the risks for Plaintiffs in establishing a remedy through monetary or injunctive relief (see *Marisol A. ex rel. Forbes v. Giuliani*, 185 F.R.D. 152, 164 (S.D.N.Y. 1999) *aff'd sub nom. Joel A. v. Giuliani*, 218 F.3d 132 (2d Cir. 2000)) – also favors final approval of the Agreement. This is so because the Agreement provides complete injunctive relief to the Plaintiff Class on its claims of street and sidewalk access, ensuring that the City not only will install ADA-compliant pedestrian ramps where none exist, but also will upgrade and maintain those ramps in accordance with ADA standards. Further, even if Plaintiffs were to

establish liability through continued litigation, better relief than that provided by the Agreement would not be guaranteed, as the Court could order a different or less comprehensive remedial plan. In short, the Agreement eliminates the risk of obtaining a lesser remedy through litigation, and allows the City to begin implementing the parties' carefully crafted plan immediately, without the inevitable delays attendant to litigation.

F. The Risks of Maintaining the Class Action Bear Little Weight in the Analysis

The sixth *Grinnell* factor – the Plaintiffs' risks of maintaining the class action through trial – bears little weight in the instant cases. Here, the Plaintiff Class has been certified by the Court and represented by Court-appointed counsel for approximately 17 years, since the entry of the 2002 Stipulation. Accordingly, there is little risk that the class would be decertified during further proceedings, or that Plaintiffs would not be able to maintain the class action through trial.

G. The Settlement Is Reasonable in Light of Defendants' Ability to Withstand a Greater Judgment, in Light of the Best Possible Recovery, and in Comparison to Other Possible Recoveries Given the Attendant Risks of Litigation

In cases where Plaintiffs solely seek injunctive relief (*see, e.g.*, *Marisol A.*, 185 F.R.D. at 162), courts generally place little weight on the seventh, eighth and ninth *Grinnell* factors -- Defendants' ability to withstand a greater judgment, the reasonableness of the settlement in light of the best possible recovery, and the reasonableness of the settlement as compared to other possible recoveries given the attendant risks of litigation. Nonetheless, as set forth below, each of those factors supports final approval of the Agreement.

1. The Agreement is Sufficient Regardless of Whether the City Can Withstand a Greater Judgment

The *Grinnell* factor examining whether Defendants may withstand a greater judgment than the relief settled for weighs in favor of final approval of the Agreement. Even if the City could withstand a judgment requiring pedestrian ramps to be made accessible on a more

accelerated timeline than the one agreed to, such a requirement could well be unenforceable given the approximately 162,000 corners in New York City, including many that require the City to prepare unique design drawings to address complex construction issues. By contrast, the Agreement provides realistic schedules and benchmarks that the City must meet, and prioritizes installation and upgrade of pedestrian ramps based on current ramp conditions and a host of geographic factors. Thus, the Agreement is designed to provide the Plaintiff Class with the tangible benefits of access to City streets and sidewalks by the earliest possible dates.

2. The Settlement Is Reasonable in Light of the Best Possible Recovery

The Agreement provides complete relief to the Plaintiff Class by setting forth a clear and comprehensive remedial plan to install, upgrade, and maintain pedestrian ramps on a City-wide basis. Even if Plaintiffs were to litigate the EPVA and CIDNY actions through trial, a better outcome would be unlikely. Moreover, courts have held that in cases where Plaintiffs have not obtained complete relief, but have still received a substantial benefit, "the fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." *Grinnell*, 495 F.2d at 455.

3. In Light of the Risks of Litigation, the Settlement is Reasonable when Compared to Other Possible Recoveries

Under the Agreement, the Plaintiff Class will begin to receive relief right away, without facing the risks and costs of litigation, as the City implements the remedial plan for surveying, installing, upgrading, and maintaining pedestrian ramps City-wide. Additional litigation will result in substantial uncertainty and delay, as well as inefficient use of the parties' resources. By contrast, the Agreement will provide certainty as to the plan and schedule for bringing pedestrian ramps into compliance with the disability access laws.

CONCLUSION

For the reasons set forth above, the Court should grant Plaintiffs' motion for final approval of the Agreement settling the EPVA and CIDNY actions, and enter an order dismissing those actions but retaining jurisdiction for purposes of enforcing the Agreement and awarding attorneys' fees and costs.

Dated: July 18, 2019
New York, New York

Respectfully submitted,

BROACH & STULBERG, LLP

__/s/_____
Robert B. Stulberg, Esq.
BROACH & STULBERG, LLP
One Penn Plaza, Suite 2601
New York, NY 10019-2699
Tel: (212) 268-1000
Fax: (212) 947-6010
Class Counsel for the Plaintiff Class

DISABILITY RIGHTS ADVOCATES

__/s/_____
Michelle A. Caiola, Esq.
DISABILITY RIGHTS ADVOCATES
655 Third Avenue, 14th Floor
New York, NY 10017-5621
Tel: (212) 644-8644
Fax: (212) 644-8636
Co-Class Counsel for the Plaintiff Class