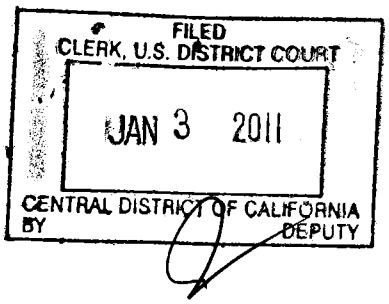

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MARK WILLITS, et al.

Plaintiffs

v.

CITY OF LOS ANGELES, et al.

Defendants

No. CV 10-05782 CBM (RZx)

ORDER ON PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

The matter before the Court is the Plaintiffs' Motion for Class Certification ("Motion"). [Doc. No. 31.]

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs Mark Willits ("Willits"), Judy Griffin ("Griffin"), Brent Pilgreen ("Pilgreen") and Communities Actively Living Independent and Free ("CALIF") (collectively, "Plaintiffs") allege that Defendants City of Los Angeles ("the City"), Mayor Antonio Villaraigosa, and various City Council members (collectively, "Defendants"), unlawfully failed, and are failing, to properly install and maintain accessible pedestrian rights of way, including curb ramps, sidewalks, crosswalks,

pedestrian crossings and other walkways ("pedestrian rights of way").[1] (Complaint at ¶ 3.) Specifically, Plaintiffs allege that the pedestrian rights of way, when viewed in their entirety, suffer from numerous deficiencies, including: (1) unsafe, non-compliant, or missing ramps; (2) broken pedestrian rights of way that are cracked, crumbled, steep, sunken, or uneven or that have improper slopes or broken and inaccessible surfaces; (3) physical obstacles on the sidewalk between intersections, such as improperly placed signs, light poles, newspapers or bus stop benches; and (4) "apron parking."[2] (*Id.* at ¶¶ 5, 24.) According to Plaintiffs, such deficiencies are directly attributable to Defendants' policies and practices, or lack thereof, with respect to the City's pedestrian rights of way and disability access. (*Id.* at ¶¶ 5-6.)

Plaintiffs further allege that, as a result, Plaintiffs and other persons with mobility disabilities either remain segregated from significant amounts of daily activities or risk injury or death by traveling on or around inaccessible pedestrian rights of ways. (*Id.* at ¶ 4.) Plaintiffs allege that Defendants' failure to install and maintain such pedestrian rights of way constitutes a systematic denial of meaningful access and discrimination that, in turn, violates federal and state nondiscrimination statutes. (*Id.*)

On August 4, 2010, Plaintiffs filed a class action complaint alleging violations of (1) the ADA; (2) Section 504; (3) California Government Code Section 11135; (4) the Unruh Act; (5) California Government Code Section 4450; and (6) the California Disabled Persons Act (the "CDPA"). [Doc. No. 1.]

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[1] The City Council members named are Eric Garcetti, Ed Reyes, Paul Krekorian, Dennis P. Zine, Tom Labonge, Paul Koretz, Tony Cardenas, Richard Alarcon, Bernard Parks, Jan Perry, Herb J. Wesson, Jr., Bill Rosendahl, Greig Smith, Jose Huizar, and Janice Hahn. (Compl. at ¶¶ 3, 19.) The individual defendants, including Mayor Antonio Villaraigosa, are sued solely in their official capacities. (*Id.* at ¶ 19.)

[2] According to Plaintiffs, "apron parking" refers to vehicles parked in driveways such that they protrude onto pedestrian rights of way and thereby leave insufficient space for persons with mobility aids to pass through the otherwise accessible pedestrian rights of way. (Compl. at ¶ 23(d).)

Defendants filed a Motion to Stay on September 7, 2010 [Doc. No. 33], and a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) [Doc. No. 41.] Prior to the filing of the Motion to Stay, Plaintiffs filed the Motion for Class Certification on September 1, 2010. [Doc. No. 31.] Plaintiffs seek certification, under Federal Rule of Civil Procedure 23(b)(2), of a class of individuals with mobility disabilities in the City of Los Angeles who have been denied access to pedestrian rights of way. Defendants filed their opposition on October 4, 2010. [Doc. No. 43.] Plaintiffs filed their reply on October 18, 2010. [Doc. No. 49.] All three matters were heard on November 15, 2010.[3]

LEGAL STANDARD

A plaintiff seeking to represent a class must satisfy the threshold requirements of Rule 23(a) as well as the requirements of certification under one of the subsections of Rule 23(b). *Amchem Prods., inc. v. Windsor*, 521 U.S.591, 614 (1997). Rule 23(a) provides that certification of a class is appropriate in a case if the following conditions are met:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). Rule 23(b) provides for certification if, *inter alia*, "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Fed. R. Civ. P. 23(b)(2).

The party moving for class certification bears the burden of showing that

[3] Defendants' motions are addressed in a separate order.

each required element of Rule 23 is satisfied. *Gen. Tel. Co. v. Falcon*, 457 U.S. 147, 158-61 (1982). For purposes of class certification, the court accepts the substantive allegations of the complaint as true, but is also "required to consider the nature and range of proof necessary to establish those allegations." *In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 691 F.2d 1335, 1342 (9th Cir. 1982) (citing *Blackie v. Barrack*, 524 F.2d 891, 901). Thus, the court *may* look beyond the pleadings to determine whether the requirements of Rule 23 have been met. *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 509 (9th Cir.1992) (citation omitted) (emphasis added). The district court must engage in a "rigorous analysis" over the elements of Rule 23, which may involve "looking . . . to issues overlapping with the merits of the underlying claims." *Dukes v. Wal-Mart Stores, Inc.*, 603 F.3d 571, 594 (9th Cir. 2010). However, consideration of the merits of the underlying claims must be limited to the issues overlapping with the Rule 23 requirements. *Id.*

DISCUSSION

I. Rule 23(a) Requirements

A. Numerosity

Rule 23(a) requires a proposed class to be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Defendants do not dispute that Plaintiff's proposed class is large enough to make joinder impracticable. Rather, Defendants argue that Rule 23(a)(1) requires Plaintiffs to put forth concrete evidence of the specific size of the class and that Plaintiffs' estimate of the class is speculative, therefore failing to comply with Rule 23(a)(1). (Defendants' Memorandum of Points and Authorities in Opposition to Plaintiffs' Motion for Class Certification ("Def's Opp") at 21:17-28, 22:1-6).

Defendants cite no authority for the proposition that Plaintiffs are required to put forth concrete evidence of the specific size of the class, and the Court has

found none.[4] The Court thus finds that Plaintiffs satisfy the numerosity requirement.

B. Commonality

Rule 23(a) also requires that there be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "All questions of fact and law need not be common to satisfy the rule." *Dukes*, 603 F.3d at 615 (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998)). "[O]ne significant issue common to the class may be sufficient to warrant certification." *Id.*, 603 F.3d at 599. In regard to civil rights suits, "commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members." *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001).

Plaintiffs contend that there are a number of common questions of law and fact that, including whether the City is required by the ADA and Section 504 to make its system of pedestrian rights of way, when viewed in its entirety, readily accessible to and usable by persons with mobility disabilities, and whether the City was required to make its system of pedestrian rights of way accessible to persons with mobility disabilities by no later than January 26, 1995 under the ADA and by no later than June 3, 1977 under Section 504. (Compl. at ¶64; Plaintiff's Memorandum of Points and Authorities in Support of Motion for Class Certification ("Plt's Memo") at 17:12-28, 18:1-12). The Plaintiffs further argue that since this case revolves around the City's allegedly "illegal system–wide policies and practices, and their systematic failures to take necessary action, which have affected all class members in the same manner," commonality is satisfied. (*Id.* at 15:21-25). Defendants argue that Plaintiffs have failed to establish common questions of law and fact because there is no significant proof of a violation of any of Plaintiffs' alleged causes of action. (Def's Opp at 8:10 through

[4] The cases cited by Defendants in their brief hold that a plaintiff must put forth a showing that the proposed class is *large enough* to satisfy the numerosity requirement, which is not at issue here.

20:28).[5]

Defendants' argument is foreclosed by *Dukes v. Wal-Mart*, in which the Ninth Circuit explicitly rejected the argument that a plaintiff seeking class certification must present significant proof of a violation of the claim alleged. *Dukes*, 603 F.3d at 594-98 ("*Falcon* does not say that Plaintiffs must show a common policy of proven discrimination at the class action stage, rather than just a common policy alleged to be discriminatory.") (citing *Falcon*, 457 U.S. at 158-59). Plaintiffs' allegations in the Complaint are sufficient, if true, to establish a common policy that is discriminatory – thus satisfying the commonality requirement of Rule 23.

C. Typicality

Rule 23(a) provides that class certification is appropriate when "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)93). A finding of commonality frequently supports a finding of typicality. *Falcon*, 457 U.S. at 157 n.13. In reviewing whether the representative parties' claims are typical of the class, a court determines "whether the named plaintiffs' individual circumstances markedly diverge or whether the legal theories and claims differ as to defeat the purposes of maintaining a class." *Von Colln v. County of Ventura*, 189 F.R.D. 583, 591 (C.D. Cal. 1999). It is sufficient for plaintiffs' claims to involve "the same remedial and legal theories" as the class claims. *Arnold v. UA Theatre Circuit, Inc.*, 158 F.R.D. 439, 449 (N.D. Cal. 1994).

Plaintiffs have alleged that they suffer the same harm as members of the class – to wit, lack of meaningful access to the City's public pedestrian rights of way. (Complt. at ¶¶53, 61; Plt's Mem at 20:19-21.) For example, barriers in the

[5] Defendants also argue that no common question exists as to the ADA claim because sidewalks and curbs are not part of the "services, programs, or activities" that Title II of the ADA regulates. (Def's Opp at 9:7 through 13:8) (citing *Frame v. City of Arlington*, 616 F.3d 476 (5th Cir. 2010)). That argument is foreclosed by *Barden v. City of Sacramento*. 292 F.3d 1073 (9th Cir. 2002) (holding that curbs and sidewalks are included in "services, programs, or activities" under Title II).

City's sidewalks that prevent Plaintiffs from accessing the sidewalk are representative of the barriers that class members may encounter. (Complt. at ¶¶23-24, 31-32, Plt's Mem at 21:1-6). Furthermore, the Plaintiffs argue that their claims and the class claims are based on the same legal theories. (*Id.* at 20:22-23.) Defendants argue that the class is so broadly defined that the Plaintiffs' claims cannot be typical of the class claims, but they do offer any explanation as to why this so. (Def's Opp at 21:1-16).[6]

Plaintiffs have satisfied the typicality requirement of Rule 23 in this case. Plaintiffs' injury stems from the same legal theory – that Defendants' policies and practices regarding access to pedestrian rights of way violate federal and state nondiscrimination laws. Plaintiffs also allege that they suffer the same type of harm as class members.

D. Adequate Representation

Rule 23(a) requires that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). To meet this requirement, Plaintiffs must show that they "do not have conflicts of interest with the proposed class, and. . . are represented by qualified and competent counsel." *Dukes*, 603 F.3d at 614. Adequate representation is usually presumed in the absence of contrary evidence. *See* 3 Newberg § 7:24 at 78.

Plaintiffs allege that they are willing and able to be advocates for the class. (Complt. at ¶62.) Defendants argue that Plaintiffs have not shown adequacy as class representatives because they have not disclosed evidence of their financial ability to carry out this litigation. (Def's Opp at 22: 10-13). Defendants also challenge the ability of Plaintiffs' counsel to be qualified counsel because, according to Defendants, Plaintiffs' attorneys have engaged in forum shopping.

[6] According to Defendants', the class is defined so broadly that it "include[s] every possible person live or who will be born on the plane." However, Plaintiffs' class requires that a person (1) have mobility disabilities (2) be denied access to pedestrian rights of way (3) as a result of Defendants' policies with regard to the City's pedestrian walkways and disability access. Plaintiffs' proposed class definition is therefore unlikely to include every person who is living or may be born.

(*Id.* at 22:20-28, 23:1-7). In their reply, Plaintiffs argue that class counsel is advancing costs for the class action, and that they chose to file suit in federal court rather than face an indefinite stay of discovery and motion practice in state court. (Plaintiffs' Reply to Opposition to Plaintiffs' Motion for Class Certification ("Plt's Reply") at 10:1-20).

Defendants do not argue that there is any conflict of interests between the Plaintiffs and the proposed class. They challenge the adequacy of counsel, but even note that the Disability Rights Legal Center has a well-earned reputation as an advocate for individuals with disabilities. (Def's Opp at 22:14-15.) The Court finds that Plaintiffs would adequately protect the interests of the class and that Plaintiffs' counsel is adequate under Rule 23.

II. Rule 23(b) Requirements

Rule 23(b) provides that "[a] class action may be maintained if Rule 23(a) is satisfied and if . . . the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). Certification under Rule 23(b)(2) is proper "if class members complain of a pattern or practice that is generally applicable to the class." *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998).

Plaintiffs' argue that certification is proper because the class claims arise from deficiencies within the City's policies and practices related to pedestrian rights of way that apply to the entire class. (Plt's Mem at 23:19-22). Furthermore, the Plaintiff class only seeks injunctive and declaratory relief. (*Id.* at 23:22-23). Defendants reiterate their arguments against a finding of commonality and typicality. (Def's Opp at 23:10-19).

The Plaintiffs allege that Defendants have failed and continue to fail to comply with anti-discriminatory federal and state statutes in the City's implementation of its policies and practices with regard to pedestrian rights of

way. (Complt. at ¶57). This allegation fits squarely into the type of claim that is certified under Rule 23(b)(2), and Defendants' arguments regarding the lack of commonality and typicality are unpersuasive. *See supra*, Section I.B; I.C. The Court thus finds that the proposed class may be certified under Rule 23(b)(2).

III. *Defendant's Evidentiary Objections*

Defendants raise numerous objections to declarations submitted by Plaintiffs in support of the Motion. Because the Court accepts as true the allegations in the Complaint, *see In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 691 F.2d at 1342, the Court has not considered the evidence submitted by Plaintiffs and finds the allegations sufficient for certification. Defendants' objections are therefore overruled as moot. *See, e.g., DeFazio v. Hollister, Inc.*, 636 F. Supp. 2d 1045, 1050 n.4 (E.D. Cal. 2009) ("To the extent the objections concern evidence not relied upon, they are moot.")

CONCLUSION

For the reasons set forth above, the Court hereby ORDERS that Plaintiffs' Motion for Class Certification is GRANTED. The plaintiff class is defined as follows: All persons with mobility disabilities who have been denied access to pedestrian rights of way in the city of Los Angeles as a result of Defendants' policies and practices with regard to its pedestrian rights of way and disability access. The class is certified for injunctive and declaratory relief only. The class claims are Count I (alleging violations of the ADA) and Count II (alleging violations of the Rehabilitation Act) of Plaintiffs' Complaint.[7] Plaintiffs Mark Willits, Judy Griffin, Brent Pilgreen, and CALIF are the class representatives. Disability Rights Legal Center and Schneider Wallace Cottrell Brayton Konecky, LLP are appointed class counsel. Pursuant to the discretion afforded the Court

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[7] The Court, in a separate order, has dismissed the other claims from this suit.

under Federal Rule of Civil Procedure 23(c)(2)(A) and 23(d), the Court waives notice to the class members for the purpose of class certification only.

IT IS SO ORDERED.

DATED: January 3, 2011

By _____
CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE