

Zack Duffly (OR SBN 143109)
zack@pcrlo.org
PORTLAND CIVIL RIGHTS LAW OFFICE
PO Box 82544
Portland, OR 97282
(503) 893-4360

Linda M. Dardarian (CA SBN 131001)*
ldardarian@gbdhlegal.com
Katharine L. Fisher (CA Bar No.305413)*
kfisher@gbdhlegal.com
Ginger L. Grimes (CA SBN 307168)*
ggrimes@gbdhlegal.com
GOLDSTEIN, BORGEN, DARDARIAN & HO
300 Lakeside Drive, Suite 1000
Oakland, CA 94612
Tel: (510) 763-9800
Fax: (510) 835-1417

Timothy Fox (CO SBN 25889)*
tfox@creeclaw.org
CIVIL RIGHTS EDUCATION AND
ENFORCEMENT CENTER
104 Broadway, Suite 400
Denver, CO 80203
(303) 757-7901

Attorneys for Plaintiffs
* Admitted *pro hac vice*

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION**

ALLEN HINES, TESS RAUNIG, and
CAROLEZOOM, on behalf of themselves and
all others similarly situated,

Plaintiffs,

vs.

CITY OF PORTLAND,

Defendant.

Case No.: 3:18-cv-00869-HZ

**DECLARATION OF TIMOTHY P. FOX
IN SUPPORT OF PLAINTIFFS'
MOTION FOR AN AWARD OF
REASONABLE ATTORNEYS' FEES,
COSTS, AND EXPENSES**

I, Timothy P. Fox, declare as follows:

1. I am a member in good standing of the Bars of the States of Colorado and California, and the Co-Executive Director of the Civil Rights Education and Enforcement Center (“CREEC”), based in Denver, Colorado. I have permission to practice in the District of Oregon *pro hac vice*. I am co-counsel for Plaintiffs and have been appointed Class Counsel in this action. I am providing this declaration to support Plaintiffs’ Motion for an Award of Reasonable Attorneys’ Fees, Costs, and Expenses. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to them.

Summary

2. The following table summarizes CREEC’s time spent on this matter, after the exercise of billing judgment:

Timekeeper	Position	Number of hours worked on this case	Rate	Lodestar
Tim Fox	Attorney	113.3	\$526	\$59,595.80
Julie Wilensky	Attorney	89.85	\$450	\$40,432.50
Alex Berger	Surveyor	110.2	\$80	\$8816
Marissa McGarry	Paralegal	45.5	\$150	\$6825
Caiti Hall	Paralegal	13.5	\$150	\$2025
Ana Diaz	Paralegal	4.8	\$125	\$600
Total		377.15		\$118,294.30

3. In addition, the costs for which CREEC seeks reimbursement total \$6286.83.

4. Below I set forth the qualifications of the timekeepers identified above, and explain that the work that they did on this case, and the expenses CREEC incurred on this case, were necessary to achieve the excellent result obtained on behalf of the class.

Experience and Qualifications of CREEC Attorneys and Staff

5. The primary CREEC attorneys who worked on this case were myself and Julie

Wilensky. CREEC paralegals and other personnel also worked on this case.

6. I am the Co-Executive Director of CREEC, a civil rights non-profit organization based in Denver, Colorado, with an office in Berkeley, California. My wife Amy Robertson and I founded CREEC in 2013 after operating as the public interest civil rights law firm Fox & Robertson, P.C. since 1996. Both at Fox & Robertson and at CREEC, my practice has been devoted to civil rights, with a focus on disability rights.

7. I incorporate by reference my previous declaration, entitled Declaration of Timothy P. Fox ("Fox Prelim. App. Decl."), which I submitted on May 21, 2018 in support of the Joint Motion for Class Certification and Preliminary Approval of Consent Decree. ECF 12. In that Declaration, I discussed my extensive experience litigating and resolving class and complex actions, including, for example, serving as class counsel in 15 disability discrimination class actions (including this one). Fox Prelim. App. Decl. at ¶¶ 3-9.

8. I had involvement in all facets of this case, including investigation of the class claims, settlement and litigation strategy, directing and supervising assignments, drafting or reviewing pleadings and other documents, participation in all settlement meetings, and legal research and analysis. In particular, I had significant involvement in the analysis of the large amount of data in this case, including information concerning alterations made by Portland to its streets and sidewalks over the last 25 years. Fox Prelim. App. Decl. at ¶¶ 18-20.

9. Ms. Wilensky (who no longer works at CREEC) is a member in good standing of the Bar of the State of California. She is a 2007 graduate of Yale Law School, where she was the Articles & Essays editor of *The Yale Law Journal*.

10. Prior to joining CREEC in November 2015, she was a shareholder at Lewis, Feinberg, Lee & Jackson, P.C. ("LFLJ") in Oakland, California, which was a nationally

recognized public interest law firm specializing in employment, employee benefits (ERISA), and civil rights. She joined LFLJ as an associate in 2010 and was promoted to shareholder in 2015. At CREEC, and previously at LFLJ, she was responsible for all facets of class action and other complex litigation. Before she joined LFLJ, she clerked for Judge John T. Noonan, Jr. of the U.S. Court of Appeals for the Ninth Circuit and Judge Nicholas G. Garaufis of the U.S. District Court for the Eastern District of New York. From 2007 to 2008, she was a Thomas Emerson Fellow at David Rosen & Associates in New Haven, Connecticut, where she litigated civil rights cases.

11. In 2015, Ms. Wilensky was selected by the National LGBT Bar Association as one of the “Best LGBT Lawyers Under 40.” In 2014 and 2015, she was named to the *Super Lawyers* Northern California Rising Stars List and listed in *San Francisco* magazine’s Top Women Attorneys in Northern California.

12. Ms. Wilensky’s primary roles in this litigation were to assist in the initial investigation of potential claims, including working with a person who conducted surveys of Portland curb ramps, and to identify and interview potential class members and named plaintiffs.

13. Alex Berger, who performed surveys on behalf of Plaintiffs, is a 2015 graduate of the University of Hastings College of the Law, where he graduated *cum laude*.

14. CREEC paralegals played an important role in this case. They reviewed and analyzed documents and information provided by Portland, wrote and followed up on open records act requests, reviewed Google Street views of corners in Portland, and generally had significant involvement in the investigation of this case. Most of the paralegal work in this case was conducted by Marissa McGarry, a 2014 Harvard graduate who is now attending Harvard Law School. Caiti Hall also performed paralegal work on this case, and she is a 2016 graduate of

the University of Virginia.

CREEC's Reasonable Time Spent on This Matter

15. I am the lead counsel from CREEC on this case, and I have been involved in all aspects of the case since its inception.

16. As set forth in my prior declaration, class counsel extensively investigated this case, and engaged in lengthy negotiations that led to an excellent result for the class. Fox Prelim. App. Decl. at ¶¶ 15-27.

17. I worked closely with my co-counsel Linda Dardarian and Zack Duffly to coordinate our efforts, and to ensure that the case was staffed efficiently. In addition, I exercised billing judgment to account for any excess, redundant, or unreasonably duplicative time

18. CREEC's representation of the Plaintiff Class was on a wholly contingent basis. The organization devoted substantial resources to this matter, and we have received no payment for any of the hours of services performed or the thousands of dollars in out-of-pocket costs and expenses that my organization committed to the negotiation and resolution of this case. We did this, with no guarantee of repayment, because of the importance of this case and the benefits it would bring to thousands of individuals with mobility disabilities.

19. All attorneys and legal staff at CREEC are instructed to maintain contemporaneous time records reflecting the time spent on this and other matters. This includes contemporaneous recording of the date and amount of time spent on a task to one-tenth of an hour; a description of the work that was performed during the indicated time period; and identification of the case to which the time should be charged. CREEC has kept contemporaneous records documenting in detail all time spent on this matter, including tasks performed by each time keeper on each day, in increments of 0.1 of an hour. Those records are

available for the Court to review should the Court wish to, and I will provide them to the Court for inspection if requested.

20. The hours CREEC billed were properly and necessarily spent on the organization's assigned tasks and projects. These tasks and projects included: (1) extensively investigating alterations conducted on Portland's sidewalks and streets over the last 25 years; (2) comparing that information with the current state of Portland's corners and curb ramps; (3) interacting with the named plaintiffs and class members; (4) drafting or reviewing pleadings; and (5) participating in extensive settlement negotiations with the City.

21. From the inception of this case through October 31, 2017, CREEC billed – after the exercise of billing judgment – 342.35 hours. From November 1, 2017 through the present, my organization spent an additional 34.8 hours. As part of the Settlement Agreement with the City, Class Counsel agreed to seek only up to \$40,000 for the hours spent after November 1, 2017.

22. CREEC will continue to work on this case to see it through the final approval of the Consent Decree, including responding to class member inquiries prior to the final approval hearing, helping prepare the motion for final approval, and traveling to Portland to attend the fairness hearing on September 24, 2018. Those hours will not be separately compensated.

23. Based on my experience in the field of disability rights, and my knowledge of and familiarity with the disability rights and plaintiff class action bar nationwide, there are no firms in the Portland area that have the depth and breadth of experience and expertise of my organization in litigating class actions involving the accessibility of pedestrian right of way facilities to individuals with mobility disabilities, and in engaging in Structured Negotiation.

The Rates Sought by CREEC Are Reasonable.

24. I have calculated our attorneys' fees incurred in this matter using reduced hourly rates. My regular hourly rate for 2018 as a 1991 law school graduate with more than 25 years of experience is \$865. For the purposes of this Settlement Agreement, I agreed to reduce my hourly rate to \$526 per hour. Similarly, I calculated our attorneys' fees at the reduced rate of \$450 per hour for Julie Wilensky, an attorney with 11 years of experience, from her regular rate of approximately \$660 per hour. The regular hourly rate for CREEC paralegals was reduced from over \$200 an hour to \$125 and \$150 per hour based on experience.

25. As described in the Dardarian Declaration filed herewith, Class Counsel's rates are based on the hourly rates at the 95th percentile of the Oregon State Bar Association 2017 Survey, after adjusting for inflation using the U.S. Department of Labor, Bureau of Labor Statistic's online Inflation Calculator, *available at*: https://www.bls.gov/data/inflation_calculator.htm. OSB 2017 Survey at 38-40.

26. Class Counsel's requested hourly rates are similar to the rates in the OSB 2017 Survey, particularly given two years of inflation. Class Counsel's requested hourly rates fall towards the higher end of the spectrum of hourly rates in Portland, which is justified by their extensive expertise in litigating disability access cases. *See* Dardarian Prelim. App. Decl. ¶¶ 2-13. Less experienced class counsel would likely have incurred greater costs, billed more time, engaged in more substantial and contentious litigation, and achieved lower rewards for the class.

27. The attorneys at GBDH and CREEC, both of which are located outside the District of Oregon, were uniquely qualified to lead the negotiation and litigation of a case involving disability access barriers in the City's pedestrian right of way due to their past experience successfully litigating

and settling similar cases with various cities around the western United States, skills and experience that were not readily available in the Portland area.

28. Using CREEC's reduced hourly rates, its reasonable lodestar in this matter is \$118,294.30.

REASONABLE COSTS AND EXPENSES

29. CREEC is seeking reimbursement of its reasonable out-of-pocket costs and expenses incurred in this matter. Class Counsel agreed to seek only up to \$15,000 in costs and expenses for investigating, negotiating, and resolving this case and obtaining court approval of the settlement, as set forth in the Consent Decree.

30. These items are billed separately and are not included in my organization's lodestar. Our organization separately tracks expenses incurred by case. My organization's total costs and expenses in this matter through the date of this declaration come to \$6286.83. Those costs include in-house copying, payment for public records, survey payments, and travel expenses. CREEC paid these costs and expenses on a regular and timely basis as they were incurred. This means that my organization paid out thousands of dollars in costs and expenses over a course of two years without any guarantee of being reimbursed. These costs and expenses have been necessarily and reasonably incurred in this case. The following table summarizes these expenses by category:

Expense	Amount
Travel expenses	\$4884.25
Mailing and Pacer charges	\$13.31
Public records requests charges	\$1189.27
Rental of conference room to meet with potential named plaintiffs and class members	\$200
Total	\$6286.83

I declare under penalty of perjury under the laws of the United States and the State of Oregon that the foregoing is true and correct, and that this Declaration was executed this 20th day of July 2018, in Denver, Colorado.



Timothy P. Fox