

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

MICHAEL MUEHE, ELAINE HAMILTON,
CRYSTAL EVANS, and COLLEEN
FLANAGAN, on behalf of themselves and all
others similarly situated,

Plaintiffs,

vs.

CITY OF BOSTON, a public entity,

Defendant.

Case No.: 1:21-cv-11080-RGS

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

I, Timothy P. Fox, declare as follows:

1. I am a member in good standing of the State Bars of California and Colorado, and Co-Executive Director of the Civil Rights Education and Enforcement Center ("CREEC") in Denver, Colorado. I am an attorney of record for the Plaintiffs in this action. I am familiar with the facts stated below based on my own personal knowledge, and if called upon could and would testify competently about them.

2. I received my J.D. from Stanford Law School in 1991, where I was a member of the Stanford Law Review and president of my graduating class. From 1991 to 1995, I was an associate at Wilmer, Cutler and Pickering in Washington, DC, and from 1995 to 1996, I was an associate at Davis, Graham & Stubbs in Denver, Colorado. In 1996, I co-founded the law firm of Fox & Robertson with my law partner, Amy Robertson. In 2013, we co-founded CREEC, a non-profit civil rights organization based in Denver, Colorado with offices in Berkeley and Los Angeles, California and Nashville, Tennessee.

3. I have been appointed as class counsel in numerous disability discrimination

cases, including the following: *Vallabhapurapu et al., v. Burger King Corp.*, No. 11-cv-00667-WHA, 2012 WL 5349389 (N.D. Cal. Oct. 29, 2012); *Castaneda, et al., v. Burger King Corp.*, No. 8-cv-04262-WHA, 2010 WL 2735091 (N.D. Cal. July 12, 2010); *Lucas v. Kmart*, No. 99-cv-01923 JLK (D. Colo.); *Moeller v. Taco Bell*, 220 F.R.D. 604 (N.D. Cal. 2004) *as amended* at 2012 WL 3070863 (July 26, 2012); *Rossart v. Developmental Pathways, Inc.*, No. 06CV44709 (Denver Dist. Ct. September 29, 2008); *Colorado Cross Disability Coalition v. City and County of Denver*, Civ. Action No. 06-cv-00865-LTB-BNB (D. Colo.); *Commonwealth of Mass. v. E*TRADE Access, Inc.*, Civil Action No. 03-11206-MEL (D. Mass. Dec. 7, 2007); *Colorado Cross-Disability Coalition v. Taco Bell Corp.*, 184 F.R.D. 354, 363 (D. Colo. 1999); *Farrar- Kuhn v. Conoco, Inc.*, Civil Action No. 99-MK-2086 (D. Colo.); *Colorado Cross-Disability Coalition v. Fey Concert Company*, Civil Action No. 97-Z-1586 (D. Colo.); *Civil Rights Education and Enforcement Center v. Ashford Hospitality Trust, Inc.*, No. 15-cv-00216 (N.D. Cal.); *Civil Rights Education and Enforcement Center v. RLJ Lodging Trust*, 15-CV-0224-YGR (N.D. Cal. 2015); *Fraihat v. U.S. Immigr. & Customs Enf't*, 2020 WL 1932393 (C.D. Cal. Apr. 20, 2020); *Reynoldson v. City of Seattle*, No. 2:15-cv-01608 (W.D. Wash. 2015); *Denny v. City and County of Denver*, 2016CV030247 (Denver Dist. Ct. 2016); *Hines v. City of Portland*, No. 3:18-cv-00869-HZ (D. Or. Sept. 27, 2018); *King v. City of Colorado Springs*, No. 1:19-cv-00829-JLK (D. Colo. Oct. 1, 2019); and *Lashbrook v. City of San Jose*, 20-CV-01236-NC (N.D. Cal.).

4. In addition to the class action cases described above, I have litigated numerous disability rights cases on behalf of individuals and organizations. These include a number of cases involving civic access such as: *Taylor v. Regional Transportation District*, Civil Action No. 00-Z-981 (D. Colo.) (addressing barriers in Denver's fixed route bus system to individuals who use wheelchairs or scooters); *Lane v. Santa Cruz Metropolitan Transit District*, Case No. 02-1808-RMW (N.D. Cal.) (addressing barriers in Santa Cruz's fixed route bus system to blind people); and *Richardson v. City of Steamboat Springs*, Civil Action No. 99-Z-1247 (D. Colo.) (addressing barriers to individuals who use wheelchairs or scooters in Steamboat Springs's

fixed route bus system).

5. I have received a number of awards and recognition for my work. For example, I and my law partner Amy Robertson received the 2018 ACLU of Colorado's Carle Whitehead Memorial award, the 2012 Award of Excellence from the Colorado Chapter of the American College of Trial Lawyers, the 2007 Impact Fund Award, the 2006 Case of the Year award from the Colorado Trial Lawyers Association, and both Ms. Robertson and I have been honored as Fellows of the Colorado Bar Foundation, as well as Fellows of the American Bar Foundation, a designation bestowed upon no more than one percent of the lawyers licensed to practice in each jurisdiction.

6. In 2008, I received The Colorado Bar Association Award of Merit, the association's highest honor, which is given annually to a member for outstanding service to the association, the legal profession, the administration of justice, and the community.

7. The firms representing the Plaintiffs and class made every effort not to duplicate billing, and to proceed in an efficient manner, assigning the appropriate attorney or staff member to distinct and necessary tasks based on their particular skills and experience.

8. CREEC's role focused primarily on the investigation of the claims prior to the submission of the demand letter on May 17, 2018. Almost 73% of CREEC's hours on this case were worked during the period between the beginning of our investigation in early 2017, and the submission of the demand letter in May 2018.

9. This investigation included: (1) a careful review of documents available on the City's website, such as its ADA transition plan; (2) documents obtained through the Massachusetts Public Records Law, Mass. Gen. Laws ch. 66, § 10, such as spreadsheets showing dates and types of alterations to the City's streets since 1992, curb ramps constructed or repaired from 2011 to 2016, and the results of noncomprehensive surveys of the City's curb ramps that it conducted in 2009 and 2014; and (3) images of the City's pedestrian right of way available on Google Street View.

10. The ADA and Section 504 require cities to install and remediate curb ramps

on corners adjacent to streets that undergo resurfacing and other alterations. To determine whether Boston has complied with this requirement, I (with the assistance of a database expert) created a Microsoft Access database. We used this database to track resurfacing projects, and then compare those projects with photos of adjacent corners to determine whether the corners had been brought into compliance with design requirements in connection with the resurfacing projects.

11. This was an extensive database. For example, the table with resurfacing information contains more than 144,000 entries, and the tables with the results of two surveys of curb ramps conducted by the City totaled approximately 47,000 entries.

12. Paralegals were responsible for entering data into the database, and performing other related tasks. I was responsible for analyzing the data using database search and reporting tools.

13. This investigation established that large numbers of curb ramps in Boston were in violation of requirements under the ADA and Section 504, and we provided numerous examples in the demand letter we sent to the City on May 7, 2018.

14. For example, in exhibits to that letter, we provided examples of noncompliance that included: 180 corners adjacent to re-surfaced streets that were entirely missing curb ramps; and more than 1300 newly constructed or altered ramps that were out of compliance with accessibility design requirements.

15. Based on a spreadsheet provided by Boston in response to our open records request, Boston installed a total of 628 ramps in 2015, and 970 ramps in 2016, the most recent years covered by Boston's response. Thus over those two years, Boston installed an average of less than 800 ramps per year.

16. CREEC's work on this case after the May 7, 2018 demand letter consisted of reviewing documents provided by the City, reviewing and editing drafts of the Consent Decree, and participating in settlement calls with the City.

17. 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. All attorneys and legal staff at CREEC have kept contemporaneous records documenting in detail all time spent on this matter, including recording of the date and amount of time spent on a task to one-tenth of an hour, and a description of the work that was performed during the indicated time period. Attached hereto as Exhibit A are true and correct records reflecting CREEC's time spent on this case.

18. I have reviewed CREEC's billing records on an entry-by-entry basis to exercise billing judgment and excise inefficient or duplicative work, clerical entries, and other billing entries that are otherwise inadequate or non-compensable. This reduced the overall lodestar by approximately 5%.

19. The following table accurately sets forth the timekeepers at CREEC who worked on this matter; their graduation dates; their hourly rates that we are seeking; and the number of hours that they worked, after the exercise of billing judgment:

Name	Position	Years of experience/graduation year	Hours	Rate	Total
Tim Fox	Co-Executive Director	30 years/1991	174.4	\$725	\$126,440
Caiti Hall	Paralegal	5 years	41.3	\$221	\$9127.30
CREEC Lodestar					\$135,567.30

20. The rates set forth above are significantly less than rates that have been approved by Courts in cases we have brought addressing curb ramps. *See, e.g., Artie Lashbrook v. City of San Jose*, No. 5:20-cv-01236-NC (Sept. 2, 2020) (ECF No. 25) (finding that rates of \$895 per hour for my work, and \$265 for work by paralegals, was reasonable). In setting these rates, CREEC also referenced the *2020 Real Rate Report Snapshot* published by Wolters Kluwer.

21. CREEC's current out-of-pocket expenses total \$2226.94 for payments to a database expert, FedEx costs, and the charges associated with our public records act requests. Attached hereto as Exhibit B are true and correct records reflecting the expenses we have incurred in this litigation, as well as an itemized summary of these expenses.

22. CREEC's costs and out-of-pocket expenses are minimal given that the parties engaged in structured negotiations.

23. All expenses and costs incurred were necessary for the negotiation and litigation of Plaintiff's claims, and are appropriate given the scope and complexity of this matter

I declare under penalty of perjury under the laws of the State of Colorado and of the United States that the foregoing is true and correct, and that this Declaration was executed on the 25th day of August, 2021 in Denver, Colorado.



Timothy P. Fox

Attorney for Plaintiffs and the Settlement Class

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (“NEF”) and paper copies will be sent to those indicated on the NEF as non-registered participants on August 30, 2021.

/s/ Raymond Wendell

Raymond Wendell