

1 Linda M. Dardarian (SBN 131001)
ldardarian@gbdhlegal.com
2 Andrew P. Lee (SBN 245903)
alee@gbdhlegal.com
3 Beth Holtzman (SBN 316400)
bholtzman@gbdhlegal.com
4 GOLDSTEIN, BORGEN, DARDARIAN & HO
300 Lakeside Drive, Suite 1000
5 Oakland, CA 94612
Tel: (510) 763-9800
6 Fax: (510) 835-1417

7 Timothy P. Fox (SBN 157750)
tfox@creeclaw.org
8 CIVIL RIGHTS EDUCATION AND
ENFORCEMENT CENTER
9 1245 E. Colfax Avenue, Suite 400
Denver, CO 80218
10 Tel: (303) 757-7901

11 *Attorneys for Plaintiff and the Settlement Class*

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN JOSE DIVISION**

15 ARTIE LASHBROOK, on behalf of himself and all
16 others similarly situated,
17 Plaintiff,
18 vs.
19 CITY OF SAN JOSE,
20 Defendant.

CLASS ACTION

Case No.: 20-cv-01236-NC

**PLAINTIFF’S NOTICE OF MOTION AND
MOTION FOR AN AWARD OF
REASONABLE ATTORNEYS’ FEES,
COSTS, AND EXPENSES;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: September 2, 2020
Time: 1:00 p.m.
Dept: Courtroom 5
Before: Hon. Nathanael M. Cousins

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NOTICE OF MOTION

PLEASE TAKE NOTICE that on September 2, 2020 at 1:00 p.m. in Courtroom 5 of the United States District Court for the Northern District of California, located at 280 South 1st St., San Jose, California 95113, Plaintiff Artie Lashbrook will and hereby does move the Court for an award of reasonable attorneys’ fees, costs, and expenses as prevailing party in this matter pursuant to Federal Rule of Civil Procedure 23(h); the Americans with Disabilities Act of 1990, 42 U.S.C. § 12205; and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794a(b). This motion is based upon this Notice of Motion and Motion; the Memorandum of Points and Authorities in support thereof; the Declarations of Linda M. Dardarian, Timothy P. Fox, the other records, pleadings, and papers filed in this case; and such other evidence or argument that may be presented at the hearing on this motion. Pursuant to Local Rule 54-5, the parties met and conferred regarding this motion. As a result of those efforts, Defendant City of San Jose (“Defendant” or “the City”) does not oppose this motion.

I. INTRODUCTION

Plaintiff Artie Lashbrook moves for an award of reasonable attorneys’ fees, costs, and expenses under the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12205, and Section 504 of the Rehabilitation Act (“Section 504”), 29 U.S.C. § 794a(b). As the prevailing party, Plaintiff requests an award of reasonable attorneys’ fees, costs, and expenses for work reasonably performed by Class Counsel from the inception of this matter through the Effective Date of the Consent Decree. While Class Counsel have incurred approximately \$855,911.09 in fees, costs, and expenses in this matter to date, they agreed to seek a maximum of \$734,627.50 in fees, costs, and expenses for work done from the initial investigation of this case through the Effective Date (\$722,327.50 in fees and \$12,300 in costs). Consent Decree § 20, Ex. 2 to Dardarian Decl. in Supp. Jt. Mot. Prelim. Approval of Class Action Settlement, ECF No. 10-1. And because Class Counsel have not incurred all anticipated travel expenses due to the COVID-19 pandemic, Class Counsel seek a total award of **\$725,253.09** (\$722,327.50 in attorneys’ fees and \$2,925.59 in costs and expenses), which is \$9,374.41 less than that maximum total award agreed to in the Consent Decree. The requested attorneys’ fees, costs, and expenses are reasonable and the City does not contest Plaintiff’s Motion.

II. RELEVANT BACKGROUND

1
2 On February 24, 2014, Class Counsel sent a letter to the City of San Jose asserting that Plaintiff
3 and other City residents and visitors with mobility disabilities have been denied access to the City's
4 pedestrian right of way because of a lack of accessible curb ramps throughout the City. Declaration of
5 Linda M. Dardarian in Support of Plaintiff's Motion for Award of Reasonable Attorneys' Fees, Costs,
6 and Expenses ("Dardarian Decl.") ¶ 19, filed herewith. Plaintiff's letter highlighted the inaccessibility
7 of the City's pedestrian right of way and how that violated the ADA, Section 504, and California
8 Government Code section 11135. Despite the strength of Plaintiff's factual and legal claims, Plaintiff
9 proposed that the parties work cooperatively to resolve those claims through structured negotiations
10 rather than litigation. *Id.* Prior to sending this letter, Class Counsel investigated the City's compliance
11 with state and federal requirements for curb ramp construction, remediation, and maintenance. *Id.* In
12 addition, Class Counsel conducted class outreach, giving a "know your rights" presentation at the
13 Silicon Valley Independent Living Center and interviewing persons with mobility disabilities who
14 lived or visited the City. *Id.*

15 In August 2014, the City agreed to Plaintiff's proposal and the parties entered into an
16 agreement that tolled the statute of limitations on Plaintiff's claims and identified the issues that would
17 be addressed through structured negotiations. *Id.* at ¶ 20. The parties' Structured Negotiations
18 Agreement also made clear that the execution of such an agreement was in lieu of Plaintiff filing a
19 complaint in federal or state court, and that Plaintiff would not be precluded from recovering attorneys'
20 fees, costs, and expenses because Plaintiff pursued alternative means of dispute resolution. *Id.* Shortly
21 thereafter, in September 2014, Plaintiff requested and received information from the City regarding its
22 previous ADA transition plans, historic and current curb ramp design standards, previous surveys of
23 curb ramps within the City's pedestrian right of way, past and current practices regarding curb ramp
24 construction and remediation, and past and current funding for curb ramp work. *Id.* The City also
25 produced its curb ramp database, which included information regarding the location and condition of
26 thousands of missing and non-compliant curb ramps within the City. *Id.*

27 In January 2015, Plaintiff sent the City a letter detailing Plaintiff's positions with respect to
28 various issues. *Id.* at ¶ 21. The letter provided substantial additional authority for Plaintiff's claims as

1 well as an extensive analysis of the City's curb ramp construction policies and practices based upon
2 information that the City produced to Plaintiff. *Id.* Relying on the City's curb ramp database, Plaintiff
3 also identified several routes connecting schools, libraries, and public transportation that were
4 inaccessible due to missing or non-compliant curb ramps. *Id.*

5 The City responded to Plaintiff's statement of positions in early February 2015. Dardarian
6 Decl. ¶ 22. The City provided additional information and denied that it had failed to comply with the
7 requirements of the ADA, Section 504, and analogous California law. *Id.* Moreover, the City claimed
8 that the statute of limitations barred Plaintiff's new construction and alterations claim. *Id.*

9 The parties discussed their respective positions at an in-person meeting held on February 4,
10 2015. *Id.* at ¶ 23. Plaintiff Lashbrook attended the meeting and described the curb ramp barriers he
11 encountered and how they negatively impacted his ability to get around the City, including an incident
12 in which he fell out of his wheelchair while descending a non-compliant curb ramp and ended up
13 laying in the roadway with oncoming vehicular traffic, being rescued by passers-by. *Id.* At the
14 conclusion of the meeting, the City agreed to provide authority for its statute of limitations defense. *Id.*
15 In an effort to work toward resolution of the dispute, Plaintiff agreed to propose settlement terms as
16 well as references to settlements of similar curb ramp accessibility claims with other cities. *Id.*

17 During March and April of 2015, the parties exchanged letter briefs regarding the City's statute
18 of limitations defense and the continuing violations doctrine. *Id.* at ¶ 24. By early May 2015, the City
19 agreed that it was in the best interests of both the City and Plaintiff to focus their efforts on resolving
20 Plaintiff's claims through structured negotiations. *Id.*

21 In late June 2015, Plaintiff provided the City his initial settlement offer, including a proposed
22 deadline for completing the City's curb ramp work and method for prioritizing the curb ramp locations
23 that were most urgent for installing or remediating curb ramps. *Id.* at ¶ 25. Due to scheduling issues,
24 the parties were unable to discuss Plaintiff's settlement offer until late July 2015. In the meantime,
25 Class Counsel inspected a number of curb ramp locations within the City. *Id.* Those inspections
26 confirmed that the City's historic curb ramp design standards resulted in the construction of curb
27 ramps that were not compliant with ADA and California technical specifications. *Id.*

28

1 In early September 2015, the City responded to Plaintiff’s settlement offer. *Id.* at ¶ 26. Among
2 other terms, the City agreed to conduct a comprehensive curb ramp survey throughout the City’s
3 pedestrian right of way in order to determine the locations and number of missing and non-compliant
4 curb ramps. *Id.* Although a comprehensive curb ramp survey would extend the parties’ negotiations
5 by several years, Plaintiff agreed that a survey would provide the best possible information on which to
6 negotiate a final consent decree. *Id.* From December 2015 through October 2016, the parties
7 negotiated an Interim Settlement Agreement, which, among other substantive provisions, required the
8 City to spend up to \$500,000 to hire a consultant to perform a complete survey of the City’s curb
9 ramps to identify all locations that were missing curb ramps and assess existing curb ramps for
10 compliance with applicable federal and state accessibility standards. *Id.* The Interim Settlement
11 Agreement also required the City to construct approximately 2,700 curb ramps over a two-year period
12 and resolve curb ramp requests made by or on behalf of individuals with mobility disabilities within
13 one-hundred twenty (120) days of the requests’ submission. *Id.*

14 Pursuant to the Interim Agreement, Plaintiff had input into the scope of services, request for
15 proposal, and survey tool used by the City to conduct the survey to ensure that the survey encompassed
16 the City’s full pedestrian right of way and captured all measurements required for compliance with
17 federal and state disability access standards. Dardarian Decl. ¶ 27. The City issued the survey request
18 for proposal in December 2016, and the vendor was selected in February 2017. The curb ramp survey
19 was divided into two phases: automated and manual. *Id.* The automated portion of the survey was
20 performed using specialized optical equipment to determine the presence or absence of curb ramps at
21 required curb ramp locations. *Id.* The manual portion of the survey involved on-site inspections of
22 existing curb ramps to determine compliance with slope, surface, and other dimensional requirements
23 of both federal and state disability access laws. *Id.*

24 The City completed its curb ramp survey in April 2018, which Class Counsel analyzed and
25 discussed with the City. *Id.* ¶ 28. The survey revealed that the City had 22,885 existing curb ramps,
26 and 20,849 of those ramps, or 91% of all curb ramps within the City, were non-compliant with
27 applicable disability access standards set forth in the 2010 Americans with Disabilities Act Access
28 Standards (“2010 ADAS”) or Title 24 of the California Building Code (“Title 24” or “CBC”). *Id.* The

1 survey found that 6,772 curb ramps were missing from locations where they are required, and 14,611
 2 existing non-compliant curb ramps contained “High Priority Curb Ramps Barriers.”¹ *Id.* Another
 3 6,238 curb ramps did not comply with federal and state accessibility standards, but were not defined as
 4 “High Priority Curb Ramps Barriers.” *Id.*

5 With the survey completed, the parties proceeded to negotiate the preliminarily approved
 6 Consent Decree. *Id.* ¶ 29. After several months of negotiations regarding critical terms, from February
 7 2019 through May 2019, the parties exchanged drafts of the Consent Decree. During this period, the
 8 parties also extended the Interim Agreement three times to allow for sufficient time to negotiate a
 9 complete resolution of this matter, and the number of accessible ramps installed as a result of the
 10 Interim Agreement increased. *Id.* Once the parties reached agreement on all injunctive relief issues,
 11 the parties proceeded to negotiate monetary issues, including Plaintiff’s proposed service award and
 12 damages payment as well as Class Counsel’s reasonable attorneys’ fees, costs, and expenses. *Id.*

13 Class Counsel are applying for \$722,327.50 in attorneys’ fees even though their actual lodestar
 14 to date is significantly higher, amounting to approximately \$852,985.50 as of July 7, 2020. Dardarian
 15 Decl. ¶ 30 (GBDH incurred a total of \$737,309.00); Declaration of Tim Fox in Support of Plaintiff’s
 16 Motion for Award of Reasonable Attorneys’ Fees, Costs, and Expenses (“Fox Decl.”) ¶ 6 (CREEC
 17 incurred a total of \$115,676.50), filed herewith. This amount excludes time that Class Counsel deleted
 18 in an exercise of billing judgment to account for excess, redundant or unreasonably duplicative time.
 19 Dardarian Decl. ¶ 36-38; Fox Decl. ¶ 5. Each firm’s contemporaneous billing records through July 7,
 20 2020 are attached to the declarations filed herewith. *See* Dardarian Decl. ¶ 30, Ex. A; Fox Decl. ¶ 3,
 21 Ex. A. The amount of time and expenses that Class Counsel will continue to incur to see this case
 22

23 _____
 24 ¹ “High Priority Curb Ramps Barriers” include the following: 1) locations that are missing curb ramps
 25 (missing curb ramps are in addition to the 14,611 existing non-compliant High Priority Curb Ramps
 26 identified above); 2) curb ramps with less than 32 inches clear width; 3) curb ramps with running
 27 slopes exceeding 10%; 4) curb ramps with cross slopes exceeding 4%; 5) curb ramps with non-flush
 28 transitions; 6) curb ramps with counter slopes exceeding 10%; 7) curb ramps with side flare slopes
 exceeding 12.5%; 8) curb ramps with side flare slopes exceeding 10% where top landings are not
 provided; 9) curb ramps with gaps or vertical edges greater than 1 inch; 10) parallel curb ramps with
 bottom landings that have slopes exceeding 4%; 11) parallel curb ramps with top landings that have
 slopes exceeding 4%; 12) parallel curb ramps with top landings that have running slopes exceeding
 10%; and, 13) curb ramps with a combination of non-compliant running slopes, counter slopes, and
 non-flush transitions. Dardarian Decl. ¶ 28 n.1.

1 through the final approval of the Consent Decree is already encompassed by this figure and will not be
2 separately compensated. Dardarian Decl. ¶ 30.

3 Class Counsel seek reasonable costs and expenses in the amount of \$2,925.59. Dardarian Decl.
4 ¶¶ 49-51 (GBDH's expenses totaling \$2,122.12); Fox Decl. ¶ 8 (CREEC's expenses totaling \$803.47).
5 Class Counsel's expenses cover court filing fees, experts, travel, copying, telephone, and legal research
6 charges. Dardarian Decl. ¶¶ 49-51; Fox Decl. ¶ 8. These costs are compensable under the ADA and
7 Section 504. Accordingly, the \$2,925.59 award of costs and expenses that Plaintiff seeks is justified
8 and reasonable.

9 **III. ARGUMENT**

10 **A. Plaintiff Is the Prevailing Party.**

11 It is undisputed that Plaintiff is the prevailing party on the claims resolved in this action.
12 Consent Decree ¶ 20, ECF No. 10-1. Plaintiff has obtained a binding settlement agreement that
13 commits the City to greatly accelerate its curb ramp work. Prior to the parties' negotiations, the City
14 constructed or remediated approximately 600 curb ramps per year based on annual expenditures of
15 approximately \$1.25 and \$1.75 million dollars. Under the Consent Decree, the City will construct or
16 remediate 1,944 high priority curb ramps per year between the Decree's effective date and 2030, and
17 807 low priority curb ramps per year between the years 2031 and 2038. Consent Decree § 5.2. In
18 addition, the City must appropriate thirteen million dollars (\$13 million) each fiscal year for curb ramp
19 construction and remediation until 2030. *Id.* § 5.1. Accordingly, the City will be fully ramped ten (10)
20 years earlier than the City's goal of achieving compliance by 2040 set forth in its transition plan.
21 Plaintiff therefore seeks, and is entitled to, an award of reasonable attorneys' fees, expenses, and costs
22 pursuant to the ADA and Section 504. *See* 42 U.S.C. § 12205 (ADA prevailing party is entitled to "a
23 reasonable attorney's fee, including litigation expenses, and costs"); 29 U.S.C. § 794a(b) (Section 504
24 prevailing party is entitled to "a reasonable attorney's fee as part of the costs").

25 **B. Class Counsel's Lodestar Is Reasonable.**

26 "In civil rights cases, the court should use the lodestar method when calculating Plaintiffs'
27 reasonable attorneys' fees." *Huynh v. Hous. Auth. of Santa Clara*, No. 14-CV-02367-LHK, 2017 U.S.
28 Dist. LEXIS 38291, at *12 (N.D. Cal. Mar. 16, 2017) (citing *Muniz v. United Parcel Serv., Inc.*, 738

1 F.3d 214, 222 (9th Cir. 2013). To calculate the lodestar, courts multiply the number of hours
2 reasonably expended by counsel’s reasonable hourly rates. *See Hensley v. Eckerhart*, 461 U.S. 424,
3 433-34 (1983); *Nat’l Fed’n of the Blind of Cal. v. Uber Techs., Inc.*, No. 14-cv-04086 NC, 2016 U.S.
4 Dist. LEXIS 192176, at *4 (N.D. Cal. Dec. 6, 2016) (citing *City of Burlington v. Dague*, 505 U.S. 557,
5 559, 112 S. Ct. 2638, 120 L. Ed. 2d 449 (1992).) Prevailing plaintiffs should generally recover their
6 lodestar “unless special circumstances would render such an award unjust.” *Jankey v. Poop Deck*, 537
7 F.3d 1122, 1130 (9th Cir. 2008) (quotation marks omitted) (quoting *Barrios v. Cal. Interscholastic*
8 *Fed’n*, 277 F.3d 1128, 1134 (9th Cir. 2002)).

9 **1. The Number of Hours Claimed Is Reasonable.**

10 Prevailing plaintiffs are entitled to be compensated for “every item of service which, at the time
11 rendered, would have been undertaken by a reasonable and prudent lawyer to advance or protect his
12 client’s interest[.]” *Moore v. James H. Matthews & Co.*, 682 F.2d 830, 839 (9th Cir. 1982) (citation
13 omitted). “By and large, the court should defer to the winning lawyer’s professional judgment as to
14 how much time he was required to spend on the case[.]” *Moreno v. City of Sacramento*, 534 F.3d
15 1106, 1112 (9th Cir. 2008). The Ninth Circuit has recognized that district courts “should defer to the
16 winning lawyer’s professional judgment as to how much time he was required to spend on the case.”
17 *Chaudhry v. City of Los Angeles*, 751 F.3d 1096, 1111 (9th Cir. 2014) (quoting *Moreno*, 534 F.3d at
18 1112); *Guam Soc’y of Obstetricians & Gynecologists v. Ada*, 100 F.3d 691, 700 (9th Cir. 1996)
19 (counsel have wide latitude to staff and prosecute complex cases in a manner that best serves their
20 clients’ interests).

21 The hours Class Counsel have spent on this case to date were reasonably expended in obtaining
22 an outstanding result for the Class. Class Counsel spent time: (1) working closely with Named
23 Plaintiff Lashbrook; (2) analyzing information provided by the City, including the City’s curb ramp
24 design standards, policies and procedures, curb ramp database, request for proposal and scope of
25 services related to the curb ramp survey, and the comprehensive survey results; (3) researching and
26 drafting correspondence addressing the City’s statute of limitations defense; (4) leading and
27 strategizing positions for the negotiations with the City; (5) negotiating the Interim Agreement and
28 Consent Decree; (5) drafting and revising correspondence, pleadings, and settlement documents; (6)

1 communicating with representatives of the City of San Jose; and (7) effectuating the Consent Decree's
2 preliminary approval and notice to the class. *See* Dardarian Decl. ¶ 33; Fox Decl. ¶ 2. Class Counsel
3 will continue to spend time to obtain final approval of the Decree, but because Class Counsel have
4 already reached the agreed-upon attorneys' fees cap set forth in the Decree, Class Counsel will not be
5 compensated for these additional hours. Dardarian Decl. ¶ 30.

6 Plaintiff has agreed to request no more than \$722,327.50 in attorneys' fees, which represents a
7 reduction of approximately \$130,658.00, over fifteen percent (15.4%) of their total lodestar. Dardarian
8 Decl. ¶ 30. The time claimed by Class Counsel is abundantly reasonable, because, as set forth above,
9 it was necessary to secure the outstanding relief obtained for the Class. Dardarian Decl. ¶¶ 33-35.

10 Class Counsel's declarations show that they did not engage unnecessarily in duplicative billing,
11 but assigned attorneys to distinct and necessary tasks based on their particular skills and experience, all
12 of which contributed to the excellent results achieved. Dardarian Decl. ¶ 36; Fox Decl. ¶ 4. *See*
13 *Moreno*, 534 F.3d at 1112 ("It must also be kept in mind that lawyers are not likely to spend
14 unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too
15 uncertain, as to both the result and the amount of the fee."). The bulk of the work in this case was
16 performed by three lawyers and a handful of staff. Dardarian Decl. ¶¶ 34-35. Any duplication is more
17 than accounted for in the substantial lodestar reduction Class Counsel have agreed to, and a further
18 reduction to Class Counsel's requested hours would not be warranted. Therefore, the Court should
19 find that Class Counsel's requested award is reasonable under the circumstances of this case.

20 a. **Class Counsel's Lodestar Is Supported by Accurate and Contemporaneous**
21 **Billing Records.**

22 Class Counsel's declarations describe each firm's billing procedures, how counsel allocated
23 projects between and within the co-counsel firms to minimize duplication and maximize efficiencies,
24 and the work performed that was necessary to negotiate and resolve this case effectively. Dardarian
25 Decl. ¶¶ 32-40; Fox Decl. ¶¶ 3-6. Class Counsel's hours are documented by contemporaneous time
26 records showing discrete entries describing each item of work performed and recorded by tenths of an
27 hour. Dardarian Decl. ¶ 32, Ex. A; Fox Decl. ¶ 3, Ex. A. These time records are *prima facie* evidence
28 that Class Counsel's hours were reasonable. *See, e.g., Hensley*, 461 U.S. at 437 n.12 (adequate time

1 records must “identify the general subject matter of . . . time expenditures”); *Rutti v. Lojack Corp.*, No.
2 SACV 06-350 DOC (JCx), 2012 U.S. Dist. LEXIS 107677, at *24 (C.D. Cal. July 31, 2012).

3 **b. Class Counsel Have Exercised Billing Judgment.**

4 Class Counsel have reviewed their billing records on an entry-by-entry basis to exercise billing
5 judgment and excise inefficient or duplicative work, clerical entries, and other billing entries that are
6 otherwise inadequate or non-compensable. Dardarian Decl. ¶¶ 36-38; Fox Decl. ¶¶ 4-5. Moreover,
7 Class Counsel agreed to seek an amount of fees that results in an additional decrease of 15.4% of Class
8 Counsel’s total lodestar. Dardarian Decl. ¶ 30. These reductions are sufficient to address unnecessary
9 duplication, clerical time and other billing errors. *See, e.g., Davis v. City & Cnty. of S.F.*, 976 F.2d at
10 1536, 1543 (9th Cir. 1992) (5% billing reduction by counsel sufficient to address clerical time and
11 other billing errors), *vacated in part on other grounds*, 984 F.2d 345 (9th Cir. 1993).

12 **c. Class Counsel Expended Far Fewer Hours by Engaging in Structured**
13 **Negotiations Rather than Litigation.**

14 The parties chose to resolve Plaintiff’s claims through structured negotiations, saving
15 thousands, if not millions, of dollars in attorneys’ fees, costs, and expenses. Class Counsel has
16 litigated several class actions involving similar pedestrian right of way access claims that resulted in
17 fee awards that exceed the amount Plaintiff requests by this Motion. For example, Class Counsel
18 herein (CREEC and GBDH) represent plaintiffs who brought similar ADA and Section 504 claims
19 against the City of Seattle in the matter of *Reynoldson, et al. v. City of Seattle*, Case No. 15-1608
20 (W.D. Wash.). Although Seattle also entered into a structured negotiation agreement, plaintiffs’
21 counsel in that case encountered resistance and delay that required plaintiffs to file a class action
22 lawsuit. The filing of the lawsuit, and the mandatory discovery it afforded, assisted the parties in
23 resuming and then concluding their negotiations. The settlement agreement there – calling for
24 installation of 1,250 ramps per year for eighteen years – was similar to the agreement reached in the
25 present matter, but plaintiffs’ counsel in that case were required to incur significantly more in
26 attorneys’ fees due to litigation. As a result, the City of Seattle agreed to pay plaintiffs’ counsel \$1.4
27 million in attorneys’ fees, costs, and expenses—almost twice the requested attorneys’ fees in this
28 matter—at the end of approximately four years of negotiations over the City’s curb ramp program.

1 The foregoing example demonstrates the efficiency with which Class Counsel negotiated the
 2 Consent Decree and obtained an outstanding result for the Class. This further establishes the
 3 reasonableness of Plaintiff's request for attorneys' fees, costs, and expenses.

4 **2. Class Counsel's Billing Rates Are Reasonable and in Line with Those of Attorneys**
 5 **with Commensurate Skill, Experience, and Reputation in the Bay Area.**

6 The rates claimed by plaintiffs' attorneys are reasonable if they are within the market range of
 7 hourly rates charged by attorneys of comparable experience, reputation and ability for similar
 8 litigation. Both the Ninth Circuit and California courts determine reasonable hourly rates by looking at
 9 the prevailing market rate "for similar work performed by attorneys of comparable skill, experience,
 10 and reputation." *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210-11 (9th Cir. 1986). The
 11 "relevant legal community" is the forum district for the action in which fees are sought. *Gates v.*
 12 *Deukmejian*, 987 F.2d 1392, 1405 (9th Cir. 1992).

13 Moreover, attorneys' rates in civil rights class actions are "governed by the same standards
 14 which prevail in other types of equally complex Federal litigation" *Hensley*, 461 U.S. at 430 n. 4
 15 (citation omitted); *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 455 (9th Cir. 2010)
 16 (reasonable rates for civil rights class actions are based on a comparison extending "to all attorneys in
 17 the relevant community engaged in 'equally complex Federal litigation,' no matter the subject
 18 matter"). Therefore, to determine applicable rates, the relevant inquiry is whether attorneys in the Bay
 19 Area with commensurate skill, experience, and reputation in handling complex litigation charge rates
 20 comparable to those sought by Plaintiff in this civil rights class action.

21 Plaintiff's request for fees is based on Class Counsel's 2020 hourly rates. Although the parties
 22 negotiated attorneys' fees in 2019 based on Class Counsel's 2019 rates, using 2020 rates accounts for
 23 delay in payment, including for time Class Counsel spent on the case in earlier years. *In re Wash. Pub.*
 24 *Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1305 (9th Cir. 1994). Additionally, Class Counsel's
 25 lodestar exceeds the agreed-upon amount regardless of whether Class Counsel use their 2019 or 2020
 26 rates.²

27 _____
 28 ² Using Class Counsel's 2019 rates, Plaintiff's total lodestar is \$820,477, which exceeds the
 \$722,327.50 in fees agreed to by the parties. See Dardarian Decl. ¶ 44; Fox Decl. ¶ 7.

1 Moreover, “courts routinely recognize that fee rates increase over time based on a variety of
 2 factors.” *Charlebois v. Angels Baseball LP*, 993 F. Supp. 2d 1109, 1122, 2012 U.S. Dist. LEXIS
 3 91069, *27 (C.D. Cal. May 30, 2012); *see also Parker v. Vulcan Materials Co. Long Term Disability*
 4 *Plan*, No. EDCV 07-1512 ABC (OPx), 2012 U.S. Dist. LEXIS 36724, at *19 (C.D. Cal. Feb. 16, 2012)
 5 (approving as reasonable approximate 10% increase in hourly rate from 2011 to 2012). Class
 6 Counsel’s 2020 rates represent a modest increase from 2019. For example, the rates for Linda M.
 7 Dardarian and Andrew Lee, the timekeepers who billed the most hours on this case for GBDH,
 8 increased by 2% (\$925 to \$945) and 6% (\$710 to \$750) respectively from 2019 to 2020. Dardarian
 9 Decl. ¶ 44. Similarly, the rates for Timothy P. Fox and Sarah Morris, the timekeepers who billed the
 10 most hours on this case for CREEC, increased by 2% (\$875 to \$890) and 4% (\$500 to \$520)
 11 respectively from 2019 to 2020. Fox Decl. ¶ 7. Class Counsel request the following rates for their
 12 work in this case:

13 **GOLDSTEIN BORGEN DARDARIAN & HO**

Name	Position	Years of Experience/Grad. Year	Hours	2020 Rates	Total
Linda M. Dardarian	Partner	33 years/1987	241.90	\$945	\$237,100.50
Andrew P. Lee	Partner	14 years/2006	511.10	\$750	\$400,875.00
Beth Holtzman	Associate	3 years/2017	90.70	\$415	\$43,990.00
Scott G. Grimes	Senior Paralegal	31 years	32.90	\$325	\$10,855.00
Stuart Kirkpatrick	Paralegal	8 years	156.70	\$285	\$44,488.50
GBDH Lodestar					\$737,309.00

21 **CIVIL RIGHTS EDUCATION AND ENFORCEMENT CENTER**

Name	Position	Years of Experience/Grad. Year	Hours	2020 Rates	Total
Amy Robertson	Co-Executive Director	32 years/1988	12.1	\$895	\$10,829.50
Tim Fox	Co-Executive Director	29 years/1991	61.3	\$890	\$54,557
Sarah Morris	Staff Attorney	10 years/2010	80.2	\$520	\$41,704
Marissa McGarry	Paralegal	6 years	17.2	\$265	\$4,558
Arielle Milkman	Paralegal	8 years	13	\$265	\$3,445

Name	Position	Years of Experience/Grad. Year	Hours	2020 Rates	Total
Ana Diaz	Paralegal	3 years	1.5	\$265	\$397.50
Sophie Breene	Paralegal	8 years	.7	\$265	\$185.50
CREEC Lodestar					\$115,676.50

The skills, reputation and experience of Class Counsel, and the reasonableness of Class Counsel's hourly rates, have been consistently recognized by federal and state courts within the Bay Area. For example, GBDH's 2019 rates were approved in the matter of *Foster v. Advantage Sales & Marketing LLC*, Case No. 18-cv-07205-LB (N.D. Cal., May 28, 2020). There, Magistrate Judge Laurel Beeler found that GBDH's "billing rates are normal and customary (and thus reasonable) for lawyers of comparable experience doing similar work." See Dardarian Decl. ¶ 46, Ex. D. Similarly, GBDH's 2019 rates were approved in the matter of *Flowers v. Twilio, Inc.*, Case No. RG16804363 (Alameda Cnty. Super. Ct., June 13, 2019). In the court's order granting final approval of settlement, it found that "the Class Counsel's 2019 hourly rates are reasonable and commensurate with the prevailing rates for class actions." *Id.* ¶ 46, Ex. E. GBDH's 2018 rates were also approved by Judge Thomas Kuhnle of Santa Clara Superior Court in the matter of *Kaku v. City of Santa Clara*, No. 17-CV-319862 (Santa Clara Cnty. Super. Ct., Jan. 22, 2019). In that voting rights case against the City of Santa Clara, Judge Kuhnle found GBDH's hourly rates to be reasonable and "comparable to rates charged by other local attorneys with specialized skills that are necessary for litigating complex cases involving novel issues." *Id.* ¶ 46, Ex. F. GBDH's 2017 and 2018 rates were also approved by several other courts. *Id.* ¶ 46, Ex. G (*Siciliano v. Apple, Inc.*, No. 2013-I-CV-257675 (Santa Clara Cnty. Super. Ct. Nov. 2, 2018) (approving GBDH's 2018 rates as reasonable in contested lodestar fee award)); Ex. H (*Willey v. Techtronic Industries North America Inc.*, No. RG 16806307 (Alameda Cnty. Super. Ct. Aug. 4, 2017) (finding that GBDH's "2017 hourly rates are reasonable and commensurate with the prevailing rates for class actions")); Ex. I (*Carillo-Hueso v. Ply Gem Indus. Inc.*, No. 34-2016-00195734-CU-OE-GDS (Sacramento Cnty. Super. Ct. June 29, 2017) (in final approval order, finding that GBDH's "2017 hourly rates are reasonable and commensurate with the prevailing rates for wage and hour class actions"))).

1 Moreover, GBDH has been paid its regular hourly rates for 2019 and prior years by several
2 public entity and private corporate defendants with whom GBDH has settled disability rights cases
3 involving systemic changes to facilities, policies, and practices, and GBDH has been paid the 2020
4 rates for Ms. Dardarian and GBDH paralegals by one such entity.

5 CREEC's hourly rates have also been consistently approved by federal courts within the Bay
6 Area, including in disability access class actions. *See, e.g., Civil Rights Educ. and Enf't Ctr. v. Ashford*
7 *Hosp. Tr., Inc.*, No. 15-cv-00216-DMR, 2016 U.S. Dist. LEXIS 37256, at *17-18 (N.D. Cal. Mar. 22,
8 2016) (ADA class action challenging hotel transportation; 2015 rate of \$750 per hour); Order Granting
9 Final Approval of Class Action Settlement and Granting Plaintiffs' Motion for Attorneys' Fees and
10 Costs, *Civil Rights. Educ. and Enf't Ctr. v. RLJ Lodging Tr., Inc.*, No. 4:15-CV-00224-YGR (N.D. Cal.
11 May 3, 2016), ECF No. 75 (ADA class action challenging hotel transportation; 2016 rate of \$790 per
12 hour).

13 Richard Pearl, a Bay Area-based expert on attorneys' fees, recently submitted a declaration in
14 support of plaintiffs' fee request in the matter of *Nevarez, et al. v. Forty Niner Football Co., et al.*,
15 Case No. 16-cv-07013-LHK (N.D. Cal.). Dardarian Decl. ¶ 48, Ex. J. In that declaration, Mr. Pearl
16 opined that the 2019 hourly rates charged by GBDH—including the hourly rates for Linda Dardarian,
17 Andrew Lee, Scott Grimes, and Stuart Kirkpatrick—are reasonable for similar attorneys and staff in
18 the Northern District of California. *Id.* (Pearl Decl. ¶ 39). The Pearl Declaration also confirms that the
19 hourly rates sought by CREEC are well within the range of market rates for attorneys who handle
20 similarly complex litigation in the Northern District of California. *Id.* (Pearl Decl. ¶¶ 32-36); Fox
21 Decl. in Supp. J. Mot. Prelim. Approval of Class Action Settlement ¶¶ 2-10 (describing qualifications
22 of CREEC attorneys), ECF No. 10-2.

23 **C. Plaintiff's Costs and Expenses Are Recoverable and Reasonable.**

24 Nontaxable costs and out-of-pocket expenses are recoverable under the ADA. *See* 42 U.S.C.
25 § 12205. Plaintiff's costs and out-of-pocket expenses are minimal given that the parties engaged in
26 structured negotiations. Dardarian Decl. ¶¶ 49-51, Ex. B; Fox Decl. ¶¶ 8-10, Ex. B. These costs
27 include in-house copying and printing, postage, online research, telephone charges, and travel
28 expenses. Dardarian Decl. ¶ 50, Ex. B; Fox Decl. ¶ 7, Ex. B. All expenses and costs incurred were

1 necessary for the negotiation and litigation of Plaintiff’s claims, are appropriate given the scope and
2 complexity of this matter, and are the type that are commonly awarded in civil rights fee shifting cases.
3 *Lovell v. Chandler*, 303 F.3d 1039, 1058 (9th Cir. 2002); *Davis*, 976 F.2d at 1556; Dardarian Decl.
4 ¶¶ 49-51, Ex. B & Ex. K (Pearl Decl. ¶¶ 72-73); Fox Decl. ¶¶ 7-9, Ex. B. Plaintiff is therefore entitled
5 to reimbursement of reasonable costs and expenses in the amount of \$2,925.59.³

6 **IV. CONCLUSION**

7 For the reasons stated herein, Plaintiff respectfully requests that this Court enter an award of
8 reasonable attorneys’ fees, expenses, and costs in the amount of \$725,253.09.

9
10 Dated: July 10, 2020

Respectfully submitted,

11 GOLDSTEIN, BORGEN, DARDARIAN & HO

12
13 */s/Linda M. Dardarian*
14 _____
Linda M. Dardarian

15 *Attorneys for Plaintiff and the Settlement Class*

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27 _____
28 ³ The amount of costs and expenses sought by Plaintiff is less than the \$12,000 agreed upon by the parties in the Consent Decree. The parties negotiated costs based on anticipated travel expenses that will no longer be incurred given the current COVID-19 pandemic.