

1
2
3
4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6 SAN JOSE DIVISION
7

8 SCOTT JOHNSON,
9 Plaintiff,
10 v.
11 441 FIRST STREET, LLC, et al.,
12 Defendants.

Case No. [5:21-cv-04202-EJD](#)

**ORDER GRANTING IN PART
DENYING IN PART MOTION FOR
ATTORNEYS' FEES AND COSTS**

Re: Dkt. No. 20

13 Before the Court is Plaintiff Scott Johnson's motion for an award of attorneys' fees and
14 costs in the amount of \$14,727.00 pursuant to 42 U.S.C. § 12205 and California Civil Code §
15 52(a).¹ Mot. for Attorney's Fees ("Motion"), Dkt. No. 20. Defendants, Los Altos Hardware, Inc.
16 and 441 First Street, LLC, oppose the motion on the grounds that Defendants charged
17 unreasonable rates and expended unnecessary time. Opposition to Pl.'s Fee Mot. ("Opposition"),
18 Dkt. No. 21. The Court finds the motion appropriate for decision without oral argument pursuant
19 to Civil Local Rule 7-1(b). Having considered the Parties' papers, the Court **GRANTS** in part and
20 **DENIES** in part Plaintiff's motion.

21 **I. Background**

22 On June 2, 2021, Plaintiff brought action against Defendants for violation of the
23 Americans with Disabilities Act ("ADA") and the Unruh Civil Rights Act ("Unruh Act").
24 Compl., Dkt. No. 1. Plaintiff is a quadriplegic and uses a wheelchair for mobility and a specially
25

26 ¹ Plaintiff originally requested \$14,952.00 in fees but Plaintiff noted in their reply that a software
27 error led to a miscalculation where Loretta Fernandes was incorrectly billed at the rate of an
28 attorney (\$550) rather than a paralegal (\$100). *See* Reply in Support of Motion, Dkt. No. 22 at 10.
Plaintiff instructed the Court to deduct \$225.00 from the original fee request to correct this error.
Case No.: [5:21-cv-04202-EJD](#)
Order Granting in Part Denying in Part Motion for Attorneys' Fees

1 equipped van. *Id.* at 1. Plaintiff alleges that he was deterred from availing himself of Defendants’
2 goods and services because Defendants failed to provide wheelchair accessible parking and
3 accessible door hardware that conform with ADA standards. *Id.* at 3–4. On August 9, 2021, the
4 Parties began settlement discussions and Plaintiff provided notice of settlement. Dkt. No. 11. The
5 settlement agreement was executed on September 10, 2021, “whereby the defendants agreed to
6 pay all reasonable attorney’s fees and litigation expenses in an amount to be determined by the
7 present motion.” Mot. at 1. On January 24, 2022, the parties provided a joint statement informing
8 the Court that the parties had reached a settlement and stipulating that dismissal may be entered.
9 Dkt. No. 18. On February 8, 2022, Plaintiff filed a Motion for Attorneys’ Fees. Mot. at 20.
10 Defendants oppose the motion, asserting that Plaintiff should only recover \$2,705.50 in fees and
11 \$602 in costs. Opposition at 2.

12 **II. Legal Standard**

13 Both the ADA and the Unruh Act permit the “prevailing party” to recover attorney’s fees
14 and costs. 42 U.S.C. § 12205; Cal. Civ. Code § 52(a). Mot. A plaintiff prevails when they
15 become entitled to enforce a judgment, consent decree, or a legally enforceable settlement against
16 the defendant. *Barrios v. Cal. Interscholastic Fed’n*, 277 F.3d 1128, 1134 (9th Cir. 2002).

17 District courts apply a two-step process to calculate the appropriate fee award. *Fisher v.*
18 *SJB–P.D., Inc.*, 214 F.3d 1115, 1119 (9th Cir. 2000). First, the court calculates the “lodestar” by
19 multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate.
20 *Grove v. Wells Fargo Fin. Cal., Inc.*, 606 F.3d 577, 582 (9th Cir. 2010); *Anatoninetti v. Chipotle*
21 *Mexican Grill, Inc.*, 643 F.3d 1165, 1176 (9th Cir. 2010). “The lodestar amount presumably
22 reflects the novelty and complexity of the issues, the special skill and experience of counsel, the
23 quality of representation, and the results obtained from the litigation.” *Intel Corp. v. Terabyte*
24 *Int’l, Inc.*, 6 F.3d 614, 622 (9th Cir. 1993). Second, the district court may adjust the lodestar
25 figure based upon the *Kerr* factors. *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 69–70 (9th
26 Cir. 1975), *cert. denied*, 425 U.S. 951 (1976).

27 The *Kerr* factors encompass: (1) the time and labor required; (2) the novelty and difficulty

1 of the questions involved; (3) the skill required to perform the legal services properly; (4) the
2 preclusion of other employment by the attorney due to acceptance of the case; (5) the customary
3 fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the
4 circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation,
5 and ability of the attorneys; (10) the “undesirability” of the case; (11) the nature and length of the
6 professional relationship with the client; and (12) awards in similar cases. *Id.* at 70. Adjustments
7 to the lodestar figure are permitted, but a “strong presumption” exists that the lodestar figure
8 represents a “reasonable fee,” and therefore, modifications in either direction are only proper in
9 “rare and exceptional cases.” *Pa. v. Del. Valley Citizens’ Council for Clean Air*, 478 U.S. 546, 565
10 (1986) (internal quotations omitted). The fee applicant bears the burden of showing that “such an
11 adjustment is necessary to the determination of a reasonable fee.” *Blum v. Stenson*, 465 U.S. 886,
12 898 (1984).

13 **III. Discussion**

14 **a. Lodestar Calculation**

15 **i. Reasonable Hourly Rate**

16 “Determination of reasonable hourly rate is not made by reference to rates actually charged
17 by the prevailing party. In determining a reasonable hourly rate, the district court should be
18 guided by the rate prevailing in the community for similar work performed by attorneys of
19 comparable skill, experience, and reputation.” *Chalmers v. City of Los Angeles*, 796 F.2d 1205,
20 1210–11 (9th Cir. 1986), *opinion amended on denial of reh’g*, 808 F.2d 1373 (9th Cir. 1987)
21 (citation omitted). The relevant legal community in this action is the Northern District of
22 California. “The hourly rate for successful civil rights attorneys is to be calculated by considering
23 certain factors, including the novelty and difficulty of the issues, the skill required to try the case,
24 whether or not the fee is contingent, the experience held by counsel and fee awards in similar
25 cases.” *Moreno v. City of Sacramento*, 534 F.3d 1106, 1114 (9th Cir. 2008).

26 Plaintiff submits a billing statement itemizing the time spent by attorneys Russell Handy,
27 Dennis Price, and Amanda Seabock. Dkt. No. 20-3. Plaintiff’s counsel, which consists of
28 Case No.: [5:21-cv-04202-EJD](#)
Order Granting in Part Denying in Part Motion for Attorneys’ Fees

1 partners and supervising attorneys, billed the following hourly rates: \$650.00, \$550.00, and
2 \$500.00. Dkt. No. 20-3. Plaintiffs team also includes multiple paralegals billing at a baseline rate
3 of \$100.00 and up to \$200.00 per hour. *Id.* Plaintiff submits declarations from Mark Potter and
4 Dennis Price, managing partner and partner of the Center for Disability Access (“CDA”)
5 respectively, in support of these rates. Dkt. No. 20-2 (“Potter Decl.”); Dkt. No. 20-7 (“Price
6 Decl.”). In his declaration, Mr. Potter states that he has litigated over 2,000 disability cases and
7 has “devoted more than 95% of his practice to disability issues over 20 years.” Potter Decl. ¶ 6.
8 Mr. Price adds that he has been involved in hundreds of disability rights cases and that their office
9 is typically “awarded rates between \$400-\$650 per hour in the Central district of California.”
10 Price Decl. ¶¶ 2–3. Mr. Price also notes that, prior to becoming a partner last year, in *Johnson v.*
11 *Rehman* the Ninth Circuit approved his billing rate at \$450.00 an hour for his court of appeals
12 work. *Id.* at ¶ 5. Plaintiff’s counsel contends that their firm’s staffing approach is efficient and
13 effective because their firm assigns discrete tasks to different attorneys who focus solely on those
14 tasks. Mot. at 3.

15 Defendants assert that Plaintiff billed unreasonable rates for a relatively simple case that
16 involved a “straight-forward application of the law, and which does not present novel or difficult
17 issues requiring a high level of skill or specialization.” Opposition at 3 (quoting *Johnson v. Li*,
18 No. 5:19-CV-08075-EJD, 2020 WL 3268580, at *3 (N.D. Cal. June 17, 2020), *aff’d sub nom.*
19 *Johnson v. Li as trustee of Li Fam. Tr. dated Mar. 10, 1988*, 848 F. App’x 744 (9th Cir. 2021))
20 (citation omitted). In *Johnson v. Li*, the Court considered a motion for attorneys’ fees in an ADA
21 case involving Plaintiff Johnson represented by the same firm. *Li*, 2020 WL 3268580 at 1.
22 Similarly, the *Li* action was not extensively litigated, and the parties settled after Plaintiff accepted
23 a Rule 68 offer. *Id.* Defendants request that the Court applies the same awarded rates in *Li* to
24 Plaintiff’s counsel in the present action, where the Court awarded \$475.00 per hour to partners,
25 \$350.00 an hour to associates, and \$250.00 an hour new associates. *Li*, 2020 WL 3268580, at *4;
26 *see Johnson v. Garlic Farm Truck Ctr. LLC*, No. 20-CV-03871-BLF, 2021 WL 2457154, at *10
27 (N.D. Cal. June 16, 2021) (“[T]he Court awards fees for Mr. Handy and Mr. Potter at \$475 per

1 hour and for Ms. Seabock at \$350 per hour.”).

2 Here, Mr. Handy and Mr. Price are partners billing at rates of \$650.00 and \$550.00 per
3 hour respectively, while Ms. Seabock is a supervising attorney billing at a rate of \$500.00 per
4 hour. Dkt. No. 20-3. The Court has previously rejected these rates as being unreasonable in
5 analogous ADA cases at similar stages of litigation. *See Johnson v. Oakwood Ctr. LLC*, No. 19-
6 CV-01582-VKD, 2019 WL 7209040, at *12 (N.D. Cal. Dec. 27, 2019) (denying Mr. Potter and
7 Mr. Handy an hourly rate of \$650 and instead granting an hourly rate of \$475; granting Ms.
8 Seabock an hourly rate of \$350); *see also Johnson v. VN Alliance LLC*, No. 18-CV-01372-BLF,
9 2019 WL 2515749 (N.D. Cal. June 18, 2019) (granting Mr. Potter and Mr. Handy an hourly rate
10 of \$425). The Court finds no reason to substantially diverge from its previous findings with
11 respect to billing rates. Accordingly, the Court will award \$475 per hour to partners Mr. Handy
12 and Mr. Price and \$350 per hour to supervising attorney Ms. Seabock.

13 The Court recognizes that “[t]he district court's function is to award fees that reflect
14 economic conditions in the district; it is not to ‘hold the line’ at a particular rate, or to resist a rate
15 because it would be a ‘big step.’” *Moreno v. City of Sacramento*, 534 F.3d 1106, 1115 (9th Cir.
16 2008). In support of Plaintiff’s billing rates, Plaintiff submitted excerpts from the 2020 Real Rate
17 Report to provide additional data on billing rates in the Northern District of California. The report
18 reflects a median billing rate of \$650 to \$845 for partners in San Jose/San Francisco. Dkt. No. 20-
19 4. However, as the Court has previously noted, the Real Rate Report offers ranges of billing rates
20 without context; it does not address the nature of work done or the skill of the attorneys in each
21 case. *Garlic Farm Truck Ctr. LLC*, 2021 WL 2457154, at *10. For example, the first quartile of
22 2020 exhibits rates of \$374 to \$621 for San Jose/San Francisco partners. Dkt. No. 20-4. The rate
23 awarded by this Court falls squarely within this range. Here, Plaintiffs engaged in a
24 straightforward ADA action, filing only a complaint before engaging in settlement. This case has
25 not involved substantial motion work or litigation. As such, the Court remains unpersuaded that
26 the rates previously granted to Mr. Johnson's attorneys in this district are unreasonable in the
27 present action or otherwise not reflective of the market for ADA litigation in this district.

1 assert that given the “immediate resolution” and “limited work necessary to accept Plaintiff’s
2 FRCP 68 offer,” as well as the fact that Defendants admitted liability, Plaintiff’s fee demand is
3 excessive. *Id.* at 2–3.

4 Defendants identify multiple instances of duplicative entries. For example, Defendants
5 assert that Ms. Seabock’s entry for 0.4 hours on 5/26/21 duplicates the public record search
6 performed by Lino Dionisio for 0.2 hours on 5/26/21. *Id.* at 5. Similarly, Defendants identify
7 multiple duplicative entries for 0.1 hours each by Ms. Seabock on 7/15/21 (“email to clarify rule
8 68”), 7/16/21 (“rule 68”), and 8/03/21 (“note re rule 68”). *Id.* at 7. Indeed, while all three of these
9 entries are vague, the entries on 7/15/21 and 8/03/21 provide enough detail to clarify the task and
10 the nature of the work. The “rule 68” entry on 7/16/21, however, appears to be duplicative
11 because it lacks specificity and is indistinguishable from the other two entries. The Court
12 therefore disregards the duplicative public record search entry by Lino Dionisio, as well as Ms.
13 Seabock’s 7/16/21 entry.

14 Defendants further contend that Plaintiff improperly billed clerical work involving ECF
15 filings and time spent emailing signed documentation to Defendants’ counsel. Opposition at 8.
16 The Court has recognized that “[p]urely clerical tasks are generally not recoverable in a motion for
17 attorneys’ fees and should instead be subsumed in normal overhead costs.” (citing *Nadarajah v.*
18 *Holder*, 569 F.3d 906, 921 (9th Cir. 2009)). “When clerical tasks are billed at hourly rates, the
19 court should reduce the hours requested to account for the billing errors.” *Id.* Defendants identify
20 the following entries as clerical tasks that should be excluded: (1) the 9/9/21 email from Dourado
21 sending the signed settlement to Plaintiff; (2) the 10/28/21 “NOS” filing by More; (3) the 1/5/22
22 filing of the request for reassignment by Adnan; (2) the three separate entries on 1/7/22 labeled as
23 “ECF” by Alba; (3) the 1/24/22 filing of the joint statement by Adnan; (4) the 1/26/22 ECF filing
24 by Alba. Opposition at 8. Because these entries all encompass clerical tasks, the Court agrees
25 with Defendants that these time entries should not be included in Plaintiff’s award of attorneys’
26 fees and costs.

27 Defendants also assert that some of the billing entries are inadequate or too vague. *Id.* at

1 8–9. Defendants point to billing entry descriptions that contain one-word entries, such as “email”
2 on 10/26/21 and highlight the “rule 68” entry once again, contending that both provide no detail
3 regarding the nature of the work. *Id.*; *see* Dkt. No. 20-3. Defendants contend that Plaintiff “bears
4 the burden of submitting detailed time records justifying the hours claimed to have been
5 expended” and cites to a case from the District Court of Guam. Opposition at 9; *see Davis v.*
6 *Guam*, No. CV 11-00035, 2019 WL 1512266, at *12 (D. Guam Apr. 8, 2019). The Court agrees
7 that these entries are vague and may render it difficult to review whether the task is reasonable.
8 However, even the *Davis* case recognizes that a handful of entries with vague descriptions which
9 are billed at 0.10 or 0.20 hours are not wholly unreasonable. *Id.* at 13. The majority of Plaintiff’s
10 entries provide sufficient detail. While Plaintiff should provide more specificity, it would be
11 “highly atypical civil rights case where plaintiff’s lawyer engages in churning.” *Moreno*, 534 F.3d
12 at 1112. Accordingly, the Court does not find Plaintiff’s entries warrant further reduction.

13 Moreover, Defendants assert that Mr. Price’s 2/8/21 work for 4.1 on the fee motion is
14 excessive because Mr. Potter’s declaration is repetitive of past declarations filed by the firm in
15 previous motions for attorneys’ fees, to the extent that portions have been cut and pasted from
16 their filings in the *Li* case. *Id.* at 9–10; Dkt. No. 21-1 ¶ 15 (“Corfee Decl.”). Defendants further
17 support this assertion by noting that in paragraph 12 of his declaration, Mr. Potter lists the
18 qualifications of Josie Zimmerman, an attorney who is not on this case or otherwise mentioned in
19 any of Plaintiff’s documents but has previously worked on the firm’s other ADA cases.

20 Opposition at 9–10. Likewise, Defendant notes that Mr. Price’s entry for 0.3 hours on 2/7/22
21 references working on a “McGuinness declaration,” which is not a submitted a declaration nor a
22 named attorney in this case. *Id.* at 9. Plaintiff did not provide any explanation for this entry.
23 Accordingly, the Court removes the McGuinness entry.

24 The Court remains unpersuaded, however, that the 4.1 hours spent by Mr. Price on the fee
25 motion are “obviously and convincingly excessive under the circumstances” to warrant a
26 reduction. *Blackwell v. Foley*, 724 F. Supp. 2d 1068, 1081 (N.D. Cal. 2010) (accepting Plaintiff’s
27 attorneys sworn declarations and copies of time sheets as sufficient support for their fee requests).

1 Mr. Price’s declaration notes that he had ceased working on the motion after a miscommunication
2 between the Parties’ counsel led Plaintiffs to believe that Defendant agreed to an amount of
3 attorney fees leading him to resume the motion work. Price Decl., ¶ 6–7. The Court finds that
4 Mr. Price’s declaration provides sufficient support for his time entry.

5 **b. Costs**

6 Finally, Plaintiff requests \$1,002.00 in filing fees and costs. Mot. at 22. Plaintiff’s request
7 for \$402.00 in support of his filing fee is well substantiated. See Compl., Dkt. No. 1 (confirming
8 payment of filing fee and receipt number). Plaintiff also requests a \$400.00 investigation cost and
9 \$200.00 in service fees. Mot. at 22. Defendants argue that Plaintiff should not be awarded costs
10 associated with the investigation or service fees because Plaintiff’s lacks receipts and the Court
11 previously denied Mr. Johnson’s costs based on failure to provide receipts. Opposition at 11
12 (citing *Johnson v. Garlic Farm Truck Ctr. LLC*, No. 20-CV-03871-BLF, 2021 WL 2457154, at
13 *12 (N.D. Cal. June 16, 2021)). However, the Court’s denial of these costs is taken out of context.
14 In *Garlic Farm Truck*, the Court addressed the missing receipts because Plaintiff’s counsel quoted
15 different costs for the investigation fee and the service fee in his attorney declaration than Plaintiff
16 quoted in the motion. *Id.* Because the Court could not confirm which fee was actually paid, the
17 Court awarded the lesser of the two quotes cited by Plaintiff. *Id.* That is not the issue in this
18 action. Plaintiff provided an attorney’s sworn statement that the firm pays all their investigators
19 “\$400 per on-site investigation” and that his investigator did not present him with a “formal
20 invoice.” Potter Decl. ¶ 4. There are no discrepancies between the fees quoted in Plaintiff’s
21 invoice and Mr. Potter’s declarations.

22 Defendants also assert that Plaintiffs did not need to hire an investigator and that the
23 investigator fee is unsupported as to the purpose of the investigator and the work that was
24 performed. Opposition at 11. Defendant contends that an investigator is not necessary in this case
25 since Mr. Johnson is an attorney and used to litigate his own ADA cases. Corfee Decl. ¶ 7.
26 However, the Court disagrees. Plaintiff provided ample explanation as to the purpose of an
27 investigation, noting in their reply that not “Mr. Johnson has numerous disabilities that limit his

1 mobility and dexterity. This prevents him from taking precise measurements, as well as
2 investigation of properties that he cannot enter.” Reply, Dkt. No 22 at 14. Accordingly, the Court
3 will award \$1,002.00 in filing fees and costs.

4 **IV. Conclusion**

5 For the foregoing reasons, the Court **GRANTS** in part and **DENIES** in part Plaintiff’s
6 motion for attorneys’ fees and costs. The Court awards Plaintiff \$7,085.00 in attorneys’ fees and
7 \$1,002.00 in costs, for a total of \$8,087.00.

8 **IT IS SO ORDERED.**

9 Dated: July 28, 2022



EDWARD J. DAVILA
United States District Judge

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28