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5 **United States District Court**
6 **Central District of California**
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8 MICHAEL ROCCA,
9 Plaintiff,

10 v.

11 DEN 109 LP dba DENNY'S #7425;
12 FRITZ MOLLER; and GEISELA
13 MOLLER,
14 Defendants.

Case No. 2:14-cv-00538-ODW-MRW

**ORDER DENYING PLAINTIFF'S
MOTION FOR ATTORNEYS' FEES
[57]**

15 **I. INTRODUCTION**

16 After a bench trial, Plaintiff Michael Rocca moves for attorneys' fees following
17 entry of judgment for Den 109 LP dba Denny's #7425, Fritz Moller, and Geisela
18 Moller (collectively "Defendants") on all but one minor charge under the California
19 Disabled Persons Act, involving the location of a water closet handle which was to the
20 left of instead of below the door's latch. For the reasons discussed below, the Court
21 **DENIES** Rocca's Motion.¹ (ECF No. 57.)

22 **II. FACTUAL BACKGROUND**

23 On January 23, 2014, Rocca filed a Complaint alleging violations of the
24 Americans with Disabilities Act ("ADA"), the Unruh Civil Rights Act, the California
25 Disabled Persons Act ("CDPA"), and California Health and Safety Code section
26 19955(a) against Defendants. Rocca, a paraplegic who uses a wheelchair for mobility,
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28 ¹ After carefully considering the papers filed in support of and in opposition to the Motion, the Court
deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

1 alleged that because he encountered at least fifteen architectural barriers prohibited by
2 the ADA at Defendants' establishment, Defendants violated the ADA for failing to
3 keep their facilities fully and equally accessible to persons with disabilities by
4 ensuring compliance with federal building codes. Rocca further argued that because
5 Defendants violated the ADA they necessarily violated the Unruh Civil Rights Act.

6 On January 26, 2015, at the parties' final pretrial conference, Rocca informed
7 the Court that Defendants failed to respond to his Requests For Admission. Following
8 the hearing, the Court gave Rocca leave to file a motion for summary judgment and
9 continued the trial date until after a ruling on the motion. On February 16, 2015,
10 Rocca moved for summary judgment. (ECF No. 37.) On May 5, 2015, the Court
11 granted partial summary judgment for Rocca as to the following violations: (1) both
12 access aisles having slopes and cross slopes that exceed 2.0%; (2) both disabled
13 parking spaces having slopes and cross slopes that exceed 2.0%; and (3) failing to
14 make the water closet stall door self-closing. (ECF No. 46.) The Court entered
15 judgment in favor of Rocca, awarding him \$4,000 in damages under the Unruh Act
16 and required Defendants to remedy the three violations in compliance with the ADA
17 Accessibility Guidelines ("ADAAG"). (*Id.*) Although not requested by either party,
18 the Court declined to award either party attorneys' fees. (*Id.* at 13–14.)

19 A bench trial was held on June 19, 2015 regarding the remaining alleged
20 violations. The Court issued its Findings of Fact and Conclusions of Law on August
21 18, 2015 and found in favor of Defendants as to the following violations: (1) the pipes
22 underneath the lavatory are improperly wrapped; (2) the paper towel dispenser is
23 mounted too high; and (3) the waste receptacle protrudes in the clear maneuvering
24 space needed to access the water closet. (ECF No. 54.) The Court dismissed with
25 prejudice the following allegations for lack of standing: (1) the words "NO
26 PARKING" is not painted within the access aisles; (2) incorrect signage posted at the
27 van accessible parking space; and (3) the tow away signage posted is incorrect. (*Id.*)
28 Lastly, the Court found that Rocca was only entitled to injunctive relief with respect to

1 the handle not being mounted below the water closet stall door lock. (*Id.*)

2 Despite the Court's express disapproval of the conduct by both parties'
3 counsels, on September 2, 2015, Rocca moved for attorney fees under the CDPA.
4 (ECF No. 57.) Defendants timely opposed and Rocca replied. (ECF Nos. 58, 63.)
5 That Motion is now before the Court for consideration.

6 III. LEGAL STANDARD

7 Under the ADA, it is within the Court's discretion to award reasonable
8 attorneys' fees and costs to the prevailing party. 42 U.S.C. § 12205. Such awards
9 should be granted as a matter of course. *Barrios v. Cal. Interscholastic Fed'n*, 277
10 F.3d 1128, 1134 (9th Cir. 2002). However, where "special circumstances would
11 render such an award unjust," attorneys' fees should be withheld. *Jankey v. Poop*
12 *Deck*, 537 F.3d 1122, 1131 (9th Cir. 2008).

13 By contrast, California law provides that under the CDPA, "the prevailing party
14 in the action shall be entitled to recover reasonable attorneys' fees." Cal. Civ. Code §
15 55 (emphasis added). Courts have held that an award of attorneys' fees is mandatory.
16 *Hubbard v. Sobreck, LLC*, 554 F.3d 742, 745 (9th Cir. 2008) (noting interpretation of
17 CDPA in *Plaintiffs v. Arciero Wine Group*, 164 Cal. App. 4th 786 (2008)).
18 Notwithstanding California's mandate to award attorneys' fees to CDPA prevailing
19 parties, federal case law prohibits attorneys' fees when special circumstances would
20 render the award unjust. If special circumstances preclude an award of attorneys' fees
21 under the ADA, preemption principles necessitate that CDPA attorneys' fees are
22 withheld as well. *See Hubbard*, 554 F.3d at 744–45 (explaining it would be
23 impossible to distinguish the fees expended in defense of the ADA claim versus the
24 CDPA claim and thus, a grant of fees under the CDPA is necessarily a grant of fees
25 arising under the ADA).

26 In a case involving a 42 U.S.C. § 1988 claim, the Ninth Circuit held that courts
27 should evaluate whether there are special circumstances warranting a denial of
28 attorneys' fees by looking at two factors: (1) whether the granting of fees would

1 further the purposes of the statute; and (2) whether the balance of equities favors a
2 denial of fees. *Mendez v. County of San Bernardino*, 540 F.3d 1109, 1126 (9th Cir.
3 2008). Additionally, in determining whether an award of fees would further the
4 purpose of the statute, courts recognize that in civil rights cases, the intent of the
5 attorneys’ fees provisions is largely to encourage voluntary compliance and to
6 eliminate the financial barriers plaintiffs ordinarily face in vindicating constitutional
7 rights. *Seattle School Dist. No. 1 v. State of Wash.*, 633 F.2d 1338, 1348 (9th Cir.
8 1980.) The key question is whether someone in the plaintiff’s position would have
9 been deterred from bringing the claim but for the attorneys’ fees provision.

10 IV. DISCUSSION

11 As already articulated in the Court’s Summary Judgement Order, special
12 circumstances in the instant case would render an award of fees to Rocca unjust. (See
13 ECF No. 46 at 13.) As an initial matter, Rocca provides no justification for an award
14 of fees, merely stating that the Court previously denied fees only based upon the ADA
15 and Unruh Act and thus, as the prevailing party, may still receive fees under the
16 CDPA. (Mot. 2–3.) Aside from the fact that the Court is skeptical that Rocca is a
17 “prevailing party” in this case, the Court finds that awarding fees to Rocca would
18 disrupt the balance of equities. Rocca requests \$31,612.50 in attorneys’ fees. Given
19 that Rocca had previously filed numerous similar claims involving similar violations,
20 many of the attorney tasks for this lawsuit would not require the traditional time
21 expenditures. (*See* Trial Tr. 53:14–54:7, June 19, 2015 (Rocca admitting that he has
22 been a party to approximately 50 similar lawsuits).) Indeed, the volume of lawsuits
23 filed and Rocca’s virtually identical complaints in these actions proves as much.
24 Further, the supporting documents in Rocca’s request lists attorney time expenditures
25 that are greater than should be required by Rocca’s experienced firm; which reports
26 that it specializes in this type of litigation. The records do not reflect the efficient
27 treatment of tasks that one would expect from attorneys who have been practicing for
28 several years and who have devoted much of their practice to disability rights law.

1 As some judges have observed, the ability for law firms and attorneys to profit
2 from the ADA has led to attorneys, disinterested in ensuring greater access to places
3 of public accommodation for people with disabilities, to file numerous lawsuit
4 intending to recover large fees. *Molski*, 347 F. Supp. at 863. This theory was further
5 supported during the bench trial, as the Court found that the only purpose for Rocca to
6 visit Defendants' restaurant was for finding violations. (ECF No. 54 at 6–7.)
7 Awarding Rocca's disingenuous practice and his attempt to extract fees from
8 unjustified efforts would disrupt the equity already achieved through the accessibility
9 changes Defendants have and are required to perform. To award fees for Rocca's
10 questionable conduct would be unjust.

11 The minimal success Rocca achieved also evidences that attorneys' fees should
12 be denied. Given that Rocca only prevailed on four out of his fifteen claims, Rocca's
13 suit was relatively unsuccessful, and therefore it would be unfair to impose attorneys'
14 fees against Defendants. Furthermore, Rocca does not distinguish which fees are
15 associated with the claims that he actually prevailed on, rather, he only provides a
16 single sum for the entire case. By providing no distinction in fees, and for the reasons
17 discussed above, the Court rejects the entire amount. Because the ADA special
18 circumstances rule preempts the CDPA attorneys' fees provision, recovery under the
19 CDPA is unwarranted.

20 With respect to the litigation costs, the CDPA does not authorize the awarding
21 of litigation costs. Cal. Civ. Code §§ 54–55.2. However, it is customary to award
22 costs to the prevailing party of ADA litigation. *See* Fed. R. Civ. P. 54(d)(1).
23 Nevertheless, while Rule 54(d) creates a presumption in favor of awarding costs to the
24 prevailing party, it is within the district court's discretion to deny such costs once the
25 court provides reasons as to why the case is not ordinary and why it would be
26 inappropriate or inequitable to award costs. *Assoc. of Mexican-American Educators v.*
27 *Cal.*, 231 F.3d 572, 593 (9th Cir. 2000). This Circuit has expressly recognized the
28 following reasons: (1) the losing party's limited financial resources; (2) misconduct by

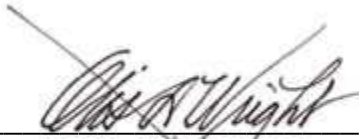
1 the prevailing party; and (3) the potential chilling effect of imposing high costs on
2 civil rights litigants. *Champion Produce, Inc. v. Ruby Robinson Co., Inc.*, 342 F.3d
3 1016, 1022 (9th Cir. 2003.) (citation omitted). As explained above and in the Court's
4 Summary Judgment Order, the circumstances of this case would make an award of
5 litigation costs inappropriate and inequitable, and thus, Rocca should also be denied
6 costs.

7 **V. CONCLUSION**

8 For the reasons discussed above, the Court **DENIES** Rocca's Motion for
9 Attorneys' Fees and Costs. (ECF No. 57.)

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11 **IT IS SO ORDERED.**

12
13 September 23, 2015

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17 **OTIS D. WRIGHT, II**
18 **UNITED STATES DISTRICT JUDGE**