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I. INTRODUCTION

Before the Court is Plaintiff Michael Rocca’s motion for attorneys’ fees. (ECF No. 74.) For the following reasons, the Court **GRANTS** Plaintiff’s motion and awards him **\$47,299.31**.

II. FACTUAL BACKGROUND

Plaintiff is a paraplegic who uses a wheelchair for mobility and a “mobility equipped vehicle when traveling.” (Compl. ¶ 8, ECF No. 1.) Defendants Fritz and Geisela Moller are associated with Defendant Den 109 LP, a Denny’s restaurant in Lynwood, California. (*Id.* ¶ 2.)

Plaintiff visited the Denny’s in question “and encountered barriers” that interfered with his ability to “enjoy the goods, services, privileges, and accommodation offered at the facility.” (*Id.* ¶ 10.) Plaintiff allegedly encountered fifteen distinct barriers during his visit:

1. Parking lot access aisles with a slope exceeding two percent;
2. Parking lot access aisles without a painted “No Parking” label;
3. Disabled parking spots with slopes and cross slopes exceeding two percent;
4. Incorrect signage for the van accessible parking space;
5. Incorrect tow-away signage for the disabled parking spaces;
6. Absence of a handle-mounted door lock in the water closet;
7. Absence of a self-closing door in the water closet;
8. A waste receptacle that obstructs access to the water closet;
9. A toilet tissue dispenser that obstructs the use of a side-grab bar;
10. A toilet tissue dispenser that is too far from the back wall;
11. A toilet tissue dispenser that is too far from the front of the water closet;
12. Pipes beneath the lavatories that were improperly or incompletely wrapped;
13. A waste receptacle that obstructs access to the paper towel dispenser;

1 14. A paper towel dispenser that is mounted too high; and

2 15. Insufficient strike-side clearance when exiting the restroom.

3 On January 23, 2014, Plaintiff filed a complaint asserting violations of: (1) the
4 Americans with Disabilities Act (“ADA”); (2) the California Disabled Persons Act;
5 (3) the Unruh Civil Rights Act; and (4) California Health and Safety Code section
6 19955. (*Id.* ¶¶ 15–51.) On February 16, 2015, Plaintiff filed a motion for summary
7 judgment. (ECF No. 37.) On May 5, 2015, the Court granted in part Plaintiff’s
8 motion, finding that Plaintiff had established the existence of three barriers to access:
9 that the parking lot aisles had a slope exceeding two percent, that the disabled parking
10 spaces had slopes and cross slopes exceeding two percent, and that the door in the
11 water closet was not self-closing. (Order 6–8, 14, ECF No. 46.) The Court ordered
12 Defendants to remedy these violations and pay Plaintiff \$4,000 in damages.
13 (Judgment, ECF No. 46.) The Court denied Plaintiff’s motion as to the remaining
14 barriers. (Order 7–12, 14.)

15 The case then proceeded to trial. At trial, Plaintiff established the existence of
16 one additional barrier: lack of a handle-mounted door lock in the water closet.
17 (Conclusions of Law ¶ 11, ECF No. 54.) However, the Court found that Plaintiff had
18 failed to satisfactorily establish the existence of the remaining barriers. (*Id.* ¶¶ 10, 12–
19 14.)

20 On September 2, 2015, Plaintiff filed a motion seeking \$37,626.89 in attorneys’
21 fees, litigation expenses, and costs. (Mot. 15, ECF No. 57-1.) On September 23,
22 2015, the Court denied Plaintiff’s motion in its entirety. (Order 6, ECF No. 64.)

23 Plaintiff separately appealed the Court’s Findings of Fact and Conclusions of
24 Law and its decision on his motion for attorneys’ fees. (ECF Nos. 59, 69.) Those
25 appeals were subsequently consolidated upon Plaintiff’s motion. (*See* Appellate
26 Docket Entry 7 (granting unopposed motion to consolidate).) On March 23, 2017, the
27 Ninth Circuit issued an order affirming the Court’s Findings of Fact and Conclusions
28 of Law. *Rocca v. Den 109 LP*, No. 15-56407, 2017 WL 1089550, at *2 (9th Cir. Mar.

1 23, 2017). However, the Ninth Circuit reversed the Court’s denial of Plaintiff’s
2 motion for attorneys’ fees, noting that Plaintiff was in fact the prevailing party and
3 thus entitled to some measure of fees. *Id.* The Ninth Circuit remanded the case for a
4 determination of the appropriate measure of attorneys’ fees. *Id.*

5 Plaintiff filed the pending motion for attorneys’ fees on May 8, 2017, seeking
6 \$86,734.31 in attorneys’ fees, litigation expenses, and costs. (New Mot. 14, ECF No.
7 74-1.) That motion is now fully briefed and ready for decision. (*See* ECF Nos. 75–
8 76.)¹

9 III. LEGAL STANDARD

10 “The ADA authorizes a court to award attorneys’ fees, litigation expenses, and
11 costs to a prevailing party.” *Moore v. Chase, Inc.*, No. 1:14-CV-01178-SKO, 2016
12 WL 3648949, at *1 (E.D. Cal. July 7, 2016) (quoting *Lovell v. Chandler*, 303 F.3d
13 1039, 1058 (9th Cir. 2002)); *see also* 42 U.S.C. § 12205. In determining an
14 appropriate fee award, courts must first calculate the “lodestar” figure by multiplying
15 the reasonable hourly rate in the community at issue with the number of hours
16 reasonably expended on the litigation. *United Steelworkers of Am. v. Phelps Dodge*
17 *Corp.*, 896 F.2d 403, 406 (9th Cir. 1990). After determining the lodestar figure, the
18 Court may adjust the award based on the *Kerr* factors, which include: (1) the time and
19 labor required; (2) the novelty and difficult of the questions involved; (3) the skill
20 requisite to perform the legal service properly; (4) the preclusion of other employment
21 by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the
22 fee is fixed or contingent; (7) time limitations imposed by the client or the
23 circumstances; (8) the amount involved and the results obtained; (9) the experience,
24 reputation, and ability of the attorneys; (10) the ‘undesirability’ of the case; (11) the
25 nature and length of the professional relationship with the client; and (12) awards in
26 similar cases. *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975)

27 _____
28 ¹ After considering the papers filed in connection with this motion, the Court deemed the matter
appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15.

1 *abrogated on other grounds by City of Burlington v. Dague*, 505 U.S. 557 (1992).
2 Courts “need not consider all twelve factors . . . only those called into question by the
3 case at hand and necessary to support the reasonableness of the fee award.” *Cairns v.*
4 *Franklin Mint Co.*, 292 F.3d 1139, 1158 (9th Cir. 2002).

5 **IV. DISCUSSION**

6 **A. The Loadstar Figure**

7 **1. Reasonable Hourly Rate**

8 Plaintiff requests fees in the amount of \$600/hour for lead counsel Scottlyn
9 Hubbard and senior partner Lynn Hubbard; \$400/hour and \$300/hour for associates
10 Khush Mehton and Stephanie Ross, respectively; and \$125–\$150 an hour for
11 paralegals assigned to this case. (New Mot. 7, 14; Hubbard Decl., Ex. 2 at 2–3, ECF
12 No. 74-4.)

13 Reasonable hourly rates are determined by examining “prevailing rate[s]” in the
14 relevant community for attorneys and paralegals performing similar work with
15 comparable levels of “skill, experience, and reputation.” *Camacho v. Bridgeport Fin.,*
16 *Inc.*, 523 F.3d 973, 979 (9th Cir. 2008) (quoting *Barjon v. Dalton*, 132 F.3d 496, 502
17 (9th Cir. 1997)). The relevant community is the district in which the adjudicating
18 court “sits.” *Id.* (citing *Barjon*, 132 F.3d at 500).

19 The party seeking attorneys’ fees bears the burden of showing that the proposed
20 hourly rate is reasonable. *See id.* at 980 (citing *Blum v. Stenson*, 465 U.S. 886, 895
21 n.11 (1984)). This is done by submitting affidavits of counsel, affidavits of other
22 counsel in the relevant community, and by providing case law examples of the
23 relevant community rate. *See id.* at 980–81.

24 In support of his proposed hourly rates, Plaintiff submits a declaration from lead
25 counsel, Scottlyn Hubbard, detailing Hubbard’s knowledge and expertise and the
26 knowledge and expertise of other counsel who worked on this case. (Hubbard Decl.,
27 ECF No. 74-2.) Plaintiff also submits the declaration of attorney Russell Handy,
28 another ADA practitioner in the Central District, who indicates that Hubbard’s

1 proposed hourly rate is reasonable. (Handy Decl. ¶ 9, ECF No. 74-6.) Finally,
2 Plaintiff points to case law suggesting that Hubbard’s proposed rate is reasonable.
3 (New Mot. 6); *see also Camarillo v. Cty. of Maywood*, Case No. 2:07-cv-3469-ODW
4 (SHx), 2015 WL 505886, *9 (C.D. Cal. Feb. 04, 2015) (finding similarly experienced
5 civil rights counsel’s \$650 hourly rate reasonable) *overruled on other grounds by*
6 *Gonzalez v. City of Maywood*, 671 F. App’x 564 (9th Cir. 2016). Defendants have not
7 opposed Plaintiff’s proposed hourly rates. In light of Plaintiff’s supporting
8 documentation and the relevant case law, the Court finds that Plaintiff’s proposed
9 hour rates are reasonable.

10 **2. Number of Hours Reasonably Expended on the Litigation**

11 Plaintiff is entitled to compensation for all time *reasonably* spent litigating this
12 case. *Camacho v. Bridgeport Fin., Inc.*, No. C 04-00478 CRB, 2008 WL 2951290, at
13 *5 (N.D. Cal. July 24, 2009) (emphasis added). Plaintiff seeks compensation for
14 187.25 hours of attorney and paralegal work. (Hubbard Decl., Ex. 2 at 12, ECF No.
15 74-4.)

16 The Court will give Plaintiff and his counsel this—they have some chutzpah in
17 putting forth their proposed “reasonable” hours calculation. On September 2, 2015, in
18 support of Plaintiff’s previous motion for attorneys’ fees and after the conclusion of
19 the proceedings before this Court, Plaintiff’s counsel Scottlynn Hubbard signed a
20 declaration under penalty of perjury indicating that the “billing entries” (hereafter
21 “Bill 1”) attached as Exhibit 3 were “true and accurate.” (Hubbard Decl. ¶ 22, ECF
22 No. 57-2.) Bill 1 indicates that Hubbard’s firm spent 76.45 hours “total” on the
23 proceedings before this Court. (Hubbard Decl., Ex. 3 at 12, ECF No. 57-4.) On May
24 8, 2017, Hubbard signed a declaration under penalty of perjury indicating that the
25 “billing entries” (hereafter “Bill 2”) attached as Exhibit 2 were “true and accurate.”
26 (Hubbard Decl. ¶ 24, ECF 74-2.) Bill 2 indicates that Hubbard’s firm spent 187.25
27 hours “total” on the proceedings before this Court and the two appeals before the
28 Ninth Circuit. (Hubbard Decl., Ex. 2 at 12, ECF No. 74-4.)

1 It is hardly surprising that Bill 2 contains a higher hours “total” than Bill 1
2 given that it takes into account the hours expended on appeal. Nevertheless, Bill 2 is
3 extremely worrisome. Adding together the time entries after August 19, 2015, the last
4 entry (Entry 203) on Bill 1, reveals that Plaintiff’s counsel spent 67.8 hours on appeal
5 in this matter. (*See* Hubbard Decl., Ex. 2 at 10–12, ECF No. 74-4.) This means that
6 Plaintiff and his counsel are now seeking to recover for 119.45 hours associated with
7 the proceedings before this Court—forty-three more hours than the “total” previously
8 sought. (*Compare* Hubbard Decl., Ex. 3, ECF No. 57-4, *with* Hubbard Decl., Ex. 2,
9 ECF No. 74-4.)

10 Plaintiff’s after-the-fact addition of hours is totally unacceptable. Moreover, it
11 is totally unjustified—Plaintiff does not even acknowledge or explain the addition of
12 the forty-three hours in his pending motion. For these reasons, the Court will not use
13 the proposed 187.25-hour “total” in calculating the lodestar figure. Instead, the Court
14 will use 144.25 hours: the 76.45-hour “total” from Bill 1 plus the 67.8 hours
15 associated with the appeals in this matter. (*See* Hubbard Decl., Ex. 3, ECF No. 57-4 at
16 12; Hubbard Decl., Ex. 2, ECF No. 74-4.)

17 **3. Loadstar Calculation**

18 Attorneys’ fees for the proceedings before this Court are **\$31,612.50** and
19 attorneys’ fees on appeal are **\$25,425**. Accordingly, the loadstar figure is **\$57,037.50**.

20 **B. Reductions to the Loadstar Figure for Limited Success**

21 The Supreme Court held in *Hensley v. Eckerhart*, 461 U.S. 424, 434–440
22 (1983) that the extent of a Plaintiff’s success is a “crucial factor” in determining
23 whether to reduce the loadstar figure. *See also Kerr*, 526 F.2d at 70 (noting that
24 “results obtained” may warrant a reduction of the loadstar figure). Therefore, the
25 Court considers the extent of Plaintiff’s success in the proceedings before this Court
26 and on appeal.

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1 **1. The Proceedings Before This Court**

2 Plaintiff was successful on summary judgment and at trial in proving that he
3 encountered four out of the fifteen alleged barriers. Defendants argue that the loadstar
4 figure should be reduced on a pro-rata basis to reflect this rate of success. (Opp'n 10,
5 ECF No. 75.) Plaintiff argues in response that case law explicitly forecloses such a
6 pro-rata reduction where the claims alleged are related, meaning they share a common
7 legal theory. (Reply 6–10, ECF No. 76.)

8 Plaintiff is correct. Where, as here, the claims are related, courts may not effect
9 a pro-rata reduction. *See Chapman v. Pier 1 Imports, Inc.*, No. CV.S-04-1339
10 LKK/DAD, 2007 WL 2462084, at *3 (E.D. Cal. Aug. 24, 2007). Nevertheless, the
11 Court may still effect some reduction in recognition of Plaintiff's limited success. In
12 *Chapman v. Pier 1 Imports, Inc.*, another ADA case involving Plaintiff's counsel, the
13 plaintiff was successful at trial in proving that he encountered seven out of twenty-two
14 alleged barriers. 2007 WL 2462084, at *3. Based on that rate of success, the district
15 court reduced the loadstar figure by fifteen percent. *Id.* Plaintiff's rate of success in
16 this case was even lower than the plaintiff in *Chapman* (the plaintiff in *Chapman*
17 prevailed on thirty-two percent of his barrier claims to Plaintiff's twenty-six percent.)
18 Accordingly, the Court reduces Plaintiff's attorneys' fees relevant to the proceedings
19 before this Court by twenty percent to reflect his limited success.² Therefore,
20 Plaintiff's attorneys' fees relevant to the proceedings before this Court are reduced
21 from \$31,612.50 to **\$25,290**.

22 **2. On Appeal**

23 Plaintiff filed two appeals: an appeal of the Court's decision on the merits and
24 an appeal of the Court's decision on his motion for attorneys' fees. (*See* ECF Nos. 59,
25 69.) As noted above, these two appeals were subsequently consolidated. Plaintiff
26 now seeks to recover attorneys' fees associated with both appeals.

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28 ² It is worth pointing out that Plaintiff acknowledges a reduction of some type may be
necessary to reflect his limited success. (Reply 11.)

1 It is beyond dispute that Plaintiff may recover for the successful appeal of his
2 motion for attorneys' fees. *Rodgers v. Claim Jumper Rest., LLC*, No. 13-CV-5496
3 YGR, 2015 WL 1886708, at *9 (N.D. Cal. Apr. 24, 2015) ("The Court may award
4 fees for 'time spent by counsel in establishing the right to a fee award.'" (quoting
5 *Davis v. City & Cnty. of San Francisco*, 976 F.2d 1536, 1543 (9th Cir. 1992))).
6 However, the Court will not award fees for Plaintiff's unsuccessful appeal of the
7 Court's decision on the merits. Had Plaintiff's appeals not been consolidated, he
8 would not have been entitled to recover attorneys' fees associated with his
9 unsuccessful merits appeal. *Clark v. City of Los Angeles*, 803 F.2d 987, 993 (9th Cir.
10 1986) (holding that a district court did not abuse its discretion in denying attorneys'
11 fees for unsuccessful appeal); *Thompson v. Gomez*, 45 F.3d 1365, 1368–69 (9th Cir.
12 1995) (suggesting that attorneys' fees may be "awarded for work performed on
13 successful appeals . . . but not for unsuccessful ones."). The mere use of
14 consolidation, an administrative tool that promotes judicial economy, should not
15 function to make attorneys' fees associated with an otherwise unsuccessful appeal
16 recoverable. As the Court is unable to distinguish in Bill 2 between time spent on the
17 merits appeal and time spent on the motion appeal, the Court will reduce the
18 attorneys' fees associated with the two appeals by fifty percent to reflect Plaintiff's
19 success on one out of the two appeals. Therefore, the attorneys' fees associated with
20 the two appeals are reduced from \$25,425 to **\$12,712.50**.

21 **C. Litigation Expenses and Costs**

22 The ADA provides that the prevailing party may recover litigation expenses and
23 costs as part of a motion for attorneys' fees. *Moore*, 2016 WL 3648949, at *1
24 (quoting *Lovell*, 303 F.3d at 1058); 42 U.S.C. § 12205. Plaintiff requests a total of
25 \$9,296.81 in litigation expenses and costs. (New Mot. 14.) Defendant contends that
26 Plaintiff offers no support for his proposed award of litigation expenses and costs.
27 (Opp'n 11.) While the expense entries Plaintiff submits are at times inconsistent,
28 Plaintiff has submitted supporting documentation for the vast majority of his claimed

1 litigation expenses and costs. (*See* Hubbard Decl., Ex. 3, ECF Nos. 74-5.) Therefore,
2 the Court awards Plaintiff **\$9,296.81** in litigation expenses and costs.

3 **V. CONCLUSION**

4 In light of the foregoing, the Court **GRANTS** Plaintiff's motion for attorneys'
5 fees. (ECF No. 74.) The Court awards Plaintiff attorneys' fees in the amount of
6 **\$38,002.50** (\$25,290 associated with the proceedings before this Court and
7 \$12,712.50 associated with his successful appeal) and litigation costs and expenses in
8 the amount of **\$9,296.81** for a total award of **\$47,299.31**.

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10 **IT IS SO ORDERED.**

11 June 13, 2017

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15 **HON. OTIS D. WRIGHT II**
16 **UNITED STATES DISTRICT JUDGE**
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