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3 **UNITED STATES DISTRICT COURT**  
4 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
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6 **JOSE TRUJILLO,**

7 **Plaintiff,**

8 **v.**

9 **BALVIR SINGH dba SUPER 7, et al.,**

10 **Defendants.**

**1:16-cv-01640-LJO-EPG**

**MEMORANDUM DECISION AND  
ORDER ADOPTING IN PART AND  
MODIFYING IN PART FINDINGS AND  
RECOMMENDATIONS (Doc. 13)**

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13 On October 31, 2016, Plaintiff Jose Trujillo filed a complaint pursuant to Title III of the  
14 Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12101-12213; the California Unruh Act,  
15 California Civil Code § 51 *et seq.*; and California Health & Safety Code §§ 19955, 19959. Doc. 1. The  
16 complaint seeks an award of statutory damages, prejudgment interest on the damages, costs of suit,  
17 attorney's fees, and injunctive relief. *Id.* Plaintiff alleges that he requires the use of a wheelchair or cane  
18 for mobility, Doc. 1, ¶ 8, and the property that is the subject of this suit, Super 7, located at 41304 Road  
19 128 in Orosi, California (the “Property”), presents numerous architectural barriers that interfered with  
20 his ability to use and enjoy the goods, services, privileges, and accommodations offered at the facility.  
21 Doc. 1, ¶ 10.

22 Defendants Balvir Singh and Darshan Singh were served with the Complaint on November 19,  
23 2016, Docs. 4 & 5, and defaults were entered against them on January 9, 2017. Doc. 7. Plaintiff then  
24 filed a motion for default judgment (the “Motion”) against Defendants on February 2, 2017. Doc. 9. In  
25 the Motion, Plaintiff requested injunctive relief, \$4,000 in statutory damages, \$3,690 in legal fees, and

1 \$1,488 in costs. Doc. 9-1 at 6-9. No opposition to the Motion was filed.

2 On March 15, 2017, the assigned magistrate judge issued findings and recommendations (the  
3 “F&Rs”), in which she recommended that the Court grant the Motion in part and reduce the requested  
4 legal fees and costs to \$2,000 and \$1,488, respectively. Doc. 13 at 8-13. The magistrate judge  
5 specifically recommended that the Court: (1) enter judgment in favor of Plaintiff and against Defendant;  
6 (2) award Plaintiff statutory damages in the amount of \$4,000; (3) award Plaintiff attorney’s fees in the  
7 amount of \$1,475 for Plaintiff’s counsel, Tanya Moore (5.9 hours instead of 9.9 hours at \$250 instead of  
8 the requested \$300 per hour), paralegal fees in the amount of \$270 for a senior paralegal in Ms. Moore’s  
9 office, Whitney Law (3.6 hours instead of the requested 5.8 hours at \$75 instead of the requested \$115  
10 per hour), and \$255 for another paralegal, David Guthrie (3.4 hours at \$75 instead of the requested \$95  
11 per hour); as well as (4) costs of suit in the amount of \$1,488. *Id.*

12 The F&Rs were served upon Defendant and contained notice that any objections were to be filed  
13 within fourteen (14) days after service. *See id.* at 13. More than 14 days have passed and Defendant has  
14 not filed an objection to the F&Rs. Plaintiff did file objections to the hourly rates the F&Rs used to  
15 calculate the attorney’s fee award. Doc. 15.

16 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(c), this Court has conducted a *de*  
17 *novo* review of this case. Having carefully reviewed the entire file, the Court finds the findings and  
18 recommendations to be supported by the record and proper analysis in all but one respect: the hourly  
19 rate used to calculate the attorney’s fee award.

20 There has been some inconsistency within this district regarding an appropriate hourly rate to use  
21 for Ms. Moore’s not infrequent attorney’s fees requests. Some decisions, including more than one  
22 adopted by the undersigned, have used \$300 as Ms. Moore’s hourly rate and \$115 as the rate for the  
23 upper-level paralegal in her office. *See, e.g., Moore v. Millenium Acquisitions, LLC*, No. 1:14-cv-01402  
24 DAD-SAB, 2017 WL 1079753, at \*3 (E.D. Cal. Mar. 21, 2017); *Moore v. Watkins*, No. 1:15-cv-00115  
25 JAM-GSA, 2015 WL 5923404, at \*5 (E.D. Cal. Oct. 9, 2015), *findings and recommendation adopted*,

1 1:15-cv-00115, Doc. 32 (Feb. 18, 2016); *Kalani v. Nat'l Seating and Mobility, Inc.*, No. 2:13-cv-00061  
2 JAM-CKD, 2014 WL 3956669, at \*2-3 (E.D. Cal. Aug. 13, 2014); *Gutierrez v. Vantia Props., LLC*, No.  
3 1:13-cv-00642 LJO-SKO, 2014 WL 2106570, at \*8 (E.D. Cal. May 20, 2014), *findings and*  
4 *recommendation adopted*, 1:13-cv-00642, Doc. 43 (June 16, 2014); *Moore v. E-Z-N-Quick*, No. 1:13-cv-  
5 01522 LJO-SAB, 2014 WL 1665034, at \*6 (E.D. Cal. Apr. 24, 2014), *findings and recommendation*  
6 *adopted*, 1:13-cv-01522, Doc. 19 (May 30, 2014); *Moore v. Ruiz*, No. 1:11-cv-2159 LJO-GSA, 2012 WL  
7 3778874, at \*6 (E.D. Cal. Aug. 31, 2012), *findings and recommendation adopted*, 1:11-cv-2159, Doc. 18  
8 (Sept. 19, 2012). Other decisions, including at least one adopted by the undersigned, have used \$250 as Ms.  
9 Moore's hourly rate and \$75 for all paralegal hours. *Kalani v. Statewide Petroleum, Inc.*, No. 2:13-cv-02287  
10 KJM-AC, 2014 WL 4230920, at \*6 (E.D. Cal. Aug. 25, 2014); *Trujillo v. Ali*, No. 1:16-cv-00694 LJO-SKO,  
11 2016 WL 6902313, at \*7 (E.D. Cal. Nov. 23, 2016)(same), *findings and recommendation adopted*, 1:16-  
12 cv-694, Doc. 23 (Jan 26, 2017); *Moore v. Chase, Inc.*, No. 1:14-CV-01178 SKO, 2016 WL 3648949, at \*3  
13 (E.D. Cal. July 7, 2016)(same).

14 An attorney's hourly rate is calculated according to the prevailing market rates in the relevant  
15 community and should comport with the rates prevailing in the community for similar services by  
16 lawyers of reasonably comparable skill, experience, and reputation. *Shirrod v. Office of Workers'*  
17 *Compensation Programs*, 809 F.3d 1082, 1086 (9th Cir. 2015). The relevant community is the forum  
18 where the district court sits. *Id.* Absent from any of the cases cited above, or by Plaintiffs, or in F&Rs, or  
19 from any authority on which those cases rely, is any objective evidence pertaining to the prevailing  
20 market rates in this community.

21 Because of the conflicting hourly rate determinations among similar ADA cases in this division,  
22 The Court ordered Plaintiff to supplement the record:

23 Plaintiff cannot satisfy his burden to establish the prevailing market rate in  
24 the Fresno division with citation to case authority alone. . . . While rate  
25 determinations in other cases, particularly those setting a rate for the  
plaintiff's attorney may be considered satisfactory evidence of the  
prevailing market rate, these cases are not binding upon the Court nor do  
they sufficiently satisfy the evidentiary burden of the fee applicant due to

1 the discrepancy in hourly rate awards. There must be objective support in  
2 the record before this Court – i.e., some type of local rate report and/or  
3 affidavits of local counsel – that either establish \$300.00 is the prevailing  
4 hourly market rate in Fresno for attorneys of similar experience and skill  
5 or that \$300.00 is an out-of-district hourly rate that should be awarded  
6 because local counsel could not be retained or the special expertise of  
7 outside-the-district counsel was necessary. *See Barjon v. Dalton*, 132 F.3d  
8 496, 500 (9th Cir. 1997).

9 Doc. 17 at 3-4.

10 Plaintiff filed supplemental evidence on April 19, 2017. Doc. 18. Among other things, Plaintiff  
11 presented the widely recognized compilation of attorney and paralegal rate data provided in the Laffey  
12 Matrix, which is regularly prepared and updated by the Civil Division of the United States Attorney’s  
13 Office for the District of Columbia and used in fee shifting cases, among others. *See*  
14 <https://www.justice.gov/usao-dc/file/889176/download> (last visited May 5, 2017). The Matrix, which  
15 only surveys prevailing rates in the Washington, D.C./Baltimore, MD legal community does not directly  
16 correlate to hourly rates for attorneys and paralegals in other parts of the country. *See Fitzgerald v. Law*  
17 *Office of Curtis O. Barnes*, No. 1:12-CV-00071-LJO-GSA, 2013 WL 1627740, at \*3 (E.D. Cal. Apr. 15,  
18 2013), *findings and recommendation adopted*, 2013 WL 1896273 (E.D. Cal. May 6, 2013) (finding  
19 Laffey Matrix inapposite for determining Fresno rates).

20 However, Plaintiff also presents a rational mechanism for adjusting the Laffey Matrix rates to  
21 Fresno’s market. The United States Bureau of Labor Statistics publishes wage estimates for private  
22 lawyers and paralegals in many major metropolitan areas, allowing for a comparison of those in the  
23 Baltimore/Washington, D.C. area to those in the Fresno area, found at  
24 <https://www.bls.gov/oes/current/oessrcma.htm> (last visited May 5, 2017) (“BLS data”). The published  
25 wages are for private attorneys and paralegals, and provide a mean hourly wage of what each are  
actually paid (i.e., without regard for the number of years in practice). The Court agrees with Plaintiff  
that it is reasonable to presume that the mean hourly rates charged by firms to their clients bear a direct  
relationship to the hourly rates earned by the billers. Therefore, the percentage difference in the mean

1 amounts paid to attorneys and paralegals in the Baltimore/Washington, D.C. and Fresno are a constant  
2 that can be applied to reduce the Matrix prevailing rates proportionately.<sup>1</sup>

3 The BLS data reflects the following mean hourly rate earned by attorneys and paralegals in  
4 Washington, D.C. and Fresno:

	Washington, D. C. Area	Fresno Area	Percentage Decrease for Fresno
Attorneys	\$82.97	\$ 57.99	30.11 %
Paralegals	\$32.68	\$ 24.87	23.9 %

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8 Returning to the Laffey Matrix, attorney Tanya Moore testifies that she has been practicing for over  
9 15 years. (Declaration of Tanya E. Moore, Doc. 9-2, ¶ 5.) The current Laffey Matrix provides that prevailing  
10 hourly rates for an attorney with 11 to 15 years of experience is \$455, and paralegals is \$154 (the Laffey  
11 Matrix makes no adjustment for paralegal experience). Adjusting for the Fresno area yields the following  
12 results:

	Laffey Matrix/ Washington D.C. Rate	Percentage Adjustment	Adjusted Laffey Matrix/ Fresno Rate
15 year Attorney	\$455	30.11%	\$317
Paralegals	\$154	23.9%	\$117

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17 According to this objective information, Tanya Moore's requested rate of \$300 per hour, as well as \$95-\$115  
18 for her firm's paralegals, are within the adjusted prevailing rates shown. Using the requested hourly rates  
19 alongside the hours expended as adjusted by the F&Rs, the attorney's fee award is recalculated as follows:  
20 \$1,770 for Tanya Moore (5.9 hours at \$300 per hour), \$414 for Whitney Law (3.6 hours at \$115 per  
21 hour), and \$323 for David Guthrie (3.4 hours \$95 per hour), for a total fee award of \$2,507.

22 The Court has thoroughly reviewed the record and agrees with the F&Rs in all other respects.

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24 <sup>1</sup> This is a different and more persuasive rationale for adjustment to the Laffey Matrix than that presented by the plaintiffs  
25 and rejected by the Court in *Rodriguez v. Kraft Foods Group, Inc.*, No. 1:14-cv-01137-LJO-EPG, Doc. 85 (December 20,  
2016) (adjustment to *Laffey Matrix* by nation-wide Legal Services Component of CPI not persuasive measure to adjust  
*Laffey Matrix* for Fresno area).

1 Accordingly, for the reasons set forth above:

2 1. The findings and recommendations (Doc. 13) issued by the magistrate judge on March  
3 15, 2017, are adopted in part;

4 2. Plaintiff Jose Trujillo's motion for default judgment is GRANTED IN PART;

5 3. Defendants Balvir Sing dba Super 7 and Darshan Singh are found in violation of Title III  
6 of the ADA for the purpose of establishing damages under the California Unruh Civil Rights  
7 Act;

8 4. Plaintiff is AWARDED statutory damages in the amount of \$4,000 payable by  
9 Defendants to the Mission Law Firm, A.P.C. Trust Account and delivered to the Mission Law  
10 Firm, A.P.C., 332 North Second Street, San Jose, California 95112;

11 5. Plaintiff is awarded reasonable attorneys' fees in the amount of \$ 2,507, and costs in the  
12 amount of \$1,488 (for a total amount of \$3,995), payable by Defendants to the Mission Law Firm,  
13 A.P.C. Trust Account and delivered to the Mission Law Firm, A.P.C., 332 North Second Street, San  
14 Jose, California 95112;

15 6. Defendants are ORDERED to remediate the barriers at its facility commonly known as  
16 Super 7, located at 41304 Road 128, Orosi, California 93647 to conform to ADA Guidelines (28  
17 C.F.R. § 36) and the California Code of Regulations Title 24 requirements by ensuring the  
18 following:

19 a. a properly configured and identified van-accessible parking stall measuring at  
20 least ninety-six inches in width with an adjacent access aisle measuring at least ninety-six  
21 inches in width, containing no slopes greater than 1:50, pursuant to 1991 ADAAG §§  
22 4.1.2(5)(b) and 4.6.3 and 2010 Standards §§ 502, et seq.;

23 b. a store entrance with a threshold not exceeding ½ inch in height pursuant to 1991  
24 ADAAG §4.13.8 and 20110 Standards § 404.2.5;

25 c. aisles within the store with the required thirty-six inches of width in the path of

1 travel pursuant to 1991 ADAAG § 4.3.3 and 2010 Standards § 403.5; and

2 d. an accessible portion of the transaction counter thirty-six inches long minimum  
3 and thirty-six inches high maximum, located on an accessible route, pursuant to 1991  
4 ADAAG § 7.2(1) and 2010 Standards §§ 904, et seq.

5 7. Judgment is entered in favor of Plaintiff and against Defendant Balvir Sing dba Super 7  
6 and Darshan Singh; and

7 9. The Clerk of Court is directed to close this case.

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9 IT IS SO ORDERED.

10 Dated: May 8, 2017

/s/ Lawrence J. O'Neill  
UNITED STATES CHIEF DISTRICT JUDGE