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UNITED STATES DISTRICT COURT

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FOR THE EASTERN DISTRICT OF CALIFORNIA

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9 ROBERT DODSON,

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NO. CIV. S-06-01486 LKK/DAD

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Plaintiff,

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v.

O R D E R

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ALBERTSON'S, INC. et al.,

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Defendants.

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Plaintiff Robert Dodson brought this action against defendant Rite Aid Corporation, d/b/a Rite Aid #6073, under the Americans with Disabilities Act (ADA) after he allegedly encountered architectural barriers at a shopping center in Sacramento, California. Plaintiff accepted defendant's offer of judgment, which encompassed both injunctive relief and monetary damages. Pending before the court is plaintiff's motion for attorneys' fees. For the reasons explained below, the court awards plaintiff \$12,911.13 in fees and costs.

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I. Procedural History

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Plaintiff commenced this action in 2006 against various

26 defendants based upon architectural barriers that he allegedly

1 encountered at the Vineyard Square shopping center in Sacramento,
2 California. On January 5, 2007, all defendants except one -- Rite
3 Aid -- were dismissed from this action. On November 26, 2007,
4 plaintiff accepted Rite Aid's offer of judgment, which encompassed
5 injunctive relief and monetary damages in the amount of \$4,001.
6 Fed. R. Civ. P. 68. On November 27, 2007, the court entered
7 judgment in plaintiff's favor.

II. Standard

9 The ADA provides that "the court . . . in its discretion, may
10 allow the prevailing party . . . a reasonable attorney's fee,
11 including litigation expenses, and costs." 42 U.S.C. § 12205. The
12 propriety of awarding attorneys' fees turns on three elements: (1)
13 whether the party who seeks attorneys' fees is the prevailing
14 party; (2) whether the court should exercise its discretion to
15 award the fees; and (3) what constitutes a reasonable award.

16 A prevailing party is one who has "succeed[ed] on any
17 significant issue in litigation which achieves some of the benefit
18 the parties sought in bringing suit." Hensley v. Eckerhart, 461
19 U.S. 424, 433 (1983) (citations and internal quotation marks
20 omitted). A party achieves prevailing party status by establishing
21 a "clear, causal relationship between the litigation brought and
22 the practical outcome realized." Rutherford v. Pitchess, 713 F.2d
23 1416, 1419 (9th Cir. 1983) (citations and internal quotation marks
24 omitted). Although the attorneys' fees provision is stated in
25 discretionary terms, a prevailing plaintiff should ordinarily
26 recover attorneys' fees unless special circumstances would render

1 such an award unjust. Barrios v. Cal. Interscholastic Fed'n, 277
2 F.3d 1128, 1134 (9th Cir. 2002).

3 The starting point for calculating the amount of a reasonable
4 fee is the number of hours reasonably expended multiplied by a
5 reasonable hourly rate. Fischer v. SJB-P.D. Inc., 214 F.3d 1115,
6 1119 (9th Cir. 2000). This lodestar figure is presumptively
7 reasonable and should only be enhanced or reduced in "rare and
8 exceptional cases." Id. (quoting Pennsylvania v. Del. Valley
9 Citizens' Council for Clean Air, 478 U.S. 546, 565 (1986)). The
10 court may, however, adjust the lodestar figure if various factors
11 overcome the presumption of reasonableness. Hensley, 461 U.S. at
12 433-34. The court may adjust the lodestar figure on the basis of
13 the Kerr factors:

14 (1) the time and labor required, (2) the novelty and
15 difficulty of the questions involved, (3) the skill
16 requisite to perform the legal service properly, (4)
17 the preclusion of other employment by the attorney due
18 to acceptance of the case, (5) the customary fee, (6)
19 whether the fee is fixed or contingent, (7) time
20 limitations imposed by the client or the
circumstances, (8) the amount involved and the results
obtained, (9) the experience, reputation, and ability
of the attorneys, (10) the "undesirability" of the
case, (11) the nature and length of the professional
relationship with the client, and (12) awards in
similar cases.

21 Morales v. City of San Rafael, 96 F.3d 359, 364 n.8 (9th Cir. 1996)
22 (quoting Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 70 (9th
23 Cir. 1975))¹; see also Cairns v. Franklin Mint Co., 292 F.3d 1139,

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25 ¹ Before the lodestar method developed, Kerr's twelve factors
26 constituted the test for setting attorneys' fee awards in the Ninth
Circuit. See Kerr, 526 F.2d at 70. At present, the court uses
some of the Kerr factors in deciding the reasonableness of the

1 1158 (9th Cir. 2002) ("The court need not consider all . . .
2 factors, but only those called into question by the case at hand
3 and necessary to support the reasonableness of the fee award.").

4 **III. Analysis**

5 Plaintiff seeks attorneys' fees and costs in the amount of
6 \$15,024.81. Defendant argues that this amount should be reduced
7 to \$3,738.88. For the reasons explained below, the court awards
8 \$12,911.13.

9 **A. Prevailing Party**

10 It is undisputed that plaintiff is the prevailing party in
11 this action, given that he accepted defendant's offer of
12 judgment.

13 **B. Discretion**

14 A prevailing plaintiff should ordinarily recover attorneys'
15 fees unless special circumstances would render such an award
16 unjust. Barrios, 277 F.3d at 1134. Here, defendant does not
17 contest that at least some fees should be awarded; rather,
18 defendant only contests the precise amount.

19 **C. Reasonable Fee**

20 The starting point for calculating the amount of a
21 reasonable fee is the number of hours reasonably expended
22 multiplied by a reasonable hourly rate. See Hensley, 461 U.S.
23 at 433.

24
25 hours billed and the hourly rate. Fischer, 214 F.3d at 1119 & n.3;
26 see also Morales, 96 F.3d at 364 n.9 (listing the Kerr factors
subsumed in the initial lodestar calculation).

1 **1. Reasonableness of Hours Billed**

2 Plaintiff's counsel has billed approximately 40 hours in
3 this action. Attorney Lynn Hubbard billed 32.1 hours, and
4 attorney Scottlynn Hubbard billed 6.95 hours. Defendant
5 contends that this amount was excessive because this was a
6 "typical run of the mill ADA case," Opp'n at 11, that did not
7 present any novel or difficult issues. In addition, defendant
8 points out that plaintiff ultimately accepted its settlement
9 offer of \$4,001 (closely tracking the \$4,000 statutory minimum
10 amount of damages provided by California Civil Code § 52) and
11 that the injunctive relief only entails repairs to the restroom,
12 plus signage at the check-out stand. Nevertheless, plaintiff's
13 attorneys only billed approximately 40 hours in this action --
14 which amounts to a week's worth of work. While the results
15 obtained may have been modest, it is doubtful that litigating a
16 case from beginning to end (even if it settles before trial)
17 could take much less time. At the very least, 40 hours is not
18 an unreasonable figure.

19 The court has also reviewed defendant's item-specific
20 objections. Defendant has objected to each and every one of
21 plaintiff's billing entries -- several on the basis of the
22 hourly billing rate (a matter discussed below) but the majority
23 on other grounds. Most of these objections are not
24 meritorious.² Nevertheless, because certain letters, discovery

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26 ² For example, defendant argues that because plaintiff's
counsel chose to locate their offices in Chico, travel time to

1 requests, and stipulations were created by modifying preexisting
2 documents (and therefore should have taken significantly less
3 time than creating such documents from scratch), the court
4 reduces Lynn Hubbard's hours billed by 2.9 hours.³ Accordingly,
5 the reasonable number of hours billed is 29.2 hours for Lynn
6 Hubbard and 6.95 hours for Scottlynn Hubbard. For paralegal and
7 legal assistants, the reasonable number of hours billed is 9.9
8 hours.⁴

9 **2. Reasonable Hourly Rate**

10 The court determines the reasonable hourly rate "according
11 to the prevailing market rates in the relevant community," Blum

12 Sacramento (which plaintiff's counsel bills at a lower rate) should
13 not be compensated. The court has rejected this argument
14 elsewhere. Chapman v. Pier 1 Imports, Inc., No. 04-1339 LKK/DAD,
15 2007 WL 2462084, at *4 (E.D. Cal. Aug. 24, 2007). Defendant also
16 argues that time spent performing a conflicts check is not
17 compensable, see Martinez v. Thrify Payless, Inc., No. 02-0745
MCE/JFM, 2006 WL 279309, at *4 (E.D. Cal. Feb. 6, 2006), but as it
is "necessary and directly related to [] litigation," it is
recoverable as attorneys' fees. See Michigan v. U.S. Entl. Prot.
Agency, 254 F.3d 1087, 1093 (D.C. Cir. 2001).

18 ³ The court makes this deduction based upon the following
19 billing entries. With regard to the initial settlement demand, the
court reduces the time from .7 to .3 hours. With regard to
20 reviewing defendant's response to the request for production of
documents, set two (which simply stated their unavailability), the
court reduces the time from .5 to .2 hours. With regard to the
21 stipulation to amend the scheduling order, the court reduces the
time from .8 to .5 hours. With regard to plaintiff's acceptance
22 of the offer of judgment, the court reduces the time from .5 to .2
hours. With regard to the bill of costs, the court reduces the
23 time from 2.1 to .5 hours.

24 ⁴ The court deducts .6 hours for telephone calls, based on the
25 declaration of defendant's counsel. See Decl. of Catherine
McCleary, ¶ 2. The remaining hours billed by the paralegals and
26 legal assistants are recoverable. See Missouri v. Jenkins by
Agyei, 291 U.S. 274, 288 (1989).

1 v. Stenson, 465 U.S. 886, 895 (1984), which is typically the one
2 in which the district court sits, Gates v. Deukmejian, 987 F.2d
3 1392, 1405 (9th Cir. 1992). The experience, skill, and
4 reputation of the attorney requesting fees are taken into
5 account. See Webb v. Ada County, 285 F.3d 829, 840 & n. 6 (9th
6 Cir. 2002). The party moving for attorneys' fees "has the burden
7 of producing satisfactory evidence, in addition to the
8 affidavits of its counsel, that the requested rates are in line
9 with those prevailing in the community for similar services of
10 lawyers of reasonably comparable skill and reputation." Jordan
11 v. Multnomah County, 815 F.2d 1258, 1263 (9th Cir. 1987) (citing
12 Blum, 465 U.S. at 895-97 & n.11).

13 The rates that courts in this district currently use for
14 ADA practitioners were set approximately a decade ago. See,
15 e.g., Connally v. Denny's, Inc., No. 96-5521 SMS slip op. at 6
16 (E.D. Cal. Aug. 10, 1999) (setting hourly rate at \$250);
17 Connally v. Brooks, No. 99-0220 DFL/PAN, slip op. at 6 (E.D.
18 Cal. Dec. 4, 2000) (same). While courts may appropriately look
19 to previous cases for guidance in determining the prevailing
20 market rate, exclusive reliance on such historical data would
21 lock-in a fixed rate that ignores inflation and other market
22 pressures affecting the cost of legal services.⁵ Accordingly,

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24 ⁵ It would also ignore the fact that as attorneys acquire more
25 experience, they may justifiably charge a higher rate for their
26 services. Thus, in addition to ignoring inflation, holding a
particular attorney's rate constant for 10 years fails to take into
account his or her current level of experience.

1 rate increases over time are appropriate. See Friend v.
2 Kolodzieczak, 72 F.3d 1386, 1391 n.5 (9th Cir. 1995) (finding a
3 \$50 increase in hourly billing rates over 3 years to be
4 "reasonable in view of inflation and rising costs of legal
5 services"); see also Associated Indem. Corp. v. Fairchild
6 Indus., Inc., 961 F.2d 32, 35-36 (2d Cir. 1992) (courts may take
7 judicial notice of inflation).

8 Here, plaintiff requests \$350/hour for Lynn Hubbard,
9 \$225/hour for associate Scottlynn Hubbard, and \$90/hour for
10 paralegals and legal assistants (previously at \$250/hour,
11 \$150/hour, and \$75/hour, respectively). There is no dispute
12 that plaintiff's counsel are skilled and experienced ADA
13 practitioners. In light of the time that previous rates were
14 held constant, the court finds that these requested rates fairly
15 reflect the prevailing market rates for ADA litigation in this
16 district.⁶ See Friend, 72 F.3d at 1391 n.5; see also Decl. of
17 Lynn Hubbard ¶ 9, 22.

18 **3. Lodestar adjustment**

19 The lodestar figure is presumptively reasonable and should
20 only be enhanced or reduced in "rare and exceptional cases."
21 Fischer, 214 F.3d at 1119. Reviewing the Kerr factors not
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23 ⁶ The paralegal rate only applies to paralegal-level tasks,
24 as opposed to "purely clerical or secretarial tasks." See Missouri
25 v. Jenkins by Agyei, 491 U.S. 274, 288 n.10 (1989); Burt v.
26 Hennessey, 929 F.2d 457, 459 (9th Cir. 1991) (holding that
secretarial tasks are compensable at a lower rate than paralegal
tasks). Here, the court applies a lower rate of \$75/hour for the
.4 hours spent on faxing.

1 already addressed in arriving at the lodestar figure, the court
2 finds that this is not a rare or exceptional case. Accordingly,
3 no upward or downward adjustment to the lodestar figure is
4 appropriate.

5 **D. Costs**

6 Plaintiff requests \$1,281.06 in costs. Because this figure
7 double-counts the filing fee, service of process fee, and mail
8 expenses, the court deducts \$374.68.

9 **IV. Conclusion**

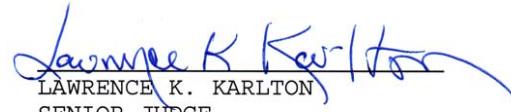
10 For the reasons explained above, the court awards
11 attorneys' fees and costs in the following amounts:

12	Lynn Hubbard:	25.2 hours @ \$350/hour	=	\$8,820.00
13	Lynn Hubbard:	4 hours @ \$175/hour ⁷	=	\$700.00
14	Scottlynn Hubbard:	6.95 hours @ \$225/hour	=	\$1,563.75
15	Paralegal:	9.9 hours @ \$90/hour	=	\$891.00
16	Secretarial Tasks:	.4 hours @ \$75/hour	=	\$30.00
17	Litigation expenses and costs:		=	\$906.38
18	Total attorneys' fees and costs:		=	\$12,911.13

19 It is therefore ORDERED that plaintiff's motion for
20 attorneys' fees and costs is GRANTED in the total sum of
21 \$12,911.13.

22 IT IS SO ORDERED.

23 DATED: February 1, 2008.


LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT

25 ⁷ This figure reflects the rate that the billing entry lists
26 for travel, although Mr. Hubbard's accompanying declaration
incorrectly applied the higher rate.

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