

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT DODSON,)	
)	
Plaintiff,)	2:06-cv-1819-GEB-GGH
)	
v.)	<u>ORDER</u> *
)	
MAZ SOUTH SACRAMENTO, INC. dba)	
BAJA FRESH MEXICAN GRILL; JAMBA)	
JUICE COMPANY dba JAMBA JUICE;)	
TOGO'S EATERIES, INC. dba TOGO'S;)	
BASKIN ROBBINS INCORPORATED dba)	
BASKIN ROBBINS; RR SACRAMENTO,)	
LLC; STARBUCKS CORPORATION dba)	
STARBUCKS #6714; CORDANO GATEWAY,)	
LLC; and MZLB SACRAMENTO, LLC,)	
)	
Defendants.)	

Defendant Starbucks Corporation ("Starbucks") moves for costs and attorney's fees under 42 U.S.C. § 12205 (the "ADA"), arguing it is the prevailing party under the statute and entitled to attorney fees and costs because Plaintiff litigated frivolous ADA claims and the sole claim tried was an "unpreserved" claim. Plaintiff counters his lawsuit prompted Starbucks to remedy all of his ADA claims except

* This matter was determined to be suitable for decision without oral argument. L.R. 78-230(h).

1 the claim that was tried; and that Plaintiff's trial theory was not
2 frivolous.

3 The parties have not presented a record sufficient for a
4 decision on the frivolity of Plaintiff's claims that were not tried
5 since the record does not contain sufficient information on whether or
6 not Starbucks remedied ADA violations in response to Plaintiff's
7 lawsuit. Further, Starbucks' argument that the claim tried was not
8 preserved for trial is erroneous since it was preserved for trial in
9 the Final Pretrial Order; nor has Starbucks shown that the issue tried
10 was "frivolous, unreasonable, or without foundation." See Brown v.
11 Lucky Stores, 246 F.3d 1182, 1190 (9th Cir. 2001) ("Attorneys fees and
12 [costs] under [the ADA] should be awarded to a prevailing defendant
13 only if the plaintiff's action was frivolous, unreasonable, or without
14 foundation").

15 Therefore, Starbucks' motion for costs and attorney's fees
16 is denied.

17 Dated: February 6, 2009

18
19 
20 _____
21 GARLAND E. BURRELL, JR.
22 United States District Judge
23
24
25
26
27
28