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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MARSHALL LOSKOT,

Plaintiff,

v.

ANNIE'S PANDA GARDEN; SHIH  
KUN WANG and HONG YING WANG,  
as Co-Trustees under that  
certain DECLARATION OF TRUST  
executed September 21, 1993;  
and SU NI ZHENG, an  
individual dba ANNIE'S PANDA  
GARDEN,

Defendants.

No. 2:13-CV-00213-JAM-JFM

**ORDER AWARDING FEES AND COSTS**

Plaintiff Marshall Loskot ("Plaintiff") sued Defendants' restaurant for architectural barriers allegedly violating the Americans with Disabilities Act ("ADA") and California law. The parties settled pursuant to a Federal Rule of Civil Procedure 68 offer. Plaintiff now moves for fees and costs.<sup>1</sup>

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<sup>1</sup> This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for May 6, 2015.

1 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

2 Plaintiff visited Defendants' restaurant on multiple  
3 occasions in 2012. Compl.(Doc. #2) ¶ 2. After sending a letter  
4 advising of architectural barriers he encountered as a person who  
5 uses a wheelchair and receiving no response, Plaintiff brought  
6 suit seeking injunctive relief and statutory damages. Compl.  
7 ¶ 20. The parties filed no motions, but engaged in negotiations  
8 and settled the claims as to injunctive relief. See Frankovich  
9 Decl. (dated January 15, 2015) Exh. A. Following the pretrial  
10 conference, Defendants also extended an offer of judgment as to  
11 damages under Federal Rule of Civil Procedure 68 (Doc. #23),  
12 which Plaintiff accepted (Docs. ##24, 26). Plaintiff now moves  
13 for an award of fees and costs consistent with that Rule 68  
14 agreement (Doc. #31). Defendants oppose the motion (Doc. #35).

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16 II. OPINION

17 Defendants oppose Plaintiff's fee application on two  
18 grounds: first, that the parties entered into a prior settlement  
19 inclusive of attorney's fees and costs, and second, that attorney  
20 Thomas E. Frankovich's hourly rate is too high.

21 A. Prior Settlement of Attorney's Fees

22 The Court interprets a settlement agreement "according to  
23 the objective intent of the parties." Gallagher v. San Diego  
24 Unified Port Dist., 2009 WL 2781553, at \*11 (S.D. Cal. Aug. 31,  
25 2009) (citing Botefur v. City of Eagle Point, Or., 7 F.3d 152  
26 (9th Cir. 1993)). The parties here have evidenced an objective  
27 intent that the issue of attorney's fees be resolved by this  
28 Court pursuant to Plaintiff's fee application. Defendants'

1 assertion that the parties entered into a prior agreement is  
2 unsupported. They provide a May 2014 email from Mr. Frankovich's  
3 legal assistant stating, "This is ti [sic] verify that the case  
4 has settled for \$8750, we will send a General Release. [sic]"  
5 See Opp. Exh. A. Defendants' claim that this settlement amount  
6 was memorialized in October 2014, see Opp. at 2, but the document  
7 they provide does not reference this \$8750 and instead states  
8 that "[a]ttorneys' fees, costs and litigation expenses remain  
9 before the Court." Mot. Exh. at 3. Furthermore, the parties  
10 later entered into the Rule 68 agreement that provides, "the  
11 parties have agreed to resolve the issues of attorney's fees cost  
12 and litigation expenses by a fee application." Doc. #26 at 1.  
13 The Court therefore concludes that the parties have evidenced an  
14 objective intent to resolve the issue of fees by this fee  
15 application.

16 B. Hourly Rates

17 The parties apparently agree that the loadstar method is  
18 appropriate for calculating fees in this case. See Hall v. City  
19 of Fairfield, 2014 WL 1286001, at \*3 (E.D. Cal. Mar. 31, 2014)  
20 (citing Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 69-70  
21 (9th Cir. 1975)). Plaintiff has requested that Mr. Frankovich's  
22 hourly rate be set at \$400 per hour. See Mot. at 10. Defendants  
23 argue that the prevailing rate in the Sacramento community for  
24 ADA cases is \$250 per hour. Opp. at 2.

25 "A court awarding attorney fees must look to the prevailing  
26 market rates in the relevant community." Bell v. Clackamas Cty.,  
27 341 F.3d 858, 860 (9th Cir. 2003). The prevailing rate for an  
28 ADA barriers case in Sacramento for an experienced attorney such

1 as Mr. Frankovich is \$300. See Johnson v. Allied Trailer Supply,  
2 2014 WL 1334006, at \*6 (E.D. Cal. Apr. 3, 2014); Jones v. Cty. Of  
3 Sacramento, 2011 WL 3584332, at \*6 (E.D. Cal. Aug. 12, 2011).

4 The Court has considered Mr. Frankovich's experience and  
5 reputation, but finds \$400 per hour to be excessive. A rate of  
6 \$400 is generally reserved for "complicated civil rights cases  
7 litigated by attorneys with thirty or more years of experience."  
8 See Johnson, 2014 WL 1334006, at \*5 (collecting cases); Jones,  
9 2011 WL 3584332, at \*6 (finding that \$350 was reasonable for an  
10 attorney with more than twenty years of experience in a police  
11 brutality case with multiple claims and defendants that proceeded  
12 to trial). In contrast, this ADA case was not complicated.  
13 Accord Yates v. Vishal Corp., 2014 WL 572528, at \*6 (N.D. Cal.  
14 Feb. 4, 2014) (characterizing Mr. Frankovich's ADA practice to  
15 include "simple" cases which he has "reduced . . . to a kind of  
16 routine") (quotation marks omitted); see Joint Pretrial Statement  
17 at 3:6 (noting that this case arose from "nearly identical ADA  
18 deficiencies" as a previous case litigated by a different  
19 plaintiff). The Court also declines to go as low as \$250,  
20 because Defendants have not provided a comparable case or other  
21 evidence that \$250 per hour is an appropriate rate. Defendants  
22 cite Loskot v. D&K Spirits, LLC, 2011 WL 567364 (E.D. Cal. 15,  
23 2011), but that case held that \$250 per hour was reasonable  
24 because the matter had resolved by default judgment. See id. at  
25 \*5. The Court therefore calculates Mr. Frankovich's loadstar at  
26 \$300 per hour.

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C. Other Aspects of the Fee Application

Defendants do not challenge any other aspects of the fee application. The Court has reviewed the breakdown of the hours billed, the rates billed for Mr. Frankovich's paraprofessionals, the enumerated costs, and the other aspects of the fee application, and finds them to be reasonable.

III. ORDER

For the reasons set forth above, the Court awards Plaintiff reasonable attorney's fees and costs in the following amounts:

Fees: \$13,302  
Costs: \$ 1,930  
Total: \$15,232

IT IS SO ORDERED.

Dated: May 11, 2015



JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE