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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SCOTT JOHNSON,)	Case No. 2:14-cv-01672-JAM-DB
)	
Plaintiff,)	
)	ORDER RE PLAINTIFF'S MOTION
v.)	FOR ATTORNEY'S FEES AND COSTS
)	
FRED ARTHUR BALLEW; TATA FOODS)	
CORPORATION, a California)	
Corporation,)	
)	
Defendants.)	

Plaintiff Scott Johnson ("Plaintiff") sued Defendants Fred Arthur Ballew and Tata Foods Corporation ("Defendants"), alleging that their business, a Denny's restaurant, does not comply with state and federal disability access laws. Compl., ECF No. 1. The Court granted partial summary judgment on Plaintiff's claims arising under the Americans with Disabilities ("ADA") and Unruh Civil Rights Act. Order, ECF No. 41. Plaintiff now seeks \$24,608.80 in attorney's fees and costs under 42 U.S.C. § 12205 and Cal. Civ. Code § 52(a). Mot. Fees, ECF No. 43. Defendants did not oppose Plaintiff's motion. For the reasons stated below, the Court grants Plaintiff's motion but reduces the amount of fees and costs sought by Plaintiff.¹

¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for April 21, 2020.

1 I. OPINION

2 A. Attorney's Fees

3 1. Legal Standard

4 When determining the reasonableness of an attorney's fee
5 request, the Court engages in a two-step process. First, the Court
6 determines the amount of a reasonable fee by multiplying the number
7 of hours reasonably expended on the litigation by a reasonable
8 hourly rate. Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). This
9 total, the "lodestar" amount, yields a presumptively reasonable
10 fee. Gonzalez v. City of Maywood, 729 F.3d 1196, 1202 (9th Cir.
11 2013).

12 Second, the Court decides whether to adjust the lodestar
13 figure upward or downward pursuant to a variety of factors. Id. at
14 1209. Those factors include: (1) time and labor required;
15 (2) novelty and difficulty of questions involved; (3) skill
16 requisite to perform legal service properly; (4) preclusion of
17 other employment by attorney due to acceptance of the case;
18 (5) customary fee; (6) time limitations imposed by client or
19 circumstances; (7) amount involved and results obtained;
20 (8) experience, reputation, and ability of attorneys; (9) nature
21 and length of professional relationship with client; and
22 (10) awards in similar cases. Kerr v. Screen Extras Guild, Inc.,
23 526 F.2d 67, 70 (9th Cir. 1975); see also Resurrection Bay
24 Conservation Alliance v. City of Seward, 640 F.3d 1087, 1095, n.5
25 (9th Cir. 2011) (noting that two former factors—the fixed or
26 contingent nature of a fee and the desirability of a case—are no
27 longer relevant).

28 "The essential goal in shifting fees (to either party) is to

1 do rough justice, not to achieve auditing perfection.” Fox v.
2 Vice, 563 U.S. 826, 838 (2011). Thus, the Court may consider its
3 “overall sense of a suit, and may use estimates in calculating and
4 allocating an attorney’s time.” Id.

5 2. Analysis

6 a. Hours Reasonably Expended

7 Plaintiff submits a “Billing Summary” and “Billing Statement,”
8 itemizing the time spent by nine attorneys—Mark Potter, Phyl Grace,
9 Dennis Price, Amanda Seabock, Chris Carson, Sara Gunderson, Elliott
10 Montgomery, Bradley Smith, and Isabel Masanque—on this case. Pl.’s
11 Ex. 2, ECF No. 43-4. Plaintiff also attached two Central District
12 of California orders granting fees to some of these attorneys, ECF
13 No. 43-5, 43-6; a declaration from an attorney in support of
14 Plaintiff’s attorneys’ rates, ECF No. 43-10; and an attorney rate
15 report, ECF No. 43-9. The Court finds that not all of the hours
16 billed by Plaintiff’s counsel are reasonable, and therefore reduces
17 the following categories of billed hours accordingly.

18 i. Estimated Hours

19 As an initial matter, Price’s billing statement includes
20 “estimates” for “time to review opposition brief, draft the reply
21 brief, attend oral argument” (8 hours). Pl.’s Ex. 2 at 11.
22 Defendants did not file an opposition to Plaintiff’s motion; no
23 reply brief was drafted; and no oral argument took place on this
24 motion. The Court finds that billing for activities that did not
25 occur is not reasonable. Thus, the eight hours billed for the
26 opposition, reply, and hearing will be omitted from the fee award.
27 See, e.g., Johnson v. Yates, No. 2:14-cv-1189-TLN-EFB, 2017 WL
28 3438737, at *2 (E.D. Cal. Aug. 10, 2017) (striking hours billed for

1 a hearing that was not held).

2 ii. Review of Minute Orders

3 Potter repeatedly bills for reviewing Minute Orders and
4 Notices on the docket. See Potter Billing Entries on: 9/16/2015,
5 11/30/2015, 10/2/2017, 11/28/2017, 8/13/2018, 8/16/2018, 1/18/2019,
6 3/5/2019. These Minute Orders and Notices are typically one to two
7 sentences long, and often deal with boilerplate issues. See, e.g.,
8 September 16, 2015 Min. Order, ECF No. 14 (instructing the parties,
9 in one sentence, to file a joint status report). The Court finds
10 it inefficient and unreasonable that the most experienced attorney,
11 who coincidentally bills at the highest rate, is reviewing run-of-
12 the-mill orders and notices from the Court or the Clerk's Office.
13 Accordingly, the Court reduces the hours billed by Potter for
14 reviewing Minute Orders and Notices in half, from 0.8 hours to 0.4
15 hours.

16 iii. Instructions to Assistants

17 Several attorneys on the team repeatedly bill for giving
18 instructions to their assistants. See Potter Billing Entries on:
19 8/18/2014, 6/18/2018, 6/27/2018, 6/28/2018, 8/3/2018, 8/7/2018,
20 3/27/2019, 7/7/2019; Grace Billing Entries on: 7/13/2015, 8/6/2015,
21 8/25/2015, 10/18/2017, 10/31/2017, 11/6/2017, 11/28/2017,
22 8/10/2018, 8/21/2018, 8/25/2018, 9/5/2018, 9/14/2018, 9/26/2018,
23 11/18/2018, 12/1/2018, 12/26/2018, 1/3/2019; Gunderson Billing
24 Entries on: 6/20/2019, 6/26/2019, 6/27/2019, 8/2/2019, 8/8/2019,
25 8/23/2019; Montgomery Billing Entries on: 4/11/2019, 4/16/2019,
26 4/24/2019, 4/25/2019, 4/30/2019, 5/1/2019, 6/5/2019, 6/7/2019,
27 6/10/2019, 6/12/2019, 6/14/2019. These entries are ones for which
28 giving instructions to a legal assistant is either the only task or

1 the predominating one. Together, these entries amount to 4.3 hours
2 billed. The Court finds the number of times Plaintiff's counsel
3 billed merely for instructing their legal assistants is excessive,
4 and that the cumulative amount of time allegedly spent doing so is
5 unreasonable.

6 The Court thus, reduces the amount of time billed for giving
7 instructions to legal assistants by half. Accordingly, Potter's
8 entries will be reduced from 0.8 hours to 0.4 hours; Grace's
9 entries will be reduced from 1.7 hours to 0.8 hours; Gunderson's
10 entries will be reduced from 0.6 to 0.3 hours; and Montgomery's
11 entries will be reduced from 1.2 hours to 0.6 hours. This amounts
12 to a total of 2.2 hours deducted.

13 iv. Other Attorneys

14 The Court is not persuaded by Plaintiff's explanation as to
15 why it was necessary for nine attorneys to work on this simple case
16 for which Plaintiff's counsel has no shortage of experience. See
17 Mot. Fees at 12 ("The Center for Disability Access has been at the
18 vanguard for ADA litigation, obtaining numerous favorable decisions
19 that have shaped the face of disability rights litigation in
20 California and the Ninth Circuit at large."); see also Potter Decl.
21 ECF No. 43-3, ¶¶ 6-8. While the Ninth Circuit has found a
22 litigation team involving multiple attorneys is justified in
23 "important class action litigation," Probe v. State Teachers' Ret.
24 Sys., 780 F.2d 776, 785 (9th Cir. 1986), the use of nine attorneys
25 on the present case constitutes overstaffing. See id. ("Hours that
26 are excessive, redundant, or otherwise unnecessary are to be
27 excluded when calculating a reasonable attorneys' fee.").

28 The Court, thus, cuts hours attributable to unnecessary

1 overstuffed and omits the hours billed by Carson, Smith, Seabock,
2 and Masanque. This results in a reduction of 0.3 hours for Carson,
3 1 hour for Smith, 2.1 hours for Seabock, and 7.2 hours for
4 Masanque. This amounts to a total of 10.6 hours deducted for
5 overstaffing. The Court finds the rest of Plaintiff's counsel's
6 time entries reasonable and not subject to reduction. In total,
7 the Court reduces Plaintiff's counsel's billing statement by 21.2
8 hours.

9 b. Reasonable Hourly Rate

10 Plaintiff requests his attorneys' time be compensated at the
11 following rates: \$595 per hour (Potter); \$550 per hour (Grace);
12 \$450 per hour (Price and Gunderson); and \$400 per hour
13 (Montgomery). Potter Decl. at ¶¶ 6, 10, 11, 14, 15.

14 Judicial opinions within the Eastern District of California
15 have found that \$300 per hour is a reasonable rate for Potter.
16 Johnson v. Bach Thuoc Vu, No. 2:14-cv-02786-JAM-EFB, 2017 WL
17 2813210, at *3 (E.D. Cal. June 29, 2017). Similarly, this
18 district's decisions have found that \$250 per hour is an
19 appropriate rate for Grace. Id. Finally, decisions provide that
20 \$150 per hour is a reasonable rate for junior associates in
21 disability access cases in the Sacramento legal community. Id.
22 Plaintiff has not presented the Court with a compelling reason to
23 depart from the rates awarded in other similar cases.

24 Accordingly, based on their number of years of legal
25 experience, the Court calculates the lodestar with reasonable
26 hourly rates as: Potter at \$300, Grace at \$250, and other attorneys
27 at \$150. As stated above, Carson, Smith, Seabock, and Masanque's
28 hours were stricken due to overstaffing. The resulting lodestar in

1 this case is as follows:

2 Attorney	Hours	Rate	Total
3 Potter	7.7	\$350.00	\$2,695.00
4 Grace	6.8	\$250.00	\$1,700.00
5 Price	3.1	\$150.00	\$ 465.00
Gunderson	2.1	\$150.00	\$ 315.00
6 Montgomery	1.5	\$150.00	\$225.00
			\$5,400.00

7 B. Costs

8 1. Legal Standard

9 The ADA authorizes an award of litigation expenses and costs
10 to a prevailing party, including expert witness fees. Lovell v.
11 Chandler, 303 F.3d 1039, 1058 (9th Cir. 2002). A prevailing party
12 may recover out-of-pocket expenses counsel normally charge fee-
13 paying clients. Dang v. Cross, 422 F.3d 800, 814 (9th Cir. 2005).
14 The requested costs must be reasonable in amount. Harris v.
15 Marhoefer, 24 F.3d 16, 20 (9th Cir. 1994).

16 2. Analysis

17 Plaintiff seeks litigation expenses in the amount of
18 \$2,781.30. Those fees are composed of service fees (\$245), filing
19 fees (\$400), investigator fees (\$200), and expert fees (\$1,655.88).
20 Although Defendants did not file objections to these costs, other
21 decisions in this district have not found this lack of objection
22 relieves Plaintiff of providing supporting documentation for
23 requested costs. See Yates, 2017 WL 3438737, at *3 (denying
24 investigation and expert costs where no bills were provided).

25 Plaintiff did not attach receipts or bills verifying that the
26 amounts billed for service and by his investigator were reasonable
27 and necessary. Potter provided a declaration that he paid his
28 investigator \$200 to conduct this case's investigation. Potter

1 Decl. ¶ 4. Potter's declaration does not explain why no billing
2 statement was submitted for his investigator and does not mention
3 the service fee. As the Court has no basis upon which to judge
4 whether these costs were reasonably incurred, the "Court will not
5 award such an amount arbitrarily." Id.

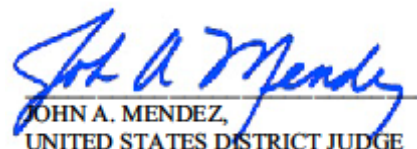
6 As for the expert fees, Plaintiff's motion contains several
7 inconsistencies. Plaintiff's brief in support of his motion
8 requests expert fees for "retain[ing] an expert to conduct site
9 inspection at the property and to prepare [an] [e]xpert report
10 pursuant to the inspection" at a cost of \$1,655.88. Mot. at 25.
11 Meanwhile, Potter's declaration says he "paid [his] expert
12 \$1,936.30 for traveling to site to conduct a site inspection."
13 Potter Decl. ¶ 5. And the expert's invoice bills \$1,936.30 for a
14 "Cancelled Access Compliance Evaluation and Report." Pl.'s Ex. 6,
15 ECF No. 43-8. Thus, it seems that the site inspection never took
16 place and the expert report was not produced. The Court is left to
17 guess whether the expert fees amounted to \$1,655.88 or \$1,939.30.
18 The Court declines to speculate and denies Plaintiff's request to
19 be reimbursed for this cost. Accordingly, Plaintiff is awarded
20 only \$400 in costs for the filing fee.

21 II. ORDER

22 For the reasons set forth above, the Court GRANTS in part
23 Plaintiff's Motion for Attorney's Fees and Costs. The Court awards
24 Plaintiff \$5,400.00 in attorney's fees and \$400.00 in costs, for a
25 total of \$5,800.00.

26 IT IS SO ORDERED.

27 Dated: April 20, 2020

28 
JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE