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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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ROBERT LEVINE and VERONICA
GUZMAN,

 Plaintiffs,

 v.

THE SLEEP TRAIN, INC.; LIVE
NATION ENTERTAINMENT, INC.;
COASTAL BREEZE LIMOUSINE,
LLC; BGE YUBA, LLC; and DOES
1-20, inclusive,

 Defendants.

CIV. NO. 2:15-00002 WBS AC

MEMORANDUM AND ORDER RE: MOTION
FOR ATTORNEY'S FEES AND COSTS

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Plaintiff Robert Levine, who is disabled, and his
fiancée, plaintiff Veronica Guzman, brought this action under the
American with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12101
et seq., and California's Unruh Civil Rights Act ("UCRA"), Cal.
Civ. Code §§ 51-53, based on barriers encountered at the Sleep
Train Amphitheatre. Defendant Coastal Breeze Limousine, LLC
("Coastal Breeze") allegedly instigated the towing of plaintiffs'

1 car from designated disabled parking at the concert venue.
2 Coastal Breeze failed to make an appearance in this case and, on
3 June 21, 2016, this court adopted the magistrate judge's findings
4 and recommendations awarding plaintiffs default judgment against
5 Coastal Breeze, enjoining Coastal Breeze from interfering with
6 plaintiffs' right to use the overflow parking lot, and awarding
7 Levine \$4,000 in statutory damages and Guzman \$1,000 in statutory
8 damages. (Docket No. 90.) Presently before the court is
9 plaintiffs' motion for attorney's fees and costs. (Docket No.
10 96.)

11 Coastal Breeze was not served with plaintiffs' motion
12 for attorney's fees because under Local Rule 135(d) "no service
13 need be made upon parties held in default for failure to appear
14 unless the document involved asserts new or additional claims for
15 relief against such defaulting parties." E.D. Cal. L.R. 135(d);
16 see also Fed. R. Civ. P. 5 ("No service is required on a party
17 who is in default for failing to appear. But a pleading that
18 asserts a new claim for relief against such a party must be
19 served on that party under Rule 4."). This request for
20 attorney's fees is not a new or additional claim for relief
21 because plaintiffs requested reasonable attorney's fees in their
22 Complaint, (See Compl. ¶¶ 2, 21, 25, 32 (Docket No. 1)), which
23 was properly served on Coastal Breeze, (Docket Nos. 2, 9). See
24 Annunciation v. W. Capital Fin. Servs. Corp., 97 F.3d 1458 (9th
25 Cir. 1996) (affirming the district court's decision to enter
26 default judgment against defendant and award attorney's fees
27 where defendant was served with a summons and copy of the
28 complaint, which requested "reasonable attorney's fees").

1 Coastal Breeze therefore did not file an opposition or statement
2 of non-opposition. The hearing date of August 22, 2017 is
3 vacated and the court takes plaintiffs' motion under submission
4 without oral argument.

5 "The ADA authorizes a court to award attorneys' fees,
6 litigation expenses, and costs to a prevailing party." Lovell v.
7 Chandler, 303 F.3d 1039, 1058 (9th Cir. 2002); see also 42 U.S.C.
8 § 12205. The court may also award attorney's fees to the
9 prevailing party under UCRA. Cal. Civ. Code §§ 52(a), 55. A
10 plaintiff prevails "when actual relief on the merits of his claim
11 materially alters the legal relationship between the parties by
12 modifying the defendant's behavior in a way that directly
13 benefits the plaintiff." Farrar v. Hobby, 506 U.S. 103, 111-12
14 (1992). A "'material alteration of the legal relationship occurs
15 [when] the plaintiff becomes entitled to enforce a judgment,
16 consent decree, or settlement against the defendant.'" Fischer
17 v. SJB-P.D. Inc., 214 F.3d 1115, 1118 (9th Cir. 2000) (quoting
18 Farrar, 506 U.S. at 113).

19 Here, plaintiffs are the prevailing party as the court
20 entered default judgment against Coastal Breeze, enjoined Coastal
21 Breeze from future interference, and ordered Coastal Breeze to
22 pay statutory damages. The legal relationship between the two
23 parties was altered because "the plaintiff[s] can force the
24 defendant to do something [it] otherwise would not have to do."
25 Id.

26 The court calculates a reasonable amount of attorney's
27 fees by following a two-step process. First, the court
28 determines the lodestar calculation--"the number of hours

1 reasonably expended on the litigation multiplied by a reasonable
2 hourly rate.” Hensley v. Eckerhart, 461 U.S. 424, 433 (1983).
3 Second, the court may adjust the lodestar figure “pursuant to a
4 variety of factors.” Gonzalez v. City of Maywood, 729 F.3d 1196,
5 1209 (9th Cir. 2013); see also Kerr v. Screen Guild Extras, Inc.,
6 526 F.2d 67, 70 (9th Cir. 1975) (enumerating factors on which
7 courts may rely in adjusting the lodestar figure). There is a
8 strong presumption, however, that the lodestar amount is
9 reasonable. Fischer, 214 F.3d at 1119 n.4.

10 In determining the size of an appropriate fee award,
11 the Supreme Court has emphasized that courts need not “achieve
12 auditing perfection” or “become green-eyeshade accountants.” Fox
13 v. Vice, 563 U.S. 826, 838 (2011). Rather, because the
14 “essential goal of shifting fees . . . is to do rough justice,”
15 the court may “use estimates” or “take into account [its] overall
16 sense of a suit” to determine a reasonable attorney’s fee. Id.

17 A. Lodestar Calculation

18 1. Hours Reasonably Expended

19 Plaintiffs seek \$13,275 in fees for a total of 23.10
20 attorney hours and 25.60 paralegal hours of work on tasks related
21 to Coastal Breeze and the present motion. (Pls.’ Mot. for
22 Att’y’s Fees (“Pls.’ Mot.”) at 1, 9 (Docket No. 96).) Attorney
23 Celia McGuinness and paralegals Aaron Clefton and Emily O’Donohoe
24 each submitted declarations and billing records itemizing the
25 time spent on matters related to Coastal Breeze in this case.
26 (McGuinness Decl. Ex. 1 (Docket No. 97); Clefton Decl. Ex. 3
27 (Docket No. 98); O’Donohoe Decl. Ex. 3. (Docket No. 99).) The
28 billing records show McGuinness billed 23.10 hours, Clefton 6.70

1 hours, and O'Donohoe 18.90 hours. (Id.) The court finds that
2 the hours expended are reasonable.

3 2. Reasonable Hourly Rate

4 The court must multiply the reasonable hours expended
5 in this litigation by a reasonable hourly rate to calculate the
6 lodestar amount. To determine the reasonableness of the hourly
7 rates claimed, the court looks to "the prevailing market rates in
8 the relevant community," Blum v. Stenson, 465 U.S. 866, 895
9 (1984), "for similar work performed by attorneys of comparable
10 skill, experience, and reputation," Chalmers v. City of Los
11 Angeles, 796 F.2d 1205, 1210-11 (9th Cir. 1986). In general,
12 "the relevant community is the forum in which the district court
13 sits." Barjon v. Dalton, 132 F.3d 496, 500 (9th Cir. 1997). The
14 burden is on the party seeking fees "to produce satisfactory
15 evidence . . . that the requested rates are in line with those
16 prevailing in the community for similar services by lawyers of
17 reasonably comparable skill, experience and reputation." Blum,
18 465 U.S. at 895 n.11.

19 Plaintiffs seek hourly rates of \$400 for attorney
20 McGuinness, \$165 for senior paralegal Clefton, and \$155 for
21 paralegal O'Donohoe. (Pls.' Mot. at 7-8.) McGuinness is the
22 lead associate attorney at the Law Offices of Paul L. Rein and
23 has been a trial lawyer for twenty-five years. (McGuinness Decl.
24 ¶¶ 1, 3.) She has practiced disability rights law exclusively
25 for the past eight years and has tried more than twenty-five
26 cases in federal and state court. (Id. ¶¶ 3, 6.) Senior
27 paralegal Clefton has eleven years of experience in paralegal
28 work for cases involving plaintiffs with disabilities and is

1 currently a third-year law student at John F. Kennedy University
2 College of Law. (Clefton Decl. ¶¶ 2, 4.) Paralegal O'Donohoe
3 graduated from law school in 2008 and has been a paralegal at the
4 Law Offices of Paul L. Rein since March 2014. (O'Donohoe Decl.
5 ¶¶ 2-3.)

6 In several recent cases this court has found hourly
7 rates of \$300 for partners, between \$175 and \$260 for senior
8 associates with significant experience, and \$150 for junior
9 associates to be reasonable for disability access cases in the
10 Sacramento legal community. See, e.g., Johnson v. Wayside Prop.,
11 Inc., Civ. No. 2:13-1610 WBS AC, 2014 WL 6634324, at *8 (E.D.
12 Cal. Nov. 21, 2014), appeal voluntarily dismissed, No. 14-17479
13 (9th Cir. Apr. 27, 2015); Johnson v. Allied Trailer Supply, Civ.
14 No. 2:13-1544 WBS EFB, 2014 WL 1334006, at *6 (E.D. Cal. Apr. 3,
15 2014); Johnson v. Gross, Civ. No. 2:14-02242 WBS KJN, 2016 WL
16 3448247, at *2-3 (E.D. Cal. June 23, 2016). For the reasons
17 discussed in more detail in the orders in those cases, the court
18 finds that an hourly rate of \$260 is appropriate for lead
19 associate McGuinness, based on her twenty-five years as an
20 attorney and eight practicing disability rights law.

21 With regard to paralegals, this court has previously
22 found hourly rates of \$75 to be reasonable in this market. See,
23 e.g., Deocampo v. Potts, Civ. No. 2:06-1283 WBS CMK, 2014 WL
24 788429, at *9 (E.D. Cal. Feb. 25, 2014) (“[C]ourts in this
25 district have generally found that \$75 is an appropriate hourly
26 rate for paralegals.”); Joe Hand Promotions, Inc. v. Albright,
27 Civ. No. 2:11-2260 WBS CMK, 2013 WL 4094403, at *3 (E.D. Cal.
28 Aug. 13, 2013) (finding the paralegal hourly rate of \$75 to be

1 reasonable, rather than the requested rate of \$150, in a case for
2 unauthorized public exhibition of a televised sporting event);
3 McCarthy v. Reynolds, Civ. No. 2:09-2495 WBS DAD, 2011 WL
4 4344147, at *1 (E.D. Cal. Sept. 14, 2011) (finding the law
5 clerk's hourly rate of \$75 to be reasonable in a Title VII sexual
6 harassment and retaliation case); Lowe v. Unum Life Ins. Co. of
7 Am., Civ. No. S-05-00368 WBS GGH, 2007 WL 4374020, at *6-7 (E.D.
8 Cal. Dec. 14, 2007) (awarding the paralegal \$75 per hour for work
9 in an ERISA case). The court will therefore apply an hourly rate
10 of \$75 for the time expended by paralegals Clefton and O'Donohoe
11 in this case.

12 Accordingly the lodestar in this case is \$7,926,
13 calculated as follows:

14	McGuinness:	23.1	x	\$260	=	\$6,006.00
15	Clefton:	6.7	x	\$75	=	\$502.50
16	O'Donohoe:	18.9	x	\$75	=	<u>\$1,417.50</u>
17						\$7,926.00

18 Because plaintiffs do not seek a multiplier or
19 reduction to the lodestar and there is a "strong presumption that
20 the lodestar amount is reasonable," Fischer, 214 F.3d at 1119
21 n.4, the court finds that no further adjustment to the lodestar
22 is warranted.

23 B. Costs

24 Under the ADA, a court may award litigation expenses
25 and costs. Lovell, 303 F.3d at 1058; 42 U.S.C. § 12205.
26 Plaintiffs seek \$267.66 in litigation costs and expenses
27 attributable to obtaining a default judgment against Coastal
28 Breeze. (Pls.' Mot. at 10.) This includes service costs of

1 \$248.50 and shipping costs of \$19.16, as verified by the
2 submitted copies of the original receipts. (McGuinness Decl. Ex.
3 2.) Based on these records, the court will award plaintiffs
4 \$267.66 in expenses and costs.

5 IT IS THEREFORE ORDERED that plaintiffs' motion for
6 attorney's fees (Docket No. 96) be, and the same hereby is,
7 GRANTED in part. Coastal Breeze is directed to pay plaintiffs
8 \$7,926 in attorney's fees and \$267.66 in costs.

9 Dated: August 16, 2016



10 **WILLIAM B. SHUBB**
11 **UNITED STATES DISTRICT JUDGE**
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