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SCOTT JOHNSON,

Plaintiff,

v.

KEANG SIM LIM and LY TECH  
NGOV,

Defendants.

No. 2:15-cv-00152-JAM-AC

**ORDER RE PLAINTIFF'S MOTION FOR  
ATTORNEYS' FEES AND EXPENSES**

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Plaintiff Scott Johnson sued Defendants Keang Sim Lim and Ly Tech Ngov, alleging that Defendants' restaurant in Fairfield, California did not comply with the Americans with Disabilities Act ("ADA") and California law.<sup>1</sup> ECF No. 1. After prevailing on summary judgment, ECF No. 33, Plaintiff moves for attorneys' fees and litigation expenses. ECF No. 36. Defendants objected to Plaintiff's Notice of Non-Receipt of Opposition.<sup>2</sup> ECF No. 39.

<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 December 13, 2016.

<sup>2</sup> Defendants did not file an opposition brief. Instead, they explained that they "mis-calendared the due date" for filing an opposition brief, and sought leave to file one. ECF No. 39, at 1. This Court denied Defendants' request. ECF No. 40.

1 I. OPINION

2 A. Legal Standard

3 A prevailing party is entitled to reasonable attorneys'  
4 fees and expenses under the ADA and the Unruh Act. 42 U.S.C.  
5 § 12205; Cal. Civ. Code § 52(a). "[A] plaintiff 'prevails' when  
6 actual relief on the merits of his claim materially alters the  
7 legal relationship between the parties by modifying the  
8 defendant's behavior in a way that directly benefits the  
9 parties." Farrar v. Hobby, 506 U.S. 103, 111-12 (1992). To  
10 determine a reasonable fee, courts calculate "the number of  
11 hours reasonably expended on the litigation multiplied by a  
12 reasonable hourly rate." Hensley v. Eckerhart, 461 U.S. 424,  
13 433 (1983).

14 B. Analysis

15 1. Hours Reasonably Expended

16 Plaintiff submitted a billing summary itemizing the hours  
17 billed by five attorneys: Mark Potter, Phyl Grace, Dennis Price,  
18 Amanda Lockhart, and Isabel Masanque. Billing Summary, ECF  
19 No. 36-3, at 1. Initially, Plaintiff requested \$16,234.47 in  
20 fees and costs, but has reduced it to \$13,784.47. Mot. at 1;  
21 Request for Modified Award, ECF No. 38, at 2.

22 The Court finds Plaintiff's attorneys fee request to be  
23 excessive. Plaintiff seeks nearly \$14,000 for services billed  
24 in this relatively non-complex ADA case—an area of the law in  
25 which Plaintiff's attorneys have extensive experience. First,  
26 the Court finds it unreasonable and inefficient to staff five  
27 attorneys on a case that parallels hundreds of other cases these  
28 attorneys have brought on Plaintiff's behalf. Even counsel

1 acknowledges that the "case presented no significant legal  
2 issues of first impression" and "did not present specialized or  
3 skillful challenges and was a fairly straight-forward  
4 application of the law." Mot. at 11, 13. Plaintiff's counsel  
5 does not explain why this case required two partners and three  
6 associates. To staff five lawyers is cumulative and  
7 inefficient; one partner and one associate should have sufficed.

8 Second, Plaintiff's attorneys frequently use boilerplate  
9 forms to litigate ADA cases. In fact, the Court is also  
10 reviewing another request by this law firm for attorneys' fees  
11 in a similar ADA case—the pleadings and briefing there parallel  
12 the pleadings and briefing here. This is not the first time  
13 this Court has addressed this issue with Plaintiff's attorneys.  
14 Just 4 months ago, this Court concluded that some of Potter's,  
15 Lockhart's, and Masanque's billing entries were unreasonable.  
16 See Johnson v. Chan, No. 14-cv-1671, 2016 WL 4368104, at \*2-3  
17 (E.D. Cal. Aug. 15, 2016).

18 The boilerplate nature of the filings in this case  
19 suggest that it should have taken Potter little time to draft  
20 the complaint, discovery requests, and attorneys' fees motion.  
21 The Court therefore reduces Potter's 1/18/2015 entry for  
22 drafting the complaint from 0.6 to 0.3 hours, 4/8/2015 entry for  
23 drafting discovery from 1.4 to 0.5 hours, and 10/17/2016 entry  
24 for drafting the fee motion from 1.2 to 0.5 hours.

25 Having made the above reductions, the Court finds that  
26 Potter reasonably expended 6.8 hours and Lockhart reasonably  
27 expended 14.3 hours. The Court declines to award fees for the  
28 hours Grace, Price, and Masanque billed because their work was

1 unnecessarily duplicative and inefficient. See Chan, 2016 WL  
2 4368104 at \*1. See also Davis v. City & Cty. of San Francisco,  
3 976 F.2d 1536, 1543 (9th Cir. 1992) ("It simply is not  
4 reasonable for a lawyer to bill, at her regular hourly rate, for  
5 tasks that a non-attorney employed by her could perform at a  
6 much lower cost.").

7           2. Reasonable Hourly Rate

8           The Court must now multiply the reasonable hours expended in  
9 this litigation by the reasonable hourly rate for each attorney.  
10 See Chan, 2016 WL 4368104 at \*3. Courts determine reasonable  
11 hourly rates by reviewing the "prevailing market rates in the  
12 relevant community." See Blum v. Stenson, 465 U.S. 886, 895  
13 (1984)). The party seeking fees must "produce satisfactory  
14 evidence...that the requested rates are in line with...lawyers of  
15 reasonably comparable skill, experience and reputation." See id.  
16 at 895 n.11.

17           Plaintiff seeks hourly rates of \$350 for Potter and \$200 for  
18 Lockhart. Mot. at 3. Plaintiff's counsel relies on John  
19 O'Connor's expertise on attorneys' hourly billing rates, ECF No.  
20 36-4, and the 2014 Real Rate Report. ECF No. 36-5. This Court  
21 is not persuaded that the requested hourly rates are reasonable.  
22 First, O'Connor's declaration offers no help because O'Connor  
23 does not evaluate disability access cases; instead, O'Connor's  
24 analysis primarily pertains to labor litigation. See ECF No. 36-  
25 4. Second, the Real Rate Report addresses reductions to hourly  
26 fees for numerous corporate practice areas, but not disability  
27 access. ECF No. 36-5, at 29. The Report does not provide a  
28 helpful benchmark for lawyers litigating disability access cases

1 for non-corporate clients.

2 "District judges can...consider the fees awarded by other  
3 judges in the same locality in similar cases." Moreno v. City of  
4 Sacramento, 534 F.3d 1106, 1115 (9th Cir. 2008). Recently, this  
5 Court and other judges in the Eastern District of California have  
6 found the hourly rates of \$300 for Potter and \$150 for junior  
7 associates reasonable for disability access cases in the  
8 Sacramento legal community. See Chan, 2016 WL 4368104 at \*3;  
9 Johnson v. Gross, No. 14-2242, 2016 WL 3448247, at \*3 (E.D. Cal.  
10 June 23, 2016); Johnson v. Lin, No. 13-cv-1484, 2016 WL 1267830,  
11 at \*4 (E.D. Cal. Mar. 31, 2016).

12 Accordingly, the attorneys' fees here are awarded as  
13 follows:

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15	Potter	6.8	x	\$300	=	\$2,040.00
16	Lockhart	14.3	x	\$150	=	\$2,145.00
17						\$4,185.00

18 Lastly, the Court grants Plaintiff's motion to recover  
19 \$3,979.47 in litigation expenses.

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21 II. ORDER

22 For the reasons set forth above, the Court GRANTS  
23 Plaintiff's motion for attorneys' fees and expenses. The Court  
24 awards \$8,164.47.

25 IT IS SO ORDERED.

26 Dated: December 15, 2016

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JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE