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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

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10 SCOTT JOHNSON,

11 Plaintiff,

12 v.

13 SAIF ALI AHMED SALEH;  
14 MICHAEL'S MARKET, INC., a  
California Corporation,

15 Defendants.

Case No. 2:16-cv-00617-JAM-KJN

**ORDER GRANTING PLAINTIFF'S MOTION  
FOR ATTORNEYS' FEES**

16

17 Plaintiff Scott Johnson ("Plaintiff") sued Defendants John  
18 Saif Ali Ahmed Saleh and Michael's Market, Inc. ("Defendants"),  
19 alleging that Michael's Market did not comply with state and  
20 federal disability access laws. Compl., ECF No. 1. The Court  
21 granted summary judgment on Plaintiff's claims arising under the  
22 Americans with Disabilities (ADA) and Unruh Civil Rights Act.  
23 Order, ECF No. 28. Plaintiff now seeks attorney's fees under 42  
24 U.S.C. § 12205 and Cal. Civ. Code § 52(a).<sup>1</sup> Mot. Fees, ECF No.  
25 33.

26

27 <sup>1</sup> This motion was determined to be suitable for decision without  
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled  
for February 13, 2018.

1 I. OPINION

2 Plaintiff believes that the Court should award him  
3 "reasonable attorney fees" and litigation expenses in the amount  
4 of \$19,088.00. Mot. Fee at 1. Defendants' counsel filed an  
5 opposition to Plaintiff's first motion for attorney fees. The  
6 first motion was stricken because Plaintiff failed to comply with  
7 the Court's order regarding filing requirements. See Opp'n, ECF  
8 No. 31; Minute Order, ECF No. 32. Plaintiff refiled the motion  
9 and also submitted a reply to Defendants' opposition, in  
10 compliance with the Court's order. Reply, ECF No. 36.

11 When determining the reasonableness of an attorney's fee  
12 request, the Court engages in a two-step process. First, the  
13 Court determines the amount of a reasonable fee by multiplying  
14 the number of hours reasonably expended on the litigation by a  
15 reasonable hourly rate. Hensley v. Eckerhart, 461 U.S. 424, 433  
16 (1983). This total, the "lodestar" amount, yields a  
17 presumptively reasonable fee. Gonzalez v. City of Maywood, 729  
18 F.3d 1196, 1202 (9th Cir. 2013).

19 Second, the Court decides whether to adjust the lodestar  
20 figure upward or downward pursuant to a variety of factors. Id.  
21 at 1209. Those factors include: (1) time and labor required;  
22 (2) novelty and difficulty of questions involved; (3) skill  
23 requisite to perform legal service properly; (4) preclusion of  
24 other employment by attorney due to acceptance of the case;  
25 (5) customary fee; (6) time limitations imposed by client or  
26 circumstances; (7) amount involved and results obtained;  
27 (8) experience, reputation, and ability of attorneys; (9) nature  
28 and length of professional relationship with client; and

1 (10) awards in similar cases. Kerr v. Screen Extras Guild, Inc.,  
2 526 F.2d 67, 70 (9th Cir. 1975); see also Resurrection Bay  
3 Conservation Alliance v. City of Seward, 640 F.3d 1087, 1095, n.5  
4 (9th Cir. 2011) (noting that two former factors—the fixed or  
5 continent nature of a fee and the desirability of a case—are no  
6 longer relevant).

7 “The essential goal in shifting fees (to either party) is to  
8 do rough justice, not to achieve auditing perfection.” Fox v.  
9 Vice, 563 U.S. 826, 838 (2011). Thus, the Court may consider its  
10 “overall sense of a suit, and may use estimates in calculating  
11 and allocating an attorney’s time.” Id.

12 A. Hours Reasonably Expended

13 Plaintiff submits a “Billing Summary” and “Billing  
14 Statements,” itemizing the time spent by eight attorneys—Mark  
15 Potter, Phyl Grace, Mary Melton, Isabel Masanque, Sara Gunderson,  
16 Dennis Price, Teresa Allen, and Amanda Lockhart—on this case.  
17 Pl.’s Ex. 2, ECF No. 33-3. Plaintiff also attached an invoice  
18 for attendance at a June 2, 2017 deposition cancelled by  
19 Plaintiff’s counsel, ECF No. 33-4; two invoices for site surveys  
20 and mileage, ECF No. 33-5, 33-6; a declaration from an attorney  
21 in support of Plaintiff’s attorneys’ rates, ECF No. 33-7; and an  
22 attorney rate report, ECF No. 33-8.

23 1. Potter

24 Not all of the hours billed by Plaintiff’s counsel are  
25 reasonable. Potter’s billing statement includes “estimates” for  
26 “time to review opposition brief, draft the reply brief, attend  
27 oral argument” (7 hours). Pl.’s Ex. 2 at 3. As an initial  
28 matter, these activities should be broken into separate time

1 entries. Additionally, no oral argument took place on this  
2 motion. Plaintiff concedes that the time estimated for oral  
3 argument should be stricken. Reply at 4. Furthermore, because  
4 Potter did not draft the reply, he cannot bill for it. Instead,  
5 the Court will credit thirty minutes of time, a reasonable  
6 estimate for the quality of the reply brief, to Masanque. Thus,  
7 the seven hours Potter billed for the cancelled attorney fee  
8 hearing will be omitted from the fee award. See, e.g., Johnson  
9 v. Yates, No. 2:14-cv-1189-TLN-EFB, 2017 WL 3438737, at \*2 (E.D.  
10 Cal. Aug. 10, 2017) (striking hours billed for a hearing that was  
11 not held).

12 Potter also bills 0.9 hours for "[d]iscussions with client;  
13 discussed his case; discussed his contacts with the geographical  
14 area for standing purposes and his likelihood of returning to  
15 maintain federal jurisdiction." Id. at 2. Given the hundreds of  
16 cases filed by Plaintiff and his counsel in the Eastern District  
17 of California, a discussion about standing could not reasonably  
18 have required this much time. This entry is reduced to 0.2  
19 hours.

20 As in other cases in which Potter represented Plaintiff, the  
21 Court will reduce Potter's 2.2 hours of public records research  
22 by half to 1.1 hours. Johnson v. Swanson, No. 2:15-CV-00215-TLN-  
23 DB, 2017 WL 3438735, at \*3 (E.D. Cal. Aug. 10, 2017) ("[C]ourts  
24 have found public records research to be clerical in nature and  
25 suited for paralegal work."); Yates, 2017 WL 3438737, at \*2  
26 (reducing 2.2 hours of public records research by half because of  
27 its clerical nature); Johnson v. Xinliang Bai, No. 2:16-cv-1698-  
28 WBS-GGH, 2017 WL 3334006, at \*2 (E.D. Cal. Aug. 4, 2017) (same);

1 Johnson v. Guedoir, No. 2:14-cv-00930-TLN-AC, 2017 WL 3172994, at  
2 \*3 (E.D. Cal. July 26, 2017) (same).

3 In total, the Court reduces the hours billed by Potter  
4 (16.2) by 9.5 hours for excessive or unreasonable entries.  
5 Potter's remaining total is 6.7 hours.

6 2. Melton

7 Plaintiff has further conceded that fees and costs billed  
8 for a deposition cancelled by his attorney were not reasonable.  
9 Reply at 4. The Court will strike Melton's time entries  
10 associated with this deposition on May 15 and 16, 2017, omitting  
11 five hours from her billing statement.<sup>2</sup>

12 The Court reduces the hours billed by Melton (6.1) by 5.3  
13 hours for excessive or unreasonable entries. Melton's remaining  
14 total is 0.8 hours.

15 3. Gunderson

16 Plaintiff failed to provide any information in his brief  
17 about Gunderson. The Court has no means by which to determine  
18 her qualifications or experience, essential elements to  
19 determining a reasonable attorney fee. All of Gunderson's 15.7  
20 hours will be omitted from the award.<sup>3</sup>

21 4. Other Attorneys

22 Plaintiff has not explained why it was necessary for eight  
23 attorneys to work on this case. The Court has reviewed the  
24 filings on the docket and finds that this case was a simple

25 \_\_\_\_\_  
26 <sup>2</sup> The Court will also strike Plaintiff's request for costs in the  
amount of \$200 for this deposition.

27 <sup>3</sup> Further review of Gunderson's time entries shows overbilling.  
28 For example, Gunderson billed in unreasonable increments for time  
spent leaving voicemails and instructing assistants.

1 matter in which the bulk of legal material was recycled from  
2 Plaintiff's past cases. While the Ninth Circuit has found a  
3 litigation team involving multiple counsel is justified in  
4 "important class action litigation," Probe v. State Teachers'  
5 Ret. Sys., 780 F.2d 776, 785 (9th Cir. 1986), the use of eight  
6 attorneys on the present case constitutes overstaffing. See id.  
7 ("Hours that are excessive, redundant, or otherwise unnecessary  
8 are to be excluded when calculating a reasonable attorneys'  
9 fee."). The Court will not award fees for hours billed by  
10 attorneys other than Potter, Melton, and Masanque.

11 The Court reduces the hours billed by Masanque (15.1) by 4.1  
12 hours for excessive or unreasonable entries. The Court grants  
13 Masanque 0.5 hours of time for the reply brief submitted pursuant  
14 to the Court's order. Masanque's remaining total is 11.5 hours.

15 B. Reasonable Hourly Rate

16 In his motion, Plaintiff requests his attorneys' time be  
17 compensated at the following rates: \$350 per hour (Potter); \$250  
18 per hour (Grace); and \$200 per hour (Melton, Masanque, Gunderson,  
19 Price, Allen, Lockhart). Potter Dec., ECF No. 33-2, p. 3; Pl.'s  
20 Ex. 2 at 2-12.

21 Judicial opinions within the Eastern District of California  
22 have found that \$300 per hour is a reasonable rate for Potter.  
23 Johnson v. Bach Thuoc Vu, No. 2:14-cv-02786-JAM-EFB, 2017 WL  
24 2813210, at \*3 (E.D. Cal. June 29, 2017). Similarly, decisions  
25 provide that \$150 per hour is a reasonable rate for junior  
26 associates in disability access cases in the Sacramento legal  
27 community. Id. Plaintiff has not presented the Court with a  
28 reason to depart from the rates awarded in other similar cases.

1 Accordingly, the Court calculates the lodestar with  
2 reasonable hourly rates as: Potter at \$300 and other attorneys at  
3 \$150. As stated above, Gunderson's hours were stricken for  
4 failure to provide any information about her qualifications and  
5 experience in the briefing. The lodestar in this case is as  
6 follows.

Attorney	Hours	Rate	Total
Potter	6.7	\$300.00	\$2,010.00
Melton	0.8	\$150.00	\$ 120.00
Masanque	11.5	\$150.00	\$1,725.00
<b>Reasonable Attorney Fees Earned</b>			<b>\$3,855.00</b>

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12 C. Costs

13 The ADA authorizes an award of litigation expenses and costs  
14 to a prevailing party, including expert witness fees. Lovell v.  
15 Chandler, 303 F.3d 1039, 1058 (9th Cir. 2002). A prevailing  
16 party may recover out-of-pocket expenses counsel normally charge  
17 fee-paying clients. Dang v. Cross, 422 F.3d 800, 814 (9th Cir.  
18 2005). The requested costs must be reasonable in amount. Harris  
19 v. Marhoefer, 24 F.3d 16, 20 (9th Cir. 1994).

20 Here, Plaintiff seeks litigation expenses in the amount of  
21 \$4,838.00. Those fees are composed of investigator fees  
22 (\$400.00), filing fees (\$400.00), service fees (\$95.50),  
23 deposition fees (\$200.00), and expert fees (\$3,742.50).  
24 Plaintiff bears the burden of providing supporting documentation  
25 for requested costs. See Yates, 2017 WL 3438737, at \*3 (denying  
26 investigation and expert costs where no bills were provided).

27 Plaintiff did not attach receipts or bills verifying that  
28 the amounts billed for service and by his investigator were

1 reasonable and necessary. Potter provided a declaration that he  
2 paid his investigator \$400 to conduct this case's investigation.  
3 Potter Dec., ECF No. 33-2, p. 2. Potter's declaration does not  
4 explain why no billing statement was submitted for his  
5 investigator and does not mention the service fee. As the Court  
6 has no basis upon which to judge whether these costs were  
7 reasonably incurred, the "Court will not award such an amount  
8 arbitrarily." Yates, 2017 WL 3438737, at \*3. Additionally, as  
9 noted above, Plaintiff shall not receive deposition fees for a  
10 deposition cancelled by his own attorney.

11 The Court grants Plaintiff \$4,142.50 in filing and expert  
12 fees.

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14 II. ORDER

15 For the reasons set forth above, the Court GRANTS  
16 Plaintiff's motion for attorneys' fees and costs. The Court  
17 awards Plaintiff \$3,855.00 in attorney's fees and \$4,142.50 in  
18 costs, for a total of \$7,997.50.

19 IT IS SO ORDERED.

20 Dated: March 2, 2018

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JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE