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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SARAH EARLY,)	Case No. 2:16-cv-00740-JAM-DB
)	
Plaintiff,)	
)	ORDER GRANTING IN PART AND
v.)	DENYING IN PART DEFENDANT'S
)	BILL OF COSTS, PLAINTIFF'S
KEYSTONE RESTAURANT GROUP, LLC,)	BILL OF COSTS, AND PLAINTIFF'S
)	MOTION FOR ATTORNEYS' FEES AND
Defendant.)	COSTS

This matter is before the Court on Plaintiff Sarah Early's ("Plaintiff" or "Early") Motion for Attorneys' Fees and Costs. Fee Mot., ECF No. 139. Defendant Keystone Restaurant Group, LLC ("Defendant" or "Keystone") opposes the motion. Opp'n, ECF No. 152. Additionally, both Early and Keystone submitted bills of costs. See Def.'s Bill of Costs, ECF No. 133; Pl.'s Bill of Costs, ECF No. 134. Each party opposes awarding the other costs. See Def.'s Obj. to Costs, ECF No. 135; Pl.'s Obj. to Costs, ECF No. 136; Def.'s Resp. to Pl.'s Obj., ECF No. 150. For the reasons set forth below, the Court GRANTS IN PART AND DENIES IN PART Keystone's Bill of Costs, GRANTS IN PART AND DENIES IN PART Early's Bill of Costs, and GRANTS IN PART AND DENIES IN PART

1 Early's Motion for Attorneys' Fees and Costs.¹

2
3 I. INTRODUCTION

4 Early filed this case in April 2016 alleging she had been
5 the victim of sexual harassment, discrimination, and retaliation
6 during her employment at a Sonic restaurant operated by
7 franchisee Keystone. See Second Am. Complaint, ECF No. 18. The
8 Court granted Early partial summary judgment on one claim, ECF
9 No. 51, and the jury returned a verdict for Early on two
10 additional claims, ECF No. 121. Specifically, Early prevailed on
11 her California Fair Employment and Housing Act (FEHA) hostile
12 work environment, quid pro quo sexual harassment, and failure to
13 prevent sexual harassment and retaliation claims against
14 Keystone. The jury awarded Early \$50,000 in damages. Both Early
15 and Keystone have submitted Bill of Costs: Early for \$8,027.54,
16 Pl.'s Bill of Costs, and Keystone for \$9,759.73, Def.'s Bill of
17 Costs.

18 As the prevailing party in this action, Plaintiff now seeks
19 attorneys' fees in the amount of \$394,073.50 and non-taxable
20 costs in the amount of \$11,488.78. See Fee Mot. Keystone
21 opposes Early's motion for fees and seeks its own costs based on
22 settlement offers made prior to trial. See Opp'n.

23 II. LEGAL STANDARD

24 Under Eastern District of California Local Rule 293, a
25 prevailing party has twenty-eight (28) days after entry of a
26

27 ¹ 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 5, 2019.

1 final judgment to move for an award of attorneys' fees. E.D.
2 Cal. L.R. 293(a). "[T]he fee applicant bears the burden of
3 establishing entitlement to an award and documenting the
4 appropriate hours expended and hourly rates." Hensley v.
5 Eckerhart, 461 U.S. 424, 437 (1983).

6 The Ninth Circuit requires a district court to calculate an
7 award of attorneys' fees by first calculating the "lodestar."
8 See Caudle v. Bristow Optical Co. Inc., 224 F.3d 1014, 1028 (9th
9 Cir. 2000). "The 'lodestar' is calculated by multiplying the
10 number of hours the prevailing party reasonably expended on the
11 litigation by a reasonable hourly rate." Id. at 1028 (citing
12 Morales v. City of San Rafael, 96 F.3d 359, 363 (9th Cir. 1996)).
13 The lodestar is presumptively reasonable unless some exceptional
14 circumstance justifies deviation. Quesada v. Thomason, 850 F.2d
15 537, 539 (9th Cir. 1998). As the Ninth Circuit has indicated, "a
16 district court should exclude from the lodestar amount hours that
17 are not reasonably expended because they are 'excessive,
18 redundant, or otherwise unnecessary.'" Van Gerwen v. Guarantee
19 Mutual Life Co., 214 F.3d 1041, 1045 (9th Cir. 2000) (quoting
20 Hensley, 461 U.S. at 434). The Court is under an independent
21 duty to reach its own "lodestar" value. Hensley, 461 U.S. at
22 433.

23 After computing the lodestar, the district court assesses
24 whether additional considerations enumerated in Kerr v. Screen
25 Extras Guild, Inc., 526 F.2d 67, 70 (9th Cir. 1975), abrogated on
26 other grounds by City of Burlington v. Dague, 505 U.S. 557
27 (1992), require the court to adjust the figure. Caudle, 224 F.3d
28 at 1028. The factors laid out in Kerr, along with the

1 substantially overlapping criteria enumerated in Local Rule 293,
2 include: (1) the time and labor required; (2) the novelty and
3 difficulty of the questions involved; (3) the skill requisite to
4 perform the legal service properly; (4) the preclusion of other
5 employment by the attorney due to acceptance of the case; (5) the
6 customary fee; (6) whether the fee is fixed or contingent;
7 (7) time limitations imposed by the client or the circumstances;
8 (8) the amount involved and the results obtained; (9) the
9 experience, reputation, and ability of the attorneys; (10) the
10 "undesirability" of the case; (11) the nature and length of the
11 professional relationship with the client; (12) awards in similar
12 cases; and (13) such other matters as the Court may deem
13 appropriate under the circumstances. Kerr, 526 F.2d at 70; E.D.
14 Cal. L.R. 293(c).

16 III. DEFENDANT'S BILL OF COSTS

17 Keystone seeks payment of its costs in the amount of
18 \$9,759.73 by Early under Federal Rule of Civil Procedure 68.
19 Def.'s Bill of Costs. "Under Rule 68, if a plaintiff rejects a
20 defendant's offer of judgment, and the judgment finally obtained
21 by plaintiff is not more favorable than the offer, the plaintiff
22 must pay the costs incurred subsequent to the offer." UMG
23 Recordings, Inc. v. Shelter Capital Partners LLC, 718 F.3d 1006,
24 1033 (9th Cir. 2013).

25 Here, there is evidence that Keystone made Early two offers
26 to settle for \$75,000. The first, made on October 21, 2016, was
27 inclusive of attorneys' fees and costs. 2016 Offer, ECF No. 133-
28 2, pp. 5-6. As Early's attorneys' fees and costs at this point

1 exceeded \$25,000, this offer was not more favorable than her
2 award at trial. See Delta Air Lines, Inc. v. August, 450 U.S.
3 346, 354 (1981) (“[Rule 68(d)] does not apply ... to judgments in
4 favor of the plaintiff for an amount greater than the settlement
5 offer.”). Keystone’s second offer for \$75,000, made on September
6 12, 2017, was exclusive of reasonable attorneys’ fees and costs.
7 2017 Offer, ECF No. 133-2, pp. 10-11. This offer applied to “all
8 causes of action alleged” in the Second Amended Complaint and was
9 both clear and unconditional. Id. at 10. Thus, although Early
10 prevailed at trial and received \$50,000, her award was less than
11 Keystone’s September 2017 Rule 68 offer of \$75,000. Accordingly,
12 Early must pay Keystone’s costs incurred after September 12,
13 2017, in addition to her own, under Rule 68(d). See Champion
14 Produce, Inc. v. Ruby Robinson Co., 342 F.3d 1016, 1026 (9th Cir.
15 2003) (“The award is mandatory; Rule 68 leaves no room for the
16 court’s discretion.”).

17 Early makes two arguments in opposition to Defendant’s Bill
18 of Costs. Pl.’s Obj. Def.’s Bill of Costs, ECF No. 136. She
19 first argues that Keystone’s offer did not qualify under Rule 68
20 because it did not include an admission of liability. Id. at 2-
21 3. This argument is fatally flawed, as a Rule 68 offer need not
22 admit liability, so long as it is a valid offer of judgment.
23 See, e.g., MRO Commc’ns, Inc. v. Am. Tel. & Tel. Co., 197 F.3d
24 1276, 1279 (9th Cir. 1999) (referencing a valid Rule 68 offer
25 that stated: “This offer of judgment is made for the purposes
26 specified in Rule 68, and is not to be construed either as an
27 admission that the defendant is liable in this action or that the
28 plaintiff has suffered any damage.”); Laxague v. Fireman’s Fund

1 Ins. Co., 269 Cal. Rptr. 456, 459 (Ct. App. 1990)

2 ("Significantly, no judicial determination of liability is
3 necessary to effectuate a settlement under [R]ule 68.").

4 Second, Early argues that Rule 68 does not apply because she
5 was not successful on any of her federal claims. Pl.'s Obj.
6 Def.'s Bill of Costs at 3-4. She cites to MRO Communications,
7 Inc. v. AT&T Co., 197 F.3d 1276 (9th Cir. 1999), in support of
8 this argument. The case is, however, inapposite to her argument
9 because the defendant in that case was the prevailing party on
10 all claims, both state and federal. See id. at 1279 ("On July
11 30, 1998, the district court entered a final judgment for AT & T
12 on all of MRO's claims."). Early does not produce a single
13 factually analogous case in support of her argument that Rule 68
14 does not apply because the jury found for Keystone on the federal
15 law claims. The Court finds that Rule 68 governs Keystone's
16 offer of judgment. See Day v. Sears Holdings Corp., No.
17 CV1109068MMMPJWX, 2013 WL 12125738, at *6 (C.D. Cal. May 28,
18 2013) (citing to Shady Grove Orthopedic Associates, P.A. v.
19 Allstate Ins. Co., 559 U.S. 393 (2010) for the principle that
20 Rule 68 governs cost recovery of California law claims in federal
21 court); MARTIN A. SCHWARTZ & JOHN E. KIRKLIN, SECTION 1983
22 LITIGATION STATUTORY ATTORNEY'S FEES § 8.04(4th ed. 2019-1
23 Supp.).

24 Although the jury did not find for Early on her Title VII
25 claims, the jury found in her favor on two FEHA claims and the
26 Court granted her summary judgment on a third FEHA claim. Early
27 succeeded on a "significant issue in litigation" and "achieve[d]
28 some of the benefit [she] sought in bringing the suit."

1 Kletzelman v. Capistrano Unified Sch. Dist., 91 F.3d 68, 70 (9th
2 Cir. 1996). The jury verdict changed the parties' relationship
3 in Early's favor. Id. at 71. Early is the prevailing party. As
4 Early declined a more favorable Rule 68 offer in September 2017,
5 the Court must award post-offer costs to Keystone.

6 Many of the costs for which Keystone seeks reimbursement
7 were incurred prior to the September 12, 2017 Rule 68 offer.
8 Def.'s Bill of Costs at 3. Keystone incurred all of the
9 transcript fees prior to this date, and thus these are not
10 recoverable. Keystone also incurred its witness fees after
11 making the September 12, 2017 offer, and accordingly may recover
12 for those costs.

Date	Reason	Amount
5/31/2018	Witness fee for trial witness Sherry Clark	\$262.88
9/05/2018- 9/06/2018	Lodging during trial for trial witness Sherry Clark	\$249.92
9/04/2018- 9/07/2018	Air travel to and from trial for trial witness Denise Lee	\$560.95
09/04/2018- 9/07/2018	Lodging during trial for trial witness Denise Lee	\$1,008.61
	Total Post-Offer Costs	\$2,082.36

23
24 The Court awards Keystone \$2,082.36 in post-offer costs.

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1 IV. PLAINTIFF'S BILL OF COSTS

2 Early seeks costs from Keystone in the amount of \$8,027.54
3 as the prevailing party. Pl.'s Bill of Costs. Federal Rule of
4 Civil Procedure 54(d) creates "a presumption in favor of awarding
5 costs to a prevailing party, but vests in the district court
6 discretion to refuse to award costs." Ass'n of Mexican-Am.
7 Educators v. State of California, 231 F.3d 572, 591 (9th Cir.
8 2000) (en banc). Although Keystone's September 2017 offer
9 truncates the costs Early may otherwise recover under Rule 54(d),
10 Rule 68 does not prevent Early's recovery of her pre-September
11 12, 2017 offer costs. See Stanczyk v. City of New York, 752 F.3d
12 273, 281 (2d Cir. 2014) ("[E]very Circuit to have confronted this
13 question appears to have reached the same conclusion: Rule 68
14 reverses Rule 54(d) and requires a prevailing plaintiff to pay a
15 defendant's post-offer costs if the plaintiff's judgment is less
16 favorable than the unaccepted offer."); Champion Produce, Inc. v.
17 Ruby Robinson Co., 342 F.3d 1016, 1024 (9th Cir. 2003) ("The Rule
18 is not designed to affect the plaintiff's recovery of pre-offer
19 costs."). Early's recoverable charts are detailed in the
20 following chart:

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Date	Reason	Amount
6/16/2016	Service of Summons on Keystone Restaurant Group, LLC	\$79.75
3/16/2017	Service of Subpoena on Sirenio Gonzalez	\$70.00
3/24/2017	Service of Subpoena on Sirenio Gonzalez	\$285.00
4/01/2017	Service of Subpoena on Sherry Clark	\$93.90
4/17/2017	Service of Subpoena on Diem Nguyen Smith	\$70.00
5/03/2017	Service of Subpoena on Diem Nguyen Smith	\$227.00
5/18/2017	Service of Subpoena on Diem Nguyen Smith	\$245.00
5/18/2017	Service of Subpoena on Diem Nguyen Smith	\$70.00
4/25/2017	Deposition of Sirenio Gonzalez	\$668.15
5/03/2017	Deposition of Sherry Clark	\$932.15
5/16/2017	Deposition of Diem Nguyen-Smith	\$440.85
5/22/2017	Deposition of Denise Lee	\$916.55
7/05/2017	Deposition of Diem Nguyen-Smith	\$977.75
8/22/2017	Deposition of Sarah Early	\$1,100.55
	Total Pre-Offer Costs	\$6,176.65

In its review of Early's exhibits, the Court found several instances where the receipts displayed higher total prices than those listed in Early's counsel's declaration. To resolve those inconsistencies, the Court awarded the lower amount listed in

1 Early's counsel's sworn declaration. The Court awards Early
2 \$6,176.65 for costs sought as the prevailing party.

3
4 V. PLAINTIFF'S MOTION FOR ATTORNEYS' FEES

5 A. Rule 68 Does Not Limit Early's Attorneys' Fees

6 Rule 68 requires the Court to look at whether the underlying
7 statute provides attorneys' fees to the prevailing party as
8 costs. Marek v. Chesny, 473 U.S. 1, 9 (1985) (holding that "the
9 most reasonable inference is that the term 'costs' in Rule 68 was
10 intended to refer to all costs properly awardable under the
11 relevant substantive statute or other authority."). Here, the
12 Court finds that the relevant statute is the one that conferred
13 Early's prevailing party status: FEHA. See Champion Produce,
14 Inc. v. Ruby Robinson Co., 342 F.3d 1016, 1028 (9th Cir. 2003)
15 ("Marek's construction of Rule 68 applies not only to federal
16 fee-granting statutes but also to state fee-granting statutes").
17 The relevant section of FEHA provides, in part:

18 In civil actions brought under this section, the
19 court, in its discretion, may award to the prevailing
20 party, including the department, reasonable attorney's
21 fees and costs, including expert witness fees, except
22 that, notwithstanding Section 998 of the Code of Civil
23 Procedure, a prevailing defendant shall not be awarded
fees and costs unless the court finds the action was
frivolous, unreasonable, or groundless when brought,
or the plaintiff continued to litigate after it
clearly became so.

24 Cal. Gov't Code § 12965(b). Cf. Laxague v. Fireman's Fund Ins.
25 Co., 269 Cal. Rptr. 456, 459 (Ct. App. 1990) ("Both the procedure
26 and purpose of [Rule 68] are strikingly similar to California
27 Code of Civil Procedure section 998."). The Ninth Circuit has
28 considered the applicability of Rule 68 to Section 12965(b) in

1 dicta, stating that "Section 12965(b) clearly provides attorney's
2 fees separately from costs." Hasan v. Contra Costa Cty., 45 F.
3 App'x 795, 796 (9th Cir. 2002) (unpublished). Finding that FEHA
4 does not include attorneys' fees as costs, the Court determines
5 that Early's rejection of the September 2017 Rule 68 offer does
6 not bar her from collecting post-offer attorneys' fees.

7 B. Calculation of Early's Attorneys' Fees

8 Under both California and federal law, the determination of
9 whether Early's attorneys' fees are reasonable begins with a
10 determination of the lodestar: the reasonable hourly rates
11 multiplied by the number of hours reasonably spent. See, e.g.,
12 Hensley, 461 U.S. at 433; Taylor v. Nabors Drilling USA, LP, 166
13 Cal. Rptr. 3d 676, 693 (Ct. App. 2014).

14 In the instant case, Early argues the total lodestar claimed
15 for work on the merits is \$394,073.50, based on 510.70 hours by
16 Jocelyn Burton at \$530 per hour, 481.10 hours by Scott Nakama at
17 \$250 per hour, 31.6 hours by Helen O'Keefe at \$100 per hour, and
18 17.3 hours by Kirtecia Griggs at \$100 per hour. Burton Decl.,
19 ECF No. 139-1, p. 4. Early's counsel does not seek a lodestar
20 enhancement. See id. Keystone's counsel objects to Early's fee
21 request on multiple grounds. See Fee Opp'n.²

22 1. Hours Reasonably Expended

23 In determining the lodestar, the Court first must determine

24 _____
25 ² Keystone moves to strike a declaration by Early's counsel in
26 support of her reply brief. Def. Obj., ECF No. 156. The Court
27 denies Keystone's request. Early's counsel's declaration is
28 submitted in response to Keystone's Rule 68 arguments. It also
demonstrates a fact that is readily apparent, i.e., that
attorneys' fees clearly exceeded \$25,000 by the time the 2016
Rule 68 offer was made.

1 whether the requested number of hours is greater than, less than,
2 or the same number of hours that reasonably competent counsel
3 would have billed. Early requests 991.8 hours for services
4 performed by attorneys and 48.9 hours for services performed by
5 paralegals. Keystone objects to these totals, arguing that
6 Early's counsel has (1) billed for motions never filed,
7 (2) failed to provide adequate detail of the tasks performed,
8 (3) billed Keystone for work performed in relation to Early's
9 claims against dismissed parties, and (4) overbilled for
10 activities where only one attorney was necessary. Opp'n at 12-
11 15.

12 First, as to Keystone's objection that Early billed for
13 pleadings never filed, Early's reply proves informative. Reply,
14 ECF No. 153, pp. 7-8. The reply provides clarity regarding
15 Early's January 2017 motion to compel Defendants' disclosures and
16 the March 2018 billing for trial equipment training. Id. The
17 reply fails to explain, however, why Nakama billed 32 hours of
18 discovery tasks between June 1, 2016 and September 12, 2016.
19 Based on the provided facts, this amount of time is excessive.
20 The Court reduces Nakama's hours by 20 hours to account for this
21 excess.

22 Second, with respect to Keystone's objection that Early's
23 counsel failed to provide adequate detail of the tasks performed,
24 the Court agrees with Keystone that Early's counsel could have
25 provided more detailed descriptions of billed tasks, which would
26 have significantly aided the Court in considering this Motion.
27 Nevertheless, the entries provide minimally sufficient
28 information upon which the Court can gauge whether billed entries

1 are reasonable. The Court will not reduce fees simply based on
2 this argument.

3 Third, as to Keystone's objection to time billed for work
4 performed opposing motions filed by other dismissed parties, the
5 Court agrees that Early should not have included hours billed
6 for time spent opposing the Sonic Defendant's Motion to Dismiss
7 and Motion for Summary Judgment, as the Sonic Defendants were the
8 prevailing party in Early's claims against them. Accordingly,
9 the Court deducts the 38 hours that Nakama spent and 2.9 hours
10 Burton spent on Early's August 9, 2016 opposition to the Motion
11 to Dismiss. The Court also reduces the hours Burton spent on
12 Early's reply to her Motion for Summary judgment by half, as
13 about half of the reply concerned the Sonic Defendants. As
14 Burton billed 25.1 hours on the reply, the Court reduces this
15 number by 12.55 hours.

16 Fourth, the Court does not find it improper that Early had
17 two attorneys present at certain case activities. Co-counsel
18 Nakama attended the mediation, settlement-related activities, and
19 trial with Burton, and absent any evidence that his presence was
20 excessive, redundant, other otherwise unnecessary, Keystone's
21 argument fails. As the trial transcript shows, Nakama did not
22 sit silently observing throughout the entire trial. See Trial
23 Transcript, ECF Nos. 137-137-5. Keystone's generalized
24 statements that the time Nakama spent attending activities was
25 unreasonable is not particularly helpful to the Court.
26 Nevertheless, the Court does find that Keystone correctly notes
27 that Nakama did not need to spend 19.5 hours reviewing the
28 transcripts of a trial he attended, and will deduct that time.

1 Applying these deductions, the Court finds that 495.25 hours
2 are appropriate for Burton, 403.6 hours are appropriate for
3 Nakama, 31.6 hours are appropriate for O'Keefe, and 17.3 hours
4 are appropriate for Griggs. These hours amount to the total time
5 that reasonably competent counsel would have billed in this case.

6 2. Reasonable Hourly Rate

7 The Court now turns to determining a reasonable hourly rate.
8 Cases direct the Court to compare the requested rates with the
9 "prevailing market rate," which is the rate "prevailing in the
10 community for similar services of lawyers with reasonably
11 comparable skill, experience, and reputation." Blum v. Stenson,
12 465 U.S. 886, 896 n.11 (1984). The relevant market in this case
13 is the rate prevailing in the Eastern District of California.

14 Burton graduated from University of Chicago Law School in
15 1988 and has been practicing law in California for over thirty
16 years. Burton Decl. at 2. She has been designated as a Super
17 Lawyer for Northern California in the area of Labor and
18 Employment Law since 2012. Id. The Court finds Burton's
19 requested hourly rate of \$530 per hour to be well within the
20 acceptable range for an attorney with Burton's experience. See
21 Z.F. by & through M.A.F. J.F. v. Ripon Unified Sch. Dist. (RUSD),
22 No. 210CV00523TLNCKD, 2017 WL 1064679, at *3 (E.D. Cal. Mar. 21,
23 2017) ("Prevailing hourly rates in the Eastern District of
24 California are in the \$350-\$550/hour range for experienced
25 attorneys with over 15 years of experience in civil rights and
26 class action litigation.").

27 Nakama graduated from Case Western Reserve University School
28 of Law and has been admitted to practice in California since June

1 2014. Burton Decl. at 3. During the time that Nakama worked on
2 this case, he had one to four years of experience. See id.
3 Accordingly, the Court finds the appropriate rate for an employee
4 with Nakama's experience in the Eastern District of California is
5 \$175/hour, rather than the \$250/hour requested by Early. See In
6 re Taco Bell Wage & Hour Actions, 222 F. Supp. 3d 813, 845 (E.D.
7 Cal. 2016) (awarding an attorney with less than two years of
8 experience the rate of \$125 per hour); Deocampo v. Potts, No. CV
9 2:06-1283 WBS CMK, 2017 WL 363142, at *4 (E.D. Cal. Jan. 24,
10 2017) ("[C]ourts in this district have found that an hourly rate
11 between \$250 and \$280 is reasonable for attorneys with ten or
12 more years of experience in civil rights cases").

13 O'Keefe has worked as a paralegal with Burton Employment Law
14 since 2015. Burton Decl. at 3. Griggs worked as a paralegal
15 with the firm from November 2015 to April 2017. Id. No
16 information was provided regarding the years of experience that
17 O'Keefe and Griggs have as paralegals. The rates requested for
18 the two paralegals—\$100 per hour—are within the acceptable range
19 for this district. Moreno v. Comm'r of Soc. Sec., No. 1:16-CV-
20 1600-SAB, 2018 WL 2388805, at *3 (E.D. Cal. May 25, 2018) ("In
21 this division, the reasonable rate of compensation for a
22 paralegal would be between \$75.00 to \$150.00 per hour depending
23 on experience."). The Court's calculation of the reasonable
24 amount of Early's attorneys' fees is set forth in the following
25 chart:

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Person	Billed Hours	Deducted Hours	Hourly Rate	Lodestar
Burton	510.7	15.45	\$530	\$262,482.50
Nakama	481.1	77.5	\$175	\$70,630.00
O'Keefe	31.6	0	\$100	\$3,160.00
Griggs	17.3	0	\$100	\$1,730.00
			Total	\$338,002.50

3. The Kerr Factors and Local Rule 293(c)

Finally, the Court considers whether circumstances justify deviating from the lodestar. See Quesada, 850 F.2d at 539. Although there is a "strong presumption" that a lodestar calculation is sufficient compensation, "that presumption may be overcome in those rare circumstances in which the lodestar does not adequately take into account a factor that may properly be considered in determining a reasonable fee." Perdue v. Kenny A. ex rel. Winn, 559 U.S. 542, 553-54 (2010).

None of the first seven Kerr factors weigh in favor of adjusting the lodestar. The Court calculated the appropriate time and labor above, and does not find that this case presented any more novelty or difficulty than any other ordinary employment discrimination lawsuit. An average amount of skill was required to perform the services rendered and this case was no more or less time consuming or preclusive of other employment opportunities than a standard case. The Court does not believe that the nature of the fee here warrants an upward or downward departure.

The eighth Kerr factor is of particular relevance in a case

1 like this, where the plaintiff achieved partial success. Here,
2 Early prevailed on three of her original nine claims, securing an
3 award of \$50,000 from the jury. Considering "the amount involved
4 and the results obtained," Kerr, 526 F.2d at 70; E.D. Cal. L.R.
5 293(c), Early achieved limited success. The Court does not,
6 however, find that a reduction of fees on this basis is
7 warranted. There is a need to encourage suits effectuating a
8 strong public policy. Furthermore, Early's state and federal
9 claims were factually related and closely intertwined. While the
10 jury verdict reflects the fact that Early's counsel seems to have
11 overvalued this case—i.e., the evidence regarding Early's damages
12 did not support the \$200,000 award requested by counsel at trial—
13 this does not lead the Court to conclude that attorneys' fees
14 should be reduced given Early's success on the issue of
15 liability.

16 The remaining factors do not provide any additional cause to
17 adjust the lodestar. The Court based Early's counsel's rates,
18 above, on counsel's experience and ability. This case was no
19 more undesirable than the typical employment discrimination case.
20 No information was provided that Early's counsel had any more
21 than an ordinary professional relationship with their client.
22 Finally, the award here was in line with the amount of damages
23 that Early demonstrated, no higher or lower than similar cases.

24 Accordingly, the Court awards Early \$338,002.50 in
25 attorneys' fees.

26 C. Additional Request for Nontaxable Costs

27 With her Motion for Attorneys' Fees, Early also requests
28 costs in the amount of \$11,488,78. Mot. at 8. It appears that

1 this amount is in addition to the \$8,027.54 claimed in her Bill
2 of Costs. See Pl. Bill of Costs, ECF No. 134. Keystone opposes
3 these costs, arguing that the motion does not (1) explain the
4 \$3,460.24 increase from her timely filed Bill of Costs,
5 (2) attach invoices for the additional costs, or (3) address why
6 costs should be considered beyond the 14-day deadline imposed by
7 Local Rule 292. Opp'n at 20; see also E.D. Cal. L.R. 292. In
8 her reply, Early contends that she may seek costs under
9 Government Code § 12965(b) and that her request was timely under
10 Local Rule 293. Reply, ECF No. 153, p. 8.

11 Local Rule 292 addresses taxable costs and specifies that a
12 bill of costs must be filed within 14 days of the entry of
13 judgment. E.D. Cal. L.R. 292(b). Local Rule 293 addresses
14 awards of attorneys' fees and specifies that motions for awards
15 of attorneys' fees to prevailing parties shall not be filed later
16 than 28 days after entry of final judgment. E.D. Cal. L.R.
17 293(a). As Federal Rule of Civil Procedure 54(d) allows a "claim
18 for attorney's fees and related nontaxable expenses," Fed. R.
19 Civ. P. 54(d)(2)(A) (emphasis added), the Court finds that
20 Early's request for nontaxable costs to be timely under Rule 293.

21 District courts have the discretion to award nontaxable
22 costs where the underlying statute awards "reasonable attorney's
23 fees" to the prevailing party. Grove v. Wells Fargo Financial
24 Calif., 606 F.3d 577, 580 (9th Cir. 2010)). Since FEHA allows
25 for a prevailing party to recover "reasonable attorney's fees and
26 costs, including expert witness fees," Cal. Gov't Code
27 § 12965(b), the Court has discretion to award Early nontaxable
28 costs.

1 Finally, as to the issue of whether Early's nontaxable
2 costs were reasonable, "[a] party seeking to recover costs and
3 expenses need not document its request with 'page-by-page
4 precision, [however] a bill of costs must represent a calculation
5 that is reasonably accurate under the circumstances.'" Kilopass
6 Tech., Inc. v. Sidense Corp., 82 F. Supp. 3d 1154, 1174 (N.D.
7 Cal. 2015) (quoting Summit Tech., Inc. v. Nidek Co., 435 F.3d
8 1371, 1380 (Fed. Cir. 2006)). Early's counsel has failed to
9 submit sufficient information that allows the Court to ascertain
10 the reasonableness and accuracy of the claimed costs. For
11 example, the chart in which Early's counsel lists their billed
12 hours also lists \$19,516.32 in expenses. Burton Decl., Ex. A, at
13 2-54 (listing \$16,418.76 in expenses for Burton, \$29.85 for
14 Griggs, \$2,875.46 for Nakama, \$158.09 for O'Keefe, \$31.54 for
15 someone named Monique Ramirez, and \$2.62 for someone named Leigh
16 Miles). Also, several of these cost descriptions are completely
17 blank, listing only a date and price with no information about
18 what cost to which the entry relates. See id. No invoices or
19 receipts were provided to substantiate these nontaxable costs,
20 even though some individual entries total thousands of dollars.
21 The only guidance the Court has regarding these costs is a table
22 in which Burton lists a summary of costs for different
23 categories, without details such as the date incurred. See
24 Burton Decl. at 4-5 (listing "Postage: 66.03; Federal Express:
25 200.24; Document retrieval: 34.68; Mediators: \$3,000.00; Out of
26 town travel: 4,650.92; Trial Transcripts: 2,500.00; Local Travel:
27 196.96; Stake out fees for subpoenas: 193.18; Electronic
28 Depositions: 647.71; Total: \$11,488.78). The Court declines to

1 award nontaxable costs over \$10,000 without even a single receipt
2 or billing invoice. Cf. Wild v. NBC Universal, No.
3 CV103615GAFAJWX, 2011 WL 12877031, at *3 (C.D. Cal. July 18,
4 2011) (awarding \$451.05 in nontaxable costs after "reviewing the
5 billing invoices").

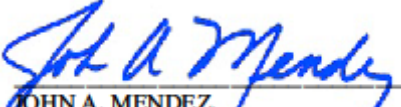
6 The billing entries list does, however, provide verifiable
7 tracking numbers for Federal Express costs and the Court finds
8 these costs to be actually and reasonably incurred. Accordingly,
9 the Court awards Early \$200.24 for these nontaxable costs.

10
11 V. CONCLUSION

12 For the reasons set forth above, the Court GRANTS IN PART
13 AND DENIES IN PART Early's Motion for attorneys' fees. ECF No.
14 139. The Court AWARDS Plaintiff the following: (1) \$338,002.50
15 in attorneys' fees for litigation and trial and (2) \$200.24 in
16 nontaxable expenses under Federal Rule of Civil Procedure
17 54(d)(2)(A), for a total of \$338,202.74. Additionally, the Court
18 GRANTS IN PART AND DENIES IN PART Keystone's Bill of Costs and
19 GRANTS Keystone \$2,082.36 in post-September 12, 2017 Rule 68
20 offer taxable costs, ECF No. 133. Finally, the Court GRANTS IN
21 PART AND DENIES IN PART Early's Bill of Costs and GRANTS Early
22 \$6,176.65 in pre-September 12, 2017 Rule 68 offer taxable costs,
23 ECF No. 134.

24 IT IS SO ORDERED.

25 Dated: February 22, 2019

26
27
28

JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE