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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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SCOTT JOHNSON,
Plaintiff,

v.

XINLIANG BAI,
Defendant.

CIV. NO. 2:16-1698 WBS GGH

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

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Plaintiff Scott Johnson is a quadriplegic who brought this action based on barriers he encountered at the Trailhead motel and lodge, which defendant Xinliang Bai owns and operates. Plaintiff alleged violations of the Americans with Disabilities Act ("ADA") and the California Unruh Civil Rights Act. The parties settled the case and defendant agreed plaintiff was entitled to reasonable attorney's fees and costs, as to be determined by the court.

"The ADA authorizes a court to award attorneys' fees, litigation expenses, and costs to a prevailing party." Lovell v.

1 Chandler, 303 F.3d 1039, 1058 (9th Cir. 2002); see 42 U.S.C. §
2 12205. The court may also award attorney's fees to the
3 prevailing party in a suit brought under the Unruh Act. See Cal.
4 Civ. Code §§ 52(a), 55.55. Defendant does not dispute that
5 plaintiff was the prevailing party, but contends that plaintiff's
6 counsel's attorney's fees are excessive.¹

7 The court calculates the reasonable amount of
8 attorney's fees by following a two-step process. First, the
9 court determines the lodestar calculation--"the number of hours
10 reasonably expended on the litigation multiplied by a reasonable
11 hourly rate." Hensley v. Eckerhart, 461 U.S. 424, 433 (1983).
12 Second, the court may adjust the lodestar figure "pursuant to a
13 variety of factors." Gonzalez v. City of Maywood, 729 F.3d 1196,
14 1209 (9th Cir. 2013). There is a strong presumption that the
15 lodestar amount is reasonable. Fischer v. SJB-P.D. Inc., 214
16 F.3d 1115, 1119 n.4 (9th Cir. 2000).

17 In determining the size of an appropriate fee award,
18 the court need not "achieve auditing perfection." Fox v. Vice,
19 563 U.S. 826, 838 (2011). The court may use estimates and "take
20 into account [its] overall sense of a suit" to determine a
21 reasonable attorney's fee. Id.

22 I. Lodestar Computation

23
24 ¹ Defendant also claims that plaintiff's counsel did not
25 timely file for attorney's fees because the parties agreed that a
26 motion for attorney's fees should be filed by June 19, 2017, and
27 the court also stated in an order that June 19 was the filing
28 deadline for any dispositional documents. (See Docket No. 15.)
This deadline is nowhere in the settlement agreement, (see Pl.'s
Mot. Ex. 3 ("Settlement Agreement") (Docket No. 20-4)), and the
court does not view a motion for attorney's fees as a
dispositional document subject to its June 19, 2017 deadline.

1 A. Reasonable Number of Hours

2 "The prevailing party has the burden of submitting
3 billing records to establish that the number of hours it has
4 requested are reasonable." Gonzalez, 729 F.3d at 1202. The
5 court may reduce the hours "where the documentation is
6 inadequate; if the case was overstaffed and the hours are
7 duplicated; [or] if the hours expended are deemed excessive or
8 otherwise unnecessary." Chalmers v. City of Los Angeles, 796
9 F.2d 1205, 1210 (9th Cir. 1986).

10 Plaintiff submitted a billing summary itemizing the
11 time spent by attorneys Mark Potter, Phyl Grace, Dennis Price,
12 and Sara Gunderson on this case. (Pl.'s Mot. for Att'y's Fees
13 ("Pl.'s Mot.") Ex. 2 ("Billing Summary") (Docket No. 20-3).)
14 Plaintiff requests a total of \$10,550 in attorney's fees for 35.6
15 hours of work. (Id. at 1.) The billing summary shows Potter
16 billed 21.7 hours, Grace 3.5 hours, Price 9.8 hours, and
17 Gunderson 0.6 hours. (Id.) Defendant objects to numerous
18 entries for Potter, Grace, and Price.

19 1. Billings by Potter

20 Defendant first objects to the 1.3 hours Potter billed
21 on March 2, 2016, to visit the Trailhead motel site, conduct an
22 assessment of the allegations, and email the investigator about
23 the photos and measurements he wanted because Potter later paid
24 an investigator to visit the site and take the measurements. The
25 court does not find it unreasonable for Potter to visit the site
26 in order to determine where there may be ADA violations in order
27 to guide the investigator's subsequent inspection and
28 measurements. The court thus finds that billing 1.3 hours for

1 conducting an assessment of the allegations, visiting the site,
2 and emailing the investigator is reasonable.

3 Defendant next objects to the 2.2 hours Potter billed
4 for public records research on April 12, 2016, because that is a
5 clerical task that is not billable as attorney's fees. See Davis
6 v. City & County of San Francisco, 976 F.2d 1536, 1543 (9th Cir.
7 1992) ("It simply is not reasonable for a lawyer to bill, at her
8 regular hourly rate, for tasks that a non-attorney employed by
9 her could perform at a much lower cost."), opinion vacated in
10 part on denial of reh'g, 984 F.2d 345 (9th Cir. 1993). The court
11 has previously addressed this precise task by plaintiff's counsel
12 in two of its prior decisions, and reduced the hours in each to
13 1.0 hour. See Johnson v. Wayside Prop., Inc., Civ. No. 2:13-1610
14 WBS AC, 2014 WL 6634324, at *4 (E.D. Cal. Nov. 21, 2014) (2.1
15 hours for public records research reduced to 1.1 hour); Johnson
16 v. Allied Trailer Supply, Civ. No. 2:13-1544 WBS EFB, 2014 WL
17 1334006, at *2 (E.D. Cal. Apr. 3, 2014) (same). Plaintiff does
18 not distinguish the record search performed in these two cases
19 from the search performed here and the court thus finds that a
20 1.1 hours reduction is merited.

21 Defendant objects to the 0.9 hour billed on July 20,
22 2016, to review the investigator's report and discuss the report
23 with the investigator on the phone because Potter had already
24 visited the site. Spending less than one hour reviewing the
25 investigator's report and speaking with the investigator where
26 such information is crucial to the merits of plaintiff's claims
27 is not unreasonable or excessive.

28 Defendant objects to the 1.0 hour billed to draft the

1 Complaint on July 20, 2016, because it is largely boilerplate and
2 identical to those filed by plaintiff's counsel in similar cases.
3 In a similar case, the court determined that 0.8 hour to draft a
4 boilerplate Complaint by the same plaintiff's counsel was
5 reasonable. See Allied Trailer, 2014 WL 1334006, at *2. There
6 is no reason for the court to believe that 1.0 hour for drafting
7 a similar Complaint here was excessive.

8 Defendant next moves to reduce Potter's December 8,
9 2016, entry of 0.6 hour that states: "Discussion with client re:
10 case update; dates for settlement conference" because it is a
11 clerical function. While informing the client of the dates of a
12 settlement conference may be clerical in nature, discussing other
13 case updates are not necessarily clerical. The court thus will
14 reduce this entry by 0.1 hour to account for the discussion about
15 the dates of the settlement conference.

16 Defendant next objects to Potter's billing of 0.3 hour
17 on January 23, 2017, for the following tasks: "reviewed email
18 history re: setting dates for conference; drafted notice of
19 settlement conference along with proposed order thereto."
20 (Billing Summary at 2.) Drafting a notice of settlement is
21 arguably a clerical task; see Wayside Property, 2014 WL 6634324,
22 at *3 (reducing attorney's fees for drafting a notice of a motion
23 for summary judgment because it was clerical); however, the court
24 does not find that 0.3 hour to review email and draft the notice
25 and proposed order is unreasonable.

26 Defendant also objects to an April 19, 2017, entry of
27 0.2 hour by Potter to draft a CCDA report because it is a
28 clerical function. There is insufficient evidence indicating

1 that this report is clerical in nature or that 0.2 hour is
2 excessive. The court thus will not reduce this entry.

3 Defendant next objects to Potter's billing of 2.0 hours
4 on June 26, 2017, to draft plaintiff's Motion for attorney's fees
5 and costs because it is a boilerplate motion. While this motion
6 is similar to motions for attorney's fees filed in unrelated
7 cases, e.g., Johnson v. Patel, Civ. No. 2:14-2078 WBS AC, the
8 motions are not identical. The court finds that 2.0 hours to
9 draft the Motion for attorney's fees and costs is not excessive
10 or unreasonable, and a reduction is not merited.

11 Plaintiff estimated that Potter would bill 7.0 hours to
12 review the opposition brief, draft the reply brief, and attend
13 oral argument. (Billing Summary at 3.) In the Reply,
14 plaintiff's counsel indicated that the Reply brief took 2.4 hours
15 to draft. The court finds that 2.4 hours to read plaintiff's
16 opposition and draft the Reply is reasonable.

17 A recurring theme in defendant's opposition is that
18 plaintiff's counsel billed more hours than necessary. The court
19 is aware of defendant's desire to reduce the amount of attorney's
20 fees owed. In light of defendant's desire to reduce the amount
21 of attorney's fees, the court issues this Order without oral
22 argument. Defendant thus will not need to pay for Potter's fees
23 incurred for attending oral argument. Because the Reply brief
24 took 2.4 hours to draft and the court issues this Order without
25 oral argument, the court will reduce this estimated entry of 7.0
26 hours by 4.6 hours.

27 2. Billings by Grace

28 Defendant first objects to the 1.3 hours billed by

1 Grace on October 25, 2016, to prepare for and conduct the Rule 26
2 conference and send notes to the discovery team. (Billing
3 Summary at 4.) Defendant argues the time is excessive because
4 the conference took less than five minutes and plaintiff's
5 counsel used their boilerplate Joint Status Report form. (See
6 Vaughn Decl. ¶ 7 (Docket No. 21-1).) The court agrees that the
7 brevity of the conference and the use of a boilerplate Joint
8 Status Report does not justify billing 1.3 hours. The court will
9 reduce this entry by 0.5 hour.

10 Defendant objects to 0.3 hour billed on May 3, 2017, as
11 duplicative of the April 20, 2017, entry. The April 20 entry was
12 a review and approval of the notice of settlement that the
13 parties later filed with the court. (See Notice of Settlement
14 (Docket No. 14); Billing Statement at 4.) The May 3 entry was a
15 review and finalization of the settlement agreement signed by the
16 parties. (See Billing Statement at 4; Settlement Agreement.)
17 The entries are not duplicative, and the court will not reduce
18 this entry.

19 3. Billings by Price

20 Defendant objects to the 2.0 hours billed by Price on
21 April 17, 2017, to prepare for the mediation conference and
22 discuss the mediation with the client and the 7.0 hours billed by
23 Price on April 18, 2017, to travel to and appear at the mediation
24 conference. The court does not find that the April 17 entry of
25 2.0 hours to prepare for the mediation conference and discuss
26 such with plaintiff is clearly excessive. Defendant argues 9.0
27 hours to prepare and attend a mediation that lasted approximately
28 1.5 hours is excessive. Plaintiff argues the mediation lasted

1 3.0 hours, but plaintiff provides no documentation that the
2 mediation lasted 3.0 hours or that the remaining 4.0 hours on
3 April 18 was a necessary and reasonable travel time. The court
4 will thus reduce Price's April 18, 2017, entry by 3.0 hours. See
5 Chalmers, 796 F.2d at 1210 (9th Cir. 1986) (holding a court may
6 reduce hours "where the documentation is inadequate").

7 Having made the above reductions, the court finds that
8 Potter reasonably expended 15.9 hours, Grace reasonably expended
9 3.0 hours, Price reasonably expended 6.8 hours, and Gunderson
10 reasonably expended 0.6 hour.

11 B. Reasonable Hourly Rate

12 The reasonable hourly rate is determined according to
13 "the prevailing market rates in the relevant community," Blum v.
14 Stenson, 465 U.S. 866, 895 (1984), "for similar work performed by
15 attorneys of comparable skill, experience, and reputation,"
16 Chalmers, 796 F.2d at 1210-11. The relevant legal community "is
17 the forum in which the district court sits," Prison Legal News v.
18 Schwarzenegger, 608 F.3d 446, 454 (9th Cir. 2010), which here is
19 the Sacramento Division of the Eastern District of California.

20 The prevailing party has the burden of producing
21 sufficient evidence that its "requested rates are in line with
22 those prevailing in the community for similar services by lawyers
23 of reasonably comparable skill, experience and reputation."
24 Blum, 465 U.S. at 895 n.11. "The hourly rate for successful
25 civil rights attorneys is to be calculated by considering certain
26 factors, including the novelty and difficulty of the issues, the
27 skill required to try the case, whether or not the fee is
28 contingent, the experience held by counsel and fee awards in

1 similar cases." Moreno v. City of Sacramento, 534 F.3d 1106,
2 1114 (9th Cir. 2008). "While disability access cases are a
3 subset of civil rights practice, the reasonable hourly rate
4 merited in routine disability access cases typically falls below
5 the hourly rate charged in more complicated civil rights cases."
6 Johnson v. Patel, Civ. No. 2:14-2078 WBS AC, 2016 WL 727111, at
7 *3 (E.D. Cal. Feb. 23, 2016).

8 Here, plaintiff's counsel seeks an hourly rate of \$350
9 for Potter, \$250 for Grace, and \$200 each for junior associates
10 Price and Gunderson. (See Billing Statement.) All of the
11 attorneys practice at the Center for Disability Access ("CDA").
12 Potter is the founder and managing partner of CDA with almost
13 twenty years of experience in disability cases, Grace has nearly
14 twenty years of experience and eleven in disability access
15 litigation, and Price and Gunderson are junior associates.
16 (Potter Decl. ¶¶ 8-10 (Docket No. 20-2).) Plaintiff's counsel
17 concedes that this case involves a straight-forward application
18 of the law and did not present novel or difficult issues
19 requiring a high level of skill or specialization. (Pl.'s Mem.
20 at 12.)

21 The court has examined the experience of Potter, Grace,
22 and Price in previous disability access cases brought by
23 plaintiff and found that hourly rates of \$300 for Potter, \$250
24 for Grace, and \$150 for Price and other junior attorneys were
25 reasonable. See, e.g., Johnson v. Gross, Civ. No. 2:14-2242 WBS
26 KJN, 2016 WL 3448247, at *2-3 (E.D. Cal. June 23, 2016); see also
27 Johnson v. Kamboj LLC, Civ. No. 2:14-00561 MCE AC, 2016 WL
28 1043719, at *3 (E.D. Cal. Mar. 16, 2016) (granting Grace an

1 hourly rate of \$250 in a similar ADA case). Plaintiff's counsel
2 does not cite any new cases finding that the reasonably hourly
3 rate in Sacramento in a routine disability access case exceeds
4 these rates.² For the reasons expressed in the court's prior
5 orders, the court finds that the reasonable rates are \$300 for
6 Potter, \$250 for Grace, and \$150 for Price and Gunderson.

7 Accordingly, the lodestar in this case is \$6,630,
8 calculated as follows:

9	Potter:	15.9	x	\$300	=	\$4,770
10	Grace:	3.0	x	\$250	=	\$ 750
11	Price:	6.8	x	\$150	=	\$1,020
12	Gunderson:	0.6	x	\$150	=	<u>\$ 90</u>
13						\$6,630

14 Because neither party seeks a multiplier or reduction
15 to the lodestar and there is a "strong presumption that the
16 lodestar amount is reasonable," Fischer, 214 F.3d at 119 n.4, the
17 court finds that no further adjustment to the lodestar is
18 warranted.

19 II. Costs

20 Under the ADA, a court may award litigation expenses
21 and costs. Lovell, 303 F.3d at 1058; 42 U.S.C. § 12205.
22 Plaintiff seeks \$675 in costs. This includes investigation costs
23 of \$200, a \$400 filing fee, and service costs of \$75. (Pl.'s

24 ² Plaintiff's counsel includes the declaration of John
25 O'Connor, an attorney's fees expert, from their Motion for
26 attorney's fees in Wayside Property to support its requested
27 attorney's fees here. The court rejected the O'Connor
28 declaration's methodology in Wayside Property because the
relevant legal market is Sacramento, not Northern California, and
it does not discuss the rates in routine disability access cases.
See Wayside Prop., 2014 WL 6634324, at *7-8.

1 Mot. at 13; Billing Summary at 1.) Defendant does not object to
2 these costs and the court will therefore award them to plaintiff.

3 IT IS THEREFORE ORDERED that plaintiff's Motion for
4 attorney's fees and costs (Docket No. 20) be, and the same hereby
5 is, GRANTED. Defendant is directed to pay plaintiff \$6,630 in
6 attorney's fees and \$675 in costs.

7 Dated: August 4, 2017

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9 WILLIAM B. SHUBB
10 UNITED STATES DISTRICT JUDGE
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