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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SCOTT JOHNSON,

 Plaintiff,

 v.

LARRY D. COMPTON and EL MONTE
RENTS, INC.,

 Defendants.

No. 2:16-cv-02961-JAM-CKD

**ORDER DENYING DEFENDANT EL MONTE
RENTS, INC.'S MOTION FOR
ATTORNEY FEES**

In December 2016, Plaintiff Scott Johnson sued Defendants Larry Compton and El Monte Rents, Inc., alleging violations of the Americans With Disabilities Act (ADA) and Unruh Civil Rights Act. Compl., ECF No. 1. El Monte filed a motion for summary judgment, ECF No. 8, which the Court granted in April 2017. ECF No. 22. Earlier this year, the Court dismissed Johnson's ADA claim as moot and declined to retain jurisdiction over Johnson's state law claims against Compton, closing the case. ECF Nos. 35-36.

1 El Monte now seeks attorney fees and costs. Mot. Fees, ECF
2 No. 37; Reply, ECF No. 40. Johnson opposes the motion. Opp'n,
3 ECF No. 39. For the reasons set forth below, the Court denies El
4 Monte's Motion for Attorney Fees.¹

5
6 I. DISCUSSION

7 A. Attorneys' Fees Under the ADA

8 The Americans with Disabilities Act provides, "In any action
9 or administrative proceeding commenced pursuant to this chapter,
10 the court or agency, in its discretion, may allow the prevailing
11 party, other than the United States, a reasonable attorney's fee,
12 including litigation expenses, and costs[.]" 42 U.S.C. § 12205.

13 Courts may grant attorney's fees to prevailing defendants in
14 civil rights actions, including ADA actions, "only 'upon a
15 finding that the plaintiff's action was frivolous, unreasonable,
16 or without foundation.'" Summers v. Teichert & Son, Inc., 127
17 F.3d 1150, 1154 (9th Cir. 1997) (quoting Christiansburg Garment
18 Co. v. EEOC, 434 U.S. 412, 421(1978)). "An action is frivolous
19 if it lacks an arguable basis in law or in fact, though it need
20 not be brought in bad faith." Peters v. Winco Foods, Inc., 320
21 F. Supp. 2d 1035, 1037 (E.D. Cal. 2004), aff'd, 151 F. App'x 549
22 (9th Cir. 2005). Courts must "resist the understandable
23 temptation to engage in post hoc reasoning by concluding that,
24 because a plaintiff did not ultimately prevail, his action must
25 have been unreasonable or without foundation." Christiansburg,

26
27 ¹ This motion was determined suitable for decision without oral
28 argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for
October 2, 2018.

1 434 U.S. at 421-22.

2 Assuming that Johnson's claims against El Monte were not
3 frivolous, unreasonable, or without foundation at the time of
4 filing, Johnson had a duty to reevaluate his claims at any point
5 where it became clear the claims lacked a factual basis. Peters,
6 320 F. Supp. at 1037. Based on the facts and principal/agent
7 agreement El Monte provided to Johnson prior to filing its
8 summary judgment motion, it was clear that El Monte did not own
9 or lease the property. Whether El Monte "operated" the property
10 was a debatable issue and one upon which each party provided
11 briefing.

12 The Court found that El Monte did not own, lease, or operate
13 the property in question at the time Johnson sued, and thus could
14 not be held liable for any of the property's ADA violations. In
15 his unsuccessful opposition to El Monte's motion for summary
16 judgment, Johnson argued that El Monte could have been liable as
17 an operator due to its principal/agent agreement with Compton's
18 business. Johnson made this argument without citing to any
19 precedent that a court should treat principal/agent and
20 franchisee/franchisor relationships differently under the ADA.
21 Indeed, the precedent El Monte cited demonstrated that an
22 agreement requiring compliance with state and federal laws is
23 insufficient to provide control over discriminatory conditions.
24 Thus, the Court found that El Monte was not an operator because
25 the principal/agent agreement did not give El Monte the power to
26 facilitate any necessary accommodation.

27 While El Monte presented analogous precedent from the
28 franchisor/franchisee context, Johnson relied on an

1 interpretation of the principal/agent agreement and a legal
2 argument for extending liability that the Court rejected.
3 However, Johnson's lack of precedent does not mean that his
4 argument was wholly without merit. The presence of a novel
5 question with little precedent weighs against a finding of
6 frivolousness. C.W. v. Capistrano Unified Sch. Dist., 784 F.3d
7 1237, 1245 (9th Cir. 2015); see also Legal Servs. of N.
8 California, Inc. v. Arnett, 114 F.3d 135, 141 (9th Cir. 1997)
9 (finding that a position unsupported by existing precedent was
10 not frivolous where there was a good faith effort to advance a
11 novel legal theory). No prior cases conclusively answered the
12 unique question posed, so Johnson's theory for extending the law
13 was not undisputedly frivolous.

14 Although it is a very close call, the Court finds that this
15 is not one of the "exceptional circumstances" in which attorney's
16 fees should be awarded to a prevailing defendant in a civil
17 rights case.

18
19 II. ORDER

20 For the reasons set forth above, the Court DENIES El Monte's
21 motion.

22 IT IS SO ORDERED.

23 Dated: October 9, 2018

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25 
26 **JOHN A. MENDEZ,**
27 **UNITED STATES DISTRICT JUDGE**
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