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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

STEVE WHITE,	)	
	)	
Plaintiff(s),	)	No. C09-0989 BZ
	)	
v.	)	<b>ORDER AWARDING ATTORNEYS'</b>
	)	<b>FEEES AND COSTS</b>
MING R. SHEN, et al.,	)	
	)	
Defendant(s).	)	
_____	)	

Before the Court is plaintiff's motion for attorneys' fees and costs. Having considered the arguments of counsel and the papers submitted, the motion is **DENIED IN PART** and **GRANTED IN PART** as set forth below.<sup>1</sup>

In this disability access suit, plaintiff Steve White, a paraplegic, sued defendants Ming R. Shen and Xiao F. Zhou, the owners of Suzhou Restaurant in Richmond, California. Plaintiff alleged he visited the Suzhou Restaurant to attend a business meeting on or about December 5, 2008. After this

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<sup>1</sup> All parties have consented to my jurisdiction for all proceedings including entry of final judgment, pursuant to 28 U.S.C. § 636(c).

1 visit, plaintiff complained to defendants' employees about the  
2 failures to provide properly accessible facilities for  
3 disabled persons. Defendants failed to remove the disability  
4 access barriers that plaintiff complained about. Plaintiff  
5 then filed this suit on March 6, 2009, alleging violations of  
6 the Americans with Disabilities Act (ADA) codified under 42  
7 U.S.C. §§ 12101 et seq., California Health & Safety Code §§  
8 19955 et seq., and California Civil Code § 54.<sup>2</sup>

9 Since the ADA was passed, over two thousand ADA access  
10 cases have been filed in this district. Plaintiff's counsel  
11 has filed about 300 of them. A recurring type of case  
12 involves a disabled person denied full access to a  
13 neighborhood restaurant or store because the establishment  
14 lacks an accessible bathroom or has steps. Frequently, the  
15 establishment is in an older building and is marginally  
16 successful. An obstacle to achieving compliance with the  
17 ADA's access requirements can be the amount of fees incurred  
18 by plaintiff's counsel by the time of a settlement.  
19 Frequently, defendants complain that the attorneys' fees are  
20 greater than the cost of remediation and plaintiff's damages  
21 combined. In an effort to expedite the achievement of  
22 compliance with the ADA, the Court adopted General Order (GO)  
23 56 in 2005. See Connally v. Bayport Marina Plaza LLC, 2007 WL  
24 2900511, at \*1 (N.D. Cal. 2007). Its aim is to require the  
25 parties to engage in a structured process designed to achieve  
26 early compliance with the ADA while minimizing the adversarial

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27  
28 <sup>2</sup> These California statutes offer similar protections  
as the ADA.

1 litigation process and concomitant fees. This motion is  
2 instructive of what can go right and what can go wrong in an  
3 ADA access case.

4 Under GO 56, in an optimal situation, an agreement to  
5 resolve the access compliance issues, if not the entire suit,  
6 would be reached approximately 4 months after the lawsuit was  
7 filed, at or after a joint site inspection. If not, GO 56  
8 provides for mediation approximately 7 months after the  
9 lawsuit was filed. Here, the early site inspection was  
10 delayed, the parties needed mediation and the access issues  
11 were not resolved until approximately 11 months after the  
12 lawsuit was filed. Before the mediation, plaintiff had  
13 already incurred \$35,571.50 in attorneys' fees. Plaintiff  
14 incurred an additional \$19,078.50 in attorneys' fees after  
15 this date. Plaintiff's damage case eventually settled for  
16 \$4000.00. Unable to agree on plaintiff's attorneys' fees,  
17 this motion was filed.

18 Plaintiff's motion for attorneys' fees and costs is  
19 brought under federal and state law. Section 505 of the ADA  
20 authorizes the Court to award a prevailing party reasonable  
21 attorneys' fees and costs. 42 U.S.C. § 12205. California  
22 Code of Civil Procedure § 1021.5 authorizes an award of  
23 attorneys' fees for enforcing "an important right affecting  
24 the public interest" if a "significant benefit . . . has been  
25 conferred on the general public or a large class of persons."  
26 Providing disabled persons access constitutes an important  
27 right affecting the public interest. California Government  
28 Code § 19230.

1           The purpose of these attorneys' fees statutes is to  
2 assure disabled persons that they will be able to secure  
3 counsel to represent them and help vindicate their civil  
4 rights. See 42 U.S.C. § 12205; Corder v. Gates, 947 F.3d 374,  
5 377 (9 Circ. 1991). In the San Francisco Bay Area, there is  
6 little danger that a disabled plaintiff will not be able to  
7 find an attorney to handle an access suit. There are a number  
8 of attorneys that specialize in bringing such actions,  
9 including plaintiff's counsel, the Law Offices of Paul Rein.  
10 See e.g., Dytch v. Jin, 3:08-cv-05028 EDL (N.D. Cal. 2009).  
11 A check of this district's docket discloses that plaintiff's  
12 counsel, has filed 287 access suits in the past nineteen years  
13 and has previously represented plaintiff six times. White v.  
14 Tom Eplin's Auto. Ctr., 3:06-cv-05871 JSW (N.D. Cal. 2007);  
15 White v. Cala, 3:06-cv-03615 MJJ (N.D. Cal. 2007); White v.  
16 Emil Villa's Cal. BBQ, 3:05-cv-02753-MMC (N.D. Cal. 2006);  
17 White v. Bank of Am. N.A., 3:05-cv-02985 MEJ (N.D. Cal. 2006);  
18 White v. Crockett, 4:04-cv-05094 SBA (N.D. Cal. 2005); White  
19 v. Main Street CA, Inc., 3:02-cv-1062 JCS (N.D. Cal. 2002).  
20 Each of these cases settled. This is common in access cases  
21 in this district, with virtually all cases resolving with  
22 agreements to remediate the access barriers, to pay damages to  
23 the plaintiff, and to pay the plaintiff's attorneys' fees.

24           To determine the reasonable amount of attorneys' fees  
25 under the ADA and state law, the court should "calculate the  
26 'lodestar figure' by taking the number of hours reasonably  
27 expended on the litigation and multiplying it by a reasonable  
28 hourly rate." Fischer v. SJB-P.D. Inc., 214 F.3d 1115, 1119

1 (9th Cir. 2000) (citing Hensley v. Eckerhart, 461 U.S. 424,  
2 433 (1983)); Crommie v. State of California, 840 F.Supp. 719,  
3 724-25 (N.D. Cal. 1994) (establishing the lodestar method as  
4 the proper method of calculation of attorneys' fees under  
5 state law). The court must review time records to determine  
6 whether the hours expended on a matter were reasonable or  
7 excessive, and must determine the reasonable hourly rate by  
8 looking to "the rate prevailing in the community for similar  
9 work performed by attorneys of comparable skill, experience,  
10 and reputation." Chalmers v. City of L.A., 796 F.2d 1205,  
11 1210-11 (9th Cir. 1986), reh'g denied, amended on other  
12 grounds, 808 F.2d 1373 (9th Cir. 1987).

13 Plaintiff requests an award of \$49,185 in attorneys' fees  
14 and \$8,637 in costs.<sup>3</sup> Mot. at 16. Defendants filed a brief  
15 opposition, arguing that this matter was resolved shortly  
16 after plaintiff filed the suit, without any further litigation  
17 such as discovery, extensive motion practice, or trial. Opp.  
18 at 2. Defendants objected to plaintiff's claim for attorneys'  
19 fees as excessive. Opp. at 3. The Court agrees. However,  
20 their proposal was that plaintiff be awarded no fees (Opp. at  
21 7), with which the Court disagrees. Since the defendants do  
22 not dispute that the plaintiff is the prevailing party, the  
23 Court finds that plaintiff is entitled to attorneys' fees in  
24 this action.

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27 <sup>3</sup> While counsel actually billed \$54,650 in attorneys'  
28 fees, he voluntarily reduced his claim for fees by ten percent.  
Mot. at 16.

1     **I.     Fees**

2             **A. Reasonable Hours Expended**

3             The Court begins by determining whether the number of  
4 hours expended litigating this matter was reasonable in light  
5 of the work performed and the context of the case. See  
6 McGrath v. County of Nev., 67 F.3d 248, 254 n.5 (9th Cir.  
7 1995). If the Court finds that the number of hours was  
8 unreasonable, it may exclude any hours that are excessive,  
9 redundant, or otherwise unnecessary. Hensley v. Eckerhart,  
10 461 U.S. 424, 434 (1983). In light of the purpose previously  
11 discussed of granting attorneys' fees in access cases, the  
12 Court finds that the 130 hours expended litigating this matter  
13 was unreasonable based on the routine work performed in this  
14 case.

15                     **i.     Paul Rein**

16             Rein served as lead counsel and requests an award for  
17 approximately 60 hours of his time spent litigating the case.  
18 Rein Decl., Ex. 26. Defendants argue that it was excessive  
19 for three lawyers to represent plaintiff in what is  
20 essentially a routine ADA access case against a small  
21 business, and the Court agrees. Opp. at 6. A routine ADA  
22 access case does not involve complicated or novel legal  
23 issues. Apart from changing the names, times and location,  
24 plaintiff's complaint is verbally identical to complaints Rein  
25 has filed in other ADA lawsuits, including several that Rein  
26 has filed on behalf of plaintiff. Compare Docket No. 1 with  
27 Tom Eplin's Auto. Ctr., 3:06-cv-05871 JSW, Docket No. 1; see  
28 also Bank of Am. N.A., 3:05-cv-02985 MEJ, Docket No. 1. Yet

1 Rein spent 1 hour meeting with his staff and co-counsel  
2 regarding this complaint and an additional 3 hours drafting  
3 this complaint. Rein Decl., Ex. 26. This is unreasonable.  
4 There is no explanation why the changes to the form complaint  
5 could not have been made in much less time by a paralegal.

6 Defendants' sole defense in this matter was undue  
7 hardship; liability was not in question during the litigation.  
8 Opp. at 6. Accordingly, it was unnecessary for Rein to staff  
9 the case with two additional attorneys in this case. Having  
10 reviewed Rein's time sheets (Rein Decl., Ex. 26), the Court  
11 finds over 20 entries of internal meetings and discussions  
12 with co-counsel Celia McGuinness. Id. Given the  
13 straightforward nature of this case, I find it unreasonable  
14 for Rein to consult with co-counsel over 20 times. Rein also  
15 spent time reviewing documents that McGuinness already  
16 reviewed, such as the defendants' initial disclosures,  
17 defendants' opposition to plaintiff's motion to enforce GO 56,  
18 and the report by access consultant Karl Danz. Id. This is  
19 excessive.

20 The Court does not see any reason necessitating both Rein  
21 and McGuinness to meet and discuss the case or review the same  
22 documents when this routine ADA access case should have only  
23 required one attorney to represent plaintiff. McGuinness is  
24 requesting compensation for approximately 50 hours of her own  
25 time on this case, which I find is more than sufficient to  
26 obtain the results achieved. Therefore, the Court will only  
27 award Rein fees for the 13.7 hours he spent before McGuinness  
28 began working on the case on February 25, 2009.

1                   **ii. Catherine Cabalo**

2                   In reviewing the time sheets submitted by Catherine  
3 Cabalo, the Court finds that a majority of Cabalo's time was  
4 spent traveling to and attending the parties' mediation that  
5 McGuinness also attended. Cabalo Decl., Ex. 35. The Court  
6 finds that Cabalo's tasks could have been delegated to a  
7 single attorney. Therefore, the Court will not award fees  
8 based on the time submitted by Catherine Cabalo, which the  
9 Court finds was unnecessary.

10                   **iii. Celia McGuinness**

11                   The Court will award fees to McGuinness for the 50.8  
12 hours she expended in this matter. This means that plaintiffs  
13 will be compensated for approximately 74 hours of attorney and  
14 legal assistant time. Is that reasonable? While the total  
15 number of hours are more than the Court would expect in a  
16 routine ADA access case, there are several extenuating factors  
17 here. Defendants shifted counsel at one point and the  
18 proceedings were delayed by the death of one defendant. While  
19 defendants are not at fault for these delays, it would also be  
20 unfair to penalize plaintiff's counsel for accommodating  
21 defendants. There were also some attorneys' fees expended by  
22 plaintiff's counsel in dealing with what they characterize as  
23 non-cooperation from defendants' second attorney, George  
24 Holland. The Court agrees that some of plaintiff's attorneys'  
25 fees were incurred as a result of a lack of cooperation by Mr.  
26 Holland in accomplishing the goals of GO 56. In a routine  
27 case, assuming that defense counsel cooperates, the Court  
28 would expect to see fewer hours expended by plaintiff's



1 counsel.

2 **B. Hourly Rate**

3 Plaintiff requests the following hourly rates for  
4 counsel: \$495 for Paul Rein; \$395 for Celia McGuinness; and  
5 \$330 for Catherine Cabalo. Plaintiff also requests \$165 an  
6 hour for senior paralegal Aaron Clefton. In support of his  
7 motion for attorneys' fees, plaintiff submits substantial  
8 evidence that the attorneys' billing rates are reasonable  
9 given their education, skill, and experience and the market  
10 rate for attorneys of comparable skill and experience. See  
11 Rein Decl. at ¶ 9-12; McGuinness Decl. at ¶ 10-13; Cabalo  
12 Decl. at ¶ 2-4. The Court recognizes that Rein is one of the  
13 leading and most experienced access lawyers in the San  
14 Francisco Bay Area, and he has been regularly awarded an  
15 hourly rate of \$495. See e.g., Blackwell v. Foley, WL  
16 2794298, at \*9-\*10 (N.D. Cal. 2010); Overbo v. Lowe Cal.  
17 Theater, Inc.'s, 3:07-cv-5368 MHP (N.D. Cal. 2010).  
18 Defendants do not argue that counsel's rates are unreasonable.  
19 Therefore, the Court finds that the hourly rates are  
20 reasonable.

21 **II. Costs**

22 Plaintiff requests an award of \$8,637 for costs incurred  
23 during litigation. In support of his motion for costs,  
24 plaintiff submits evidence that the costs incurred are  
25 reasonable. Rein Decl. at ¶ 8, Ex. 18; Clefton Decl. at  
26 ¶ 8-9, Ex. 28. Defendants' do not specifically challenge

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1 such costs.<sup>4</sup> The Court finds that the costs incurred by  
2 plaintiff are reasonable. Therefore, the Court awards \$8,637  
3 in costs.

4 **CONCLUSION**

5 For the foregoing reasons and for good cause shown, **IT IS**  
6 **ORDERED** that plaintiff is awarded attorneys' fees and costs as  
7 follows:

8 1) Attorneys' fees in the amount of \$28,431.50:

- 9 • Paul Rein: 13.7 hours x \$495/hour = \$6,781.50  
10 • Celia McGuinness: 50.8 x \$395/hour = \$20,066.00  
11 • Aaron Clefton: 9.6 hours x \$165/hour = \$1,584.00

12 2) Costs in the amount of \$8,637.

13 Dated: January 5, 2011

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15 Bernard Zimmerman  
16 United States Magistrate Judge

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21  
22 <sup>4</sup> The biggest item of costs is \$6,868.00 paid to  
23 plaintiff's access consultant and construction expert. His  
24 report is exhibit 19 to Rein's declaration. It consists of 61  
25 pages detailing over 80 claimed violations of the access  
26 requirements. Ultimately the case was settled for the  
27 installation of a bathroom in the upper level of the restaurant  
28 and half a dozen other minor measures. It may be that such an  
elaborate report was necessary in this case and defendant has  
not specifically objected to it. However, the Court would hope  
that at the joint site inspection, the parties could agree to  
such obvious remedial measures as the installation of an  
accessible bathroom without the need for an elaborate report.