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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SCOTT SCHUTZA,

Plaintiff,

v.

COSTCO WHOLESALE
CORPORATION, a Washington
Corporation; AND DOES 1-10,

Defendants.

Case No.: 19-CV-00990 DMS (WVG)

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF’S
MOTION FOR ATTORNEY’S FEES
AND LITIGATION COSTS**

Before the Court is Plaintiff Scott Schutza’s motion for attorney’s fees and litigation costs. The matter is fully briefed and submitted. For the reasons set forth below, Plaintiff’s motion is granted in part and denied in part.

**I.
BACKGROUND**

Plaintiff, who uses a wheelchair, brought this case against Defendant following his experiences at the Costco customer service desk in Santee, California. (ECF No. 1.) Plaintiff filed his Complaint on May 27, 2019, alleging one claim for violation of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. § 12101, *et seq.*, and one claim for violation of the California Unruh Civil Rights Act (the “Unruh Act”), Cal. Civ.

1 Code §§ 51–53. (*Id.*) Plaintiff alleged Defendant discriminated against him on the basis
2 of disability by failing to provide a lowered counter for membership services and failing to
3 modify a policy, practice, or procedure to accommodate his disability. (*Id.*)

4 The case was tried to the Court on June 21, 2021. (ECF No. 71.) Judgment was in
5 favor of Plaintiff, who was awarded injunctive relief and \$4,000 in damages, with the
6 option to file a separate motion for attorney’s fees and costs. (ECF No. 72.) Plaintiff filed
7 a motion to continue the fee motion cutoff (ECF No. 73), which Defendant opposed (ECF
8 No. 74), and the Court ultimately granted. (ECF No. 75.) Plaintiff filed the instant motion
9 for attorney’s fees and costs on July 26, 2021. (ECF No. 76.) Defendant filed a response
10 (ECF No. 77), and Plaintiff filed a reply. (ECF No. 78.)

11 **II.**
12 **DISCUSSION**

13 **A. Attorney’s Fees**

14 Both the ADA and the Unruh Act allow courts discretion to award attorney’s fees to
15 a prevailing plaintiff. 42 U.S.C. § 12205 (allowing for “a reasonable attorney’s fee,
16 including litigation expenses, and costs”); Cal. Civ. Code § 52.1(i) (“the court may award
17 the petitioner or plaintiff reasonable attorney's fees.”). “District courts must calculate
18 awards for attorneys’ fees using the ‘lodestar’ method.” *Ferland v. Conrad Credit Corp.*,
19 244 F.3d 1145, 1149 n.4 (9th Cir. 2001). The lodestar method looks to “the number of
20 hours reasonably expended on the litigation multiplied by a reasonable hourly rate.”
21 *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983), *abrogated on other grounds by Tex. State*
22 *Teachers Ass’n. v. Garland Indep. Sch. Dist.*, 489 U.S. 782 (1989). The party seeking fees
23 must submit evidence supporting the hours worked and rates claimed. *Id.* “[A] court may
24 adjust the lodestar upward or downward using a ‘multiplier’ based on factors not subsumed
25 in the initial calculation of the lodestar” in rare cases, where supported by specific evidence.
26 *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000). The “district
27 court has a great deal of discretion in determining the reasonableness of the fee.” *Camacho*
28 *v. Bridgeport Fin., Inc.*, 523 F.3d 973, 978 (9th Cir. 2008) (internal quotation omitted).

1 Here, Plaintiff submitted the following rates and hours to arrive at a lodestar
 2 calculation of \$39,980.00 for 87.9 hours of work,¹ at hourly rates ranging from \$450–\$650.
 3 (ECF No. 76-1 at 27; ECF No. 76-5.). Plaintiff’s counsel are all from the firm Center for
 4 Disability Access, which is affiliated with Potter Handy. (See ECF No. 76.)

Attorney	Total Hours Worked	Requested Hourly Rate	Requested Total
Russell Handy	6.3	\$650	\$4,095
James Boyd	7	\$550	\$3,850
Dennis Price	9.2	\$550	\$5,060
Isabel Masanque	20.1	\$500	\$10,050
Christopher Seabock	12	\$450	\$5,400
Matt Valenti	13.5	\$400	\$5,400
Robert Doyle	4.1	\$450	\$1,845
Bradley Smith	7.7	\$400	\$3,000
Lusine Chinkezian	1.6	\$400	\$640
Paralegal work	6.4	\$100	\$640
TOTAL			\$39,980

20 Plaintiff seeks the application of a 1.5x lodestar multiplier. (ECF No. 76-1 at 27.)
 21 Defendant challenges the hourly rates sought, the hours expended, and the application of a
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 25 ¹ The Knapton Declaration listed a total of 88.2 billable hours and \$41,400 (ECF No. 76-5
 26 at 12), but the time entries Mr. Knapton included and reviewed were different from those
 27 submitted in Plaintiff’s counsel’s ultimate billing report at ECF No. 76-4, which listed a
 28 total of 87.9 hours. That results in a lodestar calculation of \$39,980.00, as shown in the
 table above, instead of the \$39,985.00 listed in Plaintiff’s memorandum of points and
 authorities. (ECF No. 76-1 at 27.)

1 lodestar multiplier. Plaintiff’s counsel also seeks to recover fees for time replying to
2 Defendant’s opposition: 5.1 hours spent by Mr. Handy and 2 hours by Ms. Masanque
3 totaling \$3,805. (ECF No. 78-2.)

4 1. Reasonable Hourly Rates

5 A reasonable hourly rate is the rate prevailing in the community for similar work.
6 *See Gonzales v. City of Maywood*, 729 F.3d 1196, 1200 (9th Cir. 2013) (“[T]he court must
7 compute the fee award using an hourly rate that is based on the prevailing market in the
8 relevant community.”). The prevailing market rate for attorneys of comparable experience,
9 skill, and reputation controls this determination; however, “[t]hat a lawyer charges a
10 particular hourly rate, and gets it, is evidence bearing on what the market rate is, because
11 the lawyer and his clients are part of the market.” *Carson v. Billings Police Dep’t*, 470
12 F.3d 889, 892 (9th Cir. 2006). “If the party seeking attorneys’ fees fails to meet its burden,
13 the court may exercise discretion to determine reasonable hourly rates based on its
14 experience and knowledge of prevailing rates in the community.” *Arias v. Ford Motor*
15 *Co.*, Case No. CV-18-1928 PSG (SPx), 2020 WL 1940843, at *3 (C.D. Cal. Jan. 27, 2020).

16 Here, Plaintiff’s counsel seeks hourly rates between \$450 and \$650. (ECF No. 76-
17 4.) To justify these rates, Plaintiff filed supporting declarations from Dennis Price and
18 James Boyd, a partner and attorney, respectively, at Plaintiff’s counsel’s firm Center for
19 Disability Access. (ECF Nos. 76-3, 76-9.) Plaintiff also filed an expert report from
20 attorney’s fees expert Gerald Knapton in support of the current rates sought. (ECF No.
21 76-5.)

22 Defendant argues that the hourly rates sought by Plaintiff’s counsel are not
23 reasonable, noting that they exceed what other attorneys receive in this District—the
24 relevant community—in ADA cases, and what counsel has received previously in this
25 District in similar cases. (ECF No. 77 at 8–11). Defendant requests the hourly rates be
26 adjusted to rates ranging from \$225 to \$425.

1 The fees awarded in recent cases in this district² are a crucial guidepost. In prior
2 cases, the fees awarded were generally well below the rates sought by counsel here. *See,*
3 *e.g., Cartwright v. Patel*, No. 18CV2191-L-BGS, 2020 WL 6271056, at *2 (S.D. Cal. Oct.
4 25, 2020) (finding \$397 to be a reasonable average hourly rate for attorneys from Potter
5 Handy and another law firm). Most instructive is a case from June 2020, where the court
6 awarded Russell Handy \$425 per hour and Dennis Price \$350 per hour. *Langer v. Ocios*
7 *LLC*, No. 19-CV-115 JLS (LL), 2020 WL 3433087, at *6 (S.D. Cal. June 23, 2020).

8 The Court is mindful that the Ninth Circuit has directed that, “The district court’s
9 function is to award fees that reflect economic conditions in the district; it is not to ‘hold
10 the line’ at a particular rate.” *Moreno v. City of Sacramento*, 534 F.3d 1106, 1115 (9th Cir.
11 2008). However, an hourly rate jump of \$200 for Mr. Price and \$225 for Mr. Handy
12 between June 2020 (when judgment was entered in *Langer*) and July 2021 (when the
13 subject motion was filed), is not supported by any evidence from Plaintiff’s counsel.
14 *Compare Whitaker v. Joe's Jeans Inc.*, No. 21-CV-00597-CRB, 2021 WL 2590155, at *5
15 (N.D. Cal. June 24, 2021) (finding counsel from Potter Handy had “provide[d] no rationale
16 for the higher requested hourly rates” they sought beyond citing dissimilar cases in the
17 district, and therefore adjusting rates downward accordingly). Thus, awarding rates that
18 are slightly above some other recent rates afforded to Plaintiff’s counsel, but lower than
19 their initial request, is well within the discretion of this Court. *See Arias v. Ford Motor*
20 *Co.*, Case No. CV 18-1928 PSG (SPx), 2020 WL 1940843, at *3 (C.D. Cal. Jan. 27, 2020)
21 (“If the party seeking attorneys’ fees fails to meet its burden, the court may exercise
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24 ² While not dispositive, that similar rates were also awarded in district courts elsewhere in
25 California is instructive. *See, e.g., Johnson v. Shahkarami*, No. 5:20-CV-07263-BLF, 2021
26 WL 1530940, at *9 (N.D. Cal. Apr. 19, 2021) (awarding Mr. Handy \$475 per hour and Mr.
27 Seabock \$350 per hour in a case about an accessible sales counter under the ADA and
28 Unruh Act).

1 discretion to determine reasonable hourly rates based on its experience and knowledge of
2 prevailing rates in the community.”). Plaintiff’s counsel’s rates are thus adjusted as
3 follows.

4 a. Russell Handy and James Boyd

5 While these attorneys’ many years of experience is noted, the high rates they seek
6 are not consistent with those previously awarded in this District, nor are they otherwise
7 supported on alternative grounds by Plaintiff. Accordingly, the rates are adjusted to \$525
8 for Russell Handy and \$500 for James Boyd.

9 b. Dennis Price, Isabel Masanque, and Christopher Seabock

10 These attorneys have moderate years of experience, but again seek rates in this case
11 beyond what has been awarded to them, or attorneys of similar experience, in this District
12 previously. Ms. Masanque’s requested rate is notably higher than that of attorneys with
13 years more experience. (*See* ECF No. 76-5 at 25.) As such, the rates are adjusted to \$475
14 for Dennis Price, \$450 for Isabel Masanque, and \$400 for Christopher Seabock.

15 The other rates requested—for Matt Valenti, Robert Doyle, Bradley Smith, Lusine
16 Chinkejian, and Paralegal Staff—are in line with rates in this District and are not adjusted
17 by the Court.

18 2. Reasonable Hours Spent

19 Defendant argues that many of the hours spent by Plaintiff’s counsel were not
20 reasonable, quibbling with numerous entries as being too simple or administrative in nature
21 to be performed by associate or senior attorneys, and objecting to Plaintiff’s counsel’s
22 staffing strategy generally. (ECF No. 77 at 11, 17–19; *see generally* ECF No. 77-1.) While
23 there are somewhat few hours requested for legal writing and analysis as compared to more
24 routine tasks, it is not a court’s job to second-guess each hour spent on a case. “The district
25 court's inquiry must be limited to determining whether the fees requested by this particular
26 legal team are justified for the particular work performed and the results achieved in this
27 particular case. The court ... may not attempt to impose its own judgment regarding the
28 best way to operate a law firm, nor to determine if different staffing decisions might have

1 led to different fee requests.” *Moreno*, 534 F.3d at 1115. This is especially true where
2 Plaintiff’s counsel seeks fees for just above 90 hours of work for a case that went through
3 trial, with approximately 77 of those hours devoted to the merits of the case. (ECF No. 76-
4 2.) The additional time spent replying to Defendant’s opposition, at 7.1 hours, is also
5 reasonable. (ECF No. 78-2.) In short, “The court should defer to the winning lawyer’s
6 professional judgment as to how much time he was required to spend on the case; after all,
7 he won, and might not have, had he been more of a slacker.” *Id.* at 1112.

8 a. Recreated time records

9 Defendant also argues that many of the hours spent by Plaintiff’s counsel are
10 unreasonable as they were not recorded contemporaneously. (ECF No. 77 at 12–13.)
11 Plaintiff’s counsel concedes that they did not keep contemporaneous time records until
12 November 2020. (ECF No. 76-3 at 3.) The time spent on this case prior to
13 contemporaneous recording was recreated by Plaintiff’s counsel by reference to the case
14 file. (ECF No. 78 at 13.)

15 The Ninth Circuit has held that contemporaneous records are not “absolutely
16 necessary,” and fee requests can “be based on reconstructed records developed by reference
17 to litigation files.” *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1121 (9th Cir. 2000). *See also*
18 *Gonzales v. Arrow Fin. Servs. LLC*, No. 05-CV-0171-JAH (RBB), 2009 WL 10672223, at
19 *5 (S.D. Cal. May 18, 2009) (noting partially reconstructed time entries can be allowable
20 and relying on such entries in awarding fees does not amount to an abuse of discretion by
21 the district court). However, “Where the documentation of hours is inadequate, the district
22 court may reduce the award accordingly.” *Hensley*, 461 U.S. at 433.

23 Here, the reconstructed records and the fee amounts they support are reasonable.
24 Indeed, in an exercise of billing judgment, Plaintiff’s counsel already reduced the total
25 hours sought from over 100 to under 90, prior to filing the instant motion. (ECF No. 76-1
26 at 17.) This represents a reduction of over 10%, which approximates the reduction the
27 Court would be inclined to make to address the adequacy of documentation. Further,
28 Plaintiff’s counsel notes that recreating time entries from the case file generally resulted in

1 “significant underbilling,” which the Court finds persuasive given the relatively low total
2 number of hours sought in this case. (ECF No. 78 at 13.) A total of under 90 hours is very
3 efficient for a fully litigated case, especially one that was tried to judgment, and does not
4 suggest that Plaintiff’s counsel is seeking payment for more hours than they worked. Thus,
5 the Court is not convinced that a further reduction in the total hours spent is necessary
6 based on the recreated billing.

7 b. Time related to expert report

8 Finally, Defendant argues that no hours for work related to the expert report should
9 be included as compensable time. (ECF No. 77 at 27.) As discussed further *supra*, the
10 Court does not find that the expert report was reasonable or necessary to Plaintiff’s fee
11 request. As such, the Court agrees that hours spent by Plaintiff’s counsel related to the
12 expert report are not recoverable. The entries related to the fee report³ total 1.2 hours spent
13 by Dennis Price. (ECF No. 76-4 at 17.)

14 “If opposing counsel cannot come up with specific reasons for reducing the fee
15 request that the district court finds persuasive, it should normally grant the award in full,
16 or with no more than a haircut.” *Moreno*, 534 F.3d at 1116. Here, the Court finds it
17 appropriate to reduce some hourly rates and deny hours related to the expert report, but
18 otherwise finds Plaintiff’s counsel entitled to the fees they have requested.

19 After adjustments to the hourly rates, removing the 1.2 attorney hours spent by
20 Dennis Price related to the expert report, and adding the time spent on Plaintiff’s reply to
21 the instant motion, the total lodestar is \$39,300.50 for 93.8 hours of work:

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28 ³ Based on entries time entries for 0.1, 0.4, 0.3, and 0.4 hours. (ECF No. 76-4 at 17.)

Attorney	Adjusted Hours Worked	Adjusted Hourly Rate	Adjusted Total
Russell Handy	6.3	\$525	\$3,308
James Boyd	7	\$500	\$3,500
Dennis Price	8	\$475	\$3800
Isabel Masanque	20.1	\$450	\$9,045
Christopher Seabock	12	\$400	\$4,800
Matt Valenti	13.5	\$400	\$5,400
Robert Doyle	4.1	\$450	\$1,845
Bradley Smith	7.7	\$400	\$3,000
Lusine Chinkezian	1.6	\$400	\$640
Paralegal work	6.4	\$100	\$640
Dennis Price—reply	5.1	\$475	\$2,422.50
Isabel Masanque—reply	2	\$450	\$900
		TOTAL	\$39,300.50

3. Lodestar Multiplier

The lodestar is presumptively the reasonable fee amount, though courts may adjust this amount using a multiplier, based on specific evidence of rare circumstances not already considered in the initial lodestar calculation. *Van Gerwen*, 214 F.3d at 1045. Here, Plaintiff seeks a 1.5 multiplier based on risk of non-payment because of the specific risk in ADA litigation that voluntary cessation will moot the case and preclude the awarding of attorney’s fees. (ECF No. 76-1 at 23–24.) Defendant contests generally that taking cases on a contingency basis alone is insufficient to warrant a lodestar multiplier, while failing to engage Plaintiff’s specific arguments. (ECF No. 77 at 23–24.) However, the risk of mootness is a concern for this type of ADA claim, especially one with costs of litigating through trial. Thus, the Court finds that a more reasonable multiplier of 1.2 is appropriate

1 in this case, given its inherent risk. Applying a 1.2 multiplier to the initial lodestar of
2 \$39,300 yields a total of \$47,160.60 in attorney's fees.

3 **B. Costs**

4 Plaintiff seeks to recover numerous costs, with Defendant objecting only to the
5 expenses for the expert attorney's fees report and the cost of service. (ECF No. 77.)

6 1. Expert report

7 Plaintiff seeks to recover \$14,534 for an expert fee report, prepared by Mr. Knapton.
8 (ECF No. 76-1 at 26; *see* ECF No. 76-5.) Defendant argues that Plaintiff's fee expert
9 opinion was unnecessary, as Plaintiff's counsel are familiar with rates in this District as
10 experienced ADA counsel, had recent fee awards in this District, and the report represents
11 a significant cost for a case with a relatively small attorney's fee award. (ECF No. 77 at
12 24–26.). The Court agrees that this report was not a reasonable litigation cost.

13 Such fee reports are often not necessary nor reasonable costs, and “Indeed, such
14 ‘expert’ opinions have been given little weight by other courts.” *See Whitaker v. Joe's*
15 *Jeans Inc.*, 2021 U.S. Dist. LEXIS 118212, at *11 (N.D. Cal. June 24, 2021) (collecting
16 cases criticizing the use of fee experts in a case involving Potter Handy); *see also Perez v.*
17 *Cozen & O'Connor Group Long Term Disability Coverage*, 2007 U.S. Dist. LEXIS 53996,
18 at *7–8 (S.D. Cal. Mar. 27, 2007). While the Real Rate Report (“RRR”) is a helpful metric
19 in some cases, retaining an expert to opine generally on fee rates often provides little value
20 given that “Affidavits of the plaintiffs’ attorney and other attorneys regarding prevailing
21 fees in the community, and rate determinations in other cases, particularly those setting a
22 rate for the plaintiffs’ attorney, are satisfactory evidence of the prevailing market rate.”
23 *Gonzales v. Arrow Fin. Servs. LLC*, No. 05-CV-0171-JAH (RBB), 2009 WL 10672223, at
24 *6 (S.D. Cal. May 18, 2009) (citing *United Steelworkers of Am. v. Phelps Dodge Corp.*,
25 896 F.2d 403, 407 (9th Cir. 1990)). This is especially true here, as Mr. Knapton primarily
26 relies on the RRR without much additional analysis. Further, Mr. Knapton's report relies
27 on the RRR rates for Title I ADA employment claims, rather than Title III ADA public
28 accommodations claims, such as the one at issue here. (ECF No. 76-5 at 28–29.) The

1 litigation involved in these two types of claims are distinct and do not automatically
2 translate to the same billing rates, thus reducing the utility of the report.

3 The Court further agrees with Defendants that, to the extent the report was obtained
4 to determine appropriate billing rates in this District generally, it is more appropriately
5 regarded as part of Plaintiff's counsel's overhead, rather than a cost related to the instant
6 case. (*See* ECF No. 77 at 27.) As it is not a reasonably necessary expense, Plaintiff is not
7 entitled to recover the cost of the expert fee report.

8 2. Service cost

9 Defendants argue that because Plaintiff did not request a waiver of service, he cannot
10 now recover the cost of service. (ECF No. 77 at 30.) While waiver of service can be
11 advantageous, it is not required, and Defendant offers no controlling authority for its
12 proposition. Fed.R.Civ.P. 4(d) (stating a plaintiff *may* request waiver of service). Plaintiff
13 is entitled to the reasonable \$30 cost of service.

14 In an exhibit to its reply, Defendant submits that all other expenses, totaling
15 \$1,159.17, are not in dispute. (ECF No. 77-2.) As such, Plaintiff is entitled to recover
16 \$1,189.17 in reasonable costs.

17 **III.**
18 **CONCLUSION AND ORDER**

19 For the foregoing reasons, Plaintiff is awarded \$47,160.60 in attorney's fees and
20 \$1,189.17 in costs.

21 **IT IS SO ORDERED.**

22 Dated: March 29, 2022

23 

24 Hon. Dana M. Sabraw, Chief Judge
25 United States District Court