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## UNITED STATES DISTRICT COURT

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## DISTRICT OF NEVADA

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KATHLEEN DENNING,

Case No. 3:17-cv-00463-MMD-WGC

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Plaintiff,

ORDER

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v.

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WASHOE COUNTY,

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Defendant.

11 Plaintiff Kathleen Denning, an employee of Washoe County Regional Animal  
12 Services who suffers from epilepsy, sued Defendant Washoe County for allegedly  
13 violating her rights under the Americans With Disabilities Act, 42 U.S.C. § 12101, et seq.,  
14 as amended (the “ADA”), and the Rehabilitation Act, 29 U.S.C. § 701, et seq., for  
15 discrimination/failure to accommodate, retaliation, and hostile work environment. (ECF  
16 No. 60 at 2.) The Court granted summary judgment to Defendant on all of Plaintiff’s  
17 claims. (Id. at 12.) Before the Court is Defendant’s motion seeking its attorney’s fees  
18 expended defending against Plaintiff’s failure to accommodate claim (the “Motion”).<sup>1</sup> (ECF  
19 No. 63.) Because the Court is unpersuaded Plaintiff’s failure to accommodate claim was  
20 frivolous when she filed it, and as further explained below, the Court will deny the Motion.

21 Defendant moves to partially recover its fees—those expended in defending  
22 against Plaintiff’s failure to accommodate claim—under the ADA. (Id. at 5.) As Defendant  
23 lays out in its Motion (id. at 5-6), while a prevailing party in an ADA case may recover its  
24 fees, fees are normally only awarded to prevailing plaintiffs because the policy  
25 considerations supporting the award of fees to prevailing plaintiffs in ADA cases do not  
26 apply to prevailing defendants. See *Kohler v. Bed Bath & Beyond of Calif., LLC*, 780 F.3d

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<sup>1</sup>The Court has reviewed Plaintiff’s response (ECF No. 64) and Defendant’s reply (ECF No. 65).

1 1260, 1266 (9th Cir. 2015). Prevailing defendants in ADA cases may therefore only be  
2 awarded fees “upon a finding that the plaintiff’s action was frivolous, unreasonable, or  
3 without foundation.” See *id.* (citation omitted). The Ninth Circuit has further “repeatedly  
4 cautioned that district courts should not ‘engage in post hoc reasoning,’ awarding fees  
5 simply ‘because a plaintiff did not ultimately prevail.’” *Id.* (citation omitted).

6 Defendant argues Plaintiff’s failure to accommodate claim was frivolous because  
7 Defendant accommodated Plaintiff’s request for an adjusted work schedule to allow her  
8 to adapt to a new medication, and Plaintiff knew she had been accommodated when she  
9 filed her failure to accommodate claim based on that request. (ECF No. 63 at 6-8.) Plaintiff  
10 counters that her claim was not frivolous when it was filed because it was also based on  
11 other requests that Defendant did not accommodate, but which the Court later decided  
12 were time barred, leaving Plaintiff’s claim supported by only one request for an  
13 accommodation that Defendant granted—leading the Court to grant summary judgment  
14 to Defendant on Plaintiff’s reasonable accommodation claim. (ECF No. 64 at 2, 4-6.) The  
15 Court is persuaded by Plaintiff’s argument.

16 The Court declines to award Defendant its partial fees here because it does not  
17 find Plaintiff’s failure to accommodate claim was frivolous at the time it was filed. While  
18 Plaintiff ultimately lost on that claim, the Court is mindful that it should not engage in post  
19 hoc reasoning. See *Kohler*, 780 F.3d at 1266. Further, it is unusual and inconsistent with  
20 the purpose of the ADA to award fees to Defendant, who prevailed in this case. See *id.*  
21 In addition, as counsel is well aware, “the general rule in the United States” is that “litigants  
22 must pay their own attorney’s fees.” *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412,  
23 415 (1978) (citation omitted). The Court is unpersuaded it should depart from these  
24 general principles in this case.

25 The Court notes that the parties made several arguments and cited to several  
26 cases not discussed above. The Court has reviewed these arguments and cases and  
27 determines that they do not warrant discussion as they do not affect the outcome of the  
28 Motion.

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It is therefore ordered that Defendant Washoe County's motion for attorney's fees (ECF No. 63) is denied.

DATED THIS 30<sup>th</sup> day of August 2019.



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MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE