

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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CIVIL MINUTES - GENERAL

Case No. SA CV 06-464 DOC (ANx)

Date: September 8, 2006

Title: LARY FEEZOR v. AERO MOBILITY, INC., et al.

DOCKET ENTRY

[I hereby certify that this document was served by first class mail or Government messenger service, postage prepaid, to all counsel (or parties) at their respective most recent address of record in this action on this date.]

Date: _____ Deputy Clerk: _____

PRESENT:

THE HONORABLE DAVID O. CARTER, JUDGE

Kristee Hopkins
Courtroom Clerk

Not Present
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS: ATTORNEYS PRESENT FOR DEFENDANTS:

NONE PRESENT

NONE PRESENT

PROCEEDING (IN CHAMBERS): ORDER AWARDING REASONABLE ATTORNEYS' FEES
AND COSTS

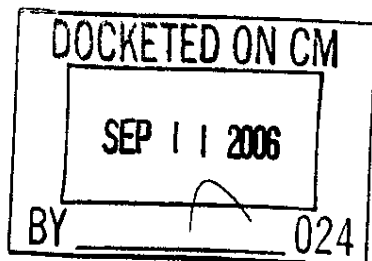
Before the Court is Plaintiff Lary Feezor's Motion for Attorneys' Fees, Including Litigation Expenses and Costs ("Motion"). The Court finds the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; Local R. 7-15. Accordingly, the hearing set for September 11, 2006 was removed from the Court's calendar. After considering the moving, opposing and replying papers, the Court hereby GRANTS the Motion.¹

I. BACKGROUND

On May 11, 2006, Plaintiff filed this action against Defendants Aero Mobility, Inc. ("Aero"), Dwight C. Schroeder and Iris E. Schroeder, and Schroeder Brothers Partnership, alleging that

¹In his reply brief, Plaintiff moved to strike Defendant's opposition as untimely. The Court declines to exercise its authority do so under Local Rule 7-12.

MINUTES FORM 11 DOC
CIVIL - GEN



Initials of Deputy Clerk
Page 1 of 4

29

architectural barriers at their automobile dealership interfered with his enjoyment of the premises and violated the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§12101, et seq.

On June 29, 2006, the Court entered judgment in favor of Feezor and against Defendants based on his acceptance of an offer to compromise with Defendants, whereby he released all claims concerning equitable relief in exchange for specific injunctive relief and \$4,100 in monetary damages. Feezor now moves for attorneys’ fees and costs in the amount of \$5,341.33 as the “prevailing party” under the ADA.

II. LEGAL STANDARD

The ADA provides that a “prevailing party” may recover reasonable attorneys’ fees, including litigation expenses and costs. 42 U.S.C. § 12205. A plaintiff prevails when “actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant’s behavior in a way that directly benefits the plaintiff.” *Farrar v. Hobby*, 506 U.S. 103, 111-12, 113 S. Ct. 566 (1992). A court should ordinarily award these statutorily authorized attorneys’ fees “unless special circumstances would render such an award unjust.” *Barrios v. Cal. Interscholastic Fed’n*, 277 F.3d 1128, 1134 (9th Cir. 2002) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 429, 103 S. Ct. 1933 (1983)).

Once the Court has determined that attorney’s fees are warranted in a given case, the Court must then assess whether the amount of fees requested is reasonable. “In setting a reasonable attorney’s fee, the district court should make specific findings as to the rate and hours it has determined to be reasonable.” *Gracie v. Gracie*, 217 F.3d 1060, 1070 (9th Cir. 2000) (quoting *Frank Music Corp. v. Metro-Goldwyn Mayer Inc.*, 886 F.2d 1545, 1557 (9th Cir. 1989)). The first step the district court must take is to “determine the presumptive lodestar figure by multiplying the number of hours reasonably expended on the litigation by the reasonable hourly rate.” *Id.* at 1070 (internal quotation marks and citation omitted). Next, the district court should, where appropriate, “adjust the ‘presumptively reasonable’ lodestar figure based upon the factors listed in *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 69-70 (9th Cir.1975), that have not been subsumed in the lodestar calculation.” *Id.* (internal quotation marks and citation omitted).

The *Kerr* factors are: (1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the ‘undesirability’ of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases. *Kerr*, 526 F.2d at 70.

III. DISCUSSION

Since the parties entered into a settlement whereby Plaintiff released all claims against Defendants concerning equitable relief in exchange for specific injunctive relief and \$4,100 in monetary damages, Plaintiff is clearly the “prevailing party.” 42 U.S.C. § 12205. The issue before the Court is whether Plaintiff’s request of \$5,341.33 in attorneys’ fees and costs is reasonable.

Plaintiff seeks to recover fees for the work of attorneys Mark Emmett, Scott Hubbard and their paralegals. Specifically, Plaintiff seeks to recover fees for 5.05 hours worked by Emmett, 7.05 hours worked by Hubbard and 15.50 hours worked by paralegals. After reviewing the itemized fee chart submitted by Plaintiff’s counsel, Decl. of Schottlynn J. Hubbard, IV Ex. B, in light of the *Kerr* factors, *Kerr*, 526 F.2d at 70, the Court finds that the following tasks involved an unreasonable number of hours and reduces the hours expended accordingly.

Hubbard billed 0.60 hours to create a fee agreement and give it to a paralegal to send on to Plaintiff. The Court finds this amount of time to be excessive, since Hubbard likely had a form fee agreement that could be prepared for his review by a paralegal. The Court reduces this entry to 0.30 hours.

Hubbard billed 0.70 hours to perform a conflict check. The Court finds this amount of time to be excessive, since such a conflict check could easily be performed by a secretary or paralegal. The Court reduces this entry to 0.10 hours.

A paralegal billed 2.00 hours to conduct online research to determine the ownership of the automobile dealership. The Court finds this amount of time to be excessive, and reduces this entry to 1.00 hours.

Emmett billed 1.00 hour to draft the complaint. Although he had to confer with Plaintiff to learn the specifics of the architectural barriers at the automobile dealership, the complaint is largely comprised of boilerplate language concerning compliance with the ADA, which could have been drafted by a paralegal. Indeed, a quick comparison of the complaint in this case with the complaint in *Feezor v. JoJo’s Restaurant, Inc., et al.*, SA CV 06-470 DOC (ANx), also before the Court, demonstrates the boilerplate nature of Plaintiff’s complaint. The Court finds the amount of time billed for this task to be excessive, and reduces this entry to 0.50 hours.

A paralegal billed 1.00 hours to create a client file. Since this task could have been completed by a secretary, the Court finds the amount of time to be excessive, and reduces this entry to 0.50 hours.

Emmett billed 0.50 hours to prepare Plaintiff’s acceptance of Defendants’ offer of

compromise. The acceptance letter is a mere three sentences long. Decl. of James C. Mason Ex. J. The Court finds the amount of time to be excessive, and reduces this entry to 0.20 hours.

Hubbard billed 3.00 hours to prepare the present Motion. Except for the itemized list, the Motion contains mainly boilerplate language concerning the availability of reasonable attorneys' fees under the ADA. Since requests for attorneys' fees under the ADA are doubtlessly a common practice for Hubbard and his firm, Disabled Advocacy Group, APLC, the Court finds this amount of time to be excessive and reduces this entry to 1.50 hours.

Thus, the Court finds that a reasonable amount of time expended by Plaintiff's counsel is as follows: 6.25 hours for Emmett, 2.65 hours for Hubbard, and 14 hours for paralegals.

The Court finds that the billing rates for Emmett, Hubbard and the paralegals are reasonable. Emmett's rate is \$250 per hour; Hubbard's rate is \$200 per hour; and the paralegals' rate is \$75 per hour. Accordingly, multiplying the reasonable number of hours by these reasonable rates, the Court sets the loadstar figure as follows:

Emmett: 6.25 hours @ \$200/hour = \$1,250.00

Hubbard: 2.65 hours @ \$250/hour = \$662.50

Paralegals: 14.00 hours @ \$75/hour = \$1,050.00

Total: \$2,962.50

Although this loadstar figure is presumptively reasonable, the Court downwardly adjusts this figure to reflect that this ADA compliance case presented neither novel nor difficult legal issues. *See Gracie*, 217 F.3d at 1070; *Kerr*, 526 F.2d at 70. In light of this second *Kerr* factor, the Court reduces the loadstar figure of \$2,962.50 by 20%, for an award of reasonable attorneys' fees of \$2,370.00.

IV. DISPOSITION

For the reasons set forth above, the Court hereby GRANTS Plaintiff's Motion and awards \$2,370.00 in reasonable attorneys' fees and costs.

The Clerk shall serve this minute order on all parties to the action.