UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MAURIZIO ANTONINETTI Plaintiff, v. CHIPOTLE MEXICAN GRILL, INC., AND DOES 1 THROUGH 10, inclusive, Defendants.	Civil No. 05CV1660-J (WMc) Related to & Consolidated for Discovery with 06cv2671 (Wmc) **ORDER:** **(1) DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION [DOC. NO. 273]** **(2) GRANTING IN PART AND DENYING IN PART PLAINTIFF'S AMENDED BILL OF COSTS**

Presently before the Court is Plaintiff's Motion for Reconsideration and Bill of Amended Costs. On August 21, 2008, the Court issued an order granting in part Plaintiff's Motion for Attorney's Fees and Costs, awarding reasonable attorneys' fees to Plaintiff based on reasonable time spent litigating the claims upon which Plaintiff prevailed at trial, and directing Plaintiff to submit an amended Bill of Costs. [Doc. No. 271.] Plaintiff filed a Motion for Reconsideration of this ruling and submitted an Amended Bill of Costs. [Docs. No. 273-274.] Defendant has opposed both the Motion for Reconsideration and the Amended Bill of Costs. [Docs. No. 283-284.] The Court heard oral argument on these matters on October 20, 2008.

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Background

Plaintiff initiated this action against Defendant Chipotle Mexican Grill, Inc. in 2005 alleging various violations of the Americans with Disabilities Act (ADA) and the California Disabled Persons Act (CDPA). Plaintiff asserted that architectural barriers denied Plaintiff full and equal access to two of Defendant's restaurants and sought monetary damages, injunctive relief, and declaratory relief. This Court held a bench trial in this action November 27-December 3, 2007. At trial, the Court made the following findings: (1) Defendant's prior practice of accommodating customers with disabilities, including customers in wheelchairs, did not constitute equivalent facilitation under section 7.2.(2)(iii) of the ADA Accessibility Guidelines; (2) Defendant's current written Customers with Disabilities Policy constitutes equivalent facilitation under Section 7.2(2)(iii); (3) Plaintiff is not entitled to an injunction requiring Defendant to lower the wall in front of the restaurants' food preparation counters; and (4) Plaintiff is entitled to a total of $5,000.00 in damages for the occasions on which he encountered barriers to his entrance into Defendant's restaurants.

On May 5, 2008 Plaintiff filed a Motion for Attorney's Fees and Costs pursuant to 42 U.S.C. § 12205 in which he sought $550,651.33 in fees and expenses. [Doc. No. 241.] The Court granted Plaintiff's Motion for Attorney's Fees and Costs in part, finding that Plaintiff was entitled to reasonable attorneys' fees for time spent litigating the issues upon which Plaintiff prevailed at trial–those related to equal facilitation under the unwritten customer policy and damages for violations of California Civil Code Sections 54 and 54.3–as well as for time spent litigating issues that were necessarily intertwined with those issues–namely, the issues regarding Defendant's parking lot violations and any related ADA claims. [Doc. No. 271.] The Court further ordered Plaintiff to "submit a copy of his Bill of Costs so the Court may determine a reasonable amount for attorneys' fees." (*Id.*)

Discussion

I. Plaintiff's Motion for Reconsideration

Plaintiff has filed a Motion for Reconsideration of the Court's ruling on Plaintiff's Motion for Attorney's Fees. [Doc. No. 273.] Plaintiff argues that the Court committed clear

error with respect to the timing of Defendant's parking modifications, which the Court discussed in the context of determining whether the public had sustained a benefit from Plaintiff's litigation. Plaintiff contends that the Court's statements about the parking modifications are factually erroneous and that the Court should reconsider and amend its ruling on Plaintiff's Motion for Attorney's Fees because of the factual errors underlying the Court's decision. Plaintiff also requests that the Court include in its order that "Plaintiff's lawsuit provided a public benefit because the parking lots at the Chipotle restaurants were modified as a result of Plaintiff's lawsuit."

A. Legal Standard for a Motion for Reconsideration

The Federal Rules of Civil Procedure do not expressly provide for motions for reconsideration. However, a motion for reconsideration may be construed as a motion to alter or amend the judgment under Rule 59(e) or Rule 60(b). *See Osterneck v. Ernst & Whinney*, 489 U.S. 169, 174 (1989); *In re Arrowhead Estates Development Co.*, 42 F.3d 1306, 1311 (9th Cir. 1994). Motions for reconsideration are not vehicles permitting the unsuccessful party to reiterate arguments previously presented. *See Costello v. United States Government*, 765 F. Supp. 1003, 1009 (C.D. Cal. 1991); *see also United States v. Navarro*, 972 F. Supp. 1296, 1299 (E.D. Cal. 1999), *rev'd on other grounds*, 160 F.3d 1254 (9th Cir. 1998) (Rule 59(e) motions "are not vehicles permitting the unsuccessful party to 'rehash' arguments previously presented"). Generally, "[r]econsideration is appropriate if: (1) the district court is presented with newly discovered evidence, (2) the district court committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law. There may also be other, highly unusual, circumstances warranting reconsideration." *Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993), cert. denied, 512 U.S. 1236 (1994).

B. Clear Error

Plaintiff contends that the Court committed clear error in its statements about the timing of modifications Defendant made to its parking lots. In the Court's Order, it wrote:

> "Defendants had already rectified many of the ADA violations regarding parking prior to the filing of the lawsuit. . . . The public has not sustained any significant benefit from Plaintiff's litigation. The issue regarding the parking barriers on which Plaintiff prevailed under California Civil Code §§ 54 and 54.3 had been

> rectified in accordance to ADA standards prior to Plaintiff's litigation. The Court did not order Defendant to take measures to rectify its ADA parking violations as a result of Plaintiff's litigation." [Doc. No. 271 at 5.]

These statements are factually incorrect. Plaintiff points to the deposition testimony of Scott Shippey and Kim Blackseth, which indicates that the ADA parking violations existed after the initiation of Plaintiff's lawsuit and that modifications were made as a result of Plaintiff's lawsuit. [Doc. No. 273-2 at 3.] Defendant also concedes that "Plaintiff is correct that Chipotle corrected the alleged parking lot violations at the Pacific Beach and Encinitas Restaurants after Plaintiff filed his lawsuit." [Doc. No. 284 at 2.] The Court did not order modifications to Defendant's parking areas at the conclusion of trial because no violations existed at that time, but Defendant did modify the parking lots after the initiation of the litigation.

Although the Court made a factual misstatement in its Order, it is not evident that this misstatement undermined the reasoning of the Order or affected the Court's decision. The Court concluded that Plaintiff's litigation did not result in any significant public benefit, in part based on its mistaken statement that the parking violations were remedied before the litigation. Public benefit, however, is just one factor that a court may consider in reducing or enhancing the lodestar figure for attorney's fees. As the Court stated in its Order, "'The most critical factor' in determining the reasonableness of a fee award 'is the degree of success obtained.'" *Farrar v. Hobby*, 506 U.S. 103, 114 (1992) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983)). The Court's Order relied most heavily on *this* factor, and it ordered that Plaintiff should receive attorneys' fees for the time spent on the claims upon which he prevailed. Notably, although the Court found that the litigation did not provide a public benefit, the Court did not rely on that factor to deny attorneys' fees to Plaintiff.

Furthermore, the Court's Order did authorize an award of attorneys' fees for the work done in relation to the parking lot violations. The Court wrote, "[T]he issues regarding Defendant's parking lot violations and unwritten customer accommodations policy and any related ADA claims are necessarily intertwined and Plaintiff should receive reasonable fees for time spent on those issues." [Doc. No. 271 at 7.] Therefore, the Court's

misstatement about the timing of the parking lot modifications did not affect Plaintiff's ability to recover attorneys' fees related to those claims. As a result, a revision of the Court's Order with regard to the timing of the parking lot modifications would have no effect on the fees to which Plaintiff is entitled.

Accordingly, the Court **DENIES** Plaintiff's Motion for Reconsideration.

II. Plaintiff's Amended Bill of Costs

A. Legal Standard for an Award of Attorneys' Fees

The ADA provides that the court "in its discretion, may allow the prevailing party . . . a reasonable attorneys' fee, including litigation expenses, and costs." *See* 42 U.S.C. § 12205. Under both the ADA and state anti-discrimination fee shifting statutes, courts are required to employ the lodestar method in calculating attorneys' fees, in which fees are assessed by multiplying the hours reasonably expended on the litigation by a reasonable hourly rate. *Staton v. Boeing Co.*, 327 F.3d 938, 965 (9th Cir. 2003); *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996). Additionally, courts consider other relevant factors adopted by the Ninth Circuit in *Kerr v. Screen Guild Extra, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975), *cert. denied*, 425 U.S. 951 (1976). These factors include:

> (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 the 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 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; and (12) awards in similar cases.

Kerr, 526 F.2d at 70 (quoting *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974)). In sum, "a district court has wide latitude in determining the number of hours that were reasonably expended by the prevailing lawyers, but it must provide enough explanation to allow meaningful review of the fee award." *Sorenson v. Mink*, 239 F.3d 1140, 1146 (9th Cir. 2001); *see also Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1211 (9th Cir. 1986).

Furthermore, the district court has discretion to reduce or enhance the lodestar figure. *See Fischer v. SHB-P.D. Inc.*, 214 F.3d 1115, 1119 n.4 (9th Cir. 2000). If the plaintiff achieves limited success, then awarding attorneys' fees based on the total number of hours reasonably spent in preparation for litigation multiplied by a reasonable hourly rate may be an extravagant sum. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983). "'The most critical factor in determining the reasonableness of a fee award 'is the degree of success obtained.'" *Farrar v. Hobby*, 506 U.S. 103, 114 (1992) (quoting *Hensley*, 461 U.S. at 436). If the relief obtained is limited compared to the scope of the entire litigation, then reducing the amount of attorneys' fees is appropriate. *Hensley*, 461 U.S. at 440.

B. Discussion

1. Background

In a motion dated May 5, 2008, Plaintiff requested $550,651.33 in fees and expenses–$524,925.00 in attorney's fees and $25,726.33 in expenses. [Doc. No. 241.] The Court ruled on this motion on August 21, 2008. [Doc. No. 271.] In that Order, the Court granted in part Plaintiff's Motion, finding that Plaintiff was only entitled to attorneys' fees for work related to the claims upon which he prevailed at trial. The Court found that these claims included equal facilitation under the unwritten customer policy and damages for violations of California Civil Code Sections 54 and 54.3, as well as the parking lot violations and related ADA claims that were necessarily intertwined. The Court found that Plaintiff should not receive fees for time spent litigating the injunction to lower the 44-inch wall or the claim that Chipotle's written Customers with Disabilities Policy did not provide equal facilitation. Further, the Court ordered Plaintiff to submit a copy of his Bill of Costs so the Court could determine a reasonable amount for attorney's fees.

On September 10, 2008, Plaintiff submitted an Amended Memorandum of Costs. [Doc. No. 274.] In this Memorandum, Plaintiff requested $559,572.06 in fees and expenses–$550,651.33 in attorneys' fees and $8,920.73 in expenses. This is essentially the same amount (slightly more, in fact) that Plaintiff requested in his previous Motion for

Attorney's Fees, to which the Court's August 21 Order was addressed, and Plaintiff does not identify which work was associated with which claims at trial.

Instead, Plaintiff asserts that "all of these costs were incurred in relation to the claims upon which the Court ruled that Plaintiff prevailed." [Doc. No. 274-3 at 2.] Plaintiff argues that all of the claims he presented at trial–those he prevailed upon as well as those he did not–required a common factual investigation in order to establish an underlying violation of the ADA. In addition, Plaintiff claims that he incurred no fees or costs in relation to his unsuccessful claim for injunctive relief, since he did not believe he had a burden of proof on this issue at trial. [*Id.* at 3.] Plaintiff also asserts that it is impossible to separate work on the written and unwritten policies, since his argument at trial was that "policies, written or unwritten, cannot constitute 'equivalent facilitation.'" [*Id.*]

However, Plaintiff later revised these statements in his Reply to Defendant's Opposition, identifying 12 hours of time spent by his attorneys on issues related to counter height or the written policy and asks that his attorneys' fees be reduced by not more than these 12 hours ($4,500). [Doc. No. 285.] In his Reply, Plaintiff also revised several other figures in his Bill of Costs, including costs for copies and expert fees. (*Id.*)

2. Plaintiff's Requested Attorneys' Fees

Plaintiff has requested over $500,000 in fees and costs in a case in which Plaintiff recovered only $5,000 in damages, which represents only a fraction of the relief sought. As the Court's previous Order noted, Plaintiff initially sought $24,000 in damages, injunctive relief, and declaratory relief. [Doc. No. 271 at 5.] The Court denied injunctive relief and found that Defendant's Customers with Disabilities Policy provides equivalent facilitation under the ADA, but found that Defendant had failed to accommodate Plaintiff appropriately during his previous visits to Chipotle restaurants and awarded $5,000 in damages. Despite this limited success, Plaintiff claims that all of the fees and costs requested were incurred while working on the claims upon which he prevailed. [Doc. No. 274.]

Plaintiff seeks $546,151.33 in attorneys' fees (Plaintiff's original request of $550,651.33 less the $4,500 Plaintiff identified as related to litigating the unsuccessful

injunctive relief claim). [Docs. No. 274, 285.] The Court **FINDS** that Plaintiff's request is unreasonable, as it is unlikely that Plaintiff's attorneys spent only 12 hours over the course of a three-year lawsuit litigating the unsuccessful claims, particularly the claim for injunctive relief. As a result, Plaintiff has failed to meet his "burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates[,]" including maintaining "billing time records in a manner that will enable a reviewing court to identify distinct claims." *Hensley*, 461 U.S. at 437.

Where a district court finds it appropriate to reduce an award of attorneys' fees because of limited success, the Supreme Court has said that the court "may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success." *Id.* at 436-37. In this case, Plaintiff's billing records make it impossible for the Court to identify specific hours associated with unsuccessful claims. In addition to Plaintiff's assertion that such categorization is impossible because of the common factual investigation required, Plaintiff has also included many "block-billed"entries in his billing statement (entries that list more than one task with an aggregate amount of time spent on each), which preclude identification of how much time Plaintiff spent on each individual task and whether that time was reasonable. *See* [Doc. No. 283 at 11-14]. Therefore, the Court **FINDS** it appropriate to simply reduce the award by a designated amount.

In *Evers v. Custer County*, the Ninth Circuit affirmed a fee award of one-third of the amount of fees requested where it was impossible to distinguish the time spent on the successful claim. 745 F.2d 1196, 1204-05 (9th Cir. 1984). Instead, the district court estimated that roughly two-thirds of the attorney's time was spent on the unsuccessful claim and therefore arrived at the one-third figure. The Ninth Circuit found this appropriate because the district judge "was familiar with the case, and made a reasonable estimate." *Id.* at 1205.

In a recently-decided case, *McCown v. City of Fontana*, the Ninth Circuit emphasized that a party's level of success is the most important factor to consider in determining

a fee award, and particularly a comparison of the damages awarded to damages sought. 2008 WL 5377694 (C.A.9 (Cal.)). "A district court must consider the excellence of the overall result . . . [but] in judging the plaintiff's level of success and the reasonableness of hours spent achieving that success, a district court should 'give primary consideration to the amount of damages awarded as compared to the amount sought.'" *Id.* at *5 (quoting *City of Riverside v. Rivera*, 477 U.S. 561, 586 (1986) (Powell, J., concurring). Furthermore, in *McGinnis v. Kentucky Fried Chicken*, the Ninth Circuit vacated an attorney fee award of $148,000 after the damages awarded to the plaintiff were reduced to $34,000, reasoning that "no reasonable person would pay lawyers $148,000 to win $34,000." 51 F.3d 805, 810 (9th Cir. 1994).

In this case, Plaintiff was awarded only $5,000 in damages, which represented slightly more than one-fifth of the damages he originally sought. If "no reasonable person would pay lawyers $148,000 to win $34,000," surely no reasonable person would pay over $500,000 in attorneys' fees to recover only $5,000. However, a party's degree of success may be measured by more than just damages awarded. *See McCown*, 2008 WL 5377694 at *6 ("[T]he district court should consider not only the monetary results but also the significant nonmonetary results [the plaintiff] achieved for himself and other members of society.") (citation omitted). In this case, Defendant Chipotle made changes to its policies and parking barriers after Plaintiff initiated this litigation. *See* discussion *supra*, section I.B. However, the Court did not order Defendant to take measures to rectify its ADA parking violations as a result of Plaintiff's litigation, and Chipotle enacted its written Customers With Disabilities Policy before the Court declared that Chiptole's prior written policy did not provide equal facilitation. *See* [Doc. No. 271 at 5]. Therefore, the nonmonetary results that Plaintiff achieved for himself and others were somewhat limited.

As a result, the Court **FINDS** that Plaintiff is entitled to one-quarter of the attorneys' fees that he has requested. The Court **AWARDS** Plaintiff attorneys' fees in the amount of **$136,537.83.**

3. Plaintiff's Claimed Costs

In his Amended Bill of Costs, Plaintiff requests reimbursement for $8,920.73 in costs, including fees of the Clerk, fees for service of summons and subpoena, transcript fees, printing fees, and witness fees (later reduced to $8,172.45 in his Reply). The Federal Rules of Civil Procedure provides that "costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the court otherwise directs." Fed. R. Civ. P. 54(d)(1). The rule creates a presumption in favor of awarding costs to a prevailing party, but vests in the district court discretion to refuse to award costs. *Ass'n of Mexican-American Educators v. State of California*, 231 F.3d 572, 591 (9th Cir. 2000) (citing *Nat'l Info. Servs., Inc. V. TRW, Inc.*, 51 F.3d 1470, 1471 (9th Cir. 1995)). The Ninth Circuit has held, "In the event of a mixed judgment, . . . it is within the discretion of a district court to require each party to bear its own costs." *Amarel v. Connell*, 102 F.3d 1494, 1523 (9th Cir. 1996). Because the judgment in this case was mixed and Plaintiff was only partially successful, and because Plaintiff has claimed that he is unable to separate the work done on the prevailing claims, the Court **ORDERS** each party to bear its own costs.

Conclusion

For the foregoing reasons, the Court:

(1) **DENIES** Plaintiff's Motion for Reconsideration;

(2) **AWARDS** Plaintiff attorneys' fees in the amount of $136,537.83; and

(3) **ORDERS** that each party bears its own costs.

IT IS SO ORDERED.

DATED: February 6, 2009

HON. NAPOLEON A. JONES, JR.
United States District Judge