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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MAURIZIO ANTONINETTI,	Plaintiff,
v.	
CHIPOTLE MEXICAN GRILL, INC.,	
Defendant.	

Case No. 05cv01660 BTM (WMC)
**ORDER RE PLAINTIFF'S MOTIONS
FOR SUMMARY JUDGMENT AND
FOR ATTORNEYS' FEES**

Pending before the Court are Plaintiff Livia Antoninetti's¹ Motion for Summary Judgment (Dkt. No. 335) and Motion for Attorneys' Fees and Expenses in Relation to Defendant's Petition for a Writ of Certiorari (Dkt. No. 336). For the reasons set forth herein, the Court GRANTS IN PART and DENIES IN PART Plaintiff's motion for summary judgment, and DENIES Plaintiff's motion for attorneys' fees and expenses without prejudice.

I. BACKGROUND

Plaintiff's claims in this case arise out of violations of the Americans with Disabilities Act (ADA) and California Disabled Persons Act (CDPA) resulting from Defendant Chipotle

¹Following the death of Livia Antoninetti's husband, Maurizio Antoninetti, on May 9, 2011, the Court granted Mrs. Antoninetti's unopposed motion to be substituted as Plaintiff in the above-captioned matter. (See Dkt. No. 349.)

1 Mexican Grill, Inc.'s construction of food counters that are too high, such that customers in
2 wheelchairs are unable to view the food as it is being prepared and thus are unable to
3 patronize the restaurant in a manner equal to the experience of other customers.²

4 Following a bench trial, the Court (Jones, J.) entered its "Findings of Fact, Conclusions
5 of Law, and Judgment" (Dkt. No. 229) on January 10, 2008, in which the Court held that
6 Defendant's initial unwritten policy regarding accommodations within the restaurants for
7 customers in wheelchairs violated the ADA, but that its subsequent and then-current written
8 policy complied with the ADA. (*Id.* at 31-34.) The Court found that Mr. Antoninetti visited
9 Defendants' restaurants on at least eight occasions while the initial unwritten policy was in
10 effect. (*Id.* at 38.) The Court denied Plaintiff's claim for injunctive relief and awarded Plaintiff
11 \$5,000 in statutory damages under the CDPA. (*Id.* at 34-39.) The \$5,000 dollar damages
12 award consisted of \$1,000 in statutory damages for each of five "bona fide" visits by Mr.
13 Antoninetti to Defendant's restaurants (one visit to the Encinitas Restaurant and four visits
14 to the Pacific Beach Restaurant) occurring while the unwritten policy was in effect. (*Id.* at
15 38.) The Court found that Mr. Antoninetti made the three remaining visits "for the purpose
16 of gathering evidence for this litigation[,]" and therefore that he was not a "bona fide"
17 customer on those occasions. (*Id.* at 32.) On that basis, the Court declined to award any
18 statutory damages for those three visits. (*Id.*)

19 The trial court also found that architectural barriers encountered by Mr. Antoninetti in
20 the parking lot at the Pacific Beach Restaurant during two of the five "bona fide" visits also
21 violated the ADA, but that the CDPA "does not provide damages for each and every
22 architectural barrier that Plaintiff encounters" on a particular occasion and therefore "relief
23 is capped at the \$1000.00 [per 'bona fide' visit] that Plaintiff is already awarded for
24 Defendant's failure to provide Plaintiff with equivalent facilitation within the Restaurants." (*Id.*
25 at 38-39.)

26 On May 5, 2008, Plaintiff moved for attorneys' fees and costs, seeking a total of
27

28 ²For a more detailed review of the facts giving rise to Plaintiff's claims in this case, see *Antoninetti v. Chipotle Mexican Grill, Inc.*, 643 F.3d 1165, 1169-71 (9th Cir. 2010).

1 \$550,651.33 (\$524,925.00 in attorneys' fees and \$25,726.33 in litigation expenses). (Dkt.
2 No. 241.) On August 21, 2008, the Court found that Plaintiff was the prevailing party in the
3 litigation, and granted in part Plaintiff's motion for attorneys' fees and costs. (Dkt. No. 271.)
4 On February 6, 2009, the Court awarded Plaintiff attorneys' fees in the amount of
5 \$136,537.83 and ordered each party to bear its own costs. (Dkt. No. 288.)

6 Plaintiff appealed the Court's Findings of Fact, Conclusions of Law, and Judgment
7 (Dkt. No. 229) "with respect to the denial of [Plaintiff's] claim for injunctive relief and with
8 respect to the denial of additional damages to Plaintiff based upon violations of the
9 Americans with Disabilities Act by Chipotle. Plaintiff does not appeal the amount of the
10 damages already awarded, but requests that the Ninth Circuit Court of Appeals affirm the
11 award of damages on a different legal basis." (Dkt. No. 255, Plaintiff's Notice of Appeal, at
12 1.) Plaintiff also appealed the award of attorneys' fees and expenses (Dkt. Nos. 271 and
13 288). (Dkt. No. 289, Plaintiff's Notice of Appeal, at 1.)

14 In its amended decision, filed September 22, 2010, the Ninth Circuit upheld the District
15 Court's conclusion that Defendant's initial unwritten policy for accommodating customers in
16 wheelchairs inside the restaurants violated the ADA, and reversed the conclusion that the
17 subsequent written policy complied with the ADA. See Antoninetti, 643 F.3d at 1177. The
18 Ninth Circuit remanded to the District Court with instructions to enter judgment that Chipotle's
19 written policy violated the ADA and to issue appropriate injunctive relief. Id. The Ninth
20 Circuit also vacated the \$5,000 damages award and remanded for further proceedings on
21 the issue of damages. Id. Lastly, the Ninth Circuit vacated the award of attorneys' fees and
22 costs and remanded that issue for reconsideration in light of the court's holding that
23 Defendant's written policy violated the ADA. Id. at 1176.

24 On November 29, 2010, the Court (Moskowitz, J.) ordered the Clerk to enter judgment
25 against Defendant for violation of the ADA, and ordered briefing on the scope of injunctive

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1 relief and the amount of damages due to Plaintiff under the CDCA.³ (Dkt. No. 329.) The
2 Court addresses these issues in turn.

3 4 II. INJUNCTIVE RELIEF

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6 Mr. Antoninetti's death on May 9, 2011, renders moot any claim for injunctive relief
7 under Title III of the ADA.⁴ Injunctive relief obviously would be ineffectual as to Mr.
8 Antoninetti because he is now deceased. His estate lacks standing to pursue an injunction
9 because it cannot show a threat to its interests or that any redress would accompany a
10 favorable judgment. See City of Los Angeles v. Lyons, 461 U.S. 95, 101-03 (1983) (holding
11 that claim for injunctive relief does not satisfy Article III case and controversy requirement
12 unless plaintiff can show that threat of future injury is "both 'real and immediate,' not
13 'conjectural' and 'hypothetical'" (citations omitted)); see also Wojewski v. Rapid City Regional
14 Hosp., Inc., 450 F.3d 338, 342 (8th Cir. 2006) (holding that plaintiff's death during pendency
15 of appeal from judgment in favor of defendant mooted plaintiff's claim for injunctive relief
16 under Title III of the ADA); Plumley v. Landmark Chevrolet Inc., 122 F.3d 303, 312 (5th Cir.
17 1997) (upholding district court's conclusion that plaintiff's death entitled defendant to
18 summary judgment on plaintiff's claim for injunctive relief under Title III of the ADA, reasoning
19 that appellant "cannot show that there is a real or immediate threat that he will be wronged
20 again").

21 Based on the forgoing, the Court finds that injunctive relief is no longer appropriate
22 in this case and DENIES Plaintiff's request "that the Court issue an injunction requiring

23
24 ³In its November 29, 2010 order, the Court referred the issue of damages to the
25 Magistrate Judge for a settlement conference, and stated that "[i]f the parties cannot reach
26 a settlement on this issue, a litigation schedule will be entered by the Magistrate Judge."
27 (Dkt. No. 329 at 3.) The docket does not indicate that the Magistrate Judge entered a
28 specific scheduling order regarding damages. Regardless, both parties thoroughly briefed
the damages issue, and it is ripe for resolution.

⁴Plaintiff does not meaningfully contest this proposition. (See generally Dkt. No. 355,
Plaintiff's Supplemental Brief in support of SJ Motion; Dkt. No. 357, Plaintiff's Response to
Defendant's Supplemental Brief re: SJ Motion.)

1 Chipotle to maintain the current heights of the walls at the food preparation areas” (See
2 Dkt. No. 335-1, Plaintiff’s Brief in support of SJ Motion, at 4.)

3
4 **III. DAMAGES**

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6 California Civil Code § 54.3 (“Violations; liability”) entitles a CDPA plaintiff to a
7 statutory minimum damages award of \$1,000 for “each offense” established by the plaintiff.⁵
8 Upon its determinations that Defendant’s unwritten policy constituted a violation of the ADA
9 (and therefore the CDPA as well⁶), and that Mr. Antoninetti made five “bona fide” visits to
10 Defendant’s restaurants while that policy was in effect, the trial court awarded Plaintiff \$5,000
11 in statutory damages. (Dkt. No. 229 at 38.)

12 On appeal, the Ninth Circuit vacated the damages award entered by the District Court
13 and remanded “for further proceedings on this issue.” On remand, Plaintiff seeks a total
14 damages award of \$8,000, consisting of \$5,000 in damages already awarded and \$3,000 in
15 additional damages for the three “litigation-related” visits. (Dkt. No. 335-1, Plaintiff’s Brief in
16 support of SJ Motion, at 3.) Defendant contends that Plaintiff is not entitled to damages for
17 the litigation-related visits because during those visits, he was not acting as a “bona fide”
18 customer. (Dkt. No. 354, Defendant’s Supplemental Brief in response to SJ Motion, at 6.)
19 Additionally, Defendant contends that Plaintiff is not entitled to damages for three of the five
20 non-litigation-related (“bona fide”) visits, on the ground that Plaintiff cannot identify the dates
21 on which he made those three visits, and therefore cannot establish specific offenses for
22 which Plaintiff is entitled to statutory damages on those three occasions. (Id. at 3-4.) The

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24 ⁵See Cal. Civ. Code § 54.3(a) (“Any person or persons, firm or corporation who denies
25 or interferes with admittance to or enjoyment of the public facilities as specified in Sections
26 54 and 54.1 or otherwise interferes with the rights of an individual with a disability under
27 Sections 54, 54.1 and 54.2 is liable for each offense for the actual damages and any amount
as may be determined by a jury, or the court sitting without a jury, up to a maximum of three
times the amount of actual damages but in no case less than one thousand dollars (\$1,000
...”).

28 ⁶See Dkt. No. 229 at 38; Cal. Civ. Code § 54(c) (“A violation of the right of an
individual under the Americans with Disabilities Act of 1990 . . . also constitutes a violation
of this section.”).

1 Court addresses separately the damages issues arising out of the three litigation-related
2 visits and the five “bona fide” visits.

3 As a threshold issue, the Court notes that Plaintiff’s claims for statutory damages
4 survive the death of Mr. Antoninetti.⁷

5
6 a. Litigation-related visits

7
8 The trial court found, and the record supports, that Mr. Antoninetti made three visits
9 to Defendant’s restaurants “for the purpose of gathering evidence for this litigation.” (Dkt. No.
10 229 at 6-7.) Two of these three visits were “site inspections” conducted at the Encinitas
11 Restaurant and the Pacific Beach Restaurant on October 6, 2006, during which Mr.
12 Antoninetti and his counsel made a video recording of each visit. Those video recordings
13 were introduced into evidence at trial and played before the trial court. The other “litigation-
14 related” visit occurred at the Pacific Beach Restaurant on October 1, 2006, shortly before Mr.
15 Antoninetti’s deposition. The trial court found, and the record supports, that Plaintiff made
16 this visit “with the intent of repeating what he claimed were his prior bad experiences in order
17 to prepare for his deposition and gather evidence to support his claims in this lawsuit.” (Id.
18 at 7 (citing Dkt. No. 267, Transcript of Nov. 30, 2007 Proceedings, at 442:12-443:1).)

19 With respect to these three “litigation-related” visits, the Court held that “Plaintiff is not
20 entitled to recover any damages . . . because, in each instance, he was not a bona fide
21 customer but rather was visiting those Restaurants as a litigant for the purpose of gathering
22 evidence to support his claims in this litigation.” (Id. at 32.)

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26 ⁷See Cal. Code. Civ. P. § 377.20 (“In an action or proceeding by a decedent’s
27 personal representative or successor in interest on the decedent’s cause of action, the
28 damages recoverable are limited to the loss or damage that the decedent sustained or
incurred before death, including any penalties or punitive or exemplary damages that the
decedent would have been entitled to recover had the decedent lived, and do not include
damages for pain, suffering, or disfigurement.”).

1 On appeal, Plaintiff challenged the trial court's conclusion that Plaintiff was not entitled
2 to statutory damages for the litigation-related visits. Antoninetti, 643 F.3d at 1177. The Ninth
3 Circuit held in broad terms that in order to recover statutory damages for a particular visit,
4 Plaintiff must

5 show that "[Mr. Antoninetti] actually presented himself to the restaurant on a
6 particular occasion, as any other customer would do, with the intent of being
7 . . . served and to purchase food . . . in the manner offered. . . . [and] actually
8 encountered access to . . . the restaurant that was not full and equal."

8 Id. (citing Reynolds v. Lee, 177 Cal. App. 4th 1211, 1226 (4th Dist. 2009)) (alterations in
9 original). The Ninth Circuit also noted that "[o]n those visits when he was not seeking to
10 purchase food or to have the 'Chipotle Experience,' Antoninetti cannot recover money
11 damages under the California Act."⁸

12 On remand, Defendant claims that Plaintiff's statutory damages are limited to regular
13 visits, and do not include visits primarily motivated by Mr. Antoninetti's participation in
14 litigation against the restaurant chain. (Dkt. No. 354, Defendant's Supplemental Brief in
15 response to SJ Motion, at 8-9.) The Court agrees. The decision of the Court of Appeals
16 requires Plaintiff to show, at the very least, that Mr. Antoninetti sought to purchase food "as
17 any other customer" and "to have the 'Chipotle Experience'" on each occasion for which he
18 seeks statutory damages. Id. at 1177. With respect to the three litigation-related visits,
19 Plaintiff is unable to meet that threshold.

20 As stated above, the Court found in its Findings of Fact, Conclusions of Law, and
21 Judgment that Mr. Antoninetti's primary motivation in making his three litigation-related visits
22 was to advance his position in this litigation, not to be served and purchase food. Moreover,
23 "any other customer" would not "present himself" at Chipotle with an attorney and a video
24 camera and proceed to record a video for use in a civil trial, as Mr. Antoninetti did during the

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26 ⁸The "Chipotle Experience," a term used frequently in this litigation, refers in relevant
27 part to the ability of Chipotle customers in the food service line to view the menu items, select
28 what they want, and watch the preparation of their meal. The Ninth Circuit found that the
placement of high walls between the food and the customers, such that Mr. Antoninetti could
not see the food while he was in line, "significantly reduced [his] ability to enjoy the 'Chipotle
Experience.'" Antoninetti, 643 F.3d at 1174. On that basis, the Ninth Circuit found that the
high walls were in violation of the ADA. Id.

1 two “site inspections.” In light of the uncontested facts regarding the litigation-related visits,
2 Mr. Antoninetti’s presently-asserted purpose of “participat[ing] in the ‘Chipotle Experience’”
3 during those visits is questionable *at best*. (See Dkt. No. 335-3, Declaration of Maurizio
4 Antoninetti in support of Plaintiff’s Motion for Summary Judgment, at ¶¶ 4-5.)

5 More likely, Plaintiff’s statements in his declaration that he intended during the
6 litigation-related visits to “participate in the ‘Chipotle Experience’” are disingenuous.
7 Plaintiff’s statutory damages claims in the present litigation hinge upon a showing that Mr.
8 Antoninetti was *not* offered the Chipotle Experience during his visits to Chipotle restaurants.
9 Plaintiff’s alleged goal of having a positive experience at Chipotle during his litigation-related
10 visits, if successful, would be antithetical to his litigation position. The Court finds it more
11 plausible that Mr. Antoninetti made the litigation-related visits with the goal of *being denied*
12 the Chipotle Experience, such that Mr. Antoninetti could establish a violation of the CDPA.
13 At trial, counsel for Defendant asked Mr. Antoninetti why, after initiating the lawsuit, he
14 revisited the Pacific Beach Restaurant shortly before his deposition:

15 Q: And the reason you went to the Pacific Beach Restaurant on Sunday, October
16 1st, [2006,] just a few days before your deposition, was in order to prepare for
your deposition, correct?

17 A: Well, in some ways, since I wanted to refresh my memory; and maybe it
18 sounds silly, but to see if I was doing the right thing.

19 Q: Are you done?

20 A: Yes. Sorry.

21 Q: And the reason you went was to gather evidence to support your lawsuit
22 against Chipotle, correct?

23 A: I didn’t gather any evidence besides my own experience.

24 Q: But you wanted to refresh your memory so that you could give good testimony
25 at your deposition that would support your case?

26 A: *I wanted to repeat the experience, yes.*

27 (Dkt. No. 267, Transcript of Nov. 30, 2007 Proceedings, at 442:12-443:1 (emphasis added).)

28 Clearly, the experience Mr. Antoninetti was referring to above was not the “Chipotle
Experience,” but rather the experience giving rise to Plaintiff’s CDPA claims. Mr. Antoninetti

1 erased any doubt in this regard later during his cross-examination:

2 Q: You testified earlier, a few minutes ago, that you went back to Chipotle
3 because you wanted to repeat the experience, correct?

4 A: The couple days prior to my deposition, yes.

5 Q: And what you meant by that was that you wanted to repeat what you thought
6 was a bad experience, correct?

7 A: Yes, correct.

8 Q: To help you gather evidence for your lawsuit, correct?

9 A: Once again, to refresh my memory, if it is evidence or not.

10 (Id. at 453:19-454:3.) In light of Mr. Antoninetti’s live trial testimony, as well as the nature of
11 his position in this litigation, the Court finds, notwithstanding his subsequent declaration to
12 the contrary, that Mr. Antoninetti did not intend during the litigation-related visits “to have the
13 ‘Chipotle Experience.’” Antoninetti, 643 F.3d at 1177.

14 Lastly, the Court notes that allowing § 54.3 statutory damages for visits made with the
15 *express* intention of advancing a CDPA plaintiff’s position in litigation would enable CDPA
16 plaintiffs essentially to write their own damages check. For all these reasons, the Court
17 DENIES Plaintiff’s request for \$3,000 in additional damages for the litigation-related visits.

18 b. Non-litigation-related visits

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20 The Court address two issues in connection with Mr. Antoninetti’s five non-litigation-
21 related or “bona fide” visits: (1) whether Plaintiff should receive multiple statutory damages
22 awards for visits on which Plaintiff has established multiple violations; and (2) whether
23 Plaintiff is entitled to damages for visits the exact dates of which Mr. Antoninetti cannot recall.

24
25 **(1) Multiple statutory damages awards**

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27 In the Findings of Fact, Conclusions of Law, and Judgment, the Court awarded \$1,000
28 for each of the five “bona fide” visits, based on Defendant’s failure to provide equal access

1 to the food service area for customers in wheelchairs. The Court specifically declined to
2 award additional damages for the two visits (out of those five) on which the Court found that
3 Mr. Antoninetti also encountered an additional violation of the ADA in the parking lot. (Dkt.
4 No. 229 at 38-39) (holding that the CDPA “does not provide damages for each and every
5 architectural barrier that Plaintiff encounters” on a particular occasion and therefore “relief
6 is capped at the \$1000.00 [per ‘bona fide’ visit] that Plaintiff is already awarded for
7 Defendant’s failure to provide Plaintiff with equivalent facilitation within the Restaurants”
8 (citations omitted)).

9 Plaintiff does not contest this proposition, seeking a damages award of only \$8,000.
10 (Dkt. No. 335-1 at 3.) Specifically, Plaintiff seeks to recover the \$5,000 “which has already
11 been awarded to” Plaintiff, in addition to “\$3,000 in damages for ‘litigation-related’ visits.”
12 (*Id.*) Accordingly, on remand the Court need not revisit the issue of whether Defendant is
13 liable for more than \$5,000 in statutory damages in connection with Mr. Antoninetti’s five non-
14 litigation-related visits as a result of the additional parking lot violations.

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16 (2) Damages for visits on uncertain dates

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18 Defendant argues that Plaintiff is not entitled to damages for three out of the five non-
19 litigation-related visits because Mr. Antoninetti was unable to recall the exact dates of those
20 three visits. (Dkt. No. 354 (citing Dkt. No. 335-3, Declaration of Maurizio Antoninetti in
21 support of Plaintiff’s Motion for Summary Judgment, at ¶ 4).) Citing *Reycraft v. Lee*, 177 Cal.
22 App. 4th 1211, 1226 (4th Dist. 2009), Defendant argues that Mr. Antoninetti’s failure to recall
23 the exact dates of these three visits renders Plaintiff unable to establish that these visits were
24 “particular occasions” on which Mr. Antoninetti suffered discrimination.

25 The plaintiff in *Reycraft* was an adult woman with partial paralysis on her right side
26 who spent the month of February 2004 visiting her sister-in-law in a mobile home park. At
27 some point during that month, on a date the plaintiff could not recall, she “visited” the park’s
28 pool and discovered that she was unable to use the pool due to the absence of a lift or other

1 device to help her get in or out. 177 Cal. App. 4th at 1215-16. Following a bench trial, the
2 trial court ruled against the plaintiff on her sole claim of money damages under California
3 Civil Code § 54.3. The appellate court affirmed, in part based on its conclusion that “the
4 stipulated facts [were] *not specific enough to show an actual denial or interference* with
5 access on a *particular occasion . . .*” Id. at 1225 (emphasis added). The court noted:

6 Plaintiff does not recall the exact date of her visit. Nothing is revealed about
7 the circumstances of her visit to the Park or to the pool. Plaintiff simply states
8 she “visited” the pool without saying how she visited. Standing alone, the word
9 “visited” is ambiguous in this context. For example, did plaintiff “visit” the pool
by simply driving by and observing it from afar without actually seeking or
attempting admittance in some way?

10 Id. The Reycraft plaintiff’s inability to recall the exact date of the visit was one of many
11 problems with her attempt to establish that a violation had occurred.

12 In the present case, by comparison, Mr. Antoninetti has established facts that are
13 “specific enough to show an actual denial or interference,” despite his failure to recall the
14 exact dates of three visits. After listening to four days of testimony, the trial court found that
15 Mr. Antoninetti made at least eight visits to Defendant’s restaurants (Dkt. No. 229 at 38) and
16 that he ordered food on each visit (Id. at 25). In his declaration supporting the present
17 summary judgment motion, Mr. Antonetti stated, with respect to the three visits the dates of
18 which he could not recall:

19 I ordered and paid for my food. On all these visits, I was unable to see the
20 food preparation area, the bins of food on display or the making of my entree
because of a high wall that blocked my view.

21 (Dkt. No. 335-3 at ¶ 4.) The record before this Court, consisting of the trial testimony and the
22 trial court’s factual findings, establishes five particular occasions on which Mr. Antoninetti
23 made non-litigation-related visits to Defendant’s restaurants, traveled the food service line,
24 and ordered food. Defendant has not meaningfully contested the number of times Mr.
25 Antonetti visited a Chipotle restaurant, nor has it introduced any support for its argument that
26 Plaintiff needs to prove the date of each individual violation in order to recover statutory
27 damages. The Court declines to read this limitation into § 54.3.

28 Based on the reasons stated above, the Court GRANTS Plaintiff’s summary judgment

1 motion to the extent Plaintiff seeks \$5,000 in statutory damages for the five non-litigation-
2 related visits.

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IV. ATTORNEYS' FEES AND COSTS

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6 In its November 29, 2010 order, the Court stated that “[b]ecause additional attorneys’
7 fees beyond this increased amount may be appropriate for work done after the Ninth Circuit
8 has issued its mandate, the Court, in the interest of judicial economy, will address attorneys’
9 fees after the other issues on remand are resolved.” (Dkt. No. 329 at 3.) Despite this clear
10 language, Plaintiff moved for attorneys’ fees and costs relating to Plaintiff’s opposition to
11 Defendant’s petition for certiorari on April 29, 2011. (See Dkt. No. 336.) Since Plaintiff
12 brought this motion prematurely, the Court DENIES Plaintiff’s motion for attorneys’ fees at
13 this time without prejudice.

14

15

V. CONCLUSION

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17 For the reasons set forth above, the Court GRANTS IN PART and DENIES IN
18 PART Plaintiff’s motion for summary judgment (Dkt. No. 335). The Court DENIES
19 Plaintiff’s request for injunctive relief and for \$3,000 in statutory damages for the three
20 “litigation-related” visits, and GRANTS Plaintiff’s request for \$5,000 in statutory damages
21 for the five “bona fide” visits. The Court DENIES as premature Plaintiff’s motion for
22 attorneys’ fees and costs (Dkt. No. 336), without prejudice.

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1 The Clerk shall enter judgment for Plaintiff and against Defendant in the amount of
2 \$5,000 in damages. The parties shall appear before the Court on April 3, 2012, at 1:30
3 p.m., to discuss the issues on attorneys' fees and the most efficient way of deciding those
4 issues.

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6 **IT IS SO ORDERED.**

7 DATED: March 21, 2012

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BARRY TED MOSKOWITZ, Chief Judge
United States District Court

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