

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior Judge Wiley Y. Daniel**

Civil Action No. 16-cv-02754-WYD-NYW

KIRSTIN KURLANDER,
on behalf of herself and others similarly situated,

Plaintiff,

v.

KROENKE ARENA COMPANY, LLC,

Defendant.

**ORDER GRANTING PLAINTIFF'S UNOPPOSED MOTION FOR ATTORNEYS' FEES
AND COSTS**

I. BACKGROUND

THIS MATTER is before the Court on Plaintiff's Unopposed Motion for Attorneys' Fees and Costs (ECF No. 67). On April 5, 2018, the Court held a hearing on this motion and Plaintiff's Unopposed Motion for Approval of Class Action Settlement (ECF No. 66). For the reasons set forth below, I will grant Plaintiff's Unopposed Motion for Attorneys' Fees and Costs.

Plaintiff Kirstin Kurlander, a deaf woman, brought this class action case to address the lack of captioning at sporting events at the Pepsi Center, which is owned and operated by Defendant Kroenke Arena Company, LLC ("KAC"). Plaintiff alleged that KAC was in violation of Title III of the Americans with Disabilities Act, 42 U.S.C. §§ 12181 et seq. ("Title III" or "ADA"). KAC denied such liability.

On August 31, 2017, this Court certified the following class pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2):

All Pepsi Center patrons who are deaf or hard of hearing and unable to hear using assistive listening devices, who have been, since November 10, 2014, or in the future will be, denied full and equal enjoyment of the goods, services, facilities, advantages, or accommodations of the Pepsi Center based on Defendant's failure to provide open captioning of aural content during non-concert events for which the center-hung display is used.

Order on Class Certification (ECF No. 55) at 2, 17. The Court also appointed Plaintiff Kirstin Kurlander as the class representative and Amy Robertson of the Civil Rights Education and Enforcement Center as class counsel pursuant to Rule 23(g). *Id.* at 17.

On December 28, 2017, the parties reached a settlement in this matter, memorialized in a proposed Consent Decree, which this Court approved on a preliminary basis on January 9, 2018 (ECF No. 65). The Consent Decree provides that KAC will not oppose an award of reasonable attorneys' fees and costs in amount not to exceed \$200,000. Consent Decree ¶ IX(A). Plaintiff has moved, pursuant to Rules 23(h) and 54(d) of the Federal Rules of Civil Procedure, for an award of \$156,104.00 in attorneys' fees and \$5,637.52 in costs.

II. FINDINGS OF FACT¹

Plaintiff has submitted the declarations of Amy F. Robertson, describing counsel's work on the case, and of Darold Killmer, providing his expert opinion that the work performed and the rates charged by Class Counsel and her colleagues were all reasonable.

¹ This Court is required to "find the facts and state its legal conclusions under Rule 52(a)" before making an award of fees to class counsel. Fed. R. Civ. P. 23(h)(3).

This case was filed on November 10, 2016. For approximately a year prior to filing, the parties had been discussing possible resolution, including exchanging draft agreements and conducting a site visit. After the complaint was filed, the parties initially focused on written discovery and Plaintiff's contested motion for class certification. Plaintiff filed her motion to certify the class on March 22, 2017 (ECF No 15) which this Court granted on August 31, 2017 (ECF 55). During class certification briefing, a discovery dispute arose concerning contact between Defendant's consulting expert and members of the putative class. The parties initially used Judge Nina Wang's discovery dispute procedure and participated in a telephonic hearing, but were ordered to brief the issue (ECF No. 24). Following briefing, Judge Wang denied Defendant's motion for a protective order or to quash subpoena duces tecum (ECF No. 45).

Following class certification, Plaintiff took a Rule 30(b)(6) deposition of Defendant, and the parties began to discuss different options for providing open captioning at the Pepsi Center. Plaintiff retained two consulting experts, a Deaf communications expert and an expert in arena media, to advise on discovery and possible settlement proposals. Plaintiff also retained a testifying expert who was preparing to travel to Denver and conduct tests on the effectiveness of various captioning options at the point when the parties began discussing settlement in October, 2017. The parties negotiated for two months, exchanging drafts of the consent decree and meeting at the Pepsi Center to evaluate captioning technology, and concluded the settlement on December 28, 2017.

Class Counsel submitted contemporaneous time records which, after the exercise of billing judgment, reflected the following hours and rates:

Timekeeper	Year	Rate	Hours	Fees
Amy Robertson	1988	\$520	249	129,480.00
Lauren Fontana	2008	\$410	26.4	10,824.00
Paralegal		\$170	87.5	14,875.00
Project assistant		\$125	7.4	925.00
Summer intern		0	9.9	0.00
Total			380.2	156,104.00

Class Counsel also submitted itemized records showing out-of-pocket costs of \$5,637.52.

III. CONCLUSIONS OF LAW

The claims of the class arose under Title III of the ADA, which provides that the prevailing party is entitled to reasonable attorneys' fees and costs. 42 U.S.C. § 12205. Plaintiff requests an award of counsel's lodestar fees, reduced for billing judgment. The "lodestar" is the product of the number of hours reasonably expended multiplied by the attorneys' reasonable hourly rates. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). "[T]here is a 'strong presumption' that the lodestar figure is reasonable." *Perdue v. Kenny A.*, 559 U.S. 542, 554 (2010); see also *Colorado Cross-Disability Coal. v. Abercrombie & Fitch Co.*, No. 09-CV-02757-WYD-KMT, 2014 WL 793363, at *1 (D. Colo. Feb. 26, 2014) ("[T]o determine the reasonableness of a fee request, a court must begin by calculating the so-called 'lodestar amount' of a fee, and a claimant is entitled to the presumption that this lodestar amount reflects a 'reasonable' fee" quoting *Robinson v. City of Edmond*, 160 F.3d 1275, 1281 (10th Cir. 1998)).

Although KAC has agreed not to contest any fee award under \$200,000, because this is a class action, this Court has the obligation to review Class Counsel's time and rates and determine that they are reasonable. I have reviewed Class

Counsel's billing records, and the information submitted by Ms. Robertson and Mr. Killmer, and conclude that both the time spent and the rates charged are reasonable. Therefore the lodestar amount of \$156,104.00 is reasonable. I have also reviewed the list of Class Counsel's out-of-pocket costs of \$5,637.52 and conclude that they are reasonable as well.

IV. CONCLUSION

For the reasons set forth above, it is hereby

ORDERED that Plaintiff's Unopposed Motion for Attorneys' Fees and Costs (ECF No. 67) is **GRANTED**. Further it is

ORDERED that, **on or before June 12, 2018**, KAC shall pay Class Counsel the amount of \$156,104.00 in attorneys' fees and \$5,637.52 in costs.

Dated: April 13, 2018.

BY THE COURT:

s/ Wiley Y. Daniel
WILEY Y. DANIEL
SENIOR UNITED STATES DISTRICT JUDGE