

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

**Civil Division**

Central District, Stanley Mosk Courthouse, Department 40

**21STCV00023**

**ORLANDO GARCIA vs ZARCO HOTELS INCORPORATED,  
A CALIFORNIA CORPORATION**

July 11, 2023

1:13 PM

Judge: Honorable Anne Richardson  
Judicial Assistant: J. Choi  
Courtroom Assistant: A. Solis

CSR: None  
ERM: None  
Deputy Sheriff: None

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**APPEARANCES:**

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

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**NATURE OF PROCEEDINGS:** Ruling on Submitted Matter RE: Defendant Zarco Hotels Incorporated's Motion for Attorney's Fees and Costs.

The Court, having taken the matter under submission on 07/10/2023 for Hearing on Motion for Attorney Fees, now rules as follows: Background

Plaintiff Orlando Garcia—an individual with physical disabilities that suffers from cerebral palsy and uses a wheelchair, walker, or cane for mobility—sued Defendant Zarco Hotels Incorporated (Zarco Hotels) pursuant to a January 4, 2021 Complaint alleging (1) an American with Disabilities Act (ADA) claim and (2) a Violation of the Unruh Civil Rights Act (UCRA) claim, as supported by provisions incorporating ADA liability to support UCRA liability. The claims are premised on allegations that while planning a trip to the Los Angeles, California area in October 2020, Plaintiff visited Zarco Hotels' website to find ADA and UCRA compliant accommodations, only to find that the website reservation system contained multiple issues failing to comply with ADA and UCRA requirements.

On October 6, 2022, Plaintiff Garcia dismissed this action with prejudice.

On November 29, 2022, Zarco Hotels moved for attorney's fees and costs in this action.

On June 23, 2023, Plaintiff opposed the motion.

On June 30, 2023, Zarco Hotels replied to the opposition.

Zarco Hotels' motion is now before the Court.

Motion for Attorney's Fees and Costs

Preliminary Note

Zarco Hotels' motion has a memorandum of points and authorities that is 18-pages long (Mot., pp. 6-23), which is three pages too long absent leave of Court (Cal Rules of Court, rule, 3.1113, subs. (d), (e)). Given that Plaintiff Garcia did not object to this defect and responded on the

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merits to this motion (see Opp'n, pp. 1-15), the Court will consider the document (Cal Rules of Court, rule, 3.1113, subd. (g)) but does admonish Zarco Hotels for its overly long memorandum.

**Legal Standard**

A prevailing party is entitled to recover costs as a matter of right. (Code Civ. Proc., § 1032, subds. (a)(4), (b).) Attorney's fees are also recoverable as costs when authorized by contract, statute, or law. (Code Civ. Proc., § 1033.5, subd. (a)(10).) The Americans with Disabilities Act allows a "prevailing party" its fees pursuant to Title 42 of United States Code, section 12205, but such fees should be granted to a defendant in a civil rights action only upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation. (Kohler v. Bed Bath & Beyond of California, LLC (2015) 780 F.3d 1260, 1266.)

The Court begins this inquiry "with the 'lodestar,' i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate." (PLCM Group v. Drexler (2000) 22 Cal.4th 1084, 1095.) From there, the "lodestar figure may then be adjusted [according to a multiplier enhancement] based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided." (Ibid.) Relevant multiplier factors include "(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, [and] (4) the contingent nature of the fee award." (Ketchum v. Moses (2001) 24 Cal.4th 1122, 1132.)

No specific findings reflecting the court's calculations for attorney's fees are required; the record need only show that the attorney's fees were awarded according to the "lodestar" or "touchstone" approach. (Rebney v. Wells Fargo Bank (1991) 232 Cal.App.3d 1344, 1349.) The Court has broad discretion to determine the amount of a reasonable attorney's fee award, which will not be overturned absent a "manifest abuse of discretion, a prejudicial error of law, or necessary findings not supported by substantial evidence." (Bernardi v. County of Monterey (2008) 167 Cal.App.4th 1379, 1393-1394.)

Order Granting Fees and Costs: GRANTED.

Zarco Hotels seeks \$57,604.90 in attorney's fees and costs against Plaintiff Garcia for what Zarco Hotels paints as Plaintiff bringing a frivolous lawsuit against Zarco Hotels. (Mot., pp. 16-21.) This figure is comprised of \$55,505.50 in attorney's fees and \$2,099.40 in costs. (Mot., Tubis Decl., Ex. 1, p. 1.)

**I. Frivolousness, Unreasonableness, and Lack of Foundation**

In its motion, Zarco Hotels first argues that this action was frivolous, vexatious, unreasonable,

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and pursued in bad faith. (See Mot., pp. 16-21.)

In opposition, Plaintiff Garcia argues that the question of whether the law made Plaintiff's complaint frivolous was unclear at the time that Plaintiff brought this action and was only made clear when the Ninth Circuit rendered its opinion in *Love v. Marriott Hotel Servs., Inc.* (9th Cir. 2022) 40 F.4th 1043—i.e., on July 22, 2022—after which Plaintiff promptly dismissed this action on October 6, 2022. (See Opp'n, pp. 1-5.) Plaintiff also argues that he conducted due diligence and made reasonable allegations, explaining in detail Plaintiff's grounds for reasonableness as to the subject matter in the Complaint. (See Opp'n, 5-12.) Plaintiff last argues that portions of the motion by Zarco Hotels comprises a personal attack on Plaintiff and his counsel, which is inappropriate. (Mot., pp. 13-15.)

In reply, Zarco Hotels argues that when Plaintiff filed his Complaint, the law was sufficiently clear as to the frivolousness of Plaintiff's claims based on the statute on which the Complaint relied, based on Department of Justice guidance thereto, and based on numerous precedents undercutting Plaintiff's claims. (See Reply, pp. 3-8.) Zarco Hotels also argues that it has presented valid evidence of a pattern of action by Plaintiff that is both accurate and relevant, for which reason it has not personally attacked Plaintiff or counsel. (See Reply, pp. 8-9.)

The Court finds that this action was frivolous, thus meriting fees. (See *Kohler v. Bed Bath & Beyond of California, LLC*, supra, 780 F.3d at p. 1266 [citing to 42 U.S.C., § 12205].)

An action is "frivolous" if it lacks an arguable basis in law or in fact. (*Huang v. Hanks* (2018) 23 Cal.App.5th 179, 182, citations omitted.)

The Complaint shows that its major complaints against the Zarco Hotels website was failure to designate the exact number of inches of clearance and other minute features for the hotel doors, beds, desks, toilets, sinks, and showers. (Complaint, ¶ 22.) The Complaint also addressed lack of information relating to slopes of surfaces and positioning of shower valves as issues with the website. (Complaint, ¶ 24.) The Complaint took issue with Zarco Hotels' website by only noting that it had ADA "accessible" rooms and restaurants, without additional specifics, noting nonetheless that "Plaintiff does not need an exhaustive list of accessibility features." (See Complaint, ¶¶ 18-24.)

The applicable statutory section—28 C.F.R. § 36.302, subd. (e)(1)(ii), effective Oct. 11, 2016, and the DOJ guidance thereon at 28 C.F.R. Pt. 36, App. A, effective Mar. 15, 2011—is more than clear in providing that hotels need only "[i]dentify and describe accessible features in the hotels and guest rooms offered through its reservations service in enough detail to reasonably permit individuals with disabilities to assess independently whether a given hotel or guest room meets his or her accessibility needs" (the Code at 28 C.F.R. § 36.302, subd. (e)(1)(ii)) and that

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such requirements could be met by statements that “the hotel is accessible and, for each accessible room, to describe the general type of room (e.g., deluxe executive suite), the size and number of beds (e.g., two queen beds), the type of accessible bathing facility (e.g., roll-in shower), and communications features available in the room (e.g., alarms and visual notification devices)” (the DOJ Guidance at “Section 36.302(e) Hotel Reservations”). (See *Love v. Marriott Hotel Servs., Inc.*, supra, 40 F.4th at p. 1046.) Such Code and Guidance instructions—available as of 2016 and 2015 respectively, i.e., well before the Complaint in this action was filed on January 4, 2021—were sufficiently clear to show that the level of detail Plaintiff required in his Complaint to deem Zarco Hotels’ rooms ADA and UCRA “accessible” was frivolous. That Love allegedly did not make such frivolousness clear until July 22, 2022 (1) does not mean that the Code and DOJ Guidance did not exist in January 2021, and (2) did not excuse Plaintiff’s Garcia’s counsel from properly informing themselves of the law they cited in bringing this action.

At oral argument, Plaintiff’s counsel argued that the Love court noted that the reservation rule at 28 C.F.R., § 36.302, subd. (e)(1)(ii) was “ambiguous” because the “[t]he Rule requires hotel reservation websites to ‘[i]dentify and describe accessible features ... in enough detail to reasonably permit’ customers ‘to assess independently whether a given hotel or guest room meets his or her accessibility needs’” without explaining what constitutes “‘enough detail,’ and which ‘accessible features’ must be identified and described,” where the rule’s “structure, history and purpose d[id] not dispel that textual ambiguity.” (*Love v. Marriott Hotel Servs., Inc.*, supra, 40 F.4th at p. 1047.) The Court does not disagree as to the rule’s ambiguity. However, the remainder of Love went on to explain that while the reservations rule was ambiguous, the DOJ Guidance gave clarity to the reservations rule such that the hotel in that case was found to have provided sufficient ADA accessibility information. (See *id.* at pp. 1047-1049.) As explained in Love, there was no basis to contend that the hotel needed to provide the number of inches around, for example, a bed or shower, because ADA Standards adopted in 1991 provide that “accessible sleeping rooms shall have a 36 in. [ ] clear width maneuvering space located along both sides of a bed.” (*Id.* at p. 1049, citing 28 C.F.R. at p. 36 app. D § 9.2.2(1), et al.)

The Court here finds that the clarity of the DOJ Guidance should have intimated to Plaintiff and counsel that the accessibility information they sought against Zarco Hotels in the Complaint went far beyond that information reasonably needed to inform Plaintiff Garcia of Zarco Hotels’ ability to accommodate Plaintiff’s accessibility needs.

Accordingly, the Court finds that Zarco Hotels is entitled to attorney’s fees pursuant to 42 U.S.C. §12205.

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II. Reasonable Fee Rates

Zarco Hotels seeks a fee rate of \$635 per hour for work performed by counsel Stuart K. Tubis and \$850 per hour for work performed by counsel Marton H. Orlick. (Mot., pp. 21-22.) The fee rates are supported by declarations from counsel, which detail the academic background, professional background, and professional accomplishments of these litigators. (Mot., Orlick Decl., ¶¶ 1-4; Mot., Tubis Decl., ¶¶ 1-3.)

Plaintiff Garcia's opposition fails to argue reasonableness in the requested fee rates. (See Opp'n, pp. 1-15.)

The Court finds that these rates are reasonable in light of the academic and professional background of counsel and the Court's knowledge of prevailing fee rates in the Los Angeles area.

III. Reasonable Hours Expended

Zarco hotels argues that the hours expended by Tubis and Orlich on this litigation are reasonable because counsel "performed necessary due diligence work that Plaintiff should have completed before filing this lawsuit," "investigated the claims for legitimacy, finding at the outset that the claims were frivolous" "requested that Plaintiff dismiss the lawsuit on several occasions, but Plaintiff refused," "expended significant hours in discovery with Plaintiff, both responding to requests and propounding its own discovery in defense, "met and conferred with Plaintiff, filed a Case Management Conference Statement, attended all necessary court hearings, and ultimately prepared and filed a complete Motion for Summary Judgement against Plaintiff," and where "[t]he litigation has been ongoing for almost 2 years, since January 2021, and [Zarco Hotels] has expended reasonable sums to defend itself." (Mot., pp. 22-23.)

Plaintiff Garcia's opposition fails to argue reasonableness in requested hours. (See Opp'n, pp. 1-15.)

The Court finds that the hours requested by Zarco Hotels for compensation are reasonable in light of the verified time records supporting the hours. (Mot., Tubis Decl., Ex. 1; see *Horsford v. Board of Trustees of Calif. State Univ.* (2005) 132 Cal.App.4th 359, 397 ["[T]rial court abused its discretion in rejecting wholesale counsels' verified time records" where "verified time statements of the attorneys, as officers of the court, are entitled to credence in the absence of a clear indication the records are erroneous".])

IV. Multiplier Enhancement

No multiplier enhancement award is requested by Zarco Hotels. This topic is thus not further discussed.

V. Costs

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Zarco Hotels seeks costs of \$2,099.40. (See Mot., Tubus Decl., Ex. 1, p. 1.)

Plaintiff Garcia's opposition does not oppose the amount of costs sought on any grounds. (See Opp'n, pp. 1-15.)

The Court finds that these costs are reasonable, as supported by Zarco Hotels' counsel's verified billing records.

**VI. Fees and Costs Conclusion**

The Court GRANTS Zarco Hotels' motion in the amount of \$57,604.90.

**Conclusion**

Defendant Zarco Hotels Incorporated's Motion for Attorney's Fees and Costs is GRANTED.

Plaintiff Orlando Garcia is ORDERED to remit payment of \$57,604.90 to Defendant Zarco Hotels Incorporated within 60 days of this ruling.

The Defendant Zarco Hotels Incorporated's Motion for Attorney Fees filed by Zarco Hotels Incorporated, a California Corporation on 11/29/2022 is Granted.

Judicial Assistant is directed to provide notice to Plaintiff's Counsel, and Plaintiff's Counsel shall give notice to all remaining parties.

**CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE §1010.6**

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the minute order entered herein, on July 11, 2023, upon each party or counsel of record in the above entitled action, by electronically serving the document(s) on Russell Clive Handy at amandas@potterhandy.com on July 11, 2023 from my place of business, Stanley Mosk, 111 N. Hill Street, Los Angeles, CA 90012, in accordance with standard court practices.