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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

LUGENE McCULLOUGH, by and through his guardian ad litem Maya Klein; GINA LAMBERTON, by and through her guardian ad litem Jeffrey Taylor; JOSONIA BISHARA, by and through her guardian ad litem Samond Bishara on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF DEVELOPMENTAL SERVICES, and NANCY BARGMANN, in her official capacity as Director of the California Department of Developmental Services,

Defendants.

Case No. 3:20-cv-2958-SI

[PROPOSED] ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEYS' FEES AND COSTS

Date: September 15, 2023
Time: 10:00 a.m.
Place: Remote (Zoom)
Judge: Susan Illston

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4 **I. INTRODUCTION**

5 Plaintiffs filed this class action in April 2020 alleging that Defendants the California
6 Department of Developmental Services (“DDS”) and Nancy Bargmann, in her official capacity
7 as Director of DDS (collectively, “Defendants”), unlawfully discriminated against Plaintiffs and
8 other deaf consumers of Defendants’ services on the basis of their disability in violation of the
9 Americans with Disabilities Act (“ADA”) and Section 504 of the Rehabilitation Act (“Section
10 504”). Plaintiffs also filed a parallel action in California state court alleging violations of
11 California Government Code section 11135 (“Section 11135”).

12 In March 2023, the Parties reached a Settlement Agreement (“Agreement”), which this
13 Court preliminarily approved on April 28, 2023. ECF No. 115. Plaintiffs now request that this
14 Court enter an order approving an award of \$1,300,000 in compensation for all attorneys’ fees
15 and costs incurred in connection with this action through the Term of the Agreement as fair and
16 reasonable and ordering Defendants to pay Plaintiffs’ counsel \$1,300,000 within sixty (60) days
17 of the Court’s order granting final approval.

18 Having presided over the proceedings in the above-captioned action and considered all
19 pertinent arguments, pleadings, records, and papers, this Court finds and orders the following.

20 **II. FINDINGS**

21 **A. As the prevailing party, Plaintiffs are entitled to recover their reasonable attorneys’ fees and costs.**

22 “In a certified class action, the court may award reasonable attorney’s fees and
23 nontaxable costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h).
24 The statutes under which this action and the parallel state court action were brought—the
25 Americans with Disabilities Act (“ADA”), Section 504 of the Rehabilitation Act of 1973
26 (“Section 504”), and California state law, under which this action was brought—allow for fee
27 shifting when plaintiffs prevail on their claims. 42 U.S.C. § 12205 (ADA prevailing party is
28 entitled to “a reasonable attorney’s fee, including litigation expenses, and costs”); 29 U.S.C.

1 § 794a(b) (Section 504 prevailing party is entitled to “a reasonable attorney’s fee as part of the
 2 costs”); Cal. Civ. Proc. § 1021.5 (successful party in an action under California law that enforces
 3 an important right affecting the public interest, confers a significant benefit on a large class of
 4 persons, was brought in the absence of public enforcement, imposed a financial burden on
 5 plaintiffs’ counsel, and secures non-monetary relief, is entitled to attorneys’ fees). Plaintiffs who
 6 prevail under these fee-shifting statutes “should ordinarily recover an attorney’s fee unless
 7 special circumstances would render such an award unjust.” *Jankey v. Poop Deck*, 537 F.3d 1122,
 8 1130 (9th Cir. 2008) (internal quotation marks and citations omitted); *see also Hensley v.*
 9 *Eckerhart*, 461 U.S. 424, 429 (1983) (internal quotation marks and citations omitted). Granting
 10 successful civil rights plaintiffs a reasonable attorney’s fee “ensure[s] effective access to the
 11 judicial process” and advances the important causes behind such legislation. *Jankey*, 537 F.3d at
 12 1131.

13 A plaintiff “prevails” for the purpose of awarding attorneys’ fees under the ADA and
 14 Section 504 when “actual relief on the merits of [their] claim materially alters the legal
 15 relationship between the parties by modifying the defendant’s behavior in a way that directly
 16 benefits the plaintiff.” *Chapman v. NJ Properties Inc.*, No. 5:16-cv-02893-EJD, 2019 WL
 17 3718585, at *2 (N.D. Cal. Aug. 7, 2019) (quoting *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1118
 18 (9th Cir. 2000)). Such “material alteration” can occur through a legally binding settlement
 19 agreement. *Id.* at *3; *see also Jankey*, 537 F.3d at 1130. The key is whether the plaintiff can
 20 “force the defendant to do something [they] otherwise would not have to do.” *Chapman*, 2019
 21 WL 3718585, at *2 (quoting *Fischer*, 214 F.3d at 1118).¹

22 Here, the Parties have entered into a legally enforceable settlement agreement that
 23 (1) provides the Settlement Class with substantial relief sought in the Complaint including
 24 communications assessments for Settlement Class Members, new Deaf Services Specialists,
 25

26
 27 ¹ Under California state law, a plaintiff will be considered a “successful party” where an
 28 important right is vindicated “by activating defendants to modify their behavior” and “an
 attorney fee award may be justified even where a plaintiff’s legal action does not lead to a
 favorable final judgment.” *Westside Cmty. for Indep. Living, Inc. v. Obledo*, 33 Cal. 3d 348,
 352–53 (1983).

1 funding to improve services available to Settlement Class Members, and increased training
2 available to regional center staff; and (2) will remain enforceable by this Court under its
3 continuing jurisdiction. *See* Agreement ¶ 64 (stipulating to the Court’s retention of jurisdiction
4 over the action “for the purpose of ensuring compliance with the terms of the Settlement
5 Agreement”), ¶¶ 69–70 (providing that a party may present disputes as to implementation to the
6 Court), & Ex. A: Implementation Plan (setting forth the actions that DDS will take under the
7 Agreement).

8 This Court finds that Plaintiffs have “prevailed” in this action for purposes of this motion
9 by achieving actual relief on the merits of their claim that is legally enforceable and there are
10 also no special circumstances rendering an award of fees and costs unjust. Plaintiffs are therefore
11 entitled to an award of reasonable attorneys’ fees and costs.

12 The Court also finds that Carl Argila’s July 17, 2023 objection, ECF No. 117, to the
13 Attorneys’ Fees and Costs award is not a bar to Plaintiffs’ recovery, and is overruled. Mr. Argila
14 objected as follows: “The undersigned strongly objects to the payment of attorneys’ fees and
15 costs for work which was part of the mandate of Disability Rights California and funded by the
16 taxpayers of the State of California.” *Id.* at 3. The receipt of funding from other sources in the
17 interim does not negate Plaintiffs’ entitlement to an award of attorneys’ fees and costs in this
18 matter pursuant to the applicable fee-shifting standards under federal and state law, as discussed
19 above.

20 **B. The Parties’ negotiated award of \$1,300,000 in fees and costs is a significant**
21 **reduction to Plaintiffs’ presumptively reasonable lodestar, and is fair and**
22 **reasonable.**

23 “While attorneys’ fees and costs may be awarded in a certified class action where so
24 authorized by law or the parties’ agreement . . . courts have an independent obligation to ensure
25 that the award . . . is reasonable, even if the parties have already agreed to an amount.” *Senne v.*
26 *Kansas City Royals Baseball Corp.*, No. 14-cv-00608 JCS, 2023 WL 2699972, at *17 (N.D. Cal.
27 Mar. 29, 2023) (citing *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir.
28 2011)). In the Ninth Circuit, courts use the “lodestar method” for calculating a reasonable
attorneys’ fee “in class actions brought under fee-shifting statutes (such as federal civil rights...),

1 where the relief sought—and obtained—is often primarily injunctive in nature and thus not
2 easily monetized, but where the legislature has authorized the award of fees to ensure
3 compensation for counsel undertaking socially beneficial litigation.” *In re Bluetooth Headset*
4 *Prod. Liab. Litig.*, 654 F.3d at 941; *see also Serrano v. Priest*, 20 Cal. 3d 25, 47–48 (1977)
5 (*Serrano III*). “The lodestar figure is calculated by multiplying the number of hours the
6 prevailing party reasonably expended on the litigation . . . by a reasonable hourly rate for the
7 region and for the experience of the lawyer.” *In re Bluetooth Headset Prod. Liab. Litig.*, 654
8 F.3d at 941; *see also Ketchum v. Moses*, 24 Cal. 4th 1122, 1133 (2001). The lodestar figure is
9 presumptively reasonable. *See Fischer*, 214 F.3d at 1119 n.4; *Rodriguez v. Barrita, Inc.*, 53 F.
10 Supp. 3d 1268, 1277 (N.D. Cal. 2014).

11 Class Counsel’s combined lodestar as of August 31, 2022—upon which they based their
12 demand for fees—was \$1,788,305 and their litigation expenses and costs were \$28,234.33, for a
13 total of \$1,816,539.33 in fees, costs, and litigation expenses through August 31, 2022. Weaver
14 Fee Decl. ¶ 9. The negotiated award of \$1,300,000 is approximately 71.6% of that total and
15 covers Class Counsel’s fees and costs through the entire Term of the Agreement. Agreement
16 § III.D. This Court finds that the requested award of \$1,300,000 is reasonable because Class
17 Counsel’s lodestar is based on reasonable rates and a reasonable number of expended hours, and
18 because it represents a substantial reduction to the presumptively reasonable lodestar, as
19 discussed in more detail below.

20 1. Class Counsel’s lodestar is based on reasonable rates.

21 Class counsel’s billing rates are reasonable as they are based on the extensive experience
22 each attorney has in complex disability rights class action litigation and are similar to prevailing
23 market rates awarded to lawyers “of reasonably comparable skill, experience, and reputation.”
24 *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008); *see also G. F. v. Contra*
25 *Costa Cnty.*, No. 13-CV-03667-MEJ, 2015 WL 7571789, at *14 (N.D. Cal. Nov. 25, 2015);
26 *Children’s Hosp. & Med. Ctr. v. Bonta*, 97 Cal. App. 4th 740, 783 (2002). The “relevant legal
27 community” is generally the forum district for the action in which fees are sought. *Gates v.*
28 *Deukmejian*, 987 F.2d 1392, 1405 (9th Cir. 1992); *Heritage Pac. Fin., LLC v. Monroy*, 215 Cal.

1 App. 4th 972, 1009 (2013). “[R]ate determinations in other cases, particularly those setting a rate
 2 for the plaintiffs’ attorney, are satisfactory evidence of the prevailing market rate.” *See Johnson*
 3 *v. Baird Lands, Inc.*, No. 18-cv-05365-VKD, 2020 WL 3833278, at *2 (N.D. Cal. July 8, 2020)
 4 (quoting *United Steelworkers of Am. v. Phelps Dodge Co.*, 896 F.2d 403, 407 (9th Cir. 1990)).

5 Plaintiffs’ lodestar is based on the following hourly billing rates:

6 *Disability Rights Advocates:*

Name	Title	2022 Hourly Billing Rate	Graduation Year
Rebecca Williford	Deputy Director of Litigation & Interim CEO/President ²	\$600	2009
Meredith Weaver	Senior Staff Attorney	\$505	2014
Jess Miller-Suchet	Paralegal	\$280	N/A
Desiree Robedeaux	Paralegal	\$280	N/A
Yi Li	Summer Law Clerk	\$280	N/A

13 *Disability Rights California:*

Name	Title	2022 Hourly Billing Rate	Graduation Year
Melinda Bird	Senior Litigation Counsel	\$910	1978
Emily Ikuta	Attorney	\$450	2016
Jeanie Min	Attorney	\$400	2018
Lynn Martinez	Attorney	\$852	1992
William Leiner	Attorney	\$650	2008
Beverly Familiar	Senior Legal Support	\$230	N/A
Edward Garcia	Legal Support	\$230	N/A
Evelyn Bello-Grant	Legal Support	\$230	N/A
Mayeli Soto	Legal Support II	\$230	N/A

21 Weaver Fee Decl. ¶¶ 15–18; Bird Fee Decl. ¶¶ 16–17.

22 This Court finds that Class Counsel’s 2022 hourly rates are reasonable. Both Disability
 23 Rights Advocates and Disability Rights California have extensive experience representing
 24 classes in complex disability rights class action litigation. *See Weaver Fee Decl.* ¶¶ 12–14, 23–
 25 29; *Bird Fee Decl.* ¶¶ 3–12. In light of their skill and expertise, Class Counsel’s standard rates
 26 have regularly been approved by this Court. *Weaver Fee Decl.* ¶¶ 15–18; *Bird Fee Decl.* ¶¶ 16–
 27

28 ² This reflects Ms. Williford’s title as of fall 2022 when Plaintiffs made their initial fee and costs demand during settlement negotiations. Ms. Williford is now DRA’s CEO & President.

1 17. See *Navarro v. City of Mountain View*, No. 5:21-cv-05381-NC, Dkt. No. 137 at 5 n.1, 6–8
2 (N.D. Cal. Feb. 28, 2023) (attached as Exhibit 6 to Weaver PA Decl.) (approving DRA’s 2022
3 rates); *T.G. v. Kern Cnty.*, No. 1:18-cv-0257 JLT, 2020 WL 3035199, at *22 (E.D. Cal. June 5,
4 2020) (approving DRA’s and DRC’s 2020 hourly rates); *Cnty. Res. for Indep. Living v. Mobility*
5 *Works of California, LLC*, No. 18-cv-06012-JSW, 2020 WL 10505223, at *2 (N.D. Cal. May 22,
6 2020) (approving DRA’s 2020 rates); *Mays v. Cnty. of Sacramento*, No. 2:18-cv-02081-TLN-
7 KJN, 2020 WL 6787145 (E.D. Cal. Jan. 13, 2020) (adopting the magistrate judge’s unopposed
8 Findings and Recommendations and ordering payment of DRC’s attorney’s fees and expenses);
9 *Nat’l Fed’n of the Blind of California v. Uber Techs., Inc.*, No. 14-cv-04086-NC, Dkt. No. 203 at
10 5 (N.D. Cal. Nov. 8, 2019) (approving DRA’s 2019 rates as reasonable); *Thomas v. Kent*, No.
11 CV 14-8013 FMO (AGR_x), 2019 WL 2590170, at *10 (C.D. Cal. May 30, 2019) (granting
12 DRC’s contested motion for attorney’s fees under Cal Civ. Code § 1021.5); *Cole v. Cnty. of*
13 *Santa Clara*, No. 5:16-cv-06594-LHK, Dkt. No. 86 at 3–4 (N.D. Cal. Mar. 21, 2019) (approving
14 DRA’s 2018 rates).

15 Moreover, use of Class Counsel’s 2022 billing rates is reasonable because in fee-shifting
16 cases taken on contingency compensation is delayed and counsel must assume the cost of
17 litigation. *Blackwell v. Foley*, 724 F. Supp. 2d 1068, 1078 (N.D. Cal. 2010) (citing *Missouri v.*
18 *Jenkins*, 491 U.S. 274, 283–84 (1989)).

19 Accordingly, this Court finds that the rates used to determine Class Counsel’s lodestar,
20 reflected above, are reasonable.

21 2. Class Counsel’s lodestar is based on a reasonable number of hours.

22 Prevailing plaintiffs are entitled to be compensated for “every item of service which, at
23 the time rendered, would have been undertaken by a reasonable and prudent lawyer to advance
24 or protect [their] client’s interest[.]” *Moore v. James H. Matthews & Co.*, 682 F.2d 830, 839 (9th
25 Cir. 1982) (quoting *Twin City Sportservice v. Charles O. Finley & Co.*, 676 F.2d 1291, 1313 (9th
26 Cir. 1981)); see also *Ramon v. Cnty. of Santa Clara*, 173 Cal. App. 4th 915, 924–25 (2009).
27 Courts “should defer to the winning lawyer’s professional judgment as to how much time [they
28 were] required to spend on the case.” *Rodriguez*, 53 F. Supp. at 1284 (quoting *Moreno v. City of*

1 *Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008)); *see also Chaudhry v. City of Los Angeles*,
2 751 F.3d 1096, 1111 (9th Cir. 2014) (quoting same).

3 While the Parties were able to reach a settlement agreement without extensive discovery
4 or litigation, this matter demanded significant time and resources from Class Counsel to
5 investigate and develop the case, prepare an amended complaint and state court complaint given
6 DDS's objection to defending state law claims in federal court, conduct communication
7 assessments and prepare a comprehensive expert report, fully brief Defendants' unsuccessful
8 motion to dismiss, prepare initial disclosures and discovery requests, prepare for class
9 certification, and conduct more than two years of settlement negotiations.

10 Plaintiffs' counsel expended a total of 4,394.9 hours on this action through August 31,
11 2022. Weaver PA Decl. Ex. 5 (1,961.1 hours expended by DRA); Bird PA Decl. Ex. 1 (2,433.8
12 hours expended by DRC). However, in preparing their lodestar, Class Counsel exercised
13 significant billing judgment, including by not seeking fees for:

- 14 • all work performed in the investigation and development of this case—Plaintiffs'
15 lodestar includes only for work commencing at the end of August 2019, just over a
16 month before Plaintiffs' October 2019 demand letter to DDS;
- 17 • all billable time by billers with fewer than 5 hours of billed time for a total reduction
18 of 13.5 hours;
- 19 • all billable time by various other attorneys and litigation support staff for a total
20 reduction of 840.5 hours; and
- 21 • any biller beyond two from a single firm who participated in calls and meetings.

22 Weaver Fee Decl. ¶ 20; Bird Fee Decl. ¶ 13. This resulted in Class Counsel no-charging 1,420
23 hours of work—or over 32.3% of all hours billed. Weaver Fee Decl. ¶ 20 (496.1 hours no-
24 charged by DRA); Bird Fee Decl. ¶ 13 (923.9 hours no-charged by DRC). Plaintiffs' lodestar is
25 thus based on 2,974.9 hours of work.

26 In addition to this exercise of billing judgment, Plaintiffs' lodestar omits a full year of
27 work completed since August 31, 2022, including (a) finalizing the settlement agreement (which
28 was not completed until March 2023), (b) briefing preliminary approval, (c) completing class

1 notice and responding to class member inquiries, and (d) briefing final approval. Weaver Fee
2 Decl. ¶ 10. The Court recognizes that this constitutes a significant additional reduction to the
3 lodestar from Plaintiffs' actual work.

4 Finally, the \$1,300,000 award covers Class Counsel's efforts to monitor implementation
5 of the settlement agreement through its Term—billing for which is also not included in the
6 lodestar.

7 Given the substantial work that was required by this case, Class Counsel's exercise of
8 billing judgment in preparing the lodestar, and the omission of all hours worked in obtaining
9 approval from this Court and that will be worked in monitoring implementation thereof, this
10 Court finds that the number of hours included in Plaintiffs' lodestar for this matter is more than
11 reasonable. In addition, the outstanding result that Plaintiffs achieved on behalf of the class
12 underscores the reasonableness of Plaintiffs' requested lodestar. *See Hensley*, 461 U.S. at 435.

13 **C. Plaintiffs are entitled to recover their reasonable litigation costs.**

14 As prevailing parties, Plaintiffs are entitled to both taxable and nontaxable costs
15 expended during the litigation of this action. Fed. R. Civ. P. 54(d)(1) (providing for award of
16 taxable costs to prevailing party); 42 U.S.C. § 12205 (providing for award of litigation expenses
17 and costs under ADA); 29 U.S.C. § 794a(b) (providing for award of costs under Section 504).
18 Plaintiffs' litigation expenses and costs of \$28,234.33—including legal research, ASL interpreter
19 costs, filing fees, service of process, and expenses associated with expert communications
20 assessments of Plaintiffs and reports—were reasonably and necessarily incurred for the
21 prosecution and successful settlement of this action. Weaver Fee Decl. ¶¶ 9, 30–32 & Ex. B;
22 Bird Fee Decl. ¶ 15 & Ex. C. These types of costs and litigation expenses are properly
23 recoverable. *See* 28 U.S.C. § 1920 (filing fees and compensation of interpreters); *Lovell v.*
24 *Chandler*, 303 F.3d 1039, 1058–59 (9th Cir. 2002) (expert witness fees); *Rodgers v. Fitzgerald*,
25 No. 14-cv-00985-DMR, 2016 WL 4658974, at *8 (N.D. Cal. Sept. 7, 2016) (awarding filing fees
26 and service of process costs in ADA case); *Rodriguez*, 53 F. Supp. 3d at 1295 (awarding
27 Westlaw charges for legal research and travel expenses in ADA case); *Uriarte-Limon v. Leyva*,
28 No. EDCV 16-194 JGB (KKx), 2017 WL 5665016, at *6 (C.D. Cal. June 30, 2017) (awarding

1 service costs, filing fees, and interpreter fees to prevailing plaintiff in ADA case).

2 This Court finds that Plaintiffs' litigation expenses and costs of \$28,234.33 are
3 reasonable. While the negotiated award amount of \$1,300,000 is already a significant reduction
4 from the presumptively reasonable lodestar, as discussed above, it also encompasses Plaintiffs'
5 litigation expenses and costs, which makes it even more reasonable.

6 **III. ORDER**

7 For the reasons stated above, Plaintiffs' motion is GRANTED in full. The Court Orders
8 as follows:

- 9 1. Plaintiffs' Unopposed Motion for Attorneys' Fees and Costs is GRANTED in full.
- 10 2. Defendants are ordered to pay Plaintiffs' counsel the amount of \$1,300,000 within
11 sixty (60) days of the Court's order granting final approval of the Agreement.

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13 DATED: _____, 2023

14 Hon. Susan Illston
15 United States District Court Judge
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