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14
15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN FRANCISCO DIVISION**

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

22 Plaintiffs,

23 v.

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

27 Defendants.
28

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

**PLAINTIFFS' UNOPPOSED MOTION
FOR AWARD OF ATTORNEYS' FEES
AND COSTS; MEMORANDUM OF
POINTS AND AUTHORITIES**

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

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES and the COURT: PLEASE TAKE NOTICE THAT on September 15, 2023 at 10:00 a.m., or as soon thereafter as can be heard, Plaintiff Lugene McCullough, by and through his guardian *ad litem* Maya Klein, and Plaintiff Josonia Bishara, by and through her guardian *ad litem* Samond Bishara (collectively “Plaintiffs”) will and hereby do move the Court for entry of an order granting Plaintiffs’ unopposed motion for attorneys’ fees and costs and awarding Plaintiffs \$1,300,000 in fees and costs in connection with the above-captioned case.

The hearing on this motion will take place before United States District Judge Susan Illston, and will be conducted via Zoom webinar (the login information for which can be found on the Court’s website at <https://www.cand.uscourts.gov/judges/illston-susan-si/>). This motion is based upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the concurrently filed declarations and exhibits, all pleadings and papers on file in this action, and any oral argument that may be presented.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

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

After more than two years of settlement negotiations the Parties reached a proposed class settlement to resolve Plaintiffs’ federal and state actions, of which they now seek final approval in the joint motion filed contemporaneously herewith. The proposed Agreement that Plaintiffs achieved provides robust relief including creation of a working group with membership of key stakeholders to make recommendations regarding DDS policies, services, and training; hiring a statewide Equity Specialist, and a regional Deaf Services Specialist at each of the twenty-one

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1 regional centers; and a process for assessing the communication skills and needs of deaf
 2 consumers. *See* Decl. Meredith J. Weaver Supp. Joint Mot. Prelim. Approval (“Weaver PA
 3 Decl.”) Ex. 1 (Class Action Settlement Agreement (hereinafter “Agreement”)), ECF 110-1 at
 4 16–47.¹

5 Pursuant to section III.D of the Agreement, Plaintiffs now seek that the Court (1) find
 6 that an award of attorneys’ fees and costs in the amount of \$1,300,000 for all fees and costs
 7 through the term of the Agreement is fair and reasonable, and (2) order Defendants to pay
 8 Plaintiffs’ counsel the amount of \$1,300,000 within sixty (60) days of the Court’s order granting
 9 final approval.

10 II. FACTUAL BACKGROUND

11 The procedural history of the case, substantive terms of injunctive relief provided in the
 12 settlement agreement, and a discussion of the substantial benefits the agreement confers on the
 13 settlement class are set forth in greater detail in the Parties’ joint motions for preliminary and
 14 final approval. *See* Joint Mot. Preliminary Approval § II, ECF No. 110; Joint Mot. Final
 15 Approval § II.A–B, ECF No. 120. Consistent with the Northern District’s *Procedural Guidance*
 16 *for Class Action Settlements*,² Plaintiffs do not repeat such details here.

17 After the Parties reached agreement on all substantive terms of injunctive relief in the
 18 settlement agreement, Plaintiffs provided a demand for \$1,998,359.33 in attorneys’ fees and
 19 costs, consisting of: \$1,788,305 in fees for work completed through final approval, based on
 20 Disability Rights Advocates’ and Disability Rights California’s (collectively “Class Counsel”)
 21 combined lodestar as of August 31, 2022; litigation expenses and costs in the amount of
 22 \$28,234.33 as of August 31, 2022; and a lump sum of \$181,820 as compensation for the
 23 necessary work of monitoring Defendants’ implementation of the Agreement. *See* Decl.
 24 Meredith J. Weaver Supp. Mot. Attorneys’ Fees & Costs (“Weaver Fee Decl.”) ¶ 9.

25
 26 ¹ For ECF documents, page number citations refer to the ECF branded number in the upper right-
 hand corner of the page.

27 ² U.S. DIST. CT. N. DIST. OF CAL., *Procedural Guidance for Class Action Settlements* (Aug. 4,
 28 2022), available at <https://www.cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements/>.

1 To prepare their \$1,788,305 lodestar Class Counsel wrote off almost a third of all hours
 2 billed on the case through August 31, 2022 and all hours expended on the case after that date.
 3 See Weaver PA Decl. Ex. 5 (showing 496.1 hours not billed out of total 1,961.1 hours expended,
 4 for lodestar of \$738,685.00); Decl. Melinda Bird Supp. Joint Mot. Prelim. Approval (“Bird PA
 5 Decl.”) Ex 1 (showing 923.9 hours not billed out of total 2,433.8 hours expended for lodestar of
 6 \$1,049,620.00). After over four months of negotiations, the Parties agreed to a total lump sum
 7 payment of \$1,300,000 for Plaintiffs’ attorneys’ fees and costs through the term of the
 8 agreement. Weaver PA Decl. ¶ 24; Agreement § III.D.

9 III. ARGUMENT

10 The Parties’ negotiated attorneys’ fees and costs are reasonable and should be approved
 11 because (1) attorneys’ fees and costs are authorized by the Americans with Disabilities Act
 12 (“ADA”), Section 504 of the Rehabilitation Act (“Section 504”), and the Agreement as well as
 13 by California Code of Civil Procedure Section 1021.5 with respect to Plaintiffs’ Section 11135
 14 claim; (2) the agreed-upon award of \$1,300,000 in attorneys’ fees and costs through the term of
 15 the Agreement is significantly less than Plaintiffs’ lodestar for work through August 31, 2022,
 16 which is based on reasonable rates and reasonable hours; and (3) the types of litigation expenses
 17 and costs requested by Plaintiffs are properly recoverable.

18 A. Plaintiffs are entitled to attorneys’ fees and costs under applicable statutes 19 and the Settlement Agreement.

20 “In a certified class action, the court may award reasonable attorney’s fees and
 21 nontaxable costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h).
 22 The statutes under which this action was brought allow for fee shifting when plaintiffs prevail on
 23 their claims. 42 U.S.C. § 12205 (ADA prevailing party is entitled to “a reasonable attorney’s fee,
 24 including litigation expenses, and costs”); 29 U.S.C. § 794a(b) (Section 504 prevailing party is
 25 entitled to “a reasonable attorney’s fee as part of the costs”); Cal. Civ. Proc. § 1021.5 (successful
 26 party in an action under California law that enforces an important right affecting the public
 27 interest, confers a significant benefit on a large class of persons, was brought in the absence of
 28 public enforcement, imposed a financial burden on plaintiffs’ counsel, and secures non-monetary

1 relief, is entitled to “attorneys’ fees”). Plaintiffs who prevail under these fee-shifting statutes
 2 “should ordinarily recover an attorney’s fee unless special circumstances would render such an
 3 award unjust.” *Jankey v. Poop Deck*, 537 F.3d 1122, 1130 (9th Cir. 2008) (internal quotation
 4 marks and citations omitted). Granting successful civil rights plaintiffs a reasonable attorney’s
 5 fee “ensure[s] effective access to the judicial process” and advances the important causes behind
 6 such legislation. *Id.* at 1130–31.

7 A plaintiff “prevails” for the purpose of awarding attorneys’ fees under the ADA and
 8 Section 504 when “actual relief on the merits of [their] claim materially alters the legal
 9 relationship between the parties by modifying the defendant’s behavior in a way that directly
 10 benefits the plaintiff.” *Chapman v. NJ Properties Inc.*, No. 5:16-cv-02893-EJD, 2019 WL
 11 3718585, at *2 (N.D. Cal. Aug. 7, 2019) (quoting *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1118
 12 (9th Cir. 2000)). Such “material alteration” can occur through a legally enforceable settlement
 13 agreement. *Id.* at *3; *see also Jankey*, 537 F.3d at 1130. The key is whether the plaintiff can
 14 “force the defendant to do something [they] otherwise would not have to do.” *Chapman*, 2019
 15 WL 3718585, at *2 (quoting *Fischer*, 214 F.3d at 1118).³

16 Here, the Parties have entered into a legally enforceable settlement agreement that
 17 (1) provides the Settlement Class with substantial relief sought in the Complaint including
 18 communications assessments for Settlement Class Members, new Deaf Services Specialists,
 19 funding to improve services available to Settlement Class Members, and increased training
 20 available to regional center staff; and (2) will remain enforceable by this Court under its
 21 continuing jurisdiction. *See* Agreement ¶ 64 (stipulating to the Court’s retention of jurisdiction
 22 over the action “for the purpose of ensuring compliance with the terms of the Settlement
 23 Agreement”), ¶¶ 69–70 (providing that a party may present disputes as to implementation to the
 24 Court), & Ex. A: Implementation Plan (setting forth the actions that DDS will take under the
 25

26 ³ The bar for recovery is lower under California state law, where “[a] plaintiff will be considered
 27 a ‘successful party’ where an important right is vindicated by activating defendants to modify
 28 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) (internal quotations omitted).

1 Agreement).

2 Thus, upon final approval, Plaintiffs will have “prevailed” in this action for purposes of
 3 this motion by achieving “actual relief on the merits of [their] claim” that is legally enforceable.
 4 *Chapman*, 2019 WL 3718585, at *2. Because there are also no special circumstances rendering
 5 an award of fees and costs unjust, Plaintiffs are therefore entitled to an award of reasonable
 6 attorneys’ fees and costs.⁴

7 **B. The Parties’ negotiated award of \$1,300,000 in fees and costs is a significant**
 8 **reduction to Plaintiffs’ presumptively reasonable lodestar, and should be**
 9 **approved.**

10 “While attorneys’ fees and costs may be awarded in a certified class action where so
 11 authorized by law or the parties’ agreement . . . courts have an independent obligation to ensure
 12 that the award . . . is reasonable, even if the parties have already agreed to an amount.” *Senne v.*
 13 *Kansas City Royals Baseball Corp.*, No. 14-cv-00608 JCS, 2023 WL 2699972, at *17 (N.D. Cal.
 14 Mar. 29, 2023) (quoting *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir.
 15 2011)). In the Ninth Circuit, courts use the “lodestar method” for calculating a reasonable
 16 attorneys’ fee “in class actions brought under fee-shifting statutes (such as federal civil rights...),
 17 where the relief sought—and obtained—is often primarily injunctive in nature and thus not
 18 easily monetized, but where the legislature has authorized the award of fees to ensure
 19 compensation for counsel undertaking socially beneficial litigation.” *In re Bluetooth Headset*
 20 *Prod. Liab. Litig.*, 654 F.3d at 941; *see also Serrano v. Priest*, 20 Cal. 3d 25, 47–48 (1977)
 21 (*Serrano III*). “The lodestar figure is calculated by multiplying the number of hours the

22 ⁴ On July 17, 2023, Carl A. Argila submitted objections to the proposed Agreement on behalf of
 23 his son and conservatee, Gerardo A. Argila, who is a Settlement Class Member. ECF No. 117.
 24 Mr. Argila objected to the Attorneys’ Fees and Costs award as follows: “The undersigned
 25 strongly objects to the payment of attorneys’ fees and costs for work which was part of the
 26 mandate of Disability Rights California and funded by the taxpayers of the State of California.”
 27 *Id.* at 3. First, this litigation has not been funded by the State of California. DRC’s systemic
 28 litigation (such as this case) is funded by various federal funding streams and by the receipt of
 attorneys’ fees and costs for such litigation pursuant to anti-discrimination laws. Decl. Melinda
 Bird Supp. Mot. Attorneys’ Fees & Costs (“Bird Fee Decl.”) ¶ 18. Second, the receipt of funding
 from other sources in the interim does not negate Plaintiffs’ entitlement to an award of attorneys’
 fees and costs in this matter pursuant to the applicable fee-shifting standards under federal and
 state law. Mr. Argila’s objection to the award of attorneys’ fees & costs should be overruled.

1 prevailing party reasonably expended on the litigation...by a reasonable hourly rate for the
 2 region and for the experience of the lawyer.” *In re Bluetooth Headset Prod. Liab. Litig.*, 654
 3 F.3d at 941; *see also Ketchum v. Moses*, 24 Cal. 4th 1122, 1133 (2001). The lodestar figure is
 4 presumptively reasonable. *See Fischer*, 214 F.3d at 1119 n.4; *Rodriguez v. Barrita, Inc.*, 53 F.
 5 Supp. 3d 1268, 1277 (N.D. Cal. 2014).

6 Class Counsel’s combined lodestar as of August 31, 2022—upon which they based their
 7 demand for fees—was \$1,788,305 and their litigation expenses and costs were \$28,234.33, for a
 8 total of \$1,816,539.33 in fees, costs, and litigation expenses through August 31, 2022. Weaver
 9 Fee Decl. ¶ 9. The negotiated award is approximately 71.6% of that total⁵ and covers Class
 10 Counsel’s fees and costs through the entire Term of the Agreement. Agreement § III.D. The
 11 requested award of \$1,300,000 is reasonable because (1) Class Counsel’s lodestar is based on
 12 reasonable rates and a reasonable number of expended hours, (2) the award requested represents
 13 a substantial reduction to the presumptively reasonable lodestar; and (3) Plaintiffs’ well-
 14 documented costs and litigation expenses are recoverable.

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

16 Class Counsel’s standard hourly rates are in line with those charged by other lawyers of
 17 similar skill, experience, and reputation in the prevailing market. Plaintiffs’ lodestar is based on
 18 the following 2022 hourly billing rates, which DRA and DRC set based on attorneys’ years of
 19 legal experience, taking into account their expertise, and market rates of private firms and fee
 20 orders for similar work:

21 *Disability Rights Advocates:*

Name	Title	2022 Hourly Billing Rate	Graduation Year
Rebecca Williford	Deputy Director of Litigation & Interim CEO/President ⁶	\$600	2009
Meredith Weaver	Senior Staff Attorney	\$505	2014
Jess Miller-Suchet	Paralegal	\$280	N/A
Desiree Robedeaux	Paralegal	\$280	N/A

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27 ⁵ $1,300,000 \div \$1,816,539.33 = 0.7156$

28 ⁶ 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.

Name	Title	2022 Hourly Billing Rate	Graduation Year
Yi Li	Summer Law Clerk	\$280	N/A

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

Weaver Fee Decl. ¶¶ 15–18; Decl. Melinda Bird Supp. Mot. Attorneys’ Fees & Costs (“Bird Fee Decl.”) ¶¶ 16–17.

Class Counsel’s billing rates are reasonable as they are based on the extensive experience each attorney has in complex disability rights class action litigation and are similar to prevailing market rates awarded to “lawyers of reasonably comparable skill, experience, and reputation.” *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008); *G. F. v. Contra Costa Cnty.*, No. 13-cv-03667-MEJ, 2015 WL 7571789, at *14 (N.D. Cal. Nov. 25, 2015); *see also Children’s Hosp. & Med. Ctr. v. Bonta*, 97 Cal. App. 4th 740, 783 (2002). The “relevant legal community” is generally the forum district for the action in which fees are sought. *Gates v. Deukmejian*, 987 F.2d 1392, 1405 (9th Cir. 1992); *Heritage Pac. Fin., LLC v. Monroy*, 215 Cal. App. 4th 972, 1009 (2013). “[R]ate determinations in other cases, particularly those setting a rate for the plaintiffs’ attorney, are satisfactory evidence of the prevailing market rate.” *See Johnson v. Baird Lands, Inc.*, No. 18-cv-05365-VKD, 2020 WL 3833278, at *2 (N.D. Cal. July 8, 2020) (quoting *United Steelworkers of Am. v. Phelps Dodge Co.*, 896 F.2d 403, 407 (9th Cir. 1990)).

Class Counsel are highly experienced litigators in the field of complex disability rights class action litigation. *See* Weaver Fee Decl. ¶¶ 12–14, 23–29; Bird Fee Decl. ¶¶ 3–12. Both

1 organizations have successfully litigated dozens of disability rights class action cases. *See*
 2 Weaver Fee Decl. ¶ 13; Bird Fee Decl. ¶ 7. In recognition of this skill and expertise, California
 3 district courts have routinely approved Class Counsel’s standard rates as reasonable. *See*
 4 *Navarro v. City of Mountain View*, No. 5:21-cv-05381-NC, Dkt. No. 137 at 5 n.1, 6–8 (N.D. Cal.
 5 Feb. 28, 2023) (attached as Exhibit 6 to Weaver PA Decl.) (approving DRA’s 2022 rates of \$280
 6 for paralegals and law clerks, \$490 for staff attorneys with 7 years’ experience, \$520 for staff
 7 attorney with 9 years’ experience, and \$590 for a supervising attorney with 12 years’
 8 experience); *T.G. v. Kern Cnty.*, No. 1:18-cv-0257 JLT, 2020 WL 3035199, at *22 (E.D. Cal.
 9 June 5, 2020) (approving DRA’s and DRC’s hourly rates⁷ ranging from \$400 to \$1,005, with the
 10 highest rate requested for an attorney who had specialized in complex public interest litigation
 11 for over 40 years); *Cnty. Res. for Indep. Living v. Mobility Works of California, LLC*, No. 18-cv-
 12 06012-JSW, 2020 WL 10505223, at *2 (N.D. Cal. May 22, 2020) (approving DRA’s 2020 rates
 13 including \$230 for litigation assistants, \$275 for paralegals, \$425 for staff attorney with 5 years’
 14 experience, and \$525 for supervising attorney with 10 years’ experience); *Mays v. Cnty. of*
 15 *Sacramento*, No. 2:18-cv-02081-TLN-KJN, 2020 WL 6787145 (E.D. Cal. Jan. 13, 2020)
 16 (adopting the magistrate judge’s unopposed Findings and Recommendations and ordering
 17 payment of DRC’s attorney’s fees and expenses); *Nat’l Fed’n of the Blind of California v. Uber*
 18 *Techs., Inc.*, No. 14-cv-04086-NC, Dkt. No. 203 at 5 (N.D. Cal. Nov. 8, 2019) (attached as
 19 Exhibit 7 to Weaver PA Decl.) (approving DRA’s rates⁸ as reasonable); *Thomas v. Kent*, No. CV
 20 14-8013 FMO (AGRx), 2019 WL 2590170, at *10 (C.D. Cal. May 30, 2019) (granting DRC’s
 21 contested motion for attorney’s fees under Cal Civ. Code § 1021.5); *Cole v. Cnty. of Santa*
 22 *Clara*, No. 5:16-cv-06594-LHK, Dkt. No. 86 at 3–4 (N.D. Cal. Mar. 21, 2019) (attached as
 23 Exhibit 8 to Weaver PA Decl.) (approving DRA’s 2018 rates of \$230 for paralegals, \$425 for a
 24 staff attorney, \$655 for a Director of Litigation, and \$775 for Managing Director of
 25

26 ⁷ In *T.G. v. Kern Cnty.*, the court approved Class Counsel’s 2020 rates. Weaver Fee Decl.
 27 ¶ 16(b).

28 ⁸ In *NFB of CA v. Uber*, the court approved DRA’s 2019 rates of \$230 for litigation assistant,
 \$275 for paralegal, \$470 for attorney with 7 years’ experience, and \$785 for attorney with 21
 years’ experience. Weaver PA Decl. ¶ 16(d).

1 Litigation⁹).¹⁰

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

6 Accordingly, the rates used to determine Class Counsel’s lodestar reflected above are
7 reasonable.

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

9 Prevailing plaintiffs are entitled to be compensated for “every item of service which, at
10 the time rendered, would have been undertaken by a reasonable and prudent lawyer to advance
11 or protect [their] client’s interest[.]” *Moore v. James H. Matthews & Co.*, 682 F.2d 830, 839 (9th
12 Cir. 1982) (quoting *Twin City Sportservice v. Charles O. Finley & Co.*, 676 F.2d 1291, 1313 (9th
13 Cir. 1981)); *see also Ramon v. Cnty. of Santa Clara*, 173 Cal. App. 4th 915, 924–25 (2009).
14 Courts “should defer to the winning lawyer’s professional judgment as to how much time he was
15 required to spend on the case.” *Rodriguez*, 53 F. Supp. 3d at 1284 (quoting *Moreno v. City of*
16 *Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008)); *see also Chaudhry v. City of Los Angeles*,
17 751 F.3d 1096, 1111 (9th Cir. 2014) (quoting same).

18 While the Parties were able to reach a settlement agreement without extensive discovery
19 or litigation, this matter demanded significant time and resources from Class Counsel, including:

20
21 _____
22 ⁹ These attorneys had 5 years, 13 years, and 20 years of experience, respectively. Weaver PA
Decl. ¶ 16(e).

23 ¹⁰ DRA’s standard rates have also been approved by other courts around the country. *Liberty*
24 *Res., Inc. v. City of Philadelphia*, No. CV 19-3846, 2023 WL 3204018, at *11 (E.D. Pa. May 1,
25 2023) (finding DRA’s 2021 rates reasonable, including \$275 for paralegals, \$455 for
26 Ms. Weaver, \$475 for senior staff attorney with 8 years’ experience, and \$815 for director of
27 litigation with 23 years’ experience); *Adam X. v. New Jersey Dep’t of Corr.*, No. CV 17-00188
28 (FLW) (LHG), 2022 WL 621089, at *11 (D.N.J. Mar. 3, 2022) (finding DRA’s 2020 rates
reasonable, including \$425 for staff attorney with 5 years’ experience and \$675 for co-director of
litigation with 15 years’ experience); *Roque v. Seattle Hous. Auth.*, No. 2:20-cv-00658-JRC,
2021 WL 9649847, at *3 (W.D. Wash. Sept. 28, 2021) (approving DRA’s 2021 rates, including
\$445 for staff attorney with 6 years’ experience and \$545 for a supervising attorney with 11
years’ experience).

- 1 • Significant investigation work prior to filing.¹¹
- 2 • The preparation of an amended complaint and state court complaint given DDS's
- 3 objection to defending state law claims in federal court.
- 4 • Early expert assessments and the preparation of a comprehensive expert report, which
- 5 was produced to DDS on April 26, 2021, when Plaintiffs sought to reopen litigation
- 6 for the purpose of deposing Dr. Romy Spitz in order to preserve her testimony.
- 7 • Full briefing of Defendants' motion to dismiss, which was denied by the Court.
- 8 • Preparation of initial disclosures and discovery requests prior to the stay of litigation.
- 9 • Prior to the stay of litigation, preparation for class certification motion, which was
- 10 due in less than two months at the time of the stay.
- 11 • More than two years of settlement negotiations, including 9 settlement conferences
- 12 before Judge Corley and even more settlement meetings among counsel.

13 See Joint Mot. Preliminary Approval § II.A–B; Bird PA Decl. ¶ 3; Weaver Fee Decl. ¶ 26. Given
 14 the above necessary work, the complex nature of this case, and the extensive negotiations
 15 required to reach a robust agreement, Plaintiffs' counsel expended a total of 4,394.9 hours on this
 16 action through August 31, 2022. Weaver PA Decl. Ex. 5 (1,961.1 hours expended by DRA); Bird
 17 PA Decl. Ex. 1 (2,433.8 hours expended by DRC).

18 However, in preparing their lodestar, Class Counsel thoroughly reviewed their billing
 19 records and exercised billing judgment, including by not seeking fees for:

- 20 • most work performed in the investigation and development of this case—Plaintiffs
- 21 lodestar includes only work commencing at the end of August 2019, just over a
- 22 month before Plaintiffs' October 2019 demand letter to DDS;
- 23 • all billable time by billers with fewer than 5 hours of billed time for a total reduction
- 24 of 13 hours;
- 25 • all billable time by various other attorneys and litigation support staff for a total

26
 27 ¹¹ *Webb v. Bd. of Educ. of Dyer Cnty.*, 471 U.S. 234, 243 (1985) (noting that where services are
 28 performed on the litigation before a lawsuit is formally commenced, they are recoverable and
 listing “obvious examples” including “drafting of the initial pleadings and the work associated
 with the development of the theory of the case”).

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1 reduction of 840.5 hours; and
2 • any biller beyond two from a single firm who participated in calls and meetings.
3 Weaver Fee Decl. ¶ 20; Bird Fee Decl. ¶ 13. This resulted in Class Counsel no-charging 1,420
4 hours of work—or over 32.3% of all hours billed.¹² Weaver Fee Decl. ¶ 20 (496.1 hours no-
5 charged by DRA); Bird Fee Decl. ¶ 13 (923.9 hours no-charged by DRC). Plaintiffs’ lodestar is
6 thus based on 2,974.9 hours.¹³

7 In addition to this exercise of billing judgment, Plaintiffs’ lodestar omits a full year of
8 work completed since August 31, 2022, including (a) finalizing the settlement agreement (which
9 was not completed until March 2023), (b) briefing preliminary approval, (c) completing class
10 notice and responding to class member inquiries, and (d) briefing final approval. Weaver Fee
11 Decl. ¶ 10. This amounts to approximately 439 hours of omitted work. Weaver Fee Decl. ¶ 10
12 (approximately 300 hours expended by DRA); Bird Fee Decl. ¶ 14 (138.8 hours expended by
13 DRC). Finally, the award covers Class Counsel’s efforts to monitor implementation of the
14 settlement agreement through its Term, Agreement § III.D—billing for which is also not
15 included in the lodestar.

16 Given the substantial work that was required by this case, Class Counsel’s exercise of
17 billing judgment in preparing the lodestar, and the omission of all hours worked in obtaining
18 approval from this Court and that will be worked in monitoring implementation thereof, the
19 number of hours included in Plaintiffs’ lodestar for this matter is reasonable. In addition, the
20 outstanding result that Plaintiffs achieved on behalf of the class underscores the reasonableness
21 of Plaintiffs’ requested lodestar. *See Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983).

22 Furthermore, the agreed-upon award of \$1,300,000 in attorney’s fees and costs represents
23 a significant reduction to the Plaintiffs’ presumptively reasonable lodestar. *See Fischer*, 214 F.3d
24 at 1119 n.4.

25
26
27
28 ¹² 1,420 ÷ 4,394.9 = 0.3231

¹³ 4,394.9 hours – 1,420 hours = 2,974.9 hours

C. Plaintiffs are entitled to recover their reasonable litigation expenses and costs.

As prevailing parties, Plaintiffs are entitled to both taxable and nontaxable costs expended during the litigation of this action. Fed. R. Civ. P. 54(d)(1) (providing for award of taxable costs to prevailing party); 42 U.S.C. § 12205 (providing for award of litigation expenses and costs under ADA); 29 U.S.C. § 794a(b) (providing for award of costs under Section 504). Plaintiffs litigation expenses and costs of \$28,234.33¹⁴—including legal research, ASL interpreters, filing fees, service of process, and expenses associated with expert communications assessments of Plaintiffs and reports—were reasonably and necessarily incurred for the prosecution and successful settlement of this action. Weaver Fee Decl. ¶¶ 9, 30–32 & Ex. B; Bird Fee Decl. ¶ 15 & Ex. C. These types of costs and litigation expenses are properly recoverable. *See* 28 U.S.C. § 1920 (filing fees and compensation of interpreters); *Lovell v. Chandler*, 303 F.3d 1039, 1058–59 (9th Cir. 2002) (expert witness fees); *Rodgers v. Fitzgerald*, No. 14-cv-00985-DMR, 2016 WL 4658974, at *8 (N.D. Cal. Sept. 7, 2016) (awarding filing fees and service of process costs in ADA case); *Rodriguez*, 53 F. Supp. 3d at 1295 (awarding Westlaw charges for legal research and travel expenses in ADA case); *Uriarte-Limon v. Leyva*, No. EDCV 16-194 JGB (KKx), 2017 WL 5665016, at *6 (C.D. Cal. June 30, 2017) (awarding service costs, filing fees, and interpreter fees to prevailing plaintiff in ADA case).

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

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court (1) find that an award of Plaintiffs attorneys’ fees and costs in the amount of \$1,300,000 for all fees and costs through the term of the Agreement is fair and reasonable, and (2) order Defendants to pay

¹⁴ This amount does not include those costs Class Counsel declined to charge for in the exercise of billing judgment and in the interest of settlement, including all costs incurred after August 31, 2022. Weaver Fee Decl. ¶ 31; Bird Fee Decl ¶ 15.

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1 Plaintiffs' counsel the amount of \$1,300,000 within sixty (60) days of the Court's order granting
2 final approval.

3
4 DATED: September 1, 2023

Respectfully submitted,

5 DISABILITY RIGHTS ADVOCATES



6 Meredith J. Weaver

7 Rebecca Williford

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8 DISABILITY RIGHTS CALIFORNIA

9 *s/ Melinda Bird*

10 Melinda Bird

11 William Leiner

12 Emily Ikuta

S. Lynn Martinez

Attorneys for Plaintiffs

13
14
15 **FILER'S ATTESTATION**

16 Pursuant to Civil Local Rule 5-1(h)(3), I, Meredith J. Weaver, attest that concurrence in
17 the filing of this document has been obtained from each of the Signatories.

18 

19 Meredith J. Weaver

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