This Document Is Presented Courtesy of

THE EMPLOYMENT LAW GROUP®

Workplace Champions Protecting Your Civil Rights®

Contact Us:

1-202-331-3911

Or visit us online:

https://www.EmploymentLawGroup.com

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TROY COACHMAN, Plaintiff, v. SEATTLE AUTO MANAGEMENT, INC. dba MERCEDES BENZ OF SEATTLE and AL MONJAZEB, Defendants.	CASE NO. C17-187 RSM ORDER ON POST-TRIAL MOTIONS

I. INTRODUCTION

Plaintiff brought this action seeking recovery on disability discrimination and failure to accommodate claims under both the Americans with Disabilities Act ("ADA") and Washington's Law Against Discrimination ("WLAD"). The case proceeded to a jury trial where Plaintiff prevailed on his four claims and the jury awarded $236,812 in economic damages and $4,697,248 in noneconomic damages. Dkt. #75. The matter is now before the Court on a number of post-trial motions, including:

1. Defendants' Motion for Approval of Supersedeas to Stay Enforcement of Judgment Pending Appeal ("Motion for Bond"). Dkt. #81;
2. Plaintiff's Motion for Attorneys' Fees & Costs ("Motion for Fees"). Dkt. #86;

3. Plaintiff's Motion for Pre- and Post-Judgment Interest and Tax Consequences Adjustment ("Motion for Interest"). Dkt. #93; and
4. Defendants' Fed. R. Civ. P. 59 Motion for New Trial, or in the Alternative, Remittitur ("Motion for New Trial"). Dkt. #104.

Defendants have requested oral argument on their Motion for New Trial, but the Court finds oral argument unnecessary to its resolution of the motions. Having considered the parties' extensive briefing and the record in this matter, the Court resolves the motions as follows.

II. BACKGROUND

Because the parties and the Court are familiar with the facts of this case, the Court need not recite the facts of the case beyond a brief summary and will revisit the facts, to the extent necessary, in its discussion of the issues. Plaintiff brought an action for discrimination against his employer and the employer's owner after he was fired following a laryngectomy necessitating the use of a voice prosthesis. Following a six-and-one-half-day jury trial, the jury found for Plaintiff and awarded $236,812 in economic damages and $4,697,248 in noneconomic damages. Dkt. #75.

III. DISCUSSION

A. Motion for New Trial

Defendants contend that various errors denied them of a fair trial. Dkt. #104. Specifically, Defendants argue: (1) that, in two regards, the jury's verdict was against the evidence; (2) that misconduct by Plaintiff's counsel robbed Defendants of a fair trial; and (3) that the Court made evidentiary and legal errors. Defendants additionally seek a new trial on the basis that the jury's verdict is excessive or, alternatively, request that the Court adjust the verdict through remittitur.

1. Legal Standard

Pursuant to Federal Rule of Civil Procedure 59, a district court may, following a jury trial, "grant a new trial on all or some of the issues . . . for any reason for which a new trial has heretofore been granted." Fed. R. Civ. P. 59(a)(1)(A). A new trial is appropriate where "the verdict is contrary to the clear weight of the evidence, is based upon false or perjurious evidence, or to prevent a miscarriage of justice," such as when damages are excessive or the trial was not fair to the moving party. *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 729 (9th Cir. 2007) (quoting *Passantino v. Johnson & Johnson Consumer Prods.*, 212 F.3d 493, 510 n.15 (9th Cir. 2000)); *Montgomery Ward & Co. v. Duncan*, 311 U.S. 243, 251 (1940). Courts may also consider "questions of law arising out of alleged substantial errors in admission or rejection of evidence or instructions to the jury." *Montgomery Ward & Co.*, 311 U.S. at 251; *see also* Fed. R. Civ. P. 61 ("no error in admitting or excluding evidence—or any other error by the court or a party—is ground for granting a new trial . . . [and] the court must disregard all errors and defects that do not affect any party's substantial rights").

2. The Jury's Verdict Is Not Against the Clear Weight of the Evidence

Defendants argue that the jury could not have found for Plaintiff on his ADA reasonable accommodation claim because he admitted he never requested an accommodation and that the evidence did not support the jury's rejection of Defendants' unconditional offer affirmative defense. The Court does not agree and, even so, the discreet issues raised by Defendants do not lead to the conclusion that the entire verdict itself is against the weight of the evidence. To weigh the evidence and credibility, the Court relies on its own judgment—not the light most favorable to the prevailing party—and is expected to reject the jury's findings only when "left with the firm

conviction that a mistake has been committed." *Landes Const. Co. v. Royal Bank of Canada*, 833 F.2d 1365, 1371–72 (9th Cir. 1987).

The evidence does not compel the conclusion that Plaintiff never requested an accommodation. Defendants argue that the ADA requires a *request* for accommodation and that Plaintiff testified he never requested an accommodation before his termination. Dkt. #104 at 2–3. Because the jury found for Plaintiff on his ADA reasonable accommodation claim, Defendants argue that the jury clearly disregarded the Court's instructions.[1] *Id.* But Plaintiff points to evidence of his initial request for medical leave for laryngectomy surgery as the request triggering reasonable accommodation. Dkt. #114 at 3 (citing *Humphrey v. Mem'l Hosp. Ass'n*, 239 F.3d 1128, 1137–39 (9th Cir. 2001)). In reply, Defendants argue that even that request is legally insufficient.[2] Dkt. #116 at 1. Regardless, Defendants provide no explanation of why the alleged error warrants a new trial. Defendants do not challenge the jury's verdict on Plaintiff's other three claims. Even if the jury erroneously found for Plaintiff on the ADA reasonable accommodation claim, Plaintiff's exact same damages were compensable under the other three claims that Plaintiff proved and that Defendants do not challenge.

Sufficient evidence also supported the jury's conclusion that Plaintiff did not unreasonably reject an unconditional offer of reinstatement. Defendants argue that the Plaintiff's

[1] The Court does not believe that the jury's verdict is contrary to the evidence, but even so, the singular error would not demonstrate that the jury otherwise disregarded the Court's instructions.

[2] Indeed, Defendants' argument appears to morph in their reply. Defendants argue that Plaintiff's request for medical leave is not sufficient under federal regulations. Essentially, Defendants argue that the jury should not have been instructed on Plaintiff's ADA reasonable accommodation claim as a matter of law. Defendants cannot wait to raise an "error until after the negative verdict." *Hemmings v. Tidyman's Inc.*, 285 F.3d 1174, 1193 (9th Cir. 2002). More importantly, Defendants' Motion does not seek relief under Federal Rule of Civil Procedure 50. *Nitco Holding Corp. v. Boujikian*, 491 F.3d 1086 (9th Cir. 2007) (failure to move under Rule 50(b) precludes later challenges to the sufficiency of the evidence).

trial testimony conflicted with his deposition testimony in that he mentioned fear of retaliation—in addition to already having a job—as the reason for rejecting Defendants' offer of reinstatement. Dkt. #104 at 7–8. But Defendants do not explain why the discrepancy precludes the jury's finding. Defendants impeached Plaintiff on this point and the fact that Plaintiff cited an additional ground for rejecting the offer in his trial testimony does not undermine either of the jury's possible conclusion that the offer was not unconditional or that Plaintiff acted reasonably in refusing.

3. Neither the Trial or Jury Verdict Were Unfair or a Miscarriage of Justice

a. Admission of Attending Physician Statements

Defendants argue that the Court's admission of documents containing statements of Plaintiff's deceased doctor—which Defendants sought to exclude before trial—was a substantial legal error. Dkt. #104 at 3; Dkt. #44 at 7–8. Defendants again objected at trial on the basis that no testimony qualified the documents for the business records exception to the hearsay rule. Dkt. #105-3. As such, Defendants argue that the documents were inadmissible and that the error was substantial because the documents supported the conclusion that Plaintiff could perform the essential functions of his job. Dkt. #104 at 4.

Errors in evidentiary rulings only warrant a new trial when the ruling "substantially prejudiced" the moving party. *Harper v. City of Los Angeles*, 533 F.3d 1010, 1030 (9th Cir. 2008) (quoting *Ruvalcaba v. City of Los Angeles*, 64 F.3d 1323, 1328 (9th Cir. 1995)). Prejudice exists, for example, where the error, "more probably than not, . . . tainted the verdict." *Id.* (quoting *Tennison v. Circus Enters, Inc.*, 244 F.3d 684, 688 (9th Cir. 2001)).

Here, even if the admission was error, Defendants do not establish that they were substantially prejudiced. Both parties presented evidence regarding whether Plaintiff could

perform the essential functions of his job. Even if admitted in error, the documents were unlikely to singularly sway the jury's determination and the admission was harmless.

b. Plaintiff's Violation of Court Order by Improper Questioning

Defendants argue that Plaintiff violated the Court's order on motions *in limine* by eliciting testimony about other discrimination complaints against Defendants. Dkt. #104 at 4–6. In questioning one of Defendants' employees about statements he made in the course of an EEOC investigation, Plaintiff attempted to establish a reason those statements may not be truthful. *Id.* The witness responded: "There was one issue before. One of our employees had filed a complaint-." Dkt. #105-4 at 2–3. But granting a new trial on the grounds of attorney misconduct is only appropriate where "the flavor of misconduct [] sufficiently permeate[s] an entire proceeding to provide conviction that the jury was influenced by passion and prejudice in reaching its verdict." *Kehr v. Smith Barney, Harris Upham & Co., Inc.*, 736 F.2d 1283, 1286 (9th Cir. 1984) (internal quotations and citations omitted). In the context of the case and testimony, the Court does not agree that Plaintiff attempted to elicit improper testimony. Further, the Court believes that the testimony was fairly innocuous and did not sufficiently permeate the proceeding so as to deprive Defendants of a fair trial.

c. Plaintiff's Violation of Court Order by Improper Argument

Defendants next argue that Plaintiff improperly highlighted Defendants' financial condition in closing arguments by valuing Plaintiff's indignity in relation to the money he generated for Defendants in the past. Dkt. #104 at 6–7. Defendants also argue that Plaintiff inflamed the jury during closing arguments by indicating it was the "conscience of the community" and that these arguments caused the jury to return an unwarranted verdict. *Id.* The Court, as Defendants note, had previously limited the use of Defendants' financial condition to

arguments related to undue hardship. *Id.* Plaintiff responds that the arguments were "vigorous, ethical advocacy" and were not improper. Dkt. #114 at 7–9. Rather, Plaintiff argues that the argument highlighted Plaintiff's personal indignity by contrasting Defendants' "discriminatory treatment, offensive statements, and aggressive litigation tactics with [Plaintiff's] dedicated and exceptional service to" Defendants. *Id.* at 7–8.

On this issue, Defendants must satisfy a higher burden in order to justify a new trial. Defendants did not object to this argument before the case was given to the jury.

> There is an even higher threshold for granting a new trial where, as here, defendants failed to object to the alleged misconduct during trial. A higher threshold is necessary for two reasons: First, raising an objection after the closing argument and before the jury begins deliberations permits the judge to examine the alleged prejudice and to admonish counsel or issue a curative instruction, if warranted. Second, allowing a party to wait to raise the error until after the negative verdict encourages that party to sit silent in the face of claimed error.

Settlegoode v. Portland Pub. Sch., 371 F.3d 503, 517 (9th Cir. 2004) (internal quotations, modifications, and citations omitted).

Defendants cannot satisfy this higher burden. On balance, the Court does not find Plaintiff's argument improper.[3] Plaintiff's argument did not appear directly related to Defendants' financial condition and instead related to Plaintiff's "worth" to Defendants.[4] This argument supports, even if marginally, the indignity Plaintiff experienced. The jury could reasonably conclude that Plaintiff suffered greater indignity because he was a valuable employee for Defendants and was nevertheless terminated on account of his disability. Whether Plaintiff's

[3] The Court also does not find that Plaintiff's single representation of the jury as the "conscience of the community" robbed Defendants of a fair trial.

[4] Plaintiff did not actually generate that revenue for Defendants during the four years following his termination. Thus, the money does not bear on Defendants' financial condition at the time of the award. Plaintiff did not argue that the jury should disgorge the money Plaintiff generated for Defendants prior to his termination.

"worth" to Defendants was a reasonable analog to value the indignity he suffered was, and is, certainly open to debate. But, as discussed more fully below, Defendants simply ignored Plaintiff's argument.

d. Unconditional Offer of Reinstatement as a Reasonable Accommodation

Defendants argue that the Court erred by preventing Defendants from arguing that Defendants' offer to reinstate Plaintiff—after Plaintiff was terminated—was a reasonable accommodation. The issue was presented at trial and considered in depth by the Court. Defendants present no new authority showing that the matter was decided contrary to the law and the Court sees no reason to revisit the matter. Defendants terminated Plaintiff's employment—the relationship between the parties. To say that they continued to accommodate Plaintiff after terminating him defies common sense. And again, Defendants do not indicate how this would have altered the jury's decision since it does not impact Plaintiff's other three claims.

4. The Size of the Verdict Does Not Warrant a New Trial or Use of Remittitur

Lastly, Defendants request that the Court reduce the jury's verdict through remittitur. Dkt. #104 at 9–12. Remittitur is a remedy available to correct excessive verdicts. *Pershing Park Villas Homeowners Assoc. v. United Pac. Ins. Co.*, 219 F.3d 895, 905 (9th Cir. 2000). A trial court granting a motion for remittitur does not substitute its judgment for that of the jury, but instead reduces the judgment to the maximum amount sustainable by the proof. *D & S Redi-Mix v. Sierra Redi-Mix & Contracting Co.*, 692 F.2d 1245, 1249 (9th Cir. 1982) (citations omitted). "Unless the amount is grossly excessive or monstrous, clearly not supported by the evidence, or based only on speculation or guesswork, [courts] uphold the jury's award." *Harper,* 533 F.3d at 1028 (internal quotations and citations omitted).

Remittitur is not appropriate here. To be sure, the jury's verdict is large and Defendants make reasonable arguments as to why a smaller verdict may be appropriate. But nothing indicates that the verdict was anything other than the jury's determination of the damages suffered by Plaintiff. Defendants believe that the evidence should have resulted in a smaller award because of the other significant events affecting Plaintiff at, and subsequent to, his termination. Dkt. #104 at 9–11. That the evidence could also have supported a smaller verdict does not demonstrate that the jury's verdict was excessive. Defendants also argue that the award was intended to punish Defendants—as opposed to compensate Plaintiff—and rely on the ratio of economic to non-economic damages reflected in other "comparable cases." *Id.* at 11–12. This comparison to wholly distinct cases does not demonstrate or persuade the Court to conclude that jury's determination of damages was improper. *See* Dkt. #114 at 11 (arguing that Washington law does not permit comparison of verdicts).[5]

Most telling, Defendants' arguments that the verdict was excessive all fail for the same reason: Defendants elected not to address damages in their closing argument. To the extent Defendants argument that the "tools" Plaintiff provided the jury were speculative or did not properly consider the facts, Defendants should have made that argument to the jury. Defendants did nothing to provide the jury with a reasonable—or even possible—calculation of Plaintiff's damages. The jury was left the stark decision between $9.42 million and $0.[6] Defendants cannot complain of a verdict within that range when Defendants did not once tell the jury that they

[5] The argument that non-economic damages must bear some ratio to economic damages is also significantly undermined by the Ninth Circuit's decision in *Johnson v. Hale*. 940 F.2d 1192, 1193 (9th Cir. 1991) ("Compensatory damages may be awarded for humiliation and emotional distress established by testimony or inferred from the circumstances.") (citing *Phiffer v. Proud Motor Hotel, Inc.*, 648 F.2d 548, 552–53 (9th Cir. 1980)).

[6] Defendants still give no indication of a jury verdict that they believe could be supported on the record.

believed $9.42 million was excessive, speculative, or not supported by the evidence. The jury clearly exercised its discretion in rejecting the full amount requested by Plaintiff and arrived at a number that does not appear to bear a direct relationship to the amount Plaintiff requested. The Court will not substitute its judgment for that of the jury, as Defendants request.

If Defendants believed that the jury should award a smaller amount of damages, they should have told the jury.[7]

B. Motion for Bond

Defendants have also sought a stay of any execution of the judgment pending appeal and propose security of $6,000,000, consisting of (1) deposit of $1,000,000 into the Court's registry and (2) a $5,000,000 irrevocable letter of credit from BMW Financial Services NA, LLC ("BMW Financial"). Dkt. #81. Plaintiff does not contest the amount of security, but contests whether the irrevocable letter of credit from BMW Financial is adequate security. Dkt. #102.[8]

1. Legal Standard

Federal Rule of Civil Procedure 62(d) provides that "[i]f an appeal is taken, the appellant may obtain a stay by supersedeas bond. . . . The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay takes effect when the court approves the bond." Fed. R. Civ. P. 62(d). Upon the posting of a proper and sufficient bond, appellant is entitled to a stay. *Am. Mfrs. Mut. Ins. Co. v. Am. Broad.-Paramount Theatres, Inc.*, 87 S.Ct. 1, 3, 17 L.Ed.2d 37 (1966). But the purpose of the stay and bond is to maintain the status quo pending appeal while also securing "an appellee from a loss that may result from the

[7] Plaintiff has requested attorneys' fees and costs for opposing Defendants' Motion for New Trial. Dkt. #114 at 12. That request is resolved at the end of this Order.

[8] Plaintiff also requests fees for opposing Defendants' Motion for Bond. Dkt. #102 at 5. The Court resolves that request at the end of this Order.

stay." *Cotton ex rel. McClure v. City of Eureka, Cal.*, 860 F. Supp. 2d 999, 1025 (N.D. Cal. 2012) (citing *Rachel v. Banana Republic, Inc.*, 831 F.2d 1503, 1505 n.1 (9th Cir. 1987)); *see also NLRB v. Westphal*, 859 F.2d 818, 819 (9th Cir. 1988) ("The posting of a bond protects the prevailing plaintiff from the risk of a later uncollectible judgment and compensates him for delay in the entry of the final judgment."). Accordingly, the Court finds it appropriate that appellant should bear the burden of demonstrating that a security other than a sufficient supersedeas bond is appropriate. *See also United States v. Cowan*, 535 F. Supp. 2d 1135 (D. Haw. 2008) (denying request for stay on a bond that was not shown to be a sufficient amount).

2. Defendants' Do Not Establish That the Security Is Adequate

Plaintiff objects to Defendants' proposed security because: (1) the irrevocable letter of credit does not comply with the requirements of Local Civil Rule 65.1(a); (2) Defendants have not provided sufficient support demonstrating BMW Financial's strength; (3) the letter of credit requires Plaintiff to submit to Ohio law; and (4) the letter of credit expires after three years, which may not be sufficient to cover the appeal period. Dkt. #102 at 3–4. Plaintiff requests that the Court only allow a supersedeas bond or, alternatively, condition any irrevocable letter of credit to comply with LCR 65.1, apply Washington law, be irrevocable absent proof of satisfaction of judgment, and require the guarantor to notify the Court of changes in guarantor's ability to fulfill the letter's terms. *Id.* at 5.

Defendants reply that a letter of credit is a sufficient replacement for a supersedeas bond, that the use of a letter of credit benefits both Defendants and Plaintiff, that BMW Financial is an adequate surety, and that the terms of the letter of credit are not burdensome. Dkt. #107 at 2–4. With regard to financial strength, Defendants submit the declaration of BMW Financial's General Manager of Credit, indicating that it "provides financing to BMW dealers for expanding

dealership capabilities and enhancing overall operations [and] . . . has more than $40 billion in serviced assets and more than one million automotive lending customers across the United States."[9] Dkt. #109 at ¶¶ 5–6. Defendants also acknowledge that the term of the letter of credit may be insufficient and submit a new proposed letter that expires "on the earlier . . . of (a) the fifth (5th) business day immediately following the date that the Appellate Court has issued its mandate in connection with the pending appeal, case number 2:17-cv-00187-RSM . . ., or (b) the satisfaction of the judgment as modified following said review." Dkt. #108-1 at 1.

Many of Defendants' arguments appear reasonable, but they have been made too late. Alternative types of security are unquestionably permitted. *Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1367 (9th Cir. 1990). But if the use of letter of credit in fact benefits both of the parties, it seems unlikely this motion would be before the Court. *See Weiss-Jenkins IV, LLC. v. Utrecht Mfg. Corp.*, No. C14-954RSL, 2017 WL 6403868 (W.D. Wash. Dec. 15, 2017) (granting stipulation staying judgment on the basis of a letter of credit). Many of the disputed terms are likely adequate. But Defendants make new arguments and submit new evidence in reply and have not given Plaintiff an opportunity to contest these assertions. *See Cotton*, 860 F. Supp. 2d at 1028–29 (noting the impropriety of considering new factual information raised in a reply brief, that "[o]ur adversarial system relies on the advocates to inform the discussion and raise the issues to the court" and refusing to consider arguments not briefed) (citations omitted).

The record is not sufficient for the Court to resolve the financial strength of BMW Financial or determine whether BMW Financial satisfies the requirements of Local Civil Rule 65.1. Further, Plaintiff has not had an opportunity to weigh in on the newly defined term of the

[9] It would seem, to the Court, that evidence demonstrating BMW Financial has made over 1,000,000 loans for a total of more than $40 billion—an average of approximately $40,000 per customer—is different than demonstrating that BMW Financial could immediately satisfy the judgment in this case and will be able to do so for the foreseeable future.

irrevocable letter of credit—expiring, at most, five days following the issuance of the mandate. On this record, Defendants' Motion for Bond is denied.

C. Motion for Interest

Plaintiff seeks pre-judgment interest on Plaintiff's economic damages, an adjustment of the award to account for the tax consequences to Plaintiff caused by a lump sum payment of past wages, and post-judgment interest. Dkt. #93 at 1. Defendants concede that Plaintiff is entitled to a tax consequence adjustment and pre- and post-judgment interest. Dkt. #110 at 1–3. Defendants only contest the rate of pre-judgment interest requested by Plaintiff.[10] *Id.*

The Ninth Circuit has recognized that awards of prejudgment interest and tax "gross-ups" are appropriate in federal discrimination cases in order to secure "complete justice." *Clemens v. Centurylink Inc.*, 874 F.3d 1113, 1116–17 (9th Cir. 2017). These decisions "are left to the sound discretion of the district court." *Id.* at 1117. In the majority of cases, the rate of post-judgment interest under 28 U.S.C. § 1961 is likely appropriate. *See Grosz-Salomon v. Paul Revere Life Ins. Co.*, 237 F.3d 1154, 1163–64 (9th Cir. 2001). "[O]n substantial evidence that the equities of [the] particular case require a different rate," the trial judge may vary the rate of prejudgment interest. *Id.* (citing *Nelson v. EG & G Endergy Measurements Group, Inc.*, 37 F.3d 1384, 1391 (9th Cir. 1994)). For instance, the district court did not abuse its discretion by awarding prejudgment interest at a rate of 10.01% in *Blankenship v. Liberty Life Assur. Co. of Boston*. 486 F.3d 620, 628 (9th Cir. 2007) (10.01% rate not an abuse of discretion where plaintiff proved money would have otherwise remained invested in a fund with that rate of return since inception).

The Court is not convinced by either of Plaintiff's arguments that this is a case to deviate from the statutory post-judgment rate established by 28 U.S.C. § 1961. First, Plaintiff argues

[10] Plaintiff has also sought attorneys' fees and costs for his Motion for Interest. Dkt. #93 at 7. Defendants also oppose this request. Dkt. #110 at 3. The Court resolves the request below.

vaguely that a 12% prejudgment award is generally appropriate under Washington law and should be applied here. Dkt. #93 at 2 (citing REV. CODE. WASH. § 19.52.020(1); *Stevens v. Brink's Home Security, Inc.*, 162 Wn.2d 42, 50 (2007)). Beyond 12% being a possible rate, Plaintiff does nothing to indicate why that rate would serve as appropriate compensation.

Second, Plaintiff argues for a 4.01% rate based off of the "net average annual rate of return" of Plaintiff's retirement account over the relevant time period. Dkt. # 93 at 3–4. Plaintiff argument attempts to reach the result of *Blankenship*, but the facts of Plaintiff's case do not support the same result. Plaintiff's argument is premised on the fact that he was required to withdraw $100,000 from his retirement account in 2017 and 2018 to support himself. Dkt. #112 at 2. Plaintiff asserts that had he timely received the economic damages, he would not have been forced to make the withdrawals and that the account otherwise realized a 4.01% rate of return. *Id.* But this argument confuses the issues. On this record, loss of interest on the amount withdrawn appears to be a new theory of damages that should have been pursued at trial. As Defendants note, Plaintiff does not seek prejudgment interest on the $100,000 withdrawn,[11] but seeks to apply the 4.01% rate to the full award of economic damages. Dkt. #110. But Plaintiff, unlike the plaintiff in *Blankenship*, does not offer any proof that the timely payments of economic damages would have been invested into his retirement account and thereby earned 4.01% interest. Dkt. #95. Rather, Plaintiff impliedly admits that he would have used the money to support himself—avoiding the need to withdraw money from his retirement account. This does not support a higher rate of prejudgment interest on the entire measure of economic damages. *See Hanson v. Cty. of Kitsap, Wash.*, No. C13-5388RJB, 2015 WL 3965829, at *9 (W.D. Wash. June

[11] In which case, interest would appear to accrue from the date of withdrawal to the date of verdict.

30, 2015) (prejudgment interest not awarded where plaintiff failed to provide credible calculation of prejudgment interest).

D. Motion for Fees

Plaintiff's has filed a Motion for Fees seeking recovery of fees and costs incurred up to the verdict in this case. Dkt. #86.[12]

1. Legal Standard

Federal Rule of Civil Procedure 54(d) provides a mechanism for the award of costs and attorneys' fees when otherwise authorized by "statute, rule, or other grounds." Fed. R. Civ. P. 54(d)(2)(B)(ii). In this case, attorneys' fees and costs are available under both the ADA and the WLAD. *See* 42 U.S.C. § 12205; REV. CODE. WASH. § 49.60.030. Under the ADA, a prevailing plaintiff "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." *Barrios v. Cal. Interscholastic Fed'n*, 277 F.3d 1128, 1134 (9th Cir. 2002) (quoting *Hensley v. Eckerhart,* 461 U.S. 424, 429 (1983)). "The essential goal in shifting fees . . . is to do rough justice, not to achieve auditing perfection." *Fox v. Vice*, 563 U.S. 826, 838 (2011).

Attorneys' fee awards are determined by calculating a "lodestar figure"—the number of hours reasonably expended at a reasonable hourly rate—and then adjusting the lodestar figure by any *Kerr* factors not already subsumed in that calculation.[13] *Ballen v. City of Redmond*, 466 F.3d

[12] Plaintiff also seeks fees for its work drafting the Motion for Fees and relevant motions and declarations. Dkt. #86 at 12. This request is addressed below.

[13] The "*Kerr* factors" refer to various considerations identified by the Ninth Circuit in *Kerr v. Screen Extras Guild, Inc.*, 526 F2d 67 (9th Cir. 1975). These factors include (1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill required, (4) the preclusion of other employment, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or circumstances, (8) the amount involved and results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the "undesirability" of the case, (11) the nature and length of the relationship with the client, and

736, 746 (9th Cir. 2006); *Pham v. City of Seattle*, 159 Wash.2d 527, 151 P.3d 976 (2007) (equivalent process under state law).

2. Lodestar Calculation

a. Plaintiff's Requested Hourly Rates Are Reasonable

"Fee applicants have the burden of producing evidence that their requested fees are 'in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation.'" *Chaudhry v. City of Los Angeles*, 751 F.3d 1096, 1110 (9th Cir. 2014) (quoting *Camacho v. Bridgeport Fin., Inc.,* 523 F.3d 973, 980 (9th Cir. 2008)). The court does not focus on the rate "actually charged the prevailing party" but looks to "fees that private attorneys of an ability and reputation comparable to that of prevailing counsel charge their paying clients for legal work of similar complexity." *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 946 (9th Cir. 2007) (citations omitted).

Plaintiff submits extensive evidence supporting the reasonableness of the hourly rates requested. Dkts. #87–#92. "Affidavits of the plaintiffs' attorney and other attorneys regarding prevailing fees in the community, and rate determinations in other cases, particularly those setting a rate for the plaintiffs' attorney, are satisfactory evidence of the prevailing market rate." *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990). Perhaps more importantly, Defendants do not object to the hourly rates requested by Plaintiff's counsel. The Court therefore finds that the following hourly rates are reasonable on the record before the Court.

Professional	Rate
Beth Bloom	$495
Jamal Whitehead	$400
Sean Phelan	$450

(12) awards in similar cases. *Id.* at 70. As noted, many of these factors have been subsumed into the lodestar calculation itself. *Cunningham v. Cnty. of Los Angeles*, 879 F2d 481, 487 (9th Cir. 1988).

Anne Silver	$275[14]
Jillian Cutler	$395
Joyce Thomas	$625
Marc Cote	$395
Michael Subit	$550
Munia Jabbar	$350
Steve Frank	$550
Frank Freed Paralegals (David Loeser, Hannelore Ohaus, Kathy Kindberg, Katie Rodenburg, and VIP Paralegals)	$150
Schroeter Goldmark Paralegals (Virginia Mendoza)	$100

b. Calculation of Reasonable Hours Expended

As with the hourly rate, the party seeking fees has the "burden of showing the time spent and that it was reasonably necessary to the successful prosecution of" the case. *Frank Music Corp. v. Metro-Goldwyn-Mayer Inc.*, 886 F.2d 1545, 1557 (9th Cir. 1989). This requires "evidence supporting those hours." *Welch*, 480 F.3d at 945–46 (citing *Hensley*, 461 U.S. at 433). The court excludes those hours that are not reasonably expended because they are "excessive, redundant, or otherwise unnecessary." *Hensley*, 461 U.S. at 434. Recognizing that the district court is generally in the best position to determine reasonable fees and that multi-year litigation necessarily causes duplication of effort, the Ninth Circuit approves of a 10% "haircut" of hours without a specific explanation but requires a "weightier and more specific" justification for a larger cut. *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112–13 (9th Cir. 2008).

In total, Plaintiff's counsel has requested compensation for 3,025.08 hours of work on his case. Dkt. #86 at 7. Plaintiff indicates that his attorneys have taken steps to exclude excessive, redundant, or otherwise unnecessary hours from the request. *Id.* at 5. Specifically, the attorneys

[14] Plaintiff indicates that a portion of Ms. Silver's time was billed at a reduced rate of $180. Dkt. #86 at 8.

focused, throughout the case, on clear divisions of labor to avoid duplication of work and have reviewed time records prior to submission to the Court. *Id.* at 5–6. During the review, Plaintiff's counsel have removed inefficient and redundant time, time spent by new staff becoming acquainted with the action, routine scheduling, some brief communications, clerical tasks, administrative case management, and time necessitated by attorney convenience. *Id.* at 6. The review resulted in 485 hours being removed. *Id.* Plaintiff believes that the resulting fee request is reasonable because of the "complete success" achieved. *Id.* at 7.

Defendants raise several objections to the hours claimed and seek to drastically cut any award from the total $1,323,509.70 requested to "no more than $356,576.88." Dkt. #98 at 12. The Court has given due consideration to the arguments of the parties and has examined, in depth, the evidence submitted.[15]

i. Inadequate Billing Descriptions

Block Billing. Defendants purportedly identify $387,366.50 worth of "block-billed" time and argue that it should be excluded as the Court cannot determine whether the time was reasonably expended. Dkt. #98 at 3. Defendants also point to an earlier ruling by this Court that it would not award fees for block-billed time. *Id.* (citing Dkt. #22 at 9). But the issue was not actually before the Court at that time as the request for fees was not accompanied by any specific billing records and the Court will consider the issue anew. *See* Dkts. #17 and #18.

Block billing is disfavored because it makes the Court's review of the time spent on particular activities more difficult and therefore justifies a reduction to the hours billed. *Welch*,

[15] Two of Defendants' objections do not necessitate discussion. First, Defendants object to $1,250 billed by attorney Sean Phelan after she withdrew from the matter. Dkt. #98 at 5. Plaintiff concedes that $1,250 should be deducted. Dkt. #106 at 3. Second, the Court does not agree with Defendants that Plaintiff should not be compensated for the time spent pursuing an EEOC charge. Plaintiff provides an adequate explanation of why these hours were reasonably expended in furtherance of the case. Dkt. #92 at ¶ 21; Dkt. #106 at 5.

480 F.3d at 948 (noting California State Bar study finding block billing "may increase time by 10% to 30%"). Defendants compile numerous instances they identify as block billing and request that the Court exclude all of the time, or at least reduce the time by 30%. Dkts. #98 at 3–8, #101-1, and #101-2. Plaintiff argues that Defendants' criteria are overly inclusive, even pulling in entries where only one distinct activity is listed, and point to several entries that are clearly not block billing. Dkt. #106 at 2. Further, Plaintiff argues that many of the entries are sufficient because they provide enough detail for the Court to consider the reasonableness of the time expended. *Id.*

Upon review, the Court agrees both that some reduction is appropriate and that Defendants' request is overbroad. While many entries identify multiple activities, the Court is generally able to determine the reasonableness of the time spent and neither complete exclusion nor reduction by 30% is warranted. Further, the Court recognizes that even precise billing practices are likely to break down as trial deadlines loom. Upon review of the records and the notations made by Defendants, the Court believes that the following reductions are appropriate.

Timekeeper	Hours Identified by Defendants as "Block-Billed"	Percentage Cut	Hours Deducted
Sean Phelan	59.4	10%	5.94
Beth Bloom	266	15%	39.9
David Loeser	30.31	15%	4.55
Anne Silver	271.6	20%	54.32
Jamal Whitehead	207.1	20%	41.42
Katie Rodenburg	235.7	25%	58.93
Kathy Kindberg	194	25%	48.5

These deductions appear consistent with the approach this Court has taken in other cases while adjusting for Defendants' over inclusiveness. *Thomas v. Cannon*, No. C15-5346 BJR, 2018 WL 1517661 at *3 (W.D. Wash. Mar. 28, 2018) (reducing block-billed time by 20%). Utilizing the reasonable billing rates, these cuts result in a total reduction of $70,726.50.

Vague Descriptions. Defendants also point to $116,075.50 worth of time they assert is described so vaguely that the Court cannot determine the reasonableness of the time because it is unclear what tasks were done or whether there was duplication of effort. Dkt. #98 at 7–8. Plaintiff responds that the billing descriptions are generally adequate to assess reasonableness and that some vagueness is necessary to protect privileged information. Dkt. #106 at 5. For the most part, the Court agrees with Plaintiff that the billing records are not overly vague. But the Court does believe that some reduction is appropriate. The Court determines that reducing, by 10%, the entries identified by Defendants as "vague" is appropriate. This results in a reduction of $11,607.55.

ii. Excessive, Redundant, or Unnecessary Entries or Work

Defendants argue, and the Court agrees, that Plaintiff's billing records also include some excessive, redundant, and unnecessary billing.

Attorney Conferences and Meetings. Defendants point out that meetings and conferences between experienced attorneys, absent persuasive justification, are often deemed excessive, redundant, and unnecessary. Dkt. #98 at 5 (ultimately relying on *Welch*, 480 F.3d at 949); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1298 (9th Cir. 1994). Plaintiff responds that the entries identified by Defendants are again overbroad and that some collaboration is an important aspect of legal practice. Dkt. #106 at 4 (citing *Elise Dragu v. Motion Picture Indus. Health Plan for Active Participants*, 159 F. Supp. 3d 1121, 1128–29 (N.D. Cal. 2016)). The Court agrees that conferencing is an important aspect of the legal practice and recognizes that it can sometimes lead to efficiencies. But upon review of the record, an excessive amount of time was spent conferencing and significant reduction is appropriate.

Plaintiff's counsel are all more than competent attorneys with relevant trial experience. While this case certainly had some wrinkles, it was not overly complex. Plaintiff's use of four attorneys may have been a touch of overkill. While the Court believes that Plaintiff's counsel worked diligently to divvy up work and avoid duplication of effort, conferences are one clear exception. As the prospect of trial became more apparent, Plaintiff's counsel had regular strategy sessions. It was not uncommon for three attorneys and two paralegals to attend. Combined, the meeting would bill at approximately $1,400 an hour. The fees added up quick and the impact on the result was likely not proportionate. Further, there were additional smaller conferences amongst attorneys throughout the case. At least some of these conferences were necessitated by the decision to bring in an additional attorney from another firm, counsel's personal decision to work remotely from Europe, counsel's sabbatical, and staff turn-over. Dkt. #92 at ¶¶ 35, 50. While coordination is beneficial, it became unreasonable here.

Defendants identify extensive instances of communications and meetings between Plaintiff's attorneys. While the Court agrees that the instances identified are likely over inclusive, they provide a useful subset on which to make a reasoned reduction.[16] As noted above, a 10% reduction is within the Court's discretion without specific justification. For the reasons stated above, the Court feels that a 50% reduction is appropriate here. However, to account for the over inclusive nature of Defendants' subset, the Court imposes only a 40% reduction. Accordingly, this results in a reduction of $46,766.20.[17]

[16] Use of the Defendants' subset makes it unnecessary for the Court to make an across the board "haircut" and allows for a more targeted cut. When taken as a percentage of the total attorneys' fees requested, the reduction is less than 4%.

[17] 40% of the $116,915.50 identified by Defendants as billed for meetings and conferences.

Staffing at Trial. Defendants also object to the use and presence of three attorneys (Ms. Bloom, Mr. Whitehead, and Ms. Silver) for Plaintiff at trial. Dkt. #98 at 6. Defendants note that the vast majority of the trial was covered by Ms. Bloom and Mr. Whitehead, with Ms. Silver providing limited support. *Id.* Recognizing that a full request may appear excessive, Plaintiff has billed Ms. Silver's time at a reduced rate for a portion of the trial. Dkt. #86 at 8. While the Court supports opportunities for counsel to gain trial experience and certainly does not diminish the value added by Ms. Silver, the overall staffing was excessive. In addition to the three attorneys, Plaintiff also charged for work performed by Ms. Mendoza, a paralegal, during trial. The Court finds it appropriate to reduce Ms. Silver's rate to $180 for all trial time and to exclude Ms. Mendoza's time during the course of trial.[18] This results in a further reduction of $1,976 for the reduction in Ms. Silver's rate[19] and $7,220 for Ms. Mendoza's time attending trial.[20]

Clerical Work. Defendants point to 32.8 hours of paralegal work which they maintain should be excluded as clerical work, overhead already built into the attorneys' hourly rates. In defense of the billing, Plaintiff points to a prior case from this District awarding fees to a solo attorney for the small amount of clerical work he performed to manage the case. Dkt. #106 at 5 (citing *Roberts v. Astrue*, No. C10-5225RJB-JRC, 2011 WL 3054904 at *8 (W.D. Wash. June 29, 2011)). That situation is distinct from the clerical tasks performed by a sophisticated firm's staff in this case. However, Defendants include hours that Plaintiff has already charged off. The Court concludes that 22 hours of paralegal—at a rate of $150—was clerical work and reduces the fee award by $3,300.

[18] This result is consistent with Defendants' staffing which appeared to be two attorneys trying the case and one person providing support.

[19] 20.8 hours reduced from $275 to $180.

[20] 72.2 hours at a rate of $100.

Duplicative Billings. Defendants identify a handful of entries that they believe are duplicative. Dkts. #101-1 and #101-2. Plaintiff responds that generally the work identified was either duplicative work that was necessary to the positive outcome or, more often, just continued work on the same aspect of the case. Dkt. #106 at 3. While there are some apparently duplicative entries, they do not appear to the Court to be as extensive as Defendants assert. The Court finds that Plaintiff has failed to establish that the specified time is not duplicative or entered in error:

- Beth Bloom: 3.5 hours (1/8/2015, 3/31/2015, 9/5/2018)
- Kathy Kindberg: 13.4 hours (2/22/2018, 7/23/2018, 9/27/2018)

This results in a reduction of $3,742.50.

c. Lodestar

After deducting $145,338.75 from Plaintiff's total request of $953,274.88, the Court is left with a total lodestar of $807,936.13. "[A] 'reasonable' fee is a fee that is sufficient to induce a capable attorney to undertake the representation of a meritorious civil rights case." *Vogel v. Harbor Plaza Ctr., LLC*, 893 F.3d 1152, 1158 (9th Cir. 2018) (quoting *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010)). The Court is satisfied that this fee is reasonable for this case.

3. Lodestar Multiplier

There is a strong presumption that the lodestar amount is a reasonable fee and a multiplier is only used to adjust the lodestar amount in "rare" or "exceptional" cases. *City of Burlington v. Dague*, 505 U.S. 557, 562 (1992); *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000); *224 Westlake, LLC v. Engstrom Prop. LLC*, 169 Wash. App. 700, 735, 281 P.3d 693, 712 (2012). Plaintiff does not address any specific *Kerr* factors and instead argues that this case is exceptional because the case was taken on contingency, state law generally supports

positive multipliers in contingency cases under the WLAD,[21] and public policy supports multipliers to encourage attorneys to take difficult cases. Dkt. #86 at 10. Defendants respond that a multiplier is not appropriate because any contingency risk was built into the attorneys' rates and was largely mitigated by the fee arrangement between Plaintiff and his counsel. Dkt. #98 at 9–10.

The Court first notes that the lodestar calculation resulted in a presumptive fee award of $807,936.13. This strikes the Court as exceedingly reasonable. This is not the rare or exceptional case warranting a multiplier and the Court is not persuaded that the contingent nature of the fee or the skill of counsel justify a multiplier. Without downplaying the risk that Plaintiff's counsel took on, recovery of some amount appeared likely in this case, Plaintiff's counsel is experienced at evaluating cases and regularly obtains sizeable awards, and this case, while requiring significant work, was not overly complex. In all, the risks were not particularly unique for cases of this type—most of which are taken on contingency—and the Court does not believe the law requires a positive multiplier in every case with a contingent fee and skilled counsel. Accordingly, the Court declines to apply a positive multiplier.

4. Costs

Prevailing parties on ADA and WLAD claims are also entitled to recover reasonable nontaxable costs. Washington law provides for broad recovery of costs in cases under the WLAD. *Blair v. Wash. State Univ.*, 108 Wash.2d 558, 573, 740 P.2d 1379, 1387 (1987)

[21] In reply, Plaintiff further specifies that "recent Ninth Circuit case law affirm[s] the availability of multipliers under state law." Dkt. #106 at 6 (citing *Rodriguez v. Cnty. of Los Angeles*, 891 F.3d 776, 809 (9th Cir. 2018)). But the Court notes that *Rodriguez* dealt with a request for attorneys' fees under a state statute and related only to the work performed in successfully prosecuting state law claims. Here, Plaintiff seeks attorneys' fees pursuant to state law and federal law and provides no indication of what work advanced solely state law claims. Even if Washington law treats multipliers more liberally, Plaintiff points to no reasonable basis for the Court to apply that multiplier only to the time spent advancing Plaintiff's state law claims.

(adopting "liberal recovery of costs" in civil rights cases "to make it financially feasible to litigate civil rights litigation," among other reasons).

Plaintiff seeks various expenses totaling $69,659.13. Defendants challenge only the charges for "non-taxable costs for depositions" ($6,323.65) and "trial consultant fees" ($7,910). Dkt. #98 at 11–12. Plaintiff responds by pointing to cases from other circuits where such costs have been awarded. Dkt. #106 at 6. But the Court agrees that these costs are not reasonable in the context of this case. Again, Plaintiff's counsel is knowledgeable and experienced and Plaintiff, beyond asserting that the expenses "were reasonably necessary to the successful outcome," does not explain why these expenses were necessary. While these expenses may have added some value to the ultimate recovery, they were largely superfluous—dessert after an opulent meal. Accordingly, the Court awards Plaintiff costs of $55,425.48.

E. Attorneys' Fees on Post-Trial Motions

Lastly, Plaintiff seeks attorneys' fees for the time spent litigating these post-trial motions. Dkts. #86 at 12 (requesting fees of $30,641.50 on the Motion for Fees), #93 at 7 (requesting fees of $3,613.50 and costs of $3,120 on the Motion for Interest), #102 at 5 (requesting fees of $1,485 on the Motion for Bond), and #114 at 12 (requesting fees of $24,225 and costs of $1,235.10 on the Motion for New Trial). Plaintiff has already established the reasonableness of the hourly rates charged. And, for the most part, Defendants do not make specific challenges to the hours billed by counsel other than asserting that the total is cumulatively unreasonable.

Motion for New Trial. Defendants object to the 54.4 hours requested by Plaintiff on the basis that the billing records provided appear vague and may represent duplication of effort. Dkt. #116 at 6. The Court does not agree and finds the billing records submitted to be adequate. Dkt. #115-7. However, Plaintiff submits no support for the hours claimed for Mr. Whitehead and Ms.

Silver. Accordingly, the Court cuts the award on those hours by 20%. This results in a fee award of $23,046. The Court also finds that the request of $1,235.10 for costs is reasonable.

Motion for Bond. The Court finds that the three hours claimed by Plaintiff with regard to Defendants' Motion for Bond to be reasonable and awards the $1,485 requested.

Motion for Interest. The Court does not award fees on Plaintiff's Motion for Interest. Plaintiff seeks $3,613.50 in attorneys' fees and $3,120 in expert declaration costs associated with the Motion for Interest. Dkt. #93 at 7. But Plaintiff was unsuccessful on the one contested issue—whether prejudgment interest should exceed the statutory post-judgment rate.[22] Thus, the Court does not find that the time spent and the costs incurred were reasonable. *Jadwin v. Cty. of Kern*, 767 F. Supp. 2d 1069, 1109 (E.D. Cal. 2011) (linchpin in fee request is that "hours be *reasonably spent in pursuit of the litigation*"). This Motion was not necessary for the result obtained.

Motion for Fees. With regard to the Motion for Fees, Defendants object to the estimated 83.1 hours Plaintiff spent preparing his Motion. Defendants point out that the Court found 37.6 hours excessive in an unrelated case and that Plaintiff's Motion tracks one filed by Plaintiff's counsel in another case. Dkt. #98 at 6–7. However, the Court finds these objections unfounded. While the Motion itself may be "tweaked" from a filing in another cases, the extensive and well prepared supporting declarations and exhibits represents the necessary work. *See* Dkts. #86–#92.

However, Plaintiff has not established that the entire 83.1 hours claimed were reasonably expended. There is no indication as to how the hours were spent as Plaintiff has not provided any billing records. The Court therefore finds it appropriate to reduce the request by 20%. This results in a fee award on the Motion for Fees of $24,513.20, which the Court finds reasonable.

[22] Defendants effectively conceded the two issues that Plaintiff prevailed on.

IV. CONCLUSION

Having reviewed the Motions, the relevant briefing, the supporting declarations and exhibits, and the remainder of the record, the Court hereby finds and ORDERS that:

1. Defendants' Fed. R. Civ. P. 59 Motion for New Trial Or, in the Alternative, Remittitur (Dkt. #104) is DENIED. Plaintiff's request for attorneys' fees is GRANTED IN PART and Plaintiff is awarded fees of $23,046 and costs of $1,235.10.
2. Defendants' Motion for Approval of Supersedeas to Stay Enforcement of Judgment Pending Appeal (Dkt. #81) is DENIED.
    a. This Order does not prevent Defendants from refiling a motion seeking a stay pending appeal or the parties filing a stipulated motion.
    b. The stay on enforcement of the judgment shall continue for fourteen (14) days after the date of this Order to allow the parties to take appropriate action.
    c. Plaintiff's request for attorneys' fees is GRANTED and Plaintiff is awarded $1,485.
3. Plaintiff's Motion for Pre- and Post-Judgment Interest and Tax Consequence Adjustment (Dkt. #93) is GRANTED IN PART.
    a. Plaintiff is awarded pre-judgment interest in the amount of 2.59%, for a total prejudgment interest award of $12,938.
    b. Plaintiff is awarded post-judgment interest at the rate of 2.59% from the date of the judgment to the date of satisfaction of the judgment.
    c. Plaintiff is awarded a tax consequence adjustment of $2,058.
    d. Plaintiff's request for attorneys' fees is DENIED.
4. Plaintiff's Motion for Attorneys' Fees & Costs (Dkt. #86) is GRANTED IN PART. The Court awards Plaintiff attorneys' fees in the amount of $807,936.13 and costs in the

amount of $55,425.48. Plaintiff's request for attorneys' fees on the Motion for Fees is GRANTED IN PART and Plaintiff is awarded fees of $24,513.20.

DATED this 3rd day of January 2019.

RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE