UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

TINA BAUGHMAN,
Plaintiff,
vs.
WALT DISNEY WORLD COMPANY,
Defendant.

Case No.: SACV 07-01108-CJC(MLGx)

ORDER DENYING PLAINTIFF'S MOTION FOR ATTORNEYS' FEES

I. INTRODUCTION

Plaintiff Tina Baughman brought this action against Defendant Walt Disney World Co. ("Disney") under the Americans with Disabilities Act ("ADA") and California state law, seeking a modification of Disney's policy prohibiting Segway use at its Disneyland park. On May 20, 2013, the Court dismissed this action because Ms. Baughman's claims were barred by a settlement agreement (the "Settlement Agreement") of a class action

lawsuit against Disney brought before a district court in the Middle District of Florida. (Dkt. No. 85.) The Court retained jurisdiction to hear any motions for attorneys' fees. Before the Court is Ms. Baughman's motion for attorneys' fees pursuant to 42 U.S.C. § 12205.[1] For the following reasons, the Court **DENIES** Ms. Baughman's motion.[2]

II. BACKGROUND

Ms. Baughman has limb girdle muscular dystrophy, a degenerative disease that causes a weakening of large muscles. (Dkt. No. 34 ["Hale Decl."] Exh. F at 11:14–25.) Because of this disease, Ms. Baughman has difficulty walking and getting up from a seated position. (*Id*. at 25:19–26:1; Compl. ¶ 5.) For transportation, she uses a Segway, a two-wheeled self-balancing motorized transportation device that she rides in a standing position. (Compl. ¶ 6; Hale Decl. ¶ 4.)

Disney has a policy that prohibits Disneyland guests from using two-wheeled transportation devices, including Segways, in Disneyland. (Compl. ¶ 6; Hale Decl. ¶ 5.) On May 18, 2006, Ms. Baughman wrote to Disney, requesting permission to use her Segway in the park for a birthday visit for her eight year-old daughter. (Hale Decl. Ex. B.) After a telephone conversation with Ms. Baughman, a Disney representative informed Ms. Baughman by letter on June 20, 2006, that Disney would not be able to honor her request because of safety concerns. (Hale Decl. Exh. E.) Ms. Baughman did not visit Disneyland for her daughter's birthday.

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[1] Although Ms. Baughman states that she is also entitled to attorneys' fees under California statutes, her memorandum in support of her motion focuses exclusively on the ADA.

[2] Having read and considered the papers presented by the parties, the Court finds this matter appropriate for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set for July 22, 2013 at 1:30 p.m. is hereby vacated and off calendar.

On August 6, 2007, Ms. Baughman brought suit against Disney in Orange County Superior Court, alleging violations of the ADA and California state law. Disney removed the action to federal court under federal question jurisdiction. On January 9, 2009, the Court granted Disney's application to stay the case pending the resolution of *Ault v. Walt Disney World Co*., Case No. 6:07-cv-1785-Orl-31KRS, a class action lawsuit filed by Segway users with disabilities against Disney in the United States District Court for the Middle District of Florida. The class representatives had entered into a preliminary settlement with Disney, and the *Ault* court certified the class for settlement purposes. The settlement class consists of all persons who "(1) suffer from a mobility disability; (2) rely upon a Segway . . . ; and (3) intend to visit the Walt Disney World Resort or the Disneyland Resort." (Dkt. No. 79 ["Fears Decl."] Exh. B ¶ 5.) Ms. Baughman, a member of the class, objected to the Agreement and submitted a signed declaration in support of her objection. (Fears Decl. Exh. C.) After holding a two-day fairness hearing, the *Ault* court dismissed the case on October 6, 2009, for lack of standing. *Ault v. Walt Disney World Co.*, No. 607-CV1785-ORL-31KRS, 2009 WL 3242028 (M.D. Fla. Oct. 6, 2009). The court found that because the class plaintiffs could use wheelchairs or motorized scooters, their injuries fell outside the "zone of interests" protected by the ADA. *Id.* at *5. After dismissal of the *Ault* action, litigation in this case resumed.

On January 25, 2010, Disney moved for summary judgment, partially based on a judicial estoppel argument. (Dkt. No. 33.) In a lawsuit against Sav-On Drugs filed on September 21, 2005, Ms. Baughman asserted in her complaint that she "has a physical impairment which causes her to rely upon a power scooter or wheelchair for her mobility." (Dkt. No. 36, [Request for Judicial Notice ("RJN")] Exh. 1, ¶ 6.) In another lawsuit brought against Santa Monica Ford on June 13, 2006, Ms. Baughman asserted that she "has a physical impairment which causes her to rely upon a power scooter or wheelchair for her mobility." (RJN Exh. 2, ¶ 6.) Additionally, the expert report submitted by Ms. Baughman in the Santa Monica Ford case outlined modifications that

were necessary for wheelchairs to enter and maneuver in the dealership's restrooms. (Dkt. No. 43 ["Rygh Decl."] Exh. G.) On November 16, 2006, Ms. Baughman sued the California Department of Motor Vehicles, again claiming that she "has a physical impairment which causes her to rely upon a power scooter or wheelchair for her mobility." (RJN Ex. 3, ¶ 6.) In her prior cases, she also alleged that her disability substantially limits her ability to stand and that the faucets and fixtures in the restrooms were too high off the floor. (RJN Exh. 1, ¶ 16; Exh. 2, ¶¶ 8, 16; Exh. 3, ¶ 9.) In this case, however, Ms. Baughman asserted that she needs a Segway because she is unable to rise from a seated position and thus cannot use a wheelchair or scooter. Indeed, she stated that she has never used a wheelchair.

On February 26, 2010, the Court granted Disney's motion for summary judgment on Ms. Baughman's ADA claim and remanded her state law claims to state court. (Dkt. No. 51.) The Court reasoned that Ms. Baughman was judicially estopped from asserting that she was incapable of using a wheelchair or scooter, and therefore, she did could not maintain that the use of a Segway was necessary in order to enjoy Disneyland. Ms. Baughman appealed the Court's decision.

On December 14, 2010, while her appeal was pending, the Eleventh Circuit determined that the Florida district court erred in dismissing the *Ault* case for lack of standing. *Ault v. Walt Disney World Co.*, 405 F. App'x 401 (11th Cir. 2010). The Eleventh Circuit remanded the case to the district court to determine whether the claims of the named plaintiffs were typical of claims of the class and whether the named plaintiffs were adequate representatives of the class. *Id.* On remand, and after considering supplemental briefs filed by objectors and *amici*, the district court granted class certification and final approval of the proposed Settlement Agreement. *Ault v. Walt Disney World Co.*, No. 6:07-CV-1785-ORL31KR, 2011 WL 1460181, at *4 (M.D. Fla. Apr. 4, 2011).

On July 18, 2012, the Ninth Circuit issued its decision on Ms. Baughman's appeal and reversed and remanded the case. *Baughman v. Walt Disney World Co.*, 685 F.3d 1131, 1133 (9th Cir. 2012). While the Ninth Circuit agreed that Ms. Baughman was estopped from claiming she could not use a wheelchair or scooter, the Ninth Circuit held that the use of Segway could still be necessary for her full and equal enjoyment of Disneyland. *Id.* at 1134–36. The Ninth Circuit made clear, however, that its decision did not "hold that Disney must permit Segways at its theme parks." *Id.* at 1137.

On August 20, 2012, the *Ault* district court's order granting class certification and final approval of the proposed Settlement Agreement was upheld by the Eleventh Circuit. *Ault v. Walt Disney World Co.*, 692 F.3d 1212 (11th Cir. 2012). Soon thereafter, Disney moved to dismiss Ms. Baughman's claims, or in the alternative, stay the case until the Supreme Court denied certiori. (Dkt. No. 78.) Although the Court noted that Ms. Baughman's claims were barred by the terms of the Settlement Agreement, the Court declined to dismiss this case because the Settlement Agreement would not become final until the Supreme Court denied certiorari of the Eleventh Circuit's decision. (Dkt. No. 88.) The Court therefore stayed the case pending the Supreme Court's decision. (*Id.*) On April 15, 2013, the Supreme Court denied certiorari, thereby finalizing the Settlement Agreement. *See Miller v. Walt Disney World Co.*, 133 S. Ct. 1806 (2013). The Court dismissed this case on May 20, 2013.[3] (Dkt. No. 85.) Ms. Baughman filed the present motion for attorneys' fees on June 17, 2013. (Dkt. No. 91 ["Pl.'s Mot."].)

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[3] The Court retained jurisdiction to hear motions for attorneys' fees. *See Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990) ("It is well established that a federal court may consider collateral issues after an action is no longer pending. For example, district courts may award costs after an action is dismissed for want of jurisdiction."); *Fed. Sav. & Loan Ins. Corp. v. Ferrante*, 364 F.3d 1037, 1041 (9th Cir. 2004) ("[A]ncillary jurisdiction exists over attorney fee disputes collateral to the underlying litigation.").

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III. ANALYSIS

The ADA provides that "the court . . . in its discretion, may allow the prevailing party . . . a reasonable attorney's fee, including litigation expenses, and costs." 42 U.S.C. § 12205. Whether a party will be granted an award of fees depends on three factors: "(1) whether the party who seeks attorneys' fees is the prevailing party; (2) whether the court should exercise its discretion to award the fees; and (3) what constitutes a reasonable award." *Wilson v. Haria and Gogri Corp.*, No. CIV.S-05-1239LKK/DAD, 2007 U.S. Dist. LEXIS 47519, at *2 (E.D. Cal. Jun. 20, 2007). A prevailing plaintiff should "ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983); *see Barrios v. California Interscholastic Fed'n*, 277 F.3d 1128, 1134 (9th Cir. 2002).

A. Prevailing Party

A "prevailing party" is one who has "succeed[ed] on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (citations and quotations omitted). A plaintiff may not recover under a " 'catalyst theory,' which posits that a plaintiff is a 'prevailing party' if it achieves the desired result because the lawsuit brought about a voluntary change in the defendant's conduct." *Buckhannon Bd. & Care Home, Inc. v. W. Virginia Dep't of Health & Human Res.*, 532 U.S. 598, 601 (2001). Instead, the prevailing party must be "awarded some relief by the court." *Id.* at 603. This includes enforceable judgments on the merits, settlement agreements enforced through a consent decree, legally enforceable settlement agreements between a plaintiff and defendant, and preliminary injunctions. *See Citizens For Better Forestry v. U.S. Dep't of Agr.*, 567 F.3d 1128, 1132 (9th Cir. 2009) (listing forms of relief that may justify a fee award).

Ms. Baughman assets that she is a prevailing party given that the Ninth Circuit found in her favor. She asserts that the "*Baughman* decision vindicates important rights, not just for Baughman, but for other persons with disabilities who are wrongfully denied policy modifications and physical alterations in public accommodations because some access has been provided." (Pl.'s Mot. at 9.) Specifically, she contends that the "Ninth Circuit indicated that Plaintiff was likely to prevail on her ADA claim because Disney was not permitted to make a blanket policy against Segways that did not provide any exception for persons with disabilities." (Pl.'s Mot. at 9.)

The Ninth Circuit's decision, however, awarded no relief to Ms. Baughman and made no statements regarding her likelihood of success. Contrary to Ms. Baughman contentions, the Ninth Circuit simply held that she could *continue* to pursue her claims. *See Klamath Siskiyou Wildlands Ctr. v. U.S. Bureau of Land Mgmt.*, 589 F.3d 1027, 1030 (9th Cir. 2009) ("Whatever form it takes, the 'material alteration' must consist of actual *relief,* not merely a determination of legal merit. [A] favorable determination on a legal issue, even if it might have put the handwriting on the wall, is not enough by itself."). Indeed, the Ninth Circuit explicitly stated: "We do not hold that Disney must permit Segways at its theme parks. It might be able to exclude them if it can prove that Segways can't be operated safely in its parks." *Baughman*, 685 F.3d at 1137. The case was remanded to this Court in order to determine whether Ms. Baughman was actually entitled to the relief she requested: the use of a Segway in Disneyland. Indeed, Ms. Baughman acknowledged this is in her opposition to Disney's motion to dismiss or stay, in which she wrote: "Here we are five years after filing. After all this time, the merits of the case have never been considered . . . ." (Dkt. No. 80 at 4.) Before the Court could make a determination on the merits, or provide any other form of relief, the Settlement Agreement was finalized, barring Ms. Baughman's claims.

Ms. Baughman next argues that she is a prevailing party because the Settlement Agreement in *Ault* was a judicially enforceable settlement which changed the legal relationship between the parties. (Pl.'s Mot. at 19.) She maintains that her action was the reason the *Ault* plaintiffs amended their complaint to cover access to Disneyland. (*Id*. at 16.) Therefore, she asserts, any relief related to Disneyland in the Settlement Agreement can be attributed to this action for the purposes of determining a prevailing party.

Ms. Baughman, however, has failed to provide any authority for her proposition that a party may be afforded prevailing party status based on the success of different plaintiffs in a different action. Even where the plaintiffs are identical between the two actions, the Ninth Circuit has held that success in one case has no effect on the prevailing party status in the other. *See U.S. Bureau*, 589 F.3d 1027 (9th Cir. 2009). In *U.S. Bureau*, several environmental organizations sued the Bureau of Land Management ("BLM") alleging that a planned timber sale violated the National Environmental Policy Act. *Id*. at 1028. The same plaintiffs had filed a similar lawsuit challenging two other timber sales by the BLM, *id*. at 1029, and the Ninth Circuit decided in favor of plaintiffs on appeal in that case. *See Klamath Siskiyou Wildlands Ctr. v. Boody,* 468 F.3d 549 (9th Cir. 2006). Two days later, the magistrate judge in *U.S. Bureau* recommended that the plaintiffs were entitled to summary judgment on some of their claims based the Ninth Circuit's decision in *Boody*. *U.S. Bureau*, 589 F.3d at 1029. That same day, the BLM changed its position regarding the timber sale at issue in *U.S. Bureau*, essentially mooting the plaintiffs' claims. *Id*. The plaintiffs then moved for attorneys' fees and costs under the Equal Access to Justice Act, which requires "prevailing party" status for an award.[4] The plaintiffs argued that they were the prevailing party in *U.S. Bureau* based on the fact

[4] "The term 'prevailing party,'. . . is a term of art that courts must interpret consistently throughout the United States Code." *U.S. Bureau*, 589 F.3d at 1030.

that *Boody* drove BLM "to flee the field of battle." *Id*. at 1033. The Ninth Circuit rejected what it characterized as a "novel" attempt to "reach[] outside the confines of [the] lawsuit" for prevailing party status. *Id*. The Ninth Circuit specifically rejected the argument that the plaintiffs had achieved some success because the *Boody* decision could be used as collateral estoppel in *U.S. Bureau*, stating: "Collateral estoppel would be available to [plaintiffs] even if [they] had never initiated this action. Its availability here is purely a function of the *Boody* litigation . . . and betokens no material alteration in the legal relationship of the parties vis-à-vis the Willy Slide timber sale. Collateral estoppel is not a form of relief; it is the consequence in one case of relief ordered in a prior case." *Id*. at 1034–35.

Like the plaintiffs in *U.S. Bureau*, Ms. Baughman is attempting to reach outside the confines of this action for her prevailing party status. The Settlement Agreement in *Ault* would exist even if Ms. Baughman had never initiated this action, and its existence is purely a function of the *Ault* litigation. Therefore, she may not impute any success in that case to this case. Although Ms. Baughman asserts that her action motivated the *Ault* plaintiffs to expand the scope of the Settlement Agreement, the Court cannot award prevailing party status based on a "catalyst theory." *See Buckhannon*, 532 U.S. at 601. If Ms. Baughman believes she is entitled to attorneys' fees based on the outcome in *Ault*, she should have filed the appropriate motion before the *Ault* court.

After properly limiting the scope of the Court's inquiry to this action, it is clear that Ms. Baughman has achieved no material alteration in the legal relationship of the parties that is judicially sanctioned. Ms. Baughman did not receive a preliminary injunction, a judgment in her favor, and did not reach a settlement with Disney. Although Ms. Baughman insists that the evidence shows that she would have been entitled to relief, the fact that her claims were barred before she received such relief means that she is not a prevailing party. *See U.S. Bureau*, 589 F.3d at 1033 ("As a matter

of law and logic, the district court cannot have awarded [plaintiffs] any relief if it dismissed the case because it could not grant relief.").

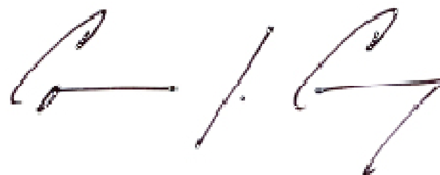
B. Discretion

Ms. Baughman's misrepresentations to this Court also present special circumstances that would render an award of attorneys' fees unjust. In three prior lawsuits, Ms. Baughman claimed that "she has a physical impairment which causes her to rely upon a power scooter or wheelchair for her mobility." In this case, however, she asserted that using a wheelchair is "impractical, painful, and difficult." Although Ms. Baughman acknowledges that her misrepresentations constitute a "serious deficiency," she asserts that a fee reduction is warranted rather than a deprivation of all fees. However, given that significant litigation revolved around Ms. Baughman's misrepresentations, and given that she has achieved no success on her claims, the Court finds that no award is warranted.

IV. CONCLUSION

For the foregoing reasons, the Court **DENIES** Ms. Baughman's motion for attorneys' fees.

DATED: July 17, 2013



CORMAC J. CARNEY
UNITED STATES DISTRICT JUDGE