

JAN 14 2009

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAREK MOLSKI; DISABILITY RIGHTS  
ENFORCEMENT, EDUCATION  
SERVICES: HELPING YOU HELP  
OTHERS,

Plaintiffs - Appellants,

v.

CONRAD'S LA CANADA  
RESTAURANT; et al.,

Defendants - Appellees.

No. 07-55336

D.C. No. CV-03-09462-TJH

MEMORANDUM \*

Appeal from the United States District Court  
for the Central District of California  
Terry J. Hatter, Jr., District Judge, Presiding

Submitted December 17, 2008\*\*

Before: GOODWIN, WALLACE, and RYMER, Circuit Judges.

---

\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Jarek Molski and Disability Rights Enforcement, Education Services (“DREES”) appeal from the district court’s order denying their motion for attorney fees and costs in their action under the Americans with Disabilities Act (“ADA”) and California law. We have jurisdiction under 28 U.S.C. § 1291. If the district court applied the proper legal standard and its findings of fact were not clearly erroneous, we review for an abuse of discretion the decision to deny attorney fees. *Jankey v. Poop Deck*, 537 F.3d 1122, 1129 (9th Cir. 2008). We vacate and remand.

Molski and DREES were prevailing parties under the ADA. *See id.* at 1130-32 (concluding that plaintiff was the prevailing party as a result of a settlement agreement authorizing the court to enforce the settlement, and that lack of prelitigation notice was not a valid ground to deny attorney fees). The district court, however, denied the motion for attorney fees and costs. Because the district court did not provide the reasons for its decision, we cannot determine whether the district court improperly denied the motion. *See id.* at 1130 (explaining that district courts should ordinarily award attorney fees to a prevailing plaintiff under the ADA unless “special circumstances” render an award unjust). Accordingly, we vacate and remand for further proceedings.

**VACATED and REMANDED.**