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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NICHOLAS PAPPAS,
Plaintiff,
v.
FORD MOTOR COMPANY,
Defendants.

Case No.: 3:21-cv-00584-BEN-KSC

**ORDER GRANTING IN-PART
PLAINTIFF’S MOTION FOR
ATTORNEY FEES AND COSTS AND
GRANTING MOTIONS TO FILE
UNDER SEAL**

[ECF Nos. 10, 12, 14, 20]

Before the Court is Plaintiff Nicholas Pappas’s (“Plaintiff”) Motion for Award of Attorney’s Fees and Costs (ECF No. 10). Defendant Ford Motor Company (“Defendant”) opposed, and Plaintiff replied. The Court took the matter under submission (ECF No. 22) and, having considered the Parties’ pleadings, the Court grants in-part Plaintiff’s motion.

I. BACKGROUND

This is a Lemon Law case. The Parties have already entered into a confidential settlement agreement regarding compensation for Plaintiff and the Defendant’s buy-back of the subject vehicle and the only matter presently disputed is attorney’s fees and costs.

1 This case was originally filed in California state court. Before removing the case
2 to this Court, Defendants made an offer to buy back the vehicle from Plaintiff for the full
3 purchase price, plus costs and fees already incurred, less a mileage offset. ECF No. 16-2.
4 Plaintiff did not accept the offer. Seven weeks after this first offer, the Parties announced
5 at the first ENE that they had reached a settlement. ECF No. 23. As part of the
6 settlement, the Parties agreed to work out attorney’s fees and costs via good faith
7 negotiation, but that if such negotiations failed, the Court could resolve the matter. *Id.*
8 After negotiations on fees failed, this motion followed. Plaintiff seeks \$48,947.80 in
9 attorney fees and an additional \$499 in costs. ECF No. 19, 11.

10 **II. LEGAL STANDARD**

11 “In diversity actions, federal courts look to state law in determining whether a
12 party has a right to attorneys' fees and how to calculate those fees.” *Base v. FCA US*
13 *LLC*, No. 17-CV-01532-JCS, 2019 WL 4674368, at *2 (N.D. Cal. Sept. 25, 2019) (citing
14 *Mangold v. Cal. Pub. Util. Comm'n*, 67 F.3d 1470, 1478 (9th Cir. 1995)). Under
15 California law, buyers who prevail in an action under the Song-Beverly Act are entitled
16 “to recover as part of the judgment a sum equal to the aggregate amount of costs and
17 expenses, including attorney's fees based on actual time expended, determined by the
18 court to have been reasonably incurred by the buyer[.]” Cal. Civ. Code § 1794(d) (West).

19 “A party is a prevailing party if the court . . . decides that the party has achieved its
20 ‘main litigation objective.’ ” *Bratton v. FCA US LLC*, No. 17-CV-01458-JCS, 2018 WL
21 5270581, at *3 (N.D. Cal. Oct. 22, 2018) (citing *Graciano v. Robinson Ford Sales, Inc.*,
22 144 Cal. App. 4th 140, 150–51 (2006); then citing *Wohlgemuth v. Caterpillar Inc.*, 207
23 Cal. App. 4th 1252, 1262 (2012)). “[C]onsumers who successfully achieve the goals of
24 their litigation through a compromise agreement [do] not lose their statutory right to fees
25 and costs” unless they expressly waived it in the compromise agreement. *See*
26 *Wohlgemuth*, 207 Cal. App. 4th at 1262, 1263 n.10.

27 The Song-Beverly Act requires a trial court “to make an initial determination of the
28 actual time expended [by the prevailing party's attorneys]; and then to ascertain whether

1 under all the circumstances of the case the amount of actual time expended and the
2 monetary charge being made for the time expended are reasonable.” *Nightingale v.*
3 *Hyundai Motor Am.*, 31 Cal. App. 4th 99, 104 (1994). “These circumstances may
4 include, but are not limited to, factors such as the complexity of the case and procedural
5 demands, the skill exhibited and the results achieved.” *Id.* The prevailing buyer has the
6 burden of “showing that the fees incurred were allowable, were reasonably necessary to
7 the conduct of the litigation, and were reasonable in amount.” *Id.* (internal quotation
8 marks and citation omitted). The “[l]odestar analysis is generally the same under
9 California law and Federal law.” *Rodriguez v. Cty. of Los Angeles*, 96 F. Supp. 3d 1012,
10 1017 (C.D. Cal. 2014), *aff’d*, 891 F.3d 776 (9th Cir. 2018).

11 “California courts have [] held that the Song[-]Beverly Act permits the trial court
12 to award a multiplier where it deems appropriate under the lodestar adjustment method.”
13 *Bratton*, 2018 WL 5270581, at *3. The California Supreme Court has instructed that
14 courts should consider the following factors, as relevant, in adjusting the lodestar:

15 (1) the novelty and difficulty of the questions involved, (2) the skill
16 displayed in presenting them, (3) the extent to which the nature of the
17 litigation precluded other employment by the attorneys, (4) the contingent
18 nature of the fee award. The purpose of such adjustment is to fix a fee at the
19 fair market value for the particular action. In effect, the court determines,
20 retrospectively, whether the litigation involved a contingent risk or required
extraordinary legal skill justifying augmentation of the unadorned lodestar in
order to approximate the fair market rate for such services.

21 *Ketchum v. Moses*, 17 P.3d 735, 741 (Cal. 2001) (internal citation omitted). Finally, “[a]
22 court may also, ‘for an appropriate reason,’ make a downward adjustment under the
23 lodestar adjustment method, for example where the court finds that time billed was
24 excessive or that the tasks performed were in connection with unrelated claims upon
25 which the party did not prevail.” *Bratton*, 2018 WL 5270581, at *3.

1 **III. DISCUSSION**

2 **A. Prevailing Party**

3 Even though this case settled at the first ENE, Plaintiff argues that he is entitled to
4 fees and costs as the prevailing party, relying on the cost provisions of the Song-Beverly
5 Act. Defendant contends Plaintiff is not the prevailing party, as the Plaintiff accepted the
6 same offer they originally rejected before removal of this case to federal court. Having
7 reviewed the Defendant’s initial offer to settle, the Plaintiff’s complaint, and the Parties’
8 settlement agreement, this Court finds the Plaintiff is the prevailing party. A party is a
9 prevailing party if the court, guided by equitable principles, decides that the party has
10 achieved its “main litigation objective.” *Graciano v. Robinson Ford Sales, Inc.*, 14 Cal.
11 App. 4th 140, 150-51 (2006). The settlement agreed upon between the parties provides
12 Plaintiff a significantly higher payout than what was offered by Defendant in March 2021
13 and is for a higher amount than what would be statutorily required under the Song-
14 Beverly Act. By refusing Defendant’s offer and continuing litigation, Plaintiff secured a
15 significantly higher payout for his vehicle. This Court finds Plaintiff is the prevailing
16 party in this action. Having determined Plaintiff is the prevailing party, this Court now
17 analyzes appropriate fees and costs.

18 **B. Fees and Costs Recoverable by Prevailing Party**

19 Under California law, buyers who prevail in an action under the Song-Beverly Act
20 are entitled to “the aggregate amount of costs and expenses, including attorney’s fees
21 based on actual time expended, determined by the court to have been reasonably incurred
22 by the buyer in connection with the commencement and prosecution of such action.”
23 Cal. Civ. Code section § 1794(d). *See Wohlgemuth v. Caterpillar Inc.*, 207 Cal. App. 4th
24 1252, 1262 (2012) (holding that “consumers who successfully achieve the goals of their
25 litigation through a compromise agreement” may recover attorney’s fees and costs as
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1 prevailing parties under the Song-Beverly Act).¹ Thus, while the language of the act is
2 mandatory, providing the buyer “shall” recover costs, including attorney’s fees, it only
3 requires payment of those costs and fees found to have been “reasonably incurred” in
4 pursuing the claim.

5 “The fee setting inquiry in California ordinarily begins with the ‘lodestar,’ i.e., the
6 number of hours reasonably expended multiplied by the hourly rate.” *PLCM Group v.*
7 *Drexler*, 22 Cal. 4th 1084, 1095 (2000). The fee applicant bears the burden of
8 documenting the appropriate hours expended in litigation; only those hours “reasonably
9 expended” should be included in the initial calculation of the lodestar. *Hensley v.*
10 *Eckerhart*, 461 U.S. 424, 433-34 (1983). Moreover, in determining “reasonable”
11 compensation, we must consider whether the case was overstaffed or over-litigated.”
12 *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001). Time expended on work deemed
13 “excessive, redundant, or otherwise unnecessary” will not be compensated.² *Hensley*,
14 461 U.S. at 433-34. It is improper, however, to limit a fee award under the Song-Beverly
15 Act to a percentage of the prevailing party’s recovery. *Graciano* at 164.

16 Next, the Court addresses the reasonableness of the rates requested by Plaintiff’s
17 counsel. The fee applicant has the burden of producing satisfactory evidence that the
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20 ¹ California courts have found that in awarding fees under the Song-Beverly Act, the trial
21 court must “make an initial determination of the actual time expended; and then [must]
22 ascertain whether under all the circumstances of the case the amount of actual time
23 expended and the monetary charge being made for the time expended are reasonable.”
24 *Nightingale v. Hyundai Motor Am.*, 31 Cal. App. 4th 99, 104 (1994). In evaluating the
25 reasonableness of counsel’s charges, the court may consider “factors such as the
26 complexity of the case and procedural demands, the skill exhibited and the results
27 achieved.” *Id.* The prevailing party has the burden of showing that the attorney’s fees it
28 requests are reasonable. *Id.*

² A court may also, “for an appropriate reason,” make a downward adjustment under the
lodestar adjustment method, for example where the court finds that time billed was
excessive or that the tasks performed were in connection with unrelated claims upon
which the party did not prevail. *Graciano v. Robinson Ford Sales, Inc.*, 144 Cal. App.
4th 140, 161 (2006).

1 requested rates are in line with those prevailing in the community for similar services of
2 lawyers of reasonably comparable skill and reputation. *Jordan v. Multnomah Cnty.*, 815
3 F.2d 1258, 1263 (9th Cir. 1987). As a general rule, the forum district represents the
4 relevant legal community. *Gates v. Deukmejian*, 987 F.2d 1392, 1405 (9th Cir. 1992).
5 Fee applicants may provide affidavits of practitioners from the same forum with similar
6 experience to establish the reasonableness of the hourly rate sought. *See, e.g.*,
7 *Mendenhall v. Nat'l Transp. Safety Bd.*, 213 F.3d 464, 471 (9th Cir. 2000); *Jones v.*
8 *Metro. Life Ins. Co.*, 845 F. Supp. 2d 1016, 1024-25 (N.D. Cal. 2012).

9 **i. Reasonableness of Plaintiff's Rate**

10 At the outset, the Court notes that Plaintiff has provided time sheets reflecting the
11 time he spent on this litigation, broken down by specific tasks, although containing some
12 less specific block billing entries. *See* ECF No. 13 at 102-115. The timesheets reflect the
13 64.9 hours of time billed at a requested rate of \$510 per hour for Plaintiff's counsel. *Id.*
14 Defendants claim this rate is too high and ask this Court to grant a rate of \$350 per hour
15 as the court did in *Aispuro v. Ford Motor Co.*, 2020 WL 4582677 (S.D. Cal. Aug. 10,
16 2020). The report relied on in *Aispuro* (the "2018 Real Rate Report: The Industry's
17 Leading Analysis of Law Firm Rates, Trends, and Practices") showed partners practicing
18 consumer litigation in this region generally have rates ranging from \$300 to \$625. *Id.* at
19 3. Plaintiff's counsel asks for a rate in the middle part of that range. In support of this
20 request, Plaintiff provides an extensive background of its counsel's consumer law
21 experience and the declarations of other attorneys who work in the area. While this Court
22 accepts Defendant's argument that these declarations are in many cases self-serving,
23 Plaintiff has established his rate based on his work experience independent of these
24 declarations. With that established, the Defendant fails to provide evidence that
25 Plaintiff's rate is unreasonable beyond pointing out a lower rate awarded in an unrelated
26 case. Accordingly, this Court will calculate Plaintiff's attorney fees at a rate of \$510.

1 **ii. Hours Reasonably Expended**

2 Defendant objects to several portions of Plaintiff’s expended hours. This Court will
3 address each in turn.

4 a. Hours Billed After Initial Settlement Offer

5 Defendant asks this Court to strike all hours billed after the initial settlement sent
6 to Plaintiff on March 31, 2021. Defendant argues that since Plaintiff accepted the same
7 offer later at the first ENE, they needlessly litigated the case and should not be able to
8 collect attorney’s fees as a result. As discussed above, though, the amount the Parties
9 ultimately settled for is significantly greater than what was offered originally.
10 Accordingly, this Court will not categorically strike all billing after March 31, 2021.

11 b. Drafting of Initial Complaint

12 Defendant argues Plaintiff’s billing records are “rife with dubious and excessive
13 billing entries for work on pleadings that are virtually identical to those filed . . . in the
14 past.” ECF No. 16 at 14. Regarding the Complaint, Defendant points out that Plaintiff’s
15 counsel has used the same form complaint for several cases throughout the years and
16 provided proof of prior complaints filed by the Plaintiff’s counsel that are nearly identical
17 besides the make, model, and VIN of the vehicle. Defendant provided several examples
18 of counsel for Plaintiff’s prior pleadings and, having reviewed them, this Court finds that
19 the Plaintiff’s claim of three hours preparing the complaint is unreasonable based on the
20 unchanged template used in filing Plaintiff’s case. The Court removes two and a half
21 hours of time claimed prepared in filing the Complaint.

22 c. Review of Scheduling Order and Buyback Offer

23 The April 5, 2021 billing entry states Plaintiff’s Counsel “Review[ed] Scheduling
24 order, review[ed] client docs and prep[ared] LL buyback offer.” ECF 13 at 111.
25 Defendant objects on the grounds that there was no scheduling order issued in the case
26 and there was no offer to buyback ever received from Plaintiff. Defendants are incorrect
27 in asserting there was no scheduling order. See ECF No. 4. This Court agrees with
28 Defendant, though, that attorney fees are inappropriate for work done that did not

1 advance the case. Seeing as how this case settled at the first ENE, Plaintiff's buyback
2 offer allegedly prepared on April 5 may have settled this case weeks before and saved
3 both sides extensive time and effort in preparing for litigation. The Court strikes 1.5
4 hours from this entry, allowing Plaintiff's counsel to claim .2 hours for reviewing a
5 straight-forward seven-page scheduling order.

6 d. Plaintiff's Motion to Remand and Reply

7 Defendants ask this Court to reject the entire time Plaintiff's counsel spent on the Motion
8 to Remand and subsequent reply, totaling 7 hours. Defendants incorrectly assert
9 Plaintiff's counsel used the same brief from two other cases recently filed in this district
10 (*Canseco v. Ford Motor Co.*, 21-CV-425-BEN-RBB, ECF No. 6-1; *Potts v. Ford Motor*
11 *Co.*, 21-CV-256-BEN-BGS, ECF No. 11-1). Plaintiff's counsel did not handle these
12 cases. This Court will not deduct time for Plaintiff's Motion to remand. Regarding the
13 reply, though, this Court strikes the entirety of the 3.2 hours billed. Plaintiff and
14 Defendant reached a settlement before Plaintiff's counsel undertook the effort to draft the
15 reply. This billed work did not advance Plaintiff's case and was unnecessary based on
16 the Parties' pending settlement. "[H]ours that are excessive, redundant, or otherwise
17 unnecessary" should be excluded. *Costa v. Comm'r of Soc. Sec. Admin.*, 690 F.3d 1132,
18 1135 (9th Cir. 2012).

19 e. Research on the Court's Discovery Order

20 Defendant challenges 10.3 hours Plaintiff's counsel spent researching issues
21 related to the Magistrate Judge's discovery order (ECF No. 4). Defendant fails to specify
22 which of the billing records comprises these 10.3 hours, but Plaintiff's counsel admits in
23 their reply that 3.5 hours were spent on the issue Defendant objects to. With that
24 established, this Court strikes 3 hours of the 3.5 claimed. ECF No. 4 is a routine
25 discovery order, including disclosure of billing records in attorney fees routinely used in
26 federal litigation. While Plaintiff may have needed to get up to speed on federal
27 litigation, the amount billed is excessive for such a routine, uncontested matter like the
28 basic discovery plan and what to expect at a first ENE.

1 f. Motion for Fees and Costs

2 Defendant asks this Court to reject the entirety of the hours billed by Plaintiff in
3 filing the motion and reply on the present matter. Defendant points out that the motion is
4 essentially a carbon copy of a motion filed in another of case tried by counsel for
5 Plaintiffs. See *Zawaideh v. BMW of North America, LLC*, No. 37-2017-00034741-CU-
6 BC-CTL. Plaintiff's counsel counters that he was required to research federal law on the
7 matter as it was his first attorney's fees case in federal court. The Court agrees with
8 Defendant and strikes the entirety of time billed for the motions for attorney's fees.

9 Plaintiff's counsel's claim that he needed to research federal law on the matter is
10 undercut by the fact that state law governs the present motion. In the present motion, all
11 but one case cited by Plaintiff's counsel is a California state case. The only federal case
12 cited was another case he had tried in which the Court approved the \$510/hour fee. This
13 Court will not allow Plaintiff's counsel to claim time for completely unnecessary
14 research.

15 The present motion contains an argument supporting the rates of a "Ms. Swanson."
16 While this individual is named in the caption of Plaintiff's counsel's firm, she is not listed
17 as having worked on any of the billing entries for Plaintiff's case. In *Pollard v. FCA*, the
18 court struck the time billed for a motion for attorneys' fees because the motion
19 "substantially resembled" and in many cases was identical to a fee motion before the that
20 court in another case. *Pollard v. FCA US LLC*, 17-CV-00591-JLS-JCG, 2020 WL
21 57270, at *5 (C.D. Cal. January 3, 2020). This Court finds this rationale persuasive. The
22 table of authorities is identical to those filed in other cases, an attorney who didn't work
23 on the case is listed in the argument supporting the fee schedule, and the declarations
24 from other attorneys are unchanged from those provided in an attorneys' fees motion in
25 2019. Plaintiff's counsel cannot expect Defendant to foot the bill for a motion
26 substantially prepared in a separate case two years ago.

1 **iii. Whether a Multiplier is Warranted**

2 Plaintiff asks this Court to award a positive lodestar multiplier of .1 for the non-fee
3 related work and a .2 positive multiplier for the remainder of the work performed.
4 Defendant argues no multiplier is warranted here. The Court agrees with Defendant.
5 Here, there was no contingent risk or extraordinary legal skill that would justify a
6 positive multiplier. Plaintiff’s risk of not recovering attorney’s fees was relatively low in
7 this case. Attorneys’ fees are guaranteed to prevailing parties under the Song-Beverly
8 Act and Plaintiff’s case was strong enough that it was unlikely upon accepting Plaintiff’s
9 case that he would recover nothing in damages. Moreover, the Court finds this to be a
10 very standard Lemon Law case, particularly exemplified by Plaintiff’s use of form
11 pleadings and slightly reworked motions from previous litigation, as well as the very
12 early settlement reached between the parties. Regarding Plaintiff’s argument that there
13 is a significant delay in compensation, this Court finds the awarded fees adequately
14 compensate counsel for any delay in receiving attorney fees arising from the contingency
15 agreement. *See Base v. FCA US, LLC*, 2020 WL 363006 (N.D. Cal. Jan. 22, 2020).
16 Accordingly, the Court awards the lodestar with no positive multipliers.

17 **C. Costs**

18 Plaintiff requests \$499 in costs/expenses for filing Plaintiff’s case. Defendant does
19 not contest this request. This Court finds this request valid and grants Plaintiff costs in
20 the amount of \$499.

1 **D. Calculation of Fees and Costs**

2 Having stricken the entirety of time Plaintiff requested for working on the present
3 motion, the Court is left with 51.7 claimed hours of billed work. Further deducting the
4 amounts listed above in Sections B(2)(b)-(e), Plaintiff is left with 41.5 hours.

5 Hours: 41.5

6 Rate: \$510/hr

7 Multiplier: 0

8 Total Fees: \$21,165

9 Costs: \$495

10 **TOTAL FEES AND COSTS: \$21,660.**

11 **E. Motion to File Under Seal**

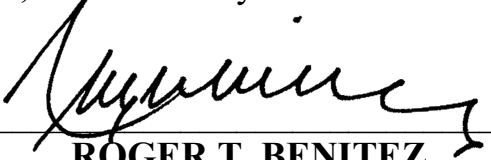
12 Plaintiff moved to file portions of its pleadings on the subject motion under seal on
13 the grounds that it is necessary to preserve the confidentiality of the settlement agreement
14 agreed to by the parties. The Court finds that, to the extent the pleadings discuss or
15 disclose terms of the settlement agreement, good cause exists to permit filing under seal.
16 Accordingly, the motions to seal are granted. Redacted versions of the aforementioned
17 documents have been filed on the public docket. The Clerk is directed to file unredacted
18 versions of the documents and exhibits lodged at Docket Numbers 13, 15, and 21 under
19 seal.

20 **III. CONCLUSION**

21 The Motions to File Under Seal are granted. The Motion for Attorney’s Fees is
22 granted-in-part. The Court awards Plaintiff \$21,660 in attorney’s fees and costs.

23 **IT IS SO ORDERED.**

24 DATED: December 7, 2021

25 
26 **ROGER T. BENITEZ**
27 United States District Judge
28