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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Duane Bryan Heward, et al.,

10 Plaintiffs,

11 v.

12 Ahmed Thahab,

13 Defendant.
14

No. CV-19-05155-PHX-DJH

ORDER

15 Pending before the Court is Plaintiffs’ Motion for Attorneys’ Fees (Doc. 41).
16 Defendant filed a Response in opposition (Doc. 51), and Plaintiff filed a Reply (Doc. 54).
17 The Court struck all statements from Defendant’s Response that bore no relation to the
18 subject matter of the attorneys’ fees request. Therefore, the Court will only consider
19 Defendant’s arguments directly related to attorneys’ fees. (Doc. 53).

20 **I. Background**

21 In September 2019, Plaintiffs brought this action for violations of the Motor Vehicle
22 Information and Costs Savings Act, 49 U.S.C. § 32701, *et seq.* (“Odometer Act”), and the
23 Arizona Consumer Fraud Act, A.R.S. § 44-1521, *et seq.* (“ACFA”). (Doc. 1 at ¶ 2).
24 Following a bench trial on the merits, on May 14, 2021, the Court entered judgment in
25 Plaintiffs’ favor and awarded them \$19,595.58 in combined actual and punitive damages.
26 (Doc. 38). The Court further ordered Plaintiffs’ counsel to file the present motion for
27 attorneys’ fees and costs. (*Id.*) For the following reasons, the Court will grant Plaintiffs’
28 Motion.

1 **II. Attorney Fee Award**

2 A party seeking an award of attorney’s fees must show it is eligible and entitled to
3 an award, and that the amount sought is reasonable. LRCiv 54.2(c).

4 **a. Eligibility**

5 The Odometer Act provides that a plaintiff is entitled to recover three times the
6 amount of his or her actual damages, or \$10,000, whichever is greater. 49 U.S.C.
7 § 32710(a). Prevailing plaintiffs are also entitled to recover reasonable attorney’s fees and
8 costs. *Id.* Because Plaintiffs brought an Odometer Act claim, they are eligible.

9 **b. Entitlement**

10 The Odometer Act specifies that “[t]he court shall award costs and a reasonable
11 attorney’s fee to the person when a judgment is entered for that person.” 49 U.S.C.
12 § 32710(b). The award of attorney’s fees to a successful plaintiff is mandatory under the
13 Act. *See Duval v. Midwest Auto City Inc.*, 578 F.2d 721 (8th Cir. 1978). “The value of an
14 attorney’s services is not only measured by the amount of the recovery to the plaintiff, but
15 also the non-monetary benefit accruing to others, in this case the public at large from his
16 successful vindication of a national policy to protect consumers from fraud in the used car
17 business.” *Fleet Inv. Co. v. Rogers*, 620 F.2d 792 (10th Cir. 1980). Since Plaintiffs
18 received a judgment in their favor under the Odometer Act, Plaintiffs are entitled to an
19 award of reasonable attorney’s fees for the time necessarily and reasonably expended.

20 **c. Reasonableness**

21 The Court will use the lodestar method to assess Plaintiffs’ proposal because this is
22 a statutory award. *See Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311
23 (9th Cir. 1990). Under the lodestar method, courts determine the initial lodestar figure by
24 taking a reasonable hourly rate and multiplying it by the number of hours reasonably
25 expended on the litigation. *Blanchard v. Bergeron*, 489 U.S. 87, 94 (1989) (citing *Hensley*,
26 461 U.S. at 433). To determine whether an award is reasonable, courts assess the following
27 factors:

- 28 (1) the time and labor required, (2) the novelty and difficulty of the questions

1 involved, (3) the skill requisite to perform the legal service properly, (4) the
2 preclusion of other employment by the attorney due to acceptance of the case,
3 (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time
4 limitations imposed by the client or the circumstances, (8) the amount
5 involved and the results obtained, (9) the experience, reputation, and ability
6 of the attorneys, (10) the ‘undesirability’ of the case, (11) the nature and
length of the professional relationship with the client, and (12) awards in
similar cases.

7 *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975), *cert. denied*, 425 U.S.
8 951 (1976); *see also* LRCiv 54.2(c)(3). Once this initial lodestar figure is calculated, courts
9 may then adjust the result by considering “other factors.” *Blanchard*, 489 U.S. at 94.

10 Plaintiffs’ Motion goes through the relevant *Kerr* factors and requests a total award
11 for fees and costs of \$22,372.50. (Doc. 54 at 7). The Court will review Plaintiffs’ request
12 for attorney fees under the *Kerr* factors.

13 **1. Time and Labor Required**

14 Plaintiffs’ counsel represents this case required 47.1 hours of his time. (*Id.*)
15 Plaintiffs further represent an odometer fraud case is unique and unlike the typical personal
16 injury case. (Doc. 41 at 5). The Odometer Act requires plaintiffs to not only show a
17 violation of prohibited conduct, but also requires plaintiffs to prove the defendant’s
18 fraudulent intent. 49 U.S.C. §§ 32710(a), 32709(d)(1)(B). *See also Hill v. Bergeron*
19 *Plymouth Chrysler*, 456 F. Supp. 417 (E.D. La. 1978).

20 Given that Defendant proceeded *pro se* for most of the case, Plaintiffs experienced
21 other difficulties. Indeed, the parties participated in a settlement conference, but the
22 conference was cut short when Defendant told Magistrate Judge Bibles he was going to
23 hire counsel. Defendant never hired counsel.¹ (Doc. 41 at 5). Defendant also provided no
24 documentation or evidence to support his claimed defenses. (*Id.* at 6). Despite Defendant’s
25 recalcitrance, Plaintiffs submit the time expended in the prosecution of this action was
26 modest because of counsel’s experience in odometer fraud litigation. (*Id.*) Defendant
27 failed to cite to a time entry in Plaintiffs’ fee request which he believes is unnecessary or

28 ¹ Defendant ultimately hired counsel two weeks after judgment was entered against him.
(Doc. 42).

1 unreasonable. Upon review of Plaintiffs' counsel's log, the Court finds the 47.1 hours
2 spent on the matter is a reasonable amount of time. (Doc. 41-1, Ex. A at 8-13).

3 **2. Novelty and Difficulty of the Questions Presented**

4 Plaintiffs argue an odometer fraud case is unique and requires a continual effort by
5 counsel to discover and uncover documentation and facts to support proof of the violation
6 and that the Defendant committed the violation with intent to defraud Plaintiffs. (Doc. 41
7 at 6). They further contend most lawyers fail to properly research the statute and the case
8 law, and risk proof of a violation without the necessary element of intent to defraud. (*Id.*)

9 Defendant argues Plaintiffs' counsel specializes in this type of litigation and
10 possesses extensive legal knowledge on how to advance these matters and, therefore, this
11 is not a novel case. (Doc 51. at 4). The Court finds Defendant's argument does not detract
12 from the difficulty of the matter. Plaintiffs contend the Odometer Act is not a strict liability
13 statute, or even one where the proof is simply negligence. (Doc. 41 at 6). The Court agrees
14 with Plaintiff that the requirement to prove intent to defraud makes these cases more
15 difficult to reach a successful conclusion. (*Id.*)

16 **3. Skill Requisite to Perform the Legal Service Properly**

17 Plaintiffs' counsel represents that the legal issues raised by odometer fraud cases
18 are sophisticated and require extensive knowledge of the law and where to find the
19 documentation to support the violation, and to prove the element of an intent to defraud.
20 (*Id.* at 7). He further argues because odometer fraud cases are frequently against small
21 dealerships, the documentation normally found in an established dealership is not available.
22 (*Id.*) The Court therefore finds an above average level of skill is required to perform the
23 legal service in these cases.

24 **4. Preclusion of Other Employment**

25 Plaintiffs' counsel represents the time spent on this case was not, and could not be,
26 spent at the same time on other cases. (*Id.* at 7). Plaintiffs' counsel limits his practice to
27 consumer protection law to help individuals who seek remedies under the Odometer Act.
28 (*Id.*)

1 **5. Customary Fee**

2 Plaintiffs’ counsel asserts that his hourly rate of \$475.00 is reasonable. (*Id.*) He
3 contends the customary fee charged in matters of this type is in line with Plaintiffs’
4 requested rate. He also cites the declaration of practicing Arizona consumer attorney
5 Richard Groves who confirmed that Plaintiffs’ rate of \$475.00 per hour is a reasonable rate
6 regularly charged in the District of Arizona (“District”) for consumer protection litigation
7 for an attorney of Plaintiffs’ counsel experience. (*Id.*) Plaintiffs’ counsel further notes
8 \$475.00 has been his standard hourly rate for consumer protection litigation since June of
9 2019. (*Id.* at 12).

10 The Court will reduce Plaintiffs’ counsel’s hourly rate to \$425.00 as has been
11 approved by judges in this District for similar actions. *See Baeza v. Compadres Auto Sales,*
12 *LLC*, CV16-1903-PHX-DMF (Apr. 26, 2017); *Thompson v. Qal Dalmi Auto Sale LLC, et*
13 *al.*, CV18-0478-PHX-JJT (Aug. 1, 2018); *Aguayo v. Transtyle, Inc., et al.*, CV 18-1174-
14 PHXSRB (Aug. 29, 2018); *King v. Union Leasing, Inc., et al.*, CV17-3281-PHX-DGC
15 (Oct. 2018); *Braunlich v. Arizona Road Trip Auto LLC, et al.*, CV 19-5906-PHX-DWL
16 (Aug. 21, 2020); *Elasfia v. Lara, et al.*, CV20-1666-PHX-SMMCDB (Mar. 3, 2021). Each
17 of these cases, including those cases adjudicated after 2019, awarded Plaintiffs’ counsel
18 hourly rates between \$400.00 and \$425.00. The Court will follow suit with the preceding
19 decisions and reduce Plaintiff’s hourly rate to \$425.00.

20 **6. Fixed or Contingent Fee**

21 Plaintiffs’ counsel represents that he worked on a contingency basis. (Doc. 54 at 6).

22 **7. Time Limitations Imposed by Client or Circumstances**

23 Plaintiffs’ counsel represents that neither the client nor the circumstances of the case
24 imposed any time limitations on this matter. (*Id.* at 9).

25 **8. Amount Involved and Results Obtained**

26 Plaintiffs received a total damage award of \$19,595.58, including actual damages
27 and punitive damages under the Odometer Act, and the ACFA. (*Id.* at 10). Plaintiffs’
28 counsel contends fee awards in civil rights and consumer protection matters regularly

1 exceed the plaintiffs' recovery. *See City of Riverside v. Rivera*, 477 U.S. 561, 580 (1986)
2 (awarding \$245,450 fees on a \$33,350 recovery, including 143 hours for trial preparation);
3 *Grant v. Martinez*, 973 F.2d 96, 101 (2nd Cir. 1992) (fee award of \$500,000 on \$60,000
4 settlement).

5 **9. Experience, Reputation, and Ability of the Attorneys**

6 According to Plaintiff's counsel, he is an experienced attorney who has been
7 practicing law for 31 years and has limited his practice to consumer protection matters.
8 (Doc. 41 at 11).

9 **10. Undesirability of the Case**

10 Plaintiffs' counsel argues consumer protection cases, including Odometer Act
11 claims, are undesirable because of the laborious task to obtain the requisite proof to win
12 the case. (*Id.* at 11). He further contends the uncertain results impose increased risks on
13 the practitioner. (*Id.*) Counsel's compensation is contingent on both the success of the
14 action and is deferred until after the end of the case—when (and if) the compensation is
15 collected from the defendant. (*Id.*) He contends, therefore, consumer protection cases are
16 not attractive cases to most legal practitioners. (*Id.*) The Court agrees.

17 **11. Nature and Length of the Professional Relationship with the Client**

18 Prior to this case, Plaintiff has never been represented by this counsel. (*Id.*)

19 **12. Awards in Similar Cases**

20 Plaintiff references several cases from the District for awards in similar actions. (*Id.*
21 at 12). In *King v. Union Leasing, Inc.*, the Court awarded plaintiff attorneys' fees of
22 \$ 14,917.50 under the Odometer Act. 2018 WL 5044660, at *3 (D. Ariz. Oct. 17, 2018).
23 In *Braunlich v. Arizona Road Trip Auto LLC, et al.*, the Court awarded plaintiff attorneys'
24 fees of \$ 4,335.00 at \$425.00 per hour for 10.2 hours under the Odometer Act. *Braunlich*
25 involved a default judgment and therefore required less hours. *Id.* This Court finds the
26 awarded rates from those cases to be comparable and instructive to the present one.
27 Moreover, as noted, the Court's adjusted \$425.00 hourly rate has been deemed reasonable
28 by other judges in this District.


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Overall, the Court finds that a reasonable rate for Plaintiffs' counsel is \$425.00 per hour and that the 47.1 hours spent are reasonable, particularly because this case proceeded to a bench trial. The Court will therefore award Plaintiff attorney fees of \$20,017.50. No further adjustment is necessary.

Accordingly,

IT IS HEREBY ORDERED that Plaintiffs' Motion for Attorney's Fees and Costs (Doc. 41) is **GRANTED** in part under the Odometer Act. The Court approves an attorney's fees and costs award in the amount of \$20,017.50, for which Defendant is liable.

Dated this 4th day of October, 2021.



Honorable Diane J. Humetewa
United States District Judge