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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

|                         |   |  |
|-------------------------|---|--|
| NAREK DAVTIAN,          | ) | Case No. CV 14-05417 DDP (Ex)            |
|                         | ) |  |
| Plaintiff,              | ) |  |
|                         | ) |  |
| v.                      | ) | <b>ORDER GRANTING PLAINTIFF'S MOTION</b> |
|                         | ) | <b>FOR ATTORNEY'S FEES IN PART AND</b>   |
| JAGUAR LAND ROVER NORTH | ) | <b>DENYING THE MOTION IN PART</b>        |
| AMERICA LLC,            | ) |  |
|                         | ) |  |
| Defendant.              | ) |  |
|                         | ) |  |
| _____                   | ) |  |

Presently before the court is Plaintiff's Motion for Attorney's Fees. Having considered the submissions of the parties and heard oral argument, the court grants the motion in part, denies the motion in part, and adopts the following Order.

**I. Background**

Plaintiff's Complaint, originally filed in state court and then removed to this court on the basis of diversity jurisdiction, alleged a single "lemon law" cause of action under California's Song-Beverly Consumer Warrant Act ("Song Beverly"). Cal. Civ. Code § 1790 et seq. Plaintiff alleged that a vehicle he had leased was

1 defective, and that Defendant failed to remedy the problems after  
2 several repair attempts. Ultimately, on the eve of trial, and with  
3 the assistance of this Court, the parties settled. The settlement  
4 agreement provided that Defendant would pay \$17,750, plus  
5 Plaintiff's "reasonably incurred attorney's fees, costs, and  
6 expenses pursuant to California Civil Code Section 1794(d) in an  
7 amount to be determined by the Court by motion." (Declaration of  
8 Erika N. Kavicky in Support of Motion, Ex. N at 5.) Plaintiff now  
9 moves for attorney's fees.

## 10 **II. Legal Standard**

11 In a diversity action, this court applies state law in the  
12 method of calculating attorneys' fees. Mangold v. California  
13 Public Utilities Commission, 67 F.3d 1470, 1478 (9th Cir. 1995).  
14 Song Beverly entitles a prevailing plaintiff to recover " a sum  
15 equal to the aggregate amount of costs and expenses, including  
16 attorney's fees based on actual time expended, determined by the  
17 court to have been reasonably incurred by the buyer in connection  
18 with the commencement and prosecution of [the] action." Cal. Civ.  
19 Code § 1794(d). The reviewing court must determine "whether under  
20 all the circumstances of the case the amount of actual time  
21 expended and the monetary charge being made for the time expended  
22 are reasonable." Nightingale v. Hyundai Motor Am., 31 Cal. App.  
23 4th 99, 104 (1994). Relevant circumstances include the complexity  
24 of the case, the skill demonstrated in prosecuting the case, and  
25 the results achieved. Id. If the time expended or the money  
26 charged are not reasonable, the reviewing court must award fees in  
27 a lesser amount than that sought. Id. The plaintiff bears the  
28 burden of demonstrating that the fees sought were allowable,

1 reasonably necessary to the conduct of the litigation, and  
2 reasonable in amount. Karapetian v. Kia Motors Am., Inc., 970  
3 F.Supp.2d 1032, 1036 (C.D. Cal. 2013).

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5 **III. Discussion**

6 The "lodestar" method is appropriate to fee motions pursuant  
7 to Section 1794(d). Doppes v. Bentley Motors, Inc., 174  
8 Cal.App.4th 967, 997 (2009). The court must first determine a  
9 figure based upon actual time spent and reasonable hourly  
10 compensation, then augment or reduce that figure by taking various  
11 factors into account, such as the complexity of the issues  
12 presented and the results achieved. Id. at 998; Nightingale, 31  
13 Cal.App.4th at 104. The court is satisfied that the rates sought  
14 by Plaintiff are reasonable in comparison with rates charged in the  
15 Los Angeles area for similar work. (Kavicky Decl. ¶¶ 38 ,40.)<sup>1</sup>  
16 Plaintiff contends that counsel expended 740.2 hours on this  
17 matter, for which they seek \$195,125.00 in fees.<sup>2</sup>

18 This Court may, in its discretion, reduce a fee award where  
19 the fees incurred were not reasonable, such as where a case is  
20 overlitigated. Karapetian, 970 F.Supp.2d at 1036. At first blush,  
21 that appears to be the case here. The issue here was not  
22 complicated, and involved a relatively simple vehicle suspension  
23 problem related to a compressor and a fuse. Nevertheless, eight

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25 <sup>1</sup> Although the Kavicky declaration includes information about  
26 rates charged in various communities throughout California, it does  
27 include examples of rates in the Los Angeles area sufficient to  
28 establish the reasonableness of Plaintiff's counsel's rates.

<sup>2</sup> Although counsel claim they expended 740.2 hours, they do  
not seek payment for 28.8 of those "no charged" hours. (Kavicky  
Decl. ¶ 6, Ex. A at 34.)

1 different Plaintiff's lawyers from the Bickel Firm worked on this  
2 case in some capacity.<sup>3</sup> Collectively, they billed enough hours to  
3 fully occupy one attorney for over four months.

4 Furthermore, although Plaintiff's counsel have provided  
5 billing records in connection with the instant motion, the  
6 credibility of counsel's representations regarding the necessity of  
7 the items billed and the time required to complete those tasks is  
8 weakened by the nature of counsel's fee arrangement with Plaintiff.

9 Counsel's standard retainer agreement requires clients such as  
10 Plaintiff to pay a flat fee of \$2,000, even though counsel will  
11 also recover for their actual expenses from defendants.

12 (Declaration of Richard Stuhlbarg, Ex. 17 at 1.) Counsel retain  
13 the discretion however, regardless of the client's wishes, "to  
14 refuse to submit to fee motion to the Court for determination."

15 (Id. at 2.) If a client, absent counsel's approval, accepts a  
16 settlement which includes a provision for submission of fees and  
17 costs to the court, "Law Firm shall have a lien on Client's  
18 recovery for the full amount of fees, costs, and expenses billed or  
19 advanced by Law Firm, regardless of the amount awarded by the  
20 Court." (Id. at 3.) If a client accepts a settlement offer that  
21 does not cover counsel's costs, the client "will remain obligated  
22 to pay Law Firm for all unrecovered costs and expenses." (Id. at  
23 2.) Thus, despite counsel's representations that they perform  
24 contingent work, that does not appear to be the case. Counsel's

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25  
26 <sup>3</sup> Although eight different attorneys worked on this case for  
27 Plaintiff, Plaintiff's counsel's firm "no charged" all of the time  
28 billed by two of those attorneys. Plaintiff seeks fees for 711.4  
hours billed by six attorneys. Nearly 75 percent of those hours  
were billed by attorney Isaac Agyeman. (Kavicky Decl., Ex. C.)

1 firm's retainer agreement is structured in a way that guarantees  
2 that counsel will be paid, either by a defendant or by the client,  
3 for all costs and fees. Such an arrangement creates obvious  
4 disincentives to litigate efficiently, let alone settle a case in  
5 its early stages.

6 The court's review of Plaintiff's billing records is further  
7 complicated by counsel's block-billed entries, particularly those  
8 of attorney Isaac Agyeman. See, e.g., Gordillo v. Ford Motor Co.,  
9 No. 11-CV-01786 MJS, 2014 WL 2801243 at \*3 (reducing by half vague,  
10 block-billed entry). Counsel's entries, in some cases, lump  
11 together over a dozen tasks, some as vague or seemingly unnecessary  
12 as "Receive e-mail from opposing counsel regarding potential  
13 settlement." (Kavicky Decl., Ex. A at 15, 23.) The court finds  
14 40.6 of attorney Agyeman's hours impossible to verify due to  
15 vagueness and the block-billed nature of the entries. The court  
16 further finds 49.2 of the hours billed by attorney Agyeman as  
17 unnecessary or duplicative, many of them involving redundant  
18 meetings with other lawyers and, in particular, excessive time  
19 spent opposing motions in limine and preparing for oral argument.  
20 The court also finds 3.2 hours billed by attorney Kyle Fellenz for  
21 meeting with other lawyers to be duplicative and unnecessary.  
22 Attorney Carol McBirney also billed 20.2 unjustifiable hours for  
23 trial preparation, particularly in light of the simplicity of the  
24 issues in this case, with which attorney Agyeman was sufficiently  
25 well-versed to try the case unaided. Counsel's paralegals also  
26 appear to have spent an unreasonable amount of time scanning  
27 documents, meriting a 2.1 hour decrease in the paralegal time  
28 billed.

1           Lastly, the court finds it appropriate to reduce the fees  
2 awarded for attorney travel time. Although the court would  
3 typically award fees for attorney travel time, Plaintiff has  
4 provided no explanation why he could not obtain counsel in the Los  
5 Angeles area, and instead retained a San Diego-based firm. Indeed,  
6 Plaintiff's own submissions establish that there are experienced  
7 lemon law lawyers in the Los Angeles area who would not have had to  
8 travel such great distances to attend court proceedings and vehicle  
9 inspections. Accordingly, the court reduces the fee award by  
10 \$8,500.<sup>4</sup> All told, the court finds that Plaintiff has failed to  
11 demonstrate that \$37,783.90 of the \$195,125.00 sought was  
12 reasonably incurred. The court therefore awards Plaintiff  
13 \$157,341.10 in fees and \$29,373.02 in costs, for a total of  
14 \$186,714.12.

15           Defendant submits that a total award of approximately \$20,000  
16 is appropriate. (Opposition at 20.) As noted above, the issues  
17 here were not complex. And, as Defendant points out, Plaintiff's  
18 \$17,750 recovery was hardly an "outstanding result." (Mot. at  
19 4:2.) Contrary to Plaintiff's counsel's representation, the  
20 settlement did not entitle Plaintiff to retain possession of a  
21 \$65,000 vehicle. (Mot. at 4.) Although resolution of some lemon  
22 law suits may allow some plaintiffs to keep their vehicles, the  
23 vehicle at issue here was leased. Indeed, Plaintiff's lease

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27           <sup>4</sup> The court will also reduce the costs awarded by \$3,236.59  
28 for travel-related costs that would not have been incurred by local  
counsel.

1 payments on the allegedly defective vehicle significantly exceeded  
2 the amount of his monetary recovery.<sup>5</sup>

3 Defendant, however, bears some responsibility for protracting  
4 this matter. The parties appear to have been close to a settlement  
5 as early as August 2015, on financial terms not significantly  
6 different from those ultimately reached. At that point,  
7 Plaintiff's fees were less than 65% of those ultimately sought.  
8 Defendant, however, refused to agree to fairly standard "prevailing  
9 party" language, apparently because it wished to preserve an  
10 argument that Plaintiff is not entitled to any attorney's fees at  
11 all. (Stuhlbarg Decl., Exs. 32, 35.) Although the parties  
12 ultimately agreed that Plaintiff had met the requirements of  
13 California Civil Code Section 1794(d), the delay in agreeing to  
14 that term cannot be laid solely at Plaintiff's feet.<sup>6</sup> Furthermore,  
15 although Defendant asks that the court award fees for only one  
16 hundred hours of work (Opp. at 20:21), the court learned at oral  
17 argument that Defendant's counsel themselves billed approximately  
18 600 hours on this matter. In light of that fact, the parties'  
19 joint responsibility for prolonging these proceedings, and the  
20 totality of the circumstances, an award significantly higher than  
21 that suggested by Defendants is appropriate.

#### 22 **IV. Conclusion**

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24 <sup>5</sup> For these reasons, the court declines to apply a positive  
25 multiplier to the award. See, e.g. Ketchum v. Moses, 24 Cal. 4th  
26 1122, 1139 (2001) ("[A] trial court should award a multiplier for  
27 exceptional representation only when the quality of representation  
far exceeds the quality of representation that would have been  
provided by an attorney of comparable skill and experience . . .  
").

28 <sup>6</sup> The court notes, however, that the nature of Plaintiff's fee  
arrangement with counsel may well have affected his calculus.

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For the reasons stated above, Plaintiff's motion is GRANTED in part and DENIED in part. The court awards Plaintiff \$157,341.10 in fees and \$29,373.02 in costs, for a total of \$186,714.12.

IT IS SO ORDERED.

Dated: March 3, 2017



DEAN D. PREGERSON  
United States District Judge