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8 **United States District Court**  
9 **Central District of California**  
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11 APRIL K. JAMESON,  
12 Plaintiff,  
13 v.  
14 FORD MOTOR CO. et al.,  
15 Defendants.

Case No. 2:18-cv-01952-ODW-(ASx)

**ORDER GRANTING IN PART,  
PLAINTIFF JAMESON MOTION  
FOR ATTORNEYS' FEES [32]**

16 **I. INTRODUCTION**

17 On February 2, 2018, Plaintiff April K. Jameson (“Jameson”) filed suit against  
18 Defendant Ford Motor Co. (“Ford”) in the Superior Court of Los Angeles County for  
19 violation of California’s Song-Beverly Consumer Warranty Act. (Not. of Removal  
20 Ex. A (“Compl.”), ECF No. 1-1.) Subsequently, Ford removed the case to federal  
21 court, (Not. of Removal (“Removal”), ECF No. 1) and over a year later, parties filed a  
22 joint notice of settlement. (Not. of Settlement, ECF No. 20.) Plaintiff now moves for  
23 attorneys’ fees and costs in the amount of \$29,406.21. For the reasons discussed  
24 below, the Court **GRANTS IN PART** Plaintiff’s Motion for Attorney’s Fees  
25 (“Motion”). (Mot. for Att’y Fees (“Mot.”), ECF No. 32.)<sup>1</sup>  
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28 <sup>1</sup> After carefully considering the papers filed in support of and in opposition to the Motions, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

1                                   **II. FACTUAL AND PROCEDURAL BACKGROUND**

2           On August 22, 2013, Jameson purchased a new 2013 Ford Fusion for  
3 \$43,490.16. (Mot. 3.) After three years and three months of owning the vehicle and  
4 driving it 53,181 miles, Jameson began experiencing problems with the engine.  
5 (Mot. 3.) Jameson took the vehicle, while still within warranty, to a Ford-authorized  
6 repair facility after the vehicle began to shake and would not accelerate. (Mot. 3.)  
7 She also felt a loss of power and believed the vehicle would stall. (Mot. 3.) At that  
8 time, the repair technicians said they were unable to duplicate her concern. (Mot. 3.)  
9 She returned five weeks later with a similar concern and the technicians replaced the  
10 fuel low pressure sensor. (Mot. 3.) Although she still felt the vehicle lacked power,  
11 technicians made no further repairs. (Mot. 3.) Within two months, Jameson returned  
12 to the authorized facility because the “check engine” light was illuminated and the  
13 revolutions per minute meter intermittently fluctuated at idle. (Mot. 3.) The  
14 technicians replaced the faulty purge valve, but three weeks later Jameson felt her  
15 vehicle shake and shut off. (Mot. 3.) Even after jump starting the vehicle, it stopped  
16 operating after moving five feet. (Mot. 3.) To resolve this matter, the technicians  
17 replaced the battery. (Mot. 4.) During this visit, the Technicians attempted to address  
18 two recalls, but parts were only available for one of the recalls. (Mot. 4.) Even after  
19 five visits to the repair facility in four months, Jameson’s problems with the vehicle  
20 remained unresolved. (Mot. 4.)

21           On April 10, 2017 and twice thereafter, Jameson contacted Ford customer  
22 service and requested that Ford repurchase her vehicle. (Mot. 4.) Jameson never  
23 received a response. (Mot. 4.) With the assistance of counsel, she filed suit against  
24 Ford on February 2, 2018. (*See Compl.*) On October 2, 2018, counsel for Jameson  
25 propounded discovery requests to Ford. (Mot. 4.) In January 2019, counsel for  
26 Jameson made additional discovery requests and deposed Ford’s “PMK.” (Mot. 5.)  
27 On or about January 30, 2019, Ford served Jameson with an Offer of Judgment  
28 pursuant to Federal Rules of Civil Procedure (“Rule”) 68 in the amount of

1 \$107,070.00. (Mot. 5.) On February 12, 2019, Jameson accepted their offer and she  
2 now moves for her attorney’s fees. (Mot. 5.)

### 3 III. LEGAL STANDARD

4 “State law governs attorney fees in diversity cases.” *Negrete v. Ford Motor*  
5 *Co.*, No. ED.18-cv-1972, 2019 WL 4221397, at \*2 (C.D. Cal. June 5, 2019) (citing  
6 *Riordan v. State Farm Mut. Auto. Ins. Co.*, 589 F.3d 999, 1004 (9th Cir. 2009) (“In a  
7 diversity case, the law of the state in which the district court sits determines whether a  
8 party is entitled to attorney fees, and the procedure for requesting an award of attorney  
9 fees is governed by federal law”)).

10 The California Song-Beverly Act authorizes an award of costs and expenses to  
11 plaintiffs prevailing in their claims pursuant to the act. Cal. Civ. Code § 1794(d).  
12 Plaintiffs may recover “a sum equal to the aggregate amount of costs and expenses,  
13 including attorney’s fees based on actual time expended, determined by the court to  
14 have been reasonably incurred by the buyer in connection with the commencement  
15 and prosecution of such action.” *Id.* However, the “prevailing buyer has the burden  
16 of showing that the fees incurred were allowable, were reasonably necessary to the  
17 conduct of the litigation, and were reasonable in amount.” *Morris v. Hyundai Motor*  
18 *Am.*, 41 Cal. App. 5th 24, 34, (Ct. App. 2019) (collecting case) (internal quotation  
19 marks omitted).

20 In determining the amount of attorney’s fees award under § 1794(d), a court  
21 must utilize the “lodestar” method of calculating the award, accomplished by  
22 multiplying the number of hours reasonably expended on the litigation by a reasonable  
23 hourly rate. *Morris*, 41 Cal. App. 5th at 34 (citing *Meister v. Regents of Univ. of*  
24 *California*, 67 Cal. App. 4th 437, 448–49 (1998) (“the California Supreme Court  
25 intended its lodestar method to apply to a statutory attorney’s fee award”)). Section  
26 1794 requires a trial court to “ascertain whether under all the circumstances of the  
27 case the amount of actual time expended and the monetary charge being made for the  
28 time expended are reasonable.” *Id.* Courts may grant an upward or downward

1 departure based on (1) the complexity of the case and procedural demands, (2) the  
 2 skill exhibited and results achieved, (3) the extent to which the nature of the litigation  
 3 precluded other employment by the attorneys, and (4) the contingent nature of the fee  
 4 award. *Morris*, 41 Cal. App. 5th at 34; *Negrete*, 2019 WL 4221397, at \*2. If the  
 5 court finds the time expended or the amount requested are not reasonable, it may  
 6 award attorney fees in a lesser amount. *Morris*, 41 Cal. App. 5th at 34.

7 **IV. DISCUSSION**

8 Jameson moves for costs in the amount of \$4,866.21, attorney’s fees in the  
 9 amount of \$16,360.00 and a lodestar modifier in the amount of \$8,180.00, totaling to  
 10 \$29,406.21. (Mot. 2.) Ford does not dispute the amount in costs. (Opp’n to Mot.  
 11 (“Opp’n”) 11, ECF No. 34.) Instead, Ford argues that the attorney’s fees are  
 12 unreasonable and asserts that the Court should grant at most \$7,500.00 in attorney’s  
 13 fee. (Opp’n 11.) Since parties do not dispute the costs, the Court **GRANTS** an award  
 14 of \$4,866.21 in costs. The Court now considers the reasonableness of the fees using  
 15 the lodestar method.

16 **A. Lodestar Analysis**

17 Plaintiff had six attorneys billing on this matter at the following rates and for the  
 18 following number of hours:

19	SBM	Managing Partner	\$550	3.7 hours
20	ALM	Partner	\$350	9.9 hours
21	KSC	Associate	\$375	5.7 hours
22	MER	Associate	\$325	5.4 hours
23	DD	Associate	\$275	7.9 hours
24	MEH	Discovery Attorney	\$350	13.7 hours

25 (Decl. of Steve Mikhov, Ex. A (“Billing Records”) 3, ECF No. 32-2.) Accordingly,  
 26 the lodestar proffered by Plaintiff is \$16,360.00.

1           The Court reviewed the Billing Records and found that Plaintiff’s counsel billed  
2 for work it did not do, such as “prepare for and appear at hearing on Motion for  
3 Attorney’s Fees (travel included)” and other administrative tasks such as “review and  
4 audit billing.” (Billing Records 3.) Accordingly, the Court strikes those hours in the  
5 bill. *See Christian Research Inst. v. Alnor*, 165 Cal. App. 4th 1315, 1320 (2008)  
6 (reducing the award by discounting hours billed); *accord Hanna v. Mercedes-Benz*  
7 *USA, LLC*, 36 Cal. App. 5th 493, 507 (2019) (“[w]hen the trial court substantially  
8 reduces a fee or cost request, we infer the court has determined the request was  
9 inflated”); *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001) (“trial courts must  
10 carefully review attorney documentation of hours expended”).

11           Next, the Court assesses whether the hourly rate charged by counsel is  
12 reasonable. “[T]he reasonable value of attorney services is variously defined as the  
13 hourly amount to which attorneys of like skill in the area would typically be entitled.”  
14 *See Ketchum*, 24 Cal. 4th at 1133 (internal quotation marks omitted). Counsel may  
15 present evidence of hourly rates state and federal courts had previously awarded him  
16 or others for comparable work. *Goglin*, 4 Cal. App. 5th at 473. Counsel should  
17 proffer evidence of a reasonable hourly rate relative to the normal rate for attorneys  
18 “conducting noncontingent litigation of the same type.” *Ketchum*, 24 Cal. 4th at 1133.  
19 However, the Court is “not obliged to accept this evidence as conclusive of the  
20 appropriate hourly rate.” *Goglin*, 4 Cal. App. 5th at 474.

21           Plaintiff’s counsel provided declarations showing that attorneys in similar cases  
22 charged a comparable hourly rate. (*See* Mikhov Decl., ¶ 54.) Additionally, Plaintiff  
23 contends that counsel has been awarded attorneys’ fees at similar rates under the  
24 Song-Beverly Act. (*See, id.* at Exs. G–HH.) Furthermore, Plaintiff asserts that the  
25 hourly rates are reasonable because this case required a range of specialized  
26 knowledge including: (1) an understanding of the full scope of consumer protection  
27 laws, which are “highly nuanced”; (2) knowledge of the intricacies of automobiles and  
28 the lexicon associated with them, as well as knowledge concerning how to investigate

1 issues with automobiles; and (3) knowledge of auto manufacturers’ and dealers’  
2 policies and protocols for repairing vehicles and complying with their legal  
3 obligations. (Mot. 10.) Plaintiff also argues the firm’s skill justifies the amount of  
4 fees requested, noting that Plaintiff ultimately recovered \$107,070.00 in damages,  
5 which is almost two-and-a-half times the vehicle’s purchase price. (Mot. 12.)

6 Defendant criticizes Plaintiff’s attorneys for comparing their hourly rates to  
7 those of other lawyers who work on a contingency basis. (Opp’n 6.) Defendant  
8 argues the Court should calculate reasonable attorney’s fees using a “blended rate” of  
9 \$250 an hour for time spent reasonably and necessarily spent on the case. (Opp’n 6.)

10 Having considered the range of rates presented in the declaration and the level  
11 of skill and advocacy required for the case at issue. The Court deems the following  
12 hourly rates appropriate:

13	SBM	Managing Partner	\$500	3.3 hours
14	ALM	Partner	\$350	9.9 hours
15	KSC	Associate	\$350	5.7 hours
16	MER	Associate	\$250	5.4 hours
17	DD	Associate	\$250	7.9 hours
18	MEH	Discovery Attorney	\$350	9.7 hours

19 *See id.* (appellate court determining the trial court did not abuse its discretion in  
20 basing its fee award on an hourly rate lower than the rate requested). Accordingly, the  
21 Court recalculates the lodestar award to \$13,830.

22 **B. Lodestar Multiplier**

23 The Court now evaluates whether a lodestar multiplier should be awarded and  
24 considers: (1) the complexity of the case and procedural demands, (2) the skill  
25 exhibited and results achieved, (3) the extent to which the nature of the litigation  
26 precluded other employment by the attorneys, and (4) the contingent nature of the fee  
27 award. *See Morris*, 41 Cal. App. 5th at 34.

1 Plaintiff argues a 0.5 multiplier is appropriate due to the “risk of taking this case  
2 on a contingent fee basis and the delay in payment since February 2018.” (Mot. 17.)  
3 According to Plaintiff, Ford “dragged this case out for nearly one year before  
4 submitting a reasonable settlement offer.” (Mot. 17.)

5 Defendant argues for a negative multiplier reducing the award of attorneys’ fees  
6 from the base Lodestar amount. (Opp’n 9.) Defendant argues that a negative  
7 multiplier is warranted because (1) there was no novelty in this claim; (2) the litigation  
8 did not preclude other employment; and (3) there was very little contingent risk once  
9 Ford served the first Offer of Judgment. (Opp’n 9.) As the Court considered the  
10 Defendant’s arguments in determining the reasonable hourly rate, the Court does not  
11 apply a negative multiplier. *See Goglin*, 4 Cal. App. 5th at 473 (declining to lower the  
12 fee award).

13 Furthermore, the Court does not find that Plaintiff’s counsel merits a lodestar  
14 multiplier. The Court does not find any issues that were particularly novel or complex  
15 nor any special skill employed. Parties exchanged discovery, Plaintiff’s counsel took  
16 one deposition and subsequently, Defendant made an offer. (*See Opp’n*)  
17 Furthermore, Plaintiff does not forgo any other employment for this case and in fact  
18 seems to engage in over fifty similar matters at once. (*See Decl. of Steve Mikhov*  
19 ¶ 25.) Accordingly, the Court does not find the first two factors weigh in favor of an  
20 upward departure.

21 Additionally, a contingent fee agreement only favors an upward departure when  
22 there is an “uncertainty of prevailing on the merits and of establishing eligibility for  
23 the award.” *Robertson v. Fleetwood Travel Trailers of California, Inc.*, 144 Cal. App.  
24 4th 785, 819 (2006). Here, the Song-Beverly Act statutorily authorizes an award of  
25 attorney’s fees to a party prevailing on its claim and Plaintiff’s counsel has settled  
26 over fifty similar cases in its client’s favor. Given pattern and practice of Plaintiff’s  
27 counsel’s work, the Court does not find that counsel reasonably faced an uncertainty  
28

1 of prevailing on the merits. Thus, this factor does not persuasively weigh in favor of  
2 an upward departure.

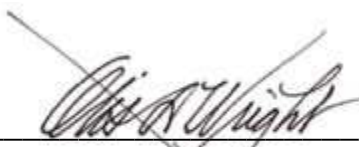
3 While counsel obtained a positive result for Plaintiff, the Court declines to apply  
4 a Lodestar multiplier in light of all the circumstances. The Court therefore **GRANTS**  
5 attorney's fees in the amount of \$13,830.00. Accordingly, the Court awards  
6 \$13,830.00 in attorney's fees and \$4,866.21 in costs and expenses for a total award of  
7 \$18,696.21.

8 **V. CONCLUSION**

9 For the reasons discussed above, the Court **GRANTS IN PART** Plaintiff's  
10 Motion for Attorneys' Fees and **AWARDS \$18,696.21**. (ECF No. 32.)

11  
12 **IT IS SO ORDERED.**

13  
14 December 16, 2019

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17 **OTIS D. WRIGHT, II**  
18 **UNITED STATES DISTRICT JUDGE**