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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARLA S. SEKULA,

Plaintiff,

v.

FCA US LLC, a Delaware Limited
Liability Company, and DOES 1 through
10 inclusive,

Defendants.

No. 1:17-cv-00460-DAD-JLT

ORDER GRANTING PLAINTIFF’S MOTION
FOR ATTORNEYS’ FEES, COSTS, AND
EXPENSES IN PART

(Doc. No. 88)

This matter came before the court on May 7, 2019 for hearing on plaintiff Carla Sekula’s motion for attorneys’ fees, costs, and expenses. (Doc. No. 88.) Attorney Sepehr Daghighian appeared telephonically on behalf of plaintiff, and attorney Leon Roubinian appeared telephonically on behalf of defendant FCA UC LLC (“FCA”). The court has considered the parties’ briefs and oral arguments and, for reasons set forth below, will grant plaintiff’s motion in part.

BACKGROUND

On June 20, 2016, plaintiff commenced this action against FCA by filing suit in Tulare County Superior Court. (See Doc. No. 1-1.) Plaintiff alleged that a new Dodge Durango that she purchased in 2013 was delivered to her with serious defects and nonconformities to warranty. (*Id.* at 5.) The complaint asserted causes of action for: (1) breaches of express and implied

1 warranties, in violation of the Song-Beverly Act, California Civil Code § 1790 *et seq.*; and
2 (2) fraudulent inducement or concealment. (*Id.* at 25–29.) On March 20, 2017, FCA removed the
3 action to this federal court. (Doc. No. 1.) Thereafter, a February 26, 2019 trial date was set.
4 (Doc. No. 10.)

5 On February 25, 2019, the parties informed the court that they had reached a settlement.
6 (Doc. No. 78.) Pursuant to Federal Rule of Civil Procedure 68, FCA offered to allow judgment to
7 be entered against it and in favor of plaintiff in the sum of \$142,000.00 to be paid to plaintiff.
8 (Doc. No. 79 at 2.) Plaintiff accepted the Rule 68 offer. (*Id.* at 4.) The offer noted that FCA
9 would provide plaintiff with “attorney’s fees based on actual time reasonably incurred in
10 connection with . . . this action . . . , to be determined by the court if the parties cannot agree.” (*Id.*
11 at 2.)

12 Apparently unable to agree on the appropriate amount of attorney’s fees to be paid to
13 plaintiff’s counsel, on April 8, 2019, plaintiff filed the pending motion for attorneys’ fees, costs,
14 and expenses. (Doc. No. 88.) On April 23, 2019, FCA filed its opposition to the pending motion,
15 and on April 30, 2019, plaintiff filed her reply thereto. (Doc. Nos. 89, 90.)

16 LEGAL STANDARD

17 Under California’s Song-Beverly Act, “if [a] buyer prevails in an action . . . , the buyer
18 shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate
19 amount of costs and expenses, including attorney’s fees based on actual time expended,
20 determined by the court to have been reasonably incurred by the buyer in connection with the
21 commencement and prosecution of such action.” Cal. Civ. Code. § 1794(d). “The plain wording
22 of the statute requires the trial court to base the fee award upon actual time expended on the case,
23 as long as such fees are *reasonably* incurred—both from the standpoint of time spent and the
24 amount charged.” *Robertson v. Fleetwood Travel Trailers of CA, Inc.*, 144 Cal. App. 4th 785,
25 817 (2006).

26 It requires the trial court to make an initial determination of the actual
27 time expended; and then to ascertain whether under all the
28 circumstances of the case the amount of actual time expended and
the monetary charge being made for the time expended are
reasonable. These circumstances may include, but are not limited to,

1 factors such as the complexity of the case and procedural demands,
2 the skill exhibited and the results achieved. If the time expended or
3 the monetary charge being made for the time expended are not
4 reasonable under all the circumstances, then the court must take this
5 into account and award attorney fees in a lesser amount. A prevailing
6 buyer has the burden of showing that the fees incurred were
7 allowable, were reasonably necessary to the conduct of the litigation,
8 and were reasonable in amount.

9 *Nightingale v. Hyundai Motor Am.*, 31 Cal. App. 4th 99, 104 (1994) (citation and internal
10 quotation marks omitted); *see also Goglin v. BMW of North America, LLC*, 4 Cal. App. 5th 462,
11 470 (2016). Under a contingent fee arrangement, “a prevailing buyer represented by counsel is
12 entitled to an award of reasonable attorney fees for time reasonably expended by his or her
13 attorney.” *Nightingale*, 31 Cal. App. 4th at 105 n.6.

14 “The determination of what constitutes a reasonable fee generally begins with the
15 ‘lodestar,’ i.e., the number of hours reasonably expended multiplied by the reasonable hourly
16 rate.” *Graciano v. Robinson Ford Sales, Inc.*, 144 Cal. App. 4th 140, 154 (2006) (quoting *PLCM
17 Group, Inc. v. Drexler*, 22 Cal.4th 1084, 1095 (2000)). The court will apply the lodestar method
18 to the Song-Beverly Act because “the statutory language of section 1794, subdivision (d), is
19 reasonably compatible with a lodestar adjustment method of calculating attorney fees, including
20 use of fee multipliers.” *Robertson*, 144 Cal. App. 4th at 818; *see also Warren v. Kia Motors
21 America, Inc.*, 30 Cal. App. 5th 24, 35 (2018). Moreover, because “[the California] Supreme
22 Court has held that the lodestar adjustment method is the prevailing rule for statutory attorney fee
23 awards to be applied in the absence of clear legislative intent to the contrary, [the lodestar
24 adjustment method] . . . is applicable to attorney fee awards under section 1794, subdivision (d).”
25 *Robertson*, 144 Cal. App. 4th at 818–19 (citing *Ketchum v. Moses*, 24 Cal. 4th 1122, 1135–36
26 (2001); *see also Warren*, 30 Cal. App. at 35–36.).

27 [T]he lodestar is the basic fee for comparable legal services in the
28 community; it may be adjusted by the court based on factors
including, as relevant herein, (1) the novelty and difficulty of the
questions involved, (2) the skill displayed in presenting them, (3) the
extent to which the nature of the litigation precluded other
employment by the attorneys, (4) the contingent nature of the fee
award. The purpose of such adjustment is to fix a fee at the fair
market value for the particular action. In effect, the court determines,
retrospectively, whether the litigation involved a contingent risk or

1 required extraordinary legal skill justifying augmentation of the
2 unadorned lodestar in order to approximate the fair market rate for
such services.

3 * * *

4 As we [have] explained . . .: “[a] contingent fee contract, since it
5 involves a gamble on the result, may properly provide for a larger
compensation than would otherwise be reasonable.’”

6 *Ketchum*, 24 Cal. 4th at 1132 (internal citation omitted).

7 If a fee request is opposed, “[g]eneral arguments that fees claimed are excessive,
8 duplicative, or unrelated do not suffice.” *Etcheson v. FCA US LLC*, 30 Cal. App. 5th 831, 848
9 (2018) (quoting *Premier Med. Mgmt. Sys. v. Cal. Ins. Guarantee Assoc.*, 163 Cal. App. 4th 550,
10 564 (2008)). Instead, the opposing party must demonstrate that the hours claimed are duplicative
11 or excessive. *Premier Med. Mgmt. Sys.*, 163 Cal. App. 4th at 562, 564; *see also First American*
12 *Title Ins. Co v. Spanish Inn, Inc.*, 239 Cal. App. 4th 598, 606 (2015) (“Although defendants
13 argued to the trial court that the ‘amount claimed for attorneys fees is not reasonable,’ defendants
14 did not respond to First American’s evidence with evidence of their own, as required.”); *Gorman*
15 *v. Tassajara Dev. Corp.*, 178 Cal. App. 4th 44, 101 (2009) (“The party opposing the fee award
16 can be expected to identify the particular charges it considers objectionable.”).

17 With this guidance in mind, the court turns to consider plaintiff’s pending motion.¹

18 ANALYSIS

19 Plaintiff, as the auto buyer who prevailed in this suit, is entitled to reasonably incurred
20 attorneys’ fees, costs, and expenses. *See* Cal. Civ. Code § 1794(d). Here, plaintiff seeks: (1) an
21 award of attorneys’ fees in the amount of \$67,627.50; (2) a lodestar multiplier of 0.5, in the
22 amount of \$33,813.75; and (3) an award of actual costs and expenses incurred in the amount of
23 \$22,488.21. (Doc. No. 88-1 at 7.) Plaintiff seeks a total award of \$123,929.46. (*Id.*) FCA
24 contends that the lodestar requested by plaintiff is unreasonable and that an upward multiplier is

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27 ¹ Each party objects to evidence presented by the other in support of or in opposition to the
28 pending motion. The court has read and considered these boilerplate evidentiary objections and,
to the extent that the court considers any such evidence to which an objection has or objections
have been made, those objections are overruled.

1 not warranted in this case. (Doc. No. 89 at 6.) FCA also objects to various costs and expenses
2 for which plaintiff seeks reimbursement. (Doc. No. 87.)

3 **A. Attorneys' Fees Request**

4 Plaintiff was represented by two law firms in this matter: the Knight Law Group ("Knight
5 Law"), who commenced this action on plaintiff's behalf and provided legal services leading up to
6 trial, and Hackler Daghighian Martino & Novak, P.C. ("HDMN"), who associated into this action
7 to provide services relating to and in anticipation of the trial of this matter. (Doc. No. 88-1 at 14.)
8 Knight Law billed a total of \$38,652.50 and HDMN billed a total of \$28,975.00. (*Id.*)

9 1. Number of Hours to be Awarded

10 The billing records indicate that Knight Law attorneys expended 103.5 billable hours on
11 this action and that HDMN attorneys expended 79.25 billable hours on this action. (Doc. Nos.
12 88-2 at 28; 88-3 at 8–12.) A total of ten Knight Law attorneys and a total of three HDMN
13 attorneys billed in this matter. (Doc. Nos. 88-2 at 28; 88-3 at 8–12.)

14 FCA contends that the number of hours billed by both law firms are unreasonable. First,
15 FCA argues that it made two offers to settle this matter—one in July 2016 and one in January
16 2019—and therefore any attorneys' fees incurred by plaintiff after either offer were not
17 "reasonably incurred" because plaintiff could have accepted either offer and resolved this matter,
18 instead of having her attorneys expend additional hours on it. (Doc. No. 89 at 4–5.) Second,
19 FCA contends plaintiff's use of "two firms and a total of 13 attorneys" resulted in an "inherent
20 duplication of effort . . . , the cost of which should not be borne by Defendant." (*Id.* at 7)
21 (emphasis omitted). FCA therefore asks the court to "exclude either the \$38,652.50 incurred by
22 [Knight Law], or the \$28,975.00 incurred by HDMN." (*Id.*) (emphasis omitted). Third, FCA
23 asks the court to reduce the total number of hours attributed to HDMN lawyers due to the firm's
24 practice of billing in quarter-hour increments. (*Id.* at 9.) The court addresses each of FCA's
25 arguments in turn.

26 With respect to whether attorney time expended after FCA's July 2016 and January 2019
27 settlement offers to plaintiff are unreasonable, the court first notes that FCA has failed to provide
28 the court with authority that supports its position that plaintiff not accepting those offers requires

1 discounting the hours expended in litigating this matter after those offers were made. As already
2 discussed, the law requires this court to first determine the actual amount of time expended by the
3 attorneys in this matter, and to then determine whether such an investment of time was
4 reasonable. Moreover, the court finds that it appears plaintiff was later shown to be justified in
5 rejecting the July 2016 and January 2019 settlement offers because her “ultimate settlement [of
6 \$142,000.00] exceeded FCA’s prior January 30, 2019 Rule 68 Offer by \$42,000.00, and its July
7 2016 section 998 offer by \$79,000.00.” (Doc. No. 90 at 7.) The court notes that neither of FCA’s
8 earlier offers accounted for the civil penalties available under the Song-Beverly Act, which was a
9 remedy that plaintiff sought in this action. Indeed, plaintiff’s attorney Steve Mikhov of Knight
10 Law avers that his firm has accepted early settlement offers from FCA in other cases where such
11 offers recognized the allegedly willful conduct of FCA in selling defective vehicles to California
12 consumers. (Doc. Nos. 90 at 10; 90-1 at 2, 5–48.)

13 FCA also contends that \$6,118.75—the amount in fees incurred by HDMN after having
14 received FCA’s February 21, 2019 Rule 68 offer—should be discounted because plaintiff’s
15 counsel “did not even review and analyze this offer until February 25, 2019.” (Doc. No. 89 at 8.)
16 The court is not persuaded by this argument. HDMN’s billing records indicate that HDMN
17 “[r]eceive[d] and review[ed] [the] defense Rule 68 Offer of Judgment” on February 21, 2019 and
18 “forward[ed] the same to co-counsel and client.” (Doc. No. 88-3 at 11.) Thus, the Rule 68 offer
19 was served on and received by plaintiff a mere five days before the date set for trial, February 26,
20 2019.² The court will not fault HDMN for continuing to prepare for trial while plaintiff
21 considered defendant’s February 21 offer, especially because that offer was essentially made on
22 the eve of trial, and a prudent attorney must continue to prepare for trial until and unless the client
23 confirms that they wish to accept a settlement offer.

24 Next, defendant argues that plaintiff’s employment of two law firms and thirteen lawyers
25 to litigate this matter was unreasonable. (Doc. No. 89 at 7, 11.) Here, too, FCA has failed to
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27 ² Despite the fact that a Rule 68 offer must be served at least fourteen days before the date set for
28 trial, the parties here stipulated to waiving the fourteen-day service period required by the rule.
(*See* Doc. No. 82.)

1 provide any authority in support of its position that solely based upon the employing of two law
2 firms who assign multiple lawyers to a case, this court could reduce the number of hours
3 expended when considering an award for attorneys' fees. To the contrary, it has been
4 "recognized that 'the participation of more than one attorney does not necessarily constitute an
5 unnecessary duplication of effort.'" *McGrath v. County of Nevada*, 67 F.3d 248, 255 (9th Cir.
6 1995) (citing *Kim v. Fujikawa*, 871 F.2d 1427, 1435 n.9 (9th Cir.1989)). Moreover, FCA has not
7 identified any entries in Knight Law and HDMN's billings that indicate a duplication of effort.
8 FCA merely contends that some of HDMN's time entries—e.g., 1.5 hours for reviewing repair
9 orders and parties' document production; 0.5 hours for telephonic conference with plaintiff; and
10 1.5 hours to review the case file—are "[e]xamples of inherent duplication by HDMN." (Doc. No.
11 89 at 7.) However, the fact that lawyers at HDMN had to review files and get up to speed on the
12 case to prepare it for trial does not constitute a duplication of effort since they were brought into
13 the case to represent plaintiff at trial and necessarily had to review files to do so.

14 Finally, FCA contends that HDMN's total hours billed should be reduced across-the-
15 board, because the firm billed its time entries in quarter-hour increments. (Doc. Nos. 89 at 9; 88-
16 3 at 8–12.) A court may impose an across-the-board reduction on hours that are billed by quarter-
17 hour increments when such billing results in an attorney's fees award request reflecting excessive
18 hours. *See, e.g., Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 949 (9th Cir. 2007) (affirming
19 district court's twenty percent, across-the-board reduction of hours where this billing practice
20 resulted in inflated time records). In *Welch*, the Ninth Circuit affirmed the district court's across-
21 the-board reduction in hours after the district court had found that "the hours were inflated
22 because counsel billed a minimum of 15 minutes for numerous phone calls and e-mails that likely
23 took a fraction of the time." *Id.* The Ninth Circuit's own review of the time records in *Welch*
24 revealed that they were "replete with quarter-hour or half-hour charges for the drafting of letters,
25 telephone calls and intra-office conferences." *Id.* Here, the court also finds that HDMN's
26 practice of billing by quarter-hour increments likely resulted in an inflated amount of attorney
27 time being billed to this matter. For example, HDMN's billing statement indicates various email
28 and telephonic correspondences between HDMN lawyers and opposing counsel, inter-office

1 meetings, and correspondences with the court, plaintiff, and expert witnesses that were billed a
2 minimum of fifteen or thirty minutes. (Doc. No. 88-3 at 8–12.) The court finds that these time
3 entries are likely inflated “because counsel billed a minimum of 15 minutes for numerous phone
4 calls and e-mails that likely took a fraction of the time.” *Welch*, 480 F.3d at 949. The court will
5 therefore exercise its discretion and apply a twenty-percent, across-the-board reduction to the
6 number of hours awarded to HDMN attorneys in this case. *See Hall v. FCA US LLC*, No. 1:16-
7 cv-0684-JLT, 2018 WL 2298431, at *5 (E.D. Cal. May 21, 2018) (Applying a twenty-percent,
8 across-the-board reduction to HDMN’s hours billed in quarter-hour increments for similar
9 reasons).

10 The court has also reviewed the Knight Law billing statements at issue here and concludes
11 that, generally, the time billed was reasonably incurred in the commencement and prosecution of
12 this action. However, the court will not award attorney Christopher Thoms the full five hours he
13 anticipatorily billed to prepare for and appear at the hearing for this motion (Doc. No. 88-2 at 28),
14 because he appeared telephonically and did not travel to Fresno for that hearing. Moreover, the
15 court will not award attorney Thoms the full four and a half hours that he anticipatorily billed to
16 review and analyze FCA’s opposition to this motion and to draft a reply thereto. (*Id.*) No
17 evidence of the time actually spent on these tasks was presented to the court, and the court
18 declines to speculate as to the actual time spent by counsel in reviewing defendant’s opposition,
19 drafting a reply, and preparing for and arguing the motion, as the burden is on the applicant to
20 present evidence to support the motion for attorney’s fees. Accordingly, attorney Thoms’ hours
21 will be reduced by eight hours. Based on the foregoing, the court will include in the award the
22 following hours to the Knight Law attorneys:

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Knight Law Attorney	Hours Requested	Hours Awarded
Attorney Alastair Hamblin	7.6	7.6
Attorney Amy Morse	10.6	10.6
Attorney Christopher Thoms	16	8
Attorney Deepak Devabose	8.4	8.4
Attorney Diane Hernandez	18.0	18.0
Attorney Kristina Stephenson-Cheang	13.8	13.8
Attorney Mitchell Rosensweig	2.1	2.1
Attorney Michelle Lumasag	3.5	3.5
Attorney Russell Higgins	16.7	16.7
Attorney Steve Mikhov	6.8	6.8
Total Hours	103.5	95.5

The court has also reviewed the HDMN billing statements at issue here and concludes that, generally, the time billed was reasonably incurred in the commencement and prosecution of this action. However, as discussed above, the court will exercise its discretion and apply a twenty-percent across-the-board reduction to HDMN’s billed hours due to HDMN’s practice of billing in quarter-hour increments even with respect to various emails and telephone conversations between HDMN lawyers and opposing counsel, inter-office meetings, and correspondences with the court, plaintiff, and expert witnesses when those tasks almost certainly consumed only a fraction of the time billed. Accordingly, the court finds the following hours appropriately attributable to the efforts of HDMN attorneys:

HDMN Attorney/Paralegal	Hours Requested	Hours Awarded
Attorney Larry Castruita	10.75	8.6
Attorney Sepehr Daghighian	27.5	22.0
Attorney Eric Schmitt	37.0	29.6
Paralegal Andrea Plata	4	3.2
Total Hours	79.25	63.4

2. Hourly Rates to be Applied

Next, the court must determine whether the hourly rates requested by plaintiff’s attorneys are reasonable.

Under California law, when awarding attorney’s fees under § 1794(d), the relevant inquiry is whether “the monetary charge being made for the time expended [is] reasonable” under all the circumstances including “factors such as the complexity of the case and procedural demands, the

1 skill exhibited and the results achieved.” *Goglin v. BMW of North America, LLC*, 4 Cal. App. 5th
2 462, 470 (2016) (quoting *Nightingale*, 31 Cal.App.4th at 104). California courts therefore focus
3 on the reasonable hourly rate for the work performed by the counsel performing that work,
4 regardless of the forum in which that work was performed and without regard to typical hourly
5 rates in the forum in which the matter was litigated.³ See *Goglin*, 4 Cal. App. 5th at 470
6 (affirming a fee award applying a hourly rate of \$575 per hour in a Song-Beverly Act case on the
7 grounds that the trial court had considered the evidence that the client agreed to compensate
8 counsel at the rate of \$575 an hour (later increased to \$625), other state and federal courts had
9 awarded the attorney comparable rates in similar cases, and the trial court had observed the

11 ³ The court is aware that, in awarding attorneys’ fees under the Song-Beverly Act, other district
12 courts have required “[t]he fee applicant . . . [to] produc[e] satisfactory evidence that the
13 requested rates are in line with those prevailing in the community for similar services of lawyers
14 of reasonably comparable skill and reputation.” *Base v. FCA US LLC*, No. 17-cv-01532-JCS,
15 2019 WL 4674368, at *4 (N.D. Cal. Sept. 25, 2019) (citing *Jordan v. Multnomah Cnty.*, 815 F.2d
16 1258, 1263 (9th Cir. 1987)); see also *Self v. FCA US LLC*, No. 1:17-cv-01107-SKO, 2019 WL
17 1994459, at *4–5 (E.D. Cal. May 6, 2019); *Hall v. FCA US LLC*, No. 1:16-cv-0684-JLT, 2018
18 WL 2298431, at *5–6 (E.D. Cal. May 21, 2018). Citing to Ninth Circuit and Supreme Court
19 precedent, these courts have stated that the “relevant community” in determining a prevailing
20 market rate is the forum in which the district court sits and then analyzed whether the rates
21 requested by counsel are reasonable in light of rates paid to attorneys of similar skill and
22 experience in the forum district. See, e.g., *Self*, 2019 WL 1994459, at *4–6. This, however, is the
23 framework that federal courts apply to motions seeking attorneys’ fees pursuant to a federal
24 statute. The court is aware of no authority holding that a federal court must apply that same
25 framework when awarding attorneys’ fees pursuant to the Song-Beverly Act, a California statute.
26 Indeed, the California Court of Appeal in *Goglin* did not engage in that forum-based rate analysis
27 and, as evidenced by the many state court fee orders that the parties have pointed this court to,
28 state courts generally do not engage in that analysis. The undersigned, therefore, considers the
pending motion under the standard articulated by the California Court of Appeal in *Goglin* and
will determine “whether the monetary charge being made for the time expended [is] reasonable”
in light of “the complexity of the case and procedural demands, the skill exhibited and the results
achieved.” 4 Cal. App. 5th at 470 (internal quotation marks and citation omitted). This approach
will appropriately result in plaintiff’s counsel being compensated at the same hourly rates they
would have received in state court rather than some lower rate based solely on the removal of the
action to federal court. Finally, even if the rate determination framework utilized in motions
seeking attorneys’ fees pursuant to federal statutes were to apply in this case, the court notes that
the hourly rates found to be reasonable by this order would be the same under that framework.
For, under the “relevant community”/“forum district” analysis, this court would look to the orders
of state courts within the Eastern District of California and conclude that those same rates are
consistent with those prevailing in the community for similar services. See *Tenorio v. Gallardo*,
No. 1:16-cv-00283-DAD-JLT, 2019 WL 3842892, at *2 n.1 (E.D. Cal. Aug. 15, 2019).

1 attorney's skills first hand, while not even mentioning the prevailing rates in the trial court's
 2 area); *see also* *Filiberto Negrete v. Ford Motor Co. et al.*, No. ED CV 18-1972-DOC (KKx),
 3 2019 WL 4221397, at *3 (C.D. Cal. June 5, 2019) ("Plaintiff has demonstrated that counsel has
 4 been awarded attorneys' fees at similar rates under the Song-Beverly Act. [citation omitted.]
 5 Such evidence is generally sufficient to show that an attorney's hourly rates are reasonable.").
 6 The fee applicant bears the burden of producing satisfactory evidence that the fees incurred were
 7 "reasonable in amount." *Goglin*, 4 Cal. App. 5th at 470 (quoting *Nightingale*, 31 Cal. App. 4th at
 8 104); *see also* *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984).

9 The Knight Law attorneys request the following hourly rates for its attorneys who worked
 10 on this matter:

Knight Law Attorney	Requested Hourly Rate	Years of Experience
Attorney Alastair Hamblin	\$325.00	3 years
Attorney Amy Morse	\$350.00	6 years
Attorney Christopher Thoms	\$350.00	14 years
Attorney Deepak Devabose	\$275.00	5 years
Attorney Diane Hernandez	\$375.00	22 years
Attorney Kristina Stephenson-Cheang	\$375.00	11 years
Attorney Mitchell Rosensweig	\$325.00	1 year
Attorney Michelle Lumasag	\$200.00	4.5 years
Attorney Russell Higgins	\$450.00	16 years
Attorney Steve Mikhov	\$550.00	16 years

11 (Doc. No. 88-2 at 8–10, 28.) The HDMN request the following hourly rates for its attorneys who
 12 worked on this matter:

HDMN Attorney or Paralegal	Requested Hourly Rate	Years of Experience
Attorney Larry Castruita	\$350.00	8 years
Attorney Sepehr Daghighian	\$400.00, \$550.00	14 years
Attorney Erik Schmitt	\$250.00, \$275.00	2 years
Paralegal Andrea Plata	\$75.00	2 years

13 (Doc. No. 88-3 at 2–4, 8.)

14 In support of the rates requested by her attorneys, plaintiff has submitted the declarations
 15 of attorneys Daghighian and Mikhov and rate determinations in other cases for some of the
 16 attorneys at issue. (Doc. Nos. 88-2, 88-3.) These declarations both state the rates that these
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1 attorneys and other lawyers from their respective firms charged in this matter and aver that the
2 requested rates are reasonable. (See Doc. No. 88-2 at 7–11; 88-3 at 2–4.) Attached to attorney
3 Mikhov’s declaration and supplemental declaration are several hourly rate determinations by state
4 courts in Song-Beverly Act actions with respect to some of the attorneys who worked on this
5 case. (See Doc. Nos. 88-2 at 94–155; 94-1 at 67–143.) FCA has also attached to its supplemental
6 briefing hourly rate determinations by state courts in Song-Beverly Act actions where some of the
7 attorneys at issue have been awarded rates lower than those requested by them here. (See Doc.
8 No. 95 at Exs. A–H.) These attachments demonstrate that various superior courts in California
9 have awarded the following rates in Song-Beverly Act actions to the following attorneys at issue
10 here: attorney Mikhov has been awarded hourly rates between \$300.00 and \$500.00; attorney
11 Higgins has been awarded hourly rates between \$350.00 and \$400.00; attorney Morse has been
12 awarded hourly rates between \$250.00 and \$400.00; attorney Stephenson-Cheang has been
13 awarded hourly rates between \$300.00 and \$350.00; attorney Hamblin has been awarded an
14 hourly rate of \$325.00; attorney Hernandez has been awarded an hourly rate of \$350.00; attorney
15 Devabose has been awarded hourly rates between \$200.00 and \$250.00; and attorney Lumasag
16 has been awarded an hourly rate of \$200.00.

17 Because “the reasonable value of attorney services is variously defined as the hourly
18 amount to which attorneys of like skill in the area would typically be entitled,” *Ketchum*, 24 Cal.
19 4th at 1133, the court finds that evidence of what some of the attorneys have previously been
20 awarded when litigating other Song-Beverly actions assists the court in determining what the
21 reasonable hourly rates should be in this case. See also *Goglin*, 4 Cal. App. 5th at 470; *Filiberto*
22 *Negrete*, 2019 WL 4221397, at *3. Having considered the various state court orders submitted by
23 both plaintiff and FCA as well as other evidence, the court concludes that the following hourly
24 rates as to each of plaintiff’s attorneys are reasonable:

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Knight Law Attorney	Hourly Rate to be Awarded	Years of Experience
Attorney Alastair Hamblin	\$325.00	3 years
Attorney Amy Morse	\$350.00	6 years
Attorney Christopher Thoms	\$350.00	14 years
Attorney Deepak Devabose	\$250.00	5 years
Attorney Diane Hernandez	\$350.00	22 years
Attorney Kristina Stephenson-Cheang	\$350.00	11 years
Attorney Mitchell Rosensweig	\$200.00	1 year
Attorney Michelle Lumasag	\$200.00	4.5 years
Attorney Russell Higgins	\$400.00	16 years
Attorney Steve Mikhov	\$500.00	16 years
HDMN Attorney or Paralegal	Hourly Rate to be Awarded	Years of Experience
Attorney Larry Castruita	\$300.00	8 years
Attorney Sepehr Daghighian	\$500.00	14 years
Attorney Erik Schmitt	\$250.00	2 years
Paralegal Andrea Plata	\$75.00	2 years

3. Lodestar Calculation

Based on the hours and hourly rates that the court has awarded plaintiff's attorneys, the lodestar here totals \$54,630.00. The court's calculations are reflected below:

Law Firm	Legal Professional	Hours Awarded	Hourly Rate Awarded	Lodestar
Knight Law	Attorney Alastair Hamblin	7.6	\$325.00	\$2,470.00
	Attorney Amy Morse	10.6	\$350.00	\$3,710.00
	Attorney Christopher Thoms	8	\$350.00	\$2,800.00
	Attorney Deepak Devabose	8.4	\$250.00	\$2,100.00
	Attorney Diane Hernandez	18	\$350.00	\$6,300.00
	Attorney Kristina Stephenson-Cheang	13.8	\$350.00	\$4,830.00
	Attorney Mitchell Rosensweig	2.1	\$200.00	\$420.00
	Attorney Michelle Lumasag	3.5	\$200.00	\$700.00
	Attorney Russell Higgins	16.7	\$400.00	\$6,680.00
	Attorney Steve Mikhov	6.8	\$500.00	\$3,400.00
HDMN	Attorney Larry Castruita	8.6	\$300.00	\$2,580.00
	Attorney Sepehr Daghighian	22.0	\$500.00	\$11,000.00
	Attorney Erik Schmitt	29.6	\$250.00	\$7,400.00
	Paralegal Andrea Plata	3.2	\$75.00	\$240.00
Total:				\$54,630.00

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1 4. Lodestar Multiplier

2 Next, plaintiff urges this court to apply a multiplier of 0.5 to the lodestar. (Doc. No. 88-1
3 at 20.) Plaintiff argues that the contingent nature of this litigation warrants a 0.2 multiplier and
4 that the delay in payment warrants a 0.3 multiplier. (*Id.* at 22.) According to plaintiff, “there
5 always existed the possibility that Plaintiff would not prevail” and that “Plaintiff’s attorneys
6 advanced all litigation costs and expenses without reimbursement.” (*Id.* at 21–22.) FCA argues
7 that an upward multiplier is not warranted here. (Doc. No. 89 at 15–17.) For the reasons that
8 follow, the court chooses to not apply an upward multiplier.

9 As discussed, the lodestar may be “augmented or diminished by taking various relevant
10 factors into account, including (1) the novelty and difficulty of the questions involved and the
11 skill displayed in presenting them; (2) the extent to which the nature of the litigation precluded
12 other employment by the attorneys; and (3) the contingent nature of the fee award, based on the
13 uncertainty of prevailing on the merits and of establishing eligibility for the award.” *Robertson*,
14 144 Cal. App. 4th at 819; *see also Warren v. Kia Motors America, Inc.*, 30 Cal. App. 5th 24, 35
15 (2018).

16 Here, plaintiff does not contend that her attorneys were precluded from seeking other
17 employment, and the court finds that the questions involved in this action were not novel or
18 difficult, nor did the attorneys demonstrate exceptional skill in presenting the issues. Rather,
19 plaintiff argues that “[t]his case required a range of specialized knowledge including: (1) an
20 understanding of the full scope of consumer protection laws, . . .; (2) knowledge of the intricacies
21 of automobiles . . .; and (3) knowledge of auto manufactures’ and dealers’ policies and protocols
22 for repairing vehicles and complying with their legal obligations.” (Doc. No. 88-1 at 16.)
23 However, the fact that plaintiff’s attorneys had to become familiar with a case is not the type of
24 novelty or difficulty that ordinarily justifies an upward multiplier. Moreover, as plaintiff admits,
25 “plaintiff’s attorneys have acquired knowledge and insight about these [issues] over the course of
26 many years of litigation,” and the attorneys do not “spend unreasonable time preparing pleadings
27 because they are able to use documents from other cases that need only be edited.” (*Id.* at 17–18.)
28 Indeed, the issues presented by this case have recently been addressed in several cases before this

1 court, many of which involved the same attorneys who appeared in this action. *See, e.g., Self*,
2 2019 WL 1994459; *Hall*, 2018 WL 2298431; *Garcia v. FCA US LLC*, 1:16-cv-00730-JLT (E.D.
3 Cal. March 7, 2018). Finally, with respect to the skills displayed by plaintiff’s counsel, the court
4 has reviewed the pleadings filed in this action and finds that the skills displayed by counsel were,
5 on balance, average at best, given that it is readily apparent from the face of these pleadings that
6 counsel relied upon pleadings from other actions as templates and that some of their filings here
7 contained references to vehicles, individuals, and issues that had no relation to this action. The
8 court therefore finds that the first two factors that could justify the application of a multiplier are
9 not applicable here because this was a Song-Beverly action of ordinary complexity and
10 difficulty.⁴

11 Moreover, the court concludes that the contingent nature of this action does not weigh in
12 favor of an upward multiplier. “The purpose of a fee enhancement, or so-called multiplier, for
13 contingent risk is to bring the financial incentives for attorneys enforcing important constitutional
14 rights . . . into line with incentives they have to undertake claims for which they are paid on a fee-
15 for-services basis.” *Ketchum*, 24 Cal. 4th at 1132.

16 A contingent fee must be higher than a fee for the same legal services
17 paid as they are performed. The contingent fee compensates the
18 lawyer not only for the legal services he renders but for the loan of
19 those services. The implicit interest rate on such a loan is higher
because the risk of default (the loss of the case, which cancels the
debt of the client to the lawyer) is much higher than that of
conventional loans.

20 *Id.* (citation and internal quotation marks omitted). As an initial matter, the court notes that, at the
21 May 7, 2019 hearing on the pending motion, attorney Daghighian could not represent to the court
22 that neither the Knight Law or HDMN law firms would not be receiving a percentage of the
23 \$142,000.00 settlement payment obtained on plaintiff’s behalf in this action. Accordingly, the
24 court finds that it would be inappropriate to apply an upward multiplier for contingent risk if the
25 law firms at issue are also receiving a percentage of the settlement fund. However, even if the
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27 ⁴ The undersigned also notes that its comments in this regard are limited to the written work
28 produced by plaintiff’s attorneys in this case. Attorney Daghighian, for instance, has tried a Song
Beverly Act case before the undersigned and demonstrated notable trial skills in that matter.

1 law firms did not receive a percentage of the settlement amount, the court would still conclude
2 that an upward multiplier based on the contingent risk is not warranted here because that factor is
3 outweighed by the other factors the court has considered, namely that this case was not novel,
4 complex, or difficult, especially because the disputed facts and issues to be resolved were
5 minimal.

6 Similarly, the court finds that an upward multiplier due to any delay in payment of fees to
7 plaintiff's counsel is unwarranted here. Plaintiff contends that "FCA dragged this case for thirty-
8 two months . . . [and that] [her] attorneys are not paid at all if they lose, and need to absorb
9 significant delay in being Plaintiff do[es] win." (Doc. No. 88-1 at 22.) Be that as it may, the
10 court is not convinced that (1) FCA is solely to blame for the delay in resolving this action and
11 (2), even if it was, it does not appear to the court that any delay was so egregious so as to justify
12 an upward multiplier.

13 Accordingly, the court declines to apply an upward multiplier to the lodestar amount
14 under the circumstances of this case.

15 **B. Costs and Expenses Request**

16 Finally, plaintiff seeks an award for costs and expenses incurred by her counsel in
17 litigating this matter. Initially, plaintiff sought \$22,488.21 in costs and expenses. (Doc. No. 88-1
18 at 23.) This initial sum, however, included costs that were properly pursued through a bill of
19 costs, which is processed by the court clerk, as opposed to a motion for attorneys' fees and costs.
20 *See* 28 U.S.C. § 1920; Fed. R. Civ. P. 54(d); Local Rule 242. Accordingly, at the May 7, 2019
21 hearing on the pending motion, the court instructed plaintiff to refile her request and eliminate
22 from her motion costs reimbursable through a separately filed bill of costs. On May 17, 2019,
23 plaintiff filed a bill of costs that was approved on June 26, 2019. (*See* Doc. Nos. 93, 96.) Now
24 pending before the court is plaintiff's motion for reimbursement of costs and expenses in the
25 amount of \$21,921.36. (Doc. No. 94-1 at 2.) FCA contends that the costs sought should be
26 reduced by \$10,658.89, arguing that: travels costs sought by plaintiff were unreasonable and
27 unnecessary; some costs purportedly incurred are not supported by receipts or invoices; and
28 plaintiff's expert witness fees are excessive and unreasonable. (Doc. No. 95.)

1 The court does not find FCA's general arguments that the costs and expenses claimed are
2 excessive, unreasonable, or unnecessary to be persuasive. Plaintiff's travel costs incurred were
3 reasonably incurred in prosecuting this action. The court will however reduce the costs and
4 expenses award by \$84.20, to account for the few copying, parking, and meal expenses
5 unsupported by any receipts or invoices. The court has reviewed the records for the remaining
6 costs and expenses sought by plaintiff and finds them to be reasonably incurred. Accordingly, the
7 court concludes that plaintiff is also entitled to a total of \$21,837.16 in reimbursements for costs.

8 **CONCLUSION**

9 For the reasons set forth above:

- 10 1. Plaintiff's motion for attorneys' fees and costs (Doc. No. 88) is granted in part;
11 2. The court awards \$54,630.00 in attorneys' fees based on the lodestar analysis; and
12 3. The court awards total costs in the amount of \$21,837.16.

13 IT IS SO ORDERED.

14 Dated: October 17, 2019

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17 UNITED STATES DISTRICT JUDGE
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