

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

PETER PETROPOULOS, et al.,  
Plaintiffs,  
v.  
FCA US LLC, et al.,  
Defendants.

Case No.: 17-CV-0398 W (KSC)

**ORDER:**

**(1) GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION FOR ATTORNEY'S FEES AND COSTS [DOC. 36]; AND**

**(2) GRANTING PLAINTIFFS' MOTION TO RE-TAX COSTS [DOC. 43]**

Pending before the Court are: (1) Plaintiffs' motion for attorneys' fees [Doc. 36]; and (2) Plaintiffs' motion to re-tax costs. [Doc. 43.] The Court decides the matters without oral argument pursuant to Civil Local Rule 7.1(d)(1). For the reasons that follow, Plaintiffs' motion for attorneys' fees is **GRANTED IN PART AND DENIED IN PART**; and Plaintiffs' motion to re-tax costs is **GRANTED**.

//  
//  
//  
//

1 **I. BACKGROUND**

2 On March 30, 2016, Plaintiffs Peter Petropolous and Connie Nelson brought this  
3 action in the Superior Court of California for violation of the Song-Beverly Act, *inter*  
4 *alia*, based on a defective 2011 Dodge Durango. (*Compl.* [Doc. 1-2, Exh. A].)

5 On January 13, 2017, Wirtz Law APC associated into the case “to prepare the case  
6 for trial.” (*Pls.’ Mot.* [Doc. 36-1] 7.) From that point forward, two plaintiffs’ law firms  
7 billed on the case—Knight Law Group and Wirtz Law APC. (*Knight Law Group Invoice*  
8 [Doc. 36-2, Exh. A]; *Wirtz Law Invoice* [Doc. 36-3, Exh. A].)

9 Defendant FCA US LLC removed the case to this Court based on diversity  
10 jurisdiction on February 27, 2017. (*Notice of Removal* [Doc. 1].) Plaintiff filed a motion  
11 to remand on March 30, 2017. (*Mot. to Remand* [Doc. 6].) The motion was denied.  
12 (*July 7, 2017 Order* [Doc. 13].)

13 Parties settled the case on August 8, 2018 for \$90,921.46. (*Pls.’ Fees Mot.* [Doc.  
14 36-1] 1; *Stipulation for Settlement* [Doc. 43-3, Exh. A].) Plaintiffs now move for costs,  
15 expenses, and fees on behalf of two law firms billing simultaneously. (*Id.* [Doc. 36-1];  
16 *Mot. to Re-Tax Costs* [Doc. 43-1]; *Knight Law Group Invoice* [Doc. 36-2, Exh. A]; *Wirtz*  
17 *Law Invoice* [Doc. 36-3, Exh. A].)

18 On February 25, 2019, Plaintiffs submitted a Bill of Costs to the Clerk’s Office in  
19 the amount of \$20,336.20. (*Bill of Costs* [Doc. 35].) Defendant objected. (*Def.’s Objs.*  
20 *to Bill of Costs* [Doc. 38].) The Clerk’s Office taxed costs in the amount of \$3,203.77,  
21 disallowing \$17,095.20 in witness costs, \$9.95 for the filing of the notice of entry of  
22 dismissal in the state-court case, and \$27.72 for an overnight courier. (*Order Taxing*  
23 *Costs* [Doc. 42].)

24 Plaintiffs now move to re-tax costs. (*Mot. to Re-Tax Costs* [Doc. 43-1].)

25 For the reasons that follow, the motion for attorneys’ fees will be granted in part  
26 and denied in part. The motion to re-tax costs will be granted.

27 //

28 //

1 **II. LEGAL STANDARD**

2 Under the Song-Beverly Act:

3 If the buyer prevails in an action under this section, the buyer shall be  
4 allowed by the court to recover as part of the judgment a sum equal to the  
5 aggregate amount of costs and expenses, including attorney’s fees based on  
6 actual time expended, determined by the court to have been reasonably  
7 incurred by the buyer in connection with the commencement and  
8 prosecution of such action.

8 Cal. Civ. Code § 1794(d).<sup>1</sup>

9 State law applies in calculating the fees due in a diversity action. See Mangold v.  
10 California Pub. Utilities Comm’n, 67 F.3d 1470, 1478 (9th Cir. 1995) (“Ninth Circuit  
11 precedent has applied state law in determining not only the right to fees, but also in the  
12 method of calculating the fees.”). Attorneys fees awarded under Song-Beverly must be  
13 “based on ‘actual time expended’ and . . . ‘reasonably incurred.’ ” See Doppes v. Bentley  
14 Motors, Inc., 174 Cal. App. 4th 967, 997 (2009) (quoting Cal. Civ. Code § 1794(d)). Per  
15 California law, the Court uses the lodestar method to calculate a reasonable fee award.  
16 Id.

17 “The lodestar adjustment method requires the trial court first to determine a  
18 touchstone or lodestar figure based on actual time spent and reasonable hourly  
19 compensation for each attorney.” Doppes, 174 Cal. App. 4th at 998. “ ‘The touchstone  
20 figure may then be augmented or diminished by taking various relevant factors into  
21 account, including (1) the novelty and difficulty of the questions involved and the skill  
22 displayed in presenting them; (2) the extent to which the nature of the litigation precluded  
23 other employment by the attorneys; and (3) the contingent nature of the fee award, based  
24 on the uncertainty of prevailing on the merits and of establishing eligibility for the  
25 award.’ ” Id. (quoting Robertson v. Fleetwood Travel Trailers of California, Inc., 144

---

26  
27  
28 <sup>1</sup> Parties have stipulated that Plaintiffs are the “prevailing party.” (*See Stipulation for Settlement* [Doc. 43-3, Exh. A] ¶ 5.B.) See Cal. Civ. Code § 1794(d); Cal. Code Civ. Proc. § 1032(a)(4).

1 Cal. App. 4th 785, 819 (2006). “For Song–Beverly Consumer Warranty Act claims, [a]  
2 prevailing buyer has the burden of showing that the fees incurred were allowable, were  
3 reasonably necessary to the conduct of the litigation, and were reasonable in amount.”  
4 Id. (quoting Nightingale v. Hyundai Motor America, 31 Cal. App. 4th 99, 104 (1994)).  
5

### 6 **III. DISCUSSION**

#### 7 **A. Motion for Attorneys’ Fees**

##### 8 **1. Knight Law Group**

##### 9 **a) Lodestar Figure - Hourly Rate and Hours Billed**

10 The Knight Law Group (“KLG”) attorneys working on this matter billed the  
11 following hours at the following rates. (*KLG Invoice* [Doc. 36-2, Exh. A].)

12 Steve Mikhov billed at the rate of \$550/hour. He has practiced in the area of  
13 consumer law since 2003. (*See Mikhov Decl.* [Doc. 36-2] ¶¶ 26–28.) He billed 10.7  
14 hours, for a total of \$5,885.00. (*KLG Invoice* [Doc. 36-2, Exh. A].)

15 Russell Higgins billed at the rate of \$450/hour. He has been an attorney since  
16 2003. (*See Mikhov Decl.* [Doc. 36-2] ¶ 32.) He billed 15.1 hours, for a total of  
17 \$6,795.00. (*KLG Invoice* [Doc. 36-2, Exh. A].)

18 Kristina Stephenson-Cheang billed at the rate of \$375/hour. She has been  
19 practicing in this area since 2013. (*See Mikhov Decl.* [Doc. 36-2] ¶ 30.) She billed 11.2  
20 hours, for a total of \$4,200.00. (*KLG Invoice* [Doc. 36-2, Exh. A].)

21 Amy Morse billed at the rate of \$350/hour. She has been practicing in this area  
22 since 2013. (*See Mikhov Decl.* [Doc. 36-2] ¶ 29.) She billed 27.4 hours, for a total of  
23 \$9,590.00. (*KLG Invoice* [Doc. 36-2, Exh. A].)

24 Alastair Hamblin billed at the rate of \$325/hour. (*See Mikhov Decl.* [Doc. 36-2] ¶  
25 33.) He has practiced in this area since 2016. He billed 5.9 hours, for a total of  
26 \$1,917.50. (*KLG Invoice* [Doc. 36-2, Exh. A].)  
27  
28

1 Deepak Devabose billed at \$275/hour. (*See Mikhov Decl.* [Doc. 36-2] ¶ 31.) He  
2 has practiced in this area since 2015. He billed 9.1 hours, for a total of \$2,502.50. (*KL  
3 Invoice* [Doc. 36-2, Exh. A].)

4 The lodestar amount of \$30,890 is generally reasonable for 79.4 hours of attorney  
5 work.

## 6 7 **2. Wirtz Law APC**

### 8 **a) Lodestar Figure - Hourly Rate and Hours Billed**

9 The Wirtz Law APC attorneys working on this matter billed the following hours at  
10 the following rates. (*Wirtz Law Invoice* [Doc. 36-3, Exh. A].)

11 Richard Wirtz billed at the rate of \$575/hour. (*Wirtz Law Invoice* [Doc. 36-3, Exh.  
12 A] 8.) He has been an attorney in California since 1988 and specializes in this area.  
13 (*Wirtz Decl.* [Doc. 36-3] ¶ 4.) He billed 3.5 hours, for a total of \$2,012.50. (*Wirtz Law  
14 Invoice* [Doc. 36-3, Exh. A] 8.)

15 Amy Smith billed at the rate of \$375/hour. (*Wirtz Law Invoice* [Doc. 36-3, Exh.  
16 A] 8.) She has been a California attorney since 2012 and has specialized in this area  
17 since 2016. (*See Wirtz Decl.* [Doc. 36-3] ¶ 5.) She billed 18.4 hours, for a total of  
18 \$6,900.00. (*Wirtz Law Invoice* [Doc. 36-3, Exh. A] 8.)

19 Jessica Underwood billed at the rate of \$350/hour. (*Wirtz Law Invoice* [Doc. 36-3,  
20 Exh. A] 8.) She has been a trial attorney since 2015. (*See Wirtz Decl.* [Doc. 36-3] ¶ 6.)  
21 She billed 10 hours, for a total of \$3,500.00. (*Wirtz Law Invoice* [Doc. 36-3, Exh. A] 8.)

22 Lauren Veggian billed at the rate of \$350/hour. (*Wirtz Law Invoice* [Doc. 36-3,  
23 Exh. A] 8.) She has been licensed in New York since 2014 and in California since 2016.  
24 (*See Wirtz Decl.* [Doc. 36-3] ¶ 7.) She billed 16.7 hours, for a total of \$5,845.00. (*Wirtz  
25 Law Invoice* [Doc. 36-3, Exh. A] 8.)

26 Erin Barns billed at the rate of \$350/hour. (*Wirtz Law Invoice* [Doc. 36-3, Exh. A]  
27 8.) She has been practicing in this area since 2012. (*See Wirtz Decl.* [Doc. 36-3] ¶ 8.)  
28 She billed 18 hours, for a total of \$6,300.00. (*Wirtz Law Invoice* [Doc. 36-3, Exh. A] 8.)

1 Rebecca Evans is a certified paralegal. She billed at \$175/hour. (*Wirtz Law*  
2 *Invoice* [Doc. 36-3, Exh. A] 8; *Wirtz Decl.* [Doc. 36-3] ¶ 8.) She billed 5 hours, for a  
3 total of \$875.00. (*Id.*)

4 Denali Wixsom is a certified paralegal. She billed at \$175/hour. (*Wirtz Law*  
5 *Invoice* [Doc. 36-3, Exh. A] 8; *Wirtz Decl.* [Doc. 36-3] ¶ 8.) She billed 1.4 hours, for a  
6 total of \$245.00. (*Id.*)

7 Samuel Albert is the firm's Director of Legal Services. He billed 1.5 hours at  
8 \$175/hour, for a total of \$262.50. (*Wirtz Law Invoice* [Doc. 36-3, Exh. A] 8; *Wirtz Decl.*  
9 [Doc. 36-3] ¶ 10.)

10 The lodestar amount of \$25,940.00 for 66.6 hours of attorney work, 6.4 hours of  
11 paralegal work, and 1.5 hours of staff time is reasonable—except for the billing reflecting  
12 a hearing on this motion, as discussed below. The average hourly rate billed is \$389.49.

### 13 14 (1) Hearing on Motion for Attorneys' Fees

15 In what would appear to be a mistake, Wirtz Law APC has billed 3 hours (\$1,050  
16 at \$350/hour) for travel to/from and attending a hearing on this motion. (*Wirtz Law*  
17 *Invoice* [Doc. 36-3, Exh. A] 7.) As stated in the caption, this motion is decided without  
18 oral argument. There was no hearing. The billing is inappropriate.

19 Wirtz Law's invoice will be deducted \$1,050.

### 20 21 3. Defendant Identifies No Unreasonably Duplicative Billing Entries.

22 Defendant argues that Plaintiffs' requested fees are unreasonable because Plaintiffs  
23 retained two law firms. (*Def.'s Opp'n* [Doc. 39] 4–9.) Defendant identifies no billing  
24 entries that would appear to be an unreasonable duplication of effort. The fee figure is  
25 \$55,780 for 143 hours of attorney time and 7.9 hours of staff time<sup>2</sup>—for a case that  
26

---

27  
28 <sup>2</sup> This figure does not take into account the fees for litigating the taxation of costs, as discussed in Part III.B., *supra*.

1 originated in March of 2016 and did not settle until August of 2018. This is a time span  
2 of about 29 months, which works out to an average of just under 5 hours of attorney time  
3 per month, at a mean billable rate of \$369.65. This is reasonable.

#### 4 5 **4. Multiplier**

6 Per California law, “the lodestar is the basic fee for comparable legal services in  
7 the community; it may be adjusted by the court based on factors including, as relevant  
8 herein, (1) the novelty and difficulty of the questions involved, (2) the skill displayed in  
9 presenting them, (3) the extent to which the nature of the litigation precluded other  
10 employment by the attorneys, (4) the contingent nature of the fee award.” Ketchum v.  
11 Moses, 24 Cal. 4th 1122, 1132 (2001). “ ‘[A] contingent fee contract, since it involves a  
12 gamble on the result, may properly provide for a larger compensation than would  
13 otherwise be reasonable.’ ” Id. (internal quotation omitted). “The purpose of a fee  
14 enhancement, or so-called multiplier, for contingent risk is to bring the financial  
15 incentives for attorneys enforcing important constitutional rights, such as those protected  
16 under the anti-SLAPP provision, into line with incentives they have to undertake claims  
17 for which they are paid on a fee-for-services basis.” Id.

18 Plaintiffs contend that they should be awarded a fee multiplier because of the  
19 contingent nature of their fee arrangements with counsel. (*Pls.’ Fees Mot.* [Doc. 36-1]  
20 16–18.) On May 2, 2016, one month after filing the state-court Complaint and along with  
21 its answer, FCA US LLC served Plaintiffs with an offer to compromise pursuant to Cal.  
22 Civ. Proc. Code § 998. The settlement offer was for \$51,000—more than the full  
23 \$41,924.64 purchase price of the vehicle.<sup>3</sup> (*Id.* [Doc. 36] 5; *Notice of Removal* [Doc. 1] ¶

---

24  
25  
26 <sup>3</sup> Plaintiffs argue that Defendants’ settlement offer created additional risks for Plaintiff because they  
27 would not be entitled to fees at all had they not attained a better outcome than the offer. (*Pls.’ Fees Mot.*  
28 [Doc. 36] 17.) Plaintiffs are not entitled to compensation for this risk. The § 998 offer to compromise is  
designed to increase risk on Plaintiffs who refuse to settle a case. The Court would be vitiating the  
statutory scheme were it to offer additional compensation after the fact to those plaintiffs who surpass  
their § 998 offers.

1 18.) Yet Plaintiffs declined the offer and continued to aggressively litigate the case for  
2 more than two years. (*Pls.’ Fees Mot.* [Doc. 36-1] 8.) On August 8, 2018, parties settled  
3 for \$90,921.46. (*Id.*; *Stipulation for Settlement* [Doc. 43-3, Exh. A].) In the interim,  
4 Plaintiffs engaged the services of two law firms and incurred attorneys’ fees obligations  
5 totaling more than \$55,000. (*Id.* [Doc. 36-1] 19; *KLG Invoice* [Doc. 36-2, Exh. A]; *Wirtz*  
6 *Law Invoice* [Doc. 36-3, Exh. A].) Plaintiffs were not litigating important constitutional  
7 rights here. Nor were they representing the public interest. See Ketchum, 24 Cal. 4th at  
8 1132. They were seeking compensation and statutory penalties for a defective Durango.

9 In light of the foregoing, and in light of the two law firms billing simultaneously  
10 on this lemon-law matter, a multiplier is not appropriate.

#### 11 12 **B. Motion to Re-Tax Costs**

13 Parties’ settlement of this case included a stipulation that Plaintiffs are the  
14 prevailing party and are “entitled to an award of attorneys’ fees and costs of suit  
15 reasonably incurred in the prosecution of this action.” (*Stipulation for Settlement* [Doc.  
16 43-3, Exh. A] ¶ 5.B.) The settlement further stated, “Attorneys’ fees and costs of suit  
17 shall be evaluated according to the same principles, standards, and authority applicable to  
18 awards of fees and costs under California Civil Code section 1794.” (*Id.*)

19 On February 25, 2019, Plaintiffs submitted a bill of costs to the Clerk’s Office in  
20 the amount of \$20,336.20. (*Bill of Costs* [Doc. 35].) Defendant objected. (*Def.’s Objs.*  
21 *to Bill of Costs* [Doc. 38].)

22 The Clerk’s Office disallowed \$17,132.87 in costs—\$17,095.20 in witness costs,  
23 \$9.95 for the filing of the notice of entry of dismissal in the state-court case, and \$27.72  
24 for an overnight courier. (*Order Taxing Costs* [Doc. 42].) It taxed costs in the amount of  
25 \$3,203.77 of the requested \$20,336.20.<sup>4</sup> (*Id.*) It reasoned that federal law and the Local  
26

---

27  
28 <sup>4</sup> This would appear to reflect a slight mathematical error. The difference between the amount requested  
and the amount disallowed is \$3203.33.



1 Rules governed the award of costs incurred after removal. This reflects an incorrect  
2 application of the Erie doctrine. See Erie R. Co. v. Tompkins, 304 U.S. 64 (1938).

3 As this is a diversity action over which the Court has jurisdiction pursuant to 28  
4 U.S.C. § 1332, California substantive law governs the award of costs. See, e.g., Clausen  
5 v. M/V NEW CARISSA, 339 F.3d 1049, 1065 (9th Cir. 2003), *as amended on denial of*  
6 *reh'g* (Sept. 25, 2003). Defendant does not argue otherwise. The Song-Beverly Act  
7 controls. See Cal. Civ. Code § 1794(d). This is in accord with the parties' settlement,  
8 which stipulated that Plaintiff was the prevailing party and provided for the  
9 reimbursement of reasonable costs incurred in prosecuting the case. (*Stipulation for*  
10 *Settlement* [Doc. 43-3, Exh. A] ¶ 5.B.) Defendant does not show any of the taxed costs to  
11 be unreasonable. Its objections are meritless.

12 Plaintiffs are entitled to reasonable attorneys' fees for securing the costs to which  
13 they were entitled under the settlement.<sup>5</sup> See, e.g., Serrano v. Unruh, 32 Cal. 3d 621, 631  
14 (1982). Plaintiffs request \$3,850 for 11 hours of work, billed by Erin Barns of Wirtz Law  
15 at the rate of \$350/hour, for litigating the costs issue. (*Invoice for Mot. to Retax Costs*  
16 [Doc. 43-12, Exh. I].) Plaintiffs will be awarded this amount in addition to the fee figure  
17 discussed above.

18 //  
19 //  
20 //  
21 //  
22 //  
23 //  
24 //  
25 //

---

27  
28 <sup>5</sup> Defendant's procedural objection to the inclusion of a request for additional fees in the later motion to  
re-tax costs is overruled. (*Def.'s Mot.* [Doc. 44] 1–2.)

1 **IV. CONCLUSION & ORDER**

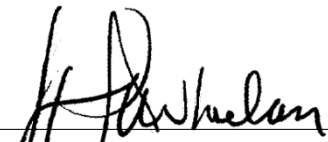
2 Plaintiffs' motion for attorneys' fees is **GRANTED IN PART AND DENIED IN**  
3 **PART.** [Doc. 36.]

4 Plaintiffs are awarded reasonable attorneys' fees in the amount of \$55,780, plus  
5 \$3,850 for litigating the taxation of costs—for a total of \$59,630.

6 Plaintiffs' motion to re-tax costs is **GRANTED.** Costs are re-taxed in the amount  
7 of \$20,336.20.

8  
9 **IT IS SO ORDERED.**

10 Dated: May 29, 2019

11  
12   
13 Hon. Thomas J. Whelan  
United States District Judge