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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 DAVID C. KOTULSKI,

12 Plaintiff,

13 v.

14 FCA US LLC, a Delaware Limited
15 Liability Company; and DOES 1 through
16 10, inclusive,

Defendant.

Case No.: 3:17-cv-00527-AJB-BGS

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION FOR ATTORNEYS' FEES,
COSTS, AND EXPENSES**

(Doc. No. 78)

17 Before the Court is Plaintiff David C. Kotulski's ("Plaintiff") motion for attorneys'
18 fees, costs, and expenses. (Doc. No. 78.) Defendant FCA US LLC ("FCA") opposed the
19 motion. (Doc. No. 85.) For the reasons stated herein, the Court **GRANTS IN PART AND**
20 **DENIES IN PART** Plaintiff's motion, with a reduction of fees as set forth in detail below.

21 **I. BACKGROUND**

22 This case arises out of the purchase of a new 2011 Jeep Grand Cherokee ("the
23 Vehicle") for a sales price of \$43,484.48. The Vehicle was manufactured and distributed
24 by Defendant FCA US LLC, which provided a written warranty with the Vehicle. Within
25 the applicable warranty period, the Vehicle exhibited repeated stalling, intermittent harsh
26 shifting or jerking, issues recognizing key fob, transmission unable to shift to park, rear
27 lamp assembly replacement, engine misfire, U connect system malfunction, and various
28 recalls. Despite numerous attempts by FCA to fix Plaintiff's Vehicle, the problems

1 persisted. Plaintiff eventually contacted FCA customer service in October 2015, and
2 requested they repurchase the Vehicle. FCA rejected Plaintiff's request. Plaintiff filed his
3 Complaint in San Diego Superior Court on July 21, 2016, alleging violations of the Song-
4 Beverly Act and fraudulent concealment. The action was removed to this Court on March
5 16, 2017. On November 4, 2019, the parties filed a joint settlement. On December 10,
6 2019, Plaintiff filed his motion for attorneys' fees, costs, and expenses, and FCA opposed
7 the motion. (Doc. Nos. 78, 85.) This order follows.

8 **II. LEGAL STANDARD**

9 "In a diversity case, the law of the state in which the district court sits determines
10 whether a party is entitled to attorney fees, and the procedure for requesting an award of
11 attorney fees is governed by federal law." *Carnes v. Zamani*, 488 F.3d 1057, 1059 (9th Cir.
12 2007); *see also Mangold v. Cal. Public Utilities Comm'n*, 67 F.3d 1470, 1478 (9th Cir.
13 1995) (noting that in a diversity action, the Ninth Circuit "applied state law in determining
14 not only the right to fees, but also in the method of calculating the fees").

15 As explained by the Supreme Court, "[u]nder the American Rule, 'the prevailing
16 litigant ordinarily is not entitled to collect a reasonable attorneys' fee from the loser.'" *Travelers Casualty & Surety Co. of Am. v. Pacific Gas & Electric Co.*, 549 U.S. 443, 448
17 (2007) (quoting *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 247
18 (1975)). However, a statute allocating fees to a prevailing party can overcome this general
19 rule. *Id.* (citing *Fleischmann Distilling Corp. v. Maier Brewing Co.*, 386 U.S. 714, 717
20 (1967)). Under California's Song-Beverly Act, a prevailing buyer is entitled "to recover as
21 part of the judgment a sum equal to the aggregate amount of costs and expenses, including
22 attorney's fees based on actual time expended, determined by the court to have been
23 reasonably incurred by the buyer in connection with the commencement and prosecution
24 of such action." Cal. Civ. Code § 794(d).

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26 The Song-Beverly Act "requires the trial court to make an initial determination of
27 the actual time expended; and then to ascertain whether under all the circumstances of the
28 case the amount of actual time expended, and the monetary charge being made for the time

1 expended are reasonable.” *Nightingale v. Hyundai Motor America*, 31 Cal. App. 4th 99,
2 104 (1994). The court may consider “factors such as the complexity of the case and
3 procedural demands, the skill exhibited, and the results achieved.” *Id.* If the court finds the
4 time expended or fee request “is not reasonable under all the circumstances, then the court
5 must take this into account and award attorney fees in a lesser amount.” *Id.* “A prevailing
6 buyer has the burden of showing that the fees incurred were ‘allowable,’ were ‘reasonably
7 necessary to the conduct of the litigation,’ and were ‘reasonable in amount.’” *Id.* (quoting
8 *Levy v. Toyota Motor Sales, U.S.A., Inc.*, 4 Cal. App. 4th 807, 816 (1992)); *see also Goglin*
9 *v. BMW of North America, LLC*, 4 Cal. App. 5th 462, 470 (2016) (same). If a fee request
10 is opposed, “[g]eneral arguments that fees claimed are excessive, duplicative, or unrelated
11 do not suffice.” *Premier Med. Mgmt. Sys. v. Cal. Ins. Guarantee Assoc.*, 163 Cal. App. 4th
12 550, 564 (2008). Rather, the opposing party has the burden to demonstrate the hours spent
13 are duplicative or excessive. *Id.* at 562, 564; *see also Gorman v. Tassajara Dev. Corp.*, 178
14 Cal. App. 4th 44, 101 (2009) (“[t]he party opposing the fee award can be expected to
15 identify the particular charges it considers objectionable”).

16 **III. DISCUSSION**

17 As a prevailing buyer, Plaintiff is entitled to an award of fees and costs under the
18 Song-Beverly Act. *See* Cal. Civ. Code § 1794(d); *see also Goglin*, 4 Cal. App. 5th at 470.
19 Here, Plaintiff moves the Court: (1) for an award of attorneys’ fees pursuant to California
20 Civil Code § 1794(d) under the “lodestar” method in the amount of \$48,300.00¹, (2) for a
21 “lodestar” modifier of 0.5 under California law, in the amount of \$24,150.00, and (3) to
22 award actual costs and expenses incurred in the amount of \$29,162.95. Plaintiff requests a
23 total of \$101,612.95 in attorneys’ fees, costs, and expenses. (Doc. No. 78-1 at 7.) FCA
24 acknowledges Plaintiff is entitled to recover attorneys’ fees and costs, but argues the
25 amount requested is unreasonable and should be reduced. (Doc. No. 85 at 5–6.)

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28 ¹ This total amount is slightly modified from Plaintiff’s briefing to account for the actual time Plaintiff’s
counsel spent on drafting the reply brief in support of the motion for attorneys’ fees.

1 **A. Plaintiff’s Motion for Attorneys’ Fees**

2 First, Plaintiff seeks \$27,785.00 for work completed by the Knight Law Group
3 (“KLG”) and \$20,515.00 for work completed by KLG’s co-counsel, Wirtz Law. (Doc. No.
4 78-1 at 13.) This totals \$48,300.00 in attorneys’ fees for both law firms.

5 **1. Hours Worked by Counsel**

6 A fee applicant must provide time records documenting the tasks completed and the
7 amount of time spent. *See Hensley v. Eckerhart*, 461 U.S. 424, 424 (1983); *Welch v.*
8 *Metropolitan Life Ins. Co.*, 480 F.3d 942, 945–46 (9th Cir. 2007). Under California law, a
9 court “must carefully review attorney documentation of hours expended” to determine
10 whether the time reported was reasonable. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132
11 (2001) (quoting *Serrano v. Priest*, 20 Cal.3d 25, 48 (1977)). Thus, evidence provided by
12 the fee applicant “should allow the court to consider whether the case was overstaffed, how
13 much time the attorneys spent on particular claims, and whether the hours were reasonably
14 expended.” *Christian Research Inst. v. Alnor*, 165 Cal. App. 4th 1315, 1320 (2008). The
15 court must exclude “duplicative or excessive” time from its fee award. *Graciano v.*
16 *Robinson Ford Sales, Inc.*, 144 Cal. App. 4th 140, 161 (2006); *see also Ketchum*, 24 Cal.
17 4th at 1132 (stating “inefficient or duplicative efforts [are] not subject to compensation”).

18 The billing records submitted by KLG indicate that its attorneys expended 76.1
19 billable hours on this case, while Wirtz Law billed 55.7 hours to the matter. (Doc. No. 78-
20 2 at 35; Doc. No. 78-3 at 12.) FCA objects to the reported hours, arguing there was
21 duplication, as well as other excessive rates or time billed. (Doc. No. 85 at 6–11.) In
22 particular, FCA lists numerous objections where billing entries were either excessive,
23 duplicative, or included clerical work. The Court will address each objection below:

- 24 • FCA objects to the \$1,040.00 billed by partner Richard M. Wirtz of Wirtz
25 Law to get up to speed, and “[r]eview and analyze client file.” (Doc. No. 78-
26 3 at 9.) The Court finds that this entry is mostly reasonable to ensure that
27 counsel is up to date in the matter. However, the Court will, in its discretion,
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1 reduce the fees by \$300.00 to ensure that reasonable time was spent on this
2 activity.

- 3 • FCA disputes three entries totaling \$1,265.00 billed by KLG for what
4 Plaintiff’s counsel offers to the public as a “free evaluation.” (Doc. No. 85 at
5 7.) FCA maintains these entries are undated, and there is no evidence that a
6 fee agreement was even in place when these tasks occurred. (*Id.*) The Court
7 agrees with FCA and in its discretion, will exclude \$700.00 from KLG’s
8 recoverable fees.
- 9 • FCA objects to the \$2,065.00 billed by attorney Amy Morse of KLG for the
10 5.9 hours spent drafting written discovery. FCA contends Plaintiff’s counsel
11 propounds the same discovery requests in every lemon law action KLG brings
12 against FCA on behalf of different plaintiffs. (Doc. No. 85 at 8.) While
13 Plaintiff argues these amounts are reasonable, the Court agrees with FCA that
14 these amounts are slightly excessive particularly given that Amy Morse is a
15 partner at KLG, and this level of work should primarily consist of adapting
16 templates. Thus, the Court, in its discretion, will reduce KLG’s recoverable
17 fees by \$1,000.00.
- 18 • In FCA’s next objection, FCA opposes the \$2,795.00 billed by attorney
19 Alistair Hamblin of KLG for drafting Plaintiff’s motion to remand, which was
20 ultimately denied. (Doc. No. 85 at 8.) Because the Court denied the motion,
21 and because the motion would have been a template-driven exercise, the Court
22 will reduce KLG’s fees by \$2,795.00. *See Ferrigno v. Philips Elecs. N. Am.*
23 *Corp.*, No. C-09-03085 RMW, 2009 WL 10692955, at *5 (N.D. Cal. Nov. 5,
24 2009) (“Plaintiff seeks to recover reasonable attorneys’ fees incurred as a
25 result of litigating against defendants’ removal. [] Plaintiff’s motion is denied.
26 Because the court has denied the motion to remand, there is no basis upon
27 which to award attorneys’ fees.”).

- 1 • FCA seeks for the Court to exclude \$325.00 from KLG’s fees. (Doc. No. 85
2 at 8.) FCA explains attorney Alistair Hamblin of KLG billed \$2,210.00 for
3 6.8 hours spent attending the depositions of dealership personnel, including
4 travel and drafting a memorandum. (*Id.*) Because KLG block-billed, it is
5 unclear how much of the time was spent on travel versus conducting the
6 deposition or drafting the memorandum. The deposition transcripts, however,
7 indicate that the total deposition time was less than 2.5 hours. (*Id.*) FCA argues
8 that courts routinely reduce the amount recoverable for travel by half, and
9 thus, the Court should reduce the fees by \$325.00. This amount represents one
10 hour of travel time at \$325/hr. The Court mostly agrees with FCA, but in its
11 discretion, will reduce KLG’s fees by \$200.00 to ensure a reasonable rate for
12 travel time. *See In re Washington Public Power Supply Sys. Dec. Lit.*, 19 F.3d
13 1291, 1298–99 (9th Cir. 1994).
- 14 • Similarly, attorney Constance Morrison of KLG billed \$2,925.00 for 7.8 hours
15 spent attending Plaintiff’s deposition, including travel and drafting a
16 memorandum. (Doc. No. 85 at 8.) Because KLG block-billed this time, it is
17 unclear much how of the time was spent on travel versus on the deposition or
18 on drafting the memorandum. FCA estimates that three hours were spent
19 traveling and requests a \$562.50 reduction. In its discretion, the Court will
20 instead reduce KLG’s fees by \$300.00 to ensure a reasonable rate for travel
21 time.
- 22 • Attorney Russell Higgins of KLG billed \$1,935.00 for 4.3 hours spent
23 attending Richard Schmidt’s deposition, including travel and drafting a
24 memorandum. (Doc. No. 85 at 9.) Because KLG block-billed this time, it is
25 unclear much how of the time was spent on travel. FCA requests a \$225.00
26 reduction. The Court will instead reduce KLG’s fees by \$100.00 to ensure a
27 reasonable rate for travel time.
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- 1 • Attorney Lauren Martin of KLG billed \$1,292.50 for 4.7 hours spent attending
2 Dr. Barbara Luna’s deposition, including travel and drafting a memorandum.
3 (Doc. No. 85 at 9.) Because KLG block-billed this time, it is unclear much
4 how of the time was spent on travel. FCA requests a \$137.50 reduction. The
5 Court will instead reduce KLG’s fees by \$70.00 to ensure a reasonable rate
6 for travel time.
- 7 • Attorney Jessica Underwood of Wirtz Law billed \$4,000.00 for 10.0 hours
8 spent attending Anthony Micale’s deposition, including travel to and from the
9 deposition. (Doc. No. 78-3 at 10.) Because Wirtz Law block-billed this time,
10 it is unclear much how of the time was spent on travel. FCA requests a
11 \$800.00 reduction. The Court will instead reduce Wirtz Law’s fees by
12 \$500.00 to ensure a reasonable rate for travel time.
- 13 • FCA points out attorney Kristina Stephenson-Cheang of KLG billed 2.9
14 hours, for a total of \$1,087.50, to review and summarize Plaintiff’s deposition,
15 which lasted less than 2.5 hours. (Doc. No. 85 at 9.) FCA contends this amount
16 should be excluded because a different attorney attended the deposition and
17 also prepared a memorandum. (*Id.*) To account for any duplication in effort,
18 the Court will reduce KLG’s fees by \$600.00.
- 19 • FCA next disputes the \$330.00 billed by partner Steve Mikhov of KLG and
20 the \$360.00 billed by Erin Barns of Wirtz Law for reviewing, auditing, and
21 billing. (Doc. No. 85 at 10.) The Court agrees Plaintiff’s counsel may not be
22 compensated for purely clerical and administrative tasks. *See Castillo-*
23 *Antionio v. Iqbal*, 2017 WL 1113300, at *7 (N.D. Cal. Mar. 24, 2017). Thus,
24 these amounts will be excluded from KLG and Wirtz Law’s fees.
- 25 • FCA asserts there was duplication in Plaintiff’s counsel’s preparation of the
26 Mandatory Settlement Conference statement. (Doc. No. 85 at 10.) Amy
27 Rotman of Wirtz Law billed \$900.00 for two hours spent drafting, reviewing,
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1 and revising an MSC Statement. However, KLG represented in its invoice that
2 Natalee Fisher billed \$600.00 to draft the statement. (Doc. No. 78-2 at 24.)
3 Plaintiff concedes “[i]t was a mistake for both KLG and Wirtz Law to prepare
4 the MSC statement.” (Doc. No. 87 at 5 n.1.) As Wirtz Law was trial counsel
5 at the time, the Court will credit Wirtz Law’s time completing this task, and
6 deduct the duplicative \$600.00 from KLG’s fees.

- 7 • Finally, FCA takes issue with the time billed to draft the briefs in support of
8 Plaintiff’s motion for attorneys’ fees. First, Wirtz Law billed \$1,575.00 for
9 drafting the instant fee motion. (Doc. No. 78-3 at 12.) Because the motion is
10 largely a template-driven activity, the Court will reduce Wirtz Law’s
11 recoverable fees by \$500.00 for the work completed on the motion. As to the
12 reply brief, Wirtz Law billed \$2,610.00 to draft the brief. (Doc. No. 87-3 at
13 2.) Because counsel has an abundance of experience in drafting replies in
14 lemon law matters, and because the work should have been at least partially
15 template-driven, the Court will reduce the amount recoverable for the reply
16 brief by \$1,000.00. Finally, Wirtz Law may not be compensated \$1,350.00 for
17 the “anticipated” time for traveling to and appearing for the hearing on instant
18 fee motion. The hearing on this motion was vacated by the Court in its
19 conclusion that the matter was suitable for determination on the papers. (Doc.
20 No. 88.)

21 In summation, KLG’s total recoverable fee amount is reduced by \$6,695.00. This
22 brings KLG’s recoverable fees down to a total of \$21,090.00. Wirtz Law’s fees are reduced
23 by \$4,010.00. This places Wirtz Law’s fees to a total of \$16,505.00.

24 **2. Hourly Rates**

25 FCA next argues Plaintiff fails to offer any admissible evidence to support the hourly
26 rates of their counsel for lemon law work. (Doc. No. 85 at 11.) However, the Court is
27 satisfied with the bases for Plaintiff’s counsels’ hourly rates. Particularly, Plaintiff provides
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ample evidence, including surveys of the hourly rates of similar attorneys with similar experience and qualifications. (Doc. No. 78-3 at 14.) Thus, the Court finds the rates cited for all attorneys supported by evidence and reasonable.

3. Lodestar Calculation

The lodestar method calculates attorneys’ fees by “by multiplying the number of hours reasonably expended by counsel on the particular matter times a reasonable hourly rate.” *State of Fla. v. Dunne*, 915 F.2d 542, 545 n.3 (9th Cir. 1990) (citing *Hensley*, 461 U.S. at 433); *see also Laffitte v. Robert Half Int’l Inc.*, 1 Cal. 5th 480, 489 (2016).

LAW FIRM	LEGAL PROFESSIONAL	HOURS	RATE	LODESTAR
Knight Law Group	Alastair Hamblin	21.2	\$325	\$6,890.00
	Amy Morse	13.9	\$350	\$4,865.00
	Constance Morrison	7.8	\$375	\$2,925.00
	Kristina Stephenson-Cheang	13.9	\$375	\$5,212.50
	Lauren Martin	4.7	\$275	\$1,292.50
	Natalee Fisher	2.4	\$250	\$600
	Russell Higgins	7.1	\$450	\$3,195.00
	Steve Mikhov	5.1	\$550	\$2,805.00
	Knight Law Group Total			
Wirtz Law	Richard M. Wirtz	7.2	\$650	\$4,680.00
	Jessica R. Underwood	13.2	\$400	\$5,280.00
	Andrea Munoz	0.70	\$200	\$140.00
	Rebecca Evans	8.2	\$200	\$1,640.00
	Amy R. Rotman	6.4	\$450	\$2,880.00
	Erin K. Barns	13.1	\$450	\$5,895.00
Wirtz Law Total				\$20,515.00
TOTAL				\$48,300.00

Here, with no adjustments to the reasonable hourly rates and hours, the total amount of fees for both KLG and Wirtz Law is \$48,300.00. Taking into account the previously noted reductions, the total lodestar amount is \$21,090.00 for KLG’s fees and \$16,505.00 for Wirtz Law’s fees. Therefore, Plaintiff’s counsels’ total lodestar amount is **\$37,595.00**.

1 **4. Application of a Multiplier**

2 Once a court has calculated the lodestar, “it may increase or decrease that amount
3 by applying a positive or negative ‘multiplier’ to take into account a variety of other factors,
4 including the quality of the representation, the novelty and complexity of the issues, the
5 results obtained, and the contingent risk presented.” *Laffitte*, 1 Cal. 5th at 504 (citation
6 omitted); *see also Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001) (indicating the court
7 may adjust the fee award considering “the following factors: (1) the novelty and difficulty
8 of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which
9 the nature of the litigation precluded other employment by the attorneys, (4) the contingent
10 nature of the fee award.”).

11 Here, Plaintiff seeks a 0.5 multiplier based on the risk of taking this case on a
12 contingent fee basis, the substantial costs advanced, the result achieved, and the delay in
13 payment. (Doc. No. 78-1 at 20.) Significantly, however, this case did not present
14 particularly novel or difficult questions of law or fact. Indeed, the issues related to the
15 alleged defect in FCA’s vehicles were addressed in *Velasco, et al. v. Chrysler Group LLC*,
16 Case No. 2:13-cv-08080-DDP-VBK and *Hall v. FCA US LLC*, Case No. 1:16-cv-0684-
17 JLT. Thus, the issues presented in this action were not uniquely complex. *See Steel v.*
18 *GMC*, 912 F. Supp. 724, 746 (N.J. Dist. 1995) (“the issues in lemon law litigation are not
19 complex and do not require a significant amount of legal analysis or novel pleading”).
20 Additionally, it is highly unlikely that the litigation of this specific case precluded counsel,
21 as lemon law attorneys, from taking on other matters. Finally, the Court finds the
22 contingent nature of the fee award is outweighed by the other factors, especially in this
23 action where the disputed facts and issues to be resolved were minimal. Indeed, there was
24 nothing unusual about this case that would put counsel at great risk for accepting the matter
25 on a contingent basis. Accordingly, the Court declines to award a multiplier and finds the
26 lodestar amount of \$37,595.00 as reasonable.

27 **B. Plaintiff’s Request for Costs**

28 Plaintiff also requests \$29,162.95 in costs. (Doc. No. 78-1 at 24.) FCA states it will

1 contest Plaintiff's purported costs and expenses after Plaintiff properly refiles his Bill of
2 Costs in compliance with the Local Rules. (Doc. No. 85 at 6.) The Clerk of Court had
3 directed that Plaintiff's "Bill of Costs must be filed within fourteen days after entry of
4 judgment." (Doc. No. 80.) As such, the Court will defer ruling on Plaintiff's cost at this
5 time. Plaintiff is to refile his Bill of Costs after entry of judgment.


6 **IV. CONCLUSION**

7 Based upon the foregoing, the Court **ORDERS** as follows:

- 8 1. Plaintiff's motion for fees is **GRANTED** in the modified amount of
9 **\$37,595.00**; and
- 10 2. Plaintiff must **REFILE** his Bill of Costs in accordance with Local Rule
11 54.1.

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13 **IT IS SO ORDERED.**

14 Dated: November 25, 2020

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16 Hon. Anthony J. Battaglia
17 United States District Judge
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