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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

RIADON JOHNSON, MARK  
JOHNSON,  
  
v.  
  
FCA US LLC,  
  
Plaintiffs,  
  
Defendant.

Case No.: 3:17-cv-0536-AJB-BGS  
**ORDER GRANTING IN PART  
PLAINTIFF’S MOTION FOR  
ATTORNEY’S FEES  
(Doc. No. 53)**

Before the Court is Plaintiffs’ motion for attorney’s fees. (Doc. No. 53.) For the reasons stated herein, the Court **GRANTS IN PART** the motion with a reduction of fees and costs as stated below.

**I. BACKGROUND**

This case arose out of the purchase of a 2012 Dodge Durango by the Plaintiffs Riadon and David Johnson. The Subject vehicle was manufactured by Defendant FCA US LLC. The Dodge Durango was sold with FCA US’s basic limited warranty which covered the cost of all parts and labor needed to repair any item on the vehicle that was defective in material, workmanship or factory preparation for 3 years or 36,000 miles.

Mr. and Mrs. Johnson contended that the Durango was delivered to them containing defects covered by the warranty that substantially impaired the vehicle’s use, value and safety. Plaintiffs claimed that despite numerous repair presentations to FCA US’s

1 authorized repair facility FCA US and its authorized repair facilities were unable to repair  
2 the Durango to conform to warranty after a reasonable number of opportunities to do so.  
3 Further, FCA US failed to promptly replace or buy back the Durango in violation of the  
4 Song-Beverly Consumer Warranty Act. Plaintiffs sought a repurchase of the Dodge  
5 Durango along with statutory civil penalties based on FCA US's willful failure to promptly  
6 repurchase or replace the defective Dodge Durango. Additionally, Plaintiffs claimed that  
7 FCA US knew about alleged defects in the totally integrated power module in the 2012  
8 Dodge Durango yet concealed this information from the Johnsons and through this  
9 concealment, committed fraudulent concealment.

10 Defendant contended that its dealerships repaired each mechanical complaint that  
11 the Plaintiffs brought to the attention of the dealership within a reasonable number of repair  
12 attempts. FCA US contended that it promptly offered to repurchase Plaintiffs' Dodge  
13 Durango and no civil penalty was warranted. FCA US contended that there was no known  
14 defect in the TIPM in Plaintiffs' Dodge Durango and that when FCA US discovered that  
15 the fuel pump relays in TIPMs were prematurely wearing, the company conducted an  
16 investigation and then conducted a nationwide recall to replace the fuel pump relays. All  
17 owners of the potentially affected vehicles were notified of that recall.

18 The parties filed a notice of joint settlement on August 20, 2018. (Doc. No. 47.)  
19 Plaintiffs filed their motion for attorneys' fees and bill of costs in January 2019.  
20 (Docs. No. 52, 53.)

## 21 II. LEGAL STANDARDS

22 "In a diversity case, the law of the state in which the district court sits determines  
23 whether a party is entitled to attorney fees, and the procedure for requesting an award of  
24 attorney fees is governed by federal law. *Carnes v. Zamani*, 488 F.3d 1057, 1059 (9th Cir.  
25 2007); *see also Mangold v. Cal. Public Utilities Comm'n*, 67 F.3d 1470, 1478 (9th Cir.  
26 1995) (noting that in a diversity action, the Ninth Circuit "applied state law in determining  
27 not only the right to fees, but also in the method of calculating the fees").

28 As explained by the Supreme Court, "[u]nder the American Rule, 'the prevailing

1 litigant ordinarily is not entitled to collect a reasonable attorneys' fee from the loser.'  
2 *Travelers Casualty & Surety Co. of Am. v. Pacific Gas & Electric Co.*, 549 U.S. 443, 448  
3 (2007) (quoting *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 247  
4 (1975)). However, a statute allocating fees to a prevailing party can overcome this general  
5 rule. *Id.* (citing *Fleischmann Distilling Corp. v. Maier Brewing Co.*, 386 U.S. 714, 717  
6 (1967)). Under California's Song-Beverly Act, a prevailing buyer is entitled "to recover as  
7 part of the judgment a sum equal to the aggregate amount of costs and expenses, including  
8 attorney's fees based on actual time expended, determined by the court to have been  
9 reasonably incurred by the buyer in connection with the commencement and prosecution  
10 of such action." Cal. Civ. Code § 794(d).

11         The Song-Beverly Act "requires the trial court to make an initial determination of  
12 the actual time expended; and then to ascertain whether under all the circumstances of the  
13 case the amount of actual time expended, and the monetary charge being made for the time  
14 expended are reasonable." *Nightingale v. Hyundai Motor America*, 31 Cal. App. 4th 99,  
15 104 (1994). The court may consider "factors such as the complexity of the case and  
16 procedural demands, the skill exhibited, and the results achieved." *Id.* If the court finds the  
17 time expended or fee request "is not reasonable under all the circumstances, then the court  
18 must take this into account and award attorney fees in a lesser amount." *Id.* "A prevailing  
19 buyer has the burden of showing that the fees incurred were 'allowable,' were 'reasonably  
20 necessary to the conduct of the litigation,' and were 'reasonable in amount.'" *Id.* (quoting  
21 *Levy v. Toyota Motor Sales, U.S.A., Inc.*, 4 Cal. App. 4th 807, 816 (1992)); *see also Goglin*  
22 *v. BMW of North America, LLC*, 4 Cal. App. 5th 462, 470 (2016) (same).

23         If a fee request is opposed, "[g]eneral arguments that fees claimed are excessive,  
24 duplicative, or unrelated do not suffice." *Premier Med. Mgmt. Sys. v. Cal. Ins. Guarantee*  
25 *Assoc.*, 163 Cal. App. 4th at 550, 564 (2008). Rather, the opposing party has the burden to  
26 demonstrate the hours spent are duplicative or excessive. *Id.* at 562, 564; *see also Gorman*  
27 *v. Tassajara Dev. Corp.*, 178 Cal. App. 4th 44, 101 (2009) ("[t]he party opposing the fee  
28 award can be expected to identify the particular charges it considers objectionable").

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### III. DISCUSSION

As prevailing buyers, Plaintiffs are entitled to an award of fees and costs under the Song-Beverly Act. *See* Cal. Civ. Code § 1794(d); *see also Goglin*, 4 Cal. App. 5th at 470. Here, Plaintiffs seek: (1) an award of attorneys’ fees under Cal. Civ. Code § 1794(d) under the lodestar method for \$46,382.50; (2) for a lodestar modifier of .5 under California law for \$23,191.25; and (3) actual costs and expenses for \$21,489.12. (Doc. No. 53-1 at 8–10.) Thus, Plaintiffs seek a total award of \$91,062.87. (*Id.* at 9.) Defendant acknowledges, “Plaintiffs are entitled to recover attorney’s fees, costs” but argues the amount requested is unreasonable. (Doc. No. 59 at 7.)

#### A. Fee Request

Plaintiffs seek \$29,370.00 for work completed by Knight Law Group and \$17,012.50 for work completed by Hackler Daghighian Martino & Novak, P.C. (“HDMN”). (Doc. No. 53-1 at 14.) This totals \$46,382.50.

##### 1. Hours Worked by Counsel

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

The billing records Knight Law Group submitted indicate the attorneys expended 82.9 billable hours through the settlement. (Doc. No. 53-2 at 33.) Defendant objects to the

1 reported hours arguing there was duplication by HDMN, as well as other excessive rates  
2 or time billed. (Doc. No. 59 at 8–9.) Defendant lists 15 examples where billing entries were  
3 excessive or included clerical work.

4 These include billing: (1) \$1,750 for 5 hours drafting the same discovery requests  
5 they do in every lemon law case; (2) \$825 for 2.2 hours attending a telephonic CMC and  
6 drafting the results; (3) \$55 to review a notice of change of address; (4) \$3,450 for 11.5  
7 hours traveling and defendant taking Plaintiff’s depositions, which Defendant claims took  
8 less than five hours to complete; (5) \$3,000 for 10 hours to travel and attend a vehicle  
9 inspection and drafting a summary, which normally take less than four hours to complete;  
10 (6) \$725 for a paralegal to do 1.5 hours of clerical tasks, which was billed at the partner  
11 rate; (7) \$37.50 for 30 minutes spent on calendaring; (8) \$112.50 to arrange trial exhibits  
12 in a folder and number them; (9) \$225 for one hour extracting and organizing documents;  
13 (10) \$112.5 for 30 minutes adding repair invoices to a file; (11) \$56.25 to revise exhibit  
14 numbers; (12) \$56.25 to draft proofs of service; (13) \$56.25 to review a notice of hearing;  
15 (14) \$6,252.50 for bringing a motion for attorney’s fees, which is a template-driven motion.  
16 (Doc. No. 59 at 9–11.)

17 The Court agrees with Defendant. Clerical tasks cannot be recovered. *See Castillo-*  
18 *Antonio v. Iqbal*, 2017 WL 1113300, at \*7 (N.D. Cal. Mar. 24, 2017). Thus, the Court  
19 strikes contested entries 3, 6, 7, 8, 9, 10, 11, 12, and 13 for a total of **\$1,436.25**. In its  
20 discretion, the Court also reduces the other amounts as follows: \$500 for discovery  
21 requests, \$400 for CMC attendance, \$1,000 for depositions, \$1,000 for vehicle inspection,  
22 and \$2,000 for this motion. This reduces the entries by \$4,900.

23 Additionally, the Court reduced Daghighian’s hours by 6.00 because the Court  
24 vacated the hearing.

## 25 2. **Hourly Rates**

26 Defendant argues the hourly rates of Alastair Hamblin, Amy Morse, Kristina  
27 Stephenson-Cheang, Michelle Lumasag, Raymond Areshenko, Russell Higgins, Larry  
28 Castruita, Asa Eaton, Kevin Yaghoubzadeh, Matthew Evans, and paralegal Andrea Plata

1 are unsupported by competent evidence. (Doc. No. 59 at 11.) However, in Steve Mikhov’s  
 2 declaration, he provides a basis for Hamblin, Morse, Stephenson-Cheang, Lumasag,  
 3 Areshenko, and Higgins. (Doc. No. 53-2 at 6–7.) Sepehr Daghighian’s declaration provides  
 4 support for the rest. (Doc. No. 53-3 at 35.) The Court finds the rates cited for all attorneys  
 5 are supported and reasonable for the area.

6 **3. Lodestar Calculation**

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

LAW FIRM	LEGAL PROFESSIONAL	HOURS	RATE	LODESTAR
<b>Knight Law Group</b>	Steve Mikhov	11.40	\$550	\$6,270.00
	Alastair Hamblin	20.50	\$325	\$6,597.50
	Amy Morse	9.20	\$350	\$3,220.00
	Kristina Stephenson-Cheang,	10.10	\$375	\$3,787.50
	Michelle Lumasag	4.50	\$200	\$ 900.00
	Raymond Areshenko	24.90	\$300	\$7,470.00
	Russell Higgins	2.50	\$450	\$1,125.00
<b>HDMN</b>	Sepehr Daghighian	5.00	\$490	\$2,450.00
	Larry Castruita	12.00	\$350	\$4,200.00
	Asa Eaton	14.50	\$225	\$3,262.50
	Kevin Yaghoubzadeh	13.25	\$250	\$3,312.50
	Andrea Plata	2.00	\$75	\$ 150.00
	Erik Schmitt	1.00	\$250	\$ 250.00
	Lauren C. Martin	0.50	\$250	\$ 125.00
<b>TOTAL</b>				<b>\$43,120</b>

26 Here, with no adjustments to rates, that amount is: \$43,120.00. Minus the previous  
 27 reductions, \$1,436.25 and \$4,900 for clerical tasks and excessive billing, brings Plaintiffs’  
 28

1 attorney fees total to: **\$36,783.75**.

2 **4. Application of a Multiplier**

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

12 Significantly, however, this case did not present novel or difficult questions of law  
13 or fact. Indeed, the issues related to the TIPM were addressed in *Velasco, et al. v. Chrysler*  
14 *Group LLC*, Case No. 2:13-cv-08080-DDP-VBK and *Hall v. FCA US LLC*, Case No.  
15 1:16-cv-0684-JLT. Thus, the issues presented in this action were not complex. *See Steel v.*  
16 *GMC*, 912 F. Supp. 724, 746 (N.J. Dist. 1995) (“the issues in lemon law litigation are not  
17 complex and do not require a significant amount of legal analysis or novel pleading”).  
18 Defendant observes that the case was not novel, not difficult, and that no special skill was  
19 required to handle the case. (Doc. No. 59 at 15–16.) Plaintiffs contend to the contrary,  
20 arguing that 13 attorneys expended around 130 hours of work that was necessary. Finally,  
21 the Court finds the contingent nature of the fee award is outweighed by the other factors,  
22 particularly in this action where the disputed facts and issues to be resolved were minimal.  
23 Accordingly, the Court finds the lodestar amount of **\$36,783.75** is reasonable and declines  
24 to award a multiplier.

25 **B. Costs to be Awarded**

26 Plaintiffs request costs in the amount of \$21,489.12. (Doc. No. 52 at 1.) In general,  
27 an award of costs in federal district court is governed by Federal Rule of Civil Procedure  
28 54(d) and not applicable state law, even in diversity cases. *See Champion Produce, Inc. v.*

1 *Ruby Robinson Co., Inc.*, 342 F.3d 1016, 1022 (9th Cir. 2003) (citing *In re Merrill Lynch*  
2 *Relocation Mgmt., Inc.*, 812 F.2d 1116, 1120 n. 2 (9th Cir. 1987)). This is because “federal  
3 courts sitting in diversity apply state substantive law and federal procedural law.” *Feldman*  
4 *v. Allstate Ins. Co.*, 322 F.3d 660, 666 (9th Cir. 2003) (citing *Erie R.R. v. Tompkins*, 304  
5 U.S. 64, 78, 58 S.Ct. 817, 82 L.Ed. 1188 (1938) ). Thus, federal procedural law governs a  
6 request for an award of costs.

7 Rule 54 of the Federal Rules of Civil Procedure provides that costs “should be  
8 allowed to the prevailing party.” Fed. R. Civ. P. 54(d)(1). This “creates a presumption in  
9 favor of awarding costs to the prevailing party, but the district court may refuse to award  
10 costs within its discretion.” *Champion Produce*, 342 F.3d at 1022. “[A] district court need  
11 not give affirmative reasons for awarding costs; instead, it need only find that the reasons  
12 for denying costs are not sufficiently persuasive to overcome the presumption in favor of  
13 an award.” *Save Our Valley v. Sound Transit*, 335 F.3d 932, 945 (9th Cir. 2003). For  
14 example, costs may be declined in light of “a losing party’s limited financial resources” or  
15 where there has been “misconduct by the prevailing party.” *Champion Produce*, 342 F.3d  
16 at 1022.

17 The Supreme Court explained that 28 U.S.C. § 1920 “defines the term ‘costs’ as  
18 used in Rule 54(d).” *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 441 (1987).  
19 Costs that may be taxed under 28 U.S.C. § 1920 include:

- 20 (1) Fees of the clerk and marshal;
- 21 (2) Fees for printed or electronically recorded transcripts necessarily obtained for  
22 use in the case;
- 23 (3) Fees and disbursements for printing and witnesses;
- 24 (4) Fees for exemplification and the costs of making copies of any materials where  
25 the copies are necessarily obtained for use in the case;
- 26 (5) Docket fees under section 1923 of this title;
- 27 (6) Compensation of court appointed experts, compensation of interpreters, and  
28 salaries, fees, expenses, and costs of special interpretation services under section 1828 of



1 this title.

2 Generally, the court may not award costs under Rule 54(d) that are not authorized  
3 by statute or court rule. *Arlington Cent. School Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291,  
4 301 (2006). Thus, “costs almost always amount to less than the successful litigant’s total  
5 expenses in connection with a lawsuit.” *Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560,  
6 573 (2012) (citing 10 Wright & Miller § 2666, at 203).

7 **1. Personal Service**

8 Under Local Rule 54.1(b), a party may recover “fees for service of process.”  
9 Requests for costs that exceed these amounts may be reduced to align with the amount  
10 authorized by Section 0.114(a). *See Yeager v. Bowlin*, 2010 WL 716389 at \*2 (E.D. Cal.  
11 Feb. 26, 2010).

12 As to Plaintiffs’ fees for service of summons, Plaintiffs charge \$907.85. (Doc. No.  
13 52 at 3.) This includes eight \$110 invoices for service on Chrysler. (*Id.*) Defendant argues  
14 this is excessive as the “personal service of the deposition subpoenas all occurred at the  
15 same location and therefore should not be billed separately for each one.” (Doc. No. 57 at  
16 4.) The Court agrees this practice was unnecessary and unreasonable. Accordingly, the  
17 Court reduces personal service fees by \$780.00.

18 **2. Deposition Costs**

19 Defendant argues the requested \$2,613.00 should be reduced by \$68.73 for failure  
20 to attach receipts of parking or meals. (Doc. No. 57 at 5.) Local Rule 54.1(a) requires  
21 “copies of invoices for requested costs.” As such, the Court agrees and reduces  
22 accordingly.

23 **3. Expert Witness Fees**

24 Plaintiffs seek \$17,115.61 in expert witness fees. (Doc. No. 52 at 4.) Plaintiffs assert  
25 such costs are appropriate under state law, noting: “Under the Song–Beverly Act, a  
26 prevailing buyer shall be allowed to recover as part of the judgment a sum equal to the  
27 aggregate amount of costs and expenses.” (Doc. No. 53-1 at 23 (emphasis in original).)

28 Significantly, the Ninth Circuit determined a court must apply federal law to a

1 request for costs in a diversity action. *See Aceves v. Allstate Ins. Co.*, 68 F.3d 1160 (9th  
2 Cir. 1995). The Court in *Aceves* awarded the prevailing party costs, including expert  
3 witness fees, under section 998(c) of the California Code of Civil Procedure. *Id.*, 68 F.3d  
4 at 1167. The Ninth Circuit determined the district court erred in applying California law  
5 because “reimbursement of witness fees is an issue of trial procedure” and in a diversity  
6 action, “federal law controls the procedure by which the district court oversaw the  
7 litigation.” *Id.*, citing *Hanna v. Plumer*, 380 U.S. 460, 463 (1965). Accordingly, here, the  
8 Court must apply federal law to determine whether Plaintiffs are entitled to recover expert  
9 fees as costs.

10 Under Section 1920, only compensation for “court appointed experts” and witness  
11 fees are permitted. See 28 U.S.C. § 1920. Neither of Plaintiffs’ witnesses were appointed  
12 by the Court. As such, Plaintiffs are not entitled to recover the expert fees under Section  
13 1920. On the other hand, 28 U.S.C. § 1821 provides that “[a] witness shall be paid an  
14 attendance fee of \$40 per day for each day’s attendance,” including testimony at a  
15 deposition. Thus, a prevailing party may be awarded the witness fee under Section 1821  
16 for an expert who testifies at a deposition. *See Ruff v. County of Kings*, 700 F. Supp. 2d  
17 1245, 1247–48 (E.D. Cal. 2010). Consequently, Plaintiffs are entitled to \$40 in costs for  
18 Micale’s deposition. The Court finds no issue with the rest of Plaintiffs’ costs. After  
19 reductions, the total Costs awarded is: **\$3,564.78** in costs under federal law, as provided  
20 under 28 U.S.C. §§ 1821 and 1920.


#### 21 IV. CONCLUSION

22 Based upon the foregoing, the Court **ORDERS**:

- 23 1. Plaintiffs’ motion for fees is **GRANTED** in the modified amount of **\$36,783.75**; and  
24 2. Plaintiffs’ motion for costs is **GRANTED** in the amount of **\$3,564.78**.

25 **IT IS SO ORDERED.**

26 Dated: August 16, 2019

27   
28 Hon. Anthony J. Battaglia  
United States District Judge

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