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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MICKEY A. DAVENPORT,  
Plaintiff,  
v.  
FCA US LLC, a Delaware Limited  
Liability Company; and DOES 1 through  
10, inclusive,  
Defendant.

Case No.: 3:17-cv-00580-AJB-BGS

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

**(Doc. No. 82.)**

Before the Court is Plaintiff Mickey A. Davenport’s (“Plaintiff”) motion for attorneys’ fees, costs, and expenses. (Doc. No. 82.) Defendant FCA US LLC (“FCA”) opposed the motion. (Doc. No. 88.) For the reasons stated herein, the Court **GRANTS IN PART AND DENIES IN PART** the motion, with a reduction of fees as set forth below.

**I. BACKGROUND**

This case arises out of the purchase of a new 2014 Jeep Cherokee (“the Vehicle”) for a sales price of \$37,218.57. The Vehicle was manufactured and distributed by Defendant FCA US LLC, which provided a written warranty with the Vehicle. Within the applicable warranty period, the Vehicle exhibited ongoing transmission and engine problems. Despite numerous attempts by FCA to fix Plaintiff’s Vehicle, the problems persisted. Plaintiff eventually contacted FCA customer service in November 17, 2015, and requested they repurchase the defective Vehicle. FCA rejected Plaintiff’s request. Plaintiff

1 filed the Complaint in San Diego Superior Court on September 9, 2016, alleging violations  
2 of the Song-Beverly Act and fraudulent concealment. The action was removed to this Court  
3 on March 23, 2017. On July 16, 2019, the parties filed a joint settlement. Plaintiff filed his  
4 motion for attorneys' fees, costs, and expenses, and FCA opposed the motion. (Doc. Nos.  
5 82, 88.) This order follows.

## 6 **II. LEGAL STANDARD**

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

13 As explained by the Supreme Court, "[u]nder the American Rule, 'the prevailing  
14 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  
15 (2007) (quoting *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 247  
16 (1975)). However, a statute allocating fees to a prevailing party can overcome this general  
17 rule. *Id.* (citing *Fleischmann Distilling Corp. v. Maier Brewing Co.*, 386 U.S. 714, 717  
18 (1967)). Under California's Song-Beverly Act, a prevailing buyer is entitled "to recover as  
19 part of the judgment a sum equal to the aggregate amount of costs and expenses, including  
20 attorney's fees based on actual time expended, determined by the court to have been  
21 reasonably incurred by the buyer in connection with the commencement and prosecution  
22 of such action." Cal. Civ. Code § 794(d).

24 The Song-Beverly Act "requires the trial court to make an initial determination of  
25 the actual time expended; and then to ascertain whether under all the circumstances of the  
26 case the amount of actual time expended, and the monetary charge being made for the time  
27 expended are reasonable." *Nightingale v. Hyundai Motor America*, 31 Cal. App. 4th 99,  
28 104 (1994). The court may consider "factors such as the complexity of the case and

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

### 14 **III. DISCUSSION**

15 As a prevailing buyer, Plaintiff is entitled to an award of fees and costs under the  
16 Song-Beverly Act. *See* Cal. Civ. Code § 1794(d); *see also Goglin*, 4 Cal. App. 5th at 470.  
17 Here, Plaintiff moves the Court: (1) for an award of attorneys’ fees pursuant to California  
18 Civil Code § 1794(d) under the “lodestar” method in the amount of \$50,616.25, (2) for a  
19 “lodestar” modifier of 0.5 under California law, in the amount of \$25,308.13, and (3) to  
20 award actual costs and expenses incurred in the amount of \$26,535.11. (Doc. No. 82-1 at  
21 7–8.) Plaintiff requests a total of \$102,459.49 in attorneys’ fees, costs, and expenses. FCA  
22 acknowledges Plaintiff is entitled to recover attorneys’ fees and costs, but argues the  
23 amount requested is unreasonable and should be reduced. (Doc. No. 88 at 7.)

#### 24 **A. Plaintiff’s Attorneys’ Fee Request**

25 First, Plaintiff seeks \$31,090.00 for work completed by Knight Law Group (“KLG”)  
26 and \$19,526.25 for work completed by co-counsel, HDMN. (Doc. No. 82-1 at 14.) This  
27 totals \$50,616.25 in attorneys’ fees for both law firms.

28 //

## 1                   1.       Hours Worked By Counsel

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

14           The billing records submitted by KLG indicate that its attorneys expended 80.2  
15 billable hours on this case while HDMN billed 78.75 hours to the case. (Doc. No. 82-2 at  
16 36; Doc. No. 82-3 at 13.) FCA objects to the reported hours, arguing there was duplication,  
17 as well as other excessive rates or time billed. (Doc. No. 88 at 12–14.) In particular, FCA  
18 lists numerous objections where billing entries were either excessive, duplicative, or  
19 included clerical work. The Court will address each objection below.

20           First, FCA objects to S. Daghighian of HDMN billing \$1,237.50 for 2.25 hours at  
21 an hourly rate of \$550.00. FCA states that this Court previously found S. Daghighian’s  
22 reasonable billing rate to be \$490.00. (Doc. No. 88 at 13.) However, it appears that S.  
23 Daghighian’s hourly rate was raised to \$550/hour in 2019 from \$490/hour in 2018. (Doc.  
24 No. 82-3 at 9.) Even with this increase in the hourly rate, the Court finds that \$550.00 is  
25 still within the reasonable range for lemon law attorneys with similar experience and  
26 expertise as S. Daghighian. Thus, the Court finds that this rate is appropriate.

27           Next, FCA seeks to exclude \$1,785.00 billed by partner Amy Morse of KLG for 5.1  
28 hours spent on drafting written discovery. (Doc. No. 88 at 13.) FCA contends Plaintiff’s

1 counsel propounds the same discovery requests in every lemon law action KLG brings  
2 against FCA on behalf of different plaintiffs. (*Id.*) While Plaintiff argues that these amounts  
3 are reasonable, the Court agrees with FCA that these amounts are rather excessive  
4 particularly given that Amy Morse is a partner at KLG, and that this is a template-driven  
5 exercise. Thus, the Court, in its discretion, will reduce KLG's recoverable fees by \$700.00.

6 FCA next takes issue with the \$330.00 billed by S. Mikhov of KLG to review several  
7 notices, orders, trial documents, and correspondence for which FCA claims he had no other  
8 involvement as he had nothing to do with trial preparations or presentation. (Doc. No. 88  
9 at 13.) The Court does not find that these entries are particularly problematic because S.  
10 Mikhov, as Plaintiff's counsel, of course had a professional responsibility to stay informed  
11 about the litigation. However, the Court will reduce KLG's fees for these amounts by  
12 \$100.00.

13 In its next challenge, FCA disputes the \$3,850.00 billed by HDMN for travel time  
14 between San Diego and Los Angeles on April 26, 2019 to attend a Mandatory Settlement  
15 Conference, and on May 9, 2019 to attend a motion in limine hearing. (Doc. No. 82-3 at  
16 11–12.) As a general proposition, travel time may be billed at normal hourly rates. *See,*  
17 *e.g., Hall v. City of Fairfield*, No. 2:10-cv-0508 DAD, 2014 WL 1286001, at \*13 (E.D.  
18 Cal. Mar. 31, 2014). However, FCA argues that this amount was “spent in travel time by  
19 the L.A. lawyers to San Diego without any explanation for why local San Diego counsel  
20 who regularly appear on KLG cases could not have represented this Plaintiff.” (Doc. No.  
21 88 at 12.) As such, the Court will, in its discretion, reduce HDMN's fees by \$2,000.00.

22 FCA also takes issue with the \$56.25 billed by HDMN for sending KLG  
23 correspondence. (Doc. No. 88 at 13.) FCA says that HDMN did not charge for  
24 correspondence sent to KLG on August 16, 2018 and August 20, 2018, yet HDMN billed  
25 for emailing KLG about dealership deposition transcripts on April 24, 2018. (*Id.*) The  
26 Court agrees FCA should not have to pay for HDMN to send correspondence to KLG, and  
27 will exclude the \$56.25 from HDMN's fees.

28 FCA also challenges the \$2,233.75 billed by HDMN for several meetings among

1 HDMN attorneys where FCA argues “the subject matter of the meeting is vaguely  
2 defined.” (Doc. No. 88 at 13.) As one example, HDMN billed \$367.50 for “[m]eeting with  
3 AOE and co-counsel re: trial preparation strategy.” (Doc. No. 82-3 at 10.) Upon close  
4 review of the descriptions of the billable activities, the Court concludes that some entries  
5 lack the necessary specificity, while others do not, *see* Doc. No. 82-3 at 10 (“Meeting with  
6 SD regarding Rule 26(a)(3)(A) Pretrial disclosures.”). As such, the Court will adjust  
7 HDMN’s fees downwards by \$700.00.

8 Additionally, FCA seeks for the Court to exclude seven entries billed by KLG and  
9 HDMN for clerical or administrative tasks. (*See, e.g.*, Doc. No. 82-3 at 9 (“Printed and  
10 saved documents received from Co-Counsel. Open and prepared case files. Reviewed  
11 Pleadings, Discovery, and Parties document production.”). The Court agrees that Plaintiff’s  
12 counsel may not be compensated for purely clerical and administrative tasks. *See Castillo-*  
13 *Antonio v. Iqbal*, 2017 WL 1113300, at \*7 (N.D. Cal. Mar. 24, 2017). Thus, the Court will  
14 reduce KLG’s fees by \$330.00 for time billed for “review and audit billing” and \$370.00  
15 from HDMN’s fees for clerical/administrative tasks.

16 FCA additionally takes issue with the \$6,230.00 billed by KLG for the instant  
17 motion for attorneys’ fees. First, KLG billed a total of \$1,505.00 for drafting the motion  
18 for attorneys’ fees. (Doc. No. 82-2 at 36.) Because the instant motion is largely a template-  
19 driven activity, the Court will reduce KLG’s recoverable fees by \$500.00 for the work  
20 completed on the motion. As to the reply brief, KLG billed \$700.00 for “anticipated” time  
21 in reviewing and analyzing FCA’s opposition brief, in addition to \$1,750.00 for  
22 “anticipated” time for drafting the reply brief. Because KLG has not supplemented its bills  
23 with actual time spent on the reply, the Court will reduce the amount recoverable for the  
24 reply brief by \$1,000.00. Finally, KLG may not be compensated \$2,275.00 for the  
25 “anticipated” time for traveling to and appearing for the hearing on instant fee motion. The  
26 hearing on this motion for attorneys’ fees was vacated by the Court in its determination  
27 that the matter was suitable for determination on the papers. (Doc. No. 91.)

28 Furthermore, FCA wants the Court to reduce KLG and HDMN’s fees by \$192.50

1 charged for work after the case settled. (Doc. No. 88 at 14.) However, the Court finds that  
2 these fees are reasonable because they were billed in connection with the settlement. Thus,  
3 these amounts are appropriate and may be recovered.

4 Finally, FCA takes issue with HDMN's practice of billing in quarterly hour  
5 increments. (Doc. No. 88 at 14.) According to the Ninth Circuit, the "practice of billing by  
6 the quarter-hour" may result in a request for excessive hours because counsel may bill "a  
7 minimum of 15 minutes for numerous phone calls and emails that likely took a fraction of  
8 the time." *Welsh v. Metro Life Ins. Co.*, 480 F.3d 942, 948–49 (9th Cir. 2007). FCA argues  
9 that here, many emails/communications and review of basic court filings are billed at .25  
10 or .5 increments such that there is a real risk of overbilling. Consequently, FCA advocates  
11 for a 20% reduction, in accordance with the Ninth Circuit's decision in *Welsh*. *See Welch*,  
12 480 F.3d at 949 (9th Cir. 2007) (affirming a 20% reduction after finding the billing practice  
13 inflated the time recorded); *Prudential Ins. Co. v. Am. v. Remington*, No. 2:12-cv-02821-  
14 GEB-CMK, 2014 WL 294989, at \*4 (E.D. Cal. Jan. 24, 2014) (also applying a 20%  
15 reduction where counsel billed in 15 minute-increments). While not excessively  
16 widespread, the Court does find that HDMN billed in increments of .25 for several items  
17 including email correspondence, and review of basic court documents such as a notice of  
18 hearing or a scheduling order. (Doc. No. 82-3 at 10–11.) Accordingly, the Court, in its  
19 discretion, will adjust HDMN's fees downward by 15%.

20 In summation, KLG's total recoverable fee amount is reduced by \$4,905.00. This  
21 brings KLG's recoverable fees down to a total of \$26,185.00. HDMN's fees are reduced  
22 by \$3,126.25. This places HDMN's fees to a total of \$16,400.00. After applying the 15%  
23 reduction (\$2,460.00) to account for HDMN's quarterly hour billing practices, HDMN's  
24 total fees comes out to \$13,940.00.

## 25 2. Hourly Rates

26 FCA next argues that under all of the circumstances of this case—from the value of  
27 the vehicle in issue, to the basic nature of the litigation tasks involved—the hourly rates  
28 are unreasonable. (Doc. No. 92 at 14.) However, the Court is satisfied with the bases for

1 Plaintiff's counsels' hourly rates. Particularly, Plaintiff's counsel has provided ample  
 2 evidence, including surveys of the hourly rates of similar attorneys with similar experience  
 3 and qualifications. (Doc. No. 82-3 at 15.) Thus, the Court finds the rates cited for all  
 4 attorneys supported by evidence and reasonable.

### 5 3. Lodestar Calculation

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

10 LAW FIRM	LEGAL PROFESSIONAL	HOURS	RATE	LODESTAR
11 <b>Knight Law Group</b>	Alastair Hamblin	2.9	\$325	\$942.50
	Amy Morse	9.5	\$350	\$3,325.00
	Constance Morrison	11.1	\$375	\$4,162.50
	Kirk Donnelly	5.0	\$400	\$2,000.00
	Kristina Stephenson-Cheang	19.8	\$375	\$7,425.00
	Mark E. Berns	17.8	\$350	\$6,230.00
	Russell Higgins	7.5	\$450	\$3,375.00
	Steve Mikhov	6.6	\$550	\$3,630.00
17 <b>Knight Law Group Total</b>				\$31,090.00
19 <b>HDMN</b>	Asa O. Eaton	25.50	\$225	\$5,936.25
	Andrea Plata	11.00	\$75	\$825.00
	Erik Schmitt	36.00	\$250/\$275	\$9,850.00
	Lauren C. Martin	1.00	\$250/\$275	\$275.00
	Sepehr Daghighian	5.25	\$490/\$550	\$2,640.00
23 <b>HDMN Total</b>				\$19,526.25
24 <b>TOTAL</b>				<b>\$50,616.25</b>

25 Here, with no adjustments to the reasonable hourly rates, the total amount of fees for  
 26 both KLG and HDMN is \$50,616.25. Taking into account the previously noted reductions,  
 27 the total lodestar amount is \$26,185.00 for KLG's fees and \$13,940.00 for HDMN's fees.  
 28



1 Therefore, Plaintiff’s counsels’ total lodestar amounts is \$40,125.00.

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 Here, Plaintiff seeks a 0.5 multiplier based on the risk of taking this case on a  
13 contingent fee basis, the substantial costs advanced, the result achieved, and the delay in  
14 payment. (Doc. No. 82-1 at 23.) Significantly, however, this case did not present  
15 particularly novel or difficult questions of law or fact. Indeed, the issues related to the  
16 alleged defect in FCA’s vehicles were addressed in *Velasco, et al. v. Chrysler Group LLC*,  
17 Case No. 2:13-cv-08080-DDP-VBK and *Hall v. FCA US LLC*, Case No. 1:16-cv-0684-  
18 JLT. Thus, the issues presented in this action were not uniquely complex. *See Steel v.*  
19 *GMC*, 912 F. Supp. 724, 746 (N.J. Dist. 1995) (“the issues in lemon law litigation are not  
20 complex and do not require a significant amount of legal analysis or novel pleading”).  
21 Additionally, it is highly unlikely that the litigation of this specific case precluded counsel,  
22 as lemon law attorneys, from taking on other matters. Finally, the Court finds the  
23 contingent nature of the fee award is outweighed by the other factors, especially in this  
24 action where the disputed facts and issues to be resolved were minimal. Indeed, there was  
25 nothing unusual about this case that would put counsel at great risk for accepting the matter  
26 on a contingent basis. Accordingly, the Court declines to award a multiplier and finds the  
27 lodestar amount of \$40,125.00 as reasonable.

1           **B. Costs to be Awarded**

2           Plaintiff requests costs in the amount of \$26,535.11 in this instant motion for  
3 attorneys' fees. (Doc. No. 82-1 at 23.) FCA states it will contest Plaintiff's purported costs  
4 and expenses after Plaintiff properly refiles his Bill of Costs in compliance with the Local  
5 Rules. (Doc. No. 88 at 5 n.1.) The Clerk of Court had directed that Plaintiff's "Bill of Costs  
6 must be filed within fourteen days after entry of judgment." (Doc. No. 87.) As such, the  
7 Court will defer ruling on Plaintiff's cost at this time. Plaintiff is to refile his Bill of Costs  
8 after entry of judgment.


9           **IV. CONCLUSION**

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

- 11           1. Plaintiff's motion for fees is **GRANTED** in the modified amount of  
12           **\$40,125.00**; and  
13           2. Plaintiff must **REFILE** his Bill of Costs in accordance with Local Rule  
14           54.1.

15  
16           **IT IS SO ORDERED.**

17           Dated: November 23, 2020

18             
19           Hon. Anthony J. Battaglia  
20           United States District Judge