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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 JEREMY HILL and  
12 DIONNE L. HILL,

Plaintiffs,

13 v.

14 FCA US LLC, a Delaware limited  
15 liability company, and DOES 1 through  
16 10, inclusive,

Defendants.

Case No.: 17-cv-00581-AJB-BGS

**ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFFS'  
MOTION FOR ATTORNEYS' FEES,  
COSTS, AND EXPENSES (Doc. No. 82.)**

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18 Before the Court is Plaintiffs Jeremy Hill and Dionne Hill's ("Plaintiffs") motion for  
19 attorneys' fees, costs, and expenses. (Doc. No. 82.) Defendant FCA US LLC ("FCA")  
20 opposed the motion. (Doc. No. 86.) For the reasons stated herein, the Court **GRANTS IN**  
21 **PART AND DENIES IN PART** the motion, with a reduction of fees as set forth below.

22 **I. BACKGROUND**

23 This case arose out of the purchase of a new 2014 Chrysler Town & Country ("the  
24 Vehicle") for a total price of \$38,633.00. The Vehicle was manufactured and distributed  
25 by Defendant FCA US LLC, which provided a written warranty with the Vehicle. Within  
26 the applicable warranty period, the Vehicle exhibited issues relating to transmission  
27 function, engine no-starts, electrical issues, recalls, and other defects. Plaintiffs first  
28 presented the Vehicle to an FCA-authorized repair facility at 5,338 miles when the sliding

1 doors would not open. Thereafter, Plaintiffs returned to FCA’s repair facility on seven  
2 separate occasions for various other issues. Plaintiffs filed their Complaint in this action in  
3 San Diego Superior Court on September 12, 2016, alleging violations of the Song-Beverly  
4 Act and fraudulent concealment. The action was removed to this Court on March 23, 2017.  
5 On July 17, 2019, FCA filed a notice of settlement. (Doc. No. 76.) Plaintiffs filed their  
6 motion for attorneys’ fees, costs, and expenses, and FCA opposed the motion. (Doc. Nos.  
7 82, 86.) 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.’”  
17 *Travelers Casualty & Surety Co. of Am. v. Pacific Gas & Electric Co.*, 549 U.S. 443, 448  
18 (2007) (quoting *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 247  
19 (1975)). However, a statute allocating fees to a prevailing party can overcome this general  
20 rule. *Id.* (citing *Fleischmann Distilling Corp. v. Maier Brewing Co.*, 386 U.S. 714, 717  
21 (1967)). Under California’s Song-Beverly Act, a prevailing buyer is entitled “to recover as  
22 part of the judgment a sum equal to the aggregate amount of costs and expenses, including  
23 attorney’s fees based on actual time expended, determined by the court to have been  
24 reasonably incurred by the buyer in connection with the commencement and prosecution  
25 of such action.” Cal. Civ. Code § 794(d).

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 prevailing buyers, Plaintiffs are 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, Plaintiffs seek: (1) for an award of attorneys’ fees pursuant to Civil Code section  
20 1794(d) under the “lodestar” method in the amount of \$41,031.25, (2) for a “lodestar”  
21 modifier of 0.5 under California law, in the amount of \$20,515.63, and (3) to award actual  
22 costs and expenses incurred in the amount of \$10,556.54. (Doc. No. 82-1 at 7.) Plaintiffs  
23 request a total of \$72,103.42 in attorney’s fees, costs, and expenses. (*Id.*) FCA  
24 acknowledges, “Plaintiffs are entitled to recover attorney’s fees, costs” but argues the  
25 amount requested is unreasonable and should be reduced. (Doc. No. 86 at 6.)

#### 26 **A. Plaintiffs’ Attorneys’ Fee Request**

27 First, Plaintiffs seek \$21,387.50 for work completed by Knight Law Group and  
28 \$19,643.75 for work completed by co-counsel, Hackler Daghighian Martino & Novak, P.C.

1 (“HDMN”). (Doc. No. 82-1 at 13.) The Knight Law Group associated with HDMN as trial  
2 specialists. This totals \$41,031.25 in attorneys’ fees for both law firms.

3 **1. Hours Worked By Counsel**

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

16 The billing records submitted by the Knight Law Group indicate that the Knight Law  
17 Group attorneys expended 57.4 billable hours on this case while HDMN billed 68.5 hours  
18 to the case. (Doc. No. 82-2 at 34.) FCA objects to the reported hours, arguing there was  
19 duplication by HDMN, as well as other excessive rates or time billed. (Doc. No. 86 at 9–  
20 12.) FCA lists several examples where billing entries were either excessive, duplicative, or  
21 included clerical work: (1) \$660.00 billed by counsel S. Mikhov of Knight Law Group to  
22 review numerous notices, orders, documents, and motions for which he had no other  
23 involvement, (2) \$1,030.00 billed for what FCA claims are several instances of duplicative  
24 and inefficient billing because counsel billed twice for the same activity, (3) \$606.25 billed  
25 by HDMN for clerical tasks, (4) \$1,787.50 billed by HDMN for “anticipated” time, without  
26 any corresponding dates, for reviewing the opposition and drafting a reply brief for the  
27 instant motion, and (5) \$2,750.00 billed by HDMN for “anticipated” time for traveling to  
28 and appearing for the hearing on instant fee motion. (Doc. No. 86 at 10–11.)

1 As to the first and second objections,<sup>1</sup> FCA does not explain how some of the billing  
2 entries for the same tasks at different times is necessarily duplicative or inefficient. For  
3 example, many of these entries showed that Plaintiffs’ counsel billed merely between 6-12  
4 minutes for each task—hardly an unreasonable amount of time. However, Plaintiffs do  
5 concede some inadvertent duplication errors in billing, which the Court will accordingly  
6 deduct from their total recovery: (1) \$37.50 billed by Knight Law Group for review of the  
7 Court Order Setting Telephonic Status Conference on June 21, 2018, (2) \$110.00 billed by  
8 Knight Law Group for review and analysis of FCA’s Rule 68 offer on July 12, 2019, and  
9 (3) \$187.50 billed by HDMN for review of the case file on May 4, 2018.

10 With respect to the third objection, the Court agrees with FCA to the extent it argues  
11 clerical tasks cannot be recovered by HDMN. *See Castillo-Antonio v. Iqbal*, 2017 WL  
12 1113300, at \*7 (N.D. Cal. Mar. 24, 2017). Indeed, review of the fee record confirms that  
13 many of HDMN’s billing entries seek compensation for purely clerical work. (*See*  
14 Declaration of Sepehr Daghighian, Doc. No. 82-3, Ex. A (reflecting entries for printing  
15 documents, calendaring, drafting proofs of service, and filing).) Plaintiffs point out that  
16 some of these “clerical” tasks such as extracting exhibits, require the expertise and  
17 knowledge of an attorney. (Doc. No. 90 at 6.) FCA seeks a total reduction of \$606.25 for  
18 these unrecoverable clerical tasks. The Court, in its discretion, will accordingly reduce  
19 HDMN’s fees by \$500 instead.

20 As for the fourth objection, the Court agrees with FCA that HDMN’s billing  
21 according to “anticipated time” is ambiguous and speculative. However, Plaintiffs have  
22 cured this deficiency by a supplemental declaration of their actual time spent working on  
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25 <sup>1</sup> FCA objects to the Declarations of Steve Mikhov and Sepehr Daghighian offered in support of Plaintiffs’  
26 motion. (Doc. No. 86-1.) However, Chambers Rules specifically states, “[o]bjections relating to the  
27 motion should be set forth in the parties opposition or reply. No separate statement of objections will be  
28 allowed.” (*See* Honorable Anthony J. Battaglia U.S. District Judge Civil Case Procedures Rule II.A.)  
Because FCA’s filed separate objections in violation of Chambers Rules, the Court will **STRIKE** these  
objections.

1 this motion, which is the exact amount of time “anticipated.” (See Supplemental  
2 Declaration of Sepehr Daghighian, Doc. No. 90-2, Ex. A.) The Court, in its discretion, will  
3 reduce the amount billed to this instant motion, specifically for review of the opposition  
4 brief, and drafting of the reply by \$300. Also, HDMN may not recover “\$2,750.00 for  
5 ‘anticipated’ time for traveling to and appearing for the hearing on instant fee motion.” The  
6 hearing on this motion for attorneys’ fees was vacated by the Court in its determination  
7 that the matter was suitable for determination on the papers. (Doc. No. 93.)

8 Finally, FCA takes issue with HDMN’s practice of billing in quarterly hour  
9 increments. (Doc. No. 86 at 11.) According to the Ninth Circuit, the “practice of billing by  
10 the quarter-hour” may result in a request for excessive hours because counsel may bill “a  
11 minimum of 15 minutes for numerous phone calls and emails that likely took a fraction of  
12 the time.” *Welsh v. Metro Life Ins. Co.*, 480 F.3d 942, 948–49 (9th Cir. 2007). FCA argues  
13 that here, nearly every email/communication and review of any sort of notice is billed at  
14 .25 or .5 such that there is a real risk of overbilling. Consequently, FCA advocates for a  
15 20% reduction, in accordance with the Ninth Circuit’s decision in *Welsh*. See *Welch*, 480  
16 F.3d at 949 (9th Cir. 2007) (affirming a 20% reduction after finding the billing practice  
17 inflated the time recorded); *Prudential Ins. Co. v. Am. v. Remington*, No. 2:12-cv-02821-  
18 GEB-CMK, 2014 WL 294989, at \*4 (E.D. Cal. Jan. 24, 2014) (also applying a 20%  
19 reduction where counsel billed in 15 minute-increments). In response, Plaintiffs state that  
20 the Court should only entertain a minimal 5% reduction because there is no evidence of  
21 actual overbilling by Plaintiffs’ counsel. (Doc. No. 90 at 7.) While not excessively  
22 widespread, the Court does find that HDMN billed in increments of .25 for several items  
23 such as reviewing a notice of hearing and email correspondence. Accordingly, in its  
24 discretion, will adjust HDMN’s fees downward by 15%.

25 In summation, the Knight Law Group’s total recoverable fee amount is reduced by  
26 \$147.50 for duplicate entries. Thus, Knight Law Group’s fees are reduced to a total of  
27 \$21,240.

28 HDMN’s fees are reduced by \$3,737.50 for (1) the \$187.50 duplicative entry, (2)

1 \$300 in the Court’s discretion for HDMN’s work on this instant motion, (3) \$500 for  
 2 clerical tasks, and (4) \$2,750.00 for anticipated travel to the fee motion hearing as such  
 3 hearing was vacated. This places HDMN’s fees to a total of \$15,906.25. Next, the Court  
 4 will apply a 15% reduction (\$2,385.93) to account for HDMN’s quarterly hour billing  
 5 practices. This brings HDMN’s total fees to \$13,520.32.

6 **2. Hourly Rates**

7 FCA next argues Plaintiffs fail to offer any admissible evidence to support the hourly  
 8 rates of their counsel for lemon law work in the San Diego area. (Doc. No. 86 at 12.)  
 9 According to FCA, all that is offered are the hearsay statements of Steve Mikhov about the  
 10 rates supposedly charged by several other lawyers for allegedly doing the same lemon law  
 11 work. (*Id.*) However, the Court is satisfied with the bases for Plaintiffs’ counsels’ hourly  
 12 rates. Particularly, Plaintiffs provide ample evidence, including surveys of the hourly rates  
 13 of similar attorneys with similar experience and qualifications. Thus, the Court finds the  
 14 rates cited for all attorneys are supported by evidence and reasonable.

15 **3. Lodestar Calculation**

16 The lodestar method calculates attorneys’ fees by “by multiplying the number of  
 17 hours reasonably expended by counsel on the particular matter times a reasonable hourly  
 18 rate.” *State of Fla. v. Dunne*, 915 F.2d 542, 545 n.3 (9th Cir. 1990) (citing *Hensley*, 461  
 19 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
<b>Knight Law Group</b>	Alastair Hamblin	3.2	\$325	\$1,040.00
	Amy Morse	14.5	\$350	\$5,075.00
	Deepak Devabose	10	\$275	\$2,750.00
	Kristina Stephenson-Cheang	10.10	\$375	\$3,750.00
	Maite Colon	1.5	\$225	\$412.50
	Natalee Fisher	4.1	\$250	\$1,025.00
	Russell Higgins	4.2	\$450	\$1,890.00
	Steve Mikhov	9.9	\$550	\$5,445.00
<b>Knight Law Group Total</b>				\$21,387.50

<b>HDMN</b>	Sepehr Daghighian	10.25	\$550 <sup>2</sup>	\$4,662.50
	Larry Castruita	0.5	\$385 <sup>3</sup>	\$150
	Asa Eaton	1.75	\$225	\$393.75
	Kevin Yaghoubzadeh	3.25	\$75	\$243.75
	Erik Schmitt	36.75	\$275 <sup>4</sup>	\$9,862.50
	Lauren C. Martin	2.75	\$275 <sup>5</sup>	\$687.5
	Kevin Jacobson	13.25	\$275	\$3,643.75
<b>HDMN Total</b>				\$19,643.75
<b>TOTAL</b>				<b>\$41,031.25</b>

Here, with no adjustments to the reasonable hourly rates, the total amount of fees for both Knight Law Group and HDMN is \$41,031.25. Taking into account the aforementioned reductions, the total lodestar amount is \$21,240 for Knight Law Group’s fees and \$13,520.32 for HDMN’s fees. Therefore, Plaintiffs’ counsels’ total lodestar amounts are **\$34,750.32**.

#### **4. Application of a Multiplier**

Once a court has calculated the lodestar, “it may increase or decrease that amount by applying a positive or negative ‘multiplier’ to take into account a variety of other factors, including the quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented.” *Laffitte*, 1 Cal. 5th at 504 (citation omitted); *see also Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001) (indicating the court may adjust the fee award considering “the following factors: (1) the novelty and difficulty

<sup>2</sup> Sepehr Daghighian’s hourly rate between 2015 to 2017 was \$400/hour for litigation services. On January 1, 2018, the hourly rate was increased to \$490.00, and on January 1, 2019 to \$550.00.

<sup>3</sup> Larry Castruita’s hourly rate was \$300/hour through December 31, 2017 and \$350/hour after January 1, 2018. His hourly rate in this matter was then \$350/hour through December 31, 2018 and \$385/hour after January 1, 2019.

<sup>4</sup> Erik Schmitt’s hours were \$250/hour up through December 31, 2018 and \$275/hour after January 1, 2019.

<sup>5</sup> Lauren C. Martin’s hourly rate in this matter was \$225/hour through December 31, 2017 and \$250/hour after January 1, 2018. As of January 1, 2019, her rate is \$275.



1 of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which  
2 the nature of the litigation precluded other employment by the attorneys, (4) the contingent  
3 nature of the fee award.”

4 Here, Plaintiffs seek a 0.5 multiplier “based on the risk of taking this case on a  
5 contingent fee basis, the substantial costs advanced, the exceptional result achieved and the  
6 delay in payment.” (Doc. No. 82-1 at 21.) Significantly, however, this case did not present  
7 particularly novel or difficult questions of law or fact. Indeed, the issues related to the  
8 TIPM were addressed in *Velasco, et al. v. Chrysler Group LLC*, Case No. 2:13-cv-08080-  
9 DDP-VBK and *Hall v. FCA US LLC*, Case No. 1:16-cv-0684-JLT. Thus, the issues  
10 presented in this action were not uniquely complex. *See Steel v. GMC*, 912 F. Supp. 724,  
11 746 (N.J. Dist. 1995) (“the issues in lemon law litigation are not complex and do not require  
12 a significant amount of legal analysis or novel pleading”). Additionally, it is highly unlikely  
13 that the litigation of this specific case precluded counsel, as lemon law attorneys, from  
14 taking on other matters. Finally, the Court finds the contingent nature of the fee award is  
15 outweighed by the other factors, especially in this action where the disputed facts and issues  
16 to be resolved were minimal. Indeed, there was nothing unusual about this case that would  
17 put counsel at great risk for accepting the matter on a contingent basis. Accordingly, the  
18 Court declines to award a multiplier and finds the lodestar amount of \$34,750.32 as  
19 reasonable.

#### 20 **B. Costs to be Awarded**

21 Plaintiffs request costs in the amount of \$10,556.54 in this instant motion for  
22 attorneys’ fees. (Doc. No. 82-2 at 36.) The Court does not see objections or any discussion  
23 of costs from FCA in its opposition brief. However, on October 4, 2019, Plaintiffs also  
24 separately filed a Bill of Costs to recover their costs. (Doc. No. 81.) The Court Clerk  
25 initially set a hearing and briefing schedule. (Doc. No. 83.) However, because the filing of  
26 the Bill of Costs was premature, the hearing and briefing schedule were vacated, and the  
27 Court Clerk stated, “[u]pon entry of judgment, party requesting costs is to refile Bill of  
28 Costs in compliance with L.R.54.1.” (Doc. No. 85.) As such, to avoid confusion, the Court

1 will defer ruling on Plaintiffs' cost at this time. Plaintiffs are to refile their Bill of Costs  
2 after entry of judgment.

3 **IV. CONCLUSION**


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

5 1. Plaintiffs' motion for fees is **GRANTED IN PART AND DENIED IN**  
6 **PART** in the modified amount of **\$34,750.32**; and

7 2. Plaintiffs must **REFILE** their Bill of Costs in accordance with Local Rule  
8 54.1.

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10 **IT IS SO ORDERED.**

11 Dated: July 30, 2020

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13 Hon. Anthony J. Battaglia  
14 United States District Judge  
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