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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DAVID HASTINGS,

Plaintiff,

v.

FORD MOTOR COMPANY and
FORD OF CHULA VISTA,

Defendants.

Case No.: 19cv2217-BAS-MDD

**ORDER GRANTING
DEFENDANTS’ MOTION FOR
REIMBURSEMENT OF
REASONABLE FEES INCURRED
IN OPPOSING PLAINTIFF’S
MOTION TO COMPEL**

[ECF No. 86]

Before the Court is Defendants’ request for attorneys’ fees expended to oppose Plaintiff’s motion to compel (ECF No. 63). (ECF No. 86). Plaintiff does not oppose the motion and agrees to pay the requested fees totaling \$10,946. (ECF No. 90).

RELEVANT BACKGROUND

On April 2, 2021, the Court denied Plaintiff’s motion to compel regarding twelve requests for production (“RFPs”). (ECF No. 73). The Court found that Plaintiff failed to specifically address the RFPs at issue, was not entitled to discovery relevant only to damages under the Song-Beverly Act, and was not entitled to identify custodians or search terms to be used by

1 Defendants. (*See generally, id.*). The Court ordered Plaintiff to show cause
2 why Plaintiff should not be required to reimburse Defendants’ reasonable
3 fees and expenses in opposing the motion to compel. (*Id.* at 8). After
4 reviewing the parties’ filings, the Court found that Plaintiff’s motion to
5 compel was not substantially justified and that no other circumstances made
6 an award or expenses unjust. (ECF No. 84 at 2).

7 Accordingly, on May 12, 2021, Defendants moved the Court for
8 reasonable expenses incurred in opposing Plaintiff’s motion to compel. (ECF
9 No. 86). Defendants seek a total award of \$10,946. (ECF No. 86 at 7).
10 Plaintiff filed a statement of non-opposition on May 20, 2021 and agreed to
11 pay Defendants the requested \$10,946 in fees. (ECF No. 90).

12 LEGAL STANDARD

13 Pursuant to Federal Rule of Civil Procedure 37, if a motion to compel is
14 denied, the Court “must, after giving an opportunity to be heard, require the
15 movant, the attorney filing the motion, or both to pay the party . . . who
16 opposed the motion its reasonable expenses incurred in opposing the motion,
17 including attorney’s fees” unless “the motion was substantially justified or
18 other circumstances make an award or expenses unjust.” Fed. R. Civ. P.
19 37(a)(5)(B).

20 The Supreme Court has made clear that determining the appropriate
21 amount of attorneys’ fees “should not result in a second major litigation.”
22 *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). In determining the size of a
23 fee award, “trial courts need not, and indeed should not, become green-
24 eyeshade accountants.” *Fox v. Vice*, 563 U.S. 826, 838 (2011). Courts should
25 not strive to “achieve auditing perfection” but should attempt “to do rough
26 justice.” *Id.* In so doing, courts may “take into account their overall sense of
27 a suit” and may even “use estimates in calculating and allocating an

1 attorney's time." *Id.*

2 Even though it is impossible to determine with mathematical precision
3 the amount of attorneys' fees and costs incurred by one party as a direct
4 result of misconduct, courts must "abide by the injunction of the arithmetic
5 teacher: Show your work!" *Padgett v. Loventhal*, 706 F.3d 1205, 1208 (9th
6 Cir. 2013); *Salstrom v. Citicorp Credit Services, Inc.*, 74 F.3d 183, 185 (9th
7 Cir. 1996).

8 In the Ninth Circuit, courts calculate awards for attorneys' fees using
9 the "lodestar" method. *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1119 (9th
10 Cir. 2000) (citing *Hensley*, 461 U.S. at 433). "The 'lodestar' is calculated by
11 multiplying the number of hours the prevailing party reasonably expended on
12 the litigation by a reasonable hourly rate." *Camacho v. Bridgeport Fin., Inc.*,
13 523 F.3d 973, 978 (9th Cir. 2008) (quoting *Ferland v. Conrad Credit Corp.*,
14 244 F.3d 1145, 1149 n.4 (2001)). The reasonableness of the hourly rate is
15 determined by the prevailing market rates in the community in which the
16 court sits, for similar litigation by attorneys of comparable experience, skill
17 and reputation. *Blum v. Stenson*, 465 U.S. 886, 895 and n.11 (1984).

18 ANALYSIS

19 Two firms, Schnader Harrison Segal & Lewis, LLP ("Schnader") and
20 Huie Fernambucq & Stewart, LLP ("Huie") worked on Defendants' opposition
21 to Plaintiff's motion to compel. (ECF No. 86 at 7). According to Defendants,
22 counsel of record, Schnader, incurred fees of \$6,744 and outside discovery
23 counsel, Huie, incurred fees of \$4,202. (*Id.*). Defendants request a total of
24 \$10,946 in attorney fees. (*Id.*).

25 **I. Reasonable Hourly Rate**

26 Determination of a reasonable hourly rate requires consideration of
27 market rates for attorneys with "the experience, skill, and reputation of the

1 attorney requesting fees.” *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 946
2 (9th Cir. 2007) (quotation marks and citation omitted). “Affidavits of the
3 [moving] attorney and other attorneys regarding prevailing fees in the
4 community . . . are satisfactory evidence of the prevailing market rate.”
5 *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir.
6 1990).

7 At Schnader, attorneys Stephen Dye and Charles F. Harlow worked on
8 the opposition at issue. (ECF No. 86-1 ¶7). Mr. Dye serves as a partner, and
9 possesses over 38 years of experience practicing law in California. (*Id.* at
10 ¶¶1-4). His hourly billing rate to Ford in “lemon law” cases is \$280. (*Id.* at
11 ¶4). Mr. Harlow is also a partner at Schnader, was admitted to the
12 California bar in 1999, and has gained substantial experience in automotive
13 consumer warranty and fraud litigation in recent years. (*Id.*). Mr. Harlow’s
14 hourly billing rate here is \$225. (*Id.*).

15 At Huie, a partner, associate, and paralegal billed time for their work
16 opposing the motion to compel. (ECF No. 86-3 ¶10). Most of the fees
17 requested by Huie were incurred by Partner, John Isaac Southerland. Mr.
18 Southerland has an hourly rate of \$290. (*Id.*). Fees were also incurred by
19 Huie Associate, Woods Parker, at an hourly rate of \$200 and by Huie
20 Paralegal, Artley Young, at an hourly rate of \$95. (*Id.*).

21 To support that Defendants’ counsel’s hourly rates are reasonable,
22 Defendants compare their own rates, all of which are under \$290, with those
23 charged by one of the same firms representing Plaintiff in another “lemon
24 law” case against Ford Motor Company. (ECF No. 86-1 ¶33). Defendants
25 submitted the March 6, 2018 declaration of managing partner, Payam
26 Shahian, which lists hourly partner rates ranging between \$570 to \$650, and
27 associate rates from \$335 to \$495. (ECF No. 86-2). Defendants highlight

1 that Plaintiff's counsel requested even higher fees for attorneys with fewer
2 years of experience than Mr. Dye and Mr. Harlow. (ECF No. 86-1 ¶33).

3 The Court finds that Defendants have produced satisfactory evidence
4 that the hourly rates for its attorneys and staff are reasonable. The hourly
5 rates are supported by declarations from lead counsel at each firm that
6 worked on the motion and are consistent with this Court's knowledge of the
7 rates charged in the San Diego community. Further, the requested rates do
8 not exceed those previously approved in other "lemon law" cases within this
9 District. *See, e.g., Aispuro v. Ford Motor Co.*, No. 18-CV-2045 DMS (KSC),
10 2020 U.S. Dist. LEXIS 142806 at *11 (S.D. Cal. Aug. 10, 2020) (granting
11 plaintiffs' counsel hourly rate of \$350 for partners, \$225 for associates, and
12 \$200 for paralegals); *Hellenberg v. Ford Motor Co.*, No. 18cv2202 JM (KSC),
13 2020 U.S. Dist. LEXIS 64303 at *4 (S.D. Cal. Apr. 10, 2020) (granting
14 plaintiff's counsel's hourly rates between \$250 and \$550).

15 **II. Reasonably Expended Hours**

16 Generally, the Court should defer to the winning lawyer's professional
17 judgment as to how much time the case required. *Costa v. Comm'r of Social*
18 *Sec. Admin.*, 690 F.3d 1132, 1136 (9th Cir. 2012). Counsel should exclude
19 hours that are "excessive, redundant, or otherwise unnecessary" and the
20 Court should decrease the hours that were not "reasonably expended."
21 *Hensley*, 461 U.S. at 434. A district court "may not uncritically accept a fee
22 request," and is obligated to review the time billed and assess whether it is
23 reasonable in light of the work performed and the context of the case.
24 *Common Cause v. Jones*, 235 F. Supp. 2d 1076, 1079 (C.D. Cal. 2002).

25 Defendants limit their request for reimbursement to time spent
26 between the date Plaintiff filed the motion to compel, March 12, 2021, and
27 the date Defendants filed their opposition, on March 30, 2021. (ECF No. 86

1 at 7). Defendants explain that opposing Plaintiff's motion was particularly
2 time consuming because Plaintiff's motion to compel did not specifically
3 address the RFPs at issue, and instead made other discovery demands. (*Id.*).
4 This required Defendants to both address the specific issues raised by the the
5 RFPs at issue, which would have posed an extreme burden on Ford if
6 granted, and address the discovery demands made in Plaintiff's moving
7 papers. (*Id.*).

8 Schnader's work on the opposition consisted of reviewing and analyzing
9 the motion, and participating in preparing the draft opposition papers,
10 revisions, and final opposition papers. (ECF No. 86-1 at ¶8). Mr. Dye billed
11 2.1 hours on the initial review and analysis of the moving papers, the history
12 of the discovery dispute, and the review and revision of the Declaration of
13 Counsel filed on March 19, 2021 (ECF No. 67). (ECF No. 86-1 at ¶8). Mr.
14 Dye also billed 6.4 hours between March 22 and March 30, 2021 for review,
15 revision and final preparation of the opposition papers, for a total of 8.5
16 hours. (*Id.*). Mr. Harlow billed for a total of 19.4 hours. (*Id.* at ¶9).
17 Specifically, Mr. Harlow billed 5.3 hours to prepare the Declaration of
18 Counsel filed on March 19, 2021, and 14.1 hours for "further analysis of the
19 moving papers, preparation of the draft opposition brief, the declararation of
20 counsel, exhibits, revisions to the opposition papers, and final preparation of
21 the opposition papers." (*Id.*).

22 Defendants explain that involving the Huie firm, which has experience
23 and expertise in Ford discovery matters, enabled them to more efficiently
24 prepare Defendants' opposition. (*Id.* at 8). Huie's work on the opposition
25 consisted of "analyzing the motion itself to assist with determining the issues
26 in dispute, participation in preparing the response, and preparation of
27 exhibits to support Ford's position, including a Declaration that [Mr.

1 Southerland] prepared to address the undue burden on Ford should Plaintiff
2 be granted the relief requested.” (ECF No. 86-3 at ¶8). Accordingly, Huie
3 Partner, John Isaac Southerland, billed 12.7 hours at his hourly rate of \$290;
4 Associate, Woods Parker, billed approximately 2.3 hours at the hourly rate of
5 \$200; and Paralegal, Artley Young, billed approximately 0.6 hours at the
6 hourly rate of \$95. (*Id.* at ¶10). Mr. Southerland further attested that all
7 time expended on this motion was necessary, and that the rates charged are
8 reasonable within this jurisdiction for attorneys and professionals of like
9 experience and expertise. (*Id.* at ¶12).

10 Upon review of the hours submitted by Defendants’ counsel, the Court
11 finds that the hours expended in responding to this motion were not
12 excessive, redundant, or otherwise unnecessary. Accordingly, Defendants
13 expended a reasonable number of hours opposing Plaintiff’s motion to compel.

14 **CONCLUSION**

15 Based on the foregoing, the Court **GRANTS** Defendants’ request for
16 attorneys’ fees and **ORDERS** Plaintiff to pay fees of \$10,946 within 30 days
17 of this order.

18 **IT IS SO ORDERED.**

19 Dated: May 26, 2021

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21 Hon. Mitchell D. Dembin
22 United States Magistrate Judge
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