



## **Sahdev et al v. Hyundai Motor America**

2023 | Cited 0 times | N.D. California | December 13, 2023

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

NITIN SAHDEV, et al.,

Plaintiffs, v. HYUNDAI MOTOR AMERICA,

Defendant.

Case No. 5:22-cv-01968-EJD ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR ATTORNEYS' FEES Re: ECF No. 40

Rule 68 offer of judgment. The Court found this motion suitable for determination without oral argument per Civil Local Rule 7- en submissions, the Court

### **I. BACKGROUND**

On March 28, 2022, Plaintiffs Nitin Sahdev and Mishal Rani filed this suit pursuant to the Song-Beverly Consumer Warranty Act relating to their 2016 Hyundai Sonata Hybrid SE. ECF No. 1. On February 3, 2023, Defendant Hyundai Motor America served a Rule 68 offer of See ECF No. 37. On February 13, 2023, Plaintiffs accepted the offer as to their claims but rejected instead to file a separate motion for Id. II. LEGAL STANDARD

Alyeska Pipeline Serv. Co. v. Wilderness Soc y, 421 U.S. 240, 260 (1975); Riordan v. State Farm Mut. Auto. Ins. Co., 589 Under California law, buyers who prevail in

an action under the Song- reasonably incurred by the buyer in connection with the commencement and prosecution of such

Cal. Civ. Code § 1794(d); see also Covarrubias v. Ford Motor Co., 2021 WL 3514095, at \*2 (N.D. Cal. Aug. 10, 2021).

Robertson v. Fleetwood Travel Trailers of Cal., Inc., 144 Cal. App. 4th 785, 818 (2006). The



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PLCM Grp. v. Drexler, 22 Cal. 4th 1084, 1095 (2000). then be augmented or diminished by taking various relevant factors into account, including (1) the novelty and difficulty of the questions involved and the skill displayed in presenting them; (2) the extent to which the nature of the litigation precluded other employment by the attorneys; and (3) the contingent nature of the fee award, based on the uncertainty of prevailing on the merits and of Robertson, 144 Cal. App. 4th at 819.

PLCM, 22 Cal. 4th at 1095. For attorney documentation of hours exp Ketchum v. Moses, 24 Cal. 4th 1122, 1132 (2001).

### III. DISCUSSION

Here, Plaintiffs seek the following fees for nine timekeepers who worked on this matter:

NAME (BAR ADMISSION)	RATE	HOURS	TOTAL
Serena Aisenman (2017)	\$410	2.2	\$902
Tionna Dolin (2014)	\$550	(2022) 0.7	\$385
Tionna Dolin (2014)	\$570	(2023) 1.8	\$1,026

NAME (BAR ADMISSION)	RATE	HOURS	TOTAL
Mark Gibson (2008)	\$485	2.2	\$1,067
Ariel Harman-Holmes (2017)	\$400	(2022) 3.9	\$1,560
Ariel Harman-Holmes (2017)	\$425	(2023) 6.5	\$2,763
Carly Henek (2010)	\$475	10.2	\$4,845
Victoria Hoekstra (1989)	\$595	11.1	\$6,605
Timothy Kenney (2017)	\$410	1.5	\$615
Nino Sanaia (2015)	\$425	1.2	\$510
Greg Yu (2003)	\$595	17.7	\$10,532
TOTAL		59.0	\$30,809

Defendant does not dispute that Plaintiff, as the prevailing party in this action, is entitled to -Beverly Act. See ECF No. lleges the rate and hours s for a lodestar multiplier and costs.

#### A. Lodestar Calculation

##### 1. Reasonable Rates

Ketchum, 24 Cal.

the affidavits of its counsel, that the requested rates are in line with those prevailing in the Jordan v. Multnomah Cty., 815 F.2d 1258, 1263 (9th Cir. 1987). In addition, Civil Local Rule 54-5(b)(3)

experience and a statement of the customary hourly charges of each such person or of comparable prevailing hourly rates or other indication of value of

and provided . Other courts in the Northern District of California have approved rates for lemon law cases that are similar to and higher than those See Ricksecker v. Ford Motor Co., 2023 WL 1542199, at \*4 (N.D. Cal. Feb. 3, 2023) (collecting cases), report and recommendation adopted, 2023 WL 2189497 (N.D. Cal. Feb. 22, 2023); Hanai v. Mercedes-Benz USA, LLC, 2022 WL 718037, at \*2



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see also *Chen v. BMW of N. Amer.*, 2022 WL 18539356, at \*3-4 (N.D. Cal. Nov. 14, 2022) (finding hourly rates between \$400 to \$600 reasonable); *Wu v. BMW of N. Am., LLC*, 2022 WL 2802979, at \*3-4 (N.D. Cal. July 18, 2022) (awarding attorneys \$450 to \$600 for 2021 rates). Defendant relies on opinions from the Eastern and Central Districts of California that reduced districts are not the relevant community for the Court reasonableness evaluation. Opp. 6 7.

Accordingly, the Court finds that the rat range of prevailing rates for attorneys in this district of comparable skill, qualifications, reputation, and experience.

2. Reasonable Hours fee award should ordinarily include compensation for all the hours reasonably spent Ketchum, 24 Cal. 4th at

*Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir.

*Costa v. Comm'r of Soc. Sec. Admin.* whether a reasonable attorney would have believed the work to be reasonably expended in pursuit *Moore v. Jas. H. Matthews & Co.*, 682 F.2d 830, 839 (9th Cir. 1982).

ours expended are unreasonable, exaggerated, and duplicative, and it has provided line-by- See will address in turn.

dismiss. Opp. 11. Although this number could be considered excessive in certain cases, the Court finds that this number fairly captures the necessary time to respond to multi-faceted dispositive -in-controv

remedies requested for the warranty claims, the timeliness under statute of limitations and multiple tolling doctrines, the economic loss rule, as well as requesting that the Court deny leave to amend on a first motion to dismiss. ECF No. 23. Especially given its own characterization of this case as

Defendant cannot be surprised when its no-holds-barred challenge to the entire complaint churned the waters, eliciting a meaningful response from Plaintiffs. Although the Court applauds ousness en be heard to complain *Peak-Las Positas Partners v. Bollag*, 172 Cal. App. 4th 101, 114 (2009). The Court will not disturb the 17.7 hours that

Defendant next challenges the expenditure of 6.0 hours to prepare for a Rule 26 conference and draft a Rule 26 report in January 2023. The Court has reviewed the joint case management conference statement at issue and agrees that six hours is excessive, especially given that Plaintiffs had only spent 3.2 hours to prepare the previous joint report in August 2022. Accordingly, the Court will reduce the time Ms. Harman-Holmes spent on the January 2023 Rule 26 conference and report by 3.0 hours, resulting in a total of 3.0 hours spent on the task.

opposing counsel. The Court does not find such time to be unreasonable, notwithstanding defense



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coun any time spend on responding to emails. ons and forty-eight (48) document requests on January 26, 2023. Although Defendant contends that 2.2 hours was excessive for copying and pasting the same objection language, the Court expects that the appearance of discovery responses does not necessarily time spent in evaluating the merits and considering appropriately available objections to the requests. Accordingly, the Court also finds the time Ms. Aisenman spent in responding to discovery in January 2023 to be reasonable. However, by the same token, the Court does not find that the 10.5 hours Ms. Hoekstra spent on discovery responses to be reasonable and will reduce this time by 5.5 hours, resulting in a total of 5.0 hours for this task.

Finally, with respect to the hours expended finds that the present motion contains several indications that it was reused from another matter. For instance, on multiple occasions, the motion refers to Kia instead of the actual Defendant, Hyundai Motor America. See Mot. 3, 10, 14. The motion also refers to a settlement payment of \$60,000 when the actual offer of judgment was for \$44,000. Compare Mot. 1 with Mot. 10, 12. Accordingly, although the billing entries reflect 10.2 hours spent on this motion, the Court finds that the fees motion reflects a reasonable time of only 5.0 hours, which is a reduction of 5.2 hours billing entries.

In sum, the Court will reduce Ms. Harman- time by 5.5 hours, and M reflected in the billing entries to be reasonable.

\* \* \* request by a total of 13.7 hours across three attorneys.

In total, the Court finds the lodestar amount accounting for reasonable rates and reasonable hours is \$23,791.00.

3. Lump Sum Fees for Reply Brief Plaintiffs also request \$3,500 as an additional lump sum brief reflects approximately 5 hours of work. Assuming that Ms. Henek was also the attorney working on the reply brief and billing at \$475, the Court finds that \$2,375 would be a reasonable lodestar amount for the fees associated with the reply.

B. Multiplier The California Supreme Court has instructed courts to consider the following factors in adjusting the lodestar using a multiplier:

(1) [T]he novelty and difficulty of the questions involved; (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the

attorneys, (4) the contingent nature of the fee award. Ketchum action for which he or she on that claim is duplicative or excessive, the court has broad discretion to apply a negative Graciano, 144 Cal. App. 4th at 161.

The Court does not find that the Ketchum factors counsel in favor of a multiplier in this case. There



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is no indication that this case was anything other than a typical lemon law matter, an See Mot. 11 13. And while is somewhat counterbalanced by the untimeliness and relatively careless presentation in motion. Nor does the time expended on this case suggest that the matter precluded other

the entire case consisted of fifty-nine (59) hours expended over two years. Finally, although fee basis, the risks inherent to such an arrangement appears to have been rewarded by a generally

above-average market rate for lemon law attorneys. Compare generally Mot. (requesting hourly rates between \$410 to \$595) with Gallagher Decl. ¶ 17 (representing that warranty defense litigators charge approximately \$200 to \$250 per hour). 1

Accordingly, the Court will decline to award any lodestar multiplier.

C. Costs and Expenses based on a failure to c costs. Opp. 15. However, Plaintiffs have filed a bill of costs in this case, and the Clerk of Court has subsequently taxed costs against Defendant. ECF Nos. 41, 47.

See, e.g., Ricksecker, 2023 WL 1542199, at \*5;

Covarrubias, 2021 WL 3514095, at \*6. The Court does not construe P expenses as one for double recovery, nor does the California statute provide for such recovery.

Cal. Civ. Code § with the understanding that Plaintiffs are not to obtain double recovery for their expenses.

### IV. CONCLUSION

Based on and consistent with the foregoing discussion, the Court GRANTS IN PART and AWARDS fees, costs, and expenses to Pla (1) \$23,791.00 (2) \$484.35 in costs and expenses; and (3) \$2,375.00

This amount shall be payable within 90 days of this Order. IT IS SO ORDERED. Dated: December 13, 2023

EDWARD J. DAVILA United States District Judge

1 captured somewhat by the higher rates that the Court has permitted.

