

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

Volkswagen Group of America, Inc. v. On-Line Administrators, Inc.

No. 2:23-cv-06599-CAS-JCx · No. No. 2:23-cv-06599-CAS-JCx · Decided May 27, 2025

OPINION

Volkswagen Group of America, Inc. v. On-Line Administrators, Inc.

PER CURIAM.

1 O 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA

10

11 VOLKSWAGEN GROUP OF No. 2:23-cv-06599-CAS-JCx

AMERICA, INC.,

12 Plaintiff, FINDINGS OF FACT AND

13 CONCLUSIONS OF LAW

– v. – 14

ON-LINE ADMINISTRATORS, INC.,

15 DBA PEAK PERFORMANCE

MARKETING SOLUTIONS; ON-

16 LINE ADMINISTRATORS, LLC;

AFFINITIV, INC.,

17 Defendants. 18

19

20 I. INTRODUCTION

21 On August 11, 2023, plaintiff Volkswagen Group of America, Inc. 22 (“Volkswagen”) filed suit
against defendants On-Line Administrators, Inc. dba Peak 23 Performance Marketing Solutions,
On-Line Administrators, LLC, and Affinitiv, Inc. 24 (collectively “defendants”) in this Court. Dkt.
1 (“Compl.”). Plaintiff brings claims for: 25 (1) express contractual indemnity; (2) equitable
indemnity; (3) declaratory relief; and (4) 26 breach of contract, arguing that defendants were
obligated to indemnify plaintiff in a 27 third-party lawsuit that was filed against both parties,
Brian Trenz v. On-Line 1 On October 12, 2023, defendants filed a motion to dismiss. Dkt. 14. On
2 November 15, 2023, the Court denied defendants’ motion as to plaintiff’s four claims,
3 but granted defendants’ motion as to plaintiff’s prayer for an award of attorneys’ fees.
4 Dkt. 22. The Court determined that there was no contractual or statutory basis for an
5 award of attorneys’ fees in this action, as distinguished from indemnification for 6 attorneys’

fees in the underlying Trenz action. Id. 7 On January 27, 2025, the Court granted partial summary judgment to Volkswagen.

8 Dkt. 63. On February 4, 2025, the Court granted the parties' stipulation to voluntarily
9 dismiss the claims asserted against Affinitiv, Inc. Dkt. 69. Accordingly, the only 10 remaining
issue in this case is damages, and the only remaining parties are plaintiff 11 Volkswagen and
defendant On-Line Administrators, Inc. d/b/a Peak Performance 12 Marketing Solutions, now
known as On-Line Administrators, LLC ("Peak"). The Court 13 found in its summary judgment
order that Michigan law governs this dispute, based on 14 the choice-of-law provision set forth in
the terms and conditions (the "2009 Terms & 15 Conditions") that applied to the purchase orders
between Volkswagen and Peak. Dkt. 63 16 at 14. 17 On February 18, 2025, the Court granted the
parties' stipulation to set the trial as a 18 bench trial. Dkt. 81. On April 2, 2025, the Court granted
the parties' stipulation 19 allowing trial to proceed on the papers. Dkt. 94. On April 18, 2025,
Volkswagen filed 20 its opening brief. Dkt. 100 ("OB"). Volkswagen also submitted the
declaration of 21 Aaron D. Van Oort ("Van Oort"), the declaration of Paul Karlsgodt
("Karlsgodt"), and 22 the following exhibits: the 2009 Terms & Conditions, Ex. 3; the settlement
agreement 23 between Volkswagen and the Trenz plaintiff, Ex. 6; Volkswagen's fees spreadsheet,
Ex. 24 7; Volkswagen's billing spreadsheet, with description of tasks, hours spent, and biller 25
information, Ex. 8; a copy of the report of Peak's expert, John S. Pierce ("Pierce"), Ex. 26 23; and
excerpts from Volkswagen's deposition of Pierce, Ex. 102. Dkt. 100-3. 27 Volkswagen
concurrently filed a request for judicial notice. Dkt. 101 ("RJN"). 1 submitted the declaration of
Jay T. Ramsey ("Ramsey"); the declaration of Pierce; and 2 Pierce's expert report, with the
exhibits relied upon by Pierce. Dkts. 103-1, 103-2, 103- 3 3. 4 On May 9, 2025, Volkswagen filed
its reply brief. Dkt. 104 ("RB"). It also 5 submitted additional excerpts from Pierce's deposition.
Dkt. 104-2. 6 On May 19, 2025, the Court held a hearing. Having carefully considered the 7
parties' arguments and submissions, the Court finds and concludes as follows.

8 II. BACKGROUND

9 The background of this case is well-known to the parties. See dkt. 63 at 2-6. The 10 Court
recites facts relevant to the issue of damages, as set forth by the parties through 11 declarations,
court records, and Peak's expert, Pierce. 12 A. Indemnification Provision and the Trenz Action 13
The indemnification provision of the 2009 Terms & Conditions states, in pertinent 14 part, that
"Supplier will, at its expense, indemnify... [Volkswagen] from and against all 15 damages, losses,
claims, liabilities and expenses (including reasonable attorneys' and 16 other professional fees,
settlements and judgments (collectively "Losses") claimed by 17 any Third Person in any... suit...
in connection with... The breach or misrepresentation 18 by Supplier of its obligations or
warranties to [Volkswagen] under these Terms[.]" OB 19 at 8. 20 On October 26, 2015, Brian
Trenz filed a complaint against Volkswagen and Peak 21 in the United States District Court for the
Central District of California. Id. The Trenz 22 complaint alleged that Peak and Volkswagen
violated the Telephone Consumer 23 Protection Act ("TCPA"), 47 U.S.C. § 227. Id. It consisted of

two classes: (1) the Pre-

24 October 16, 2013 Class, or the Brian Trenz (“Trenz”)/Francis Breidenbach

25 (“Breidenbach”) Class, and (2) the Post-October 16, 2013 Class, or the Caitlyn Farrell 26 (“Farrell”)/Noelle Simms (“Simms”) Class. Id. The plaintiffs alleged that at least 27 1,290,000 calls were made by Peak at Volkswagen’s direction. Id. They sought 1 Id. This created exposure of approximately \$2 billion for Volkswagen and Peak. Id. at 2 8-9. 3 On September 25, 2017, this Court, the Honorable Judge André Birotte Jr. 4 presiding, determined that class action plaintiff Breidenbach had provided consent under 5 the TCPA, and thus summarily adjudicated his claim in favor of Volkswagen and Peak.

6 Id. at 9. The Court denied summary judgment as to plaintiff Trenz’s claims. Id. The

7 Court also granted class certification in the Trenz action, both for the Pre-October 16, 8 2013 Class, now led only by Trenz, and the Post-October 16, 2013 Class, led by Farrell 9 and Simms. Id. On October 10, 2017, Volkswagen and Peak filed a Rule 23(f) petition 10 for permission to appeal the class certification ruling. Id. On December 20, 2017, the 11 Ninth Circuit denied the petition. See Brian Trenz, et al v. On-Line Administrators, Inc., 12 et al, Case No. 17-80206, dkt. 7. 13 On June 19, 2018, the Trenz action was reassigned to the Honorable Judge 14 Josephine L. Staton. Dkt. 100-2 ¶ 15. On August 10, 2020, the Court reconsidered its 15 order denying summary judgment as to plaintiff Trenz’s claims, and instead entered an 16 order granting summary judgment on his claims in favor of Volkswagen and Peak. OB 17 at 9. The Court also decertified the Pre-October 16, 2013 Class, which had been led by 18 plaintiff Trenz. Id. On March 25, 2022, pursuant to stipulation, the Court decertified the 19 remaining Post-October 16, 2013 Class, represented by Farrell and Simms; dismissed 20 Farrell and Simms’ individual claims with prejudice; dismissed the Post-October 16, 21 2013 Class’s claims without prejudice; and entered final judgment. Id. On April 22, 22 2022, plaintiff Trenz filed an appeal of the previous summary judgment and class 23 decertification rulings. Id. This appeal was voluntarily dismissed. Id. 24 B. Attorneys’ Efforts on the Trenz Action 25 Volkswagen retained two law firms to represent it in the Trenz action: Baker & 26 Hostetler LLP (“Baker”) and Faegre Drinker Biddle & Reath LLP (“Faegre”). Id. at 14. 27 In total, between 2015 and 2022, Volkswagen’s attorneys billed for 4,721.34 hours of 1 costs. Id. Peak, meanwhile, retained Sheppard Mullin Richter and Hampton (“Sheppard 2 Mullin”). Dkt. 103-1 ¶ 5. Peak’s attorneys billed \$1,010,714.50 on the matter. Dkt. 3 103-3 at 14. 4 For Volkswagen, a total of 19 timekeepers at Baker billed 4,460.80 hours on the 5 Trenz action. OB at 14-15. This is broken down by 1,612.70 hours for partners, 6 2,466.10 hours for associates, 350.9 hours for paralegals, and 31.1 hours for litigation 7 support. Id. at 14. The initial partner and associate working on the Trenz action for 8 Baker left the firm less than a year into the case. Id. at 15. Baker partner Karlsgodt and 9 associate Matthew Pearson (“Pearson”) then took over the case, focused on TCPA issues 10 and briefing. Id. Once the classes were certified, partner Billy Donley (“Donley”) and 11 then-associate Rachel Hooper (“Hooper”) joined the team as trial counsel. Id. Marc 12 Flink (“Flink”), partner, only assisted with the Rule

23(f) petition. Id. Paralegal Sharon 13 Beer helped with document productions and exhibit preparations. Id. 14 At Faegre, a total of nine timekeepers billed 260.54 hours on the Trenz action. Id. 15 at 16. This is broken down by 182.54 hours for partners, 77.6 hours for associates, and 16 0.4 hours for litigation support. Id. Faegre partner Van Oort performed the most work. 17 Id. Faegre was originally engaged to assist with the Rule 23(f) petition, and was 18 engaged again in March 2018, to assist with settlement negotiations. Id. Faegre's Rule 19 23(f) work was performed under flat fee agreements. Id. When Faegre was brought 20 back into the case in March 2018, it initially worked under an hourly fee agreement, but 21 some work was performed under flat fee agreements starting in July 2018. Id. The flat 22 fee was adjusted depending on the amount of work performed. Id. Beginning in

23 February 2020, Faegre proceeded on a purely hourly fee agreement. Id.

24 Volkswagen asserts that its attorneys worked on significant briefing in the Trenz 25 action, including two motions to dismiss, two motions for summary judgment, a Rule 26 23(f) petition, a motion to certify immediate appeal, class certification and 27 decertification briefing, and supplemental briefing on class decertification. Id. at 9-12. 1 attorneys "were tasked with drafting the motion [] and preparing supporting documents."

2 Id. at 11. Peak states that both side's attorneys were "involved equally" in the

3 preparation of documents for this motion, and that in this instance, Baker provided an 4 initial draft and Peak's attorneys provided a "substantial re-write." Dkt. 103-1 ¶ 9. As 5 for the November 1, 2019, supplemental brief in support of the class decertification 6 motion, Volkswagen asserts that its attorneys "took the laboring oar with preparing a 7 majority of the [] brief and supporting documents." OB at 12. Peak states that both 8 sides worked on competing drafts, which were ultimately merged together and edited by 9 each side. Dkt. 103-1 ¶ 10. 10 Volkswagen's attorneys also spent time on discovery and trial preparations. OB at 11 12. There were ten depositions taken in total, including two expert depositions (one for 12 plaintiffs and one for defendants), as well as two Volkswagen 30(b)(6) deponents. Id. at 13 12-13. The depositions occurred in-person and varied in location. Id. at 13. Written 14 discovery included four sets of requests for productions and four sets of interrogatories 15 propounded on Volkswagen. Id. Volkswagen also produced approximately 5,000 pages 16 in response to discovery requests. Id. Further, Volkswagen states that the Trenz action 17 involved extensive third-party discovery, including subpoenas to approximately 100 18 Volkswagen dealers and a review of thousands of documents received from the dealers. 19 Id. Volkswagen states that it was in frequent contact with dealers due to its working 20 relationship with them. Id. Peak asserts, however, that its attorneys "handled all of 21 those subpoenas." Dkt. 103-1 ¶ 11. Finally, Volkswagen states that its attorneys spent 22 time resolving discovery disputes in three discovery conferences. OB at 13. 23 Additionally, Volkswagen's attorneys engaged in settlement communications. Id. 24 Volkswagen and the Trenz plaintiffs participated in mediations on December 14, 2018, 25 and February 6, 2020. Id. at 14. These required Volkswagen's attorneys to prepare 26 briefs and settlement

analyses, and to discuss settlement with plaintiffs' counsel before 27 and after each mediation. Id. Volkswagen states that often, Peak's counsel was not 1 and settlement agreement whereby Volkswagen agreed to pay \$275,000 to Trenz and his 2 attorneys in exchange for dismissal with prejudice of the claims pending on appeal. Id. 3 C. Pierce's Expert Report 4 In his report, Pierce states that he was retained by Peak's counsel to review, 5 evaluate, and provide his independent opinions as to the reasonableness of Volkswagen's 6 attorneys' fees in the Trenz action. Dkt. 103-3 at 1. Pierce asserts that he is an "A.V.- 7 rated trial attorney with more than 47 years of litigation and trial experience in a broad 8 range of complex commercial litigation matters." Id. at 6. He is currently a capital 9 partner in the San Francisco office of Hinshaw & Culbertson, LLP. Id. Pierce states that 10 for the last 34 years, he has "served as an arbitrator, a litigator, consultant and/or expert 11 witness in a wide range of legal fee dispute cases." Id. at 7. In that time, he has 12 "reviewed and analyzed well over \$4.5 billion in law firm invoices reflecting legal fees 13 and costs generated in litigation matters." Id. He also frequently lectures on the topics 14 of litigation management and allocation and reasonableness of attorneys' fees. Id. 15 Pierce asserts that Baker and Faegre's hourly rates were at or below the prevailing 16 hourly billing rates for similar commercial litigators in Los Angeles, based on Real Rate 17 Reports from 2015 to 2022. Id. at 11-13. Pierce then asserts that the hours billed by 18 Baker and Faegre were unreasonable. Id. at 15. Pierce states that Volkswagen's staffing 19 was 193.33% greater than Peak's staffing; the hours billed by Volkswagen's attorneys 20 were 258.88% greater than the hours billed by Peak's attorneys; and Volkswagen's fees 21 were 203.25% more than Peak's fees. Id. at 15-17. 22 Pierce then focuses on two projects as "examples" of Volkswagen's excessive 23 hours and fees: the parties' joint motion for decertification, filed on October 19, 2018, 24 and their joint supplemental brief in support of the motion for decertification, filed on 25 November 1, 2019. Id. at 17-18. Pierce states that Volkswagen's lawyers billed a 26 collective 300.40 hours and \$129,336.00 in legal fees on drafting the motion to decertify 27 the class, while Peak's lawyers billed a total of 124.05 hours and corresponding 1 Pierce asserts that Volkswagen's lawyers billed a collective 284.84 hours and 2 \$121,483.58 in legal fees, while Peak's lawyers billed a total of 98.40 hours and 3 corresponding \$55,676.50 in legal fees for the same project. Id. at 18. 4 Next, Pierce asserts that many billing entries of Baker partners are "vague," such 5 as "Work on subpoena issues"; "Work on case strategy"; "Various correspondence with 6 team"; "Follow up regarding discovery issues"; and "Follow up regarding expert 7 witness." Id. at 21-24. Pierce states that some entries are vague because they are 8 excessively redacted, such as "Legal research regarding [redacted]" and "Call with P. 9 Karlsgodt to assess [redacted]." Id. at 25-26. Pierce suggests a total of \$105,213.98 in 10 deductions for vague billing entries. Id. at 27. Additionally, Pierce argues that 11 Volkswagen's lawyers improperly block-billed, as Baker timekeepers billed 342.20 12 hours and \$148,036.50 in increments of one-hour or more, while Faegre timekeepers 13 billed 64.70 hours and \$40,047.30 in increments of one-hour or more. Id. at 33. Pierce 14 opines that a 25% deduction in block-billed fees is appropriate, as

well as a 30% 15 deduction for fees with descriptions that are excessively redacted. Id. at 33, 37.

16 III. LEGAL STANDARD

17 To determine the reasonableness of attorneys' fees under Michigan law, the court 18 is first
"required to determine 'the reasonable hourly or daily rate customarily charged in 19 the locality
for similar legal services, using reliable surveys or other credible evidence.'" 20 Woodman v.
Dep't of Corr., 511 Mich. 427, 451 (2023) (citing Smith v. Khouri, 481

21 Mich. 519, 522 (2008)). Second, the court must "multiply that rate by the reasonable

22 number of hours expended in the case to arrive at a baseline figure." Id. (citing Pirgu v. 23
United Servs. Auto. Ass'n, 499 Mich. 269, 281 (2016)). Thereafter, the court must 24 consider a
non-exhaustive list of factors "to determine whether an up or down 25 adjustment is appropriate."
Pirgu, 499 Mich. at 281. These factors, set forth in the 26 Michigan Rules of Professional
Conduct, Rule 1.5(a), include: 27

(1) the experience, reputation, and ability of the lawyer or lawyers performing the

1 services, (2) the difficulty of the case, i.e., the novelty and difficulty of the 2 questions involved,
and the skill requisite to perform the legal service properly, (3) 3 the amount in question and the
results obtained, (4) the expenses incurred, (5) the 4 nature and length of the professional
relationship with the client, (6) the 5 likelihood, if apparent to the client, that acceptance of the
particular employment 6 will preclude other employment by the lawyer, (7) the time limitations
imposed by 7 the client or by the circumstances, and (8) whether the fee is fixed or contingent. 8
Id. at 282. The burden of proving reasonableness rests with the party requesting the 9 attorneys'
fees. Id. at 281, n.45. 10

IV. DISCUSSION

11 As an initial matter, as requested by Volkswagen, the Court takes judicial notice 12 of the court
file in the Trenz action. See RJN. Pursuant to Federal Rule of Evidence 13 201(b), the Court "may
take notice of proceedings in other courts, both within and 14 without the federal judicial system,
if those proceedings have a direct relation to matters 15 at issue." U.S. ex rel. Robinson Rancheria
Citizens Council v. Borneo, Inc., 971 F.2d 16 244, 248 (9th Cir. 1992). These materials are
directly related to the issue of damages, as 17 the parties primarily dispute whether the time and
labor spent by Volkswagen's attorneys 18 in the Trenz action was reasonable. 19 The Court
examines each category of Volkswagen's damages request in turn. 20 A. Attorneys' Fees and Costs
21 Volkswagen argues that it is entitled to attorneys' fees pursuant to the 2009 Terms 22 &
Conditions, as its attorneys reasonably expended 4,721.34 hours litigating the Trenz 23 action
over seven years, resulting in \$2,245,305.62 in fees and costs. OB at 18. 24 Volkswagen first
contends that its counsel's billing rates are reasonable and 25 comparable to similar Los Angeles
area firms. Id. at 19. Second, Volkswagen contends 26 that its attorneys reasonably billed 4,721.34
hours, largely on discovery, briefs, and 27 settlement communications. Id. at 20. According to
Volkswagen, discovery included 1 written discovery, ten depositions, third-party discovery
involving subpoenas to 100 2 dealers, thousands of documents, meet and confer discussions, and

discovery 3 conferences. Id. As for briefs, Volkswagen states that its attorneys prepared two 4 motions to dismiss, two motions for summary judgment, class certification and 5 decertification briefing, a Rule 23(f) petition, and a motion to certify immediate appeal. 6 Id. As for settlement, Volkswagen contends that its attorneys participated in two 7 mediations and spent “hours” discussing settlement with the Trenz plaintiffs’ counsel.

8 Id. at 20-21.

9 Volkswagen states that its 28 timekeepers did not work on the case at one time.

10 Id. at 21. Rather, Volkswagen argues that the “core team” at Baker consisted of two 11 partners and two associates, while the “core team” at Faegre was “mostly one partner 12 and sometimes one associate.” Id. Volkswagen then argues that other relevant factors— 13 including results obtained, experience of the lawyers, difficulty of the case, the length of 14 its relationship with counsel, and the fact that its counsel was precluded from other 15 employment while working on Trenz—supports its request. Id. at 22-24. Volkswagen 16 asserts that it did not place any restrictions on its attorneys during the litigation, as its 17 “goal was a successful defense,” given that it was the defendant with “deep pockets” that 18 would be responsible for any judgment should Peak not be able to pay its share. Id. at 19 24. 20 Separately, Volkswagen disputes any argument that Volkswagen’s fees should be 21 reduced to align with the fees incurred by Peak in the Trenz action, because 22 Volkswagen’s attorneys performed “substantially more work.” Id. Volkswagen also 23 disputes the methodology and reasoning of Peak’s expert, Pierce, stating that his opinion 24 “is only based on the work performed by both parties for the joint motion to decertify 25 and the supplemental brief on decertification.” Id. at 25-26. 26 In opposition, Peak argues that the number of hours expended on the Trenz 27 litigation by Volkswagen’s attorneys was not reasonable. AB at 9. Peak contends that 1 Id. Peak states that the litigation lasted for seven years only because some rulings were 2 reconsidered, and because of pandemic-related delays. Id. Peak argues that there were 3 only 12 substantive motions in the litigation. Id. at 9-10. Peak next contends that 4 discovery was “fairly limited,” as there were ten depositions in total, including 5 “straightforward” depositions of the named plaintiffs. Id. at 10. Peak asserts that the 6 volume of documents produced “is small” compared to other litigation and only fills two 7 bankers’ boxes. Id. Peak states that, according to Pierce, only \$1,096,770.44 of the fees 8 requested by Volkswagen are reasonable. Id. 9 Relying on Pierce’s report, Peak asserts that Volkswagen unreasonably employed 10 two law firms in the Trenz action, with 19 timekeepers from Baker and ten timekeepers 11 from Faegre. Id. Peak also describes the staffing as partner-heavy. Id. Peak argues that 12 Faegre unreasonably spent 100 hours on each mediation. Id. at 11. Peak further argues 13 that Baker unreasonably billed 4,460.10 hours, 2.5 times more than Peak’s counsel, 14 Sheppard Mullin, which billed 1,823.5 hours. Id. Peak disputes Volkswagen’s 15 argument that Volkswagen’s attorneys took on “vastly” more work. Id. at 12. Rather, 16 Peak argues, without support, that Pierce confirmed that when the parties worked jointly, 17 the same work was done by both sets of attorneys. Id. at 12. Peak also argues, with the 18 support of

Ramsey's declaration, that both parties were equally involved in preparing 19 documents for the motion for class certification; that both parties prepared drafts of the 20 supplemental briefing, which were ultimately merged; and that Peak's counsel "took the 21 laboring oar" in subpoenaing dealers. Id. 12-13. Additionally, Peak questions 22 Karlsgodt's assertion that Baker attorneys Donley and Hooper were brought on for trial 23 preparation, when "[t]he matter never got close to trial." Id. at 14. Given that Donley 24 and Hooper each billed more than 700 hours, Peak asserts that it is "unclear why so 25 much of their time would have been needed, or why it would not have been duplicative" 26 of Karlsgodt and Pearson's work. Id. According to Peak, Pierce opines that a reduction 27 of 85% of the differential between the hours billed by Volkswagen's attorneys and those 1 must be reduced to account for vague entries, block billing, and redactions, resulting in a 2 reduction of \$160,132.57. Id. Finally, Peak contends that there are discrepancies in 3 Volkswagen's entries between what was actually performed and what was actually 4 billed, resulting in overbilling of \$87,172.05. Id. at 15. 5 Separately, Peak argues that Volkswagen's attacks on Pierce's report are 6 meritless. Id. Peak states that it is appropriate to compare the hours billed by Peak and 7 Volkswagen because they were sued for the same reason, engaged in the same or similar 8 discovery, and filed the same or similar pleadings. Id. Peak argues that Volkswagen's 9 challenges go to the weight of Pierce's opinion, not its admissibility. Id. at 18. 10 In reply, Volkswagen argues that with \$2 billion at risk, it was not unreasonable to 11 engage two law firms, especially since only Baker was engaged at first. RB at 5. Next, 12 Volkswagen asserts that of the 19 Baker timekeepers, only seven performed more than 13 100 hours of work. Id. at 6. Of the ten Faegre timekeepers, Volkswagen states that only 14 one performed more than 100 hours of work. Id. Volkswagen states that Pierce did not 15 confirm attorney hours or that the work performed by Volkswagen's and Peak's 16 attorneys was the same. Id. at 6-7. As for the motion to decertify, Volkswagen asserts 17 that "[o]ne day of editing versus days of drafting and researching" are not the same. Id. 18 Further, Volkswagen contends that its attorneys prepared lengthier declarations and 19 supporting documents than Peak's attorneys. Id. Volkswagen argues that its trial team 20 was necessary, as the Trenz class action was set for trial on August 6, 2019. Id. at 8. 21 Volkswagen next argues that Pierce's comparisons are flawed because he looked 22 at only two projects, completed in a short time span, in a case that spanned seven years.

23 Id. at 10-11. Further, according to Volkswagen, Pierce testified that his comparison was 24 subjective and that some excluded entries should have been included in the analysis for 25 Sheppard Mullin. Id. at 11-12. Additionally, Volkswagen asserts that Pierce incorrectly 26 stated the number of partners and associates working on the Trenz action for 27 Volkswagen. Id. at 14. Volkswagen argues that Pierce did not consider that 1 third-party company to complete the work that he relied upon and that he did not know 2 his own methodology. Id. at 15. Further, Volkswagen states that Pierce did not look at 3 any of the redacted entries to determine if sufficient context was provided. Id. at 16. 4 Because there is no dispute as to the reasonableness of Baker's and Faegre's 5 hourly rates, the Court focuses its analysis on the time and labor

reasonably required to 6 litigate the Trenz action. The Court finds that the time and labor expended by 7 Volkswagen's attorneys was largely reasonable. The Court recognizes that the briefing 8 completed in the Trenz action was significant, including two motions to dismiss, two 9 motions for summary judgment, a Rule 23(f) petition regarding the class certification 10 ruling, a motion to certify immediate appeal regarding the Court's denial of summary 11 judgment, class certification and decertification briefing, and supplemental briefing on 12 class decertification. In addition to briefing, Volkswagen's attorneys engaged in 13 discovery and successful settlement negotiations. The Court finds that it was reasonable 14 for Volkswagen to commit significant time to complete these tasks and to aggressively 15 litigate this matter. Peak does not appear to deny that defending the Trenz action 16 required significant effort, but rather argues that Volkswagen's attorneys did not work 17 efficiently on the matter. Peak relies on the fact that its own attorneys billed only 18 1,823.5 hours to the Trenz action, less than half of the time billed by Volkswagen's 19 attorneys, even while Peak was responding to the same lawsuit. 20 The Court is not persuaded by Peak's argument. Neither Peak, nor its expert, 21 Pierce, appear to acknowledge the differing positions of Volkswagen and Peak as co- 22 defendants in the underlying Trenz action. As Volkswagen states, the risk of the 23 litigation "was felt more strongly" by Volkswagen "[a]s the defendant with 'deep 24 pockets,'" which "would have been liable for any judgment amount if Peak was unable 25 to pay its share." OB at 9. Accordingly, the Court finds it reasonable that Volkswagen 26 would have a greater incentive to defend the case, and would therefore take on 27 substantially more work than Peak. In other words, the fact that Peak's lawyers billed 1 than Volkswagen's lawyers. Rather, the Court finds that the status of the co-defendants 2 and their billing patterns indicates that Volkswagen's attorneys led the defense, while 3 Peak's attorneys largely took a secondary role. The Court agrees with Volkswagen that 4 Pierce did not "confirm" that the work performed by Volkswagen's and Peak's attorneys 5 during all stages of the Trenz litigation was the same or similar. As to settlement 6 specifically, it appears that Volkswagen's attorneys led discussions and that only 7 Volkswagen signed the agreement. Dkt. 100-1 ¶ 11; dkt. 98-1 at 7-8. This is true even 8 though the ultimate agreement also benefitted Peak, requiring the plaintiff to release all 9 of his claims against Peak. See dkts. 98-1, 102. Meanwhile, it is undisputed that Peak 10 denied Volkswagen's July 29, 2016 indemnification and defense request, and later 11 denied Volkswagen's April 11, 2022 request for Peak to pay the settlement amount.

12 Dkt. 60 ¶¶ 43-44, 53-54. This further demonstrates that Volkswagen acted reasonably in 13 aggressively litigating and settling Trenz, as it was unclear at the time if Peak would 14 ultimately indemnify Volkswagen against all potential losses from the lawsuit. 15 Using the "Task Codes" provided in Volkswagen's billing spreadsheet, see dkt. 16 100-3, Ex. 8, the Court has attempted to categorize Volkswagen's entries to evaluate 17 their reasonableness. The Court provides an approximate breakdown: 18 Category Hours 19 Research, Fact Investigation, Analysis/Strategy 1284.94 20 Document/File Management, Budgeting, Other Case Administration

21 Pleadings 115.8

22 Discovery 1474.8

23 Trial Court Motions 396.4 24 Appellate Motions, Submissions, and Briefs 89.4 25 Class Action
Certification and Notice 544.2 26 Experts and Trial Preparation 43 27 Hearing Attendance and
Court-Mandated Conferences 47.8

1 Settlement 190.2

2 No Task Code Provided 119.8

3 TOTAL 4721.34

4 5 In a large class action like Trenz, it appears reasonable that Volkswagen's 6 attorneys spent the
majority of their time on discovery and analysis and strategy, as well 7 as significant time on
issues related to class certification and trial court motions. 8 Nevertheless, the Court identifies
several areas in Volkswagen's billing entries that may 9 be subject to deductions. First, the Court
examines Volkswagen's billing entries for 10 duplications. Volkswagen states that Baker partner
Flink "only assisted with the Rule 11 23(f) petition," billing approximately 76 hours and \$31,160.
OB at 15. Volkswagen's 12 billing entries show that five other Baker timekeepers also worked on
the Rule 23(f) 13 petition, billing \$20,047.50. Dkt. 100-3, Ex. 8. Further, Volkswagen states that
Faegre 14 partner Van Oort was brought into the case in October 2017 to assist with the Rule 23(f)
15 petition, for a \$14,000 fixed fee. OB at 16. It appears to the Court that a portion of these 16
efforts was duplicative, and Volkswagen has not demonstrated otherwise. While it may 17 have
been reasonable for Van Oort to work with Flink on the Rule 23(f) petition, the 18 Court
concludes that the \$20,047.50 billed by the five other Baker timekeepers was 19 duplicative. The
Court therefore finds it appropriate to deduct \$20,047.50 from 20 Volkswagen's requested fees.
See Sabbagh v. Hamilton Psychological Servs., PLC, 329 21 Mich. App. 324, 361, n.8 (2019) ("It
goes without saying that legal expenditures for 22 duplicative work 'are properly excluded when
determining what constitutes a reasonable 23 attorney fee[.]'"). 24 Additionally, it appears that
attorney time was at least partially duplicated after 25 Baker partner Donley and then-associate
Hooper joined the team. Volkswagen asserts 26 that Donley and Hooper were engaged as trial
counsel and focused on trial preparation, 27 while Baker partner Karlsgodt and associate Pearson
remained focused on TCPA issues 1 and the Court's approximate categories, the hours billed by
Karlsgodt and Pearson on the 2 one hand, and Donley and Hooper on the other, appear as follows:
3 Category Karlsgodt & Donley & Pearson Hooper 4 Hours Hours Research, Fact Investigation,
Analysis/Strategy 257.7 463.1 5 Document/File Management, Budgeting, Other Case 36.5 19.9 6
Administration 7
8 Pleadings 53.5 15.7
9 Discovery 576 827
10 Trial Court Motions 197.4 172.8 11 Appellate Motions, Submissions, and Briefs 69.4 0 12
Class Action Certification and Notice 544.1 0 13 Experts and Trial Preparation 21.5 21.5 14
Hearing Attendance and Court-Mandated Conferences 37.1 0

15 Settlement 79.5 0

16 No Task Code Provided 0 0

17 TOTAL 1872.7 1520

18 19 Based on these categories, the exact division of labor between the Karlsgodt and 20 Pearson team and the Donley and Hooper team is not clear. The largest overlap of work 21 appears to have occurred in the areas of analysis/strategy, discovery, and trial court 22 motions. While the Court understands from Volkswagen's declarations that the 23 analysis/strategy work completed by Karlsgodt and Pearson was distinct from the 24 analysis/strategy work completed by Donley and Hooper, Volkswagen has not explained 25 how their efforts on discovery and trial court motions were distinct and necessary. As it 26 is Volkswagen's burden to prove that its fees are reasonable, and Volkswagen did not 27 provide a justification for Donley and Hooper's efforts other than trial preparation, the 1 court motions is warranted. As Hooper and Donley billed \$360,021.00 on discovery and 2 \$75,200.00 on trial court motions, totaling \$435,221.00, a 20% deduction is equivalent 3 to \$87,044.20. See *Int'l-Matex Tank Terminals-Ill. v. Chem. Bank*, No. 1:08-CV-1200, 4 2010 WL 3222515, at *7 (W.D. Mich. June 16, 2010), report and recommendation 5 adopted sub nom. *Int'l-Matez Tank Terminals-Ill. v. Chem. Bank*, No. 1:08-CV-1200, 6 2010 WL 3238917 (W.D. Mich. Aug. 16, 2010) (applying Michigan law and deducting 7 20% of attorneys' fees that were described as an inefficient and duplicative expenditure 8 of time). 9 Next, the Court considers whether any of Volkswagen's billing entries were 10 impermissibly vague or block-billed. While Michigan courts have found that block 11 billing is not per se improper, the Court must examine whether these entries were such 12 that the Court cannot analyze "what tasks were performed, the relevance of those tasks to 13 the litigation, and whether the amount of time expended on those tasks was reasonable." 14 *Lakeside Retreats LLC v. Camp No Couns. LLC*, 340 Mich. App. 79, 98 (2022). Here, 15 the Court agrees with Pierce's findings that a total of \$105,213.98 in attorneys' fees 16 contained vague descriptions that prevented the Court from sufficiently examining their 17 reasonableness. Dkt. 103-3 at 27. These include entries such as "Work on case 18 strategy," "Follow up on discovery issues," and "Conduct legal research regarding 19 REDACTED." See dkt. 100-3, Ex. 8. Additionally, the Court agrees with Pierce's 20 findings that a total of \$188,083.80 in fees were billed in increments of one-hour or 21 more, preventing the Court from identifying exactly how much time was spent on each 22 billed task. Dkt. 103-3 at 33. These include entries such as the 9.7 hours billed as one 23 entry on March 4, 2017, for approximately five tasks. Dkt. 100-3, Ex. 8. 24 The Court finds that a 15% deduction is appropriate here for the identified vague 25 and block-billed entries, totaling \$43,994.67 overall. See also *Vogel v. Desaeher*, No. 26 339763, 2019 WL 488765, at *5 (Mich. Ct. App. Feb. 7, 2019) (affirming trial court that 27 reduced certain requested attorneys' fees by 6% for impermissibly vague billing entries); 1 (applying Michigan law and noting that "plaintiff's method of block billing makes it 2 difficult to excise unreasonable time with any precision," forcing the Court to make "a 3 rough estimation" of the time spent on each task); *Gratz v. Bollinger*, 353 F.

Supp. 2d 4 929, 939 (E.D. Mich. 2005) (applying federal law and finding that “a ten percent (10%) 5 reduction in Maslon’s requested fees is appropriate due to its attorneys’ block billing and 6 vague entries.”). 7 In total, the Court finds that a deduction of \$151,086.37, or 7% of Volkswagen’s 8 \$2,154,045.00 request, is warranted, due to duplicative efforts, block-billing, and vague 9 billing. The remainder of Volkswagen’s request is reasonable, entitling Volkswagen to 10 recover \$2,002,958.63 in attorneys’ fees. Additionally, the Court agrees with both 11 parties that Volkswagen’s requested \$91,260.62 in costs is reasonable. 12 B. Settlement Amount 13 Volkswagen argues that the 2009 Terms & Conditions allow for recovery of the 14 full \$275,000 settlement amount, as the word “settlement” is not qualified. OB at 26-27. 15 In opposition, Peak argues that the Court should award only \$6,000 for 16 Volkswagen’s settlement of the Trenz action. AB at 18. Peak states that Volkswagen 17 settled with only one plaintiff for \$6,000, after the trial court had entered summary 18 judgment on his individual claims and de-certified the class. Id. at 18-19. Peak contends 19 that the \$269,000 directed toward Trenz’s attorneys was unreasonable, because Trenz 20 could not recover any attorneys’ fees, even if he prevailed, as the TCPA does not provide 21 for attorneys’ fees and the case was no longer a class action. Id. at 19. 22 In reply, Volkswagen argues that “reasonable” only modifies “attorneys’ fees” in 23 the 2009 Terms & Conditions, but that regardless, the settlement was reasonable, 24 because the Trenz plaintiff appealed the order decertifying the class. RB at 17-18. 25 Assuming, without deciding, that “reasonable” modifies “settlement” in the 2009 26 Terms & Conditions, the Court finds that Volkswagen’s settlement with the Trenz 27 plaintiff and his attorneys was reasonable. When the Trenz plaintiff appealed to the 1 Trenz v. On-Line Administrators, Inc. et al. Case No. 2-15-cv-08356-AB-KS, dkt. 269. 2 The Court therefore finds that Volkswagen’s settlement was reasonable for the same 3 reasons discussed in its summary judgment order, dated January 27, 2025: 4 It is undisputed that the Trenz plaintiffs alleged that at least 1,290,000 calls were 5 made by Peak at Volkswagen’s direction, including 490,000 calls made during the 6 period covered by plaintiff Trenz’s class. SUF ¶ 46. It is also undisputed that the 7 Trenz plaintiffs sought penalties of up to \$1,500 per violation. Id. ¶ 45. Thus, 8 accounting only for calls and violations alleged in plaintiff Trenz’s class—as his 9 claim was the only one appealed and settled—Volkswagen faced a potential 10 exposure of \$735,000,000 if Trenz prevailed on appeal and later at trial. Even 11 assuming plaintiff Trenz’s likelihood of prevailing was low, Volkswagen settled 12 for less than 0.04% of its potential exposure amount, at \$275,000.

13 Dkt. 63 at 18. Peak takes issue with the portion of the settlement directed to the 14 plaintiff’s attorneys. The Court is not persuaded by Peak’s argument that it was 15 unreasonable for the plaintiff’s attorneys to receive \$269,000 in compensation, while 16 Peak’s own attorneys billed \$1,010,714.50 as a defendant in the same action. Further, 17 while Peak did not sign the settlement agreement, it appears to the Court that Peak 18 benefited from it, as it required the plaintiff to release all of his claims against Peak. See 19 dkts. 98-1, 102. Accordingly, assuming arguendo that the 2009 Terms & Conditions 20 require a reasonable settlement, the

Court concludes that Volkswagen's \$275,000 settlement was reasonable and is recoverable in full. C. Prejudgment Interest Volkswagen argues that Michigan law allows for the recovery of prejudgment interest here. OB at 27 (citing M.C.L. § 600.6013(8)). Volkswagen asserts that, on May 25, 2025, it will be owed approximately \$240,000 in prejudgment interest. Id. In opposition, Peak argues that Volkswagen does not explain how it calculated prejudgment interest, and therefore its request should be denied. AB at 19. 1 using the formula provided in M.C.L. § 600.6013(8), even if the amount is modified 2 depending on the Court's ultimate award. RB at 18. 3 As this Court exercises jurisdiction over this matter based on diversity of 4 citizenship, prejudgment interest must be determined in accordance with state law. See 5 In re Cardelucci, 285 F.3d 1231, 1235 (9th Cir. 2002) ("In diversity actions brought in 6 federal court a prevailing plaintiff is entitled to pre-judgment interest at state law rates 7 while post-judgment interest is determined by federal law."); Est. of Riddle ex rel. 8 Riddle v. S. Farm Bureau Life Ins. Co., 421 F.3d 400, 409 (6th Cir. 2005) (same). 9 Under Michigan law, prejudgment interest is calculated as follows: 10 [F]or complaints filed on or after January 1, 1987, interest on a money judgment 11 recovered in a civil action is calculated at 6-month intervals from the date of filing 12 the complaint at a rate of interest equal to 1% plus the average interest rate paid at 13 auctions of 5-year United States treasury notes during the 6 months immediately 14 preceding July 1 and January 1, as certified by the state treasurer, and 15 compounded annually, according to this section. Interest under this subsection is 16 calculated on the entire amount of the money judgment, including attorney fees 17 and other costs[.] 18 M.C.L. § 600.6013(8). "This interest award is mandatory, not discretionary." Stryker 19 Corp. v. XL Ins. Am., Inc., No. 1:17-CV-66, 2020 WL 6319170, at *3 (W.D. Mich.

20 Sept. 15, 2020). "The prejudgment interest statute is remedial in nature and is to be 21 construed liberally in favor of the prevailing party. [Its purpose] is not only to 22 compensate the prevailing party for the delay in the use of the money, but also to offset 23 the costs of bringing the action and to provide an incentive for prompt settlement." 24 Perceptron, Inc. v. Sensor Adaptive Machines, Inc., 221 F.3d 913, 923 (6th Cir. 2000) 25 (citations omitted). 26 Here, Volkswagen's complaint was filed on August 11, 2023, and the amount 27 determined recoverable —\$2,002,958.63 in attorneys' fees, \$91,260.62 in costs, and 1 || action. While Volkswagen states that it is entitled to approximately \$240,000 in 2 || prejudgment interest, it has not provided these calculations to the Court. The Court 3 || requests that Volkswagen submit its calculations of prejudgment interest pursuant to 4 || M.C.L. § 600.6013(8) for a money judgment of \$2,369,219.25, comprising 5 || \$2,002,958.63 in attorneys' fees, \$91,260.62 in costs, and \$275,000 from the settlement 6 || agreement, by May 29, 2025. Peak shall submit any objection to this calculation by June 7 || 2, 2025. See Stryker, 2020 WL 6319170, at *3 (verifying the plaintiff's M.C.L. § 8 || 600.6013(8) calculations before awarding prejudgment interest).

9 | IV. CONCLUSION

10 In accordance with the foregoing, the Court finds that Volkswagen is entitled to 11 || }

\$2,369,219.25 in damages. The Court RESERVES JUDGMENT on the prejudgment 12 || interest
to be awarded to Volkswagen. 13 IT IS SO ORDERED. 14 || Dated: May 27, 2025 Manis A yd 16
Christina A. Snyder
7 UNITED STATES DISTRICT JUDGE
18 19 20 21 22 23 24 25 26 27 28 91

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