

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Cabrera v. Ford Motor Company

Cabrera v. Ford Motor Company · No. 3:23-cv-01775 · Decided August 26, 2025

SUMMARY

The United States District Court for the Southern District of California addresses Plaintiffs’ motion for attorneys’ fees, costs, and expenses following their acceptance of Ford Motor Company’s Rule 68 offer of judgment in a California Song-Beverly Consumer Warranty Act action. The Court considers the reasonableness of counsel’s hourly rates and time expended, including fees incurred in a previously dismissed state-court proceeding, and Defendant’s objections to costs and a lodestar enhancement.

OPINION

Cabrera v. Ford Motor Company

PER CURIAM.

1 2 3 4 5 6

7 UNITED STATES DISTRICT COURT

8 SOUTHERN DISTRICT OF CALIFORNIA

9 10 ILZIA CABRERA and JOHN Case No.: 23-cv-1775-WQH-LR

CABRERA,

11 ORDER

Plaintiffs, 12 v. 13

FORD MOTOR COMPANY,

14 Defendant. 15

HAYES, Judge: 16 The matter before the Court is the Motion for Attorneys’ Fees, Costs, and Expenses 17 filed by Plaintiffs Ilzia Cabrera and John Cabrera (collectively, “Plaintiffs”). (ECF No. 60.) 18

I. BACKGROUND

19 On March 24, 2023, Plaintiffs initiated this action by filing a Complaint against 20 Defendant Ford Motor Company (“Defendant”) in the United States District Court for the 21 Northern District of California. (ECF No. 1.) On May 1, 2023, Plaintiffs filed the First 22 Amended Complaint (“FAC”), the operative pleading, which asserted claims against 23 Defendant for violations of the California Song-Beverly Consumer Warranty Act 24 (“Song-Beverly Act”). (ECF No. 16, FAC.) 25 On September 26, 2023, District Judge Beth Labson Freeman issued an order 26 granting Defendant’s Motion to Dismiss for Improper Venue under Federal Rule of Civil 27

Procedure 12(b)(3) and Transfer Venue under 28 U.S.C. § 1404(a). (ECF No. 31 at 9.) 28 1 Judge Freeman further denied without prejudice to “refiling in the proper court” 2 Defendant’s Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6). Id. 3 On September 27, 2023, the case was transferred from the United States District 4 Court for the Northern District of California to the United States District Court for the 5 Southern District of California. (ECF No. 33.) 6 On October 27, 2023, Defendant filed the Motion to Dismiss Plaintiffs’ First 7 Amended Complaint Pursuant to Rule 12(b)(6) (“Motion to Dismiss”). (ECF No. 40.) On 8 June 4, 2024, the Court granted in part and denied in part the Motion to Dismiss. (ECF No. 9 44.) Specifically, the Court dismissed without prejudice Plaintiffs’ fourth cause of action 10 for breach of the implied warranty of merchantability. Id. at 18. 11 On July 2, 2024, Defendant filed an Answer to the FAC. (ECF No. 45.) 12 On August 13, 2024, Plaintiffs filed a Request for Entry of Judgment Pursuant to 13 FRCP 68(a), indicating that they had accepted Defendant’s offer of judgment under Federal 14 Rule of Civil Procedure 68 “in the amount of \$105,000.00.” (ECF No. 51 at 2.) Plaintiffs 15 also attached a signed copy of Defendant’s Offer of Judgment Pursuant to Federal Rule of 16 Civil Procedure 68 (“Rule 68 Offer”). Id. at 4–7. With respect to attorneys’ fees and costs, 17 the Rule 68 Offer stated, in relevant part: 18 Plaintiffs shall retain the right to petition the Court for an award of reasonably and actually incurred attorney fees and costs recoverable pursuant to 19 California Civil Code Section 1794(d). In ruling on Plaintiffs’ fee/cost 20 motion(s), the attorney fees, expenses and costs shall be calculated as if Plaintiffs were found to have prevailed in this action under section 1794(d) of 21 the California Civil Code. Ford expressly reserves all defenses to Plaintiffs’ 22 fee/costs motion(s). Plaintiffs may recover for attorney fees and costs reasonably and actually incurred in bringing such a fee/cost motion(s). 23 24 Id. at 5.

25 On August 21, 2024, the Court issued an Order directing the Clerk of the Court “to 26 enter JUDGMENT in favor of Plaintiffs in the amount of \$105,000.00 pursuant to the terms 27 of the Rule 68 Offer.” (ECF No. 52 at 2.) The next day, the Court entered the judgment. 28 (ECF No. 53.) 1 On November 8, 2024, the Court issued an Order granting the parties’ joint motion 2 to continue the deadline for Plaintiffs to file a Motion for Attorneys’ Fees, Costs, and 3 Expenses. (ECF No. 57.) The Court extended Plaintiffs’ deadline to file the motion to 4 November 19, 2024. Id. at 2.

5 On November 25, 2024,¹ Plaintiffs filed the Motion for Attorneys’ Fees, Costs, and 6 Expenses. (ECF No. 60.)² 7 On November 26, 2024, Plaintiffs filed a Bill of Costs, requesting that the Clerk of 8 the Court tax costs in favor of Plaintiffs in the amount of \$751.25. (ECF No. 61.) On 9 December 9, 2024, the Clerk of the Court issued an Order Taxing Costs in the amount of 10 \$0.00. (ECF No. 64.) In the Order, the Clerk of the Court stated: 11 Local Rule 54.1(a) allows a prevailing party entitled to costs to file a Bill of Costs within fourteen (14) days after entry of judgment. The Bill of Costs was 12 filed on November 26, 2024. An entry of judgment was entered on August 22, 13 2024. As such, this Bill of Costs must be denied in its entirety. 14 Id. at

1. 15 16 17 18 1 In its Response in Opposition, Defendant points out that Plaintiffs filed the Motion for Attorneys' Fees, Costs, and Expenses several days after the deadline set by the Court. (ECF No. 66 at 8 n.1.) Defendant 19 notes that it is raising arguments in opposition to Plaintiffs' Motion "in the event that the Court considers Plaintiffs' untimely motion." Id. However, "[c]ourts are particularly likely to allow an untimely motion 20 for attorneys' fees when there is no prejudice resulting from the delay and the interests of justice favor 21 resolving the untimely request on its merits." *Prodox, LLC v. Pro. Document Servs., Inc.*, No. 2:20-cv- 02035-JAD-NJK, 2022 WL 22881782, at *1–2 (D. Nev. Nov. 21, 2022) (refusing to deny a motion for 22 attorneys' fees as untimely—despite the plaintiff's failure to provide "sufficient justification" for filing the motion "more than two months late"—in part because the defendant "ha[d] not established any 23 prejudice stemming from the timing of the motion"). In this case, Defendant has not demonstrated that it suffered any prejudice from Plaintiffs filing the pending Motion within one week of the deadline 24 previously set by the Court. The Court accordingly declines to deny the Motion as untimely. 25 2 Previously, on November 22, 2024, Plaintiffs filed a Motion for Attorneys' Fees, Costs, and Expenses 26 (ECF No. 58) and a Request for Judicial Notice (ECF No. 59) that appear to be essentially identical to the present Motion and its attachments. (Compare ECF Nos. 58, 58-1, 58-2, 59, with ECF Nos. 60, 60-1, 60-2, 27 60-3.) The Court observes that the previously filed Motion (ECF No. 58) contained an improper hearing date and assumes that Plaintiffs refiled the Motion to correct that deficiency. The previously filed Motion 28 1 On December 16, 2024, Defendant filed a Response in Opposition to the Motion for 2 Attorneys' Fees, Costs, and Expenses. (ECF No. 66.)

3 II. CONTENTIONS

4 Plaintiffs contend that, as prevailing parties, they are entitled to recover their 5 attorneys' fees, costs, and expenses in the amount of \$70,400.50 pursuant to California 6 Civil Code § 1794(d) and the Rule 68 Offer. (See ECF No. 60 at 9–10.) Specifically, 7 Plaintiffs request an award consisting of: 8 (1) \$47,740.00 in attorney fees for Strategic Legal Practices, APC ('SLP'); (2) a 1.35 multiplier enhancement on the attorney fees (or \$16,709.00);

9

(3) \$1,451.50 in costs and expenses for SLP; and (4) an additional \$4,500.00

10 for Plaintiffs' counsel to review Defendant's Opposition, draft the Reply, and attend the hearing on this Motion. 11

12 Id. at 10. Plaintiffs contend that "[t]he hourly rates for the attorneys who worked on this 13 case are appropriate given the relative experience and qualifications of these attorneys" and 14 that their counsel's rates "have been approved by Courts in the Southern and Central 15 District [of California], and throughout the state." Id. at 16. Plaintiffs also contend that their 16 counsel's billable hours—amounting to a total of 93.8 hours—spent litigating this case 17 through the present Motion are reasonable. Id. at 18. Additionally, Plaintiffs contend that 18 a lodestar multiplier enhancement of 1.35 is warranted in this case because (1) "counsel 19 obtained an

excellent outcome”; (2) the risks posed by the litigation were “substantial” 20 because “SLP undertook representation of Plaintiff[s] on a contingency basis”; and 21 (3) payment has been delayed for over a year. *Id.* at 21–23. Finally, Plaintiffs contend that 22 they are entitled to reimbursement for their costs and expenses reasonably incurred in 23 litigating this case. See *id.* at 23. Plaintiffs attach documentation of SLP’s itemized billing 24 entries and costs and expenses for this case. (ECF No. 60-2 at 206–10.) 25 Defendant does not dispute that Plaintiffs are the prevailing parties for purposes of 26 this motion. Defendant contends, however, that Plaintiffs’ counsel’s hourly rates are 27 “excessive” and “unsupported by the evidence.” (ECF No. 66 at 10.) Defendant also 28 contends that Plaintiffs’ counsel’s time entries include “excessive” and “unnecessary” 1 entries, including time entries related to the state court proceeding that Plaintiffs voluntarily 2 dismissed prior to filing the present action in the Northern District of California. *Id.* at 15– 3 16. Defendant contends that additional entries contain inappropriate block-billed and 4 clerical tasks. *Id.* at 19–21. Defendant contends that Plaintiffs’ fees requested in connection 5 with the present Motion are excessive given the Motion’s “template” nature. *Id.* at 18. 6 Defendant attaches a spreadsheet detailing its specific objections to Plaintiffs’ itemized 7 billing entries. (ECF No. 66-5.) Defendant also contends that a lodestar enhancement is 8 unwarranted in this action. Finally, Defendant contends that Plaintiffs’ request for costs 9 should be denied because Plaintiffs “seek unrecoverable costs, do not present any evidence 10 to support their costs, and improperly bring an untimely request for costs,” despite the 11 Clerk of the Court denying Plaintiffs’ Bill of Costs as untimely. (ECF No. 66 at 23 (citing 12 ECF No. 64).) In sum, Defendant requests that the Court award Plaintiffs “no more than 13 \$8,210.25 in attorneys’ fees” and deny Plaintiffs’ request for costs. *Id.* at 24.

14 III. LEGAL STANDARD

15 Under the Song-Beverly Act, a prevailing buyer: 16 shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney’s fees based 17 on actual time expended, determined by the court to have been reasonably 18 incurred by the buyer in connection with the commencement and prosecution of such action. 19 20 Cal. Civ. Code § 1794(d). “The plaintiff bears the burden of demonstrating that the fees 21 sought were allowable, reasonably necessary to the conduct of the litigation, and 22 reasonable in amount.” *Hellenberg v. Ford Motor Co.*, No. 18cv2202 JM (KSC), 2020 WL 23 1820126, at *1 (S.D. Cal. Apr. 10, 2020) (citing *Karapetian v. Kia Motors Am., Inc.*, 970 24 F. Supp. 2d 1032, 1036 (C.D. Cal. 2013)). 25 “Courts calculate attorneys’ fees under § 1794(d) using the ‘lodestar adjustment 26 method.’” *Aispuro v. Ford Motor Co.*, No. 18-CV-2045 DMS (KSC), 2020 WL 4582677, 27 at *2 (S.D. Cal. Aug. 10, 2020) (quoting *Robertson v. Fleetwood Travel Trailers of Cal., 28 Inc.*, 144 Cal. App. 4th 785, 818 (Ct. App. 2006)). “The lodestar calculation ‘begins with 1 a touchstone or lodestar, based on careful compilation of the time spent and reasonable 2 hourly compensation of each attorney.’” *Id.* (quoting *Ketchum v. Moses*, 17 P.3d 735, 741 3 (Cal. 2001)). After determining the reasonable hourly rate for comparable legal services in 4 the community,

courts may adjust that amount based on the following factors: “(1) the 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*, 17 P.3d at 741. “[T]he purpose of such adjustment is to fix a fee at the fair market value for the particular action.” 9 *Id.*

10 IV. DISCUSSION

11 A. Attorneys’ Fees 12 1. Reasonable Rate 13 In determining a reasonable rate for attorneys’ fees, “the burden is on the fee applicant to produce satisfactory evidence—in addition to the attorney’s own affidavits— 15 that the requested rates are in line with those prevailing in the community for similar 16 services by lawyers of reasonably comparable skill, experience, and reputation.” *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984). “The relevant community is that in which the 18 district court sits.” *Carr v. Tadin, Inc.*, 51 F. Supp. 3d 970, 978 (S.D. Cal. 2014) (quoting 19 *Weeks v. Kellogg Co.*, No. CV 09-08102(MMM) (RZx), 2013 WL 6531177, at *32 (C.D. 20 Cal. Nov. 23, 2013)); see *Butler v. Homeservices Lending LLC*, No. 11-cv-02313-L 21 (MDD), 2014 WL 5460447, at *6 (S.D. Cal. Oct. 27, 2014) (“The survey and reports 22 submitted by both [plaintiff] and [defendant] are irrelevant to the hourly rate inquiry 23 because none of them address the prevailing market rate for attorneys of reasonably 24 comparable skill, experience, and reputation in the Southern District of California.”). 25 Courts may draw upon “[d]ecisions by other courts regarding the reasonableness of the rate 26 sought,” as well as “[the court’s] own experience in determining what constitutes a 27 reasonable rate.” *Base v. FCA US, LLC*, No. 17-cv-01532-JCS, 2020 WL 363006, at *4 28 (N.D. Cal. Jan. 22, 2020). “Once the fee applicant has proffered such evidence” of the 1 prevailing market rate in the community, “the opposing party must produce its own 2 affidavits or other evidence to rebut the proposed rate.” *Nguyen v. BMW of N. Am., LLC*,

3 No. 3:20-CV-2432 JLS (BLM), 2023 WL 173921, at *2 (S.D. Cal. Jan. 12, 2023) (quoting 4 *Cortes v. Metro. Life Ins. Co.*, 380 F. Supp. 2d 1125, 1129 (C.D. Cal. 2005)). 5 Plaintiffs contend that the following hourly rates are reasonable: 6 Name Hourly Rate (2023) Hourly Rate (2024) 7 Tionna Carvalho \$570 \$595 8 Christian Castro N/A \$475 9 Ivy Choderker \$595 \$595 10 Mark Gibson \$495 N/A 11 Elizabeth Larocque \$595 \$595 12 Daniel Law \$475 \$495 13 Tara Mejia \$350; \$395 N/A 14 Mirwais Mohammad \$400 N/A 15 Deborah Rabieian \$435 N/A 16 Rosy Stoliker N/A \$435 17 Rabiya Tirmizi N/A \$395 18 Michael Tracy \$475 N/A 19 20 21 3 An additional nine timekeepers are included in the documentation attached to Plaintiffs’ Motion. 22 However, as explained below, the Court is excluding from the fee award the time that Plaintiffs’ counsel billed in the state court action that Plaintiffs voluntarily dismissed prior to filing the present federal action. 23 Because these nine timekeepers billed time for Plaintiffs’ case only in 2021 and 2022—prior to the filing of the present federal case—the Court has deducted their time from Plaintiffs’ fee award and need not 24 evaluate the reasonableness of their hourly rates. 25 4 The Court uses “N/A” to indicate that, according to Plaintiffs’ billing records, the attorney did not

bill 26 any time for Plaintiffs' case during the corresponding year. For example, attorney Christian Castro did not bill any time for Plaintiffs' case in 2023. 27 5 The billing records reflect that, between May and July 2023, attorney Tara Mejia's hourly rate increased 28 1 (ECF No. 60-2 at 7–17; see also *id.* at 210.) Plaintiffs contend that these rates “are 2 appropriate given the relative experience and qualifications of these attorneys,” and that 3 the rates are like those “that have been approved by Courts in the Southern and Central 4 District [of California], and throughout the state.” (ECF No. 60 at 16.) 5 Defendant contends that Plaintiffs' counsel's requested rates “are excessive and well 6 above the rates charged for similar work in the community, especially for cookie-cutter 7 lemon law cases.” (ECF No. 66 at 11.) Defendant contends that Plaintiffs offer no evidence 8 as to the “prevailing community rate,” and instead rely upon “a handful of other courts 9 [that] have granted [SLP] those rates in the past.” *Id.* at 10. Defendant contends that the 10 Court should apply the 2022 Real Rate Report's median rates for consumer goods and 11 insurance defense cases in determining an appropriate rate for Plaintiffs' counsel. *Id.* at 12. 12 Defendant contends that the Court should award rates of no more than \$350 per hour for 13 Tionna Carvalho—who Defendant contends is “the only billing partner on this matter”— 14 and \$275 per hour for non-partners. *Id.* at 13. 15 Plaintiffs cite several cases where courts within the San Diego community—at both 16 the state and federal level—have approved SLP's rates as reasonable. For example, in *Hall 17 v. FCA US LLC*, a San Diego Superior Court judge declined to reduce SLP's rates, which 18 ranged from \$325/hour to \$495/hour in that case. (ECF No. 60-2 at 129–130 (citing *Hall 19 v. FCA US LLC*, No. 37-2016-00006383-CU-BC-CTL (San Diego Superior Ct. June 25, 20 2018))); *id.* at 140–48.) The judge in *Hall* explained that he found SLP's rates “to be 21 consistent with San Diego lawyer rates” “based on [the] Court's familiarity with this issue.”

22 *Id.* at 130.

23 Plaintiffs also cite *Scherer v. FCA US, LLC*, where, in 2022, a judge in the Southern 24 District of California found that, with respect to SLP's associate and senior attorneys, the 25 rates were “supported by evidence and [were] reasonable.” No. 20-cv-02009-AJB-BLM, 26 2022 WL 22902332, at *7 (S.D. Cal. Oct. 24, 2022). The rates approved in *Scherer* 27 28 1 included, as relevant to this action, a \$550/hour rate for Tionna Carvalho; a \$450/hour rate 2 for Mark Gibson; and a \$410/hour rate for Deborah Rabieian. *Id.* These rates are 3 comparable to the rates SLP seeks in the present action, particularly when accounting for 4 the attorneys' increased experience, as well as inflation. (Cf. ECF No. 60-2 at 210 (seeking, 5 in this action, rates of \$570/hour and \$595/hour for Tionna Carvalho; \$475/hour and 6 \$495/hour for Mark Gibson; and \$435/hour for Deborah Rabieian).) 7 Additionally, in another recent case that SLP litigated in this district, another judge 8 deemed the following rates to be reasonable in a case involving several of the same 9 attorneys: \$550/hour for Tionna Dolin; \$440/hour for Daniel Law; and \$410/hour for 10 Deborah Rabieian, all for the year of 2022. See *Bendavid v. Kia Am., Inc.*, No. 22-CV-223- 11 RSH-BLM, 2023 WL 6063442, at *3–4 (S.D. Cal. Mar. 7, 2023) (concluding that SLP's 12

requested rates were reasonable in light of orders from comparable cases reflecting 13 approval of similar rates); see also *Bendavid v. Kia Am., Inc.*, No. 22-CV-223-RSH-BLM, 14 ECF No. 29-2 at 307 (S.D. Cal. Aug. 10, 2022) (listing the attorneys' hourly rates). 15 Although the defendant in *Bendavid* did not challenge the reasonableness of SLP's hourly 16 rates, the Court nevertheless finds the approval of similar rates in another one of SLP's 17 cases (and involving several of the same attorneys as in this case) persuasive. See *Bendavid*, 18 2023 WL 6063442, at *4. The Court notes that the rates approved in *Bendavid* are 19 comparable to the rates the same attorneys now request in this case. 20 Defendant points out that some cases within this district and the Central District of 21 California have reduced the hourly rates in similar lemon law cases to reflect the Real Rate 22 Report's median rates for general consumer goods and insurance defense cases. (See ECF

23 No. 66 at 11; see also, e.g., *Aispuro*, 2020 WL 4582677, at *3–4 (reducing the plaintiff's 24 attorneys' requested rates to \$350/hour for partners and \$225/hour for associates in 25 26 27 6 Ms. Carvalho is referenced in *Scherer* as “Tionna Dolin,” *id.*; however, Plaintiffs' Motion clarifies that Dolin is Ms. Carvalho's maiden name. (See, e.g., ECF No. 60-2 at 8 (referencing Ms. Carvalho as “Tionna 28 1 accordance with the median rates in the 2018 Real Rate Report).) However, other courts 2 within this district have declined to follow the Real Rate Report. See *Jurosky v. BMW of 3 N. Am., LLC*, No. 19cv706 JM (BGS), 2020 WL 5033584, at *3 (S.D. Cal. Aug. 25, 2020) 4 (declining to adjust the hourly rates for SLP attorneys based upon the Real Rate Report in 5 part because “[o]ther courts ... have declined to adjust rates based on the Real Rate Report” 6 and “the cases in which the court decreased the hourly rate did not involve the attorneys 7 who represented Plaintiff here”); *Pappas v. Ford Motor Co.*, No. 3:21-cv-00584-BEN- 8 KSC, 2021 WL 5810661, at *3 (S.D. Cal. Dec. 7, 2021) (approving the plaintiff's 9 attorney's requested rate of \$510/hour and declining to implement the \$350/hour rate 10 applied in *Aispuro* because the plaintiff “provide[d] an extensive background of its 11 counsel's consumer law experience and the declarations of other attorneys who work in the 12 area” and the defendant “fail[ed] to provide evidence that Plaintiff's rate [was] 13 unreasonable beyond pointing out a lower rate awarded in an unrelated case”). 14 In this case, the Court declines to follow Defendant's suggestion of applying the 15 Real Rate Report's median rates for general consumer goods and insurance defense cases. 16 The Court instead finds the hourly rates approved for other lemon law actions in this 17 district—often involving the same attorneys, or, at the very least, the same firm—more 18 persuasive in determining reasonable hourly rates for Plaintiffs' counsel. See *Jurosky*, 2020 19 WL 5033584, at *3; *Pappas*, 2021 WL 5810661, at *3; *Scherer*, 2022 WL 22902332, at 20 *7; *Bendavid*, 2023 WL 6063442, at *3–4. 21 In sum, the Court concludes that Plaintiffs' counsel's requested rates are reasonable. 22 These rates are also comparable to those awarded to different counsel in other recent 23 Southern District of California “lemon law” cases. See *Garcia v. Ford Motor Co.*, No. 24 22-cv-1474-GPC, 2023 WL 3961090, at *4 (S.D. Cal. June 12, 2023) (upholding attorney 25 rates ranging “between \$475 and \$605 per hour” in part because “the

attorneys involved 26 [were] highly skilled in Song-Beverly cases” and “[had] many years’ experience litigating 27 Song-Beverly actions and have a proven track record of success”); Hellenberg, 2020 WL 28 1 1820126, at *2–3 (upholding as reasonable rates of \$350/hour–\$550/hour for partners and 2 rates of \$250/hour–\$325/hour for associates).⁷ 3 2. Hours Reasonably Expended 4 The prevailing party is entitled to “an award of fees for all time reasonably expended 5 in pursuit of the ultimate result achieved in the same manner that an attorney traditionally 6 is compensated by a fee-paying client for all time reasonably expended on a matter.” 7 Hensley v. Eckerhart, 461 U.S. 424, 431 (1983) (quotation omitted). “A fee applicant must 8 provide records documenting the tasks completed and the amount of time spent.” Scott v. 9 Jayco Inc., No. 1:19-cv-0315 JLT, 2021 WL 6006411, at *2 (E.D. Cal. Dec. 20, 2021) 10 (citing Hensley, 461 U.S. at 424). 11 “[G]eneral arguments that fees claimed are excessive, duplicative, or unrelated do 12 not suffice.” Demaria v. FCA US LLC, No. 17-cv-00539-AJB-BGS, 2020 WL 7013584, at 13 *1 (S.D. Cal. Nov. 25, 2020) (quoting Premier Med. Mgmt. Sys., Inc. v. Cal. Ins. Guarantee 14 Ass’n, 163 Cal. App. 4th 550, 564 (Ct. App. 2008)). Instead, “[i]f the prevailing party meets 15 his initial burden” of “showing that the fees incurred were reasonably necessary to the 16 conduct of the litigation,” “[t]he party opposing the fee award can be expected to identify 17 the particular charges it considers objectionable.” White v. FCA US LLC, No. 22-cv-00954- 18 BLF, 2024 WL 4257640, at *2 (N.D. Cal. Sept. 20, 2024) (citations omitted). “If a court 19 determines that some hours billed are not reasonable, it may exclude them using one of two 20 methods: the court may either conduct an ‘hour-by-hour analysis’ of the fee request or 21 make an ‘across the board percentage cut.’” Zargarian v. BMW of N. Am., LLC, 442 F. 22 23 7 In determining reasonable rates, the Court does not consider Defendant’s arguments that Plaintiffs’ 24 counsel’s rates “do not reflect rates that clients actually pay” and that Plaintiffs failed to present “evidence 25 that any client has ever paid them these rates.” (ECF No. 66 at 11.) Plaintiffs need not show that they were actually billed at their attorneys’ rates to demonstrate that the rates are reasonable or to recover attorneys’ 26 fees. See Lin v. BMW of N. Am., LLC, No. LACV 18-08297-VAP (PLAx), 2020 WL 8743479, at *6 (C.D. Cal. Sept. 8, 2020) (rejecting the defendant’s argument that plaintiff’s counsel’s rates were “unreasonable” 27 because they were not “actually charged” to the plaintiff and holding that, “[a]lthough plaintiff’s counsel was retained on a contingency fee basis, Plaintiff [was] entitled to recovery of his attorneys’ fees pursuant 28 1 Supp. 3d 1216, 1223 (C.D. Cal. 2020) (quoting Gonzalez v. City of Maywood, 729 F.3d 2 1196, 1203 (9th Cir. 2013)). 3 a. Hours Expended in the Voluntarily Dismissed State Court Proceeding 4 5 Defendant contends that the Court should exclude the billing entries from the state 6 court proceeding that Plaintiffs voluntarily dismissed prior to filing the present federal 7 action because these entries are “unnecessary and redundant.” (ECF No. 66 at 15.) 8 Specifically, Defendant’s counsel explains in a declaration that: 9 On August 12, 2021, Plaintiffs first filed suit in Santa Clara Superior Court alleging causes of action for breach of express and implied warranty under the 10 Song-Beverly Act, Fraudulent Inducement – Concealment, and negligent 11 repair.

On November 19, 2021, [Defendant] filed its motion to compel arbitration which was set to be heard on February 22, 2022. Before 12 [Defendant's] motion could be heard, Plaintiffs voluntarily dismissed their 13 state court action on February 16, 2022. Over a year later, on March 24, 2023, Plaintiffs brought suit in the United States District Court for the Northern 14 District of California. 15 (ECF No. 66-1 at 2.)⁸ Notably, Plaintiffs' Complaint and FAC similarly assert causes of 16 action against Defendant under the Song-Beverly Act. (See generally ECF No. 1; ECF No. 17 16.) 18 Defendant contends that Plaintiffs should not be permitted to recover fees incurred 19 in the state court proceeding because that proceeding was a separate action "that Plaintiffs 20 voluntarily dismissed to avoid an unfavorable ruling on [Defendant's] motion to compel 21 arbitration." (ECF No. 66 at 15.) Defendant contends that, pursuant to Federal Rule of Civil 22 Procedure 41(d), a defendant is typically permitted to seek costs from a plaintiff who 23 24 25 26 ⁸ Although Plaintiffs did not file a Reply responding to Defendant's contentions about the prior state court proceeding, the Court notes that the Joint Case Management Conference Statement, which was filed 27 jointly by the parties on September 13, 2023, states that this federal matter "was previously filed in Santa Clara Superior Court (21CV387137) before Plaintiffs dismissed and re-filed in federal court." (ECF No. 28 1 previously dismissed an action and later files another action "based on or including the 2 same claim against the defendant." See *id.* at 16; see also Fed. R. Civ. P. 41(d) ("If a 3 plaintiff who previously dismissed an action in any court files an action based on or 4 including the same claim against the same defendant, the court ... may order the plaintiff 5 to pay all or part of the costs of that previous action[.]"). Defendant contends that, in light 6 of Rule 41(d), it would be illogical for the Court to permit Plaintiffs to now recover their 7 state court fees in this federal proceeding "when it is clear that Plaintiffs abused the 8 litigation process by forum shopping." (ECF No. 66 at 16.) In the alternative, Defendant 9 requests that, if the Court permits Plaintiffs to recover fees incurred in the state court 10 proceeding, the Court should nevertheless exclude several billing entries Defendant 11 identifies as "suspect, unreasonable, excessive, and unnecessary." *Id.* at 16–17. 12 As Defendant points out, courts often apply Rule 41(d) to award costs to the 13 defendant where, as here, the plaintiff voluntarily dismisses a prior action and then re-files 14 a case based upon or including the same claim. Rule 41(d) thus "protects against the 15 harassment of repeated lawsuits by the same plaintiff on the same claims" and "deter[s] 16 forum shopping and vexatious litigation." *Owen v. Hyundai Motor Am.*, No. 2:22-cv- 17 00882-KJM-CKD, 2023 WL 2529782, at *1 (E.D. Cal. Mar. 15, 2023) (citations and 18 internal quotation marks omitted). For example, in *Owen*, the plaintiff filed a Song-Beverly 19 action in California state court, then voluntarily dismissed the entire action without 20 prejudice after the defendant moved to compel arbitration. *Id.* Several months later, the 21 plaintiff filed a complaint containing "allegations mirror[ing] those in her state court 22 complaint" against the defendant in federal court. *Id.* The federal court subsequently 23 granted the defendant's request to recover the costs and fees that the defendant "incurred 24 needlessly as a direct result of [the plaintiff's] dismissal and refiling" pursuant to Rule 25 41(d). *Id.* at *4. Other courts have also awarded the costs and

fees of defending the state 26 court lawsuit to defendants in similar circumstances. See, e.g., *Ortega v. Am. Honda Motor 27 Co., Inc.*, No. 2:22-cv-04276-FLA (MRWx), 2023 WL 5207504, at *3–4 (C.D. Cal. Mar. 28 24, 2023) (concluding that the defendant should recover its costs and fees incurred for 1 “prior legal services rendered in the state court action [that] cannot contribute to its defense 2 in the present [federal] case”). 3 Here, Defendant is not seeking to recover its own fees incurred in the state court 4 action; instead, Defendant merely contends that it would be inequitable for Plaintiffs to 5 benefit from forum-shopping by recovering their fees from the voluntarily dismissed state 6 court proceeding. The Court agrees with Defendant that, in light of Rule 41(d) and the 7 policy considerations underlying it, it would be illogical and inequitable to permit Plaintiffs 8 to now recover fees from the state court proceeding that they voluntarily dismissed before 9 filing the present federal action. Accordingly, the Court deducts the billing entries ranging 10 from August 10, 2021, to January 12, 2023, from Plaintiffs’ fee award.⁹ (See ECF No. 60-2 11 at 206–07.) 12 b. Number of Timekeepers 13 Defendant also contends that “Plaintiffs’ use of twenty-one different timekeepers for 14 this run-of-the-mill matter is the very definition of unreasonable and unnecessary.” (ECF 15 No. 66 at 6 (emphasis removed).) However, “[t]he court is not in a position ... to determine 16 the appropriate number of attorneys assigned to this particular case given that it is not privy 17 to the inner workings of Plaintiffs’ counsel’s law firm.” *Holcomb v. BMW of N. Am., LLC*, 18 No. 18cv475 JM (BGS), 2020 WL 759285, at *3 (S.D. Cal. Feb. 14, 2020) (observing that, 19 “for better or worse, the use of a large number of attorneys in Song-Beverly Act cases 20 appears relatively common”). Here, the Court is satisfied that the billing records in this 21 case do not reflect excessive amounts of time billed for duplicative work, inter-office 22 23 24 9 Plaintiffs’ billing records indicate that Plaintiffs began incurring fees in relation to the present federal 25 action on March 13, 2023, when counsel billed 2.0 hours to “Review file and draft complaint” nine days before filing the Complaint. (ECF No. 60-2 at 207.) Prior to this time entry, Plaintiffs’ counsel inexplicably 26 billed 1.2 hours to “Draft P’s PMQ NOD,” on January 12, 2023 —nearly one year after voluntarily dismissing the state court proceeding and two months prior to drafting Plaintiffs’ federal Complaint to 27 initiate this action. See *id.* With no action then pending, the Court can discern no reason for Plaintiffs’ counsel to have prepared a notice of deposition at that time. Thus, Plaintiffs may not recover the fees 28 1 communications, or reviewing the file and case materials, which are the primary concerns 2 when an “excessive” number of timekeepers are involved in a case. See *id.* Accordingly, 3 because “the billing records do not show that a significant amount of time was 4 unreasonably spent getting [twelve] attorneys up-to-speed on this case,” the Court declines 5 to find that the hours expended are unreasonable based solely on the number of 6 timekeepers. *Id.* 7 c. Templated and “Unreasonable” Work 8 Defendant contends that the Court should exclude various billing entries because 9 they are either “suspect” or “boilerplate.” (ECF No. 66 at 17–18.) 10 For example, Defendant takes issue with the 2.7 hours billed by Plaintiffs’ counsel 11 for “drafting, reviewing, and filing their boilerplate,

templated complaint that Plaintiffs' 12 counsel files in nearly every federal matter." *Id.* at 18. Specifically, Mark Gibson billed 2.0 13 hours to "Review file and draft complaint," and Tionna Carvalho billed 0.7 hours to 14 "Review and revise federal complaints." (ECF No. 60-2 at 207.) Notably, "the participation 15 of more than one attorney does not necessarily constitute an unnecessary duplication of 16 effort." *Caccamise v. Credit One Bank, N.A.*, No. 18-CV-971 JLS (BLM), 2020 WL 17 804741, at *7 (S.D. Cal. Feb. 18, 2020) (quoting *Kim v. Fujikawa*, 871 F.2d 1427, 1435 18 (9th Cir. 1989)). However, in *Rahman v. FCA US LLC*, the court found that billing 1.7 19 hours to prepare the complaint was "excessive for a routine lemon law case; drafting a 20 boilerplate complaint should not take more than an hour." 594 F. Supp. 3d 1199, 1205 21 (C.D. Cal. 2022). In this case, the Court agrees that the amount of time billed for revising 22 and editing the Complaint appears excessive, given the routine nature of this case and both 23 Gibson and Carvalho's experience with litigating "lemon law" actions. The Court 24 accordingly deducts 1.0 hour of Gibson's time from Plaintiffs' fee award. 25 Defendant also contends that it was "unreasonable and excessive" for Plaintiffs' 26 counsel to bill 2.2 hours to review Defendant's Motion to Dismiss and draft the FAC 27 because the FAC "is identical to the initial complaint but for changes in only two 28 paragraphs." (ECF No. 66 at 18.) However, the Court finds that the 2.2 hours billed by 1 Plaintiffs' counsel for these tasks is not unreasonable, given that this time encompassed 2 reviewing Defendant's 16-page motion, conducting legal research, and drafting the FAC. 3 (See ECF No. 60-2 at 207.) The Court declines to deduct this time from Plaintiffs' fee 4 award. 5 Defendant further contends that a 1.0-hour billing entry on May 1, 2023 for "drafting 6 an ESI letter, RFPs, SROGs, RFAs, FROGs, and a notice of deposition" is "suspect and 7 unreasonable" because "no ESI letter, SROGs, RFAs, or FROGs were ever served in this 8 case" and Plaintiffs' written discovery requests were not served until December 2023. 9 (ECF No. 66 at 18.) Notably, courts will decline to award fees incurred to draft unserved 10 discovery requests where the drafting attorney "fail[s] to explain why he drafted discovery 11 and then decided not to serve that discovery for the following 9 months." *Matevosyan v. 12 Mercedes-Benz USA, LLC*, No. 22-4679-MWF (JEMx), 2023 U.S. Dist. LEXIS 213774, 13 at *27 (C.D. Cal. July 10, 2023); see also *Odadjian v. Jaguar Land Rover N. Am., LLC*, 14 No. 2:21-cv-09333-SB-GJS, 2022 WL 17254343, at *3 (C.D. Cal. Aug. 18, 2022) 15 (declining to award fees for time spent drafting discovery requests that the plaintiff never 16 served on the defendant in part because the plaintiff failed to clarify when counsel drafted 17 the requests, and, assuming that the discovery requests had been prepared "earlier on" in 18 the case, the plaintiff's "unexplained failure to serve the discovery made its preparation 19 useless"). Here, however, because Defendant acknowledges that Plaintiffs eventually 20 served RFPs on Defendant—albeit seven months after this billing entry—the Court finds 21 that at least some of the time expended in this billing entry should be recoverable by 22 Plaintiffs' counsel. The Court accordingly reduces this time entry by 0.5 hours. 23 In its objections to Plaintiffs' billing entries, Defendant contends that several entries 24 related to drafting and corresponding about an "initial

discovery meet and confer letter” 25 should be excluded because “[n]o discovery meet and confer letter was served throughout 26 the case history.” (ECF No. 66-5 at 17–18.) The Court accordingly deducts the January 31, 27 2024, and February 1, 2024, billing entries related to drafting and corresponding about the 28 initial discovery meet and confer letter—totaling 5.1 hours—from Plaintiffs’ fee award. 1 d. Block-Billing 2 Defendant contends that several billing entries should be excluded or reduced due to 3 impermissible block-billing. (ECF No. 66 at 19.) However, “block billing only becomes 4 an issue where there is a need to separate work that qualifies for compensation from work 5 that does not.” Zargarian, 442 F. Supp. 3d at 1228 (citing *Jaramillo v. County of Orange*, 6 200 Cal. App. 4th 811, 830 (Ct. App. 2011)). Courts accordingly find block-billing 7 unobjectionable where there is “no need to separate out covered from uncovered work.” 8 Id. (quoting *Jaramillo*, 200 Cal. App. 4th at 830); see *Lardizabal v. Am. Express Nat’l 9 Bank*, No. 22-cv-345-MMA (BLM), 2023 WL 8264435, at *8 (S.D. Cal. Nov. 29, 2023) 10 (determining that block-billing was neither “egregious” nor “objectionable” where all the 11 billing entries in question were related to the plaintiff’s claims for which he was eligible to 12 receive attorney’s fees and “none of the entries complained about ... exceeded even three 13 hours of billable time”). 14 Defendant objects to only two of Plaintiffs’ billing entries as “improper 15 block-billing.” (See ECF No. 66-5 at 17 (listing “[b]lock time” as an objection to an entry 16 where attorney Elizabeth Larocque billed 1.1 hours for “Review, revise Initial Disclosures. 17 Review, analyze, redact documents for production and several correspondence.”); id. at 18 18 (listing “[b]lock time” as an objection to an entry where attorney Tionna Carvalho billed 19 0.5 hours for “Review correspondence from client [] Review and sign D’s 998 offer”).) 20 The Court finds that these entries do not contain any tasks that are ineligible for 21 compensation, rendering block-billing unobjectionable. The Court declines to find that 22 Plaintiffs’ fee award warrants a reduction due to block-billing. 23 e. Clerical Tasks and Internal Communications 24 Defendant contends that one billing entry should be excluded because Plaintiffs’ 25 counsel billed for tasks that are clerical in nature. (ECF No. 66 at 19.) Specifically, 26 Defendant objects to a billing entry on November 28, 2023, where attorney Tara Mejia 27 billed 0.2 hours for “Update discovery definitions, Double-check VINS and update 28 caption.” (ECF No. 66-5 at 17.) Defendant contends that the Court should exclude these 1 hour as “clerical tasks that were billed by a senior attorney with an excessive hourly rate.” 2 (ECF No. 66 at 20.) While the Court notes that Mejia is not a senior attorney, as she was 3 admitted to the bar in 2022—only one year prior to the date of the challenged billing 4 entry—the Court agrees that this entry is comprised of work that appears to be at least 5 partially clerical in nature, such as “[d]ouble-check[ing] VINS” and “updat[ing] [the] 6 caption.” The United States Supreme Court has held that “purely clerical or secretarial 7 tasks should not be billed at a paralegal [or lawyer’s] rate, regardless of who performs 8 them.” *Missouri v. Jenkins*, 491 US. 274, 288 n.10 (1989); see *Scott*, 2021 WL 6006411, 9 at *6 (explaining that ineligible clerical tasks include “creating indexes for a binder; filing 10 emails, memoranda, and other correspondence; updating the case calendar with

new dates; 11 copying, scanning, and faxing documents; and filing or serving documents”). However, the 12 Court is not convinced that “[u]pdat[ing] discovery definitions” constitutes clerical work. 13 See Zargarian, 442 F. Supp. 3d at 1229 (declining to exclude certain tasks, including 14 “drafting initial disclosures” and “drafting discovery documents,” from the fee award 15 because they were not “purely clerical or secretarial tasks”). The Court accordingly deducts 16 only 0.1 hour from this billing entry. 17 As for internal communications, Defendant objects to one billing entry on July 11, 18 2024, where attorney Elizabeth Larocque billed 0.6 hours for “Numerous correspondence 19 and phone calls with IT re ID and doc production and retrieval of same.” (ECF No. 66-5 at 20 18.) The Court agrees that, as best the Court can discern, this time entry appears to involve 21 resolving technical issues with retrieving documents, rather than substantive legal work. 22 See Scott, 2021 WL 6006411, at *7 (noting that courts decline to award fees for “retrieving 23 electronic court documents” because this task is clerical in nature). The Court accordingly 24 deducts this entry from Plaintiffs’ fee award. 25 f. Fees Incurred After the Rule 68 Offer 26 In its objections to Plaintiffs’ billing entries, Defendant contends that all fees 27 incurred after August 8, 2024—the date Plaintiffs accepted Defendant’s Rule 68 Offer— 28 “should be excluded entirely.” (ECF No. 66-5 at 19–20.) The challenged entries include 1 communicating with a clerk about the parties’ upcoming status conference, attending the 2 status conference, finalizing the Plaintiffs’ Request for Entry of Judgment Pursuant to 3 FRCP 68(a), and reviewing the settlement and approving the disbursement to Plaintiffs. 4 See *id.* The Court finds that these tasks—and the time spent completing them—were 5 reasonable. Additionally, the Court notes that the Rule 68 Offer does not limit Plaintiffs’ 6 ability to recover fees incurred after acceptance of the offer. (Compare ECF No. 51, with 7 *Wentworth v. Ford Motor Co.*, No. 22-CV-01964-W-BGS, 2023 WL 11795672, at *4 (S.D. 8 Cal. Apr. 17, 2023) (striking all hours billed after the date of the defendant’s Rule 68 offer 9 where the offer contained a provision that “explicitly limit[ed]” the plaintiffs’ recovery to 10 “fees and costs now accrued”).) 11 The Court declines to deduct the fees incurred after Plaintiffs’ acceptance of the Rule 12 68 Offer. 13 g. Fees for the Present Motion 14 Defendant contends that Plaintiffs request “excessive” fees for preparing the present 15 Motion for Attorneys’ Fees, Costs, and Expenses, considering its “cookie-cutter” and 16 “template” nature. (ECF No. 66 at 18–19.) Defendant contends that Plaintiffs’ fees for this 17 Motion “should be rejected altogether, or significantly reduced to no more than \$1,500.00.”

18 *Id.* at 19.

19 Here, attorney Christian Castro billed a total of 9.2 hours—or \$4,370.00—to draft 20 the present Motion and its supporting documents. (ECF No. 60-2 at 209.) In lemon law 21 cases, courts often reduce the hours spent on motions for attorneys’ fees due to the 22 template, “boilerplate” nature of these motions and their accompanying documents. See, 23 e.g., *Ovesepyan v. Mercedes-Benz USA, LLC*, No. 2:21-cv-01410-FWS-AFM, 2023 WL 24 8586384, at *4 (C.D. Cal. Mar. 17, 2023) (finding no more than nine hours spent on the 25 fee motion to be reasonable

in light of “the straightforward and boilerplate nature of lemon 26 law fee motions”); *Saavedra v. Ford Motor Co.*, No. 21-cv-01193-AJB-BGS, 2022 WL 27 16629951, at *3 (S.D. Cal. Sept. 16, 2022) (reducing the plaintiff’s fees for time spent on 28 the attorneys’ motion to \$1,250.00 because an attorneys’ fees motion in a Song-Beverly 1 action “is largely a template-driven activity”); *Demaria*, 2020 WL 7013584, at *4 2 (reducing the fee for the attorneys’ fee motion from \$1,755.00 to \$1,055.00 “[b]ecause the 3 motion is largely a template-driven activity”); *Scherer*, 2022 WL 22902332, at *4 4 (reducing SLP’s recovery for a fee motion to \$4,579.50). But see *Hellenberg*, 2020 WL 5 1820126, at *4–5 (concluding that, although the plaintiff’s attorneys “were not required to 6 draft the [fees] motion from scratch, or conduct much, if any, substantive research,” billing 7 4.7 hours and \$980.00 was “a reasonable amount of time”). 8 The Court concludes that Plaintiffs’ requested fee for drafting the pending Motion 9 is inflated when considering its template nature, particularly in comparison to the hours 10 that courts have deemed reasonable for the same type of motion in similar “lemon law” 11 cases. The Court accordingly reduces Plaintiffs’ counsel’s time for drafting the present 12 Motion and its supporting documents by 4.2 hours. Plaintiffs’ counsel accordingly may 13 recover \$2,375.00 for this task. 14 Plaintiffs also requested an additional \$4,500.00 as “Anticipated Fees to review 15 Opposition, draft Reply ISO P’s Motion for Attorneys’ Fees, Costs, and Expenses, and 16 attend hearing on P’s Motion for Attorneys’ Fees, Costs, and Expenses.” (ECF No. 60-2 at 17 209.) However, the Court did not hold a hearing on the pending Motion, and Plaintiffs did 18 not file a reply brief. Accordingly, the Court declines to award Plaintiffs any of the 19 \$4,500.00 requested as “Anticipated Fees.” 20 3. Lodestar Multiplier 21 “The lodestar amount is considered presumptively reasonable, and only the ‘rare’ or 22 ‘exceptional’ case will justify an upward adjustment.” *Rahman*, 594 F. Supp. 3d at 1207 23 (quoting *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1046 (9th Cir. 2000)). 24 Courts generally consider four factors when determining whether to add a “multiplier” or 25 “enhancement” to the lodestar: “(1) the novelty and difficulty of the questions involved, 26 (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation 27 precluded other employment by the attorneys, [and] (4) the contingent nature of the fee 28 award.” *Zargarian*, 442 F. Supp. 3d at 1230 (quoting *Ketchum*, 17 P.3d at 741). 1 Plaintiffs contend that a lodestar multiplier enhancement of 1.35 is warranted in this 2 case because (1) “counsel obtained an excellent outcome”; (2) the risks posed by the 3 litigation were “substantial” because “SLP undertook representation of Plaintiff[s] on a 4 contingency basis”; and (3) payment has been delayed for over a year. (ECF No. 60 at 21– 5 23.) Defendant contends that a multiplier is unwarranted because “no facts supporting an 6 enhancement are present.” (ECF No. 66 at 22.) In particular, Defendant contends that “this 7 case lasted less than one and a half years and had very basic motion practice,” “[t]here was 8 nothing novel or complex about this case,” and “it involved no special skill or ability, nor 9 did it result in an extraordinary award.” *Id.* Defendant contends that, “[i]n similarly 10 straightforward Song-Beverly actions,” federal district courts in California “have declined 11 to award a lodestar

multiplier.” Id. at 21 (collecting cases). 12 Here, the Court finds that adding a multiplier enhancement to Plaintiffs’ fee award 13 is not appropriate, given the routine nature of this case and the lack of novel or complex 14 issues. See Rahman, 594 F. Supp. 3d at 1207 (concluding that none of the factors 15 “support[ed] an enhancement of the lodestar” in “a largely routine lemon law case that 16 involved few procedural demands and the exercise of limited skill from lawyers who 17 specialize in this practice area and generally rely upon boilerplate pleadings and work 18 product”). As in Rahman, the fact that Plaintiffs’ counsel litigated this case on a 19 contingency-fee basis does not merit an enhancement to the lodestar, as “the [Song-Beverly 20 Act] is a mandatory fee-shifting statute which ‘eliminates any uncertainty about whether 21 costs will be awarded to the prevailing party.’” Id. (quoting *Arias v. Ford Motor Co.*, No. 22 EDCV 18-1928 PSG (SPx), 2020 WL 1940843, at *2 (C.D. Cal. Jan. 27, 2020)). The Court 23 is also unconvinced that a multiplier is warranted based on a “delay in payment” that was 24 incurred as a result of Plaintiffs’ counsel’s “own choice to take this case on a contingency 25 basis.” Hellenberg, 2020 WL 1820126, at *6. 26 Additionally, while Plaintiffs’ counsel obtained an “excellent outcome” by settling 27 this action for \$105,000.00—over two times the purchase price of Plaintiffs’ vehicle 28 (\$42,090.00)—an excellent outcome is only one of the factors a court considers when 1 determining whether to apply a multiplier. Moreover, Plaintiffs’ counsel’s ability to 2 achieve excellent outcomes is already reflected in their hourly rates. See, e.g., *Zapata v. 3 Ford Motor Co.*, No. CV 22-968-GW-KSx, 2023 WL 12095331, at *7–8 (C.D. Cal. Feb. 4 3, 2023) (concluding that, although the court agreed that plaintiff’s counsel obtained an 5 “excellent outcome” by settling the case for “more than twice the vehicle’s purchase price,” 6 a multiplier was nevertheless unwarranted because “[the] case was not particularly 7 complex,” and the plaintiff “made no showing that this [was] an extraordinary case”); 8 *Zargarian*, 442 F. Supp. 3d at 1230 (“The amount of time and skill required to properly 9 resolve this litigation, counsel’s success in resolving the matter, and the case’s novelty or 10 complexity are reflected in the number of billable hours recorded and the reasonable hourly 11 rate.”). 12 The Court declines to apply a multiplier to the lodestar in this action. 13

4. Summary of Fees Awarded 14

The following chart reflects the Court’s adjustments to Plaintiffs’ counsel’s hours 15 billed, as discussed above:

Name	Hourly Adjusted	Hourly Adjusted	Total	Rate (2023)	Hours	Rate (2024)	Hours	Billed
Tionna Carvalho	\$570	2.9	\$595	1.3	\$2,426.50			
Christian Castro	N/A	N/A	\$475	5.0	\$2,375.00			
Ivy Choderker	\$595	1.0	\$595	0.0	\$595.00			
Mark Gibson	\$495	1.0	N/A	N/A	\$495.00			
Elizabeth Larocque	\$595	6.3	\$595	6.3	\$7,497.00			
Daniel Law	\$475	9.5	\$495	0.5	\$4,760.00			
Tara Mejia	\$350	0.5	N/A	N/A	\$293.50			
Mirwais	\$400	0.0	N/A		\$0.00			
Mohammad	\$435	0.0	N/A	N/A	\$0.00			
Rosy Stoliker	N/A	N/A	\$435	1.3	\$565.50			
Rabiya Tirmizi	N/A	N/A	\$395	6.5	\$2,567.50			
Michael Tracy	\$475	0.3	N/A		\$142.50			

7 \$21,717.50 8 9 The Court’s adjustments result in a total of \$21,717.50 in recoverable attorneys’ fees. 10

B. Costs and Expenses 11

In the present Motion for Attorneys’ Fees, Costs, and Expenses, Plaintiffs contend 12 that they are entitled to recover \$1,451.50 in

costs and expenses. (ECF No. 60 at 10.) 13 Separately, Plaintiffs filed a Bill of Costs seeking for costs to be taxed in their favor in the 14 amount of \$751.25. (ECF No. 61.) The Clerk of the Court denied Plaintiffs' Bill of Costs 15 as untimely. (ECF No. 64.) 16 Defendant contends that Plaintiffs' request for costs in the pending Motion "should 17 be denied entirely because Plaintiffs seek unrecoverable costs, do not present any evidence 18 to support their costs, and improperly bring an untimely request for costs." (ECF No. 66 at 19 23.) Defendant also points out that the Clerk of the Court previously rejected Plaintiffs' 20 Bill of Costs as untimely. (See ECF No. 64.)

21 1. Legal Standard 22 Under federal law, the costs available to the prevailing party are limited to those 23 listed in 28 U.S.C. § 1920. See *Hellenberg*, 2020 WL 1820126, at *6 (citing *Fed. R. Civ. 24 P. 54(d)*; *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 441 (1987)). "However, 25 where a claim for reimbursement of costs arises under state law, state law may determine 26 costs." *Scherer*, 2022 WL 22902332, at *9 (citing *Clausen v. M/V New Carissa*, 339 F.3d 27 1049, 1064 (9th Cir. 2003)). As relevant here, the Song-Beverly Act contains a broad 28 provision authorizing the prevailing plaintiff to "recover as part of the judgment a sum 1 equal to the aggregate amount of costs and expenses ... determined by the court to have 2 been reasonably incurred by the [plaintiff] in connection with the commencement and 3 prosecution of such action." Cal. Civ. Code § 1794(d); see *Zomorodian v. BMW of N. Am., 4 LLC*, 332 F.R.D. 303, 305 (C.D. Cal. 2019) (noting that the Song-Beverly Act "is broader 5 than the Local Rules and FRCP 54 because it permits prevailing parties to recover 6 'expenses' as well as 'costs'"). Federal courts often find that "[c]osts and expenses under 7 the Song-Beverly Act are ... part of a substantive, compensatory damages scheme, which 8 trump federal procedural rules and are recoverable in federal court." *Scott v. Ford Motor 9 Co.*, No. EDCV 18-2346 JGB (KKx), 2020 WL 8125665, at *2 (C.D. Cal. Nov. 24, 2020); 10 see also *Jurosky*, 2020 WL 5033584, at *9 ("The costs and expenses provision in the 11 Song-Beverly Act is substantive"); *Scherer*, 2022 WL 22902332, at *9 ("[T]he Court 12 concludes the Song-Beverly Act applies to Plaintiffs' contention that they are entitled to 13 costs and expenses."). 14 In this case, however, "it is not necessary for the court to revisit this issue here 15 because [D]efendant has consented to § 1794(d) as the controlling statute concerning costs 16 based on the parties' settlement agreement." *Martinez v. Ford Motor Co.*, No. 17 1:18-cv-01607-NONE-JLT, 2021 WL 3129601, at *10 (E.D. Cal. July 23, 2021). 18 Specifically, the Rule 68 Offer states: 19 [Defendant] offers to permit judgment to be entered ... and Plaintiffs shall retain the right to petition the Court for an award of reasonably and actually 20 incurred attorney fees and costs recoverable pursuant to California Civil Code

21 Section 1794(d). In ruling on Plaintiffs' fee/cost motion(s), the attorney fees, expenses and costs shall be calculated as if Plaintiffs were found to have 22 prevailed in this action under section 1794(d) of the California Civil Code. 23 (ECF No. 51 at 5.) Nevertheless, "[a]lthough state substantive law applies, this does not 24 obviate the Court's obligation to ensure that the costs were 'reasonably incurred.'" 25 *Saavedra*, 2022 WL 16629951, at *5 (citing Cal.

Civ. Code § 1794(d)). 26 / / / 27 / / / 28 1 2. Procedural Issues with Plaintiffs’ Request for Costs and Expenses 2 As a preliminary matter, the Court first addresses the procedural issues with 3 Plaintiffs’ request for costs and expenses, namely: (1) the untimeliness of Plaintiffs’ request 4 and (2) Plaintiffs’ failure to file a motion to retax costs after the Clerk of the Court rejected 5 the Bill of Costs as untimely. 6 Generally, in this district, “[w]ithin fourteen (14) days after entry of judgment, the 7 party in whose favor a judgment for costs is awarded or allowed by law, and who claims 8 costs, must file with the Clerk the bill of costs, together with a notice of when the Clerk 9 will hear the application.” S.D. Cal. Civ. L.R. 54.1(a). Subsequently, “[a] review of the 10 decision of the Clerk in the taxation of costs may be taken to the Court on motion to re-tax 11 by any party in accordance with Rule 54(d), Fed. R. Civ. P., and Civil Local Rule 7.1.” 12 S.D. Cal. Civ. L.R. 54.1(h). Such a motion to retax “must be served and filed within seven 13 (7) days after receipt of the notice [of the Clerk’s taxation of costs].” S.D. Cal. Civ. L.R. 14 54.1(h)(1). However, “[a]lthough a party may waive his right to move for review of costs 15 by not filing the motion within the proper time limits, a court has discretion to review an 16 untimely motion, notwithstanding the waiver.” *Sumotext Corp. v. Zoove, Inc.*, No. 17 16-cv-01370-BLF, 2021 WL 3727078, at *2 (N.D. Cal. Aug. 23, 2021) (quoting *Ashker v. 18 Sayre*, No. 05-03759 CW, 2010 WL 2991667, at *1 (N.D. Cal. July 29, 2010)); see also 19 *J.A.M. v. United States*, No. 3:22-CV-00380-GPC-BGS, 2024 WL 4573753, at *1 (S.D. 20 Cal. Oct. 24, 2024) (“[B]ecause ‘the timeliness requirements of Rule 54(d) are not 21 jurisdictional,’ a court has discretion to consider untimely motions for costs” (quoting 22 *Rodriguez v. Barrita, Inc.*, 53 F. Supp. 3d 1268, 1292 (N.D. Cal. 2014))). 23 Here, prior to Plaintiffs’ filing of either the present Motion or the Bill of Costs, the 24 Court issued an Order granting the parties’ joint motion to continue the deadline for 25 Plaintiffs to file a Motion for Attorneys’ Fees, Costs, and Expenses, extending Plaintiffs’ 26 deadline to file the motion to November 19, 2024. (ECF No. 57 at 2.) However, Plaintiffs 27 did not file the present Motion until November 25, 2024, and they did not file the Bill of 28 Costs until the following day. (ECF Nos. 60 & 61.) On December 9, 2024, the Clerk of the 1 Court issued an Order Taxing Costs in the amount of \$0.00. (ECF No. 64.) In the Order, 2 the Clerk of the Court stated: 3 Local Rule 54.1(a) allows a prevailing party entitled to costs to file a Bill of Costs within fourteen (14) days after entry of judgment. The Bill of Costs was 4 filed on November 26, 2024. An entry of judgment was entered on August 22, 5 2024. As such, this Bill of Costs must be denied in its entirety. 6 *Id.* at 1. While the Clerk of the Court’s Order did not reference the Court’s prior extension 7 of the deadline for Plaintiffs to file a Motion for Attorneys’ Fees, Costs, and Expenses, the 8 Clerk of the Court correctly noted that Plaintiffs’ Bill of Costs was untimely. See *id.* 9 Plaintiffs filed the Bill of Costs on November 26, 2024, seven days after the extended 10 deadline. (See ECF No. 61.) Notably, Plaintiffs did not file a motion to retax costs or 11 otherwise challenge the Clerk of the Court’s Order taxing \$0.00 in costs. 12 In light of the language of the Rule 68 Offer, the Court finds that it is appropriate to 13 consider Plaintiffs’ request for costs and expenses, despite the untimeliness of Plaintiffs’ 14 request and their failure

to file a motion to retax costs. In *Instrumentation Laboratory Co. 15 v. Binder*, the court granted the plaintiff's untimely request for costs in spite of the 16 plaintiff's failure to file a bill of costs or to obtain "prior leave of court to forego the 17 procedure set forth in Rule 54(d)(1) and [the Local Rules]." No. 11cv965 DMS (KSC), 18 2013 WL 12049072, at *7 (S.D. Cal. Sept. 18, 2013), aff'd, 603 F. App'x 618 (9th Cir. 19 2015). The court explained that it was granting the plaintiff's untimely request in part 20 because the agreement between the parties "provide[d] for recovery of all reasonable 21 litigation expenses," and the court accordingly "[would] not deny [the plaintiff's] request 22 based solely on a point of procedure that does not prejudice Defendants in any way." Id. 23 Similarly, here, Defendant has also failed to demonstrate how it has suffered prejudice due 24 to Plaintiffs' failure to follow procedure. Additionally, the agreement between the parties 25 in this case—the Rule 68 Offer—likewise provides for Plaintiffs' recovery of "expenses 26 and costs ... as if Plaintiffs were found to have prevailed in this action under section 27 1794(d) of the California Civil Code." (ECF No. 51 at 5.) 28 1 The Court will accordingly exercise its discretion to consider Plaintiffs' request for 2 costs and expenses in the present Motion. 3 3. Costs from the State Court Action 4 Plaintiffs appear to request that the Court award costs and expenses that Plaintiffs 5 incurred while litigating the state court action that preceded this action. Notably, Plaintiffs' 6 Motion for Attorneys' Fees, Costs, and Expenses seeks \$1,451.50 in costs and expenses, 7 which includes costs and expenses incurred during the state court action. (See ECF No. 60 8 at 2 (seeking \$1,451.50 in costs); ECF No. 60-2 at 209–10 (reporting the total costs and 9 expenses (including costs incurred from August 12, 2021, to February 16, 2022, while the 10 state court action was pending) as \$1,451.50).) In contrast, Plaintiffs' Bill of Costs sought 11 only \$751.25 for costs and expenses incurred during the present federal action. (See ECF 12 No. 61-1 at 1–2, 5–6.)

13 To the extent Plaintiffs seek to recover costs and expenses from the state court 14 proceeding, the Court finds those costs and expenses to be unrecoverable in the present 15 action. As the Court concluded above when discussing Plaintiffs' attorneys' fees, in light 16 of Federal Rule of Civil Procedure 41(d), it would similarly be illogical and inequitable to 17 permit Plaintiffs to recover their costs and expenses from the state court proceeding that 18 they voluntarily dismissed before filing the present federal action. 19 The Court accordingly declines to award Plaintiffs any costs or expenses that they 20 incurred during the state court action. 21 4. E-Filing and Email Expenses 22 Turning now to the costs and expenses incurred during the present action, the Court 23 notes that many of Plaintiffs' requests involve expenses owed to First Legal Network, LLC 24 ("First Legal") for "eFiling" and "eMail Correspondence." (See ECF No. 60-2 at 209–10; 25 ECF No. 61-1 at 5–6.) 26 As explained above, although only certain specified costs are eligible to be taxed 27 under 28 U.S.C. § 1920 and this Court's Local Rules, under the broader provisions of the 28 Song-Beverly Act, prevailing plaintiffs may "recover reasonably incurred costs and 1 expenses as nontaxable expenses." *Owen v. Hyundai Motor Am.*, No. 2:22-cv-00882-KJM- 2 CKD, 2024 WL 3967691, at *10 (E.D. Cal. Aug. 28, 2024) (citing Cal. Civ. Code § 1794). 3 Nevertheless, federal

courts will decline to award such nontaxable expenses where the plaintiff fails to demonstrate that they were “reasonably incurred.” See *id.* In *Owen*, the Eastern District of California declined to award the plaintiff her requested expense for \$2,228.98 spent on e-filing documents through First Legal because the plaintiff failed to show that these expenses were reasonably incurred. *Id.* The Court noted that the plaintiff “[did] not argue she had to file documents through First Legal and [did] not address defendant’s argument [that] she could have filed those documents through PACER without incurring these additional costs.” *Id.*; see also *Meeks v. FCA US LLC*, No. 1:22-cv-0761 JLT CDB, 2024 WL 4437098, at *10 (E.D. Cal. Oct. 7, 2024) (declining to award the plaintiff “the private e-filing costs” he owed to First Legal because these costs “[were] not reasonable given that counsel may have e-filed the documents without such costs” (citing *Owen*, 2024 WL 3967691, at *9)). Here, Plaintiffs similarly do not explain why the expenses owed to First Legal for e-filing and emailing various documents were “reasonably incurred.” Accordingly, the Court declines to award any of these costs—totaling \$185.75 (see ECF No. 60-2 at 209–10)—to Plaintiffs. 5. Recoverable Costs The Court finds that the remaining costs and expenses sought by Plaintiffs are recoverable. Specifically, Plaintiffs seek to recover \$402.00 for the costs of the filing fee to file the Complaint to initiate this action. For one matter, this cost was “reasonably incurred” under California Civil Code § 1794(d). Additionally, Plaintiffs provide evidence documenting this expense, in the form of a screenshot of the docket, which notes the filing fee amount (\$402.00), as well as the receipt number. (ECF No. 61-1 at 10.)!° Plaintiffs may accordingly recover the cost of the \$402.00 filing fee. 3 Plaintiffs also seek to recover the costs for service of the summons and complaint in this action, in the amount of \$138.50. The Court finds that this cost was also “reasonably incurred” under California Civil Code § 1794(d). Additionally, Plaintiffs provide evidence to support this cost, in the form of a receipt from First Legal that states in the “Service Detail” section: “SUMM; COMP; CCCS; ORDER” and “SERVE PROVIDE POS.” /d. at 8 Plaintiffs may accordingly recover the \$138.50 cost for service of the summons and complaint in this action. 10 In total, Plaintiffs are entitled to recover \$540.50 in costs and expenses pursuant to the language of the Rule 68 Offer, as well as California Civil Code § 1794(d).

12 CONCLUSION

13 IT IS HEREBY ORDERED that Plaintiffs’ first Motion for Attorneys’ Fees, Costs, 14 Expenses (ECF No. 58) is denied as moot. 15 IT IS FURTHER ORDERED that Plaintiffs’ second Motion for Attorneys’ Fees, 16 Costs, and Expenses (ECF No. 60) is granted in part and denied in part. Defendant shall 17 pay Plaintiffs’ attorneys’ fees in the amount of \$21,717.50. Defendant shall also pay 18 Plaintiffs’ costs and expenses in the amount of \$540.50. 19 The Clerk of the Court shall close this case. 20 21 /Dated: August 26, 2025 BME: Me Z. A a 22 Hon. William Q. Hayes 3 United States District Court 24 26 Although Defendant contends that Plaintiffs “provide no explanation of their costs nor any way for the Court to determine whether these costs were

actually incurred” (ECF No. 66 at 23), the Court notes that 27 || Plaintiffs attached a declaration, along with exhibits of supporting evidence, including receipts, to the Bill 28 of Costs. (See ECF No. 61-1.) The Court considers this evidence when evaluating whether Plaintiffs’ costs were actually and reasonably incurred. 450