

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 08/07/2020

TIME: 11:00:00 AM

DEPT: C-69

JUDICIAL OFFICER PRESIDING: Katherine Bacal

CLERK: Calvin Beutler

REPORTER/ERM: Leyla Jones CSR# 12750

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2016-00003200-CU-BC-CTL** CASE INIT.DATE: 01/29/2016

CASE TITLE: **Duff vs Jaguar Land Rover North America LLC [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Breach of Contract/Warranty

EVENT TYPE: Motion Hearing (Civil)

APPEARANCES

Michael E Lindsey, counsel, present for Plaintiff,Appellant(s) telephonically.

JACQUELINE BRUCE CHINERY, counsel, present for Defendant,Respondent on Appeal(s) telephonically.

Upon hearing the time estimate for argument, the Court is inclined to trail the matter to the afternoon calendar.

All counsel are available.

The Court trails the matter until the afternoon calendar.

2nd call; 1:30PM

The Court hears oral argument and CONFIRMS the tentative ruling as follows:

Plaintiff's motion for attorney's fees is **GRANTED in part**. Plaintiff's motion for costs is denied without prejudice to properly filing and serving a memorandum of costs.

Background

Following a bench trial, judgment was entered for plaintiff and against defendant, granting nominal damages of \$1.00. ROA # 551. Plaintiff now seeks almost a million dollars in fees and costs.

Discussion

Prevailing Party

Under the Song-Beverly Consumer Warranty Act, a buyer who "prevails in an action under this section"

is entitled to costs and expenses, including attorney's fees. Civ. Code § 1794(d). The first question, then is whether or not plaintiff prevailed under this section.

Defendant argues that plaintiff was not the prevailing party because plaintiff did not achieve his litigation objectives, citing, *inter alia*, *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553. *Graham* is not on point. The California Supreme Court in *Graham* held that it is sound to look at the "impact of the action, not its manner of resolution," in determining whether a party is successful in public interest litigation and, thus, entitled to attorney's fees. Here, there is no need to look at a catalyst theory, or any other theory, to determine whether the plaintiff is entitled to fees, because the statute says he is.

The Song-Beverly Consumer Warranty Act was "intended for the protection of the consumer..." *Reynolds v. Ford Motor Company* (2020) 47 Cal.App.5th 1105, 1111 (citation omitted). Here, the Court entered judgment in favor of the plaintiff. ROA # 551. It previously issued a statement of decision explaining that while plaintiff proved a breach under the Act, he did not prove any damages. ROA # 545. However, under the terms of the Act, once plaintiff proved a breach, he was the prevailing party.

Defendant's additional arguments are also unpersuasive. Defendant's 998 offer was previously deemed invalid, and the fee-shifting statute provides for a mandatory award.

Lodestar

Attorney fees under the Song-Beverly Act are appropriately calculated using the lodestar method. *Reynolds, supra*, 47 Cal.App.5th at 1112 (noting further that it is inappropriate and an abuse of discretion to tie an attorney fee award to the amount of the plaintiff's damages). Here, under the applicable lodestar method, plaintiff has shown and adequately supported his counsel's claimed hourly rates of \$575. The Court is not convinced that this should be increased to \$650. Further, as explained below, not all of the hours expended were reasonably incurred.

Plaintiff submitted a declaration with his time and billing entries showing he spent 1,505 hours litigating the case. Plaintiff asserts the hours spent are commensurate with defense counsel's hours billed. Mtn., pp. 2, 8. Having reviewed and considered the parties' arguments on this issue, as well as defendant's specific objections to certain billing, the following hours do not appear reasonably incurred, and thus will be reduced:

97.7 hours for reviewing transcripts and preparing cross examination of Pat Dalhberg will be reduced by 67 hours.

62.3 hours for reviewing transcripts and preparing cross examination for George Krzyanowski will be reduced by 40 hours.

151 hours for preparing trial exhibits will be reduced by 111 hours.

169.2 hours for preparing and responding and arguing on motions in limine will be reduced by 85 hours.

31.7 hours regarding a motion for protective order will be reduced by 7 hours.

21 hours relating to the motion for attorney's fees and costs will be reduced by 5 hours.

Accordingly, a total of 315 hours will be deducted as not reasonably incurred. A total of 1,190 hours will thus be utilized for the lodestar figure.

The Court considered whether a multiplier to the base figure is warranted, and determined no upward or downward adjustment is needed.

Conclusion

Plaintiff's motion for attorney's fees is **GRANTED**. Plaintiff is awarded attorneys' fees in an amount of \$684,250 to be payable by defendant.

Plaintiff's motion for costs of \$22,884.63 is denied without prejudice to filing and serving a memorandum of costs, so that defendant may have an opportunity to respond accordingly. Cal. R. Ct., rule 3.1700.

Plaintiff is to give notice within two court days of this ruling.



Judge Katherine Bacal