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FILED
Superior Court of California
County of Placer
MAR 03 2020
Jake Chatters
Executive Officer & Clerk
By: K. Harding, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER

ANNA P. KING,

Plaintiff,

vs.

HYUNDAI MOTOR AMERICA, a
California corporation, and DOES 1
through 10, inclusive,

Defendants.

Case No.: SCV-38637
RULING ON SUBMITTED MATTERS

Plaintiff Anna King's motion for prejudgment interest and two motions for attorneys' fees, and defendant Hyundai Motor America's motion to tax or strike costs came on regularly for hearing on February 14, 2020, at 8:30 a.m. in Department 3. Deepak Devabose, Esq. appeared on behalf of plaintiff Anna King. Julian Senior, Esq. appeared on behalf of defendant Hyundai Motor America. The court has carefully considered the moving and opposing papers, and the oral argument of the parties at the hearing. The court rules on the matters submitted to the court as follows:

1 Plaintiff's Motion for Prejudgment Interest

2 Plaintiff moves for an award of prejudgment interest pursuant to Civil
3 Code section 3287(a).

4 Civil Code section 3287(a) states in pertinent part:

5 A person who is entitled to recover damages certain, or capable
6 of being made certain by calculation, and the right to recover
7 which is vested in the person upon a particular day, is entitled also
8 to recover interest thereon from that day, except when the debtor
9 is prevented by law, or by the act of the creditor from paying the
10 debt.

11 As a preliminary matter, the court finds that the motion is not barred
12 as untimely. Neither Civil Code section 3287 nor any other rule specifies
13 when prejudgment interest must be sought. *Steiny & Co., Inc. v. Cal. Elec.*
14 *Supply Co.* (2000) 79 Cal.App.4th 285, 294.

15 Plaintiff in this lemon law action prevailed on her cause of action for
16 breach of express warranty, and was awarded damages in the amount of
17 \$30,412.43. Plaintiff's motion sets forth two independent requests for
18 prejudgment interest. First, plaintiff requests prejudgment interest based on
19 the "baseline restitution amount of \$26,428" at the legal rate of 10% per
20 annum, from the date of plaintiff's purchase of the vehicle, February 19,
21 2010, to the date of the jury's verdict, July 16, 2019. Second, plaintiff
22 requests prejudgment interest on the entire judgment from the date of the
23 jury's verdict, on July 16, 2019, to the date of entry of judgment, on
24 September 23, 2019.

25 Under Civil Code section 3287(a), persons entitled to recover
26 "damages certain or capable of being made certain by calculation" are
27 entitled to interest from the time the right to recover arises. Civ. Code §
28 3287(a); *Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th

1 163, 174-175. "Where the amount of damages cannot be resolved except
2 by verdict or judgment, prejudgment interest is not appropriate." *Duale v.*
3 *Mercedes-Benz USA, LLC* (2007) 148 Cal.App.4th 718, 729 (cit. omit.) In
4 *Duale*, the appellate court affirmed the trial court's denial of prejudgment
5 interest in a lemon law action. The court noted that determination of the
6 jury's award in that action required determination of:

7 (1) whether any of the many defects alleged in the complaint
8 represented a nonconformity, (2) whether any such
9 nonconformity "substantially impaired [the] use, value, or safety"
10 of the vehicle, and (3) then to determine—for any such
11 nonconformity—the mileage at which plaintiffs first presented the
12 car to defendant for repair. (Civ.Code, §§ 1793.2, subd. (d)(2)(C),
13 1794, subd. (b).) The trial court found that "[a]ll of these issues
14 were contested at the trial" and, further, even as to the single
15 nonconformity found by the jury, whether it substantially impaired
16 the car's use, value or safety and the mileage at which it was first
17 presented to defendant for repair were both in dispute at trial.
18 Thus, the amount of damages could not be resolved except by
19 verdict, and prejudgment interest was not appropriate.

20 *Id.* at 729; see also *Warren v. Kia Motors America, Inc.* (2018) 30
21 Cal.App.5th 24, 43-45.

22 Similarly, in this case, issues such as whether the various alleged
23 defects represented a nonconformity, whether the nonconformities
24 substantially impaired the use, value or safety of the vehicle, and the mileage
25 at which plaintiffs first presented the car for repair, were disputed issues
26 which were determined by the jury. Moreover, plaintiff's request to
27 determine prejudgment interest based on the purchase price of the vehicle,
28 running from the date of purchase, is unsupported. First, the jury's verdict

1 was calculated in part by reducing damages based on its calculation of the
2 "value of use" at the time the jury determined that plaintiff presented the
3 vehicle for repairs. Second, plaintiff does not demonstrate that her breach
4 of warranty claim accrued at the time of purchase. Plaintiff's request for
5 prejudgment interest in the amount of \$24,871.28 is denied.

6 In her reply brief, plaintiff raises for the first time a request that the
7 court consider awarding her prejudgment interest pursuant to Civil Code
8 section 3287(b), which gives the court discretion to award prejudgment
9 interest in contract actions, even if the damages are unliquidated. This
10 request is denied, as it was not set forth in the moving papers, thus depriving
11 defendant of the opportunity to respond.

12 Plaintiff's request for prejudgment interest on the amount of the
13 judgment from the date of the verdict to the date of entry of judgment is
14 granted in part. *Bullock v. Philip Morris USA, Inc.* (2008) 198 Cal.App.4th
15 543, 573-574. Contrary to defendant's contention, *Bodell Construction Co.*
16 *v. Trustees of California State University* (1992) 62 Cal.App.4th 1508, does
17 not stop the accrual of prejudgment interest after rejection of a more
18 favorable 998 offer. Rather, *Bodell* holds that post-offer prejudgment
19 interest is excluded from calculations when determining whether plaintiff
20 obtained a more favorable judgment. *Id.* at 1526. Plaintiff shall be awarded
21 prejudgment interest from the date of verdict to September 6, 2019.
22 Although the parties subsequently stipulated to amend the judgment, the
23 amended judgment did not change the calculation of plaintiff's money
24 damages. Thus plaintiff is entitled to prejudgment interest for 52 days, at
25 \$8.33 per day, for a total of \$433.16.

26 As set forth above, plaintiff's motion for prejudgment interest is
27 granted in part. Plaintiff is awarded prejudgment interest in the amount of
28 \$433.16. Plaintiff's motion is otherwise denied.

1 Plaintiff's Motion for Attorneys' Fees (Knight Law Group & Altman Law Group)

2 Rulings on Objections

3 Defendant's objections to the declaration of Steve Mikhov are ruled on
4 as follows: Objection Nos. 1, 2, 3, 4, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25,
5 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 are sustained. The remaining
6 objections are overruled.

7 Defendant's objections to the declaration of Bryan Altman are ruled on
8 as follows: Objection Nos. 6-8 are sustained. The remaining objections are
9 overruled.

10 Plaintiff's objections to the declaration of Soheyl Tahsildoost are ruled
11 on as follows: Objection Nos. 3, 10, 11, 12, 13, 14, 16, 17, 18 and 19 are
12 sustained. The remaining objections are overruled.

13 Ruling on Motion

14 In the instant motion, plaintiff seeks attorneys' fees as the prevailing
15 party in the amount of \$282,290, plus a .5 multiplier enhancement of
16 \$141,145, for a total of \$423,435. Plaintiff also seeks costs and expenses in
17 the amount of \$46,852.09.

18 This case is a lemon law action arising out of plaintiff Anna King's
19 purchase of a 2010 Hyundai Tucson. The complaint in this action was filed
20 October 28, 2016. The action proceeded to a jury trial, following which the
21 jury found in favor of plaintiff on her claim for breach of express warranty,
22 awarding her damages of \$30,412.43. The parties do not dispute that
23 plaintiff is the prevailing party in the action. Pursuant to Civil Code section
24 1794(d), a buyer who prevails in an action under that section is authorized
25 to recover attorneys' fees "determined by the court to have been reasonably
26 incurred by the buyer in connection with the commencement and prosecution
27 of such action."

28 ////

1 While plaintiff is the prevailing party in the action, her motion papers
2 largely ignore a critical issue relating to her right to recover fees. As noted
3 by defendant, on May 26, 2017, defendant served plaintiff with an offer to
4 compromise pursuant to Code of Civil Procedure section 998. The 998 offer
5 gave plaintiff the choice of (1) a lump sum payment of \$37,106.38, or (2) a
6 statutory repurchase pursuant to Civil Code sections 1793.2(d)(2) and
7 1794(b). The 998 offer also gave plaintiff the choice of (1) a flat sum of
8 \$5,000 for attorneys' fees, costs and expenses; or (2) attorneys' fees, costs
9 and expenses to be determined by motion. The jury verdict was less
10 favorable than defendant's 998 offer by \$6,693.95.

11 Pursuant to Code of Civil Procedure section 998(c)(1), where plaintiff
12 rejects a valid offer to compromise, but fails to obtain a more favorable
13 judgment, plaintiff is precluded from recovering her postoffer costs, and must
14 pay defendant's costs from the time of the offer. Costs under section 998
15 include attorneys' fees awarded by statute. Code Civ. Proc. §§ 998(a),
16 1033.5(a)(10)(B); *Mangano v. Verity, Inc.* (2008) 167 Cal.App.4th 944, 948;
17 *Duale v. Mercedes-Benz USA, LLC* (2007) 148 Cal.App.4th 718, 726.

18 Plaintiff previously admitted that section 998(c)(1) applies. In moving
19 to tax costs claimed by defendant in this action, plaintiff conceded that
20 defendant was entitled to costs after defendant's May 26, 2017 offer
21 pursuant to Code of Civil Procedure section 998, but sought to tax some of
22 those costs. (See Plaintiff's Motion to Tax and/or Strike Defendant's Costs,
23 filed October 4, 2019, at 3:1-8.) The court awarded defendant costs of
24 \$31,254.46, including expert witness fees. Plaintiff has not challenged that
25 ruling.

26 Despite previously admitting the validity of the May 26, 2017 offer, for
27 the purpose of the current motion, plaintiff's reference to that offer is limited
28 to the following paragraph:

1 On or around May 26, 2017, HMA served Plaintiff with what
2 purported to be HMA's second 998 Offer. (SM Dec., § 12.)
3 Unfortunately, HMA's second attempt lacked numerous critical
4 terms that rendered the offer fatally vague, ambiguous and
5 uncertain. (*Id.*) On or around June 29, 2017, Plaintiff's counsel
6 prepared and served written objections to HMA's irreparably
7 vague, ambiguous and uncertain second 998 Offer. (*Id.*) HMA
8 never cured Plaintiff s objections and made no other offers to
9 settle this case. (*Id.*)

10 (Pltf. Memo. of Pts. and Auth. at 5:11-16, *emph. in orig.*) In her reply brief,
11 plaintiff reiterates that she found the 998 offer "to be vague, uncertain,
12 ambiguous and incomplete" and claims that the concession made in her prior
13 motion to tax "was not, and was not intended to be, a comment on the legal
14 sufficiency of HMA's settlement overtures." (Pltf. Reply at 3:1-9.)

15 Plaintiff's contention that the May 26, 2017 offer was an invalid offer
16 in not persuasive for several reasons. First, as noted, plaintiff previously
17 conceded that the offer was valid, and that defendant was entitled to costs
18 under section 998, and plaintiff has not challenged the court's ruling
19 awarding defendant costs, including expert witness fees. Second, plaintiff
20 provides no analysis for the purpose of the current motion as to why the offer
21 was invalid, other than vaguely claiming that it was "fatally vague,
22 ambiguous and uncertain." The only other information provided by plaintiff
23 is found in the declaration of Steve Mikhov, who claims that the offer "lacked
24 numerous critical terms". (Declaration of Steve Mikhov at 3:28.) However,
25 the missing terms are not identified, nor does plaintiff offer the written
26 objections which she served as support for her assertion. Third, in opposing
27 defendant's pending motion to tax costs, plaintiff has taken yet another
28 position on the validity of the 998 offer, arguing that in fact she obtained a

1 more favorable judgment than the offer, after accounting for prejudgment
2 interest, costs and expenses. (See Plaintiff's Opposition to Defendant's
3 Motion to Strike and/or Tax Plaintiff's Costs, filed December 27, 2019, at 1:7-
4 10 ("HMA intentionally ignores the fact that prejudgment interest and yet to
5 be determined attorney's fees and costs must be added to the verdict for §
6 998 comparison purposes".)) Plaintiff has now taken three contrary positions
7 on the 998 offer in three separate motions filed in the action.

8 Further, based on its own review of the May 26, 2017 offer, the court
9 concludes that it was sufficiently specific so as to permit plaintiff
10 "meaningfully to evaluate it and make a reasoned decision whether to accept
11 it, or reject it and bear the risk [she] may have to shoulder [her] opponent's
12 litigation costs and expenses." *Berg v. Darden* (2004) 120 Cal.App.4th 721,
13 727; see also *Kirzhner v. Mercedes-Benz USA, LLC* (2017) 18 Cal.App.5th
14 453, 456. In determining whether the verdict or award is "more favorable,"
15 postoffer costs incurred by plaintiff are excluded. Code Civ. Proc. §
16 998(c)(2)(A). This prevents the continuance of a lawsuit solely to recover
17 costs that could have been avoided by accepting defendant's 998 offer. See
18 *Bodell Const. Co. v. Trustees of Cal. State Univ.* (1998) 62 Cal.App.4th 1508,
19 1521. Plaintiff was awarded damages of \$30,412.43. Based on defendant's
20 998 offer to settle the action for a flat sum of \$37,106.38, plaintiff failed to
21 obtain a more favorable award. Plaintiff does not demonstrate otherwise.
22 Pursuant to Code of Civil Procedure section 998(c)(1), plaintiff is not entitled
23 to costs, including attorneys' fees, after May 26, 2017, the date of the offer.

24 Turning to fees requested by plaintiff which were incurred prior to May
25 26, 2017, fee setting typically begins with the "lodestar" – i.e., a touchstone
26 figure based on the number of hours reasonably expended multiplied by the
27 reasonable hourly rate. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084,
28 1095-1097. For fees incurred prior to May 26, 2017, plaintiff seeks to

1 recover for work performed by eight attorneys, billed at rates ranging
2 between \$325-\$950/hour. "The reasonable hourly rate is that prevailing in
3 the community for similar work." *Id.* at 1095. In the court's experience,
4 rates exceeding \$400/hour are not commensurate with Placer County billing
5 rates, including for other cases of this type. Further, this case did not present
6 particularly complex or unique issues which would justify a higher billing rate.
7 Considering all the circumstances of the present case, the reasonable billing
8 rates for similar work which prevail in this community, the level of experience
9 and actual work performed by various attorneys and staff, and the court's
10 knowledge of billing rates which have been approved in this court in other
11 lemon law cases, the court finds that the reasonable billing rate for primary
12 lead counsel, Steve Mikhov and Bryan Altman, is \$400/hour. The court finds
13 that the reasonable billing rate for Joel Elkins, Amy Morse, Chris Swanson,
14 Kristina Stephenson-Cheang, Diane Hernandez and Mitchell Rosensweig is
15 \$300/hour.

16 Turning to the question of whether the number of hours expended were
17 reasonable, Civil Code section 1794(d) requires the court "to make an initial
18 determination of the actual time expended; and then to ascertain whether
19 under all the circumstances of the case the amount of actual time expended
20 and the monetary charge being made for the time expended are reasonable."
21 *Nightingale v. Hyundai Motor America* (1994) 31 Cal.App.4th 99, 104. The
22 factors to be considered by the court include "the complexity of the case and
23 procedural demands, the skill exhibited and the results achieved." *Id.* A
24 prevailing buyer has the burden of "showing that the fees incurred were
25 'allowable,' were 'reasonably necessary to the conduct of the litigation,' and
26 were 'reasonable in amount.'" *Levy v. Toyota Motor Sales, U.S.A., Inc.*
27 (1992) 4 Cal.App.4th 807, 816.

28 ////

1 The court has carefully reviewed the billing statements provided by
2 counsel, the pleadings filed in support of and in opposition to the current
3 motion, and the entire file in this action. Based upon that review, the court
4 concludes that the time billed by plaintiff's counsel should be reduced in
5 certain respects. First, Steve Mikhov claims 2.3 hours incurred at the outset
6 of the case on an unknown date. It is unclear how this time can be accurately
7 accounted for when counsel is unaware of the date on which the work was
8 performed. These hours shall be stricken. The court strikes .8 hours billed
9 by Joel Elkins on January 31, 2017, to review the file and prepare for a motion
10 to compel plaintiff's deposition, as no motion to compel plaintiff's deposition
11 was filed or heard during this timeframe. The court strikes .2 hours billed by
12 Kristina Stephenson-Cheang on February 6, 2017, to review a case
13 management conference statement and notice of jury fees prepared by a
14 different associate on February 1, 2017. The court strikes 7.0 out of 8.0
15 hours billed by Diane Hernandez on March 7, 2017, to prepare for, travel to,
16 and participate in the hearing on defendant's motion to strike first amended
17 complaint. Plaintiff does not demonstrate that it was reasonably necessary
18 to have an attorney who had no prior involvement in the case travel to attend
19 this hearing, as opposed to attending telephonically. Finally, the court strikes
20 .7 out of 1.2 hours incurred by Amy Morse on March 10, 2017, to prepare a
21 meet and confer letter regarding defendant's discovery responses. As noted
22 by defense counsel, it received eight identical meet and confer letters
23 simultaneously for various different cases between the parties. In light of
24 this information, plaintiff does not justify the full amount of the requested
25 fees. Finally, the court finds that a multiplier is not warranted in this case.

26 Based on the foregoing, plaintiff's motion is granted in part. Plaintiff
27 is awarded attorneys' fees of \$5,510.

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1 Plaintiff's Motion for Attorneys' Fees (Hackler, Daghighian, Martino & Novak)

2 Rulings on Objections

3 Defendant's objections to the declaration of Sepehr Daghighian are
4 ruled on as follows: Objection Nos. 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17
5 and 18 are sustained. The remaining objections are overruled.

6 Ruling on Motion

7 In the instant motion, plaintiff seeks attorneys' fees incurred by
8 Hackler, Daghighian, Martino, Novak ("HDMN") in the amount of \$57,875,
9 plus a .5 multiplier enhancement of \$28,937.50, for a total of \$86,812.50.

10 This case is a lemon law action arising out of plaintiff Anna King's
11 purchase of a 2010 Hyundai Tucson. The complaint in this action was filed
12 October 28, 2016. The action proceeded to a jury trial, following which the
13 jury found in favor of plaintiff on her claim for breach of express warranty,
14 awarding her damages of \$30,412.43. The parties do not dispute that
15 plaintiff is the prevailing party in the action. Pursuant to Civil Code section
16 1794(d), a buyer who prevails in an action under that section is authorized
17 to recover attorneys' fees "determined by the court to have been reasonably
18 incurred by the buyer in connection with the commencement and prosecution
19 of such action."

20 While plaintiff is the prevailing party in the action, her motion papers
21 largely ignore a critical issue relating to her right to recover fees. As noted
22 by defendant, on May 26, 2017, defendant served plaintiff with an offer to
23 compromise pursuant to Code of Civil Procedure section 998. The 998 offer
24 gave plaintiff the choice of (1) a lump sum payment of \$37,106.38, or (2) a
25 statutory repurchase pursuant to Civil Code sections 1793.2(d)(2) and
26 1794(b). The 998 offer also gave plaintiff the choice of (1) a flat sum of
27 \$5,000 for attorneys' fees, costs and expenses; or (2) attorneys' fees, costs
28

1 and expenses to be determined by motion. The jury verdict was less
2 favorable than defendant's 998 offer by \$6,693.95.

3 Pursuant to Code of Civil Procedure section 998(c)(1), where plaintiff
4 rejects a valid offer to compromise, but fails to obtain a more favorable
5 judgment, plaintiff is precluded from recovering her postoffer costs, and must
6 pay defendant's costs from the time of the offer. Costs under section 998
7 include attorneys' fees awarded by statute. Code Civ. Proc. §§ 998(a),
8 1033.5(a)(10)(B); *Mangano v. Verity, Inc.* (2008) 167 Cal.App.4th 944, 948;
9 *Duale v. Mercedes-Benz USA, LLC* (2007) 148 Cal.App.4th 718, 726.

10 Plaintiff previously admitted that section 998(c)(1) applies. In moving
11 to tax costs claimed by defendant in this action, plaintiff conceded that
12 defendant was entitled to costs after defendant's May 26, 2017 offer
13 pursuant to Code of Civil Procedure section 998, but sought to tax some of
14 those costs. (See Plaintiff's Motion to Tax and/or Strike Defendant's Costs,
15 filed October 4, 2019, at 3:1-8.) The court awarded defendant costs of
16 \$31,254.46, including expert witness fees. Plaintiff has not challenged that
17 ruling.

18 Despite previously admitting the validity of the May 26, 2017 offer,
19 plaintiff's moving papers do not mention the issue in seeking fees. In her
20 reply brief, plaintiff states only that "HMA contends that just because it
21 served an offer to compromise early in the litigation, Plaintiff should have
22 been happy with the offer and accepted it. However, its logic is misplaced
23 and contrary to caselaw." (Reply at 1:10-12.) Remarkably, plaintiff offers
24 no other argument or analysis with respect to the applicability of Code of
25 Civil Procedure section 998, which is fundamental to plaintiff's right to
26 recover fees incurred by HDMN, who was not associated into the case until
27 over a year after plaintiff's rejection of defendant's May 26, 2017 offer.

28 ////

1 As noted, plaintiff previously conceded that the offer was valid, and
2 that defendant was entitled to costs under section 998, and plaintiff has not
3 challenged the court's ruling awarding defendant costs, including expert
4 witness fees. In plaintiff's companion motion for fees incurred by Knight Law
5 Group and Altman Law Group, plaintiff contends the offer is invalid, but does
6 not explain how it is invalid, or identify the supposed missing terms. The
7 court notes that in opposing defendant's pending motion to tax costs, plaintiff
8 has taken yet another position on the validity of the 998 offer, arguing that
9 in fact she obtained a more favorable judgment than the offer, after
10 accounting for prejudgment interest, costs and expenses. (See Plaintiff's
11 Opposition to Defendant's Motion to Strike and/or Tax Plaintiff's Costs, filed
12 December 27, 2019, at 1:7-10 ("HMA intentionally ignores the fact that
13 prejudgment interest and yet to be determined attorney's fees and costs
14 must be added to the verdict for § 998 comparison purposes".)) Plaintiff has
15 taken three contrary positions on the 998 offer in three separate motions
16 filed in the action.

17 Based on its own review of the May 26, 2017 offer, the court concludes
18 that it was sufficiently specific so as to permit plaintiff "meaningfully to
19 evaluate it and make a reasoned decision whether to accept it, or reject it
20 and bear the risk [she] may have to shoulder [her] opponent's litigation costs
21 and expenses." *Berg v. Darden* (2004) 120 Cal.App.4th 721, 727; *see also*
22 *Kirzhner v. Mercedes-Benz USA, LLC* (2017) 18 Cal.App.5th 453, 456. In
23 determining whether the verdict or award is "more favorable," postoffer costs
24 incurred by plaintiff are excluded. Code Civ. Proc. § 998(c)(2)(A). This
25 prevents the continuance of a lawsuit solely to recover costs that could have
26 been avoided by accepting defendant's 998 offer. *See Bodell Const. Co. v.*
27 *Trustees of Cal. State Univ.* (1998) 62 Cal.App.4th 1508, 1521. Plaintiff was
28 awarded damages of \$30,412.43. Based on defendant's 998 offer to settle

1 the action for a flat sum of \$37,106.38, plaintiff failed to obtain a more
2 favorable award. Plaintiff does not demonstrate otherwise. Pursuant to Code
3 of Civil Procedure section 998(c)(1), plaintiff is not entitled to costs, including
4 attorneys' fees from May 26, 2017, the date of the offer.

5 As all of HDMN's fees were incurred long after plaintiff rejected
6 defendant's May 26, 2017 offer, plaintiff cannot recover any of HDMN's fees.
7 Accordingly, plaintiff's motion for attorneys' fees is denied.

8
9 Defendant's Motion to Tax or Strike Costs

10 Rulings on Objections

11 Plaintiff's objections to evidence are ruled on as follows: Objection
12 Nos. 8, 9 and 13 are sustained. The remaining objections are overruled.

13 Defendant's objections to evidence are ruled on as follows: Objection
14 Nos. 1 and 2 are sustained. The remaining objections are overruled.

15 Ruling on Motion

16 On November 22, 2019, plaintiffs filed a memorandum of costs seeking
17 costs and expenses in the total amount of \$46,852.09. The filing of the
18 memorandum of costs was timely pursuant to California Rules of Court, rule
19 3.100(a)(1), as it was filed within 20 days of a party's service by mail of
20 notice of entry of judgment.

21 Civil Code section 1794(d) provides for an award of costs and expenses
22 to a buyer who prevails in an action under the Song-Beverly Act. However,
23 as noted in the court's rulings on plaintiff's motions for attorneys' fees,
24 plaintiff is not entitled to recover costs incurred after May 26, 2017, the date
25 of defendant's 998 offer. In opposing defendant's motion, plaintiff argues
26 that prejudgment interest, attorneys' fees and costs must be added to the
27 verdict in order to determine whether the offer was more favorable.
28 However, in determining whether the verdict or award is "more favorable,"

1 postoffer costs incurred by plaintiff are excluded. Code Civ. Proc. §
2 998(c)(2)(A). This prevents the continuance of a lawsuit solely to recover
3 costs that could have been avoided by accepting defendant's 998 offer. See
4 *Bodell Const. Co. v. Trustees of Cal. State Univ.* (1998) 62 Cal.App.4th 1508,
5 1521. The court has denied plaintiff's motion for prejudgment interest,
6 except for certain amounts accruing after the jury verdict. With respect to
7 attorneys' fees, costs and expenses, defendant's 998 offer took these items
8 into account by offering either a lump sum payment of \$5,000, or fees, costs
9 and expenses to be determined by motion. Plaintiff fails to establish that she
10 obtained a more favorable judgment than defendant's 998 offer.

11 Otherwise, plaintiff's entitlement to costs is limited to those
12 "determined by the court to have been reasonably incurred by the buyer in
13 connection with the commencement and prosecution" of the underlying
14 action. Civ. Code § 1794(d); *Levy v. Toyota Motor Sales, U.S.A., Inc.* (1992)
15 4 Cal.App.4th 807, 813. Plaintiffs bear the burden of showing that that costs
16 or expenses were (1) reasonably necessary to the conduct of litigation and
17 (2) reasonable in amount. *Levy v. Toyota Motor Sales, U.S.A., Inc., supra*, 4
18 Cal.App.4th at 816. If items set forth in a memorandum of costs appear to
19 be proper charges, the verified memorandum of costs is prima facie evidence
20 of the propriety of the costs, and the burden is on the party seeking to tax
21 such costs to show that they were not reasonable or necessary. *Ladas v.*
22 *Cal. State Auto. Ass'n* (1993) 19 Cal.App.4th 761, 774. Where items that
23 are properly objected to are put in issue, the burden of proof is on the party
24 claiming them as costs. *Id.* at 775-776.

25 Of those costs requested by plaintiff, it appears to the court that the
26 costs incurred prior to May 26, 2017, total \$1,366.32. This total includes the
27 12 items identified by defendant in its reply brief, as well as the filing fee for
28 the complaint, service of process costs for service of the complaint on


1 defendant, and jury fees posted February 2, 2017. Of these costs, defendant
2 challenges court reporter fees, overnight mailing costs, and mileage, bridge
3 toll and copy costs in connection with defendant's motion to strike.

4 The court taxes mileage, bridge toll, and copy costs, totaling \$207.14,
5 related to plaintiff's appearance at the hearing on defendant's motion to
6 strike. Plaintiff does not demonstrate that it was reasonably necessary to
7 travel to attend this hearing, as opposed to appearing telephonically. As
8 noted, the court also taxes all costs incurred after May 26, 2017.

9 Plaintiff is awarded costs and expenses in the amount of \$1,159.18.
10 Plaintiff's request for additional attorneys' fees is denied.

11 IT IS SO ORDERED.

12
13 DATED: 3/3/20


HONORABLE MICHAEL W. JONES
Judge of the Superior Court

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER
CLERK'S CERTIFICATE OF MAILING [C.C.P. §1013a(4)]

FILED
Superior Court of California
County of Placer

MAR 05 2020

Jake Chatters
Executive Officer & Clerk
By: K. Harding, Deputy

Case Number: SCV0038637

Case Name: King v Hyundai

I, the undersigned, certify that I am the clerk of the Superior Court of California,
County of Placer, and I am not a party to this case.

I mailed copies of the document[s] indicate below: **submitted matter[s]** of

02/14/20.

True copies of the documents were mailed following standard court practices in
a sealed envelope with postage fully prepaid, addressed as follows:

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On March 5, 2020 in Placer County, California.

Dated: March 5, 2020

Clerk of the Superior Court, Jake Chatters
By:  by Deputy Clerk K. Harding