IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

INDEL FOOD PRODUCTS INC.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CAUSE NO. EP-20-CV-98-KC**
	§	
DODSON INTERNATIONAL PARTS INC.,	§	
	§	
	§	
Defendant.	§	

ORDER

On this day, the Court considered Plaintiff and Third-Party Defendant's Motion for Fees and Costs and Affidavit in Support ("Indel Motion"), ECF No. 116. The Court also considered Defendant Dodson International Parts, Inc.'s Opposed Motion for Attorneys' Fees ("Dodson Motion"), ECF No. 117. For the reasons below, Plaintiff's Motion is **GRANTED IN PART** and **DENIED IN PART**, and Defendant's Motion is **GRANTED IN PART** and **DENIED IN PART**.

I. BACKGROUND

This case arises from a failed agreement for the purchase and sale of an aircraft.[1] Indel Food Products, Inc. ("Indel") sued Dodson International Parts, Inc. ("Dodson"), bringing a claim for breach of contract and a separate request for declaratory relief, to clear a cloud of title Dodson had placed on the aircraft. Indel Original Pet. ¶¶ 9–14, ECF No. 1-1. Dodson brought counterclaims against Indel for breach of contract and violations of the Texas Deceptive Trade Practices Act, Tex. Bus. & Com. Code § 17.01 et seq. ("DTPA"). Def. 1st Am. Countercl.

[1] A detailed recitation of the facts can be found on pages one through five of the Court's September 21, 2021, Order, ECF No. 52, and in the trial record.

¶¶ 13–20, ECF No. 13.[2] Both claims arose out of Indel's alleged failure to convey the aircraft to Dodson under the parties' agreement. *See id.*; Dodson Mot. Summ. J. ¶¶ 15, 20, ECF No. 33. In addition to damages, Dodson sought specific performance, in order to obtain the aircraft itself. *See* Def. 1st Am. Counterclaim ¶¶ 21–25.

From August 5, 2022, to August 11, 2022, the Court held a jury trial. *See* Minute Entries, ECF Nos. 88, 90–92, 103. The trial proceeded in two phases, first as to liability and then as to damages. At the liability stage, the jury found Dodson materially breached its contract with Indel to purchase the aircraft, by failing to conduct a timely inspection. Aug. 10, 2022, Jury Verdict 1–3 ("Liability Verdict"), ECF No. 97. But the jury also found that Indel violated the DTPA, by engaging in false, misleading, or deceptive acts. *Id*. at 3. It did not find that Indel had breached its contract with Dodson. *Id.*

At the damages stage, the jury awarded Indel $165,000, for Dodson's breach of contract. Aug. 11, 2022, Jury Verdict 1 ("Damages Verdict"), ECF No. 108. The jury also awarded Dodson $125,240 in economic damages for Indel's violation of the DTPA. *Id.* at 2. While the jury found that Indel's DTPA violation was committed knowingly or intentionally, they awarded Dodson $0 in additional damages as a result of the knowing or intentional misconduct. *Id.*

Following trial, the Court denied Dodson's post-trial motion, *see* Sept. 21, 2022, Order, ECF No. 114, and entered Final Judgment, ECF No. 115, which included a damages judgment in accordance with what the jury had awarded and a declaratory judgment in accordance with what Indel had requested, clearing the cloud of title on the aircraft. The Court also ordered the parties to meet and confer to attempt to reach an agreement on costs and attorneys' fees. *See* Sept. 21, 2022, Order 17.

[2] Dodson also brought cross-claims against third-party Defendant Gustavo Deandar, *id.* ¶¶ 26–28, for which the Court granted summary judgment to Deandar, *see* Sept. 21, 2021, Order 15–18.

The parties did not reach an agreement and filed their respective motions. *See* Indel Mot. 1; Dodson Mot. 1. Indel requests that the Court order Dodson to pay $3,098.38 in costs under Federal Rule of Civil Procedure 54 and $56,828.76 in fees, for 231 hours of work, under section 38.001 of the Texas Civil Practice and Remedies Code. Indel Mot. 1–2; Indel Resp. 1 n.1, ECF No. 118. Dodson requests that the Court order Indel to pay $6,186.06 in costs and $403,513.00 in fees, for 1,474.6 hours of work, under section 38.001, as well as section 17.50(d) of the Texas Business and Commerce Code. Dodson Mot. 1, 3, 8–9. Indel filed a Response to Dodson's request, in which it argues that Dodson's fees are unreasonable. *See generally* Indel Resp. Dodson did not file a response to Indel's motion or a reply to Indel's Response, and the time to file both has elapsed. *See* Local Rule CV-7.

II. ATTORNEYS' FEES STANDARD

"The award of attorneys' fees is governed by the law of the state whose substantive law is applied to the underlying claims." *Kona Tech. Corp. v. S. Pac. Transp. Co.*, 225 F.3d 595, 614 (5th Cir. 2000) (quoting *Exxon Corp. v. Burglin*, 4 F.3d 1294, 1301 (5th Cir. 1993)). In this case, Texas law applied to all of the parties' claims. *See* Sept. 21, 2021, Order 11 n.2. And under Texas law, both section 17.50(d) and section 38.001 require that attorneys' fees be awarded to a "prevailing party." *See Kona Tech. Corp.*, 225 F.3d at 614 (collecting cases); *Satellite Earth Stations E., Inc. v. Davis*, 756 S.W.2d 385, 387 (Tex. App. 1988). Section 17.50(d) comprises the DTPA's fee-shifting provision, and section 38.001 applies to common law breach of contract claims.

A prevailing party "must prove the reasonableness and necessity of the requested attorney's fees." *Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469, 484 (Tex. 2019). To decide whether requested fees are reasonable, Texas courts employ the two-step

"lodestar" method. *See id.* at 493–97. At step one, "the court must determine the reasonable hours spent by counsel in the case and a reasonable hourly rate for such work." *Id.* at 494 (quoting *El Apple I, Ltd. v. Olivas*, 370 S.W.3d 757, 760 (Tex. 2012)). Multiplying the rate and the hours together yields the base lodestar fee. *See id.* at 492. At step two, "[t]he court may then adjust the base lodestar up or down . . . [if] necessary to reach a reasonable fee." *Id.* at 494 (quoting *El Apple I*, 370 S.W.3d at 760).

At both steps, Texas courts may consider eight non-exclusive factors:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal service properly;
>
> (2) the likelihood . . . that the acceptance of the particular employment will preclude other employment by the lawyer;
>
> (3) the fee customarily charged in the locality for similar legal services;
>
> (4) the amount involved and the results obtained;
>
> (5) the time limitations imposed by the client or by the circumstances;
>
> (6) the nature and length of the professional relationship with the client;
>
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
>
> (8) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

Rohrmoos Venture, 578 S.W.3d at 494 (quoting *Arthur Andersen & Co. v. Perry Equip. Corp.*, 945 S.W.2d 812, 818 (Tex. 1997)); *id.* at 496. A factor considered at step one of the lodestar analysis may not be considered again at step two. *See id.* at 501.

While the lodestar method and these factors guide a fees determination, the size of the award ultimately "rests in the sound discretion of the trial court." *El Apple I*, 370 S.W.3d at 761 (citing *Ragsdale v. Progressive Voters League*, 801 S.W.2d 880, 881 (Tex. 1990) (per curiam)).

III. ATTORNEYS' FEES ANALYSIS

Indel argues that it is entitled to attorneys' fees under section 38.001 because it succeeded on its breach of contract claim. Indel Mot. 2. And Dodson argues it is entitled to attorneys' fees under section 38.001 for its failed contract counterclaim and under section 17.50(d) for its successful DTPA counterclaim. Dodson Mot. 1, 3.

A. Prevailing Party Status

The Court must first determine whether Indel, Dodson, or both of them qualify as "prevailing part[ies]" under sections 38.001 and 17.50(d). *See Kona Tech. Corp.*, 225 F.3d at 614; *Satellite Earth Stations E., Inc.*, 756 S.W.2d at 387. To "prevail" under either statute, a party must succeed on their respective cause of action and obtain an award of damages. *See Kona Tech. Corp.*, 225 F.3d at 614; *Guzman v. Ugly Duckling Car Sales of Tex., LLP*, 63 S.W.3d 522, 526 (Tex. App. 2001).

"When there is more than one main issue and both sides prevail on one or more of them, it is possible for both sides to be prevailing parties." *Hrdy v. Second St. Props. LLC*, 649 S.W.3d 522, 561 (Tex. App. 2022) (citing *Mohican Oil & Gas v. Scorpion Expl. & Prod.*, 337 S.W.3d 310, 321–23 (Tex. App. 2011)). While perhaps counterintuitive, both sides can "prevail" and obtain mandatory attorneys' fees, even when one side's recovery is entirely offset by the other's. *See McKinley v. Drozd*, 685 S.W.2d 7, 8–11 (Tex. 1985); *Osborne v. Jauregui, Inc.*, 252 S.W.3d 70, 76 (Tex. App. 2008); *Brent v. Field*, 275 S.W.3d 611, 622 (Tex. App. 2008).

In *McKinley*, for instance, the Texas Supreme Court affirmed the trial court's decision that both parties had prevailed and that each were entitled to obtain an award of attorneys' fees from the other. *See* 685 S.W.2d at 8. As here, the plaintiff prevailed on a breach of contract claim and the defendant on a DTPA counterclaim. *Id.* And, as here, both parties were awarded

damages, but the defendant's recovery was entirely offset by a larger award to the plaintiff. *Id.* The plaintiff was entitled to reasonable attorneys' fees under section 38.001's predecessor statute, and, despite the offset to their damages, the defendant was entitled to its reasonable fees as well, under the DTPA. *Id.; Taylor Elec. Servs., Inc. v. Armstrong Elec. Supply Co.*, 167 S.W.3d 522, 533 (Tex. App. 2005) (explaining the fee-shifting provision at issue in *McKinley* has been amended and recodified as section 38.001). "[T]he [Texas Supreme] Court has not overruled *McKinley* or called it into doubt." *See Jones v. Allstate Vehicle & Prop. Ins. Co.*, No. 01-21-00162-CV, 2022 WL 17419386, at *5 (Tex. App. Dec. 6, 2022).

Here, like the parties in *McKinley*, both Indel and Dodson are prevailing parties for the purposes of attorneys' fees, even though Dodson's breach of contract counterclaim failed and its DTPA damages were eclipsed by Indel's contract damages. *See McKinley*, 685 S.W.2d at 8; Liability Verdict 3; Final J. 1. Thus, Indel is entitled to fees under section 38.001 and Dodson under section 17.50(d). *See McKinley*, 685 S.W.2d at 8. But Dodson is not entitled to an award of attorneys' fees under section 38.001 because it did not obtain a favorable liability verdict, much less an award of damages, on its own breach of contract claim. *See Kona Tech. Corp.*, 225 F.3d at 614; Liability Verdict 3.

B. Lodestar Step One

1. Dodson's rate and hours

As a prevailing party, Dodson seeks fees for 1,474.6 hours, billed at an average of $273.64 per hour.[3] *See* Dodson Mot. 8. At step one of the lodestar, courts may reduce a party's

[3] Dodson's total fee of $403,513, divided by its 1,4743.6 hours, yields this average. Dodson's five paralegals billed $135 per hour, its one associate billed $275, its one local counsel billed $375, and its three partners billed $400. Dodson Mot. Exs., at 2–5, 16, 22, 56.

unreasonable fee request by cutting their rate, their hours, or both, depending on which aspects of the fee bill render it unreasonable. *See Rohrmoos Venture*, 578 S.W.3d. at 498–99.

A rate is "normally deemed to be reasonable" if it is "in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.'" *Id.* at 499 (quoting *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984)). Based on the Court's review of similar cases in El Paso, and accounting for a reasonable increase in billing rates over time, Dodson's average rate of $273.64 per hour is reasonable. *See, e.g.*, *Acosta v. Campos*, No. EP-14-CV-160-PRM, 2015 WL 1758125, at *5–6 (W.D. Tex. Apr. 17, 2015) ($250 per hour in a breach of contract case); *Restrepo v. All. Riggers & Constructors, Ltd.*, 538 S.W.3d 724, 752 (Tex. App. 2017) ($250 per hour in a DTPA case); *Brownhawk, LP v. Monterrey Homes, Inc.*, 327 S.W.3d 342, 349 (Tex. App. 2010) ($225 per hour in a breach of contract claim).

Dodson's 1,474.6 hours, however, warrant a significant reduction. The requested hours suffer from a number of serious deficiencies—Dodson billed for excessive work, for clerical work, for vague time entries, and for travel time at its full rate.

a. Duplicative and excessive work

Hours are unreasonable if they represent "duplicative [or] excessive . . . work." *El Apple I*, 370 S.W.3d at 762 (citing *Watkins v. Fordice*, 7 F.3d 453, 457 (5th Cir. 1993)). Billing far more time than opposing counsel may indicate excessive hours. *Am. Acad. of Implant Dentistry v. Parker*, No. AU-14-CA-00191-SS, 2018 WL 401818, at *5 (W.D. Tex. Jan. 11, 2018) (finding hours excessive when one party billed twice as much for a deposition).[4] Employing a large legal team for a simple case may also be excessive. *See Smith v. Xerox Corp.*, No. 3:06-CV-1213-N,

[4] Though attorneys' fees are a matter of state law, the Court also references federal case law because the federal and Texas state standards are similar. *See Rohrmoos Venture*, 578 S.W.3d at 493–502; *El Apple I*, 370 S.W.3d at 760, 765.

2008 WL 11422638, at *2 (N.D. Tex. May 13, 2008) (cutting hours because a party "hired five attorneys . . . and two paralegals to handle what was essentially a run-of-the-mill employment discrimination case" with "no complex or novel issues" (citing *Walker v. U.S. Dep't of Hous. and Urban Dev.*, 99 F.3d 761, 768 (5th Cir. 1996))).

Dodson did both. It billed over six times as many hours—1,474.6—as Indel did—just 231. *Compare* Dodson Mot. 8, *with* Indel Resp. 2. And compared to the single attorney Indel employed, Dodson had five paralegals, three partners, one associate, and one local counsel. *Compare* Dodson Mot. Exs., at 2–5, 16, 22, 56, *with* Indel Mot. 8–32. This ten-person team billed nearly 1,500 hours in a case involving what were—in the Court's experience—straightforward legal issues. *See Smith*, 2008 WL 11422638, at *2. Each of these considerations alone would warrant a reduction to Dodson's hours, and together they license a significant one. *See Am. Acad. of Implant Dentistry*, 2018 WL 401818, at *5; *Smith*, 2008 WL 11422638, at *2.

b. Clerical work and travel time

Additionally, Dodson's time logs are replete with entries for clerical work, rather than substantive legal work. Clerical work, however, is not recoverable under fee-shifting statutes, whether performed by an attorney or a paralegal. *See Cruz v. Hauck*, 762 F.2d 1230, 1235 (5th Cir. 1985); *El Apple I*, 370 S.W.3d at 763. "[C]opying, typing, labeling, faxing, mailing, filing" and similar activities are all considered clerical work. *Chacon v. City of Austin*, No. A-12-CA-226-SS, 2015 WL 4138361, at *7 (W.D. Tex. July 8, 2015) (quoting *Dinet v. Hydril Co.*, Civil Action No. 05–3778, 2006 WL 3904991, at *8 (E.D. La. Nov. 22, 2006)).

Such entries are found throughout Dodson's billing logs. For example, across eighteen different entries, an attorney billed nearly $1,000 to arrange a hotel for the trial in El Paso. *See id.* at 28, 80–82; *Coe v. Chesapeake Expl., LLC*, No. 2:09-CV-290-TJW, 2011 WL 4356728, at

*4 (E.D. Tex. Sept. 15, 2011) (classifying "reserving hotel rooms" as clerical work). Similar entries for clerical work by attorneys abound. *See, e.g.*, Dodson Mot. Exs., at 51 ("Verify Geff Anderson's CV is updated to be used as exhibit to motion designating experts.").

Paralegals billed for clerical work as well—to "[u]pdate [the] case file," to "[c]orrespond[ ] with [the] court clerk," and to "[p]repare [an] index of Bates numbered documents." *See* Dodson Mot. Exs., at 9, 11, 21. About half of the entries for paralegals appear to be clerical work. *See, e.g.*, *id*. at 26 ("Work on scheduling court reporter to cover deposition."); *id*. at 29 ("Attempt to reach Mr. Dodson regarding available dates for mediations."); *id.* at 32 ("Review communications from Brock Benjamin providing dates for deposition."). Dodson cannot recover for any of this time. *See Cruz*, 762 F.2d at 1235; *El Apple I*, 370 S.W.3d at 763.

Similarly, courts do not award fees at the full hourly rate for travel time, typically cutting them by fifty percent. *See In re Babcock & Wilcox Co.*, 526 F.3d 824, 828 (5th Cir. 2008) (collecting cases); *Kiewit Offshore Servs. Ltd. v. Dresser-Rand Glob. Servs., Inc.*, No. CV H-15-1299, 2017 WL 2599325, at *7 (S.D. Tex. June 15, 2017) (same). Yet Dodson's attorneys appear to have billed at their regular hourly rate when traveling to and from El Paso. *See* Dodson Mot. Exs., at 26, 86, 89. None of Dodson's clerical work and only half of its travel time is reasonable. Together, these problems pervade a substantial portion of Dodson's entries.

c. Vague entries

Nor can Dodson obtain fees for time that it describes only vaguely. A party cannot recover for "inadequately documented work." *El Apple I*, 370 S.W.3d at 762 (citing *Watkins*, 7 F.3d at 457). If an entry is "too vague to permit meaningful review," a court "may properly

reduce or eliminate hours." *La. Power & Light Co. v. Kellstrom*, 50 F.3d 319, 326 (5th Cir. 1995) (collecting cases).

Though courts have not defined how vague is "too vague," Dodson's entries miss the mark. *See id.* 326–27. Dodson repeatedly billed for "updates" and for entries about the case's "status," without further explanation. *See, e.g.*, Dodson Mot. Exs., at 12, 14, 28, 35, 47, 50, 60. The inadequacy of these entries is all the more striking given Indel's comparatively meticulous records. *See, e.g.*, Indel Mot. 22 ("Review caselaw related to apparent and agent authority as it relates to limited/specific agency and assess applicability to defending a claim of waiver by Dodson.").

Many of Dodson's records are too vague for the Court to meaningfully review them. *See Kellstrom*, 50 F.3d at 326. These difficulties are exacerbated by the size of Dodson's legal team. For example, on March 5, 2020, an associate billed $275 for an hour spent on "Review and analyze documents from client." Dodson Mot. Exs., at 8. The next day, a partner billed $200 for thirty minutes of "Receive and review documents from Nick Dodson." *Id.* Due to the vagueness of these entries, the Court cannot discern whether the two lawyers' time spent on these tasks was duplicative.

Of similar concern are Dodson's entries for the trial itself. On August 8, 2022, for example, Dodson billed $2,025.00 for fifteen hours of paralegal time, $4,125.00 for fifteen hours of associate time, and $7,200.00 for eighteen hours of partner time. *Id.* at 89. In total, then, Dodson would have the Court award it $13,350.00 for forty-eight hours of work on that single day of trial. *See id.* And to justify this leviathan request, each of these time entries is logged, simply, as "attend trial." *Id.* Given only this terse description, it is impossible to tell how many

of the paralegal's fifteen hours were spent on clerical tasks, or how many of the partner's eighteen hours were spent duplicating the associate's work.

The Court is sympathetic to the rigorous demands of jury trials, which often entail significant additional work outside the courtroom, at the beginning and end of each day. Indeed, for August 8, Indel seeks $3,350.00 for its sole attorney's 13.40 hours of work on "[t]rial and prep for the following day." Indel Mot. 29. But the nearly four-fold gap between the parties' hours that day is striking and unexplained. Even greater discrepancies exist on other trial days. *Compare id.* (Indel seeking $2,150.00 for 8.6 hours of work on August 9), *with* Dodson Mot. Exs., at 89 (Dodson seeking $12,945.00 for forty-five hours of work on August 9). The fact that trials entail long hours does not give Dodson carte blanche to claim as many hours per day as it sees fit.

In short, Dodson employed five paralegals and five lawyers when Indel employed just one attorney. It billed almost 1,500 hours, more than six times what Indel did. These observations raise red flags that Indel may be billing for excessive or duplicative work. Further, many of Dodson's entries are plainly for clerical work, for which it cannot recover at all, and travel time, for which it can obtain only a sharply reduced rate. Finally, many of Dodson's other entries are too vague for the Court to assess. In many instances, it is impossible to discern whether large time blocks were spent on clerical work. And Dodson's sparing descriptions, especially those of similar or even identical tasks performed by two or more people, only deepen the Court's concerns that much of its work was excessive and duplicative.

2. Dodson's Step One Reduction

With all these problems in view, the Court finds that a large reduction of Dodson's 1,474.6 hours is justified. *See Kiewit Offshore Servs.*, 2017 WL 2599325, at *5–7 (considering

billing deficiencies together rather than one-by-one). In other egregious cases, courts have reduced fees at step one by as much as sixty percent. *See Gros v. City of New Orleans*, Civil Action No. 12-2322, 2014 WL 2506464, at *11–12 (E.D. La. June 3, 2014); *see, e.g.*, *Kiewit Offshore Servs.*, 2017 WL 2599325, at *4, 7–8 (over thirty-five percent).

An even greater reduction is warranted here. Like the attorneys in *Kiewit Offshore Services*, Dodson's legal team billed for vague time entries, for clerical work by attorneys and paralegals, and fully for travel time. *See Kiewit Offshore Servs.*, 2017 WL 2599325, at *4–6; *see generally* Dodson Mot. Exs. Compounding these inadequacies, Dodson employed multiple attorneys and paralegals and billed far more than Indel. *See Am. Acad. of Implant Dentistry*, 2018 WL 401818, at *5; *Smith*, 2008 WL 11422638, at *2; *see generally* Dodson Mot. Exs. In light of these problems, the Court finds Dodson's 1,474.6 hours to be grossly excessive and cuts its hours by seventy percent. *See Am. Acad. of Implant Dentistry*, 2018 WL 401818, at *5; *Kiewit Offshore Services*, 2017 WL 2599325, at *4, 7; *Gros*, 2014 WL 2506464, at *12. This brings Dodson's hours to 442.38, which, multiplied by Dodson's average rate of $273.64 per hour, yield a base lodestar of $121,052.86.

3. Indel's rate and hours

Indel seeks fees for 231 hours, billed largely at $250 per hour.[5] *See generally* Indel Mot. Its rate, which is slightly lower than Dodson's, is reasonable for the same reasons. *See Acosta*, 2015 WL 1758125, at *5–6; *Restrepo*, 538 S.W.3d at 752; *Brownhawk, LP*, 327 S.W.3d at 349.

Indel's hours merit a small reduction, as a few entries are impermissibly vague. *See Kellstrom*, 50 F.3d at 326; *see, e.g.*, Indel Mot. 11 ("[P]aralegal"); *id.* at 17 ("Email to Kristin (defense counsel)"); *id.* at 25 ("Call with counsel."); *id.* at 29 ("Zoom meeting."). But there are

[5] For reasons the Court cannot discern, two of Indel's entries were billed at $85 per hour. *See* Indel Mot. 17, 25.

only a few of such entries, and nearly all of them are for less than an hour's work. *See* Indel Mot. at 11, 17, 25, 29. More importantly, they are the clear exception to Indel's many detailed entries. *See, e.g.*, *id.* at 20 ("Hourly: Assess likelihood of prevailing in asserting lack of diversity because of failure to meet 75K threshold"); *id.* at 22 ("Hourly: Assess likelihood of prevailing under Texas Uniform Declaratory Judgement Act based on Dodson's unlawful exercise of ownership.").

Apart from these vague entries, Indel's billing suffers from none of the other problems that Dodson's does. And the Court discerns no other deficiencies in Indel's time records. Based on Indel's handful of vague entries, the Court reduces Indel's hours by five percent. *See, e.g.*, *Saizan v. Delta Concrete Prods. Co.*, 448 F.3d 795, 800 (5th Cir. 2006) (affirming a ten-percent reduction because of "vagueness, duplicative work, and not indicating time written off"); *Cajun Servs. Unlimited, LLC v. Benton Energy Serv. Co.*, Civil Action No. 17-491, 2021 WL 5833967, at *5 (E.D. La. Dec. 9, 2021) (reducing by ten percent when "*many* of the entries [were] too vague" (emphasis added)). This brings Indel's requested 231 hours down to 219.45. Multiplying Indel's hours by its $250 per hour rate yields a base lodestar of $54,862.50.

C. Lodestar Step Two

1. Standard for Adjusting Fees

Neither party argues for an enhancement to their lodestar, but Indel argues that Dodson's should be reduced. *See generally* Indel Mot.; Dodson Mot.; Indel Resp. 1–2. "There is a strong presumption that the [base] lodestar figure is reasonable," only to be "overcome in [ ] rare circumstances in which the lodestar does not adequately take into account a factor" at step one. *Rohrmoos Venture*, 578 S.W.3d at 502 (quoting *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 553–54 (2010)) (quotation marks omitted).

The "results [a party] obtained" is the "most critical factor" and can justify a substantial reduction at step two of the lodestar. *See Combs v. City of Huntington*, 829 F.3d 388, 394 (5th Cir. 2016) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983)); *Rohrmoos Venture*, 578 S.W.3d at 500 n.12; *Smith v. Patrick W.Y. Tam Tr.*, 296 S.W.3d 545, 548 (Tex. 2009) (quoting *Farrar v. Hobby*, 506 U.S. 103, 114 (1992)). It is "particularly crucial where a [party] is deemed 'prevailing' even though he succeeded on only some of his claims." *Hensley*, 461 U.S. at 434.

Where a partially prevailing party "bring[s] distinctly different claims that are based on different facts and legal theories," an unsuccessful claim cannot be counted towards attorneys' fees. *United States ex rel. Longhi v. United States*, 575 F.3d 458, 476 (5th Cir. 2009) (quoting *Hensley*, 461 U.S. at 435). But where a party's "claims for relief [ ] involve a common core of facts or will be based on related legal theories . . . the district court should focus on the significance of the overall relief obtained by [the party]." *Id.* (quoting *Hensley*, 461 U.S. at 435).

When considering a party's overall success, "[t]here is no precise formula to determine the appropriate amount by which the lodestar fee should be reduced." *Wright v. Blythe-Nelson*, No. Civ.A.3:99CV2522-D, 2004 WL 2870082, at *8 (N.D. Tex. Dec. 13, 2004) (citing *Hensley*, 461 U.S. at 436). "The court may use its 'equitable discretion' to 'arrive at a reasonable fee award, either by attempting to identify specific hours that should be eliminated or by simply reducing the award to account for the limited success of the [party].'" *Pruett v. Harris Cnty. Bail Bond Bd.*, 499 F.3d 403, 418 (5th Cir. 2007) (quoting *Texas State Tchrs. Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 789–90(1989)), *abrogated on other grounds by Reagan Nat'l Advert. of Austin, Inc. v. City of Austin*, 972 F.3d 696, 703 n.3 (5th Cir. 2020). A court may also cut the lodestar in direct proportion to the number of claims that failed. *See Dall. Indep. Sch. Dist. v. Woody ex rel. K.W.*, No. 3:15-CV-1961-G, 2018 WL 6304401, at *11 (N.D. Tex. Nov. 30, 2018)

("[P]roportionality remains an appropriate consideration in the typical case." (quoting *Combs*, 829 F.3d at 396) (quotation marks omitted)).

2. Adjusting Dodson's lodestar

Dodson does not argue that its fees should be enhanced, only that its base lodestar figure is reasonable and should not be reduced. *See* Dodson Mot. 9. Indel appears to argue that Dodson's fees should be reduced because it succeeded on one counterclaim but otherwise did not prevail. *See* Indel Resp. 1–2.[6]

This case presents the sort of exceptional circumstances where a step two reduction is justified. *See Rohrmoos Venture*, 578 S.W.3d at 502. By almost all measures, Dodson did not succeed. Indel Resp. 1–2. Indel prevailed on all of its claims against Dodson. Liability Verdict, 1–3; Final J. 1. In contrast, Dodson brought two interrelated counterclaims against Indel but prevailed on only one. Def. 1st Am. Countercl. ¶¶ 13–20; Liability Verdict 3. And it owes more in damages—$165,000—than it is owed by Indel—just $125,240. Damages Verdict 1–2. Most importantly, it failed at the crux of the case. This lawsuit was born out of the parties' competing claims to an aircraft. *See* Indel Original Pet. ¶¶ 9–11; Def. 1st Am. Countercl. ¶¶ 21–25. Indel, not Dodson, obtained a declaratory judgment conferring clear title to that aircraft. Final J. 1. Dodson thus exits this suit having nominally prevailed on one claim, but owing Indel nearly $40,000, and without title to the aircraft.

[6] When considering Dodson's fees at step one, the Court considered the following factors and will not consider them again at step two: "(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal service properly;" "(3) the fee customarily charged;" and "(7) the experience, reputation, and ability of the . . . lawyers." *Rohrmoos Venture*, 578 S.W.3d at 494 (quoting *Arthur Anderson*, 945 S.W.2d at 818).

That Dodson lost on one of its two claims against Indel suggests the lodestar can be cut in half.[7] *See Dall. Indep. Sch. Dist.*, 2018 WL 6304401, at *11–12. That it lost on the case's most important points—it won less in damages than it lost and did not obtain the aircraft—suggests cutting the lodestar further. *See Doucet v. City of Bunkie*, Civil Action No. 04-1231, 2009 WL 111594, at *4 (W.D. La. Jan. 15, 2009) (considering the relative importance of the plaintiff's claims). The Court thus cuts Dodson's lodestar of $121,052.86 by another seventy percent, yielding a final attorneys' fees award of $36,315.86.

3. Adjusting Indel's lodestar

The Court sees no reason to adjust Indel's lodestar figure. Neither party requests an adjustment. And even considering the lodestar factors sua sponte, the Court finds that no factors justify an enhancement or reduction. All the factors the Court finds most relevant—the time required, the customary fee, and the lawyer's background—were adequately accounted for at step one. *See Rohrmoos Venture*, 578 S.W.3d. at 500–01. And when it comes to the "most critical factor"—the results obtained—Indel succeeded, winning a declaratory judgment and more in damages than Dodson. *See Smith*, 296 S.W.3d at 548; Final J. 1. Indel is thus entitled to its base lodestar of $54,862.50 in attorneys' fees.

IV. COSTS

Indel requests $3,098.38 in costs, while Dodson requests $6,186.06. Indel Mot. 6; Dodson Mot. 9. "The award of costs is governed by federal law." *Cates v. Sears, Roebuck & Co.*, 928 F.2d 679, 688 (5th Cir. 1991) (quoting 10 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice & Procedure* § 2669 (2d ed. 1983)). Rule 54(d) provides that

[7] This is without even considering Dodson's claims against Deandar, on which it lost at summary judgment. *See* Sept. 21, 2021, Order 15–18. If the Court were to consider these claims as well, an even greater reduction of Dodson's fee bill could be justified.

"[u]nless a federal statute, these rules, or a court order provides otherwise, costs . . . should be allowed to the prevailing party." Fed. R. Civ. P. 54(d).

A. Prevailing Party

Unlike the Texas standard for attorneys' fees, "Rule 54(d)(1) 'unambiguously limits the number of prevailing parties in a given case to one.'" *Tempest Publ'g, Inc. v. Hacienda Recs. & Recording Studio, Inc.*, 141 F. Supp. 3d 712, 718 (S.D. Tex. 2015) (quoting *Shum v. Intel Corp.*, 629 F.3d 1360, 1367 (Fed. Cir. 2010)). There is "no special rule or exception for mixed judgment cases, where both parties have some claims decided in their favor." *Mobile Telecomms. Techs., LLC v. Samsung Telecomms. Am., LLC*, No. 2:13-CV-259-RSP, 2015 WL 5719123, at *1 (E.D. Tex. Sept. 28, 2015) (quoting *Shum*, 629 F.3d at 1367). "The case is viewed as a whole to make the determination [of who is the prevailing party]." *Myers ex rel. Myers v. Papachristou*, No. 3:05CV104-B-A, 2007 WL 9735476, at *2 (N.D. Miss. Sept. 27, 2007) (citing *Studiengesellschaft Kohle v. Eastman Kodak*, 713 F.2d 128, 131 (5th Cir. 1983)).

For example, in *Kellogg Brown & Root International, Inc. v. Altanmia Commercial Marketing Co. W.L.L.*, Civil Action No. H-07-2684, 2009 WL 1457632 (S.D. Tex. May 26, 2009), the court determined that the plaintiff was the prevailing party because "at bottom the litigation was about whether [the plaintiff] or [the defendant] had to pay for [ ] vehicle losses and damages . . . . [And the plaintiff] obtained a declaratory judgment that it was not obligated to pay these claims." *Id.* at *2. In this case, Indel is the prevailing party—at bottom, this case was about whether Indel or Dodson was entitled to an aircraft, and Indel obtained a declaratory judgment saying it was, along with a net damages award of almost $40,000. *See Kellogg Brown & Root Int'l*, 2009 WL 1457632, at *2; Final J. 1.

B. Reasonableness of Costs

Once a prevailing party is determined, "[t]here is a strong presumption under Rule 54(d)(1) that [it] will be awarded costs." *Harris v. Fresenius Med. Care*, Civil Action No. H-04-4807, 2007 WL 1341439, at *5 (S.D. Tex. May 4, 2007) (citing *Cheatham v. Allstate Ins. Co.*, 465 F.3d 578, 586 (5th Cir. 2006)). Under 28 U.S.C. § 1920, recoverable costs include:

> (1) Fees of the clerk and marshal;
>
> (2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;
>
> (3) Fees and disbursements for printing and witnesses;
>
> (4) Fees for exemplification and copies of papers necessarily obtained for use in the case;
>
> (5) Docket fees . . . ;
>
> (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services.

Id. (quoting 28 U.S.C. § 1920). "[F]ederal courts may only award those costs articulated in section 1920 absent explicit statutory or contractual authorization to the contrary." *Mota v. Univ. of Tex. Hous. Health Sci. Ctr.*, 261 F.3d 512, 529 (5th Cir. 2001) (first citing *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 444–45 (1987); and then citing *Denny v. Westfield State Coll.*, 880 F.2d 1465, 1467–69 (1st Cir. 1989)).

Indel incurred $382.75 for fees of the clerk, $673.10 for transcripts, $596.46 for copies, and $1,446.07 for travel costs. *See* Indel Mot. 6. All but travel costs are recoverable. *Mota*, 261 F.3d at 529*; Harris*, 2007 WL 1341439, at *5. Indel is thus entitled to $1,652.31, representing its original $3,098.38 request, less its $1,446.07 in travel costs.

V. CONCLUSION

For the reasons above, the Court **GRANTS IN PART** and **DENIES IN PART** Indel's Motion, ECF No. 116. Dodson **SHALL PAY** Indel $54,862.50 in attorneys' fees and $1,652.31 in costs of court.

IT IS FURTHER ORDERED that the Court **GRANTS IN PART** and **DENIES IN PART** Dodson's Motion, ECF No. 117. Indel **SHALL PAY** Dodson $36,315.86 in attorneys' fees.

The Clerk shall close the case.

SO ORDERED.

SIGNED this 11th day of January, 2023.

KATHLEEN CARDONE
UNITED STATES DISTRICT JUDGE