STATE OF SOUTH CAROLINA COUNTY OF BERKELEY RITA R. GREENAWALT AND JAMES M. GREENAWALT, Plaintiffs, vs. NISSAN NORTH AMERICA, INC., Defendant.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2020-CP-08-02455 **ORDER REGARDING PLAINTIFFS' MOTION FOR ATTORNEY'S FEES**

This matter came before the Court for a hearing on April 5, 2023 on Plaintiffs' motion for attorney's fees and costs. Present were C. Steven Moskos for Plaintiffs and Sarah Eibling for Defendant. Several issues were presented.

SETTLEMENT

On April 5, 2023, Defendant's counsel filed a brief opposing an award of attorney's fees to Plaintiffs. Defendant argued that since Plaintiffs had not obtained a judgment against Defendant, an award of attorney's fees was not appropriate. At the hearing, Plaintiffs' counsel stated that he understood the parties had agreed to resolve this case under the terms stated below. Plaintiffs' counsel stated that, after mediation, he had tried to have Defendant's counsel confirm in writing the settlement terms on at least three occasions, but Nissan's counsel did not respond. Therefore, the Parties had not settled this matter as the Parties did not have a written settlement agreement as required by Rule 43(k) SCRCP. Nissan's counsel countered saying Plaintiffs' counsel did not want the settlement written down and signed by the Parties. Plaintiffs' counsel denied this claim. At Plaintiffs' counsel's request, Defendant's counsel agreed to put the settlement on the record. Counsel for both parties agreed the settlement terms are as follows:

1. Nissan is to pay the Greenawalts $35,000;
2. The Greenawalts are considered the prevailing parties as to all claims;
3. Nissan will not contest the Greenawalts' costs;
4. The Parties will sign a Release as to all claims;
5. At turn in, the Greenawalts will provide Nissan with a copy of their current registration;
6. After turn in, Nissan, or its agent, shall overnight to the Greenawalts' counsel the $35,000 funds for the Greenawalts; and
7. The attorney's fees issue shall be submitted to a judge for determination.

The Court agreed it would retain jurisdiction over this matter until all terms of the settlement were completed. The Court accepted the settlement "in open court and noted upon the record". See Rule 43(k) SCRCP. With the settlement on the record, the matter is properly before the Court for a determination of attorney's fees.

PREVAILING PARTY

Nissan has agreed that Plaintiffs are the prevailing Parties in this matter regarding the claims made under the Magnuson Moss Warranty Act - 15 U.S.C. 2301 *et seq.,* the Lemon Law - SC Code §56-28-10 *et seq.*, the Unfair Trade Practices Act SC Code §39-5-10 *et seq.*, and the Dealers Act - SC Code §56-15-10 *et seq.* These statutes all provide for attorney fees for prevailing plaintiffs; two (the Unfair Trade Practices Act and the Dealers Act) explicitly mandate attorney fee awards for prevailing plaintiffs. Nonetheless, Nissan claims Plaintiffs are not entitled to any attorney's fees because a verdict or judgment has not been rendered against Nissan under these statutes. Nissan has not offered any authority in support of its position.

Contrary to Nissan's position, the statutes do not specifically state a verdict or judgment is a prerequisite to attorney's fees.[1] The UTPA simply requires the court find there was a violation of

[1] THE UNFAIR TRADE PRACTICES ACT - §39-5-140
(a) Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by Section 39 5 20 may bring an action individually, but not in a representative capacity, to recover actual damages. If the court finds that the use or employment of the unfair or deceptive method, act or practice was a willful or knowing violation of Section 39 5 20, the court shall award three times the actual damages sustained and may provide such other relief as it deems necessary or proper. Upon the finding by the court of a violation of this article, **the court shall award to the person**

the UTPA. Nissan's agreement that Plaintiffs are the prevailing party is sufficient for such a finding by this Court. The Dealers Act does not even require a finding by the court. It only requires that a person be injured, which is implicit in the stipulation that Plaintiffs are the prevailing party on this claim. The Lemon Law and the Magnuson-Moss Warranty Act only require the Plaintiffs to be the prevailing party. Nissan has admitted they are.

Furthermore, South Carolina does not require a verdict or judgment before attorney's fees can be awarded. In Hueble v. S.C. Dep't of Natural Res., 416 S.C. 220, 785 S.E.2d 461, 466 (2016), the Court held, "that for a party to be considered a prevailing party, there must be a 'material alteration of the legal relationship of the parties,' and there must be 'judicial imprimatur on the change.' Thus, it is not enough for a desired outcome to occur to attain 'prevailing party' status. Rather, it requires both a change on the part of the parties and an enforceable acknowledgement by a court. Significantly, the Supreme Court explained that interlocutory victories or a voluntary change in conduct each lack the 'necessary judicial imprimatur.' The

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bringing such action under this section reasonable attorney's fees and costs. (Emphasis added.)

REGULATION OF MANUFACTURERS, DISTRIBUTORS AND DEALERS - §56-15-110
(1) In addition to temporary or permanent injunctive relief as provided in Section 56 15 40(3)(c), any person who shall be injured in his business or property by reason of anything forbidden in this chapter may sue therefor in the court of common pleas and **shall recover** double the actual damages by him sustained, and the cost of suit, including **a reasonable attorney's fee**. (Emphasis added.)

ENFORCEMENT OF MOTOR VEHICLE EXPRESS WARRANTIES - §56-28-50
(D) Any consumer who finally prevails in any action brought under this chapter, may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses (**including attorney's fees based on actual time expended**) and other such costs which are directly attributable to the nonconformity of the motor vehicle determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action, unless the court in its discretion determines that such an award of attorney's fees would be inappropriate. (Emphasis added.)

MAGNUSON MOSS WARRANTY ACT - 15 U.S.C. § 2310(d)
(2) If a consumer finally prevails in any action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses (**including attorneys' fees based on actual time expended**) determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action, unless the court in its discretion shall determine that such an award of attorneys' fees would be inappropriate. (Emphasis added.)

Supreme Court also clarified that "'a party in whose favor a judgment is rendered, regardless of the amount of damages awarded...,'" is a 'prevailing party'" for purposes of the various fee-shifting statutes. Hueble v. S.C. Dep't of Natural Res., 416 S.C. 220, 785 S.E.2d 461 (2016). The test is whether the party received meaningful relief, not whether the party received all the relief requested. Hueble, 416 S.C. 220, 230, 785 S.E.2d 461 (2016).

But even if a verdict or judgment were needed for fees to be awarded, as Nissan claims, Nissan has stipulated that Plaintiffs are deemed to have obtained a favorable judgment. "A prevailing party has been defined as: [t]he one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention [and] is the one in whose favor the decision or verdict is rendered and judgment entered." Heath v. County of Aiken, 302 S.C. 178, 394 S.E.2d 709 (1990) (quoting Buza v. Columbia Lumber Co., 395 P.2d 511, 514 (1964)).

By stating on the record that Plaintiffs are the "prevailing party", Nissan has stipulated to all the elements of prevailing party status, including that Plaintiffs successfully prosecuted the action, prevailed on the main issue, and are the ones in whose favor the decision or verdict is rendered and judgment entered. Nissan's argument is foreclosed by its own stipulation.

Nissan's position attempts to make a requirement for a judgment an additional element to obtaining attorney's fees, independent of and in addition to being a prevailing party. Nissan's position is erroneous, as being stipulated to be a prevailing party necessarily stipulates to all the necessary elements of being a prevailing party, e.g., being the one in whose favor a verdict is rendered and judgment entered. Nissan has not provided any authority for its position. Nissan's position is rejected.

Even if Nissan's agreement that Plaintiffs are the prevailing party is not a "verdict or judgment", the Court finds that a formal "verdict or judgment" is not necessary for the court to rule on attorney's fees where the parties have stipulated to the same.

During mediation, Nissan agreed to put the issue of attorney's fees before the Court for determination. It was not until the day of the hearing that Nissan informed Plaintiffs it would claim that, since there is no jury verdict, Plaintiffs were not entitled to fees. This is a classic "gotcha" moment that the Court will not suffer. Nissan's position poses problems not just for the Plaintiffs but also for the Court system. To accept Nissan's position means that Plaintiffs will have to bear the burden of substantial attorney's fees. That defeats the purposes of the four statutes. To find for Nissan on this argument also means that attorneys in the future will be unable to settle the underlying case and leave just the issue of fees for the Court. Because the parties may be unable to agree on the amount of fees, they will have to bring the entire case to the court. This would result in a great waste of the Court's resources and is contrary to the purpose of the civil rules to ensure "the just, speedy, and inexpensive determination of every action." See Rule 1 SCRCP. The Court must be able to manage its docket to do justice for everyone involved in the legal process. Nissan's approach would prevent that.

The Court finds Plaintiffs are the prevailing Parties under these fee shifting statutes. Therefore, Plaintiffs are entitled to an award of attorney's fees.

ATTORNEY'S FEES FACTORS AND PROCESS

In South Carolina, there are six factors to consider in determining an award of attorney's fees:

(1) the nature, extent, and difficulty of the case;
(2) the time necessarily devoted to the case;
(3) professional standing of counsel;
(4) contingency of compensation;

(5) beneficial results obtained; and
(6) customary legal fees for similar services.
Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997).

"[W]hen an action in which attorney fees are recoverable by statute is joined with alternative theories of recovery based on the same transaction, no allocation of attorney's services need be made except to the extent counsel admits that a portion of the services was totally unrelated to the statutory claim or it is shown that the services related to issues which were clearly beyond the scope of the statutory claim proceeding. Accord, Heindel v. Southside Chrysler Plymouth, Inc., 476 So.2d 266 (Fla.App.1985). This approach requires the party asserting the right to attorney fees to produce an itemized affidavit of their fees that they believe are related to the statutory claim. The opposing party then has the burden of showing which of the fees are clearly unrelated." Taylor v. Nix, 307 S.C. 551, 557, 416 S.E.2d 619, 622 (1992).

The determination of fees "should not result in a second major litigation." Hensley v. Eckerhart, 461 U.S. 424, 437, 103 S.Ct. 1933 (1983). The fee applicant must submit appropriate documentation to meet "the burden of establishing entitlement to an award." Ibid. "But trial courts need not, and indeed should not, become green-eyeshade accountants. The essential goal in shifting fees is to do rough justice, not to achieve auditing perfection. So trial courts may take into account their overall sense of a suit, and may use estimates in calculating and allocating an attorney's time." Fox v. Vice, 131 S. Ct. 2205, 180 L. Ed. 2d 45, 563 U.S. 826 (2011).

PURPOSE OF FEE SHIFTING STATUTES

The Magnuson Moss Warranty Act, the Enforcement Of Motor Vehicle Express Warranties Act (the SC Lemon Law), the Unfair Trade Practices Act, and the Dealers Act are remedial statutes. South Carolina has long recognized the principle of liberal construction and implementation of remedial statutes to effectuate their purpose. Ducworth v. Neely, 319 S.C. 158,

459 S.E.2d 896 (Ct. App. 1995); South Carolina Dep't of Mental Health v. Hanna, 270 S.C. 210, 241 S.E.2d 563 (1978); Inabinet v. Royal Exch. Assur. of London, 165 S.C. 33, 162 S.E. 599 (1932).

The purpose of a fee shifting statute is to make sure that a consumer has an economically feasible private right of action. Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 691 S.E.2d 135 (2010).

Attorney's fees should not be restricted to the smallest amount possible. Instead, the Court should view the case as a whole and award fees commensurate with the service provided so that competent first class attorneys will be willing to handle these types of cases. Gimarc v. Neal, 417 F. Supp. 129 (DCSC 1976).

"[C]ourts generally hold that a 'lodestar' approach reflecting the amount of attorney time reasonably expended on the litigation results in a reasonable fee under a fee-shifting statute." Layman v. State, 376 S.C. 434, 452, 658 S.E.2d 320, 330; see also Maybank v. BB&T Corp., 416 S.C. 541, 580-81, 787 S.E.2d 498, 518-19 (2016) (affirming the circuit court's use of a lodestar analysis to calculate a reasonable attorney's fee awarded under the South Carolina Unfair Trade Practices Act). "A lodestar figure is designed to reflect the reasonable time and effort involved in litigating a case, and is calculated by multiplying a reasonable hourly rate by the reasonable time expended." Layman, 376 S.C. at 457, 658 S.E.2d at 332.

***JACKSON v. SPEED* FACTORS**

(1) The Nature, Extent, and Difficulty of the Case;

The issues in this case were complex in that the statutory legal framework required by this kind of case is unusual and requires specialized experience in handling it. Additionally, it is complex factually in that it deals with either computer software, which is an ever-evolving system,

or it deals with hardware that is specialized to vehicles. Neither party could identify the exact problem with the vehicle which leads to additional complexity, especially for Plaintiffs.

Nissan claims this case was not difficult and in fact was a run-of-the-mill lemon law claim. The Court is not aware of what a "run-of-the-mill lemon law claim" is and Nissan has not provided any evidence of what it is. The statutes involved contain complex and complicated legal processes. Two of the statutes require prelitigation activity which can be a trap for the unwary. Furthermore, a review of the Court's file shows Nissan presented and argued numerous complicated defenses to the Court. These defenses alone make this case difficult. This factor weighs in Plaintiffs' favor.

(2) The Time Necessarily Devoted to the Case;

Per Jackson and Nix, Plaintiffs' counsel filed eighteen pages of timesheets detailing the 215.4 hours of work he asserts are related to the statutory claims through March 30, 2023. He has also filed two supplemental time records reflecting time spent from March 31 through April 30, 2023. Nissan then had the burden "of showing which of the fees are clearly unrelated". Nix, 307 S.C. at 557, 416 S.E.2d at 622. Nissan has not provided the Court with any evidence, argument, affidavit, or other information stating that the time reflected in Plaintiffs' counsel's time sheets were clearly unrelated to the fee shifting statutes. This factor weighs in Plaintiffs' favor.

Nissan argues that settlement offers are not evidence. On the other hand, Nissan argues that Plaintiffs should have accepted Nissan's settlement offers earlier so that counsel's fees would not have been so high. Nissan's approach requires the Court to review settlement offers. Nissan, however, has not provided any evidence it offered to repurchase Plaintiffs' car and pay all Plaintiffs' attorney's fees incurred to that point. The record is devoid of any evidence that Nissan offered to repurchase Plaintiffs' car per the Lemon Law formula and pay all Plaintiffs' attorney's fees incurred to that point. Nissan's first offer to repurchase the car, as found in the record, occurred July 9,

2021, approximately eight months after suit was filed and approximately thirteen and one-half months after Plaintiff's counsel sent a written demand to Nissan to repurchase the car. (See Exhibit 1 and Exhibit 17 to the Affidavit of C. Steven Moskos filed April 2, 2023.) Nissan's offer of $33,500 was to cover all claims including attorney's fees and costs. Since Nissan admits that the damages were at least $35,000, its $33,500 total offer was clearly insufficient as it contained insufficient amounts for damages and no amount for the statutorily-mandated fees and costs.

Nissan's brief asserts it made a Rule 68 Offer of Judgment for $39,000.00 to repurchase the car and to pay attorney's fees. This Offer was not filed. Nissan's other offers were made the same way. Nissan has not provided any proof that it offered a full repurchase price along with fees and costs to the date of the offer that might warrant reducing a fee award. The Court finds Nissan's argument to be without merit.

Nissan's brief opposing an award of fees claims Nissan "was prepared to repurchase the Plaintiffs' vehicle on November 12, 2020", the day before suit was filed. There is nothing in the record to indicate that. The record shows that on June 29, 2020, Nissan made its highest presuit offer to pay Plaintiffs $3,000 and Plaintiffs keep the car. Had Nissan wanted to repurchase the car on November 12, 2020, nothing prevented Nissan from making a full settlement offer at that time.

Nissan's arguments regarding time devoted to this case seem to be in conflict. Nissan says that Plaintiffs must have a judgment to be able to request fees. That requires Plaintiffs to fully prepare for trial and to try the case to a verdict. Nissan also says Plaintiffs should have accepted Nissan's offers at the beginning of the case, even when those offers would not fully compensate Plaintiffs. Nissan then says since Plaintiffs did not accept those insufficient offers, Plaintiffs' counsel's fees should be limited to the time when those offers were made. These arguments put Plaintiffs in an unwinnable bind where they would lose no matter what they chose to do. Nissan's

position is in opposition to the purposes of the fee shifting statutes to provide a cost-effective method for consumers to bring these actions and to ensure competent counsel will handle these matters.

While a defendant is entitled to defend itself vehemently, it must weigh such defense against increasing a plaintiff's counsel's fees incurred in responding to the defendant's arguments. If a defendant incorrectly decides to put up a vigorous defense, refusing to resolve a matter, the court will not relieve the defendant of self-inflicted wounds should it be the subject of a fee award. Rish v. Rish By & Through Barry, 296 S.C. 14, 16, 370 S.E.2d 102, 104 (Ct. App. 1988). Nissan could have reduced Plaintiffs' counsel's fee request by resolving this matter sooner rather than later. It chose not to do so.

(3) Professional Standing of Counsel;

The Court has personal knowledge of Plaintiffs' counsel and is aware that Plaintiffs' counsel has a good reputation in the legal profession. He has handled numerous cases which have resulted in new law and which have helped consumers. Jay Masty and Justin Kahn provided affidavits attesting to Plaintiffs' counsel's standing in the legal community. Defendant has not provided any evidence regarding this factor. This factor weighs in favor of Plaintiffs.

(4) Contingency of Compensation;

Mr. and Ms. Greenawalt have provided an affidavit attesting that they would not be able to pay the attorney's fees generated in this case, but for the existence of the fee shifting statutes. Nissan has not provided any evidence regarding this factor. This factor weighs in favor of Plaintiffs.

(5) Beneficial Results Obtained;

Mr. and Ms. Greenawalt tried unsuccessfully to get Nissan to repurchase their car pursuant to the Lemon Law. Nissan refused. Nissan did not take this case seriously. Before suit, it only made small cash offers to Mr. and Ms. Greenawalt with them retaining the car. With counsel's help, Nissan has now agreed to repurchase the car at an amount above the full repurchase price to resolve not only the Lemon Law claim but the other claims as well, and to pay costs, and to put the issue of attorney's fees before the court for resolution. Mr. and Ms. Greenawalt have received very beneficial results caused by employing Mr. Moskos. Nissan has not provided any evidence that the results were not beneficial to Plaintiffs. This factor weighs in favor of Plaintiffs.

(6) Customary Legal Fees for Similar Services.

Plaintiffs have submitted affidavits of two prominent attorneys in which they state that the customary legal fees for similar services would be $450.00 per hour. Nissan has not provided any evidence to contradict these attorneys. The Court finds $450.00 per hour to be a reasonable fee for this complex litigation. This factor weighs in favor of Plaintiffs.

NISSAN'S OTHER ARGUMENTS

At the hearing, Nissan claimed attorney's fees are not warranted because Plaintiffs were awarded a repurchase of the car through the Better Business Bureau (BBB) and they could have requested fees then. Nissan cites the November 12, 2020 BBB Auto Line correspondence, which transmitted the final decision, as the basis upon which Plaintiffs could have requested attorney's fees through the BBB and ended this matter presuit. (Exhibit A to Nissan's Opposition to Attorney's Fees filed April 5, 2023.) Nissan relies on part of a sentence in the correspondence for this position. The actual sentence, however, reads,

> "If you believe you are entitled to reimbursement for any amounts (including any attorney's fees, ***if your manufacturer's program summary allows for them***) that

> you have not already submitted to the manufacturer as part of this case, please include documentation for these expenses when you return the enclosed acceptance rejection form." (Emphasis added.)

Nissan's argument is without merit, as its program summary does not allow an arbitrator to award attorney's fees to a successful plaintiff. The BBB Auto Line Program Summary for Nissan, included as Exhibit 28 to Rita Greenawalt's affidavit in support of Plaintiffs' motion for summary judgment filed November 8, 2021 and Exhibit 2 to Plaintiffs' counsel's affidavit in support of attorney's fees filed April 2, 2023, states:

> "if the claim meets all standards of the applicable lemon law, the arbitrator will award a refund or replacement vehicle including all remedies specifically provided by that law, **excluding** attorney's fees, any penalties or multiple damages". (Emphasis in original.)

Plaintiffs' claim form requested a repurchase of the vehicle and attorney's fees. (Exhibit 26 to Rita Greenawalt's affidavit in support of Plaintiffs' motion for summary judgment filed November 8, 2021 and Exhibit 2 to Plaintiffs' counsel's affidavit in support of attorney's fees filed April 2, 2023.) On November 10, 2020, the BBB arbitrator awarded a repurchase but did not award attorney's fees. (Exhibit 27 to Rita Greenawalt's affidavit in support of Plaintiffs' motion for summary judgment filed November 8, 2021, Exhibit 6 to Plaintiffs' counsel's affidavit in support of attorney's fees filed April 2, 2023.)

When read as a whole and in conjunction with the BBB June 19, 2020 correspondence and the arbitrator's order, it is clear Plaintiffs were not entitled to request attorney's fees through the BBB process.

Nissan's brief also argues that the fees are simply too high in proportion to Plaintiffs' recovery. Our Supreme Court has rejected this argument in Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989) (Affirming the trial court's award of $26,000 in attorney fees and $3,252.51 in costs on a verdict of $16,161 actual damages.) and Taylor v. Medenica, 331 S.C.

575, 503 S.E.2d 458 (1998) ("[T]here is no requirement that an attorney's fee be less than or comparable to a party's monetary judgment"); id. (explaining an award of attorney's fees may substantially exceed the actual recovery and affirming an award of $500,000 in attorney's fees and $24,068 in costs on a verdict that when trebled equaled $108,726.). See also Riverside v. Rivera, 477 U.S. 561, 573-75 (1986) (plurality) (rejecting the argument that "attorney's fees in such cases should be proportionate to the amount of damages a plaintiff recovers"); id. at 585 (Powell, J., concurring) (same). Instead, "Congress enacted § 1988 specifically to enable plaintiffs to enforce the civil rights laws even where the amount of damages at stake would not otherwise make it feasible for them to do so," id. at 577 (plurality); "Section § 1988 was enacted because existing fee arrangements were thought not to provide an adequate incentive to lawyers," id. at 586 (Powell, J., concurring).

"'[R]equiring the unsuccessful defendant to pay the plaintiff's attorney's fees is a legitimate tool in enforcing the underlying public policy of the [securities] statute.'" Taylor v. Medenica, 331 S.C. 575, 578, 503 S.E.2d 458, 460 (1998) (quoting Bradley v. Hullander, 277 S.C. 327, 287 S.E.2d 140 (1982)) (alteration in original). "Allowing plaintiffs who successfully pursue an action under the UTPA to recover their attorney's fees encourages individuals to pursue litigation to protect the public interest." Id. at 579, 503 S.E.2d at 460. These provisions "epitomize[] the definition of a remedy." Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 57, 691 S.E.2d 135, 153 (2010). Remedial measures are broadly construed to achieve their purposes. E.g., Allen v. Union Oil & Mfg. Co., 59 S.C. 571, 577, 38 S.E. 274, 276 (1901).

The larger Acts in which fee shifting provisions are embedded, the Lemon Law, the Magnuson-Moss Warranty Act, the Unfair Trade Practices Act, and the South Carolina Dealers Act, are obviously designed to remedy problems of businesses treating customers unfairly. They

create a right to sue about such acts. Due to the small amounts often at stake in such disputes, however, the right to sue would often be meaningless without fee-shifting, as the expected fees would likely dwarf the recovery, as this case shows. These fee-shifting provisions are thus remedies-within-remedies; they are designed to remedy the problem that the larger remedial act would be largely toothless if Plaintiffs had to pay their own attorney.

ATTORNEY'S FEE AWARD

Based on the above, Plaintiffs' counsel claims time of 215.4 hours spent on this matter from May 14, 2020 through March 30, 2023 to be related to the statutory claims. Under this calculation, Plaintiffs would be entitled to $96,930.00. (215.4 hours multiplied by $450.00 per hour).

Plaintiffs also claim entitlement to the fees incurred in efforts to obtain fees. Austin v. Stokes-Craven Holding Corp., 406 S.C. 187, 750 S.E.2d 78 (2013). Plaintiffs' counsel filed his First Supplemental Time Records showing an additional 30.4 hours worked from March 31 through April 4, totaling $13,680.00 for this time. (30.4 hours multiplied by $450.00 per hour). Counsel has also filed his Second Supplemental Time Records showing an additional 35.9 hours worked from April 5 through April 30, totaling $16,155.00. (35.9 hours multiplied by $450.00 per hour). Plaintiffs' total of the attorney's fees incurred through and including April 30, 2023 is $126,765.00.

There is no doubt, at least to this Court, that Defendant was playing whack-a-mole when it came to settling this case and its position on attorney's fees. They claim Plaintiffs could have settled this case with less incurred in attorney's fees. However, the record seems to indicate Defendant did not make settling the case as easy as they now claim. They overlook they only agreed to more than a token offer until Plaintiffs were forced to hire an attorney who had to aggressively pursue that outcome. To say $4,000 would be reasonable would be tantamount to

saying no attorney's fees were awarded. Indeed, that is the amount Defendants concede as costs. However, the Plaintiffs' total attorney's fee request comes in at around $195,000. ($126,000 multiplied by a 1.5 multiplier). This seems "too much," all things considered.

This Court finds that a fee of $75,000 is reasonable and necessary to achieve the outcome and to deter the automotive dealers from the conduct they displayed in refusing to settle until after protracted efforts by the Plaintiffs' attorney forced them to settle. At the same time, an award of $75,000 is a lot less than the amount Plaintiffs claim, but it is still reasonable and generous and should send a message to auto dealers to resolve these cases sooner rather than later.

COSTS

Plaintiffs have submitted evidence of $4,891.72 in costs. Nissan waived any contest to Plaintiffs' costs. Plaintiffs are awarded $4,891.72 for their costs.

CONCLUSION

Therefore, it is,

ORDERED that this matter is settled per the terms agreed to by the Parties on the record in open court. It is further,

ORDERED that Defendant pay Plaintiffs $75,000.00 towards Plaintiffs' attorney's fees. It is further,

ORDERED that Defendant pay Plaintiffs $4,891.72 for the costs and expenses incurred in this matter.

AND IT IS SO ORDERED.

[*Electronic Signature Page to Follow*]

Berkeley Common Pleas

Case Caption: Rita R Greenawalt , plaintiff, et al VS Nissan North America, Inc.

Case Number: 2020CP0802455

Type: Order/Attorney Fees

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134