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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELY COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Appellate Case No. 2023-001124
Lower Court Case No. 2020-CP-08-02455

Rita R. Greenawalt and
James M. Greenawalt,

Appellants,

v.

Nissan North America, Inc.,

Respondent.

RECORD ON APPEAL

Volume II of II

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Exhibit 36

Steve Moskos

From: Sarah Eibling <Sarah.Eibling@nelsonmullins.com>
Sent: Tuesday, August 2, 2022 10:59 AM
To: Steve Moskos
Subject: Automatic reply: Greenawalt v Nissan

I will be out of town on business the next two days with limited access to email and voicemail. If you need immediate assistance please contact Kelli Martin at kelli.martin@nelsonmullins.com or Linda Silvey at linda.silvey@nelsonmullins.com.

Confidentiality Notice
This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

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Steve Moskos

From: Steve Moskos
Sent: Tuesday, August 2, 2022 11:08 AM
To: kelli.martin@nelsonmullins.com
Subject: FW: Greenawalt v Nissan

Ms. Martin,

I sent the below e-mail to Sarah. I received her automated response that she was out of the office. To make sure she receives this, I am sending it to you. Please pass it along to Sarah. Thank you.

Steve

PLEASE NOTE WE HAVE RECENTLY MOVED. OUR NEW ADDRESS IS BELOW.

C. Steven Moskos
6650 Rivers Ave., Ste 210
North Charleston, SC 29406
843-763-5297
steve@moskoslawfirm.com
https://www.moskoslawfirm.com

From: Steve Moskos
Sent: Tuesday, August 2, 2022 10:59 AM
To: Sarah T. Eibling <sarah.eibling@nelsonmullins.com>
Subject: Greenawalt v Nissan

Sarah,
During our last set of emails, you stated that you had a trial in federal court starting August 22, 2022 and that it might go two weeks or longer. My understanding is that you are going to request a continuance of this case which is currently scheduled in Berkeley County the weeks of August 22 and 29. I would ask that you submit that request as soon as possible so we do not get sideways with the judge and so that my client is not prejudiced. Please let me know when you intend to submit your motion for a continuance. Also, we discussed an Amended Scheduling Order. Please provide that to me also so I may review it and get it back to you for submission to the Court. Thanks.
Steve

PLEASE NOTE WE HAVE RECENTLY MOVED. OUR NEW ADDRESS IS BELOW.

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C. STEVEN MOSKOS, P.A.

Exhibit 38

ATTORNEY AND COUNSELOR AT LAW

C. Steven Moskos
Board Certified Civil Trial Attorney
Board Certified Civil Pretrial Advocate
By the National Board of Trial Advocacy
Supreme Court of South Carolina Certified Mediator

M

6650 Rivers Ave., Suite 210
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Telephone: (843) 763-5297
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steve@moskoslawfirm.com

August 22, 2022

Nelson Mullins
Attn: Sarah T. Eibling
P.O. Box 11070
Columbia, SC 29211-1070

RE: Greenawalt v. Nissan North America, Inc.
Case No.: 2020-CP-08-02455

Dear Sarah:

I have tried to keep the time I have spent on this case as low as possible so this matter could be settled reasonably. Unfortunately, Nissan has known about the problems and malfunctions in its 2019 Rogue but has chosen to refuse to repurchase my client's vehicle. Additionally, it has chosen to stonewall my clients during discovery. I do not know the reason for these choices, but that is the course it has chosen. Additionally, it has chosen to fight my client's summary judgment motion so this matter must be tried. To that end, I now need to prepare for trial so I must insist that Nissan more fully respond to Plaintiffs' discovery by amending its Answers to Plaintiffs' Interrogatories and its responses to Plaintiffs' Request for Production. This letter is being sent pursuant to Rule 11 SCRCP and to avoid the necessity of a motion to compel.

My client has been patient waiting on Nissan to cooperate in discovery. We understand that Nissan does not want to admit liability, however, its stalwart defense is needlessly increasing the time, effort, and expense needed to prosecute this case. My client is entitled to this information as it relates to the navigation system issues in Nissan's vehicles and my client's vehicle specifically.

First, Nissan's "General Objections" are not binding on my client nor is it proper as Nissan cannot provide an answer and then say it is not admissible at trial. Nissan and its attorneys have a duty to review its answers. Under Rule 11 an attorney's signature certifies that he/she has read the response and that to the best of his knowledge, there are good grounds to support it. This makes Nissan's response binding upon it. Simply saying Nissan is not bound does not provide Nissan cover. Furthermore, the objections must be to a specific question so the court and I know to which Nissan's objections apply. Please withdraw this "statement".

Additionally, the following discovery responses need to be amended as I have set forth.

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RE: Greenawalt v. Nissan North America, Inc.
Case No.: 2020-CP-08-02455

INTERROGATORIES

Interrogatory No. 4: Nissan claims there is nothing wrong with my clients' vehicle and that it has never had this kind of problem in one of its vehicles. Plaintiffs have a right to test these defenses. Nissan needs to set out the lawsuits that apply to the navigation system used in my clients' vehicle and/or those in which a 2019 Rogue with navigation issues is involved. Nissan, even if it actually believes the interrogatory is too broad, must respond to what it does concede is within the limits of the lawsuit. Obviously, this case is about the navigation system issue. If there are other lawsuits regarding Nissan's Rogues, Nissan should at least let us know the name of the suits and whether they are ongoing or have been resolved. Nissan is not entitled to limit the discovery in this case to the smallest amount of information. Nissan knows that my client is entitled to any information if "the information sought appears reasonably calculated to lead to the discovery of admissible evidence". Nissan cannot object simply because it does not want to produce the requested information.

Additionally, Plaintiffs have alleged an unfair trade practice violation. As you know, we are entitled to broader information as we have the burden of proving Nissan's conduct has happened before. Please provide the information regarding lawsuits involving 2019 Nissan Rogue model vehicles, particularly those with nonconformities which relate to issues with the navigation system.

Interrogatory No. 12: This interrogatory simply requests a "yes" or "no" answer. Did Nissan pay Hudson Nissan to make warranty repairs on my client's vehicle? Please respond properly to this interrogatory.

Interrogatory No. 13 and 14: These interrogatories request the specific number of opportunities Hudson Nissan and Nissan have had to correct the problems in Plaintiffs' vehicle. Again, Nissan has simply provided documents and left it to me to determine how many opportunities Nissan has had. This is not appropriate, especially since Nissan will object to the number of opportunities I glean from the documents. I know Nissan does not want to admit the number of days the vehicle has been out of service, but the discovery rules require it to respond properly. Additionally, since Nissan has denied it has been given a reasonable opportunity to repair the vehicle, this request is relevant and needs to be answered by Nissan. (See Complaint paragraphs 59 and 66; Answer paragraphs 59 and 66.) Please state the number of opportunities Hudson Nissan and Nissan have had to repair the vehicle.

Interrogatory No. 15: We consider Hudson Nissan Nissan's agent. I am sure the jury will also. We are entitled to know how many more opportunities Hudson Nissan should have to repair Plaintiffs' Rogue. The objections you have stated are nonresponsive.

RE: Greenawalt v. Nissan North America, Inc.
Case No.: 2020-CP-08-02455

Please provide the number of attempts Hudson Nissan should be given to repair the Rogue.

Interrogatory No. 16: I am asking for a specific number of times Nissan contends the Rogue was presented to a Nissan authorized repair facility for repairs under Nissan's warranty. Again, I should not have to cull through Nissan's documents to determine what Nissan considers the correct number of times the vehicle was presented for repair. Nissan's answer does not guarantee that Nissan will agree with my assessment of its records. Nissan's response will only lead to confusion in the courtroom. Maybe that is what is intended.

Additionally, the vehicle could have been presented for a repair, but a warranty slip was not generated. I have no way to know this. Please state the number of times Nissan contends my client's vehicle was presented for repairs under the warranty.

Interrogatory No. 17: This interrogatory, like all the others, is very relevant and should be answered. Please state how many times Nissan should be allowed to work on the Rogue before Nissan considers the vehicle non-conforming.

Interrogatory No. 18: Nissan has not provided a complete response to this interrogatory. Please state the specific reasons why Nissan does not believe the vehicle is non-conforming.

Interrogatory No. 19: I will again ask Nissan to state the specific number of days my client's Rogue has been out of service by reason of repair during Nissan's warranty. If Nissan refuses to answer this question, I will tally the number of days listed on the Hudson Nissan repair invoices. Nissan will then be estopped to deny the number of days I determine the vehicle to have been out of service by reason of repair.

Interrogatory No. 21: Nissan's Answer does not comply with Rule 8 SCRCP which requires a Defendant to set forth the facts which support its affirmative defenses. Nissan has not stated how the Complaint fails to state a cause of action. Please either explain how the Complaint is defective or withdraw this defense.

Interrogatory No. 22: Nissan's Answer asserts a third party has caused my clients' damages. Nissan, however, has not complied with Rule 8 SCRCP which requires a Defendant to set forth the facts which support its affirmative defenses. Nissan has not identified this alleged third party in either its Answer or its Answers to Interrogatories. Please either identify the third party or withdraw this affirmative defense.

Interrogatory No. 24: Nissan's Answer asserts that Nissan's warranty somehow bars my clients' claims. Nissan, however, has not complied with Rule 8 SCRCP which requires a Defendant to set forth the facts which support its affirmative defenses. Nissan has not

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RE: Greenawalt v. Nissan North America, Inc.
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identified the section of the warranty it relies on to bar my clients' action. Please either identify the section of the warranty Nissan relies on or withdraw this affirmative defense.

Interrogatory No. 26: Nissan's Answer claims my clients misused, abused, or failed to maintain the vehicle. Nissan, however, has not complied with Rule 8 SCRCP which requires a Defendant to set forth the facts which support its affirmative defenses. Nissan has not stated the facts that support its defense. Please either state the facts upon which Nissan bases its claim that the Plaintiffs used, abused, or failed to maintain the vehicle or withdraw this affirmative defense.

REQUESTS FOR PRODUCTION

RFP 3: Nissan has not produced any service bulletins regarding the navigation system in the 2019 Rogue. These, in turn, would be based on engineering reports. These have not been produced either. The engineering reports, emails, claims from customers, and other materials should also be produced. I am entitled to review those documents to see how they apply to my client's case. Please provide the requested information. Hudson Nissan's employees contacted Nissan through Nissan's technical hotline. Those records need to be produced. Nissan should also have received at least one email from Hudson Nissan regarding my clients' vehicle being subject to the Lemon Law. That email needs to be produced.

RFP 4: Please provide the policies and procedures manuals used by Nissan to evaluate requests from consumers in South Carolina for Nissan to repurchase vehicles which are believed to be non-conforming. Obviously, I am entitled to this information since I have an unfair trade practice claim and I am entitled to show the jury any sort of pattern and practice which supports my clients' claims. I look forward to receiving these procedures.

RFP 9: Mrs. Greenawalt provided to Hudson Nissan videos and photographs of the problems in the vehicle. Hudson Nissan took pictures also. These were sent to Nissan. Please produce them.

RFP 10: Nissan has not produced any technical service bulletins related to the car or the navigation system. Please do so.

RFP 11: Please provide the dealer agreement with Hudson Nissan and any other documents

RFP 16: You stated you would produce NTB1906 Software Update For Infotainment Issues. I have not been able to find it in Nissan's discovery responses. Please produce it.

RFP 18: Nissan needs to produce the records it has related to its calculation of the

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number of days the vehicle has been out of service. Nissan keeps a record of these so employees know whether the vehicle falls within the Lemon Law. If you have previously provided it to me, please state the Bates number where I may find it. If you have not previously provided it, please do so.

RFP 21: Nissan has calculated the number of days my client's vehicle has been out of service. That would have been maintained prior to attorneys being involved in this case. Therefore, I am requesting that Nissan provide the report(s) it has in its possession and/or control that show the number of days Nissan believes the vehicle to have been out of service.

RFP 24: My clients are entitled to the phone logs kept by Nissan regarding other people's issues with their 2019 Rogue's navigation system. Please provide them.

RFP 26: I do not understand Nissan's response to this request. I am asking for Nissan's policies and procedures related to investigating alleged nonconformities and the requirements needed to prepare and issue TSBs. Nissan's objections are simply designed to be dilatory and vexatious. Obviously, we need the policies and procedures to confirm that Nissan followed its policies. Nissan needs to provide the requested information or provide a privilege log.

RFP 27: I am requesting Nissan's policies and procedures for repurchasing vehicles under South Carolina law as they relate to my client's vehicle. Nissan's response is simply a refusal to provide the policies and procedures. Please provide the requested information.

RFP 29: This request is not overly broad or vague. Please provide the requested documents.

RFP 30: Rule 8 SCRCP mandates Nissan "state in short and plain terms the facts constituting his defenses to each cause of action asserted". Simply listing the documents produced is not sufficient as I have no way of knowing which, if any, documents apply to which, if any, defenses. Nissan's objection that the request is overly broad and unduly burdensome is inaccurate. Nissan has put these issues in dispute. Therefore, Nissan must produce the information it relies on to assert its affirmative defenses. Nissan's response to this request indicates it does not have any evidence to support its affirmative defenses. Therefore, these affirmative defenses should be removed until such time as evidence is discovered. Nissan may then move to amend its answer to include those defenses. Please confirm, pursuant to Rule 11, that Nissan has sufficient evidence to assert these defenses by providing that evidence or that Nissan intends to withdraw these defenses until it has adequate evidence.

This kind of case tends to be document intensive. The more time spent trying to obtain

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RE: Greenawalt v. Nissan North America, Inc.
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the documents related to this matter is only increasing the fees to be requested by my clients at the conclusion of this case. Therefore, we request that Nissan provide the requested documents without further delay.

This letter is being sent pursuant to Rule 11 SCRCP. Please provide the requested information by August 26, 2022, so we may avoid a motion to compel.

It is disappointing that Nissan will not accept responsibility for a vehicle it knows to be defective. Nissan's defense is designed only to prolong this matter in the hopes that my client will give up. Nissan's approach costs everyone more money and wastes my client's, Nissan's, and the court's resources. Should Nissan decide to resolve this case, please let me know so we may negotiate a settlement.

If you have any questions, please do not hesitate to contact me.

Sincerely,

C. Steven Moskos
CSM/slf

cc: Rita Greenawalt
James Greenawalt

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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 **PLAINTIFF'S NOTICE OF DEPOSITION OF ADAM GUISE**

TO: SARAH T. EIBLING, ESQ., ATTORNEY FOR DEFENDANT NISSAN NORTH AMERICA, INC.:

PLEASE TAKE NOTICE that on November 10, 2022, C. Steven Moskos, attorney for the Plaintiffs will take the deposition of Adam Guise beginning at 2:00 p.m. Said deposition will be held at the Law Office of C. Steven Moskos, 6650 Rivers Avenue, Suite 210, North Charleston, SC 29406 and will be taken, upon oral examination, pursuant to the South Carolina Rules of Civil Procedure, before a Notary Public or some other officer authorized by law to take depositions.

The oral examination will continue from day to day until completed. The deposition is being taken for the purpose of discovery, for use at trial, and for all other purposes as are permitted under the rules of this Court and all applicable statutes and laws.

You are invited to attend and take such part as is fit and proper.

SIGNATURE ON NEXT PAGE

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C. STEVEN MOSKOS, P.A.
ATTORNEY FOR PLAINTIFFS
s/C. Steven Moskos
SC Bar# 7938
6650 Rivers Ave., Suite 210
North Charleston, SC 29406
Telephone: (843) 763-5297
steve@moskoslawfirm.com

Charleston, South Carolina
October 26, 2022

CERTIFICATE OF SERVICE

Undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by electronic means on October 26, 2022 in a manner provided by Order of the Supreme Court of South Carolina.

C. STEVEN MOSKOS, P.A.
By: s/C. Steven Moskos

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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 **PLAINTIFF'S NOTICE OF DEPOSITION OF DAVID CRABTREE**

TO: SARAH T. EIBLING, ESQ., ATTORNEY FOR DEFENDANT NISSAN NORTH AMERICA, INC.:

PLEASE TAKE NOTICE that on November 10, 2022, C. Steven Moskos, attorney for the Plaintiffs will take the deposition of David Crabtree beginning at 12:00 p.m. Said deposition will be held at the Law Office of C. Steven Moskos, 6650 Rivers Avenue, Suite 210, North Charleston, SC 29406 and will be taken, upon oral examination, pursuant to the South Carolina Rules of Civil Procedure, before a Notary Public or some other officer authorized by law to take depositions.

The oral examination will continue from day to day until completed. The deposition is being taken for the purpose of discovery, for use at trial, and for all other purposes as are permitted under the rules of this Court and all applicable statutes and laws.

You are invited to attend and take such part as is fit and proper.

SIGNATURE ON NEXT PAGE

C. STEVEN MOSKOS, P.A.
ATTORNEY FOR PLAINTIFFS
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Charleston, South Carolina
October 26, 2022

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By: s/C. Steven Moskos

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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 **PLAINTIFF'S NOTICE OF DEPOSITION OF JAMES GREEN**

TO: SARAH T. EIBLING, ESQ., ATTORNEY FOR DEFENDANT NISSAN NORTH AMERICA, INC.:

PLEASE TAKE NOTICE that on November 10, 2022, C. Steven Moskos, attorney for the Plaintiffs will take the deposition of James Green beginning at 9:00 a.m. Said deposition will be held at the Law Office of C. Steven Moskos, 6650 Rivers Avenue, Suite 210, North Charleston, SC 29406 and will be taken, upon oral examination, pursuant to the South Carolina Rules of Civil Procedure, before a Notary Public or some other officer authorized by law to take depositions.

The oral examination will continue from day to day until completed. The deposition is being taken for the purpose of discovery, for use at trial, and for all other purposes as are permitted under the rules of this Court and all applicable statutes and laws.

You are invited to attend and take such part as is fit and proper.

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C. STEVEN MOSKOS, P.A.
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Charleston, South Carolina
October 26, 2022

CERTIFICATE OF SERVICE

Undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by electronic means on October 26, 2022 in a manner provided by Order of the Supreme Court of South Carolina.

C. STEVEN MOSKOS, P.A.
By: s/C. Steven Moskos

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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 **PLAINTIFF'S NOTICE OF DEPOSITION OF MELVIN GRANT**

TO: SARAH T. EIBLING, ESQ., ATTORNEY FOR DEFENDANT NISSAN NORTH AMERICA, INC.:

PLEASE TAKE NOTICE that on November 10, 2022, C. Steven Moskos, attorney for the Plaintiffs will take the deposition of Melvin Grant beginning at 10:30 a.m. Said deposition will be held at the Law Office of C. Steven Moskos, 6650 Rivers Avenue, Suite 210, North Charleston, SC 29406 and will be taken, upon oral examination, pursuant to the South Carolina Rules of Civil Procedure, before a Notary Public or some other officer authorized by law to take depositions.

The oral examination will continue from day to day until completed. The deposition is being taken for the purpose of discovery, for use at trial, and for all other purposes as are permitted under the rules of this Court and all applicable statutes and laws.

You are invited to attend and take such part as is fit and proper.

SIGNATURE ON NEXT PAGE

C. STEVEN MOSKOS, P.A.
ATTORNEY FOR PLAINTIFFS
s/C. Steven Moskos
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steve@moskoslawfirm.com

Charleston, South Carolina
October 26, 2022

CERTIFICATE OF SERVICE

Undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by electronic means on October 26, 2022 in a manner provided by Order of the Supreme Court of South Carolina.

C. STEVEN MOSKOS, P.A.
By: s/C. Steven Moskos

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Exhibit 43

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 **PLAINTIFF'S NOTICE OF DEPOSITION OF STEPHEN STOREY**

TO: SARAH T. EIBLING, ESQ., ATTORNEY FOR DEFENDANT NISSAN NORTH AMERICA, INC.:

PLEASE TAKE NOTICE that on November 10, 2022, C. Steven Moskos, attorney for the Plaintiffs will take the deposition of Stephen Storey beginning at 3:00 p.m. Said deposition will be held at the Law Office of C. Steven Moskos, 6650 Rivers Avenue, Suite 210, North Charleston, SC 29406 and will be taken, upon oral examination, pursuant to the South Carolina Rules of Civil Procedure, before a Notary Public or some other officer authorized by law to take depositions.

The oral examination will continue from day to day until completed. The deposition is being taken for the purpose of discovery, for use at trial, and for all other purposes as are permitted under the rules of this Court and all applicable statutes and laws.

You are invited to attend and take such part as is fit and proper.

SIGNATURE ON NEXT PAGE

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C. STEVEN MOSKOS, P.A.
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North Charleston, SC 29406
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steve@moskoslawfirm.com

Charleston, South Carolina
November 3, 2022

CERTIFICATE OF SERVICE

Undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by electronic means on November 3, 2022 in a manner provided by Order of the Supreme Court of South Carolina.

C. STEVEN MOSKOS, P.A.
By: s/C. Steven Moskos

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Exhibit 44

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Rita R. Greenawalt and James M. Greenawalt, Plaintiffs, vs. Nissan North America, Inc. Defendant.	)	Civil Action No. 2020-CP-08-02455 **DEFENDANT NISSAN NORTH AMERICA, INC.'S FIRST SET OF INTERROGATORIES TO PLAINTIFFS**

TO: C. STEVEN MOSKOS, COUNSEL FOR PLAINTIFFS

Pursuant to Rules 26 and 33 of the South Carolina Rules of Civil Procedure, Defendant Nissan North America, Inc. ("Defendant" or "NNA"), hereby serves its First Set of Interrogatories upon Plaintiffs. Plaintiffs must serve answers to the Interrogatories in writing and under oath within thirty (30) days from the date of service.

DEFINITIONS AND INSTRUCTIONS

A. When answering these requests, you are requested to furnish all information available to you, including information in the possession of Plaintiffs' attorneys, investigators, employees, agents, representatives, or any other person acting or purporting to act on Plaintiffs' behalf. When a question is directed to Plaintiffs, the question is also directed to the aforementioned persons.

B. The terms "you," "your," or "your representatives" refer to Plaintiffs, their agents and representatives, and any other person acting or purporting to act on behalf of Plaintiffs.

C. The term "anyone acting on your behalf" includes, but is not limited to, representatives, attorneys, and investigators, whether they be hired or appointed by Plaintiffs, their attorneys or representatives, or a court of law.

D. The term "person" means and includes natural persons, corporations, partnerships, associations, and any other kind of business or legal entity.

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E. The term "document" means and includes any kind of written, typewritten, computer created, electronically stored information (whether stored locally, on a network, on the Internet, on any type of storage device, or medium), or printed material whatsoever, including, but without limitation, papers, agreements, contracts, notes, memoranda, correspondence, letters, emails, text messages, databases, web pages, Internet history files, blogs, Internet chat messages, telegrams, statements, books, reports, minutes, reports, minutes, records, accounting books, diagrams, photographs, analysis, studies, transcriptions and records of which you have any knowledge or information, whether in your possession or under your control or not, relating or pertaining in any way to the subject matter in connection with which it is used, and includes, without limitation, originals, all file copies, all other copies no matter how or by whom prepared, and all drafts and electronically stored versions prepared in connection with such writings, whether used or not.

F. The term "Subject Vehicle" refers to Plaintiffs' vehicle as described in Paragraph 35 of the Complaint (2019 Nissan Rogue VIN: 5N1AT2MT4KC841781).

G. The conjunctions "and" and "or" shall be interpreted conjunctively and shall not be interpreted disjunctively to exclude any information otherwise within the scope of any Interrogatory.

H. With respect to any request contained herein, if Plaintiffs are able to provide some but not all of the information required, provide such information as you are able and specifically identify to which portion of the request Plaintiffs lack sufficient information to respond fully.

I. These requests shall be deemed continuing in nature so as to require supplemental answers if Plaintiffs obtains further information between the time the answers are served and the time of the final judgment.

INTERROGATORIES

1. Identify all persons who have knowledge of facts that support, contradict, or in any way relate to any allegations contained in the pleadings, including a description of the knowledge that each such person possesses.

RESPONSE:

2. For each person identified in response to Interrogatory No. 1, identify whether written or recorded statements have been taken from such person and who has possession of any such written or recorded statements.

RESPONSE:

3. List the names and addresses of any expert witness whom you expect to call as an

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expert witness at the trial of this case and for each such expert witness state the subject matter on which the expert is expected to testify, state the substance of the facts and opinions to which the expert is expected to testify, and state a summary of the grounds for each opinion.

RESPONSE:

4. Describe all communications between you and NNA that refer to, relate to, or concern the allegations contained in the pleadings, including the identity of the parties to the communications, the substance of the communications, and dates of such communications.

RESPONSE:

5. Describe all communications between you and any authorized Nissan dealership that refer to, relate to, or concern the allegations contained in the pleadings, including the identity of the parties to the communications, the substance of the communications, and dates of such communications.

RESPONSE:

6. Describe all communications between you and any third party (other than an authorized Nissan dealership as addressed in response to Interrogatory No. 5) that refer to, relate to, or concern the allegations contained in the pleadings, including the identity of the parties to the communications, the substance of the communications, and dates of such communications.

RESPONSE:

7. Set forth a list of all photographs, sketches or other prepared documents in your possession that relate to the claims and defenses at issue in this case, including, but not limited to, all documents Plaintiffs intend to rely upon to show or prove her allegations in the Complaint and all documents or exhibits Plaintiffs intend to use or introduce at the trial of this case.

RESPONSE:

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8. Describe all damages which you contend you suffered as a result of Defendant's actions or omissions alleged in the pleadings. For each item of damages, state the nature of each item of damages, the amount of each item of damages, the date each item of damages occurred, how each item of damages was computed, and all facts which form the basis of your contention that Defendant caused the item of damages.

RESPONSE:

9. Identify with specificity the primary purpose for which you use the Subject Vehicle.

RESPONSE:

10. Identify with specificity (i.e., the date) when Plaintiffs first observed that the Subject Vehicle was defective as alleged in Paragraph 39 of the Complaint.

RESPONSE:

11. State whether the Subject Vehicle has been repaired, serviced, modified, or otherwise maintained by any other dealership, service center, body shop, or garage that is not an authorized Nissan dealership, from the date you took delivery to the present. If yes, with respect to each instance, identify the name of such dealership, service center, body shop, or garage and its location (City, State) and the date such repair, service, modification, or maintenance was performed.

RESPONSE:

12. Identify the last time the Subject Vehicle exhibited any issues with the infotainment center and/or navigation system and describe the issue experienced.

RESPONSE:

13. State whether the Subject Vehicle has ever been involved in an accident or collision. If yes, identify the date of such accident or collision and provide a description of the

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nature and extent of any damage the Subject Vehicle sustained as a result.

RESPONSE:

14. State whether you still have access to the mobile phone(s) used by Plaintiffs to connect to the Subject Vehicle's navigation system when Plaintiffs first complained of issues with the navigation system. If not, state the date of disposition of the mobile phone(s) and the reasons for disposition.

RESPONSE:

15. Identify the brand, model number, provider and software version of the mobile phone(s) used by Plaintiffs to connect to the Subject Vehicle's navigation system.

RESPONSE:

16. State whether the owner's manual was provided to you at the time of purchase of the Subject Vehicle.

RESPONSE:

17. State whether any other written instructional material was provided to you at the time of purchase or thereafter related to the Subject Vehicle.

RESPONSE:

18. Identify all communications Plaintiffs or someone acting on Plaintiffs' behalf had with Tom-Tom related to the Subject Vehicle or any of its components, including the date, participants, and information exchanged with Tom-Tom.

RESPONSE:

19. Explain the reasoning for rejecting the Better Business Bureau decision related to the Subject Vehicle.

RESPONSE:

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20. Identify all requests for attorneys' fees made at any time to the Better Business Bureau related to Plaintiffs' Subject Vehicle and the results of such requests. If no requests were made for attorneys' fees, please describe the reasoning for not making such a request to the BBB.

RESPONSE:

21. Identify any similar incidents of Nissan of which Plaintiffs are aware in any Nissan vehicle related to the Infotainment center and/or navigation system operating in the same manner as Plaintiffs allege.

RESPONSE:

By: *s/Sarah T. Eibling*

Sarah T. Eibling
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1320 Main Street / 17th Floor
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Charlotte, NC 28202-6041
(704) 417-3000

Attorneys for Defendant Nissan North America, Inc.

Columbia, South Carolina

Dated: November 3, 2022.

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CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Nissan North America, Inc., do hereby certify that I have served all counsel in this action with a copy of "***Defendant Nissan North America, Inc.'s First Set of Interrogatories to Plaintiffs***" by serving a copy of the same by email as follows:

C. Steven Moskos, P.A.
steve@moskoslawfirm.com

Attorney for Plaintiffs

Kelli D. Martin

Kelli D. Martin, Sr. Administrative Assistant

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STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Rita R. Greenawalt and James M. Greenawalt, Plaintiffs, vs. Nissan North America, Inc. Defendant.	)	Civil Action No. 2020-CP-08-02455 **DEFENDANT NISSAN NORTH AMERICA, INC.'S FIRST SET OF REQUESTS FOR PRODUCTION TO PLAINTIFFS**

TO: C. STEVEN MOSKOS, COUNSEL FOR PLAINTIFFS

Pursuant to Rules 26 and 34 of the South Carolina Rules of Civil Procedure, Defendant Nissan North America, Inc. ("Defendant" or "NNA"), hereby serves its First Set of Requests for Production upon Plaintiffs. Plaintiffs must respond and produce documents responsive to the Requests within thirty (30) days from the date of service.

DEFINITIONS AND INSTRUCTIONS

A. When answering these requests, you are requested to furnish all information available to you, including information in the possession of Plaintiffs' attorneys, investigators, employees, agents, representatives, or any other person acting or purporting to act on Plaintiffs' behalf. When a question is directed to PlaintiffS, the question is also directed to the aforementioned persons.

B. The terms "you," "your," or "your representatives" refer to fs, their agents and representatives, and any other person acting or purporting to act on behalf of Plaintiffs.

C. The term "anyone acting on your behalf" includes, but is not limited to, representatives, attorneys, and investigators, whether they be hired or appointed by Plaintiffs, their attorneys or representatives, or a court of law.

D. The term "person" means and includes natural persons, corporations, partnerships, associations, and any other kind of business or legal entity.

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E. The term "document" means and includes any kind of written, typewritten, computer created, electronically stored information (whether stored locally, on a network, on the Internet, on any type of storage device, or medium), or printed material whatsoever, including, but without limitation, papers, agreements, contracts, notes, memoranda, correspondence, letters, emails, text messages, databases, web pages, Internet history files, blogs, Internet chat messages, telegrams, statements, books, reports, minutes, reports, minutes, records, accounting books, diagrams, photographs, analysis, studies, transcriptions and records of which you have any knowledge or information, whether in your possession or under your control or not, relating or pertaining in any way to the subject matter in connection with which it is used, and includes, without limitation, originals, all file copies, all other copies no matter how or by whom prepared, and all drafts and electronically stored versions prepared in connection with such writings, whether used or not.

F. The term "Subject Vehicle" refers to Plaintiffs' vehicle as described in Paragraph 35 of the Complaint (2019 Nissan Rogue VIN: 5N1AT2MT4KC841781).

G. The conjunctions "and" and "or" shall be interpreted conjunctively and shall not be interpreted disjunctively to exclude any information otherwise within the scope of any Interrogatory.

H. With respect to any request contained herein, if Plaintiffs are able to provide some but not all of the information required, provide such information as you are able and specifically identify to which portion of the request Plaintiffs lack sufficient information to respond fully.

I. These requests shall be deemed continuing in nature so as to require supplemental answers if Plaintiffs obtains further information between the time the answers are served and the time of the final judgment.

J. If a request is made for production of Documents that are no longer in your possession, custody, or control, state the following: when such Documents were most recently in your possession, custody, or control; what disposition you made of them; who is the person or entity currently in possession, custody, or control of such Documents; and the identity of any persons or entities referred to in the Documents or sent a copy of the Documents. If the Documents have been destroyed, identify the person who destroyed the Documents and the person who directed that the Documents be destroyed; state when they were destroyed, and state the reasons the Documents were destroyed.

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Produce all documents that were identified in your response to Defendant's First Set of Interrogatories.

RESPONSE:

2. Produce all documents that were used in or relied upon in responding to

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Defendant's First Set of Interrogatories.

RESPONSE:

3. All non-privileged documents and communications on which you intend to rely in any way to prove the claims or defenses asserted in this action.

RESPONSE:

4. Produce all documents which summarize, set forth, give any indication of, or bear any other relationship to any expert witnesses and/or their opinions, including any document upon which said expert may fully or in part base an opinion or which was provided by you to any such expert.

RESPONSE:

5. Produce complete copies of all sales and financing contracts in connection with the purchase of the Subject Vehicle.

RESPONSE:

6. Produce complete copies of all documents provided to you by the seller at the time of the sale of the Subject Vehicle.

RESPONSE:

7. Produce the current registration documents for the Subject Vehicle.

RESPONSE:

8. Produce complete copies of the current and any former titles for the Subject Vehicle.

RESPONSE:

9. Produce complete copies of all repair orders and invoices concerning the Subject Vehicle whether from an authorized Nissan dealership or from a third-party repair shop, garage,

service center, or body shop.

RESPONSE:

10. Produce documents that refer to, relate to, or concern when Plaintiffs first observed that the Subject Vehicle was defective as alleged in Paragraph 39 of the Complaint.

RESPONSE:

11. Produce documents that refer to, relate to, or concern how you discovered that the Subject Vehicle is defective as alleged in the Complaint.

RESPONSE:

12. Produce documents that refer to, relate to, or concern your allegation in Paragraph 65 of the Complaint that "the defects and condition of the vehicle substantially impair its use, market value, and/or safety to Plaintiffs."

RESPONSE:

13. Produce documents that refer to, relate to, or concern when you discovered the alleged defects in the Subject Vehicle and when you notified Defendant of the alleged defects alleged in Complaint.

RESPONSE:

14. Produce complete copies of any and all documents exchanged between you and your insurance carrier in connection with any collisions or incidents involving the Subject Vehicle including, claim forms, photographs, statements, receipts, invoices, and correspondence.

RESPONSE:

15. Produce complete copies of any and all police reports made in connection with any collision or incident involving the Subject Vehicle.

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RESPONSE:

16. Please complete copies of all written warranties for the Subject Vehicle.

RESPONSE:

17. Produce complete copies of any owners' manuals for the Subject Vehicle.

RESPONSE:

18. Produce complete copies of any written material that accompanied the Subject Vehicle at the time of sale or sent to you any time thereafter related to the Subject Vehicle.

RESPONSE:

19. Produce complete copies of all maintenance or service plans, together with contracts, receipts, and invoices for such plans.

RESPONSE:

20. Produce complete copies of all documents relating or pertaining to any inspections or tests of the Subject Vehicle performed by you or on your behalf.

RESPONSE:

21. Produce all communications between you and NNA that refer to, relate to, or concern the allegations contained in the pleadings.

RESPONSE:

22. Produce all communications between you and any authorized Nissan dealership that refer to, relate to, or concern the allegations contained in the pleadings, including the identity of the parties to the communications, the substance of the communications, and dates of such communications.

RESPONSE:

23. Produce all communications between you and any third party (other than a Nissan

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authorized dealership) that refer to, relate to, or concern the allegations contained in the pleadings, including the identity of the parties to the communications, the substance of the communications, and dates of such communications.

RESPONSE:

24. Produce all documents that refer to, relate to, or concern damages which you allege to have incurred due to the acts or omissions of Defendant as alleged in the Complaint including but not limited to receipts, bank statements, or other documentation demonstrating any out-of-pocket expenses allegedly incurred (e.g., engine oil purchases).

RESPONSE:

25. Produce all photographs, plats, sketches, video or audio recordings, or other documents concerning your allegations in the Complaint.

RESPONSE:

26. Produce all documents that refer to, relate to, or concern any amounts due and owing to a third party by you related to the Subject Vehicle.

RESPONSE:

27. Produce all documents that refer to, relate to, or concern the purchase and/or installation of any non-OEM/aftermarket components and/or parts on the Subject Vehicle.

RESPONSE:

28. Produce a screen shot of current version and software of the mobile phone(s) used by Plaintiffs to connect to the Subject Vehicle's navigation.

RESPONSE:

29. Produce all records Plaintiffs submitted and/or received as part of the Better Business Bureau process related to the Subject Vehicle, including any technical reports submitted

on Plaintiffs' behalf to the BBB.

RESPONSE:

30. Produce all documents obtained by you pursuant to a subpoena issued in connection with this litigation.

RESPONSE:

31. Produce all records of similar incidents of which Plaintiffs are aware in any Nissan vehicle related to the Infotainment center and/or navigation system operating in the same manner as Plaintiffs allege.

RESPONSE:

32. Produce all records of communications, whether written or verbal, made by Plaintiffs or on Plaintiffs' behalf with Tom-Tom related to the Subject Vehicle.

RESPONSE:

33. Produce any appraisal or estimate ever prepared for the Subject Vehicle.

RESPONSE:

34. Produce any record that shows the Subject Vehicle's current mileage.

RESPONSE:

35. Produce any traffic tickets received since the day of purchase to present while driving Subject Vehicle.

RESPONSE:

36. Produce copies of any accident reports generated since the day of purchase to present involving the Subject Vehicle.

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RESPONSE:

By: *s/Sarah T. Eibling*

Sarah T. Eibling
SC Bar No. 72607
E-Mail: sarah.eibling@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
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Ashia Crooms-Carpenter
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301 South College Street / 23rd Floor
Charlotte, NC 28202-6041
(704) 417-3000

Attorneys for Defendant Nissan North America, Inc.

Columbia, South Carolina
Dated: November 3, 2022.

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CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Nissan North America, Inc., do hereby certify that I have served all counsel in this action with a copy of "***Defendant Nissan North America, Inc.'s First Set of Requests for Production to Plaintiffs***" by serving a copy of the same by email as follows:

C. Steven Moskos, P.A.
steve@moskoslawfirm.com

Attorney for Plaintiff

Kelli D. Martin, Sr. Administrative Assistant

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 **30(b)(6) NOTICE OF DEPOSITION OF NISSAN NORTH AMERICA, INC.**

TO: SARAH T. EIBLING, ESQ., ATTORNEY FOR DEFENDANT NISSAN NORTH AMERICA, INC.:

PLEASE TAKE NOTICE that on November 11, 2022, C. Steven Moskos, attorney for the Plaintiffs will take the deposition of the 30(b)(6) Representative(s) of Nissan North America, Inc., beginning at 9:30 a.m. Said deposition will be held at the Law Office of C. Steven Moskos, 6650 Rivers Avenue, Suite 210, North Charleston, SC 29406 and will be taken, upon oral examination, pursuant to the South Carolina Rules of Civil Procedure, before a Notary Public or some other officer authorized by law to take depositions. Deponent will be required to testify as to the topics, subjects, and material as stated on Exhibit 1 attached hereto.

The oral examination will continue from day to day until completed. The deposition is being taken for the purpose of discovery, for use at trial, and for all other purposes as are permitted under the rules of this Court and all applicable statutes and laws.

You are invited to attend and take such part as is fit and proper.

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C. STEVEN MOSKOS, P.A.
ATTORNEY FOR PLAINTIFFS
s/C. Steven Moskos
SC Bar# 7938
6650 Rivers Ave., Suite 210
North Charleston, SC 29406
Telephone: (843) 763-5297
steve@moskoslawfirm.com

Charleston, South Carolina
October 26, 2022

CERTIFICATE OF SERVICE

Undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by electronic means on October 26, 2022 in a manner provided by Order of the Supreme Court of South Carolina.

C. STEVEN MOSKOS, P.A.
By: s/C. Steven Moskos

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EXHIBIT 1

Exhibit 1 to 30(b)(6) Notice of Deposition and Subpoena to Nissan North America, Inc., hereinafter referred to as Nissan.

This matter relates to a 2019 Nissan Rogue VIN: 5N1AT2MT4KC841781 purchased by Rita R. Greenawalt and James M. Greenawalt on August 30, 2019.

The deponent will be required to testify as to the following:

1. The policies and procedures of Defendant Nissan when customers complain about problems with their vehicles and want Defendant Nissan to repurchase a non-conforming vehicle. In case there is any question, non-conforming means that a vehicle is not performing, acting, operating to, or otherwise meeting the standards set forth pursuant to Defendant Nissan's warranty, or that the vehicle was not manufactured in a way that it would conform to, in other words meet, the standards of Defendant Nissan's warranty.

2. The policies and procedures of Defendant Nissan when customers complain about problems with their vehicles and want Defendant Nissan to repurchase a vehicle with a nonconformity. In case there is any question regarding this topic, "nonconformity" means a defect or condition that substantially impairs the use, value, or safety of a motor vehicle, but does not include a defect or condition that results from an accident, modification, or alteration of the motor vehicle by persons other than the manufacturer or its authorized service agent.

3. Nissan's policies and procedures for deciding when to and when not to repurchase a defective Nissan vehicle from a consumer.

4. Nissan's warranties covering the vehicle.

5. Nissan's responses to Plaintiffs' Interrogatories and Requests for Production.

6. Any and all of Plaintiffs' Interrogatories and Requests for Production.

7. All repairs made to the subject vehicle under Nissan's warranty.

8. Any defenses in Nissan's Answer.

9. Any defense Nissan asserts against Plaintiffs.

10. Any work done by Nissan on the subject vehicle.

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11. Any conversations Plaintiff, or anyone on Plaintiffs' behalf, had with Nissan North America.

12. All opportunities Nissan North America had to repair Plaintiffs' vehicle.

13. All documents in Nissan North America's possession regarding Plaintiffs' vehicle or the repairs made to the vehicle.

14. Similar complaints made by other Nissan customers regarding the same or similar problems complained of by Plaintiffs with their 2019 Nissan Rogue.

15. Nissan's 2019 Lemon Law Warranty Program through the Better Business Bureau.

16. Communications by Defendant Nissan to or with the Better Business Bureau regarding the vehicle which is the subject of this action.

17. The arbitration proceedings before the Better Business Bureau from the original filing of the claim until the present.

18. The repair opportunities given Nissan North America by Plaintiffs regarding the vehicle which is the subject of this action.

19. The application of the South Carolina Lemon Law Section 56-28-10 et seq. to Plaintiffs' vehicle or its transaction with Hudson Nissan of North Charleston, Nissan, or Nissan Motor Credit.

20. The efforts made by Plaintiffs to have Defendant Nissan repurchase the subject vehicle under the South Carolina Enforcement of Motor Vehicle Express Warranties Act.

21. Nissan's determination to offer or not offer to repurchase the subject vehicle from Plaintiffs.

22. Any and all documents produced by Nissan North America.

23. Any payments made to Hudson Nissan of North Charleston for any work done under warranty on the subject vehicle.

24. Any actions taken by Nissan's Customer Service Center, Nissan's Regional Customer Service Manager, NHL, or any other Nissan employee who has dealt with Plaintiffs or the subject vehicle.

25. Any findings regarding Nissan's work on the vehicle or inspections of the vehicle.

26. Any and all technical service bulletins related to or which apply to the subject vehicle.

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27. Any documents in Nissan North America's possession regarding the subject vehicle.

28. Defendant's policies and procedures regarding payment for warranty repairs paid for by Nissan.

29. Defendant's policies and procedures for repurchasing vehicles as a goodwill gesture to the customer.

30. Defendant Nissan's policies and procedures for repairing vehicles under its warranty.

31. Defendant Nissan's agency relationship with Hudson Nissan of North Charleston regarding warranty repairs made by Hudson Nissan of North Charleston to Plaintiffs' vehicle.

32. Defendant Nissan's communications with Hudson Nissan of North Charleston regarding warranty repairs made by Hudson Nissan of North Charleston to Plaintiffs' vehicle. In case there is any question, "communications" include any sort of contact between Hudson Nissan of North Charleston and Nissan such as, but not limited to, telephone conversations, letters, post cards, emails, facsimile transmissions, contact through a computer, or person to person conversations.

33. The efforts made by Defendant Nissan's engineers or any of its other employees prior to August 30, 2019 to determine why 2019 Nissan Rogues had issues with its infotainment system, navigation system, electrical system, or other complaints similar to that complained of by Plaintiffs.

34. The efforts made by Defendant Nissan's engineers or any of its other employees prior to October 25, 2022 to determine why Plaintiffs' 2019 Nissan Rogue had issues with its infotainment system, navigation system, electrical system, or other complaints similar to that complained of by Plaintiffs.

35. The efforts made by Defendant Nissan's engineers or any of its other employees after August 30, 2019 to determine why 2019 Nissan Rogues had infotainment system, navigation system, electrical system, or other complaints similar to that complained of by Plaintiffs.

36. The efforts made by Defendant Nissan's engineers or any of its other employees after August 30, 2019 to determine why Plaintiffs' 2019 Nissan Rogue had infotainment system, navigation system, electrical system, or other complaints similar to that complained of by Plaintiffs.

37. The reasons Defendant Nissan refuses to repurchase Plaintiffs' 2019 Nissan Rogue.

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38. How and why technical service bulletins are prepared regarding the vehicles manufactured by Defendant Nissan.

39. The reasons for the creation of any and all technical service bulletins used by Nissan or Hudson Nissan of North Charleston to repair Plaintiffs' 2019 Nissan Rogue.

40. Why Plaintiffs' 2019 Nissan Rogue had various infotainment system, navigation system, electrical system, or other complaints.

41. Any repairs made to Plaintiffs' 2019 Nissan Rogue by Defendant Nissan pursuant to Defendant Nissan's warranty.

42. The documentation maintained by Nissan in any medium regarding Plaintiffs' complaints so as to comply with the SC Lemon Law or so Nissan knows how to proceed when their vehicle comes in for repairs.

The deponent should bring the following items to the deposition:

1. Any and all original records, notes, correspondence, reports or other documents relating to the 2019 Nissan Rogue VIN: 1FMJU1HT2KEA64037 purchased by Plaintiffs.

2. Any and all letters, notifications or other documents sent by Plaintiffs to Defendant Nissan or by Defendant Nissan to Plaintiffs regarding the subject vehicle.

3. Defendant Nissan's policies and procedures for repurchasing vehicles which are determined to be defective or not conforming to Defendant Nissan's warranty.

4. Defendant Nissan's policies and procedures for repurchasing vehicles as a goodwill gesture to the customer.

5. Defendant Nissan's policies and procedures for repairing nonconforming vehicles under its warranty.

6. Any and all files, notes, records, reports or other documents in Defendant Nissan's possession or control relating to Defendant's or anyone else's tests or inspections of Plaintiffs' 2019 Nissan Rogue, conclusions about the results of any tests or inspections of the subject vehicle, recommendations relating to Defendant's or anyone else's tests or inspections of or recommendations about the subject vehicle.

7. Any and all files, notes, records, reports or other documents in Defendant Nissan's possession or control relating to Defendant Nissan's or anyone else's

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tests or inspections of 2019 Nissan Rogue regarding various infotainment system, navigation system, electrical system, or other complaints or issues in that model vehicle, conclusions about the results of any tests or inspections of the 2019 Nissan Rogue regarding various infotainment system, navigation system, electrical system, or other complaints or issues, recommendations relating to Defendant's or anyone else's tests or inspections of or recommendations about 2019 Nissan Rogue regarding various infotainment system, navigation system, electrical system, or other complaints or issues.

8. Any and all technical service bulletins relating to the model vehicle which is the subject of this action which deal with various infotainment system, navigation system, electrical system, or other complaints or issues in 2019 Nissan Rogue.

9. Any and all emails, reports, notes, records or other documents used by Defendant Nissan's employees when they learned of the various infotainment system, navigation system, electrical system, or other complaints or issues in 2019 Nissan Rogues, to discuss why 2019 Nissan Rogues had various infotainment system, navigation system, electrical system, or other complaints or issues and what needed to be done about the various infotainment system, navigation system, electrical system, or other complaints or issues in the 2019 Nissan Rogue.

10. Any and all emails, reports, notes, records or other documents used by Defendant Nissan's employees when they learned of the various infotainment system, navigation system, electrical system, or other complaints or issues in Plaintiffs' 2019 Nissan Rogue, to discuss why Plaintiffs' 2019 Nissan Rogue's various infotainment system, navigation system, electrical system, or other complaints or issues occurred and what needed to be done about the various infotainment system, navigation system, electrical system, or other complaints or issues in Plaintiffs' 2019 Nissan Rogue.

11. The policies and procedures used by Nissan regarding warranty claims.

12. Any communications Defendant Hudson Nissan of North Charleston had with any of Defendant Nissan's agents or employees regarding the subject vehicle.

13. Any inspections of the subject vehicle after Plaintiffs complained about the various infotainment system, navigation system, electrical system, or other complaints or issues in the subject vehicle.

14. Any communications Hudson Nissan of North Charleston employees had with Plaintiffs regarding the nonconformities in the subject vehicle.

15. Any and all files, notes, records, reports or other documents in Nissan's possession relating to Defendant's or anyone else's tests or inspections of the subject vehicle, conclusions about the results of any tests or inspections of the

subject vehicle, recommendations relating to Defendant's or anyone else's tests or inspections of or recommendations about the subject vehicle.

16. Any and all documents upon which Defendant bases any of its defenses.

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Exhibit 47

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Steve Moskos

From: Steve Moskos
Sent: Wednesday, October 26, 2022 2:33 PM
To: Sarah T. Eibling
Subject: Greenawalt v Nissan
Attachments: 42 Pls 30b6 NOD to Nissan 10-26-22.pdf; 43 Pls NOD re James Green 10-26-22.pdf; 44 Pls NOD re Melvin Grant 10-26-22.pdf; 45 Pls NOD re David Crabtree 10-26-22.pdf; 46 Pls NOD re Adam Guiese 10-26-22.pdf; Subpoena for James Green Depo 11-10-22.pdf; Subpoena for Melvin Grant for 11-10-22 @10_30.pdf; Subpoena to Hudson Nissan for documents 2-23-21.pdf; Subpoena to Hudson Nissan of N. Chas. 5-24-21.pdf

Sarah,
I have attached copies of my notices of depositions and the subpoenas for James Green, Melvin Grant, David Crabtree, and Adam Guise, Hudson Nissan employees. These depositions shall take place on November 10 at my office. I have also attached a notice of deposition for Nissan together with a list of topics to cover. Nissan's deposition is set for November 11. I would also like to set up the mediation in this case. My understanding is that David McCormack has November 15, 16, and 18 open. Jon Austen has November 18 in the afternoon open. Please let me know what works for you so I can save the date with the mediator. Thanks.
Steve

PLEASE NOTE WE HAVE RECENTLY MOVED. OUR NEW ADDRESS IS BELOW.

C. Steven Moskos
6650 Rivers Ave., Ste 210
North Charleston, SC 29406
843-763-5297
steve@moskoslawfirm.com
https://www.moskoslawfirm.com

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Exhibit 48

C. STEVEN MOSKOS, P.A.
ATTORNEY AND COUNSELOR AT LAW

C. Steven Moskos
Board Certified Civil Trial Attorney
Board Certified Civil Pretrial Advocate
By the National Board of Trial Advocacy
Supreme Court of South Carolina Certified Mediator

M

6650 Rivers Ave., Suite 210
North Charleston, SC 29406
Telephone: (843) 763-5297
www.moskoslawfirm.com
steve@moskoslawfirm.com

November 2, 2022

Nelson Mullins
Attn: Sarah T. Eibling
P.O. Box 11070
Columbia, SC 29211-1070

RE: Greenawalt v. Nissan North America, Inc.
Case No.: 2020-CP-08-02455

Dear Sarah:

I have scheduled the mediation in the above-referenced matter for November 21, 2022. Please confirm that you and your client will be present.

If you have any questions, please do not hesitate to contact me.

Sincerely,

C. Steven Moskos
CSM/slf

cc: Rita Greenawalt
James Greenawalt

NELSON MULLINS

NELSON MULLINS RILEY & SCARBOROUGH LLP
ATTORNEYS AND COUNSELORS AT LAW

1320 Main Street, 17th Floor
Columbia, SC 29201
T: 803.799.2000 F: 803.256.7500
nelsonmullins.com

Sarah T. Eibling
T: 803.255.9756
sarah.eibling@nelsonmullins.com

ELECTRONICALLY FILED - 2023 Apr 02 3:54 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

November 2, 2022

Via E-mail

C. Steven Moskos, Esquire
C. Steven Moskos, P.A.
6650 Rivers Ave., Ste 210
N. Charleston, SC 29406

RE: Greenawalt, et al. v. Nissan North America, Inc.
C.A. No. 2020-CP-08-02455

Dear Steven:

We are in receipt of your November 2, 2022, letter in which you advise you scheduled mediation in this matter for November 21, 2022. As my office informed Karon yesterday, I am not available on November 21, 2022, as I already have another mediation scheduled. I am further not available November 17 or 18, 2022. I will consult my calendar and get my client's availability and will forward new November and December dates that the mediation can be scheduled. Thank you,

Sincerely,

Sarah T. Eibling

STE:kdm

Exhibit 50

C. STEVEN MOSKOS, P.A.
ATTORNEY AND COUNSELOR AT LAW

C. Steven Moskos
Board Certified Civil Trial Attorney
Board Certified Civil Pretrial Advocate
By the National Board of Trial Advocacy
Supreme Court of South Carolina Certified Mediator

6650 Rivers Ave., Suite 210
North Charleston, SC 29406
Telephone: (843) 763-5297
www.moskoslawfirm.com
steve@moskoslawfirm.com

November 3, 2022

Nelson Mullins
Attn: Sarah T. Eibling
P.O. Box 11070
Columbia, SC 29211-1070

RE: Greenawalt v. Nissan North America, Inc.
Case No.: 2020-CP-08-02455

Dear Sarah:

Your November 2, 2022 letter states that you are not available to mediate this case on November 21 and that your office informed my legal assistant of this. My assistant has been waiting for a return call regarding your availability to mediate this case and was never told you were unavailable. Regardless, we need to mediate this case as soon as possible. You stated you will consult your calendar, contact your client for availability, and get back in touch with me. Please provide your available dates as soon as possible. This matter will come up on the December 5, 2022 roster. I need to finish the depositions for Hudson Nissan scheduled for November 10, Nissan's 30b6 representative for November 11, and the mediation before trial. I look forward to hearing from you.

If you have any questions, please do not hesitate to contact me.

Sincerely,

C. Steven Moskos
CSM/slf

cc: Rita Greenawalt
James Greenawalt

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ELECTRONICALLY FILED - 2023 Apr 02 3:54 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

Steve Moskos

From: Steve Moskos
Sent: Thursday, November 10, 2022 6:42 PM
To: Sarah Eibling
Subject: RE: Greenawalt v. Nissan
Attachments: 50 NOD of Nissan's 30(b)(6) Rep 11-10-22.pdf

Sarah,

As you know this case will be two years old on November 13, 2022. My clients want to move this matter to a conclusion. They have tried to get Nissan to repurchase its defective Rogue before hiring me, before going through Nissan's Informal Dispute Settlement Mechanism, after going through same, and several times after suit was filed. Some of my clients' attempts to resolve this matter have not received a response.

Nissan has also been dilatory and obstructionistic throughout this case. I am still awaiting responses to my clients' First Supplemental Interrogatories and First Requests For Production served December 17, 2021 and my clients' Second Supplemental Interrogatories and Second Requests For Production served December 18, 2021.

This case is up for trial on December 5, 2022. I noticed Nissan's 30(b)(6) deposition on October 26, 2022. Your email sent yesterday, November 9, 2022, was the first notice I had that Nissan had a problem with providing a 30(b)(6) representative or documents. In your email, you unilaterally postponed my deposition of Nissan's 30(b)(6) representative. While you said Nissan may object to certain topics, those were not identified.

In light of these facts, though, I am willing to accommodate you as much as I can. I have attached an amended notice of deposition for Nissan's 30(b)(6) representative to be taken December 1 at 10:00 AM at my office. This resolves Nissan's Rule 34 issue with my request for documents. If Nissan would like to do the deposition earlier, please let me know and I will do my best to make it happen. I would ask that Nissan forward the documents in the deposition notice to me in advance so we can move quickly through the deposition to save time and money.

I am also willing to work with you on a mediation date up to December 1. I would be willing to mediate the case in the afternoon of December 5, but I do not know if we will be first up that week. Your November 2, 2022 letter stated Nissan would not attend the November 21 mediation. You then stated you would provide me some available dates. I have not received them yet. Just let me know when we can conduct the mediation and I will try to set it up. Please keep in mind though that many of the best mediators in Charleston are very booked up. That is why I scheduled the mediation when I did.

I am and have been willing to work with Nissan to move this case toward a resolution. I would urge Nissan to work through these issues quickly to keep the costs and expenses, including attorney's fees, to a minimum. In fact, I would ask Nissan to participate in settlement negotiations so we may end this matter without the court's intervention. Please let me know if Nissan is interested in trying to settle this matter. Otherwise, I await your response regarding mediation dates.

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Steve
PLEASE NOTE WE HAVE RECENTLY MOVED. OUR NEW ADDRESS IS BELOW.

C. Steven Moskos
6650 Rivers Ave., Ste 210
North Charleston, SC 29406
843-763-5297
steve@moskoslawfirm.com
https://www.moskoslawfirm.com

From: Sarah Eibling <Sarah.Eibling@nelsonmullins.com>
Sent: Thursday, November 10, 2022 5:53 AM
To: Steve Moskos <steve@moskoslawfirm.com>
Subject: RE: Greenawalt v. Nissan

Steve:

Any response to the email below? If I do not hear from you by noon, I will file our motion for protection / motion to quash.

Thanks!
Sarah

NELSON MULLINS

SARAH T. EIBLING PARTNER
sarah.eibling@nelsonmullins.com
MERIDIAN | 17TH FLOOR
1320 MAIN STREET | COLUMBIA, SC 29201
T 803.255.9756 F 803.256.7500
NELSONMULLINS.COM VCARD VIEW BIO

From: Sarah Eibling
Sent: Wednesday, November 9, 2022 7:05 AM
To: Steve Moskos <steve@moskoslawfirm.com>
Subject: Greenawalt v. Nissan

Steve:

A few things, first, Nissan has tried to accommodate your NOD but it simply does not have any availability in November or early December for a 30(b)(6) deposition, particularly one as voluminous as the one we were served with on October 26 encompassing more than 42 topics and 16 requests for production (which does not comply with Rule 34). When your (prior?) secretary contacted my office in early May to schedule a 30(b)(6) deposition, she was told that I had to have the notice FIRST before I could schedule a date because I had to

know what you wanted so I could figure out who to designate as it would be our designee(s) schedule that mattered; we never received any notice until more than 5 months later with a unilaterally selected date without any discussions with me. If you cannot agree to move it to a date that suits Nissan's designee(s), I have been instructed to prepare a motion for protective order. We will likely have several more objections to the topics, which may also require court intervention and that all cannot be handled within your timeframe.

Second, I realize that we are #13 on the December 5 trial roster, but there do appear to be several cases before ours, even one date certain set to begin on 12/5 and scheduled to take one week. I understand that anything can happen with the 12 cases before ours but getting reached seems unlikely even if we were to stay on track. That means we are in to 2023 anyway.

Third, Nissan would much prefer we make a request for a date certain trial so that we KNOW when to have our witnesses and experts available. Having them block a week at a time, only to not get called and then need to repeat again the following jury term of court is very difficult for them and me because I have many other things already scheduled that are difficult (if not impossible) to move, as I am sure you do. I see Berkeley has Common Pleas terms on 1/30 (Jefferson); 2/13 (Jefferson) and 3/6 (if you want Young). If you would be agreeable to one of those dates, I can consult with my client and we can file a stipulation to have it set as a date certain; giving us plenty of time to complete the other tasks on your list. (I already have a potential date certain in Orangeburg 1/23 for a trial that got kicked last Thursday)

Fourth, Nissan would like to attend mediation as it is required to do so but the timing has been challenging for it and for me. I had a week-long date certain trial set for Nov. 7 that only just the Thursday prior got moved (hence the conflict with 1/23). I already have a three-day multi-party mediation starting November 16, 17, 18 in Charleston and a one-day mediation in North Charleston on November 21. That bring us to Thanksgiving. I have a Summary Judgment in person hearing in Beckley West Virginia on November 28 and am scheduled to be in Lexington, Kentucky on November 30. I coach middle school Mock Trial and our team advanced to the State Competition, which is set for December 2, 3. So, as you can see, timing is an issue to get this all wrapped up before December and those are just MY conflicts 😊

Can we simply reset here and get dates that will work? We have worked cooperatively to this point and I would like to see if we can do so to accommodate both our clients once again.

Here is my proposal:

1. Let's decide on a term of court that suits so we can see if the timing of these other things will work; I suggest the mid-February / early March date to give us the best chance

2. We will get you a date for the 30(b)(6) deposition within 7 business days; likely to be in mid-December, early January

3. We can select a mediation date that is shortly after the 30(b)(6) deposition depending on Jon's availability; but hopefully with this much notice, a date should be available

4. We will have objections to the 30(b)(6) notice by 11/23 so if we need to engage the court, we have time prior to the deposition.

Thoughts?

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Thanks,
Sarah

NELSON MULLINS

SARAH T. EIBLING PARTNER
sarah.eibling@nelsonmullins.com
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Exhibit 52

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C. STEVEN MOSKOS, P.A.
ATTORNEY AND COUNSELOR AT LAW

C. Steven Moskos
Board Certified Civil Trial Attorney
Board Certified Civil Pretrial Advocate
By the National Board of Trial Advocacy
Supreme Court of South Carolina Certified Mediator

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steve@moskoslawfirm.com

November 21, 2022

Nelson Mullins
Attn: Sarah T. Eibling
P.O. Box 11070
Columbia, SC 29211-1070

RE: Greenawalt v. Nissan North America, Inc.
Case No.: 2020-CP-08-02455

Dear Sarah:

After the depositions of the three mechanics who worked on my clients' defective vehicle, you stated that my clients were offered a repurchase of the vehicle before suit was filed. I have reviewed my entire file for such an offer, but I cannot find it. If you have anything in writing stating a full repurchase offer prior to suit, please send it to me.

In an effort to settle this matter, I have sent you at least three settlement offers to which I have not received a response. If Nissan wishes to resolve this matter, please send me Nissan's offer. Obviously, the sooner the better as we know Nissan will be closing the last two weeks of December.

Additionally, your November 2, 2022 letter stated that you were not available to mediate this case on November 21. You further stated that you would look at your calendar, contact your client, and provide me alternative dates. On November 3, I requested your alternative dates. Instead, I received your first set of discovery. On November 8, I again wrote asking for mediation dates, but I did not hear from you. After the mechanics' depositions you said you would contact Nissan to find out when a representative would be available. Please let me know your and your client's availability. Please also remind Nissan that it is important that its representative be present at the mediation. I have found that when a party is not present, the mediation fails.

As you know, mediators are hard to find on short notice. With the holidays, mediators will be in even shorter supply. I do not want to have to tell the judge we did not conduct mandatory mediation. Please provide me some alternative dates today so we may move forward with this case.

RE: Greenawalt v. Nissan North America, Inc.
Case No.: 2020-CP-08-02455

If you have any questions, please do not hesitate to contact me.

Sincerely,

C. Steven Moskos
CSM/slf

cc: Rita Greenawalt
James Greenawalt

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Exhibit 53

ELECTRONICALLY FILED - 2023 Apr 02 3:54 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

Steve Moskos

From: Steve Moskos
Sent: Friday, March 31, 2023 10:09 AM
To: Sarah T. Eibling
Subject: FW: Settlement Confirmation

Sarah,
Please confirm the terms of our clients' settlement. Thanks.
Steve

C. Steven Moskos
6650 Rivers Ave., Ste 210
North Charleston, SC 29406
843-763-5297
steve@moskoslawfirm.com
https://www.moskoslawfirm.com

From: Steve Moskos
Sent: Thursday, March 30, 2023 6:29 PM
To: Sarah T. Eibling <sarah.eibling@nelsonmullins.com>
Subject: RE: Settlement Confirmation

Sarah,
Please confirm the terms of our settlement per the mediation. Thank you.
Steve

C. Steven Moskos
6650 Rivers Ave., Ste 210
North Charleston, SC 29406
843-763-5297
steve@moskoslawfirm.com
https://www.moskoslawfirm.com

From: Steve Moskos
Sent: Tuesday, March 21, 2023 4:08 PM
To: Sarah T. Eibling <sarah.eibling@nelsonmullins.com>
Subject: Settlement Confirmation

Sarah,

This email is to confirm our settlement negotiations with the mediator. As I understand it, our settlement is:

1. Nissan is to pay the Greenawalts $35,000;
2. The Greenawalts are considered the prevailing party 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 the Greenawalts' counsel the $35,000 funds for the Greenawalts;
7. The attorney's fees issue shall be submitted to a judge for determination.

Please confirm that I have stated the terms correctly.

Steve

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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

TIME RECORDS FOR C. STEVEN MOSKOS' REPRESENTATION OF RITA AND JAMES GREENAWALT

I, C. Steven Moskos, attest that I did the following work on the above matter and that the time spent is accurate, not duplicative, necessary to my representation of Rita and James Greenawalt. The below times were for work done in the commencement and prosecution of this matter. All the causes of action are so intertwined that if there is time totally devoted to a non-fee shifting statute, it cannot be separated from the time related to the fee shifting statutes.

Date	Description	Hrs worked
14-May-20	Initial Consultation. Review of documents with clients. Conference with clients regarding legal theories of case, the prelitigation process, and the trial process.	2.8
21-May-20	Review repair orders and attorney notes. Prepare to move forward with case. Organize file.	1.4
22-May-20	Dictate correspondence to Client regarding case. Dictate final repair opportunity and demand for repurchase letters to Nissan and Hudson Nissan of North Charleston.	0.3
23-May-20	Work on and prepare final repair opportunity and repurchase letters to manufacturer and dealer.	0.8
28-May-20	Telephone conference with Jim Greenawalt regarding additional malfunctions of the GPS system over the last few days.	0.3

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29-May-20	Telephone call to Rita Greenawalt regarding Nissan's refusal to repair her car.	0.4
3-Jun-20	Telephone conference with Rita Greenawalt regarding her telephone conference with Ricardo at Nissan.	0.2
16-Jun-20	Review of $2,500 offer from Nissan. Dictate email to Rita Greenawalt regarding Nissan's offer. Dictate email to Nissan regarding transmitting its offer to Ms. Greenawalt.	0.3
17-Jun-20	Telephone conference with Rita Greenawalt regarding her refusal to accept Nissan's $2500 offer. Dictate email to Nissan declining $2,500 offer and demanding repurchase.	0.5
17-Jun-20	Review email from Nissan regarding its $3000 offer. Dictate email to Rita Greenawalt regarding Nissan's offer.	0.1
18-Jun-20	Review email from Nissan refusing to repurchase the car. Dictate email to Rita Greenawalt regarding Nissan's position. Dictate response to Nissan.	0.2
18-Jun-20	Review email from Rita Greenawalt regarding $3000 offer from Nissan. Dictate email to Nissan declining $3000 cash offer and demanding a repurchase of the car. Work on Better Business Bureau Auto Line claim form.	1.5
19-Jun-20	Review email from Rita Greenawalt regarding the BBB Claim Form. Dictate response to Rita Greenawalt regarding how to complete the BBB Claim Form.	0.4
19-Jun-20	Review of BBB Claim Form from BBB. Dictate email to Rita Greenawalt regarding Claim Form.	0.3
19-Jun-20	Review email from Rita Greenawalt regarding the BBB Claim Form. Work on completing the BBB Claim Form. Dictate email to BBB sending in the Claim Form.	0.5
24-Jun-20	Review of BBB Claim Form. Dictate correspondence to BBB.	0.2
7-Jul-20	Review email from Nissan regarding its $3000 offer. Dictate email to Nissan declining its $3000 offer.	0.1
7-Jul-20	Review correspondence from BBB. Telephone conference with BBB regarding status of the Claim Form.	0.2
14-Jul-20	Prepare a letter to the BBB with the Claim Form. Prepare exhibits to attach to Claim Form.	0.2
21-Jul-20	Telephone Rita Greenawalt regarding the status of the case. Review of Nissan's website regarding infotainment system.	0.5
6-Aug-20	Telephone conference with BBB regarding setting of the hearing.	0.3
15-Aug-20	Review file. Confirm that BBB has all the documents needed to move forward with the hearing. Dictate correspondence to BBB. Dictate email to Rita Greenawalt.	0.8

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19-Aug-20	Called Jim Greenawalt regarding Rita Greenawalt's surgery.	0.1
3-Sep-20	Review email from BBB regarding attending hearing by phone.	0.1
4-Sep-20	Review email from BBB regarding the hearing date. Dictate email to BBB regarding scheduling of the arbitration.	0.2
9-Sep-20	Review email from BBB regarding hearing date. Telephone conference with Rita Greenawalt to confirm hearing date. Dictate email to BBB regarding availability for Sept. 17.	0.2
14-Sep-20	Work on direct and cross examination questions for BBB hearing.	0.4
14-Sep-20	Review BBB Hearing Packet. Dictate email to Rita Greenawalt regarding BBB Hearing Packet.	0.1
14-Sep-20	Review email from BBB regarding Sept. 17 hearing. Dictate email to Rita Greenawalt regarding the setting of the BBB hearing.	0.1
15-Sep-20	Zoom conference with Rita Greenawalt to prepare for BBB hearing. Prepare and edit questions for BBB hearing. Dictate emails to Rita Greenawalt regarding BBB hearing and Nissan's response to the BBB claim.	2.5
16-Sep-20	Review email from the BBB regarding process to telephone into the hearing. Dictate response to BBB to confirm process.	0.2
17-Sep-20	Review email from Rita Greenawalt regarding BBB hearing. Dictate response to Rita Greenawalt. Dictate email to BBB regarding contacting R. Greenawalt and CSM for BBB hearing. Telephone conference with Rita Greenawalt to prepare for BBB hearing. Attend BBB hearing by telephone with Arbitrator Bernie Ferron and Nissan Representative Joe Hall. Conference with Rita Greenawalt regarding hearing.	1.8
17-Sep-20	Review email from Rita Greenawalt regarding BBB hearing. Dictate response to Rita Greenawalt. Dictate email to BBB regarding contacting R. Greenawalt and CSM regarding BBB hearing.	0.4
18-Sep-20	Telephone conference with Jim Greenawalt regarding the registration for the car.	0.1
24-Sep-20	Telephone conference with Rita Greenawalt regarding the status of the BBB Order.	0.1
6-Oct-20	Dictate email to BBB requesting an update on the status of the arbitrator's decision. Telephone conference with Rita Greenawalt regarding inspection of the car.	1.8
17-Oct-20	Review email from Rita Greenawalt regarding the failure of the BBB appointed inspector to call her. Dictate	0.2

	response to Rita Greenawalt. Dictate email to BBB regarding the BBB appointed inspector not contacting Ms. Greenawalt.	
20-Oct-20	Review email from Rita Greenawalt regarding the inspection of the vehicle on October 20, 2020.	0.1
20-Oct-20	Review email from Rita Greenawalt regarding the inspection of the car by the BBB. Dictate email to Rita Greenawalt concerning the inspection of the car.	0.3
22-Oct-20	Review of Inspection Report from the BBB. Dictate email to Rita Greenawalt regarding the inspection report.	0.5
22-Oct-20	Review email from Rita Greenawalt regarding the BBB report. Dictate response to Rita Greenawalt.	0.1
8-Nov-20	Review file. Dictate email to BBB regarding status of the arbitrator's decision. Work on Complaint.	1.6
9-Nov-20	Conference with James and Rita Greenawalt regarding the Complaint and status of BBB decision.	0.3
12-Nov-20	Review of email from the BBB regarding the BBB decision. Review of BBB decision. Dictate email to Rita Greenawalt regarding the BBB decision.	0.3
13-Nov-20	Review email from Rita Greenawalt regarding the BBB decision. Telephone conference with Rita Greenawalt regarding the signing of the BBB decision. Dictate email to BBB regarding the rejection of the BBB decision. File Summons and Complaint with the Berkeley County Clerk of Court. Prepare correspondence to Nissan's registered agent to serve the Summons and Complaint.	1
30-Nov-20	Review file. Send Rejection of Decision form to BBB per its request.	0.3
3-Dec-20	Prepare Affidavit of Service for Nissan. Submit Affidavit of Service to Clerk of Court.	0.5
12-Jan-21	Prepare Interrogatories to Nissan. Begin work on Plaintiffs' Requests for Production to Nissan.	1.7
13-Jan-21	Edit Requests for Production to Nissan. Dictate correspondence to Sarah Eibling regarding Plaintiffs' discovery requests.	0.6
13-Jan-21	Dictate correspondence to Sarah Eibling requesting Nissan amend its Answer to respond properly to State and Federal quotes from statuted. Dictate email to Rita Greenawalt.	0.5
23-Feb-21	Prepare subpoena to Hudson Nissan regarding production of documents from the sales and service departments.	0.3
24-Feb-21	Telephone Sarah Eibling. Dictate email to Sarah Eibling regarding Nissan amending its Answer, deposition of Hudson Nissan, and Nissan's failure to answer discovery.	0.4

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4-Mar-21	Review of email from Rita Greenawalt regarding status of the case and the timing of her vacation. Dictate response to Rita Greenawalt.	0.2
9-Mar-21	Review email from Sarah Ebling regarding Nissan's response to my January 13, 2021 letter. Review file. Review file from Hudson Nissan.	0.5
10-Mar-21	Dictate correspondence to Sarah Eibling regarding Nissan's Default.	0.2
18-Mar-21	Prepare Motion for Entry of Default, Motion to Strike, Motion to Make A More Definite Statement, and Motion to Compel. Organize exhibits for Motions.	1.8
19-Mar-21	Review and edit of Motion to Strike or to Compel against Nissan. File with the Clerk of Court.	0.7
19-Mar-21	Review of Motion to Strike and Compel. File Motion with the Clerk.	0.9
22-Mar-21	Telephone conference with Sarah Eibling regarding my discovery and Nissan amending its Answer.	0.5
24-Mar-21	Review 8 emails from Sarah Eibling regarding Nissan's discovery responses. Review Nissan's Answers to Interrogatories. Dictate email to Sarah Eibling regarding receipt of discovery documents.	0.5
30-Mar-21	Telephone conference with James Greenawalt regarding deposition of Hudson Nissan and status of the case.	0.4
13-Apr-21	Telephone conference with Jackie at the Berkeley County Clerk of Court regarding Sarah Eibling's request for protection.	0.2
15-Apr-21	Dictate and file request for an Order of Protection for April 20 and 21.	0.3
21-May-21	Telephone conference with Rita Greenawalt regarding inspection of the car and the deposition of Hudson Nissan.	0.6
24-May-21	Review of correspondence and subpoena to Hudson Nissan. Review of correspondence to Sarah Eibling regarding the inspection of the car and Ms. Greenawalt's cell phone. Dictate email to Sarah Eibling regarding inspection of the car.	0.5
25-May-21	Review of email from Sarah Eibling regarding the deposition of Rita Greenawalt. Dictate correspondence to Sarah Eibling regarding the deposition of Rita Greenawalt and Nissan's deficient discovery responses.	0.6
2-Jun-21	Telephone conference with Eric Tonneson, attorney for Hudson Nissan, regarding the deposition subpoena to Hudson Nissan.	0.5
4-Jun-21	Review email from Eric Tonnsen regarding a copy of Hudson's file for the deposition of Hudson. Dictate email to Eric Tonnsen regarding a copy of Hudson's file.	0.3

5-Jun-21	Review file for exhibits for deposition of Hudson Nissan. Telephone conference with Rita Greenawalt regarding postponing the deposition. Dictate email to Sarah Eibling regarding discovery issues in the case.	0.9
7-Jun-21	Video conference with Sarah Eibling regarding status of the case, the upcoming deposition of Hudson, and Nissan's discovery responses. Dictate email to Eric Tonnsen regarding doing the deposition of Hudson Nissan on Thursday and moving it to Monday June 14, 2021. Telephone conference with Rita Greenawalt regarding status of the case.	2.1
7-Jun-21	Dictate email to Rita Greenawalt regarding documents from Nissan.	0.3
8-Jun-21	Review of emails from Eric Tonnsen regarding not being able to attend the deposition of Hudson as Hudson's attorney on June 10. Dictate email to Sarah Eibling regarding not being able to depose Hudson Nissan. Dictate email to Rita Greenawalt regarding not being able to depose Hudson.	0.3
14-Jun-21	Travel to Hudson of North Charleston for inspection of Rita Greenawalt's vehicle. Conference with Sarah Eibling and Michael Ramirez from Nissan. Conference with Rita Greenawalt. Dictate email to Eric Tonneson regarding the deposition of Hudson of North Charleston.	2.4
21-Jun-21	Review email from Rita Greenawalt regarding vehicle malfunctioning. Dictate email to Eric Tonnsen and Sarah Eibling requesting a copy of the video. Dictate email to Rita Greenawalt regarding the vehicle malfunctioning.	0.2
24-Jun-21	Dictate email to Sarah Eibling and Eric Tonnsen regarding setting deposition of Hudson Nissan for July 26.	0.4
29-Jun-21	Prepare and edit amended deposition notice to Hudson Nissan. Review correspondence to Hudson, Sarah Eibling, and Eric Tonnsen.	0.3
8-Jul-21	Review email from James Greenawalt regarding settlement. Dictate email to James Greenawalt acknowledging receipt of emails and discussing how to proceed.	0.2
8-Jul-21	Review email from Sarah Eibling requesting a settlement figure. Telephone conference with Rita and James Greenawalt regarding email from Sarah Eibling. Dictate email to Sarah Eibling requesting Nissan's settlement offer and attempting to settle the case.	0.5
9-Jul-21	Review of email from Sarah Eibling regarding settlement. Dictate email to Rita Greenawalt regarding release and settlement.	0.5

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12-Jul-21	Dictate email to Sarah Eibling and Eric Tonneson regarding the location of, the protection of, and forwarding of the video of the malfunctioning Rogue.	0.4
12-Jul-21	Review of video of Rita Greenawalt, Steven Storey, and malfunctioning of the GPS. Download movie file.	0.4
12-Jul-21	Review of email form Sarah Eibling regarding settlement of the case. Review of emails from James Greenawalt regarding comments on Nissan's settlement proposal. Dictate email to Sarah Eibling regarding Greenawalt's settlement proposal.	0.5
13-Jul-21	Telephone conference with Rita Greenawalt regarding status of the case and receipt of the video from Hudson Nissan.	0.3
22-Jul-21	Review file and decide on exhibits for deposition of Hudson Nissan. Prepare documents for deposition of Hudson Nissan.	1.6
25-Jul-21	Work on questions for the deposition of Hudson Nissan.	0.8
26-Jul-21	Prepare for deposition of Hudson Nissan. Travel to Hudson Nissan. Conduct deposition of Hudson Nissan's 30(b)(6) representative. Conference with Rita Greenawalt regarding deposition. Travel back to office.	5
30-Jul-21	Telephone conference with Sarah Eibling regarding setting of Motion to Strike.	0.2
30-Jul-21	Review email from Kelli Martin with Nelson Mullins regarding Sarah Eibling's Order of Protection. Review motions' roster.	0.2
3-Aug-21	Review Motion to Strike and defendant's motion. Review Court Rules (6, 12, 55,) on default.	1.6
4-Aug-21	Prepare for Motion to put Nissan in Default, Motion to Strike, and Motion to Amend. Travel to Moncks Corner for motions. Attend motion hearing. Travel to office from Moncks Corner.	4.1
28-Aug-21	Review and edit Motion for Summary Judgment. E-File Motion for Summary Judgment.	0.4
9-Sep-21	Review emails from Sarah Ebling regarding mediation. Dictate email to Sarah Eibling regarding consent scheduling order. Dictate email to Rita and James Greenawalt regarding Nissan's Offer of Judgment.	0.4
10-Sep-21	Telephone conference with Rita and James Greenawalt regarding Offer of Judgment from Nissan.	0.5
13-Sep-21	Telephone conference with James Greenawalt regarding the Offer of Judgment.	0.1
29-Sep-21	Review of correspondence from Sarah Eibling re her Notice of Deposition for Rita Greenawalt. Dictate correspondence to Sarah Eibling regarding conflicts with deposition date of October 11, 2021.	0.2

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1-Oct-21	Review email from Sarah Eibling regarding the deposition of Rita Greenawalt. Telephone conference with Rita and Jim Greenawalt. Dictate email to Sarah Eibling regarding the deposition date for Rita Greenawalt.	0.5
7-Oct-21	Review email from Sarah Eibling regarding deposition of Rita Greenawalt. Dictate email to Rita Greenawalt regarding her deposition.	0.2
9-Oct-21	Review file. Review Court calendar regarding motion's rosters.	0.3
29-Oct-21	Review of Brief in Support of Motion for Summary Judgment. Review Exhibits for Motion.	1.1
30-Oct-21	Work on Affidavit of Rita Greenawalt for summary judgment motion. Review and edit brief supporting motion for summary judgment. Dictate email to Rita Greenawalt.	3.4
31-Oct-21	Read emails from Rita Greenawalt regarding material for affidavit for summary judgment.	0.1
31-Oct-21	Review of email from Rita Greenawalt regarding affidavit for Summary Judgment Motion. Dictate email to Rita Greenawalt regarding her questions about the affidavit.	0.1
2-Nov-21	Conference with Rita Greenawalt to prepare for her deposition. Review of documents from the file.	4.6
4-Nov-21	Work on edits to affidavit for Rita Greenawalt. Dictate email to Rita Greenawalt. Telephone conference with Rita Greenawalt regarding the affidavit.	1
4-Nov-21	Prepare for deposition of Rita Greenawalt. Attend deposition of Rita Greenawalt. Review photos and videos of nonconformity in the car. Conference with Rita and James Greenawalt regarding the deposition.	6.8
5-Nov-21	Make final edits to affidavit. Confirm and organize exhibits for affidavit and Brief.	1.7
5-Nov-21	Telephone conference with Rita Greenawalt regarding edits to her affidavit. Make edits to affidavit. Conference with Rita and Jim Greenawalt regarding Rita Greenawalt's affidavit. Review brief in support of motion for summary judgment. Review deposition of Thomas Downing.	1.7
6-Nov-21	Final edits to Brief in Support of Motion for Summary Judgment. Review exhibits for motion and affidavit. Efile Brief, Affidavits, and Exhibits. Dictate email to Judge McCoy's law clerk with copies of the Brief, Affidavits, and Exhibits.	1.6
8-Nov-21	Dictate email to Rita Greenawalt regarding filed documents for motion for summary judgment.	0.1

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9-Nov-21	Review brief from Sarah Eibling. Review exhibits. Prepare for hearing. Make notes regarding the brief and affidavits. File affidavit with Defendant's Answers to Plaintiffs' Interrogatories.	2
9-Nov-21	Attend virtual summary judgment motion. Argue motion to Judge McCoy. Review email from Sarah Eibling.	1.1
20-Nov-21	Review email from Rita Greenawalt regarding her deposition. Telephone conference with Rita and Jim Greenawalt regarding the errata sheet and the deposition.	0.4
27-Nov-21	Dictate correspondence to Sarah Eibling regarding settlement. Prepare Release. Review time sheet. Work on numbers for settlement demand.	1.5
30-Nov-21	Begin Work on Supplemental Interrogatories to Nissan regarding witnesses to phone issues. Dictate correspondence and email to Sarah Eibling regarding her consent to add TomTom to the case. Telephone conference with Rita Greenawalt regarding the events at the time of the sale. Telephone conference with Jim Greenawalt regarding the sales representations.	1.3
30-Nov-21	Review correspondence to Sarah Eibling regarding settlement of the case. Review emails regarding settlement of the case. Dictate email to Sarah Eibling to settle the case.	0.7
1-Dec-21	Review of Form 4 denying Plaintiffs' motion for summary judgment.	0.1
2-Dec-21	Dictate correspondence to TomTom regarding making a claim for a breach of warranty.	0.5
2-Dec-21	Telephone Jim Greenawalt regarding errata sheet. Telephone call Rita Greenawalt. Work on Second set of Interrogatories to Nissan. Review of Defendant's response to Plaintiffs' Motion for Summary Judgment.	1.6
2-Dec-21	Dictate email to Rita Greenawalt regarding Nissan's opposition to summary judgment and other documents.	0.3
17-Dec-21	Look for legal contact for TomTom. Dictate correspondence regarding amending complaint to include TomTom. Dictate correspondence to TomTom making a claim on behalf of Mr. and Ms. Greenawalt. Work on Requests to Admit to Nissan. Edit Supplemental Interrogatories and Supplemental Requests for Production to Nissan North America. Review of Owner's Manual, Warranty Manual, and Telecommunications Manual to prepare supplemental discovery to Nissan. Dictate email to Rita Greenawalt regarding status of the case. Dictate email to Sarah Eibling serving Plaintiffs'	5

	Requests to Admit, Supplemental Interrogatories, and Supplemental Requests for Production.	
18-Dec-21	Dictate Second Supplemental Requests for Production to Nissan North America. Dictate correspondence to Sarah Eibling serving Plaintiffs' Second Supplemental Requests for Production to Nissan North America. Dictate correspondence to Sarah Eibling attempting to settle the case. Review file regarding settlement efforts. Dictate email to Sarah Ebling regarding settlement.	1.8
10-Jan-22	Review email from Anne Bliek, attorney for TomTom. Review Nissan's Response to Motion for Summary Judgment. Dictate email to Anne Bliek regarding issues in case.	0.8
11-Jan-22	Review of email from Anne Bliek regarding TomTom's denial of problems related to its service. Dictate email to Anne Bliek with TomTom.	0.3
12-Jan-22	Review email from Anne Bliek stating TomTom cannot cause Greenawalt's voice guidance problem. Dictate email to Anne Bliek to get TomTom on the record regarding it not being responsible for the components which are nonconforming. Telephone call to Anne Bliek.	0.2
13-Jan-22	Telephone call to Anne Bliek, attorney for TomTom in the Netherlands, regarding how it interacts with the navigation system. Dictate email to Anne Bliek regarding meeting.	0.2
14-Jan-22	Dictate email to Anne Bliek regarding Zoom meeting to discuss the case.	0.2
17-Jan-22	Prepare for meeting with Anne Bliek. Review documents in file. Telephone conference with Anne Bliek with TomTom. Research regarding the supplier of the voice program used in the 2019 Rogue navigation system.	2.4
2-Feb-22	Legal research regarding responding to Requests for Admissions, effect of admission, prejudice, and service. Review file. Prepare strategy regarding Requests for Admissions.	1.6
21-Mar-22	Review email from Kelli Martin regarding potential dates for a scheduling order. Dictate email to Kelli Martin with dates for scheduling Order.	0.3
21-Mar-22	Telephone call to Sarah Eibling regarding a consent scheduling order. Telephone conference with Kelli Martin, Sarah Eibling's legal assistant regarding a consent scheduling order.	0.2
22-Mar-22	Dictate email to Sarah Eibling regarding scheduling order.	0.1

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23-Mar-22	Review emails from Sarah Eibling and her paralegal. Dictate email to Judge McCoy regarding the proposed scheduling order.	0.2
21-Jul-22	Dictate email to Rita Greenawalt regarding the status of the case.	0.1
21-Jul-22	Dictate correspondence to Sarah Eibling, pursuant to Rule 11 SCRCP, requesting Nissan respond to Plaintiffs' Second Set of Interrogatories and Plaintiffs' First Supplemental Requests for Production served on December 17, 2021 and Plaintiffs' Second Supplemental Requests for Production served on you on December 18, 2021. Dictate email to Sarah Eibling sending request for discovery responses.	0.5
21-Jul-22	Prepare Offer of Judgment to Nissan. Telephone conference with Rita and Jim Greenawalt regarding the Offer of Judgment to Nissan. Dictate email to Rita Greenawalt regarding proof she bought a new phone. Dictate email to Sarah Eibling regarding Offer of Judgment.	1
21-Jul-22	Research expert witness to testify regarding Nissan's claims that Rita Greenawalt's phone is causing her problems with the car.	0.4
22-Jul-22	Conference with Rita Greenawalt regarding status of the case. Discuss strategy moving forward.	0.4
22-Jul-22	Telephone conference with consulting expert witness regarding testimony for trial.	0.8
22-Jul-22	Research expert witnesses to discuss geolocation issues. Telephone conference with consulting expert witness. Dictate email to Rita Greenawalt regarding their new phones. Telephone Eric Tonnson regarding depositions of Hudson Nissan's mechanics.	0.6
22-Jul-22	Telephone conference with Kelli Martin from Sarah Eibling's office requesting that I resend the discovery from December 17 and 18, 2021. Email December 17 and 18, 2021 emails to Sarah Eibling and Kelli Martin.	0.3
25-Jul-22	Telephone conference with consulting expert regarding case.	0.2
29-Jul-22	Telephone consulting expert. Telephone conference with Rita Greenawalt regarding the status of the case and hiring an expert. Dictate email to Sarah Eibling regarding outstanding discovery.	1
29-Jul-22	Review email from Sarah Eibling regarding scheduling of case. Review file. Dictate response to Sarah Eibling regarding her request for a continuance, responding to discovery, and NNA's response to Plaintiffs' Offer Of Judgment.	0.7

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30-Jul-22	Review email from Sarah Eibling re depositions and trial dates. Telephone conference with Rita Greenawalt re expert witness.	0.8
2-Aug-22	Work on acquiring an expert for trial. Telephone conference with Rita Greenawalt regarding the expert witness. Dictate email to Rita Greenawalt regarding the expert witness. Dictate emails to Sarah Eibling and Kelli Martin regarding Sarah Eibling requesting a continuance and preparing an Amended Scheduling Order.	0.9
2-Aug-22	Review file to determine when Nissan will respond to Plaintiff's Interrogatories and Requests for Production from December 17 and 18, 2021. Review court roster for placement of case on the roster.	0.2
3-Aug-22	Review email from Sarah Eibling's office regarding Order of Continuance. Review proposed Order. Dictate response to Sarah Eibling's office regarding Order of Continuance.	0.5
5-Aug-22	Review of proposed motion for continuance from Sarah Eibling. Review proposed Amended Scheduling Order. Review court calendar. Dictate email to Sarah Eibling regarding changes to the Motion and the Order.	1
13-Aug-22	Review Nissan's proposed motion for a continuance and Amended Scheduling Order. Dictate email to Sarah Eibling consenting to Amended Scheduling Order.	0.4
16-Aug-22	Dictate email to Rita Greenawalt regarding expert witness.	0.1
16-Aug-22	Dictate email to consulting expert regarding testimony of expert.	0.1
18-Aug-22	Telephone conference with expert locator.	0.2
19-Aug-22	Conference with consulting expert.	0.9
19-Aug-22	Review Consent Scheduling Order filed by the Court. Review of emails from Sarah Eibling regarding Nissan responding to discovery by August 15, 2022.	0.1
20-Aug-22	Work on Motion to Compel discovery responses. Review file.	0.4
21-Aug-22	Work on six-page Rule 11 letter regarding incomplete answers to initial interrogatories.	3.6
21-Aug-22	Prepare and edit Motion to Compel regarding December 2021 supplemental discovery requests. Prepare exhibits for motion. File motion.	1.6
22-Aug-22	Review email from Berkeley County Clerk of Court. Review of Motion to Compel filed against Nissan.	0.3
22-Aug-22	Review and edit Rule 11 letter to Sarah Eibling regarding Nissan's initial discovery responses. Dictate email to Sarah Eibling regarding amending Nissan's initial discovery responses.	1.3

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26-Aug-22	Prepare for meeting with potential expert. Meet with potential expert. Research potential expert.	1.5
1-Sep-22	Review email from Rita Greenawalt regarding expert witness. Dictate email to Rita Greenawalt regarding the status of the case. Dictate email to expert institute.	0.2
9-Sep-22	Telephone conference with consulting expert.	0.3
19-Sep-22	Review email from consulting expert. Dictate email to consulting expert.	0.3
10-Oct-22	Telephone call to consulting expert.	0.1
18-Oct-22	Review file. Begin work on deposition notice for Nissan.	0.2
20-Oct-22	Telephone conference with Rita Greenawalt regarding depositions of Nissan and Charleston Nissan mechanics.	0.3
25-Oct-22	Work on notice of deposition for Nissan's 30b6 representative.	1.7
26-Oct-22	Work on scheduling Depositions of Charleston Nissan's mechanics and Nissan. Prepare notices of depositions for Charleston Nissan's mechanics and Nissan. Dictate email to attorney Eric Tonnsen regarding accepting service of the subpoenas for Charleston Nissan's mechanics. Prepare subpoenas for Charleston Nissan's mechanics. Dictate email to Eric Tonnsen with Subpoenas for Green, Grant, Crabtree, and Guise. Prepare acceptance of service for Eric Tonnsen re subpoenas for Green, Grant, Crabtree, and Guise. Dictate email to Sarah Eibling re depositions of Nissan and Green, Grant, Crabtree, and Guise.	1.9
31-Oct-22	Work on finding a mediator for the case. Review Scheduling Order. Work on scheduling for trial.	0.3
2-Nov-22	Review file. Dictate correspondence to Sarah Eibling regarding mediation.	0.8
2-Nov-22	Review of correspondence from Sarah Eibling regarding mediation. Dictate correspondence to Sarah Eibling regarding mediation and depositions.	0.7
2-Nov-22	Dictate email to Eric Tonnsen regarding whether he will accept service of the deposition notices for Hudson Nissan's employees.	0.2
3-Nov-22	Dictate individual Acceptances of Service for the Hudson Nissan employees to depose. Work on scheduling mediation. Review correspondence from Sarah Eibling regarding setting mediation date. Review file to determine settlement status.	1.3
3-Nov-22	Dictate email to Eric Tonnsen regarding upcoming depositions. Review individual acceptances of service of the deposition notices. Dictate email to Sarah Eibling regarding notice of deposition of Stephen Storey.	0.9

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4-Nov-22	Dictate email to Eric Tonnsen regarding the acceptances of service to Charleston Nissan's mechanics. Serve Subpoenas on Charleston Nissan's mechanics.	0.5
4-Nov-22	Review email from Sarah Eibling's office regarding Nissan's Interrogatories and Requests for Production. Dictate email to Rita Greenawalt regarding answering Nissan's Interrogatories and Requests for Production. Prepare to respond to Nissan's Interrogatories and Requests for Production.	1
7-Nov-22	Review email from Eric Tonnsen regarding accepting service of the subpoenas for Hudson Nissan's employees and his desire to move the date of the deposition. Dictate response to Eric Tonnsen requiring the depositions to go forward as set.	0.2
8-Nov-22	Review of email from Sarah Eibling regarding depositions of James Green, Melvin Grant, and David Crabtree. Dictate response to Sarah Eibling. Dictate email to Sarah Eibling regarding deposing Nissan's 30b6 witness and requesting information about the witness beforehand. Review Sarah Eibling's November 2, 2022 letter regarding mediation. Dictate correspondence to Sarah Eibling requesting dates to conduct mandatory mediation in this case.	0.8
8-Nov-22	Work on preparing deposition questions for Hudson Nissan's employees.	0.8
10-Nov-22	Review email from Sarah Eibling regarding Nissan's refusal to be deposed on November 11, 2022. Review file regarding prior attempts to depose Nissan. Dictate email to Sarah Eibling regarding taking the deposition of Nissan. Legal research regarding depositions. Review calendar for dates for mediation.	3.4
10-Nov-22	Work on updating the subpoenas for Crabtree, Grant, and Green for November 15 starting at 11 AM per Eric Tonnsen. Work on changing the acceptances of service for November 15.	0.8
14-Nov-22	Prepare for depositions of Charleston Nissan's mechanics. Review repair invoices from Hudson Nissan.	2.6
15-Nov-22	Work on deposition preparation for Hudson Nissan's mechanics. Read Defendant's opposition to Plaintiff's motion for summary judgment. Attend depositions of David Crabtree, Melvin Grant, and James Green. Conference with Sarah Eibling. Conference with Rita Greenawalt.	10
16-Nov-22	Review file based on deposition testimony of Hudson Nissan's Mechanics. Work on timeline for settlement	5.2

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	negotiations. Review videos produced by Rita Greenawalt. Review all emails in file.	
17-Nov-22	Work on Settlement Chart. Begin reviewing phone log regarding settlement conversations.	0.3
21-Nov-22	Edit settlement letter to Sarah Eibling regarding settlement and mediation.	0.4
21-Nov-22	Continuing review of phone log to determine settlement discussions. Dictate correspondence to Sarah Eibling regarding settlement.	0.5
5-Dec-22	Prepare list of outstanding matters and issues in case. Travel to Moncks Corner for docket sounding. Conference with opposing counsel re motions, mediation, and settlement. Conference with the Clerk of Court to set motions the week of January 18, 2023. Travel to office. Dictate email to Sarah Eibling regarding conference at the courthouse.	2.6
8-Dec-22	Dictate subpoena to the Better Business Bureau regarding its AutoLine Process.	0.3
8-Dec-22	Review and edit of subpoena and letter to the Better Business Bureau.	0.2
8-Dec-22	Dictate motion to compel Mediation. Review emails regarding mediation. Prepare exhibits. E-file motion and exhibits with the Clerk of Court.	2.4
10-Dec-22	Review and edit motion to compel mediation. Efile motion to compel mediation.	0.8
20-Dec-22	Review settlement offer from Nissan. Review settlement offers. Review amounts needed to settle the case. Dictate email to Sarah Eibling requesting clarification of the settlement being made by Nissan.	0.6
21-Dec-22	Send follow up email to Sarah Eibling regarding Nissan's settlement offer.	0.1
23-Dec-22	Review offer from Nissan. Dictate email to Rita Greenawalt regarding Nissan's settlement offer and proposed Release. Redact Release proposed by Nissan.	0.4
3-Jan-23	Telephone conference with Jim and Rita Greenawalt regarding Nissan's settlement offer for part of the case. Dictate email to Sarah Eibling regarding settling the whole case and mediating the case so we can be ready for trial.	0.8
5-Jan-23	Telephone conference with Berkeley County Clerk of Court regarding the scheduling of the 3 outstanding motions in the case.	0.2
6-Jan-23	Dictate email to consulting expert terminating search for expert. Dictate draft correspondence to Sarah Eibling regarding mediating the case. Edit correspondence to	1.2

	Sarah Eibling regarding mediating the case. Dictate email to Sarah Eibling regarding mediation and settlement.	
16-Jan-23	Review email from Rita Greenawalt consulting expert. Dictate email to consulting expert.	0.2
9-Feb-23	Review email from the Court regarding the scheduling of Plaintiffs' Motion to Compel. Dictate email to Sarah Eibling and an email to Kelly Martin attempting to set mediation date.	0.3
14-Feb-23	Review email from Sarah Eibling regarding setting of mediation. Dictate email to Rita Greenawalt regarding Plaintiffs' availability.	0.2
15-Feb-23	Review email from Rita Greenwalt regarding mediation. Telephone conference with Rita Greenawalt regarding mediation strategy. Dictate email to Sarah Eibling.	1.2
16-Feb-23	Work on setting up and preparing for mediation. Dictate email to David McCormack regarding mediation on March 8, 2023.	0.9
20-Feb-23	Telephone conference with David McCormack regarding mediation.	0.6
23-Feb-23	Review Motion to Compel for hearing. Review documents attached to motion.	0.3
23-Feb-23	Review emails from Sarah Eibling and David McCormack regarding mediation. Dictate email to Sarah Eibling agreeing to allow Nissan to appear at the mediation by Zoom. Dictate email to David McCormack regarding setting the mediation.	0.3
24-Feb-23	Work on preparing for mediation. Review BBB documents. Review correspondence.	1.8
24-Feb-23	Outline argument for Motion to Compel. Attend Motion to Compel via Webex with Sarah Eibling and Judge Jennifer McCoy. Prepare an Order for the Court regarding the granting of my Motion to Compel. File Order with the Clerk of Court.	1.7
25-Feb-23	Dictate email to Rita Greenawalt concerning the date, time and location of the mediation. Begin mediation letter to David McCormack. Review file regarding settlement status. Review file regarding BBB decision.	2.4
25-Feb-23	Review email from Rita Greenawalt regarding mediation preparation. Dictate response to Rita Greenawalt.	0.1
6-Mar-23	Work on mediation letter to David McCormack. Work on settlement numbers and demand. Telephone conference with Rita Greenawalt. Telephone conference with Jim and Rita Greenawalt regarding the mediation.	3.3
6-Mar-23	Review of Nissan's Answers to Plaintiffs' First Supplemental Interrogatories and Plaintiffs' First	2.5

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	Requests for Production. Brief review of Nissan's document production Nissan 1044-1349. Dictate correspondence to Sarah Eibling regarding Nissan's violation of Judge McCoy's Order. Dictate email to Rita Greenawalt regarding Nissan's discovery responses.	
7-Mar-23	Review emails regarding mediation. Telephone conference with Rita Greenawalt regarding changing the location of the mediation. Dictate email confirming moving the location of the mediation. Review of document production Nissan 1350-2040. Dictate Motion for Sanctions regarding February 28, 2023 Order.	2
8-Mar-23	Prepare motion for attorney's fees. Prepare documentation for review by Justin Kahn for Motion for Attorney's Fees.	0.8
8-Mar-23	Prepare for mediation. Prepare time sheets. Review report to mediator. Prepare documents to bring to mediation. Travel to mediation. Attend mediation at Nelson Mullins. Negotiate settlement of the claims. Travel from mediation.	5.6
10-Mar-23	Work on Brief in Support of Motion for Attorney's Fees. Outline issues and begin organizing topics.	1.1
10-Mar-23	Review emails from Berkeley County setting Motion to Compel Mediation and Eibling's Motion for Protection. Telephone calls and conference with Berkeley County regarding motion for attorney's fees. Review motion for attorney's fees. File Motion for Attorney's Fees with the Clerk of Court.	1.8
11-Mar-23	Work on Brief in support of Motion for attorney's fees.	1
12-Mar-23	Dictate email to Judge Young requesting a hearing on motion for attorney's fees the week of April 3, 2023.	0.4
12-Mar-23	Work on Brief in Support of Attorney's Fees. Legal research regarding attorney's fees	4
14-Mar-23	Telephone conference with Justin Kahn regarding affidavit of attorney's fees and legal criteria for same. Legal research regarding attorney's fees.	0.7
17-Mar-23	Dictate follow up email to Judge Young's law clerk to schedule Motion for Attorney's fees during the April 3 Berkeley County trial roster.	0.3
20-Mar-23	Review email from Judge Young's law clerk regarding hearing Plaintiffs' Motion for Attorney's fees on April 5, 2023. Dictate responses to Judge Young's law clerk regarding hearing Plaintiffs' Motion for Attorney's fees on April 5, 2023.	0.2
21-Mar-23	Review email from Rita Greenawalt regarding settlement confirmation. Telephone conference with Rita Greenawalt regarding the settlement conference and	0.9

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	confirmation of terms. Dictate email to Sarah Eibling to confirm settlement terms. Work on Release for case.	
23-Mar-23	Telephone conference with Mike Maucher regarding contacting Jay Masty regarding an affidavit of attorney's fees.	0.4
29-Mar-23	Telephone conference with Jay Masty regarding affidavit in support of motion for attorney's fees. Discuss status of the case and need for affidavit. Provide Jay Masty access to the file. Dictate email to Jay Masty regarding affidavit material. Share file with Jay Masty.	2.4
30-Mar-23	Review delivery of material to Jay Masty for review. Work on uploading documents for Jay Masty.	0.7
30-Mar-23	Review file for information for Rita and James Greenawalt's Affidavit. Legal Research regarding attorney fee applications. Work on Rita and James Greenawalt's Affidavit. Review affidavit of Justin Kahn. Review affidavit of Jay Masty. Telephone conferences with Rita Greenawalt. Email affidavit to Rita Greenawalt for execution.	3.5
TOTAL		215.4

Additional time will be incurred from the filing of these records until and through the hearing on attorney's fees. Supplemental time records for the additional time spent will be submitted to the court for its consideration.

C. STEVEN MOSKOS, P.A.
ATTORNEY FOR PLAINTIFFS
s/C. Steven Moskos
SC Bar No.: 7938
6650 Rivers Ave., Suite 210
North Charleston, SC 29406
Telephone: (843) 763-5297
steve@moskoslawfirm.com

Charleston, South Carolina
March 31, 2023

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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 **AFFIDAVIT RITA GREENAWALT AND JAMES GREENAWALT IN SUPPORT OF AN AWARD OF ATTORNEY'S FEES**

We swear or affirm under penalty of perjury that the following statements are true:

1. We are Rita R. Greenawalt (Rita) and James M. Greenawalt (Jim), Plaintiffs in the above-entitled action.

2. On August 30, 2019, we paid cash for a 2019 Nissan Rogue VIN: 5N1AT2MT4KC841781 from Hudson Charleston Acquisition, LLC, d/b/a Hudson Nissan of North Charleston (Hudson).

3. On January 25, 2020 when the car had been driven about 2,000 miles, I began experiencing problems with its navigation system as the GPS navigation voice guidance system stopped working.

4. I returned the Rogue to Hudson for repairs. From January 25, 2020 until May 13, 2020, the Rogue was in the shop seven for 48 days.

5. Hudson, on behalf of Nissan North America, Inc. (Nissan), worked on the Rogue under Nissan's warranty; however, the problems with the Rogue have persisted to this day.

6. During the time that Hudson and Nissan worked on the Rogue, we asked Nissan to replace the Rogue so we could buy another vehicle. We told Nissan that I (Rita)

spend a lot of time in my car by myself. I (Rita) use the navigation system to go to appointments and run errands. We also use it when we go out of town. I (Rita) did not feel safe in the Rogue.

7. Nissan's response was to deny our claim and close its file. Not knowing the next steps, we were forced to hire an attorney to help us get out of this car and to get our money back.

8. I (Rita) contacted several attorneys over the weekend to see if they handled this type case. Each one referred me to Mr. Moskos.

9. I (Rita) then contacted Mr. Moskos in Charleston.

10. We are not lawyers, nor do we know the law regarding defective products, especially automobiles.

11. We do not have the time nor the training to learn the law sufficiently to represent ourselves against Nissan or Hudson regarding this defective Rogue.

12. We are not aware of any other lawyers who could help us with this kind of case.

13. We had no choice but to hire C. Steven Moskos to represent us against Nissan.

14. We hired Mr. Moskos on May 18, 2020.

15. Mr. Moskos informed us that his fee was based on an hourly rate. Our understanding is that his hourly rate is $450.00 per hour.

16. We cannot afford to pay $450.00 per hour. If we had to pay the $450.00 per hour fee, we would not have been able to pursue our legal remedies in this case. Had we known that through this process we would owe Mr. Moskos approximately $90,000, more than two and one-half times what we received, we would not have pursued this matter. It would not have been cost effective.

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17. Mr. Moskos sent a letter to Nissan on our behalf requesting a repurchase of the Rogue. Nissan's response was to offer us $2,500 and for us to keep the Rogue. We refused.

18. We had to participate in the BBB Autoline program before we could file suit in court.

19. Nissan then offered us $3,000 to go away. We refused again as we wanted the car repurchased and our lawyer's fees paid.

20. I (Rita) attended the BBB hearing. Nissan then offered us $5,000 and for us to keep the Rogue. That was rejected also. We did not want the Rogue as it was still not working correctly.

21. We were successful at the BBB hearing as the arbitrator ruled in our favor. Nissan's program through the BBB prohibited the arbitrator from telling Nissan to reimburse us for our lawyer's fees. We were forced to file suit.

22. We had hoped this matter would be over quickly; however, Nissan refused to fully repurchase the Rogue and pay our attorney's fees.

23. We could not afford to lose money because Nissan made a bad car. Thus, we declined Nissan's offers.

24. We thought the matter would be over quickly; however, Nissan continued to put up roadblocks and defenses which we knew did not apply. Nonetheless, Nissan continued to fight us and make us spend money on various costs, money we could have used otherwise.

25. We are disappointed that we had to stay in this car so long; however, we are satisfied with the amount to be paid to repurchase the car. We believe we received a very good benefit because we hired Mr. Moskos.

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26. We have found Mr. Moskos to be professional.

27. Mr. Moskos has kept us up to date on the status of our case and he has explained the legal process to us when we asked questions.

28. Mr. Moskos was able to do what we could not, to get Nissan to agree to repurchase the Rogue. I am very satisfied with the result of a full repurchase of the Rogue.

29. We ask the Court to order Nissan to pay all Mr. Moskos' fees, so we do not have to.

BY: _____
RITA R. GREENAWALT

_____
JAMES M. GREENAWALT

Charleston, South Carolina
March 31, 2023

SWORN TO BEFORE ME THIS

31 DAY OF March, 2023

_____
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: May 23 2024

ELECTRONICALLY FILED - 2023 Apr 03 9:53 AM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY)	CASE NO.:2020-CP-08-02455
)	
RITA R. GREENAWALT AND)	
JAMES M. GREENAWALT)	
)	
Plaintiff,)	
)	AFFIDAVIT OF JAY S. MASTY, ESQUIRE
vs.)	IN SUPPORT OF AN AWARD
)	OF ATTORNEY'S FEES
NISSAN NORTH AMERICA, INC.)	
)	
Defendant.)	
_____/	

PERSONALLY APPEARED BEFORE ME, Jay S. Masty, Esquire who, first being duly sworn deposes and states as follows:

I am a First Honor graduate of Emory Law School in Atlanta Georgia in 1989. I am an attorney, licensed to practice law in South Carolina and Georgia. I am admitted to practice law before the United States Fourth Circuit Court of Appeals, the United States District Court for the State of South Carolina, the United States District Court for the Northern District of Georgia, and the United States District Court for the Southern District of Georgia. I have argued appellate cases in the Fourth Circuit Court of Appeals, the South Carolina Supreme Court and the South Carolina Court of Appeals.

I am a member of various legal professional organizations including the American Bar Association, the American Association for Justice and the South Carolina Bar Association. I am a member of the Charleston and Berkeley County bar.

In 1989, after graduation from Law School, I first practiced law at the Fulton County Public Defender's office where I tried numerous felony criminal defense cases. After over one year there, I moved to Charleston, South Carolina and began practicing law at Nexsen Pruet Jacobs and Pollard. While there, I tried numerous cases in the State and Federal Courts of South Carolina and Georgia. My practice was limited to civil defense cases, typically products liability actions.

I taught law classes at Trident Technical college and the College of Charleston for approximately 20 years. I have taught numerous seminars to practicing attorneys over the

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years on topics such as medical malpractice, evidence and discovery.

In 1993, I began practice with DeLuca Maucher in Berkeley County. I continue to work with this firm after 30 years. My main focus at this firm, approximately 70%, is plaintiff's professional negligence actions. Approximately 25% of my practice is dedicated to a select number of business entities where I serve as corporate counsel. In that capacity as corporate counsel, I invoice the clients on an hourly/rate basis. The remaining portion of my practice is dedicated to Criminal Defense work. I have been approved to try capital defense cases.

Since beginning with DeLuca Maucher, I have worked out of the Goose Creek, Berkeley county office. I have likely tried over 75 cases before Judges and Juries of Berkeley County. I have tried cases all over the State of South Carolina and Georgia.

I am informed and believe that pending before this Court is the Plaintiff's Motion for Attorney's fees and Costs and that the Court is considering an award of expenses and attorney's fees in connection therewith.

I have worked on numerous cases that have required the submission of a petition and affidavit for the approval of attorney's fees and costs. I am informed and believe that under the law of this State, pursuant to Barron Data Systems, Inc. v. Later, 297 S.C. 382, 377 S.E.2d 296 (1989) and Glasscock v. Glasscock, 304 S.C. 158, 403 S.E.2d 313 (1991), Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997), there are six factors that need be considered by the Court, to wit:

1 Nature, extent and difficulty of the legal services rendered;
2 Time and Labor devoted to the Case;
3 The Professional standing of counsel;
4 The contingency of compensation;
5 The beneficial results obtained;
6 and the Customary legal fees for similar services.

In preparation for my opinions in this actions, I have reviewed the following documents:

1 The pleadings;
2 A portion of the discovery file;
3 Correspondence and emails between the parties;
4 A portion of the evidence supporting Plaintiff's claims of a defective product sold by Defendant;
5 A portion of the notes to the file representing extensive efforts on the part of Plaintiff's counsel to "develop" this case and to secure witness testimony and evidence;

6 The attorney's billing time sheet and affidavit;
7 BBB records and informational literature;
8 BBB's award in arbitration;
9 Countless Motions filed by Plaintiff's counsel, many with supporting memoranda;
10 Expert witness research and contact memoranda;
11 Legal research on "Lemon Law".

I have additionally talked at length with counsel for the Plaintiff about this case.

In analyzing the appropriateness of an award of attorney's fees in light of the afore factors, one must first look, in my opinion, to the issue of success in the litigation. There can be no argument but that the Plaintiff prevailed in this litigation. Considering the other elements in determining the appropriateness of the attorney fee prayer, it is important to note the complexity of this area of the law. A quick read of the Lemon Law Statute, with the endless "administrative remedies" necessary as conditions precedent is tantamount to sitting in Property Class learning about future interests. This is complex litigation.

A fortiori, this litigation is important litigation in an area of the law where a simple consumer stands in opposition to the very largest corporations in the world. Consumer law cases have historically resulted in insufficient attorney fee awards which, along with the complexity of the issues, results in a very select few members of the BAR practicing in this area. The risk of collecting any fee commensurate to the amount of time and effort committed to the client often "scares" lawyers away from assisting in these kinds of cases.

A review of the attorney's billing time sheet tells the whole story here. Jumping through the "hoops" of pre-filing and pre-trial litigation, the hunt for evidence, the vast amount of discovery and motions practice, the countless meetings and contact with opposing counsel, the endless flow of documents all suggest counsel's perseverance and his willingness to fight for his client. These documents, in my opinion, show a remarkable "warrior" mentality of Plaintiff's counsel in a case where no one died, no one was seriously injured, and the likelihood of representing these clients after this litigation is low.

The failure to award an appropriate attorney's fee in this case or other cases similar in nature will no doubt serve as a message to other attorneys that this area of the law is simply not worth it. Not worth the time, not worth the risk, not worth the award. And ultimately, society is harmed and individual consumers are unable to find counsel willing to take on their battles.

I am aware of and informed about the reputation of Plaintiff's counsel in the legal community. He is clearly the "go-to" guy for these kinds of cases. He is willing to fight the

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fight and his success rate is second to none. I myself have referred numerous clients to counsel over the years, clients who have later told me they felt as though they had an attorney on their side willing to fight the "giants" of industry.

Based on my review of this file, the time expended by Mr. Moskos was reasonable and appropriate and much of it, frankly, necessary as a result of the litigious nature of the defendant. The extent and difficulty of this case, the successful outcome, the professional standing of counsel, the contingency of compensation, all warrant an attorney fee award of at least $450 an hour. I am informed and believe that attorneys practicing in very specialized and complex areas of the law charge attorney's fees in this amount in Berkeley County. Point of fact, I have charged such an hourly rate in some cases of equal complexity with such high risk of an unsuccessful resolution.

I hold the opinions stated herein within a reasonable degree of certainty. Actually, I hold these opinions to a standard higher than, "more likely than not".

I am presenting a charge of $500 to counsel for the Plaintiff for my work on this file an the drafting of this affidavit.

FURTHER AFFIANT SAYETH NAUGHT.

Jay S. Masty, JD, LLM, Esquire
Of counsel
DeLuca Maucher LLP
102 Marilyn Street
Goose Creek, SC 29445

Sworn to me on the 30th of March, 2023.

Notary for South Carolina
My Commission expires: July 17, 2027

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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 **AFFIDAVIT OF JUSTIN S. KAHN, ESQ. IN SUPPORT OF AN AWARD OF ATTORNEY'S FEES**

Charleston County)
South Carolina)

Personally appeared before me, Justin S. Kahn, who, being duly sworn deposes and states as follows:

I am an attorney and civil litigator with Kahn Law Firm, LLP in Charleston, S.C. I have litigated a variety of cases including professional liability, personal injury, consumer, product liability, contract, and other matters.

I am triple board certified by the American Board of Professional Liability Attorneys in medical malpractice where I currently serve as president and by the National Board of Trial Advocacy as a civil trial advocate and in civil pretrial practice advocacy. I am a diplomate with the National College of Advocacy of the American Association of Justice. I am also certified by the South Carolina Supreme Court as a civil circuit court mediator and am AV rated by Martindale-Hubbell.

I have taught civil pretrial practice and deposition skills as an adjunct professor at the Charleston School of Law for over 10 years. For about 30 years, I have authored the South

Carolina Rules Annotated and the South Carolina Rules of Evidence Annotated published by the South Carolina Bar CLE Division and written various articles concerning advocacy.

I am a member of various legal professional organizations including the American Association for Justice, American Bar Association, South Carolina Association for Justice, South Carolina Bar Association and am a permanent member of the Fourth Circuit Judicial Conference. I am a member of the House of Delegates for the South Carolina Bar. I have practiced in state and federal courts throughout the country. I am admitted to practice before the United States Supreme Court, United States Fourth Circuit Court of Appeals, United States Third Circuit Court of Appeals, United States Second Circuit Court of Appeals, United States Court of Federal Claims, United States District Court for the District of South Carolina and the South Carolina Supreme Court. I have argued appellate cases before the South Carolina Supreme Court and Court of Appeals, as well as Fourth and Second Circuit Courts of Appeal.

I graduated law school in 1992 from the University of South Carolina School of Law. I was admitted to the bar of the Supreme Court of South Carolina in November of 1992. I have been admitted to the United States District Court, District of South Carolina and the District of Columbia Court of Appeals. I have been actively engaged in the practice of law since 1992. I have written, lectured, and taught throughout the country on a variety of topics including advocacy, procedure, evidence, ethics, technology, and persuasion. I have also been an attorney involved in class action matters, including as lead counsel.

I have worked on cases requiring the submission of a petition and affidavit for the approval of attorney's fees and costs. I am aware of the criteria for the determination of the reasonableness of an award of attorney's fees and costs.

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I understand that pending before the Court is Plaintiffs' Motion for Attorney's Fees and Costs, and that the Court is considering an award of expenses and attorney's fees.

I have reviewed documents, including the pleadings, Mr. Moskos' time records, and his affidavit, and am aware of the nature of this litigation. I am also familiar with Mr. Moskos' skills as a litigator and advocate in consumer matters.

In South Carolina, a Court is to consider six factors in determining the reasonableness of attorney's fees, including: (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; (6) customary legal fees for similar services. *Glasscock v. Glasscock*, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991).

I have reviewed the itemization of fees and costs attached to the attorney fee petition. I believe the work done by Mr. Moskos in this matter justifies favorable consideration by the Court of each of the factors needed to determine the reasonableness of the fees sought.

It is further my legal opinion that the attorney fee awards in consumer law cases to prevailing plaintiffs/claimants have historically been insufficient to generally attract qualified counsel to represent plaintiffs on a contingency or partial contingency fee basis and that the risk and work required to successfully prosecute a consumer law case is uniquely different and greater than handling other types of cases. In part, this is based on the novelty and difficulty of the legal and factual issues frequently involved, the risk of collectability of judgement, and the fact that the client relationship is almost always a "one time" event for the client and the attorney. It is my opinion to a reasonable degree of legal certainty that the services of Mr. Moskos as a lawyer facilitated a favorable result for the client and that a fee award in the amount of $450.00

per hour for attorney's fees in this case is fair, reasonable and proper. The decision to grant such an award is the Court's.

It is the further opinion of affiant that the failure to adequately compensate attorneys who represent consumers has a negative effect on the ability of consumers to obtain adequate legal representation to file and prosecute meritorious claims; it is further my opinion that an enhancement/multiplier to the award of attorney's fees is appropriate and would serve to have a positive effect on the ability of consumers to obtain adequate legal representation.

Based upon the activities described in his affidavit, the time expended by Mr. Moskos was reasonable and appropriate for this case. In light of the nature, extent and difficulty of the legal services rendered, the professional standing of counsel, the contingency of compensation, the fees customarily charged, including in and around South Carolina for similar services, and the results obtained, a reasonable hourly rate in South Carolina and Berkeley County for counsel's efforts would be at least $450.00 an hour for time spent in litigating and prosecuting the case.

FURTHER AFFIANT SAYETH NOT.

Justin S. Kahn

Sworn to before me on the
31st of March, 2023

Notary for South Carolina
My commission expires: 11/5/31

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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

COSTS INCURRED BY RITA AND JAMES GREENAWALT

Below is a list of the costs and expenses incurred by Mr. and Mrs. Greenawalt for the commencement of and prosecution of this matter. These costs were necessary to their case and not duplicative. Plaintiffs request the Court order Defendant to reimburse them these costs as they would not have been incurred but for Defendant's refusal to repurchase the subject vehicle prior to these costs being incurred. Receipts for these costs are attached as Exhibit 1.

Date	Expenses/Costs Incurred in Greenawalt	Amount
5/23/2020	Certified Mail to Hudson Nissan of N. Charleston	$6.90
5/23/2020	Certified Mail to Nissan North America	$6.90
11/13/2020	Payment Receipt Filing Fee	$180.32
11/13/2020	Certified Mail to Corp Service Corp.	$12.65
2/24/2021	Certified Mail to Hudson Charleston Acquisition, LLC	$6.96
5/24/2021	Certified Mail to Hudson Nissan of N. Charleston	$7.16
6/29/2021	Certified Mail to Hudson Charleston Acquisition, LLC	$7.16

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8/9/2021	Southeastern Transcript, Inc. depo of Thomas Downing 6/26/21	$522.00
8/28/2021	Filing Fee for Motion for Summary Judgment	$31.74
11/18/2021	Garber Reporting Service depo of Jeffrey Thomas	$667.15
8/21/2022	Filing fee for Motion To Compel Discovery Responses	$31.74
12/10/2022	Filing fee for Motion To Compel Mediation	$31.74
11/7/2022	Service of three subpoenas	$180.00
12/8/2022	Invoice from Clark & Bolen Court Reporting depos of Green, Grant and Crabtree – Hudson Mechanics	$920.00
12/9/2022	Certified Mail fee to Better Business Bureau	$7.82
3/7/2023	Filing Fee for Motion for Sanctions re Discovery	$31.74
3/8/2023	Parking	$8.00
3/10/2023	Filing Fee for Motion for Attorney's Fees	$31.74
3/22/2023	David McCormack - Mediation Fee	$1,000.00
3/30/2023	Jay Masty - Fee to review file and prepare an affidavit for Attorney Fee Petition	$500.00
3/31/2023	Justin Kahn - Fee to review file and prepare an affidavit for Attorney Fee Petition	$500.00
	File Maintenance fee	$200.00
	Total	$4,891.72

The charge for Jay Masty is in his affidavit in support of a full award of attorney's fees filed contemporaneously with this statement of costs.

SIGNATURE ON NEXT PAGE

C. STEVEN MOSKOS, P.A.
ATTORNEY FOR PLAINTIFFS
s/C. Steven Moskos
SC Bar No.: 7938
6650 Rivers Ave., Suite 210
North Charleston, SC 29406
Telephone: (843) 763-5297
steve@moskoslawfirm.com

Charleston, South Carolina
March 31, 2023

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For delivery information, visit our website at *www.usps.com*®

OFFICIAL USE

Certified Mail Fee
$ 3.55

Extra Services & Fees *(check box, add fee as appropriate)*
- ☐ Return Receipt (hardcopy) $ 2.85
- ☐ Return Receipt (electronic) $
- ☐ Certified Mail Restricted Delivery $
- ☐ Adult Signature Required $
- ☐ Adult Signature Restricted Delivery $

Postage
$ .50

Total Postage and Fees
$ 6.90

Postmark Here

Sent To Hudson Nissan of N. Chas

Street and Apt. No., or PO Box No. 7331 Rivers Ave

City, State, ZIP+4® N. Chas SC 29406

PS Form 3800, April 2015 PSN 7530-02-000-9047 **See Reverse for Instructions**

7019 1120 0002 2535 0147

EXHIBIT 1

ELECTRONICALLY FILED - 2023 Apr 03 10:

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at *www.usps.com®*.

OFFICIAL USE

Certified Mail Fee
$ 3.55

Extra Services & Fees *(check box, add fee as appropriate)*
- [x] Return Receipt (hardcopy) $ 2.85
- [ ] Return Receipt (electronic) $
- [ ] Certified Mail Restricted Delivery $
- [ ] Adult Signature Required $
- [ ] Adult Signature Restricted Delivery $

Postage
$ .50

Total Postage and Fees
$ 6.90

Greenacatt 5/23/20
Postmark Here

Exhibit 2

Sent To Nissan North America

Street and Apt. No., or PO Box No. PO Box 685003

City, State, ZIP+4® Franklin, TN 37068

PS Form 3800, April 2015 PSN 7530-02-000-9047 **See Reverse for Instructions**

7019 1120 0002 2535 0130

ELECTRONICALLY FILED - 2023 Apr 03 10:

Exhibit 3

ELECTRONICALLY FILED - 2023 Apr 03 10:45 AM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

Steve Moskos

From: noreply@portal.sc.gov
Sent: Friday, November 13, 2020 4:03 PM
Subject: Berkeley County Common Pleas Court E-Filings Receipt

Payment Receipt Confirmation

Your payment was successfully authorized. Your credit or debit card will not be charged until the Clerk of Court accepts your filing.

Your payment was successfully processed.

Contact Name	Berkeley County Common Pleas Court
Contact Phone	843-719-4400
Contact Address	300-B California Avenue Moncks Corner, SC 29461

Transaction Summary

Description	Amount
Berkeley County Common Pleas Court - E-Filing	$175.00
SC.GOV TOTAL	$180.32

The online price of items or services purchased through SC.GOV, the state's official Web portal, includes funds used to develop, maintain, enhance and expand the service offerings of the state's portal.

Customer Information

Customer Name	C. Steven Moskos
Company Name	
Local Reference ID	F_3208115_733
Receipt Date	11/13/2020
Receipt Time	04:02:56 PM EST

Payment Information

Payment Type	Credit Card
Credit Card Type	VISA
Credit Card Number	******5724
Order ID	89295849
Billing Name	Costa S Moskos

Billing Information

Billing Address	4000 Faber Place Dr. Suite 300
Billing City, State	Charleston, SC
ZIP/Postal Code	29405
Country	US
Phone Number	843-763-5297

This receipt has been emailed to the address below.

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at *www.usps.com®*.

OFFICIAL USE

Certified Mail Fee
$ 3.55

Extra Services & Fees *(check box, add fee as appropriate)*
- ☐ Return Receipt (hardcopy) $ 2.85
- ☐ Return Receipt (electronic) $
- ☐ Certified Mail Restricted Delivery $ 5.45
- ☐ Adult Signature Required $
- ☐ Adult Signature Restricted Delivery $

Postage
$ .80

Total Postage and Fees
$ 12.65

Greenwelf

Postmark Here

Nissan

Exhibit 4

Sent To Corp Service Corp

Street and Apt. No., or PO Box No. 508 meeting St

City, State, ZIP+4® Cola SC 29169

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7019 1120 0002 2535 0529

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Exhibit 5

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Certified Mail Fee
$ 3.60

Extra Services & Fees *(check box, add fee as appropriate)*

- [x] Return Receipt (hardcopy) $ 2.85
- [ ] Return Receipt (electronic) $
- [ ] Certified Mail Restricted Delivery $
- [ ] Adult Signature Required $
- [ ] Adult Signature Restricted Delivery $

Postage
$ .51

Total Postage and Fees
$ 6.96

Postmark Here

Greenawalt vs. Nissan n. America

Sent To
Hudson Charleston Acquisition, LLC

Street and Apt. No., or PO Box No.
7331 Rivers Ave

City, State, ZIP+4®
n. Charleston, SC 29406-4612

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7019 1120 0000 8494 0620

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7019 1120 0002 2535 3214

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Extra Services & Fees *(check box, add fee as appropriate)*
- [X] Return Receipt (hardcopy) $ 2.85
- [ ] Return Receipt (electronic) $
- [ ] Certified Mail Restricted Delivery $
- [ ] Adult Signature Required $
- [ ] Adult Signature Restricted Delivery $

Postage
$ .71

Total Postage and Fees
$ 7.16

Postmark Here

Exhibit 6

Greenawalt vs. nissan n. America

Sent To
Hudson nissan 87 n. Chas.

Street and Apt. No., or PO Box No.
7331 Rivers Ave

City, State, ZIP+4®
n. Charleston, SC 29418

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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Exhibit 7

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OFFICIAL USE

Certified Mail Fee $ 3.60	
Extra Services & Fees *(check box, add fee as appropriate)*	
☒ Return Receipt (hardcopy) $ 2.85	
☐ Return Receipt (electronic) $	
☐ Certified Mail Restricted Delivery $	
☐ Adult Signature Required $	
☐ Adult Signature Restricted Delivery $	
Postage $ 1.71	
Total Postage and Fees $ 7.16	Postmark Here

Sent To Hudson Charleston Acquisition

Street and Apt. No., or PO Box No. 7331 Rivers Ave.

City, State, ZIP+4® N. Charleston, SC 29418

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

Exhibit by Greenwalt vs. Nissan North America

589

7019 1120 0002 2535 3278

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ELECTRONICALLY FILED - 2023 Apr 03 10:45 AM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

Exhibit 8

SOUTHEASTERN TRANSCRIPT, INC.
P. O. Box 13478, Charleston, SC 29422
(843) 762-2442
sjrossmann@bellsouth.net

August 9th, 2021
Job No. 6431-LW

Please Make Check Payable To:

SOUTHEASTERN TRANSCRIPT
P.O. BOX 13478
Charleston, SC 29422
Tax I.D. No. 56-2575802

To: **C. STEVEN MOSKOS, P.A.**
Attn: C. Steven Moskos
Attorney at Law
4000 Faber Place Drive, Suite 300
North Charleston, SC 29405
steve@moskoslawfirm.com
assistant@moskoslawfirm.com

Reference: GREENAWALT vs NISSAN NORTH AMERICA
Case No. 2020-CP-08-02455

Deposition of: **Thomas Downing**
Date: July 26, 2021
Time: 11:00 – 2:30
Location: Hudson Nissan – North Charleston, SC

LORI WEBBER, INDEPENDENT COURT REPORTER

Appearance fee/4 hours	110.00
99 pages sealed original/E-tran ptx/pdf	391.05
Exhibits (total) 35 pages/scanned	8.75
p&h	12.20

Total----------$522.00

Thank you very much,
Lori

SOUTHEASTERN TRANSCRIPT, INC.

I.D. # 57 - 1055589

Garber Reporting Service
Certified Court Reporters
Post Office Box 12348
Columbia, SC 29211
(803) 256-4500

Invoice No. 21916

Please show invoice number on checks and correspondence

Exhibit 9

C. STEVEN MOSKOS, ESQ.
C. STEVEN MOSKOS, P.A.
4000 FABER PLACE DRIVE
SUITE 300
NORTH CHARLESTON, SC 29405

Date: 11/18/2021

11/4/2021 JEFFREY M. THOMAS

2020-CP-08-02455
RITA R. GREENAWALT, et. al. vs. NISSAN NORTH AMERICA, INC.

DEPOSITION OF RITA R. GREENAWALT

ONE DIGITAL COPY OF TRANSCRIPT		572.40
DIGITAL COMPRESSED TRANSCRIPT		74.00
DIGITAL EXHIBIT COPIES		20.75
	Total Due:	667.15

THANK YOU.

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Due & Payable upon receipt

Exhibit 10

ELECTRONICALLY FILED - 2023 Apr 03 10:45 AM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

Steve Moskos

From: noreply@egov.com
Sent: Saturday, August 28, 2021 3:25 PM
Subject: Berkeley County Common Pleas Court - E-Filings Receipt

Payment Receipt Confirmation

Your payment was successfully authorized. Your credit or debit card will not be charged until the Clerk of Court accepts your filing.

Receipt Contact Information

Contact Name Berkeley County - Common Pleas - 08002 - E-Filings

Transaction Summary

Description	Amount
Berkeley County - Common Pleas - 08002 - E-Filings	$30.00
ServiceFee*SC.GOV	$1.74
TOTAL	$31.74

The online price of items or services purchased through SC.GOV, the state's official Web portal, includes funds used to develop, maintain, enhance and expand the service offerings of the state's portal.

Customer Information

Customer Name C. Steven Moskos
Company Name
Local Reference ID F_3942575_733
Receipt Date 8/28/2021
Receipt Time 03:24:36 PM EDT

Payment Information

Payment Type Credit Card
Credit Card Type VISA
Credit Card Number ******9345
Order ID 122426752
Billing Name Costa S Moskos

Billing Information

Billing Address 4000 Faber Place Dr. Suite 300
Billing City, State Charleston, SC
ZIP/Postal Code 29405
Country US
Phone Number 843-763-5297

E

This receipt has been emailed to the address below.

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ELECTRONICALLY FILED - 2023 Apr 03 10:45 AM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

Steve Moskos

From: noreply@egov.com
Sent: Saturday, December 10, 2022 5:02 PM
Subject: Berkeley County Common Pleas Court - E-Filings Receipt

Payment Receipt Confirmation

Your payment was successfully authorized. Your credit or debit card will not be charged until the Clerk of Court accepts your filing.

Receipt Contact Information

Contact Name Berkeley County - Common Pleas - 08002 - E-Filings

Transaction Summary

Payment To Berkeley County - Common Pleas - 08002

Description	Amount
Berkeley County - Common Pleas - 08002 - E-Filings	$30.00
ServiceFee*SC.GOV	$1.74
TOTAL	$31.74

The online price of items or services purchased through SC.GOV, the state's official Web portal, includes funds used to develop, maintain, enhance and expand the service offerings of the state's portal.

Customer Information

Customer Name C. Steven Moskos
Company Name
Local Reference ID F_5208021_733
Receipt Date 12/10/2022
Receipt Time 05:01:38 PM EST

Payment Information

Payment Type Credit Card
Credit Card Type VISA
Credit Card Number ******9345
Order ID 94753533
Billing Name Costa S Moskos

Billing Information

Billing Address	6650 Rivers Ave Suite 210
Billing City, State	North Charleston, SC
ZIP/Postal Code	29406
Country	US
Phone Number	843-763-5297
This receipt has been emailed to the address below.	
Email Address	steve@moskoslawfirm.com

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- ☐ Return Receipt (hardcopy) $ 3.25
- ☐ Return Receipt (electronic) $
- ☐ Certified Mail Restricted Delivery $
- ☐ Adult Signature Required $
- ☐ Adult Signature Restricted Delivery $

Postage
$ .57

Total Postage and Fees
$ 7.82

Greenawalt

Exhibit 13

Postmark Here
12/09/2022

Sent To
Better Business Bureau Attn: C. Hadley

Street and Apt. No., or PO Box No.
2442 Devine St

City, State, ZIP+4®
Columbia, SC 29205

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7021 2720 0000 8253 9835

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INVOICE

ELECTRONICALLY FILED - 2023 Apr 03 10:45 AM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

CLARK BOLEN
COURT REPORTING & VIDEO CONFERENCING

Invoice No.	Invoice Date	Job No.
84268	12/8/2022	53762
Job Date	**Case No.**	
11/15/2022	2020CP0802455	
Case Name		
Rita Greenawalt v. Nissan of America		
Payment Terms		
Due upon receipt		

C. Steven Moskos, Esq.
Law Office of Steven Moskos
6650 Rivers Ave
Suite 210
Charleston, SC 29406

James Green, Melvin Grant, David Crabtree 920.00

TOTAL DUE >>> $920.00

Location of Job : Law Office of Steven Moskos
6650 Rivers Ave
Suite 210
Charleston, SC 29406

Thank you for your business!

You can make a payment by going to https://clarkbolen.com/make-a-payment/

Clark Bolen is going green! Clark Bolen will send out all transcripts & invoices electronically. We will store your original transcript and exhibits until you go to trial. Please contact our office for more information or to request your sealed transcript.

Please call us at 843-762-6294 should you have any questions!

(-) Payments/Credits: 0.00
(+) Finance Charges/Debits: 0.00
(=) New Balance: **$920.00**

Tax ID: 57-1123170

Please detach bottom portion and return with payment.

C. Steven Moskos, Esq.
Law Office of Steven Moskos
6650 Rivers Ave
Suite 210
Charleston, SC 29406

Invoice No. : 84268
Invoice Date : 12/8/2022
Total Due : **$920.00**

Remit To: **Clark Bolen, Inc.**
PO Box 12189
Charleston, SC 29422

Job No. : 53762
BU ID : CHS-MAIN
Case No. : 2020CP0802455
Case Name : Rita Greenawalt v. Nissan of America

ELECTRONICALLY FILED - 2023 Apr 03 10:45 AM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

Steve Moskos

From: noreply@egov.com
Sent: Friday, March 10, 2023 5:11 PM
Subject: Berkeley County Common Pleas Court - E-Filings Receipt

Payment Receipt Confirmation

Your payment was successfully authorized. Your credit or debit card will not be charged until the Clerk of Court accepts your filing.

Receipt Contact Information

Contact Name Berkeley County - Common Pleas - 08002 - E-Filings

Transaction Summary

Payment To Berkeley County - Common Pleas - 08002

Description	Amount
Berkeley County - Common Pleas - 08002 - E-Filings	$30.00
ServiceFee*SC.GOV	$1.74
TOTAL	$31.74

The online price of items or services purchased through SC.GOV, the state's official Web portal, includes funds used to develop, maintain, enhance and expand the service offerings of the state's portal.

Customer Information

Customer Name C. Steven Moskos
Company Name
Local Reference ID F_5462875_733
Receipt Date 3/10/2023
Receipt Time 05:11:08 PM EST

Payment Information

Payment Type	Credit Card
Credit Card Type	VISA
Credit Card Number	******9345
Order ID	141742964
Billing Name	Costa S Moskos

Billing Information

Billing Address	6650 Rivers Ave Suite 210
Billing City, State	North Charleston, SC
ZIP/Postal Code	29406
Country	US
Phone Number	843-763-5297
This receipt has been emailed to the address below.	
Email Address	steve@moskoslawfirm.com

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Certified Mail Fee
$ 3.60

Extra Services & Fees *(check box, add fee as appropriate)*
- [x] Return Receipt (hardcopy) $ 2.85
- [ ] Return Receipt (electronic) $
- [ ] Certified Mail Restricted Delivery $
- [ ] Adult Signature Required $
- [ ] Adult Signature Restricted Delivery $

Postage
$ .71

Total Postage and Fees
$ 7.16

Postmark Here

Greenblatt vs. Nissan N. America

Sent To Hudson Charleston Acquisition

Street and Apt. No., or PO Box No. 7331 Rivers Ave. 600

City, State, ZIP+4® N. Charleston, SC 29418

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7019 1120 0002 2535 3278

ELECTRONICALLY FILED - 2023-Apr-03 10:

ELECTRONICALLY FILED - 2023 Apr 03 10:45 AM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

Steve Moskos

From: noreply@egov.com
Sent: Tuesday, March 7, 2023 3:37 PM
Subject: Berkeley County Common Pleas Court - E-Filings Receipt

Payment Receipt Confirmation

Your payment was successfully authorized. Your credit or debit card will not be charged until the Clerk of Court accepts your filing.

Receipt Contact Information

Contact Name Berkeley County - Common Pleas - 08002 - E-Filings

Transaction Summary

Payment To Berkeley County - Common Pleas - 08002

Description	Amount
Berkeley County - Common Pleas - 08002 - E-Filings	$30.00
ServiceFee*SC.GOV	$1.74
TOTAL	$31.74

The online price of items or services purchased through SC.GOV, the state's official Web portal, includes funds used to develop, maintain, enhance and expand the service offerings of the state's portal.

Customer Information

Customer Name C. Steven Moskos
Company Name
Local Reference ID F_5448794_733
Receipt Date 3/7/2023
Receipt Time 03:36:40 PM EST

Payment Information

Payment Type Credit Card
Credit Card Type VISA
Credit Card Number ******9345
Order ID 141599798
Billing Name Costa S Moskos

Billing Information

Billing Address	6650 Rivers Ave Suite 210
Billing City, State	North Charleston, SC
ZIP/Postal Code	29406
Country	US
Phone Number	843-763-5297
This receipt has been emailed to the address below.	
Email Address	steve@moskoslawfirm.com

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David McCormack ADR, LLC
125-A Wappoo Creek Drive, Suite 101-C
Charleston, SC 29412
Tel: (843) 789-9153
Email: davidmccormackadr@bellsouth.net

Invoice 2023-107
March 20, 2023
Due Upon Receipt

C. Steven Moskos, Esquire
6650 Rivers Avenue, Suite 210
North Charleston, SC 29406

Sarah T. Eibling, Esquire
Nelson Mullins
1320 Main Street, 17th Floor
Columbia, SC 29201

Matter: Rita and James Greenawalt v. Nissan North America

Date	Description	Hours	Rate	Total
2-14-23	Review correspondence	.1	$400.00	$40.00
2-20-23	Telephone conference with Steve Moskos	.5	$400.00	$200.00
2-24-23	Draft correspondence; review correspondence	.2	$400.00	$80.00
3-2-23	Telephone conference with Sarah Eibling	.4	$400.00	$160.00
3-7-23	Review pleadings and submissions	1.3	$400.00	$520.00
3-8-23	Prepare for and mediate case	2.5	$400.00	$1,000.00
	Total	**5.0**		**$2,000.00**

David McCormack ADR, LLC
Invoice 2023-107

Total Amount Due	**$2,000.00**
Steve Moskos' client owes	$1,000.00
Sarah Eibling's client owes	$1,000.00

Make check payable to:
David McCormack ADR, LLC
MAIL PAYMENT TO:
130 Tradd Street
Charleston, SC 29401

Please reference the matter or return this page with payment.

ELECTRONICALLY FILED - 2023 Apr 03 10:45 AM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

ELECTRONICALLY FILED - 2023 Apr 03 10:45 AM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

90 CUMBERLAND ST

Parking receipt

Entry: 12:38 March 8, 2023
Paid: 16:35 March 8, 2023
Elapsed time: 0 day(s),
3 hour(s), 57 minute(s)
Payment $8.00

Credit Card Purchase
Account XXXXXXXXXXXX5969
MOSKOS/ C

If you have a question about
this transaction, contact the
office and mention transaction
#33-2241

Thank you

ELECTRONICALLY FILED - 2023 Apr 03 10:45 AM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

Exhibit 20

Steve Moskos

From: noreply@egov.com
Sent: Friday, March 19, 2021 12:16 PM
Subject: Berkeley County Common Pleas Court - E-Filings Receipt

Payment Receipt Confirmation

Your payment was successfully authorized. Your credit or debit card will not be charged until the Clerk of Court accepts your filing.

Receipt Contact Information

Contact Name Berkeley County - Common Pleas - 08002 - E-Filings

Transaction Summary

Description	Amount
Berkeley County - Common Pleas - 08002 - E-Filings	$30.00
ServiceFee*SC.GOV	$1.74
TOTAL	$31.74

The online price of items or services purchased through SC.GOV, the state's official Web portal, includes funds used to develop, maintain, enhance and expand the service offerings of the state's portal.

Customer Information

Customer Name C. Steven Moskos
Company Name
Local Reference ID F_3512010_733
Receipt Date 3/19/2021
Receipt Time 12:16:18 PM EDT

Payment Information

Payment Type Credit Card
Credit Card Type VISA
Credit Card Number ******9345
Order ID 115498236
Billing Name Costa S Moskos

Billing Information

E

Billing Address	4000 Faber Place Dr. Suite 300
Billing City, State	Charleston, SC
ZIP/Postal Code	29405
Country	US
Phone Number	843-763-5297

This receipt has been emailed to the address below.

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Exhibit 21

ELECTRONICALLY FILED - 2023 Apr 03 10:45 AM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

Steve Moskos

From: Justin Kahn <jskahn@kahnlawfirm.com>
Sent: Friday, March 31, 2023 11:03 AM
To: Steve Moskos
Cc: Pattie H Michel
Subject: Greenawalt Affidavit
Attachments: Kahn, Justin Affidavit Moskos Attorneys Fees.pdf

Dino

Attached is my affidavit in support of your attorneys fees request in this matter. My charge for reviewing the materials and creating this affidavit is $500.00. Please let me know if you have any questions.

Thank you.

Justin S. Kahn
Kahn Law Firm, LLP

p. 843.577.2128
f. 843.577.3538
www.kahnlawfirm.com

Mail
PO Box 31397
Charleston, SC 29417

Office
562 Savannah Highway
Charleston, SC 29407

Adjunct Professor Charleston School of Law
Board Certified
• American Board of Professional Liability Attorneys (Medical)
• National Board of Trial Advocacy (Civil, Civil Practice)
NCA and AAJ Diplomate
SC Supreme Court Certified Mediator

ELECTRONICALLY FILED - 2023 Apr 04 12:11 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

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 **BRIEF IN SUPPORT OF A FULL AWARD OF ATTORNEY'S FEES TO PLAINTIFFS**

This matter comes before the Court on Plaintiffs' Motion for Attorney's Fees. Jim and Rita Greenawalt's Complaint alleged violations of the Magnuson-Moss Warranty Act, the South Carolina Lemon Law, the Unfair Trade Practices Act, and the Dealers Act. These causes of action allow for attorney's fees to be awarded to a prevailing party. Nissan agrees Jim and Rita are the prevailing parties under these statutes for the purposes of awarding attorney's fees. Nissan has also agreed not to contest Plaintiffs' costs and expenses.

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

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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, 416 S.E.2d 619 (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).

STATEMENT OF FACTS

On August 30, 2019, Mr. and Ms. Greenawalt bought a 2019 Nissan Rogue for Ms. Greenawalt from Hudson Nissan of North Charleston. On January 25, 2020, she began experiencing problems with the navigation system being inoperable. See Summary Judgment Affidavit of Jim and Rita Greenawalt filed November 8, 2021, Exhibits 8-10, 12-20, and 34-36. Jim and Rita returned her car at least seven times to Nissan,

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through its agent for warranty repairs, Hudson Nissan. The car was out of service at least 44 days. Affidavit of Jim and Rita Greenawalt filed November 8, 2021 Exhibits 24-33 and Brief in Support of Motion for Summary Judgment filed November 8, 2021 Exhibit C. These facts are undisputed by Nissan.

Jim and Rita tried to have the vehicle repaired and they sought to have Nissan repurchase the vehicle. Nissan refused to repurchase the car. To get relief, Jim and Rita were forced to hire an attorney. The details of counsel's representation are contained in the affidavit of C. Steven Moskos.

SOUTH CAROLINA LEMON LAW PROCESS

A Lemon Law action is different than most other claims. It requires extensive work that must be completed prior to filing suit. These steps increase the fees charged prior to suit. Nissan is aware of these statutorily mandated pre-suit requirements.

The South Carolina Lemon Law, SC Code 56-28-10 *et seq.*, sets forth a procedure whereby a consumer who buys a nonconforming vehicle must do the following:

1. Take the vehicle to an authorized repair facility for repair at least three times.

2. If the vehicle continues to malfunction, the consumer is supposed to contact the manufacturer

3. If the vehicle continues to malfunction, the consumer is to notify the manufacturer by certified mail of the nonconformities in the vehicle and give the manufacturer an opportunity for a final repair attempt. SC Code Ann. §56-28-50(B) and (E).

4. If the vehicle continues to malfunction, whether the manufacturer exercises its final repair opportunity, the consumer must participate in the manufacturer's informal dispute settlement mechanism (IDSM). This is an arbitration process which is non-binding on the consumer. SC Code Ann. §56-28-60[1].

5. After the IDSM process, the consumer can file suit.

[1] This process is also required by the Magnuson-Moss Warranty Act 15 U.S.C. 2310(a), another claim made by Jim and Rita.

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6. Assuming success, the consumer must transfer ownership of the vehicle to the manufacturer. The manufacturer must pay the consumer the full purchase price as delivered minus a reasonable allowance for mileage. The formula is set forth in the statute. SC Code Ann. §56-28-40.

7. The consumer may also petition the court for his/her attorney's fees to be paid by the manufacturer. SC Code Ann. §56-28-50.

1. THE POLICY UNDERLYING SOUTH CAROLINA LAW FAVORS THE AWARD OF COSTS AND ATTORNEY FEES.

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 and to make sure that competent counsel will be willing to undertake these matters on behalf of consumers. Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 691 S.E.2d 135 (2010).

Allowing plaintiffs who successfully pursue an action under fee shifting statutes to recover their attorney's fees encourages individuals to pursue litigation to protect the public interest. Similarly, requiring unsuccessful defendants to pay the plaintiff's attorney's fees discourages tradesmen from engaging in unfair methods of competition and unfair and deceptive acts in the conduct of trade or commerce, thereby also enforcing the purpose of the statute. Liberty Mut. Ins. Co. v. Employee Resource,176 F. Supp. 2d 510 (D.S.C. 2001).

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Furthermore, 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).

This policy is well stated in Jordan v Transnational Motors, 212 Mich App 94; 537 NW2d 471 (1995).[2]

The Jordan Court explained:

> In consumer protection as this, the monetary value of the case is typically low. If courts focus only on the dollar value and the result of the case when awarding attorney fees, the remedial purposes of the statutes in question will be thwarted. Simply put, if attorney fee awards in these cases do not provide a reasonable return, it will be economically impossible for attorneys to represent their clients. Thus, practically speaking, the door to the courtroom will be closed to all but those with either potentially substantial damages, or those with sufficient economic resources to afford the litigation expenses involved. Such a situation would indeed be ironic: it is but precisely those with ordinary consumer complaints and those who cannot afford their attorney fees for whom these remedial acts are intended.

Jordan v Transnational Motors, 212 Mich App 94; 537 NW2d 471, 475 (1995).

South Carolina follows this policy. See Taylor v. Medenica, 331 S.C. 575, 582, 503 S.E.2d 458, 462 (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).

This matter involves a relatively set and relatively small amount of money, the

[2] Jordan deals with the Magnuson-Moss Warranty Act (MMWA), a federal warranty statute. It is still a leading case on the policy reasons for fee shifting statutes. The MMWA statute dealing with attorney's fees is identical to the SC Lemon Law provision. 15 U.S. Code § 2310(d)(2) reads "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."

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Rogue's "full purchase price as delivered". To Jim and Rita, it is a great deal of money. They are attempting to recover what they paid for the car. If Jim and Rita have to pay by the hour for the services rendered in light of Defendant's wrongful refusal to repurchase the car under the Lemon Law, for providing additional written notice of the car's defects, for requesting non-binding arbitration through the BBB, for filing suit, for contesting Defendant's Answer, for preparing discovery requests, for filing several motions, for reviewing the documents in the file, and for preparing for trial, they will not receive any reimbursement for their loss. This result is contrary to the purpose of the statute, helping those that cannot afford to pursue a consumer claim.

Awarding less than the full fee requested also tends to cause other Plaintiffs to forego their rights against car manufacturers as they do not see any benefit to them for pursuing such actions. If a consumer is not able to get the timely return of his money, he is likely to get rid of the vehicle as quickly as possible. It is also likely that he will not tell the buyer about the problem with the vehicle. Thus, another consumer will have to deal with the nonconformities. At that point, the manufacturer's warranty will probably not apply, and the subsequent consumer will be stuck with large repair bills and no recourse. Defendant, and those like it, will be able to produce nonconforming vehicles and then disregard the laws that require them to provide what they promised whenever they feel so inclined. This hurts consumers and their employers who lose the consumer's productivity because the consumer has to waste time trying to get his new car fixed. The Court should find that the purpose of the above fee shifting statutes is promoted by the imposition of Plaintiffs' full attorney's fees upon Defendant.

2. **JIM AND RITA ARE ENTITLED TO A FULL AWARD OF ATTORNEY'S FEES**

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BASED ON THE CRITERIA USED BY THE SOUTH CAROLINA COURTS.

"A statutory award of attorney['s] fees is typically authorized under what is known as a fee shifting statute, which permits a prevailing party to recover attorney['s] fees from the losing party." Layman v. State, 376 S.C. 434, 452, 658 S.E.2d 320, 329 (2008). Here, Jim and Rita are entitled to a full award of attorney's fees as there are four applicable statutes which allow for the award of attorney's fees, the Magnuson Moss Warranty Act, the Lemon Law, the Unfair Trade Practices Act, and the Dealers Act.[3]

"[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

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[3] 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 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.)

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statute." Id. at 452, 658 S.E.2d at 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.

(1) The Nature, Extent and Difficulty of the Legal Services Rendered.

This case by its very nature was not a simple case. Counsel had to investigate the background and history of the Nissan Rogue. Research had to be done regarding whether there are other cases of this model vehicle having issues with its navigation system. Documents related to the repairs to Jim and Rita's vehicle, as well as the purchase and any other service, also had to be reviewed. The issues involved complicated software. Based on Nissan's defenses, expert help was needed to understand how to approach this case.

The SC Lemon Law does not have any cases interpreting it. There is almost always a dispute and debate over the language of the statute, especially related to rebates, negative equity, service contracts, and GAP insurance. This case contained some of those issues. Counsel had to be prepared to meet those arguments.

The SC Lemon Law and the Magnuson-Moss Warranty Act also have several pre-suit requirements (see above) such as written notice of the problems, a final repair opportunity, and participation in the manufacturer's informal dispute settlement mechanism (nonbinding arbitration). These statutorily mandated requirements force a Plaintiff to have his case ready to go to trial before suit is filed. Knowing this, a Plaintiff

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has to be ready to prove his case from the start.

Defendant will surely argue this case was not complicated or difficult. One only need review Nissan's 12 affirmative defenses and its brief opposing Plaintiffs' Motion for Summary Judgment to see that Nissan took this matter seriously and wished to prevail against Jim and Rita. These defenses included everything from denying any nonconformities in the car, to accusing Jim and Rita of failing to follow the applicable statutes' requirements, to Nissan having allegedly fixed the vehicle under the warranty, to third parties being responsible for the defects, to external and environmental issues affecting the voice guidance system, to Jim and Rita's phone interfering with the system. Even though Jim and Rita requested the facts to support these defenses, Nissan did not supply them. Jim and Rita had to overcome all of these defenses to succeed.

Additionally, the laws governing this transaction are very complicated and technical. There are federal laws, state laws, and common law dealing with this consumer transaction. There are many traps for the unwary. Failure to understand all of these laws would seriously jeopardize Jim and Rita's likelihood of a successful resolution of this case.

Lastly, Plaintiffs' counsel is well aware of Defendant's counsel's strong litigation and trial skills. Plaintiffs' counsel had to be very prepared to meet the expected defense from Nissan's counsel.

Nissan will argue that it is committed to customer satisfaction, that it tried to repurchase this vehicle even before litigation started, and that Jim and Rita's counsel refused to settle the case to increase the attorney's fees Nissan would have to pay. As will be discussed later, while Nissan fell on its own sword regarding repurchasing the vehicle, it only did so after Jim and Rita retained counsel and definitive proof of liability

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was shown.

Nissan has yet to address the fact that Jim and Rita had asked Nissan to repurchase this vehicle prior to hiring counsel, yet Nissan refused. Nissan cannot say that it is committed to customer satisfaction and resolving this problem with Jim and Rita while simultaneously refusing to repurchase a vehicle it knows to be defective. Nissan's refusal to pay reasonable attorney's fees under the Lemon Law placed Jim and Rita on the horns of a dilemma. They had to decide whether to except Nissan's insufficient attorney's fee proposal, in which case they would have to pay the remaining attorney's fee balance, or they could proceed to trial, in which case they had to prepare fully. If this case were called for trial, as it was on December 5, 2022 and on April 3, 2023, and counsel said Jim and Rita were not prepared for trial because they had been trying to settle the case with Nissan, the court might have simply said, "Too bad. You knew the case was coming up for trial. You should have been ready. Call your first witness". Since Nissan refused to comply with the law, Jim and Rita chose to be prepared for trial.

(2) The Time and Labor Necessarily Devoted to the Case.

As stated by the United States Supreme Court,

> The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.
> Hensley v Eckerhart, 461 US 424, 103 S Ct 1933, 1939, 76 L Ed 2d (1983).

There is a "'strong presumption' that the lodestar represents the 'reasonable' fee,..." City of Burlington v. Dague, 505 U.S. 557, 112 S.Ct. 2638, 120 L.Ed.2d 449 (1992) As the Hensley Court's opinion underscored, "[w]here a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee." Id., at 1940.

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"It must also be kept in mind that lawyers are not likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee. It would therefore be the highly atypical civil rights case where plaintiff's lawyer engages in churning. By and large, the court should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case; after all, he won, and might not have, had he been more of a slacker." Moreno v. City of Sacramento, 534 F.3d 1106 (9th Cir. 2008.)

Counsel has spent 215.4 hours working on this case through March 30, 2023. (An extensive description of the time spent on this case is attached to the affidavit of C. Steven Moskos and in the Time Records filed with the Clerk of Court.) Based on counsel's rate of $450.00 per hour, Plaintiffs are entitled to an award of at least ninety-six thousand nine hundred thirty and 00/100 dollars ($96,930.00) as reasonable attorney's fees through March 30, 2023. Additional time has been incurred since then and should be included in the compensable time. Jim and Rita's counsel, in his Time Records and his Affidavit of Attorney's Fees, has laid out extensively the work done in this case. The time spent by Jim and Rita's counsel has been reasonable, necessary, and not duplicative. Time was properly spent prior to filing suit to satisfy the pre-litigation requirements imposed by Nissan, i.e. written notice of the nonconformity, an additional opportunity to repair the car, and attempting to utilize the BBB arbitration process. As can be seen from the time records, counsel's efforts to resolve this matter were reasonable and conservative, especially in light of Nissan's stubborn and unreasonable defense of the case.

Nissan stubbornly refused to include sufficient attorney's fees in settlement discussions. Nissan's position ignored the reality that additional time would be incurred

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by council to finish negotiating the release, keeping track of the turn in process over approximately 60 days, and participating in the turn in of the vehicle. Additionally, on July 9, 2021, Nissan demanded that confidentiality be part of the release. Confidentiality of the resolution of this matter would always cause settlement negotiations to fail because such a clause would impose a taxable consequence on Jim and Rita. See Amos v. Commissioner, 86 T.C.M. 663 (T.C. 2003). Regardless, Nissan maintained throughout this matter that it was not going to pay enough in attorney's fees to resolve this matter. Thus, Nissan left me no choice but to prepare for trial.

(3) The Professional Standing of Counsel.

Plaintiffs' counsel is a respected member of the South Carolina Bar and Charleston Bar. He receives referrals of Lemon Law, warranty, and auto fraud type cases from other attorneys across South Carolina. Additionally, he has written and lectured on the subject of warranty law. His article has appeared in a national Paralegal magazine. He has lectured at various continuing legal education programs in South Carolina on Consumer Law. (See Plaintiffs' Counsel's Affidavit of Attorney's Fees.) He has also been a guest lecturer on consumer law and the Unfair Trade Practices Act at the University of South Carolina School of Law for the last several years.

(4) The Contingency of Compensation.

While "contingency of compensation" is an appropriate factor considered in awarding attorney's fees, the contingency to be considered is whether the party on whose behalf the services were rendered will be able to pay the attorney's fee if an award is not made. Glasscock v. Glasscock, 304 S.C. 158, 403 S.E.2d 313 (1991). As is made clear from their affidavit, Jim and Rita would not be able to afford the attorney's fees generated

by this litigation.

(5) The Fee Customarily Charged in the Locality for Similar Legal Services.

Few attorneys regularly handle Lemon Law cases in South Carolina. Counsel has been litigating these kinds of cases for nearly thirty-five years. A review of the affidavits of Jay Masty and Justin Kahn show that an hourly fee of $450 per hour for this kind of case is reasonable in Berkeley County and across South Carolina. See Affidavits filed April 3, 2023.

(6) The Beneficial Results Obtained.

Clearly, Plaintiffs' counsel provided a beneficial result. Prior to counsel's involvement, Jim and Rita were being ignored. Because they hired counsel, Jim and Rita will now receive a more beneficial result than if they had settled pre-suit or even if they had gone to trial on just their Lemon Law claim. Nissan has now agreed to return all their money paid for this vehicle under the Lemon Law and more money on top of that to resolve all their other claims. Had Jim and Rita gone to trial, the jury would have been instructed to reduce the full amount that Jim and Rita had paid by the amount of the reasonable allowance for mileage for Jim and Rita's use of the vehicle. The Court may have also reduced their claim by the amount of the rebate. This is not a position accepted by Plaintiffs, but it is a possibility.

Jim and Rita have obtained all the relief they sought and more. Thus, the results obtained were "excellent" and they "should recover a fully compensatory fee." Hensley, 461 U.S. at 435. Jim and Rita do not expect Nissan to dispute this factor.

3. NISSAN CANNOT COMPLAIN ABOUT THE AMOUNT OF ATTORNEY'S FEES REQUESTED AS NISSAN'S ACTIONS CAUSED THOSE FEES TO BE HIGH.

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If a party chooses to take the risk that it will end up with a significant fee application, it cannot be heard to complain when the event comes to pass. "Thus, petitioners could have avoided liability for the bulk of the attorney's fees for which they now find themselves liable by making a reasonable settlement offer in a timely manner...' The government cannot litigate tenaciously and then be heard to complain about the time necessarily spent by the plaintiff in response. '" City of Riverside v. Rivera, 477 U.S. 561, 580 n.11, 106 S. Ct. 2686, 91 L. Ed. 2d 466 (1986)(citation omitted). A party may choose its tactics, but if it chooses to litigate intensely–and expensively–it must bear the consequences of that decision. See. e.g., Postow v. Oriental Building Ass'n., 455 F. Supp. 781, 791 (D.D.C. 1978), aff'd in relevant part, rev'd in part on other grounds, Postow v. OBA Fed. Sav. and Loan Ass'n, 627 F.2d 1370, (D.C. Cir. 1980)(reviewing TILA claim); Fleet Inv. Co. v. Rogers, 620 F.2d 792, 793 (10th Cir. 1980) (reviewing odometer fraud case). "The borrower's counsel did not inflate this small case into a large one; its protraction resulted from the stalwart defense. And although defendants are not required to yield an inch or to pay a dime not due, they may by militant resistance increase the exertions required of their opponents and thus, if unsuccessful, be required to bear that cost." McGowan v. King, Inc., 661 F.2d 48, 51 (5th Cir. 1981) (truth in lending).

Nissan has taken the "Stalingrad defense" approach to this case. It fought on every point as if it was fighting from house to house and rock to rock. Our Courts have also taken the position that if the opposing party causes attorney's fees to increase, that party is responsible for paying for that work. See Rish v. Rish By & Through Barry, 296 S.C. 14, 16, 370 S.E.2d 102, 104 (Ct. App. 1988) (holding that the family court abused its discretion in failing to award a more adequate fee to counsel for the wife); id. at 17, 370

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S.E.2d at 104 (Bell, J., concurring) (rejecting the husband's contention that he could not afford to pay the wife's attorney's fees for the frivolous action he brought and explaining that "[t]his court does not sit to relieve self-inflicted wounds").

There is a corollary to the duty to defend to the utmost--the duty to take care to resolve litigation on terms that are, overall, the most favorable to a lawyer's client. Although tension exists between the two duties, they apply concurrently. When attorneys blindly pursue the former, their chosen course of action may sometimes prove to be at the expense of the latter. Lipsett v. Blanco, 975 F.2d 934 (1st Cir. 1992).

In this case, Nissan chose to ignore Jim and Rita before they hired an attorney. After Jim and Rita hired counsel, Nissan made nuisance value offers. Jim and Rita were forced to file suit and conduct discovery. They tried to end the case early by filing a Motion for Summary Judgement. Nissan intensely fought that motion by blaming Jim and Rita's cell phones for interfering with radio signals, blaming obstructions in the environment, blaming TomTom, a provider of map software, and claiming the defect was not covered by the warranty. Plaintiffs' motion was denied, forcing Plaintiffs' counsel to have to work harder. Jim and Rita took the deposition of Hudson Nissan' 30(b)(6) representative, yet Nissan refused to resolve the case. Jim and Rita had to depose the Hudson Nissan mechanics who worked on the vehicle. Motions had to be filed to obtain discovery which was outstanding for approximately one year. A motion had to be filed to compel mediation. A motion had to be filed for sanctions as Judge McCoy's Order regarding Plaintiffs' Motion to Compel was not followed.

While Nissan eventually offered to repurchase the Rogue, the price offered was less than the Lemon Law required. Finally, Nissan agreed to repurchase the Rogue.

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Throughout this process, Nissan refused to pay the attorney's fees which had accrued. Nissan tried to use the smallest carrot possible to coax Jim and Rita into settling the case. Instead of complying with the South Carolina Lemon Law, it decided to try to wear Jim and Rita out. There must be some cost associated with this tactic when their defense ultimately fails. An award of full attorney's fees is that cost.

4. THE COURT SHOULD NOT "MONDAY MORNING QUARTERBACK" THE PARTIES' SETTLEMENT NEGOTIATIONS.

Nissan is expected to argue two reasons why the court should penalize Jim and Rita for proceeding with their case when Nissan refused to pay their reasonable attorney's fees. First, Nissan may claim Jim and Rita failed to negotiate pre-suit or made outrageous demands to settle so Nissan was not required to accept those demands or even consider them. Conversely, it may argue that it made reasonable offers that should have been accepted. These arguments are Nissan's attempt to have the Court "Monday morning quarter back" settlement negotiations to have Jim and Rita's fees reduced. In N.A.A.C.P. v. Town of E. Haven, 259 F.3d 113 (2d Cir. 2001), the Second Circuit dealt with this issue saying that settlement should not be driven by fear of the Court's refusal to award fees.

> [T]he NAACP was not required to make that decision amidst ongoing negotiations based on a guess as to whether six years later a district court would find that the negotiations would have been fruitful had they continued. A plaintiff, concerned that a court will refuse its claim for legal fees after successful litigation because the court concludes that pre-litigation negotiations probably would have succeeded, will likely decide whether to bring suit based on that fear rather than its best judgment.

The Second Circuits also held that "the parties' closeness to settlement in informal negotiations, or a 'willing [ness]' to reach an agreement are, together or alone, insufficient

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grounds for declining to award attorney's fees incurred in subsequent litigation."[4]

This analysis comports with the policy adopted in South Carolina that fee shifting statutes are designed to make sure a consumer has an economically feasible private right of action and to make sure that competent counsel will be willing to undertake these matters on behalf of consumers. Adoption of Nissan's position would frighten consumers who might be scared the court would not fully compensate them for their attorney's fees, placing an additional burden on them to pay for a manufacturer's defective car. It would also cause qualified attorneys to hesitate to help injured people for fear that they would not be fully compensated for their efforts. Thus, a manufacturer would be able to make defective products without worrying about being held responsible for its defective vehicles. Nissan's position subverts the purpose of fee shifting statutes.

Second, Nissan may argue Jim and Rita should have accepted the BBB award and submitted their attorney's fee petition to the BBB. This argument fails because Nissan's rules at the BBB specifically state that attorney's fees are excluded from the BBB's consideration. (See Affidavit of C. Steven Moskos Exhibit 2, p. 3.)

Nissan cannot show any bad faith on Jim and Rita's part. All it can say is that they should have settled for what Nissan was offering, even though that offer did not fully compensate them. The Court should reject Nissan's invitation to Monday morning quarterback the settlement negotiations between the Parties. Nissan wishes for the Court

[4] The Court further stated, "We hold that informal negotiations alone cannot establish bad faith for purposes of Ortiz. Otherwise, in attempting to limit fee awards, defendants could argue that informal negotiations in the run up to litigation show that the litigation was unnecessary and therefore in bad faith. Permitting such an argument to prevail would be precisely contrary to the purpose of Ortiz: to prohibit the use of informal negotiations as a basis for reducing fee awards in order to avoid just this sort of hindsight scrutiny of a litigant's tactical decisions that would 'improperly dissuade []' 'plaintiffs with meritorious claims . . . from pressing forward with their litigation.' Ortiz, 980 F.2d at 140-41." N.A.A.C.P. v. Town of E. Haven, 259 F.3d 113 (2d Cir. 2001).

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to do what it could not, force Jim and Rita to take less than the law allows. The Court should decline to do so.

5. SOUTH CAROLINA COURTS UPHOLD ATTORNEY FEE AWARDS THAT EXCEED THE ACTUAL DAMAGES AWARDED TO THE CONSUMER.

Defendants frequently attempt to diminish the value of consumer attorneys' efforts by citing the relatively modest amount of a typical settlement viz-a-viz the attorney fees and costs expended to reach a satisfactory result. Our Supreme Court rejected this approach in Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989)[5] and Taylor v. Medenica, 331 S.C. 575, 503 S.E.2d 458 (1998)[6] ("[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).

Courts across the country have been nearly unanimous in their emphasis on the need to compensate consumer attorneys fully for their efforts, irrespective of relatively small amounts in controversy. For example, the Ohio Supreme Court in Bittner v. Tri-County Toyota, Inc., 569 NE 2d 464 (Ohio 1991), stated:

> At the outset, we reject the contention that the amount of attorney fees awarded pursuant to R.C. 1345.09(F) must bear a direct relationship to the dollar amount of the settlement, between the consumer and the supplier...In order for private citizens to obtain redress under the Act, they must first be able to obtain adequate legal representation. Private attorneys may be unwilling to accept consumer cases if the dollar amount they are permitted to bill their adversary is limited to the dollar amount of the recovery, especially since monetary damages in many instances under the Act are limited to $200. An attorney may expend inordinately large amounts of time and energy pursuing a claim that reaps relatively small monetary benefits for a prevailing plaintiff. We agree with the observation of the United States

[5] 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.

[6] Affirming an award of $500,000 in attorney's fees and $24,068 in costs on a verdict that when trebled equaled $108,726.

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Supreme Court when it said:

> A rule of proportionality would make it difficult, if not impossible, for individuals with meritorious * * * claims but relatively small potential damages to obtain redress from the courts. Riverside v. Rivera (1986), 477 U.S. 561, 578, 106 S.Ct. 2686, 2696, 91 L.Ed.2d 466.

> In addition to addressing an individual wrong, pursuing a claim under the Act may produce a benefit to the community generally. A judgment for the consumer in such a case may discourage violations of the Act by others. Prohibiting private attorneys from recovering for the time they expend on a consumer case undermines both the purpose and the deterrent effect of the Act. Id., at 465-466.

The position of the Ohio Supreme Court and the United States Supreme Court, as stated above, is the rational approach to justice for wronged consumers. It is also an effective means of accomplishing non-monetary objectives such as protecting the public by encouraging competent legal counsel to represent consumers and in discouraging violations of remedial statutes.

A number of other courts (using their own consumer statutes) have held that attorney fees may exceed the actual or principal damages.[7] As the Utah Supreme Court stated in Dixie State Bank v Bracken, 764 P.2d 985, 990 (Utah 1988) [quoting in part Cabrera v Cottrell, 694 P.2d 622, 615 (Utah 1985)]:

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[7] See, e.g., Osborn v. Sinclair Refining Co., 207 F.Supp. 856 (D.Md.1962) (fee award of $14,000, damages of $325); Knutson v. Daily Review, Inc., 479 F. Supp. 1263 (N.D.Cal.1979) (fees of $54,079; nominal damages of $6); Totz v Continental Du Page Accura, 602 N.E.2d 1374 (Ill. App.2 Dist. 1992) (Appeals Court upheld $17,625 attorney fee award based upon state consumer protection statute where compensatory damages were $407.50); Keyes v Bollinger, 640 P2d 1077, 1084 (Wash. App. 1982) ("an award [of attorney fees] is not unreasonable merely because it exceeds the damages awarded under the Consumer Protection Act"); Steiger v. J.S. Builders, Inc., 663 A2d 432, 436 (Conn App. 1995) (trial court abused its discretion where it found evidence that consumers attorney fees were in the amount of $22,000.00 and then disallowed more than $7,500.00 on the basis that the larger amount would almost equal the damages being awarded under the Connecticut Unfair Trade Practices Act [CUTPA] to the consumer).

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> It is a simple fact in a lawyer's life that it takes about the same amount of time to collect a note in the amount of $1,000.00 as it takes to collect a note of $100,000.00. As stated in Cabrera:
>
> > The total amount of attorney fees awarded in this case cannot be said to be unreasonable just because it is greater than the amount recovered on the contract. The amount of damages awarded in a case does not place a necessary limit on the amount of attorney fees that can be awarded.

As our Court of Appeals recognized in Ducworth v. Neely, 319 S.C. 158, 163, 459 S.E.2d 896, 899 (Ct. App. 1995), a critical factor in determining the appropriate amount of fees is the remedial purpose underlying the Act. Ultimately, Nissan was the cause of the litigation at issue. It is reasonable and just that Nissan should bear the burden of the attorney's fees necessarily expended in vindicating Plaintiffs' rights even if those fees are more than Plaintiffs' recovery. See, e.g., Dixie State Bank v Bracken, 764 P2d 985, 989 (Utah 1988) (one appropriate factor in determining a reasonable fee is 'the necessity of initiating a lawsuit to vindicate the rights under a contract.').

6. JIM AND RITA ARE ENTITLED TO RECOVER COSTS AND FEES INCURRED IN PURSUING THEIR FEE PETITION.

It is well established that an attorney is entitled to recovery of costs and fees incurred in litigating a fee petition. See, e.g., Knopp v Johnson, 712 F Supp 571, 592-593 (1989) (citing Northcross, 611 F.2d at 631; Weisenberger v. Huecker, 593 F.2d 49, 53-54 (6th Cir.), cert. denied, 444 U.S. 880, 100 S.Ct. 170, 62 L.Ed.2d 110 (1979)). Indeed, plaintiffs' counsel may even hire outside counsel to represent him in litigating a fee petition. Id., at 593.

In the instant case, Nissan has refused to pay Jim and Rita's attorney's fees. Plaintiffs' counsel has had to file a motion, to prepare this detailed brief, to provide the court an itemized statement of time spent on this matter, to provide an itemized statement

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of costs and expenses incurred in this case, to prepare an affidavit of attorney's fees, to obtain an affidavit from Jim and Rita, to obtain an affidavit from Jay Masty and Justin Kahn, to review the file for various exhibits, and to appear before the Court to argue the Motion for Attorney's Fees. This has caused additional time to be incurred and should be compensated appropriately.

7. PLAINTIFF IS ENTITLED TO REVIEW DEFENSE COUNSEL'S TIME RECORDS IF DEFENDANT OBJECTS TO PLAINTIFFS' REQUEST FOR ATTORNEY'S FEES.

Information regarding the hours and hourly rates expended by an opponent's counsel in litigation is relevant to determination of the reasonableness of attorney fees. Mitroff v. Xomox Corp., 631 F. Supp. 25 (S.D. Ohio 1985)(Plaintiff's counsel was entitled to inquire into the number of hours expended and the rates charged by defense counsel.)

Similarly, in Black v. Lojac Enterprises, Inc., 117 F. 3d 1420 (6th Cir. 1997), the Court stated that "undoubtedly, where the issue of the reasonableness of time expended is fully joined, the amount of time spent by the opposing party is a relevant benchmark as to the amount of time reasonably required."

One purpose of permitting such discovery of opposing counsel's fees is to demonstrate the time required to respond to the tactics of Defendants' counsel in this litigation. Mitroff, supra at 28.

At least one court has held that it is an abuse of discretion to refuse to allow discovery as to defense counsel's hours and fees when defendant is challenging the reasonableness of plaintiff's hours and fees. Henson v.Columbus Bank & Trust Co., 770 F.2d 1566, 1575 (11th Cir. 1985). Defendant's own hourly rate and time expended are among the factors which the Court can consider in assessing the reasonableness of

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plaintiff's counsel's time. See Chambless v. Masters, Mates & Pilots Pension Plan, 885 F.2d 1053, 1059 (2d Cir. 1989); Gaines v. Dougherty County Bd. of Ed., 775 F.2d 1565, 1571 n.12 (11th Cir. 1985); Duchscherer v. W.W. Wallwork, Inc., 534 N.W.2d 13, 19 (N.D. 1995); Bayless v. Irv Leopold Imports, Inc., 659 F. Supp. 942 (D. Or. 1987); Real v. Continental Group, 116 F.R.D. 211, 213 (N.D. Cal. 1986); Mitroff v. Xomox Corp., 631 F. Supp. 25, 28 (S.D. Ohio 1985); Blowers v. Lawyers Co-op Publishing Co., 526 F. Supp. 1324, 1325-27 (W.D.N.Y. 1981); Naismith v. Professional Golfers Ass'n, 85 F.R.D. 552, 562 (N.D. Ga. 1979); McPherson v. School Dist. No. 186, 465 F. Supp. 749, 758-59 (S.D. Ill.1978); Stasny v. Southern Bell Tel. & Tel. Co., 77 F.R.D. 662 (W.D.N.C. 1978). Murray v. Stuckey's, Inc., 153 F.R.D. 151 (D. Iowa 1993).

If Defendant argues that the time spent on this case was not reasonable or that the fees are too high, Plaintiffs request that the Court order Defendant to turn over the time records of its attorney(s) so that a comparison may be made.[8] Defendant's counsel includes Sarah Eibling, any other attorneys at her firm, and any attorneys employed or paid by Nissan, whether in house or outside counsel, to work on this matter. While not definitive, this information may give the Court some idea of what a reasonable amount of the time, attorney's fees, and costs are for this case.

Based on prior experience, Plaintiffs' counsel anticipates that Nissan's counsel's hourly rate will be substantially lower than Jim and Rita's counsel's hourly rate. The obvious reason is that Nissan's counsel has a repeat client while Plaintiffs' counsel will likely represent Jim and Rita only one time. Thus, Nissan's counsel can make more

[8] Plaintiff would seek only the time spent on the case, a brief description of the work performed by Defendant's counsel, and the rate charged by Defendant's counsel. Plaintiff does not seek any information which is protected by the Attorney-Client privilege.

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money over time, whereas Jim and Rita's counsel, on a regular basis, must find new clients after the conclusion of each case. Furthermore, large defense firms enter contracts with manufacturers agreeing to handle warranty matters at a lower rate so the firms can obtain manufacturers business regarding products liability claims and other matters where the firms can charge much higher rates. Thus, while the number of hours defense counsel has worked may be helpful, counsel's rate may not be.

RELIEF REQUESTED

In sum, Jim and Rita is seeking recovery of the following:

TIME:	
C. Steven Moskos 215.4 hours x $450.00/hour May 14, 2020 through March 30, 2023	$ 96,930.00
COSTS	
TOTAL COSTS & EXPENSES	$ 4,891.72
TOTAL TIME and COSTS	**$101,821.72**

In addition to the foregoing amounts, Jim and Rita seek the costs and fees incurred from March 31, 2023 through the conclusion of this matter. Between March 31 and April 2, counsel spent an additional 24.7 hours not reflected in his time records but will be submitted to the court at the hearing. Additionally, counsel has incurred time in preparing this brief and will incur time traveling to and from Moncks Corner at Nissan's request for an in-person hearing, time arguing this motion, and time spent through the date of turning in the vehicle. This time should be compensated.

CONCLUSION

Jim and Rita request the Court award them full attorney's fees as Nissan has been the driver of those fees. It had the opportunity prior to suit to settle the case with Jim and Rita before counsel was hired. Nissan then had numerous opportunities to settle for a

reasonable sum. It chose not to do so. Instead, it required Jim and Rita to incur substantial costs over a long period of time and to prepare for trial. Jim and Rita should not be punished or penalized because Nissan refused to abide by the law.

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Charleston, South Carolina
April 4, 2023

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

JESSICA GIFFORD, Plaintiff,	§	
vs.	§	CIVIL ACTION NO. 4:16-cv-03136-MGL
HORRY COUNTY POLICE DEPARTMENT, and SAUNDRA RHODES, Defendants.	§	

MEMORANDUM OPINION AND ORDER
GRANTING PLAINTIFF'S MOTION FOR ATTORNEYS' FEES AND COSTS, AS PROVIDED HEREIN

I. INTRODUCTION

Plaintiff Jessica Gifford (Gifford) filed this lawsuit in the Horry County Court of Common Pleas against Defendants the Horry County Police Department (HCPD) and Saundra Rhodes (Rhodes) (collectively, Defendants), along with several other defendants, who have since been dismissed.

Rhodes was the Chief of HCPD during the relevant time period. Gifford alleged violations of her constitutional rights against Rhodes, 42 U.S.C. § 1983, and a state law claim of negligence/gross negligence against HCPD.

Defendants removed the case to this Court. The Court has federal-question jurisdiction over Gifford's federal claim pursuant to 28 U.S.C. § 1331, and supplemental jurisdiction over her state claim in accordance with 28 U.S.C. § 1367.

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Pending before the Court is Gifford's motion for attorneys' fees and costs. Having considered the motion, the response, the replies, the record, and the relevant law, the Court will grant Gifford's motion for attorney fees and costs, as modified herein.

II. FACTUAL AND PROCEDURAL HISTORY

Gifford's negligence/gross negligence claim against HCPD, as well as her constitutional claim against Rhodes, relate to the illegal and inappropriate actions of HCPD's former detective, Troy Allen Large (Large).

The jury in this matter rendered a verdict in favor of Gifford on both her negligence claim against HCPD, in the amount of $500,000, and her constitutional claim against Rhodes, in the amount of one dollar.

Gifford subsequently filed a motion for attorneys' fees and costs, Defendants filed a response in opposition to the motion, and Gifford filed a reply in support of the motion. The motion seeks attorneys' fees and costs only as to Gifford's constitutional claim against Rhodes.

Thereafter, Gifford filed documentation of her costs, Defendants filed their objections, and Gifford filed a reply. The parties also briefed the Court on the untimeliness of Gifford's motion.

The Court, now having been fully briefed on all the relevant issues, is prepared to adjudicate Gifford's motion.

III. DISCUSSION AND ANALYSIS

A. Whether Gifford is entitled to her request for an award of attorneys fees

1. Whether the Court will excuse the untimeliness of Gifford's motion

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Before the Court considers the merits of Gifford's request for attorneys' fees, it must first deal with the untimeliness of it.

Federal Rule of Civil Procedure 54 governs motions for attorneys' fees as well as the time within which such motions for fees must be filed. Rule 54(d)(2)(B) provides that, "[u]nless a statute or a court order provides otherwise, the motion [for attorney fees] must[ ] be filed no later than [fourteen] days after the entry of judgment." Fed. R. Civ. P. 54(d)(2)(B).

Nevertheless, "[t]he . . .[C]ourt may, for good cause, extend the . . . deadline 'on motion made after the time has expired if the party failed to act because of excusable neglect.'" *SlepTone Entm't Corp. v. Karaoke Kandy Store, Inc*., 782 F.3d 313, 316 (6th Cir. 2015) (quoting Fed. R. Civ. P. 6(b)(1)(B)); *see also Allen v. Murph*, 194 F.3d 722, 723-24 (6th Cir. 1999) (noting that, when a party failed to timely file its motion for attorney fees and failed to request an enlargement of the time period before such time expired, "the district court could permit a late filing only if the delay was the result of 'excusable neglect.'" (quoting Fed. R. Civ. P. 6(b)(1)(B)).

Judgment was entered in ths case on May 11, 2022. Thus, Gifford's motion for attorneys' fees were due on May 25, 2022. But, she failed to file them until June 3, 2022, nine days late.

Gifford contends she has established good cause to excuse her late filing on her motion. Defendants disagree.

Ironically, as an aside, the Court notes Defendants' response to the motion was due on June 17, 2022. Having been granted two extensions of time with the consent of Gifford, however, Defendants waited until July 15, 2022 to file their response, twenty-eight days after it was originally due and forty-two days after Gifford filed the motion.

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"Because Congress has provided no other guideposts for determining what sorts of neglect will be considered 'excusable,' [the Supreme Court has] conclude[d] that the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." *Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380, 395 (1993). "These include . . . the danger of prejudice to the [non-movant], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Id*.

Considering the factors set forth in *Pioneer Inv. Services Co.,* there is no danger of prejudice to Defendants in the Court's excusing Gifford's counsel's nine-day delay in filing her motion for attorneys' fees. The length of the delay and its potential impact on judicial proceedings are negligible.

The reason for the delay Gifford's counsel gives is that they had another six-day trial that immediately followed this one. Then, they state, when they returned to their offices, in preparing their motion, they were required to assemble the billing records of multiple attorneys.

Gifford's counsel do not dispute that the delay was within their control, but there is no evidence of any bad faith. For these reasons, the Court concludes the untimeliness of Gifford's motion for attorney fees was the result of excusable neglect, and will thus be excused.

2. Whether Gifford is entitled to any award of attorneys' fees

According to Gifford, she is entitled to attorneys' fees under 42 U.S.C. § 1988(b). Section 1988(b) provides, in relevant part, that, "[i]n any action or proceeding to enforce a provision of section[ ] . . . 1983, . . . the [C]ourt, in its discretion, may allow the prevailing party . . .a reasonable attorney[s'] fee as part of the costs[,]" *Id*.

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Defendants oppose Gifford's claim of attorneys' fees. Alternatively, they request the Court award a substantially reduced amount.

"The purpose of § 1988 is to ensure effective access to the judicial process for persons with civil rights grievances. Accordingly, a prevailing plaintiff should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983) (citations omitted) (internal quotation marks omitted). The "special circumstances" exception is inapplicable here.

"Congress enacted [Section] 1988 specifically because it found that the private market for legal services failed to provide many victims of civil rights violations with effective access to the judicial process." *City of Riverside v. Rivera*, 477 U.S. 561, 576 (1986). "These victims ordinarily cannot afford to purchase legal services at the rates set by the private market." *Id*. Thus, "they are unable to present their cases to the courts." *Id*. (citation omitted) (internal quotation marks omitted).

As per 1988(b), Gifford must be a "prevailing party" to recover any attorneys' fees. Both parties agree she is the prevailing party in this matter. And, they both rely on *Farrar v. Hobby*, 506 U.S. 103 (1992), in support of their position as to whether Gifford is entitled to an award of attorneys' fees.

Each of the parties, however, highlights only the portion of *Farrar* that seemingly supports their positions. Nevertheless, the Court must find and cite to the law that supports the correct outcome.

Defendants center their argument around the portion of the *Farrar* opinion stating that, "[w]hen a plaintiff recovers only nominal damages . . . ,the only reasonable fee is usually no fee at

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all." *Farrar*, 506 U.S. at 115. Based on this, they contend Gifford is entitled to no award of attorneys' fees.

But, "[b]ecause the Court in *Farrar* held that plaintiffs recovering only nominal damages *usually or often* will not be entitled to an award of attorney's fees, it is clear that such plaintiffs will at least sometimes be entitled to a fee award." *Mercer v. Duke University*, 401 F.3d 199, 203 (4th Cir. 2005). Thus, the Fourth Circuit has rejected any argument that *Farrar* automatically precludes attorneys' fee awards in all nominal-damage cases. *See, e.g., Clark v. Sims*, 28 F.3d 420, 425 (4th Cir.1994) (remanding fee award in nominal-damage case for reconsideration in light of plaintiff's limited success).

As the Fourth Circuit has observed, "[a]lthough the majority opinion in *Farrar* provides little guidance for courts considering whether an award of attorney's fees is warranted [in cases in which only nominal damages are awarded], Justice O'Connor in a separate concurring opinion addressed the question in more detail." *Mercer*, 401 F.3d at 203 "Justice O'Connor recognized . . . that not all nominal damages awards are de minimis. Nominal relief does not necessarily a nominal victory make." *Id*. at 204 (citation omitted) (internal quotation marks omitted).

As such, Section 1988 serves as "a tool that ensures the vindication of important rights, even when large sums of money are not at stake, by making attorney's fees available under a private attorney general theory." *Farrar*, 506 U.S. at 122 (O'Connor, J., concurring).

Justice O'Connor "suggested that when determining whether attorney's fees are warranted in a nominal-damages case, courts should consider '[1] the extent of relief, [2] the significance of the legal issue on which the plaintiff prevailed, and [3] the public purpose served by the litigation'" *Id*. (quoting *Farrar*, 506 U.S. at 122 (O'Connor, J., concurring).

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The Fourth Circuit employed these three factors in *Mercer* to consider whether the plaintiff, who received only nominal damages, was nonetheless entitled to an award of attorney's fees under section 1988. In doing so, it stated that "[w]e believe that the factors set forth by Justice O'Connor help separate the usual nominal-damage case, which warrants no fee award, from the unusual case that does warrant an award of attorney's fees." *Id*.

Gifford, not surprisingly, highlights Justice O'Connor's concurrence, and discusses these three factors, in support of her argument she is entitled to attorneys' fees. Defendants fail to provide any argument as to Justice O'Connor's framework.

The first consideration, "the extent of relief" factor, examines "the difference between the amount recovered and the damages sought[.]" *Jones v. Lockhart*, 29 F.3d 422, 424 (8th Cir. 1994). In *Jones*, the Eight Circuit, finding that this factor weighed in favor of granting of attorneys' fees, stated that, "although there is a discrepancy between the amount of damages sought and the amount recovered ($860,000 sought, $2 recovered), it pales in comparison to the discrepancy presented in *Farrar* ($17,000,000 sought, $1 recovered)." *Id*.

Turning to this case, as Gifford notes, absent from the trial strategy here was a high demand for monetary damages. In fact, Gifford's counsel declined to ask for any specific amount of actual monetary losses at trial. And, she neglected to offer any evidence of any actual monetary damages incurred for medical and/or mental health treatment.

Instead, according to Gifford, "counsel recognized throughout the trial that, due to the unique nature of this case, the focus of the civil rights claim was squarely on the vindication of the constitutional right of a young woman who was coerced into engaging in a sexual act with a deviant law enforcement officer who was almost three times her age." Gifford's Reply at 5.

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In addition, counsel for Gifford requested and presented to the Court a nominal damages jury charge. Thus, evidently, recovery of a large sum of money was neither the theme, the trial strategy, nor the goal of Gifford's case against Rhodes.

Consequently, it seems to the Court that the jury's favorable nominal damage verdict, which underscores that Rhodes is liable to Gifford for Large's unconstitutional, unlawful, and unwanted, sexual touching and/or sexual assault of her, is exactly the relief Gifford was seeking. *See Farrar*, 506 U.S. at 121 (O'Connor, J. concurring) ("[A]n award of nominal damages can represent a victory in the sense of vindicating rights even though no actual damages are proved.")

Besides, because Gifford failed to provide any evidence of actual damages, the jury's award of just nominal damages is perfectly understandable.

All things considered, the Court is unable to say the nominal damages award in this case is fatal to Gifford's request for attorneys' fees. In fact, she got what she wanted: judgment against Rhodes saying Rhodes had violated her constitutional rights. Therefore, this factor weighs in favor of Gifford's request for attorneys' fees.

The second factor to consider is "the significance of the legal issue on which the plaintiff prevailed." *Id*. at 122. "This factor is concerned with the general legal importance of the issue on which the plaintiff prevailed." *Mercer*, 401 F.3d at 206. The constitutional right that is the subject of Gifford's constitutional claim is the right to bodily integrity.

Over 130 years ago, the Supreme Court opined that "[n]o right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." *Union Pac. R. Co. v. Botsford*, 141 U.S. 250, 251 (1891).

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As Gifford aptly states, she "established at trial that [Rhodes] was legally responsible for the unconstitutional and unlawful acts of her subordinate officer who violated [her] Fourteenth Amendment right to bodily integrity." Gifford's Reply at 7.

Inasmuch as "[n]o right is held more sacred[ ]" than Gifford's right to bodily integrity, *Union Pac. R. Co.*, 141 U.S. at, 251, and the jury found that Rhodes is liable for Large's violation of that right, Gifford succeeded on a significant legal issue. Accordingly the second factor is Justice O'Connor's concurrence in *Farrar* also weighs in favor of granting Gifford's request for attorneys' fees.

"The final factor [the Court] must consider is whether the litigation served a public purpose, as opposed to simply vindicating [Gifford's] individual rights." *Mercer*, 401 F.3d at 207. Gifford's "success might be considered material if it also accomplished some public goal other than occupying the time and energy of counsel, court, and client." *Farrar*, 506 U.S. at 121–22 (O'Connor, J., concurring).

Gifford contends that "[t]he jury's finding in this case sends a message to the current executive staff of the Horry County Police Department and to every county-wide law enforcement agency in the state that they cannot turn a blind eye to evidence of predatory and unconstitutional behavior by one of their own officers." Gifford's Reply at 8-9. According to Gifford, "[t]his is particularly true when the predatory behavior by officers threatens the 'most sacred' of our Constitutional rights, as it did in this case." *Id* at 9.

The evidence in the record overwhelmingly shows that Rhodes knew, or should have known, about Large's misbehavior and misconduct. But she failed to adequately address it.

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Although the monetary award for Rhodes's constitutional violation is nominal, the verdict against her for her constitutional violation is huge. And, it will likely reverberate across the law enforcement agencies of this state for years to come with the resounding message that the top brass must be diligent in monitoring and appropriately responding to their officers' unconstitutional misbehavior and misconduct.

Thus, because the Court is of the strong opinion that Gifford's civil rights claim against Rhodes serves an important public purpose, this factor also weighs in favor of Gifford's request for attorneys' fees..

So, all three of Justice O'Connor's considerations favor a conclusion that Gifford is entitled to an award of attorney fees. But, for how much?

3. Whether Gifford's is entitled to an award for attorneys' fees in the amount of $878,467.80

Gifford seeks attorneys' fees in the amount of $878,467.80. Here is a breakdown:

Attorney/Paralegal	Hours	Rate	Total
James B. Moore III, Esq.	690.40	$450	$310,680.00
Scott C. Evans, Esq.	605.11	$450	$272,299.50
Amy Lawrence, Esq.	465.752	$400	$186,300.80
Justin Lovely, Esq.	108.125	$400	$43,250.00
Sarah Austin, Esq.	144.5	$250	$36,125.00
Julie Long, Paralegal	238.5	$125	$29,812.50
Total hours for Attorneys	2,013.887		
Total fees for Attorneys and Paralegal			$878,467.80

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"In calculating an award of attorney's fees, a court must first determine a lodestar figure by multiplying the number of reasonable hours expended times a reasonable rate." *Robinson v. Equifax Information Services*, LLC, 560 F.3d 235, 243-44 (4th Cir. 2009). When deciding what constitutes a "reasonable" number of hours and rate, the Fourth Circuit has instructed that the Court's discretion should be guided by the following twelve factors:

> (1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fees awards in similar cases.

Barber v. Kimbrell's Inc, 577 F.2d 216, 226 n. 28 (4th Cir.1978).

Although the Court considers all of the factors, they need not be strictly applied in every case inasmuch as all of the factors are not always applicable. *See E.E.O.C. v. Service News Co*., 898 F.2d 958, 965 (4th Cir. 1990) (stating that seven of the twelve factors were inapplicable in the matter).

Gifford has supplied the Court with time records and affidavits substantiating her request for attorneys' fees, along with an in depth discussion of the relevant above-listed factors. Defendants addressed just a few of those considerations.

a. "the time and labor expended"

This consideration weighs in favor of granting Gifford's petition for attorneys' fees.

"[T]he fee applicant bears the burden of . . . documenting the appropriate hours expended and hourly rates." *Hensley*, 461 U.S. at 437. "Where the documentation of hours is inadequate, the district court may reduce the award accordingly." *Id*. at 433.

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Gifford contends, during the six years her lawsuit was pending, her "counsel submitted significant briefing on several complex and important constitutional legal issues that go to the heart of the protections guaranteed by the Fourteenth Amendment, developed an extensive factual record, identified, prepared, and presented highly qualified expert witnesses, identified and interviewed a series of fact witnesses, and zealously represented [Gifford] over [six] days of jury trial." Gifford's Motion at 7.

According to the affidavits of two of Gifford's counsel, they "participated in twelve depositions, multiple hearings, and motions in this matter since 2016. To date, there are [240] ECF filings in this case. . . . The pretrial and trial work was voluminous, extensive, and laborious." Scott E. Evan's Affidavit ¶ 4; James B. Moore III's Affidavit ¶ 4. Counsel also participated in three mediations.

Gifford, "has not sought compensation for considerable time that would otherwise ordinarily be billable in the course of representation to a private client, such as time for communications including regular telephone conferences with opposing counsel, regular correspondence and emails with opposing counsel, and regular correspondence and emails with co-counsel." Gifford's Motion at 6.

"Additionally, for a majority of the hours expended in discovery and depositions, [Gifford's] Counsel reduced the number of hours . . .to evenly distribute the time between the [other] cases handled by her attorneys during parts of this litigation." *Id*.

"Plaintiff's counsel, of course, is not required to record in great detail how each minute of [her or] his time was expended. But at least counsel should identify the general subject matter of [her or] his time expenditures." *Hensley*, 461 U.S. at 437. Gifford's counsel has done so here.

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Defendants lodge several objections to the amount of time Gifford claim for attorneys' fees. The Court will address them in the order Defendants raised them.

First, in a footnote, Defendants argue that "the Court has been given insufficient information by [Gifford] to identify fees attributable to work on the state law claim." Defendants' Response at 6 n.2. But, they neglect to develop the argument. Consequently, this "perfunctory and undeveloped claim [by Defendants is deemed] waived." *Russell v. Absolute Collection Servs., Inc.*, 763 F.3d 385, 396 n. * (4th Cir. 2014).

Besides, inasmuch as both Gifford's state claim and constitution claim concern the supervisory liability for Large's misbehavior and misconduct, and both arise from the same related and interconnected nucleus of operative facts such that they are somewhat inextricably connected, it appears to the Court that it would be impossible to separate the fees for the two separate claims.

Second, Defendants complain of Gifford's counsel "claiming the fees for three and sometimes four and five lawyers for the same task[ ]" without justification. Defendants' Response at 10.

There is no per se rule the Court is aware of that sets forth the maximum number of attorneys one should have participating in trials, depositions, or other case-related matter. On some tasks, such as legal research and trial preparation, billing by multiple attorneys is both common and expected.

As to Gifford's having three attorneys at trial, inasmuch as the Court observed the three of them to have fully participated and have been fulled engaged in all aspects of the trial, it is not up to the Court to say it was unnecessary to have them all there. After all, it seems improper to question Gifford's use of multiple attorneys, which likely contributed to her proving her case against Rhodes.

The Court has carefully reviewed Gifford's counsel's billing records as to this issue and finds the hours listed for multiple attorneys to be reasonable. There is just one caveat, however.

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In several instances, Gifford bills for more than two attorneys at a deposition. Absent is any explanation as to why more than two attorneys were necessary. The Court, therefore, will not approve any fees for more than two attorneys at a deposition.

Third, Defendants question the awarding of attorneys' fees for attorneys not listed on the Court's docket. According to Defendants, Gifford "attempts to claim attorney's fees for two attorneys who are not even identified by this Court as counsel of record. Justin Lovely and Sarah Austin have never filed a notice of appearance, appeared at any matter in this litigation, nor signed any pleadings or motions on behalf of [Gifford]." Defendants' Response at 10.

But why does Defendant fail to cite to any legal support for the proposition that the Court should refrain from awarding attorneys' fees for these two attorneys? And, why has the Court been unable to locate any? The answer seems obvious: there is none. Thus, this argument appears to be unmoored to any legal authority.

Fourth, Defendants protest Justin Lovely's presence at Large's bond hearing although "Large is not a party to this lawsuit, and his bond hearing addressed no allegations against. . . Rhodes." *Id.* at 10-11. This argument does not merit discussion. Of course, Large's criminal liability for his misbehavior and misconduct when he was employed by Rhodes is related to her civil liability here. Thus, it was proper for Gifford's counsel to bill for this.

Fifth, Defendants also dispute the hours charged for Justin Lovely's meeting with an identified potential witness for Gifford, who was not called at trial. But, surely Rhodes's counsel would, and likely has, billed for meeting with a potential witness they failed to call to trial. The Court is unable to fathom anything improper about that.

Sixth, Defendants contend it is inappropriate to award attorneys' fees to Justin Lovely's and Sarah Austin's participation in an intensive weekend client preparation session on June 24-26, 2019.

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According to Defendants, "[t]his case . . . was not tried in 2019, and neither of these attorneys tried it." *Id*. at 11.

But, Defendants well know the trial was originally scheduled for the summer of 2019; and it was proper for these two attorneys to help prepare the case for trial, even if they did not actually try the case. Preparing exhibits and witnesses are just two examples of this.

b. the novelty and difficulty of the questions raised

This consideration also weighs in favor of granting Gifford's request for attorneys' fees.

Proving that Rhodes was liable for a constitutional violation against Gifford was particularly demanding.

> To establish supervisory liability against . . . Rhodes for a constitutional violation, . . . Gifford must prove by a preponderance of the evidence:
>
> (1) that . . . Rhodes had (a) actual or (b) constructive knowledge, which is defined as knowledge that one using reasonable care or diligence should have, that . . . Large was engaged in conduct that posed an unreasonable risk of constitutional injury to citizens such as . . . Gifford;
> (2) that . . . Rhodes's response to that knowledge was so inadequate as to show deliberate indifference to or tacit authorization of the alleged offensive conduct; and
> (3) that there was an affirmative causal link between . . . Rhodes' inaction and the constitutional injury suffered by . . . Gifford. .

Jury Charge at 13-14. Nevertheless, although notoriously difficult, Gifford's counsel overcame Rhodes's qualified immunity and other motion for summary judgment claims and convinced the jury to find Rhodes had violated Gifford's constitutional rights.

c. the skill required to properly perform the legal services rendered

This factor, too, weighs in favor of the Court's granting Gifford's motion for attorneys' fees.

Again, this was a notoriously difficult and complex case. And, hats off to counsel for each party for performing so well.

As Gifford points out in her motion,

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> The issues in the trial presented sophisticated legal questions that had to be proven to both the Court and communicated to the jury. Did . . . Large violate Jessica's 14th Amendment right to bodily integrity? Was the sexual assault consensual as . . . Rhodes's alleged? Did . . . Rhodes have actual or constructive knowledge that . . . Large was engaged in conduct that posed a risk of constitutional injury to the Plaintiff? Was her response to this knowledge adequate? At each turn, Plaintiff was successful.

Gifford's Motion at 9. And, she was successful, in large part, thanks to her highly skilled attorneys.

d. the attorney's opportunity costs in pressing the instant litigation

This factor weighs in favor of Gifford's fee request, too.

Given the amount of time counsel expended on this case, a total of 2,013.887 hours, it is obvious counsel worked on this case at the exclusion of others. And, because Gifford's counsel took this case on a contingent basis, there was no guarantee of the amount of payment, if any, they would receive in payment. Consequently, Gifford's counsel's opportunity costs were quite high.

e. the customary fee for like work

This factor also favors Gifford's request.

"[D]etermination of the hourly rate will generally be the critical inquiry in setting the reasonable fee, and the burden rests with the fee applicant to establish the reasonableness of a requested rate." *Plyler v. Evatt*, 902 F.2d 273, 277 (4th Cir. 1990) (citation omitted) (internal quotation marks omitted). "In addition to the attorney's own affidavits, the fee applicant must produce satisfactory specific evidence of the 'prevailing market rates in the relevant community for the type of work for which he seeks an award." *Id*. (citation omitted) (internal quotation marks omitted).

"Examples of the type of specific evidence that [the Fourth Circuit has] held is sufficient to verify the prevailing market rates are affidavits of other local lawyers who are familiar both with the skills of the fee applicants and more generally with the type of work in the relevant community." *Robinson*, 560 F.3d at 245.

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"Although the determination of a market rate in the legal profession is inherently problematic, as wide variations in skill and reputation render the usual laws of supply and demand largely inapplicable, the [Supreme] Court has nonetheless emphasized that market rate should guide the fee inquiry." *Id*. (citation omitted) (internal quotation marks omitted) (footnote omitted).

The Court has provided the per-hour-rates Gifford's counsel seeks in this action above. They range from $250 to $450. Gifford has provided evidence in the form of affidavits from two other highly respected members of the South Carolina bar, who litigate civil rights cases and attest to the outstanding abilities of Gifford's counsel. They support these rates.

Given this, along with the Court's own experience and knowledge of the market, the Court concludes these fees are reasonable. As such, it rejects Defendants' arguments to the contrary.

Although Defendants maintain that Gifford "presents no fee agreement showing that she agreed to any of the claimed rates," Response in Opposition at 7, Gifford's counsel took this case on a contingency basis. So, of course, there is no such fee agreement.

f. the attorney's expectations at the outset of the litigation

This factor favors the granting of Gifford's attorneys' fees request, as well.

Gifford states that "Counsel took this case with complete uncertainty as to the outcome and aware that few cases survive summary judgment and are successfully tried to verdict under 42 U.S.C. § 1983." Gifford's Motion at 10. And, she is correct.

In the Court's experience, most all Section 1983 cases are dismissed at either the motion to dismiss or the motion for summary judgment stage. Few survive past that. But, this one did. That is a huge credit to Gifford's counsel.

According to Gifford, "Counsel was dedicated to the notion that if Plaintiff was successful at trial, a finding of a 42 U.S.C. § 1983 violation against . . . Rhodes was well worth the uncertainty of the outcome." *Id*.

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g. the time limitations imposed by the client or circumstances

This factor is inapplicable to the facts of this case.

h. the amount in controversy and the results obtained

This factor favors Gifford.

As discussed above, Gifford never asked for a particular amount of money for her constitutional claim against Rhodes. Instead, it appears she sought to have her claim for the harm done to her be acknowledged. And it was, with both a unanimous jury verdict finding a constitutional violation by Rhodes, and a Court that wholly agrees with the jury's determination..

i. the experience, reputation and ability of the attorney

This factor heavily favors the granting of Gifford's motion as to both the number of hours billed, with the exception noted above, and the rate requested.

Counsel for both Gifford and Defendants did an outstanding job representing their clients at trial. They also all enjoy a great reputation and are a credit to the South Carolina Bar.

Gifford's attorneys are experienced in the field of civil rights litigation, which was evidenced at each step of this litigation. And, their reputations are sterling.

The Court has reviewed the many papers that Gifford's counsel submitted to the Court, heard their arguments, and closely observed their conduct at trial and their mastery of the subject matter. The Court finds their abilities in this area of the law to be unsurpassed.

j. the undesirability of the case within the legal community in which the suit arose

This consideration weighs in Gifford's favor, too.

This case has all of the marks of an undesirable case. The facts that had to be proven were, to put it mildly, disgusting.

Although Gifford argued she had been harmed, as noted above, she had no medical bills to support her claims. Only a few very skilled group of attorneys would take on a case such as this, and

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even fewer would not only survive a motion for summary judgment, but also win a verdict on the constitutional claim.

k. the nature and length of the professional relationship between attorney and client

This factor has no bearing on the Court's consideration of Gifford's motion.

Gifford filed this lawsuit on September 16, 2016. Her relationship began shortly before that, in August 2016. Scott E. Evan's Affidavit ¶ 4; James B. Moore III's Affidavit ¶ 4. The trial concluded a little over five and a half years later, on May 9, 2022.

The relationship between Gifford and her counsel commenced because of her need for representation in this matter. There is no indication that, with the end of this case, their relationship will continue.

l. attorneys' fees awards in similar cases

This factor weighs in favor of Gifford's requested rate and the number of hours charged.

The Court has reviewed the cases Gifford set forth and considered its own experience in complex and difficult matters such as this. As such the Court is of the opinion that the attorneys' fees, both the rates and the number of hours that Gifford seeks, with the exception noted above, are comparable to those fees awarded in similar actions.

As an example of the total fee award, in *Mercer v. Duke University*, 301 F. Supp. 2d 454 (M.D.N.C. 2004), the district court awarded the plaintiff $349,243.96 in attorney fees, *id*. at 470, although she received "only one dollar in compensatory damages[,]" *id.* at 457. The decision was later affirmed by the Fourth Circuit: *Mercer v. Duke University*, 401 F.3d at 212.

Adjusted for inflation, that $349,243.96 would equal $567,314.00 in today's dollars**.** *See* https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=349%2C243.96&year1=200103&year2=202302, Jan. 2004 to February 2023 (last visited March 29, 2023).

* * * * *

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The total of attorneys' fees the Court is awarding in this case are quite substantial. But, the Court is of the firm opinion they are appropriate.

Given the malfeasance proven in this case, it is extremely important that cases such as this be filed. And, "although [Rhodes] had the right to play hardball in contesting [Gifford's]claims, it is also appropriate that [Rhodes] bear the cost of [her unsuccessful] strategy." *Burgess v. Premier Corp*., 727 F.2d 826, 841 (9th Cir. 1984).

The attorneys in this case billed for a total of 2,013.887 hours in this case. Thus, if just one attorney had billed that time, assuming forty hours of billing each week, it would have taken her/him a little over fifty weeks, or almost a year, to prepare for and try this case to verdict. Alone. Given the complexity and difficulty of this case, this seems like a reasonable amount of time to prepare for and try a case such as this.

"When plaintiff prevails on only some of the claims made, the number of hours may be adjusted downward; but where full relief is obtained, the plaintiff's attorney should receive a fully compensatory fee, and in cases of exceptional success, even an enhancement." *Rum Creek Coal Sales, Inc v. Caperton*, 31 F.3d 169, 174–75 (4th Cir. 1994) (citations omitted) (internal quotation marks omitted).

Given the Court's discussion above regarding Gifford's requested rate and number of hours billed, the Court concludes her request to be reasonable. Her counsel prevailed on all of her claims here. Therefore, they are fully entitled to "a fully compensatory fee." *Id*.

B. Whether Gifford is entitled to recover reasonable expenses

As an initial matter, the Court must address the untimeliness of Gifford's request for costs. Defendants note in their objections to Gifford's bill of cost that Local Civil Rule 54.03 provides that "A bill of costs shall be filed within the time limits set for Fed. R. Civ. P. 54(d)(2)(B) for

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applications for attorney's fees. Noncompliance with this time limit shall be deemed a waiver of any claim for costs."

But then, Local Civil Rule 1.02 states that, "[f]or good cause shown in a particular case, the [C]ourt may suspend or modify any Local Civil Rule." The Court is of the opinion that, just as Gifford has shown excusable neglect/good cause for her late filing of her motion for attorneys' fees, she has, based on the same reasons, shown excusable neglect/good cause for the filing of her untimely request for costs.

Gifford states she "is entitled to recover reasonable expenses in the amount of $23,848.37 as a part of the attorneys' fees award pursuant to 42 U.S.C. § 1988." Gifford's Motion at 13. Gifford maintains "[a]ll [her claimed] expenses were incurred in the course of litigation[,] . . . were necessary for the successful resolution of the case. . . . [and] are normally charged by Evans Moore, LLC and Lovely Law Firm to clients for payment and were accrued in the course of providing legal services for [her]." *Id*. at 14.

Defendants, on the other hand, maintain she is entitled only to "costs taxable under 28 U.S.C. § 1920 and Federal Rule of Civil Procedure 54(d)." Defendants' Response at 11 (citation omitted) (internal quotation marks omitted). According to Defendants, "[t]he only taxable costs that the Plaintiff may recover are . . . "

> (1) Fees of the clerk and marshal; (2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case; (3) Fees and disbursements for printing and witnesses; (4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case; (5) Docket fees under section 1923 . . . ; [and] (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828[.]

Id. at 11-12 (quoting 28 U.S.C. § 1920).

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But, "[t]he great weight of authority in this circuit and others clearly establishes that a prevailing plaintiff is entitled to compensation for reasonable litigation expenses under § 1988." *Daly v. Hill*, 790 F.2d 1071, 1084 (4th Cir. 1986). This includes "those reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client, in the course of providing legal services." *Spell v. McDaniel*, 852 F.2d 762, 771 (4th Cir. 1988). "Consequently," according to the Fourth Circuit, "the district court err[s] as a matter of law in evaluating the expense request . . . under 28 U.S.C. § 1920 and Fed. R. Civ. P. 54(d)." *Daly*, 790 F.2d at1084.

Although Gifford originally sought reimbursement on expert fees, in her Reply, she stated that "it appears there is conflicting authority as to whether expert fees are taxable in cases brought pursuant to 42 U.S.C. § 1983." Gifford's Reply at 16. *Compare Warfield v. City of Chicago*, 733 F. Supp. 2d 950, 955 (N.D. Ill. 2010) ("[B]ecause [the expert] was an expert reasonably used in this case, his fees are recoverable."), *with Corral v. Montgomery Cnty.*, 91 F. Supp. 3d 702, 721 (D. Md. 2015) ("[T]he terms of Section 1988 do not permit compensation for expert witness fees[ ]" in a Section 1983 action). "As such, . . . [Gifford] has elected to remove expert case expenses from the Itemized Expense Sheet and Bill of Costs." Gifford's Reply at 16.

Gifford initially failed to provide any documentation for her claimed costs. But, she has now filed it. She also submitted affidavits from her counsel attesting to the accuracy of the cost request. *See, e.g.,* Affidavit of James B. Moore III ¶ 9 ("(To the best of my knowledge, the time entries and case costs submitted . . . are a true and accurate representation of the work performed in this case and the costs paid by Evans Moore, LLC and Lovely Law Firm to fund this matter.").

Gifford notes that she "voluntarily limited her request to only those costs incurred after May 2019 although the case was litigated from 2016 through 2022 at significant expense." Giffords's Reply re Documentation ¶ 6.

Defendants have set forth several objections to Gifford's expense request.

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First, they object to the request for payment of the expenses of Gifford's experts. And, although Gifford insists she is entitled to reimbursement for these expenses, she fails to provide any cases in which a court has granted such a request. The Court has been unable to find any such cases either.

Further, inasmuch as Section 1988 appears not to provide for the reimbursement of expert fees, it seems to be incongruous to say it would allow for the payment of expert expenses. *See* 42 U.S.C. § 1988 ("In awarding an attorney's fee . . . to enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney's fee."). Thus, the Court will not award payment of those costs.

Defendants object to the payment of a $47 filing fee, too. It appears that fee was charged in error. Thus, the Court will direct the Clerk of Court to reimburse that fee to Gifford.

Defendants also object to the expense of $1,798.50 for a trial transcript and $1,272.65 for photocopies, stationery, envelopes, and postage. But, the Court deems those costs as proper.

Defendants' other objections do not merit discussion.

Defendants fail to object to Giffords's other claims for costs for which she provides "No Record." Thus, the Court will rely on Gifford's counsel's affidavits as a sufficient basis on which to award those costs. It has no reason to disbelieve counsel's sworn statements on the matter.

Except for the expert fees and expenses and the $47 filing fee, the Court is persuaded that all the other costs Gifford seeks are "reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client, in the course of providing legal services." *Spell*, 852 F.2d at 771. Thus, in light of Gifford's requests for costs, the documentation, and Gifford's counsel's affidavits, the Court will grant Gifford's request for costs, less the expert fees and expenses and the $47 filing fee.

C. Whether Gifford is entitled to an award of post judgment interest

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Gifford moves the Court to award post-judgment interest on all amounts awarded in this action. Defendants fail to address this request. Therefore, they have waived any argument they might have against this award. *See Russell*, 763 F.3d at 396 n. * (noting that failure to present legal arguments waives the argument).

"In contrast to the district court's discretion in the awarding of pre-judgment interest, federal law mandates the awarding of post-judgment interest." *Quesinberry v. Life Ins. Co. of North America*, 987 F.2d 1017, 1031 (4th Cir. 1993).

Under federal law, post-judgment interest "shall be allowed" and "shall be calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment." 28 U.S.C. § 1961(a).

Accordingly, Gifford is entitled to an award of post-judgment interest.

IV. CONCLUSION

In light of the foregoing discussion and analysis, Gifford's motion for attorneys' fees in the amount of $878,467.80, less the billing for more than two attorneys at a deposition, is **GRANTED**, her motion for costs, less her expert fees and expenses and the $47 filing fee, is **GRANTED**, and her request for post-judgment interest is **GRANTED**.

The Clerk of Court shall refund the $47 filing fee to Gifford.

IT IS SO ORDERED.

Signed this 29th day of March 2023, in Columbia, South Carolina.

s/ Mary Geiger Lewis
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE

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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

FIRST SUPPLEMENTAL TIME RECORDS FOR C. STEVEN MOSKOS' REPRESENTATION OF RITA AND JAMES GREENAWALT

I, C. Steven Moskos, attest that I did the following work on the above matter and that the time spent is accurate, not duplicative, necessary to my representation of Rita and James Greenawalt. The below times were for work done in the commencement and prosecution of this matter. All the causes of action are so intertwined that if there is time totally devoted to a non-fee shifting statute, it cannot be separated from the time related to the fee shifting statutes.

Date	Description	Hrs worked
31-Mar-23	Work on Affidavit of Attorney's Fees. Review and edit time sheets for presentation to the court and to remove attorney client privileged communications. Telephone conference with Justin Kahn regarding points in his affidavit. Work on Statement of Costs and Exhibits. Conference with Rita Greenawalt regarding the affidavit of Rita and James Greenawalt. E-file time records through March 30, 2023 of C. Steven Moskos, Plaintiffs' Statement of Costs, Affidavit of Rita and Jim Greenawalt, Affidavit of Jay Masty, and Affidavit of Justin Kahn.	8.1
1-Apr-23	Work on affidavit of attorney's fees. Edit affidavit. Review settlement offers in case. Review of Pleadings folder. Review of correspondence. Gather exhibits for affidavit. Review exhibits for use in affidavit. Review emails related to this matter.	7.5
1-Apr-23	Work on editing affidavit of C. Steven Moskos.	1

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2-Apr-23	Edit Affidavit of Attorney's Fees and insert exhibits citations in affidavit. Travel to and from notary. Number exhibits. E-file Affidavit of C. Steven Moskos with the Clerk. Email Affidavit of C. Steven Moskos and 53 exhibits to Sarah Ebling.	7.3
2-Apr-23	Review of brief in support of motion for attorney fees.	0.8
3-Apr-23	Review emails from Berkeley County Clerk of Court regarding filings made on March 31, 2023. Telephone conference with Berkeley County Clerk of Court regarding rejection of all filings even though only one supposedly did not comply with the rules. Refile 3 affidavits with the Clerk of Court. Refile time records with the Clerk of Court. Refile list of costs with the Clerk of Court. Work on and edit Brief in Support of Motion for Attorney's Fees.	3.4
4-Apr-23	Efile Brief in support of motion for attorney's fees. Dictate email to Max Mazurek, Judge Young's law clerk, and Sarah Eibling regarding documents filed in support of the Greenawalts' Motion for Attorney's Fees.	0.5
4-Apr-23	Prepare for motion to award attorney's fees. Review affidavits of Rita and Jim Greenawalt, Jay Masty, and Justin Kahn. Begin review of time records.	1.8
TOTAL		30.4

Time spent from May 14, 2020 through March 30, 2023 – 215.4 hours.
Time spent from March 30, 2023 through April 4, 2023 - 30.4 hours.
Total hours through April 4, 2023 **245.8 hours**

245.8 hours x $450.00/hour = 110,610.00.

Additional time will be incurred for work done on April 5, 2023 through the turn in of the vehicle. Supplemental time records for the additional time spent will be submitted to the court for its consideration.

C. STEVEN MOSKOS, P.A.
ATTORNEY FOR PLAINTIFFS
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Charleston, South Carolina
April 5, 2023

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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 **DEFENDANT NISSAN NORTH AMERICA, INC.'S RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR ATTORNEY FEES**

Defendant Nissan North America, Inc. ("Nissan"), by and through its undersigned counsel, hereby files this Response in Opposition to Plaintiff's Motion for Attorney Fees. On March 10, 2023, Rita and James Greenawalt ("Plaintiffs") filed with this Court a one-page Motion for Attorney Fees, indicating that Plaintiff intended to request an Order awarding unspecified attorneys' fees to Plaintiffs' counsel. On Sunday, April 2, 2023, Plaintiffs filed an Affidavit of C. Steven Moskos in Support of an Award of Attorneys' Fees, which detailed the legal work Mr. Moskos had completed on behalf of Plaintiffs since May 2020. Plaintiffs are requesting from Nissan an award of $101,821.73 in attorneys' fees. Also on Sunday, Plaintiffs attached 45 Exhibits in support of Mr. Moskos' time and expenses. Plaintiffs submitted a Brief in Support of a Full Award of Attorneys' Fees to Plaintiffs on April 4, 2023.

Nissan opposes Plaintiffs' request for attorney fees, as this case is unexceptional and did not present unique issues of fact or law, Mr. Moskos' efforts did not result in a remarkably favorable result for Plaintiffs, Mr. Moskos' rate is unusually expensive for cases of this type, and lastly, the law does not allow for attorneys' fees in partially litigated cases where the defendant is not found to be in violation of the law. Nissan respectfully requests that the Court reject Plaintiffs' Motion for Attorney Fees.

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Rule 11 Conferral

As also represented in Plaintiff's Motion for Attorney Fees, undersigned counsel affirms in accordance with Rule 11 of the South Carolina Rules of Civil Procedure that consultation with Mr. Moskos would serve no useful purpose.

INTRODUCTION

Nissan asks this Court to reject Plaintiff's Motion for Attorney Fees. To begin with, this Court has not found Nissan liable for any violations of the consumer protection laws at issue; a judgment against Nissan is required under the law before a winning party may receive attorneys' fees. Secondly, Plaintiffs have failed to justify the particular circumstances that warrant Mr. Moskos' time and expenses for this matter—a case of the type that Plaintiff's counsel routinely handles, involving South Carolina Lemon Law, federal Magnuson-Moss Warranty Act, and the South Carolina Unfair Trade Practices Act. If the Court finds on that Plaintiffs are entitled an award for attorneys' fees, Nissan requests that the Court enter an Order for attorneys' fees that is proportionate to the case type, work completed, and resolution achieved.

Mr. Moskos is a seasoned litigator who has developed a practice over three decades in consumer law and "auto fraud." Though this case has been active since May 2020, during the height of the pandemic, the bulk of Mr. Moskos' work was 1) working up arbitration before the Better Business Bureau ("BBB") and attending the BBB hearing, 2) filing a suit in the Court of Common Pleas and other motions practice like Motions for Summary Judgment, 3) conducting a few depositions of Hudson Nissan personnel (the dealership managing the repair attempts) and defending Plaintiffs' depositions. While Mr. Moskos' work for this matter spanned from arbitration to filing in trial court, Nissan has remained ready to repurchase Plaintiffs' vehicle since November 12, 2020 – however, it was Mr. Moskos' conduct that prevented resolution. Nissan – through its informal dispute resolution process –

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was ordered to repurchase Plaintiffs' vehicle on November 12, 2020, and was preparing to repurchase. (Ex. A). However, before Nissan even had a chance to repurchase, Plaintiffs – less than 24 hours later – rejected the award (Ex. B) and filed suit on November 13, 2020 (Ex. C). Even since filing suit, Nissan has agreed more than twice to pay Plaintiffs for the value of their car. (Ex. D and Ex. E) The only thing holding up resolution at each and every one of these resolution milestones – Mr. Moskos' demand for exorbitant attorneys' fees. (Ex. F).

Considering this matter's current posture, the results obtained as being substantially similar to the ones available 2 ½ years ago, and the lack of a "judgment" against Nissan, which is required before attorneys' fees are assessed, Mr. Moskos' request for attorneys' fees should be denied.

LEGAL STANDARD

The South Carolina Dealer's Act allows "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 attorneys' fee." S.C. Code Ann. § 56-15-110. The statute allows for reasonable attorneys' fees upon a finding that a plaintiff was "injured" via a defendant's violation of the Dealer's Act.

A trial court is empowered to award plaintiffs reasonable attorney fees if it is found that a violation of the Dealer's Act was committed after a bench trial, jury trial, or judgment finding a defendant liable. Plaintiff cites to Jackson for the proposition that a trial court may award reasonable attorneys' fees in cases where Plaintiffs successfully prove violations under the Dealer Act. See Jackson v. Speed, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997) (finding that attorney was entitled to reasonable hourly rate of $125 when a bench trial found that the defendant had violated the Dealer's Act by making misrepresentations during a car purchase transaction.) "The Regulation of Manufacturers, Distributors, and Dealers Act (Dealers Act) allows a successful plaintiff to recover reasonable attorneys' fees and

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costs." Dick Dyer & Assocs., Inc. v. Moore's Cars, LLC, No. 2016-002466, 2017 WL 6032650, at *1 (S.C. Ct. App. Dec. 6, 2017)

In every situation where plaintiffs alleged a defendant violated these consumer laws the court's issuance of attorneys' fees to a party was predicated on a finding that the defendant's conduct was contrary to the law.

ARGUMENT

A finding of injury is a prerequisite to attorneys' fees under the South Carolina Dealers' Act, the Unfair Trade Practices Act, the Lemon Law, and the Magnuson Moss Warranty Act, and in the absence of such a finding, Plaintiff's Motion for Attorney Fees is improper and legally flawed. Plaintiffs argue that the Lemon Law requires extensive pre-suit work which increases legal fees and that the other laws Nissan is alleged to have violated invite them to petition for attorneys' fees, even absent the critical verdict or court judgment attributing liability to Nissan. While Plaintiffs are correct that the Lemon Law mandates that a consumer exhaust certain remedies, Plaintiffs miss that the law is designed to return the consumer to the status quo before purchase of the car—the manufacturer must either repair the car, replace the care, or take it back and refund Plaintiff's money[1]. S.C. Code Ann. § 56-28-50.

During the arbitration before the BBB, in November 2020, Nissan was ordered to repurchase Plaintiffs' car. (Ex. A). Less than 24 hours after receiving the arbitrator's award, Plaintiffs rejected the arbitrator's decision (Ex. B) in favor of filing a lawsuit **that same day** all because Plaintiffs' counsel claims that Nissan's informal dispute resolution process does not allow for the recovery of attorneys' fees. (Ex. C). Again, his view on this issue is in violation of the statute. Attorneys' fees are not mandatory, rather they require a finding by the Court of entitlement.

[1] Which is also the purpose under Magnuson-Moss such that if the manufacturer complies with the manufacturer's warranty in repairing, replacing, or repurchasing the vehicle, the legal predicate for finding a violation of the Magnuson-Moss act has been extinguished.

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After filing suit, Plaintiffs began motions practice, discovery, and depositions towards proving Nissan's liability. It was only natural that Nissan engage in its defense. Mr. Moskos wants to take issue with the fact that Plaintiffs brought suit and Nissan mounted a defense. That isn't the metric the Court should be viewing when evaluating the reasonableness of his request for attorneys' fees and costs.

In September 2021, Nissan offered to repurchase Plaintiffs' car. In its Offer of Judgment, Nissan offered to repurchase the vehicle and resolve all claims—including attorneys' fees—for $39,000. (Ex. D). Plaintiffs rejected Nissan's offer in favor of continuing litigation. Finally, following mediation, Nissan made an offer of $35,000 to Plaintiffs to repurchase the subject vehicle and Plaintiffs accepted, leaving the issue of attorneys' fees to be determined by the Court at a later date. (Ex. G).

1. <u>The law does not contemplate attorneys' fees for resolutions without a court's findings as to liability of claims.</u>

The South Carolina Lemon Law provides a process through which a manufacturer may cure a defective car, and when this process fails, there are several necessary conditions that must be satisfied before a consumer is eligible for attorneys' fees: 1) a court must issue a judgment, 2) the costs accrued must be attributable to the nonconformity of the vehicle, and 3) the costs must be reasonably incurred by the consumer. *See* S.C. Code Ann. § 56-28-50(D)(a consumer "*may* be allowed by the court to recover *as part of the judgment* a sum equal to the aggregate amount of cost and expenses…" and allowing costs which are "*directly attributable to the nonconformity of the motor vehicle* determined by the court to have been *reasonably incurred*…")(emphasis added). *Id*. Plaintiffs' argument that the Lemon Law provides a statutory hook for attorney fees overlooks that the law presumes that consumers will engage manufacturers in good faith to cure their vehicles of defects or return the customer to the same position they were in before purchasing the vehicle and Plaintiffs' argument presupposes a mandatory entitlement to such fees, which is not accurate.

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The Dealers Act, S.C. Code Ann. § 56-15-110(1), the section titled "Suit for Damages" provides that in addition to other relief a court may grant, person who "shall be injured…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 attorneys' fee." Again, the Dealers Act presumes that a consumer will have claims adjudicated by a court, as the law grants consumers the right to sue, and guarantees them judicially prescribed recovery such as double the actual damages. Double actual damages are not determined via a settlement agreement, nor is the cost of a suit—these are mechanisms through which a court is enabled to assess liability against a party.

The Unfair Trade Practices Act provides that "[u]pon the finding by the court of a violation of this article, the court shall award to the person bringing such action under this section reasonable attorneys' fees and costs." S.C. Code Ann. § 39-5-140(a). The Act details actions for damages and where the law prescribes potential remedies, the law mandates that a court find a party liable for certain conduct. The statute grants courts the ability to make findings and assess liability according to violations of the law and allows for reasonable attorneys' fees and costs to the winning party only upon a finding by the court that the losing party violated the law.

The Magnuson Moss Warranty Act allows a consumer to recover in the event he prevails in a judgment. 15 U.S.C.A. § 2310(d)(2) (West). Again, the law requires the court to make a determination or a judgment as to a party's liability as a condition for a court's assessment of attorneys' fees.

Plaintiffs' continued rejection of Nissan's offers to resolve the case is not evidence of Nissan's liability under the law. Moreover, Nissan's settlement offer is not evidence of Nissan's liability under the law. Plaintiffs cite Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 57, 691 S.E.2d 135, 153 (2010) for the proposition that a fee shifting statute like the Lemon Law is to provide consumers with an "economically feasible private right of action and to make sure that competent counsel will be willing to

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undertake these matters on behalf of customers." (Mot. In Support of Attorneys' Fees.) In Austin, the South Carolina Supreme Court extended the plaintiff's statutorily prescribed damages and attorney fees under the Dealers Act to common law claims that were included in the lawsuit. The Court reasoned that the court-assessed remedies were "based on the same facts and circumstances" underlying the plaintiff's claims under the Dealers Act.

In every South Carolina case where attorneys' fees were awarded via the statutes at issue, the trial court made findings after a bench trial or jury verdict. Columbia (SC) Tchrs. Fed. Credit Union v. Newsome Chevrolet-Buick, 303 S.C. 162, 166, 399 S.E.2d 444, 447 (Ct. App. 1990) In his amended order the master concluded the conduct of Newsome was capable of being defined as either fraudulent under the common law or a violation of the statute. Toyota of Florence, Inc. v. Lynch, 314 S.C. 257, 261, 442 S.E.2d 611, 614 (1994) (affirming the trial court's grant of attorneys' fees after a jury trial); Taylor v. Nix, 307 S.C. 551, 555, 416 S.E.2d 619, 621 (1992) (finding attorney fees recoverable after a jury determined the defendants had violated the Dealers Act); Kucharski v. Rick Hendrick Chevrolet Ltd. P'ship, No. 2002-UP-584, 2002 WL 31386090, at *4 (S.C. Ct. App. Sept. 18, 2002) (modifying the award of attorneys' fees after a jury verdict found violation of Dealers Act).

No such findings have been made in this case. In fact, just the opposite. Plaintiffs' filed a motion for summary judgment on August 28, 2021, asserting that liability be found as a matter of law. That motion was briefed and argued before Judge Jennifer McCoy. Plaintiffs did not prevail in establishing Nissan's liability. A Form 4 Order was issued and entered on December 1, 2021 denying Plaintiffs' Motion for Summary Judgment. (Ex. H).

2. Plaintiffs have not shown that they were charged a $450/hour fee, nor have they demonstrated that it is a reasonable fee for services.

Nissan has not seen any support beyond Plaintiffs' affidavits to support Mr. Moskos' hourly rate. Plaintiffs have not submitted bills that they were charged by Mr. Moskos in this matter; this suggests that

Plaintiffs and Mr. Moskos may have landed on an alternative fee arrangement or a contingency arrangement of some sort. Either way, Plaintiffs should show what Mr. Moskos represented and billed as his hourly rate before this Court awards, if any, attorneys' fees.

In cases assessing attorneys' fees, the Courts have analyzed the award of attorneys' fees after a completed trial where defendants are unquestionably at fault. In the case Plaintiffs chiefly rely, Jackson v. Speed, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997), after a bench trial finding that the defendant had violated the Dealers Act, the court found that the plaintiff's counsel was entitled to the reasonable hourly rate of $125. If the same reasonable hourly rate assessed for the *Jackson* plaintiffs were applied to similar cases in 2023, plaintiffs' counsel would charge $234, adjusted for present inflation. *See also* Austin v. Stokes-Craven Holding Corp., 406 S.C. 187, 195, 750 S.E.2d 78, 82 (2013) (affirming $49,936.50 in trial-level attorneys' fees under the Dealer's Act).

3. Plaintiffs have not shown that these fees were reasonably incurred and resulted in a favorable outcome for Plaintiffs.

Even if this Court finds that $450 an hour for uncomplicated work is reasonable, it is also imperative that Plaintiffs' counsel proves to this Court that his skill, knowledge and experience in justifying such an exorbitant hourly rate resulted in a favorable outcome for the Plaintiffs. Plaintiffs' counsel fails in this regard. Plaintiffs are in no better position today than when they first engaged Mr. Moskos before the BBB arbitration. Nissan has not been found to have violated any consumer protection laws, however, if Plaintiffs were awarded attorneys' fees, the Court would have to assume that Mr. Moskos worked successfully to uncover violations of the law by Nissan. Plaintiffs are asking the Court to rely on the *Jackson* factors, however in this case, Mr. Moskos' fee request is **not proportional** to the results obtained.

Nissan was prepared to repurchase the Plaintiffs' vehicle on November 12, 2020, before Plaintiffs rejected that award. That repurchase amount would have been approximately $33,000 dollars

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by application of the repurchase statute. (Ex. I). Twenty-nine months later, Mr. Moskos negotiated a $35,000 settlement for his clients. The Court must consider whether his work added value to the results he obtained for his clients. The Court must evaluate whether it is "reasonable" to expend $100,000 to get an additional $2,000 for your client. Nissan does not believe our court's jurisprudence or case law supports such a position as that suggests putting attorney needs before that of consumer needs.

If the Court is inclined to award attorneys' fees, Nissan submits that only the fees incurred prior to filing suit on November 13, 2020 should be permitted since the results obtained from that date forward were not reasonable and did not result in any more favorable of a position for the Plaintiffs.

CONCLUSION

For the foregoing reasons, Nissan North America, Inc. asks the Court to reject Plaintiffs' Motion for Attorneys' Fees.

Dated: April 5, 2023

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ *Sarah T. Eibling*

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Attorneys for Defendant Nissan North America, Inc.

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Exhibit A

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BBB AUTO LINE

November 12, 2020

MR RITA GREEENAWALT CO STEVE MOSKOS C/O STEVE MOSKOS
4000 FABER PLACE DR STE 300
NORTH CHARLESTON SC 29405

Re: NIS2018152 Greeenawalt CO Steve Moskos vs Nissan North America
5N1AT2MT4KC841781

Dear Mr.. Rita Greeenawalt CO Steve Moskos C/O Steve Moskos:

Enclosed is the arbitrator's *Decision* and *Reasons for Decision* for your case.

We have also enclosed an *Acceptance/Rejection Form* that must be used to accept or reject the decision. Please complete the form and return it to BBB AUTO LINE so that we receive it in our office **within** 14 **days** from the date of this letter. We recommend that you call to confirm receipt of this form a few days after you send it to us.

Please note, that according to the terms of the Decision, the manufacturer will provide you with a statement of amounts that will be paid, if you accept the Decision. **Upon receipt of the manufacturer's statement of amounts, you should review and compare it to the manufacturer's Program Summary and/or lemon law remedies, if applicable. If you dispute any of the amounts outlined on the manufacturer's statement, you must submit a written request to our office within 10 days after your receipt of the statement. Your request will be forwarded to the manufacturer for comment and then both positions will be sent to the arbitrator for resolution.** If you believe you are entitled to reimbursement for any amounts (including any attorney 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 those expenses when you return the enclosed *Acceptance/Rejection* form.

Should you accept the decision, please be aware that a current vehicle registration (valid until the date of the transaction) is required.

Please do not make any changes or additions to the *Acceptance/Rejection Form* as we will consider that a rejection of the decision.

If you have any questions about the decision or the amounts, please feel free to call me at 800.955.5100. You may also fax the signed form to me at 703.247.9700.

Sincerely,

Santiago Gonzalez at Extension 5301

Council of Better Business Bureaus, Inc.
3033 Wilson Boulevard, Suite 600 · Arlington, VA · 22201 · Phone 800.955.5100 · Fax: 703.247.9700

BBB AUTO LINE

ACCEPTANCE OR REJECTION OF DECISION

Date: 11/12/20 Case Number: NIS2018152
Customer: Rita Greeenawalt CO Steve Moskos,
Business:
Mfr-Info: 1900 SC 5N1AT2MT4KC841781

If this form is not received in our office within 14 days from the date of the cover letter, the decision will be considered rejected. You may return it to our office via fax at 1.703.247.9700.

Please check one of the following:

_____ I ACCEPT THE ARBITRATION DECISION. I understand this means:

* the business will be legally bound to abide by this decision; and,
* I, too, will be legally bound, which means I give up any right to sue the business in court on any claim that has been resolved at the arbitration hearing, unless the business fails to perform according to the Arbitrator's decision or unless otherwise provided by state or federal law.

You must do the following if you have been awarded a repurchase/replacement award and accept it:

1) Contact your financial company to provide permission to release payment and payoff information to the manufacturer in order to complete the repurchase/replacement transaction.
Indicate the date you have done this:_____

2) Please provide the full name of your financing company _____
Account Number _____
Mailing address _____
City _____ State _____ Zip _____
Telephone number _____ Fax number _____

_____ I REJECT THE ARBITRATION DECISION. I understand this means:

* I may pursue other legal remedies under state or federal law;
* depending on federal or state law, the decision may be introduced as evidence by me or the business in any civil court action relating to any matter considered in this arbitration hearing;
* the business will not be obligated to perform any part of the decision; and,
* this will end Better Business Bureau involvement in my case.

Signature(s) of Titled Owner(s): _____ Date: _____

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National Programs
BBB AUTO LINE®

November 12, 2020

LAUREN MARCH

MAIL DROP P3C P O BOX 685003
FRANKLIN TN 37068-5003

Re: NIS2018152 Greeenawalt CO Steve Moskos vs Nissan North America
5N1AT2MT4KC841781

Dear Madam/Sir:

Enclosed is the arbitrator's *Decision* and *Reasons for Decision* for your case.

The customer has been sent an *Acceptance/Rejection Form* and has 14 days to return the form to the BBB AUTO LINE. For good cause the BBB AUTO LINE may extend this time frame. We will notify you as soon as we know whether the customer has accepted or rejected the *Decision*.

If you have any questions about the decision or if I may be of service to you, please feel free to call me at 800.334.2406.

Sincerely,

Santiago Gonzalez at Extension 5301

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Reasons for Decision

National Programs

Submitted Date: 11/10/20

NIS2018152

VIN: 5N1AT2MT4KC841781

Customer: Mr. Rita Greeenawalt CO Steve Moskos - Hearing Date: 09/17/20

Arbitrator: Bernie Ferrone

Question 1

It is determined that a { Please list below } decision is a fair resolution of this dispute.

Manufacturer to buy back per BBB SCAuto Line Program summary. Although technical expert required by Nissan could not find a problem, I continue to find that the vehicle is eligible for a buyback. See b.below for reasons.

b For the following reasons, the decision listed above is a fair resolution of this dispute. (If relevant, explain how lemon law standards apply to the facts in this case)

Manufacturer attempted repairs on GPS system 7 times with no success and the vehicle was out of service for the consumer 40+ days. Manufacturer stated that they had replaced everything they could and manufacturer stated they could not repair the GPS unit. Manufacturer stated that they thought the problem was caused by external forces, but could not identify and external forces that could cause the non working unit.
Received the technical expert's inspection report on 11/10/20. He did not find any problems with the factory GPS system, but it was determined earlier at the dealer that the problem was intermittent and not solveable. The factory offered a financial settlement at that time and the consumer rejected the settlement offer. I found that the problem still exists after 7 attempts and 40+ days out of service so I ordered a buy back per guidelines.

Question 2

If awarding a repurchase/replacement, identify the problem(s) upon which the award is based and the number of repair attempts for each problem.

All problems involved the GPS unit. It would intermittently not work at all. The manufacturer acknowledged that they attempted repairing the unit 7 times and after every time, the problem recurred. The vehicle was out of service for a total of 40 days. I find that the defect does effect the safety of the vehicle.

Question 3

Please indicate the cumulative number of days the vehicle was out of service for all problems

40

Question 4

Was final notice given? (Yes / No / Not Applicable)

Yes

Question 5

Please identify the mileage on the vehicle at the time of the hearing/inspection:

5827.

REPURCHASE DECISION

National Programs

Submitted Date: 11/10/20

NIS2018152

VIN: 5N1AT2MT4KC841781

Customer: Mr. Rita Greeenawalt CO Steve Moskos - Hearing Date: 09/17/20

Arbitrator: Bernie Ferrone

Question 1

Vehicle (Year, Make, Model):

2019 Nissan Rogue

Question 2

The manufacturer shall repurchase the above ("vehicle") owned by the customer within 30 days after the manufacturer's receipt of the customer's acceptance of this decision, in accordance with the provisions of the applicable manufacturer *Program Summary* that set out the remedies to be included in a repurchase award: (Indicate with an "X")

a **Under the lemon law**

X

- OR -

b **Not under the lemon law**

Question 3

The following shall be deducted from the amounts paid by the manufacturer:

a **If any amount is to be paid by the consumer for the consumer's use of the vehicle, please provide a dollar amount or formula (being certain to reference the mileage used) for the Reasonable Allowance for Use:**

Formula per BBB Auto Line Program summary. Mileage 2612 @ first report.

The Manufacturer may deduct for any damage beyond normal wear and tear that is not caused by a vehicle nonconformity and that is not repaired by the customer prior to the completion of this transaction.

The manufacturer shall provide the customer with a written statement of all amounts that will be paid under this decision. If there is a dispute as to any amounts that should be paid by the manufacturer, the customer may submit a written request to BBB AUTO LINE asking that the arbitrator resolve the dispute. BBB AUTO LINE must receive the customer's request no later than 10 days after the customer receives the manufacturer's statement of amounts that will be paid.

The arbitrator's resolution of the dispute will be provided to the parties in the form of a decision that the customer may accept or reject, and a rejection will be considered to be a rejection of this repurchase decision. The manufacturer's time for performance under this decision shall be extended by the number of days it takes to resolve the dispute submitted by the customer as to any amounts that should be paid by the manufacturer. .

At the time of repurchase, the customer will be responsible for turning over the vehicle and providing clear title to the manufacturer. The vehicle shall have a current registration and be in a similar condition as it was at the time of the hearing, allowing for normal usage. The customer must also comply with all additional requirements in the section of the manufacturer *Program Summary* that sets out customer responsibilities if a repurchase is awarded.

If there is a lienholder, payment of any amounts due shall be made by the manufacturer to the customer and the lienholder as their respective interests appear on the records of ownership.

The manufacturer shall contact the customer to arrange a mutually agreeable location for the repurchase transaction.

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CASE: NIS2018152
Arbitrator: Bernie Ferrone

Customer: Mr. Rita Greeenawalt CO Steve Moskos
Date: 11/10/20

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Exhibit B

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BBB AUTO LINE

ACCEPTANCE OR REJECTION OF DECISION

Date: 11/12/20 Case Number: NIS2018152
Customer: Rita Greeenawalt CO Steve Moskos,
Business:
Mfr-Info: 1900 SC 5N1AT2MT4KC841781

If this form is not received in our office within 14 days from the date of the cover letter, the decision will be considered rejected. You may return it to our office via fax at 1.703.247.9700.

Please check one of the following:

_____ I ACCEPT THE ARBITRATION DECISION. I understand this means:

* the business will be legally bound to abide by this decision; and,
* I, too, will be legally bound, which means I give up any right to sue the business in court on any claim that has been resolved at the arbitration hearing, unless the business fails to perform according to the Arbitrator's decision or unless otherwise provided by state or federal law.

You must do the following if you have been awarded a repurchase/replacement award and accept it:

1) Contact your financial company to provide permission to release payment and payoff information to the manufacturer in order to complete the repurchase/replacement transaction.
Indicate the date you have done this:_____

2) Please provide the full name of your financing company _____
Account Number _____
Mailing address _____
City _____ State _____ Zip _____
Telephone number _____ Fax number _____

✓ I REJECT THE ARBITRATION DECISION. I understand this means:

* I may pursue other legal remedies under state or federal law;
* depending on federal or state law, the decision may be introduced as evidence by me or the business in any civil court action relating to any matter considered in this arbitration hearing;
* the business will not be obligated to perform any part of the decision; and,
* this will end Better Business Bureau involvement in my case.

Signature(s) of Titled Owner(s): Rita Greenawalt Date: 11/13/2020

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Exhibit C

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C. STEVEN MOSKOS, P.A.

ATTORNEY AND COUNSELOR AT LAW

C. Steven Moskos
Board Certified Civil Trial Attorney
Board Certified Civil Pretrial Advocate
By the National Board of Trial Advocacy
Supreme Court of South Carolina Certified Mediator

M

4000 Faber Place Drive, Suite 300
North Charleston, SC 29405
Telephone: (843) 763-5297
www.moskoslawfirm.com
steve@moskoslawfirm.com

November 13, 2020

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Corporation Service Company
Reg Agent for Nissan North America, Inc.
508 Meeting Street
West Columbia, South Carolina 29169

RE: Greenawalt v. Nissan North America, Inc.
Case No.: 2020-CP-08-02455

Dear Sir or Madam:

Please find enclosed and served upon you, Corporation Service Company as Registered Agent for Nissan North America, Inc., a filed copy of the Summons and Complaint regarding the above captioned matter.

If you have any questions, please do not hesitate to contact me.

Sincerely,

C. Steven Moskos
CSM/slf

Enclosures

cc: Rita Greenawalt

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CSC

Notice of Service of Process

LDD / ALL
Transmittal Number: 22326399
Date Processed: 11/19/2020

Primary Contact: Sherry Robinson
Nissan North America, Inc.
One Nissan Way
Franklin, TN 37067-6367

Electronic copy provided to: Angie Mathis
Maribeth Riggins-Loy
Catherine Reidy
Steve Roberts
Tonya Brooks
Susan Gritton
LaTonya Irvin
Sandy Hughes
Courtney Smith
Samaritan Potter

Entity:	Nissan North America, Inc. Entity ID Number 0505342
Entity Served:	Nissan North America, Inc.
Title of Action:	Rita R. Greenawalt vs. Nissan North America, Inc.
Matter Name/ID:	Rita R. Greenawalt vs. Nissan North America, Inc. (10676443)
Document(s) Type:	Summons/Complaint
Nature of Action:	Breach of Warranty
Court/Agency:	Berkeley County Court of Common Pleas, SC
Case/Reference No:	2020-CP-08-02455
Jurisdiction Served:	South Carolina
Date Served on CSC:	11/18/2020
Answer or Appearance Due:	30 Days
Originally Served On:	CSC
How Served:	Certified Mail
Sender Information:	C. Steven Moskos 843-763-5297

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | sop@cscglobal.com

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ELECTRONICALLY FILED - 2023 Apr 05 10:34 AM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

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-_____ **SUMMONS** (Jury Trial Demanded)

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the attorney for Plaintiffs, C. Steven Moskos, at his office located at 4000 Faber Place Drive, Suite 300, North Charleston, South Carolina 29405, within thirty (30) days of the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN NOTICE FURTHER that, if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Complaint.

C. STEVEN MOSKOS, P.A.
ATTORNEY FOR PLAINTIFFS

BY: s/C. Steven Moskos
SC Bar# 7938
4000 Faber Place Dr., Ste. 300
North Charleston, SC 29405
Telephone: (843) 763-5297
steve@moskoslawfirm.com

Charleston, South Carolina
November 13, 2020

ELECTRONICALLY FILED - 2020 Nov 13 4:02 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

ELECTRONICALLY FILED - 2023 Apr 05 10:34 AM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

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-_____ **COMPLAINT** (Jury Trial Demanded)

Plaintiffs, complaining of Defendant, allege the following:

1. That Plaintiff Rita Greenawalt is a resident of Berkeley County, South Carolina.
2. That Plaintiff James Greenawalt is a resident of Berkeley County, South Carolina.
3. That Defendant, Nissan North America, Inc., hereinafter Nissan, is a corporation organized and licensed in a State other than the State of South Carolina but is doing business in the State of South Carolina.
4. That Defendant Nissan has established a procedure to resolve warranty disputes with its customers.
5. That as part of that procedure, Defendant Nissan requires consumers to participate in an informal dispute settlement mechanism (IDSM) as allowed under the Magnuson-Moss Warranty Act, 15 U.S.C. 2301 et seq.
6. That Defendant Nissan's informal dispute settlement mechanism is administered by the Better Business Bureau (BBB).
7. That Defendant Nissan is familiar with the requirements of the Magnuson-Moss Warranty Act as this Act applies to the warranties Nissan issues regarding its 2019 vehicles.

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8. That 15 U.S.C. 2311(b)(1) states, "Nothing in this chapter shall invalidate or restrict any right or remedy of any consumer under State law or any other Federal law."

9. That in spite of the language in 15 U.S.C. 2311(b)(1), Defendant Nissan has established and participates in an informal dispute settlement mechanism that restricts the rights and remedies of consumers under the South Carolina Enforcement of Motor Vehicle Express Warranties §56-28-10 *et seq.*, also known as the Lemon Law.

10. That if a vehicle is nonconforming and meets the criteria of the South Carolina Lemon Law, a manufacturer is required to replace the nonconforming vehicle with a comparable vehicle or to "refund to the consumer the full purchase price as delivered including applicable finance charges, sales taxes, license fees, registration fees, and any other similar governmental charges, less a reasonable allowance for the consumer's use of the vehicle."

11. That the South Carolina Lemon Law defines a reasonable allowance for use as "that amount directly attributable to use by the consumer before his first report of the nonconformity to the manufacturer, agent, or dealer, and must be calculated by multiplying the full purchase price of the vehicle by a fraction having as its denominator one hundred twenty thousand and having as its numerator the number of miles that the vehicle traveled before the first report of nonconformity".

12. That any consumer who finally prevails in any action brought under the South Carolina Lemon Law "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

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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".

13. That the South Carolina Lemon Law, §56-28-10 *et seq.*, does not state that a manufacturer is to receive a credit for any rebates which are applied to a consumer's purchase of a vehicle.

14. That the South Carolina Lemon Law, §56-28-10 *et seq.*, does not state that the amount of a manufacturer's rebate is to be or may be deducted or excluded from the full purchase price formula found in the South Carolina Lemon Law.

15. That the word "rebate" is not used or mentioned anywhere in the South Carolina Enforcement of Motor Vehicle Express Warranties, §56-28-10 *et seq.*

16. That the term "negative equity" as used in the car industry means that a person owes a financial entity more money on a car loan than the car is worth.

17. That Nissan franchised car dealerships will sometimes take a car in as a trade-in on a new vehicle.

18. That sometimes the traded in vehicle will have negative equity.

19. That Nissan franchised car dealerships will sometimes take the negative equity and "roll it" into a car loan used to extend credit to a consumer so he/she can buy a vehicle from that dealership.

20. That the South Carolina Lemon Law, §56-28-10 *et seq.*, does not state that a manufacturer is to receive a credit against the full purchase price as delivered of the car for any negative equity which was added to or made a part of a consumer's

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purchase of a new vehicle.

21. That the South Carolina Lemon Law, §56-28-10 *et seq.*, does not state that negative equity from a prior car loan from a vehicle used as a trade in on the nonconforming vehicle is to be or may be deducted or excluded from the full purchase price formula found in the South Carolina Lemon Law.

22. That the phrase "negative equity" is not used or mentioned anywhere in the South Carolina Enforcement of Motor Vehicle Express Warranties, §56-28-10 *et seq.*

23. That Defendant Nissan prepared the formula and remedies that the BBB could use if the BBB found in favor of a consumer.

24. That the formula Defendant Nissan prepared for the BBB process excludes rebates and negative equity from the full purchase price of the vehicle.

25. That the formula Defendant Nissan prepared for use in the BBB process allows Defendant Nissan a reasonable allowance for use that is calculated by multiplying the full purchase price of the vehicle by a fraction having as its denominator one hundred thousand and having as its numerator the number of all accrued miles that the vehicle traveled.

26. That Defendant Nissan uses the BBB formula and remedies in its IDSM when the BBB finds in favor of a consumer.

27. That the formula Defendant Nissan uses in its IDSM through the BBB excludes rebates and negative equity from the full purchase price of the vehicle.

28. That the formula Defendant Nissan uses allows Defendant Nissan a reasonable allowance for use that is calculated by multiplying the full purchase price of the vehicle by a fraction having as its denominator one hundred thousand and having

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as its numerator the number of all accrued miles that the vehicle traveled.

29. That the formula used by Defendant Nissan is less advantageous to consumers than the South Carolina Enforcement of Motor Vehicle Express Warranties, §56-28-10 *et seq.*

30. That Defendant Nissan requires the BBB to use the formula and remedies set forth above when the BBB administers a dispute and finds in favor of a consumer.

31. That prior to January 1, 2019, Defendant Nissan was aware of the formula and remedies that the BBB could use should the BBB arbitrator find in favor of a consumer.

32. That the informal dispute settlement mechanism Defendant Nissan requires consumers to use does not allow prevailing consumers to receive attorney's fees.

33. That Defendant Nissan has not taken any steps to change or alter the informal dispute settlement mechanism or its remedies since January 1, 2019.

34. That on or about August 30, 2019, Plaintiffs purchased a 2019 Nissan Rogue VIN: 5N1AT2MT4KC841781 from Hudson Charleston Acquisition, LLC, d/b/a Hudson Nissan of North Charleston.

35. That Plaintiffs were purchasers, other than for purposes of resale, of the 2019 Nissan Rogue VIN: 5N1AT2MT4KC841781, a private passenger motor vehicle, which is a type normally used for personal, family, or household purposes.

36. That at the time of purchase, the 2019 Nissan Rogue had been driven at least 15 miles.

37. That Defendant Nissan issued a three year or thirty-six thousand mile, whichever came first, warranty covering the 2019 Nissan Rogue bumper to bumper.

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38. That Defendant Nissan's warranty covers the cost of all parts and labor needed to repair the various components in the vehicle that are defective in workmanship or materials.

39. Beginning shortly after Plaintiffs purchased this vehicle, and continuing to the present, Plaintiffs have returned this vehicle to Hudson Nissan of North Charleston, an authorized agent for Nissan regarding warranty repairs, on a number of occasions and complained that the vehicle has deficiencies including, but not limited to, malfunctions in the navigation system and electrical system.

40. That the Nissan Rogue has been in for repairs on more than three occasions, yet it is still unrepaired.

41. That the Nissan Rogue has been out of service for approximately 48 days and is still unrepaired.

42. That Defendant Nissan, individually and through its authorized agent Hudson Nissan of North Charleston, has failed to conform the vehicle to its warranty in that the vehicle still operates poorly and is nonconforming.

43. That Defendant Nissan recognizes that the vehicle is nonconforming.

44. That Plaintiffs participated in the arbitration program established by Defendant Nissan by going through the BBB program.

45. That Defendant Nissan did not oppose Plaintiffs' request for relief through the BBB program.

46. That Defendant Nissan did not provide any evidence that it had repaired Plaintiffs Rogue.

47. That the BBB hearing officer found in favor of Plaintiffs and ordered that the vehicle

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be repurchased by Defendant.

48. That the BBB hearing officer did not award attorney's fees as part of their decision even though said fees were requested by Plaintiffs.

49. That Plaintiffs have made a demand on Defendant to accept the return of the subject vehicle pursuant to South Carolina law; however, Defendant has failed and refused to accept the return of the subject vehicle in a timely fashion.

50. That Plaintiffs have had to hire an attorney to represent them in this matter.

FOR A FIRST CAUSE OF ACTION
(BREACH OF WARRANTIES)

51. That Plaintiffs repeat all prior paragraphs as if repeated herein verbatim.

52. Defendant Nissan expressly warranted to Plaintiffs that it would repair defects in parts and/or workmanship in Plaintiffs's vehicle.

53. Although Defendant Nissan has attempted to limit Plaintiffs' rights under the warranty to the replacement or repair of defects in parts and/or workmanship under the terms of the express warranty, this exclusive remedy has failed to serve its essential purpose, in that Defendant Nissan has failed to correct Plaintiffs' vehicle's defects after attempting numerous times to do so.

54. Defendant Nissan impliedly warranted that Plaintiffs' vehicle would pass without objection in the trade, that it was of fair average quality for goods of that type, and that it was suitable to be used for the ordinary purposes for which these vehicles are used.

55. Defendant Nissan breached all implied and express warranties to Plaintiffs, and as a direct and proximate result of Defendant Nissan's breaches, Plaintiffs have suffered actual, consequential and incidental damages.

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FOR A SECOND CAUSE OF ACTION
(VIOLATION OF MAGNUSON-MOSS WARRANTY ACT)

56. That Plaintiffs repeat all prior paragraphs as if repeated herein verbatim.

57. Upon information and belief, Defendant Nissan is a supplier of consumer products engaged in the business of making vehicles directly or indirectly available to consumers.

58. Defendant Nissan failed to comply with its warranty obligations to Plaintiffs under its written and/or implied warranties in the following particulars:

a. In failing to provide Plaintiffs with a vehicle which was free from defects;

b. In failing to provide Plaintiffs with a vehicle which would pass without objection in the trade;

c. In failing to provide Plaintiffs with a vehicle of fair average quality for goods of that type;

d. In failing to provide Plaintiffs with a vehicle which was fit for the ordinary purposes for which such vehicles are used; and

e. In failing to properly repair, replace or adjust defects in the vehicle's parts and/or workmanship.

59. Plaintiffs have afforded Defendant Nissan a reasonable opportunity to cure its failure to comply with its warranty obligations, but Defendant Nissan has failed and refused to do so.

60. Plaintiffs are, therefore, informed and believe that they have complied with the requirements of 15 U.S.C. 2301 et seq. to the best of their ability.

61. As a direct and proximate result of the acts above, Defendant Nissan, upon information and belief, has violated 15 U.S.C. 2301 et seq., commonly known as

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the Magnuson-Moss Warranty Act, and as a direct and proximate result of the Defendant's violation, Plaintiffs have suffered actual, consequential and incidental damages, and they have incurred attorney's fees and costs in bringing this action.

FOR A THIRD CAUSE OF ACTION
(ENFORCEMENT OF MOTOR VEHICLE EXPRESS WARRANTIES)

62. That Plaintiffs repeat all prior paragraphs as if repeated herein verbatim.

63. That Plaintiffs notified Defendant Nissan by and through its agent Hudson Nissan of North Charleston that the motor vehicle had not been conformed to Defendant's express warranties.

64. That neither Defendant Nissan, nor its authorized dealer, has been able to conform the motor vehicle to the express warranties which apply to the aforementioned vehicle.

65. That the defects and condition of the vehicle substantially impair its use, market value, and/or safety to Plaintiffs.

66. That Defendant has been allowed a reasonable number of attempts to fix the vehicle, but it is still unable to conform the vehicle to the applicable express warranties.

67. That Plaintiffs are entitled to a refund of their money and the satisfaction of any debt owed to a financial institution.

68. That Defendant has failed and refused to repurchase or replace the vehicle pursuant to Section 56-28-10 et. seq. of the South Carolina Code of Laws, 1976 as amended.

69. That Plaintiffs are, therefore, informed and believe that they have complied with the requirements of Section 56-28-10 et. seq. of the South Carolina Code of Laws

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1976 as amended.

70. That as a direct and proximate result of the acts alleged above, Defendant, upon information and belief, has violated Section 56-28-10 et. seq. of the South Carolina Code of Laws 1976, as amended, commonly known as the Enforcement of Motor Vehicle Express Warranties Act, and should be required to repurchase the subject vehicle and compensate Plaintiffs for their actual, consequential and incidental damages, finance charges, sales taxes, license fees, registration fees and other similar governmental charges, and pay Plaintiffs' attorney's fees and costs incurred in bringing this action.

FOR A FOURTH CAUSE OF ACTION
(UTPA VIOLATION)

71. That Plaintiffs repeat all prior paragraphs as if repeated herein verbatim.

72. That the aforementioned acts and practices of Defendant Nissan, including but not limited to, establishing and/or utilizing an informal dispute settlement mechanism in violation of State and federal law and in failing and refusing to repurchase or replace the vehicle pursuant to the South Carolina Lemon Law formula, are against the public interest and that these acts and practices are capable of repetition.

73. That Defendant's actions are unfair and deceptive.

74. That Defendant's actions were willful and wanton in that Defendant knew or should have known that its conduct was unfair and deceptive and, therefore, a violation of this State's statutes concerning unfair and deceptive acts and practices.

75. That as a result of Defendant's unfair and deceptive acts or practices in violation of this State's statutes, Plaintiffs pray judgment against Defendant for three times the actual damages, together with attorney's fees, together with the costs and

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disbursements of this action.

FOR A FIFTH CAUSE OF ACTION
(REGULATION OF MOTOR VEHICLE DEALERS ACT)

76. That Plaintiffs repeat all prior paragraphs as if repeated herein verbatim.

77. That Plaintiffs are informed and believe that the malicious and deceptive acts and practices of Defendant constitutes a violation of Section 56-15-10 et. seq. of the South Carolina Code of Laws 1976.

78. That as a result of Defendant's deceptive acts and practices, Plaintiffs have suffered damages in the loss of the value of the vehicle.

79. That as a result of Defendant's violation of this State's Statutes dealing with the regulation of motor vehicle dealers, Plaintiffs demand (2) two times their actual damages, together with punitive damages not to exceed three times the actual damages, together with attorney fees, together with the costs and disbursements of this action.

WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

1. In the First Cause of Action for actual, consequential and incidental damages for Defendant's breaches of express and implied warranties;

2. In the Second Cause of Action for a refund of their money, or in the alternative, actual, consequential and incidental damages, together with reasonable attorney's fees and costs for Defendant's violation of 15 U.S.C. 2301 *et seq*;

3. In the Third Cause of Action for a refund of their money, actual, consequential and incidental damages, together with reasonable attorney's fees and costs for Defendant's violation of Section 56-28-10 et.seq., S.C. Code Ann.;

4. In the Fourth Cause of Action for three (3) times their actual damages, together with attorney's fees, together with the costs and disbursements of this action.

5. In the Fifth Cause of Action for (2) two times their actual damages, together with punitive damages not to exceed three times the actual damages, together with attorney fees, together with the costs and disbursements of this action.

6. For an injunction against Defendant Nissan to prevent it from excluding from its informal dispute settlement mechanism an award of attorney's fees to prevailing consumers.

7. For such other and further relief as this Court deems just and proper.

C. STEVEN MOSKOS, P.A.
ATTORNEY FOR PLAINTIFFS

BY: s/C. Steven Moskos
SC Bar# 7938
4000 Faber Place Dr., Ste. 300
North Charleston, SC 29405
Telephone: (843) 763-5297
steve@moskoslawfirm.com

Charleston, South Carolina
November 13, 2020

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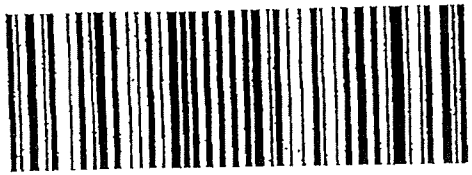
PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL®



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US POSTAGE
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FROM 29405
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C. Steven Moskos
C. Steven Moskos, P. A
4000 Faber Place Dr., Ste. 300
North Charleston SC 29405

7019 1120 0002 2535 0529

693

Corporation Service Company
Reg Agent for Nissan North America
508 Meeting Street
West Columbia SC 29169

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Exhibit D

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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 **DEFENDANT'S OFFER OF JUDGMENT TO PLAINTIFF**

TO: STEVEN MOSKOS, ATTORNEY FOR THE ABOVE-NAMED PLAINTIFF:

Defendant Nissan North America, Inc. ("Defendant"), by and through its undersigned counsel, pursuant to Rule 68 of the South Carolina Rules of Civil Procedure, offers to allow judgment to be taken against it in the above-referenced action for the repurchase of the 2019 Nissan Rogue, bearing VIN #5N1AT2MT4KC841781 (the "Subject Vehicle") for the total sum of Thirty Nine Thousand Dollars ($39,000.00), inclusive of interest, costs, and attorneys' fees, accrued to the date of this offer, and by you (Plaintiffs) agreeing to return the Subject Vehicle in an undamaged condition, save for the alleged nonconformities and reasonable wear and tear (i.e., no cracked windshield, no bumper damage, no body damage, and no accessories that would alter the safety and/or emission certification of the vehicle), and free of any other lien or encumbrance and by agreeing to dismiss Nissan North America, Inc., with prejudice within 7 days of accepting this offer.

If you (Plaintiff) accept this inclusive Offer of Judgment and give notice within twenty (20) days of the date of service of this Offer in writing, you (Plaintiffs) or Defendant may file this Offer, and the Clerk shall then enter judgment against Defendant as described herein.

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If written notice accepting this Offer is not given within twenty (20) days of the date of the service as stated below, this inclusive Offer is deemed to be withdrawn. Under Rule 68(a), SCRCP, an offer not accepted "shall be considered rejected and evidence thereof is not admissible except in a proceeding after trial to fix costs, interest, attorney's fees, and other recoverable monies." Further, if you (Plaintiffs) fail to obtain a more favorable judgment than that offered by Defendant, you (Plaintiff) must pay Defendant's "costs from the time of the offer." Rule 68(b), SCRCP as well as being subject to other limitations under the law if you (Plaintiffs) fail to obtain a more favorable judgment than that offered by Defendant.

This inclusive Offer of Judgment is not and should not be construed as an admission by Defendant of any liability whatsoever, in this action or any other action. The sole purpose of this Offer of Judgment is to save attorney time and costs, and in the event this Offer is not accepted, Defendant intends to vigorously defend this action at the trial of the case.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/Sarah T. Eibling

Sarah T. Eibling
SC Bar No. 72607
E-Mail: sarah.eibling@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Ashia Crooms-Carpenter
SC Bar No. 102680
E-mail: ashia.carpenter@nelsonmullins.com
301 South College Street / 23rd Floor
Charlotte, NC 28202-6041
(704) 417-3000

Attorneys for Defendant Nissan North America, Inc.

Columbia, South Carolina
September 3, 2021

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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

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Nissan North America, Inc., do hereby certify that I have served all counsel in this action with a copy of "***Defendant Offer of Judgment to Plaintiff***" by sending a copy of the same via electronic mail as follows:

C. Steven Moskos, P.A.
The Moskos Law Firm
4000 Faber Place Dr., Ste. 300
North Charleston, SC 29405
steve@moskoslawfirm.com

Kelli D. Martin, Sr. Administrative Assistant

Dated: Sept. 3, 2021

Exhibit E

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Sarah Eibling

From: Sarah Eibling
Sent: Tuesday, December 20, 2022 3:57 PM
To: Steve Moskos
Subject: RE: Greenawalt v Nissan

Steve:

I have authorization to repurchase your client's vehicle in the amount of $34,0000 and to submit the issue of attorneys' fees and costs to mediation.

How would you like to proceed?

Thanks,
Sarah

NELSON MULLINS

SARAH T. EIBLING PARTNER
sarah.eibling@nelsonmullins.com
MERIDIAN | 17TH FLOOR
1320 MAIN STREET | COLUMBIA, SC 29201
T 803.255.9756 F 803.256.7500
NELSONMULLINS.COM VCARD VIEW BIO

From: Steve Moskos <steve@moskoslawfirm.com>
Sent: Monday, December 5, 2022 7:25 PM
To: Sarah Eibling <sarah.eibling@nelsonmullins.com>
Subject: Greenawalt v Nissan

◄**External Email**► - From: steve@moskoslawfirm.com

Sarah,

Confirming our conversation today, we need to move forward with the case. I know the following need be done.

1. I need from you Nissan's responses to my December 17, 2021 supplemental interrogatories and supplemental requests for production.
2. I need from you Nissan's responses to my December 18, 2021 second supplemental interrogatories and second supplemental requests for production.
3. I need from you dates when I can depose Nissan.
4. I need from you dates when Nissan is willing to mediate this case.

5. The clerk's office scheduled my August 22, 2022 motion to compel for the week of January 18, 2023 before Judge McCoy.
6. You will contact Nissan to see if it is willing to buy back the Greenawalt's vehicle and pay my clients' costs, leaving the resolution of attorney's fees to be determined through our negotiations, a mediation, or by submission to a judge.

Please let me know if Nissan will provide the above and, if so, when. Let me know if I forgot anything. Thanks.

Steve

PLEASE NOTE WE HAVE RECENTLY MOVED. OUR NEW ADDRESS IS BELOW.

C. Steven Moskos
6650 Rivers Ave., Ste 210
North Charleston, SC 29406
843-763-5297
steve@moskoslawfirm.com
https://www.moskoslawfirm.com

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Exhibit F

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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 **PLAINTIFF'S OFFER OF JUDGMENT TO DEFENDANT NISSAN NORTH AMERICA, INC.**

TO: SARAH T. EIBLING, ESQ., ATTORNEY FOR DEFENDANT, NISSAN NORTH AMERICA, INC.:

PLEASE TAKE NOTICE that Plaintiffs above named hereby rescind all prior offers and now herewith offers, pursuant to South Carolina Code Annotated §15-35-400 and Rule 68 SCRCP, to take judgment only under Plaintiffs' Third Cause of Action against Nissan North America, Inc. in the amount of Eighty Thousand and 00/100 Dollars ($80,000.00), for the repurchase of the subject vehicle and attorney's fees and costs incurred for this claim only. Plaintiffs shall transfer title to the subject vehicle to Defendant at Hudson Nissan of North Charleston in North Charleston, South Carolina contemporaneous with receipt of $80,000.00. This Offer does not pertain to or include Plaintiffs' remaining causes of action.

PLEASE TAKE NOTICE that to accept this offer, Defendant must give notice thereof in writing within twenty days from the date of this notice or within ten days prior to trial, whichever occurs first, by filing notice with the Clerk of Court in the County in which

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the action is pending that Defendant Nissan North America, Inc. agrees to allow judgment to be filed against it in the amount stated above. Upon the filing, the Clerk shall enter immediately judgment of the stipulation.

PLEASE TAKE NOTICE that if the offer to accept judgment is not accepted within twenty days after notification or prior to or on the tenth day before the actual trial date, whichever date occurs first, the offer shall be considered rejected, and evidence thereof is not to be admissible except in a proceeding after the trial to fix costs, interests, attorney's fees and other recoverable monies.

PLEASE TAKE NOTICE that if this Offer is not accepted and Plaintiffs obtain a verdict or determination at least as favorable as the rejected offer, Plaintiffs shall be allowed to recover from Defendant Nissan North America, Inc., any administrative, filing, or other court costs from the date of the offer until judgment and eight percent interest computed on the amount of the verdict or award from the date of the offer.

C. STEVEN MOSKOS, P.A.
ATTORNEY FOR PLAINTIFFS
s/C. Steven Moskos
SC Bar# 7938
6650 Rivers Ave., Suite 210
North Charleston, SC 29406
Telephone: (843) 763-5297
steve@moskoslawfirm.com

Charleston, South Carolina
July 21, 2022

CERTIFICATE OF SERVICE

Undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by electronic means on June 21, 2022 in a manner provided by Order of the Supreme Court of South Carolina.

C. STEVEN MOSKOS, P.A.
By: s/C. Steven Moskos

Exhibit G

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Sarah Eibling

From: Steve Moskos <steve@moskoslawfirm.com>
Sent: Tuesday, March 21, 2023 4:08 PM
To: Sarah Eibling
Subject: Settlement Confirmation

◄External Email► - From: steve@moskoslawfirm.com

Sarah,

This email is to confirm our settlement negotiations with the mediator. As I understand it, our settlement is:

1. Nissan is to pay the Greenawalts $35,000;
2. The Greenawalts are considered the prevailing party 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 the Greenawalts' counsel the $35,000 funds for the Greenawalts;
7. The attorney's fees issue shall be submitted to a judge for determination.

Please confirm that I have stated the terms correctly.

Steve

C. Steven Moskos
6650 Rivers Ave., Ste 210
North Charleston, SC 29406
843-763-5297
steve@moskoslawfirm.com
https://www.moskoslawfirm.com

Exhibit H

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Berkeley
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP0802455

Rita R Greenawalt et al
PLAINTIFF(S)

Nissan North America, Inc.
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Plaintiff Rita R Greenawalt's Motion for Summary Judgment was filed on August 28, 2021 and was heard by this Court on November 9, 2021. Summary Judgment is properly granted when viewing the evidence and inferences to be drawn therefrom in a light most favorable to the nonmoving party, when there are no genuine issues of material fact, and when the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. "[T]he nonmoving party ... is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Huffman v. Sunshine Recycling, LLC, 426 S.C. 262, 270-71, 826 S.E.2d 609, 614 (2019). This Court finds that the Defendant submitted at least a scintilla of evidence sufficient to DENY Plaintiff Rita R Greenawalt's Motion for Summary Judgment at this time.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/01/2021 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2023 Apr 05 10:34 AM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455
ELECTRONICALLY FILED - 2021 Dec 01 4:49 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

ELECTRONICALLY FILED - 2023 Apr 05 10:34 AM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

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Berkeley Common Pleas

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

Case Number: 2020CP0802455

Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Exhibit I

ELECTRONICALLY FILED - 2023 Apr 05 10:34 AM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

CONDITIONAL SALES AGREEMENT

HUDSON NISSAN OF NORTH CHARLESTON

7331 Rivers Avenue
N. Charleston, SC 29406
843.553.1000

STOCK # 841761
SALESMAN ANDRE MIDDLETO SALESMAN #
DATE SOLD 08/24/19

PURCHASER'S NAME	DL#	DOB
JAMES M GREENAWALT	004571508	01/23/53
CO-PURCHASER'S NAME	DL#	DOB
RITA R GREENAWALT	004795146	07/13/56

ADDRESS	E-MAIL
1040 WILLOWOOD AVE	JRGREEN6969@AOL.COM

CITY	STATE	COUNTY	ZIP	CELL PHONE	WORK PHONE
GOOSE CREEK	SC	BERKELEY	29445	(843)797-6969	(843)727-5675

PLEASE ENTER MY OFFER FOR (X) NEW CAR OR TRUCK ( ) USED CAR OR TRUCK

VEHICLE PURCHASED

SERIAL # 5N1AT2MT4KC841781	
YEAR 2019	COLOR PEARL WHITE
MAKE NISSAN	TRIM S
MODEL ROGUE	MILES 15
BODY TYPE FWD SL	MODEL #

USED VEHICLE TRADE-IN UNIT #1

SERIAL # 6N1AT2MT6GC773286	
YEAR 2016	COLOR PEARL WHITE
MAKE NISSAN	TRIM
MODEL ROGUE	MILES 24717
BODY TYPE 2WD SL	MODEL #
BALANCE OWED TO	
ADDRESS	ACCT #
BALANCE OWED ON CAR	GOOD THRU

USED VEHICLE TRADE-IN UNIT #2

SERIAL #	
YEAR	COLOR
MAKE	TRIM
MODEL	MILES
BODY TYPE	MODEL #
BALANCE OWED TO	
ADDRESS	ACCT #
BALANCE OWED ON CAR	GOOD THRU

MSRP/RETAIL PRICE	30,140.00
SALES PRICE	31,828.37
MANUFACTURERS REBATE(S)	3,500.00
PURCHASE PRICE	28,328.37
PERMAPLATE 3YR EXTER	389.00
NAS PLATINUM PROTECT	800.00
PERMAPLATE 7YR	650.00
ESTIMATED TAG FEES ( ) Now ( ) Transfer	25.00
ELECTRONIC TAG & REGISTRATION FEES	N/A
MOTOR VEHICLE CLOSING FEE	556.63
IMF	500.00
TOTAL PURCHASE PRICE	31,250.00
	N/A
SERVICE CONTRACT	2,000.00
TRADE ALLOWANCE	17,500.00
TRADE PAYOFF AMOUNT	N/A
TRADE EQUITY	17,500.00
TOTAL CASH DOWN	987.85
BALANCE DUE ON DELIVERY	14,762.15

LIEN

WELLS FARGO DEALER SERVICES

PO BOX 997517

SACRAMENTO CA, 95899

FAILURE TO OBTAIN FINANCING: Dealer is not obligated to sell under this Conditional Sales Agreement unless financing is approved by a lending institution satisfactory to Dealer at Dealer's sole discretion (or until Purchaser pays the Balance Due After Trade-In or Down Payment to Dealer in cash). If approval of financing is not obtained or Purchaser does not pay the balance shown on the front to Dealer in cash within seven (7) days from the date of this agreement, The Purchaser shall return the vehicle delivered to Purchaser under this Conditional Sales Agreement and Dealer shall return to Purchaser any trade-in vehicle and/or deposit or down payment constituting a part of the consideration for this Conditional Sales Agreement, less Dealer's expenses and/or damages, including but not limited to repair of any physical damage to the vehicle, $1.00 per mile in excess of 25 miles per day or 150 miles, whichever is less, reasonable attorney fees and costs associated with enforcing this agreement, plus any other incidental and consequential damages Dealer suffers as a result of the failure to obtain approval of financing or payment of the balance shown on the front. If the trade-in has been sold by Dealer, then Purchaser shall be entitled to reimbursement of the actual cash value of the trade-in vehicle, less the expenses and/or damages described above, regardless of the amount of any trade allowance and/or discount allowed by Dealer. Purchaser agrees to indemnify and save Dealer harmless from liability for any and all debts, obligations, damages, claims, demands, actions, suits, proceedings or judgements of any kind or nature, arising directly or indirectly from, as a result of, or otherwise connected with this Conditional Sales Agreement or Purchaser's possession of the motor vehicle, as well as from the costs, including reasonable attorney fees, of defending against them. Purchaser shall maintain in full force and effect insurance to cover damage to the motor vehicle and liability arising from the operation of the same.

It is expressly understood and agreed to by and between the parties hereto that this is an offer to purchase by the Purchaser, and is not an offer to sell by HUDSON NISSAN OF NORTH CHARLESTON and further, that this offer to purchase does not become a binding contract on the parties hereto until accepted in writing by an authorized officer of HUDSON NISSAN OF NORTH CHARLESTON.

Except as set forth herein, this CONDITIONAL SALES AGREEMENT constitutes the entire agreement between PURCHASER and HUDSON NISSAN OF NORTH CHARLESTON.

MOTOR VEHICLE CLOSING FEE

A closing fee is a fee charged for all administrative and financial work needed to transfer the motor vehicle to the consumer, person, or entity including, but not limited to, compliance with all state, federal, and lender requirements, preparation and retrieval of documents, protection of the private personal information of the consumer, records retention, and storage costs.

"AS IS"

Any warranties on the product sold hereby are those made by the manufacturer. The seller, hereby, expressly disclaims all warranties, either expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and either assumes nor authorizes any other person to assume for it any liability in connection with the sale of the product.

The terms on the back of this document are incorporated herein by reference as if fully set forth on the front of this agreement and are legally binding on all parties hereto.

Purchaser

Purchaser

Accepted by

08/24/19
Date

THIS AGREEMENT IS GOVERNED BY A SEPARATE ARBITRATION AGREEMENT

ELECTRONICALLY FILED - 2023 Apr 05 10:34 AM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

ELECTRONICALLY FILED - 2023 Apr 30 11:11 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

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 **AFFIDAVIT OF** **C. STEVEN MOSKOS**

I, C. Steven Moskos, declare under penalty of perjury that the following is true and correct. Executed on April 30, 2023.

1. I am the attorney for Plaintiffs Rita R. Greenawalt and James M. Greenawalt in the above-entitled action.

2. On March 31, 2023, I attempted to file my initial time records, Plaintiffs' statement of Costs, Rita and James Greenawalt's affidavit, the affidavit of Jay Masty, and the affidavit of Justin Kahn; however, the Berkeley County Clerk of Court did not accept these filings before the end of the day on March 31, 2023. (Exhibit 1.)

3. On March 31, 2023, I emailed my initial time records, Plaintiffs' statement of Costs, Rita and James Greenawalt's affidavit, the affidavit of Jay Masty, and the affidavit of Justin Kahn to Sarah Eibling. (Exhibit 2.)

4. On April 2, 2023, I efiled my affidavit and exhibits in support of my clients' motion for attorney's fees. I also emailed a copy of those documents to opposing counsel. (Exhibits 3, 4, 5, and 6.)

5. On April 3, 2023, I received notice from the clerk that the manner in which I filed the affidavit of costs was incorrect. The clerk rejected the filing of all the documents submitted on March 31 even though all the other documents were filed correctly. I immediately refiled all the documents I filed with the clerk on March 31, 2023 and which were sent to opposing counsel on March 31, 2023. (Exhibit 7.)

SIGNATURE ON NEXT PAGE

C. STEVEN MOSKOS, P.A.
ATTORNEY FOR PLAINTIFFS
s/C. Steven Moskos
SC Bar No.: 7938
6650 Rivers Ave., Suite 210
North Charleston, SC 29406
Telephone: (843) 763-5297
steve@moskoslawfirm.com

Charleston, South Carolina
April 30, 2023

ELECTRONICALLY FILED - 2023 Apr 30 11:11 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

Exhibit 1

ELECTRONICALLY FILED - 2023 Apr 30 11:11 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

Steve Moskos

From: efiledonotreply@sccourts.org
Sent: Friday, March 31, 2023 4:32 PM
To: Steve Moskos
Subject: Courtesy NEF RE: 2020CP0802455

****** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2020CP0802455

Official File Stamp: 03-31-2023 04:31:16 PM
Court: CIRCUIT COURT
Common Pleas
Berkeley
Case Caption: Rita R Greenawalt , plaintiff, et al VS Nissan North America, Inc.
Document(s) Submitted: Affidavit/Affidavit of
Affidavit/Affidavit of Costs
- E-Filing/Additional Parts
Affidavit/Affidavit of
Affidavit/Affidavit of
Affidavit/Affidavit of
Filed by or on behalf of: C. Steven Moskos

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Melvin Wayne Cockrell, III
Darrell T. Johnson, Jr.
Ashia Bre'ana Crooms-Carpenter for Nissan North America, Inc.
Scott Douglas MacLatchie, Jr. for Nissan North America, Inc.
Sarah Theresa Eibling for Nissan North America, Inc.
C. Steven Moskos for Rita R Greenawalt et al

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

Exhibit 2

ELECTRONICALLY FILED - 2023 Apr 30 11:11 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

Steve Moskos

From: Steve Moskos
Sent: Friday, March 31, 2023 5:09 PM
To: Sarah T. Eibling
Subject: Greenawalt v Nissan
Attachments: 01 Time Records of C. Steven Moskos 3-31-23.pdf; 02 Statement of Costs Part 1.pdf; 02 Statement of Costs Part 2.pdf; 03 Affidavit of Rita and Jim Greenawalt 3-31-23.pdf; 04 Affidavit of Jay Masty.pdf; 05 Affidavit of Justin Kahn.pdf

Sarah,
Apparently, the clerk's office was unable to file five documents I e-filed. I am providing them now so you will have them for the attorney fee hearing next Wednesday.
Steve

C. Steven Moskos
6650 Rivers Ave., Ste 210
North Charleston, SC 29406
843-763-5297
steve@moskoslawfirm.com
https://www.moskoslawfirm.com

Exhibit 7

ELECTRONICALLY FILED - 2023 Apr 30 11:11 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

Steve Moskos

From: efiledonotreply@sccourts.org
Sent: Monday, April 3, 2023 8:49 AM
To: Steve Moskos
Subject: Rejection Notice: Your filing, Re: Greenawalt - (160) Failure to Deliver/Warranty - Affidavit/Affidavit of, was rejected

To:	C. Steven Moskos	steve@moskoslawfirm.com
From:	efiledonotreply@sccourts.org	
Date:	2023-03-31 16:31:16.923	
Subject:	Your electronic filing, Re: Greenawalt - (160) Failure to Deliver/Warranty - Affidavit/Affidavit of, was rejected by CIRCUIT COURT.	

Case Number:	2020CP0802455
Case Type:	(160) Failure to Deliver/Warranty
Document Type:	Affidavit/Affidavit of
Document Type:	Affidavit/Affidavit of Costs
Document Type:	E-Filing/Additional Parts
Document Type:	Affidavit/Affidavit of
Document Type:	Affidavit/Affidavit of
Document Type:	Affidavit/Affidavit of
Reason(s) rejected:	Dear Filer, Your Filing for Aff of Costs, Please list your Exhibits (receipts) on their own line under Exhibits filing. Also Please Remove the Additional Parts filing and File these Exhibits(reciepts) Under Exhibits and break them up into 3 Exhibits, labeling them A, B, C. Thank you,

CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

Exhibit 3

ELECTRONICALLY FILED - 2023 Apr 30 11:11 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

Steve Moskos

From: efiledonotreply@sccourts.org
Sent: Sunday, April 2, 2023 3:56 PM
To: Steve Moskos
Subject: Courtesy NEF RE: 2020CP0802455

****** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2020CP0802455

Official File Stamp: 04-02-2023 03:54:54 PM
Court: CIRCUIT COURT
Common Pleas
Berkeley
Case Caption: Rita R Greenawalt , plaintiff, et al VS Nissan North America, Inc.
Document(s) Submitted: Affidavit/Attorney Fees
- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits

Filed by or on behalf of: C. Steven Moskos

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Melvin Wayne Cockrell, III
Darrell T. Johnson, Jr.
Ashia Bre'ana Crooms-Carpenter for Nissan North America, Inc.
Scott Douglas MacLatchie, Jr. for Nissan North America, Inc.
Sarah Theresa Eibling for Nissan North America, Inc.
C. Steven Moskos for Rita R Greenawalt et al

The following people have not been served electronically by the Court. Therefore, they must be served by traditional

means:

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

ELECTRONICALLY FILED - 2023 Apr 30 11:11 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455
~~~

Exhibit 4

ELECTRONICALLY FILED - 2023 Apr 30 11:11 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

Steve Moskos

From: Steve Moskos
Sent: Sunday, April 2, 2023 4:03 PM
To: Sarah T. Eibling
Subject: Greenawalt v Nissan Email #1
Attachments: Affidavit of C. Steven Moskos 4-2-23.pdf; Exhibits 1-9 to Affidavit of C. Steven Moskos 4-2-23 Part 1 .pdf; Exhibits 10-12 to Affidavit of C. Steven Moskos 4-2-23 Part 2 .pdf; Exhibits 13-14 to Affidavit of C. Steven Moskos 4-2-23 Part 3 .pdf; Exhibits 15-18 to Affidavit of C. Steven Moskos 4-2-23 Part 4.pdf; Exhibits 19-30 to Affidavit of C. Steven Moskos 4-2-23 Part 5.pdf

Sarah,
Here is my affidavit of attorney's fees. I have 53 exhibits so I don't know if they will go through in one email. Therefore, I am going to send you three emails to make sure you get them all.
Steve

C. Steven Moskos
6650 Rivers Ave., Ste 210
North Charleston, SC 29406
843-763-5297
steve@moskoslawfirm.com
https://www.moskoslawfirm.com

Exhibit 5

ELECTRONICALLY FILED - 2023 Apr 30 11:11 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

Steve Moskos

From: Steve Moskos
Sent: Sunday, April 2, 2023 4:03 PM
To: Sarah T. Eibling
Subject: Greenawalt v Nissan Email #2
Attachments: Exhibits 31-40 to Affidavit of C. Steven Moskos 4-2-23 Part 6.pdf; Exhibits 46-53 to Affidavit of C. Steven Moskos 4-2-23 Part 8.pdf

C. Steven Moskos
6650 Rivers Ave., Ste 210
North Charleston, SC 29406
843-763-5297
steve@moskoslawfirm.com
https://www.moskoslawfirm.com

Exhibit 6

ELECTRONICALLY FILED - 2023 Apr 30 11:11 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

Steve Moskos

From: Steve Moskos
Sent: Sunday, April 2, 2023 4:03 PM
To: Sarah T. Eibling
Subject: Greenawalt v Nissan Email #3
Attachments: Exhibits 41-45 to Affidavit of C. Steven Moskos 4-2-23 Part 7.pdf

This is the last of three emails

C. Steven Moskos
6650 Rivers Ave., Ste 210
North Charleston, SC 29406
843-763-5297
steve@moskoslawfirm.com
https://www.moskoslawfirm.com

ELECTRONICALLY FILED - 2023 May 01 4:22 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

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

SECOND SUPPLEMENTAL TIME RECORDS FOR C. STEVEN MOSKOS' REPRESENTATION OF RITA AND JAMES GREENAWALT

I, C. Steven Moskos, swear that I did the following work on the above matter and the times stated below and in my time records filed April 3, 2023 and my First Supplemental Time Records filed April 5, 2023 are accurate, not duplicative, and necessary to my representation of Rita and James Greenawalt. The time reflected in my three sets of time records is related to each of four causes of action, 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., and is in the attached timesheets. My three sets of timesheets contain no time unrelated to the relevant causes of action. The time in my three sets of timesheets, was for work done in the commencement and prosecution of this matter. All the causes of action are so intertwined that if there is time totally devoted to a non-fee shifting statute, it cannot be separated from the time related to the fee shifting statutes.

Date	Description	Hrs worked
5-Apr-23	Review Brief in Support of Motion for Summary Judgment. Organize argument for hearing. Review of List of Costs. Review of time records. Prepare and file first supplemental time records. Review of Nissan's Brief in Opposition to Plaintiffs' Motion for Attorney's Fees.	8.6

ELECTRONICALLY FILED - 2023 May 01 4:22 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

	Legal research regarding prevailing party issues. Travel to Moncks Corner for motion hearing. Argue motion before Judge Young, 1 hour 45 minutes. Travel to office. Begin work on proposed Order as instructed by Judge Young.	
6-Apr-23	Work on proposed Order regarding attorney's fees. Research regarding prevailing party issue and whether Plaintiffs are entitled to fees without a verdict or judgment.	3.1
23-Apr-23	Review of file. Review of emails. Dictate email to Berkeley County Clerk of Court notifying the clerk the case has been settled. Dictate email to Sarah Eibling regarding status of the turn in of the car.	0.5
23-Apr-23	Work on Order for the Court regarding attorney's fees. Legal research regarding attorney's fees.	4.1
24-Apr-23	Edit Proposed Order. Legal research regarding prevailing party issue.	1.5
25-Apr-23	Legal research regarding prevailing party. Review of Heath, Hueble, Buckhannon, and other cases. Review Rule 68. Review of Nissan's brief opposing attorney's fees. Legal research regarding judicial estoppel. Work on issues related to Jackson v Speed factors. Edit proposed Order. Work on costs section.	5.1
25-Apr-23	Review email from Rita Greenawalt regarding the status of the turn in. Dictate response to Rita Greenawalt.	0.1
26-Apr-23	Review edits to Order. Work on reorganizing Order. Work on legal research regarding the award of attorney's fees and the standards for such awards. Review of Nissan's brief opposing attorney's fee award. Legal research regarding estoppel and Nissan's change of position regarding an award of fees from settlement to hearing.	6.1
26-Apr-23	File email with clerk of court regarding settlement. Filing made pursuant to the clerk of court's direction. Dictate affidavit regarding documents efiled with the clerk and emailed to Sarah Eibling March 31, 2023. Review file. Review emails for exhibits. Prepare Exhibits for affidavit.	1.1
27-Apr-23	Dictate 3rd email to Sarah Eibling regarding status of turn in of the car to Nissan.	0.1
27-Apr-23	Review edits. Reorganize and work on arguments.	0.9
28-Apr-23	Work on edits to proposed Order.	0.5
28-Apr-23	Review email from Rita Greenawalt regarding status of the turn in. Dictate response to Rita Greenawalt. Dictate email to Sarah Eibling regarding status of the turn in of the car. Telephone call to Kelli Martin in Sarah Eibling's office to determine the status of the turn in of the car.	0.3
30-Apr-23	Edit arguments in proposed Order with additional research regarding award of attorney's fees. Work on	3.9

	Second Supplemental Time Records. Work on Affidavit of C. Steven Moskos re filings.	
TOTAL		35.9

Time spent from May 14, 2020 through March 30, 2023 – 215.4 hours.
Time spent from March 30, 2023 through April 4, 2023 - 30.4 hours.
Time spent from April 5, 2023 through April 30, 2023 - 35.9 hours
Total hours through April 30, 2023 **281.7 hours**

281.7 hours x $450.00/hour = 126,765.00.

Additional time will be incurred for work done after April 30, 2023 through the turn in of the vehicle. Supplemental time records for the additional time spent will be submitted to the court for its consideration.

C. STEVEN MOSKOS, P.A.
ATTORNEY FOR PLAINTIFFS

SC Bar No.: 7938
6650 Rivers Ave., Suite 210
North Charleston, SC 29406
Telephone: (843) 763-5297
steve@moskoslawfirm.com

Charleston, South Carolina
May 1, 2023

Sworn to before me on May 1, 2023

ANISSA J. GODDARD NOTARY PUBLIC SOUTH CAROLINA

Notary for South Carolina
My commission expires: 4/7/27

ELECTRONICALLY FILED - 2023 May 01 4:22 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

ELECTRONICALLY FILED - 2023 May 23 1:27 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

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 **PLAINTIFFS' MOTION TO ENFORCE SETTLEMENT**

TO: SARAH T. EIBLING, ESQ., ATTORNEY FOR DEFENDANT NISSAN NORTH AMERICA, INC.:

PLEASE TAKE NOTICE that Plaintiffs, through their undersigned attorney, will move before the Presiding Judge, Ninth Judicial Circuit, at such place and time as the Court may appoint, for an Order enforcing the settlement reached by the Parties and compelling Defendant Nissan North America (hereinafter Nissan) to accept the return of the subject vehicle and to conclude this matter. In support of this motion, Plaintiffs show the Court the following:

1. The litigation in this matter has been difficult and hard fought by both parties.

2. On March 7, 2023, the parties attended mediation wherein the case was settled on the following terms:

   a. Nissan is to pay the Greenawalts $35,000;
   b. The Greenawalts are considered the prevailing party as to all claims;
   c. Nissan will not contest the Greenawalts' costs;
   d. The Parties will sign a Release as to all claims;
   e. At turn in, the Greenawalts will provide Nissan with a copy of their current registration;
   f. After turn in, Nissan, or its agent, shall overnight the Greenawalts' counsel the $35,000 funds for the Greenawalts;
   g. The attorney's fees issue shall be submitted to a judge for determination.

3. After the mediation, Nissan refused to agree to these terms in writing. See Exhibit 53 to Affidavit of C. Steven Moskos in Support of Attorney's Fees filed April 2, 2023.

4. On March 10, 2023, Plaintiffs filed their motion for attorney's fees.

5. On April 5, 2023, the settlement terms were put on the record in open court before the Honorable Roger Young and confirmed by both Parties. Judge Young then heard Plaintiffs' Motion for Attorney's Fees. Judge Young confirmed that the Court would retain jurisdiction over the matter in case either Party needed to enforce the terms of the settlement. Judge Young also ordered the parties to submit proposed Orders by May 1, 2023.

6. On May 1, 2023, Plaintiffs timely filed their proposed Order regarding attorney's fees.

7. On May 2, 2023, Defendant filed its untimely proposed Order.

8. As part of the settlement, Nissan had agreed to repurchase the subject vehicle within sixty days. Nissan has not done so even though seventy-seven days have passed.

9. Plaintiffs' counsel has telephoned and emailed Nissan's counsel to confirm that Nissan has started its repurchase process. (Exhibit 1.)

10. Plaintiffs have performed their responsibilities under the settlement agreement except for signing documents to transfer ownership of the subject vehicle to Nissan and returning the vehicle to Nissan.

11. Defendant Nissan refuses to accept the return of the vehicle and has ignored Plaintiffs' counsel's request to know the status of the repurchase of the vehicle.

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12. The Court still has Plaintiffs' motion for attorney's fees under advisement. Plaintiffs are concerned Defendant Nissan will not start the repurchase process until the Court rules on attorney's fees. Plaintiffs believe Defendant Nissan will then demand another 60 days to complete the settlement.

13. Plaintiffs have a duty to return the vehicle to Defendant Nissan subject to normal wear and tear. Plaintiffs do not want an accident to occur which causes damage to the vehicle and jeopardizes the settlement. Plaintiffs should not have to store the vehicle for Defendant Nissan.

Plaintiffs request that this Court order Defendant Nissan to accept the return of the vehicle immediately and to have Nissan produce for signing all documents it needs to transfer the vehicle's title to Nissan. Plaintiffs also request attorney's fees and costs for having to bring this motion.

The undersigned counsel certifies that further consultation with Defendant's counsel would serve no useful purpose.

PLEASE BE PRESENT TO OPPOSE SAID MOTION IF SO MINDED.

C. STEVEN MOSKOS, P.A.
ATTORNEY FOR PLAINTIFFS
s/C. Steven Moskos
SC Bar No.: 7938
6650 Rivers Ave., Suite 210
North Charleston, SC 29406
Telephone: (843) 763-5297
steve@moskoslawfirm.com

Charleston, South Carolina
May 23, 2023

ELECTRONICALLY FILED - 2023 May 23 1:27 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

Exhibit 1

ELECTRONICALLY FILED - 2023 May 23 1:27 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

Steve Moskos

From: Steve Moskos
Sent: Thursday, May 18, 2023 12:23 PM
To: Sarah T. Eibling
Subject: FW: Greenawalt v Nissan
Attachments: 2023-05-18 Release signed by Greenawalts only.pdf

Sarah,

On May 17, 2023, I received your firm's check in the amount of $35,000 together with your May 16 letter stating that the funds could not be disbursed until you received the signed settlement agreement. I have attached the Settlement Agreement signed by my clients. I need Nissan to sign the Settlement Agreement. Nonetheless, since I have delivered a signed copy of the Settlement Agreement to you with this email, I can now disburse the $35,000 proceeds to my client.

Aside from the attorney's fee issue which in under advisement with Judge Young, the primary remaining issue is the turn-in of the car. I have been asking since April 17, 2023 for Nissan to tell me where it is in the repurchase process. While I think the repurchase should happen in less than two weeks, Nissan claimed it needed 60 days. It is now 72 days after settlement at mediation. Either Nissan started the process immediately after the arbitration and should be close to asking my clients to bring the car to Hudson Nissan or Nissan has not started the process. There are only two reasons not to start the process. Either 1) Nissan is continuing to draw out this matter to save money or to punish my clients or 2) it is waiting on the attorney's fees motion to be resolved. Neither of these reasons is appropriate. While I do not expect a response, I will again ask for the status of the repurchase. Please let me know.

In about nine days, I will be going on vacation for two weeks. Since you will not communicate with me, I feel I have no choice but to file a Motion to Enforce Settlement today. Hopefully, when I get back the court will reach my motion and we can conclude this matter.

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Sent: Tuesday, May 16, 2023 6:22 PM
To: Sarah T. Eibling <sarah.eibling@nelsonmullins.com>
Subject: FW: Greenawalt v Nissan

Sarah,

As you know, I called your office yesterday, May 15, 2023. It was my eighth attempt to confirm that Nissan has started the repurchase process. I left a voice mail requesting the courtesy of a phone call or a response to my emails below. As of 6:20 pm on May 16, 2023, I still have not received any word from you or your office concerning Nissan's progress in repurchasing my clients' Rogue.

On March 7, 2023, the parties mediated this case. Nissan agreed to repurchase my clients' Rogue for $35,000 and submit the determination of attorney's fees to the court. At the mediation, Nissan stated it would take about sixty days to repurchase the car. That was seventy days ago. My clients have been more than patient with Nissan's dilatory actions in resolving this matter. It is now time to end Nissan's abuse of Mr. and Ms. Greenawalt. If I do not receive confirmation by 3:00 pm May 17, 2023 that the repurchase process will be completed by Friday May 19, 2023, I will be filing a motion to compel settlement and requesting additional attorney's fees from Judge Young. Please let me know how you wish to proceed.

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Subject: RE: Greenawalt v Nissan

Sarah,

Please respond to me. I have been asking for an update on the repurchase for weeks. I have not received any response. Please give me the courtesy of telling me 1) that you have notified Nissan the case is settled, 2) that Nissan has started the repurchase process, and 3) when my clients should expect to turn in the car at Hudson Nissan. Please also confirm that Nissan is not waiting for a resolution of the attorney's fee issue before it starts the process. That is not in the spirit of settlement.

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Subject: RE: Greenawalt v Nissan

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Ms. Martin,

Thank you for speaking with me today about the status of the repurchase of my clients' car. As I understand it, you are going to look into the status and let me know where Nissan is in the process. Emailing me is probably the easiest way to let me know where we are. I look forward to hearing from you. Thank you again for your help.

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Subject: FW: Greenawalt v Nissan

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Please confirm that Nissan is in the process of repurchasing the Greenawalts' vehicle. Also, please let me know the status of the turn in. The turn in is not dependent on Judge Young's Order on fees so we want to move forward as soon as possible. Thanks.
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ELECTRONICALLY FILED - 2023 May 23 5:33 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

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 **THIRD SUPPLEMENTAL TIME RECORDS FOR C. STEVEN MOSKOS' REPRESENTATION OF RITA AND JAMES GREENAWALT**

I, C. Steven Moskos, swear that I did the following work on the above matter and the times stated below and in my time records filed April 3, 2023, my First Supplemental Time Records filed April 5, 2023, and my Second Supplemental Time Records filed May 1, 2023 are accurate, not duplicative, and necessary to my representation of Rita and James Greenawalt. The time reflected in my four sets of time records is related to each of four causes of action, 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., and is in the attached timesheets. My four sets of timesheets contain no time unrelated to the relevant causes of action. The time in my four sets of timesheets, was for work done in the commencement and prosecution of this matter. All the causes of action are so intertwined that if there is time totally devoted to a non-fee shifting statute, it cannot be separated from the time related to the fee shifting statutes.

I further assert that the time below was incurred to complete the proposed Order requested by Judge Young and because Defendant Nissan and its counsel will not

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respond to me as to how and when Plaintiffs can return the defective vehicle to Nissan and sign over title to Nissan. I have filed a Motion to Enforce Settlement to force Nissan to conclude this matter. (Exhibit 1.)

Nissan's conduct here is consistent with its conduct during this litigation. Nissan has increased the time my clients and I have had to spend on this matter. Such dilatory conduct should not be rewarded. The best way to stop this behavior is for the Court to order Nissan to pay for the fees incurred.

Date	Description	Hrs worked
1-May-23	Legal research regarding the requirements for time sheets submitted to the court.	0.2
1-May-23	Telephone conference with Kelli Martin regarding the status of the repurchase of the Rogue. Dictate email to Kelli Martin requesting an email regarding the status of the turn in of the car.	0.2
1-May-23	Review proposed Order to confirm dollar amounts for fees are correct. Finish Final time sheets. Travel to notary regarding affidavit. Efile with the clerk of court. Dictate email to Max, Judge Young's law clerk, with and regarding my proposed Order regarding attorney's fees.	1.9
2-May-23	Review of Nissan's proposed Order. Dictate email to Rita Greenawalt regarding Nissan's Order. Telephone conference with Rita Greenawalt regarding the motion for attorney's fees. Work on document to file Gifford v Horry County Police Department with Clerk of Court. Efile document and Gifford v Horry County Police Department with Clerk of Court.	2.8
16-May-23	Telephone conference with Jim Greenawalt regarding status of settlement. Dictate emails to Jim and Rita Greenawalt regarding the status of the case and the progress of the motion for attorney's fees. Dictate email to Sarah Eibling requesting status of the turn in of the Rogue.	1.1

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17-May-23	Review correspondence and the check from Sarah Eibling regarding the settlement proceeds. Review of Release. Correct Release. Dictate email to Rita Greenawalt regarding the settlement proceeds and the Release.	0.9
17-May-23	Review of email from Rita Greenawalt. Dictate email to Rita Greenawalt regarding signing of the Release and settlement check.	0.4
18-May-23	Conference with Jim and Rita Greenawalt to discuss settlement check and defense counsel's refusal to communicate with me and to let me know the status of the turn in process. Review of emails to Sarah Eibling requesting status of turn in. Dictate email to Sarah Eibling transmitting a copy of the settlement agreement.	1
23-May-23	Review emails for exhibits. Work on Motion to Enforce Settlement. Prepare exhibit. Prepare time sheet for request for additional attorney's fees. Dictate email to Judge Young's law clerk regarding additional time spent on the case.	1.4
TOTAL		9.9

Time spent from May 14, 2020 through March 30, 2023 – 215.4 hours
Time spent from March 30, 2023 through April 4, 2023 - 30.4 hours
Time spent from April 5, 2023 through April 30, 2023 - 35.9 hours
Time spent from April 30, 2023 through May 23, 2023 - 9.9 hours
Total hours through May 23, 2023 **291.6 hours**

291.6 hours x $450.00/hour = $131,220.00.
$131,220 x 1.5 (multiplier) = $196,830.00

Plaintiffs request the Court use a multiplier of 1.5 based on the complexity and difficulty of this case and upon any factors the Court deems proper and award Plaintiffs $196,830.00 towards their fees.

Additional time will be incurred for work done after May 23, 2023 through the turn in of the vehicle. Supplemental time records for the additional time spent will be submitted to the court for its consideration.

C. STEVEN MOSKOS, P.A.
ATTORNEY FOR PLAINTIFFS
s/C. Steven Moskos
SC Bar No.: 7938
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Charleston, South Carolina
May 1, 2023

ELECTRONICALLY FILED - 2023 May 23 5:33 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

Exhibit 1

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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 **PLAINTIFFS' MOTION TO ENFORCE SETTLEMENT**

TO: SARAH T. EIBLING, ESQ., ATTORNEY FOR DEFENDANT NISSAN NORTH AMERICA, INC.:

PLEASE TAKE NOTICE that Plaintiffs, through their undersigned attorney, will move before the Presiding Judge, Ninth Judicial Circuit, at such place and time as the Court may appoint, for an Order enforcing the settlement reached by the Parties and compelling Defendant Nissan North America (hereinafter Nissan) to accept the return of the subject vehicle and to conclude this matter. In support of this motion, Plaintiffs show the Court the following:

1. The litigation in this matter has been difficult and hard fought by both parties.

2. On March 7, 2023, the parties attended mediation wherein the case was settled on the following terms:

   a. Nissan is to pay the Greenawalts $35,000;
   b. The Greenawalts are considered the prevailing party as to all claims;
   c. Nissan will not contest the Greenawalts' costs;
   d. The Parties will sign a Release as to all claims;
   e. At turn in, the Greenawalts will provide Nissan with a copy of their current registration;
   f. After turn in, Nissan, or its agent, shall overnight the Greenawalts' counsel the $35,000 funds for the Greenawalts;
   g. The attorney's fees issue shall be submitted to a judge for determination.

3. After the mediation, Nissan refused to agree to these terms in writing. See Exhibit 53 to Affidavit of C. Steven Moskos in Support of Attorney's Fees filed April 2, 2023.

4. On March 10, 2023, Plaintiffs filed their motion for attorney's fees.

5. On April 5, 2023, the settlement terms were put on the record in open court before the Honorable Roger Young and confirmed by both Parties. Judge Young then heard Plaintiffs' Motion for Attorney's Fees. Judge Young confirmed that the Court would retain jurisdiction over the matter in case either Party needed to enforce the terms of the settlement. Judge Young also ordered the parties to submit proposed Orders by May 1, 2023.

6. On May 1, 2023, Plaintiffs timely filed their proposed Order regarding attorney's fees.

7. On May 2, 2023, Defendant filed its untimely proposed Order.

8. As part of the settlement, Nissan had agreed to repurchase the subject vehicle within sixty days. Nissan has not done so even though seventy-seven days have passed.

9. Plaintiffs' counsel has telephoned and emailed Nissan's counsel to confirm that Nissan has started its repurchase process. (Exhibit 1.)

10. Plaintiffs have performed their responsibilities under the settlement agreement except for signing documents to transfer ownership of the subject vehicle to Nissan and returning the vehicle to Nissan.

11. Defendant Nissan refuses to accept the return of the vehicle and has ignored Plaintiffs' counsel's request to know the status of the repurchase of the vehicle.

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12. The Court still has Plaintiffs' motion for attorney's fees under advisement. Plaintiffs are concerned Defendant Nissan will not start the repurchase process until the Court rules on attorney's fees. Plaintiffs believe Defendant Nissan will then demand another 60 days to complete the settlement.

13. Plaintiffs have a duty to return the vehicle to Defendant Nissan subject to normal wear and tear. Plaintiffs do not want an accident to occur which causes damage to the vehicle and jeopardizes the settlement. Plaintiffs should not have to store the vehicle for Defendant Nissan.

Plaintiffs request that this Court order Defendant Nissan to accept the return of the vehicle immediately and to have Nissan produce for signing all documents it needs to transfer the vehicle's title to Nissan. Plaintiffs also request attorney's fees and costs for having to bring this motion.

The undersigned counsel certifies that further consultation with Defendant's counsel would serve no useful purpose.

PLEASE BE PRESENT TO OPPOSE SAID MOTION IF SO MINDED.

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ATTORNEY FOR PLAINTIFFS
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Aside from the attorney's fee issue which in under advisement with Judge Young, the primary remaining issue is the turn-in of the car. I have been asking since April 17, 2023 for Nissan to tell me where it is in the repurchase process. While I think the repurchase should happen in less than two weeks, Nissan claimed it needed 60 days. It is now 72 days after settlement at mediation. Either Nissan started the process immediately after the arbitration and should be close to asking my clients to bring the car to Hudson Nissan or Nissan has not started the process. There are only two reasons not to start the process. Either 1) Nissan is continuing to draw out this matter to save money or to punish my clients or 2) it is waiting on the attorney's fees motion to be resolved. Neither of these reasons is appropriate. While I do not expect a response, I will again ask for the status of the repurchase. Please let me know.

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As you know, I called your office yesterday, May 15, 2023. It was my eighth attempt to confirm that Nissan has started the repurchase process. I left a voice mail requesting the courtesy of a phone call or a response to my emails below. As of 6:20 pm on May 16, 2023, I still have not received any word from you or your office concerning Nissan's progress in repurchasing my clients' Rogue.

On March 7, 2023, the parties mediated this case. Nissan agreed to repurchase my clients' Rogue for $35,000 and submit the determination of attorney's fees to the court. At the mediation, Nissan stated it would take about sixty days to repurchase the car. That was seventy days ago. My clients have been more than patient with Nissan's dilatory actions in resolving this matter. It is now time to end Nissan's abuse of Mr. and Ms. Greenawalt. If I do not receive confirmation by 3:00 pm May 17, 2023 that the repurchase process will be completed by Friday May 19, 2023, I will be filing a motion to compel settlement and requesting additional attorney's fees from Judge Young. Please let me know how you wish to proceed.

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ELECTRONICALLY FILED - 2023 Jun 22 10:35 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

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 **PLAINTIFF'S MOTION TO ALTER OR AMEND THE JUDGMENT**

TO: SARAH T. EIBLING, ESQ., ATTORNEY FOR DEFENDANT NISSAN NORTH AMERICA, INC.:

PLEASE TAKE NOTICE that Plaintiffs, through their undersigned attorney, will move before the Judge of the Ninth Judicial Circuit, at the Berkeley County Courthouse, in Moncks Corner, South Carolina, at such place and time as the Court may appoint, pursuant to Rule 52 and Rule 59 SCRCP for an Order altering or amending its Order filed June 12, 2023. Specifically, Plaintiffs request the Court award full attorney's fees to Plaintiffs as allowed by South Carolina law.

LAW

> Trial courts, sitting without juries in an action at law, write their findings specially and separately: 'to allow a reviewing court to determine from the record whether the judgment—and the legal conclusions which underlie it—represent a correct application of the law. The requirement for appropriately detailed findings is thus not a mere formality or a rule of empty ritual; it is designed instead to dispose of the issues raised by the pleadings and to allow the appellate courts to perform their proper function in the judicial system.'

In re Treatment & Care of Luckabaugh, 351 S.C. 122, 132-33, 568 S.E.2d 338, 343 (2002) (quoting Coble v. Coble, 300 N.C. 708, 712, 268 S.E.2d 185, 189 (N.C. 1980)). See also id. at 133-34, 568 S.E.2d at 343-44 (declining to speculate on how the lower

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court viewed the ultimate facts when confronted with contradictory evidence, finding the absence of factual findings made the appellate court's task of reviewing the court order impossible because the reasons underlying the decision were left to speculation and determining review of the record by the appellate court could not "save the order from its deficiencies due to the contradictory testimony presented below.")

LEGAL STANDARD FOR AWARDING ATTORNEY'S FEES

The Court rightly found that four fee shifting statutes apply in this case. At least two provide for a mandatory award of attorney's fees to Plaintiffs, the Unfair Trade Practices Act and the Dealers Act.

The Court rightly found that under South Carolina law, the standard for determining the amount of an attorney's fees award is that, "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)." (Court's Order pp. 5-6.)

The Court rightly found that the Greenawalts, as the prevailing party, are required "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." (Court's Order p. 6.) (citing Taylor v. Nix, 307 S.C. 551, 557, 416 S.E.2d 619, 622 (1992).)

As the Court recognizes, the purpose of the fee shifting statutes in this matter "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)" and so "that

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competent first class attorneys will be willing to handle these types of cases. Gimarc v. Neal, 417 F. Supp. 129 (D.S.C. 1976).” (Court’s Order p. 7.)

The Court also recognized 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) and that the “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. (Court’s Order p. 7.)

The Court rightly found each of the Jackson v Speed factors had to be weighed in favor of Plaintiffs based on the undisputed evidence[1]. (Court’s Order pp. 7-11.)

The Court rightly found that Defendant did not make any arguments or provide any evidence regarding these factors. Instead, Defendant made unsupported conclusory statements about a fee award. The Court correctly rejected these conclusory statements.

The Court rightly rejected Defendant's argument that an award of attorney’s fees under the mandatory and discretionary fee shifting statutes is to be proportionate to the recovery. Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989); Taylor v. Medenica, 331 S.C. 575, 503 S.E.2d 458 (1998). (Court’s Order pp. 12-14.)

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[1] (1) the nature, extent, and difficulty of the case; (Order p. 7.)
(2) the time necessarily devoted to the case; (Order p. 8.)
(3) professional standing of counsel; (Order p. 10.)
(4) contingency of compensation; (Order p. 10.)
(5) beneficial results obtained; and (Order p. 11.)
(6) customary legal fees for similar services. (Order p. 11.)
Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997).

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The Court rightly considered three of Plaintiffs' four time records regarding this matter, the initial record showing 215.4 hours, the first supplemental record showing 30.4 hours, and the second supplemental record showing 35.9 hours. (Court's Order p. 14.) The Court did not, however, reference Plaintiffs' third supplemental record filed May 23, 2023 showing an additional 9.9 hours worked by Plaintiffs' counsel in an effort to resolve this matter[2].

Since Defendant has failed to provide any evidence on any of the Jackson factors which might warrant consideration of reducing an award of attorney's fees, the Court is required to determine the time spent by counsel under the four fee shifting statutes and multiply it by the reasonable hourly rate, $450 as found by the Court. (Court's Order p. 11.) In this matter, the total time spent by Plaintiffs' counsel is 291.6 hours, not including the time spent preparing and filing this motion. The Court has found that $450 per hour is reasonable. 291.6 hours multiplied by $450 equals $131,220.00.

REQUESTS

1. Plaintiffs request the Court alter or amend its Order by considering and including in its award Plaintiffs' third supplemental time records filed May 23, 2023.

2. Plaintiffs request the Court follow the lodestar analysis by multiplying 291.6 hours worked by Plaintiffs' counsel on this matter by the reasonable hourly rate of $450.00 per hour. (215.4 hours + 30.4 hours + 35.9 hours + 9.9 hours = 291.6 hours.)

3. Plaintiffs further request the Court amend its Order which states "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

[2] Nissan has still failed to comply with the settlement terms agreed to at mediation and on the record on April 5, 2023. Nissan's refusal is the subject of Plaintiffs' current outstanding Motion To Enforce Settlement filed May 23, 2023.

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Plaintiffs' attorney forced them to settle." (Court's Order p. 15.) The Court should amend its Order to provide a full award of attorney's fees in the amount of at least $131,220.00 (291.6 x $450). This portion of the Order should be altered or amended for three reasons.

a. First, the Court appears to have conflated the purpose of punitive damages with the purposes of the applicable fee shifting statutes. Punitive damages are to deter bad conduct as found by the Court. The applicable fee shifting statutes, in contrast, are designed to make a claim economically worth pursuing for a consumer and to encourage qualified attorneys to undertake these claims. The Court in Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 691 S.E.2d 135 (2010) and again in Austin v. Stokes-Craven Holding Corp., 406 S.C. 187, 750 S.E.2d 78 (2013) held, ""[t]he rationale for this position is that an award for both [punitive damages and attorney's fees] does not amount to double recovery for a single wrong given attorney's fees are intended to make such claims economically viable for private citizens whereas an award of punitive damages is designed to punish wrongful conduct and deter future misconduct." The Court recognized that punitive damages and an award of attorney's fees serve different purposes. In Gimarc v. Neal, 417 F. Supp. 129 (D.S.C. 1976), the court recognized that if the court fails to award a proper fee "then first-class attorneys will be discouraged from engaging in this sort of litigation, and the purpose and intent of the Congress would be entirely aborted". The intent of the Legislature is paramount. The Legislature's intent is to have "first-class attorneys" handling these cases and it wants consumers to be able to bring them economically. The Court should reenforce these policy reasons and give power to the Legislature's intent by

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ordering Nissan to pay a full attorney fee award. Otherwise, the intent of the Legislature will be thwarted as "first-class attorneys" will not want to take these cases and consumers will not be able to bring these cases economically.

b. Second, the Defendant is an automobile manufacturer, not an automobile dealer. This should be amended.

c. Third, the Order finds that all the evidence weighs in favor of a full award of attorney's fees to Plaintiffs, that Nissan's "whack-a-mole" conduct warranted the time spent by Plaintiffs' counsel, and that South Carolina follows the lodestar approach in ruling on an attorney fee award. The Order then reduces the fees awarded by $56,220, 43% of the base award requested[3]. The Order does not provide any rationale, under South Carolina's criteria, for the 43% reduction. Such a reduction does not follow South Carolina law and defeats the purpose of the remedial consumer protection statutes used in this case.

4. Plaintiffs request the Court amend its finding that an award "of $75,000 is reasonable and generous". Failure to award the full amount of attorney's fees requested only encourages car manufacturers to stall in resolving cases. Manufacturers keep track of fee awards. If a manufacturer sees a trend of Courts awarding less fees than requested, it will be encouraged to prolong matters in the hopes of finding a judge who will not award full fees and/or in hopes the consumer and/or his attorney will get nervous about receiving a full fee award. This may cause the consumer to settle at a lower amount to avoid incurring fees for which he may not receive indemnification. The consumer will

[3] Plaintiffs requested the base amount of $131,220 be awarded. Plaintiffs also requested the Court consider a multiplier to reflect the complexity and difficulty of the case. The award of the base fees and a multiplier should be separate considerations. Based on the evidence and records before the Court, Plaintiffs should receive at least the base amount of $131,220 plus the fees generated to prepare and to file this motion and any time incurred subsequently.

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want to avoid having to make up the difference in a partial fee award and the amount owed. At the same time, the consumer's attorney may want to settle to ensure he gets full compensation or to avoid spending time and effort for which he is not compensated. This thwarts the purposes of fee shifting statutes as set forth by the Legislature and the Courts for these kinds of claims. Additionally, the Court's Order seeks to stop "the conduct they displayed in refusing to settle until after protracted efforts by the Plaintiffs' attorney forced them to settle." Without a full fee award, the Court's desire to discourage recalcitrant Defendants will be thwarted.

5. In the alternative, Plaintiffs request the Court set forth the rationale used to reduce Plaintiffs' attorney fee award by $56,220.00 since Plaintiffs produced evidence satisfying all the Jackson factors, Nissan did not provide any evidence warranting a reduction in attorney fees, and the Court found the case complex and that Nissan's conduct increased the fees incurred in this case.

Plaintiffs request the Court amend its Order to award a full attorney's fee of $131,220 as required by the applicable four fee shifting statutes, that the Court order Nissan to pay the filing fee of $31.74 for this motion, that the Court order Nissan to pay Plaintiffs for the additional time expended in preparing for and in filing this motion, and change "automobile dealers" to "automobile manufacturers". In the alternative, Plaintiffs request the Court provide its rationale for reducing Plaintiffs' fee request by $56,220, 43% of the base award requested.

The undersigned counsel certifies that further consultation with Defendant's counsel would serve no useful purpose.

PLEASE BE PRESENT TO OPPOSE SAID MOTION IF SO MINDED.

C. STEVEN MOSKOS, P.A.
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steve@moskoslawfirm.com

Charleston, South Carolina
June 22, 2023

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ELECTRONICALLY FILED - 2023 Jul 05 3:40 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

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 **FOURTH SUPPLEMENTAL TIME RECORDS FOR C. STEVEN MOSKOS' REPRESENTATION OF RITA AND JAMES GREENAWALT**

I, C. Steven Moskos, swear that I did the following work on the above matter and the times stated below and in my initial time records filed April 3, 2023, my First Supplemental Time Records filed April 5, 2023, my Second Supplemental Time Records filed May 1, 2023, and my Third Supplemental Time Records filed May 23, 2023 are accurate, not duplicative, and necessary to my representation of Rita and James Greenawalt. The time reflected in my five sets of time records is related to each of four causes of action, 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*. and is in the attached timesheets. My five sets of timesheets contain only time related to the relevant causes of action. The time in my five sets of timesheets, was for work done in the commencement and prosecution of this matter. All the causes of action are so intertwined that if there is time totally devoted to a non-fee shifting statute, it cannot be separated from the time related to the fee shifting statutes.

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I further assert that the time below was incurred in preparing and filing Plaintiffs' Motion to Alter or Amend the Order of the Court filed June 12, 2023 and because Defendant Nissan and its counsel will not respond to me as to how and when Plaintiffs can return the defective vehicle to Nissan and sign over title to Nissan. See Plaintiffs' Motion to Enforce Settlement filed May 23, 2023.

Nissan's conduct here is consistent with its conduct during this litigation. Nissan has increased the time my clients and I have had to spend on this matter. Such dilatory conduct should not be rewarded. The best way to stop this behavior is for the Court to order Nissan to pay for the fees incurred.

Date	Description	Hrs worked
24-May-23	Review of email from Judge Young's law clerk. Dictate email to Rita Greenawalt regarding Motion to Enforce Settlement and Third Supplemental Time Records.	0.2
13-Jun-23	Telephone conference with consulting attorney regarding Order and motion for reconsideration. Legal research regarding motion for reconsideration. Work on Motion for Reconsideration. Review Court's Order filed June 12, 2023.	1.2
20-Jun-23	Work on Motion to Alter or Amend the Judgment regarding attorney's fees. Review Court's Order. Review Defendant's brief opposing motion for attorney's fees.	0.9
21-Jun-23	Work on and edit Motion to Amend or Alter the Court's Order regarding attorney's fees.	2
22-Jun-23	Edit Motion for Reconsideration. Expand arguments in favor of a full fee award. Legal research law related to attorney fee awards. Dictate email to Judge Young serving a copy of Plaintiffs' Motion for Reconsideration.	4.1
27-Jun-23	Review email from Judge Young's law clerk. Dictate email to Sarah Eibling regarding the turn in of the vehicle.	0.2

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5-July-23	Work on Fourth Supplemental Time Records. Efile Fourth Supplemental Time Records with the Clerk of Court. Dictate email to Judge Young's law clerk and Sarah Eibling regarding Fourth Supplemental Time Records.	.9
TOTAL		9.5

Time spent from May 14, 2020 through March 30, 2023 – 215.4 hours
Time spent from March 30, 2023 through April 4, 2023 - 30.4 hours
Time spent from April 5, 2023 through April 30, 2023 - 35.9 hours
Time spent from April 30, 2023 through May 23, 2023 - 9.9 hours
Time spent from May 24, 2023 through July 5, 2023 - 9.5 hours
Total hours through July 5, 2023 **301.1 hours**

301.1 hours x $450.00/hour = $135,495.00.
$135,495.00 x 1.5 (multiplier) = $203,242.50

Plaintiffs request the Court use a multiplier of 1.5 based on the complexity and difficulty of this case and upon any factors the Court deems proper and award Plaintiffs $203,242.50 towards their fees. Should the Court decide not to apply a multiplier to this complex and difficult case, Plaintiffs request the Court order attorney's fees in the amount of $135,495.00, the lodestar amount based on the hours worked multiplied by the reasonable hourly rate.

Additional time will be incurred for work done after July 5, 2023 through the turn in of the vehicle. Supplemental time records for the additional time spent will be submitted to the court for its consideration.

C. STEVEN MOSKOS, P.A.
ATTORNEY FOR PLAINTIFFS
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North Charleston, SC 29406
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Charleston, South Carolina
July 5, 2023

Steve Moskos

From: Sarah Eibling <Sarah.Eibling@nelsonmullins.com>
Sent: Tuesday, June 27, 2023 9:28 AM
To: Young, Roger Law Clerk (Max J. Mazurek)
Cc: Steve Moskos
Subject: Re: Greenawalt v Nissan 2020CP0802455

Thank you, Mr. Mazurek. Have a great holiday.

Thanks,
Sarah

Nelson Mullins
803–255–9756

On Jun 27, 2023, at 9:27 AM, Young, Roger Law Clerk (Max J. Mazurek) <ryounglc@sccourts.org> wrote:

Ms. Eibling,

Judge Young is giving Defendants until July 10th to file a response to Plaintiff's motion to alter or amend. Please let me know if you have any questions.

Best,
Max J. Mazurek
Law Clerk to The Honorable Roger M. Young, Sr.
100 Broad Street
Charleston, South Carolina 29401
Office: (843) 958-2015
Email: RYounglc@sccourts.org

From: Young, Roger Law Clerk (Max J. Mazurek)
Sent: Friday, June 23, 2023 9:58 AM
To: 'Steve Moskos' <steve@moskoslawfirm.com>; Young, Roger Secretary (Robyn R. Hills) <ryoungsc@sccourts.org>
Cc: Sarah T. Eibling <sarah.eibling@nelsonmullins.com>
Subject: RE: Greenawalt v Nissan 2020CP0802455

Mr. Moskos – Received, thank you.

Max J. Mazurek
Law Clerk to The Honorable Roger M. Young, Sr.
100 Broad Street
Charleston, South Carolina 29401
Office: (843) 958-2015
Email: RYounglc@sccourts.org

From: Steve Moskos <steve@moskoslawfirm.com>
Sent: Friday, June 23, 2023 9:37 AM
To: Young, Roger Law Clerk (Max J. Mazurek) <ryounglc@sccourts.org>; Young, Roger Secretary (Robyn R. Hills) <ryoungsc@sccourts.org>
Cc: Sarah T. Eibling <sarah.eibling@nelsonmullins.com>
Subject: Greenawalt v Nissan 2020CP0802455

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Judge Young,

Pursuant to Rule 59 SCRCP, please find attached Plaintiffs' Motion to Alter or Amend your Order filed June 12, 2022. The attached motion was filed June 22, 2023.

C. Steven Moskos
6650 Rivers Ave., Ste 210
North Charleston, SC 29406
843-763-5297
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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 **DEFENDANT NISSAN NORTH AMERICA, INC.'S RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION TO AMEND JUDGMENT**

Defendant Nissan North America, Inc. ("Nissan"), by and through its undersigned counsel, hereby files this Response in Opposition to Plaintiffs' Motion to Amend Judgment. On June 12, 2023, this Court filed its Order Regarding Plaintiffs' Motion for Attorney's Fees, finding that Plaintiffs' request for attorney's fees at a rate of $450 per hour was reasonable. In the Order, however, this Court did not adhere to a strict lodestar calculation, but adjusted Plaintiffs' counsel award downward based on its comprehensive analysis of the *Jackson* factors. Plaintiffs were awarded a "reasonable" fee of $75,000.00. On June 22, 2023, Rita and James Greenawalt ("Plaintiffs") filed with this Court a Motion to Amend or Alter the Judgment, indicating that this Court erred in its June 12 Order. Plaintiffs are requesting that this Court amend its findings and alter its judgment to award attorney's fees in the amount of $131,220— which would reflect a strict adherence to calculation of counsel's hourly rate multiplied by time spent.

Nissan opposes Plaintiffs' request, as there is no justification under either SCRCP Rule 52 nor 59 for this Court to alter or amend its June 12 Order. The law, furthermore, does not require strict adherence to an hourly rate calculation as requested by Plaintiffs, nor is such strict adherence proper in a case of this scale. Even if strict adherence to a lodestar calculation is necessary, Plaintiff counsel's requested fee rate of $450.00 per hour is erroneous and insufficiently supported.

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For the following reasons, Nissan respectfully requests that the Court reject Plaintiffs' Motion to Amend Judgment. Nissan also requests that the Court reconsider its original finding of $75,000 in attorney's fees for Plaintiffs.

LEGAL STANDARD

Rule 52 of the South Carolina Rules of Civil Procedure requires "[i]n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon S.C. R. Civ. P. 52(a). Rule 52 does not require a court to make an explicit or specific factual finding for each ruling; a court's judgment is proper under Rule 52 where the court has adequately stated the basis for the result it reaches and substantially finds facts and conclusions of law. *Noisette v. Ismail*, 304 S.C. 56, 58, 403 S.E.2d 122, 123 (1991).

Rule 59(e) of the South Carolina Rules of Civil Procedure, on the other hand, allows a court to "alter or amend [a] judgment." S.C. R. Civ. P. 59(e). However, motions for reconsideration will only be granted where "highly unusual circumstances" are present. *U.S. ex rel. Becker v. Washington Savanah River Co*., 305 F.3d 284, 290 (4th Cir. 2002) (stating that mere discontent with the court's ruling will not support Rule 59(e) relief). Courts in our jurisdiction have recognized only three circumstances in which a Rule 59(e) motion shall be granted: "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." *Clemons v. Home Telecom Co.,* 2022 S.C. C.P. LEXIS 1062, 1; *see also Hutchinston v. Staton,* 994 F.2d 1076, 1081 (4th Cir. 1993).

ARGUMENT

1. None of the standards for altering or amending a court's order exist here.

This Court should deny Plaintiff's request to alter or amend its Order, as there exists no justification here to overturn the Court's initial ruling under either Rule 52 or Rule 59.

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In their Motion, Plaintiffs offer no support for their contention that Rules 52 and 59 support an amended order from the Court. Instead, Plaintiffs look to *In re Treatment & Care of Luckabaugh*, 351 S.C. 122, 132-33, 568 S.E.2d 338, 343 (2002) for the proposition that a court should make "appropriately detailed findings." The Court has done just that. In it June 12 Order, the Court found that "all things considered," the amount in attorney's fees requested by Plaintiff was too much. Among the Court's considerations were the *Jackson* factors as well as the previous attempted settlements, and the ultimate disposition of the case. Plaintiffs' request that this Court amend its findings of fact under Rule 52 should be denied, as this Court is not and indeed no South Carolina courts are required to state explicitly and specifically each fact it relied on in reaching its conclusion. The Court adequately stated in its Order the bases for its conclusion regarding attorney's fees. It was not also pertinent under Rule 52 that this Court, as Plaintiffs request, explicitly break down its method of fee calculations.

Plaintiff's request that this Court amend its judgment under Rule 59 should also be denied, as there is no evidence to show that any of the standards required for amendments therein exist here. In their Motion, Plaintiffs fail to address the standards of review under a Rule 59 motion. On its own, absent any intervening changes in the law, new evidence, or clear errors, Plaintiff's request for this Court to alter or amend its judgment is insufficient.

2. <u>The lodestar analysis is but a starting point for a court to consider in awarding attorney's fees, and strictly adhering to an hourly rate calculation (or lodestar) is inappropriate in a case of this scale.</u>

This Court should refuse Plaintiff's request that it stringently follow an hourly rate calculation in its final judgment of attorney's fees, as strictly adhering to an hourly rate calculation is not required nor appropriate in a case of this scale. South Carolina courts have reiterated that an hourly rate calculation is just one part of the lodestar analysis and is a starting point for courts to consider when awarding attorney's

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fees. See *Edmonds v. U.S.*, 658 F.Supp. 1126, 1144 (D.S.C.,1987). Though the purpose of a fee shifting statute in these types of matters is to make certain 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), a court must view the case as a whole and award fees appropriate with the service provided. *See Gimarc v. Neal*, 417 F. Supp. 129 (DCSC 1976). Thus, in awarding attorney's fees under a fee shifting statute, courts have used a lodestar analysis as a starting point for reasonableness before considering other relevant factors in arriving at a final amount. *Layman v. State*, 376 S.C. 434, 458, 658 S.E.2d 320, 333; *see Hensley v. Eckerhart*, 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) ("Further, the lodestar method has been referred to as "the most useful starting point.").

Similarly, other courts outside of our jurisdiction have stated that a lodestar figure is to be used as a *starting point* before a court considers other factors to determine a reasonable attorney's fee. *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 106 S.Ct. 3088, 3097, 478 U.S. 546, 563 (U.S.Pa.,1986) ("[U]sing the lodestar figure as a starting point, the court could then make adjustments to this figure, in light of "(1) the contingent nature of the case, reflecting the likelihood that hours were invested and expenses incurred without assurance of compensation; and (2) the quality of the work performed as evidenced by the work observed, the complexity of the issues and the recovery obtained."); *see also Merola v. Atlantic Richfield Co.*, 515 F.2d 165, 168 (CA3 1975).

Here, this Court's Order properly reduced the calculated lodestar amount, as there is no authority stating that a court must strictly follow a lodestar calculation, and this Court's use of the lodestar analysis only as a mere starting point for reasonableness is supported by courts in our jurisdiction, as well as courts in other jurisdictions. This Court was free and correct to reduce the lodestar amount to an appropriate fee, given the smaller scope, expense, and relative success of the case.

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Plaintiff counsel's reliance on *Layman* and *Maybank* in support of strict adherence to a lodestar calculation is inappropriate here, as even in those cases, the court considered other relevant factors before reaching a final verdict on attorney's fees. *Layman, 376 S.C. at 452*; see also *Maybank v. BB&T Corp.*, 416 S.C. 541, 580-81, 787 S.E.2d 498, 518-19 (2016). In *Layman*, the court expressly stated that it would use the lodestar calculation as a "starting point for a reasonable fee in [the] case". *Layman*, 376 S.C. at. 460. Rather than strictly adhere to the lodestar calculation, the court in *Layman* proceeded to enhance the lodestar figure with a multiplier due to the other relevant facts of the case, such as the exceptional success and results of the case. *Id*. Similarly, in *Maybank*, the court did not strictly adhere to the lodestar figure. *Maybank*, 787 S.E.2d 498. Instead, the court there enhanced the calculated lodestar amount due to the heavy success and heightened complexity of the case. *Id*. at 519. Both *Layman* and *Maybank* are relevant authorities to show that courts are not required to award plaintiffs attorney's fees in the amount of a lodestar figure, and there are no exceptional facts of this matter that should move this Court to hold otherwise.

3. <u>Even if adherence to the lodestar calculation is appropriate, Plaintiffs fee rate of $450.00 is not, as it was not supported by or weighed against other relevant factors of this case.</u>

This Court should find that Plaintiff's proposed fee rate is erroneous, as it is not supported by the current market rate nor was it properly weighed against the *Jackson* factors. In determining the reasonable time and hourly rate for attorneys' fees, South Carolina courts look to the factors set forth in *Jackson v. Speed*, which include the nature, extent, and difficulty of the case; the time necessarily devoted to the case; the professional standing of counsel; the contingency of compensation; the beneficial results obtained; and the customary legal fees for similar services. 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997). An award for attorney's fees will be affirmed so long as sufficient evidence in the record supports

each factor. *Id.* In awarding attorney's fees under Dealer's Act claims, Lemon Law claims, Magunson-Moss claims, and UTPA claims, courts in and out of our jurisdiction have heavily and specifically looked at both an attorney's experience and the prevailing market rate for services in a specific geographic area. *Addy's Harbor Dodge, LLC v. Glob. Vehicles U.S.A. Inc*., No. CA 4:11-1065-KDW, 2015 WL 450452 (D.S.C. Feb. 3, 2015); *see Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292 (11th Cir. 1988); *see also Bowden v. Forest River, Inc.*, 2020 WL 3584792 (E.D.Va., 2020).

In one South Carolina case involving an Unfair Trade Practices Act claim, the court awarded attorney's fees ranging from $200.00 per hour to $300.00 per hour, depending on the counsel's length of experience and the rate of other firms in the geographic market. *CT&T EV Sales, Inc. v. 2AM Group*, LLC, 2012 U.S. Dist. LEXIS 97174. There, the court investigated firms in the area performing similar work when computing this fee. *Id*. at 10. ("According to the affidavit submitted, investigation of firms performing similar work as that involved in this case in the Charleston, South Carolina area revealed hourly rates consistent with those charged herein."). This general fee was then computed in light of the *Jackson* factors. *Id*. at 3.

In determining a proper attorneys fee under the Dealer's Act, one South Carolina court has held that an hourly rate of $275 was reasonable. *Addy's Harbor Dodge*, *LLC v. Glob. Vehicles U.S.A. Inc*., No. CA 4:11-1065-KDW, 2015 WL 450452 (D.S.C. Feb. 3, 2015). In *Addy's Harbor Dodge*, it was stated that a court should consider the *Jackson* factors when determining a proper hourly rate for the purpose of calculating an appropriate attorney's fee. *Id*. at 2. After expressly considering affidavits that provided a detailed breakdown of the attorney's practice experience, the number of hours worked, and the prevailing market rate for consumer litigation in the geographic area, the court determined that the evidence supported the award for attorneys' fees at $275 an hour. *Id.*

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One Georgia court has held that an hourly rate of $125 under a Magnuson Moss Warranty claim was unreasonable where plaintiffs submitted inadequate affidavits in support of this fee. *Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292 (11th Cir. 1988). In *Norman*, the plaintiffs there submitted a bare affidavit that stated that the rate of $125 was reasonable, with no mention of prevailing market rates, nor any skill level or experience of the attorneys at issue. *Id*. at 1304. Therefore, the court stated that in determining a reasonable hourly rate, it is paramount to consider the prevailing market rate for similar lawyers having similar types of issues. *Id*. at 1305.

Another court in our neighboring state has held that an hourly rate of $175 was improper under a Magnuson Moss Warranty claim where the affidavits submitted in support of this fee did not address reasonable market rates in the relevant county. *Scoggins v. KIA Motors Am., Inc.,* 612 S.E.2d 823 (Ga. App. 2005). In *Scoggins*, the plaintiffs submitted an affidavit by a specializing Georgia attorney in support of a fee of $175 an hour. *Id*. at 825. The court determined that the affidavit submitted was insufficient, as it did not represent any actual costs incurred. *Id*. Further, the court held that a mere statement from an attorney regarding "hourly rates charged by consumer advocates in the South" did not adequately address reasonable rates for attorneys practicing in the specific county and market. *Id*. Furthermore, the affidavit at issue provided no mention of a reasonable hourly rate specifically for the three attorneys involved in the case. *Id*. Considering the lack of evidence supporting the hourly rate contemplated by the plaintiffs, the court held that the $175 hourly rate sought by the plaintiffs was improper. *Id*.

In Virginia, courts have held that a reasonable rate for attorney's fees under a Magnuson Moss Warranty Act claim must be calculated according to prevailing market rates in the community in which the action is commenced. *Bowden v. Forest River, Inc.,* 2020 WL 3584792 (E.D.Va., 2020). ("In addition to providing attorney affidavits, the fee applicants must establish that the proposed rates are reasonable

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by producing "satisfactory specific evidence of the prevailing market rates in the relevant community for the type of work for which he seeks an award.").

This Court should find that Plaintiff's attorney's fee of $450.00 is not reasonable, as it is not in line with fees customarily charged in South Carolina for similar services. Further, the opposing side's claim for this amount is unfounded, as it was not based on the prevailing market rate for consumer litigation, nor the counsel's experience. Plaintiffs merely submitted biographical affidavits from two attorneys stating that $450.00 was a reasonable fee for the services at issue, but not attesting to the types of fees that they themselves or other attorneys have charged. A survey of the caselaw has shown that numerous courts—both inside and outside of our jurisdiction—have held to be insufficient support for reasonableness of a fee.

Moreover, though the Order at issue touched on the *Jackson* factors, it did not specifically weigh Plaintiff's proposed fee against all of the other *Jackson* factors, as other courts in the state have done. Thus, this Court should find that Plaintiff's proposed rate of $450.00 is erroneous, especially if it adheres to a strict lodestar calculation.

4. **Though fee rates need not be proportionate to the amount of recovery, the amount of recovery is still a factor that courts often consider when determining a proper fee rate.** Though Plaintiffs have cited *Baron Data Systems, Inc. v. Loter* in support of their position that attorney's fees need not be proportionate to recovery, plaintiffs have failed to mention that the amount of recovery is nonetheless a factor that courts consider in awarding attorney's fees. *See Baron Data Systems, Inc. v. Loter*, 297 S.C. 382 (S.C.,1989); *see generally Taylor v. Medenica*, 331 S.C. 575 (S.C.,1998). While it is true that the court in *Baron* awarded attorney's fees exceeding the verdict obtained, it was also stated therein that, "the amount of recovery *is but one factor to be considered* in determining reasonable attorney's fees". *Baron*, 297 S.C. at 385. As such, though it is not required that attorney's fees be

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proportionate to recovery, Plaintiff's humble amount of recovery nonetheless is a factor for courts to consider in awarding attorney's fees.

CONCLUSION

For the foregoing reasons, Nissan North America, Inc. asks the Court to reject Plaintiffs' Motion to Amend.

Dated: July 10, 2023

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
The Honorable Roger M. Young, Circuit Court Judge

Case No. 2020-CP-08-02455

Nissan North America, Inc. ..... Petitioner-Appellant

v.

Rita R. Greenawalt and
James M. Greenawalt..... Respondents.

NOTICE OF APPEAL

Nissan North America, Inc ("Nissan") by and through his undersigned counsel, timely appeals the lower court's Order Regarding Plaintiffs' Motion for Attorney's Fees. A copy of the written order is attached as **Exhibit A**. Appellant received written notice of the entry of the Order Regarding Plaintiffs' Motion for Attorney's Fees on June 12, 2023. Rita R. Greenawalt and James M. Greenawalt are represented by C. Steven Moskos of The Moskos Law Firm, located at 6650 Rivers Ave., Ste 210 North Charleston, SC 29406. Mr. Moskos' telephone number is 843-763-5297.

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ELECTRONICALLY FILED - 2023 Jul 19 5:00 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

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 **PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION TO ALTER OR AMEND THE JUDGMENT**

Plaintiffs' Motion to Alter or Amend the Judgment requests amendment of the Court's June 12, 2023 Order on essentially two grounds:

1. The Court did not include in the award or the analysis Plaintiffs' third supplemental time records filed May 23, 2023; and

2. After otherwise properly following the lodestar analysis almost until the end, the Court used the wrong standard.

Jim and Rita assert the Court conflated the purposes of a punitive damages award with the purposes of awarding fees under a fee shifting statute and that the Court did not follow its own lodestar analysis. Nissan's opposition brief does not dispute any of these points.

Instead, Nissan makes a series of erroneous arguments. It argues the court was correct to reduce the fee request; even though the award of $75,000 was correct, the award should be lowered; it restates some of its arguments made at the attorney fee hearing; and it untimely moves the Court to amend its June 12 Order to reduce the hourly rate from $450 to a lower unspecified amount and, consequently, award fees based on the lower rate.

Because Nissan has failed to provide any evidence or legal basis to oppose Jim's

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and Rita's motion for attorney's fees or Plaintiffs' Motion to Alter or Amend the Court's Order, Jim and Rita assert their motion for reconsideration should be granted.

1. NISSAN FAILED TO TIMELY FILE ITS BRIEF OPPOSING PLAINTIFFS' MOTION.

On June 27, 2023, the Court instructed Nissan to respond to Jim's and Rita's motion by July 10. Nissan did not file its motion until July 11. (Exhibit 1 and 2 from Defendant Nissan North America, Inc.'s Response In Opposition To Plaintiffs' Motion To Amend Judgment, hereinafter Nissan's Brief, p. 11.) This is the second time Nissan has been late in its filings regarding this motion.[1] (Exhibit 3.) Jim and Rita move that Nissan's opposition brief be stricken as an untimely response and/or motion, as discussed below, and given no weight by the Court.

2. NISSAN STATES THE WRONG STANDARD REGARDING RULE 59 SCRCP MOTIONS.

Nissan's Opposition cites federal cases re the strict federal standards for Rule 59 motions.[2] (Nissan's Brief, pp. 2-3). It argues that Jim's and Rita's motion fails to meet those standards. (Id.) South Carolina standards, as the Court is undoubtedly aware, are very different. Elam v. S.C. DOT, 361 S.C. 9, 602 S.E.2d 772, 778-79 (2004) ("[I]t is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court 'alter or amend the judgment,' but also as a vehicle to seek 'reconsideration' of issues and arguments.") That is what Jim and Rita did here.

South Carolina does, however, require a Rule 59 motion to be timely. Jim's and

[1] On April 5, 2023, after the motion hearing, the Court instructed Nissan to file its proposed Order regarding Jim's and Rita's request for fees by May 1, 2023. Nissan filed its untimely Order on May 2, 2023. (Exhibit 3.)

[2] Two of the three cases Defendant cites regarding standards for Rule 59 motions are clearly federal cases. The third, which Defendant cites as "Clemons v. Home Telecom Co., 2022 S.C. C.P. LEXIS 1062, 1;" is improperly cited; does not show up in Fastcase or Westlaw; appears to be federal; and is contrary to Elam.

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Rita's Motion complies with the Rules. It is Nissan's Response that does not.

3. NISSAN NOW ASKS THE COURT TO RECONSIDER ITS JUNE 12 ORDER EVEN THOUGH IT DID NOT FILE A MOTION REQUESTING RECONSIDERATION OF THE ORDER WITHIN 10 DAYS OF NOTICE OF THE FILING OF THE ORDER.

On page 2 of its late-filed brief, "Nissan also requests that the Court reconsider its original finding of $75,000 in attorney's fees for Plaintiffs." This request is untimely. If Nissan wished for the court to amend its findings, make additional findings, or amend its Order, it had to file a motion requesting the amendment within 10 days of notice of entry of the judgment. Rule 52(b), 59(e) SCRCP. Nissan then had to serve the Court with a copy of the motion within 10 days of its filing. Rule 52(d), Rule 59(g) SCRCP. It did neither.

The Court filed its Order on June 12, 2023. Notification of electronic filing was sent to Nissan's three attorneys[3] on June 12, 2023. (Exhibit 4.) Nissan did not file any motions by June 23, the ten-day absolute deadline for a motion to alter or amend under Rules 52 and 59 SCRCP. Overland, Inc. v. Nance, 423 S.C. 253, 256, 815 S.E.2d 431, 432 (2018). Consequently, Nissan never served a motion on the court.

Nissan now asks that the Court reconsider its original fee award of $75,000 and its finding that $450.00 per hour is a reasonable hourly rate. The Court should not entertain these or any other "motions" as they are untimely.

4. NISSAN'S UNTIMELY MOTION FOR RECONSIDERATION REGARDING THE COURT'S FINDING THAT $450 PER HOUR IS A REASONABLE FEE SHOULD BE DENIED AS NISSAN HAS NOT PROVIDED THE COURT ANY EVIDENCE REGARDING ANY OF THE JACKSON FACTORS AND PARTICULARLY THE CUSTOMARY LEGAL FEES FOR SIMILAR SERVICES.

First, Nissan seeks to reargue its position as to why the $450 hourly rate is

[3] Nissan's attorneys of record are Sarah Eibling, Ashia Bre'ana Crooms-Carpenter, and Scott Douglas MacLatchie. See the Berkeley County Public Index.

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unreasonable. The time for those arguments has passed. Nissan did not provide any evidence of a reasonable rate in its initial brief to Plaintiffs' Motion for Attorney's fees, or at the motion hearing. Jim and Rita provided the appropriate evidence through their affidavits. Consequently, the Court found $450 per hour to be a reasonable rate for this complex case. Nissan did not timely file a motion for the court to reconsider its finding. Nissan cannot now attack the hourly rate.

Even if the Court were to ignore the strict time deadlines in Rules 52 and 59 SCRCP and reconsider its ruling, Nissan's attack should fail. Nissan has failed at every step to provide ***any evidence*** that a $450 hourly rate is unreasonable. Even in its current filing, Nissan's argument boils down to: "here are a bunch of cases from Alabama to Pennsylvania that are between 8 and 37 years old. See the hourly rate is not $450 per hour. Therefore, the hourly rate in this case should be lower than $450 per hour. Court, pick a number out of the air based on these cases." This is not evidence.

The Court should further disregard Nissan's "motion" as it has failed to meet its "burden of showing which of the fees are clearly unrelated" as mandated by Taylor v. Nix, 307 S.C. 551, 557, 416 S.E.2d 619, 622 (1992). In fact, it has not provided ***any evidence*** to show "which of the fees are clearly unrelated" or that $450.00 is not a reasonable hourly fee as stated in the affidavits of C. Steven Moskos, Jay Masty, and Justin Kahn.[4]

Nissan's opposition brief states it "has not seen any support beyond Plaintiffs' affidavits to support Mr. Moskos' hourly rate". What more is there to show? Counsel has provided a description of all his relevant work and time spent on this matter. Jay Masty

[4] Since Nissan has not presented any evidence or argument regarding the Jackson factors "professional standing of counsel" and "the contingency of compensation", it is presumed that Nissan agrees those factors weigh in favor of Jim and Rita.

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and Justin Kahn are well-respected, experienced trial lawyers familiar with the customary current legal fees in the area. Each explained his lengthy experience in the legal field, his familiarity with hourly rates in the community, his review of the file, his discussions with counsel about the case, and his review of the law relative to an award of fees. Each recognized the novelty and complexity of consumer law cases generally, and this case specifically. Both found all hours listed were reasonably spent on this case, Jim's and Rita's counsel to have a good professional standing, Jim and Rita received a beneficial result, and counsel's efforts warrant an hourly rate of ***at least*** $450/hour. Mr. Masty went further and stated he has "charged such an hourly rate in some cases of equal complexity".[5] [6]

Nissan has not provided any affidavits. It presented no evidence to oppose Jim's and Rita's affidavits as to the nature, extent, and difficulty of the case, the reasonableness of the time spent, the hourly rate, or the fee sought. Instead, Nissan seeks to add another factor to the Jackson analysis "what is actually charged to the consumer".[7] Under Nissan's proposed approach, counsel's fee in his contract with Jim and Rita is the reasonable fee. (Nissan's Brief p. 8.) This approach has been rejected by our Courts.

[5] Nissan's brief on page 8 states, "Plaintiffs merely submitted biographical affidavits from two attorneys stating that $450.00 was a reasonable fee for the services at issue, but not attesting to the types of fees that they themselves or other attorneys have charged". This is obviously incorrect.

[6] Counsel would also point out that other courts have found his fee of $450 per hour reasonable. See Master-in-Equity's 2019 Final Order in Means v McCutcheon, Case No.: 2019-CP-10-03689. (Exhibit 5.) That Order was appealed as the Master awarded fees in proportion to the underlying debt. Said rate was approved on appeal in an unpublished opinion. The Master's Order was reversed and remanded for an award of reasonable attorney's fees because, as here, "there was no evidence in the record that warranted a reduction in the fees requested". Appellate Case No. 2021-000426. (Exhibit 6.) See also arbitrator Morgan Templeton's 2021 arbitration award in Taylor v. Hudson Charleston Acquisition II LLC d/b/a Charleston Nissan finding $450 per hour reasonable and awarding a full attorney fee. (Exhibit 7.) The Court confirmed the award on December 31, 2021. Case No.: 2020-CP-10-04137.

[7] "Either way, Plaintiffs should show what Mr. Moskos represented and billed as his hourly rate before this Court awards, if any, attorneys' fees." (Nissan's Brief p. 8.)

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Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997) ("When determining the reasonableness of attorney's fees under a statute mandating the award of attorney fees, the contract between the client and his counsel does not control the determination of a reasonable hourly rate.") The standard is the "customary legal fees for similar services", not what is actually charged or even worse, what is actually paid. And to repeat, the Court has already found the rate appropriate. Nissan should have presented its counter-evidence, if any, before the original order was issued.

Nissan's position requires the Court to look at cases that are eight to thirty-five years old which are federal court cases and cases outside our jurisdiction and that do not take into consideration inflation's effect on fees. Furthermore, Nissan has not compared the facts in those foreign cases to the facts in this case nor has it analyzed those cases under each Jackson factor. One cannot tell what work was done by the lawyers, if the lawyers in the foreign cases had three years', ten years', or thirty-six years' experience, if the other 6 federal factors made a difference in the award, if the award considered the client's ability to pay, if the court considered counsels' reputation in the community, and most importantly, what the reasonable rate in South Carolina is today.

Jim and Rita move that Nissan's opposition brief be stricken as an untimely motion and they request Nissan's brief be given no weight by the Court.

5. JIM'S AND RITA'S MOTIONS TO AMEND THE COURT'S ORDER ARE PROPER.

First, Jim's and Rita's current motions are proper as they seek to have the Court use the proper standard for awarding attorney's fees and to have the Court provide the proper basis for such an award. Currently, the Court bases its award on the punitive damages or sanctions purpose of imposing fees to deter and to punish litigants. This is

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an error of law as the purpose of an award of attorney's fees in a consumer fee shifting case is to make the case economically feasible for the consumer and for the consumer's attorney. If the purposes of the fee shifting statute are not honored, wrongdoers like Nissan would easily get away with harming consumers simply because consumers could not afford to oppose them.

Second, Jim and Rita also assert that it was an error of law for the Order not to follow the lodestar analysis and award Jim and Rita the full fee requested. Nissan did not and still has not provided any evidence that weighs in favor of modifying the lodestar amount. Thus, the Order needs to be amended to award Jim and Rita the full fee amount.

Third, the Court did not hold the lodestar amount was too much. Nissan mischaracterizes the Court's Order (p. 3) when it states, "In it June 12 Order, the Court found that 'all things considered,' the amount in attorney's fees requested by Plaintiff was too much." Jim and Rita provided the Court two fee amounts, a lodestar amount ($131,220.00)[8] and a fee based on the lodestar amount times a multiplier ($196,830.00). The Court's Order reads, "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." The Court stated the lodestar plus the multiplier "seems 'too much,' all things considered". The Court never commented on Jim's and Rita's lodestar amount.

Third, the Court's Order did not reference Jim's and Rita's counsel's third supplemental time records. These were filed May 23, 2023. Jim and Rita believe this

[8] This lodestar amount is for all time through May 23, 2023 as stated in Jim and Rita's counsel's Third Supplemental Time Records. The Court's Order used the lodestar for time through April 30, 2023 ($126,765.00). That was the last time record on Jim and Rita's counsel's Second Supplemental Time Records.

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was an oversight. Their Motion requested this additional time be included in the fee award.[9] As Defendant does not contest this, the additional award should be granted.

Jim's and Rita's motion is in conformity with the Rules.

6. NISSAN ASKS THE COURT TO TURN A BLIND EYE TO SOUTH CAROLINA'S STATUTORY LAW AND CASE LAW REGARDING THE JACKSON FACTORS.

Nissan states the Court "should refuse Plaintiff's request that it stringently follow an hourly rate calculation in its final judgment of attorney's fees, as strictly adhering to an hourly rate calculation is not required nor appropriate in a case of this scale". (Nissan's Brief p. 3.) Such a position is contrary to State and Federal law which specifically states plaintiffs are entitled to an award of costs and expenses, "including attorney's fees based on actual time expended". Enforcement Of Motor Vehicle Express Warranties - §56-28-50(D) and Magnuson Moss Warranty Act - 15 U.S.C. § 2310(d)(2). The Legislature and Congress clearly stated that the court should strictly adhere to an hourly rate calculation.

Furthermore, the United States Supreme Court in Hensley v. Eckerhart, 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) held "where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. Normally this will encompass all hours reasonably expended on the litigation, and indeed in some cases of exceptional success an enhanced award may be justified."[10] Jim and Rita have met their burden to produce proper time records. Nissan has not presented any evidence that counsel's time records could not be properly billed to a client.

Additionally, in Blum v. Stenson, 465 U.S. 886, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984) the Court held "[w]hen . . . the applicant for a fee has carried his burden of showing

[9] Additional time records have since been submitted to the Court and should be included in the award.
[10] The Hensley Court also held that "hours that are not properly billed to one's client also are not properly billed to one's adversary pursuant to statutory authority". The converse is also true, hours properly billed to one's client also are properly billed to one's adversary pursuant to statutory authority.

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that the claimed rate and number of hours are reasonable, the resulting product ***is presumed*** to be the reasonable fee" to which counsel is entitled." Id., at 897, 104 S.Ct., at 1548 (emphasis added).

In Layman v State of South Carolina, 376 S.C. 434, 658 S.E.2d 320 (2008) the court specifically held that the lodestar figure is the "starting point for reasonableness". The Layman court stated how important the lodestar figure is. The State wanted the Court to separate the fees incurred in the TERI litigation from those in the Working Retirees' claims which had been remanded. The Court declined stating that the claims were so intertwined they could not be separated. Therefore, the Court included all the time for both sets of litigation. The Court then reduced the total number of hours to be compensated by three percent "***only*** in an abundance of caution" in case there was "time devoted ***solely*** to the Working Retirees' claims" (emphasis added) Id. 658 S.E.2d at 333. The Court then multiplied the time spent by the hourly rate to arrive at a reasonable attorney fee. The Court did not address the other four Jackson factors. Once the lodestar amount was determined, the court moved to a discussion of enhancement of the lodestar fee with a multiplier which was granted. Here, the Court should not reduce the fees at all since Jim and Rita did not bring any claims which are totally separate from the fee shifting claims. Here, the Court simply stated the amount with a multiplier was too great.

Nissan admits that the lodestar analysis is correct.[11] Thus, the starting point is Jim's and Rita's full fee request of $131,220.00 through May 23, 2023 together with $4,275.00 for the time from May 24 through July 5 and the additional time spent

[11] "Plaintiffs are requesting that this Court amend its findings and alter its judgment to award attorney's fees in the amount of $131,220— which would reflect a strict adherence to calculation of counsel's hourly rate multiplied by time spent." (Emphasis added.) Nissan's Brief p. 1

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responding to Nissan's opposition to Jim's and Rita's current motion.

While the court may reduce the lodestar amount based on ***evidence*** the time was duplicative, unrelated, or unnecessary or because the hourly rate is inappropriate, ***no evidence*** of same was provided by Nissan nor was such finding made by the Court. Just the opposite occurred. The Court found all the Jackson factors weighed in Jim's and Rita's favor 100%.[12] Thus, the Court should amend its Order by awarding Jim's and Rita's full fee request.

7. NISSAN IS NEEDLESSLY PROLONGING THIS MATTER AND INCREASING PLAINTIFFS' FEES.

Nissan's brief is scattered and contains untimely motions. This is increasing Jim's and Rita's fees. Nissan's opposition to Jim's and Rita's fee application is discouraged by the United States Supreme Court which held 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).

A similar approach is taken by our Courts. In Taylor v. Nix, 307 S.C. 551, 416 S.E.2d 619 (1992), the Court held that the party asserting the right to attorney fees has 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. This is a clean, quick manner to resolve the attorney fee application without becoming a second major litigation as Nissan seeks to do here.

12

JACKSON FACTORS	COURT'S FINDINGS
The nature, extent, and difficulty of the case	100% for Plaintiffs - Order pp. 7-8
The time necessarily devoted to the case	100% for Plaintiffs - Order pp. 8-10
Professional standing of counsel	100% for Plaintiffs - Order p. 10
Contingency of compensation	100% for Plaintiffs - Order p. 10
Beneficial results obtained	100% for Plaintiffs - Order p. 11
Customary legal fees for similar services	100% for Plaintiffs - Order p. 12

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Other evidence that Nissan has not been and is not currently interested in resolving this matter is that Nissan refuses to communicate with counsel so the Rogue can be returned to Nissan pursuant to the Parties' settlement agreement. Jim and Rita have been forced to file a motion to compel settlement with the Court. (See Motion filed May 23, 2023.) Additionally, Nissan has filed a Notice of Appeal of the Court's June 12 Order when the Court has not finished ruling on the matter. More time will be wasted because of Nissan's actions.

Nissan has needlessly dragged this matter out. It now says Jim's and Rita's counsel's fees are too high. As Judge Bell stated in Rish v. Rish By and Through Barry, 370 S.E.2d 102, 296 S.C. 14 (Ct. App. 1988) "One who intends to build a tower should first count the cost, whether he has sufficient to finish it. Luke 14:28. This court does not sit to relieve self-inflicted wounds." The fees would have been lower had Nissan paid what was owed. It chose to fight Jim's and Rita's claims. The wounds about which Nissan complains are self-inflicted.

8. NISSAN AGREES THAT SOUTH CAROLINA COURTS DO NOT USE A PROPORTIONALITY RULE BETWEEN PLAINTIFFS' FEE REQUEST AND THE AMOUNT RECOVERED BY PLAINTIFFS.

Nissan asserts at least three times that lodestar fees "in a case of this scale" are inappropriate. Nissan similarly states on pages 4 and 9 of its brief that a fee based on the lodestar approach is inappropriate "given the smaller scope of the case", and "Plaintiff's humble amount of recovery". Nissan provides no cases in support of its claim that the Court should award a smaller fee because the amount in controversy is small. The legislature recognized that big Defendants and car manufacturers specifically would aggressively litigate "small" cases and then claim the case was too small to warrant an appropriate fee. To insure that injured consumers with small amounts in controversy could

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hire quality attorneys, the Legislature included fee shifting provisions in these consumer protection statutes.[13] In the Order, the Court cites Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989), Taylor v. Medenica, 331 S.C. 575, 503 S.E.2d 458 (1998), and Riverside v. Rivera, 477 U.S. 561, 106 S.Ct. 2686, 91 L.Ed.2d 466 (1986) properly holding that fees are not to be reduced based on a perceived "small recovery". Nissan has no cases to the contrary.

9. THE CASES CITED BY NISSAN ARE NOT APPLICABLE TO THE LODESTAR ANALYSIS OR TO THE "CUSTOMARY LEGAL FEES FOR SIMILAR SERVICES" FACTOR.[14]

The Court looked at the fees charged in South Carolina for similar services to determine whether the hourly rate of $450 per hour is reasonable.[15]. Nissan has not presented any evidence of the "fees customarily charged in South Carolina for similar services" or that the legal market of and that the hourly rates charged by attorneys in other States at other times are reasonable rates for attorneys currently practicing in South Carolina.

Nissan cites Addy's Harbor Dodge, LLC v. Glob. Vehicles U.S.A. Inc., No. CA 4:11-1065-KDW, 2015 WL 450452 (D.S.C. Feb. 3, 2015), (Nissan's Brief p. 6)[16], an eight-year-

[13] Nissan acknowledges this position in the first sentence on page 4 of its brief, "the purpose of a fee shifting statute in these types of matters is to make certain that a consumer has an economically feasible private right of action".

[14] Nissan's second argument (page 3) is confusing as it starts off claiming the Court does not have to follow an "hourly rate calculation". This falls under the sixth Jackson factor "customary legal fees for similar services". Nissan's argument, however, then begins using "lodestar analysis" in place of "hourly rate calculation". For the purposes of the following discussion, "hourly rate calculation" is considered to mean "lodestar analysis".

[15] Nissan recognizes the Court needed to determine the fees customarily charged in South Carolina for similar services. "This Court should find that Plaintiff's attorney's fee of $450.00 is not reasonable, as it is not in line with fees customarily charged in South Carolina for similar services." (Nissan's Brief p. 8)

[16] Nissan's third argument claims the Court's determination of a $450/hour fee rate was erroneous and should be thrown out. This is part of Nissan's untimely motion to reconsider the Court's Order and should not be considered.

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old Federal District Court case which used the federal 12 factor test for attorney's fees found in Barber v. Kimbrell's, Inc., 577 F.2d 216, 226 & n.28 (4th Cir. 1978). Contrary to the representation on page 6 of Nissan's brief, the Magistrate Judge's Order never mentions Jackson, much less states "that a court should consider the Jackson factors when determining a proper hourly rate for the purpose of calculating an appropriate attorney's fee." It does, however, hold, in reference to the 12 federal factors, "'[T]hese factors should be considered in determining the reasonable rate and the reasonable hours, which are then multiplied to determine the lodestar figure which will normally reflect a reasonable fee.' E.E.O.C. v. Serv. News Co., 898 F.2d 958,965 (4th Cir. 1990) (Emphasis added.)." Addy's Harbor Dodge, LLC v. Glob. Vehicles U.S.A. Inc. See also Blum v. Stenson, 465 U.S. 886, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984) (when the rate and number of hours are reasonable, the resulting product is presumed to be the reasonable fee.) Thus, the lodestar figure here is presumed to be the reasonable fee. Nissan had to rebut this presumption with evidence, which it has not provided.

Nissan cites Norman v. Housing Authority of City of Montgomery, 836 F.2d 1292 (11th Cir. 1988), a 35-year-old Federal class action from Alabama. The class challenged the Housing Authority's practice of overcharging public housing tenants for rent by failing to provide adequate utility allowances for gas and electric service. It was not a Magnuson-Moss Warranty Act claim in Georgia as stated on page 7 of Nissan's brief. Norman, however, does support Jim's and Rita's position by holding, "A reasonable hourly rate is the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation. Blum v. Stenson, 465 U.S. at 895-96 n. 11, 104 S.Ct. at 1547 n. 11." Plaintiffs have provided affidavits from two accomplished and highly respected attorneys who state the minimum reasonable hourly

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rate for this case is $450.00 per hour. The Court could have ruled the hourly rate was higher. The Court chose the minimum reasonable hourly rate based on the evidence.

Nissan's reliance on Scoggins v. Kia Motors America, Inc., 612 S.E.2d 823, 272 Ga. App. 495 (Ga. App. 2005) is also misplaced. In 2005, the Georgia Court refused to award any fees because counsel's affidavit was deficient. Plaintiff's attorney did not provide adequate proof that $175 and $200 was the market rate for his services. Counsel attempted to use the "Laffey Matrix", which "'is a rate schedule established by the United States Department of Justice that establishes what the department believes to be a reasonable rate for corresponding legal experience in Washington, D.C.". The Georgia Court said the "Matrix" was not sufficient as it "applies only to attorneys practicing in the federal courts in the District of Columbia. Scoggins has failed to show that Washington, D.C. and Cobb County are in the same legal market and that the hourly rates charged by attorneys practicing in the District are reasonable rates for attorneys practicing in Cobb County." Id. 272 Ga. App. 497, 612 S.E.2d 826. Nissan is taking the same impermissible position the Scoggins court ruled against. Nissan is asking the Court to find that $175 per hour is an appropriate hourly rate, yet it has not provided any evidence that the legal market and the hourly rates in Cobb County, Georgia in 2005 are the same in South Carolina in 2023.

Nissan then moves to Virginia citing Bowden v. Forest River, Inc., 2020 WL 3584792 (E.D. Va., 2020). After settlement of a case involving a recreational vehicle, the court found to be reasonable the $650/hour fee of Ronald Burdge, who has 40 years' experience, the $175/hour fee of Scarlett Steuart, an attorney with four years of experience, the $750/hour fee of Leonard Bennett, who has 25 years' experience, the $625/hour fee for Matthew Erausquin, who has 16 years' experience, and the $450/hour

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for Tara Keller, who has 10 years' experience. Jim's and Rita's counsel has more experience than Mr. Bennett or Mr. Erausquin who received more than Jim's and Rita's counsel is requesting. Under Nissan's own case, the hourly rate here would be increased.

The court determined the lodestar amount and reviewed the 12 factors used in federal court. The attorneys submitted their own affidavits, but did not submit third party affidavits regarding the proper hourly rate. The court did cut some hours it found duplicative. Nissan has not made such a showing here.

As in this case, Defendants in Bowden alleged that plaintiffs achieved "limited success". The court did not accept this argument stating,

> "the parties' stipulation explicitly states that Plaintiffs have succeeded 'on all elements of all claims.' And although the terms and conditions of the parties' settlement agreement are confidential, the agreement has been submitted under seal for the Court's review. After comparing the degree of Plaintiffs' success to the amount in controversy, the Court finds that the proposed fee award should not be reduced."

Here, Nissan settled the case stipulating "the Greenawalts are considered the prevailing parties as to all claims". (Court's Order p. 2.). Again, under Defendant's own case, the proposed fee award should not be reduced.

The cases cited by Nissan do not apply as they do not rebut Jim's and Rita's position nor do they show that the fees awarded in other jurisdictions years ago reflect the legal market of and the hourly rates charged by attorneys currently practicing in South Carolina.

Finally, it is telling that Nissan never addressed Gifford v Horry County, Civil Action No. 4:16-cv-03136-MGL (D.S.C. March 29, 2023)[17] where the Florence Federal Court,

[17] A copy of the opinion was filed with the clerk of court on April 5, 2023 and handed up to the Court during the April 5, 2023 attorney fee motion hearing.

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one week before the motion hearing in this case, awarded Plaintiff's counsel $878,467.80 in attorney's fees based on a $1 verdict. The Court found that an hourly rate of $450 per hour for attorneys with twelve years' experience was reasonable.[18] (See Gifford v Horry County p. 17.) Jim's and Rita's counsel has more experience, and so presumptively should, if anything, receive a higher rate.

At the conclusion of its foreign cases, Nissan says the Court "did not specifically weigh Plaintiff's proposed fee against all of the other Jackson factors". That is nonsensical, as one does not weigh the factors against a fee. But even if one did, this argument does Nissan no good as the Court found all the factors weigh in favor of Jim and Rita. Nissan only discusses one of the Jackson factors, the reasonable rate. Nissan's discussion of the size of Jim's and Rita's substantial recovery is irrelevant as fee shifting statutes are so consumers can hire quality attorneys to bring smaller cases.

CONCLUSION

The Court should follow the purposes for awarding attorney's fees instead of the purposes for awarding punitive damages, and award the amount determined to be appropriate under the lodestar. Jim and Rita request that the Court include all the time presented including the time spent responding to Nissan's Opposition to the current motion. Jim and Rita request the Court award $164,610.00 towards their attorneys' fees. (C. Steven Moskos at 352.7 hours. Brooks R. Fudenberg at 13.1 hours. Hours multiplied by $450 equals $164,610.00.)

Nissan's requests to change the June 12, 2023 Order should also be denied as not having been timely filed pursuant to Rule 52 or Rule 59 SCRCP.

[18] James B. Moore III, Esq. https://www.evansmoorelaw.com/our-attorneys/james-b-moore-iii/
Scott C. Evans, Esq. https://www.evansmoorelaw.com/our-attorneys/scott-c-evans/

C. STEVEN MOSKOS, P.A.
ATTORNEY FOR PLAINTIFFS
s/C. Steven Moskos
SC Bar No.: 7938
6650 Rivers Ave., Suite 210
North Charleston, SC 29406
Telephone: (843) 763-5297
steve@moskoslawfirm.com

Charleston, South Carolina
July 19, 2023

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Exhibit 1

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Steve Moskos

From: Young, Roger Law Clerk (Max J. Mazurek) <ryounglc@sccourts.org>
Sent: Tuesday, June 27, 2023 9:27 AM
To: Sarah T. Eibling
Cc: Steve Moskos
Subject: RE: Greenawalt v Nissan 2020CP0802455

Ms. Eibling,

Judge Young is giving Defendants until July 10th to file a response to Plaintiff's motion to alter or amend. Please let me know if you have any questions.

Best,
Max J. Mazurek
Law Clerk to The Honorable Roger M. Young, Sr.
100 Broad Street
Charleston, South Carolina 29401
Office: (843) 958-2015
Email: RYounglc@sccourts.org

From: Young, Roger Law Clerk (Max J. Mazurek)
Sent: Friday, June 23, 2023 9:58 AM
To: 'Steve Moskos' <steve@moskoslawfirm.com>; Young, Roger Secretary (Robyn R. Hills) <ryoungsc@sccourts.org>
Cc: Sarah T. Eibling <sarah.eibling@nelsonmullins.com>
Subject: RE: Greenawalt v Nissan 2020CP0802455

Mr. Moskos – Received, thank you.

Max J. Mazurek
Law Clerk to The Honorable Roger M. Young, Sr.
100 Broad Street
Charleston, South Carolina 29401
Office: (843) 958-2015
Email: RYounglc@sccourts.org

From: Steve Moskos <steve@moskoslawfirm.com>
Sent: Friday, June 23, 2023 9:37 AM
To: Young, Roger Law Clerk (Max J. Mazurek) <ryounglc@sccourts.org>; Young, Roger Secretary (Robyn R. Hills) <ryoungsc@sccourts.org>
Cc: Sarah T. Eibling <sarah.eibling@nelsonmullins.com>
Subject: Greenawalt v Nissan 2020CP0802455

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Judge Young,

Pursuant to Rule 59 SCRCP, please find attached Plaintiffs' Motion to Alter or Amend your Order filed June 12, 2022. The attached motion was filed June 22, 2023.

C. Steven Moskos
6650 Rivers Ave., Ste 210
North Charleston, SC 29406
843-763-5297
steve@moskoslawfirm.com
https://www.moskoslawfirm.com

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Exhibit 2

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Kelli Martin

From: efiledonotreply@sccourts.org
Sent: Tuesday, July 11, 2023 9:47 AM
To: Sarah Eibling
Cc: Kelli Martin; Laurie Jennings
Subject: Accepted Notice: Your filing, Re: 000531/01930 - (160) Failure to Deliver/Warranty - Response, was accepted

External Source/Sender notice

Use caution responding or clicking links/attachments.

To: Sarah Theresa Eibling sarah.eibling@nelsonmullins.com
From: efiledonotreply@sccourts.org
Date: 2023-07-11 09:35:22.247
Subject: Your electronic filing, Re: 000531/01930 - (160) Failure to Deliver/Warranty - Response, was accepted by CIRCUIT COURT.

Case Number: 2020CP0802455
Case Type: (160) Failure to Deliver/Warranty
Document Type: Response
Reason(s) : (none provided)

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Exhibit 3

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Steve Moskos

From: Sarah Eibling <Sarah.Eibling@nelsonmullins.com>
Sent: Tuesday, May 2, 2023 12:02 AM
To: Steve Moskos; Roger Young (ryounglc@sccourts.org)
Subject: RE: Rita R Greenawalt , plaintiff, et al VS Nissan North America, Inc. 2020CP0802455
Attachments: (Greenawalt) Proposed Order Denying Motion for Attorneys Fees - 4853-4441-2769 1.docx

Max:

Attached please find Nissan's Proposed Order Denying Plaintiffs' Motion for Attorneys' Fees.

Respectfully,
Sarah Eibling

SARAH T. EIBLING PARTNER
sarah.eibling@nelsonmullins.com
MERIDIAN | 17TH FLOOR
1320 MAIN STREET | COLUMBIA, SC 29201
T 803.255.9756 F 803.256.7500
NELSONMULLINS.COM VCARD VIEW BIO

From: Steve Moskos <steve@moskoslawfirm.com>
Sent: Monday, May 1, 2023 4:45 PM
To: Roger Young (ryounglc@sccourts.org) <ryounglc@sccourts.org>
Cc: Sarah Eibling <sarah.eibling@nelsonmullins.com>; Steve Moskos <steve@moskoslawfirm.com>
Subject: Rita R Greenawalt , plaintiff, et al VS Nissan North America, Inc. 2020CP0802455

◄External Email► - From: steve@moskoslawfirm.com

Max,

Pursuant to Judge Young's instructions, please find attached a copy of my proposed Order regarding my clients' motion for attorney's fees. I have filed three sets of time records regarding this matter. Please let me know if you need anything else.

Steve

C. Steven Moskos
6650 Rivers Ave., Ste 210

North Charleston, SC 29406
843-763-5297
steve@moskoslawfirm.com
https://www.moskoslawfirm.com

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Certificate of Electronic Notification

Recipients

Ashia Crooms-Carpenter	- Notification transmitted on 06-12-2023 04:05:38 PM.
Scott MacLatchie	- Notification transmitted on 06-12-2023 04:05:39 PM.
Melvin Cockrell	- Notification transmitted on 06-12-2023 04:05:36 PM.
C. Moskos	- Notification transmitted on 06-12-2023 04:05:36 PM.
Darrell Johnson	- Notification transmitted on 06-12-2023 04:05:37 PM.
Sarah Eibling	- Notification transmitted on 06-12-2023 04:05:37 PM.

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NOTICE OF ELECTRONIC FILING [NEF]

–

A filing has been submitted to the court RE: 2020CP0802455

Official File Stamp:	06-12-2023 04:05:29 PM
Court:	CIRCUIT COURT Common Pleas Berkeley
Case Caption:	Rita R Greenawalt , plaintiff, et al VS Nissan North America, Inc.
Document(s) Submitted:	Order/Attorney Fees Order/Attorney Fees
Filed by or on behalf of:	Roger M. Young

This notice was automatically generated by the Court's auto-notification system.

–

The following people were served electronically:

Melvin Wayne Cockrell, III

Darrell T. Johnson, Jr.

Ashia Bre'ana Crooms-Carpenter for Nissan North America, Inc.

Scott Douglas MacLatchie, Jr. for Nissan North America, Inc.

Sarah Theresa Eibling for Nissan North America, Inc.

C. Steven Moskos for Rita R Greenawalt et al

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2019-CP-10-03689
	)	
JESSICA MEANS AND HALL & MEANS, LLC,	)	
	)	
Petitioners,	)	
	)	**ORDER**
vs.	)	
	)	
DONALD B. MCCUTCHEON,	)	
	)	
Respondent	)	

This matter came before me on December 7, 2020 for supplemental proceedings. Petitioners were present as was their counsel. Neither Mr. McCutcheon nor his representative appeared.

This matter started in Small Claims Court in Charleston County. Petitioners attempted to serve the Summons and Complaint on Mr. McCutcheon by leaving them with his mother at 110 Mitton Road in Moncks Corner. Ms. McCutcheon represented to the process server that Mr. McCutcheon lived with her. Mr. McCutcheon did not respond resulting in a default judgment dated May 23, 2019 in the amount of $3,857.50.

On May 30, 2019, Petitioners filed a motion for attorney's fees. Said petition was approved by the Honorable James Turner. The Transcript of Judgment was amended awarding Petitioners a total of $6,823.20.

On July 11, 2019, the $6,823.20 Transcript of Judgment was filed with the Charleston County Clerk of Court.

On July 15, 2019, Mr. McCutcheon filed a motion for a new trial alleging he had not been properly served.

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On August 2, 2019, Judge Turner heard Mr. McCutcheon's motion.

On August 9, 2019, Judge Turner filed his Order in Small Claims Court setting aside the May 23, 2019 judgment.

On August 25, 2019, Judge Turner sent a letter to the Parties specifically to the Defendant at the address he supplied to the court scheduling a bench trial for September 11, 2019.

On September 11, Mr. McCutcheon again failed to appear for his hearing. Judge Turner found in favor of Petitioners in the amount of $10,340.20. Judge Turner filed his Transcript of Judgment with the Small Claims Court on September 11. That Transcript was then filed with the Charleston County Clerk of Court on October 3, 2019.

On September 17, Judge Turner denied Mr. McCutcheon's Motion for a New Trial.

On October 21, the Charleston County Clerk of Court filed Judge Turner's August 9, 2019 Order vacating his May 23, 2019 Order awarding Petitioners $6,823.20.

After the filing of the October 21 Order, the effective Order from Judge Turner's office regarding the merits of the case was the Transcript of Judgment filed September 11, 2019 awarding Petitioners $10,340.20.

Petitioners attempted to have the September 11 judgment enforced by the Sheriff, but the execution was returned *nulla bona*.

On February 25, 2020, the clerk of court filed the Honorable Jennifer B. McCoy's Rule to Show Cause, Order, and Order of Reference which referred this matter to the Master. A hearing was set on several occasions; however, the matter was continued based on the difficulty of serving Mr. McCutcheon and the COVID-19 pandemic.

This matter came before the Court on September 11, 2020. Mr. McCutcheon did

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not appear. Petitioners explained their attempts to serve Mr. McCutcheon. These included sending notice of the hearing to Mr. McCutcheon by regular and by certified mail. The Post Office did not return the regular mail, but it did return the unclaimed certified mail. Petitioners also attempted service using a process server. While Mr. McCutcheon informed Judge Turner his address was 90 Hanover Street, Apt. A in Charleston, the process server found that Mr. McCutcheon was not living there.

At the September 11, 2020 hearing, the Court instructed Petitioners to serve Mr. McCutcheon by publication. The matter was continued until December 7, 2020.

Petitioners published notice of the hearing in the newspaper. Petitioners also sent notice to Mr. McCutcheon by regular and certified mail. Again, the regular mail did not come back. The certified mail was not claimed. After the September 11, 2020 hearing, Mr. McCutcheon, on two occasions, sent petitioners' attorney a copy of the October 21, 2019 Order vacating the May 23, 2019 judgment. The Order was all that was in the envelope. The envelope had a return address of 90 Hanover Street, Apt A, Charleston, SC 29403 the same address Defendant provided to Judge Turner.

On December 7, 2020, the Court and Petitioners' attorney discussed notice to Mr. McCutcheon of the hearing. First, Mr. McCutcheon was served by publication. Second, Mr. Moskos provided the court with an affidavit of attorney's fees. Attached to the affidavit were 58 exhibits. These exhibits contained numerous letters to Mr. McCutcheon at 90 Hanover Street, Apt A, Charleston, SC. These letters were sent by Petitioner's counsel and the Small Claims Court. There were at least four exhibits (Exhibits 2, 5, 55, and 56) which indicate that Mr. McCutcheon's address is 90 Hanover Street as these documents came from him.

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Based on the Court's record, I find that Mr. McCutcheon was served and did receive notice of the December 7 hearing.

Petitioners presented the Court with an affidavit from United Bank which stated that Mr. McCutcheon has sufficient funds in his accounts to satisfy the judgment against him. I further find that Mr. McCutcheon has several bank accounts with sufficient cash to satisfy the outstanding judgment. He also has a residence at 90 Hanover St. which could be used to satisfy the outstanding judgment. He also has tenants who are paying him rent that could go towards the judgment.

I find Petitioners are entitled to their underlying judgment, post judgment interest at 18% per annum, costs for these proceedings, and additional attorney's fees.

Post judgment interest runs at 18% per annum per the Parties' contract. Renaissance Enterprises, Inc. v. Ocean Resorts, Inc., 483 S.E.2d 796, 326 S.C. 460 (Ct. App. 1998). Post judgment interest began accruing on September 12, 2019, the day after the judgment was filed in Small Claims Court. Interest from September 12, 2019 until December 7, 2020 equals $2,384.73. For everyday thereafter interest shall accrue at the rate of six dollars and two cents ($6.02) until the judgment is paid or until the filing of this Order, whichever comes first. Once this Order is filed, post judgment interest will have to be recalculated to take into account the new judgment amount at 7.25% starting January 15, 2021.

Since September 11, 2019, Petitioners have incurred several costs in attempting to collect the outstanding judgment. I find that Petitioners are entitled to $589.66 for the additional costs they have paid.

In Small Claims Court, Petitioners made a claim for and received an award of

attorney's fees pursuant to the Parties' contract. Petitioners requested additional attorney's fees in the amount of $21,060.00 incurred from September 11, 2019 through December 6, 2020.

The Court has reviewed Petitioners' counsel's affidavit of attorney's fees and finds that Mr. McCutcheon has made collecting the outstanding judgment very difficult by hiding from Petitioners and the Court. Mr. McCutcheon's efforts to hide from Petitioners and the Court have also needlessly wasted Petitioners' and the Court's resources as multiple hearings have had to be scheduled and great effort and expense has had to be made and has been incurred to provide Mr. McCutcheon with notice of the proceedings. The time listed by Mr. Moskos, 54.0 hours, is reasonable based on Mr. McCutcheon's actions and the legal requirements of notice imposed on Petitioners to get to this point. Counsel's efforts have resulted in a judgment against Mr. McCutcheon and evidence of resources available to satisfy the judgment. This is an excellent result. Should Mr. McCutcheon not pay the attorney's fees incurred, Petitioners would be responsible for the outstanding fees which they likely could pay. Petitioners' counsel is a long standing, respected member of the Bar. I further find that a fee of $390 to $450 per hour is a reasonable fee for this area for civil litigation.

Nonetheless, I find that the original amount of $3,787.50 owed to Petitioners, is a small amount when compared to the $26,481.00 requested by Petitioners to cover the fees in the Small Claims Court ($5,421.00) and in going through the Supplemental Proceedings process ($21,060.00). Thus, I think it is equitable to award Petitioners $6,146.40 in additional attorney's fees. Therefore, it is,

ORDERED that Petitioners' judgment be increased by $2,384.73 for post judgment

interest from September 12 until December 7, 2020. Post judgment interest shall continue to accrue by $6.02 per day until the judgment is paid or the date of the filing of this Order arrives. At that time, the post judgment interest will need to be recalculated. Petitioners shall also receive additional costs of $589.66 and additional attorney's fees of $6,146.00. The total judgment shall be $19,460.59 which consists of 1) the original judgment of $10,340.20, 2) post judgment interest of $2,384.73, 3) additional costs $589.66, 4) additional attorney's fees of $6,146.00. At the time of payment, additional post judgment interest is to be added to the judgment in the amount of $6.02 per day from December 8 until this Order is filed. It is further,

ORDERED that United Bank turn over to C. Steven Moskos, PA the sum of $19,460.59, with the additional interest stated above, from Mr. McCutcheon's account ending in 9135, the Senior Checking account. If account 9135 no longer has sufficient money to satisfy the outstanding judgment, United Bank is to pay money from the account ending in 2070, the Free Business Checking account. United Bank is to continue issuing money from Mr. McCutcheon's accounts until the judgment is paid or the funds are depleted.

Should the United Bank accounts fail to satisfy the outstanding judgment, the Sheriff is directed to sell the residence at 90 Hanover St. to satisfy the judgment. Additionally, the tenants located at 90 Hanover St. are directed to pay to C. Steven Moskos, PA any and all rents that they would pay to Mr. McCutcheon until such time as the house is sold or the judgment is satisfied.

AND IT IS SO ORDERED.

E-FILED-CHANCERY-COURT-MARLBORO
FILED: 12-JUL-21 5:00 PM
CLERK OF THE CHANCERY COURT
MARLBORO COUNTY, SC
2020CP1302455

E-FILED 2021-Jan-25 9:50:00 PM CHARLESTON COMMON PLEAS 2019CP1003689

Charleston Common Pleas

Case Caption: Jessica L Means VS Donald B Mccutcheon

Case Number: 2019CP1003689

Type: Order/Supplemental Proceedings Order

So Ordered

s/Mikell R. Scarborough 3062

ELECTRONICALLY FILED - 2023 Jul 19 5:00 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Jessica Means and Hall & Means, LLC, Appellants,

v.

Donald B. McCutcheon, Respondents.

Appellate Case No. 2021-000426

Appeal From Charleston County
Mikell R. Scarborough, Master-in-Equity

Unpublished Opinion No. 2023-UP-035
Submitted January 1, 2023 – Filed February 1, 2023

REVERSED AND REMANDED

C. Steven Moskos, of C. Steven Moskos, PA, of North Charleston, for Appellants.

Donald B. McCutcheon, of Charleston, pro se.

PER CURIAM: Jessica Means and Hall & Means, LLC (collectively, the Law Firm) appeal the Master-in-Equity's award of attorney's fees in supplemental proceedings. On appeal, the Law Firm argues (1) the master committed an error of law by awarding fees in proportion to the underlying debt Donald McCutcheon owed to the Law Firm and (2) the award was without evidentiary support because

there was no evidence in the record that warranted a reduction in the fees requested. We reverse and remand.

We hold the master abused his discretion in limiting his award of attorney's fees to the Law Firm based on the amount of the underlying debt. *See Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 383, 377 S.E.2d 296, 297 (1989) ("The general rule is that attorney's fees are not recoverable unless authorized by contract or statute."); *id.* at 384, 377 S.E.2d at 297 ("Where there is a contract, the award of attorney's fees is left to the discretion of the trial judge and will not be disturbed unless an abuse of discretion is shown."); *Laser Supply & Servs., Inc. v. Orchard Park Assocs.*, 382 S.C. 326, 340, 676 S.E.2d 139, 147 (Ct. App. 2009) ("An appellate court will not reverse an [attorney's fees] award unless it is based on an error of law or is without any evidentiary support."); *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 494, 427 S.E.2d 659, 660 (1993) ("There are six factors to consider in determining an award of attorney's fees: 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained."); *Baron Data Sys.*, 297 S.C. at 384, 377 S.E.2d at 297 ("Consideration should be given to all six criteria in establishing reasonable attorney's fees; none of these six factors is controlling."). In considering the factors for determining a reasonable attorney's fee award, the master found the Law Firm's time expended was reasonable based on McCutcheon's actions; the Law Firm achieved an excellent result; the Law Firm would be responsible for the attorney's fees if McCutcheon did not pay them; the Law Firm's counsel was a long standing, respected member of the Bar; and counsel's rate of $390 to $450 an hour was a reasonable fee in the area for civil litigation. Despite deciding these factors favorably to the Law Firm, the master limited his award of fees to less than a third of the requested amount because the size of the underlying debt was relatively small. We hold this limitation was an error of law. *See Taylor v. Medenica*, 331 S.C. 575, 582, 503 S.E.2d 458, 462 (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). As the master noted, McCutcheon made collecting the outstanding judgment difficult by hiding himself and his assets from the Law Firm and the court and had needlessly wasted the Law Firm's and the court's resources. These actions resulted in the Law Firm amassing substantial attorney's fees and McCutcheon made no argument that the fees were unreasonable. *See Rish v. Rish By & Through Barry*, 296 S.C. 14, 16, 370 S.E.2d 102, 104 (Ct. App. 1988) (holding that the family court abused its discretion in failing to award a more adequate fee to counsel for the wife); *id.* at 17, 370 S.E.2d

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at 104 (Bell, J., concurring) (rejecting the husband's contention that he could not afford to pay the wife's attorney's fees for the frivolous action he brought and explaining that "[t]his court does not sit to relieve self-inflicted wounds"); Rule 208(a)(4), SCACR ("Upon the failure of respondent to timely file a brief, the appellate court may take such action as it deems proper."); *Robinson v. Hassiotis*, 364 S.C. 92, 93 n.2, 610 S.E.2d 858, 859 n.2 (Ct. App. 2005) (noting that because the respondent had not filed a brief, this court may take such action as it deems proper, including reversal). Accordingly, we reverse the master's order and remand for an award of reasonable attorney's fees consistent with this opinion.

REVERSED AND REMANDED.[1]

GEATHERS, MCDONALD, and HILL, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

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Exhibit 7

Exhibit 1

AMERICAN ARBITRATION ASSOCIATION
CASE NO.:01-21-0001-1264

Sajee Taylor,

Claimant,

vs.

Hudson Charleston Acquisition II, LLC d/b/a Charleston Nissan

Respondent.

FINAL AWARD

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreenl.ent entered into by the above-named parties on August 16, 2017, and having been duly sworn, and conducting an oral hearing on November 10 and 11, 2021 with both parties being represented by counsel, in accordance with the Rules, and having fully reviewed and considered all the written documents submitted to me, as well as the testimony and arguments presented during the evidentiary hearing[1], and also the post arbitration briefs and submissions provided thereafter, do hereby, AWARD, as follows:

The crux f this case surrounds Claimant's allegation that Respondent2 sold her a 201 7 Nissan Altima ("the Altima") on or about August 16, 2017, after accepting her 2016 Nissan Versa ("the Versa") as d trade-in and committed various torts and unfair trade practices associated with the transaction. Specifically, on September 25, 2017, Claimant alleges that Hudson repossessed

1 There were 28 exhibits admitted into evidence by the parties. The following persons testified: Eddie Nuttall, Kathryn Messenger, Damion Hubbard, Tommy Russell, Sajee Taylor, Sebrina Bingley, and Sandra Key.

2 Sometimes refe.rred to as "Hudson".

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the Altima and wrongfully refused to return the Versa to her. Conversely, Hudson contends that the parties entered into a Conditional Sales Agreement ("CSA") which required Claimant, among other things, to qualify for a loan for the Altima *before* the CSA would be approved by Hudson, but also contends its signature was unnecessary to have the CSA be enforceable. Claimant asserts causes of action for conversion, negligence, unfair trade practices, and violations of the South Carolina Dealer's Act. Hudson asserts a counterclaim for breach of contract arising out of the CSA. The testimony and facts in this matter are convoluted and confusing. However, when ultimately digesting the facts, what occurred in this matter is relatively clear.

It is undisputed that on August 16, 2017, Claimant was at Hudson for an oil change and considered purchasing the Altima. She was shown the Altima, test drove the Altima, and signed all paperwork presented to her to purchase it. Indeed, it is conceded by all parties that she took possession of the Altima, that she placed her Versa license plate on the Altima, that she insured the Altima, and that no separate rental agreement and/or "conditional delivery agreement" was signed by the parties. It is likewise undisputed that Claimant provided documentation to Hudson supporting her income, but for whatever reason, what was provided did not satisfy the purported lender such that it would agree to lend the money to Claimant to purchase the Altima. Claimant admits that she was not paying cash for the Altima and that financing was required to purchase the Altima. Claimant, however, testified credibly that she believed she was the owner of the Altima when she left the dealership on August 16, 2017. There is no evidence that Hudson actually signed the CSA. While Hudson took the position that they operated with the belief that they had an agreement, the CSA states:

> It is expressly understood and agreed to by and between the parties hereto that this is an offer to purchase by the Purchaser [Claimant], and is not an offer to sell by CHARLESTON NISSAN and further, that this offer to purchase does not become a binding contract until

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accepted in writing by an authorized officer of CHARLESTON NISSAN. (emphasis added).

It has been the law of South Carolina for more than a century that one cannot take the benefits of a contract/transaction and at the same time ignore the burdens. Townes v. City Council of Augusta, 29 S.E. 851 (S.C. 1898). To have a valid contract, there must be an offer and acceptance which is supported by consideration. The parties must further have a meeting of the minds as to all essential and material terms of the agreement. Armstrong v. Collins, 621 S.E.2d 368 (S.C. Ct. App. 2005); Allegro, Inc. v. Scully, 791 S.E.2d 140 (S.C. 2016).

To suggest that the facts/events in this case which occurred between August 17, 2017, and September 25, 2017, are disputed would be a gross understatement. Virtually every position, detail, communication, and event between those dates are in dispute between the parties. Thus, the findings of fact reached in this matter, are based upon my factual conclusions, impressions, and interpretation of those disputed facts as the finder of fact and are, in my view, being most probably true by the preponderance of the evidence except where noted as being supported by clear and convincing evidence.

Factually, I find that the CSA is not a valid contract. Hudson never signed it as required above for it to be binding. Factually, I do not find a meeting of the minds occurred, or acceptance of the offer to purchase occurred by Hudson. While it may have acted like there was an agreement, ultimately there was no agreement because it was not signed and the language of Hudson's contract required a signature to make it binding. Hudson cannot, on the one hand, say a contract exists, but on the other give it all contingencies to reject the contract when/if it is so inclined. As the finder of fact, the only consistent acts by Hudson were its inconsistencies with regard to the transaction all of which would lead a reasonable person to believe that a sale occurred.

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First and foremost, Hudson gave the Altima to Claimant to use as her own. They filled it with gas, had her insure it, moved the tags to the vehicle, sent communications congratulating Claimant on her purchase, and took possession of the Versa. Furthermore, not only did Hudson take possession of the Versa, but they also claim to have worked on the Versa. No authorization to work on the Versa was given by Claimant. If the Versa were still Claimant's, Hudson would have had to have permission to perform that work. In the undersigned's view, any reasonable person would believe they bought the Altima. That said, it is equally clear that Claimant did not present with cash for the car and required financing. Thus, it would be improper for Claimant to keep the Altima without paying for it. Factually, I believe it became clear to Claimant by mid-September 2017 that there were problems with the financing of the purchase of the Altima for whatever reason. Claimant refused to return the Altima to Hudson. She should have done so, but as the finder of fact, Hudson should not have first allowed the Altima to leave the dealership if there were any question that the financing was not going to occur. The reasonable approach is to wait to confirm the primary contingency (financing) is satisfied *before* conveying the property to the purchaser and taking possession of the Claimant's Versa.

Hudson employees testified, as did Messenger, that the reason for CSA's and for giving possession of the vehicle to the purchaser before funding the deal is so that the prospective purchaser does not go to another dealership and/or decide not to purchase the vehicle while waiting to learn whether financing can occur. It is intended to give the purchaser the impression that they own the car and so they won't back out of the deal per the testimony of Hudson and Messenger. I find that this tactic is at best deceptive especially when coupled with the other acts described above and the totality of this transaction. As the finder of fact, I find this sales approach to be unconscionable. Throughout the testimony, Hudson testified it did nothing wrong, that no policies

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or procedures have changed, and attempted to argue that it was Claimant who acted improperly due to her inability to obtain financing and refusal to return the Altima. While true Claimant should have returned the Altima when it became clear financing was an issue, Hudson's actions were worse.

Hudson admitted that when a CSA does not go through the parties are to be put back in the place they were before the CSA was signed. This makes complete sense to the undersigned, but it did not occur in this case. By Hudson's own admission it did not follow its own policies or procedures in returning the parties to the *status quo* and nothing has changed from the approach of this transaction which gives the probability that this circumstance can and will occur in the future. What is most disturbing about this transaction, even if the CSA were enforceable as Hudson argues, the document contemplates the return of Claimants down payment and vehicle. That never occurred and no reasonable explanation was provided. Hudson's position was that damages were incurred to the Altima and costs associated with the repossession of the same and mileage, thus, it was entitled to retain Claimant's property until she paid those expenses. Even if true, retaining the Versa as some form of "set off" is not contemplated in the CSA and is completely unreasonable. Hudson could have returned the Versa and then brought an action for damages against Claimant, but to simply keep the Versa is inexplicable. Regardless, this is no moment, because factually I find that the CSA is not binding because it was never actually accepted by Hudson as required by *its contract* thus making the flawed argument for keeping the Versa untenable. Accordingly, all relief sought by Hudson in its counterclaim is denied and all relief sought by Claimant arising from the theory that the Altima was her vehicle is also denied because while she may have believed a sale occurred, it is undisputed she did not pay for Altima.

However, with regard to Claimant's tort claims against Hudson, I find they are properly granted in part and denied in part as explained below. In the undersigned's view, Hudson was correct to request the Altima's return and Claimant was not justified in refusing to return it. I am awarding no damages under the theory of wrongful repossession of the Altima to Claimant. There was no factual or legal basis for Hudson's refusal to return the Versa to Claimant. The only justification for that decision was the existence of the CSA, which even if enforceable as noted above, did not contemplate retaining the vehicle pending payment of the items related to the use of the Altima. I find this decision was arbitrary, reckless, willful, and wanton. I find that by clear and convincing evidence. I find that the refusal to return the Versa caused damage to Claimant. It was undisputed that the value of the Versa was $12,000 at the time Hudson took possession. It was undisputed that the Versa was ultimately repossessed by the lender and that Claimant owes $11,405.01 as a result. Claimant also argues she lost her job as a result of the loss of her vehicle and that she borrowed or was given money ($5,000) by family members. While I am convinced that the loss of the Versa contributed to the loss of her job, I am not persuaded that the loss of the vehicle was the sole proximate cause of the loss of her job. It does not however, have to be the sole proximate cause in order to award damage if it is *a* proximate cause. Madison ex rel. Bryant v. Babcock Center, Inc., 638 S.E.2d 650 (S.C. 2006). Accordingly, I find Claimant's loss of job was more likely than not caused in part by the loss of her vehicle and inability to get to work timely which was exacerbated by the loss of the vehicle. Claimant testified that she earned $14.00 per hour times 40 hours a week for six months for a total of $13,440 in claimed wages. From an actual damages standpoint, Claimant is claiming a total of $41,845.01 in damages as it relates to the loss of the Versa based upon her testimony. No evidence quantifying any impact on Claimant's credit rating was presented so as to calculate damages. Intuitively, there was a damage due to the

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repossession, but there was also testimony that other impacts on Claimant's credit occurred. As the finder of fact, I reject this theory of damage.

I find as a matter of fact and law that Hudson converted Claimant's property -- the Versa. Hawkins v. City of Greenville, 594 S.E.2d 557 (S.C. Ct. App. 2004). I also find that when Hudson was asked to give it back, it had an obligation to return the property and the refusal to do so was a calculated, willful, wanton, and intentional decision. I also find that Claimant has proven by the greater weight of the evidence her claim of negligence because Hudson assumed a duty of possessing the Versa and refused to return the same upon request. Beneficial Financial I, Inc. v. Windham, 847 S.E.2d 793 (S.C. Ct. App. 2020) (elements of negligence). Based upon the damages above, I Award **$35,000.00** as actual damages under the conversion and negligence causes of action.

I find as a matter of fact that Claimant has proven by clear and convincing evidence that she is entitled to punitive damages based upon Hudson's willful, wanton, intentional, and reckless conduct. I have considered SC Code Ann § 15-32-520 and its elements/considerations. As the finder of fact, I find that Hudson's retention of the Versa was without just cause, that it was solely responsible for the retention, that it caused harm to Claimant, that Claimant did not cause/contribute to that harm, that the retention of the property lasted nearly a year until repossessed, that Hudson received money for retaining the Versa (storage), that Hudson has the ability to pay an award, and that there is a need for a deterrent to this conduct. There is no reasonable basis under the circumstances of this transaction for Hudson to have kept the Versa. I was not presented any evidence of similar penalties or awards or civil fines. Likewise, I am considering the provisions of SC Code Ann. § 15-32-530(A) in rendering my decision. I Award punitive damages of **$500,000.00**. I believe this amount comports with due process and the

mandates of the Supreme Court of South Carolina as well as the statute allowing for such awards. Id.; Mitchell v. Fortis Ins. Co., 686 S.E.2d 176 (S.C. 2009). To the extent necessary, I find that there was a financial motivation for the actions of Hudson and, thus, I find the statutory cap on punitive damages does not apply.

In considering the South Carolina Dealers Act, and the language contained therein, as the finder of fact, I find that Hudson acted in bad faith, arbitrarily, and in an unconscionable manner with regard to this transaction by the preponderance of the evidence both factually and as applied to the law. Brown v. Dick Smith Nissan, Inc., 777 S.E.2d 208 (S.C. 1015); Taylor v. Nix, 416 S.E.2d 619 (S.C. 1992). I find that Claimant has satisfied this burden and is entitled to two times actual damages for a total of **$70,000.00** plus her attorney's fees/costs which I find are: **$117,135.00 and $5,216.03**, respectively for a total of **$192,351.03**.

To prevail on a claim under the Unfair Trade Practices Act, Claimant must prove 1) an unfair or deceptive act in the conduct of trade or commerce; 2) an affect on the public interest; and 3) damages caused to Plaintiff. Brown v. Wachovia Bank, 2011 WL 5024297 (D.S.C. 2011) (citations omitted). In as much as Hudson admitted, when a CSA entered it is done so to prevent the customer from going to another dealership and/or changing their mind about the transaction. In as much as the vehicle is given to the customer and for all intents and purposes left with the impression that they have purchased a vehicle and the same is memorialized by literature confirming a "purchase" I find the totality of this transaction satisfies all three of the elements cited above by a preponderance of the evidence as the finder of fact. I find this tactic to be deceptive and to affect the public. I find that Claimant has satisfied this burden and is entitled to three times actual damages for a total of **$105,000.00** plus her attorney's fees/costs which I find are: **$117,135.00 and $5,216.03**, respectively for a total of **$227,351.03**.

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With regard to the attorney's fee request awarded above, I have considered the same pursuant to the considerations set forth in Layman v. State, 658 S.E.2d 320 (S.C. 2008), as well as based upon my experience, and find all those factors satisfied. Mr. Moskos' hourly rate is reasonable at $450 Respondent does not contest the reasonableness of that rate, nor the amount of time spent. I Award the total amount of **$122,351.03** in attorney's fees/costs.

Finally, I find all these damages are awarded arise out of the same transaction and occurrence and, thus, Claimant must elect her remedy because there is but one injury here. Cowart v. Poore, 523 S.E.2d 182 (S.C. Ct. App. 1999). Thus, Claimant must choose her remedy and may not make a double recovery.

I have considered all of the materials provided to me and considered the arguments presented to me. I hereby Award to Claimant damages as referenced above with the caveat that she must elect her remedy. The administrative fees of the American Arbitration Association totalling $2,900.00 and the compensation of the arbitrator totaling $5,000.00 shall be borne as incurred. For the reasons stated above, the claims presented in this arbitration by the parties are properly granted, in part, and denied, in part. This Award is rendered in full and final adjudication of all claims and defenses submitted to this arbitration. All claims or defenses not expressly granted to any party to this arbitration are hereby denied.

December 7, 2021

Morgan S. Templeton
Arbitrator

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ELECTRONICALLY FILED - 2023 Jul 19 5:46 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

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

Affidavit of Brooks R. Fudenberg

1) I have been a member in good standing of the South Carolina Bar since 2003. I am also a member of the Bars of the federal Fourth Circuit and the District of South Carolina.

2) I graduated in 1991 from Yale Law School.

3) My legal scholarship has been published by the UCLA LAW REVIEW. It has been favorably received by the academic community.

4) I am a contributing author to SOUTH CAROLINA DAMAGES (2nd Ed) (SC Bar 2009) and was a member of the South Carolina Bar's Practice & Procedure Committee.

5) I have taught Legal Research, Writing & Analysis at the Charleston School of Law and the University of Miami School of Law. I have also taught Free Speech, Remedies, and Takings of Property at the University of Miami School of Law.

6) I have published extensive articles in The Washington Post. My byline has appeared in The Boston Globe, The San Francisco Chronicle, and other leading publications. Short humor has appeared in The Atlantic, The Washington Post, and The New York Times.

BRF

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7) I do not advertise. My practice consists largely of appellate and similar matters on which trial counsel throughout the State request my services. Published cases include *Henderson v. Summerville Ford-Mercury, Inc.*, 405 S.C. 440, 748 S.E.2d 221 (2013) (issue of confirmation of arbitration award); A*ustin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 691 S.E.2d 135 (2010) ("*Austin I*") (multiple issues including admission if evidence, punitive damages, and attorney fees); and *Austin v. Stokes-Craven Holding Corp.* , 406 S.C. 187, 750 S.E.2d 78 (2013) ("*Austin II*") (issue of attorney fees).

8) I have worked extensively on several appeals with trial counsel in the above-captioned case, C. Steven Moskos. He asked me to assist with post-trial filings in this case and to handle any appeal in the matter. It is my understanding that he did so due to the quality of my work in such matters.

9) The attached timesheets (Ex. 1) accurately reflect my work on this matter for which compensation is sought. Time was kept on a contemporaneous basis.

10) I charge $450 hourly for appellate work, which I understand to be a customary and reasonable rate for a South Carolina appellate attorney with my training, experience, and skills. Previous fee awards were $300 hourly for work in 2013, $390 hourly for work in 2016, and $450 hourly for work in 2020-21.

11) As reflected in the attached timesheets, I have provided 13.1 hours of service. The time incurred was necessary and proper to properly advance Plaintiffs' interest in this matter.

BRF

12) Plaintiffs have incurred $5,895 in attorney's fees for my work as of the date of this affidavit.

FURTHER AFFIANT SAYETH NOT.

Brooks R. Fudenberg, (SC Bar # 72019)
Law Office of Brooks R. Fudenberg, LLC
14 Ashe Street
Charleston, SC 29403
Tel. (843) 696-8911
eFax: (910) 401-1242
BRF@Fudenberglaw.com

Charleston, South Carolina

SWORN TO BEFORE ME THIS

19th DAY OF July 2023.

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 04/06/2027

DEBORAH ALEXANDRA CUELLAR-BENITEZ
NOTARY PUBLIC
SOUTH CAROLINA
COMM. EXP. 04-06-2027

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TIME NECESSARILY EXPENDED BY BROOKS R. FUDENBERG
on Greenawalt v. Nissan North America, Inc.
through 07/18/2023

4/25/2023		
	0.8	Review, mark up, edit, Plaintiffs' draft proposed Order Regarding Plaintiffs' Motion For Attorney's Fees.
4/26/2023		
	0.1	Edit paragraph in Reply brief.
	0.9	Review, mark up, edit, Plaintiffs' draft proposed Order.
5/2/2023		
	0.3	Review, mark up, Defendant's Proposed Order.
6/13/2023		
	0.2	Read, mark up, Judge's filed 15- page order.
6/21/2023		
	0.4	Read, edit, 1st draft of Motion to Amend/Reconsider.
6/22/2023		
	0.3	Read, edit, 2d draft of Motion to Amend/Reconsider.
7/12/2023		
	0.5	Telephone Conference with C. Steven Moskos re: Defendant's premature Notice of Appeal and Defendant's Opposition to Motion to Amend/Reconsider, both filed today.
	0.5	Read, markup, Defendant's Opposition to Plaintiffs' Motion to Amend/Reconsider. 2 emails to C. Steven Moskos re same.
	0.3	Review, markup, initial draft of Plaintiffs' Reply re Motion to Amend/Reconsider.

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7/13/2023		
	0.1	Find case on SC rules for motions to reconsider.
	0.1	Search for Clemons case Defendants improperly cited.
	0.1	Review D's Opposition to Motion to Amend/Reconsider.
	0.4	Drafting on SC standards for Rule 59 motion, because Defendants, relying on FEDERAL case law, claim Plaintiffs' motion was improper.
	0.2	Further markup of Plaintiffs' draft Reply
	0.1	Email C. Steven Moskos with markup and draft paras on Rule 59 standards.
	0.8	Telephone Conference with C. Steven Moskos mostly re Brooks R. Fudenberg markup of draft Reply and Defendant's Opposition. Also some other issues.
	0.1	Document C. Steven Moskos sent tonight with questions. Answer his questions.
7/14/2023		
	0.3	Telephone Conference with C. Steven Moskos re Reply to Opposition to Motion to Amend/Reconsider.
7/16/2023		
	1.3	Review, mark up, draft Reply C. Steven Moskos sent last night.
7/17/2023		
	0.6	Receive revised draft from C. Steven Moskos. Review highlighted portions, make suggestions, return.
	1.6	Telephone Conference then Zoom meeting with C. Steven Moskos re draft Reply.
7/18/2023		
	0.2	Review, mark up, 2 draft letters from C. Steven Moskos to opposing counsel, 1 re the untimely appeal, 1 re Defendant's failure to take possession of vehicle as agreed at settlement.

	0.1		Review revised argument C. Steven Moskos sent this morning, respond.
	0.7		Review full draft C. Steven Moskos sent this morning.
	1.2		Telephone Conference with C. Steven Moskos re the extensive suggestions for the 19-page brief.
7/19/2023			
		0.3	Review, edit highlighted portions only of draft Reply sent by C. Steven Moskos last night.
		0.1	Call from Tom Nelson re he has Covid and how to get his affidavit notarized if he cannot be in room with notary.
		0.1	Review notarized Nelson affidavit.
		0.2	Telephone Conference with C. Steven Moskos re my recent edits.
		0.2	Telephone Conference with C. Steven Moskos re timing of Supplemental Fee Request
Total		**13.1**	**13.1 Hours at $450 = $5,895**

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ELECTRONICALLY FILED - 2023 Jul 19 5:46 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0802455

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 **AFFIDAVIT OF ANDREW RADEKER**

Personally appeared before me, Andrew S. Radeker, who first being duly sworn, deposes and says as follows:

1. My name is Andrew S. Radeker. I am a principal in the law firm of Harrison, Radeker & Smith, P.A.
2. I have been licensed to practice law in South Carolina courts since 2005 and have been in the private practice of law since that time. I am also admitted to practice before the United States District Court for the District of South Carolina and the United States Court of Appeals for the Fourth Circuit.
3. A significant part of my practice has been in the appellate courts of this state. I have been lead counsel in over 60 appellate cases before the South Carolina Supreme Court and Court of Appeals.
4. The six factors South Carolina courts traditionally consider in determining the amount of attorney's fees to be awarded are (1) the nature, extent, and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. E.g., Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 383, 377 S.E.2d 296 (1989).
5. I have worked on many consumer-oriented matters. They tend to have smaller amounts in controversy. It is important that qualified attorneys be compensated for their time so consumers can hire those attorneys to represent them. I know that many times consumers

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are not properly compensated causing attorney's to avoid these kinds of cases, including the kind involved here.

6. I have communicated with Brooks Fudenberg about the case and have reviewed the time records he sent me concerning the time he spent on this case on appeal, and I am aware that his hourly rate in connection with the services he provided in this case is $450 per hour.
7. In light of the six factors mentioned above, I believe that this rate and the time Mr. Fudenberg spent on this case are both reasonable.
8. I know Mr. Fudenberg, and I know him to be a brilliant lawyer who works very diligently and thoroughly. He is a gifted writer and researcher.
9. Considering Brooks Fudenberg's knowledge, intellect, and writing ability, his services in light of the issues involved is worth at least $450.00, if not more, especially in light of inflation. For an attorney of Mr. Fudenberg's caliber and experience, $450 per hour is within the customary rates for appellate legal services in South Carolina.

FURTHER AFFIANT SAYETH NOT.

Andrew S. Radeker

SWORN to before me this
19th day of July, 2023.

(L.S.)
Rhonda S. Schaub
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 1/9/29

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STATE OF SOUTH CAROLINA COUNTY OF BERKELEY RITA R. GREENWALT and JAMES M. GREENWALT, Plaintiff, vs. NISSAN NORTH AMERICA, INC., Defendant.	IN COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2020-CP-08-02455 **AFFIDAVIT OF THOMAS C. NELSON, ESQ.**

PERSONALLY, appeared before me, Thomas C. Nelson, Esquire, who after being duly sworn, deposes and says that:

1. I received my Juris Doctorate from the University of South Carolina School of Law in 2003. I was admitted to practice in the State of South Carolina in January 2004 and am in good standing with the South Carolina Bar Association. I am also admitted to practice in the U.S. District Court for the District of South Carolina and the U.S. Supreme Court. My current practice consists of an even split of family law and criminal defense. In the past, I have handled appeals to the South Carolina Supreme Court, the South Carolina Court of Appeals, and the South Carolina Administrative Law Court. I also have significant experience in civil litigation to include personal injury cases, contract disputes, business partner disputes, and real estate litigation.

2. I am the author of the *South Carolina Deposition Procedure Handbook*, published by the South Carolina Bar Association in 2015, and the *South Carolina Implied Consent Handbook*, published by the South Carolina Bar Association in 2020. I have lectured at Continuing Legal Education seminars on both of these topics. I have been recognized by Super Lawyers as a

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Rising Star in the field of General Litigation. I maintain an AV Preeminent Rating with Martindale Hubbell.

3. In my 19 years practicing law, I have regularly been exposed to the attorney's fees charged by other attorneys. I have regularly read appellate decisions that discuss the reasonableness of attorney's fees, including *Layman v. State*, 376 S.C. 434, 658 S.E.2d 320 (2008) (fifteen years ago, approving hourly rates from $200 for junior counsel to $600 for senior counsel) and *Glasscock v. Glasscock*, 304 S.C. 158, 161 (S.C. 1991) (setting the longstanding precedent of South Carolina regarding the factors to be considered by a court reviewing the reasonableness of attorney's fees). I regularly see attorney's fees affidavits submitted in South Carolina family courts. I have learned about various attorney's fees and hourly rates through discussions with other attorneys, or by hearing or reading about judgments and awards in various types of cases. I have once been assigned a case by the Resolution of Fee Disputes Board under Rule 416, SCACR.

4. I am offering this affidavit to provide my opinion on the hourly rate of Brooks Fudenberg. I have known Mr. Fudenberg since 2007. We have consulted with each other regarding each other's cases and reviewed each other's drafts of legal memorandums and appellate briefs in the past. Mr. Fudenberg graduated from Yale Law School in 1991. His legal scholarship has been published by the UCLA Law Review. He has been a member of the South Carolina Bar Association since 2003. He is a contributing author to South Carolina Damages (2nd Ed) (SC Bar 2009) and was a member of the South Carolina Bar's Practice & Procedure Committee. He has served as an adjunct professor at the Charleston School of Law and the University of Miami School of Law. He has written articles published in the Washington Post.

5. Based upon the professional standing of Mr. Fudenberg, my knowledge of his abilities, and my knowledge of customary legal fees for similar services, my professional opinion is that $450 is an acceptable and reasonable hourly rate for his services.

6. I have reviewed his timesheets in this matter, and I consider each of the time entries (totaling 12.2 hours) to be reasonable for their corresponding descriptions.

AFFIANT SAYS NO MORE.

Thomas C. Nelson

SWORN to and subscribed before me)
this 19th day of July 2023)
)
)
NOTARY PUBLIC FOR SOUTH CAROLINA)
)
My commission expires:)

NOTARY SEAL

SARAH NELSON
Notary Public, State of South Carolina
My Commission Expires 4/22/2032

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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 **FIFTH SUPPLEMENTAL TIME RECORDS FOR C. STEVEN MOSKOS' REPRESENTATION OF RITA AND JAMES GREENAWALT**

I, C. Steven Moskos, swear that I did the following work on the above matter and the times stated below and in my initial time records filed April 3, 2023, my First Supplemental Time Records filed April 5, 2023, my Second Supplemental Time Records filed May 1, 2023, my Third Supplemental Time Records filed May 23, 2023, and my Fourth Supplemental Time Records filed July 5, 2023 are accurate, not duplicative, and necessary to my representation of Rita and James Greenawalt. The time reflected in my six sets of time records is related to each of four causes of action, 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*. and is in the attached timesheets. My six sets of time records contain only time related to the relevant causes of action. The time in my six sets of time records, was for work done in the commencement and prosecution of this matter. All the causes of action are so intertwined that if there is time totally devoted to a non-fee shifting statute, it cannot be separated from the time related to the fee shifting statutes.

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I further assert that the time below was incurred in preparing and filing Plaintiffs' Reply to Defendant's Opposition to Plaintiffs' Motion to Alter or Amend The Judgment and because Defendant Nissan and its counsel will not respond to me as to how and when Plaintiffs can return the defective vehicle to Nissan and sign over title to Nissan. See Plaintiffs' Motion to Enforce Settlement filed May 23, 2023.

Nissan's conduct here is consistent with its conduct during this litigation. Nissan has increased the time my clients and I have had to spend on this matter. Such dilatory conduct should not be rewarded. The best way to stop this behavior is for the Court to order Nissan to pay for the fees incurred.

Date	Description	Hrs worked
11-Jul-23	Review of Brief from Sarah Eibling opposing motion to alter order regarding attorney's fees. Legal research regarding attorney's fees, standards for motion for reconsideration.	3.1
12-Jul-23	Work on Reply brief. Review of Review of Notice of Appeal. Telephone conference with Brooks Fudenberg regarding Reply to Nissan's opposition brief to Plaintiffs' Motion to Alter or Amend the Court's Order and the appeal filed by Nissan. Legal research regarding the issues in Nissan's Opposition Brief. Edit arguments in brief.	5.8
13-Jul-23	Edit Reply Brief. Review edits from Brooks Fudenberg regarding Reply Brief. Telephone conference with Brooks Fudenberg regarding edits to brief.	1.6
13-Jul-23	Review of Addy's Harbor Dodge, LLC v. Glob. Vehicles U.S.A. Inc., 7., Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, Merola v. Atlantic Richfield Co., 5. Maybank v. BB&T Corp., Norman v. Housing Authority of City of Montgomery, Bowden v. Forest River, Inc., Scoggins v. Kia Motors America, Inc., Addy's Harbor Dodge, LLC v. Glob. Vehicles U.S.A. Inc.	2.5
14-Jul-23	Telephone conference with Brooks Fudenberg regarding brief. Edit brief. Add new section regarding Nissan's cases. Review cases cited by Nissan.	6.7
15-Jul-23	Review brief. Review Nissan's brief Opposing motion for reconsideration. Legal research regarding attorney's fees re beneficial results. Review Court's June 12, 2023	7.4

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	Order. Review Nissan's initial brief re attorney's fees. Add additional arguments to brief. Edit brief. Review files to locate other orders approving a $450/hr fee rate.	
15-Jul-23	Telephone conference with JIm and Rita Greenawalt regarding the status of the motion for attorney's fees and finishing up the case.	0.8
16-Jul-23	Review edits from Brooks Fudenberg. Review Reply Brief. Edit Reply Brief.	5.1
17-Jul-23	Dictate correspondence to Sarah Eibling regarding Nissan's unripe appeal and settlement.	0.3
17-Jul-23	Review Reply brief. Review prior Nissan filings. Review prior edits and suggestions for edits from Brooks Fudenberg.	3.5
17-Jul-23	Dictate correspondence to Sarah Eibling regarding Nissan's refusal to accept the return of the defective Rogue.	0.4
17-Jul-23	Review edits of latest brief sent to Brooks Fudenberg 7-17-23. Edit Reply brief. Telephone conference with Brooks Fudenberg. Complete edits and condense brief.	4.3
18-Jul-23	Work on final edits to Reply Brief. Dictate email to Brooks Fudenberg. Work on organizing Exhibits.	1.6
18-Jul-23	Review of correspondence to Sarah Eibling regarding Nissan's failure to repurchase the car, storage fees, and Nissan paying the costs awarded by the Court. Dictate email to Brooks Fudenberg for review of correspondence.	0.2
18-Jul-23	Review of correspondence to Sarah Eibling regarding withdrawal of Nissan's appeal and offering to settle the case.	0.2
18-Jul-23	Work on Fifth Supplemental Time Records.	0.4
18-Jul-23	Telephone conference with Brooks Fudenberg regarding correspondence to Sarah Eibling and Reply brief. Work on editing brief.	4.1
19-Jul-23	Review affidavit of Andrew Radeker. Dictate email to Brooks Fudenberg regarding affidavit of Andrew Radeker.	0.3
19-Jul-23	Telephone conference with Brooks Fudenberg regarding final edits to the Reply brief. Finish edits to the Reply brief. Telephone conference with Justin Kahn regarding his supplemental affidavit in support of attorney's fees. Complete Fifth Supplemental Time Records. Review and edit Brooks Fudenberg's affidavit of attorney's fees. Dictate email to Rita Greenawalt regarding status of the case. Efile Reply.	3.3

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TOTAL		51.6

Time spent from May 14, 2020 through March 30, 2023 –	215.4 hours
Time spent from March 30, 2023 through April 4, 2023 -	30.4 hours
Time spent from April 5, 2023 through April 30, 2023 -	35.9 hours
Time spent from April 30, 2023 through May 23, 2023 -	9.9 hours
Time spent from May 24, 2023 through July 5, 2023 -	9.5 hours
Time spent from July 5, 2023 through July 18, 2023 -	51.6 hours
Total hours through July 18, 2023	**352.7 hours**

352.7 hours x $450.00/hour = $158,715.00.
$158,715.00 x 1.5 (multiplier) = $238,072.50

Plaintiffs request the Court find the lodestar amount (the hours worked multiplied by the reasonable hourly rate) of $158,715.00 is reasonable pursuant Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997), that the other Jackson factors have been met, and that Plaintiffs are entitled to $158,715.00 to go toward the attorney's fees for C. Steven Moskos. Plaintiffs further request the Court use a multiplier of 1.5 based on the complexity and difficulty of this case and upon any factors the Court deems proper and award Plaintiffs $238,072.50 towards their fees. Should the Court decide not to apply a multiplier to this complex and difficult case, the Court should order attorney's fees in the amount of $158,715.00, to be paid by Nissan.

Additional time will be incurred for work done after July 19, 2023 through the turn in of the vehicle. Supplemental time records for the additional time spent will be submitted to the court for its consideration.

C. STEVEN MOSKOS, P.A.
ATTORNEY FOR PLAINTIFFS
s/C. Steven Moskos

SC Bar No.: 7938
6650 Rivers Ave., Suite 210
North Charleston, SC 29406
Telephone: (843) 763-5297
steve@moskoslawfirm.com

Charleston, South Carolina
July 19, 2023

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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 **AFFIDAVIT OF JUSTIN KAHN**

Charleston County)
South Carolina)

Personally appeared before me, Justin S. Kahn, who, being duly sworn deposes and states as follows:

1. I previously signed an affidavit dated March 31, 2023 in this matter.

2. I incorporate that affidavit here.

3. I am aware that additional work and arguments have taken place since March 31, 2023.

4. I have discussed this work with Mr. Moskos, the attorney for Mr. and Mrs. Greenawalt.

5. I have reviewed his work product and his time records submitted to the Court after March 31, 2023.

6. It is my professional opinion that the time spent, and the work performed are reasonable based on the opposition presented by Defendant Nissan and the difficulty of the issues involved.

7. It is also my professional opinion that the Court should award Mr. and Mrs. Greenawalt attorney's fees based on the number of hours worked by Mr. Moskos multiplied by at least

$450.00 per hour, for the same reasons and based on the same criteria stated in my prior affidavit.

FURTHER AFFIANT SAYETH NOT

Justin S. Kahn

SWORN to before me this
19th day of July 2023.

(L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 11/5/31

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RECEIVED
Jul 17 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELY COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Appellate Case No. 2023-001124
Lower Court Case No. 2020-CP-08-02455

Rita R. Greenawalt and
James M. Greenawalt,

Appellants,

v.

Nissan North America, Inc.,

Respondent.

CERTIFICATE PURSUANT TO RULE 210(g), SCACR

I certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

May 17, 2024

s/ Brooks R. Fudenberg
Brooks R. Fudenberg
14 Ashe Street
Charleston SC 29403
843-696-8911
Attorney for Appellants