

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No. 2017-000902

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SC Court of Appeals

Daniel O'Shields And Roger W.
Whitley, A Partnership d/b/a O&W Cars,

Appellants

v.

Columbia Automotive Company,
LLC d/b/a Midlands Honda,

Respondent.

RECORD ON APPEAL

VOLUME V OF V

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INDEX

ORDERS, JUDGMENTS, DECREES, and DECISIONS

ORDERS UNDER APPEAL

Order on Post-Trial Motions, filed 12-02-16	1
Order on Plaintiffs' Motion Pursuant to Rule 59 and Motion for Supplemental Attorney Fees, filed 3-16-17	24
Order on Plaintiffs' Motion for Supplemental Attorney Fees for December 2016 through March 2017, filed 8-14-17	30

OTHER ORDERS, JUDGMENTS, AND DECISIONS

Form 4 Order Resolving Motion to Dismiss, filed 4-19-13	35
Order on Plaintiffs' Motion to Amend Complaint, filed 5-09-13	37
Form 4 Order noting that Plaintiffs' cause of action for constructive fraud is withdrawn and denying Defendant's Motion for Summary Judgment, filed 10-01-15	41
Stipulation of Dismissal with Prejudice as to Defendant Nationwide Insurance Company, filed 4-21-15	42
Verdicts on Actual Damages, 4-21-16	43
Jury's Answers to Special Interrogatories	45
Verdict on Punitive Damages, 4-22-16	47

PLEADINGS

Summons and Complaint, filed 1-17-13	48
Answer of the Defendant PSC Automotive, ¹ filed 2-27-13	60
Amended Complaint, filed 5-09-13	67
Amended Answer of Defendant PSC Automotive Group to Plaintiffs' Amended Complaint, filed 10-21-15	78
Amended Answer to Plaintiffs' Second Amended Complaint, filed 8-31-16	84
Second Amended Complaint, filed 9-13-16	92

¹ Respondent Columbia Automotive Company, LLC was referred to as "PSC Automotive" or "PSC Automotive Group" until April 15, 2016.

TRANSCRIPTS AND ASSOCIATED MATERIALS

ACTUAL DAMAGES PHASE

Charles Ecklund Video Deposition Published to the Jury

Location in trial transcript of Charles Ecklund Video Deposition	
Published to the Jury from 09:52 A.M. until 10:30 A.M April 19, 2016	311
Charles Ecklund – Transcript Excerpts of Video Deposition Published to the Jury	102 ²
Direct Examination by Mr. Moskos	103
Redirect Examination by Mr. Moskos	139

Exhibits from Ecklund Video Deposition Published to the Jury					
Ecklund Deposition Pls.' Ex. #		Trial Pls.' Ex. #		Description	Page in Record
1		1		Damage Disclosure Form	936
11		11		Nationwide Estimate of Repairs	947
12		12		Midlands Honda's Certified Pre-owned Window Sticker for '03 Civic	954
13		13		Midlands Honda's Handwritten Buyer's Order (8-02-08)	955
14		14		Midlands Honda's Typed Buyer's Order (8-02-08)	956
15		15		Certified Pre-owned Vehicle Customer Info. (Ecklund)	957
16		16		"We Owe" (Ecklund)	958
17		17		8-6-08 Ecklund Invoice	959
18		18		9-30-08 Ecklund Invoice	961
19		19		Ecklund's Buyer's Guide	962
20-42		20-42		8X10 Color Photos of Civic from Ecklund	965-987
43		43		Affidavit & Notification of Sale of Motor Vehicle	988

² For the convenience of the Appellate Court, the deposition testimony that was published to the jury has been bracketed.

44		44		Ecklund's Power of Attorney to Midlands Honda		989

**ADESA via Joseph Richard Guyer Video Deposition Transcript
Excerpts Published to the Jury**

Location in Trial Transcript of Joe Guyer Video Deposition Published to the Jury from 11:47 AM until 01:12 PM	311
ADESA via Joseph Richard Guyer – Transcript Excerpts of Video Deposition Published to the Jury	140 ³
Direct Examination by Mr. Moskos.....	141
Cross-Examination by Mr. Walker	210
Redirect Examination by Mr. Moskos	215

Exhibits from Guyer Video Deposition Published to the Jury					
Guyer Deposition Pls.' Ex. #		Trial Pls.' Ex. #		Description	Page in Record
1		1		Damage Disclosure Form	936
2-10		2-10		Nationwide's Photos of Original Wreck Damages	938-946
11		11		Nationwide Estimate of Repairs	947
32		32		20 8X10 Color Photo of Civic from Ecklund	977
45		46		ADESA Inc. Power of Attorney	991
46		47		ADESA Indemnity and Hold Harmless Agreement	992
48		50		ADESA Dealer Acknowledgment Form	993
49		51		ADESA Auction Terms and Conditions	994
50		52		Arbitration Rules	996
51		53		ADESA Screen Shot Vehicle Info '03 Honda Civic	1011

³ For the convenience of the Appellate Court, the deposition testimony that was published to the jury has been bracketed.

52		54		ADESA Screen Shot Vehicle Info '03 Honda Civic		1012
53		55		ADESA Sale Contract (Seller)		1013
54		56		ADESA Sale Contract (Buyer)		1014
55		57		Vehicle Info printed 12-10- 13 @ 09:55 am		1015
56		58		Google Map - ADESA Compound		1016
57		59		Street view ADESA @ Gate 3		1017
58		60		Photo/Street view		1018
59		61		Photo/Street view		1019
60		62		Google Map - Westinghouse Blvd		1020
61		63		Google Map - Street view WH Blvd		1021
62		64		Google - Aerial View ADESA		1022
63		65		Google - Aerial View ADESA		1023

**ADESA via Joseph Richard Guyer Video Deposition Transcript Excerpt
Played Only to the Trial Judge**

Cross-Examination by Mr. Walker 220

Exhibit from Guyer Video Deposition Excerpt Played Only to the Trial Judge						
Guyer Deposition Def.'s Ex. #		Trial Pls.' Ex. #		Description		Page in Record
1		51		ADESA Auction Terms and Conditions		994

Transcript of Record of Trial	223
Opening Statements	
By Mr. Moskos	280
By Mr. Walker	292
Brent Ferrell	
Direct Examination by Mr. Moskos.....	342
Cross-Examination by Mr. Walker	404
Redirect Examination by Mr. Moskos	412
Randy Threatt	
Direct Examination by Mr. Moskos.....	414
Cross-Examination by Mr. Walker	448
Redirect Examination by Mr. Moskos	451
Brian Allen	
Direct Examination by Mr. Moskos.....	474
Cross-Examination by Mr. Walker	514
Redirect Examination by Mr. Moskos	519
Greg Nalewaja	
Direct Examination by Mr. Moskos	521
Cross-Examination by Mr. Walker	554
Redirect Examination by Mr. Moskos	563
Roger Whitley	
Direct Examination by Mr. Moskos.....	582
Cross-Examination by Mr. Walker	624
Redirect Examination by Mr. Moskos	653
Closing Arguments – Actual Damages Phase	
By Mr. Moskos	739
By Mr. Walker	767
Rebuttal by Mr. Moskos.....	782
Jury Charges – Actual Damages Phase.....	823

PUNITIVE DAMAGES PHASE

Transcript of Record of Trial

Greg Nalewaja (recalled for Punitive Damages Phase)

Direct Examination by Mr. Moskos.....	884
Cross-Examination by Mr. Walker	903
Redirect Examination by Mr. Moskos	907

Closing Arguments – Punitive Damages Phase

By Mr. Moskos 911

By Mr. Walker 923

Jury Charges – Punitive Damages Phase 927

Trial Exhibits			
Trial Pls.' Ex. #		Description	Page in Record
1		Damage Disclosure Form	936
2-10		Nationwide's Photos of Original Wreck Damages	938-946
11		Nationwide Estimate of Repairs	947
12		Midlands Honda's Certified Pre-owned Window Sticker for '03 Civic	954
13		Midlands Honda's Handwritten Buyer's Order (8-02-08)	955
14		Midlands Honda's Typed Buyer's Order (8-02- 08)	956
15		Certified Pre-owned Vehicle Customer Info. (Ecklund)	957
16		"We Owe" (Ecklund)	958
17		8-6-08 Ecklund Invoice	959
18		9-30-08 Ecklund Invoice	961
19		Ecklund's Buyer's Guide	962
20-42		20 8X10 Color Photos of Civic from Ecklund	965-987
43		Affidavit & Notification of Sale of Motor Vehicle	988
44		Ecklund's Power of Attorney to Midlands Honda	989
45		ADESA Corp. Personal Guaranty	990
46		ADESA Inc. Power of Attorney	991
47		ADESA Indemnity and Hold Harmless Agreement	992

48-49		[None entered]		
50		ADESA Dealer Acknowledgment Form		993
51		ADESA Auction Terms and Conditions		994
52		Arbitration Rules		996
53		ADESA Screen Shot Vehicle Info '03 Honda Civic		1011
54		ADESA Screen Shot Vehicle Info '03 Honda Civic		1012
55		ADESA Sale Contract (Seller)		1013
56		ADESA Sale Contract (Buyer)		1014
57		Vehicle Info printed 12-10-13 @ 09:55 am		1015
58		Google Map - ADESA Compound		1016
59		Street view ADESA @ Gate 3		1017
60-61		Photo/Street view		1018-19
62		Google Map - Westinghouse Blvd		1020
63		Google Map - Street view WH Blvd		1021
64		Google - Aerial View ADESA		1022
65		Google - Aerial View ADESA		1023
66		Midlands Honda 159-point Certified Pre-Owned Inspection Invoice		1024
67		8-02-08 Carfax		1026
68		3-11-10 Carfax		1029
69		ADESA Corporation Acknowledgment Form		1033
70		3-11-10 Handwritten Telephone Message		1034
71-89		Photos from Plaintiff's expert Brian Allen		1036-1054
90		04-2-10 Check in amount of \$6,960.00		1055
91		\$550.00 Repair Bill		1056
92		Bill of Sale		1057
93		\$10.00 Bill for Relay Switch		1058

94		Deal Recap Sheet		1059
95		Deal Recap Sheet		1060
96 (ID)		Midlands Honda's 2015 Dealer Financial Statement and Balance Sheet		1061

Defendant's Requests To Charge

Defendant's Request to Charge # 16	1062
Defendant's Request to Charge # 17	1063
Defendant's Request to Charge # 21	1064
Defendant's Request to Charge # 24	1066
Defendant's Request to Charge # Punitive Damages "B"	1068
Defendant's Request to Charge Punitive Damages "C"	1070

POST-TRIAL PHASE

Transcript of Hearing on Post-Trial Motions, July 27, 2016	1071

OTHER MATERIALS

PRE-TRIAL

Motion to Dismiss on Behalf of Defendant PSC Automotive Group, served 2-25-13	1181
Plaintiffs' Motion to Amend Complaint, served 5-01-13	1184
Offer of Judgment by Defendant PSC Automotive Group to Plaintiffs, served 1-26-15 (not filed)	1186
Plaintiffs' Offer of Judgment to Defendant PSC Automotive Group, served 2-04-15, filed 2-06-15	1187
Defendant's Motion for Summary Judgment, served 7-10-15	1190
Plaintiffs' Answers to Defendant PSC Automotive Group d/b/a Midlands Honda's Interrogatories	1197
ADESA Sale Contract (Seller) (Pls.' Trial Ex. 55)	1013
Roger W. Whitley deposition condensed transcript excerpt	1204
Arbitration Rules (Pls.' Tr. Ex. 52)	996
Roger W. Whitley deposition condensed transcript excerpt	1205
Plaintiffs' Brief ¹ in Opposition to Defendant PSC's Motion for Summary Judgment, served 9-30-15	1206
Ex. 1 Page 1 from Midlands Honda's 159-point Certified Pre-Owned Inspection Invoice (Pls.' Trial Ex. 66)	1024

Ex. 2	3-11-10 Handwritten Telephone Message (Pls.' Trial Ex.70).....	1034
Ex. 3	Arbitration Rules (Pls.' Trial Ex.52)	996
Ex. 4	ADESA Inc. Power of Attorney (Pls.' Trial Ex.46).....	991
Ex. 5	ADESA Sale Contract (Buyer) (Pls.' Trial Ex.56).....	1014
Ex. 6	Damage Disclosure Form (Pls.' Trial Ex.1)	936
Ex. 7	3-11-10 Carfax (Pls.' Trial Ex. 68).....	1029
	Charles Ecklund deposition condensed transcript excerpt.....	1223
	Greg Nalewaja deposition condensed transcript excerpts.....	1226
	ADESA via Joseph Richard Guyer deposition condensed transcript excerpts	1229
	Roger W. Whitley deposition transcript excerpts	1244
	Motion to Dismiss on Behalf of Defendant Columbia Automotive Co., LLC, served 4-15-16.....	1256
	Plaintiffs' Pre-Trial Brief, served 4-18-16	1259

POST-TRIAL

	Defendant's Motion for Judgment Notwithstanding the Verdict, or, in the Alternative a New Trial, or a New Trial Nisi Remittitur, served 5-02-16	1277
	Defendant's Motion to Require Election of Remedies, served 5-02-16	1294
	Defendant's Motion to Enforce North Carolina Punitive Damages Cap, served 5-02-16.....	1297
	Defendant's Motion for Setoff or Recoupment, served 5-02-16	1299
	Plaintiffs' Post-Trial Motions, served 5-02-16	1301
	Plaintiffs' Brief in Support of Treble Damages, served 5-02-16	1303
	Plaintiffs' Brief in Support of Interest under Offer of Judgment, served 5-02- 16.....	1305
Ex. 1	Plaintiff's Offer of Judgment.....	1187
Ex. 2	Costs and Expenses After Offer of Judgment	1308
	Plaintiffs' Brief in Support of Plaintiffs' Request for Prejudgment Interest, served 5-02-16.....	1310
	Plaintiffs' Brief in Support of Plaintiffs' Request for Attorney's Fees, served 5-02- 16.....	1316
	Affidavit of Attorney's Fees of C. Steven Moskos in Support of Plaintiff's Motion for Attorney Fees, served 5-02-16.....	1333
Ex. 1	Timesheets of C. Steven Moskos for pursuing Plaintiffs' claims against Defendant Columbia Automotive Co. under the NCUTPA from 6-29-2011 through 5-01-2016.....	1343
Ex. 2	C. Steven Moskos' Paralegal's Timesheet	1357

Ex. 3	Timesheets of C. Steven Moskos for pursuing claims against Defendant Nationwide Insurance Co.....	1358
Ex. 4	Order of 7-21-14 in <i>Karesh v. Elite Auto Wholesale, et al.</i>	1361
Ex. 5	Affidavit of Mary Leigh Arnold in Support of Plaintiffs' Request for Attorney Fees.....	1371
Ex. 6	Affidavit of Brian L. Boger in Support of Plaintiffs' Request for Attorney Fees.....	1375
Ex. 7	Plaintiff's Costs and Expenses	1379
Ex. 8	Defendant's Offer of Judgment	1186
	Email from Judge Cothran's law clerk, James R. White, re: election of remedies, 5-18-16.....	1434
	Plaintiffs' Election of Remedies, served 5-23-16	1435
	Plaintiffs' Motion for Reconsideration, served 5-23-16	1438
	Defendant's Response to Plaintiffs' Election of Remedies, served 5-27-16	1440
	Plaintiffs' Brief Opposing Defendant's Motion to Enforce North Carolina's Punitive Damages Cap, served 7-20-16	1443
Ex. 70	3-11-10 Handwritten Telephone Message (Pls.' Trial Ex. 70)	1034
	Plaintiffs' Brief Regarding Defendant's Response to Plaintiffs' Election of Remedies, served 7-20-16	1450
	Plaintiffs' Brief Regarding Election of Remedies, served 7-20-16	1454
	Plaintiffs' Brief Opposing Defendant's Motion for Setoff or Recoupment, served 7-20-16.....	1457
Ex. 11	Nationwide Estimate of Repairs (Pls.' Trial Ex. 11).....	947
	Plaintiffs' Brief Opposing Defendant's Motion for Judgment Notwithstanding the Verdict, or, in the Alternative, a New Trial, or a New Trial Nisi Remittitur, served 7-20-16	1464
Ex. 46	ADESA Power of Attorney (Pls.' Trial Ex. 46).....	991
Ex. 50	Dealer Acknowledgement Form (Pls.' Trial Ex. 50).....	993
Ex. 52	Arbitration Rules (Pls.' Trial Ex. 52)	996
Ex. 68	3-11-10 Carfax (Pls.' Trial Ex. 68).....	1029
Ex. 70	3-11-10 Handwritten Telephone Message (Pls.' Trial Ex. 70)	1034
	Excerpts from Directed Verdict Transcript.....	1511
	First Supplemental Affidavit of Attorney Fees of C. Steven Moskos in Support of Plaintiff's Motion for Attorney's Fees, served 7-21-16.....	1529
Ex. 1	Timesheets of C. Steven Moskos – work performed 5-02-16 through 7-20-16	1537
Ex. 2	Expense Receipt	1541

Affidavit of Brooks R. Fudenberg, served 7-21-16	1542
Attach. Timesheets of Brooks R. Fudenberg – work performed 04- 22-2016 through 7-20-2016	1544
Ex. 1 Affidavit of Jason Scott Luck	1549
Defendant’s Brief in Opposition to Plaintiffs’ Motion to Treble Damages, served 7-22-16.....	1552
Defendant’s Brief in Opposition to Plaintiffs’ Motion for Interest Under Offer of Judgment, served 7-22-16	1554
Defendant’s Brief in Response to Plaintiffs’ Motion for Prejudgment Interest, served 7-22-16.....	1559
Defendant’s Brief in Opposition to Plaintiffs’ Motion for Attorney Fees, served 7-22-16.....	1562
App. 1 Complaint in <i>Allen v. Hoover Automotive</i>	1581
Complaint in <i>Kincer et al. v. Midlands Automotive,</i> <i>LLC, d/b/a Carolina Chrysler, Dodge, Jeep, Ram,</i> <i>et al.</i>	1594
Complaint in <i>Henderson v. Summerville Ford-</i> <i>Mercury, Inc., et al.</i>	1610
App. 2 Plaintiffs’ First Interrogatories to Defendant Midlands Honda	1623
Plaintiffs’ First Requests for Production to Defendant Midlands Honda	1635
Plaintiffs’ First Set of Interrogatories to the Defendant Midlands Automotive, LLC, d/b/a Chrysler, Dodge, Jeep, Ram, in <i>Kincer et al. v.</i> <i>Midlands Automotive, LLC, d/b/a Carolina Chrysler,</i> <i>Dodge, Jeep, Ram, et al.</i>	1648
Plaintiffs’ First Request for Production to the Defendant Midlands Automotive, LLC, a/b/a Chrysler, Dodge, Jeep, Ram, in <i>Kincer et al. v.</i> <i>Midlands Automotive, LLC, d/b/a Carolina Chrysler,</i> <i>Dodge, Jeep, Ram, et al.</i>	1657
Plaintiff’s Interrogatories to Defendant Summerville Ford-Mercury, Inc., in <i>Henderson v. Summerville</i> <i>Ford-Mercury, Inc., et al.</i>	1670
Plaintiff’s Request to Produce to Defendant Summerville Ford-Mercury, Inc., in <i>Henderson v.</i> <i>Summerville Ford-Mercury, Inc., et al.</i>	1683
App. 3 Time entries relating to punitive damages	1692
App. 4 Time entries relating to pursuing claims against Co- Defendant	1695
App. 5 Unnecessary travel time	1698

Attach.	Affidavit of H. Clayton Walker, Jr.	1701
Attach.	Affidavit of Robert L. Reibold	1707
	Defendant's Memorandum in Further Support of Motion for Motion for Judgment Notwithstanding the Verdict ("JNOV"), or, in the Alternative, a New Trial, or a New Trial Nisi Remittitur JNOV, served 7-22-16.....	1711
Ex. 1	Defendant's Motion in Limine	1716
Ex. 2	Excerpts from Partial Transcript of Trial	1722
	Email from Judge Cothran's law clerk, John Furse, regarding post-trial motions, 8-29-16	1731
	Email from C. Steven Moskos to Judge Cothran re Midlands-Honda award, 8-29-16	1732
	Affidavit of C. Steven Moskos in Support of Plaintiffs' Motion for Attorney Fees, served 8-30-16	1734
Ex. 1	Email from C. Steven Moskos to Robert Reibold, re <i>Henderson v. Summerville Ford-Mercury, Inc., et al.</i> , 3-07-12	1777
Ex. 2	Letter from Brooks R. Fudenberg to Robert Reibold, re <i>Henderson v. Summerville Ford-Mercury, Inc., et</i> <i>al.</i> , 9-30-13	1778
Ex. 3	Order Granting Plaintiff's Motion for Statutory Fees and Costs in <i>Henderson v. Summerville Ford-</i> <i>Mercury, Inc., et al.</i> , filed 10-06-14	1780
Ex. 4	Settlement Demand to Hoover Chrysler Jeep by C. Steven Moskos on behalf of Richard M. Allen, 1-29- 16	1788
Ex. 5	Correspondence from H. Clayton Walker, Jr. to C. Steven Moskos re: <i>Kincer et al. v. Midlands</i> <i>Automotive, LLC</i> , 2-23-15	1789
Ex. 6	Time Line of events in the instant case	1791
Ex. 7	Roger W. Whitley deposition transcript excerpt.....	1796
Exs. 8-18	Emails and letter correspondence between counsel re the present case, 12-04-13 through 1-23-15	1800-1811
Ex. 19	Plaintiffs' Offer of Judgment to Defendant CAC, 2- 04-15	1812
Ex. 20	Letter from H. Clayton Walker, Jr., to Hon. L. Casey Manning, 4-07-2015	1814
Ex. 21	Email from H. Clayton Walker, Jr. to counsel, 4-07- 2015	1815
Ex. 22	Letter from H. Clayton Walker, Jr., to Hon. L. Casey Manning, requesting order of protection, with attachment, 2-26-2014	1816

Ex. 23	Letter from C. Steven Moskos to Hon. L. Casey Manning, re: status conference and Defendant Nationwide's motion for summary judgment, 6-03-14	1819
Ex. 24	Letter from H. Clayton Walker, Jr., to Hon. L. Casey Manning, requesting order of protection, with attachment, 7-25-2014	1820
Ex. 25	Letter from H. Clayton Walker, Jr., to Hon. L. Casey Manning, requesting order of protection, with attachment, 3-16-2015	1822
Ex. 26	Email from H. Clayton Walker, Jr., to C. Steven Moskos, requesting consent to continuance, 4-02-2015	1824
Ex. 27	Letter from H. Clayton Walker, Jr., to Hon. L. Casey Manning, requesting status conference, 4-07-2015	1825
Ex. 28	Email from H. Clayton Walker, Jr., to C. Steven Moskos, re: scheduling, 4-07-2019.....	1826
Ex. 29	Letter from H. Clayton Walker, Jr., to Hon. L. Casey Manning, requesting case not appear on trial roster until the week of July 27, dated 4-10-2015.....	1827
Exs. 30-31	Email from C. Steven Moskos to H. Clayton Walker, Jr, with attached letter, proposing mediation dates in August, 7-16-2015	1829
Ex. 32	Out of office auto-reply email from H. Clayton Walker, Jr. to C. Steven Moskos, 7-16-15	1831
Ex. 33	Letter from H. Clayton Walker, Jr., to Hon Allison Renee Lee, requesting order of protection, with attachment, 7-22-2015	1832
Ex. 34	Letter from H. Clayton Walker, Jr., to Hon Allison Renee Lee, with consent motion to delay trial from week of April 11 to week of April 18, 2016, and supporting affidavit, 3-28-2016	1833
Ex. 35	Plaintiff's proposed Stipulation of testimony from Nationwide Insurance Company	1840
Ex. 36	Randy Threatt Deposition Transcript Excerpts.....	1842
Ex. 37	Brent Ferrell Deposition Transcript Excerpts	1844
Ex. 38	Scott Austin Deposition Transcript Sections	1846
Ex. 39	Nancy Lynn Watkins Deposition Transcript Sections	1848
Ex. 40	Email from H. Clayton Walker, Jr., to C. Steven Moskos, 4-07-15	1850
Ex. 41	Email from H. Clayton Walker, Jr., to C. Steven Moskos, 7-06-15	1851

	James Y. Becker to C. Steven Moskos, dated 9-14-16	2007
Ex. 2	Email from James Y. Becker to C. Steven Moskos, 10-03-16	2009
	Defendant's proposed Order on Plaintiff's Motion Pursuant to Rule 59 and Motion for Supplemental Attorney's Fees	2011
	Email from Brooks R. Fudenberg to Judge Cothran, 1-20-17	2017
Attach.	List of Issues Pending/Draft Order	2019
	Email from Cesairé Chase to Judge Cothran, with attachments, 1-23-17	2027
	Letter from H. Clayton, Walker, Jr. to Judge Cothran, re issues pending, dated 1-23-17	2028
	Defendant's proposed Order on Plaintiff's Motion Pursuant to Rule 59 and Motion for Supplemental Attorney's Fees	2011
	Email from Judge Cothran's law clerk, John Furse, regarding motion to reconsider, 1-26-17	2029
	Letter from H. Clayton Walker, Jr., to Judge Cothran, dated 2-06-17.....	2031
Attach.	Defendant's proposed Order on Plaintiff's Motion Pursuant to Rule 59, SCRCF	2032
Attach.	Defendant's proposed Order on Plaintiff's Motion for Supplemental Attorney's Fees	2035
	Plaintiff's Reply in Support of Plaintiffs' Rule 59 Motion and Motion for Supplemental Attorney Fees, served 2-07-17	2039
Ex. 1	Email from Judge Cothran's law clerk, John Furse, inquiring as to what issues remain to be ruled on, 1-13-17	1996
Ex. 2	Email to Judge Cothran from Brooks R. Fudenberg 1-20-17 with List of Issues Pending/Draft Order.....	2019
Ex. 3	Second Supplemental Affidavit of C. Steven Moskos.....	2048
Ex. 4	First Supplemental Affidavit of Brooks R. Fudenberg	2051
	Letter from H. Clayton Walker, Jr. to Judge Cothran, dated 2-22-17.....	2054
	Email from Judge Cothran's law clerk, John Furse, re Order on Motion Pursuant to Rule 59, 2-27-17	2055
	Plaintiff's Motion for Supplemental Attorneys' Fees for December 2016 Through March 2017, and Memorandum in Support, served 3-30-17	2058
Ex. 1	Timesheets of C. Steven Moskos – work performed 12-19-2016 through 3-28-2017	2065
Ex. 2	Timesheets of Brooks R. Fudenberg – work performed 12-15-2016 through 3-29-2017	2070
Ex. 3	List of Issues Pending/draft order	2019

Email from Brooks R. Fudenberg to Judge's Clerk transmitting copy of Notice of Appeal, 4-11-17.....	2083
Notice of Appeal, filed 04-13-17	2086
Email from Judge Cothran's law clerk, John Furse, regarding motion for supplemental attorney fees, 6-02-17	2087
Defendant's proposed Order on Plaintiff's Motion for Supplemental Attorneys' Fees for December 2016 Through March 2017, served 6-12-17	2088
Plaintiffs' Memorandum in Opposition to Defendant's proposed Order, served 6-28-17.....	2093
Exs. 1-10(A) Correspondence between counsel for the parties, 4- 20-17 through 6-27-17	2106-2133
Ex. 11 Second Supplemental Affidavit of Brooks R. Fudenberg	2134
Timesheets of Brooks R. Fudenberg – work performed 3-30-17 through 6-28-17	2137
Ex. 12 Third Supplemental Affidavit of C. Steven Moskos.....	2143
Timesheets of C. Steven Moskos – work performed 3-30-17 through 6-28-17	2146
Letter from H. Clayton Walker, Jr., to Judge Cothran, dated 7-25-17.....	2149
Defendant's proposed Order on Plaintiff's Motion for Supplemental Attorneys' Fees for December 2016 Through March 2017, served 8-07-17	2150
Email from Judge Cothran's law clerk, John Furse, re Judge's intent to sign Defendant's proposed Order, 8-08-17.....	2156
Notice of Appeal, served 9-05-17	2158
Certificate of Counsel	2160

C Steven Moskos

From: Cesaire Chase <cchase@walkerreibold.net>
Sent: Monday, October 17, 2016 4:54 PM
To: rcothranj@sccourts.org; 'Cothran, Ralph F. Jr., Law Clerk (John Furse)';
'Cothran, Ralph Ferrell Jr. Secretary (Gayle Brunson)'
Cc: 'Clay Walker'; csmoskos@earthlink.net
Subject: Daniel O'Shields and Roger W. Whitley v. Columbia Automotive
Company, LLC d/b/a Midlands Honda
Attachments: Ltr to Judge Cothran re requested proposed order 10.17.16 HCW.pdf;
Proposed Order on Post-Trial Motions 10.17.16.pdf

Good Afternoon –

Attached please find the requested proposed order in connection with the above-referenced matter.

Thank you.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	
	)	
Daniel O'Shields and Roger W.	)	Civil Action No. 2013-CP-40-0319
Whitley, A Partnership d/b/a	)	
O&W Cars,	)	
	)	
<i>Plaintiff</i>	)	
	)	
v.	)	
	)	
Columbia Automotive, LLC d/b/a	)	
Midlands Honda,	)	
	)	
	)	
<i>Defendant.</i>	)	
	)	

ORDER ON POST-TRIAL MOTIONS

This case was tried from April 18-22, 2016, resulting in a jury verdict of \$6,645 in actual damages on the following causes of action asserted by Plaintiff Daniel O'Shields and Roger W. Whitley, A Partnership d/b/a O&W Cars ("Plaintiff"): (1) breach of contract; (2) negligent misrepresentation; (3) the North Carolina Unfair Trade Practices Act ("NCUTPA"); and (4) fraud. The jury also returned a verdict of \$2,381,888 in punitive damages on the fraud claim.

This matter is before the Court on the post-trial motions filed by the parties, which were heard on July 27, 2016. In addition, the Court includes in this order its review of the punitive damages award reached by the jury. The motions before the Court are:

I. Plaintiff's Motion

Plaintiff filed a single motion seeking four additional measures of recovery.

1. Trebling Plaintiff's verdict under N.C.G.S. § 75-16;
2. Awarding Plaintiff's attorney's fees and costs against the Defendant;
3. Awarding interest under S.C. Code § 15-35-400; and
4. Awarding prejudgment interest under N.C.G.S. § 24-5.

II. Defendant's Motions

1. Motion for Judgment Notwithstanding the Verdict ("JNOV"), or, in the Alternative, a New Trial, or a New Trial Nisi Remittitur;
2. Motion to Require Election of Remedies;
3. Motion to Enforce North Carolina Punitive Damages Cap; and
4. Motion for Setoff or Recoupment.

The Court will address each of these motions below with the exception of the motion for setoff or recoupment, which will be addressed in a separate order.¹

DISCUSSION

I. Defendant's Motion for JNOV or, in the Alternative, a New Trial or a New Trial Nisi Remittitur.

The motion is denied. The Court provides further discussion of some of the arguments raised in the following discussion, together with its review of the punitive damages award.

The Court notes that Defendant's motions are properly before it. Plaintiff has argued that Defendant failed to renew its directed verdict motions at the close of all evidence, and is therefore precluded from seeking JNOV. The Court finds that it was not necessary to renew any motions for directed verdict at the close of the punitive damages phase of the case. Defendant presented no evidence in the punitive damages phase of the trial which would have impacted the Court's rulings on the motions for directed verdict, and there was no passage of time sufficient for the Court to reconsider its rulings. Any renewal of the motions at that point in trial would have been futile. *See Fetter v. Gentner*, 396 S.C. 461, 469, 722 S.E.2d 26, 31 (Ct. App. 2012) ("This court does not require parties to engage in futile actions in order to preserve issues for appellate review.").

¹ As a preliminary matter, the parties and the Court agree that North Carolina substantive law applies in this case. North Carolina is the place of the contract at issue and the location of the alleged injury. Thus, under both contract and tort conflict of law rules, North Carolina law applies to all substantive matters. *See Lister v. NationsBank of Del., N.A.*, 329 S.C. 133, 494 S.E.2d 449 (Ct. App. 1997).

A. Due Process Review of Punitive Damages Award.

The multi-million dollar punitive damages award is the proverbial elephant in the room, and the Court will consider arguments related to the punitive damages verdict at the outset. The jury returned a verdict of \$6,645 on Plaintiff's fraud cause of action. Following the punitive damages phase of the trial, the jury returned a verdict of \$2,381,888 in punitive damages—more than 358 times the actual damages awarded. Defendant challenged the punitive damages award on multiple grounds, and the Court concludes that the punitive damages award cannot stand.

1. North Carolina Punitive Damages Review.

Following a challenge, North Carolina law mandates written judicial review of punitive damages awards. The Court elects to perform this review in connection with its ruling on the Defendant's post-trial motion. The applicable statute reads:

[w]hen reviewing the evidence regarding a finding by the trier of fact concerning liability for punitive damages in accordance with G.S. 1D-15(a), or regarding the amount of punitive damages awarded, the trial court shall state in a written opinion its reasons for upholding or disturbing the finding or award. In doing so, the court shall address with specificity the evidence, or lack thereof, as it bears on the liability for or the amount of punitive damages, in light of the requirements of this Chapter.

N.C.G.S. §1D-50. N.C.G.S. § 1D-35 lists the following factors to be considered in assessing a punitive damages award: (1) the reprehensibility of the defendant's motives and conduct; (2) the likelihood, at the relevant time, of serious harm; (3) the degree of the defendant's awareness of the probable consequences of its conduct; (4) the duration of the defendant's conduct; (5) the actual damages suffered by the claimant; (6) any concealment by the defendant of the facts or consequences of its conduct; (7) the existence and frequency of any similar past conduct by the defendant; (8) whether the defendant profited from the conduct; (9) the defendant's ability to pay punitive damages, as evidenced by its revenues or net worth.

a. Reprehensibility.

The conduct here is not sufficiently reprehensible to justify the jury's punitive damages award for several reasons. First, the United States Supreme Court has stated that while suppression of a material fact can support tort liability and even a modest punitive damages award, this conduct is less reprehensible than a deliberate false statement, particularly where, as here, there is a good-faith basis for believing no duty to disclose exists. Punitive damages must bear a reasonable relationship to compensatory damages. *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 580 (1996).

In this case, there is little or no evidence that the Defendant was aware of the change in auction rules. Similarly, there is no evidence that Defendant ever made a false representation directly to Plaintiff or was even aware that the auction had completed and provided a North Carolina damage disclosure form. Finally, Defendant had a good-faith basis for believing that there was no duty to disclose, as the sale was made to another dealer at a red-light sale and the contract was marked "as is." There was no evidence showing that Defendant's conduct was anything other than an isolated incident. The condition of the subject vehicle was unique, and Plaintiff presented no evidence that Defendant had ever violated the auction rules or North Carolina statutory law on any other occasion. Moreover, the harm suffered was purely economic and did not result in any personal injuries. Given this evidence, the Defendant's conduct does not justify an extraordinary punitive damages award.

b. Likelihood, at the Relevant Time, of Serious Harm.

This case did not involve personal injury, but rather concerned the sale of a high mileage used car between two dealerships. The measure of actual damages was the difference between the sales price of the car and its value at the time of sale, a difference of less than \$5,000. Moreover, Plaintiff had a duty under the auction rules and a common law duty as North Carolina

motor vehicle dealers to inspect the vehicle. These facts indicate that even if Defendant concealed information, there was little, if any, chance of harmful consequences to the Plaintiff.

c. Degree of Defendant's Awareness of the Probable Consequences of its Conduct.

The following facts were undisputed a trial: (1) Defendant sold the vehicle as a red light vehicle; (2) the contract was marked "as is;" (3) the vehicle had visible wreck damage; and (4) the vehicle had a visible change in paint scheme. Given these facts and Plaintiff's contractual and legal duties to inspect the vehicle, it would have been difficult for Defendant to foresee serious harm. This factor does not support the punitive damages award.

d. Duration of the Defendant's Conduct.

This case involves a discrete transaction that did not occur over any appreciable period of time and largely involved the conduct of a third-party, the auction. Therefore, this factor does not support the punitive damages award.

e. Actual Damages Suffered by the Plaintiff.

The jury determined that the actual damages were \$6,645. This award does not support a punitive damages award of \$ 2,381,888.

f. Any Concealment by the Defendant of the Facts or Consequences of Its Conduct.

There was no direct communication between Plaintiff and Defendant prior to this transaction, nor was there any contact after the transaction until Plaintiff contacted Defendant after discovering the vehicle's condition. Additionally, Plaintiff's own expert explained that the vehicle's problems were immediately apparent if anyone looked under the car. The Court concludes that Defendant did not attempt to conceal the consequences of its conduct, and this factor does not support the large punitive damages award in this case.

g. Existence and Frequency of Similar Past Conduct.

This case involved a single used vehicle with a unique repair history and condition. Plaintiff introduced no evidence of misconduct of any kind involving any other vehicle, and there was no evidence of any other violations of the auction rules or North Carolina law. This factor does not support the punitive damages award.

h. Whether the Defendant Profited from the Conduct.

Defendant made a profit from the sale of this vehicle. However, the economic benefit received by Defendant was slight. At best, this factor is neutral.

i. Defendant's Ability to Pay Punitive Damages.

The Defendant's net worth exceeds the punitive damages award entered in this case. This factor is the only factor which might support the jury's punitive damages award. However, the United States Supreme Court has cautioned that a defendant's wealth alone cannot justify an otherwise unconstitutional punitive damages award. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 427 (2003).

Given the analysis of each of the factors set forth in the North Carolina statute, the applicable factors fall far short of what is needed to support the staggering punitive damages award reached by the jury.

2. Constitutionality of Punitive Damages Award.

There are constitutional limits on the amount of punitive damage awards. Punitive damages must bear a reasonable relationship to compensatory damages. *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 562 (1996) ("[t]he Due Process Clause of the Fourteenth Amendment prohibits a State from imposing a 'grossly excessive' punishment on a tortfeasor."). In *Gore*, the Supreme Court set forth three guideposts for determining the constitutionality of a punitive damages award: (i) reprehensibility of the defendant's conduct; (ii) the disparity

between the harm suffered and the punitive damages award; and (iii) the difference between the punitive damages award and civil penalties authorized or imposed in comparable cases. *Id.* at 575; see also *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 686 S.E.2d 176 (2009). This punitive damages award does not survive this review.

a. Reprehensibility.

The Court has previously discussed this element in connection with the North Carolina factors. In addition, the Court finds *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 691 S.E.2d 135 (2010) instructive. *Austin* involved claims for fraud and unfair trade practices based upon a car dealer's misrepresentations about wreck damage on a vehicle it sold to a consumer. *Id.* at 31, 691 S.E.2d at 139. The South Carolina Supreme Court stated that the car dealer's conduct in that case exhibited an extremely high degree of reprehensibility and affirmed a ratio of punitive damages to actual damages of 8.21 to 1. *Id.* at 53, 691 S.E.2d at 151.

In some ways, *Austin* is similar to this case. Both involve alleged fraud or unfair trade practices against a car dealer with respect to prior wreck damage. In addition, the plaintiff in both cases was represented by the same attorney. Yet, there are key differences. For example, in *Austin*, the sale was to a consumer who intended to use the vehicle as his primary means of transportation. The sale here was between two car dealerships and the car was sold "as is" with obvious wreck damage. In addition, *Austin* included evidence that the dealer forged the plaintiff's signature on a buyer's guide. *Id.* There is no similar evidence of additional fraudulent or reprehensible conduct here. Given these differences, while the Court concludes the conduct in this case is somewhat reprehensible, it also concludes that the degree of reprehensibility exhibited here does not rise to the level exhibited in *Austin*.

b. Ratio.

The United States Supreme Court has stated that, while there is no bright-line rule, an award of “more than four times the amount of compensatory damages might be close to the line of constitutional impropriety.” *State Farm*, 538 U.S. at 425 (2003); *Pacific Life Ins. Co. v. Haslip*, 499 U.S. 1, 23 (1991). In most cases then, an award more than four to five times the compensatory damages is unconstitutional. For the rare case in which a greater ratio is appropriate, “few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process.” *State Farm*, 538 U.S. at 425. Here, the jury’s verdict results in a ratio of 358:1 and therefore fails any ratio test.

c. Civil Penalties.

The comparable civil penalties for the conduct at issue under applicable North Carolina law are found in North Carolina’s damage disclosure statute, N.C.G.S. § 20.71-4, and NCUTPA, N.C.G.S. § 75-16. North Carolina’s damage disclosure statute requires that a transferor of a motor vehicle disclose whether the vehicle has been reconstructed. N.C.G.S. § 20.71-4. It also provides that a violation may be redressed by a civil action under N.C.G.S. § 20-348, “Private Civil Action.” *Id.* This section authorizes recovery of “[t]hree times the amount of actual damages sustained or one thousand five hundred dollars (\$1,500), whichever is greater.”² The maximum recovery for a violation of the NCUTPA is treble damages. N.C.G.S. § 75-16. Thus, the jury’s punitive damages award vastly exceeds any comparable civil penalty.

Based on a review of the required factors, the Court therefore concludes that the punitive damages award in this case is excessive and violates due process. In deference to the jury, the Court can do no more than determine the upper limit of the range of punitive damages awards consistent with due process and set the amount of punitive damages accordingly. *Hollis v.*

² Violation of the damage disclosure statute is also a class 2 misdemeanor. To the extent criminal penalties are relevant in this analysis, a class 2 misdemeanor carries a maximum fine of \$1,000. N.C.G.S. § 15A-1340.23(b).

Stonington Development, LLC, 394 S.C. 383, 404, 714 S.E.2d 904, 915 (Ct. App. 2011). In the Court's view, the conduct at issue is sufficiently reprehensible to justify exceeding the 4 or 5 to 1 ratio discussed in *State Farm*. However, it is not sufficiently reprehensible to justify more than a single digit ratio. The Court therefore believes the appropriate ratio of punitive damages to actual damages is 7:1—this is less than the 8.21:1 ratio in *Austin* discussed previously because the Court finds the conduct here to be less reprehensible than the conduct at issue in *Austin*. The award of punitive damages is hereby reduced to seven times actual damages, or \$46,515.³

B. New Trial Arguments Relating to Punitive Damages.

The Court takes this opportunity to separately address Defendant's argument that it was entitled to a new trial on punitive damages because the jury should not have been permitted to consider evidence or arguments on "safety," and its argument that the Court erred in failing to provide the jury with a complete recharge on the elements of fraud.

1. Evidence of Safety.

Plaintiff's principal argument to the jury on punitive damages was that the subject vehicle was unsafe, and, by placing the vehicle back in the stream of commerce, Defendant could have harmed third parties. Defendant objected to the introduction of safety evidence on multiple occasions, including before and during the closing argument on punitive damages.

Defendant is correct that courts have cautioned against use of potential harm to third persons as a basis for awarding punitive damages. *Phillip Morris, USA v. Williams*, 549 U.S.

³ The Court's reduction of the punitive damages award affects the outcome of certain other motions filed by Defendant. Defendant's motion to enforce North Carolina's statutory cap on punitive damages is moot because, as reduced, the punitive damages award does not exceed the statutory cap of \$250,000. Defendant's motion for a new trial based on the amount of the punitive damages verdict is also affected. The Court does not believe that the punitive damages verdict, as reduced, is so excessive as to require a new trial and therefore the motion is denied on this ground. Finally, because the punitive damages verdict has been reduced, Defendant's motion for a new trial *nisi remittitur* is denied.

346 (2007); *Branham v. Ford Motor Co.*, 390 S.C. 203, 701 S.E.2d 5 (2010); *Durham v. Vinson*, 360 S.C. 639, 602 S.E.2d 760 (2004). As stated in *Phillip Morris*:

[t]he Constitution's Due process Clause forbids a State to use a punitive damages award to punish a defendant for injury that it inflicts upon nonparties or those whom they directly represent, *i.e.*, injury that it inflicts upon those who are, essentially, strangers to the litigation.

549 U.S. at 354. Yet *Phillip Morris* also states that "where the risk of that misunderstanding is a significant one – because, for instance, of the sort of evidence introduced at trial or the kinds of argument the plaintiff made to the jury – a court, *upon request*, must protect against that risk." *Id.* at 357 (emphasis added). Defendant here objected to Plaintiff's use of evidence of safety and potential harm to third persons, but Defendant did not request a limiting instruction. Under these circumstances, the Court does not believe allowing Plaintiff to argue as it did rises to the level of a due process violation. Defendant's motion for a new trial based upon use of harm to third parties to award punitive damages is therefore denied.

2. Recharge on Elements of Fraud.

During the trial, the jury informed the Court that it had reached a verdict on all but one cause of action and asked the Court for additional information on an element of fraud. The Court instructed the jury to continue to deliberate. The jury submitted an additional request to be instructed again on the elements of fraud. The Court recharged Defendant's Requested Charge No. 16, a basic charge on the elements of fraud. Defendant requested that the Court also recharge Defendant's Request to Charge No. 17, which explained the reasonable reliance element of fraud in North Carolina, and, in particular instructed the jury that reliance cannot be reasonable unless the plaintiff was denied the opportunity to investigate, and the Court denied this request. Shortly after the recharge, the jury returned a verdict on all claims against Defendant, including the fraud cause of action.

Defendant argues that the Court erred in failing to recharge the jury fully. When the jury requests additional charges, it is sufficient for the Court to charge only the parts of the initial charge which are necessary to answer the jury's request. *Rauch v. Zayas*, 284 S.C. 594, 597, 327 S.E.2d 377, 378 (Ct. App. 1985). "Its failure to charge in greater detail is not error if the details were fully covered in the original charge." *Id.* Here, the Court believes the recharge was a correct statement of law and properly addressed the jury's question. Defendant's motion for a new trial on this ground is therefore denied.

II. Recovery under the NCUTPA.

A. Treble Damages.

North Carolina law mandates that the Court treble the actual damages verdict rendered by the jury on the NCUTPA claim. N.C.G.S. § 75-16. Accordingly, the Court trebles the actual damages award of \$6,450 to \$19,350.

B. Attorney's Fees.

In this case, only one claim gives rise to the possibility of an attorney's fee award for a prevailing plaintiff—the NCUTPA claim. Under the NCUTPA, attorney's fees may be awarded to a prevailing plaintiff under the following conditions:

[i]n any suit instituted by a person who alleges that the defendant violated G.S. 75-1.1, the presiding judge may, in his discretion, allow a reasonable attorney fee to the duly licensed attorney representing the prevailing party, such attorney fee to be taxed as a part of the court costs and payable by the losing party, upon a finding by the presiding judge that:

(1) The party charged with the violation has willfully engaged in the act or practice, and there was an unwarranted refusal by such party to fully resolve the matter which constitutes the basis of such suit

N.C.G.S. § 75-16.1. To recover attorney's fees under this statute, "a plaintiff must prove the following: (1) that the plaintiff is a prevailing party; (2) that the defendant willfully engaged in the prohibited act; and (3) that the defendant's refusal to fully resolve the matter was

unwarranted. A plaintiff must prove these factors by a preponderance of the evidence.” *Llera v. Sec. Credit Sys., Inc.*, 93 F. Supp. 2d 674, 676 (W.D.N.C. 2000).

The parties extensively briefed entitlement to fees under this statute. After reviewing all of the materials submitted, the Court has determined that a reasonable attorney fee in the amount of \$21,264 should be awarded.⁴

The Court finds that Plaintiff was the prevailing party under the NCUTPA as the jury returned a full award of \$6,645. Moreover, the jury was also charged with assessing willfulness, which the Court assumes was implicit in the fraud verdict. Thus, the Court finds the prevailing party and willfulness elements are met.

In analyzing the materials submitted by the parties, the Court finds that Defendant’s settlement efforts were directed to the NCUTPA claim and were reasonable with respect to the resolution of that claim, but were not tailored “to fully resolve the matter which constitutes the basis of [this] suit.” As shown in the affidavits presented by counsel, the sticking point with respect to settlement rested on punitive damages. On the one hand, Plaintiff did not make any offer below \$280,000, and on the other hand, Defendant’s highest offer was \$15,000 “plus a reasonable attorney’s fee.” On this basis, the Court finds there was an unwarranted refusal to settle the entire claim prior to trial.

The purpose of attorney’s fees under the NCUTPA is to encourage private enforcement of the NCUTPA. *Shepard v. Bonita Vista Properties, L.P.*, 191 N.C. App. 614, 625, 664 S.E.2d

⁴ At the hearing, Plaintiff asked for leave to submit an additional affidavit in support of the request for attorney’s fees. The Court agreed, but asked that any affidavit be filed quickly. More than thirty days later and after the Court has issued guidance to the parties about its rulings, Plaintiff submitted a lengthy affidavit. Defendant objected, citing, among other things, the lateness of the affidavit and the fact that the affidavit contained legal arguments and opinions rather than additional facts. The Court notes that much of the affidavit is improper as it contains legal arguments and speculation about which the Affiant lacked personal knowledge, but it has considered the factual representations as part of its analysis.

388, 396 (2008), *aff'd*, 363 N.C. 252, 675 S.E.2d 332 (2009). They were not meant to, and do not, allow for recovery of time spent in pursuing punitive damages, which are not available under the NCUTPA. As shown in the settlement correspondence and in the affidavits of Plaintiff's counsel, the vast majority of the effort expended in this case was devoted to the recovery of a large punitive damages award and not the pursuit of a claim under the NCUTPA.

The Court therefore limits the award to the realm of a reasonable award on the NCUTPA claim and the work expended by Plaintiff's counsel on that claim. Plaintiff bears the burden of proving a reasonable attorney's fee for this cause of action. North Carolina law requires that attorney's fee requests be reviewed using the following factors: (1) time and labor expended; (2) the skill required; (3) the customary fee for like work; and (4) the experience or ability of the attorney. *United Laboratories, Inc. v. Kuykendall*, 403 S.E.2d 104, 111 (1991), *aff'd*, 437 S.E.2d 374 (1993). North Carolina courts do not employ a multiplier. *Nakatsukasa v. Furiex Pharmaceuticals, Inc.*, 2015 WL 4069818 (N.C.Sup.Ct. 2015) ("[p]laintiffs have not cited to, and this Court is unable to find, any reported case in which a North Carolina court has applied a 'multiplier' to increase the lodestar amount.").⁵

1. Time and Labor Expended.

The most useful starting point for determining the amount of a reasonable attorney's fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. *Southeast Air Charter, Inc. v. Stroud*, 2015 WL 4897790 at * 3 (N.C. Sup. Ct. 2015) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). Hours that are excessive, redundant, or

⁵ In any event, a multiplier increasing the fee award would be inappropriate. Plaintiff bears the burden of establishing that a multiplier should be used, and the burden is a heavy one. Multipliers should be used only in rare and exceptional circumstances. *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010). The Court finds that this is not such a case.

otherwise unnecessary are removed and should not be included in the trial court's assessment of attorney's fees. *Id.*

Here, Plaintiff has made no effort to delineate the number of hours expended on the NCUTPA cause of action (other than removing a few hours attributable to a settling co-defendant). Instead, Plaintiff has chosen to ask the Court for an award of nearly all of its fees, seeking an award of attorney's fees and costs totaling \$370,543.12 for a claim under which the maximum recovery was \$19,935. The Court does not believe this approach is appropriate as it is not reflective of the fees reasonably expended on this cause of action.

As an initial matter, Plaintiff has not discounted the total time spent in this case to reflect the claims on which it was not successful. Plaintiff initially asserted claims for violation of the South Carolina Unfair Trade Practices statute, S.C. Code Ann. § 39-5-10 *et seq.* and violation of the South Carolina Dealer's Act, S.C. Code Ann. § 56-15-10 *et seq.* These claims were abandoned after Defendant sought to dismiss them. In addition, Plaintiff withdrew a claim for constructive fraud after Defendant filed a motion for summary judgment. Lastly, the Court found the economic loss rule barred Plaintiff's negligence claim and granted Defendant's motion for directed verdict. Thus, Plaintiff abandoned or was unsuccessful on half the claims asserted against this Defendant (4 of 8).

Nor does the Court believe attorney's fees should be awarded for time spent pursuing punitive damages, which are not recoverable under the NCUTPA. Indeed, the evidence and the arguments of counsel make it clear that the majority of Plaintiff's efforts were aimed at recovery of punitive damages, rather than recovery under the NCUTPA. For example, the first settlement demand from Plaintiff came in a letter dated January 23, 2015. That letter demanded \$350,000 and stated "your clients have exposure of \$250,000 in punitive damages under North Carolina

law. I am sure a jury will reach that number easily.” The question of admissibility of evidence on punitive damages was discussed extensively in pre-trial motions before the Court and at directed verdict in connection with the economic loss rule arguments. When the Court commented on the small amount of actual damages in the case, Plaintiff’s counsel agreed that damages were small “until you get to the punitive damage phase.” By way of further illustration, Plaintiff included the entire punitive damages phase of the trial, which could not possibly have been attributable to the NCUTPA claim. The emphasis on punitive damages is also reflected in the Plaintiff’s post-trial submissions and arguments at the hearing on the post-trial motions.

Additionally, although Plaintiff excluded some of the time spent on claims against the original co-defendant, it appears to the Court that the materials submitted by Plaintiff did not exclude all of that time. Plaintiff should not recover from Defendant for time spent in pursuing claims against another party.

Furthermore, the Court finds that any paralegal time should be excluded for two reasons: (1) it does not appear to relate to the NCUTPA claim; and (2) the NCUTPA does not allow recovery of attorney’s fees for time spent by non-lawyers. The NCUTPA provides that a court may allow a reasonable attorney fee “to the duly licensed attorney representing the prevailing party.” N.C.G.S. § 75-16.1. Time for paralegals and assistants is considered an element of overhead and is not recoverable. *Irwin Indus. Tool Co. v. Worthington Cylinders Wisconsin, LLC*, 747 F.Supp.2d 568, 591 (W.D.N.C. 2010).

The Court also notes that certain time entries submitted by Plaintiff appear excessive. For example, time records indicate that Plaintiff’s counsel spent 5.4 hours reviewing the deposition transcript of Mr. Ferrell, which he took, in preparation for summary judgment.

Plaintiff's counsel also attempts to claim between 15.1 and 23.20 hours for review of the deposition of Mr. Nalewaja, whom he deposed.

Finally, a significant portion of the travel time claimed was necessitated solely by the Plaintiff's choice to use a Charleston lawyer to bring suit in Richland County, rather than bringing the action in North Carolina. While Plaintiff was free to file suit in South Carolina, the Court will not impose the extra cost of this decision on the Defendant.

After a thorough review of the materials submitted, the Court has identified approximately 218 hours of entries that contain or could contain time spent on the NCUTPA claim. That said, many of these time entries are vague or relate to large blocks of time, only some of which are attributable to the NCUTPA cause of action. For example, on August 1, 2015, Plaintiff's counsel devoted 6.8 hours to "Prepare for Mediation. Prepare Pretrial Brief. Legal research regarding North Carolina Unfair Trade Practices Statute." Other entries are unrelated in any way to the NCUTPA claim. For example, on April 12, 2016, Plaintiff's counsel spent 5.1 hours as follows:

Review email from Jamie Flynn. Telephone conference with Jamie Flynn regarding testimony of Nationwide. Telephone conference with Kevin Ivey. Legal research regarding proof of punitive damages. Legal research regarding post trial analysis of punitive damages. Legal research involving procedural aspect of punitive damages. Review of objections and counter-designations of video testimony of Ecklund and Guyer. Begin review of evidence law regarding video depositions.

Given this practice, the Court is unable to precisely calculate the total hours spent on the NCUTPA claim using the records submitted by Plaintiff, and must therefore base its calculations on a percentage reduction of the hours claimed by Plaintiff. To account for block billing and the

other issues the Court has identified above, the Court finds a reduction of 75% is appropriate.⁶ This approach is consistent with that taken by the Superior Court of North Carolina, Business Court in *Out of the Box Developers, LLC v. Doan Law, LLP*, No. 10 CVS 8327, 2014 WL 4298329, at *10–11 (N.C. Super. Aug. 29, 2014) (removing certain hours from lodestar and applying percentage discount to account for claims other than the NCUTPA). Therefore, the Court determines that 54.525 hours reflects a reasonable amount of time and labor devoted by Plaintiff's counsel to the NCUTPA claim.

2. Skill Required.

This case was not complex for Plaintiff's counsel. Plaintiff's counsel primarily handles "auto fraud and unfair trade practice type cases." He makes similar claims in many cases, using form complaints and form discovery. The Court has accounted for this experience in accepting the hourly rate presented by Plaintiff's counsel as discussed below.

This case required the application of North Carolina law, but this factor does not justify the enormous attorney's fee sought for two reasons. First, this case did not have to be brought in South Carolina. Plaintiff resides in North Carolina and the transaction occurred in North Carolina. North Carolina's long arm statute would have permitted Plaintiff to sue in North Carolina with a North Carolina attorney. Again, Plaintiff was free to bring suit in South Carolina, but the Court will not make Defendant pay the extra cost incurred because of that choice. Second, while North Carolina law varies from South Carolina in certain respects, there is no significant difference between North Carolina law and South Carolina on the basic elements

⁶ The Court notes that this percentage reduction is also consistent with the number of claims submitted to the jury (of the four claims submitted, only one carried an entitlement to an award of reasonable attorney's fees).

of a claim for unfair trade practices. Thus, the Court finds that this case was not exceptionally complicated for Plaintiff's counsel.

3. Experience or Ability of the Attorney.

The Court accepts the affidavits of Plaintiff's attorneys with respect to the recitation of their experience or ability in cases such as this one.

4. Customary Fee for Like Work.

The Court accepts the affidavits presented by Plaintiff's counsel that indicate a rate of \$400/hour is consistent with the market rate for similar work performed by attorneys with skill and experience in this area. For that reason, the Court accepts Plaintiff's proposed rate of \$390/hour and will apply that rate to the number of hours identified above, resulting in a total fee award of \$21,264.

The Court further notes that it is customary for Plaintiff's attorneys to accept cases such as this one on a contingency basis under which the attorney will receive 40% of any verdict. In this case, 40% of the fraud verdict (including punitive damages) as adjusted by the Court earlier in this order results in a total of \$21,264. In addition, this award is consistent with the trebled award under the NCUTPA.

Given the above analysis, the Court finds a reasonable attorney's fee award in this case is \$21,264.

C. Costs.

Plaintiff also seeks an award of costs in the amount of \$14,866.62. The vast majority of this amount is not recoverable. Unlike most issues in the case, the award of costs is governed by South Carolina law. *Restatement (Second) of Conflicts* § 122, cmt. a (noting that a court applies its own rules to matters of judicial administration, such as costs).

Under Rule 54, SCRCP, only the following costs are recoverable:

- (1) Costs authorized by statute and sanctions imposed in favor of the prevailing party;
- (2) Fees of the clerk;
- (3) Fees of the sheriff;
- (4) Fees incurred in service of process;
- (5) Witnesses' Fees;
- (6) Fees for exemplification of copies of papers necessarily obtained for trial.

Costs for such items as deposition fees, expert witness fees, mailings, publications, and travel expenses such as meals, lodging, car rental and mileage are not recoverable. *Black v. Roche Biomedical Laboratories*, 315 S.C. 223, 433 S.E.2d 21, 25 (Ct.App. 1993). Applying these standards to the itemization of costs submitted by Plaintiff yields the following list of recoverable costs:

	<u>Date</u>	<u>Item</u>	<u>Amount</u>
1.	1/14/13	Filing fee to Richland County	\$150.00
2.	9/22/15	Motions filing fees	\$125.00
3.	4/2/15	Richland County Sheriff, service of deposition subpoenas	\$30.00
4.	5/22/15	Payment to SW Process Service	\$10.00 ⁷
5.	4/4/16	Trial check for Brent Farrell	\$31.80
6.	4/4/16	Trial check for Randy Threatt	\$31.80
7.	4/7/16	Payment to SWS Process Service for trial subpoenas	\$20.00
8.	4/7/16	Payment to James Ruopoli for service of trial subpoena	\$10.00
9.	4/17/16	FedEx office printing costs	\$85.47
10.	4/18/16	Richland County jury roster	\$10.00
11.	4/28/16	Post-trial motion filing fee	<u>\$25.00</u>
Total:			\$529.07

Thus, the Court awards \$529.07 in costs.

III. Defendant's Motion to Require Election of Remedies.

Defendant moved to require Plaintiff to elect remedies. Election of remedies involves a choice between two or more different and coexisting modes or procedure or forms of relief afforded by the law for the same injury. *Save Charleston Foundation v. Murray*, 286 S.C. 170,

⁷ In all cases, the service of process fee has been reduced to \$10, the amount charged by the sheriff. Rule 54(e)(4), SCRCP.

333 S.E.2d 60 (Ct.App. 1985). Stated differently, “[e]lection of remedies is the act of choosing between different remedies allowed by law *on the same state of facts.*” *Boardman v. Lovett Enterprises, Inc.*, 283 S.C. 425, 428, 323 S.E.2d 784, 785 (Ct. App. 194), *rev’d on other grounds*, 287 S.C. 303, 338 S.E.2d 323 (1985). Courts must ensure that litigants do not receive a double recovery. *See Collins Music Co. v. Smith*, 332 S.C. 145, 147, 503 S.E.2d 481, 482 (Ct. App. 1998); *MRD Motorsports v. Trail Motorsports, LLC*, 694 S.E.2d 517 (N.C. App. 2010) (plaintiff is entitled to only one redress for a single wrong); *see also* N.C.G.S. § 1D-20 (“A claimant must elect, prior to judgment, between punitive damages and any other remedy pursuant to another statute that provides for multiple damages.”).

In this case, Plaintiff’s claims all arose from the same transaction, involved the same injury, and the jury returned a verdict for the same amount of actual damages on each claim. The Court concluded initially, and still concludes, that election of remedies is required.⁸ Permitting Plaintiff to recover actual damages on more than one claim would amount to more than one recovery for a single injury.

After consideration of the post-trial motions, and as set forth herein, the Court reduced the punitive damages award to \$46,515, and awarded reasonable attorney’s fees of \$21,264. The Court then required Plaintiff to elect between the following options: (1) NCUTPA actual damages of \$6,645 trebled to \$19,935 plus reasonable attorney’s fees of \$21,264; or (2) fraud actual damages of \$6,645 plus punitive damages of \$46,515. Plaintiff elected the first option, foregoing the fraud claim, and taking recovery under the NCUTPA.

⁸ The Court originally required Plaintiff to elect soon after the verdict was returned, and Plaintiff elected actual damages for fraud, punitive damages for fraud, and attorney’s fees under the NCUTPA. Defendant objected to this election, and Plaintiff moved to reconsider, asking that it be permitted to delay election until after the Court ruled on post-trial motions. The Court granted this request.

IV. Prejudgment Interest.

A. Offer of Judgment.

Plaintiff seeks an award of more than \$236,628.01 in interest and costs of \$14,279.82 pursuant to S.C. Code Ann. § 15-35-400, South Carolina's statute governing offers of judgment. Plaintiff argues that recovery of these amounts is authorized because the verdict in this case exceeded the \$280,000 offer of judgment made before trial.⁹

The Court need not address the conflicts of law issue because interest under an offer of judgment is not available under either North or South Carolina law. If North Carolina law applies, only defendants may make offers of judgment. Rule 68, NCRCP. If South Carolina law applies, interest under an offer of judgment is not awarded unless the Plaintiff received a recovery at least as favorable as the rejected offer of judgment. S.C. Code Ann. § 15-35-400(b). Plaintiff made an offer of judgment of \$280,000 and the elected recovery is well below that amount, making interest and other costs unavailable.

B. General Statutes

Plaintiff sought an award of prejudgment interest under both North Carolina and South Carolina law. The claim for prejudgment interest under North Carolina law is governed by N.C.G.S. 24-5, which provides that:

(b) Other Actions. – In action other than contract, any portion of a money judgment designated by the fact finder as compensatory damages bears interest from the date the action is commenced until the judgment is satisfied. Any other portion of a money judgment in an action other than contract, except the costs, bears interest from the date of entry of judgment under G.S. 1A-1, Rule 58, until the judgment is satisfied. Interest on an award in an action other than contract shall be at the legal rate.

⁹ As a preliminary matter, § 15-35-400 may not apply. Authorities are split as to whether recovery pursuant to a statute governing offers of judgment is substantive or procedural. *E.g.*, *Southeast Floating Docks, Inc.*, 82 So.3d 73 (Fla. 2012); *but see Paine Webber Jackson and Curtis, Inc. v. Winters*, 579 A.2d 545 (Conn. App. 1990).

Plaintiff argues that it is entitled to prejudgment interest on the award of actual damages of \$6,445 at North Carolina's legal rate of interest of eight percent. N.C.G.S. § 24-1 (legal rate of interest). Given the actual damages award of \$6,645 is \$531.60, the per diem interest accrued is \$1.46. Plaintiff seeks prejudgment interest through May 2, 2016 of \$1,751.02. Additional interest through October 10, 2016 is \$242.36. The Court therefore awards total prejudgment interest of \$1,993.38.

Plaintiff has also sought prejudgment interest under South Carolina law. Defendant contends that South Carolina law regarding prejudgment interest does not apply. However, the Court does not need to resolve the question of conflicts of law because, even if South Carolina law applied, prejudgment interest is not available. Prejudgment interest is only available on an unliquidated claim. *Dibble v. Sumter Ice & Fuel Co.*, 283 S.C. 278, 322 S.E.2d 674 (Ct.App. 1984). The Court determines that Plaintiff's damages were not liquidated because the amount of damages rested on evidence of the retail value of the vehicle, which would not be presented until trial. *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 691 S.E.2d 135 (2010). In *Austin*, The South Carolina Supreme Court addressed an almost identical claim. It stated:

[a]lthough [plaintiff] is correct that prejudgment interest is statutorily authorized by the provisions of section 34-31-20 of the South Carolina Code, we find [Plaintiff's] damages were not liquidated at the time his claim arose. [Plaintiff's] lawsuit arose out of his dissatisfaction with the purchase of a used vehicle. Because [Plaintiff] alleged claims of fraud, constructive fraud, negligence, and violations of state and federal motor vehicle acts his prospective damages were unliquidated and could not have been ascertained without evidence of the retail value of the truck. Given [Plaintiff's] monetary recovery could not have been reduced to certainty, the trial judge correctly denied

[Plaintiff's] request for prejudgment interest.

Id. at 58, 691 S.E.2d at 154. Thus, the Court denies this request.

CONCLUSION

For the reasons stated above, individually and collectively, it is hereby ORDERED, ADJUDGED, and DECREED that:

1. Defendant's motion for JNOV is denied.
2. Defendant's motions for new trial, including its motion for new trial under the thirteenth juror doctrine and a new trial *nisi remittitur*, are denied.
3. The punitive damages award is reduced to \$46,515.
4. Defendant's motion for enforce the North Carolina punitive damages is cap is denied as moot.
5. Plaintiff's motion for attorney's fees and costs is granted in part. Plaintiff is awarded \$21,264 in reasonable attorney's fees and costs of \$529.07.
6. Plaintiff's motion for interest and costs under its offer of judgment is denied.
7. Plaintiff's motion for prejudgment interest is granted in the amount of \$1,993.38.
8. Defendant's motion to require Plaintiff to elect remedies is granted.
9. As a result of this Order and Plaintiff's election, the Court enters the following findings with respect to the amount of Plaintiff's recovery. Entry of final judgment shall take place after the Court rules on Defendant's motion for setoff, as the amount of the final judgment may be affected by that ruling.

Treble Damages under the NCUTPA	\$19,935
Attorney's Fees	\$21,264
Costs	\$529.07
Prejudgment interest	<u>\$1,993.38</u>
	\$43,721.45

IT IS SO ORDERED.

The Honorable R. Ferrell Cothran, Jr.
Presiding Judge

_____, 2016

LAW OFFICE OF BROOKS R. FUDENBERG, LLC

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Charleston, South Carolina 29401
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Tel. 843-416-2558
eFax: 1-910-401-1242**

November 1, 2016

The Honorable R. Ferrell Cothran, JR.
Post Office Box 32
3 West Keitt Street
Manning, SC 29102

RE: Daniel O'Shields, et al. v. Columbia Automotive Co., LLC, d/b/a Midlands Honda
C/A No.: 2013-CP-40-0319

Draft Order submitted by Defendant

Dear Judge Cothran:

While we obviously disagree with the conclusions evidenced in Mr. Furse's email of August 29, we write now to take issue with Defendant's failure to follow those instructions, its sua sponte determinations to go beyond those instructions, and other errors that have nothing to do with the instructions, such as Defendant's consistent use of the singular "Plaintiff" throughout the proposed Order. Defendant has even changed the caption of the case, without notice, to reflect its theme that there was only one Plaintiff. The Order should be changed throughout, including the caption, to the plural "Plaintiffs" wherever the word appears.

Substantively, Defendant has taken it upon itself to deny Plaintiffs' motion for offer of judgment interest, while reserving its own motion for a setoff to be decided later. Defendant should not be allowed to have it both ways. If the Defendant's motion for a setoff is to be ruled on later, so too should Plaintiffs' motion for offer of judgment interest.

A list of additional errors in the proposed order includes:

1. Page 2 of Defendant's Order has Your Honor stating that Defendant's Motions for JNOV, a New Trial, or a New Trial Nisi Remittitur "are properly before [the Court]." This is not what Your Honor said.

In fact, as Defendant had not renewed its JNOV motion at the conclusion of all the evidence, that motion was not properly before you. As Your Honor noted, Rule 50(b) is clear.

Defendant's proposed Order similarly has the Court stating, incorrectly, that one day is insufficient time to reconsider a ruling. Order at 2.

We would ask that the Order deny the Defendant's JNOV motion as untimely, and that if you had reached its merits, it would have been denied.

2. Defendant's discussion of punitive damages (pp. 3-11) is multiply flawed.

While Defendant speculates as to the Court's reasoning for reducing the punitive damages award, and provides a lengthy, twisting, series of suggested rationalizations, including numerous factually inaccurate renditions of the evidence, the Order never addresses the reasoning Your Honor did provide in chambers and from the bench. That this is a small case. The Court's actual reasoning should be provided.

3. New Trial Arguments Relating to Punitive Damages

a. Evidence of Safety. The proposed Order, on pages 9-10, reads as if the Court is admitting error, but arguing that it is not reversible error. After describing the many objections the Defendant made, this section of the Order declares, in its penultimate sentence, "Under these circumstances, the Court does not believe allowing Plaintiff to argue as it did rises to the level of a due process violation." The Order never states that Defendant's many objections were to the introduction of such evidence – evidence the Supreme Court has held is entirely proper to introduce.

At a minimum, the Court should add a sentence at the end of the first paragraph under this heading, “However, Defendant’s objections were to the introduction of such evidence, whereas introducing such evidence is entirely proper.”

The remainder of the section of the Order should be replaced with,

Phillip Morris, USA v. Williams, 549 U.S. 346 (2007), on which Defendant primarily relied for the proposition that such evidence may not be introduced, instead repeatedly stated that such evidence may be introduced. While one cannot “use a punitive damages verdict to punish a defendant directly on account of harms it is alleged to have visited on nonparties,” id. at 355, such evidence does go to reprehensibility, id. at 357.

How can we know whether a jury, in taking account of harm caused others under the rubric of reprehensibility, also seeks to punish the defendant for having caused injury to others? Our answer is that state courts cannot authorize procedures that create an unreasonable and unnecessary risk of any such confusion occurring. In particular, we believe that where the risk of that misunderstanding is a significant one—because, for instance, of the sort of evidence that was introduced at trial or the kinds of argument the plaintiff made to the jury—a court, upon request, must protect against that risk.

Id. All Defendant was entitled to was an instruction that the safety issues go solely to reprehensibility, had it requested such. However, it made no such request, arguing instead that the evidence may not be presented to the jury.

4. Defendant’s Footnote 4 (p. 12)

Defendant’s footnote four is flawed. Defendant attempts to change the Court’s instructions to Plaintiffs. The Court did not “ask[] that any affidavit be filed quickly.” Rather, the Court agreed that Plaintiff could file an affidavit – seeing how Defendant, without a motion, a request, or even a “sorry,” had violated the Court’s instructions to file all memoranda a week before the hearing – but did not specify that it be filed quickly.

5. Attorney's Fees

a. Contrary to Defendant's contention on page 15 of the proposed Order, the admissibility of evidence on punitive damages was not "discussed extensively in pre-trial motions before the Court." Nor was the admissibility discussed extensively in "connection with the economic loss rule arguments."

b. Even had punitive damages evidence been discussed extensively in connection with the economic loss rule, that merely shows that the issues are inextricably intertwined. Under North Carolina law and South Carolina law, one does not separate out time incurred on intertwined issues. Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 57 (2010), Whiteside Estates, Inc. v. Highland Cove LLC, 553 S.E.2d 431, 443 (2001).

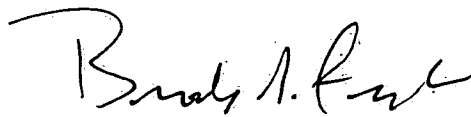
6. Election of Remedies (pp. 19-20)

Although the Order cites United Laboratories, Inc. v. Kuykendall, 403 S.E.2d 104, 111 (1991), aff'd, 437 S.E.2d 374 (1993), in another context, the proposed Order completely ignores Kuykendall on the issue of election of remedies. Indeed, its more than a full page discussion never addresses the issue on which the battle over election was fought: whether Plaintiffs were entitled to elect punitive damages from their fraud verdicts, and attorney fees from their NC UTPA verdicts, as held by Kuykendall and Austin. The Court should cite these cases and the North Carolina statute, N.C.G.S. § 1D-20, entitled "Election of extracompensatory remedies," which Defendant maintains negates Kuykendall. It should hold that the statute does not require Plaintiffs to elect between attorney fees and punitive damages, as the statute provides "A claimant must elect, prior to judgment, between punitive damages and any other remedy pursuant to another statute that provides for multiple damages," whereas N.C.G.S. § 75-16, "Civil action by person injured; treble damages," allowing for multiple damages, is a different statute than N.C.G.S. § 75-16.1, "Attorney fee," on which the attorney fee claim is based; and

because the title of N.C.G.S. § 1D-20, "Election of extracompensatory remedies," makes clear that its concern is to prevent a plaintiff from receiving exemplary damages under more than one cause of action, once labeled as "punitive" and once labeled as "double damages" or "treble damages," and that were there any ambiguity, the UTPA is to be read liberally to achieve its purposes of providing an effective response for those hurt by an unfair trade practice, Walker v. Fleetwood Homes of North Carolina, 627 S.E.2d 629, 176 N.C.App. 668 (N.C. App., 2006) (NCUTPA is remedial and thus is to liberally construed), Marshall v. Miller, 302 N. C. 539 (1981) (the Act was needed because common-law actions had proven ineffective), Shepard v. Bonita Vista Properties, LP, 191 N.C. App. 614, 664 SE 2d 388 (2008) (providing a full award of attorney's fees advances the purposes of the Act).

There are what we believe to be many other errors of law and fact, but we are striving not to re-argue here points we have already raised.

Sincerely,

A handwritten signature in black ink, appearing to read "Brooks R. Fudenberg". The signature is fluid and cursive, with the first name "Brooks" being more prominent.

Brooks R. Fudenberg
Attorney for Plaintiffs

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

DANIEL O'SHIELDS AND ROGER W.
WHITLEY A PARTNERSHIP D/B/A
O&W CARS

Plaintiffs

vs.

COLUMBIA AUTOMOTIVE
COMPANY, LLC D/B/A MIDLANDS
HONDA

Defendant

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
) CASE NO. 13-CP-40-0319
)

) **PLAINTIFFS' MOTION PURSUANT TO**
) **RULE 59 AND MOTION FOR**
) **SUPPLEMENTAL ATTORNEY FEES,**
) **AND MEMORANDUM IN SUPPORT**

RICHLAND COUNTY
FILED
JANETTE W. MCBRIDE
C.C.P. & G.S.
DEC 20 AM 11:36

Plaintiffs respectfully move under Rule 59, SCRCP, to alter or amend the judgment and Order filed December 2, 2016 in this case, and, to the extent necessary, separately move for an award of supplemental attorney fees and costs. This Motion/Memorandum largely tracks the organization of that Order.

Following the submission of multiple post-trial memoranda, motions, and oppositions by each party, and the conclusion of the hearing on those motions held on the twenty-seventh of July, the Court's clerk emailed the parties on August 29, stating,

Gentlemen,

Judge Cothran has made a decision regarding the verdict awarded in this case.

Judge Cothran directs the plaintiff to elect from either of the following awards:

1. *Treble Damages and attorney's fees for the N.C. Unfair Trade Practices Cause of Action*: \$6,645(actuals) X 3=\$19,935 plus an award of attorney's fees of \$21,264 for a total of \$41,199. OR

2. *Actual and Punitive damages for the fraud cause of action*: \$6,645(actuals) plus \$46,515 in punitive damages for a total of \$53,160.

Judge Cothran has given the plaintiff a 10 day deadline to make the election of award. Judge Cothran asks, that upon the election of award by the plaintiff, that defense counsel submit a proposed order on this issue within a reasonable time.

Please contact me if you have any questions or concerns regarding this email or any other matters involving this case.

Thanks,

Ex. 1 (Clerk's email of 8/29/2016). Plaintiffs chose Option 1. Ex. 2 (Pls.' election). Defendant submitted its proposed Order as a PDF via email on October 17. Ex. 3 (Def.'s email and proposed Order). Plaintiffs submitted a letter objecting to certain aspects of the proposed Order. Ex. 4 (Pls.' letter of 11/01/2016). The Court signed the Order, apparently without modification.

A. Plaintiffs ask the Court to alter or amend the Order in that it refers throughout to "Plaintiff" in the singular, whereas this case has from its initial filing in the Clerk's office in 2013 through the post-trial briefing by both sides in 2016 involved multiple Plaintiffs. Without any objection from Defendant, any briefing on the subject, or the matter being argued, the December 2nd Order changed the caption to "Plaintiff" and several times throughout the document "Plaintiff" in the singular is used. At a minimum, the Court should issue an Order clarifying that the word "Plaintiff" in that its December 02 Order is to be read as "Plaintiffs," and that any other words referring to them should be read in the plural, where appropriate.

B. In reference to Defendant's JNOV motion, the Order states that a full day is not sufficient time for the Court to reconsider a ruling on a directed verdict motion. This point was not previously raised in this case, and it is incorrect. Even a few hours of testimony is sufficient to trigger the need to renew motions such as the directed verdict motion at issue here. *Freeman v A. & M. Mobile Home Sales, Inc.*, 293 SC 255, 359 SE 2d 532 (SC App. 1987).

C. The Order erroneously states that North Carolina law mandates written review of punitive damages awards, following a challenge. This is incorrect. The statute the Order cites does not say that. That statute says that when doing such a review, the review will be written and

will address certain subjects. It does not state the requirements to trigger such a review, and does not state that such a review is required “following a challenge.”

D. The Order did not address Plaintiffs’ arguments (1) that civil penalties authorized or imposed in comparable cases include a complete shut-down of the Dealership, with resulting economic loss far greater than the punitive damages that were awarded by the jury, and (2) (a) that the North Carolina punitive damages statute authorizes punitive awards of \$250,000 and more in cases comparable to the present case, and (b) that North Carolina appellate courts have ruled that the statute is constitutional. Plaintiffs have maintained, in the alternative, and continue to maintain, that if the Court is unwilling to award the punitive damages called for by the jury, that it follow North Carolina law and award Plaintiffs \$250,000.00 in punitive damages. Plaintiffs respectfully request that the Court rule in their favor on these issues.

The Order’s comparison of the present case to *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22 (2010) is inapposite. True, as the Order notes, *Austin* involved not just a wrecked car, but evidence of a forged signature as well. However, the “clipped” car here – literally, two half-vehicles that had been clipped together and sold as one – was even more dangerous than the pickup truck with a tracking problem in *Austin*. Here, too, this was not the first time the Defendant had sold the exact same car to an unsuspecting customer. Here, too, the evidence was that the dealership had a practice of selling previously wrecked vehicles without disclosure. Moreover, the actual damages awarded in *Austin* – approximately \$26,000 – were on the order of the *punitive* damages awarded here. Just as there was no reason to think the actual damages in *Austin* would serve as an effective deterrent, so too is there little reason to think the punitive damages awarded by the Order will effectively deter. The punitive damages are limited by the Order so severely that they cannot do their necessary job. The Court should markedly increase

the punitive damages award to at least the amount specified by North Carolina law, \$250,000.00 per Plaintiff, in line with that State's public policy.

E. Pages 9 and 10 of the Order, discussing harm to third persons, may leave the misimpression that Plaintiffs argued impermissible grounds to the jury, and are "saved" only by Defendant's failure to have requested a limiting instruction. In fact, Plaintiff's argument to the jury was entirely proper, employing evidence of potential harm to third persons only as evidence of reprehensibility. Plaintiffs never argued that the jury should award punitive damages, or award a large amount of punitive damages, for the harm inflicted on third parties, nor for the potential harm so inflicted. Plaintiffs respectfully ask the Court to clarify that it was not implying there was anything improper about Plaintiffs' closing.

F. In regard to Defendant's unwarranted refusal to completely resolve the matter, the Order should note that Defendant refused to offer any resolution, refused to do anything at all other saying, "tough," until Plaintiff filed suit.

G. Footnote four says that the Court instructed that any affidavit be filed "quickly." The Court did not so instruct, and the Order should not state that it did. Rather, the Order should state that after Defendant's failure to comply with the Court's directive that any memoranda from the Parties be filed a week before the July 27 hearing, the Court allowed Plaintiffs the opportunity to file an affidavit, but did not instruct that it be filed "quickly." An amended order should make this point clear.

H. While the Order does accurately reflect North Carolina law in awarding Plaintiffs' attorney fees, the Order provides an unreasonably small quantum of fees, \$21,264, for Mr. Moskos' work from June 29, 2011 through July 20, 2016. North Carolina law requires that when attorneys fees are awarded for a UTPA violation, the fees must be reasonable, e.g., *Custom*

Molders v. Am. Yard Prods., 342 N.C. 133, 142, 463 S.E.2d 199, 204 (1995) (holding that “Once the trial court decides to award attorneys’ fees, however, it must award a reasonable fee.”)

The Order cuts Mr. Moskos’ two sets of timesheets, totalling 601.9 hours, for which, as the Order states, Plaintiffs requested \$370,543.12 (after a requested multiplier) down to 54.525 hours. The resulting award is less than 10% of the requested fees for Mr. Moskos. It is far less than either party had argued for, other than Defendant’s argument that the Plaintiffs should not receive any fees.

The Order does so in two stages. First, it cuts Mr. Moskos’ request from 601.9 to 218 hours, then it further reduces the 218 hours by 75 percent. Each stage is erroneous.

The reason for the initial elimination of almost 65% of the time, and the ensuing reduction of seventy-five percent of the remainder, appears to be the erroneous belief that the time spent was not related to the UTPA claim. This belief is erroneous on many grounds.

First, under North Carolina law and South Carolina law, one does not need to separate out the time on causes of action or issues that are inextricably intertwined, as are the causes of action here. *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 57 (2010), *Whiteside Estates, Inc. v. Highland Cove LLC*, 553 S.E.2d 431, 443 (2001).

Second, the 218 hours figure appears for the first time in the draft Order that defense counsel prepared and sent. Implicit in the statement that only 218 hours could potentially contain time spent on the UTPA cause of action is that the remaining 383.9 hours of his time could not relate to the UTPA. But no such calculation has been presented to Plaintiffs. The most Defendant was able to identify prior to this Order as being insufficiently related to the UTPA was 52.7 hours. Its Brief in Opposition to Plaintiffs’ Motion for Attorney Fees claimed

"7.05 - 21.45 hours" should be eliminated as going to punitive damages rather than the UTPA, 10.95 should be eliminated as going to claims against settling Defendant Nationwide, and 20.3 hours of travel time. Adding these and using the high end of the 7.05 - 21.45 hours figure totals 52.7 hours. Thus the initial cut here is more than 330 hours beyond what Defendant argued should be cut.

If this cut of 383.9 hours was done by the Court, Plaintiffs request the opportunity to see which hours were cut and why. If these are defense counsel's numbers, Plaintiffs should be entitled to see the calculations and rationales or these hours should be added to the award of fees.

Plaintiffs strongly maintain that any reduction in time from what Mr. Moskos requested on grounds that hours were not related to the UTPA claim should proceed, first, with his providing timesheets, as he has done, second, with the defendant identifying which hours are supposedly unrelated and why, and third, with Plaintiff having an opportunity to defend the relation of those hours to the UTPA claim. Nevertheless, and without waiving the argument in the previous sentence, Mr. Moskos has jumped to the third step, providing his timesheets previously provided, but now with time removed under the Order's expansive view of what constitutes "unrelated" time. Ex. 5. Plaintiffs continue to maintain that all the time Mr. Moskos requested was related to the UTPA cause of action. However, the point is that even taking an extremely expansive view of what is "unrelated," or, what amounts to the same thing, a cramped view of "related," Mr. Moskos still has 506.3 hours of time that are related to the UTPA cause of action for the June 2011 - July 20, 2017 period.

In making the analysis, one should keep in mind that time related to pre-judgment interest applies to the UTPA cause of action that Plaintiffs elected; and time related to a possible set-off

relates to the actual damages awarded in the UTPA cause of action. So too does time spent overcoming Defendant's "economic loss rule" defense, via which Defendant attempted to strike the UTPA cause of action. So too does time spent developing the facts that show the willfulness of the Defendant's action. That time might seem at first glance to go only to punitive damages, or only to the fraud verdict. But as the Order recognizes in another subsection of its UTPA discussion, "the jury was also charged with assessing willfulness [as needed for an award of attorney fees under the UTPA verdict], which the Court assumes was implicit in the fraud verdict." Order, p. 12. So that time, too, relates to the UTPA cause of action.

The Order maintains that punitive damages issues constituted the vast majority of Mr. Moskos' time. This is highly implausible on its face. It is refuted by the timesheets of Mr. Moskos previously filed. It is further refuted by the re-filed timesheets accompanying this Motion and addressing the Court's stated concern with punitive damages.

In making this analysis, one should keep in mind that – at least from the time of the directed verdict motion – the punitive damages analysis was necessary to achieving and maintaining the UTPA claim. The Order states, "The question of admissibility of evidence on punitive damages was discussed extensively in pre-trial motions before the Court and at directed verdict in connection with the economic loss rule arguments." (Emphasis added). Thus, in the Order's view, evidence of punitive damages was discussed in relation to Defendant's attempt to stymie the UTPA and other causes of action on the basis of the economic loss rule. Under North Carolina and South Carolina law, this time relates to the UTPA claim – it is not merely intertwined with time on the UTPA claim, it itself was part of the UTPA claim.

Similarly, Defendant's post-trial filing directly about punitive damages is extremely short

- two pages, including caption and signature block. Rather, the bulk of the post-trial argument regarding punitive damages concerned Defendant's attempt to gain a new trial absolute - a new trial in toto, on actual damages and punitive damages - as a result of a supposed impropriety in the punitive damages award, or supposed prejudice reflected in that award, or supposedly improper and inflammatory material - evidence that the car Defendant sold without disclosure was dangerous to all who shared the road with it. Indeed, Defendant places virtually its entire argument about punitive damages squarely in its argument regarding a new trial absolute. Def.'s Notice of Motion and Motion for Judgment Notwithstanding the Verdict or, in the Alternative a New Trial, or a New Trial Nisi Remittitur ("Def.'s Mot. JNOV, etc."), Heading II and Subheading A and text accompanying, p. 5 and thereafter; text accompanying *id.* Subheading B on pages 11-12. Because Defendant was arguing that these supposed punitive damages improprieties justified a new trial in full, it became necessary to refute these claims about punitive damages in order to preserve the UTPA verdict. Defendant's Memorandum in Further Support of Motion for Judgment Notwithstanding the Verdict ("JNOV"), or, in the Alternative a New Trial or New Trial Nisi Remittitur similarly focuses entirely on the punitive damages issue, and does so in order to argue that all verdicts must be reversed. This time, even if regarding punitive damages, was needed to protect the UTPA verdict and is therefore compensable.

If some time spent regarding the amount of punitive damages was not generally sufficiently related to the UTPA claim to be compensated, that time is a small portion of the "punitive damages-related" time, and even much of that was needed in response to Defendant's argument that the size of the punitive damages award entitled Defendant to a new trial on the UTPA and other causes of action.

Moreover, the Order displays faulty logic when it repeatedly refers to Plaintiffs seeking recovery of punitive damages larger than the amount of possible actual damages, to Plaintiffs basing their settlement position on a possible large punitive damage award, and concludes that therefore Plaintiffs' counsel spent more time on the punitive damages issues than on other issues. Plaintiffs seeking punitive damages almost always seek punitive damages larger than the actual damages. That does not mean that the attorney spent the bulk of his time on punitive damages.

The Order further errs in not crediting Plaintiffs' counsel for work on the South Carolina UTPA, because the North Carolina and South Carolina statutes are without significant differences, as the Order recognizes.

The Order similarly errs to the (unstated) extent it cut hours as supposedly relating to the settling Defendant, Nationwide. Based on Defendant's above-referenced "Def.'s Mot. JNOV, etc.," Defendant appears to believe that any entry that mentions Nationwide is uncompensable, even if it was, for example, a letter addressed to both Defendants. That is not the law. Plaintiffs can guess at which hours the Order deems to be related exclusively to Nationwide, but that's a major part of the point: Plaintiffs should not have to guess.

Nevertheless, an attempt is made in the re-filed timesheets to address whatever concerns Plaintiff can think of. It should be pointed out that some time that appears on the surface to be about Nationwide exclusively – such as time involved in securing a Nationwide corporate representative to appear at trial – was actually not about any claim against Nationwide, which had already been dismissed, but in establishing the factual background for the claims against Defendant Midland Honda.

Finally, the hours allowed – approximately 54 hours for a case that consumed more than

four years and necessitated travel to Chicago and a four-day trial solely on actual damages – is unreasonable on its face. The award for Mr. Moskos' work should be markedly increased. Plaintiffs respectfully maintain that in failing to provide a reasonable award, the Court abused its discretion. Its award is manifestly unreasonable.

To the extent, if any, that the award rests upon the coincidence that the amount awarded in fees is 40% of the underlying recovery, and that 40% is a common contingency percentage, the Order errs. Statutes like the UTPA are enacted in large part because the customary contingency percentages would be insufficient, in a large number of cases, to attract quality counsel to accept the case. *Cf. Riverside v. Rivera*, 477 U.S. 561 (1986), in which the federal Supreme Court found fee-shifting particularly appropriate where, as here, the expected costs of litigation are greater than the expected recovery of damages. 477 U.S. at 579–80 (plurality); *id.* at 586 (Powell, J., concurring); *see also Bradley v. Hullander*, 277 S.C. 327, 330, 287 S.E.2d 140, 141 (1982) (securities law) (similar); *United Lab. v. Kuykendall*, 102 N.C. App. 484, 494, 403 S.E.2d 104, 111 (1991), *aff'd*, 437 S.E.2d 374 (1993) (similar). The Order errs in relying on unpublished Superior Court cases rather than reported appellate cases such as *Custom Molders v. Am. Yard Prods.*, 342 N.C. 133, 463 S.E.2d 199 (1995), and *Cotton v. Stanley*, 94 N.C. App. 367, 369, 380 S.E.2d 419, 421 (1989) (holding "Once the court decides to award attorneys' fees, however, it must award reasonable attorneys' fees."). *See also id.*,

In an action under Chapter 75 of the General Statutes alleging unfair or deceptive trade practices, the prevailing party is entitled to reasonable attorneys' fees when the court finds (i) that the party charged with a violation wilfully engaged in unlawful conduct proscribed by the Chapter and (ii) that there was an unwarranted refusal by the party charged to fully resolve the matter.

"Since the trial court had already found in the previous order that defendants' conduct was

willful and that their refusal to settle the dispute was unwarranted, plaintiffs were, in our opinion, entitled to legal fees for prosecuting the appeal as well as for the preparation for retrial.” *Id.* at 370, 380 S.E.2d at 422. See *United Laboratories, Inc. v. Kuykendall*, 403 S.E.2d 104, 111 (1991) (listing the factors that are to be considered in awarding such fees); see also *id.* at 109 (discussing the purpose behind the NC UTPA); *United Labs., Inc. v. Kuykendall*, 335 N.C. 183, 195, 437 S.E.2d 374, 381-82 (1993) (listing additional factors). A standard contingency percentage is not a factor. The amount of the verdict reflects the success of the attorney and adequacy of representation, which are factors, but these factors are not to be reduced to a mere percentage-of-the-recovery.

The Order further misapplies or misinterprets the unpublished Superior Court cases on which it relies. For example, *Out of the Box Developers, LLC v. Doan Law, LLP*, 2014 NCBC 39, 2014 NCBC LEXIS 39 (N.C. Super. Ct. Aug. 29 2014) awarded \$467,827.63 in fees on \$25,676 in damages— greatly unlike the 40% of actual damages recovered in the present award. *Id.* at *15 (award of \$15,675); *id.* (\$1.00 award); *id.* (award of \$10,000); *id.* at 69 (attorney fees of \$467,827.63).

Additionally, the Order should further be amended, or a supplemental order issued, to cover fees for Mr. Moskos’ work subsequent to July 20. His timesheets for that work through today’s date are attached. Ex. 6. They show 167.4 hours. Of these, he calculates 138.5 come within the Order’s vision of what is “related” to the UTPA claim, and 28.9 hours may not. At the \$390 rate, that would make a lodestar of \$54,015.00 for his work from July 21 to December 15. However, the Court may prefer to wait until it after rules on the Motion for Set-Off and consider all of Mr. Moskos’ work subsequent to July 20 at that time.

I. Overlooked Time: The Order should further be amended, or a separate order issued, to award attorney fees for Mr. Fudenberg's work. The Order completely ignores Mr. Fudenberg's efforts and bases its award of \$21,264 in fees solely on the work of Mr. Moskos through July 20, 2016. Order, p. 14 (stating an amount of fees sought by Plaintiffs that represents the sum of Mr. Moskos' two requests, for his time through May 1, 2016, and for time from that date through July 20, plus an unexplained \$25). Mr. Fudenberg had presented timesheets detailing 56.1 hours through July 20, 2016; an affidavit stating his credentials and summarizing his work; and an affidavit of another respected attorney attesting to the reasonableness of a \$390 hourly rate for that work. At the \$390 hourly rate that comes to \$21,879.00.

Perhaps obviously, Mr. Fudenberg's timesheets do not contain significant time relating to the Defendant that was dismissed before Mr. Fudenberg was engaged; nor time on any causes of action that were dismissed before he was engaged. In fact, according to the Order, by the time Mr. Fudenberg was engaged, Defendant had already tied a defense of the UTPA award to a defense of the punitive damages award, Order, p. 15 (finding that punitive damages were discussed extensively in relation to the economic loss rule at the directed verdict stage), and the link between punitive damages and the UTPA was further reinforced by Defendant in its two extensive filings regarding its motion for a new trial absolute. Nor do the Order's concerns about punitive damages being discussed in pre-trial motions or during the trial apply to Mr. Fudenberg whom, again, was not billing for time at those stages.

Nor does the Order's concern with block billing apply to Mr. Fudenberg's timesheets except in a few instances when, preparing to meet a deadline in this case, he was jumping so often between emails, legal research, telephone consultations, document review and writing that it

would be highly impractical to be billing for each event separately.

In view of the Order's apparent requirement that time be shown to relate to the UTPA claim, Mr. Fudenberg resubmits his filed time sheets with explanations as to what time could possibly be considered not related to the UTPA claim, what time is clearly related, and how he divides time that included both UTPA and other claims. Ex. 7. In this regard, he treats time related to the Offer of Judgment issue as not being UTPA time, although he maintains that, properly seen, it is sufficiently related. He also treats time going to the amount of the punitive damage award as not related, unless it is clear that the time was in response to Defendant's argument that the punitive damages award's alleged "excessiveness" requires that a new trial absolute be granted. He thus identifies 44.3 hours from his previously-filed timesheets as being "related" to the UTPA within the Order's vision of "related," and 11.8 hours as unrelated. Plaintiffs should be awarded \$17,277.00 for Mr. Fudenberg's work through July 21, 2016.

Mr. Fudenberg has also incurred 77.2 hours since July 20, 2016 through December 14. That time is detailed in Ex. 8. Adjusting the time for the Order's apparent view of what time is related to the UTPA claim leaves him with 52.0 hours. He thus requests \$20,280.00 in attorney fees at the \$390 hourly rate for that period, a total of \$37,557.00 for his work to date. As with Mr. Moskos' later work, it may make the most sense for the Court to wait until after it decides Defendant's set-off issue which the Court has reserved for later decision.

As to both timesheets, Mr. Fudenberg has already deleted any work he considers not sufficiently relevant. Some of that work is not shown in the timesheets.

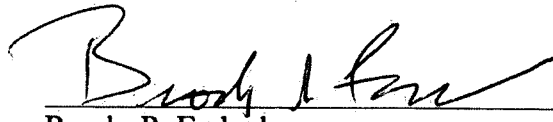
The Court should amend the judgment to add an award for Mr. Fudenberg's work and an award for Mr. Moskos' time since July 20, 2016, or issue a supplemental award doing so.

J. The denial of offer of judgment interest rests on misreading the statute's use of the word "verdict" as meaning "recovery."

K. The Order's calculation of pre-judgment interest is through October 10, 2016, but the judgment was not rendered until December 2, 2016. The award should therefore be increased by \$77.38 through the day of filing of the order, or \$71.84 through the date of signing of the order, further augmented by pre-judgment interest for any days between those dates and the filing of the amended order.

Conclusion. The Court should rule on the issues above that it has not yet ruled on; should correct the overlooking of Mr. Fudenberg's timesheets and issue a supplemental fee award accordingly; should dramatically increase the award for Mr. Moskos' time through July 20, and award fees for both attorneys from July 21, 2016 going forward, should require that the calculations that led to 218 hours being considered the only possible relevant time be made available to Plaintiffs, should award at least \$250,000.00 per Plaintiff of the jury's verdict of punitive damages, award judgment interest pursuant to Plaintiffs' Offer of Judgment, revise the pre-judgment interest calculation, and provide relief in regards to all the issues raised hereinabove.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Brooks R. Fudenberg", is written over a horizontal line.

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EXHIBIT 5

**DANIEL O'SHIELDS AND ROGER W. WHITLEY A PARTNERSHIP D/B/A O&W CARS v.
COLUMBIA AUTOMOTIVE COMPANY, LLC d/b/a Midlands Honda
Attorney's Fees For C. Steven Moskos**

June 29, 2011 through May 1, 2016

Date	Event	Time	Explanation	Time devoted to UTPA Claim	Estimated Time Arguably not part of UTPA Claim
6/29/2011	Review of Documents from Nationwide. Dictate correspondence to Florida DMV	.3	This case began with an investigation into the prior wreck damage found in the Civic. I had to find out if the car had been damaged, how extensive the damage was, and whether the vehicle's safety was an issue. I needed to be able to prove that the sale of the vehicle without disclosure was unfair and/or deceptive. The key to the case was going to be finding a willful and knowing deception by Midlands Honda and the facts surrounding that deception. Through the title history and communication with Ms. Gaskins, the prior owner of the vehicle, it was learned that Nationwide insured the vehicle and purchased it as a total loss. I contacted nationwide to find out if it had photographic evidence of the wreck and to acquire a copy of the repair estimate. The main focus was to show that Midlands Honda could not have missed the prior wreck damage in the vehicle.	.3	

6/29/2011	Telephone conference with Buck Daniel from Nationwide regarding Nationwide claim file	.1	I had to speak with someone at Nationwide to explain what I was looking for. Mr. Daniel was the Nationwide representative I dealt with.	.1	
3/16/2012	Prepare Complaint	1.3	I had to prepare the complaint based on the information I had available to me which included facts related to Nationwide which needed to be in the complaint regardless of whether Nationwide was a Defendant. There is no way to determine how much time was spent solely working on claims related to nationwide as most of the work related to setting forth the facts of the case.	.9	.4
12/2/2012	Work on Complaint	1.2	Same as above.	1.	.2
12/29/2012	Review of Complaint. Review File. Dictate amendments to the complaint.	1.3	Same as above.	1.	.3
1/11/2013	Review of Correspondence from Roger Whitley. Review of Complaint	.3	The next entries deal specifically with my contact with Midlands Honda through its counsel. The core issues in the case did not change even though Midlands Honda insisted on using North Carolina law. The question involved the deception and selling the vehicle at the auction without disclosure and the unfairness of the transaction to my clients.	.3	
2/14/2013	Telephone conference with Rob Reibold regarding the issues in the Complaint.	.2	Mr. Reibold called me regarding his representation of Midlands Honda. He stated he was trying to answer the complaint and wanted to know the difference in the value of the car on the date Plaintiffs purchased it. He also wanted the auction rules to see if there was anything that helped him. He also wanted to limit the damages to \$75,000 or less. He did not have any authority to settle the case at this time.	.2	

3/4/2013	Telephone conference with Roger Whitley. Dictate correspondence to Clay Walker	1.1	Discussion with Mr. Whitley regarding Midlands Honda's Answer wherein it denied knowledge of any prior wreck damage as well as Midlands Honda's desire to be sued under North Carolina law.	1.	.1
4/12/2013	Prepare Amended Complaint. Legal research regarding NC UTPA claim. Research of NC Statutes 20-305.1-fa	.7	Midlands Honda sought to dismiss Plaintiffs' South Carolina claims asserted against it. Research into the elements of the NC UTPA had to be done.	.7	
4/14/2013	Prepare Amended Complaint. Legal research regarding NC Statutes. Dictate correspondence to Robert Reibold. Prepare and send email to Robert Reibold and Sean Cox.	2.2	The allegations of the deceptive acts by Midlands Honda remained the same. The main work on the amended complaint dealt with properly asserting the elements of North Carolina's Unfair Trade Practices Act against Midlands Honda. Since Nationwide had answered, I was obligated to include Sean Cox in my communications with Mr. Reibold about amending the complaint. Therefore Mr. Cox was included as a recipient of the letter and the amended complaint both which were sent by email to the Defendant's attorneys. Both consented to my proposed amended complaint.	2.2	
4/16/2013	Prepare Order to Amend Complaint. Dictate email to opposing counsel regarding proposed Order.	.4	The motion to amend needed to be filed together with a proposed Consent Order allowing the amendment.	.4	
4/24/2013	Email prepared and sent to Robert Reibold regarding Consent Order to Amend Complaint.	.1	Consent had to be obtained from both attorneys in order to submit the Consent Order. Both defendants signed the Consent Order Plaintiffs' Amended Complaint; however, Mr. Reibold had inadvertently failed to send me his signature page. He permitted me to sign his name to the Consent Order.	.1	

5/1/2013	Review of correspondence to Client. Review of correspondence to Clerk of Court. Prepare Amended Complaint for court	.9	Same as above.	.9	
5/7/2013	Telephone conference with Roger Whitley regarding status of the case. Review file.	.6	Discussions with Mr. Whitley regarding the deceptive representations made by Midlands Honda and selling the vehicle at the auction. They also included how the auction worked and his damages. As	.6	
7/25/2013	Telephone conference with Patty Gay with Zurich Insurance about total loss of vehicle	.1	At this point, Midlands Honda's insurance company wanted to resolve the case. It claimed Midlands Honda did not know about the prior wreck damage and That the main culprit in the case was Nationwide insurance company. It became clear from Defendant's answer and permits insurance company that Midlands Honda was not taking any responsibility for deceiving my clients. It was clear Midlands Honda was going to claim ignorance of the wreck damage in the Civic, so a substantial amount of work would have to go into proving that the vehicle had been previously wrecked and that there was evidence of that damage that Midlands Honda's employees should have seen.	.1	
7/30/2013	Telephone call to Roger Whitley regarding the estimate.	.2	Discussions occurred regarding Midlands Honda's actions and its failure to follow the North Carolina damage disclosure law, thus, deceiving Mr. Whitley. The extent of the damage in the vehicle was also discussed.	.2	
9/25/2013	Review of subpoenas to Allstate, Adesa Charlotte, East Cooper Paint and Body, Honda Cars of Aiken, Honda of Columbia, and Hoover Chrysler Jeep.	.8	In an effort to prove the damage was visible, I attempted to get invoices from where the vehicle had been serviced. Unfortunately, this did not turn up any relevant information.	.8	

9/26/2013	Review of discovery subpoenas. Look for Sandra Gaskins.	1.4	I was still looking for proof that Midlands Honda knew about the prior wreck damage. I was trying to build up my evidence in that regard.	1.4	
10/1/2013	Telephone call to Linda McDonald at Honda of Columbia regarding subpoena.	.2	Honda of Columbia's response to my subpoena was insufficient. I was trying to find out if there was more information to show that Midlands Honda had been deceptive.	.2	
10/2/2013	Review of Plaintiffs' responses to Def Midland Honda's Requests for Production. Review of Plaintiffs' answers to Def Midland Honda's Interrogatories.	.9	Midlands Honda submitted extensive discovery requests. They are not limited to any particular cause of action and it is reasonable to assume that even if Plaintiffs had only sued under the UTPA, all of the discovery requests still would have been sent by Midlands Honda.	.9	
10/3/2013	Review of Answers to Interrogatories from PSC Automotive Group.	.6	Same as above	.6	
10/7/2013	Dictate email to Rob Reibold regarding motion to compel scheduled for 10-8-13. Review of invoices from Honda Cars of Columbia.	.2	This related to Midlands Honda's motion to compel. It was resolved so I did not have to travel to Columbia for the motion hearing.	.2	
10/9/2013	Dictate correspondence to Daniel O'Shields and Roger Whitley regarding scheduling of their depositions.	.2	While Nationwide had noticed the depositions of Plaintiffs, the depositions were to take place at the offices of Walker and Reibold. Therefore Midlands Honda's attorney would be present at the deposition and able to ask questions. Midlands Honda also received the benefit of the questions asked by Nationwide's attorney.	.2	
10/19/2013	Prepare Interrogatories and Requests for Production to Midlands Honda.	.7	I submitted my discovery requests to Midlands Honda to determine its knowledge of the prior wreck damage and to obtain any records it had Regarding the Civic.	.7	

10/20/2013	Review of interrogatories and Requests for Production going to Midlands Honda. Dictate correspondence to Clay Walker regarding Plaintiffs' discovery requests.	1.		1.	
10/21/2013	Prepare Interrogatories and Requests for Production to go to the Defendant Midlands Honda.	.8		.8	
10/28/2013	Telephone call to Judge Casey Manning regarding the reason for mediation being put off until April per his request. Dictate email to Rob Reibold and Sean Cox regarding conversation with Judge's secretary.	.3	Noticing that the date for mediation was approaching, the parties requested an extension of time to mediate so that discovery could be finished. It was expected that six months was enough time to complete the discovery process and to conduct the mediation. The parties jointly requested such relief from the court.	.3	
11/14/2013	Travel to meet clients for deposition preparation. Conference with Clients regarding deposition. Review of file, liability and damages in case with clients. Discussion of settlement of the case.	7.	I had moved my main office location. I still maintained a presence at 535 Stinson Dr., Charleston. I met Mr. Whitley there to prepare for his deposition wherein we discussed the deceptive acts of Midlands Honda. Of course, we had to review all of the facts and information which had been provided by both parties in order to be properly prepared.	6.5	.5

11/19/2013	Travel to and from Columbia for Depositions of Roger Whitley and Dan O'Shields. Attend depositions of Roger Whitley and Dan O'Shields. Conference with Roger Whitley and Dan O'Shields regarding depositions. Conference with Sean Cox and Clay Walker regarding production of documents to be able to settle the case. Travel 132 miles	8.3	I had to travel to Colombia for my clients depositions. Many of the questions asked by Nationwide's counsel are commonly asked at depositions such as my client's background, his education, former and current employment and what he knows about the facts of the case. The questions dealing specifically with Nationwide's liability were a few as Mr. Whitley knows little about South Carolina titling law and bad faith insurance practices.	7.3	1.
12/4/2013	Dictate email to defendants requesting documents responsive to October 2013 Requests for Production.	.1	Many times there were emails sent to Mr. Walker and Mr. Cox at the same time. This was one of those occasions. The email read, "Gentlemen, any word on when I might be able to get the documents I requested in October?" Neither Defendant had responded to my discovery requests.	.1	
12/16/2013	Dictate email to Clay Walker regarding their lack of discovery responses.	.2	Same as above.	.2	
2/10/2014	Dictate email to Sean Cox and Clay Walker regarding discovery responses.	.1	At this point, the April mediation deadline was looming. I still had not received discovery responses from the Defendants. I sent the following email, "Gentlemen, As of today, I still not received any discovery responses from you. I understand that Nationwide was used to have a protective order in place, but I need to discovery to prepare my case. Please forward your responses to me as soon as possible. Thank you."	.1	

2/19/2014	Dictate email to Defendants requesting their discovery responses by February 27.	.1	The same type email was sent on this occasion too.	.1	
2/27/2014	Dictate correspondence to Clay Walker regarding his client's failure to respond to discovery.	.2	Again I could not get responses from Midlands Honda. This letter was sent March 4, 2014.	.2	
4/30/2014	Telephone call to Judge Manning's office. Telephone conference with Sean Cox. Telephone conference with Judge Manning, Clay Walker and Sean Cox.	.5	This was the last day to mediate the case. The Court had notified the parties that a status conference was required. Judge Manning was not immediately available. Sean Cox and I discussed the case and the issues that concerned our clients. Mr. Walker was actually present before Judge Manning. When Judge Manning was available, Judge Manning made a conference call and we discuss the status of the case.	.2	.3
5/6/2014	Dictate email to Clay Walker to find out when he will send his discovery responses. Dictate email to Sean Cox regarding Adesa Auto Auction subpoena. Telephone Roger Whitley regarding case.	1.2	I still had not received Midlands Honda's discovery responses. I wrote to Mr. Walker to obtain his responses. I also discussed the status of the case with Mr. Whitley. I also knew that Mr. Cox had subpoenaed information from ADESA Auto Auction. I requested that information from him.	1.	.2

5/12/2014	Telephone call to Clay Walker regarding whether he will respond to Plaintiff's discovery. Telephone call to Sean Cox regarding Motion to Compel discovery from Midlands Honda. Dictate email to Clay Walker regarding Motion to Compel Hearing.	.8	This dealt with the underlying deception by Midlands Honda.	.6	.2
5/13/2014	Telephone call to Roger Whitley regarding Midlands' discovery responses.	.5	I discussed with Mr. Whitley the documents received from Midlands and their implication.	.5	
5/13/2014	Telephone conference with Charles Ecklund regarding his dealings with Midlands Honda.	1.7	I contacted Mr. Ecklund to find out if he had any records regarding his ownership of the vehicle and whether he ever notified Midlands Honda about the prior wreck damage.	1.7	
5/13/2014	Review of email from Clay Walker. Dictate email to Sean Cox regarding Midland Honda's discovery. Review of deal jacket from Clay Walker. Dictate email to Clay Walker regarding objections from Clay Walker. Dictate emails to Charles Ecklund regarding his dealings with Midland Honda. Dictate email to Judge Hood regarding motion hearing.	3.4	I reviewed the file produced by Midlands Honda and sent a copy to Mr. Cox to supplement my discovery responses. I also followed up with Mr. Ecklund to obtain any photographs and documents he had regarding the Civic. My motion to compel was now no longer needed. (See if Clay told Hood he would have documents to me within a certain period of time.)	3.3	.1

5/24/2014	Dictate email to Mr. Ecklund regarding photos of the car. Dictate correspondence to Clay Walker regarding his discovery responses.	.5	Again I had to follow up with Mr. Ecklund to obtain his photographs. I also wrote to Mr. Walker regarding****	.5	
5/30/2014	Dictate email to Clay Walker regarding discovery responses. Review of notes regarding requests for discovery responses from Midlands Honda.	.2		.2	
5/30/2014	Telephone call to Judge Hood's office regarding the status of the Consent Order regarding discovery.	.1	My motion to compel was directed towards Midlands Honda's failure to provide any discovery responses for six months.	.1	
5/30/2014	Review statutory law on punitive damages. Legal research on punitive damages limits.	.4			.4
5/30/2014	Telephone call to Charles Ecklund regarding the pictures he has and his deposition.	.3	I knew I needed Mr. Ecklund's testimony for trial as it was clear Midlands Honda did not intend to settle the case. I was trying to determine when Mr. Ecklund would be available as he did not live in South Carolina. I was concerned about the scheduling since there were three attorneys' and Mr. Ecklund's schedule which had to be accommodated.	.3	
6/4/2014	Review of correspondence and discovery responses from Clay Walker.	.4	Midlands finally provided discovery responses most of which related to liability for deceptive activity by Midlands Honda.	.4	

6/5/2014	Telephone call to Clerk's office to get a copy of Judge Hood's Order regarding Plaintiff's Motion to Compel. Dictate email to Clay Walker and Sean Cox regarding Judge Hood's Order regarding Plaintiff's Motion to Compel.	.2	I was trying to determine if the Court had signed the Consent Order requiring Midlands Honda to produce its records by May 23, 2014. This related to liability for the deceptive representations and actions Plaintiffs alleged.	.2	
6/10/2014	Telephone call to Patty Gay representing Midlands Honda regarding settling the case.	.1	Again Midlands Honda's insurance company was trying to resolve the case; however, it never made an offer to Plaintiffs. Instead it continued to point the finger at Nationwide.	.1	
6/13/2014	Review emails from Charles Ecklund regarding the pictures he had of the subject vehicle. Dictate email to Charles Ecklund regarding same.	.2	I reviewed the evidence from Mr. Ecklund showing that Midlands Honda new the Civic was a clipped car prior to selling it at the auction.	.2	
9/30/2014	Prepare list of depositions that need to be taken in the case.	.5	Nationwide was becoming more tangential in the case. The case against Midlands Honda was growing stronger. The focus of the trial needed to be on Midlands Honda and that became the focus of the litigation. The file was reviewed and the depositions necessary to strengthen the case were considered. These depositions involved Nancy Watkins, Charles Ecklund, Midlands Honda's 30(b)(6) representative, Scott Austen, Brent Farrell, and Randy Threatt.	.4	.1
10/20/2014	Dictate email to Clay Walker and Sean Cox regarding depositions in the case.	.2	I would have sent this communication solely to Mr. Walker had Mr. Cox not been an attorney in the case.	.2	

12/12/2014	Review of deposition notices for Ecklund, Austen, Farrell and Midlands Honda.	1.3	These were designed to determine Midlands Honda's knowledge of the prior wreck damage in the vehicle.	1.3	
12/13/2014	Telephone call to Charles Ecklund regarding setting up his deposition. Dictate email to Ecklund regarding setting up his deposition.	.2	Same as above.	.2	
12/19/2014	Telephone conference with Scott Austin regarding subpoena.	.3	Same as above.	.3	
12/19/2014	Telephone conference with Charles Ecklund regarding his deposition.	.2	Same as above.	.2	
12/23/2014	Telephone conference with Scott Austin regarding time to show up at his deposition.	.1	Same as above.	.1	
12/23/2014	Review file regarding depositions needed for trial.	.7	Same as above.	.7	
12/30/2014	Telephone call to Charles Ecklund. Dictate email to Charles Ecklund.	.1		.1	
12/31/2014	Dictate email to Sean Cox and Clay Walker about the deposition of Charles Ecklund.	.1		.1	

1/5/2015	Telephone conference with Sean Cox and Clay Walker regarding scheduling of the depositions and an Amended Scheduling Order. Telephone call to Charles Ecklund.	.4	I called Mr. Cox and discuss the status of the case. I then called Mr. Walker. Mr. Cox, Mr. Walker and I discussed taking the various depositions I needed for trial. We were not able to arrive at dates.	.3	.1
1/6/2015	Telephone conference with Charles Ecklund regarding his deposition. Telephone conference with Roger Whitley regarding expert testimony. Telephone conference with Bill Walkowiak regarding inspection of the car.	1.5	By contacted Mr. Ecklund about scheduling his deposition and what happened when he dealt with Midlands Honda. I then contacted Mr. Whitley about the need for an expert witness. I contacted Mr. Walkowiak in Charlotte. We discussed using Pack Brothers Body Shop at trial.	1.5	
1/7/2015	Telephone conference with Scott Austin regarding moving of deposition.	.1	Mr. Austin was the salesman who dealt with Mr. Ecklund When Mr. Ecklund returned the Civic to Midlands Honda. I contacted him to cancel his deposition and to reschedule it as Mr. Walker was unavailable to attend the deposition.	.1	
1/8/2015	Review of correspondence to opposing counsel and amended notices of taking depositions of Midlands 30b6, Scott Austin, Randy Threath and Brent Farrell.	.5		.5	
1/14/2015	Telephone conference Billy Walkowiak about the car.	.8	Mr. Walkowiak had inspected the vehicle. He discussed the damage found in the Civic, how easy it was to detect once the vehicle was raised off the ground, and the unsafe nature of the repairs.	.8	

1/14/2015	Review of notice of depositions for Ferrell, Austin, and Threatt. Review of Notice of Inspection of Midlands Honda. Review of 30(b)(6) notice of deposition regarding Midlands Honda.	.4	These depositions related to the witnesses that Midlands Honda. They were designed to show Midlands Honda's knowledge of the prior wreck damage and its deceptive representations at the auction.	.4	
1/14/2015	Telephone conference with Ronnie Pack with Pack Brothers Collision regarding his preliminary inspection of the car. Dictate and send emails to Ronnie Pack regarding discovery from the case.	1.4	Expert testimony regarding the damages to the vehicle was needed. Pack Brothers Collision was to supply that testimony.	1.4	
1/23/2015	Telephone conference with Clay Walker regarding settlement. Dictate correspondence to Clay Walker regarding settlement.	.3	Mr. Walker called asking for a settlement demand. I followed up our conversation with a letter setting forth my client's demand.	.3	
1/23/2015	Telephone conference with Gene Wheeler, attorney for ADESA Auto Auction. Dictate email to Gene Wheeler regarding ADESA's 30b6 deposition witness.	.8	I needed to obtain ADESA Auto Auction's records regarding The Civic. I contacted ADESA's GENERAL Counsel to obtain the records.	.8	
1/23/2015	Telephone conference with Clay Walker regarding resolution of the case.	.1	I reviewed the file and gave him a demand. Mr. Walker did not have an offer to make to my client.	.1	

1/24/2015	Prepare for depositions of Midlands Honda Witnesses.	.6	The main goal was to have Midlands Honda's witnesses admit they knew the car had been "clipped" before it was sent to the auction and that they willfully and knowingly misrepresented the vehicle at the sale.	.6	
1/25/2015	Prepare exhibits for depositions. Work on deposition questions for ADESA 30b6 rep, Brent Ferrell, Scott Austin.	4.1	Same as above.	4.1	
1/26/2015	Dictate offer of judgment to Midlands Honda.	.2	Midlands Honda had sent a general offer of judgment. I believed that North Carolina follows the same election of remedies rule that South Carolina does. In other words my clients could receive a judgment for actual and punitive damages under a fraud cause of action and attorney's fees under their UTPA claim. I submitted my client's offer of judgment based on this very.	.1	.1
1/27/2015	Review file for documents to use during the depositions of Midlands Honda. Work on deposition questions for Midlands Honda, Threatt, and Ferrell's deposition.	2.4	Again I had to prepare for the depositions to be able to prove Midlands Honda willfully and knowingly deceived my clients.	2.4	
1/28/2015	Travel to Columbia for and attend deposition of Midlands Honda's 30b6 representative. 142 miles.	9.7	See above.	9.7	
2/4/2015	Telephone conference with Roger Whitley regarding depositions.	.7	I discussed with Mr. Whitley the impact of the depositions on his case.	.7	

3/6/2015	Telephone call to Ken Levinson in Chicago to set up deposition of Charles Ecklund. Telephone call to Charles Ecklund to set up deposition. Telephone call to Clay Walker to set up depositions.	.2	I needed a location to depose Mr. Ecklund rule had moved to Chicago. I also needed to set up the deposition of Mr. Ecklund with Mr. Walker.	.2	
3/12/2015	Work on direct examination of Roger Whitley, Charles Ecklund and Nancy Watkins.	2.1	This matter was expected to appear on the trial roster. I began drafting trial testimony.	2.1	
3/13/2015	Work on direct of Nationwide.	.4		.4	
3/25/2015	Review of deposition notices to Austin, Threatt, Ferrell and Watkins. Review of deposition notice regarding Austin, Threatt, Ferrell and Watkins.	.4		.4	
3/26/2015	Dictate email to Charles Ecklund to set up time to take his deposition.	.2		.2	
4/1/2015	Telephone conference with Roger Whitley regarding status of the case.	.8		.8	
4/6/2015	Telephone conference with Clay Walker regarding scheduling for depositions.	.5		.5	
4/8/2015	Review emails from Clay Walker. Prepare Consent 40(j) Order.	.3	The Parties discussed how to proceed in light of a trial date and discovery.		.3

4/9/2015	Telephone conference with Clay Walker regarding depositions. Dictate notice of deposition for Brent Farrell. Work on preparing for deposition of Scott Austin. Telephone conference with Randell Threatt regarding postponing his deposition. Work on preparing for deposition of Nancy Watkins.	3.	At this point, the claims against Nationwide had been resolved. The claims going forward against Midlands Honda related to the willful and knowing deception and unfair conduct of Midlands Honda towards the Plaintiffs. The subject depositions were needed to obtain evidence to prove these contentions.	3.	
4/10/2015	Dictate email to Charles Ecklund regarding deposition notice. Finish preparing for Depositions of Scott Austin and Nancy Watkins.	.8	See above.	.8	
4/10/2015	Travel to and from Columbia for depositions of Austin and Watkins. Attend depositions of Austin and Watkins.	6.4	See above	6.4	
4/15/2015	Dictate correspondence to Judge Manning regarding trial during the week of April 20, 2015. Dictate email to Judge Manning, his clerk, Clay Walker and Sean Cox regarding trial during the week of April 20, 2015.	.4	The case was coming up for trial. Mr. Walker requested the case not be tried before July 27. I agreed with him and joined in his request.	.4	

4/22/2015	Prepare for Depositions of Threatt and Farrell.	1.3	See above regarding depositions. These depositions had to be rescheduled several times due to various conflicts.	1.3	
4/22/2015	Telephone conference with Attorney Bert Utsey regarding discovery issues.	.3	Discussion regarding trial testimony of Nationwide.	.3	
4/22/2015	Conference call with Sean Cox and Gary Boykin regarding Nationwide's testimony for trial.	.5	With the trial coming up, I needed Nationwide to provide testimony regarding the photographs and the estimate of repairs. This would go to the extent of the damages, their obviousness, and the safety of the vehicle which would impact the value of the Civic.	.5	
4/23/2015	Travel to Clay Walker's office for depositions of Brent Ferrell and Randy Threatt. Attend depositions of Brent Ferrell and Randy Threatt.	6.3	See above regarding discovery depositions of Midlands Honda's witnesses.	6.3	
5/24/2015	Dictate email to Charles Ecklund regarding deposition date.	.2	I was finally able to set up Mr. Ecklund's deposition. Additionally it became evident that Midlands Honda would not offer a reasonable settlement amount. Therefore I knew I was going to have to try this case. I needed Mr. Ecklund's testimony to counter that of Mr. Farrell and Mr. Threatt.	.2	
6/2/2015	Telephone call to Charles Ecklund. Dictate email to Charles Ecklund.	.2	Same as above.	.2	
6/5/2015	Telephone call to Clay Walker regarding deposition of Charles Ecklund, mediation, deposing ADESA Auto Auction, and supplementing discovery.	.4	Same as above.	.4	

6/7/2015	Review of file. Work on setting up deposition of Charles Ecklund. Work on Supplemental Answers to Midland Honda's Interrogatories. Dictate letter to Clay Walker regarding photographs from Ecklund and Whitley. Prepare amended Notice of taking deposition of ADESA Auto Auction.	2.3	Same as above.	2.3	
6/29/2015	Prepare for deposition of Charles Ecklund in Chicago. Dictate email to Frank Stocker, the videographer for Mr. Ecklund's deposition. Review of Midlands Honda's Motion to Amend its Answer and Supplemental Interrogatories. Legal research regarding additional defenses sought to be added to Midlands' Answer.	.9	Same as above. Midlands Honda then wanted to amend its answer to include certain UCC defenses.	.3	.6

6/30/2015	Pick up photos from Kinko's for Ecklund Deposition. Review exhibits for Ecklund Deposition. Dictate correspondence to Clay Walker regarding photos for Ecklund Deposition. Review file to prepare exhibits for use at trial.	1.4	See previous entries above regarding the need for Mr. Ecklund's testimony.	1.4	
7/1/2015	Prepare for Deposition of Charles Ecklund. Review of email from Clay Walker.	.8	Same as above.	.8	
7/2/2015	Work on Ecklund's deposition questions. Review file for exhibits to Ecklund's deposition. Travel to airport and Chicago.	4.3	Same as above.	4.3	
7/3/2015	Prepare for deposition of Charles Ecklund. Conference with Charles Ecklund and Clay Walker. Attend deposition of Charles Ecklund. Travel to Charleston from Chicago. Work on summarizing Scott Austin's deposition.	12.6	Same as above. Believing the trial was coming up; I began preparing by summarizing Mr. Austin's deposition.	12.6	
7/6/2015	Work on Summarizing Scott Austin's deposition.	.3	See above.	.3	
7/8/2015	Review of Scott Austin's Deposition.	2.	See above.	2.	

7/9/2015	Review Nancy Watkins deposition.	.6	The same goes for the need to summarize Ms. Watkins' deposition.	.6	
7/10/2015	Telephone conference with Jeff Grady regarding the deposition of ADESA Auto Auction. Review names of potential mediators. Telephone conference with Dave Maxfield regarding mediators.	1.4	I still needed the deposition of ADESA and was trying to set that up. Mr. Walker had previously emailed me regarding mediating this case. I was attempting to find someone I felt comfortable with who could mediate this case.	1.4	
7/13/2015	Telephone conference with Tommy Lydon regarding mediation of the case.	.2	I contacted Tommy Leiden in Columbia to see if he would be willing to mediate this matter.	.2	
7/16/2015	Dictate email to Jeff Grady, attorney for ADESA Auto Auction. Telephone conference with Court Reporter in Chicago regarding Ecklund Deposition. Telephone call to Jeff Grady regarding deposition of ADESA.	.5	I was still trying to make sure all the arrangements with ADESA had been made. Again the object of ADESA's testimony was to prove a willful and knowing deception perpetrated by Midlands Honda.	.5	

7/17/2015	Telephone conference with Clay Walker regarding mediation and deposition of ADESA. Telephone conference with Roger Whitley regarding mediation, status of the case, facts of the case. Telephone conference with Thomas Lydon to set up the mediation.	1.2		1.2	
7/17/2015	Telephone call to Tommy Lydon's office regarding mediation.	.1		.1	
7/18/2015	Dictate email to Clay Walker regarding deposition of ADESA Auto Auction on July 29.	.1		.1	
7/19/2015	Review and synopsise Randy Threatt's deposition.	3.6	Again thinking that the case might be up for trial shortly, I began reviewing Mr. Threatt's deposition.	3.6	
7/22/2015	Telephone call to Clay Walker about rescheduling the deposition of ADESA. Telephone conference with Jeff Grady regarding the deposition and the documents to be produced by ADESA. Dictate email to Tommy Lydon regarding the mediation in the case.	1.	ADESA requested its deposition be rescheduled. I did what I could to accommodate it and its witnesses.	1.	

7/23/2015	Telephone call to Clay Walker to see if he will agree to move the ADESA Auto Auction deposition to Tuesday from Wednesday. Dictate email to Clay Walker to see if he will agree to move the ADESA Auto Auction deposition to Tuesday from Wednesday.	.1	See above.	.1	
7/24/2015	Telephone call to Jeff Grady regarding the ADESA 30b6 deposition. Work on photos of ADESA Auto Auction from Google. Prepare for deposition of ADESA. Dictate email to Jeff Grady regarding the ADESA 30b6 deposition.	1.8	See above.	1.8	
7/25/2015	Dictate email to Court Reporter regarding SCRCP Rules on videotaped depositions. Review of documents for ADESA Auto Auction Trial Deposition. Review file. Pull exhibits for ADESA Auto Auction Trial Deposition. Work on questions for ADESA Auto Auction Trial Deposition.	5.4	See above regarding testimony to prove Midlands Honda used unfair trade practices and selling the vehicle and deceived the Plaintiffs into buying the Civic.	5.4	

7/26/2015	Prepare Exhibits for photocopying. Organize files for deposition of ADESA Auto Auction. Legal research regarding Midlands Motion for Summary Judgment.	.7	See above. Midlands Honda's motion for summary judgment dealt with legal issues outside of the unfair trade practice act; however the facts relating to the issues in the summary judgment motion supported Plaintiffs' unfair trade practices claims.	.4	.3
7/26/2015	Work on questions for ADESA 30b6 deposition. Prepare for Deposition of ADESA Auto Auction. Review of ADESA Auto Auction Terms and Conditions. Review of file. Dictate email to Clay Walker regarding Google Photographs. Dictate email to Jeff Grady regarding documents for ADESA's deposition. Legal research.	7.1	See above regarding deposition of ADESA.	7.1	

7/27/2015	Travel to Charlotte for deposition of ADESA Auto Auction 30b6 witness. Telephone conferences with Jeff Grady. Travel to ADESA to view the scene. Travel to Pack Bros. to look at the car and to discuss the case with Brian Allen. Conference with Roger Whitley regarding case and deposition. Work exhibits for deposition. Review of questions for deposition.	9.6	See above regarding deposition of ADESA. I also examined the car and discussed the dangerous condition of the vehicle with Brian Allen, the expert who testified at trial.	9.6	
7/28/2015	Travel to Jeff Grady's office. Attend video deposition of ADESA's 30b6 representative Joe Guyer. Conference with Roger Whitley. Travel to Charleston. Round trip 449 miles.	8.3	See above regarding deposition of ADESA.	8.3	
8/1/2015	Prepare for Mediation. Prepare Pretrial Brief. Legal research regarding NC Unfair Trade Practices Statute.	6.8		4.8	2.

8/2/2015	Work on Pretrial Brief. Legal Research regarding economic loss rule and Unfair Trade Practice Claims. Work on Directed Verdict Motion	5.4	Expecting the case to be tried, I began preparing for same. Defendant summary judgment motion involved the economic loss rule. Defendant claimed the economic loss rule defeated Plaintiffs' negligence, negligent misrepresentation, fraud, and violation of North Carolina's unfair trade practices act claim. Extensive research needed to be done on this issue to be able to defeat defendant summary judgment motion and the expected directed verdict motion.	1.	4.4
8/3/2015	Telephone conference with Roger Whitley. Legal research	1.2	I was preparing for the mediation.	.6	.6
8/3/2015	Legal research regarding punitive damages. Dictate correspondence to Tommy Lydon for the Mediation. Dictate email to Jeff Grady attorney for ADESA Auto Auction to obtain the Personal Guaranty and Dealer Acknowledgment Form signed by Midlands Honda.	1.4	I believe that a jury could be greatly offended by the conduct of Midlands Honda. North Carolina's punitive damages statute is different than South Carolina's. I needed to understand it and its impact on this case. Additional information was needed from ADESA regarding Midlands Honda's account with the auction. This information was needed to establish the auctions agency relationship with Midlands Honda.	.4	1.
8/4/2015	Travel to and from Columbia for mediation. Attend mediation. Conference with Roger Whitley. 222 miles	7.9	The mediation did not deal specific causes of action. The facts showing defendant's deception were discussed; however, no settlement was reached.	5.	2.9

8/5/2015	Telephone conference with attorney regarding status of case and how to approach case based on facts and status of the case.	1.		1.	
9/1/2015	Prepare Plaintiffs' Second Supplemental Responses to Defendant PSC's interrogatories.	.6	Plaintiff's second supplemental responses to interrogatories dealt with adding Mr. Allen as an expert witness to testify whether Midlands Honda's mechanics should have seen the damage, the extent of the damage, the nature of the repairs and the safety of The Civic.	.6	
9/2/2015	Telephone conference with Brian Allen regarding his expert testimony.	.4	See above.	.4	
9/11/2015	Dictate email to Jeff Grady, attorney for ADESA Auto Auction, regarding documents signed by Midlands Honda. Review file for ADESA documents signed by Midlands Honda.	.3	I was trying to obtain documents which would show that the auction was the agent for Midlands Honda for the purposes of marketing and selling the Civic.	.3	
9/14/2015	Telephone call to Clay Walker regarding deposition of Service Manager.	.1	Midlands Honda still would not accept liability. In an effort to establish a Midlands Honda's knowledge of the damage to the vehicle and the extent of the damage, I wanted to speak to Midlands Honda service manager.	.1	
9/16/2015	Review of Brent Farrell's deposition in preparation for summary judgment motion.	.4	Defendant's motion for summary judgment was unique in that it sought to exclude evidence which was to be used at trial to prove Plaintiffs' unfair trade practices claim. A review Mr. Farrell's deposition to see if I could use his testimony to defeat Defendant's motion.	.4	

9/17/2015	Dictate Request to Admit to Midlands Honda. Telephone conference with Jeff Grady regarding the Dealer Acknowledgement Form signed by Midlands Honda. Dictate Second Requests for Production. Dictate correspondence to Clay Walker re Requests to Admit and 2nd Requests for Production. Telephone conference with Clay Walker regarding deposition of Service Manager. Dictate correspondence to Clay Walker re Supplemental Response to Defendant Midlands' Interrogatories. Dictate email to Brian Allen with Pack Brothers Collision Center sending documents regarding car.	1.1	Plaintiff's request for emissions and second request for production dealt with the issue of Defendant's representations to Plaintiffs. Plaintiffs second supplemental answers to Midlands interrogatories related to Mr. Allen and the disclosure of Mr. Allen as an expert witness.	1.1	
9/20/2015	Review of deposition of Brent Farrell for summary judgement motion.	1.6	See above.	1.6	
9/21/2015	Review of deposition of Brent Ferrell for summary judgment motion and trial.	3.1	See above.	3.1	

9/28/2015	Work on Brief Opposing Motion for Summary Judgment. Legal research regarding Economic Loss Rule, summary judgment standard, contributory negligence.	5.8	Midlands Honda's motion for summary judgment dealt with the North Carolina damage disclosure form, the economic loss rule, the constructive fraud claim, and contributory negligence. The damage disclosure form and the economic loss rule issues related to the entire complaint as the damage disclosure form went to the deceptive representations in the economic loss rule dealt with whether any claim other than a breach of contract could be asserted. Quick research indicated that constructive fraud was not a viable claim and therefore should be withdrawn. North Carolina law is clear that contributory negligence is a jury issue.	3.	2.8
9/29/2015	Work on Brief Opposing Motion for Summary Judgment.	5.1	Same as above.	2.	3.1
9/30/2015	Work on Brief Opposing Summary Judgment. Prepare for Motion for Summary Judgment hearing. Legal research regarding economic loss rule. Review depositions of Nalewaj, Guyer, Whitley and Ecklund. Dictate email to Judge Gee. Review of Motion to Amend Answer. Legal research regarding amendment of Answer.	8.1	Same as above	2.	6.1
10/10/2015	Telephone conference with Roger Whitley regarding status of the case.	.4	Discussion of moving forward in the case, preparing for trial, and the need for an expert.	.4	

10/15/2015	Review email from Clay Walker regarding his response to my last discovery requests. Dictate email to Clay Walker regarding his response to my last discovery requests and setting up depositions.	.2	Midlands Honda still denied any wrongdoing at the auction. I still needed to make sure the agency relationship existed between Midlands Honda and the auction.	.2	
10/22/2015	Telephone conference with Brooks Fudenberg regarding economic loss rule brief.	.2	I knew the economic loss rule would be raised again and wanted to be prepared.		.2
10/25/2015	Review of deposition of Greg Nalewaja. Prepare synopsis of deposition of Greg Nalewaja.	2.6	Mr. Nalewaja's deposition is nearly 250 pages long. Mr. Nalewaja was not cooperative during his deposition and continuously provided evasive answers to even straightforward questions. Reviewing his deposition was time-consuming as I had to determine what could be used at trial to prove Midlands Honda had acted unfairly and deceptively.	2.6	
10/29/2015	Review of Nalewaja's deposition. Investigate Regina Salinas.	.5	Same as above.	.5	
11/4/2015	Telephone conference with Brooks Fudenberg regarding Attorney's fees under NC Law.	.4	I knew the issue of attorney's fees under the UTPA was going to be contentious. I wanted to make sure I was moving for the appropriate way.	.4	
12/13/2015	Review and synopsis of Nalewaja's deposition.	3.2	Same as above.	3.2	
12/14/2015	Review of 249 page deposition of Nalewaja as Midland's 30b6 representative	1.5	Same as above.	1.5	

12/15/2015	Review deposition of Nalewaja 153-157.	.4	Same as above	.4	
12/15/2015	Review of 249 page deposition. Pages 145-152	.5	Same as above.	.5	
12/16/2015	Review of deposition of Nalewaja pages 158-176.	1.3	Same as above.	1.3	
12/17/2015	Review deposition of Nalewaja pages 177-189.	1.	Same as above.	1.	
12/19/2015	Work on review of deposition of Nalewaja pages 190-243.	2.8	Same as above.	2.8	
12/20/2015	Review of Nalewaja deposition page 243-249. Prepare for trial. Work on to do list.	1.2	Same as above.	1.2	
12/28/2015	Review of deposition of Charles Ecklund for use at trial. Telephone conference with Justin Kahn regarding evidence issues. Begin work on closing argument. Begin working on ADESA Auto Auction Deposition Trial Testimony.	4.1	The video testimony of Mr. Ecklund and Joseph Guyer needed to be edited and the transcript sections provided to opposing counsel prior to trial. Their testimony was necessary to show Midlands Honda's knowledge of the damage to the vehicle, knowledge of the safety issues present in the vehicle, the deceptive representations made to play to us in light of Defendant's knowledge and the various duties that were breached by Defendant.	4.1	
12/29/2015	Work on trial testimony of Joseph Guyer. Review deposition and video tape of the deposition for line and page numbers.	4.2	Same as above.	4.2	

12/30/2015	Work on deposition/trial testimony of Joseph Guyer/ADESA Auto Auction.	.7	Same as above.	.7	
1/7/2016	Review of law regarding confidentiality of mediations and interplay with NC fee shifting statute.	.8	Midlands Honda's defense in this case had been fierce. I knew every issue was going to be contested especially the attorney's fee provision under the UTPA. Trial again was looming and that needed to be prepared to deal with the attorney fee issue.	.8	
1/7/2016	Work on attorney fee issue regarding NC Gen Stat Sec 75-61.1.	1.	Same as above.	1.	
1/9/2016	Telephone conference with Roger Whitley regarding status of the case, date of trial and dental issues.	.5	Mr. Whitley had dental issues which were going to require surgery. This would prevent a trial from going forward. We discussed how to proceed.	.5	
1/14/2016	Legal Research regarding UCC 2-314.	.6	Research was conducted based on Defendant's recently amended answer which included certain UCC defenses.		.6
3/1/2016	Work on legislative history of NC Code 20-71.4. Telephone NC General Assembly regarding legislative history of NC Code 20-71.4.	1.	Plaintiffs' use of the North Carolina damage disclosure form had already been attacked by Defendant. I needed it to show the deceptive conduct of Defendant.	1.	
3/2/2016	Telephone Matt Norris about the legislative intent behind the damage disclosure form.	.3	Same as above.	.3	
3/23/2016	Prepare for Trial. Work on to do list. Prepare cross for Nancy Watkins. Work on Outline for the case.	1.4	I began preparing for trial which I knew would be hotly contested. I was not sure who Midlands Honda would call in an effort to escape liability which was still being strongly denied by Midlands Honda.	1.4	

3/25/2016	Telephone conference with Roger Whitley regarding continuance. Telephone conference with Clay Walker regarding continuance. Work on the outline of the case. Review emails regarding case. Review of ADESA Auction Rules and NAAA Arbitration Policy of Jan 2011. Review of emails.	4.	For trial preparation regarding establishing liability for the unfair and deceptive representations made about the Civic.	4.	
3/28/2016	Review of correspondence in case.	.6	Same as above.	.6	
3/28/2016	Review of correspondence between the parties.	.4	Same as above.	.4	
3/31/2016	Legal research regarding disclosure of prior wreck damage. Review of Auction Rules and violations by Defendant.	1.9	Same as above.	1.9	
4/3/2016	Review of Rules from the ADESA Auto Auction. Review of Dan O'Shield's deposition. Summarize Dan O'Shield's deposition.	1.2	Same as above.	1.2	
4/4/2016	Review of file for exhibits. Work on direct of Roger Whitley.	1.6	Same as above.	1.6	

4/4/2016	Work on trial preparation. Send out subpoenas to witnesses. Telephone call to Jamie Flynn regarding Nationwide's testimony. Work on Opening Statement.	2.	Same as above. Nationwide was no longer a party. Therefore, a Nationwide representative had to be subpoenaed to trial to establish the wreck, the extent of the damage to the vehicle and to introduce the photographs of the car after it was wrecked. Getting Nationwide to cooperate and accept a subpoena was difficult.	2.	
4/5/2016	Work on pretrial Brief.	.7	I began the pretrial brief to set forth the various unfair and deceptive practices of Midlands Honda regarding the Civic.	.7	
4/5/2016	Work on Second Amended Complaint. Dictate correspondence to Clay Walker regarding Second Amended Complaint. Telephone call to Clay Walker to discuss consent to file Second Amended Complaint. Work on pretrial brief. Legal research regarding negligent misrepresentation. Telephone calls to James Flynn regarding Nationwide attending trial. Dictate email to James Flynn regarding Nationwide attending trial. Work on Direct of Nationwide Representative for trial. Work on reviewing file to prepare for trial. Review of certain exhibits.	5.4	Midlands Honda had previously notified me that it was not properly identified in the caption. Additionally Nationwide was no longer in the litigation. Therefore, I amended the complaint to accurately reflect the correct name of Midlands Honda and the allegations of deception against it. Midlands Honda had made it clear that it would be contesting every issue of liability and making claims that Plaintiff's claims failed as a matter of law. Therefore I had to determine if the claim of negligent misrepresentation existed for this type of case.	4.4	1.

4/6/2016	Review of title histories. Review of documents from Roger Whitley. Review of documents from Nationwide Insurance Company. Telephone call to Jamie Flynn regarding subpoena to Nationwide. Determine how to subpoena Nationwide to trial. Telephone Atlanta office of Goodman McGuffey Lindsey and Johnson to have Nationwide served. Review of emails regarding Sean Cox' agreement to produce Nationwide at trial. Telephone conference with Process Server regarding subpoenas to Ferrell and Threath. Review of Defendant Midlands Honda's discovery responses. Work on Motion in Limine.	3.6	Again work was being done to ensure liability could be proven at trial regarding Defendant's knowledge of the damage to and the unsafe nature of the Civic.	3.6	
4/6/2016	Work on Motion in Limine. Review of file and documents.	1.3	The motion in limine was to bring to the court's attention possible evidentiary objections and other issues. Except for Defendant's net worth, the other issues related to the UTPA claim.	1.	.3

4/6/2016	Review file. Work on Cross of Nalawaja.	.8	I expected Mr. Nalawaja to contest every duty imposed by the North Carolina damage disclosure form, the auction rules, and North Carolina common-law. His testimony was expected to be important regarding whether Midlands Honda had acted deceptively and unfairly.	.8	
4/8/2016	Telephone conference with Brian Allen at Pack Brothers regarding testimony at trial. Dictate emails to Brian Allen regarding trial.	.5	Mr. Allen was important to Plaintiffs' ability to explain to the jury the damage which had been done to the Civic and the safety issues related to its repair. This testimony would help in establishing value of the vehicle on the day the Civic was purchased by Plaintiffs.	.5	
4/8/2016	Dictate email to James Flynn, attorney for Nationwide, regarding acceptance of service of the trial subpoena for Nationwide. Legal research regarding punitive damages.	1.1	Again, I was attempting to ensure that Nationwide would be present at the trial. Punitive damages under fraud were also going to be an issue even though Midlands Honda did not think it had done anything to warrant the imposition of punitive damages against it.	.1	1.
4/9/2016	Telephone call to Roger Whitley. Dictate email to Clay Walker regarding Deposition page and line numbers for Guyer and Ecklund. Review of Guyer's deposition for use at trial. Telephone conference with Roger Whitley.	3.5	See above regarding preparation of video deposition page and line designations and their use at trial.	3.5	

4/10/2016	Review of ADESA Auto Auction deposition for use at trial. Review of page and line designations and video tape locations. Dictate email to Clay Walker sending deposition designations for Charles Ecklund and ADESA Auto Auction to be used at trial.	4.6	Same as above.	4.6	
4/10/2016	Legal research regarding use of video depositions at trial.	1.8	The videotaped deposition was expected to be crucial to establishing Defendant's knowledge of the prior wreck damage, especially in light of Mr. Farrell's and Mr. Threatt's lack of memory in dealing with the Civic and Mr. Ecklund. Defendant's knowledge of the "clipped" nature of the vehicle was essential to proving that Midlands Honda had acted unfairly and deceptively and selling the vehicle at the auction without disclosing said damage.	1.8	
4/10/2016	Work on Direct of Brian Allen.	.3	See prior description of Bryan Allen's testimony re: deceptive representations	.3	

4/11/2016	Continue work on Brian Allan's trial questions. Telephone conference with Roger Whitley regarding Dan O'Shields heart surgery. Work on Opening statement. Telephone conference with Kevin Ivey with Nationwide Insurance. Work on Direct of Nationwide Insurance's 30b6 representative. Work on Cross of Nancy Watkins. Work on Voir Dire.	5.8	Same as above. The efforts to have nationwide testify continued. Trial preparation continued in an effort to show the deceptive practices of Midlands Honda.	5.8	

4/12/2016	Review email from Jamie Flynn. Telephone conference with Jamie Flynn regarding testimony of Nationwide. Telephone conference with Kevin Ivey. Legal research regarding proof of punitive damages. Legal research regarding post trial analysis of punitive damages. Legal research regarding procedural aspect of punitive damages. Review of Objections and counter-designations of video testimony of Ecklund and Guyer. Begin review of evidence law regarding video depositions.	5.1	See prior references to Nationwide's testimony above. The legal issues surrounding punitive damages were becoming more important. Mr. Walker had provided me with his counter-designations regarding Mr. Ecklund and Mr. Guyer's video depositions. These had to be reviewed and objections dealt with.	3.6	1.5
4/12/2016	Work on Stipulation regarding testimony of Nationwide. Work on Pretrial Brief. Review of Ratification. Work on procedural nature of punitive damages cap.	2.3	Nationwide still did not want to provide a witness. Mr. Flynn sought to have Nationwide testify by stipulation. He requested that I prepare a stipulation which he would present to Mr. Walker. I prepared the stipulation which was rejected by Mr. Walker. I continue to work on the legal issues in the pretrial brief. The question of whether or North Carolina or South Carolina law applied to the various aspects of this case continued. I was sure the question of whether punitive damages were substantive or procedural would come up a trial and needed to be addressed.	1.9	.4

4/13/2016	Prepare for trial. Work on Cross of Randy Threatt. Work on Brief regarding substantive v procedural aspect of punitive damages statute. Telephone conference with Leon Bouknight regarding excerpts of video depositions. Telephone conference with Jamie Flynn regarding subpoena to and testimony of Nationwide.	6.8	Same as above regarding punitive damages. I still had to coordinate playing the various parts of the videotaped depositions. I needed Mr. Bouknight's help for that. See above regarding Nationwide's testimony.	5.9	.9
4/14/2016	Work on Cross of Randy Threatt. Prepare Cross of Brent Ferrell. Review of Roger Whitley's deposition.	1.6	Mr. Threatt and Mr. Farrell no longer work for Midlands Honda. Their testimony would largely be directed towards liability and the deceptive conduct and practices utilized by Midlands Honda.	1.6	
4/14/2016	Prepare for trial. Review documents for exhibits. Work on issues for trial, including introduction of exhibits, punitive damages issues and evidentiary issues. Dictate email to Clay Walker regarding Midlands Honda's Dealer Financial Statement – Balance Sheet for 2014 and 2015.	1.7	The exhibits were needed to show Midlands Honda's duties as well as its deceptive conduct. Issues relating to punitive damages and proof of same also had to be worked on.	.6	1.1

4/14/2016	Review of Exhibits from Nalawaja (30b6) deposition. Legal research on economic loss rule.	1.1	I needed to make sure that I had all the exhibits necessary to properly question Midlands Honda's 30(b)(6) representative. I expected the economic loss rule to be argued by Midlands Honda and I needed to prepare for its argument.	.1.1	

4/15/2016	Pull Guyer and Ecklund Depositions regarding use of depositions at trial. Telephone conference with Brian Allen. Review of email from Brian Allen. Telephone conference with Jamie Flynn regarding Nationwide's testimony. Work on reducing exhibits for trial. Telephone conference with Jamie Flynn and Kevin Ivey. Work on organization of the Exhibits. Dictate Plaintiffs' Response to Defendant's Supplemental Interrogatories. Review of Defendant's Answer to Plaintiffs' Second Amended Complaint. Review of Defendant's Motion to Compel. Review of Defendant's Motion to Dismiss. Work on Brief Opposing Defendant's Motion to Dismiss. Legal research regarding Negligent Misrepresentation. Breeden and River's Edge Reviewed. Begin working on Jury Instructions, negligent misrepresentation and fraud.	12.5	See above regarding videotaped deposition testimony of Guyer and Ecklund, and the in-person testimony of Mr. Allen and Nationwide. April 15 was the Friday before the trial. Defendant had filed several motions to which I had to respond. One dealt with compelling the confidential settlement with Nationwide. The second was a motion to dismiss which again dealt with the North Carolina damage disclosure form in its applicability to the case as well as whether North Carolina recognized a claim for negligent omission. Plaintiffs had to prepare supplemental discovery responses and prepare for Defendant's motion to dismiss. Midlands Honda was attempting to remove the duties imposed by North Carolina law from the case. This directly affected the unfair trade practice claim. Plaintiffs also had to review Midlands Honda's answer to Plaintiffs' second amended complaint which was also filed on April 15.	5.	7.5

4/16/2016	Travel to Kinko's to order photos and blowups for trial. Travel to Office Depot to pick up supplies for trial. Partial review of Roger Whitley's deposition. Work on Pretrial Brief. Work on Brief Opposing Defendant's Motion to Dismiss.	11.6	Again I was preparing the case to prove liability and damages for Midlands Honda's deceptive acts and practices.	11.6	
4/17/2016	Finalize blowups. Pickup exhibits from Kinko's. Travel to Columbia. Telephone conference with Roger Whitley. Conference with Roger Whitley. Finalize Pretrial Brief. Review of arguments regarding video depositions. Telephone Leon Bouknight regarding video depositions. Review of deposition of Roger Whitley. Conference with Roger Whitley to prepare for trial testimony.	14.7	This activity was related to proving the deceptive acts and practices by Midlands Honda and its violations of its duties under North Carolina law, the auction rules, and the common law.	14.7	

4/18/2016	Travel to and from court. Attend docket sounding in jury qualification. Attend pretrial motion hearings. Conduct opening and direct examination of Nationwide. Conference with client to prepare for direct examination. Review of Charles Ecklund's deposition page and line numbers to present to the jury. Dictate email to Leon Bouknight to complete deposition testimony. Work on Cross of Brent Ferrell and Randy Threatt.	13.2	The trial started. Proving the extent of the damage to the Civic and Midlands Honda's knowledge of the prior wreck damage were the primary focus of the first day of trial. After trial concluded, I continue to prepare for Mr. Farrell Mr. Threatt's testimony regarding the unfair trade practices they used in handling and selling the Civic and the representations they made on behalf of Midlands Honda at the auction.	13.2	

4/19/2016	Review of Cross of Brent Ferrell, Randy Threatt and Greg Nalawja. Dictate Cross of Brent Ferrell, Randy Threatt and Greg Nalawja. Travel to Court House. Attend trial. Provide video deposition testimony of Charles Ecklund and ADESA Auto Auction. Conduct Direct of Brent Ferrell and Randy Threatt. Conference with Client. Legal research regarding jury instructions. Legal research for directed verdict. Telephone conference with Brian Allen.	14.3	Again liability was the focus of this day's testimony. After the trial ended for the day, preparations began for the next day's testimony again regarding liability and the extent of the damage to the Civic.	14.3	

4/20/2016	Work on Direct Of Roger Whitley, Brian Allen, and Greg Nalawaja. Work on Closing. Work on directed verdict motion. Travel to and attend trial. Conduct Direct examination of Brian Allen, Roger Whitley and Greg Nalawaja. Argue directed verdict motion. Legal research regarding negligent omission, failure to disclose. Review emails and various cases from Rob Reibold. Dictate emails to Judge Cothran and Rob Reibold. Legal research on Jury Instructions. Legal research regarding economic loss rule.	15.9	Much of the trial day was spent on testimony regarding the condition of the car, the deceptive representations made by Midlands Honda and the damages to plaintiffs. Directed verdict motions began in the afternoon. Plaintiff sought to dismiss Midlands Honda's affirmative defenses. Midlands Honda sought to have plaintiffs' tort claims dismissed under North Carolina's economic loss rule.	14.9	1

4/21/2016	Legal research regarding willful blindness. Review of closing argument. Review of jury instructions. Prepare additional jury instructions. Travel to Court House for trial. Conference with Court and Opposing Counsel regarding jury instructions. Conduct closing argument. Attend jury charge. Wait for jury. Travel to hotel. Prepare questions for punitive damages phase. Prepare argument for punitive damages phase of trial.	14.6	Legal research regarding the issues raised in the directed verdict motion continued. Jury instructions regarding the various claims were discussed. Closing arguments dealing with liability in actual damages under the various causes of action were made. After trial, preparations were made for the punitive damages phase of the trial.	9.6	5.
4/22/2016	Work on Punitive damages argument. Travel to court. Attend trial. Direct Examination of Midlands Honda's 30b6 corporate representative. Give closing argument on punitive damages. Wait for jury verdict. Conference with Client. Travel to Charleston. Drove total of 284 miles.	7.			7.

4/23/2016	Review of legal issues. Legal research on NC UTPA, attorney's fees and punitive damages statute.	4.8	Post-trial motions were expected. Research began on the issues expected to be raised.	3.2	1.6
4/24/2016	Work on Post Trial Motions. Work on Brief Regarding Additur under UTPA. Work on Brief Regarding Interest on Offer of Judgment.	2.4	I began work on my post-trial motions.	1.4	1.
4/25/2016	Work on Brief to Treble UTPA damages. Work on Brief Regarding Offer of Judgment. Legal research regarding affirmative defense of setoff. Work on Brief in Support of Plaintiffs' Motion for Attorney's Fees.	4.7	Same as above.	3.7	1.
4/26/2016	Work on the Brief Regarding Prejudgment Interest. Legal research regarding attorney's fees. Telephone conference with Mary Leigh Arnold regarding affidavit of fees. Review of Fees generated. Work on Affidavit of Attorneys Fees - Begin review of time spent.	5.6	To support players request for attorney fees, and affidavit was requested from Mary Leigh Arnold. I also had to prepare my affidavit of attorney's fees.	5.6	
4/27/2016	Legal research regarding attorney's fees. Work on Brief in Support of Plaintiffs' attorney's fees.	3.2	My fee request was being made under the North Carolina UTPA.	3.2	

4/28/2016	Work on Brief in Support of Attorneys Fees. Telephone conference with Brian Boger. Legal research regarding attorneys' fees in North Carolina. Work on affidavit of attorney's fees. Review costs and work done in file.	7.1	Same as above. I requested an additional affidavit to support my request for attorney's fees from Brian Boger.	7.1	
4/29/2016	Work on Motion for Costs. Telephone call to Mary Leigh Arnold regarding affidavit of attorney's fees. Acquire affidavit of attorney's fees from Mary Leigh Arnold. Legal research regarding punitive damages issues.	3.6	See above regarding my request for attorney's fees under the North Carolina UTPA.	3.6	
4/30/2016	Review of Post Trial Motions. Review of Brief in Support of Treble Damages. Review of Brief in Support of Prejudgment Interest. Telephone conference with Brooks Fudenberg. Review of Brief in Support of Interest Under Offer of Judgment. Review of Brief in Support of Attorney's Fees. Review Exhibits for Brief.	5.8		3.8	2.

5/1/2016	Review of fees charged in case. Review of paralegal fees charged in case. Review of time assigned to handling case against Nationwide Insurance. Dictate email to Brooks Fudenberg regarding Post Trial Motions re: fees. Work on Brief in Support of Attorney's Fees.	3.		3.	
TOTAL:		448.1		385.8	62.3

I certify that these timesheets accurately reflect my work on the referenced case. Where time is divided between columns, it is on the basis of good-faith estimates.


C. Steven Moskos

**DANIEL O'SHIELDS AND ROGER W. WHITLEY A PARTNERSHIP D/B/A O&W CARS v. COLUMBIA AUTOMOTIVE
COMPANY, LLC d/b/a Midlands Honda
Attorney's Fees For C. Steven Moskos**

May 2, 2016 through July 20, 2016

Date	Event	Time	Explanation	Time devoted to UTPA Claim	Time Arguably not part of UTPA Claim
5/2/2016	Finalize Post Trial Motions, Briefs, Exhibits and Affidavits. Organize Briefs and Exhibits. Review of Affidavit of Attorney's Fees and Costs. Travel to Richland County Clerk of Court to file Post Trial Motions, Briefs and affidavits. Telephone conference with Brooks Fudenberg regarding status of the motions and possible appeal.	9.7	Various issues were dealt with	8	1.7
5/4/2016	Telephone conference with Roger Whitley regarding post trial motions filed by Midlands Honda and Roger.	.9	Clients up to date on the status of their case, including issues related to attorney's fees.	.9	
5/5/2016	Review of Post Trial Motions from Clay Walker. Dictate email to Brooks Fudenberg regarding Post Trial Motions.	.6	Reviewed the four motions from the defendant.	.3	.3
5/14/2016	Work on Plaintiffs' Brief Opposing Motion to Enforce Statutory Cap.	.7			.7

5/14/2016	Work on Brief responding to Defendant's Motion for Plaintiffs' to elect a remedy. Legal research regarding due process regarding punitive damages. Legal research regarding high ratio verdicts and multiple Plaintiffs. Work on Brief Opposing Defendant's Motion for Setoff or Recoupment. Work on Brief Opposing Defendant's Motion to Enforce North Carolina's Punitive Damages Cap. Telephone conference with Brooks Fudenberg regarding damages cap.	9.3		4.	5.3
5/15/2016	Review of Brief Opposing Motion to Enforce North Carolina's Punitive Damages Cap. Legal research regarding punitive damages for each Plaintiff. Legal research regarding standards for JNOV motion. Review of Defendant's JNOV Motion. Telephone conference with Brooks Fudenberg regarding issues raised by JNOV Motion. Legal research on directed verdict motion criteria.	5.6	Midlands Honda's JNOV motion sought to throw out the entire case including plaintiffs' UTPA claim. Time had to be devoted to this motion to ensure it was not dismissed.	4.1	1.5
5/16/2016	Work on Brief Opposing Motion for JNOV and a new trial. Legal research regarding standards for JNOV. Review file regarding facts of case and directed verdict motion. Telephone conference with Brooks Fudenberg regarding Brief re JNOV	4.2	Same as above.	3.2	1.
5/20/2016	Review of email from Judge Cothran	3.3	Judge Cothran's email related to the UTPA claim	3.3	

	regarding election of remedies. Work on Brief Opposing Set Off. Legal research regarding setoff and collateral estoppel.		and attorney's fees. The remaining issues did not.		
5/21/2016	Review of Brief Opposing Defendant's Motion for a Set Off. Legal research regarding collateral source. Review of Brief Opposing Defendant's Motion to Enforce NC Cap on Punitive Damages. Review of Brief Regarding Defendant's Motion to Require Election of Remedies. Prepare Election of Verdict as required by Court per Defendant's Motion to Require Election of Remedies. Work on Brief Opposing Defendant's Motion for JNOV. Review transcript from directed verdict motion.	4.6	Midlands Honda's election of remedies motion includes the North Carolina UTPA. Defendant's Motion for Set Off impacts Plaintiffs' UTPA claim. Defendants' JNOV motion also seeks to defeat Plaintiffs' UTPA claim.	3.8	.8
5/21/2016	Review of transcript from trial motion for directed verdict.	1.0	Midlands Honda's directed verdict motions attempted to throw out the entire case, including the UTPA claim which allows for attorney's fees.	1.	
5/22/2016	Review of directed verdict motion transcript. Review of Briefs opposing punitive damages cap, setoff, and election of remedies. Dictate email to Brooks Fudenberg regarding briefs. Telephone conference with Brooks Fudenberg regarding changes to briefs. Dictate email to Judge Cothran's law clerk regarding election of remedies. Legal research regarding economic loss rule.	6.3	The election of remedies issue dealt with the UTPA and attorney's fees issues. Defendant's economic loss rule arguments apply to all noncontract claims, including the UTPA.	6.3	
5/23/2016	Legal Research on economic loss rule	7.0	See above regarding the economic loss rule and	7.0	

	for Brief Opposing Motion for JNOV. Work on Brief Opposing Motion for JNOV. Prepare Motion for Reconsideration of Court's ruling requiring election of remedies. Telephone conference with Clay Walker regarding my motion to reconsider the Court's ruling requiring election of remedies. Dictate email to Clay Walker with body of motion to reconsider the Court's ruling requiring election of remedies. Dictate email to Brooks Fudenberg. Dictate emails to Ryan White, Judge Cothran's law clerk regarding election of remedies issues. Dictate correspondence to Richland County Clerk of Court regarding motion for reconsideration.		the election of remedies.		
5/24/2016	Work on Brief Opposing Motion for JNOV. Legal research regarding new trial absolute and thirteenth juror doctrine. Work on arguments regarding punitive damages. Review of State Farm v Campbell and BMW v Gore.	8.2		7.0	1.2
5/25/2016	Legal research of constitutionality of NC Punitive Damages statute. Review of Rhine v K-Mart. Work on Brief Opposing Motion for a New Trial. Legal research regarding BMW v Gore and State Farm v Campbell.	2.9		2.	.9
5/26/2016	Legal research regarding Ratio aspect of punitive damages award. Legal	7.7		7.0	.7

	research regarding difference between punitive damages and civil penalties. Telephone conference with Matt Norris regarding difference between punitive damages and civil penalties. Legal research regarding 13th juror doctrine. Legal research regarding new trial nisi remoter. Legal research regarding "Golden Rule" doctrine.				
5/27/2016	Review of Brief Opposing Motion for JNOV, New Trial, and Nisi Remittitur. Review of deposition of Joseph Guyer. Review of correspondence from Rob Reibold regarding Objection to Plaintiffs' Election of Remedies. Legal research regarding United Laboratories v. Kuykendall.	5.6	I was dealing with the punitive damages issues as well as the attorney fee issues during the same period of time. Time was spent researching Midlands Honda's assertion that the plaintiffs had to elect a remedy between fraud and the UTPA.	3.5	2.1
5/28/2016	Review of Brief Opposing Motion for JNOV, New Trial, and Nisi Remittitur. Legal research regarding 13th juror doctrine. Review of deposition of Joseph Guyer. Review of exhibits. Legal research regarding punitive damages. Review of Defendant's Brief regarding Objection to Plaintiffs' Election of Remedies. Legal research regarding United Laboratories v. Kuykendall and election of remedies.	8.1	Same as above.	2	6.1
5/29/2016	Review of Brief Opposing Motion for Set Off. Review of Brief Opposing Regarding Election of Remedies.	3.3	Same as above.	3.	.3

	Review of Brief Opposing Defendant's Motion to Enforce Punitive Damages Cap. Legal research regarding punitive damages and the factors used. Review of Summons and Complaint. Start review of Brief Opposing Motion for JNOV, New Trial and New Trial Nisi Addittur.				
5/30/2016	Review of Brief Opposing Motion for JNOV, New Trial and New Trial Nisi Remittitur. Legal research regarding choice of laws provisions. Work on Plaintiffs' Response to Defendant's Response to Plaintiffs' Election of Remedies. Legal research regarding Brown v King and Broussard.	5.2	Same as above.	5.2	
6/1/2016	Telephone conference with Brooks Fudenberg regarding hearing requested by Judge Cothran for June 9. Dictate emails to Ryan White, Judge Cothran's law clerk.	.5	These entries would have been for the case in its entirety. As a result, some of the time spent could arguably be for non-UTPA claims.	.2	.3
6/3/2016	Review of Brooks Fudenberg's notes and references in Plaintiffs' Brief Opposing Defendant's Motion for JNOV and for a New Trial. Telephone conference with Brooks Fudenberg discussing Plaintiffs' Brief Opposing Defendant's Motion for JNOV and for a New Trial.	6.3	As stated, defendant's post-trial motions dealt extensively with punitive damages; however, it also dealt with the unfair trade practice act, the basis for attorney's fees. An accurate estimate of time is difficult as defendants main issue regarding the UTPA relates to the economic loss rule which it tried to apply to all of plaintiffs' non-contract claims. Midlands Honda was also trying to throw out the entire case through its JNOV and New Trial motions.	6.3	
6/4/2016	Work on Brief Opposing JNOV and New Trial Motions. Conference with	9.2	See above.	9.2	

	Brooks Fudenberg to work on Brief Opposing JNOV and New Trial Motions.				
6/5/2016	Work on JNOV and new trial outline. Work on brief opposing JNOV and New Trial and Thirteenth Juror issues. Conference with Brooks Fudenberg regarding brief opposing JNOV and New Trial and Thirteenth Juror issues. Legal research regarding new trials, punitive damages standards, reliance, and intent. Work on Brief Opposing Defendant's Motion for Setoff.	10.9	See above.	9.9	1.
6/6/2016	Work on Brief opposing Defendant's Motion for a Set Off. JNOV Motion. Work on elements of fraud and UTPA. Review of jury instructions. Review of SC Code Ann Sec 15-38-50. Telephone conference with Brooks Fudenberg regarding set off.	3.3		1.	2.3
6/8/2016	Telephone conference with Brooks Fudenberg regarding motion hearing with Judge Cothran and the briefs that need to be sent to Judge Cothran.	1.0	This was a general conversation regarding scheduling.	.6	.4
6/10/2016	Telephone call to Roger Whitley regarding status of the post trial hearings.	.6	Discussed the scheduling of the post trial hearing and the implications of the hearing.	.3	.3
6/21/2016	Review of brief opposing JNOV, New Trial and Nisi motions.	1.2	Based on the briefs, some time was spent dealing with the UTPA.	.8	.4
6/22/2016	Review of Brief Opposing Motion for JNOV, New trial and New trial Nisi.	6.3	See above.	5.2	1.1
6/28/2016	Prepare correspondence to Roger Whitley regarding post trial motions.	.7		.4	.3

	Work on Brief opposing JNOV.				
7/8/2016	Work on Brief Opposing Motion for JNOV and New Trial.	.4		.4	
7/9/2016	Work on corrections needed to Brief Opposing Motion for JNOV and New Trial.	4.8		3.6	1.2
7/14/2016	Review of Brief Opposing Defendant's Motion for Setoff.	.7		.7	
7/16/2016	Work on Brief Opposing Defendant's Motion to Enforce NC's Punitive Damages Cap. Legal research regarding punitive damages in SC.	1.9			1.9
7/19/2016	Work on Brief Opposing Motion for Setoff. Telephone conference with Brooks Fudenberg. Review of Brief Regarding Defendant's Response to Plaintiffs' Election of Remedies.	2.0	The election of remedies brief dealt with the attorney's fees issues.	2.	
7/20/16	Finalize Brief Opposing Setoff, Brief regarding election of remedies, Brief regarding enforcement of North Carolina punitive damages cap, Brief regarding Defendant's response to Plaintiffs' election of remedies, and Brief opposing Defendant's motion for JNOV, New trial and New Trial Nisi. Telephone calls and emails to Brooks Fudenberg regarding final briefs. Work on First Supplemental Affidavit of Attorney's Fees. Dictate email to Judge Cothran and Clay Walker regarding Post Trial briefs. Telephone conference with Roger Whitley.	9.8	In addition to the election of remedies issues, I needed to put together my first supplemental affidavit of attorney's fees.	8.3	1.5

TOTAL ATTORNEY'S HOURS FROM MAY 2, 2016 THROUGH JULY 20, 2016	153.8		120.5	33.3

I certify that these timesheets accurately reflect my work on the referenced case. Where time is divided between columns, it is on the basis of good-faith estimates.

**C. STEVEN MOSKOS, P.A.
ATTORNEY FOR PLAINTIFF**

BY:

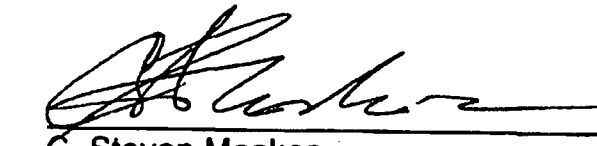

 C. Steven Moskos
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EXHIBIT 6

**DANIEL O'SHIELDS AND ROGER W. WHITLEY A PARTNERSHIP D/B/A O&W CARS v.
COLUMBIA AUTOMOTIVE COMPANY, LLC d/b/a Midlands Honda
Attorney's Fees For C. Steven Moskos**

July 21, 2016 through December 15, 2016

Date	Event	Time	Explanation	Time devoted to UTPA Claim	Time Arguably not part of UTPA Claim
7/21/2016	Review of 1st Supplemental Affidavit of Attorney's Fees. Telephone conference with Brooks Fudenberg. Dictate email to Judge Cothran regarding 1st Supplemental Affidavit of Attorney's Fees.	.6	Attorney's fees sought under the North Carolina UTPA.	.6	
7/22/2016	Dictate email to Ryan White, Judge Cothran's law clerk, regarding Plaintiffs' Post-Trial Motions and supporting Briefs.	.1		.1	

7/23/2016	Telephone conference with Brooks Fudenberg. Review of Defendant's Brief in Opposition to Plaintiffs' Motion for Attorney's Fees, Affidavit of Robert Reibold, Affidavit of Clay Walker,. Legal research regarding the award of punitive damages, election of remedies and . NCUTPA. Prepare timeline for Court.	8.9		8.9	
7/24/2016	Legal research regarding remedies and verdicts. Legal research regarding punitive damages and acquisition of UTPA attorneys fees. Review State Farm v Campbell. Review Defendant's Supplemental Memo re JNOV. Review of Defendant's Brief regarding Offer of Judgement. Review of Defendant's Brief Opposing Treble Damages.	3.4		.6	2.8
7/24/2016	Review of Defendant's JNOV memo.	.8		.8	
7/25/2016	Review of Brief Opposing Attorney's Fees. Work on Brief supporting fees. Legal research regarding "unwarranted refusal to pay."	1.6		1.6	

7/26/2016	Dictate affidavit regarding attorney's fees. Telephone conference with Brooks Fudenberg regarding motion hearing and legal research. Review of Briefs. Work on presentation for motions hearing. Legal research.	11.1	The time invested reflects work on all the post-trial motions. The facts and testimony supporting plaintiffs' UTPA claim are so intertwined with those of the other claims, they cannot be adequately separated. Nonetheless, some work was non-UTPA oriented.	8.	3.1
7/27/2016	Prepare for Post Trial Motions in Manning. Travel to Manning for Post Trial Motions. Attend Post Trial Motions. Conference with Brooks Fudenberg regarding argument to be made and those made at the hearing. Conference with Roger Whitley.	10.7	See above.	8.	2.7
8/6/2016	Prepare affidavit responding to Rob Reibold's and Clay Walker's affidavits. Review of affidavit of Rob Reibold's and Clay Walker's affidavits. Legal research regarding offers of judgment.	5.8	This time related to my specific response to defendant's counsel's objections regarding my affidavit of attorney's fees.	5.8	
8/8/2016	Work on Affidavit of CSM for Post Trial Motion Hearing. Legal research regarding unwarranted refusal to settle.	4.5	Same as above.	4.5	
8/9/2016	Review of material for affidavit of CSM. Work on affidavit of CSM.	2.9	Same as above.	2.9	

8/10/2016	Organize affidavit. Legal research. Review of prior files involving Walker-Reibold.	3.	Same as above.	3.	
8/11/2016	Work on Affidavit and organization of affidavit. Telephone conference with Richland County Clerk's office regarding 2nd Amended Complaint.	7.1	Same as above. The clerk's office did not reflect that plaintiffs' second amended complaint had been filed even though Judge Cothran had granted players motion to amend during trial. Efforts were made to make sure the record was complete.	6.9	.2
8/13/2016	Review of phone records. Review file notes. Work on Affidavit. Legal research.	2.5	Same as above.	2.5	
8/16/2016	Work on affidavit. Dictate Motion to Amend the Complaint. Dictate correspondence to Clerk of Court. Dictated Consent Order to Amend Complaint.	1.8	While I continued to work on my affidavit regarding attorney's fees, I decided to make sure the clerk of court's records were complete by filing a formal motion regarding the second amended complaint.	1.2	.6
8/18/2016	Work on affidavit responding to Mr. Walker's and Mr. Reibold's affidavits.	1.4	See above regarding affidavit of attorney's fees.	1.4	
8/19/2016	Work on affidavit. Review or affidavit of Clay walker and Robert Reibold.	3.4	Same as above.	3.4	
8/20/2016	Review of affidavit. Review of Clay Walker's affidavit. Review of Defendant's Brief Opposing Motion for Attorney's Fees. Legal research regarding travel time and intertwined fees.	3.2	Same as above.	3.2	

8/21/2016	Work on Affidavit. Review of Appendix 3, 4, and 5. Legal research regarding travel time and intertwined claims.	1.6	Same as above.	1.6	
8/22/2016	Work on appendix arguments and case law.	7.7	Same as above.	7.7	
8/23/2016	Review of Affidavit. Telephone conference with Brooks Fudenberg regarding affidavit and exhibits. Organize exhibits.	3.8	Same as above.	3.8	
8/27/2016	Work on changes to affidavit. Legal research regarding attorney's fees. Review of edits by Brooks Fudenberg. Dictate email to Brooks Fudenberg.	6.4	Same as above.	6.4	
8/29/2016	Telephone conference with Brooks Fudenberg regarding CSM's affidavit allowed by Court. Legal research regarding Llera. Final review of affidavit of C. Steven Moskos. Dictate email to Clay Walker regarding filing of Second Amended Complaint. Dictate email to Judge Cothran regarding affidavit and other issues not addressed.	6.9	Same as above.	6.8	.1
8/30/2016	Legal research regarding remedy v. costs. Legal research regarding punitive damages. Dictate email to Brooks Fudenberg regarding legal research.	.6	The issues of punitive damages, remedies and costs relate to the egregious nature of the deceptive representations. They, however, more accurately relate to plaintiffs' fraud claim.		.6

8/30/2016	Review of Affidavit and correspondence to Clerk of court. Dictate email to Clay Walker and Rob Reibold regarding Consent Order. Dictate email to Clay Walker and Rob Reibold regarding Motion to Amend and Consent Order.	.9	Worked on my affidavit regarding attorney's fees as well as getting Mr. Walker to sign the consent order allowing the second amended complaint to be filed.	.4	.5
8/31/2016	Telephone conference with Roger Whitley regarding Court's decision on post trial motions.	.3	This dealt with all the post-trial issues.	.1	.2
9/1/2016	Dictate correspondence to Clerk of Court regarding filing of 2nd Amended Complaint.	.3			.3
9/1/2016	Review of correspondence from Clay Walker. Telephone conference with Brooks Fudenberg.	.6	This relates to Midlands Honda's objection to my affidavit regarding attorney's fees.	.6	
9/8/2016	Telephone call to Brooks Fudenberg. Work on election of remedies document. Legal research on punitive damages and UTPA. Telephone conference with Roger Whitley regarding election of remedy issue.	1.9	The issue of election of remedies between a UTPA claim and a fraud claim allowing for punitive damages are so intertwined that they cannot be divided.	1.9	
9/8/2016	Work on Election of Remedy document. Prepare email to Judge Cothran. Dictate correspondence to Clerk of Court regarding Election of Remedy document.	.7	Same as above	.7	

9/8/2016	Review of election of remedy declaration. Dictate email to Brooks Fudenberg.	.4	Same as above.	.4	
9/16/2016	Telephone conference with Brooks Fudenberg regarding Midlands Honda's settlement offer. Telephone conference with Roger Whitley, Dan O'Shields and Brooks Fudenberg regarding Midlands Honda's settlement offer. Dictate email to Jamie Becker regarding Midlands Honda's settlement offer.	3.6	Review of Midlands Honda's offer to settle included payment of attorney's fees under the UTPA claim.	3.6	
9/20/2016	Telephone conference with Brooks Fudenberg.	.2	This dealt with how to handle the attorney fee issue.	.2	
9/21/2016	Dictate correspondence to Roger Whitley and Dan O'Shields.	.2	Issues regarding attorney's fees were dealt with.	.2	
10/18/2016	Review proposed Order from Clay Walker. Telephone call to Brooks Fudenberg.	1.3	The post-trial motions order dealt with many issues; however, the main issues in the order dealt with punitive damages and attorney's fees.	.7	.6
10/19/2016	Telephone call to Brooks Fudenberg regarding order from Clay Walker.	.1	Same as above.	.1	
10/19/2016	Telephone conference with Brooks Fudenberg regarding Order written by Clay Walker for Judge Cothran. Discussion of strategy regarding Post Trial Motions.	2.7	Same as above.	1.5	1.2

10/19/2016	Review of attorney's fees issues in Order. Dictate email to Brooks Fudenberg.	1.		1.	
10/20/2016	Telephone conference with Brooks Fudenberg regarding strategy concerning proposed Order from Clay Walker. Legal research regarding punitive damages award. Telephone conference with Matt Norris regarding punitive damages issues.	3.6		1.	2.6
10/21/2016	Legal research regarding statutory construction. Work on information for response to proposed Post Trial Order. Dictate email to Brooks Fudenberg.	3.4	This time was most likely spent related to punitive damages and plaintiffs' offer of judgment.	3.4	
10/22/2016	Telephone conference with Brooks Fudenberg.	.4	Various issues would have been discussed, including attorney's fees.	.2	.2
10/28/2016	Review of emails from Brooks Fudenberg. Work on researching legal issues regarding Plaintiffs' and defendant's duties., reliance issues, paralegal fees, review of Nalawaja's deposition, and intertwined causes of action to respond to Clay Walker's proposed Order.	2.9	Multiple issues regarding the case were discussed. Many related to the attorney's fee issue.	2.2	.7

10/28/2016	Review of additional email from Brooks Fudenberg. Respond to questions from Brooks Fudenberg related to work on Clay Walker's proposed post trial Order.	.3	Issues needed to be resolved regarding the post-trial order submitted to Judge Cothran. Predominantly, the issue has become dealing with the attorney's fees.	.3	
10/31/2016	Review of emails from Brooks Fudenberg regarding proposed Order. Work on responses to emails from Brooks Fudenberg. Review of Directed Verdict transcript. Legal research.	4.9	I had to deal with multiple issues. At least one-half dealt with the issue of attorney's fees.	2.5	2.4
11/1/2016	Review draft of letter to Judge Cothran. Telephone conference with the clerk of court. Legal research regarding interplay between UTPA and punitive damages. Telephone conference with Brooks Fudenberg.	6.	Issues regarding the post-trial order needed to be raised to Judge Cothran which was done in the form of the letter.	5.7	.3
11/1/2016	Work on draft letter to Judge Cothran. Telephone conference with Brooks Fudenberg.	2.2	The issues in the letter going to Judge Cothran were reviewed so it could be sent to judge Cothran.	1.1	1.1
11/2/2016	Telephone conference with Athena Borer of the Richland County Clerk of Court's office regarding Court's exhibits from trial.	.3	This request was to determine whether Midlands Honda had a valid argument regarding the court's recharge one fraud.		.3
12/1/2016	Telephone conference with Brooks Fudenberg regarding post trial order.	.4	Attorney's fees and the other issues in the post-trial order were discussed.	.2	.2
12/2/2016	Telephone conference with Roger Whitley.	.5	I discussed the status of the case with Mr. Whitley which included the issue of attorney's fees.	.3	.2

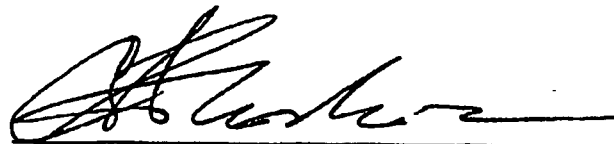
12/5/2016	Telephone conference with Brooks Fudenberg regarding Judge Cothran's post trial order.	.4	Attorney's fees and the other issues in the post-trial order were discussed.	.2	.2
12/10/2016	Review of email from Brooks Fudenberg regarding Motion for Reconsideration. Work on attorney's fees time from July 21, 2016 through December 9, 2016.	.7	The Motion for Reconsideration relates to a number of issues, including attorney's fees. The issues which needed to be worked on needed to be evaluated and scheduled.	.4	.3
12/11/2016	Work on legal research regarding offer of judgment. Dictate emails to Brooks Fudenberg.	5.6			5.6
12/11/2016	Work on determining time spent on punitive damages.	1.2			1.2
12/12/2016	Dictate email to Brooks Fudenberg regarding offer of judgment issues.	.2			.2
12/12/2016	Work on questions related to attorney's fees. Dictate email to Brooks Fudenberg regarding attorney's fees issues.	2.3		2.3	
12/12/2016	Complete work on reviewing time spent on punitive damages to be used in motion for reconsideration.	.5			.5
12/12/2016	Review of email from Brooks Fudenberg re post trial order.	.2	This dealt specifically with the attorney's fee issue.	.2	
12/13/2016	Dictate email to Brooks Fudenberg. Work on questions related to Nationwide's participation in the case as a witness and as a party.	2.3	This involves the breakdown of time spent on the case which is relevant to the issue of attorney's fees	2.3	

12/14/2016	Work on hours for Motion for Reconsideration. Work on explanation of time worked regarding deceptive acts of Midland's Honda. Telephone conference with Brooks Fudenberg regarding Motion for Reconsideration.	3.2		3.2	
12/14/2016	Work on break down of attorney fee time for Motion for Reconsideration.	3.9		3.9	
12/15/2016	Work on breaking down of attorney fee time under the NC UTPA .	1.3		1.3	
12/15/2016	Work on time associated with NC UTPA related to attorney fee application and Motion for Reconsideration. Dictate emails to Brooks Fudenberg regarding attorney's fees issues and time.	6.7		6.7	
Total		167.4		138.5	28.9

I certify that these timesheets accurately reflect my work on the referenced case. Where time is divided between columns, it is on the basis of good-faith estimates.

**C. STEVEN MOSKOS, P.A.
ATTORNEY FOR PLAINTIFF**

BY:

A handwritten signature in black ink, appearing to read 'C. Moskos', is written over a horizontal line.

C. Steven Moskos
4000 Faber Place Dr., Ste. 300
North Charleston, SC 29405
Telephone: (843) 763-5297

1971

EXHIBIT 7

TIME NECESSARILY EXPENDED BY BROOKS R. FUDENBERG
on Daniel O'Shields and Roger W. Whitley A Partnership D/B/A O&W Cars vs.
Columbia Automotive Company, LLC D/B/A Midlands Honda
From 04-22-2016 through 07-20-2016

[Text in brackets was added in December.]

4/22/2016	0.20	Tel. Conf. with C. Steven Moskos, Esq. re: verdict and overview of certain issues.
4/23/2016	0.10	Email from Mr. Moskos re: whether caps on punitive are unconstitutional; send reply
4/27/2016	0.10	Tel. Conf. with Mr. Moskos re: his 2.3 million judgment and strategy
4/28/2016	0.40	Read entirety of N.C. Gen. Stat. § 1D
	0.10	Email to Mr. Moskos re: whether caps on punitive damages are unconstitutional.
4/29/2016	0.70	Tel. Conf. with Mr. Moskos re: various issues in the case
4/30/2016	0.90	Tel Conf. with Mr. Moskos re: same

Time that the Order's view might consider partially on non-UTPA. Non-UTPA amount.	Time that the Order's view might consider partially on non-UTPA. UTPA-related amount.	All on non-UTPA	Not at all on non-UTPA
0.1	0.1		
		0.1	
0.1			
		0.4	
		0.1	
0.3	0.4		
0.4	0.5		

5/1/2016	4.10	Read, make suggestions on "Plaintiffs' Post-Trial Motions." "Plaintiffs' Brief in Support of Treble Damages," "Plaintiffs' Brief in Support of Plaintiffs' Request for Attorney's Fees," "Plaintiffs' Brief in Support of Interest under Offer of Judgment," "Plaintiffs' Brief in Support of Plaintiff's Request for Prejudgment Interest," with attachments. Also read letters of 1-23-15 from Mr. Moskos to H. Clayton Walker, Esq., and of 1-26-15 from Mr. Walker's office to Mr. Moskos.			
		[Plaintiff's Briefs in Support of Attorney Fees and Treble Damages pertained only to the UTPA cause of action. The Brief re: Prejudgment Interest applied to the UTPA cause of action as well as others; the same work would have been required even had their not been favorable verdicts on other causes of action. The Brief in Support of OOJ interest might be seen as relating to the verdict on the fraud cause of action rather than the others. I estimate one hour on the OOJ brief.]	1.0	3.1	
	0.30	Tel. confs. (2) with Mr. Moskos re: Post-Trial Motions and Briefs.	0.1	0.2	
5/2/2016	0.10	Tel. Conf. with Mr. Moskos re: attachments to today's filings.			0.1
	1.00	Tel. conf with Mr. Moskos re: transcript sections and possible appeal.	0.2	0.8	
	0.20	Tel. Conf. with clerk of court's office; call Mr. Moskos and relay substance of conversation with clerk's office.			0.2
5/3/2016	0.20	Emails (2) from Mr. Moskos and (1) to Mr. Moskos re: possible errors in transcript of trial.			0.2
5/5/2016					

Receive, read, Defendants' 4 Post-Trial Motions. Emails to Mr. Moskos (2) and from Mr. Moskos (1) re: same.

[The memorandum titled "punitive damages" was only 2 p, including caption and sig page. It took no time to read.

0.70 Even the part of the JNOV motion that seeks a new trial absolute, based on punitive damages, is about the UTPA, because of Defendant's argument, JNOV Mot. p. 5, that NC law would require a new trial on everything if Defendant had been awarded a new trial on punitive damages. Thus, to preserve the UTPA verdict from Defendant's attack, it was necessary to address most of Defendant's arguments re: the applicability of punitive damages.

Part II.G. of the JNOV motion, regarding the charge on fraud is not directly related to the UTPA claim. It is less than a page .

Section IV, which is less than a page -- three short paragraphs - does not directly concern the UTPA claim.

Thus I estimate 0.6 hours related to the UTPA claim. But to avoid any argument, I will call it 0.2 for non-UTPA]

5/14/2016

0.70 Tel Conf. with Mr. Moskos re: responses to Defs' post-trial motions, esp. the motion re: punitive damages, and the JNOV motion which discusses punitive damages, focusing on the cap on punitive damages.
0.10 Email from Mr. Moskos re: whether setoffs are substantive or

5/15/2016

0.50 Tel. call from Mr. Moskos. Read the Rhyne case on whether lex fori applies to punitive damages.

5/16/2016

	0.2	0.5	
	0.5	0.2	0.1
		0.5	

0.90	Tel. Conf. with Mr. Moskos re: draft Brief in response to JNOV	0.2	0.9	
5/21/2016				
0.10	Email from Mr. Moskos re: which remedy to elect, and the elements of fraud in NC			0.1
0.50	Tel. Conf. with Mr. Moskos. Review the marked-up JNOV:	0.1	0.4	
0.20	Read, analyze the elements of NC's fraud cause of action from NC pattern jury instructions		0.2	
5/22/2016				
0.10	Read, comment on new draft of discussion of the election of the verdicts.			0.1
0.40	Read, comment on the Brief in Response to Defs' Motion for Setoff			0.4
0.40	Read, comment on the Briefs in Response to Defs' Motion to Elect Remedies and Defs' Motion to Enforce Statutory Cap' [2 Briefs, 0.4 hours, so I divide the time 0.2 and 0.2]	0.2	0.2	
1.00	Tel. Conf. with Mr. Moskos re: changes to Briefs	0.4	0.6	
0.10	Email to Mr. Moskos re: needed change in response to Defendant's Objection to Plaintiffs' Election of Remedies			0.1
5/23/2016				
0.10	Email from Mr. Moskos with proposed Motion for Reconsideration of directive that Plaintiffs elect prior to court's determination of the awards under each cause of action. edit, comment, return same.			0.1
0.10	Forwarded email from Mr. Moskos to Mr. Walker			0.1
1.10	Tel. Conf. with Mr. Moskos [I cannot find the record of what we discussed, so I am calling it all "non-UTPA related"]		1.1	
5/25/2016				
0.10	Tel. Conf. with Mr. Moskos. [I cannot find the record of the topic of the conversation, and so am calling it "non-UTPA related."]		0.1	
5/31/2016				

	Read Defs' Response to Plaintiffs' Election of Remedies. Read, add to, and revise draft Response. Read, edit, comment on draft response to Defs' Motion for JNOV/New Trial/New Trial Nisi Remittitur. Read portions of transcript	3.90	0.4	3.5	
	Tel. Conf. with Mr. Moskos	0.30	0.1	0.2	
	Re-read Defs' JNOV/New Trial motion, copy and paste parts into the Response, with thoughts re: the same. Spell check, finalize, email to Mr. Moskos.	1.60	0.2	1.4	
6/1/2016	Email from and to Mr. Moskos. [This was re: Judge's desire for a hearing]	0.20			0.2
	Tel. Conf. with Mr. Moskos re: certain points in BRF review of the JNOV response, re: timing of our responses, re: draft email to Judge Cothran's clerk re: the proposed hearing next week.	0.30			0.3
	Research re: United Laboratories, Inc. v. Kuykendall.	0.60			0.6
	Pull, read. Shepardize N.C.G.S. § 1D-20.	0.20		0.2	
	Read, mark up draft Response to Defs' Motion re: Setoff	0.70			0.7
	Read draft Response to Defs' Motion to Elect Remedies	0.20			0.2
	Read, mark up Response to Motion to Enforce Statutory Cap	0.60		0.6	
	Tel. Conf. with Mr. Moskos re: emails from Mr. Walker and Judge Cothran, scheduling and strategy	0.40	0.1	0.3	
6/3/2016	Tel. confs. (3) with Mr. Moskos re: Plaintiffs' draft Response to Defendant's Motion for JNOV/New Trial/New Trial Nisi Remittitur.	1.30	0.3	1.0	
6/4/2016					

6.20

Tel. Confs. with Mr. Moskos re: draft Response to Defs' Motion for JNOV/New Trial/New Trial Nisi Remittitur. Receive, read Dealer Acknowledgement Form dated 01-09-07, Damage Disclosure form, Documents from ADESA - Charlotte, parts of Binder 2 Non Confidential ADSEA, with Mr. Moskos talking me through them. Reorganize/rewrite one section of Response to Defs' Motion for JNOV/New Trial/New Trial Nisi Remittitur. Skim/read case. Draft revisions to Plaintiffs' Response to Defs' Motion for JNOV/New Trial/New Trial Nisi Remittitur re: the reprehensibility of Defs' conduct, and re: the conflict between Defs' position at trial as to the extent of their JNOV motion and the position in Defs' post-trial Motion for JNOV/New Trial/New Trial Nisi Remittitur. Draft section on what, precisely, the Court allowed Plaintiff's expert Mr. Allen to testify to. Read, write up discussion of, Phillip Morris USA v. Williams, on which Defendants rely in the above Motion.

1.50

[At this point, unlike before and at trial, punitive damages were inextricably interwoven with UTPA due to Def's argument that a denial of punitive damages required a new trial absolute. Exception would be matters going only to the amount of punitive damages, not to the entitlement.]

6/5/2016

2.50

Tel. confs. with Mr. Moskos re: draft Response to Defs' Motion for JNOV/New Trial/New Trial Nisi Remittitur. Shepardize case. Emails (12) to or from Mr. Moskos.

5.60

Tel. Conf. with Mr. Moskos re: Defs' Motion for Setoff. emails (2) from Mr. Moskos. Draft response to Defs' argument that the arbitration rules did not require disclosure, nor did the disclosure statement, and therefore it is fine to place unsafe vehicles on the road. Work on Response to Defs' Motion for Setoff. Work on response to Defs' "Golden Rule" argument; issues re: punitive damages. LEXIS research.

6/6/2016

1.3

4.9

1.5

2.5

1.0

4.6

1.00	Work on Response to Defs' Motion for Setoff.			1.0
0.10	Read excerpts sent by Mr. Moskos of NC fraud jury instructions and UTPA jury instructions.	0.1		
0.10	Read Outline of draft Response to Defs' Motion for JNOV/New Trial/New Trial Nisi Remittitur.			0.1
0.20	Email from Mr. Moskos. Read case he inquires about. [The email and the case were about set-offs.]			0.2
0.70	Tel. Confs. (2) with Mr. Moskos re: law of setoffs.			0.7
0.40	Research NC law re: setoffs, email to Mr. Moskos setting forth findings.			0.4
0.30	Receive, mark up, re-read confidential document. [regarding set-offs]			0.3
0.10	Tel. Conf. with Mr. Moskos [regarding set-offs]			0.1
6/8/2016				
0.90	Tel. Conf. with Mr. Moskos re: regarding motion hearing with Judge Cothran and the briefs that need to be sent. Edit draft Response to Defs' Motion for JNOV/New Trial/New Trial Nisi Remittitur.	0.2	0.7	
6/9/2016				
0.20	Emails (5) to or from Mr. Moskos re: date for hearing and timing of briefs.			0.2
6/23/2016				
2.30	Receive revised draft of Response to Defs' Motion for JNOV/New Trial/New Trial Nisi Remittitur. Edit same.	0.3	2.0	
0.60	LEXIS research re: N.C. Gen. Stat. § 20-294. Mark up same.			0.6
0.10	Read revised outline of draft Response to Defs' Motion for JNOV/New Trial/New Trial Nisi Remittitur.			0.1
0.90	Review comments on draft Response. Insert discussion of Austin v. Stokes Craven Holding Corp. ("Austin I"). Calculate punitive damages at Austin's 15% of net worth.		0.9	
0.20	Spell check	0.1	0.1	

7/19/2016

0.10 Emails to and from Jason Luck, Esq., potential affiant.

0.1

7/20/2016 6.10

Tel confs. (6) with Mr. Moskos re: aspects of Plaintiffs' Response to Defs' Motion for JNOV/New Trial/New Trial Nisi Remittitur, Brief Opposing Setoff, Brief regarding election of remedies, Brief regarding enforcement of North Carolina punitive damages cap, Brief regarding Defendant's response to Plaintiffs' election of remedies, and Brief opposing Defendant's motion for JNOV; Tel. Confs. (3) with Mr. Moskos re: fee application; Tel. Confs. (3) with Jason Luck re: affidavit. Emails (35) to and from Mr. Moskos; (10) to and from Mr. Luck. Draft Affidavit of Brooks R. Fudenberg. Edit/revise portions of Plaintiffs' Briefs.

6.1

7.9

27.5

3.9

16.8

Total 56.10

Lodestar amount

56.1 hours at \$390 per

\$21,879.00

[Summary

7.9

3.9

11.8

Time the Order's view might see as not related to the UTPA cause of action

27.5

16.8

44.3

Time the Order's view accepts as UTPA-related
Lodestar at \$390/hr]

\$17,277.00

I certify that these timesheets accurately reflect my work on the referenced case. Where time is divided between the first two columns to the right of the textual column, it is on the basis of good-faith estimates.

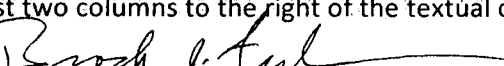

Brooks R. Fudenberg

EXHIBIT 8

TIME NECESSARILY EXPENDED BY BROOKS R. FUDENBERG
on Daniel O'Shields and Roger W. Whitley A Partnership D/B/A O&W Cars vs.
Columbia Automotive Company, LLC D/B/A Midlands Honda
From 07-21-2016 through 12-09-16

Order's
vision,
Related to
the UTPA
cause of
action
potentially un-
related to the
UTPA cause
of action

7/21/16 0:2 Tel. call with C. Steven Moskos, Esq., re: documents to send to Clerk, and re: Def.'s using "Plaintiffs," plural, and the Clerk's website giving three judgments for actual damages 0:2

0:1 Prepare, sign cover letter to Clerk of Court and Notice of Appearance 0:1

7/22/16 0:2 Receive email from opposing counsel to Mr. Moskos, forwarded by Mr. Moskos, at 3:30 Friday afternoon, with Def.'s late filings. Read email, download attachments, read transmittal letter mentioned in email. 0:2

5:09 PM

0:2 Read Affidavit of Clayton Walker 0:2

0:6 Read Def.'s Br. In Opposition to Atty fees, and selected exhibits thereto 0:6

0:2 Read final exhibit to Def.'s "Mem. Further Support for JNOV" 0:2

7/23/2016 0:1 Tel. Conf. with Mr. Moskos re: his view of the history of settlement discussions 0:1

0:5 Re-read Def.'s new "Opposition" to fees, except discussion of the amount. Calculate total fees requested to date for BRF and Mr. Moskos. 0:5

0:7 email from Mr. Moskos re: fees, read, Shepardize case regarding fees that he extensively quotes 0:7

1:8 Long tel. conf. with Mr. Moskos after hours. [I was at home and did not make notes of topic. To be safe, assume it was all on issues not related to the UTPA claim.] 1:8

7/24/2016	1.9 Read and markup Def.'s brief re: offers of judgment. Write brief summary of same. Read Pls' Brief in Support of Interest on Offers of Judgment. Review and edit notes. Draft email to Mr. Moskos re: same. Receive 3 emails from Mr. Moskos re: same. Read case re: OOJs that Mr. Moskos inquired about. Related tasks		1.9
	1.0 Read Def.'s Brief "In Further Support of Mot. JNOV." Review files for counter to Def.'s argument that the only admissible evidence of harm and potential harm is of harm to the Plaintiff. Send email to Mr. Moskos with thoughts on same.	1.0	
7/25/2016	0.1 email from outside attorney re: OOJ statute		0.1
	0.1 call USC law library, transferred to Megan Brown's voicemail, leave detailed message		0.1
	0.5 Research per request from Mr. Moskos re: argument Def. raises re: the entitlement to attorney fees	0.5	
	0.1 Read Def.'s filing in Opposition to Award of Pre-Judgment Interest	0.1	
	0.1 Re-read Pls' filing in Support of Pre-Judgment Interest	0.1	
	0.1 Read Def.'s Opposition to Treble Damages.	0.1	
	0.2 Review research notes on NC law on attorney fees	0.2	
	0.2 Re-read Pls' and Def.'s filings on offer of judgment, pull statute, Shepardize it.		0.2
	0.1 Email group of attorneys with question re: OOJ statute		0.1
7/26/2016	0.2 Make list of topics for next conference with Mr. Moskos. [List shows topics included OOJ and UTPA. So 0.1 and 0.1]	0.1	0.1
	0.1 Call again to USC law, add to list of topics for call		0.1
	0.3 Online research re: OOJ statute		0.3
	0.2 Email from USC		0.2
	0.8 Email from Mr. Moskos with attached North Carolina federal case re: attorney fees (magistrate's recommendation); find Circuit Judge's Order re: same, email Mr. Moskos with thoughts.	0.8	
	0.4 Telephone Conf. with Mr. Moskos. [Both UTPA-related and non-related issues. Split it 50/50]	0.2	0.2
	0.7 Do calculations requested by Mr. Moskos re: OOJ		0.7

	0.5 Second tel. conf. w/Mr. Moskos. Discussed a case re: fees. BRF verbally edited argument re: fees, tried to make sense of Def.'s figures in FN 4 of its Opp. to Fees [all UTPA-related], discussed the items in the xls's BRF sent this afternoon [OOJ-related]. Divide it 0.3 on the UTPA-related, 0.2 on the OOJ.	0.3	0.2
7/27/2016	0.2 Receive email from Mr. Moskos re: 3 topics: fees, election, and OOJ. Send 2 reply emails.	0.1	0.1
	0.1 Receive email from Mr. Moskos with 2 reply briefs, one re: OOJ, the other re: fees. Can't divide. 0.1. So call it all OOJ.		0.1
	0.1 Email from Mr. Moskos re: OOJ		0.1
	0.1 Email from Mr. Moskos re: OOJ		0.1
	0.2 Email from Mr. Moskos re: the atty fees Reply Brief, skim Rhyne case, send email response.	0.2	
	7.6 Travel to Manning, hearing (3h 10 mins), return. Estimate 1/3 of hearing concerned OOJ or aspects of punitive damages that did not go to Def.'s argument that it was entitled to a new trial.	6.0	1.6
7/28/2016	0.1 Email from Mr. Moskos re: OOJ		0.1
8/7/2016	0.3 Receive 3 emails from Mr. Moskos, 1 re: NGGS 75 16.1, 1 re: election, 1 re: OOJ. Re-read case re: OOJ. Call to Mr. Moskos, leave extensive voicemail with my thoughts.	0.1	0.2
8/8/2016	0.6 4 emails from Mr. Moskos, 3 regarding attorney fees issues and 1 re: OOJ; 5 emails to Mr. Moskos; 4 re: attorney fees issues and 1 re: punitive damages. Call it 0.4 for the UTPA-related attorney fees issues.	0.4	0.2
8/23/2016	0.1 email from and to Mr. Moskos re Amended complaint	0.1	
	0.3 emails from (2) and to (1) Mr. Moskos re: book on NC Unfair Business Practices	0.3	
8/25/2016	0.4 Read, markup the book's [see entry immediately above] analysis of the UDAP statute, send to Mr. Moskos	0.4	
8/29/2016	0.2 email from Judge Cothran's clerk. Read same, leave voice message for Mr. Moskos re: same. Receive 2 emails from Mr. Moskos re: same.	0.2	
9/8/2016	0.2 Draft Election of Remedy to send to Court	0.2	

9/14/2016	0.3 Tel. conf. w/Mr. Moskos re: offer from Atty James Becker, representing Defendant.	0.3	
9/15/2016	0.2 emails from (2) and to (1) Mr. Moskos re: settlement offer	0.2	
9/16/2016	1.0 talk with Mr. Moskos about strategy, settlement, likely outcomes.	0.9	0.10
	0.3 Conference call with Client and Mr. Moskos summarizing the above	0.20	0.10
	0.1 email from Mr. Moskos forwarding letter to Mr. Moskos from Mr. Becker, discussed on 9/14	0.1	
	0.1 email from Mr. Becker. Tel. conf. w/Mr. Moskos re: same.	0.10	
10/17/2016	0.1 email from, voice message from, and call from Mr. Moskos re draft order submitted today by Clay	0.1	
	0.6 Read draft Order submitted by Def., and cover letter	0.5	0.1
10/19/2016	2.30 3 tel. confs. with Mr. Moskos re: draft Order	1.90	0.4
10/20/2016	0.9 Tel. conf. with Mr. Moskos re: draft order and how to respond.	0.7	0.2
	0.1 email to Mr. Moskos re: pre-judgment interest	0.1	
	0.5 draft response to judge	0.4	0.1
	1.0 Tel. conf. w/Mr. Moskos re: NC punitive damages review, standards for D.		1.0
	0.1 Tel. conf w/Mr. Moskos discussing asking Judge for time to file response:	0.1	
10/22/2016	1.7 Draft response to Def.'s proposed Order	1.4	0.3
	0.6 Tel. conf. with Mr. Moskos. [At home, on the weekend. No record of substance. Attribute it all to non-UTPA]		0.6
10/26/2016	0.3 Begin and finish response to Constitutionality of punitive damages award (p. 7 of draft Order)		0.3
	0.5 Begin on response to "New Trial Arguments Relating to Punitive Damages"		0.5
10/27/2016	0.2 email from Mr. Moskos re: NC punitive damages statute and NC lawyer's view, send reply		0.2
	0.6 Continue with response to "New Trial Arguments Relating to Punitive Damages"	0.6	
	0.3 skim/read two cases emailed by Mr. Moskos relating to fees, and particularly fees as a percentage of recovery	0.3	

	0.3 skim/read case sent by Mr. Moskos re: whether review of punitive damages is required by NC law.		0.3
	0.2 read Mr. Moskos' lengthy email of 10-21 re his hours; make xls, do math on his time, email Mr. Moskos re: the results of my quick analysis		0.2
	0.3 Draft response to proposed Order's discussion of skill required and of costs		0.3
	0.2 Finish body of response - (write sections re: Offer of Judgment, pre-judgment interest)		0.2
	0.5 Draft brief conclusion to response to proposed order. Begin lengthy email to Mr. Moskos with questions from the draft response.		0.5
	0.4 Finalize email to Mr. Moskos, send. Email addressed ten topics. All were related to the UTPA. No mention of O.O.J., and only discussion of punitive damages concerned. Def.'s (inaccurate) argument that a jury cannot be allowed to hear of potential harm to third parties as a consideration going to punitive damages.		0.4
10/28/2016	0.1 review questions sent to Mr. Moskos last night		0.1
	1.7 Review post-trial filings, make notes for current filing and for possible appeal		1.5
	0.2 email from Mr. Moskos in response to my email of last night re: comparable penalties; respond.		0.2
	0.4 email from Mr. Moskos in response to another email of last night; send email response. The 2 emails concerned many issues, but all related to UTPA, nothing re punitive damages or O.O.J.		0.4
	0.1 Email from Mr. Moskos re: comparable penalties for punitive damages; respond briefly		0.1
	0.1 another email from Mr. Moskos, various issues, all related to the UTPA claim		0.1
10/29/2016	0.2 Review the affidavits of Clayton Walker and Robert Reibold, add notes on certain of Mr. Reibold's paragraphs to my file of Notes on post-trial filings		0.2
	0.2 Review Def.'s Response to Pls. election of remedies 05-27-16; email Mr. Moskos re: Kuykendall case		0.2
	0.7 Begin review of Plaintiffs' post-trial filings: Start and complete review of the 17-page Brief in Support of Atty fees, other than the exhibits. Review Mr. Moskos' original filed affidavit in support of fee request.		0.7
	0.2 review the exhibits to Mr. Moskos' affidavit in support of fees.		0.2

	0.4 Read Mr. Moskos' 07-20-2016 1st Supplemental Affid in Support of Atty Fees. Copy parts to my notes file. Review affidavit of BRF.	0.4	
	0.7 Write long email to Mr. Moskos re: attorney fees.	0.7	
10/30/2016	0.4 Review P's Brief Opposing JNOV, write up thought of how to incorporate part of that into our response.	0.4	
	0.2 draft sketch of argument re: this vehicle more dangerous than the vehicle in <i>Austin</i> .		0.2
	0.5 Review P's Brief Opposing JNOV, add additional quotes to notes on duration of the challenged conduct, draft sketch of argument re: same	0.5	
	0.5 Review Pls' Brief Opposing JNOV, skim Pls' Brief Opposing Statutory Cap. Send Mr. Moskos email re: Def's argument about duty to inspect, second email re: the NC damage disclosure statute. 4 activities here totaling 0.5. Only 1 arguably does not relate to the UTPA claim, skimming the brief re: the limit on punitive damages. Skimming likely took less time than the others. To err on the side of lowering the hours, I assign 0.2 hours to that skim.	0.3	0.2
	0.2 Finish P's Brief Opposing JNOV. Again, to the extent that the Brief relates to punitive damages, it is in the context of Def. seeking a new trial absolute. Nevertheless, in abundance of caution, I divide the time equally, 0.1 and 0.1	0.1	0.1
	0.1 Review the 2 P's filings July 20 re election of remedies	0.1	
	0.1 ensure I have read all the prior post-trial filings	0.1	
	0.3 review Mr. Moskos' answers to list of questions about draft order, review portion of Def's Brief to ensure it did not ask to exclude all non-NCUTPA time	0.3	
	0.4 re-skim the draft order to make sure nothing has been overlooked. Review "draft" letter. Send email to Mr. Moskos re: his affidavit.	0.4	
	0.9 Continue review of earlier draft response to proposed Order. Send 2 emails to Mr. Moskos, 1 about authority for court costs, 1 about Order's language re: Pls' request for an award of costs.	0.7	0.2
	0.2 Continue review of earlier draft response to proposed Order. Begin review of my file "Notes on post-trial filings."	0.1	0.1
	0.3 Tel. call to Mr. Moskos re: several of the emails I sent to him.	0.3	
10/31/2016	0.1 email from Mr. Moskos re my email re "Damage Disclosure form."	0.1	
	0.2 emails (4) re: inducing or preventing one from inspecting, 2 from Mr. Moskos, 2 to Mr. Moskos	0.2	

	0.1 email from Mr. Moskos re setoff and also re fees	0.1	
	0.3 review Notes on post-trial filings	0.2	0.1
	0.3 Statutory research and analysis, email to Mr. Moskos, all relating to election of remedy	0.3	
	0.1 email from Mr. Moskos, in response to email from BRF re: the Order's reference to Mr. Moskos' Supplemental Affidavit.	0.1	
	0.2 review notes on post-trial filings, compare dates, email Mr. Moskos re BMW v. Gore and NC GS 1D		0.2
	0.4 review Notes on post-trial filings, skim/read case Mr. Moskos sent via email attachment.		0.4
	0.2 Legal research: review and Shepardize case Mr. Moskos sent, skim 2 of the citing cases		0.2
	0.2 Receive, read 4 emails from Mr. Moskos, 2 re: punitive damages, one re: NC disclosure statute and common law requiring disclosure, 1 re: motion for atty fees. I am splitting it 50/50	0.1	0.1
	0.1 Send 2 emails to Mr. Moskos re: punitive damages.		0.1
	1.7 Edit draft letter responding to Def.'s proposed Order, write additional content.	1.3	0.4
11/1/2016	0.4 Lexis research re: whether an issue is procedural or substantive	0.4	
	0.2 Analyze case relating to OOJs		0.2
	0.3 Tel. conf. w/Mr. Moskos re: draft letter	0.2	0.1
	0.1 review draft to see if anything else needs to be researched.		0.1
	0.7 email from Mr. Moskos re: case concerning the amount of punitive damages. Pull case and do follow-up research.		0.7
	0.4 pull, read NC case Mr. Moskos sent cite for re: election of remedies issue. Conduct follow-up research. Call one of the North Carolina attorneys involved, speak with him. Discussed NCGS 1-20 and why he thinks it does not prohibit atty fees under UTPA while obtaining punitive damages via common law cause of action.		0.4
	0.1 Receive tel. call from other atty involved in the NC case above, discuss the election issue	0.1	
	0.3 email from Mr. Moskos with his comments on part of the draft letter (redlined).	0.2	0.1
	0.5 finish reading Mr. Moskos' comments on draft letter. Send email to Mr. Moskos re: conversations with NC attorneys today.	0.3	0.2
	0.4 read, mark up second part of draft sent separately by Mr. Moskos	0.3	0.1
	0.2 email from Mr. Moskos with additional thoughts on the draft relating to various issues, including punitive damages. Split it 50/50.	0.1	0.1

	0.7 Tel. conf. with Mr. Moskos re: the draft response to the proposed Order and his comments thereon.	0.4	0.3
	0.2 revise draft in light of conversation with Mr. Moskos	0.1	0.1
	0.2 re-read my notes from the 07-27 hearing.	0.1	0.1
	0.8 revise draft	0.6	0.2
	0.6 Tel. conf. w/Mr. Moskos re: draft response to proposed Order	0.4	0.2
	0.8 Revise draft	0.8	
	1.7 revising, and tel. conf. w/Mr. Moskos. Print, sign, email response to proposed Order.	1.3	0.4
12/8/2016	2.5 Begin drafting Rule 59 motion. Complete first draft.	2.5	
	0.3 email to Mr. Moskos with 7 questions that arose during writing of first draft. Four concern the measure of attorney fees. Being cautious, call it only 0.1 for those four questions.	0.1	0.2
12/9/2016	0.1 review notes on order for cases to read.	0.1	
	0.6 Pull, read, mark up, case Order cites re: punitive damages		0.6
	0.1 Shepardize the above case		0.1
	0.1 review notes on that case		0.1
	0.5 Read <i>Shepard v. Bonita Vista</i> , case on purpose of UTPA cited in Order	0.5	
	0.5 Begin Shepardizing <i>Shepard</i> .	0.5	
	0.2 continue review of marked-up order for cases to read. Edit draft Motion.	0.1	0.1
	0.4 Find, Shepardize unpublished NC Super case order cites re: UTPA fees - "Out of the Box Developers."	0.4	
	0.5 Read of Out of the Box Developers.	0.5	
	0.4 finish Out of the Box Developers, make xls showing ratios of fees to awards	0.4	
	0.2 Finish Shepardizing and review OTB	0.2	
	0.1 email Mr. Moskos re: OTB	0.1	
	0.4 review section of order on pre-judgment interest. Add draft paragraph to Memo re: same. Write questions for Mr. Moskos re: same.	0.4	
	0.2 review case cited in OTB.	0.2	
	0.3 pull, read cited case re: UTPA fees	0.3	
	0.1 review the letter sent to Judge Cothran with various objections to the proposed Order	0.1	
	0.4 draft email to outside attorney re: matter in Order concerning UTPA fees. Send to Mr. Moskos for comments.	0.4	

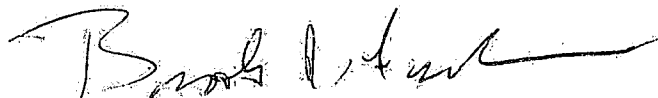
	0.2 read <i>Whiteside</i> case's discussion of fees.	0.2	
	0.4 Shepardize <i>Whiteside</i> .	0.4	
	0.6 Shepardize <i>Cotton v. Stanley</i> , case on UTPA fees. Read citing case.	0.6	
12/13/2016	1.1 review BRF filed timesheets for work that can be said not to relate to UTPA. Make new xls of same with explanations as to what work is considered non-UTPA. Review earlier filings to see which concerned which issues in order to allot work between what the Order's vision might consider "not related" to the UTPA claim and what it would consider "related."	1.1	
	0.1 Review the revised BRF timesheet prepared for work up to July 20, edit same.	0.1	
	0.3 Shepardize <i>Kuykendall</i> for recent citing decisions.	0.3	
12/14/2016	0.3 revise draft email re: issue in the Order to send to another outside attorney	0.3	
	0.1 add point to draft Rule 59 Motion that asking more for punitive damages than for actual damages pleadings and settlement discussion has no relation to how much work done on each cause of action.	0.1	
	0.1 make note of another point to add to Motion re: contingency contracts and purpose of fee-shifting statutes.	0.1	
	0.1 review their "In Further Support JNOV" to see if it is irrelevant to the UTPA claim	0.1	
	0.1 review Mr. Moskos' two timesheet extracts he emailed yesterday, 1 re: his time relating to punitive damages and 1 re: Nationwide, and text he drafted accompanying Nationwide extract.	0.1	
	0.4 Tel. conf. w/Mr. Moskos re: how his timesheets should be amended to account for the Order's concerns.	0.4	
	0.1 continuation of call, now about damages to the clients.		0.1
	0.1 follow-up call, about whether and how to show that Paralegal time mentioning Nationwide was relevant to the UTPA claim	0.1	
	0.7 new draft of para about the 218 hours mentioned in the Order	0.7	
	0.5 see if 218 hours can be arrived at another way	0.5	
	0.4 3 emails from Mr. Moskos. Send reply to one asking for directions about entries that mention Nationwide. Briefly review his affidavits, send reply.	0.4	
	0.2 go through timesheets from this summer, after July 20, to determine which entries relate to punitive or other items that defense may claim are not UTPA-related.	0.2	
	0.5 Tel. conf with outside attorney primarily re: the issue I emailed him about. Also discuss talk the OOL and the punitive award.	0.3	0.2

72.2
at \$390.00
\$28,158.00

52.0
\$390.00
\$20,280.00

20.2

I certify that these timesheets accurately reflect my work on the referenced case. Where time is divided between columns, it is on the basis of good-faith estimates.


Brooks R. Fudenberg

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
) CASE NO. 13-CP-40-0319

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RICHLAND COUNTY
 FILED
 2016 DEC 20 AM 11:36
 JEANNETTE W. MCBRIDE
 C.C.P. & G.S.

Respectfully Submitted,

Brad A. Lund

1992

WALKER || REIBOLD

ATTORNEYS AT LAW

3321 Forest Drive Suite One, PO Box 61140 Columbia, SC 29260

Clay Walker

(803) 454-0955

Fax (803) 454-0956

cwalker@walkerreibold.net

December 30, 2016

Via E-Mail and Regular Mail

The Honorable R. Ferrell Cothran Jr.
Post Office Box 32
3 West Keitt Street
Manning, SC 29102

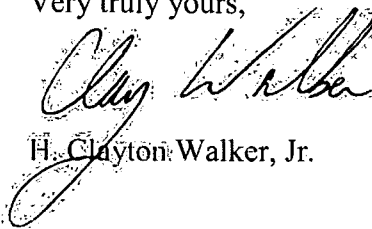
Re: Daniel O'Shields and Roger W. Whitley, A Partnership d/b/a O&W Cars v. Columbia Automotive Company, LLC d/b/a Midlands Honda
C/A No.: 2013-CP-40-0319

Dear Judge Cothran:

I write regarding two issues. First, after considering the cost and benefit of pursuing the claim of set-off in this case, the Defendant has decided to withdraw, and does hereby withdraw, its motion to require a set-off. The withdrawal of the motion should resolve all post-trial issues aside from the Plaintiff's recently filed Rule 59 motion and motion for supplemental fees.

Second, we would be grateful if we could have until January 20, 2017 to respond to a very limited number of issues raised in that motion. Please advise at your convenience. I am,

Very truly yours,



H. Clayton Walker, Jr.

HCW:cnc

cc: C. Steven Moskos, Esq.,

Exhibit 1**C Steven Moskos**

From: C Steven Moskos <csmoskos@earthlink.net>
Sent: Tuesday, January 03, 2017 4:28 PM
To: 'Cesaire Chase'; 'rcothranj@sccourts.org'; 'Cothran, Ralph F. Jr., Law Clerk (John Furse)'; 'Cothran, Ralph Ferrell Jr. Secretary (Gayle Brunson)'
Cc: 'Clay Walker'; Brooks Fudenberg (brooks.r.fudenberg@fudenberglaw.com)
Subject: RE: O'Shields, Whitley, and O&W Cars v. Columbia Automotive Company, LLC

Your Honor,

We must object to Defendant's request for 35 days to respond to our Rule 59 motion and motion for supplemental fees. The trial of this case ended more than eight months ago. Our clients deserve closure. The Defendant has said everything it needs to say. A final decision needs to be made. We understand about the holidays; however, we had only 10 days to file our motion; Defendant is asking for more than three times that amount to file its response.

When Defendant was provided 30 days to prepare its draft Order, we received only 15 days to respond, half the time allowed for preparing the main document. Here, Defendant took 15 days – more time than we were allowed to write our motion – simply to request additional time. And it wants an additional 21 days – twice the amount of time we were allowed to prepare our motion – to file its response.

We do not believe this is appropriate. We, therefore, ask that you deny Defendant's request.

C. Steven Moskos
 4000 Faber Place Dr., Suite 300
 North Charleston, SC 29405
 843-763-5297 Office

From: Cesaire Chase [mailto:cchase@walkerreibold.net]
Sent: Friday, December 30, 2016 12:13 PM
To: rcothranj@sccourts.org; 'Cothran, Ralph F. Jr., Law Clerk (John Furse)' <rcothranlc@sccourts.org>; 'Cothran, Ralph Ferrell Jr. Secretary (Gayle Brunson)' <RCothranSC@sccourts.org>
Cc: 'Clay Walker' <cwalker@walkerreibold.net>; csmoskos@earthlink.net
Subject: Daniel O'Shields and Roger W. Whitley v. Columbia Automotive Company, LLC

Good Afternoon –

Attached please find correspondence from H. Clayton Walker, Jr., Esq. in connection with the above-referenced matter.

Thank you.

Cesaire N. Chase
Paralegal
Walker Reibold, LLC
(803) 454-0955
(803) 454-0956 Facsimile
cchase@walkerreibold.net

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C Steven Moskos

From: Cothran, Ralph F. Jr., Law Clerk (John Furse) <rcothranlc@sccourts.org>
Sent: Friday, January 13, 2017 1:53 PM
To: C Steven Moskos; Cothran, Ralph Ferrell, Jr.
Cc: 'Clay Walker'; Brooks Fudenberg
Subject: RE: O'Shields, Whitley and O&W Cars v Columbia Automotive

Gentlemen,
 Judge Cothran is trying to finish this case up as soon as possible. To ensure that we don't miss any loose ends could you let us know what all still needs to be ruled on in this matter. Thanks for all of your help with this.
 Thankyou,

John L. Furse
 Law Clerk to the Honorable R. Ferrell Cothran, Jr.
 Circuit Judge of the Third Judicial Circuit
 P.O. Box 32
 Manning, SC 29102
 OFFICE: (803) 435-2450

From: C Steven Moskos [mailto:csmoskos@earthlink.net]
Sent: Wednesday, January 04, 2017 3:48 PM
To: Cothran, Ralph Ferrell, Jr. <RCothranJ@sccourts.org>; Cothran, Ralph F. Jr., Law Clerk (John Furse) <rcothranlc@sccourts.org>
Cc: 'Clay Walker' <cwalker@walkerreibold.net>; Brooks Fudenberg <brooks.r.fudenberg@fudenberglaw.com>
Subject: O'Shields, Whitley and O&W Cars v Columbia Automotive

Your Honor,

In light of Defendant's withdrawal of its Motion for Setoff, I have taken the liberty of preparing a Form 4 Order for your signature. I have attached it to this email. Thank you.

C. Steven Moskos
 4000 Faber Place Dr., Suite 300
 North Charleston, SC 29405
 843-763-5297 Office

C Steven Moskos

From: Rob Reibold <rreibold@walkerreibold.net>
Sent: Friday, January 13, 2017 5:17 PM
To: rcothranlc@sccourts.org
Cc: 'Clay Walker'; C Steven Moskos
Subject: O&W v. Midlands Honda
Attachments: Ltr to Judge Cothran 01.13.17.pdf

Dear Judge Cothran:

I am enclosing a PDF copy of Midlands Honda's response to Plaintiff's Rule 59 motion and motion for supplemental fees. A hard copy is being served by mail today.

Have a nice weekend.

Rob Reibold

Robert L. Reibold
Walker || Reibold
Post Office Box 61140
Columbia, SC 29260
(803) 454-0955

(803) 454-0956 (fax)

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WALKER || REIBOLD

ATTORNEYS AT LAW

3321 Forest Drive Suite One, PO Box 61140 Columbia, SC 29260

Clay Walker

(803) 454-0955

Fax (803) 454-0956

cwalker@walkerreibold.net

January 13, 2017

Via E-Mail and Regular Mail

The Honorable R. Ferrell Cothran Jr.
Post Office Box 32
3 West Keitt Street
Manning, SC 29102

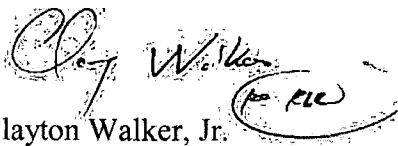
Re: Daniel O'Shields and Roger W. Whitley, A Partnership d/b/a O&W Cars v. Columbia Automotive Company, LLC d/b/a Midlands Honda
C/A No.: 2013-CP-40-0319

Dear Judge Cothran:

Enclosed please find the following: (1) Midlands Honda's Memorandum in response to Plaintiffs' Rule 59(e) motion and motion for supplemental fees; (2) a supporting affidavit; and (3) a proposed order for your consideration on the motions. The original memo and affidavit are being filed with Richland County Clerk of Court. The proposed order has been sent to both you, and by copy of this letter, to opposing counsel in compliance with Rule 5, SCRCP.

Thank you for your consideration of these matters. I am,

Very truly yours,



H. Clayton Walker, Jr.

HCW:cnc

Encl.

Cc w/encl: C. Steven Moskos, Esq.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	
	)	
Daniel O'Shields and Roger W.	)	Civil Action No. 2013-CP-40-0319
Whitley, A Partnership d/b/a	)	
O&W Cars,	)	
	)	
<i>Plaintiff</i>	)	
	)	
v.	)	
	)	
Columbia Automotive, LLC d/b/a	)	
Midlands Honda,	)	
	)	
<i>Defendant.</i>	)	

**DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION PURSUANT TO RULE 59
AND MOTION FOR SUPPLEMENTAL ATTORNEY'S FEES**

Columbia Automotive, LLC, d/b/a/ Midlands Honda ("Midlands Honda") provides the following response to the Plaintiff's Motion. As an initial note, this action stems from one transaction: the sale of one used car by Midlands Honda to O&W Cars. O&W is a partnership, and Daniel O'Shields and Roger W. Whitley are the partners ("O&W"). There was one buyer here, and thus, there is one recovery and one punitive damages analysis whether the buyer is described as "plaintiff" or "plaintiffs."

I. Response to Rule 59, SCRC Motion

The Court has fully and accurately addressed most of the items referenced by O&W. Midlands Honda will not retread that ground; however, Midlands Honda provides a brief response as to some of the points raised below:

1. Interest.

Midlands Honda agrees that the prejudgment interest award should be adjusted upward to reflect the time until judgment is entered in this case and suggests that the Clerk of Court should

be instructed to make that calculation at the time judgment is entered ($\$1993.38 + (\text{number of days since October 10, 2016} * \$1.46)$)).

2. Attorney's Fees.

O&W had the burden of establishing the amount of its attorney's fees relating to its claim under the North Carolina Unfair Trade Practices Act ("NCUTPA"). The Court previously concluded that O&W had failed to do so in a number of respects, including by block billing time related to the NCUTPA claim together with time which was unrelated. O&W now tries to correct its prior failure by providing new affidavits which purport to divide time between recoverable and non-recoverable claims. O&W should not be permitted to submit new evidence at the Rule 59(e), SCRCF stage after the record has closed and the Court has issued its decision.

O&W also presents new time records seeking additional time from May 2, 2016 to July 20, 2016. These records cover an approximately 13 week period of time beginning with the post-trial motions hearing and ending a week before the hearing. O&W could have filed a supplemental affidavit or request seeking these fees prior to the hearing. It did not do so, and never sought leave to supplement the record prior to the Court's decision. The Court should not consider any supplemental affidavits submitted by O&W relating to time prior to July 20, 2016.

Finally, O&W seeks to increase the Court's attorney's fee award by arguing that the Court forgot or failed to award fees for time spent by Brooks Fudenberg. However, an examination of the Court's order reveals that this argument is incorrect. The Court's award was based on the full amount requested by O&W as of the time of the hearing in this matter, \$370,543.12 (*see* ¶¶ 27-28 of First Supplemental Affidavit of Attorney's Fees of C. Steven Moskos in Support of Plaintiff's Motion for Attorney's Fees). Nothing in the Court's order

indicates that the Court did not consider Mr. Fudenberg's time in its award. O&W cannot take a second bite at the apple now that it received an award that was lower than it hoped.

II. Supplemental Motion for Attorney's Fees after July 20, 2016.

Midlands Honda addresses O&W's claim for supplemental fees by the time period in which the fees were allegedly incurred. Additionally, there are some general issues with respect to O&W's time records which apply irrespective of the date on which the fees were incurred.

1. July 21, 2016 through July 27, 2016.

Midlands Honda acknowledges that time spent immediately prior to the July 27, 2016 hearing on post-trial motions and time spent at the hearing could not have been submitted *prior* to the hearing. Recent time records submitted by Mr. Moskos and Mr. Fudenberg claim that they spent 36 hours working on UTPA issues from July 21 to July 27. Supplemental attorney's fees for this period are therefore capped at \$14,040 (36 hours * \$390/hr). However, Midlands Honda asserts that the 36 hour figure is overstated. Mr. Moskos claimed that approximately 75% (8 of 10.7 hours) of the time he spent on the day of the hearing were related to the NCUTPA. Mr. Fudenberg's time records acknowledge that no more than two-thirds (66.67%) of that time was spent on the NCUTPA. Midlands Honda believes both of these estimates are excessive because punitive damages were a significant and time consuming part of the argument on post-trial motions, and other issues, including error preservation, evidentiary arguments, setoff, etc. were addressed as well. Midlands Honda believes less than 50% of the time spent in connection with the hearing related to the NCUTPA claim.

Additionally, some of the time entries submitted by O&W for this period show that time claimed to have been spent on the NCUTPA was spent on some other aspect of the case or it cannot be ascertained whether the NCUTPA was involved or not. For example, Mr. Moskos's July 22 and July 24 time entries do not contain enough detail to determine whether they involved

NCUTPA work. Other entries, asserting that 100% of the time claimed was spent on the NCUTPA, are undercut by the entries themselves that state that some portion of the time was spent on issues such as punitive damages, election of remedies, and offers of judgment.

Although O&W's counsel has a legitimate claim to some amount of fees for time spent relating to the NCUTPA claim between July 21, 2016 and July 27, 2016, that amount cannot exceed \$14,040 and, Midlands Honda submits, should be substantially less than that amount.

2. July 28, 2016 through September 13, 2016.

Mr. Moskos claims to have spent a total of 65.2 hours on NCUTPA related activity during this period. Sixty point nine of these hours relate to the August 30, 2016 affidavit filed by O&W after the Court's preliminary ruling. The Court has already ruled that "much of the affidavit is improper as it contains legal arguments and speculation about which the Affiant lacked personal knowledge."

Midlands Honda asks that the Court not award any fees for the August 30, 2016 affidavit, as it was predominantly an exercise in after the fa

ct legal briefing and speculation, rather than an affidavit to address the facts presented in Midlands Honda's memorandum opposing O&W's requested award of attorney's fees. In the alternative, any additional fee amount should be limited to less than three hours, reflecting a reasonable amount of time to respond to the chronology contained in Midlands Honda's response to the request for attorney's fees.

The remaining time not spent on the affidavit in this period is minimal, 4.3 hours by Mr. Moskos and 1.7 hours by Mr. Fudenberg, producing a total fee amount of \$2,340 (6 hours * \$390/hr). Midlands Honda believes that attorney's fees awarded for time spent between July 28 and September 13 should be capped at \$2,340, or, alternatively, at \$3,510, if the Court elects to award three hours of time in connection with the drafting of the supplemental affidavit.

3. September 14, 2016 through the Present.

Before attorney's fees may be awarded under the NCUTPA, there must be an unwarranted refusal to settle on the part of the defendant. N.C.G.S. § 75-16.1; *Llera v. Security Credit Systems, Inc.*, 93 F.Supp.2d 674 (W.D.N.C. 2000). An award of fees for time spent on or after September 14, 2016 would be improper because, as discussed in more detail below, there was no unwarranted refusal to settle.

The Court previously concluded that Midlands Honda's pre-trial offer of judgment was a reasonable effort to resolve the NCUTPA exposure, but still found an unwarranted refusal to settle because Midlands Honda had not attempted to resolve the entire case. Midlands Honda made another settlement attempt in response to the Court's order. On September 14, 2016, Midlands Honda, through counsel, hand delivered a settlement offer to Mr. Moskos. (Affidavit of James Y. Becker ("Becker Aff.") at ¶¶ 3 and 4, Ex. A). Midlands Honda attempted in good faith to settle the *entire* case by offering to pay O&W "a sum reflecting actual damages plus the trial court's award of both punitive damages and attorney's fees for a total of \$81,069 (\$6,645 in actual damages + \$46,515 in punitive damages + \$21,264 in attorney's fees)." *Id.* In other words, Midlands Honda offered to pay O&W all of the relief approved by the trial court, including alternative relief which would have been foreclosed by O&W's election of remedies. In fact, Midlands Honda made a slight math error in its settlement offer and, as a result, the offer was greater than the total amount of relief approved by the Court.

On September 16, O&W rejected the settlement offer. Mr. Moskos stated: "I have reviewed Midlands Honda's confidential settlement offer with my clients. While the offer is confusing since it offered \$81,069 but the numbers totaled only \$74,424, my clients have decided to decline both offers." *Id.* at Ex. 2. Midlands Honda twice asked for a counter offer

(on September 16 and October 3), but O&W has not responded or attempted to continue the settlement dialogue *Id.* at ¶ 6.

Midlands Honda contends there is no basis for any further fee award after this offer was made on September 14, as there was no unwarranted refusal “to fully resolve the matter which constitutes the basis of such suit” as required by the NCUTPA in N.C.G.S. § 75-16.1.

4. General Issues

In addition to the specific argument as to the periods above, there are some general issues with O&W’s supplemental fee request. Preliminarily, O&W did not supplement its filing until after the Court had ruled on the issue of attorney’s fees, notwithstanding the time that elapsed between the hearing on July 27, 2016 and the Court’s preliminary ruling on August 29, 2016 and the Court’s written order dated November 28, 2016. Midlands Honda also notes that the time entries for Attorneys Moskos and Fudenberg do not corroborate in places with Attorney Fudenberg showing a significantly lower amount of time than Attorney Moskos.

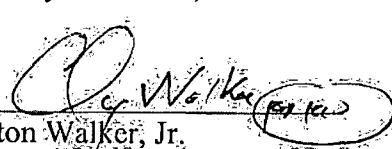
CONCLUSION

Should the Court be inclined to grant additional fees, Midlands Honda asks that those fees should be reasonable and properly limited to time spent pursuing the NCUTPA action, as previously argued by Midlands Honda.

Respectfully submitted,

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing document has been served upon all counsel by mailing a copy properly addressed and with sufficient postage affixed thereto this 13 day of January 2017.
Walker & Reibold, Attorneys at Law


H. Clayton Walker, Jr.
WALKER | REIBOLD
Post Office Box 61140
Columbia, SC 29260
(803) 454-0955
(803) 454-0956/facsimile
cwalker@walkerreibold.net

January 13, 2017

ATTORNEYS FOR MIDLANDS HONDA

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Daniel O'Shields and Roger W.	)	
Whitley, A Partnership d/b/a	)	Civil Action No. 2013-CP-40-0319
O&W Cars,	)	
<i>Plaintiff</i>	)	
	)	
v.	)	
Columbia Automotive, LLC d/b/a	)	
Midlands Honda,	)	
<i>Defendant.</i>	)	

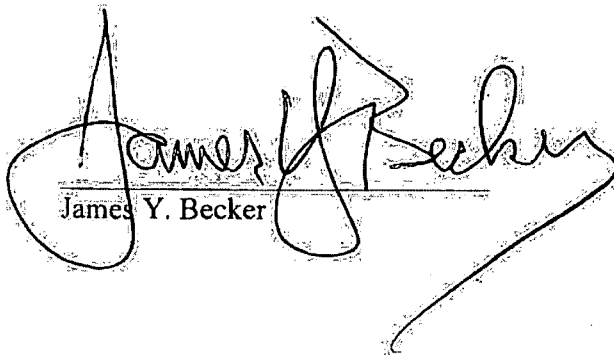
AFFIDAVIT OF JAMES Y. BECKER

1. I am an attorney licensed to practice law in the State of South Carolina. I am employed by Haynsworth Sinkler Boyd, P.A.
2. After the jury trial and verdict in the above captioned case, my firm was engaged to consult with the Defendant and its counsel of record regarding the post-trial motions to be filed herein.
3. At that time, I was defending another case against another defendant, which was brought by the Plaintiff's counsel, Steven Moskos, on behalf of another plaintiff. On September 14, 2016, Mr. Moskos and I participated in an arbitration hearing for the other case. Prior to the hearing, I hand delivered a settlement offer on behalf of Defendant Midlands Honda to Mr. Moskos for settlement of this case. A true and accurate copy of the letter conveying that settlement offer is attached as Exhibit 1.

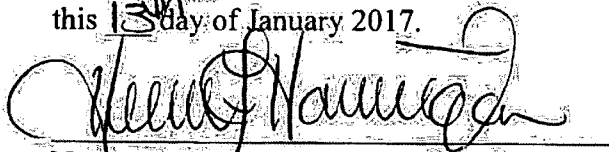
4. In fact, Midlands Honda made a slight math error in its settlement offer and, as a result, the offer was greater than the total amount of relief previously approved by the Court. Nevertheless, Midlands Honda did not retract the offer or reduce it.

5. On September 16, Plaintiff O&W Cars rejected the settlement offer by an email to me from Mr. Moskos, a true and accurate copy of which is attached as Exhibit 2. In the email, Mr. Moskos stated: "I have reviewed Midlands Honda's confidential settlement offer with my clients. While the offer is confusing since it offered \$81,069 but the numbers totaled only \$74,424, my clients have decided to decline both offers."

6. As shown on the email conversation attached as Exhibit 2, in reply emails on September 16 and again on October 3, 2016, I asked Mr. Moskos for a counter offer from O&W, but O&W never responded or otherwise attempted to continue the settlement discussion with me or Midlands Honda's counsel of record, Clay Walker and Rob Reibold.

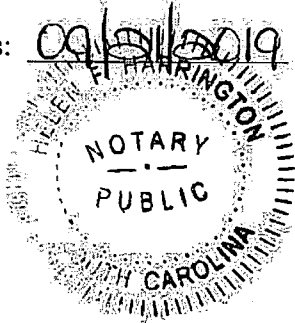

James Y. Becker

Sworn to and subscribed before me
this 13th day of January 2017.


Notary Public, State of South Carolina

My commission expires: 09/15/2019

[NOTARY SEAL]



Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

1201 MAIN STREET, 22ND FLOOR (29201-3226)
POST OFFICE BOX 11889 (29211-1889)
COLUMBIA, SOUTH CAROLINA
TELEPHONE 803.779.3080
FACSIMILE 803.766.1243
WEBSITE www.hsbilawfirm.com

JAMES Y. BECKER
DIRECT DIAL NUMBER 803.540.7706
EMAIL jbecker@hsbilawfirm.com

**CONFIDENTIAL SETTLEMENT COMMUNICATION SUBJECT
TO RULE 408 OF THE SOUTH CAROLINA RULES OF EVIDENCE**

Via Hand Delivery

September 14, 2016

C. Steven Moskos
C. Steven Moskos, P.A.
Suite 300
4000 Faber Place Drive
North Charleston, SC 29405

Re: Daniel O'Shields and Roger W. Whitley, A Partnership d/b/a O&W Cars v. Columbia
Automotive Company LLC, d/b/a Midlands Honda
Civil Action No. 2013-CP-40-0319
HSB File No. 38954.0002

Dear Steve:

My firm has been retained by Columbia Automotive, LLC ("Midlands Honda") to assist Walker | Reibold with any possible appeal in this matter. In light of the Court's recent direction regarding the election of remedies and your subsequent election, we are reaching out to you in hopes of reaching a settlement. Please be advised this letter is subject to Rule 408, SCRE and is for settlement purposes only.

Although we believe we would have a favorable position in any appeal or cross-appeal, Midlands Honda would like to resolve this matter without further litigation. To that end, I am authorized to offer Plaintiffs a sum reflecting actual damages plus the trial court's award of both punitive damages and attorney's fees for a total of \$81,069 (\$6,645 in actual damages + \$46,515 in punitive damages + \$21,264 in attorney's fees). This offer provides Plaintiffs with the maximum possible recovery approved by the trial court without the necessity of electing between punitive damages and attorney's fees.

Please let me know your response by September 21, 2016.



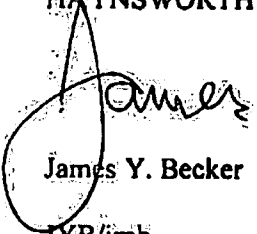
Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

C. Steven Moskos
September 14, 2016
Page 2

Sincerely yours,

HAYNSWORTH SINKLER BOYD, P.A.



James Y. Becker

JYB/jmb

Becker, James

From: Becker, James
Sent: Monday, October 03, 2016 11:07 AM
To: C Steven Moskos (csmoskos@earthlink.net)
Subject: FW: Whitley, et al v Midlands Honda

Steve:

Please see below. Any interest in making a counteroffer?

James Y. Becker | Attorney | Haynsworth Sinkler Boyd, P.A.
 1201 Main St., 22nd Floor, Columbia, South Carolina 29201-3232
jbecker@hsblawfirm.com | 803.540.7706

From: Becker, James
Sent: Friday, September 16, 2016 4:49 PM
To: 'C Steven Moskos'
Cc: Brooks Fudenberg; Ballew, Reeve
Subject: RE: Whitley, et al v Midlands Honda

Steve:

Thanks for the quick response. Yes, you are correct that our math does not add up (and no one on our side caught that). But in any event, I believe I have some room to negotiate. Will you make a counter-offer?

James Y. Becker | Attorney | Haynsworth Sinkler Boyd, P.A.
 1201 Main St., 22nd Floor, Columbia, South Carolina 29201-3232
jbecker@hsblawfirm.com | 803.540.7706

From: C Steven Moskos [<mailto:csmoskos@earthlink.net>]
Sent: Friday, September 16, 2016 3:39 PM
To: Becker, James
Cc: Brooks Fudenberg
Subject: Whitley, et al v Midlands Honda

Jamie,

I have reviewed Midlands Honda's confidential settlement offer with my clients. While the offer is confusing since it offered \$81,069 but the numbers totaled only \$74,424, my clients have decided to decline both offers.

Steve

C. Steven Moskos
 4000 Faber Place Dr., Suite 300



North Charleston, SC 29405
843-763-5297 Office

ELECTRONICALLY FILED - 2019 Jan 16 5:50 PM - RICHLAND - COMMON PLEAS - CASE#2013CP4000319

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Daniel O'Shields and Roger W.)
Whitley, A Partnership d/b/a)
O&W Cars,)
Plaintiff)
v.)
Columbia Automotive, LLC d/b/a)
Midlands Honda,)
Defendant.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2013-CP-40-0319

**ORDER ON PLAINTIFF'S MOTION PURSUANT TO RULE 59 AND MOTION FOR
SUPPLEMENTAL ATTORNEY'S FEES**

Having considered the motion of Daniel O'Shields and Roger W. Whitley, a Partnership d/b/a O&W Cars ("O&W") pursuant to Rule 59, SCRPC and motion for supplemental attorney's fees, the Court makes the following rulings.¹ The Court further directs the Clerk of Court to enter judgment consistent with this order. In the interim since the Court's order was filed Columbia Automotive, LLC d/b/a Midlands Honda ("Midlands Honda") has withdrawn its motion for setoff; therefore, judgment is appropriate at this time as itemized in the Conclusion of this Order.

I. Rule 59, SCRPC Motion

As an initial note, this action stems from one transaction: the sale of one used car by Midlands Honda to O&W Cars. O&W is a partnership, and Daniel O'Shields and Roger W. Whitley are the partners ("O&W"). There was one buyer here, and thus, there is one recovery

¹ Pursuant to Rule 59(f), SCRPC, the Court hereby exercises its discretion to rule on this matter on the briefs without further hearing. O&W submitted these requests in one filing, and the Court addresses them in one order.

and one punitive damages analysis whether the buyer is described as “plaintiff” or “plaintiffs.” O&W’s argument on this point is therefore denied.

In addition, the Court provides additional discussion on two matters raised by O&W:

1. Interest.

The prejudgment interest award should be adjusted upward to reflect the time until judgment is entered in this case. The Court directs the Clerk of Court to make that calculation on the date of entry as follows: $\$1993.38 + (\text{number of days since October 10, 2016} * \$1.46)$.

2. Attorney’s Fees.

O&W had the burden of establishing the amount of its attorney’s fees relating to its claim under the North Carolina Unfair Trade Practices Act (“NCUTPA”). The Court previously concluded that O&W had failed to do so in a number of respects, including by block billing time related to the NCUTPA claim together with time which was unrelated. O&W cannot correct this failure at the Rule 59 stage by providing new affidavits which purport to divide time between recoverable and non-recoverable claims. The Court declines to revisit its rulings on this point.

O&W also presents new time records seeking additional time from May 2, 2016 to July 20, 2016. O&W could have filed a supplemental affidavit or request seeking these fees prior to the hearing. It did not do so, and never sought leave to supplement the record prior to the Court’s decision. The Court declines to revisit its rulings on this point.

Finally, O&W seeks to increase the Court’s attorney’s fee award by arguing that the Court forgot or failed to award fees for time spent by Brooks Fudenberg. The Court disagrees with this contention and clarifies that it did consider Mr. Fudenberg’s time in its original fee award.

The remainder of the motion is denied without further discussion.

II. Supplemental Motion for Attorney’s Fees after July 20, 2016.

The Court addresses these arguments by time period.

1. July 21, 2016 through July 27, 2016.

O & W's counsel have submitted claims for an additional 36 hours (or \$14,040) for the period immediately prior to the hearing in this matter on July, 27, 2016. Based on the same analysis applied in its earlier order which is incorporated by reference here, the Court finds that this figure does not represent a reasonable reflection of the time devoted to the NCUTPA claim. The Court was present at the hearing and notes that much of the parties' time and energy was devoted to the analysis of the punitive damages award. There were also other arguments that were unrelated to the NCUTPA. Additionally, some of the time entries submitted by O&W for this period show that time claimed to have been spent on the NCUTPA was spent on some other aspect of the case or it cannot be ascertained whether the NCUTPA was involved or not. For example, Mr. Moskos's July 22 and July 24 time entries do not contain enough detail to determine whether they involved NCUTPA work. Other entries, asserting that 100% of the time claimed was spent on the NCUTPA, are undercut by the entries themselves that state that some portion of the time was spent on issues such as punitive damages, election of remedies, and offers of judgment. As a result the Court finds a reasonable attorney's fee for this period is \$7,020, representing 50% of the time claimed.

2. July 28, 2016 through September 13, 2016.

Mr. Moskos claims 65.2 hours on NCUTPA related activity during this period. 60.9 of these hours relate to the August 30, 2016 affidavit filed by O&W after the Court's preliminary ruling. The Court has already ruled that "much of the affidavit is improper as it contains legal arguments and speculation about which the Affiant lacked personal knowledge." Based on this finding, the Court finds that the vast majority of this time does was not reasonably expended in

connection with the NCUTPA claim. The Court finds that an appropriate fee for the preparation of an affidavit to respond to the chronology contained in Midlands Honda's response to the request for attorney's fees is \$780, representing two hours of work at the previously approved rate (\$390/hr).

The remaining time in this period not spent on the affidavit is minimal, 4.3 hours by Mr. Moskos and 1.7 hours by Mr. Fudenberg, producing a total fee amount of \$2,340 (6 hours * \$390/hr). The Court finds an award of these fees is appropriate.

The total attorney's fees awarded for this time period is \$3,120.

3. September 14, 2016 through the Present.

Before attorney's fees may be awarded under the NCUTPA, there must be an unwarranted refusal to settle on the part of the defendant. N.C.G.S. § 75-16.1; *Llera v. Security Credit Systems, Inc.*, 93 F.Supp.2d 674 (W.D.N.C. 2000). The Court previously concluded that Midlands Honda's pre-trial offer of judgment was a reasonable effort to resolve the NCUTPA exposure, but still found an unwarranted refusal to settle because Midlands Honda had not attempted to resolve the entire case.

As shown in the Affidavit of James Y. Becker attached to Midland's Honda's response to O&W's motion, Midlands Honda made another settlement attempt in response to the Court's order that amounted to an effort "to fully resolve the matter which constitutes the basis of [this suit]." On September 14, 2016, Midlands Honda, through counsel, hand delivered a settlement offer to Mr. Moskos offering to pay O&W "a sum reflecting actual damages plus the trial court's award of both punitive damages and attorney's fees for a total of \$81,069 (\$6,645 in actual damages + \$46,515 in punitive damages + \$21,264 in attorney's fees)." In other words, Midlands Honda offered to pay O&W all of the relief approved by the Court, including alternative relief which would have been foreclosed by O&W's election of remedies. In fact,

Midlands Honda made a slight math error in its settlement offer and, as a result, the offer was greater than the total amount of relief approved by the Court.

On September 16, O&W rejected the settlement offer, stating "I have reviewed Midlands Honda's confidential settlement offer with my clients. While the offer is confusing since it offered \$81,069 but the numbers totaled only \$74,424, my clients have decided to decline both offers." Midlands Honda twice asked for a counter offer (on September 16 and October 3), but O&W had not responded as of the date of Mr. Becker's affidavit.

As a result, the Court finds that there is no entitlement to any additional attorney's fee award after September 14, 2016 as there was not an unwarranted refusal "to fully resolve the matter which constitutes the basis of such suit" as required by the NCUTPA in N.C.G.S. § 75-16.1.

CONCLUSION

For the reasons stated above, individually and collectively and as provided in the Court's earlier order, it is hereby ORDERED, ADJUDGED, and DECREED that:

1. The prejudgment interest award will be adjusted upward to reflect the time until judgment is entered in this case. The Court directs the Clerk of Court to make that calculation on the date of entry as follows: $\$1993.38 + (\text{number of days since October 10, 2016} * \$1.46)$.
2. The Attorney's Fee award will be adjusted to include an additional \$10,140.
3. As a result, the Court directs that judgment be entered as follows:

Treble Damages under the NCUTPA	\$19,935
Attorney's Fees	\$31,404 (\$21,264 + \$10,140)
Costs	\$529.07
Prejudgment Interest	$\$1993.38 + (\text{number of days since October 10, 2016} * \$1.46)$
	\$51,868.07 + Prejudgment Interest as calculated by the Clerk's office pursuant to the formula above

4. O&W's motions are otherwise denied.

IT IS SO ORDERED.

The Honorable R. Ferrell Cothran, Jr.
Presiding Judge

_____, 2017

Brooks R. Fudenberg

From: Brooks R. Fudenberg <Brooks.R.Fudenberg@Fudenberglaw.com>
Sent: Friday, January 20, 2017 3:43 PM
To: 'Cothran, Ralph F. Jr., Law Clerk (John Furse)'; 'C Steven Moskos'; 'Cothran, Ralph Ferrell, Jr.'
Cc: 'Clay Walker'
Subject: RE: O'Shields, Whitley and O&W Cars v Columbia Automotive
Attachments: List of issues pending and draft order 13-CP-40-0319.docx

Your Honor,

You asked for a list of issues awaiting decision. Instead, Defendant sent more issues. We believe you should not accept its Response nor the affidavit it filed 21 days after we filed our Motion to Reconsider. We are submitting, attached to this email, a list of topics, in the form of a draft order, awaiting your decision as of the time of Mr. Furse's email.

Because we do not know how you will rule, we did not draft a "Conclusion."

If you are going to accept Defendant's filings, we would like time to respond. We had only ten days to file our Motion after receiving the December 2, 2016 Order. Defendant took three times as many days to file its response. We believe we would then be entitled to 3 times the number of days Defendant took, but believe we can have something in 45 days.

Sincerely,

From: Cothran, Ralph F. Jr., Law Clerk (John Furse) [<mailto:rcothranlc@sccourts.org>]
Sent: Friday, January 13, 2017 1:53 PM
To: C Steven Moskos; Cothran, Ralph Ferrell, Jr.
Cc: 'Clay Walker'; Brooks Fudenberg
Subject: RE: O'Shields, Whitley and O&W Cars v Columbia Automotive

Gentlemen,

Judge Cothran is trying to finish this case up as soon as possible. To ensure that we don't miss any loose ends could you let us know what all still needs to be ruled on in this matter. Thanks for all of your help with this.

Thankyou,

John L. Furse
Law Clerk to the Honorable R. Ferrell Cothran, Jr.
Circuit Judge of the Third Judicial Circuit
P.O. Box 32
Manning, SC 29102
OFFICE: (803) 435-2450

From: C Steven Moskos [<mailto:csmoskos@earthlink.net>]
Sent: Wednesday, January 04, 2017 3:48 PM
To: Cothran, Ralph Ferrell, Jr. <RCothranJ@sccourts.org>; Cothran, Ralph F. Jr., Law Clerk (John Furse) <rcothranlc@sccourts.org>

Cc: 'Clay Walker' <cwalker@walkerreibold.net>; Brooks Fudenberg <brooks.r.fudenberg@fudenberglaw.com>
Subject: O'Shields, Whitley and O&W Cars v Columbia Automotive

Your Honor,

In light of Defendant's withdrawal of its Motion for Setoff, I have taken the liberty of preparing a Form 4 Order for your signature. I have attached it to this email. Thank you.

C. Steven Moskos
4000 Faber Place Dr., Suite 300
North Charleston, SC 29405
843-763-5297 Office

~~~ 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.

|                               |   |                                     |
|-------------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA       | ) | IN THE COURT OF COMMON PLEAS        |
|                               | ) | FOR THE FIFTH JUDICIAL CIRCUIT      |
| COUNTY OF RICHLAND            | ) | CASE NO. 13-CP-40-0319              |
|                               | ) |                                     |
| DANIEL O'SHIELDS AND ROGER W. | ) |                                     |
| WHITLEY A PARTNERSHIP D/B/A   | ) | <b>ORDER ON PLAINTIFFS' RULE 59</b> |
| O&W CARS                      | ) | <b>MOTION AND MOTION FOR</b>        |
|                               | ) | <b>SUPPLEMENTAL ATTORNEYS' FEES</b> |
| Plaintiffs                    | ) |                                     |
|                               | ) |                                     |
| vs.                           | ) |                                     |
|                               | ) |                                     |
| COLUMBIA                      | ) |                                     |
| AUTOMOTIVE                    | ) |                                     |
| COMPANY, LLC D/B/A MIDLANDS   | ) |                                     |
| HONDA                         | ) |                                     |
|                               | ) |                                     |
| <u>Defendant</u>              | ) |                                     |

The following matters were raised by the Plaintiffs' Motion to Alter or Amend the Verdict and Plaintiffs' Motion for Supplemental Attorney Fees. The Court finds and holds as follows:

1. Re: the use of the singular "Plaintiff" in the Order on Post-Trial Motions of December 2, 2016, the Court \_\_\_ intends that "Plaintiff" and related words be read in the plural.

\_\_\_ intends to indicate that there was only one Plaintiff in this case.

2. The December 2 Order denies Defendant's JNOV motion on substantive grounds, but holds that a full day is insufficient time for a court to reconsider a ruling, so as to void the need to renew the motion. The Court

\_\_\_ Agrees with Plaintiffs that a day suffices, *Freeman v A. & M. Mobile Home Sales, Inc.*, 293 SC 255 (Ct. App. 1987), and thus Defendant's JNOV motion is denied for failure to renew it at the close of all the evidence on the final day of testimony as well as on substantive grounds.

\_\_\_ Disagrees with Plaintiffs.

3. The Court ☐ Agrees / ☐ Does not agree with Plaintiffs that North Carolina law does not mandate a written review of punitive damages awards, following a challenge.

4. The Court ☐ Agrees / ☐ Does not agree with Plaintiffs that civil penalties authorized or imposed in comparable cases include a complete shut-down of the Dealership;

☐ Agrees / ☐ Does not agree with Plaintiffs that the North Carolina punitive damages statute authorizes and mandates punitive awards of \$250,000 in cases comparable to the present case;

☐ Agrees / ☐ Does not agree with Plaintiffs that the North Carolina punitive damages statute, by its terms, mandates a punitive award of \$250,000 in the present case;

☐ Agrees / ☐ Does not agree with Plaintiffs' argument that North Carolina appellate courts have ruled that the statute is constitutional;

and therefore ☐ Does / ☐ Does not award Plaintiffs \$250,000 in punitive damages.

5. The Court notes Plaintiffs' argument that each Plaintiff is entitled separately to a punitive damage award, be it \$250,000 or some other amount, and ☐ Agrees / ☐ Disagrees.

6. The Court has considered Plaintiffs' arguments that a ratio of punitive to actual damages in this case should be greater than the ratio in *Austin v. Stokes-Craven Holding Corp.* because (i) the vehicle here was more dangerous than the vehicle in *Austin*; (ii) the Defendant here had actually sold the same dangerous car twice; (iii) the Defendant here had a practice of selling previously-wrecked vehicles without disclosure; and (iv) the lesser actual damages here make a higher ratio appropriate. The Court ☐ therefore increases the punitive damage award as stated above (or by other amount ). ☐ rejects the claim that these factors appropriately produce a higher ratio of punitive to actual damages than the ratio in *Austin*.

7. Plaintiffs have observed that the December 2 Order did not mention that Defendant refused to offer any resolution at all until after Plaintiffs filed suit. The Court ☐ Does / ☐ Does not so note.

8. ☐ The Court agrees with Plaintiffs that there was nothing improper about Plaintiffs' closing argument regarding the potential harm to third persons from the clipped Civic.

☐ The Court agrees with Defendant that, had Defendant timely objected to Plaintiffs' references to potential harm to third persons, the jury should have been instructed to disregard those arguments.

9. ☐ The Court does not recall stating that Plaintiffs' counsel's affidavit responding to Defendant's late filings was to be filed quickly.

☐ The Court does recall stating that Plaintiffs' counsel's affidavit responding to Defendant's late filings was to be filed quickly.

10. The Court ☐ Agrees / ☐ Disagrees with Plaintiffs' argument that North Carolina law requires that an award of attorney fees under the North Carolina Unfair Trade Practices Act ("NC UTPA") must be reasonable in amount;

☐ Agrees / ☐ Disagrees with Plaintiffs that a standard contingency percentage, such as 40% of the recovery, is not a proper methodology to calculate awards of attorney fees under NC UTPA;

☐ Agrees / ☐ Disagrees with Plaintiffs that if a fee award is to be determined by determining which of the hours in the timesheets of their counsel are insufficiently related to the UTPA cause of action to be compensated, at least where, after a thorough review, a large majority of those hours are identified as insufficiently related, Plaintiffs are entitled to see which hours have been rated "uncompensable;"

☐ Agrees / ☐ Disagrees with Plaintiffs that after they are presented with the analysis, they are entitled to a reasonable amount of time to challenge those determinations;

☐ Agrees / ☐ Disagrees with Plaintiffs that where specific timesheet entries were identified as insufficiently related to the UTPA cause of action, Plaintiffs are entitled to be presented with the reasoning underlying those determinations, and an opportunity to challenge those determinations;

☐ Agrees / ☐ Disagrees with Plaintiffs that where Defendants are unwilling to allow Plaintiffs to see which hours were cut, the hours should not be cut.

Re: the Order's striking of several hundred hours that supposedly could not possibly relate to the UTPA claim, so as to leave only "approximately 218 hours" that could contain compensable time,

☐ The Court instructed Defendant to prepare an Order finding that after careful review only approximately 218 hours might possibly include compensable time, and the Plaintiff is entitled to a copy of that communication from the Court to Defendant, which I hereby instruct my clerk to provide.

☐ The Court instructed Defendant that the Court had found only approximately 218 hours which might possibly include compensable time, and the Plaintiffs are not entitled to a copy of that communication from the Court to Defendant.

☐ The approximately 218 hours figure was produced by Defendant, and adopted by the Court, and Defendant is instructed to provide Plaintiffs an analysis showing which hours were deemed completely uncompensable so as to reach the 218 hours figure, after which Plaintiffs will have a reasonable time to challenge those determinations.

\_\_ The approximate 218 hours figure was produced by Defendant, and adopted by the Court, which takes on faith defense counsel's assertion that no more than approximately 218 hours of Plaintiffs' attorney time contains possibly compensable work, and denies Plaintiffs and their attorneys their request to see which hours were struck and why.

And therefore the Court:

\_\_ Instructs that the analyses via which specific entries totaling hundreds of hours were deemed insufficiently related to the UTPA claim to be compensated be provided to Plaintiffs, and similarly for analyses via which specific hours were excluded based on other rationales; and that Plaintiffs be provided a reasonable amount of time to challenge those analyses;

\_\_ Instructs that if Plaintiffs will not be allowed to see which hours were struck, said hours will not be struck, and so provides Plaintiffs their requested hours in full, consisting of \$176,319.00 for Mr. Moskos' work from June 29, 2011 through May 1, 2016; \$59,982.00 for Mr. Moskos' work from May 2 through July 20, and \$21,879.00 for Mr. Fudenberg's work from April 22 through July 20;

\_\_ Agrees with Plaintiffs that if compensation is to be awarded based on a lodestar computation involving the hours reasonably expended multiplied by a reasonable hourly rate, 54.525 hours for their work through July 20, 2016 in this case is insufficient, \_\_ and increases the award to \$\_\_\_\_\_ (representing \_\_ hours for Mr. Moskos and \_\_ for Mr. Fudenberg);

\_\_ Makes no change to the 54.525 hours awarded for work from 2011 through May 1, 2016.

11. The Court notes Plaintiffs' arguments that:

(a) Seeking a greater amount in a claim that involved punitive damages than the amounts sought in other claims does not mean the attorney spent more time on punitive damages than on other claims and nor does it mean so here;

(b) that it is erroneous to divide the hours equally among all the claims submitted to the jury, as this leaves no allowance for time that went to more than one cause of action or to all causes of action,

(c) that it is especially erroneous to reduce the time by 75% where the vast majority of the time incurred has already been excluded on the grounds that it did not relate to the relevant claim, as the Order did,

(d) that, where causes of action are necessarily intertwined, or arise out of the same transaction and occurrence, a court is not, under applicable law, to deduct for time spent on causes of action other than the action that provides for statutory fees at least where there is no admission by counsel that the requested time is wholly unrelated to the statutory claim allowing fees; and

(e) that, if there is an exception to (d), it is that hours can be excluded where the party seeking to reduce the fees meets the burden of demonstrating that certain hours should be excluded;

And the Court:

Agrees with        \_\_\_ (a), \_\_\_ (b), \_\_\_ (c), \_\_\_ (d), and \_\_\_ (e);

Disagrees with    \_\_\_ (a), \_\_\_ (b), \_\_\_ (c), \_\_\_ (d), and \_\_\_ (e);

And therefore:

\_\_\_ Awards \$176,319 for Mr. Moskos' work from 2011 through July 2016;



\_\_\_ Awards \$85,020 for Mr. Moskos' work from 2011 through July 2016, consisting of the 218 hours discussed above, without the ensuing 75% discount;

\_\_\_ Makes no change to the prior award in this regard.

12. Regarding Mr. Fudenberg's work specifically, the Court:

\_\_\_ Agrees with Plaintiffs that Mr. Fudenberg's 56.1 hours incurred between April 2 and July 20 were not included in the 54.525 compensable hours, and thereby increases the attorney fee award by \$21,879.00 (or other amount, \_\_\_\_\_).

\_\_\_ Disagrees with Plaintiffs, and clarifies that \_\_\_ of the 54.525 compensable hours were for the work of Mr. Moskos and \_\_\_ were for the work of Mr. Fudenberg.

\_\_\_ Disagrees with Plaintiffs, and states that neither Plaintiffs nor their counsel have the right to see whose work was deemed compensable for what amount of fees.

13. The Court recognizes that Mr. Fudenberg incurred 77.2 hours between July 21, 2016 and December 14, which was not included in the prior hourly analysis, and for which it awards \$20,280 / \_\_\_\_\_ (other amount) in fees.

14. The Court recognizes that Mr. Moskos incurred 138.5 hours between July 21, 2016 and December 14, which was not included in the prior hourly analysis, and for which it awards \$54,015 / \_\_\_\_\_ (other amount) in fees.

15. The Court acknowledges Plaintiffs' arguments that the December 2 Order erred in relying on lower court cases rather than appellate court cases, and that it misread or misapplied those lower court cases, and \_\_\_ makes the following adjustments to the above or to the December 2 Order:

\_\_\_ makes no additional adjustments.

16. \_\_\_ The Court recognizes that it was error to hold an amount for interest through October 10 under the North Carolina statute, N.C.G.S. 24-5, because, as quoted in the Order, that interest runs until the judgment is satisfied. Therefore, the Court amends its prior Order and holds that Plaintiffs are entitled to interest from the commencement of this action on January 17, 2013 until Defendant pays the judgment.

\_\_\_\_\_ The Court holds to the October 10 date in its prior Order regarding interest.

17. The Court notes Plaintiffs' arguments regarding the Offer of Judgment interest, and \_\_\_ denies the same.

\_\_\_ awards Offer of Judgment interest \_\_\_ in the amount of \$ \$231,916.42 / \_\_\_ at eight percent (8%) on the \$2,388,533 amount of the jury's verdict on actual and punitive damages from the date of the offer until the date of the verdict / of \_\_\_\_\_ .

18. Any arguments, contentions, assertion of facts, and the like that were raised by Plaintiffs' Motion and are not ruled on here are Denied.

**IT IS SO ORDERED.**

\_\_\_\_\_  
The Honorable R. Ferrell Cothran, Jr.  
Presiding Judge

\_\_\_\_\_, 2017

## C Steven Moskos

---

**From:** Cesaire Chase <cchase@walkerreibold.net>  
**Sent:** Monday, January 23, 2017 4:22 PM  
**To:** rcothranj@sccourts.org; 'Cothran, Ralph F. Jr., Law Clerk (John Furse)';  
'Cothran, Ralph Ferrell Jr. Secretary (Gayle Brunson)'  
**Cc:** 'Clay Walker'; csmoskos@earthlink.net  
**Subject:** Daniel O'Shields, et al v. Columbia Automotive Company, LLC d/b/a  
Midlands Honda  
**Attachments:** Ltr to Judge Cothran 01.23.17 HCW.pdf

Good Afternoon –

Attached please find correspondence from H. Clayton Walker, Jr., Esq. in connection with the above-referenced matter.

Thank you.

Cesaire N. Chase  
Paralegal  
Walker Reibold, LLC  
(803) 454-0955  
(803) 454-0956 Facsimile  
[cchase@walkerreibold.net](mailto:cchase@walkerreibold.net)

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# WALKER || REIBOLD

ATTORNEYS AT LAW

3321 Forest Drive Suite One, PO Box 61140 Columbia, SC 29260

Clay Walker

(803) 454-0955

Fax (803) 454-0956

cwalker@walkerreibold.net

January 23, 2017

**Via E-Mail and Regular Mail**

The Honorable R. Ferrell Cothran Jr.  
Post Office Box 32  
3 West Keitt Street  
Manning, SC 29102

Re: Daniel O'Shields and Roger W. Whitley, A Partnership d/b/a O&W Cars v. Columbia Automotive Company, LLC d/b/a Midlands Honda  
C/A No.: 2013-CP-40-0319

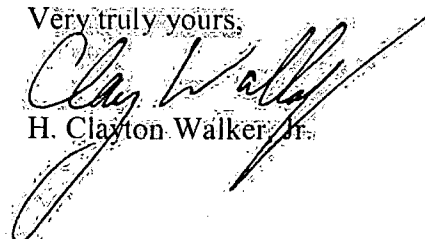
Dear Judge Cothran:

Please let me respond to the correspondence forwarded to you on January 20, 2017 by Plaintiff as well as to the email from your clerk about issues remaining for decision. The following issues remain for decision and/or further action:

1. Motion for Setoff. Defendant withdrew its motion for setoff, and does not object to Plaintiff's Form 4 order. The motion for setoff can be resolved by the Form 4 order.
2. Plaintiff's Motion to Reconsider. Defendant has replied to the motion, and previously submitted a proposed order, another copy of which is enclosed. The motion is ripe for decision.
3. Plaintiff's Motion for Supplemental Fees. Defendant has responded and submitted a reply affidavit. Defendant feels that nothing further is necessary on this motion, and, consequently, the Court is free to rule. The enclosed proposed order also addresses this motion.

Defendant is not aware of any further pending motions or matters which must be resolved before this case is closed. Thank you for your consideration of these matters. I am,

Very truly yours,



H. Clayton Walker Jr.

HCW:cnc

Encl.

cc w/encl: C. Steven Moskos, Esq.

**Exhibit 2****C Steven Moskos**

---

**From:** Cothran, Ralph F. Jr., Law Clerk (John Furse) <rcothranlc@sccourts.org>  
**Sent:** Thursday, January 26, 2017 11:34 AM  
**To:** Cesaire Chase; Cothran, Ralph Ferrell, Jr.; Cothran, Ralph Ferrell Jr. Secretary (Gayle Brunson)  
**Cc:** 'Clay Walker'; csmoskos@earthlink.net  
**Subject:** RE: Daniel O'Shields, et al v. Columbia Automotive Company, LLC d/b/a Midlands Honda

Good Morning,  
 Judge Cothran has decided to deny plaintiff's motion to reconsider in this case. He asks that defense counsel submit a proposed order reflecting this decision within 10 days.  
 Thanks,

John L. Furse  
 Law Clerk to the Honorable R. Ferrell Cothran, Jr.  
 Circuit Judge of the Third Judicial Circuit  
 P.O. Box 32  
 Manning, SC 29102  
 OFFICE: (803) 435-2450

**From:** Cesaire Chase [mailto:cchase@walkerreibold.net]  
**Sent:** Monday, January 23, 2017 4:22 PM  
**To:** Cothran, Ralph Ferrell, Jr. <RCothranJ@sccourts.org>; Cothran, Ralph F. Jr., Law Clerk (John Furse) <rcothranlc@sccourts.org>; Cothran, Ralph Ferrell Jr. Secretary (Gayle Brunson) <RCothranSC@sccourts.org>  
**Cc:** 'Clay Walker' <cwalker@walkerreibold.net>; csmoskos@earthlink.net  
**Subject:** Daniel O'Shields, et al v. Columbia Automotive Company, LLC d/b/a Midlands Honda

Good Afternoon --

Attached please find correspondence from H. Clayton Walker, Jr., Esq. in connection with the above-referenced matter.

Thank you.

Cesaire N. Chase  
 Paralegal  
 Walker Reibold, LLC  
 (803) 454-0955  
 (803) 454-0956 Facsimile  
[cchase@walkerreibold.net](mailto:cchase@walkerreibold.net)

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WALKER || REIBOLD

ATTORNEYS AT LAW

3321 Forest Drive Suite One, PO Box 61140 Columbia, SC 29260

Clay Walker

(803) 454-0955

Fax (803) 454-0956

cwalker@walkerreibold.net

February 6, 2017

Via E-Mail and Regular Mail

The Honorable R. Ferrell Cothran Jr.
Post Office Box 32
3 West Keitt Street
Manning, SC 29102

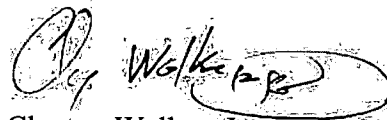
Re: Daniel O. Shields and Roger W. Whitley, A Partnership d/b/a O&W Cars v. Columbia Automotive Company, LLC d/b/a Midlands Honda
C/A No.: 2013-CP-40-0319

Dear Judge Cothran:

In response to your email of January 26, we were unclear whether you wanted an order disposing of the entire Motion Pursuant to Rule 59 and Motion for Supplemental Attorney's Fees or just the portions seeking relief under Rule 59. For that reason, we are submitting two proposed orders: one addressing relief under Rule 59 and the other addressing the supplemental fee request. We are happy to make any revisions the Court requests.

Thank you for your continued time and attention to this matter. I am,

Very truly yours,



H. Clayton Walker, Jr.

HCW:cnc

Encl.

cc w/encl: C. Steven Moskos, Esq.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	
	)	
Daniel O'Shields and Roger W.	)	Civil Action No. 2013-CP-40-0319
Whitley, A Partnership d/b/a	)	
O&W Cars,	)	
	)	
<i>Plaintiff</i>	)	
	)	
v.	)	
	)	
Columbia Automotive, LLC d/b/a	)	
Midlands Honda,	)	
	)	
	)	
<i>Defendant.</i>	)	
	)	

ORDER ON PLAINTIFF'S MOTION PURSUANT TO RULE 59, SCRPC

Having considered the motion of Daniel O'Shields and Roger W. Whitley, a Partnership d/b/a O&W Cars ("O&W") pursuant to Rule 59, SCRPC, the Court makes the following rulings.¹ The Court further directs the Clerk of Court to enter judgment consistent with this order. In the interim since the Court's order was filed Columbia Automotive, LLC d/b/a Midlands Honda ("Midlands Honda") has withdrawn its motion for setoff; therefore, judgment is appropriate at this time as itemized in the Conclusion of this Order. The Court will issue a separate order on O&W's supplemental fee request contained in the same motion.

As an initial note, this action stems from one transaction: the sale of one used car by Midlands Honda to O&W Cars. O&W is a partnership, and Daniel O'Shields and Roger W. Whitley are the partners ("O&W"). There was one buyer here, and thus, there is one recovery and one punitive damages analysis whether the buyer is described as "plaintiff" or "plaintiffs." O&W's argument on this point is therefore denied.

¹ Pursuant to Rule 59(f), SCRPC, the Court hereby exercises its discretion to rule on this matter on the briefs without further hearing.

In addition, the Court provides additional discussion on two matters raised by O&W:

1. Interest.

The prejudgment interest award should be adjusted upward to reflect the time until judgment is entered in this case. The Court directs the Clerk of Court to make that calculation on the date of entry as follows: $\$1993.38 + (\text{number of days since October 10, 2016} * \$1.46)$.

2. Attorney's Fees.

O&W had the burden of establishing the amount of its attorney's fees relating to its claim under the North Carolina Unfair Trade Practices Act ("NCUTPA"). The Court previously concluded that O&W had failed to do so in a number of respects, including by block billing time related to the NCUTPA claim together with time which was unrelated. O&W cannot correct this failure at the Rule 59 stage by providing new affidavits which purport to divide time between recoverable and non-recoverable claims. The Court declines to revisit its rulings on this point.

O&W also presents new time records seeking additional time from May 2, 2016 to July 20, 2016. O&W could have filed a supplemental affidavit or request seeking these fees prior to the hearing. It did not do so, and never sought leave to supplement the record prior to the Court's decision. The Court declines to revisit its rulings on this point.

Finally, O&W seeks to increase the Court's attorney's fee award by arguing that the Court forgot or failed to award fees for time spent by Brooks Fudenberg. The Court disagrees with this contention and clarifies that it did consider Mr. Fudenberg's time in its original fee award.

The remainder of the motion is denied without further discussion.

CONCLUSION

For the reasons stated above, individually and collectively and as provided in the Court's earlier order, it is hereby ORDERED, ADJUDGED, and DECREED that:

1. The prejudgment interest award will be adjusted upward to reflect the time until judgment is entered in this case. The Court directs the Clerk of Court to make that calculation on the date of entry as follows: $\$1993.38 + (\text{number of days since October 10, 2016} * \$1.46)$.

2. Midlands Honda has withdrawn its motion for setoff.

3. As a result, the Court directs that judgment be entered as follows:

Treble Damages under the NCUTPA	\$19,935
Attorney's Fees	\$21,264
Costs	\$529.07
Prejudgment Interest	$\$1993.38 + (\text{number of days since October 10, 2016} * \$1.46)$
	\$41,728.07 + Prejudgment Interest as calculated by the Clerk's office pursuant to the formula above

4. O&W's motion is otherwise denied.

IT IS SO ORDERED.

The Honorable R. Ferrell Cothran, Jr.
Presiding Judge

_____, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	
	)	
Daniel O'Shields and Roger W.	)	Civil Action No. 2013-CP-40-0319
Whitley, A Partnership d/b/a	)	
O&W Cars,	)	
	)	
<i>Plaintiff</i>	)	
	)	
v:	)	
	)	
Columbia Automotive, LLC d/b/a	)	
Midlands Honda,	)	
	)	
	)	
<i>Defendant.</i>	)	

ORDER ON PLAINTIFF'S MOTION FOR SUPPLEMENTAL ATTORNEY'S FEES

Having considered the motion of Daniel O'Shields and Roger W. Whitley, a Partnership d/b/a O&W Cars ("O&W") for supplemental attorney's fees, the Court makes the following rulings.¹ The Court further directs the Clerk of Court to enter judgment consistent with this order.

The Court addresses O&W's fee request by time period.

1. July 21, 2016 through July 27, 2016.

O & W's counsel have submitted claims for an additional 36 hours (or \$14,400) for the period immediately prior to the hearing in this matter on July, 27, 2016. Based on the same analysis applied in its earlier order which is incorporated by reference here, the Court finds that this figure does not represent a reasonable reflection of the time devoted to the North Carolina Unfair Trade Practices Act ("NCUTPA") claim. The Court was present at the hearing and notes

¹ This motion was filed as part of a motion for relief pursuant to Rule 59, SCRPC, which has been addressed by the Court in separate order. The Court hereby exercises its discretion to rule on this matter on the briefs without further hearing.

that much of the parties' time and energy was devoted to the analysis of the punitive damages award. There were also other arguments that were unrelated to the NCUTPA. Additionally, some of the time entries submitted by O&W for this period show that time claimed to have been spent on the NCUTPA was spent on some other aspect of the case or it cannot be ascertained whether the NCUTPA was involved or not. For example, Mr. Moskos's July 22 and July 24 time entries do not contain enough detail to determine whether they involved NCUTPA work. Other entries, asserting that 100% of the time claimed was spent on the NCUTPA, are undercut by the entries themselves that state that some portion of the time was spent on issues such as punitive damages, election of remedies, and offers of judgment. As a result the Court finds a reasonable attorney's fee for this period is \$7,200, representing 50% of the time claimed.

2. July 28, 2016 through September 13, 2016.

Mr. Moskos claims 65.2 hours on NCUTPA related activity during this period. 60.9 of these hours relate to the August 30, 2016 affidavit filed by O&W after the Court's preliminary ruling. The Court has already ruled that "much of the affidavit is improper as it contains legal arguments and speculation about which the Affiant lacked personal knowledge." Based on this finding, the Court finds that the vast majority of this time does was not reasonably expended in connection with the NCUTPA claim. The Court finds that an appropriate fee for the preparation of an affidavit to respond to the chronology contained in Midlands Honda's response to the request for attorney's fees is \$780, representing two hours of work at the previously approved rate (\$390/hr).

The remaining time in this period not spent on the affidavit is minimal, 4.3 hours by Mr. Moskos and 1.7 hours by Mr. Fudenberg, producing a total fee amount of \$2,340 (6 hours * \$390/hr). The Court finds an award of these fees is appropriate.

The total attorney's fees awarded for this time period is \$3,120.

3. September 14, 2016 through the Present.

Before attorney's fees may be awarded under the NCUTPA, there must be an unwarranted refusal to settle on the part of the defendant. N.C.G.S. § 75-16.1; *Llera v. Security Credit Systems, Inc.*, 93 F.Supp.2d 674 (W.D.N.C. 2000). The Court previously concluded that Midlands Honda's pre-trial offer of judgment was a reasonable effort to resolve the NCUTPA exposure, but still found an unwarranted refusal to settle because Midlands Honda had not attempted to resolve the entire case.

As shown in the Affidavit of James Y. Becker attached to Midlands Honda's response to O&W's motion, Midlands Honda made another settlement attempt in response to the Court's order that amounted to an effort "to fully resolve the matter which constitutes the basis of [this suit]." On September 14, 2016, Midlands Honda, through counsel, hand delivered a settlement offer to Mr. Moskos offering to pay O&W "a sum reflecting actual damages plus the trial court's award of both punitive damages and attorney's fees for a total of \$81,069 (\$6,645 in actual damages + \$46,515 in punitive damages + \$21,264 in attorney's fees)." In other words, Midlands Honda offered to pay O&W all of the relief approved by the Court, including alternative relief which would have been foreclosed by O&W's election of remedies. In fact, Midlands Honda made a slight math error in its settlement offer and, as a result, the offer was greater than the total amount of relief approved by the Court.

On September 16, O&W rejected the settlement offer, stating "I have reviewed Midlands Honda's confidential settlement offer with my clients. While the offer is confusing since it offered \$81,069 but the numbers totaled only \$74,424, my clients have decided to decline both offers." Midlands Honda twice asked for a counter offer (on September 16 and October 3), but O&W had not responded as of the date of Mr. Becker's affidavit.

As a result, the Court finds that there is no entitlement to any additional attorney's fee award after September 14, 2016 as there was not an unwarranted refusal "to fully resolve the matter which constitutes the basis of such suit" as required by the NCUTPA in N.C.G.S. § 75-16.1.

CONCLUSION

For the reasons stated above, individually and collectively and as provided in the Court's earlier order, it is hereby ORDERED, ADJUDGED, and DECREED that O&W is awarded an additional \$10,320 in attorney's fees. O&W's motion is otherwise denied.

IT IS SO ORDERED.

The Honorable R. Ferrell Cothran, Jr.
Presiding Judge

_____, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	CASE NO. 13-CP-40-0319
DANIEL O'SHIELDS AND ROGER W. WHITLEY A PARTNERSHIP D/B/A O&W CARS	)	
Plaintiffs	)	PLAINTIFFS' REPLY IN SUPPORT OF PLAINTIFFS' RULE 59 MOTION AND MOTION FOR SUPPLEMENTAL ATTORNEYS' FEES
vs.	)	
COLUMBIA AUTOMOTIVE COMPANY, LLC D/B/A MIDLANDS HONDA	)	
Defendant	)	

2017 FEB 13 AM 11:36
 JEANNETTE W. MCBRIDE
 C.C.P. & G.S.
 FILED
 RICHLAND COUNTY

Plaintiffs reply to Defendant's Response to Plaintiffs' Rule 59 Motion and Motion for Supplemental Attorneys' Fees as follows:

Brief Procedural Sketch

1. On January 13, 2017, 29 days after Plaintiffs submitted their Rule 59 Motion and Motion for Supplemental Attorneys' Fees, Judge Cothran, via his clerk Mr. Furze, asked via email what still needed to be ruled on in this matter. (Ex. 1.) That afternoon, Defendant raised new issues via emailing a document entitled "Defendant's Response to Plaintiff's Motion Pursuant to Rule 59 and Motion for Supplemental Attorney's Fees," as well as an affidavit. Plaintiffs responded January 20 to Mr. Furze's email, with a list of topics, and proposed rulings in favor of Plaintiffs and alternatively in favor of Defendant on each topic, emailed as a Microsoft Word document to facilitate editing. (Ex. 2). Plaintiffs requested that the Court not consider Defendant's late Response, and, if the Court was going to consider Defendant's Response, that Plaintiffs be afforded time to file a Reply. Defendant sent its list of topics in answer to Mr. Furze's January 13 email at 4:25 pm on January 23. The morning of January 26, Mr. Furze informed via email that the Court was asking Defendant to draft an order denying

Plaintiffs' motion to reconsider. The Court has not informed the litigants whether it is going to consider Defendant's Response. If it is, however, then it should also consider this Reply.

2. Defendant's Response is simply wrong to the extent it implies that there is something wrong with the timing of Plaintiffs' fee requests. Plaintiffs timely moved within ten days of the end of the trial for attorney fees. It should have been obvious to Defendant that the post-trial proceedings, involving numerous motions and lengthy memoranda from Defendant, were going to involve additional work by Plaintiffs' counsel and that, if fees were awarded to Plaintiffs, additional fees would be incurred. There is no requirement that counsel file monthly fee requests. Plaintiffs would have been entitled to wait until the end of the post-trial litigation to file for fees for that stage of the case. Instead, Plaintiffs filed timesheets current through one week before the July 27 hearing – current, that is, through the final day the Court had set for memoranda to be filed, July 20, a date that Defendant did not honor. Plaintiffs again filed, with their Rule 59 Motion and Motion for Supplemental Fees, timesheets current through one day before the date of that motion. Plaintiffs would have been entitled to wait until the Court ruled on that motion, and on Defendant's Motion for Set-off, to file for their post-trial fees *in toto*. Instead, Plaintiffs have so far provided Defendant with updated timesheets with each major filing. Defendant cannot credibly complain that it was not kept aware of the number of hours being incurred by Plaintiffs' counsel, or that it forgot that Plaintiffs believed fees were on-going. Furthermore, this is not the first case Defendant's counsel has defended in which attorney's fees were an issue. *See, e.g.,* Order Granting Motion for Statutory Attorney Fees and Costs in *Henderson v. Summerville Ford-Mercury, Inc. and Capital One Auto Finance, Inc.*, in which Walker // Reibold opposed a fee request by a plaintiff represented by Mr. Moskos and Mr. Fudenberg. Ex. 3 to Aff. of C. Steven Moskos in Support of Pls.' Mot. for Attorney Fees.

Defense counsel knows the procedure allows for attorney time to be updated as the litigation proceeds. The Court's time is not well-utilized by recurrent fee requests. As matters now stand, Plaintiffs will need to file for additional hours for work since their most recent timesheets were filed. That is why Plaintiffs pointed out in their previous filings that the best thing might be to wait until the motion for a set-off, which looked to be the final item requiring an order, was ruled on, and deal with all these fees at that time. *E.g.*, Pls.' Mot. Pursuant to Rule 59 and Mot. for Supp. Attorney Fees, at 11. *See also id.* at 13.

3. Defendant's Response misstates the law regarding the burden of establishing a proper fee. It was Plaintiffs' burden to present timesheets showing time spent and services provided for each entry. *Taylor v. Nix*, 307 S.C. 551, 557 (1992); *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 57 (2010); *Whiteside Estates, Inc. v. Highland Cove LLC*, 553 S.E.2d 431, 443 (N.C. Ct. App. 2001). Plaintiffs met that burden. Because the causes of action arose from the same nucleus of operative facts and the same transaction, and were inextricably interwoven and intertwined, no apportionment of fees was necessary under either North Carolina or South Carolina law. *Nix*, 307 S.C. at 557; *Austin*, 387 S.C. at 57; *Whiteside Estates*, 553 S.E.2d at 443. Were it proper to deny compensation for time spent on causes of action other than the UTPA, then, once Plaintiffs presented counsels' timesheets, it became Defendant's burden to show which of the entries did not concern the statutory cause of action. *Nix*, 307 S.C. at 557; *Austin*, 387 S.C. at 57; *Whiteside Estates*, 553 S.E.2d at 443. Defendant did not meet its burden, nor even attempt to do so. One may not simply issue a conclusion that only 218 hours could potentially relate or do relate to the statutory cause of action without identifying the entries that allegedly do not relate.

4. Plaintiffs understood the draft Order sent by Defendant on October 17 and filed as the order of the Court on December 2 to have concerned only Mr. Moskos' time from 2011 through July 20, 2016 in stating that "[only] approximately 218 hours" contained or potentially contained work on the UTPA claim. Yet Defendant's Response to the current Motion states that Mr. Fudenberg's time through July 20 was considered. Def.'s Response, pp. 2-3. Yet that Response also seems to indicate that Mr. Fudenberg's time through July 20, 2016 was not considered in arriving at the "approximately 218 hours" and 54.525 hours figures. *Id.*, p. 2. Defendant's Response seems to further indicate that Mr. Moskos' time between May 2 and July 20, 2016 was not included in the hours that were then reduced to the "approximately 218" hours that contained or could contain UTPA work [which were then further reduced by 75%]. The forthcoming Order on Plaintiffs' Rule 59 Motion and Motion for Supplemental Attorney Fees should state whether the December 02 Order supposedly included Mr. Fudenberg's time from April 22 through July 20, 2016 in the approximately 218 hours and the 54.525 hours figures. It should also make clear, if Mr. Fudenberg's time was included, how many of the 54.525 compensated hours were for Mr. Fudenberg's work. It should further make clear which of Mr. Moskos' hours were in the "pool" that supposedly contained only 218 hours of work; e.g., did it include his work from 2011 through May 1, 2016 and his work from May 1 through July 20, 2016?

5. If Mr. Fudenberg's time prior to and including July 20, and/or some of Mr. Moskos' time through that date, was not included in the pool from which "approximately 218" potential hours and ultimately 54.525 compensable hours were found, the Court should award fees for that time.

6. Plaintiffs' counsel have each provided an affidavit, Exs. 3 - 4 to the present Reply (Affidavits of C. Steven Moskos and of Brooks R. Fudenberg, respectively) stating that counsel had not seen nor heard nor been informed of any communication "from or to" the Court stating, suggesting, enquiring about, or discussing anything remotely similar to a proposition that only approximately 218 hours of entries contained or could contain UTPA-related work, or whether the hours should be cut by any percentage, until Defendant's draft order of October 17, 2016.

The first full paragraph on page 2 of Defendant's Response mischaracterizes the purpose of the fee affidavits Plaintiffs presented with the current motion. The immediately following paragraph is factually inaccurate and contradicts other statements in the Response. Mr. Moskos did request his fees for that time period with the July 20 filing. Nor, even had Plaintiffs not requested any of those fees on July 20, would Plaintiffs be required to seek leave to supplement the record. They could simply file additional documents, which become part of the record.

7. The discussion in Defendant's Response of the timesheets for July 21 through July 27, 2016 suffers from mathematical, reading, and legal errors. The hours claimed as going to the UTPA, even under the overly-constricted reading of what constitutes relating to the UTPA cause of action, total 41.6, not 36, a 16% difference. Fees for that period should total at least \$4,875.00 for Mr. Fudenberg's work and \$11,349.00 for Mr. Moskos'. More properly, the Court should grant amounts that do not stem from such a restrictive view of the services that relate to the NCUTPA cause of action, or should follow *Nix* and the other cases and grant the full amounts requested.

Similarly, Defendant erroneously writes that Mr. Fudenberg estimated that one-third of his time on the day of the July 27 hearing concerned matters other than the UTPA. Mr.

Fudenberg did not write what Defendant says he wrote. He wrote that he estimated one-third of the time at the hearing concerned offer of judgment interest, or elements of punitive damages issues that did not go to Defendant's argument that it was entitled to a new trial due to putative punitive-damages-related problems. Mr. Fudenberg did not state that only one third of his entire time that day related to those issues. Mr. Fudenberg had five entries that day. Even the entry Defendant focused on to the exclusion of the others did not say 1/3 of that entry was for non-UTPA work. That entry includes not only time at the hearing, but travel to and from. Thus, Defendant misreads the timesheet.

But even had Mr. Fudenberg written what Defendant inaccurately states he wrote, Defendant's attempt to make hay out of its conclusion that Mr. Moskos estimated 75% while Mr. Fudenberg estimated only 66.7% of the time that day went to the UTPA is misguided. So Mr. Moskos estimated 75% and (if Mr. Fudenberg had written what Defendant imagines he wrote) Mr. Fudenberg estimated 66.7 percent. That simply shows the wisdom of cases like *Nix*, *Austin*, and *Whiteside Estates*. Thus, even had Defendant's argument accurately portrayed what Plaintiffs' counsel had written, it would cut against Defendant.

Defendant similarly misunderstands the law it applies to its analysis of that week. In Defendant's telling, less than 2/3 of the time at the July 20 hearing was UTPA-related, because, for example, there was discussion of error preservation and of setoff. Response, p. 3. Defendant's legal analysis is erroneous. The error preservation was about Defendant's motion to throw out the entire verdict, including the UTPA verdict. The setoff concerns Defendant's attempt to reduce the amount of damages it will pay on the UTPA verdict. As a matter of law, these relate to the UTPA claim.

This tour through a single week, a tiny part of the timesheets – the only room where Defendant even partially draws back the curtains on how it calculates compensable hours – reveals mathematical, reading, and legal errors. This is another reason that, if certain entries from Plaintiffs' timesheets were actually determined not to contain nor potentially contain time spent on the NCUTPA claim, leaving only 218 hours of entries that contained/could contain compensable work, Plaintiffs should be allowed to see which entries were determined to contain/possibly contain such work and which were determined not to. Plaintiffs should be allowed to see the full calculations. Plaintiffs should be informed, for example, of the total hours that Defendant considered. E.g., did it include Mr. Fudenberg's hours from April 22, his earliest entry, through July 20, in what was scoured for entries that could contain UTPA-related time? Which entries were in effect struck? For example, if entries dealing with the setoff were struck, the Court should find that time dealing with Defendant's proposed set-off is properly compensated.

8. Defendant's argument, Response, p. 4, regarding time spent on Mr. Moskos' affidavit severely discounts the problems defense counsel created for Mr. Moskos. The affidavits of opposing counsel presented, in Mr. Moskos' view, a misleading-by-omission rendition of the history of the interactions of counsel in this case. In order to present an accurate and non-misleading rendition of the interactions, Mr. Moskos had to review the entire file, including interactions from years ago. This required hours of work for which he deserves to be compensated. Because Defendant's attorneys were claiming in their affidavits that Mr. Moskos had proven difficult to settle with in other cases, he needed to review those closed files in order to be sure that his recollection was correct and that Defendant's affidavits were erroneous.

Moreover, in order to provide context to the reader, Mr. Moskos presented his understanding of the law in the affidavit. The Court should award full compensation for that work.

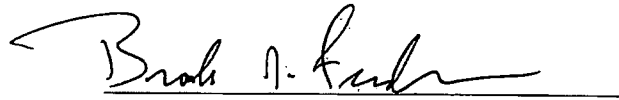
9. Defendant's argument that post-trial fees end when a Defendant makes a reasonable post-trial settlement offer is multiply flawed. First, under North Carolina law, if fees were awarded for the underlying dispute, fees continue to accumulate as long as the litigation lasts. *Printing Servs. of Greensboro, Inc. v. Am. Capital Grp., Inc.*, 180 N.C. App. 70, 82, 637 S.E.2d 230, 237 (2006). Second, Defendant's offer described in its Response was not a reasonable offer; the amounts offered to settle the entire case completely ignore the likelihood of Plaintiffs' success on appeal. Third, as the affidavit of James Becker that Defendant presented with its late Response makes clear, Mr. Becker is not even counsel of record in this matter. Fourth, Defendant should be estopped or otherwise prevented from relying on the written "offer" presented by the non-counsel-of-record in that its very first word is, in all capitals, boldfaced, and underlined, "Confidential." Defendant then filed this "Confidential" document in the public record, and apparently was aware even as it labeled the document "Confidential" in boldfaced, underlined, capitals, that it would likely file the document publicly. Moreover, despite the document's reference to Rule 408, SCRCP, Defendant is attempting to use the settlement numbers to prove the "invalidity of the claim" to fees, exactly what Rule 408 prohibits.

Conclusion.

For the reasons stated above, the reasons stated in Plaintiffs' Rule 59 Motion, and such other reasons as may be apparent to the Court, the Court should modify its December 02 Order and should grant Plaintiffs' Supplemental Request for Attorney Fees.

[Signature block follows]

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Brooks R. Fudenberg", written over a horizontal line.

Brooks R. Fudenberg
Law Office of Brooks R. Fudenberg, LLC
171 Church Street, Suite 160
Charleston SC 29401
Tel.: 843-416-2558
Fax: 910-401-1242
BRF@Fudenberglaw.com
Attorney for Plaintiffs

EXHIBIT 3

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
) CASE NO. 13-CP-40-0319

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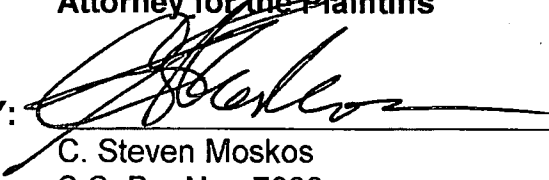
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KOS
C. P. & G. S.
JENNETTE W. MCBRIDE

2049

directing a 75 percent reduction in either total hours for which fees were requested
nor any subset of those hours prior to December 2, 2016.

C. STEVEN MOSKOS, P.A.
Attorney for the Plaintiffs

BY: 

C. Steven Moskos
S.C. Bar No.: 7938
4000 Faber Place Drive, Suite 300
N. Charleston, SC 29407
Telephone: (843) 763-5297
Email: csmoskos@earthlink.net

Charleston, South Carolina
February 7, 2017

SWORN TO BEFORE ME THIS

7th DAY OF February 2017.

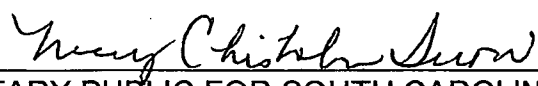

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: May 22, 2022

EXHIBIT 4

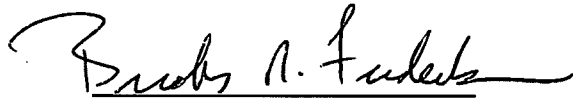
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	CASE NO. 13-CP-40-0319
	)	
DANIEL O'SHIELDS AND ROGER W.	)	
WHITLEY A PARTNERSHIP D/B/A	)	
O&W CARS	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
COLUMBIA AUTOMOTIVE	)	
COMPANY, LLC D/B/A MIDLANDS	)	
HONDA	)	
	)	
Defendant.	)	

RICHLAND COUNTY
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 2017 FEB 13 AM 11:37
 JEANNETTE W. MCBRIDE
 C.C.P. & G.S.

First Supplemental Affidavit of Brooks R. Fudenberg

- 1) My name is Brooks R. Fudenberg.
- 2) I am an attorney of record for Daniel O'Shields, Roger W. Whitley and O&W Cars, the Plaintiff(s) in the referenced case.
- 3) I have neither received a copy of, nor been informed of the date and means of, any communication from the Court to Defendant or defense counsel in this case stating that 218 hours or approximately 218 hours of time entries of Plaintiffs' counsel contain or could contain time spent on the North Carolina Unfair Trade Practices Act claim in this matter, nor of any similar communication, prior to December 2, 2016. Nor have I received a copy of nor been informed of any such communication from the Court stating that a given number of time entry hours of Plaintiffs' counsel did not relate to the UTPA claim, or were uncompensable for other reasons.

- 4) I have neither received a copy of, nor been informed of the date and means of, any communication from the Court to Defendant or defense counsel in this case directing a 75 percent reduction in either total hours for which fees were requested nor any subset of those hours prior to December 2, 2016.



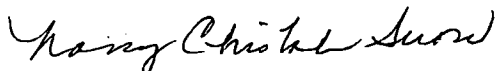
Brooks R. Fudenberg
Law Office of Brooks R. Fudenberg, LLC
171 Church Street, Suite 160
Charleston, SC 29401
Tel. (843) 416-2558
eFax: (910) 401-1242
BRF@Fudenberglaw.com

Attorney for Plaintiffs

Charleston, South Carolina

SWORN TO BEFORE ME THIS

7th DAY OF February 2017.



NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: May 22, 2022

WALKER || REIBOLD

ATTORNEYS AT LAW

3321 Forest Drive Suite One, PO Box 61140 Columbia, SC 29260

Clay Walker

(803) 454-0955
Fax (803) 454-0956
cwalker@walkerreibold.net

February 22, 2017

Via E-Mail and Regular Mail

The Honorable R. Ferrell Cothran Jr.
Post Office Box 32
3 West Keitt Street
Manning, SC 29102

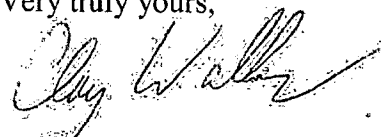
Re: Daniel O'Shields and Roger W. Whitley, A Partnership d/b/a O&W Cars v. Columbia Automotive Company, LLC d/b/a Midlands Honda
C/A No.: 2013-CP-40-0319

Dear Judge Cothran:

Plaintiff recently submitted additional affidavits in connection with the pending motions. We object to consideration of these affidavits for the same reasons we objected to the other affidavits submitted after the close of evidence or the court's ruling. However, we do not plan on making any further response. We believe the motions are ready for decision.

Thank you for your consideration of these matters. I am,

Very truly yours,



H. Clayton Walker, Jr.

HCW:cnc

cc: C. Steven Moskos, Esq.

C Steven Moskos

From: Cothran, Ralph F. Jr., Law Clerk (John Furse) <rcothranlc@sccourts.org>
Sent: Monday, February 27, 2017 3:27 PM
To: Brooks R. Fudenberg; Cothran, Ralph Ferrell, Jr.
Cc: 'Clay Walker'; 'C Steven Moskos'
Subject: RE: O'Shields, Whitley and O&W Cars v Columbia Automotive

Gentlemen:

Judge Cothran has signed the order dated January 23, 2017. We are mailing it to Clayton Walker's office for filing. Please let me know if you have any questions.

Thanks,

John L. Furse
 Law Clerk to the Honorable R. Ferrell Cothran, Jr.
 Circuit Judge of the Third Judicial Circuit
 P.O. Box 32
 Manning, SC 29102
 OFFICE: (803) 435-2450

From: Brooks R. Fudenberg [mailto:Brooks.R.Fudenberg@Fudenberglaw.com]
Sent: Tuesday, February 07, 2017 6:16 PM
To: Cothran, Ralph Ferrell, Jr. <RCothranJ@sccourts.org>; Cothran, Ralph F. Jr., Law Clerk (John Furse) <rcothranlc@sccourts.org>
Cc: 'Clay Walker' <cwalker@walkerreibold.net>; 'C Steven Moskos' <csmoskos@earthlink.net>
Subject: RE: O'Shields, Whitley and O&W Cars v Columbia Automotive

Judge Cothran,

Please find attached a copy of Plaintiffs' Reply in Support of Plaintiffs' Rule 59 Motion and Motion for Supplemental Attorneys' Fees and exhibits. We will also send copies by regular mail to yourself and opposing counsel, and the originals to the Richland County Clerk of Court.

Sincerely,

Brooks R. Fudenberg
 Attorney for the Plaintiffs

Law Office of Brooks R. Fudenberg, LLC
 171 Church Street, Suite 160
 Charleston, SC 29401
 843-416-2558

910-401-1242 (eFax)

From: Cothran, Ralph F. Jr., Law Clerk (John Furse) [<mailto:rcothranlc@sccourts.org>]
Sent: Friday, January 13, 2017 1:53 PM
To: C Steven Moskos; Cothran, Ralph Ferrell, Jr.
Cc: 'Clay Walker'; Brooks Fudenberg
Subject: RE: O'Shields, Whitley and O&W Cars v Columbia Automotive

Gentlemen,
 Judge Cothran is trying to finish this case up as soon as possible. To ensure that we don't miss any loose ends could you let us know what all still needs to be ruled on in this matter. Thanks for all of your help with this.
 Thankyou,

John L. Furse
 Law Clerk to the Honorable R. Ferrell Cothran, Jr.
 Circuit Judge of the Third Judicial Circuit
 P.O. Box 32
 Manning, SC 29102
 OFFICE: (803) 435-2450

From: C Steven Moskos [<mailto:csmoskos@earthlink.net>]
Sent: Wednesday, January 04, 2017 3:48 PM
To: Cothran, Ralph Ferrell, Jr. <RCothranJ@sccourts.org>; Cothran, Ralph F. Jr., Law Clerk (John Furse) <rcothranlc@sccourts.org>
Cc: 'Clay Walker' <cwalker@walkerreibold.net>; Brooks Fudenberg <brooks.r.fudenberg@fudenberglaw.com>
Subject: O'Shields, Whitley and O&W Cars v Columbia Automotive

Your Honor,

In light of Defendant's withdrawal of its Motion for Setoff, I have taken the liberty of preparing a Form 4 Order for your signature. I have attached it to this email. Thank you.

C. Steven Moskos
 4000 Faber Place Dr., Suite 300
 North Charleston, SC 29405
 843-763-5297 Office

~~~ 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.

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|--------------------------------------------------------------------|---|--------------------------------|
| STATE OF SOUTH CAROLINA                                            | ) | IN THE COURT OF COMMON PLEAS   |
| COUNTY OF RICHLAND                                                 | ) | FOR THE FIFTH JUDICIAL CIRCUIT |
|                                                                    | ) | CASE NO. 13-CP-40-0319         |
| DANIEL O'SHIELDS AND ROGER W. WHITLEY A PARTNERSHIP D/B/A O&W CARS | ) |                                |
|                                                                    | ) | <b>PLAINTIFFS' MOTION FOR</b>  |
|                                                                    | ) | <b>SUPPLEMENTAL ATTORNEYS'</b> |
|                                                                    | ) | <b>FEES FOR DECEMBER 2016</b>  |
| Plaintiffs,                                                        | ) | <b>THROUGH MARCH 2017, AND</b> |
|                                                                    | ) | <b>MEMORANDUM IN SUPPORT</b>   |
| vs.                                                                | ) |                                |
|                                                                    | ) |                                |
| COLUMBIA AUTOMOTIVE COMPANY, LLC D/B/A MIDLANDS HONDA              | ) |                                |
|                                                                    | ) |                                |
| Defendant.                                                         | ) |                                |

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JEANNETTE W. MCBRIDE  
C.C.P. & G.S.  
RICHLAND COUNTY  
FILED

Plaintiffs hereby move for an award of supplemental attorney fees for work performed by C. Steven Moskos, from December 16, 2016 through March 29, 2017, and for work performed by Brooks R. Fudenberg, from December 15, 2016 through March 29, 2017.

They so move pursuant to N.C. Gen. Stat. § 75-16.1 (authorizing attorney fees to successful plaintiffs in cases brought under the North Carolina Unfair Trade Practices Act, G.S. § 75-1.1); the Orders of this Court filed December 02, 2016 and March 16, 2017 (awarding fees to Plaintiffs for prior attorney work); *Printing Servs. of Greensboro, Inc. v. Am. Capital Grp., Inc.*, 637 S.E.2d 230, 237 (N.C. App. 2006) (holding that once a fee award is found to be proper in a given case, the amount of fees awarded must be reasonable); *id.* (holding that once fees are awarded in a given case, fees continue to accumulate for work conducted post-trial).

Specifically, they request \$17,004.00 for Mr. Moskos' work of 43.6 hours and \$38,610.00 for Mr. Fudenberg's 99.0 hours, a total of \$55,614.00. (Ex. 1 (Timesheets of C. Steven Moskos); Ex. 2 (Timesheets of Brooks R. Fudenberg)). This comprises work on four sets of filed documents, the last day of Mr. Fudenberg's work on the Plaintiffs' Motion Pursuant To Rule 59

And Motion For Supplemental Attorney Fees, And Memorandum In Support; the List of Issues Pending and draft Order On Plaintiffs' Rule 59 Motion And Motion For Supplemental Attorneys' Fees (Ex. 3); the Reply in Support of Plaintiffs' Motion Pursuant To Rule 59 And Motion For Supplemental Attorney Fees; and the present Motion. It also comprises work on lesser documents such as Plaintiffs' Objection to Defendant's request for 35 days to respond to Plaintiffs' Rule 59 motion, time preparing a Form 4 Order when Defendant dropped its request for a setoff, as well as time reviewing case law, consultation with co-counsel and review of various responsive documents sent by Defendant's counsel to the Court.

## **I. Entitlement to Fees**

N.C. Gen. Stat. § 75-16.1 authorizes attorneys fees to successful plaintiffs in cases brought under the North Carolina Unfair Trade Practices Act, G.S. § 75-1.1, provided certain conditions are met. This Court has already found that those conditions were met. Order of December 02, 2016. For similar reasons, Plaintiffs are entitled to an award of fees for the work detailed in the timesheets being filed with this motion. Moreover, under North Carolina law, once fees are awarded in a given case, fees continue to accumulate for work conducted post-trial. *Printing Servs. of Greensboro, Inc. v. Am. Capital Grp., Inc.*, 637 S.E.2d 230, 237 (N.C. App. 2006). South Carolina law is to the same effect. *E.g., McDowell v. South Carolina Department of Social Services*, 304 S.C. 539, 544, 405 S.E.2d 830, 833 (1991); *cf. Austin v. Stokes-Craven Holding Corp.* ("Austin IP"), 406 S.C. 187, 201, 750 S.E.2d 78, 85 (2013).

## **II. The Amount of the Award**

Under North Carolina law, once a fee award is found to be proper in a given case, the amount of fees awarded must be reasonable. *Printing Servs. of Greensboro, Inc.*, 637 S.E.2d at 237.

Under North Carolina law, a court is to look at eight factors in determining the amount of a statutory fee award. The first four are:

1. the time and labor expended;
2. the skill required;
3. the customary fee for like work; and
4. the experience or ability of the attorney.

*United Lab. v. Kuykendall*, 403 S.E.2d 104, 111 (N.C. App. 1991). In addition, the trial court should consider and make findings concerning:

5. the novelty and difficulty of the questions of law;
6. the adequacy of the representation;
7. the difficulty of the problems faced by the attorney, especially any unusual difficulties;  
and
8. the kind of case for which the fees are sought and the result obtained.

*United Labs., Inc. v. Kuykendall*, 437 S.E.2d 374, 381-82 (N.C. 1993). The court may also in its discretion consider and make findings on the services expended by paralegals and secretaries acting as paralegals if, in the trial court's opinion, it is reasonable to do so. *Id.*

(1) The time and labor expended, which is the first criterion, is detailed in the timesheets of Mr. Moskos and Mr. Fudenberg. (2) The skill required included analysis of legal research into various issues including North Carolina law regarding attorney fees and election of remedies; South Carolina law regarding timing of fee requests; math skills to correct Defendant's multiple mathematical errors; analysis of the various issues involved, and writing skills to prepare the memoranda. (3) Plaintiffs provided with their prior filings three affidavits of respected attorneys,

each stating that a customary fee for like work would be \$400 or more per hour. (Affs. of Mary Leigh Arnold and Brian Boger, Exs. 5 and 6 to Plaintiffs' Brief In Support Of Plaintiffs' Request For Attorney's Fees, served May 2, 2016; Aff. of Jason Luck, Ex. 1 to Affidavit of Brooks R. Fudenberg, served July 21, 2016). Plaintiffs request only \$390 per hour. (4) Mr. Moskos' qualifications were discussed in Plaintiffs' Brief In Support Of Plaintiffs' Request For Attorney's Fees, at 13; Mr. Fudenberg's were discussed in the first Affidavit of Brooks R. Fudenberg filed with this Court, dated July 21, 2016. Those discussions are incorporated by reference. Briefly, Mr. Moskos has been a member of the South Carolina Bar for 31 years, primarily suing automotive dealers, with cases referred to him statewide. He is a board certified trial attorney and a board certified pretrial advocate. He has presented at CLE programs at the State and national levels. His work has been published in the *South Carolina Bar Journal* and a national paralegal magazine. He has also tried and been involved in several appeals related to fraudulent, unfair, and deceptive trade practices by car dealers. Mr. Fudenberg is a 1991 graduate of Yale Law School. He has been a member of the South Carolina Bar for thirteen years. His practice consists largely of researching and writing briefs and memoranda for attorneys statewide. Of particular interest, that work includes drafting the briefs for the prevailing appellate parties in South Carolina Supreme Court cases against automobile dealers who deceptively sold previously-wrecked vehicles. His scholarship has appeared in the *UCLA Law Review* and is well-received by leading scholars. Popular work includes several publications in the *Washington Post* and humorous letters in the *Post*, the *New York Times*, and the *Atlantic*. This team of attorneys was well-qualified to handle these matters.

(5) The novelty and difficulty of the questions of law included mastering the North Carolina UTPA and attorney fee case law following *Kuykendall*; the North Carolina pre- and post-judgment interest statute; and the novel argument pressed by Defendant that it could stop the accumulation of fees by making an offer after trial, verdict, and notice of the Court's judgment.

(6) The adequacy of the representation. *See* discussion of item (4) above. Plaintiffs' counsel were required to address numerous issues, often in a limited time frame. Nevertheless, they produced well-researched and well-written documents on another state's law.

(7) The difficulty of the problems included a wide range of issues under North Carolina law. There were at least two unusual difficulties. One unusual difficulty was that the Defendant, having been directed to draft an order awarding \$21,264 in fees, or 40% of the recovery, imagined a review by which the Court first determined that entries representing the majority of the time had nothing to do with the Unfair Trade Practices Act, and then reduced the remaining minority by another 75% in order to bring the award down to 40% of the recovery. Defendant then convinced the Court to include that non-existent review in its Order as if that review had actually happened.

A second unusual difficulty was posed by Mr. James Becker's offer on behalf of Defendant of settlement for a sum including both punitive damages and attorney fees, in effect conceding that the Court erred in requiring Plaintiffs to elect between the two. (Ex. A to Def.'s Resp. to Pls.' Rule 59 Mot. and Mot. for Supplemental Att'ys' Fees.) However, the offer was marked "CONFIDENTIAL" at the top of the first page (capitalization, boldface, and underlining in original). Defendant then publicly filed the "CONFIDENTIAL" document.

Defendant erroneously urged that this “CONFIDENTIAL” document stopped the accumulation of the post-verdict fees that North Carolina appellate courts have held continue to accrue after the verdict.

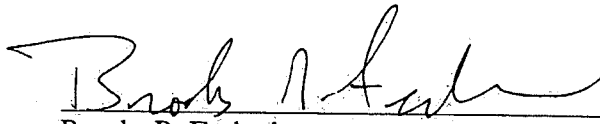
(8) The case for which fees are sought is a North Carolina Unfair Trade Practices Act case. It concerns Defendant’s second fraudulent sale of this clipped vehicle, dangerous to the driver, any passengers, and all others sharing the road.

The purpose of that Act was to establish an effective private cause of action for aggrieved consumers in North Carolina because common-law remedies had proven ineffective. *Marshall v. Miller*, 276 S.E.2d 397, 400 (N.C. 1981). The purpose of attorneys fees in Chapter 75 is to encourage private enforcement of Chapter 75. *United Labs., Inc. v. Kuykendall*, 437 S.E.2d 374, 380 (N.C. 1993). Providing a full award of attorney’s fees provides an incentive for attorneys to accept these kinds of cases, thus furthering the goals of the legislation. *Shepard v. Bonita Vista Properties, LP*, 664 SE 2d 388 (N.C. App. 2008). See also *Austin v. Stokes-Craven Holding Corp.* (“*Austin I*”), 387 S.C. 22, 57, 691 S.E.2d 135, 153 (2010) (a full award of fees to the successful Plaintiff facilitates the purpose of the Act) (SC Dealer’s Act); *McDowell v. South Carolina Department of Social Services*, 304 S.C. 539, 544, 405 S.E.2d 830, 833 (1991) (requiring fees under a fee-shifting statute to be awarded for later stages of litigation).

## **Conclusion.**

For the reasons stated above and such other reasons as may be apparent to the Court, Plaintiffs respectfully request the Court grant the fees specified above for the period specified above.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Brooks R. Fudenberg", written over a horizontal line.

Brooks R. Fudenberg

LAW OFFICE OF BROOKS R. FUDENBERG,  
LLC

171 Church Street, Suite 160

Charleston SC 29401

Tel.: 843-416-2558

Fax: 910-401-1242

BRF@Fudenberglaw.com

Attorney for Plaintiffs



# C. Steven Moskos

4000 Faber Place Drive Suite 300

North Charleston, SC 29405

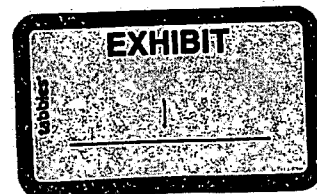
Phone: (843) 763-5297

Daniel O'Shields and Roger W. Whitley A Partnership d/b/a O&W Cars v.  
Columbia Automotive Company, LLC d/b/a Midlands Honda

Case No: 2013-CP-40-0319

2017 APR -3 AM 11:45  
JENNIFER W. MCBRIDE  
C.C.H. & G.S.  
RICHLAND COUNTY  
FILED

| Date       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Time |
|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| 12/19/2016 | Telephone conference with Roger Whitley regarding status of case. Telephone conference with Brooks Fudenberg regarding conversation with Roger Whitley and value of the case.                                                                                                                                                                                                                                                                                                                                                                                                                             | 1.30 |
| 1/3/2017   | Telephone conference with Brooks Fudenberg re: Strategy. Dictate correspondence to Judge Cothran regarding Defendant's request for time to respond to Motion for Reconsideration. Prepare Form 4 regarding Defendant's withdrawal of its Motion for Setoff.                                                                                                                                                                                                                                                                                                                                               | 1.00 |
| 1/3/2017   | Review of correspondence from Clay Walker regarding withdrawal of Motion for Setoff. Dictate email to Brooks Fudenberg regarding correspondence from Clay Walker. Review of email from Brooks Fudenberg regarding letter.                                                                                                                                                                                                                                                                                                                                                                                 | .40  |
| 1/4/2017   | Telephone conference with Brooks Fudenberg. Review of email to Judge Cothran and Clay Walker regarding Form 4 ending Motion for Setoff.                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | .70  |
| 1/17/2017  | Review of emails from Brooks Fudenberg regarding Defendant's latest correspondence and filings with the Court. Dictate email to Brooks Fudenberg. Telephone conference with Brooks Fudenberg regarding response to James Becker's affidavit and whether a post trial offer defeats the "unwarranted refusal to settle" requirement. Second telephone conference with Brooks Fudenberg regarding the need to file a response to Defendant's submission of James Becker's affidavit as well as providing the Court with a list of the remaining issues as requested by Judge Cothran through his law clerk. | 1.30 |
| 1/18/2017  | Review of documents from Brooks Fudenberg regarding emails to go to Judge Cothran.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | .70  |
| 1/18/2017  | Work on correspondence to Judge Cothran regarding post trial motions. Telephone conference with Brooks Fudenberg regarding Motion for Reconsideration Order and how to respond to Defendant's arguments opposing Reconsideration. Discussion of correspondence to go to Judge Cothran regarding Plaintiffs' Reply.                                                                                                                                                                                                                                                                                        | 2.10 |



|           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |      |
|-----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| 1/19/2017 | Review of email to Brooks Fudenberg. Review of proposed email to go to Judge Cothran regarding the list of issues he requested. Dictate email to Brooks Fudenberg regarding the list of issues left in the case requested by Judge Cothran.                                                                                                                                                                                                                                                            | .30  |
| 1/19/2017 | Review of emails from Brooks Fudenberg regarding issues in Motion for Reconsideration. Review of edits regarding draft Order for Judge Cothran regarding Motion for Reconsideration. Review of issues regarding Court's emailed decision regarding post trial motions. Telephone conference with Brooks Fudenberg regarding submission to Judge Cothran dealing with the remaining issues in the case per Judge Cothran's email. Legal research regarding attorneys' fees under N.C.G.S. Sec. 75-16.1. | 2.60 |
| 1/19/2017 | Review of Rhyne case. Review of emails from Brooks Fudenberg regarding attorney fee hours. Review of material regarding attorney fee hours. Review of additional edits to Order to go to Judge Cothran. Dictate emails to Brooks Fudenberg regarding Court's prior orders, total time spent on case, time spent on UTPA claim, and fees requested. (Thirty-one emails to or from Brooks Fudenberg transmitted over the course of the day.)                                                             | 2.70 |
| 1/20/2017 | Review of edits to portion of Order to be sent to Judge Cothran. Dictate email to Brooks Fudenberg suggesting additional edits to the Order.                                                                                                                                                                                                                                                                                                                                                           | .80  |
| 1/20/2017 | Review of finalized Order for Judge Cothran. Telephone conference with Brooks Fudenberg. (An additional twenty-one emails sent between counsel to fine tune Order.)                                                                                                                                                                                                                                                                                                                                    | 1.30 |
| 1/23/2017 | Review of correspondence from Clay Walker regarding issues to be decided. Dictate email to Brooks Fudenberg.                                                                                                                                                                                                                                                                                                                                                                                           | .10  |
| 1/23/2017 | Review of Orders sent by Clay Walker January 13, 2017 and January 23, 2017 to Judge Cothran to verify they are the same Order.                                                                                                                                                                                                                                                                                                                                                                         | .40  |
| 1/23/2017 | Dictate email to Brooks Fudenberg regarding James Y. Becker's affidavit.                                                                                                                                                                                                                                                                                                                                                                                                                               | .30  |
| 1/24/2017 | Legal research regarding attorney fees and burden of proof. Dictate email to Brooks Fudenberg.                                                                                                                                                                                                                                                                                                                                                                                                         | 1.10 |
| 1/24/2017 | Telephone conference with Brooks Fudenberg re: strategy. Legal Research regarding appellate fees.                                                                                                                                                                                                                                                                                                                                                                                                      | .60  |
| 1/25/2017 | Telephone conference with Brooks Fudenberg regarding reply to Clay Walker's letter dealing with three issues and Clay's Walker's proposed order to the judge. Legal research regarding NCUTPA.                                                                                                                                                                                                                                                                                                         | 3.30 |
| 1/26/17   | Telephone conference with Brooks Fudenberg regarding affidavits to be submitted regarding how Court arrived at 218 hours for fees; and a motion for reconsideration regarding second Order of the Court on the fees issues.                                                                                                                                                                                                                                                                            | .20  |
| 1/27/2017 | Telephone conferences with Brooks Fudenberg regarding affidavits to be filed with the Court in support of Plaintiffs' request                                                                                                                                                                                                                                                                                                                                                                          | 1.20 |

|           |                                                                                                                                                                                                                                                                                                                                                             |      |
|-----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
|           | for additional fees.                                                                                                                                                                                                                                                                                                                                        |      |
| 1/29/2017 | Review of Reply material emailed from Brooks Fudenberg regarding Motion For Reconsideration.                                                                                                                                                                                                                                                                | 2.20 |
| 2/2/2017  | Telephone conference with North Carolina consumer attorney Matt Norris regarding UTPA and attorney's fees.                                                                                                                                                                                                                                                  | .30  |
| 2/6/2017  | Review of proposed Orders from Clay Walker. Review of Plaintiffs' Reply in Support of Rule 59 Motion and Motion for Supplemental Attorneys' Fees. Review of Draft Affidavit of Brooks Fudenberg.                                                                                                                                                            | 1.70 |
| 2/6/2017  | Telephone conference with Brooks Fudenberg regarding response to Midlands Honda's opposition to Plaintiffs' Motion for Reconsideration. Review time spent between July 21, 2016 and July 27, 2016. Review of affidavit of C. Steven Moskos filed August 31, 2016. Draft argument regarding reasons affidavit required more than 2 hours of time to prepare. | 2.60 |
| 2/7/2017  | Review of email from Brooks Fudenberg. Review of Reply in support of Rule 59 Motion and Supplemental Motion for Fees.                                                                                                                                                                                                                                       | 1.00 |
| 2/7/2017  | Telephone conference with Brooks Fudenberg regarding Reply. Telephone conference with Brooks Fudenberg regarding affidavits for filing. Travel to Brooks Fudenberg's office regarding affidavits. Review of emails from Brooks Fudenberg.                                                                                                                   | .60  |
| 2/17/2017 | Begin work on time sheets for period starting December 16, 2016 and ending February 17, 2017.                                                                                                                                                                                                                                                               | .30  |
| 2/27/2017 | Review of email from John Furse's re: Judge Cothran signing Clay Walker's proposed Order. Telephone conference with Brooks Fudenberg regarding Judge Cothran signing one of the Orders prepared by Clay Walker and strategy moving forward.                                                                                                                 | .50  |
| 3/1/2017  | Review of email from Brooks Fudenberg regarding additional time sheets to file with the Court. Review of Time Sheets for period of 12-19-16 through March 1, 2017. Telephone conference with Brooks Fudenberg regarding what is billable and what is not.                                                                                                   | .90  |
| 3/8/2017  | Review of Attorney Time Sheets from December 16, 2016 through February 17, 2017.                                                                                                                                                                                                                                                                            | 1.20 |
| 3/14/2017 | Review of Time Sheets for Brooks Fudenberg from December 2016 until March 2017. Review of my records. Dictate email to Brooks Fudenberg regarding time sheets and proposed motion.                                                                                                                                                                          | 1.70 |
| 3/20/2017 | Review of filed Order from the Court. Dictate email to Brooks Fudenberg regarding Order. Review of Plaintiffs' Motion for Supplemental Attorneys' Fees for December 2016 Through March 2017, and Memorandum in Support. Dictate email to Brooks Fudenberg regarding Motion.                                                                                 | .20  |
| 3/20/2017 | Telephone conference with Brooks Fudenberg regarding second supplemental request for attorney's fees, potential affidavit, and legal research regarding UTPA.                                                                                                                                                                                               | .80  |
| 3/21/2017 | Review of Supplemental Memorandum supporting request for                                                                                                                                                                                                                                                                                                    | .80  |

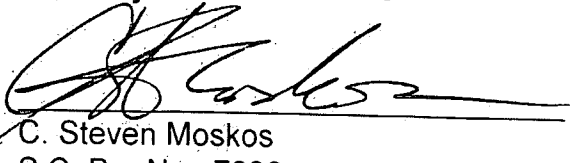
|                    |                                                                                                                                                                                                                                                                                                                                                                                                            |             |
|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
|                    | attorney's fees. Dictate email to Brooks Fudenberg regarding Supplemental Memorandum supporting request for attorney's fees.                                                                                                                                                                                                                                                                               |             |
| 3/22/2017          | Review of time sheets to confirm accuracy of entries. Update time sheets and totals. Email time sheets to Brooks Fudenberg.                                                                                                                                                                                                                                                                                | 1.70        |
| 3/24/2017          | Review of 3 emails from Brooks Fudenberg regarding calculation of time in CSM's time sheets and Supplemental Motion for attorneys' fees. Telephone conference with Brooks Fudenberg regarding legal research on attorney's fees and intertwined claims. Discussion of various cases from North Carolina and South Carolina regarding the interpretation and application of the NC Attorney Fees provision. | 1.30        |
| 3/28/2017          | Review of additional edits made to Brooks Fudenberg to Plaintiffs' Motion for Supplemental Attorneys' Fees for December 2016 Through March 2017, and Memorandum in Support. Dictate two emails to Brooks Fudenberg regarding edits, comments, and suggestions to Motion. Review of one email from Brooks Fudenberg regarding edits, comments, and suggestions to Motion.                                   | .80         |
| 3/28/17            | Telephone conference with Brooks Fudenberg regarding Plaintiffs' Motion for Supplemental Attorneys' Fees for December 2016 Through March 2017, and Memorandum in Support and the accompanying attorneys' time sheets. Review of edits to CSM's time sheets. Review of edits to time sheets of Brooks Fudenberg. Update and print CSM's time sheets.                                                        | 2.60        |
| <b>TOTAL HOURS</b> |                                                                                                                                                                                                                                                                                                                                                                                                            | <b>43.6</b> |

PERSONALLY appeared before me, C. Steven Moskos, Esquire, who, being duly sworn, deposes and says that he is one of the attorneys for the Plaintiffs in Daniel O'Shields and Roger W. Whitley A Partnership d/b/a O&W Cars v. Columbia Automotive Company, LLC d/b/a Midlands Honda, Case No: 2013-CP-40-0319 and that the time sheets above are true and accurate.

**SIGNATURE ON NEXT PAGE**

C. STEVEN MOSKOS, P.A.  
Attorney for the Plaintiffs

BY:

  
C. Steven Moskos

S.C. Bar No.: 7938

4000 Faber Place Drive, Suite 300

N. Charleston, SC 29407

Telephone: (843) 763-5297

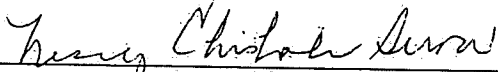
Email: csmoskos@earthlink.net

Charleston, South Carolina

3/29, 2017

SWORN TO BEFORE ME THIS

29<sup>th</sup> DAY OF March 2017.



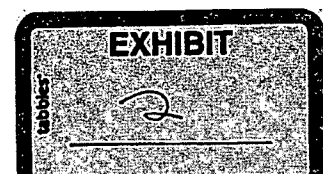
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: May 22, 2022

**TIME NECESSARILY EXPENDED BY BROOKS R. FUDENBERG**  
**on the UTPA claim in Daniel O'Shields and Roger W. Whitley A Partnership D/B/A**  
**O&W Cars vs. Columbia Automotive Company, LLC D/B/A Midlands Honda**  
**From 12-15-2016 through 03-29-2017**

| Date       | Time related to the UTPA claim | Service                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|------------|--------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 12/15/2016 | 1.0                            | Work on timesheets. Review the Order on post-trial motions. Emails (2) to C. Steven Moskos, Esq. re: his timesheets.                                                                                                                                                                                                                                                                                                                                             |
|            | 4.1                            | Begin and complete Draft 3 of Plaintiff's Rule 59 Motion and Motion for Supplemental Attorneys' Fees and Memorandum in Support. Large majority of work concerned the attorney fee award under the NC UTPA. Significant discussion of how the Order had greatly misstated the amount of time that had been devoted to punitive damages, excessively reducing the NC UTPA fee award. Other topics included the directed verdict motion and post-judgment interest. |
|            | 0.1                            | Receive revised timesheets from Mr. Moskos, add these figures to calculations.                                                                                                                                                                                                                                                                                                                                                                                   |
|            | 0.1                            | Email to Mr. Moskos re: case re: a clipped car, and re: 2 additional cases.                                                                                                                                                                                                                                                                                                                                                                                      |
|            | 0.1                            | Email from Mr. Moskos re: his hours of the last two days, send reply.                                                                                                                                                                                                                                                                                                                                                                                            |
|            | 0.1                            | Shepardize case re: statutory fees.                                                                                                                                                                                                                                                                                                                                                                                                                              |
|            | 0.1                            | Receive 2 emails from Mr. Moskos; send reply re: Def.'s DV motion.                                                                                                                                                                                                                                                                                                                                                                                               |
|            | 0.1                            | Emails (4) from Mr. Moskos re: last-minute edits to his timesheets, send 2 reply emails.                                                                                                                                                                                                                                                                                                                                                                         |
|            | 0.1                            | Tel. Conf. with Mr. Moskos re: draft Motion.                                                                                                                                                                                                                                                                                                                                                                                                                     |
|            | 0.1                            | Review folder for notes of additional points to make in Motion/Memorandum.                                                                                                                                                                                                                                                                                                                                                                                       |
|            | 0.6                            | Spell check new portion of Motion/Memorandum. Draft separate Motion for Supplemental Fees. Edit draft Mot./Mem. in light of Mr. Moskos' markup.                                                                                                                                                                                                                                                                                                                  |
| 12/19/2016 | 0.4                            | Tel. Conf. with Mr. Moskos. Discussed value of the case as it now stands; whether to make an offer to James Becker; how to explain all the various possible outcomes to Client; what Mr. Moskos told Client when the case was tried (0.3); case law allowing a plaintiff to recover both punitive damages and attorneys fees after the amendment to the punitive damages statute on which Def. relies (0.1).                                                     |

RICHIE ANDERSON  
 FILED  
 2017 APR -3 AM 11:45  
 JEANNETTE W. MCCBRIDE  
 C.C.P. & G.S.



1/3/2017 0.2 Email from Mr. Moskos, with attachment Def.'s letter to Judge Cothran dropping claim for setoff, and question re: same. Email reply, answering question about setoff and raising question re: the additional days Def. is requesting to prepare a Response to Pls.' Rule 59 Motion.

0.1 Tel. Conf. with Mr. Moskos re: strategy.

0.3 Draft email to Judge objecting to Def.'s request for more than triple the time Pls. had to write their Motion for Def. to respond to that Motion.

0.8 Tel. Conf. with Mr. Moskos, discuss draft objection to Def.'s request for 35 days to respond to Pls.' Rule 59 motion, receive Mr. Moskos' revised draft, discuss that, revise, send to Mr. Moskos. 2d Tel. Conf. with Mr. Moskos, final revisions by both Mr. Moskos and BRF, discuss method to communicate Plaintiffs' position to the Court and how to ensure all communications are in the record.

0.1 Email from Mr. Moskos with Form 4 filled out denying Def.'s Motion for Setoff. Send email suggesting how to deliver it to Judge. Send separate email raising question of making a formal letter of today's email to the Judge re: Def.'s request for 35 days.

1/4/2017 0.3 Tel. Conf. with Mr. Moskos re: Form 4 re: motion for setoff and when to move for additional fees. Jointly edit draft email to court while on phone with Mr. Moskos.

1/13/2017 0.3 Review email from Judge Cothran's clerk, John L. Furse, Esq., requesting a listing of all issues upon which Judge Cothran needs to rule to ensure no issue is missed. Tel. Conf. with Mr. Moskos re: said email, and re: next steps and strategy.

0.5 Re-read and markup, twice, Rule 59 motion.

0.4 Read James Becker, Esq.'s filing also done today. Email to Mr. Moskos re: same.

1/14/2017 0.1 Read 2 emails sent by Mr. Moskos this morning re: yesterday's emails from Judge's clerk and opposing counsel.

0.6 Work on list of items awaiting rulings in response to yesterday's email from Mr. Furse.

0.1 Email from Mr. Moskos indicating that Def. emailed a Response to Pls.' Mot., send email reply.

0.4 Read materials emailed to the Court by Robert Reibold, Esq., yesterday, forwarded by Mr. Moskos.

0.2 Read lengthy email from Mr. Moskos re: Def.'s filings of yesterday.

0.2 Response email to Mr. Moskos, commenting on issue his email raised and raising another issue.

|           |     |                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----------|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|           | 0.2 | Email to Mr. Moskos re: timing of Def.'s Response to Pls.' Rule 59 Motion and Motion for Supp. Atty Fees.                                                                                                                                                                                                                                                                                                        |
|           | 0.3 | Write up thoughts for Reply in Support of Rule 59 Mot., email same to Mr. Moskos.                                                                                                                                                                                                                                                                                                                                |
|           | 0.8 | Examine math in Def.'s Response re: the hours incurred by Pls.' counsel from July 20 through July 27. Check filed timesheets. Identify mathematical error in Def.'s calculation of total hours. Identify additional error in, and write draft of argument debunking, Def.'s argument that Mr. Moskos claimed 75% of the time was UTPA-related while Mr. Fudenberg claimed only 67% of the time was UTPA-related. |
| 1/15/2017 | 0.4 | Re-read, twice, and mark up, Def.'s Response, re-read Mr. Becker's affidavit.                                                                                                                                                                                                                                                                                                                                    |
| 1/16/2017 | 0.6 | Re-read and mark up the Dec 02 2016 Order in light of Def.'s 01/13/17 filings.                                                                                                                                                                                                                                                                                                                                   |
| 1/17/2017 | 0.1 | Email to Mr. Moskos re: Def.'s email of Friday 1/13; receive emailed response.                                                                                                                                                                                                                                                                                                                                   |
|           | 0.3 | Tel conf. with Mr. Moskos re: Def.'s Response, mostly re: Mr. Becker's affidavit and Def.'s argument that Mr. Becker's affidavit ends fees.                                                                                                                                                                                                                                                                      |
|           | 0.3 | 2d Tel. Conf. with Mr. Moskos. Discussed whether Pls. need to reply; and whether Pls. should list the issues before the Court as of the time of Mr. Furse's email.                                                                                                                                                                                                                                               |
| 1/18/2017 | 0.3 | Work on straightening out inaccuracies in Def.'s Jan. 13 filings re: BRF's time and total hours worked by Pls.' attorneys May 2 - July 20.                                                                                                                                                                                                                                                                       |
|           | 0.3 | Draft email response to Mr. Furse's email of 1/13/17.                                                                                                                                                                                                                                                                                                                                                            |
|           | 1.2 | Write list of topics awaiting rulings/draft Order on remaining issues. Email draft to Mr. Moskos.                                                                                                                                                                                                                                                                                                                |
|           | 1.2 | Tel. Conf. with Mr. Moskos re: Def.'s filings and what should be in Pls.' Reply.                                                                                                                                                                                                                                                                                                                                 |
| 1/19/2017 | 0.2 | Read Mr. Moskos' revisions to draft email to Judge; revise; email current draft to Mr. Moskos.                                                                                                                                                                                                                                                                                                                   |
|           | 0.8 | Read Mr. Moskos' revisions to draft List of Topics Awaiting Rulings/Order on Remaining Issues, and revisions Mr. Moskos and BRF made during tel. conf. of 1/18; refine the changes; make additional revisions.                                                                                                                                                                                                   |
|           | 0.1 | Email Mr. Moskos re: phrasing of an argument.                                                                                                                                                                                                                                                                                                                                                                    |
|           | 1.1 | Revise draft List/Order.                                                                                                                                                                                                                                                                                                                                                                                         |
|           | 0.4 | Review draft List/Order and folder.                                                                                                                                                                                                                                                                                                                                                                              |



|           |     |                                                                                                                                                                                                                                                                                                                                                                           |
|-----------|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|           | 0.1 | Review Mr. Moskos' additional revisions to draft email.                                                                                                                                                                                                                                                                                                                   |
|           | 0.1 | Email to Mr. Moskos re: issue of atty fees in draft List/Order.                                                                                                                                                                                                                                                                                                           |
|           | 0.3 | Tel. Conf. with Mr. Moskos re: draft List/Order.                                                                                                                                                                                                                                                                                                                          |
|           | 0.2 | Two additional Tel. Confs. (brief) with Mr. Moskos re: draft List/Order.                                                                                                                                                                                                                                                                                                  |
|           | 0.4 | Write up options for Court re: possibility of ex parte communication.                                                                                                                                                                                                                                                                                                     |
|           | 0.3 | Review Dec 02 Order re: the 218 hours supposedly identified as potentially containing compensable work. Finish new version of discussion of the 218 hours issue and options for Court to address same in draft List/Order. Email to Mr. Moskos.                                                                                                                           |
|           | 1.2 | Rewrite/revise draft List/Order.                                                                                                                                                                                                                                                                                                                                          |
| 1/20/2017 | 0.3 | Mark up hard copy of draft List/Order.                                                                                                                                                                                                                                                                                                                                    |
|           | 0.1 | 2 emails from Mr. Moskos re: draft List/Order, send response.                                                                                                                                                                                                                                                                                                             |
|           | 1.3 | Read Mr. Moskos' suggested revisions to draft List/Order, email Mr. Moskos re: same; accept some proposed revisions, modify others, insert into draft, compare to changes BRF made on hard copy of most recent draft, add insert re: the supposed 218 hours containing or possibly containing relevant time, spell check, email draft of complete document to Mr. Moskos. |
|           | 0.5 | Tel. Conf. with Mr. Moskos - mark up draft List/Order on phone.                                                                                                                                                                                                                                                                                                           |
|           | 0.4 | Finish revisions, spell check, 8 emails, 4 from and 4 to Mr. Moskos.                                                                                                                                                                                                                                                                                                      |
| 1/23/2017 | 0.1 | Receive, read, lengthy email from Mr. Moskos re: Becker affidavit filed by Def.                                                                                                                                                                                                                                                                                           |
|           | 0.4 | Lengthy email to Mr. Moskos re: whether to do an additional filing, and re: issue of whether fees continue to accrue.                                                                                                                                                                                                                                                     |
|           | 0.1 | Receive, read letter of H. Clayton Walker, Esq., to Judge Cothran of today's date.                                                                                                                                                                                                                                                                                        |
| 1/24/2017 | 0.4 | Tel. Conf. with Mr. Moskos re: next steps.                                                                                                                                                                                                                                                                                                                                |
|           | 3.1 | LEXIS research re: whether settlement offer post-trial stops accrual of statutory fees under NCUTPA.                                                                                                                                                                                                                                                                      |
|           | 0.3 | Email to Mr. Moskos re: why post-trial settlement offers do not stop the accrual of fees; and re: the burden of proof re: quantum of fees to be awarded under NC UTPA.                                                                                                                                                                                                    |
|           | 0.1 | Email from Mr. Moskos, various issues.                                                                                                                                                                                                                                                                                                                                    |
| 1/25/2017 | 0.6 | Review Def.'s Response to Rule 59 Motion; Def.'s letter and draft Order of 1/23/17; draft email to group of attorneys re: the supposed thorough review that identified only 218 hours of potentially                                                                                                                                                                      |

compensable time.

|           |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-----------|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|           | 0.9 | Pull, read, Shepardize case cited in Def.'s filing of 01-13-17; skim certain citing cases.                                                                                                                                                                                                                                                                                                                                                                                                                               |
|           | 0.2 | Begin draft Reply in Support of Pls.' Rule 59 Motion and Motion for Supplemental Attorneys' Fees.                                                                                                                                                                                                                                                                                                                                                                                                                        |
|           | 0.1 | Tel. conf. with Mr. Moskos re: analysis of Defendant's response to Motion for Reconsideration and re: Mr. Moskos' August 30, 2016 affidavit.                                                                                                                                                                                                                                                                                                                                                                             |
| 1/26/2017 | 0.9 | LEXIS research on question of whether offer such as Mr. Becker's prevents attorney fees under NCUTPA from accruing.                                                                                                                                                                                                                                                                                                                                                                                                      |
|           | 0.2 | Tel. Conf. with Mr. Moskos re: best method to show appellate court that Judge Cothran never told us how Judge Cothran arrived at the figure for the amount of fees, and especially that Plaintiffs have never been informed how Clay Walker, in preparing the order for the Judge to sign, arrived at 218 hours. Also re: need to do a Reply to offset Def.'s argument that we had needed to present fees through one week before the date any motion is filed or hearing held in order to be compensated for that time. |
|           | 0.6 | Work on draft affidavit of BRF.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 1/27/2017 | 0.7 | Tel. Conf. with Mr. Moskos re: strategy for affidavits from Pls.' counsel and re: filing a Reply memorandum.                                                                                                                                                                                                                                                                                                                                                                                                             |
|           | 0.3 | Edit affidavit.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|           | 0.5 | Second Tel. Conf. with Mr. Moskos re: strategy for affidavits from Pls.' counsel and re: filing a Reply.                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 1/28/2017 | 2.5 | Draft Reply Memorandum.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|           | 0.2 | Email to Mr. Moskos re: email from Judge's clerk of 1/26 not mentioning the Motion for Supplemental Fees, and providing thoughts thereon.                                                                                                                                                                                                                                                                                                                                                                                |
|           | 0.3 | Add to draft Reply notes for Mr. Moskos' attention, email draft to him.                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 1/29/2017 | 2.9 | Write second draft of Reply.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|           | 0.8 | Review the list of topics sent to Court on 1/20/17 to see if anything needs to be added from that to the draft Reply. Write questions for Mr. Moskos re: same. Add to Reply brief outline of the procedural history beginning with Rule 59 motion.                                                                                                                                                                                                                                                                       |
|           | 0.3 | Re-read draft order on Rule 59 motion submitted by opposing counsel; add to draft Reply in response.                                                                                                                                                                                                                                                                                                                                                                                                                     |
|           | 0.3 | Spell check, light editing.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

|           |     |                                                                                                                                                                                                    |
|-----------|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1/30/2017 | 0.3 | Proofread hard copy of draft Reply.                                                                                                                                                                |
|           | 0.3 | Incorporate changes from edit of hard copy.                                                                                                                                                        |
|           | 1.2 | Consider suggestions from Mr. Moskos' review of draft Reply, incorporate/modify/reject the various suggestions.                                                                                    |
|           | 0.8 | Work on timesheet for Dec 15, separating UTPA-related time from unrelated time to the extent possible.                                                                                             |
| 2/1/2017  | 0.1 | Tel. Conf. with Mr. Moskos re: Reply in Support of Rule 59 Motion.                                                                                                                                 |
|           | 0.1 | Email to Mr. Moskos with back-and-forth from comments on a section of the draft Reply, and question extending same.                                                                                |
| 2/2/2017  | 0.8 | Work on timesheets after Dec 15, separating UTPA-related time from unrelated time to the extent possible.                                                                                          |
| 2/3/2017  | 1.6 | Work on timesheets after Dec 15, separating UTPA-related time from unrelated time to the extent possible.                                                                                          |
| 2/5/2017  | 0.7 | Read, mark up draft Reply.                                                                                                                                                                         |
| 2/6/2017  | 0.4 | Work on timesheets after Dec 15, separating UTPA-related time from unrelated time to the extent possible.                                                                                          |
|           | 0.2 | Email from Mr. Moskos with attached letter from Def. with 2 draft orders. Read the letter and Def.'s two new draft Orders.                                                                         |
|           | 2.0 | Incorporate/modify/reject edits done yesterday of hard copy of Reply. Edit Reply in light of hard copy markup. Finish editing. Spell check. Email draft Reply to Mr. Moskos.                       |
|           | 0.2 | Compare Def.'s draft orders received today with Def.'s most recent previous draft order. Do math on certain of Def.'s calculations. Def. again has math errors.                                    |
|           | 0.3 | Revise draft affidavits of Mr. Moskos and BRF.                                                                                                                                                     |
|           | 0.5 | Tel. conf. with Mr. Moskos re: Defendant's filings of today, whether the 2 proposed orders Def. filed today differ in substance from single order previously proposed by Def., and how to respond. |
|           | 0.2 | Read revisions to Reply and to affidavits suggested by Mr. Moskos.                                                                                                                                 |
|           | 0.2 | Email from Mr. Moskos re: a contradiction in Def.'s Response; send return email offering opinion on which meaning Def. intends.                                                                    |
| 2/7/2017  | 0.6 | Read, mark up hard copy of Reply.                                                                                                                                                                  |
|           | 1.5 | Review/consider/revise Mr. Moskos' proposed revisions to Reply emailed last night, and changes BRF redlined yesterday for re-consideration, and BRF markup of hard copy.                           |

|           |     |                                                                                                                                                              |
|-----------|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
|           | 0.1 | 2 emails to Mr. Moskos, 1 email posing 2 questions, 1 relating to draft Reply and 1 relating to his prior affidavit.                                         |
|           | 0.1 | 2 emails from Mr. Moskos in response to BRF emails above; send 1 email reply.                                                                                |
|           | 0.2 | Draft new part of Reply, re: time spent on Mr. Moskos' August affidavit.                                                                                     |
|           | 0.2 | Read/skim Mr. Moskos' analysis of time incurred researching and drafting Mr. Moskos' August affidavit.                                                       |
|           | 0.1 | Spell check draft Reply.                                                                                                                                     |
|           | 0.3 | Tel. conf. with Mr. Moskos re: what is needed for Pls.' Reply.                                                                                               |
|           | 0.2 | Work section on August affidavit into Reply, email draft Reply to Mr. Moskos.                                                                                |
|           | 0.1 | Proof, finalize, affidavit of BRF, have it notarized.                                                                                                        |
|           | 0.1 | Tel. conf. with Mr. Moskos to go over his final revisions/questions/suggestions.                                                                             |
|           | 0.2 | Accept/reject redlined changes, remove highlighting.                                                                                                         |
| 2/8/2017  | 0.6 | Work on separating UTPA from non-UTPA related time incurred after Dec 15.                                                                                    |
| 2/9/2017  | 0.6 | Work on timesheets after Dec 15. Finish separating UTPA from non-UTPA.                                                                                       |
|           | 0.2 | Work on timesheets, check highlighted entries.                                                                                                               |
| 2/10/2017 | 0.9 | Proofread/edit hard copy of timesheets 12/15/16 – 02/09/17.                                                                                                  |
|           | 1.6 | Work with edits of hard copy of timesheets.                                                                                                                  |
|           | 0.7 | Proofread hard copy of timesheets.                                                                                                                           |
| 2/13/2017 | 0.8 | Work with marked up hard copy of timesheets.                                                                                                                 |
|           | 0.8 | Start read of 98-page partial transcript, which includes DV motion, to determine accuracy of a certain claim by Def.                                         |
| 2/14/2017 | 0.7 | Continue read of 98-page transcript extract.                                                                                                                 |
| 2/16/2017 | 0.3 | Finish read of transcript extract.                                                                                                                           |
|           | 0.2 | Conduct pdf search of transcript extract in attempt to find material Defendant maintains was argued to the Court.                                            |
|           | 0.2 | Review emails between BRF and Mr. Moskos re: Def.'s claim that evidence of punitive damages was discussed extensively in connection with economic loss rule. |
|           | 0.1 | Compare language from December 2 order re: punitive damages and                                                                                              |

directed verdict motion with most recent draft orders prepared by Def.

0.2 Do math, assuming Def. did intend to include BRF's time through July 20 in the "approximately 218" hours that were then reduced another 75%, to see what percent of requested hours, total, were awarded.

0.2 Draft email to Mr. Moskos inquiring into Def.'s purpose in making certain representations in its Response.

0.4 Work on timesheets 2/13 - 2/16.

2/22/2017 0.1 Receive email from Mr. Moskos, forwarding email from Def.'s law firm to Judge Cothran, with attached letter from Mr. Walker to Judge Cothran; read letter.

0.1 Email to Mr. Moskos with thoughts on Def.'s letter to Judge Cothran.

0.1 Receive email from Mr. Furse referencing "the order dated January 23, 2017." There is no such order. Locate undated order emailed by Def. on 1-23. Skim same.

2/27/2017 0.5 Tel. Conf. with Mr. Moskos re: today's email from Judge Cothran's clerk, implications, next steps.

0.3 Tel. Conf. with Mr. Moskos re: billing.

3/1/2017 0.1 Email to group of attorneys re: authority for proposition that lower court order prepared by a party should not attribute to the Court events that did not occur.

3/2/2017 0.4 Review Mr. Moskos' timesheets.

0.8 Review BRF timesheets in light of telephone call with Mr. Moskos of 03-01-17.

3/3/2017 0.1 Follow-up email to group of attorneys re: authority for proposition that lower court order prepared by a party should not attribute to the Court events that did not occur.

0.4 Organize files in computer folder.

0.1 Review response to above 3/3/17 email; send reply.

0.3 Draft motion for fees for work performed Dec 2016 - March 2017.

0.1 Review Pls.' Reply in Support of Rule 59 motion for authority to use in current motion.

0.4 Go over timesheets for work since Dec. 15, looking for non-UTPA-related work.

1.6 Lexis Research re: entitlement to fees for subsequent work if fees are ordered through trial, and re: remands rather than reversals of fee awards where the lower court order provides insufficient reasoning.

|           |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-----------|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|           | 0.5 | Email from Thomas Nelson, Esq., in response to above follow-up email of today's date to group of attorneys. Send lengthy email Reply.                                                                                                                                                                                                                                                                                                              |
| 3/6/2017  | 1.1 | Legal research re: requirement that fees be awarded for later stages of litigation if fees were awarded for trial.                                                                                                                                                                                                                                                                                                                                 |
|           | 0.3 | Legal research re: entitlement to receive both statutory fees from one cause of action and punitive damages from another.                                                                                                                                                                                                                                                                                                                          |
| 3/7/2017  | 0.2 | Review case law on proposition that interest on UTPA judgments are "related" to the UTPA claim for fees purposes.                                                                                                                                                                                                                                                                                                                                  |
|           | 1.0 | Make separate chart showing time not related to the UTPA claim.                                                                                                                                                                                                                                                                                                                                                                                    |
|           | 0.6 | Draft lengthy email to former Supreme Court clerk John Warren, Esq., re: the Order's incorrect statement that a careful review found 218 hours which were then reduced by 75%, seeking advice on how an appellate court is likely to review an order prepared by a party that contains such an incorrect statement.                                                                                                                                |
|           | 0.1 | Review email to Mr. Warren, polish, send.                                                                                                                                                                                                                                                                                                                                                                                                          |
|           | 0.1 | Work on timesheets for today.                                                                                                                                                                                                                                                                                                                                                                                                                      |
|           | 0.4 | Tel. Conf. with John Warren, Esq., re: incorrect statement in Dec. Order to the effect that Judge reviewed timesheets and found only 218 hours that could contain relevant work; also re: case law saying PCR courts should write their own orders in order to receive deference from reviewing courts, and the implications against deference by the appellate court of the Def. having written the orders in this case; other issues for appeal. |
|           | 0.1 | Write up description re: talk with Mr. Warren, review notes of conversation.                                                                                                                                                                                                                                                                                                                                                                       |
| 3/8/2017  | 0.1 | Edit, clean, add to notes from conversation yesterday evening with John Warren.                                                                                                                                                                                                                                                                                                                                                                    |
| 3/14/2017 | 0.1 | Initial Review of CSM markup of BRF's timesheets.                                                                                                                                                                                                                                                                                                                                                                                                  |
|           | 0.1 | Email to Mr. Moskos re: John Warren, Esq.                                                                                                                                                                                                                                                                                                                                                                                                          |
| 3/15/2017 | 1.0 | Review, edit time sheet of "related" hours in light of Mr. Moskos' comments and suggestions.                                                                                                                                                                                                                                                                                                                                                       |
| 3/16/2017 | 1.0 | Review, edit chart of time not "related" to the UTPA claim, in light of Mr. Moskos' comments and suggestions. Move certain time between charts.                                                                                                                                                                                                                                                                                                    |
|           | 0.1 | Receive opposing counsel's Request for Order of Protection (forwarded by Mr. Moskos).                                                                                                                                                                                                                                                                                                                                                              |

|           |     |                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-----------|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3/17/2017 | 0.1 | Compute days since Mr. Furse emailed with a copy of the signed Order on Motion to Reconsider/for Supplemental Fees.                                                                                                                                                                                                                                                                                                                |
| 3/20/2017 | 0.1 | Emails (2) from Mr. Moskos, re: draft Motion and re: he has received the filed Order on the Rule 59 Motion.                                                                                                                                                                                                                                                                                                                        |
|           | 0.8 | Tel. conf. with Mr. Moskos re: time sheet entries of CSM and of BRF; re: whether a need exists to address additional issues in our soon-to-be-filed affidavits and/or memorandum; re: his discussions with a North Carolina lawyer re: North Carolina aspects of the case; on CSM's and BRF's separate discussions with a South Carolina lawyer and former Sup. Ct. Clerk re: how appellate court is likely to see certain issues. |
|           | 0.5 | Review, spell-check, refine, BRF timesheets.                                                                                                                                                                                                                                                                                                                                                                                       |
|           | 0.3 | Review Motion to Reconsider and for Supplemental fees, and the Reply in support thereof.                                                                                                                                                                                                                                                                                                                                           |
|           | 0.1 | Review Order received today, make annotation re: certain confused language.                                                                                                                                                                                                                                                                                                                                                        |
|           | 0.1 | Review Dec 02 Order.                                                                                                                                                                                                                                                                                                                                                                                                               |
|           | 0.3 | Review the 2 reported <i>Kuykendall</i> decisions re: determining amount of fee awards. Write brief review of what those two cases held.                                                                                                                                                                                                                                                                                           |
|           | 0.4 | Tel. Conf. with Mr. Moskos re: the 2 <i>Kuykendall</i> decisions, review filings re: the NC factors for determining the amount of fees.                                                                                                                                                                                                                                                                                            |
| 3/21/2017 | 0.3 | Write first draft of argument for current Memorandum re: the entitlement to a statutory fee award, and first paragraph re: the amount of the fee award.                                                                                                                                                                                                                                                                            |
|           | 0.4 | Analysis of NC factors for amount of fee.                                                                                                                                                                                                                                                                                                                                                                                          |
|           | 3.0 | Review work filed during the relevant period.                                                                                                                                                                                                                                                                                                                                                                                      |
|           | 0.2 | Review file, check clerk of court's webpage re: the case.                                                                                                                                                                                                                                                                                                                                                                          |
|           | 0.1 | Review Reply to apply it to the 2d fee factor.                                                                                                                                                                                                                                                                                                                                                                                     |
|           | 0.5 | Apply items 2-4 (skill through experience) of the NC factors to this case.                                                                                                                                                                                                                                                                                                                                                         |
|           | 0.9 | Write analysis of the last 4 factors.                                                                                                                                                                                                                                                                                                                                                                                              |
|           | 0.4 | Review, proofread, edit Mot./Mem. Add Conclusion. Email to Mr. Moskos for review.                                                                                                                                                                                                                                                                                                                                                  |
|           | 0.1 | Read edited version of memorandum returned by Mr. Moskos                                                                                                                                                                                                                                                                                                                                                                           |
| 3/22/2017 | 0.6 | Review edits and comments by Mr. Moskos; accept some, modify others, raise questions about others. First draft of argument setting forth the filed work product in the period covered by the present fee request.                                                                                                                                                                                                                  |

|           |     |                                                                                                                                                                                                             |
|-----------|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|           | 0.3 | Legal research on SC cases requiring that fees under a fee-shifting statute be awarded for work performed after trial, where fees were awarded for work through trial.                                      |
|           | 0.2 | Write extensive thought on Mot./Mem.                                                                                                                                                                        |
|           | 0.3 | LEXIS research re: requirement that a fee award be of a reasonable amount.                                                                                                                                  |
|           | 0.3 | Write additional material for item 8 of the factors in determining the amount of a fee.                                                                                                                     |
|           | 0.5 | Neaten the tracked changes for sending draft to Mr. Moskos. Send email to group of attorneys re: case support for certain proposition.                                                                      |
|           | 1.0 | Review comments and edits by Mr. Moskos on BRF timesheets to date; accept some, modify others, reject others.                                                                                               |
| 3/23/2017 | 0.3 | Read hard copy of CSM's timesheets since December; make written suggestions for clarifications.                                                                                                             |
|           | 0.8 | Read, mark up hard copy of BRF timesheets since December.                                                                                                                                                   |
|           | 1.0 | Revise Motion/Memorandum in light of Mr. Moskos' comments.                                                                                                                                                  |
| 3/24/2017 | 0.5 | Review draft Memo/Motion.                                                                                                                                                                                   |
|           | 1.2 | Two Tel. Confs. with Mr. Moskos of 1.0 and 0.2 hours, respectively, concerning issues in the case, largely re: fee requests.                                                                                |
| 3/27/2017 | 0.5 | Revise Draft Motion/Memorandum in light of Friday's review.                                                                                                                                                 |
|           | 0.1 | Follow-up email to group of attorneys re: request made Wednesday.                                                                                                                                           |
|           | 1.2 | Write in descriptions of the citations to the three affidavits mentioned in draft Mot./Mem., fix two typographical errors; add to bio of BRF; Read hard copy of new draft, revise on computer. Spell-check. |
| 3/28/2017 | 0.3 | Receive draft Motion/Memorandum with numerous markups from Mr. Moskos. Complete first-run-through.                                                                                                          |
|           | 0.2 | Spell-check draft Mot./Mem.                                                                                                                                                                                 |
|           | 2.0 | Tel. Conf. with Mr. Moskos. Discuss suggested edits to Mot./Mem; BRF's markup of CSM's timesheets; CSM's markup of BRF's timesheets.                                                                        |
| 3/29/2017 | 0.4 | Markup hard copy of draft Mot./Mem.                                                                                                                                                                         |
|           | 1.6 | Input edits from markup of hard copy of these timesheets and from tel. review yesterday with Mr. Moskos.                                                                                                    |
|           | 0.1 | Email attorney John Warren for permission to use his name in these timesheets.                                                                                                                              |
|           | 0.1 | Review of email forwarded from Mr. Reibold by Mr. Moskos with                                                                                                                                               |



March 16 Order and cover sheet and issue re: interest.

0.3 Receive, read 4 emails sent between noon and 1:30 pm; 3 from Mr. Moskos, one from Mr. Warren. Send reply email to Mr. Warren and 2 response emails to Mr. Moskos. Receive second email from Mr. Warren.

0.2 Work on timesheets for today. Spellcheck these sheets.

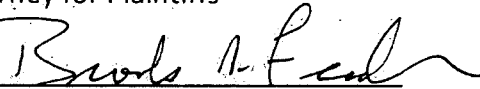
**Total 99.0**

PERSONALLY appeared before me, Brooks R. Fudenberg, who, being duly sworn, deposes and says that he is one of the attorneys for the Plaintiffs in Daniel O'Shields and Roger W. Whitley A Partnership d/b/a O&W Cars v. Columbia Automotive Company, LLC d/b/a Midlands Honda, Case No: 2013-CP-40-0319 and that the time sheets above are true and accurate.

SIGNATURE ON NEXT PAGE

**LAW OFFICE OF BROOKS R. FUDENBERG, LLC.**

Attorney for Plaintiffs

BY: 

**Brooks R. Fudenberg**

171 Church Street, Suite 160

Charleston, SC 29401

Tel. (843) 416-2558

eFax: (910) 401-1242

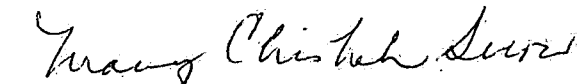
BRF@Fudenberglaw.com

Charleston, South Carolina

March 30, 2017

**SWORN TO BEFORE ME THIS**

30 DAY OF March 2017.



NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: May 22, 2022

## Brooks R. Fudenberg

---

**From:** Brooks R. Fudenberg <Brooks.R.Fudenberg@Fudenberglaw.com>  
**Sent:** Thursday, March 30, 2017 6:18 PM  
**To:** 'Cothran, Ralph Ferrell, Jr.'; 'Cothran, Ralph F. Jr., Law Clerk (John Furse)'  
**Cc:** 'Clay Walker'; 'C Steven Moskos'  
**Subject:** O'Shields, Whitley and O&W Cars v Columbia Automotive  
**Attachments:** Cover letters (Judge and Clerk), Mot. Cover Sheet, Proof of Service.pdf; Pls.' Mot. and Mem. for Supp. Att'y Fees through March 2017.pdf; Ex. 1. CSM Timesheets.pdf; Ex. 2. BRF Timesheets.pdf; Ex. 3. List of Topics and Draft Order.pdf

Judge Cothran,

Please find attached a copy of Plaintiffs' Motion for Supplemental Attorneys' Fees for December 2016 Through March 2017, and Memorandum in Support. Copies are being sent by regular mail to yourself and opposing counsel, and the originals to the Richland County Clerk of Court.

Sincerely,

Brooks R. Fudenberg  
Attorney for the Plaintiffs

Law Office of Brooks R. Fudenberg, LLC  
171 Church Street, Suite 160  
Charleston, SC 29401  
843-416-2558  
910-401-1242 (eFax)

**C Steven Moskos**

---

**From:** Brooks R. Fudenberg <Brooks.R.Fudenberg@Fudenberglaw.com>  
**Sent:** Tuesday, April 11, 2017 12:22 PM  
**To:** 'Cothran, Ralph F. Jr., Law Clerk (John Furse)'  
**Cc:** 'Clay Walker'; 'C Steven Moskos'  
**Subject:** RE: O'Shields, Whitley and O&W Cars v Columbia Automotive  
**Attachments:** NOA.Whitley et al.pdf; Supporting Docs NOA Whitley et al.pdf

Mr. Furse,

Attached please find a Notice of Appeal which is being filed today via US Mail.

Sincerely,

Brooks R. Fudenberg  
 Law Office of Brooks R. Fudenberg, LLC  
 171 Church Street, Suite 160  
 Charleston, SC 29401  
 843-416-2558  
 910-401-1242 (eFax)

THIS COMMUNICATION MAY CONTAIN CONFIDENTIAL AND PRIVILEGED ATTORNEY-CLIENT OR ATTORNEY WORK PRODUCT INFORMATION. IF YOU ARE NOT THE INTENDED RECIPIENT, PLEASE CONTACT THE SENDER AND THEN DESTROY THIS COMMUNICATION.

---

**From:** Cothran, Ralph F. Jr., Law Clerk (John Furse) [mailto:rcothranlc@sccourts.org]  
**Sent:** Monday, February 27, 2017 3:27 PM  
**To:** Brooks R. Fudenberg; Cothran, Ralph Ferrell, Jr.  
**Cc:** 'Clay Walker'; 'C Steven Moskos'  
**Subject:** RE: O'Shields, Whitley and O&W Cars v Columbia Automotive

Gentlemen:

Judge Cothran has signed the order dated January 23, 2017. We are mailing it to Clayton Walker's office for filing. Please let me know if you have any questions.

Thanks,

John L. Furse  
 Law Clerk to the Honorable R. Ferrell Cothran, Jr.  
 Circuit Judge of the Third Judicial Circuit

P.O. Box 32  
Manning, SC 29102  
OFFICE: (803) 435-2450

---

**From:** Brooks R. Fudenberg [<mailto:Brooks.R.Fudenberg@Fudenberglaw.com>]  
**Sent:** Tuesday, February 07, 2017 6:16 PM  
**To:** Cothran, Ralph Ferrell, Jr. <[RCothranJ@sccourts.org](mailto:RCothranJ@sccourts.org)>; Cothran, Ralph F. Jr., Law Clerk (John Furse) <[rcothranlc@sccourts.org](mailto:rcothranlc@sccourts.org)>  
**Cc:** 'Clay Walker' <[cwalker@walkerreibold.net](mailto:cwalker@walkerreibold.net)>; 'C Steven Moskos' <[csmoskos@earthlink.net](mailto:csmoskos@earthlink.net)>  
**Subject:** RE: O'Shields, Whitley and O&W Cars v Columbia Automotive

Judge Cothran,

Please find attached a copy of Plaintiffs' Reply in Support of Plaintiffs' Rule 59 Motion and Motion for Supplemental Attorneys' Fees and exhibits. We will also send copies by regular mail to yourself and opposing counsel, and the originals to the Richland County Clerk of Court.

Sincerely,

Brooks R. Fudenberg  
Attorney for the Plaintiffs

Law Office of Brooks R. Fudenberg, LLC  
171 Church Street, Suite 160  
Charleston, SC 29401  
843-416-2558  
910-401-1242 (eFax)

---

**From:** Cothran, Ralph F. Jr., Law Clerk (John Furse) [<mailto:rcothranlc@sccourts.org>]  
**Sent:** Friday, January 13, 2017 1:53 PM  
**To:** C Steven Moskos; Cothran, Ralph Ferrell, Jr.  
**Cc:** 'Clay Walker'; Brooks Fudenberg  
**Subject:** RE: O'Shields, Whitley and O&W Cars v Columbia Automotive

Gentlemen,

Judge Cothran is trying to finish this case up as soon as possible. To ensure that we don't miss any loose ends could you let us know what all still needs to be ruled on in this matter. Thanks for all of your help with this.

Thankyou,

John L. Furse  
Law Clerk to the Honorable R. Ferrell Cothran, Jr.

Circuit Judge of the Third Judicial Circuit  
P.O. Box 32  
Manning, SC 29102  
OFFICE: (803) 435-2450

---

**From:** C Steven Moskos [<mailto:csmoskos@earthlink.net>]  
**Sent:** Wednesday, January 04, 2017 3:48 PM  
**To:** Cothran, Ralph Ferrell, Jr. <[RCothranJ@sccourts.org](mailto:RCothranJ@sccourts.org)>; Cothran, Ralph F. Jr., Law Clerk (John Furse) <[rcothranlc@sccourts.org](mailto:rcothranlc@sccourts.org)>  
**Cc:** 'Clay Walker' <[cwalker@walkerreibold.net](mailto:cwalker@walkerreibold.net)>; Brooks Fudenberg <[brooks.r.fudenberg@fudenberglaw.com](mailto:brooks.r.fudenberg@fudenberglaw.com)>  
**Subject:** O'Shields, Whitley and O&W Cars v Columbia Automotive

Your Honor,

In light of Defendant's withdrawal of its Motion for Setoff, I have taken the liberty of preparing a Form 4 Order for your signature. I have attached it to this email. Thank you.

C. Steven Moskos  
4000 Faber Place Dr., Suite 300  
North Charleston, SC 29405  
843-763-5297 Office

~~~ 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.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 13-CP-40-0319

Daniel O'Shields And Roger W.
Whitley A Partnership d/b/a
O&W Cars,

Appellants,

v.

Columbia Automotive Company,
LLC d/b/a Midlands Honda,

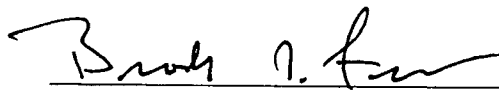
Respondent.

RICHLAND COUNTY
FILED
2017 APR 13 AM 11:42
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

NOTICE OF APPEAL

Daniel O'Shields, Roger W. Whitley, and A Partnership d/b/a O&W Cars appeal the orders of the Honorable R. Ferrell Cothran dated November 28, 2016 and February 27, 2017. Appellants received written notice of the entry of judgment of the first Order on December 5, 2016 and of the second order, which is in part an order on a motion to reconsider the first order, on March 20, 2017.

April 11, 2017



Brooks R. Fudenberg
Law Office of Brooks R. Fudenberg LLC
171 Church Street, Suite 170 Charleston, SC 29401
843-416-2558
Attorney for Appellants

Other Counsel of Record:

Harry Clayton Walker, Jr., Esq. Robert Reibold, Esq. Walker & Reibold, LLC PO Box 61140 Columbia, SC 29260 (803) 454-0955 Attorneys for Respondent	C. Steven Moskos, Esq. C. Steven Moskos, P.A. 4000 Faber Place Dr., Suite 300 North Charleston, SC 29405 843-763-5297 Office Attorney for Appellants

Brooks R. Fudenberg

From: Cothran, Ralph F. Jr., Law Clerk (John Furse) <rcothranlc@sccourts.org>
Sent: Friday, June 2, 2017 9:28 AM
To: Brooks R Fudenberg (Brooks.R.Fudenberg@Fudenberglaw.com);
'cwalker@walkerreibold.net'
Subject: Midlands Honda-2013-CP-40-0319

Good Morning:

Judge Cothran has decided to deny plaintiff's motion for supplemental attorney fees in the above listed case. He therefore requests that defense counsel submit an order reflecting this decision within 10 days.

Thanks,

Jack Furse
Law Clerk to the Honorable R. Ferrell Cothran, Jr.
Circuit Judge of the Third Judicial Circuit
P.O. Box 32
Manning, SC 29102
OFFICE: (803) 435-2450

~~~~ 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.

## **Brooks R. Fudenberg**

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**From:** Clay Walker <cwalker@walkerreibold.net>  
**Sent:** Monday, June 12, 2017 11:13 AM  
**To:** 'Cothran, Ralph F. Jr., Law Clerk (John Furse)'; 'Brooks R Fudenberg'  
**Cc:** 'Becker, James'; 'Spruill, Sarah'; 'Rob Reibold'  
**Subject:** RE: Midlands Honda-2013-CP-40-0319  
**Attachments:** DM 5001533-v1 Proposed Order Supplemental Fees (2).docx

Good day. Attached please find the proposed order requested by Judge Cothran.

Clay Walker

**From:** Cothran, Ralph F. Jr., Law Clerk (John Furse) [<mailto:rcothranlc@sccourts.org>]  
**Sent:** Friday, June 02, 2017 9:28 AM  
**To:** Brooks R Fudenberg ([Brooks.R.Fudenberg@Fudenberglaw.com](mailto:Brooks.R.Fudenberg@Fudenberglaw.com)) <[Brooks.R.Fudenberg@Fudenberglaw.com](mailto:Brooks.R.Fudenberg@Fudenberglaw.com)>; 'cwalker@walkerreibold.net' <[cwalker@walkerreibold.net](mailto:cwalker@walkerreibold.net)>  
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	
	)	
Daniel O'Shields and Roger W.	)	Civil Action No. 2013-CP-40-0319
Whitley, A Partnership d/b/a	)	
O&W Cars,	)	
	)	
<i>Plaintiff</i>	)	
	)	
v.	)	
	)	
Columbia Automotive, LLC d/b/a	)	
Midlands Honda,	)	
	)	
	)	
<i>Defendant.</i>	)	
	)	

**ORDER ON PLAINTIFF'S MOTION FOR SUPPLEMENTAL ATTORNEY'S
FEES FOR DECEMBER 2016 THROUGH MARCH 2017**

Plaintiffs [hereinafter "O&W"] moved for an award of supplemental attorney's fees for work performed by C. Steven Moskos, from December 16, 2016 through March 29, 2017, and for work performed by Brooks R. Fudenberg, from December 15, 2016 through March 29, 2017. Having considered the motions and submissions of O&W's counsel, the Court DENIES the motion for the reasons set forth below:

- I. **The Court has previously ruled that Plaintiff may not recover for fees incurred after September 14, 2016 as there was no unwarranted refusal to settle by Midlands Honda after that date.**

O&W's claim for attorney's fees arises under the North Carolina Unfair Trade Practices Act, and specifically N.C.G.S. § 75-16.1. Before any fees may be awarded under this statute, there must be an unwarranted refusal to settle on the part of the defendant. N.C.G.S. § 75-16.1; *Llera v. Security Credit Systems, Inc.*, 93 F.Supp.2d 674 (W.D.N.C. 2000). The Court has previously ruled that since September 14, 2016, Midlands Honda has engaged in meaningful and reasonable settlement efforts. As a result, the Court previously ruled that there could be no

recovery of attorney's fees for time incurred after September 14, 2016. For that reason, the Court is perplexed as to why this motion, seeking attorney's fees incurred after that date, was filed.

By this order, the Court incorporates and confirms its earlier ruling and denies O&W's petition for attorney's fees incurred between December 2016 and March 2017. The Court further notes that these repeated motions for attorney's fees illustrate that Plaintiff's counsels' primary incentive here is attorney compensation rather than recovery for their client.

O&W's citation to *Printing Servs. of Greensboro, Inc. v. Capital Group, Inc.*, 637 S.E.2d 230 (N.C.App. 2006) for the proposition that once fees are awarded in a case, fees continue to accumulate for post-trial is both an overstatement of the law (as discussed below) and inapplicable on the facts of this case. The Court has determined that there was no longer an unwarranted refusal to settle after a certain date. *Printing Servs.* states only the general principle that appellate attorney's fees may be included in a fee award under § 75:16-1. Neither *Printing Servs.*, nor any of the cases it cites, addresses the situation present in this case, where a defendant engaged in reasonable settlement activity following a jury verdict, and the plaintiff refused to negotiate. In the Court's view, construing § 75:16-1 to require supplemental awards of attorney's fees in the presence of subsequent reasonable settlement efforts by a defendant would permit a plaintiff who was successful at trial to use post-trial motions and appeals as a veritable attorney's fee printing press. Such a result is patently inconsistent with the statute.

Settlement negotiations can occur at any stage of litigation, and, should be considered when awarding attorney's fees under North Carolina law. For example, in *United Laboratories, Inc. v. Kuykendall*, 403 S.E.2d 104 (N.C. App. 1991), *aff'd*, 437 S.E.2d 374 (N.C. 1993), the North Carolina Court of Appeals reviewed a second request for attorney's fees. The trial court in

that case initially issued an award of attorney's fees in the amount of \$47,522.23. *Id.* at 106. An appeal followed, which resulted in a second trial. In considering whether further attorney's fees should be awarded, both the trial court and the appellate court reviewed settlement negotiations which occurred after the first trial, after the first appeal, and prior to the second trial. *Id.* at 111. Additional attorney's fees were awarded because the trial court concluded, and the appellate court agreed, that there was an unwarranted refusal to settle in the *post-trial* negotiations. *Id.* In this case, the Court finds Plaintiff is not entitled to any fees after September 14, 2016 based on O&W's reasonable efforts to settle.

II. The Court, in Its Discretion, Elects to Deny Fees.

Additionally and alternatively, an award of attorney's fees under N.C.G.S. § 75-16.1 is always discretionary, even when the factors which would support an award are present. *Basnight v. Diamond Developers, Inc.*, 178 F.Supp.2d 589, 592 (M.D.N.C. 2001) (“[e]ven where the facts of a particular case will support a finding that the requirements of N.C.Gen.Stat. § 75-16.1 have been met and an award of attorney's fees may be warranted, the Court retains the discretion to deny the award”); *Blankenship v. Town & Country Ford, Inc.*, 174 N.C.App. 764, 771, 622 S.E.2d 638, 643 (2005) (“[t]he decision whether or not to award attorney fees under section 75-16.1 rests within the sole discretion of the trial [court]. *And if fees are awarded*, the amount also rests within the discretion of the trial court.”) (emphasis added); *Evans v. Full Circle Productions, Inc.*, 443 S.E.2d 108, 110 (N.C. App. 1994) (“[W]e also recognize that the statute has been designed to award attorney's fees in extreme cases, since even when the statutory requirements are met, an award of attorney's fees is within the trial court's discretion.”).

The Court, in its discretion, declines to award attorney's fees for activity following September 14, 2016.

III. Attorney's Fees Are Not Recoverable After September 14, 2016 Because They Were Not Incurred to Obtain or Protect O&W's Status as a Prevailing Party.

North Carolina's statute allows a trial court to award attorney's fees for post-trial or appellate work by a prevailing party on an unfair trade practices claim where such work is expended in an "effort to protect the judgment." *See Faucette v. Carmel Road, LLC*, 775 S.E.2d 316, 326 (N.C.App. 2015); *Cotton v. Stanley*, 380 S.E.2d 419, 422 (N.C.App. 1989) ("[f]ees are authorized for the prevailing party and may be awarded for all time, including appeal, *reasonably expended in obtaining or sustaining the status of prevailing party.*") (emphasis added).

Plaintiff O&W prevailed on the unfair trade practices claim at trial. None of the work performed by Plaintiff's counsel to challenge or increase the Court's fee award was necessary to sustain Plaintiff's status as a prevailing party. Instead, Plaintiff's counsels' primary incentive here appears to be attorney compensation rather than recovery for their client. An award of fees for such purposes is not appropriate under North Carolina law.

For all of the reasons set forth here and the Court's prior orders addressing O&W's ever increasing and repeated demands for attorney's fees, the Court, in its discretion, declines to award attorney's fees for activity following September 14, 2016.

IT IS SO ORDERED.

The Honorable R. Ferrell Cothran, Jr.
Presiding Judge

_____, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	CASE NO. 13-CP-40-0319
DANIEL O'SHIELDS AND ROGER W. WHITLEY A PARTNERSHIP D/B/A O&W CARS	)	
	)	
Plaintiffs	)	PLAINTIFFS' MEMORANDUM OF
	)	LAW IN OPPOSITION TO
vs.	)	DEFENDANT'S PROPOSED ORDER
	)	ON PLAINTIFF'S MOTION FOR
	)	SUPPLEMENTAL ATTORNEYS' FEES
	)	FOR DECEMBER 2016 THROUGH
	)	MARCH 2017
COLUMBIA AUTOMOTIVE COMPANY, LLC D/B/A MIDLANDS HONDA	)	
	)	
Defendant.	)	

RICHLAND COUNTY
 FILED
 2017 JUL -5 AM 11:15
 JEANETTE W. McBRIDE
 C.C.P. & C.S.

Plaintiffs' Motion for Supplemental Attorneys' Fees for December 2016 Through March 2017 was served March 30, 2017, superseded by Plaintiffs' Notice of Appeal served April 11. On June 12, 2017, Defendant submitted via email a proposed Order on that motion ("Draft Order" or "DO"), per an email from the Judge's clerk requesting that Defendant draft an order denying the Motion but providing no further guidance.

I. THE COURT DOES NOT HAVE JURISDICTION TO RULE AS DEFENDANT'S DRAFT ORDER PROPOSES.

Defendant's Draft Order states that the March 30 Motion at issue is controlled by the Court's prior Order on Plaintiff's Motion Pursuant to Rule 59 and Motion for Supplemental Attorney's Fees, filed March 16, which is currently on appeal. Specifically, Defendant claims that the Court's ruling that Defendant's September 14, 2016 offer was "reasonable" at that time and thus prevented any fees from accruing between that date and the February 27 date of signing

of that Order applies here as well. DO at 1-3. However, as noted, that earlier order is currently on appeal.

Plaintiffs intend specifically to appeal the Court's rulings that (a) a post-judgment offer can prevent the accrual of attorney fees under governing North Carolina law, and (b) the Court's holding that Defendant's offer was sufficiently "reasonable" as to deny Plaintiffs further attorney fees.

Thus, this proposed holding will be affected by the appeal. This Court thus lacks jurisdiction to issue such an order. *See* Rules 205 and 241, SCACR ("The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal." Rule 241 (emphasis added)); Rule 205 (similar).

Whether this Court would have jurisdiction to grant the motion is an interesting question. Plaintiffs had filed the motion largely due to concern that had they not requested these fees at this time, Defendant would be arguing on remand that Plaintiffs had waived their right to these fees by not timely requesting them. After filing the Notice of Appeal, Plaintiffs had not expected the present motion to be ruled on until after the remand, assuming Plaintiffs are successful on appeal.

II. DEFENDANT MISLED THE COURT ONCE AS TO THE REASONABLENESS OF ITS \$81,069.00 OFFER. IF DEFENDANT AT ONE TIME THOUGHT THAT \$81,069.00 WAS REASONABLE TO SETTLE THIS CASE, DEFENDANT HAS REEVALUATED. IT IS NOW OFFERING \$290,000. THE COURT SHOULD SIMILARLY DISCONTINUE APPLYING DEFENDANT'S ERRONEOUS PROPOSITION.

Overview

The first section of Defendant's draft Order hinges on the supposed reasonableness of Defendant's confidential September 14, 2016 offer to settle the case for eighty-one thousand and sixty-nine dollars (\$81,069.00). It previously convinced the Court this sum was a reasonable amount at which to settle this entire case. *See* Order of 3/16/17 at 4-5 (the Court accepting this argument). Having convinced the Court that \$81,000 is a reasonable amount to settle the case, Defendant turned around and raised its offer thrice, to \$290,000.00.¹ Plaintiffs have counter-offered at \$1.395 million. Obviously, if the parties agree that the proper settlement value is between \$290,000 and \$1.395 million, \$81,069 is far too low, only 28% of Defendant's current offer.

In fact, Defendant's most recent offer is, by its terms, a little above \$444,000.00, although Defendant has stated the amount as \$290,000.

Argument

The first two paragraphs of the Draft Order's argument are entirely about Defendant's \$81,069 offer. DO, at 1-2. The third paragraph, DO at 2, mentions two cases, each of which the Defendant has the Court maintaining break Defendant's way due to the supposed reasonableness of its \$81,069 offer. The fourth paragraph misreads the North Carolina Court of Appeals decision in *Kuykendall*, taking a pre-trial offer to be a post-trial offer – the offer was made following an appeal that set aside the results of the trial to which Defendant refers, and ordered a new trial; the offer was made before the new trial, not after. Furthermore, paragraph four

¹ Plaintiffs usually would not bring the amount of a settlement offer to the attention of a court. However, since Defendant is doing so via partial revelation, Plaintiffs have no reservation about providing the Court with more complete information.

explicitly hinges on the assertion that Defendant's settlement offer was sufficiently reasonable as to deny Plaintiffs fees.

The Draft Order mischaracterizes the Court's earlier Order. "The Court has previously ruled that since September 14, 2016, Midlands Honda has engaged in meaningful and reasonable settlement efforts." DO, at 1. That is not exactly true. The Order did say that Defendant made "an" (one) effort, on September 14, 2016, March Order, at 4, but it said nothing about any ongoing efforts. The Draft Order has the Court incorporating and confirming that earlier ruling. This, the Court should not do. Defendant has provided only a partial, and misleading, characterization of the situation.

Defendant first raised its offer to \$150,000.00 on April 20. Ex. 1

Plaintiffs countered with an offer to settle for \$1.4 million on April 28. Ex. 2.

Defendant then offered \$170,000.00 on May 8. Ex. 3. On May 11, Plaintiffs' counsel instructed defense counsel not to waste their time with \$20,000 increments, as this matter was worth far more than the \$170,000 Defendant was offering. Plaintiffs' counsel demanded a large increase in Defendant's offer:

We are in receipt of your Client's offer of \$170,000, or barely more than ten cents on the dollar. We are not interested in devoting additional time to negotiating in that range. We reduced our demand \$200,000.00 below our expected return. If your Client is seriously interested in fully resolving the entire matter, it needs to significantly increase its offer. Nonetheless, in an effort to keep things moving we will reduce our demand by \$5,000 to \$1,395,000. The offer will stay open until 5:00PM on May 17.

Ex. 4. Defendant obviously agreed, as it raised its offer on May 16 to at least \$290,000.00. Ex. 5.

This offer is ten thousand dollars (\$10,000.00) more than the Offer of Judgment that Plaintiffs served on February 4, 2015, to which defendant never responded, even when the Court

raised the issue of settlement at trial on at least 2 occasions and at the post-trial motions hearing, July 27, 2016.

Since then, Plaintiffs have asked Defendant three times to explain the discrepancy between what that offer says (implying a higher amount) and that offer's math (resulting in \$290,000.00) and/or to provide its calculations in order that Plaintiffs may point out what is missing or erroneous. Exs. 6 -10. Plaintiffs calculated the amount to meet the text of the offer to be \$444,009.81. Ex. 8 (email from Mr. Moskos to Mr. Walker of June 6.)

Defendant has so far failed to explain the discrepancy or provide the figures that it added to reach the total. Yesterday evening, June 27, 2017, at 10:25, as Plaintiffs' attorneys thought this Memorandum was finished, and were assembling exhibits, an email arrived from Defendant's counsel making clear that its offer is \$290,000.00. Ex. 10A. Defendant still has not explained the discrepancy or provided the figures it added.

In short, neither Plaintiffs nor Defendant consider \$81,069 a reasonable settlement amount. Defendants have offered more than three and a half times (3.6) that amount. Plaintiffs' last counter-offer was \$1.395 million.²

² Among the issues on which the appellate court could markedly increase the award are:

- Whether Plaintiffs should have been awarded \$250,000.00 in punitive damages as mandated by N.C. Gen. Stat. Sec 1D-25;
- Whether each Plaintiff is entitled to \$250,000.00 for a total of \$750,000.00 in punitive damages;
- Whether the Court erred in requiring Plaintiffs to elect between attorney fees and punitive damages;
- Whether Plaintiffs are entitled to attorney fees for work so far performed in amounts substantially larger than the Court's awards to date; and

Obviously, since the reasonable settlement value is between \$290,000 and \$1,395,000, inclusive, Defendant's earlier offer of \$81,069.00 was clearly not a reasonable amount to fully resolve the issues in this case. It may be too late for the Court to reverse its earlier ruling accepting Defendant's claim.

However, no one believes \$81,069 is a reasonable amount to settle this case. The Court should decline to extend its decision to the present fee request, and grant the fees requested in the instant motion.

III. DEFENDANT'S PROPOSED ORDER ERRS IN NUMEROUS ADDITIONAL WAYS.

First, as an initial matter, and to void any claim that by not objecting Plaintiffs waived the point, Plaintiffs, via undersigned counsel, object to the speculation regarding Plaintiffs' counsel's motives, DO at 2, 4, which is factually incorrect and betrays an unawareness of the purposes and mechanics of statutory fee-shifting. Nor do Defendants or the Court have any knowledge of the agreements between Plaintiffs and their counsel.

Second, as discussed in Plaintiffs' prior filings, incorporated here by reference, North Carolina law does not allow a post-trial offer to prevent attorney fees from accruing. *See esp.* Pls.' Reply in Support of Pls.' Rule 59 Mot. and Mot. for Supplemental Att'ys' Fees, at 8. *See also*

-
- Whether Plaintiffs are entitled to Offer of Judgment interest of more than \$230,000.00.

Moreover, interest would continue to accrue on the judgment and, if Plaintiffs are successful, on the much larger amounts that the judgment should have awarded, as the interest will be calculated on what the appellate court decides was the amount that should have been awarded.

In addition, Defendant may be liable for Plaintiffs' future attorney fees and costs, as well as additional out-of-pocket expenses and fees to compensate its team of four senior partners for their work going forward.

See Ex. 2 (similar).

Printing Servs. of Greensboro, Inc. v. Am. Capital Grp., Inc., 180 N.C. App. 70, 82, 637 S.E.2d 230, 237 (2006).

Third, and to similar effect, Defendant misreads the cases it does cite. Its central reliance on the North Carolina Court of Appeals' decision in *Kuykendall* is multiply flawed. (1) The dicta from the Court of Appeals in *Kuykendall* did not say that if the offer had been reasonable, fees would have stopped accruing; it merely said that because the offer was not reasonable, fees did not stop accruing. It never reached or addressed the question of whether a reasonable offer at that stage could stop further fees from accruing. (2) Moreover, despite Defendant's attempt to pass off the offer there as a "post-trial" offer, on the supposed grounds it was made before the second trial and therefore chronologically after the first trial, the offer discussed there was analytically a pre-trial offer. It came not immediately after the first trial, but only after the first appeal had concluded and the matter had been remanded for a new trial. (3) In fact, the *Kuykendall* court itself refers to the offer as "Prior to the second trial," 403 S.E.2d at 111, not "following the first trial." That court clearly and properly treated the offer as a pre-trial offer. (4) This failure to offer a reasonable settlement prior to the retrial sufficed to award fees for the entire case, including two appeals and two trials. *Id.* (5) Finally, *Kuykendall* holds entirely contrary to Defendant's insistence that it is up to the trial court to decide whether to award fees for the post-trial and appellate stages of the case. "We also note that plaintiff's attorneys are entitled to fees for post-trial motions and this appeal." *Id.* at 495. South Carolina courts interpret South Carolina statutes similarly. "[A]ppellant is entitled to attorney's fees under § 15-77-300 for this litigation and appeal seeking to secure such fees." *McDowell v. South Carolina Department of Social Services*, 304 S.C. 539, 544, 405 S.E.2d 830, 833 (1991) (reversing trial court which had

refused to award such fees). In short, once there is an unwarranted refusal to settle, under the very case on which Defendant places its strongest reliance, and a decision that fees are appropriate is made, Plaintiffs are entitled to reasonable compensation for all the fees incurred at every stage of the litigation.

Fourth, Defendant's reading of other cases is erroneous. Those cases do not stand for the proposition that the Court has discretion to deny fees for stages of a case, nor for the proposition that the amount awarded for any stage may be arbitrary. While the cases may stand for the proposition that the decision to award fees in the first instance is in the discretion of the trial court, North Carolina has emphatically rejected the notion that a supposed "greater power" to deny fees altogether includes a putative "lesser power" to award unreasonably low fees or to excise entire stages of litigation from the fee award. *See generally* Brooks R. Fudenberg, "Unconstitutional Conditions and Greater Powers," 43 UCLA L. REV. 371-521 (1995) (discussing the federal Supreme Court's, and certain other authorities', alternate embraces of and rejections of the argument that "the greater includes the lesser" in a wide variety of contexts); *Kuykendall*, 403 S.E.2d at 111 (power to deny fee entirely does not include power to award unreasonable fee); *id.* (power to deny fee entirely does not include power to exclude stages of litigation from the fee award). *See also* discussions of these issues in earlier filings by Plaintiffs; *esp.* Pls.' Rule 59 Mot. and Mot. for Supplemental Att'ys' Fees and Mem. in Support, at 4-5 (citing North Carolina authority for the proposition that once a decision has been made to award fees, the amount awarded must be reasonable); *id.* at 10-11 (citing additional authority); *id.* (citing case law setting forth the manner in which reasonable fees are determined under North Carolina law); Plaintiffs' Brief in Support of Plaintiffs' Request for Attorney's Fees, at 9-13.

Defendant similarly misreads cases which state that attorney fees are mandatory for appeals, once a decision to award trial-level fees has been made, when the appeal is needed to maintain or attain the status of prevailing party. These cases do not say that fees are awarded only when such status is at stake. Nor would it make sense to so hold. Cf. *Riverside v. Rivera*, 477 U.S. 561 (1986), in which the federal Supreme Court found fee-shifting particularly appropriate where, as here, the expected costs of litigation are greater than the expected recovery of damages. 477 U.S. at 579-80 (plurality); *id.* at 586 (Powell, J., concurring). The plain language of the statute refutes the Dealership's reading, which is unreasonable and illogical. "A reasonable attorney fee" necessarily implies all work that is reasonable; it would not be "reasonable" to deny payment for work reasonably necessary. *E.g., Renaissance Enters. v. Ocean Resorts*, 326 S.C. 460, 469, 483 S.E.2d 796, 801 (Ct. App. 1997) (contractual provision) (finding "no reason" that such work would be excluded from a fee award), *rev'd in part on other grounds*, 334 S.C. 324, 513 S.E.2d 617 (1999). Suppose a plaintiff proves a violation, and yet due to an erroneous and preserved error in admission of evidence, or in the jury instructions, the plaintiff is awarded only \$10.00, when a proper verdict would be \$4,000.00. Certainly the intent behind the fee-shifting statute was not to deny fees for the time and effort incurred in correcting that error. So too here, where the unmultiplied attorney fees were inappropriately and contrary to law cut from more than \$330,000.00 to \$31,404.00, more than 90 percent. Mar. 16 Order, at 5. It would make no sense to say that North Carolina law awards reasonable attorney fees to successful plaintiffs in UTPA cases, only to turn around and say they must work after a trial without compensation in order to obtain those fees.

The North Carolina fee-shifting statute at issue here, like most fee-shifting statutes in most jurisdictions, requires compensation for all fees reasonably incurred. This is so regardless of whether the fees were incurred directly in the principal lawsuit, or instead for matters related to the principal lawsuit. The statute here contains no exception for appeals, nor for litigation over attorney fees, nor for appeals intended to increase the damage award.

The current fee-shifting provision is a member of a class of one-sided consumer-protection fee-shifting provisions. Their purpose and language are unlike those in other fee-shifting provisions. Fee-shifting in domestic relations may be ordered primarily to balance the overall interests of the parties, in light of their assets, income, and other concerns, rather than to encourage divorcing parties to litigate further. Language in some contracts provides that the loser pay the prevailing party's fees. Its purpose may be to ensure the prevailing party the "benefit of its bargain." Such a provision is neutral on its face. It does not prefer the buyer to the seller, nor vice versa; nor the bailor to the bailee, nor vice versa; nor the employer to the employee, nor vice-versa.

N.C.G.S Section 75-16.1 is different. It is biased in favor of the consumer. It provides for fees to the consumer if the challenged practice was willful and the seller unwarrantedly refused to settle, a powerful tool. It consigns the Defendant to obtain fees only if the action was both "malicious and frivolous," and the plaintiff knew or should have known of the frivolity and malice.

The scholarly literature concerning such fee-shifting provisions was gathered and analyzed in *Covenant Mutual Ins. Co. v. Young*, 179 Cal. App. 3d 318, 324-328, 225 Cal. Rptr. 861, 864-68 (Cal. App. 1986), which concludes, not surprisingly, that fee-shifting statutes favoring

successful plaintiffs “are created by legislators as a deliberate stratagem for advancing some public purpose, usually by encouraging more effective enforcement of some important public policy,” *id.* at 324, 225 Cal. Rptr. at 865. “[W]here the Legislature wants to encourage litigation it can intervene to alter the decision-making equation by instituting unilateral fee-shifting. Then the injured person knows he will not have to absorb his own lawyer’s legal fees, at least if he wins.” *Id.* at 325, 225 Cal. Rptr. at 865.

“Awarding fees as part of a prevailing plaintiff’s relief should also provide *increased and efficient deterrence of wrongful primary conduct* because of the prospect of having to pay the full cost that an injured party incurs in securing compensation for its loss” (Rowe, Attorney Fee Arrangements and Dispute Resolution, paper prepared for the National Conference on the Lawyer’s Changing Role in Resolving Disputes, Harv. Law Sch., Oct. 14-16, 1982, at p. 41, citing Posner, *Economic Analysis of Law* (1977) p. 143, italics added.)

Id.

Such statutes are vigorously enforced to ensure adequate compensation. *In re Warner Communications Sec. Litigation*, 618 F. Supp. 735, 750-51 (S.D.N.Y. 1985) (collecting cases) (“‘generous’” awards are appropriate under such statutes); *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 363 (E.D.N.Y. 2010) (collecting additional cases) (“‘generous fee awards in cases such as this serve the dual purpose of encouraging plaintiffs’ attorneys to act as private attorneys general and discouraging wrongdoing’”); *United Labs., Inc. v. Kuykendall*, 437 S.E.2d 374, 380 (N.C. 1993) (NC Supreme Court) (“The purpose of attorneys fees in Chapter 75, however, is to ‘encourage private enforcement’ of Chapter 75”).

South Carolina decisions, too, accord with these sound principles. As to the theory and purposes of such fee-shifting provisions, *see, e.g., Taylor v. Medenica*, 331 S.C. 575, 578, 503 S.E.2d 458, 460 (1998) (quoting *Bradley v. Hullander*, 277 S.C. 327, 287 S.E.2d 140 (1982) (“‘requiring

the unsuccessful defendant to pay the plaintiff's attorney's fees is a legitimate tool in enforcing the underlying public policy of the [securities] statute.”); *id.* at 579, 503 S.E.2d at 460 (“Allowing plaintiffs who successfully pursue an action under the UTPA to recover their attorney's fees encourages individuals to pursue litigation to protect the public interest.”).

The *Kuykendall* decision on which Defendant relies states, 403 S.E.2d at 109,

The overall purpose and legislative intent of G.S. 75-1.1 is ‘to declare deceptive acts or practices in the conduct of any trade or commerce in North Carolina unlawful, to provide civil means to maintain ethical standards of dealings between persons engaged in business and the consuming public within this State, and to enable a person injured by deceptive acts or practices to recover treble damages from a wrongdoer.’

The court reiterated, “‘The act is directed toward maintaining ethical standards in dealings between persons engaged in business and to promote good faith at all levels of commerce.’” *Id.* (citation omitted). It further explained, “One purpose for the statute authorizing attorneys’ fees is to encourage individuals to bring valid actions to enforce the statute by making such actions economically feasible.” *Id.* at 111. By providing an amount of fees in its initial order that would not make similar actions economically feasible, the Court forced Plaintiffs to challenge the amount of that award. The most recent effort along those lines, on which the forthcoming order will likely rule, was necessitated in order to make actions like the present economically feasible.

As stated in *Kuykendall*, “Once the court decides to award attorneys’ fees, however, it must award reasonable attorneys’ fees.” *Id.* at 111. “We also note that plaintiff’s attorneys are entitled to fees for post-trial motions and this appeal.” *Id.*

Defendant’s reading of *Kuykendall*, and of North Carolina law more generally, is simply erroneous.

And for the above reasons, the Court should further award Mr. Fudenberg \$20,943.00 and Mr. Moskos \$13,299.00 for their work from March 29 through June 28, 2017 as detailed in the attached timesheets, Ex.s. 11 - 12 (Affidavits of Mr. Fudenberg and Mr. Moskos, with attached timesheets), and if the issue needs to be briefed further, please let us know. They presently seek compensation only for their work in the lower court matter, and not on the appeal; they do so, among other reasons, to avoid having another issue to litigate now.

Conclusion

For the above reasons, and such other reasons as may be apparent to the Court, the Court should GRANT the instant motion and award fees for the work of the Plaintiffs' attorneys subsequent to March 28 through June 26, 2017.

Respectfully Submitted,



Brooks R. Fudenberg
Law Office of Brooks R. Fudenberg, LLC
171 Church Street, Suite 160
Charleston SC 29401
Tel.: 843-416-2558
Fax: 910-401-1242
BRF@Fudenberglaw.com
Attorney for Plaintiffs

EXHIBIT 1

WALKER || REIBOLD

ATTORNEYS AT LAW

3321 Forest Drive Suite One, PO Box 61140 Columbia, SC 29260

Robert L. Reibold

(803)454-0955

Fax (803)454-0956

rreibold@walkerreibold.net

April 20, 2017

Via E-Mail and Regular Mail

C. Steven Moskos, Esq.
C. Steven Moskos, PA
4000 Faber Place Drive – Ste. 300
North Charleston, SC 29405

Re: Daniel O'Shields and Roger W. Whitley, a partnership d/b/a O&W Cars v. Midlands
Honda
Civil Action No. 2013-CP-40-0319

Dear Steve:

We have received the Notice of Appeal in this case. After discussing the potential cost of the appeal with our client, we have been authorized to make another attempt to settle this matter. This offer is made in an effort to resolve this matter fully without further effort and expense and should not be deemed as a comment of any kind on the merits of your appeal.

Although we did not receive a counter to our last overture, the client has authorized us to offer \$150,000 in return for a complete resolution of this matter, including but not limited to dismissal of the appeal and satisfaction of the judgment. This offer reflects a substantial increase from our last offer. It is almost three times the amount of the judgment, and more than twenty-two times the actual damages awarded by the jury. If not accepted, this offer will expire at the close of business on Monday, May 1, 2017.

We look forward to hearing from you.

Sincerely,



Robert L. Reibold

RLR:wr

EXHIBIT 2

Brooks R. Fudenberg

From: C Steven Moskos <csmoskos@earthlink.net>
Sent: Friday, April 28, 2017 4:34 PM
To: Rob Reibold; Clay Walker
Cc: Brooks Fudenberg
Subject: Daniel O'Shields and Roger W. Whitley A Partnership d/b/a O&W Cars v. Columbia Automotive Company, LLC d/b/a Midlands Honda
Attachments: Lt Reibold 4-28-17.pdf

Gentlemen,

Please see attached correspondence regarding fully resolving the above matter.

C. Steven Moskos
4000 Faber Place Dr., Suite 300
North Charleston, SC 29405
843-763-5297 Office

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
Board Certified Circuit Court Mediator



4000 Faber Place Drive, Suite 300
North Charleston, SC 29405
Telephone: (843) 763-5297
www.moskoslawfirm.com
csmoskos@earthlink.net

April 28, 2017

Walker & Reibold, LLC
Attn: Robert L. Reibold
P. O. Box 61140
Columbia, SC 29260

**RE: Daniel O'Shields and Roger W. Whitley A Partnership d/b/a O&W Cars v. Columbia Automotive Company, LLC d/b/a Midlands Honda
Appellate Case No. 2017-000902**

Dear Rob,

Thank you for forwarding your Client's offer of April 20. It is encouraging that your Client is finally taking this case seriously. However, your Client massively underestimates the amounts of its exposure. By our calculations, your Client could easily end up owing our Clients more than \$1,600,000.00. We base this on \$6,645.00 in actual damages; three punitive damage awards at \$250,000.00 per Plaintiff, see Rhyne v. K-Mart Corp. (holding that where a defendant injures several persons who bring one lawsuit, punitive damage awards are not divided among the plaintiffs but are awarded to each plaintiff in whole); \$236,628.01 in offer of judgment interest; \$3,106.88 in pre- and post-judgment interest through May 1, 2017; and \$409,385.40 in attorney fees and \$14,279.82 in costs through March 30, 2017. That total is a little more than \$1,420,045.11. Together with fees and costs we have incurred since March 30, 2017, the total is a little more than \$1,429,000.00.

Exposure will continue to increase as the matter moves through the appellate process. We understand that you maintain that the September 12, 2016 offer via Mr. Becker has stopped the accrual of liability by your Client for our fees. This matter, however, could well end up like Henderson v. Summerville Ford, wherein you were convinced you had a way to prevent liability for Mr. Fudenberg's and my fees, and, with Mr. Becker, attempted to deny our fees and/or greatly reduce them below our requested levels. As you may recall, Mr. Becker found that we had requested only \$63,600.00 for pursuing the appeal. (Page 6 of Mr. Becker's affidavit in that case). Two-thirds of the \$184,230.00 fee award was a response to your Client's attempt to limit or deny those fees.

Nor would it be surprising if the hours necessary to provide quality representation in the present appeal are ultimately substantially greater than those required in Henderson. That case, Mr. Becker attested, "was a simple, single-issue matter" that "would have been appropriate" for an exam in the second year of law school (pages 6-8 of Mr. Becker's affidavit in that case), while the present appeal involves multiple first-level issues.

Page Two of Two
April 28, 2017

RE: Daniel O'Shields and Roger W. Whitley A Partnership d/b/a O&W Cars v.
Columbia Automotive Company, LLC d/b/a Midlands Honda
Appellate Case No. 2017-000902

In addition to this exposure, your Client will presumably be responsible for any fees of Mr. Becker and his team at Haynsworth Sinkler Boyd as well as any fees yourself and Mr. Walker charge going forward.

Thus, we believe that your Client's financial interests are served by settling this case at any amount less than \$1,600,000.00, as ongoing interest, your team's fees, and ours will likely be on the order of \$180,000.00, and perhaps multiples thereof.

This, of course, assumes neither party files for a writ of certiorari with the Supreme Court.

Finally, there is a practical reason to resolve this matter fully now. Your Client should also consider that win or lose on appeal - or if it comes out as a draw - there will be an appellate decision, most likely a published decision, recounting that your Client's dealership sold, twice, the same "clipped car" to unsuspecting customers. And that its managers testified it is the dealership's standard practice to unload such vehicles without informing customers.

It is my understanding, perhaps your Client can confirm, that such published opinions tend to appear in Google searches about car dealerships.

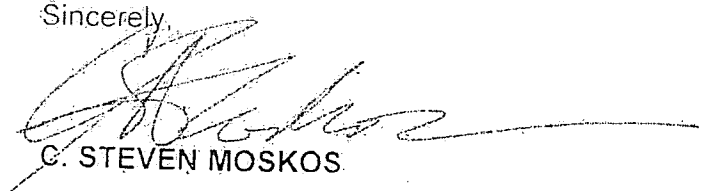
Nevertheless, having spoken with our Clients, we are able to offer to settle the entire case, including moving to voluntarily dismiss the appeal and filing satisfaction of judgment, for \$1,400,000.00.

As time goes forward, and our Client incurs additional costs, e.g., for a transcript, and Mr. Fudenberg and I begin incurring substantial hours in preparing our Clients' first brief, the settlement figure will rise.

This offer will be open for ten days from today's date. Please let us know how you wish to proceed.

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

Sincerely,



C. STEVEN MOSKOS

CSM/slf

cc: H. Clayton Walker, Jr., Esq.

EXHIBIT 3

WALKER || REIBOLD

ATTORNEYS AT LAW

3321 Forest Drive Suite One, PO Box 61140 Columbia, SC 29260

Clay Walker

(803) 454-0955
Fax (803) 454-0956
cwalker@walkerreibold.net
Reply to Columbia Office

May 8, 2017

VIA EMAIL

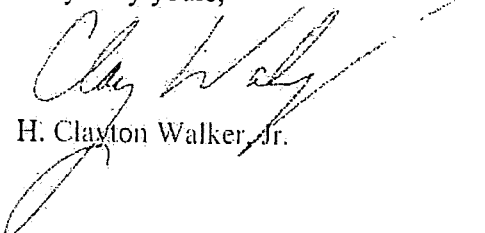
C. Steven Moskos, Esq.
Moskos Law Offices
4000 Faber Place Drive – Ste. 300
Charleston, SC 29405

Re: Daniel O'Shields v. Columbia Automotive, LLC
Appellate Case No.: 2017-000902

Dear Steve:

Thank you for your letter of April 28, 2017. We disagree in many ways with the statements and claims made in it, and must decline to acquiesce to your demand. In the interest of compromise, the Defendant would offer \$170,000 to resolve all claims. This offer is made subject to all conditions set forth in our letter to you of April 20, 2017 and will expire at 5 pm on May 18, 2017 unless accepted in writing. I am,

Very truly yours,


H. Clayton Walker, Jr.

HCW:cnc

EXHIBIT 4

Brooks R. Fudenberg

From: C Steven Moskos <csmoskos@earthlink.net>
Sent: Thursday, May 11, 2017 8:52 AM
To: 'Becker, James'; Spruill, Sarah; Clay Walker; Rob Reibold
Cc: Brooks Fudenberg
Subject: Whitley et al v Midlands Honda

Dear Clay, Rob, Sarah and Jamie,

We are in receipt of your Client's offer of \$170,000, or barely more than ten cents on the dollar. We are not interested in devoting additional time to negotiating in that range. We reduced our demand \$200,000.00 below our expected return. If your Client is seriously interested in fully resolving the entire matter, it needs to significantly increase its offer. Nonetheless, in an effort to keep things moving we will reduce our demand by \$5,000 to \$1,395,000. The offer will stay open until 5:00PM on May 17.

Sincerely,

C. Steven Moskos
4000 Faber Place Dr., Suite 300
North Charleston, SC 29405
843-763-5297 Office

EXHIBIT5

WALKER || REIBOLD

ATTORNEYS AT LAW

3321 Forest Drive Suite One, PO Box 61140 Columbia, SC 29260

Clay Walker

(803) 454-0955
Fax (803) 454-0956
cwalker@walkerreibold.net
Reply to Columbia Office

May 16, 2017

VIA EMAIL

C. Steven Moskos, Esq.
Moskos Law Offices
4000 Faber Place Drive – Ste. 300
Charleston, SC 29405

Re: Daniel O'Shields v. Columbia Automotive, LLC
Appellate Case No.: 2017-000902

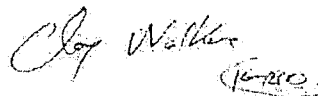
Dear Steve:

We received your recent counter-offer of \$1,395,000. Again, we disagree with your assessment of the exposure in this case. We are, however, interested in a reasonable resolution. I am authorized to make a final offer of \$290,000 in return for dismissing the appeal with and a full satisfaction of judgment. We determined the amount of this offer as follows:

<u>Description</u>	<u>Amount</u>
1. UTPA treble damages award	\$19,935
2. Costs awarded by the trial court	\$529.07
3. Interest through May 11, 2017	\$308
4. Amount of Fees Claimed Initially	\$176,319
5. Amount of Supplemental Fees Claimed	<u>\$93,121</u>
Total:	\$290,212.07

The offer thus approximates three times actual damages, costs awarded by the court, and all hourly fees you have sought to date at your claimed hourly rate. This offer will remain open until 5:00 pm on Wednesday May 17, 2017, at which time it will expire and be withdrawn. If you are not inclined to accept this final offer, please let us know whether you will consent to correct the amount of the judgment to reflect interest and allow payment of the corrected amount into court pursuant to Rule 67, SCRCP. I remain,

Very truly yours,



H. Clayton Walker, Jr.

HCW:cnc

EXHIBIT 6

Brooks R. Fudenberg

From: C Steven Moskos <csmoskos@earthlink.net>
Sent: Tuesday, May 16, 2017 4:15 PM
To: Clay Walker
Cc: Brooks Fudenberg
Subject: Daniel O'Shields et al. v. Columbia Automotive, LLC

Clay,
I have reviewed your settlement offer dated May 16, 2017. Please explain how you calculated the Interest in Item 3 and the "Amount of Supplemental Fees Claimed" as your calculations are much lower than ours. Thank you.

Steve

C. Steven Moskos
4000 Faber Place Dr., Suite 300
North Charleston, SC 29405
843-763-5297 Office

From: Cesaire Chase [<mailto:cchase@walkerreibold.net>]
Sent: Tuesday, May 16, 2017 10:24 AM
To: csmoskos@earthlink.net
Cc: 'Clay Walker' <cwalker@walkerreibold.net>
Subject: Daniel O'Shields v. Columbia Automotive, LLC

Good Morning –

Attached please find correspondence from H. Clayton Walker, Jr., Esq. in connection with the above-referenced matter.

Thank you.

Cesaire N. Chase
Paralegal
Walker Reibold, LLC
(803) 454-0955
(803) 454-0956 Facsimile
cchase@walkerreibold.net

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

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EXHIBIT 7

Brooks R. Fudenberg

From: Clay Walker <cwalker@walkerreibold.net>
Sent: Sunday, May 21, 2017 6:42 PM
To: 'C Steven Moskos'
Cc: 'Brooks Fudenberg'; rreibold@walkerreibold.net
Subject: RE: Daniel O'Shields et al. v. Columbia Automotive, LLC

Interest was calculated at \$1.46 per day. The fee amount was determined by adding up the claimed amounts.

I go on vacation tomorrow for two weeks. During this time, please copy Rob Reibold on any communication to me.

Clay

From: C Steven Moskos [<mailto:csmoskos@earthlink.net>]
Sent: Tuesday, May 16, 2017 4:15 PM
To: Clay Walker <cwalker@walkerreibold.net>
Cc: Brooks Fudenberg <brooks.r.fudenberg@fudenberglaw.com>
Subject: Daniel O'Shields et al. v. Columbia Automotive, LLC

Clay,
I have reviewed your settlement offer dated May 16, 2017. Please explain how you calculated the Interest in Item 3 and the "Amount of Supplemental Fees Claimed" as your calculations are much lower than ours. Thank you.

Steve

C. Steven Moskos
4000 Faber Place Dr., Suite 300
North Charleston, SC 29405
843-763-5297 Office

From: Cesaire Chase [<mailto:cchase@walkerreibold.net>]
Sent: Tuesday, May 16, 2017 10:24 AM
To: csmoskos@earthlink.net
Cc: 'Clay Walker' <cwalker@walkerreibold.net>
Subject: Daniel O'Shields v. Columbia Automotive, LLC

Good Morning –

Attached please find correspondence from H. Clayton Walker, Jr., Esq. in connection with the above-referenced matter.

Thank you.

Cesaire N. Chase
Paralegal

Walker Reibold, LLC
(803) 454-0955
(803) 454-0956 Facsimile
cchase@walkerreibold.net

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EXHIBIT 8

Brooks R. Fudenberg

From: C Steven Moskos <csmoskos@earthlink.net>
Sent: Monday, June 5, 2017 9:12 AM
To: Clay Walker
Cc: Brooks Fudenberg; Rob Reibold
Subject: Whitley et al v Midlands Honda

Clay,

Welcome back. I hope your vacation was everything you wanted it to be.

When you left, we had pointed out that the figure you had for our requested fees was substantially lower than the fees we had actually requested. Perhaps, now that you are back, you can provide us with the figures you used to reach that figure so that we may point out what is missing. The figure you provided as the total of our requested fees was \$139,945.40 less than the fees we had actually requested, and almost \$149,000 less than our fees including time from the last request through the 4/28/17 date of our letter.

The \$308 you calculated in interest appears to contemplate interest solely on actual damages from the December 2 filing of the judgment. However, N.C.G.S. §24-5 provides our client interest on actual damages from the date of filing of the complaint, as well as interest on the entire award, including attorneys' fees, from the date of entry of judgment until satisfaction of judgment. Thus, interest was \$5,170.34 through May 1, 2017.

We understand that your Client wishes to fully compensate us for certain elements while denying all compensation for others. The Judge's clerk's email of Friday morning instructed you to draft an order denying our motion for supplemental attorney fees. To avoid having the Parties brief those issues, with the resultant fees, now would be a good time for your Client to correct its offer so that it complies with its stated intent in order that we may resolve this matter.

C. Steven Moskos
4000 Faber Place Dr., Suite 300
North Charleston, SC 29405
843-763-5297 Office

EXHIBIT 9

Brooks R. Fudenberg

From: Clay Walker <cwalker@walkerreibold.net>
Sent: Monday, June 5, 2017 8:56 PM
To: 'C Steven Moskos'
Cc: 'Brooks Fudenberg'; 'Rob Reibold'
Subject: RE: Whitley et al v Midlands Honda

Good evening. Please clarify your letter. I am uncertain about your intent. Are you asking the defendant to increase the dollar amount of its offer to settle, making a settlement demand that if accepted would resolve the case, or some other option?

Please advise at your earliest convenience.

Clay

From: C Steven Moskos [<mailto:csmoskos@earthlink.net>]
Sent: Monday, June 05, 2017 9:12 AM
To: Clay Walker <cwalker@walkerreibold.net>
Cc: Brooks Fudenberg <brooks.r.fudenberg@fudenberglaw.com>; Rob Reibold <rreibold@walkerreibold.net>
Subject: Whitley et al v Midlands Honda

Clay,

Welcome back. I hope your vacation was everything you wanted it to be.

When you left, we had pointed out that the figure you had for our requested fees was substantially lower than the fees we had actually requested. Perhaps, now that you are back, you can provide us with the figures you used to reach that figure so that we may point out what is missing. The figure you provided as the total of our requested fees was \$139,945.40 less than the fees we had actually requested, and almost \$149,000 less than our fees including time from the last request through the 4/28/17 date of our letter.

The \$308 you calculated in interest appears to contemplate interest solely on actual damages from the December 2 filing of the judgment. However, N.C.G.S. §24-5 provides our client interest on actual damages from the date of filing of the complaint, as well as interest on the entire award, including attorneys' fees, from the date of entry of judgment until satisfaction of judgment. Thus, interest was \$5,170.34 through May 1, 2017.

We understand that your Client wishes to fully compensate us for certain elements while denying all compensation for others. The Judge's clerk's email of Friday morning instructed you to draft an order denying our motion for supplemental attorney fees. To avoid having the Parties brief those issues, with the resultant fees, now would be a good time for your Client to correct its offer so that it complies with its stated intent in order that we may resolve this matter.

C. Steven Moskos
4000 Faber Place Dr., Suite 300
North Charleston, SC 29405

843-763-5297 Office

EXHIBIT 10

Brooks R. Fudenberg

From: C Steven Moskos <csmoskos@earthlink.net>
Sent: Tuesday, June 6, 2017 5:37 PM
To: 'Clay Walker'
Cc: 'Brooks Fudenberg'; 'Rob Reibold'
Subject: RE: Whitley et al v Midlands Honda

Clay,

We are still trying to understand your Client's offer of May 16. As we indicated that day, the words and the numbers do not match. The words indicate that you wish to provide us full payment for certain items, including our requested fees and interest. The numbers belie that. To cover the items listed in your offer – three times actual damages, costs awarded by the trial court, interest through May 11, and amount of fees claimed, the total would be \$444,009.81.

The total would actually be higher, as this interest is calculated only through May 1 rather than the May 11 date your letter mentioned, and as we have incurred fees in the month since we made our April 28 offer. But that to one side, we are trying to determine whether your Client's offer is the lower amount stated in numbers or the full amount of the items it was attempting to cover.

If the offer is \$444,009.81, your Client can expect a considerable reduction in the amount of our Clients' counter-offer.

Please let me know so that we may advise our Clients.

C. Steven Moskos
4000 Faber Place Dr., Suite 300
North Charleston, SC 29405
843-763-5297 Office

From: Clay Walker [<mailto:cwalker@walkerreibold.net>]
Sent: Monday, June 05, 2017 8:56 PM
To: 'C Steven Moskos' <csmoskos@earthlink.net>
Cc: 'Brooks Fudenberg' <brooks.r.fudenberg@fudenberglaw.com>; 'Rob Reibold' <rreibold@walkerreibold.net>
Subject: RE: Whitley et al v Midlands Honda

Good evening. Please clarify your letter. I am uncertain about your intent. Are you asking the defendant to increase the dollar amount of its offer to settle, making a settlement demand that if accepted would resolve the case, or some other option?

Please advise at your earliest convenience.

Clay

From: C Steven Moskos [<mailto:csmoskos@earthlink.net>]

Sent: Monday, June 05, 2017 9:12 AM

To: Clay Walker <cwalker@walkerreibold.net>

Cc: Brooks Fudenberg <brooks.r.fudenberg@fudenberglaw.com>; Rob Reibold <rreibold@walkerreibold.net>

Subject: Whitley et al v Midlands Honda

Clay,

Welcome back. I hope your vacation was everything you wanted it to be.

When you left, we had pointed out that the figure you had for our requested fees was substantially lower than the fees we had actually requested. Perhaps, now that you are back, you can provide us with the figures you used to reach that figure so that we may point out what is missing. The figure you provided as the total of our requested fees was \$139,945.40 less than the fees we had actually requested, and almost \$149,000 less than our fees including time from the last request through the 4/28/17 date of our letter.

The \$308 you calculated in interest appears to contemplate interest solely on actual damages from the December 2 filing of the judgment. However, N.C.G.S. §24-5 provides our client interest on actual damages from the date of filing of the complaint, as well as interest on the entire award, including attorneys' fees, from the date of entry of judgment until satisfaction of judgment. Thus, interest was \$5,170.34 through May 1, 2017.

We understand that your Client wishes to fully compensate us for certain elements while denying all compensation for others. The Judge's clerk's email of Friday morning instructed you to draft an order denying our motion for supplemental attorney fees. To avoid having the Parties brief those issues, with the resultant fees, now would be a good time for your Client to correct its offer so that it complies with its stated intent in order that we may resolve this matter.

C. Steven Moskos
4000 Faber Place Dr., Suite 300
North Charleston, SC 29405
843-763-5297 Office

EXHIBIT 10A

Brooks R. Fudenberg

From: Clay Walker <cwalker@walkerreibold.net>
Sent: Tuesday, June 27, 2017 10:25 PM
To: 'C Steven Moskos'
Cc: 'Brooks Fudenberg'; 'Rob Reibold'
Subject: RE: Whitley et al v Midlands Honda

The offer to settle is, as you refer to it, the "lower amount stated in the numbers" set forth in the letter transmitted to you.

Clay Walker

From: C Steven Moskos [mailto:csmoskos@earthlink.net]
Sent: Tuesday, June 06, 2017 5:37 PM
To: 'Clay Walker' <cwalker@walkerreibold.net>
Cc: 'Brooks Fudenberg' <brooks.r.fudenberg@fudenberglaw.com>; 'Rob Reibold' <rreibold@walkerreibold.net>
Subject: RE: Whitley et al v Midlands Honda

Clay,

We are still trying to understand your Client's offer of May 16. As we indicated that day, the words and the numbers do not match. The words indicate that you wish to provide us full payment for certain items, including our requested fees and interest. The numbers belie that. To cover the items listed in your offer – three times actual damages, costs awarded by the trial court, interest through May 11, and amount of fees claimed, the total would be \$444,009.81.

The total would actually be higher, as this interest is calculated only through May 1 rather than the May 11 date your letter mentioned, and as we have incurred fees in the month since we made our April 28 offer. But that to one side, we are trying to determine whether your Client's offer is the lower amount stated in numbers or the full amount of the items it was attempting to cover.

If the offer is \$444,009.81, your Client can expect a considerable reduction in the amount of our Clients' counter-offer.

Please let me know so that we may advise our Clients.

C. Steven Moskos
4000 Faber Place Dr., Suite 300
North Charleston, SC 29405
843-763-5297 Office

From: Clay Walker [mailto:cwalker@walkerreibold.net]
Sent: Monday, June 05, 2017 8:56 PM
To: 'C Steven Moskos' <csmoskos@earthlink.net>
Cc: 'Brooks Fudenberg' <brooks.r.fudenberg@fudenberglaw.com>; 'Rob Reibold' <rreibold@walkerreibold.net>
Subject: RE: Whitley et al v Midlands Honda

Good evening. Please clarify your letter. I am uncertain about your intent. Are you asking the defendant to increase the dollar amount of its offer to settle, making a settlement demand that if accepted would resolve the case, or some other option?

Please advise at your earliest convenience.

Clay

From: C Steven Moskos [<mailto:csmoskos@earthlink.net>]

Sent: Monday, June 05, 2017 9:12 AM

To: Clay Walker <cwalker@walkerreibold.net>

Cc: Brooks Fudenberg <brooks.r.fudenberg@fudenberglaw.com>; Rob Reibold <rreibold@walkerreibold.net>

Subject: Whitley et al v Midlands Honda

Clay,

Welcome back. I hope your vacation was everything you wanted it to be.

When you left, we had pointed out that the figure you had for our requested fees was substantially lower than the fees we had actually requested. Perhaps, now that you are back, you can provide us with the figures you used to reach that figure so that we may point out what is missing. The figure you provided as the total of our requested fees was \$139,945.40 less than the fees we had actually requested, and almost \$149,000 less than our fees including time from the last request through the 4/28/17 date of our letter.

The \$308 you calculated in interest appears to contemplate interest solely on actual damages from the December 2 filing of the judgment. However, N.C.G.S. §24-5 provides our client interest on actual damages from the date of filing of the complaint, as well as interest on the entire award, including attorneys' fees, from the date of entry of judgment until satisfaction of judgment. Thus, interest was \$5,170.34 through May 1, 2017.

We understand that your Client wishes to fully compensate us for certain elements while denying all compensation for others. The Judge's clerk's email of Friday morning instructed you to draft an order denying our motion for supplemental attorney fees. To avoid having the Parties brief those issues, with the resultant fees, now would be a good time for your Client to correct its offer so that it complies with its stated intent in order that we may resolve this matter.

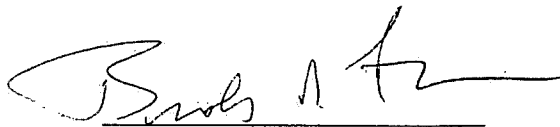
C. Steven Moskos
4000 Faber Place Dr., Suite 300
North Charleston, SC 29405
843-763-5297 Office

EXHIBIT 11

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	CASE NO. 13-CP-40-0319
	)	
DANIEL O'SHIELDS AND ROGER W.	)	
WHITLEY A PARTNERSHIP D/B/A	)	
O&W CARS	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
COLUMBIA AUTOMOTIVE	)	
COMPANY, LLC D/B/A MIDLANDS	)	
HONDA	)	
	)	
Defendant.	)	

Second Supplemental Affidavit of Brooks R. Fudenberg

- 1) My name is Brooks R. Fudenberg. I am an attorney of record for Daniel O'Shields, Roger W. Whitley and O&W Cars, the Plaintiffs in the referenced case.
- 2) The attached timesheets accurately reflect my work on this case for the dates specified.
- 3) I incorporate my previous affidavits filed in this case.



Brooks R. Fudenberg
Law Office of Brooks R. Fudenberg, LLC
SC Bar No. 0072019
171 Church Street, Suite 160
Charleston, SC 29401
Tel. (843) 416-2558
eFax: (910) 401-1242
BRF@Fudenberglaw.com

Attorney for Plaintiffs

1/2

Charleston, South Carolina

SWORN TO BEFORE ME THIS

27th DAY OF Nov 2017.



NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 11/29/2022

TIME NECESSARILY EXPENDED BY BROOKS R. FUDENBERG
on the lower court case in
Daniel O'Shields and Roger W. Whitley A Partnership D/B/A O&W Cars vs.
Columbia Automotive Company, LLC D/B/A Midlands Honda
From 03—30-2017 through 06-28-2017

3/30/2017	0.6	Tel. Conf. with C. Steven Moskos, Esq., re: finalizing time sheets to file with the Court.
	1.4	Finalize Memorandum and my timesheets for today's filing.
4/3/2017	0.1	Tel. Conf. with Armand Derfner, Esq., re: SC law on atty fees.
4/6/2017	0.2	Review appellate rules re: effect of appeal on lower court proceedings.
4/20/2017	0.4	Tel. Conf. with Mr. Moskos re: new settlement offer from Defendant.
	0.5	Second part of conversation with Mr. Moskos re: the settlement offer.
4/21/2017	0.7	Tel. Conf. with Mr. Moskos. Decide to call Roger Whitley.
	0.5	Tel. Conf. with Mr. Moskos and Mr. Whitley.
	0.2	Tel. Conf. with Mr. Moskos.
4/24/2017	1.2	Tel. Conf. with Mr. Moskos re: settling case.
	0.1	Read figures Mr. Moskos emailed during our conversation.
4/25/2017	2.4	Draft letter to Robert Reibold, Esq. Perform many calculations in preparing the letter.
	0.7	Finish, spell check, print copy of draft letter to Mr. Reibold re: settlement.
	0.3	Proofread, lite polishing, quick note to Mr. Moskos re: an issue in the draft letter, email to Mr. Moskos.
4/27/2017	0.6	Tel. Conf. with Mr. Moskos re: settlement discussions.
	0.3	Review Mr. Moskos' edits to settlement letter.
4/28/2017	0.2	Edit draft settlement letter and send to co-counsel.

	0.5	Tel. Conf. with Mr. Moskos, marking up and discussing draft, and email re: same.
5/5/2017	0.1	Extensive voicemail to Mr. Moskos re: sending settlement letter to Defendant's new attorneys, and re: who is lead counsel for Def.
5/6/2017	0.1	Tel. Conf. with Mr. Moskos re: approach to Ms. Spruill and Mr. Becker.
	0.5	Draft email to Ms. Spruill.
5/7/2017	0.1	Text from Mr. Moskos, followed by Tel. Conf. with Mr. Moskos, re: email today from Mr. Becker.
5/9/2017	0.1	Settlement offer from Mr. Walker, forwarded by Mr. Moskos. Respond to Mr. Moskos.
	0.1	Tel. Conf. with Mr. Moskos re: settlement.
	1.1	Tel. Conf. with Mr. Moskos re: settlement offer.
	0.3	Draft response to Mr. Walker re: settlement
5/10/2017	0.7	Draft counter-offer to Defendant. Emails (6), 3 to and 3 from Mr. Moskos re: counter-offer.
5/16/2017	0.3	Email to Mr. Moskos re: our offer, email from Mr. Moskos forwarding Def.'s counter-offer as I again was not included in the email; email Mr. Moskos re: same, receive lengthy return email.
	0.1	Shepardize <i>Kuykendall</i> .
	1.4	Tel. Conf. with Mr. Moskos re: today's counter-offer. Discuss opposing counsel's request to deposit judgment amount with the clerk of court; attempt to determine how defense counsel arrived at their figure for what is supposedly Plaintiffs' complete fee requests; work with Mr. Moskos on email to Mr. Walker.
5/21/2017	0.1	Email from Mr. Walker, forward to Mr. Moskos with comment.
5/25/2017		Recalculate figures in response to Mr. Walker's email of Sun evening May 21.
6/2/2017	0.2	Draft email to Mr. Walker re: settlement.

	1.1	Review all the math, the fees, interest, the law on interest, etc. Calculate the post-judgment interest as of today if appellate court increases award as argued on appeal. Draft email to send to Mr. Walker.
6/5/2017	0.2	Email from Mr. Moskos with suggested changes to email to Mr. Walker and question. Send response and raise additional questions.
	0.1	2d email from and to Mr. Moskos re: settlement.
	0.2	Tel. Conf. with Mr. Moskos re: what we are trying to accomplish with this email; how things are phrased, etc.
	0.6	Receive email from Mr. Walker sent approx. 9 pm, 31 min Tel. Conf. with Mr. Moskos re: same and how to respond.
6/6/2017	0.4	Draft response to Mr. Walker's 6/5/17 8:59 pm email.
	0.4	Tel. Conf. with Mr. Moskos; finalize email to Mr. Walker.
6/12/2017	0.2	Receive draft order from Mr. Walker, read same, forward to Mr. Moskos as he again was not included in the email.
	0.5	Create chronology of certain events in the case.
	0.3	Legal research on lower court's jurisdiction following filing of Notice of Appeal. Drafting of Plaintiffs' Return.
	0.8	Draft Plaintiffs' response to Defendant's proposed Order. Finish Sections Roman Numerals I and II (first drafts of each).
	0.3	Read in full the North Carolina Court of Appeals <i>Kuykendall</i> decision.
	1.0	Re-read Defendant's proposed order. Review one case. Add to draft return's discussion of offers the details of the offers; write up topics that still need to be addressed for Mr. Moskos; spell check, send draft to Mr. Moskos.
6/14/2017	0.4	Add to draft Return.
6/16/2017	0.1	Drafting/reviewing of Plaintiffs' Return.
	0.2	Drafting/reviewing of Plaintiffs' Return.
6/17/2017	1.9	Drafting/reviewing of Plaintiffs' Return.
6/18/2017	0.6	Mark up hard copy of draft Return.

6/20/2017	1.2	Work off marked up copy. Accept some changes, reject others, modify others, add others.
	0.1	Draft email to group of attorneys re: issue in the case.
6/21/2017	1.4	Work off marked up copy of Sec III of draft Return.
6/22/2017	0.7	Drafting of Plaintiffs' Return.
	0.3	Lexis research in NC statutes and rules.
	0.2	Drafting of Plaintiffs' Return.
	0.6	Review memoranda re: attorney fees filed in <i>Henderson v. Summerville Ford-Mercury, Inc.</i> , in which an argument virtually identical to the draft Order's Section III was entirely rejected by Judge Dickson in favor of awarding fees.
	0.8	Finish draft of Plaintiffs' Return.
	0.2	Write notes to Mr. Moskos re: the draft Return.
	0.5	Spell check and light edit.
	0.5	Read and mark up hard copy, work off markup.
6/23/2017	0.7	Markup current draft of Response.
	0.2	Read <i>Renaissance Enters.</i>
6/24/2017	0.2	Read Judge Dickson's order in <i>Henderson</i> , rejecting argument virtually identical to Def.'s argument here.
	0.9	Read <i>Riverside v. Rivera</i> , 477 U.S. 561 (1986).
	0.5	Read <i>Coventry</i> (case providing substantial analysis of fee shifting statutes).
	1.1	Re-read/skim Mr. Reibold's 02-18-2014 Opp'n to Appellate Att'y's Fees in <i>Henderson</i> , his 02-14-2014 5-page brief seeking to arbitrate the appellate fees issue, his July 2014 Response on fees, for references to his argument that plaintiffs cannot be awarded fees when there was no money disputed in the underlying case, as it is substantially identical to their argument here that plaintiffs cannot be awarded fees unless they are attempting to obtain or protect their status as a prevailing party. Make list of pages to reference in current filing in the present case. Read Henderson's June 2014 filing in the same case through page 13. Begin similar list.

6/25/2017	1.2	Continue reading of selected filings from <i>Henderson</i> - re-read Plaintiff's post-remand filings re: fees and costs, skipping certain sections. Make list of pages to reference in current filing in the present case.
	0.9	Tel. Conf. with Mr. Moskos re: his thoughts on what we are now calling draft Memorandum in Opposition to Defendant's Proposed Order.
	0.2	Skim Mr. Moskos' markup via cell phone for highlights.
6/26/2017	0.3	Download, read Mr. Moskos' markup on desktop computer.
	0.4	Tel. Conf. with Mr. Moskos re: the draft filing.
	3.4	Drafting. Rewrite Section I. Write new heading for Sec. II. Rewrite Section II. Spell-check the two new sections to email to Mr. Moskos for his review. Work off BRF markup of hard copy and Mr. Moskos' suggestions to revise Section III. Finish, spell-check revised Section III, send to Mr. Moskos for his review.
	0.3	Tel. Conf. with Mr. Moskos re: major issues from his review of Sections I, II, and III.
	0.3	Draft affidavit to accompany Plaintiff's Memorandum.
	2.1	Work on timesheets since April 3 through Jun 26, 2017.
6/27/2017	0.4	Email from Mr. Moskos with comments on Sec III; send two reply emails, Lexis search.
	0.4	Read, markup, hard copy of timesheets April 3 - June 26.
	0.4	Tel. Conf. with Mr. Moskos re: various issues in the case and today's filing.
	0.4	Shepardize all cases in current draft Memo for recent negative authority.
	0.7	Finalize first 2 sections of Memo, several emails to and from Mr. Moskos included in this time period.
	0.1	Sign affidavit and have it notarized.
	0.2	Review <i>Henderson</i> filings for short summary fit for exhibit for present case.
	0.2	Skim 2 cases sent by Mr. Moskos today.
	0.5	Work on Section III of Memo.
	0.8	Working off marked up hard copy, revise timesheets for clarity.
	0.1	Work on timesheets.
	0.3	Visually skim, spell check timesheets, make minor corrections.
	1.3	Finalize draft Memo.
	0.1	Make exhibit list.
	0.1	Email from Mr. Walker.

6/28/2017	0.1	Download Mr. Moskos' revisions to draft Memorandum, read same.
	0.4	Revise memo in light of Mr. Walker's email of yesterday.
	0.3	Work on BRF timesheets.
	0.7	Tel. Conf. with Mr. Moskos re: changes to Memorandum due to Mr. Walker's email of yesterday, and re: Mr. Moskos' timesheets.
	0.8	Review Mr. Moskos' timesheets.
	0.6	Input changes into draft Memorandum, add a paragraph on a new topic.
	0.2	Meet briefly with Mr. Moskos, consult re: the new paragraph in the Memorandum, and re: BRF's suggested revisions to Mr. Moskos' timesheets.
Total	53.7	

EXHIBIT 12

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
) CASE NO. 13-CP-40-0319

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1. My name is C. Steven Moskos. I am an attorney of record for Daniel O'Shields, Roger W. Whitley, and O&W Cars, the Plaintiffs in the referenced case.
2. The attached time sheets, Exhibit 1, accurately reflect my work on this case for the dates specified.
3. I incorporate my previous affidavits filed in this case.

e

Charleston, South Carolina
6/28, 2017

SWORN TO BEFORE ME THIS

28th DAY OF June 2017.

AZ
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 11/29/2022

EXHIBIT 1

Time for C. Steven Moskos
from 3/29/17 to 06/28/17 on the lower court case in
Daniel O'Shields and Roger W. Whitley A Partnership d/b/a O&W Cars v. Columbia
Automotive Company, LLC d/b/a Midlands Honda
Case No: 2013-CP-40-0319

3/29/2017	Travel to Brooks Fudenberg's office. Conference with Brooks Fudenberg regarding affidavits to go to the Clerk and the Court. Prepare correspondence to the Clerk of Court regarding Motion for Supplemental Attorneys Fees. Prepare correspondence to Judge Cothran regarding Motion for Supplemental Attorneys Fees. Dictate 3 emails to Brooks Fudenberg regarding letters to the Clerk, Judge Cothran, and the Civil Cover Sheet.	1.10
3/29/2017	Review of 3 emails from Brooks Fudenberg regarding filing with the Court. Review of updated time sheets for Brooks Fudenberg. Telephone conference with Brooks Fudenberg regarding updated time sheets.	1.60
3/30/2017	Review of time sheets from Brooks Fudenberg regarding analysis of the calculation of attorneys fees in the Court's Order prepared by Clay Walker. Dictate email to Brooks Fudenberg regarding suggestions on the time sheets.	.50
3/30/2017	Telephone conference with Brooks Fudenberg regarding suggestions to finalize time sheets to file with the Court.	.60
4/10/2017	Legal research regarding partnerships.	.20
4/21/2017	Telephone conference with Brooks Fudenberg regarding strategy to settle the case. Telephone conference with Roger Whitley regarding potential settlement offers and strategy for moving forward to resolve the case.	1.40
4/24/2017	Review of NC Case law. Telephone conference with Brooks Fudenberg regarding case law and implications on settlement.	3.00
4/24/2017	Telephone conference with Brooks Fudenberg regarding settlement proposal to Defendant. Begin letter to Clay Walker regarding settlement demand.	1.30
4/26/2017	Legal research regarding settlement issues.	.50
4/27/2017	Telephone conference with Brooks Fudenberg regarding settlement letter to Midland's Honda. Review of proposed settlement letter to Midland's Honda. Make edits to letter.	2.20
4/28/2017	Review of settlement letter. Telephone Brooks Fudenberg regarding settlement letter. Finalize letter to Rob Reibold regarding settlement of the case. Prepare email to Rob Reibold transmitting settlement letter.	1.60
5/9/2017	Telephone conference with Brooks Fudenberg regarding Midland's Honda's settlement offer.	1.10

5/10/2017	Review of email from Brooks Fudenberg regarding next settlement demand to Defendant. Edit email to defense counsel. Dictate email to Brooks Fudenberg regarding suggested changes.	.20
5/11/2017	Dictate email to defense attorneys regarding settlement.	.10
5/16/2017	Review of settlement correspondence from Clay Walker. Dictate email to Brooks Fudenberg regarding settlement offer from Midlands Honda. Review of email from Brooks Fudenberg regarding Clay Walker's letter. Dictate email to Brooks Fudenberg to discuss response to Clay Walker's letter and to discuss the matter with Clients. Review of file and settlement offers from Midlands Honda.	.90
5/16/2017	Telephone conference with Brooks Fudenberg regarding the settlement offer from Clay Walker. Discussion of the attorney's fees calculation by Clay Walker.	1.60
5/17/2017	Telephone conference with Brooks Fudenberg regarding timing of offers.	.40
5/19/2017	Review of email from Brooks Fudenberg regarding communication from Clay Walker regarding questions about interest and attorney fees.	.20
6/5/2017	Review of emails from Brooks Fudenberg regarding settlement of case and requesting information from Clay Walker. Telephone conference with Brooks Fudenberg regarding sending settlement email to Clay Walker.	.50
6/5/2017	Telephone conference with Brooks Fudenberg regarding June 5, 2017 email from Clay Walker responding to request for clarification of Defendant's offer to settle.	.60
6/6/2017	Review of email from Brooks Fudenberg regarding response to Clay Walker's questions. Telephone conference with Brooks Fudenberg regarding settlement of the case.	.60
6/24/2017	Begin review and revision of Plaintiffs' Memorandum of Law in Opposition to Defendant's Proposed Order on Plaintiff's Motion for Supplemental Attorneys' Fees for December 2016 Through March 2017.	.30
6/25/2017	Review of Draft of Response to Clay Walker's proposed Order. Review of Defendant's proposed Order. Prepare suggested edits to Plaintiffs' Memorandum of Law in Opposition to Defendant's Proposed Order on Plaintiff's Motion for Supplemental Attorneys' Fees for December 2016 Through March 2017. Dictate email to Brooks Fudenberg regarding suggested edits.	3.30
6/25/2017	Telephone conference with Brooks Fudenberg regarding Plaintiffs' Memorandum of Law in response to Clay Walker's proposed Order.	.80
6/26/2017	Telephone conference with Brooks Fudenberg regarding Attorney fees issues in response to Clay Walker's Proposed Order. Review Brooks Fudenberg's edits of the Memorandum of Law opposing proposed Order.	3.20

6/26/2017	Review of Brooks Fudenberg's amended arguments regarding opposing Defendant's Proposed Order regarding attorney's fees. Dictate emails to Brooks Fudenberg regarding Defendant depositing the judgment in the Clerk's office and responding to Brooks Fudenberg's arguments against Clay Walker's proposed order.	.90
6/27/2017	Review of email from Brooks Fudenberg regarding Midlands' request to deposit money into the Court. Dictate response to Brooks Fudenberg with strategy and legal questions regarding same. Legal research regarding purpose of fee-shifting statutes in NC. Telephone conference with Brooks Fudenberg regarding strategy for Response to Clay Walker's proposed Order. Legal research on attorneys' fees as costs. Prepare affidavit regarding attorney's fees incurred from March 29, 2017 through June 27, 2017.	3.30
6/28/2017	Dictate email to Judge Cothran regarding responding to Clay Walker's Proposed Order. Telephone conferences with Brooks Fudenberg regarding changes to Memorandum of Law based on Clay Walker's 10:25pm June 27, 2017 email responding to Plaintiffs' counsel's request for clarification of Defendant's settlement offer. Review of draft of Memo of Law. Review of time sheets for CSM to attach to Memo of Law.	2.1
TOTAL		34.1

WALKER || REIBOLD

ATTORNEYS AT LAW

3321 Forest Drive Suite One, PO Box 61140 Columbia, SC 29260

Clay Walker

(803) 454-0955

Fax (803) 454-0956

cwalker@walkerreibold.net

July 25, 2017

Via E-Mail and Regular Mail

The Honorable R. Ferrell Cothran Jr.
Post Office Box 32
3 West Kcitt Street
Manning, SC 29102

Re: Daniel O'Shields and Roger W. Whitley, A Partnership d/b/a O&W Cars v. Columbia Automotive Company, LLC d/b/a Midlands Honda
C/A No.: 2013-CP-40-0319

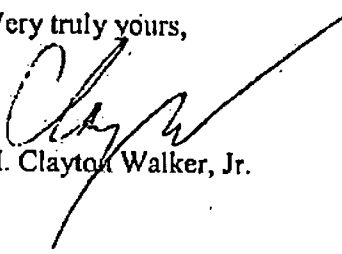
Dear Judge Cothran:

Plaintiff recently submitted filings to you in opposition of the proposed order we submitted in connection with the most recent motion for supplemental attorney's fees. Plaintiff indicated that they did not expect the Court to rule on this motion. While Defendant did not know Plaintiff did not seek a ruling in the normal course, Defendant does not object to delaying a decision on the motion as Plaintiff has suggested.

If, on the other hand, you do wish to rule, simply let us know and we will submit a revised proposed order.

Thank you for your consideration. I am,

Very truly yours,


H. Clayton Walker, Jr.

HCW:cnc

cc: C. Steven Moskos, Esq. (via email)

WALKER || REIBOLD

ATTORNEYS AT LAW

3321 Forest Drive Suite One, PO Box 61140 Columbia, SC 29260

Clay Walker

(803) 454-0955

Fax (803) 454-0956

cwalker@walkerreibold.net

August 7, 2017

Via E-Mail and Regular Mail

The Honorable R. Ferrell Cothran Jr.
Post Office Box 32
3 West Keitt Street
Manning, SC 29102

Re: Daniel O Shields and Roger W. Whitley, A Partnership d/b/a O&W Cars v. Columbia Automotive Company, LLC d/b/a Midlands Honda
C/A No.: 2013-CP-40-0319

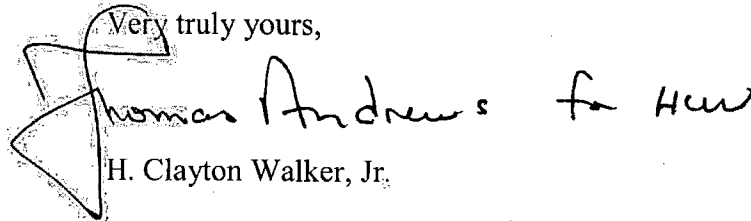
Dear Judge Cothran:

I wrote you recently indicating that we were content to go along with Plaintiff's suggestion that there be no ruling on Plaintiff's motion for supplemental fees while the appeal was pending, but that if you notified us that you wished to rule, we would submit a reply to Plaintiff's opposition to our proposed order on the motion. I learned Friday that Plaintiff now wants you to issue a ruling. In fact, Plaintiff intends to file a motion with the Court of Appeals to stay briefing until you have ruled on the motion.

We consented to the motion to stay, and because it now appears Plaintiff needs a ruling by you, we hereby enclose another copy of a proposed order on the motion for fees. The order is substantively identical to our prior proposal, except that we have added a footnote to address an argument Plaintiff raised in its response. All other changes are formatting matters because the footnote changed pagination.

Thank you for your consideration of this matter. We look forward to your ruling. If you find our order acceptable, you can return it to us in the envelope provided and we will file it in Richland. If you have any questions or concerns whatsoever, please feel free to contact us.

Very truly yours,



H. Clayton Walker, Jr.

HCW:cnc

cc: C. Steven Moskos, Esq. (via email)
Brooks R. Fudenberg, Esq. (via email)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	
	)	
Daniel O'Shields and Roger W.	)	Civil Action No. 2013-CP-40-0319
Whitley, A Partnership d/b/a	)	
O&W Cars,	)	
	)	
<i>Plaintiff</i>	)	
	)	
v.	)	
	)	
Columbia Automotive, LLC d/b/a	)	
Midlands Honda,	)	
	)	
	)	
<i>Defendant.</i>	)	
	)	

**ORDER ON PLAINTIFF'S MOTION FOR SUPPLEMENTAL ATTORNEY'S
FEES FOR DECEMBER 2016 THROUGH MARCH 2017**

Plaintiffs [hereinafter "O&W"] moved for an award of supplemental attorney's fees for work performed by C. Steven Moskos, from December 16, 2016 through March 29, 2017, and for work performed by Brooks R. Fudenberg, from December 15, 2016 through March 29, 2017. Having considered the motions and submissions of O&W's counsel, the Court DENIES the motion for the reasons set forth below:

- I. **The Court has previously ruled that Plaintiff may not recover for fees incurred after September 14, 2016 as there was no unwarranted refusal to settle by Midlands Honda after that date.**

O&W's claim for attorney's fees arises under the North Carolina Unfair Trade Practices Act, and specifically N.C.G.S. § 75-16.1. Before any fees may be awarded under this statute, there must be an unwarranted refusal to settle on the part of the defendant. N.C.G.S. § 75-16.1; *Llera v. Security Credit Systems, Inc.*, 93 F.Supp.2d 674 (W.D.N.C. 2000). The Court has previously ruled that since September 14, 2016, Midlands Honda has engaged in meaningful and reasonable

settlement efforts.¹ As a result, the Court previously ruled that there could be no recovery of attorney's fees for time incurred after September 14, 2016. For that reason, the Court is perplexed as to why this motion, seeking attorney's fees incurred after that date, was filed.

By this order, the Court incorporates and confirms its earlier ruling and denies O&W's petition for attorney's fees incurred between December 2016 and March 2017. The Court further notes that these repeated motions for attorney's fees illustrate that Plaintiff's counsels' primary incentive here is attorney compensation rather than recovery for their client.

O&W's citation to *Printing Servs. of Greensboro, Inc. v. Capital Group, Inc.*, 637 S.E.2d 230 (N.C.App. 2006) for the proposition that once fees are awarded in a case, fees continue to accumulate for post-trial is both an overstatement of the law (as discussed below) and inapplicable on the facts of this case. The Court has determined that there was no longer an unwarranted refusal to settle after a certain date. *Printing Servs.* states only the general principle that appellate attorney's fees may be included in a fee award under § 75:16-1. Neither *Printing Servs.*, nor any of the cases it cites, addresses the situation present in this case, where a defendant engaged in reasonable settlement activity following a jury verdict, and the plaintiff refused to negotiate. In the Court's view, construing § 75:16-1 to require supplemental awards of attorney's fees in the presence of subsequent reasonable settlement efforts by a defendant would permit a plaintiff who was successful at trial to use post-trial motions and appeals as a veritable attorney's fee printing press. Such a result is patently inconsistent with the statute.

¹ That Midlands Honda has continued its efforts to settle this case has no bearing on the Court's determination that there was not an unwarranted refusal to settle as of September 14, 2016. The Court has determined and remains convinced that the offer made as of that date was a reasonable effort to settle this case in its entirety. Subsequent settlement offers do not change that finding, but they do provide further evidence that there has not been an unwarranted refusal to settle on the part of Midlands Honda since that date.

Settlement negotiations can occur at any stage of litigation, and, should be considered when awarding attorney's fees under North Carolina law. For example, in *United Laboratories, Inc. v. Kuykendall*, 403 S.E.2d 104 (N.C. App. 1991), *aff'd*, 437 S.E.2d 374 (N.C. 1993), the North Carolina Court of Appeals reviewed a second request for attorney's fees. The trial court in that case initially issued an award of attorney's fees in the amount of \$47,522.23. *Id.* at 106. An appeal followed, which resulted in a second trial. In considering whether further attorney's fees should be awarded, both the trial court and the appellate court reviewed settlement negotiations which occurred after the first trial, after the first appeal, and prior to the second trial. *Id.* at 111. Additional attorney's fees were awarded because the trial court concluded, and the appellate court agreed, that there was an unwarranted refusal to settle in the *post-trial* negotiations. *Id.* In this case, the Court finds Plaintiff is not entitled to any fees after September 14, 2016 based on O&W's reasonable efforts to settle.

II. The Court, in Its Discretion, Elects to Deny Fees.

Additionally and alternatively, an award of attorney's fees under N.C.G.S. § 75-16.1 is always discretionary, even when the factors which would support an award are present. *Basnight v. Diamond Developers, Inc.*, 178 F.Supp.2d 589, 592 (M.D.N.C. 2001) (“[e]ven where the facts of a particular case will support a finding that the requirements of N.C.Gen.Stat. § 75–16.1 have been met and an award of attorney's fees may be warranted, the Court retains the discretion to deny the award”); *Blankenship v. Town & Country Ford, Inc.*, 174 N.C.App. 764, 771, 622 S.E.2d 638, 643 (2005) (“[t]he decision whether or not to award attorney fees under section 75–16.1 rests within the sole discretion of the trial [court]. *And if fees are awarded*, the amount also rests within the discretion of the trial court.”) (emphasis added); *Evans v. Full Circle Productions, Inc.*, 443 S.E.2d 108, 110 (N.C. App. 1994) (“[W]e also recognize that the statute

has been designed to award attorney's fees in extreme cases, since even when the statutory requirements are met, an award of attorney's fees is within the trial court's discretion.").

The Court, in its discretion, declines to award attorney's fees for activity following September 14, 2016.

III. Attorney's Fees Are Not Recoverable After September 14, 2016 Because They Were Not Incurred to Obtain or Protect O&W's Status as a Prevailing Party.

North Carolina's statute allows a trial court to award attorney's fees for post-trial or appellate work by a prevailing party on an unfair trade practices claim where such work is expended in an "effort to protect the judgment." *See Faucette v. Carmel Road, LLC*, 775 S.E.2d 316, 326 (N.C.App. 2015); *Cotton v. Stanley*, 380 S.E.2d 419, 422 (N.C.App. 1989) ("[f]ees are authorized for the prevailing party and may be awarded for all time, including appeal, *reasonably expended in obtaining or sustaining the status of prevailing party.*") (emphasis added).

Plaintiff O&W prevailed on the unfair trade practices claim at trial. None of the work performed by Plaintiff's counsel to challenge or increase the Court's fee award was necessary to sustain Plaintiff's status as a prevailing party. Instead, Plaintiff's counsels' primary incentive here appears to be attorney compensation rather than recovery for their client. An award of fees for such purposes is not appropriate under North Carolina law.

For all of the reasons set forth here and the Court's prior orders addressing O&W's ever increasing and repeated demands for attorney's fees, the Court, in its discretion, declines to award attorney's fees for activity following September 14, 2016.

SIGNATURE LINE ON FOLLOWING PAGE

[CONTINUED FROM PAGE 4 OF ORDER DENYING MOTION FOR SUPPLEMENT FEES]

IT IS SO ORDERED.

The Honorable R. Ferrell Cothran, Jr.
Presiding Judge

_____, 2017

Brooks R. Fudenberg

From: Cothran, Ralph F. Jr., Law Clerk (John Furse) <rcothranlc@sccourts.org>
Sent: Tuesday, August 8, 2017 10:49 AM
To: Cesaire Chase; Cothran, Ralph Ferrell Jr. Secretary (Gayle Brunson)
Cc: 'Clay Walker'; csmoskos@earthlink.net; BRF@Fudenberglaw.com
Subject: RE: O'Shields, et al. v. Columbia Automotive Company, LLC dba Midlands Honda

Good Morning,

This order meets Judge Cothran's approval. We are currently holding court in York County and will sign it when we get back to the office.

Thanks,

Jack Furse
Law Clerk to the Honorable R. Ferrell Cothran, Jr.
Circuit Judge of the Third Judicial Circuit
P.O. Box 32
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From: Cesaire Chase [<mailto:cchase@walkerreibold.net>]
Sent: Monday, August 7, 2017 4:37 PM
To: Cothran, Ralph F. Jr., Law Clerk (John Furse) <rcothranlc@sccourts.org>; Cothran, Ralph Ferrell Jr. Secretary (Gayle Brunson) <RCothranSC@sccourts.org>
Cc: 'Clay Walker' <cwalker@walkerreibold.net>; csmoskos@earthlink.net; BRF@Fudenberglaw.com
Subject: O'Shields, et al. v. Columbia Automotive Company, LLC dba Midlands Honda

Good Afternoon—

Attached please find correspondence from H. Clayton Walker, Jr. in connection with the above-referenced matter.

Thank you.

Cesaire Nicole Chase
Paralegal
Walker Reibold, LLC
(803) 454-0955
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 13-CP-40-0319

Daniel O'Shields And Roger W.
Whitley A Partnership d/b/a
O&W Cars,

Appellants,

Columbia Automotive Company,
LLC d/b/a Midlands Honda,

v.

Respondent.

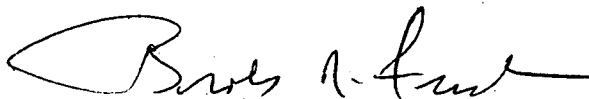
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SEP 08 2017

SC Court of Appeals

NOTICE OF APPEAL

Daniel O'Shields, Roger W. Whitley, and A Partnership d/b/a O&W Cars appeal the order of the Honorable R. Ferrell Cothran filed August 14, 2017. Appellants received written notice via email of the entry of judgment on August 15, 2017.



September 5, 2017

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No. 2017-00096

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SC Court of Appeals

Daniel O'Shields And Roger W.
Whitley, A Partnership d/b/a O&W Cars,

Appellants,

v.

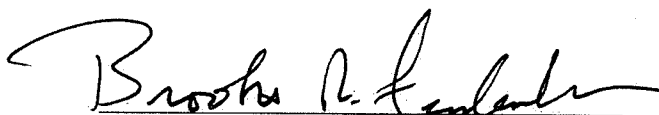
Columbia Automotive Company,
LLC d/b/a Midlands Honda,

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.

July 27, 2019



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