

No. S266034

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

LISA NIEDERMEIER,
Plaintiff and Respondent,

v.

FCA US LLC,
Defendant and Appellant.

California Court of Appeal
Second Appellate District, Division One
No. B293960
Superior Court of Los Angeles County
Hon. Daniel S. Murphy, Judge
No. BC638010

**MOTION FOR JUDICIAL NOTICE, MEMORANDUM OF
POINTS AND AUTHORITIES, DECLARATION OF MATT
GREGORY, AND PROPOSED ORDER**

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**CERTIFICATE OF INTERESTED
ENTITIES OR PERSONS**

Pursuant to Rule 8.208, I certify that the following listed entities have: (1) a financial interest in the subject matter in controversy or in a party to this proceeding; or (2) a non-financial interest that could be substantially affected by the outcome of the proceeding:

1. FCA North America Holdings LLC has a 100% ownership interest in Defendant-Appellant FCA US LLC.

2. FCA Holdco B.V. has a 100% ownership interest in FCA North America Holdings LLC.

3. Stellantis N.V. (f.k.a. Fiat Chrysler Automobiles N.V.) has a 100% ownership interest in FCA Holdco B.V. Stellantis N.V. is a publicly traded company incorporated under the laws of the Netherlands.

Dated: August 2, 2021

/s/ Thomas H. Dupree Jr.
Counsel for Appellant

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MOTION FOR JUDICIAL NOTICE

Pursuant to California Rule of Court 8.252(a), Defendant and Appellant FCA US LLC respectfully requests that this Court take judicial notice of the attached legislative history of the Song-Beverly Act. Among other things, this legislative history sheds additional light on the Legislature's intent in defining "the measure of the buyer's damages" under Civil Code Section 1794(b). FCA also respectfully requests that the Court take judicial notice of the attached trial court order in this case granting Plaintiff and Appellee Lisa Niedermeier \$163,442.92 in attorney's fees and costs.

Dated: August 2, 2021

Respectfully submitted,

/s/ Thomas H. Dupree Jr.

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MEMORANDUM OF POINTS AND AUTHORITIES

This Lemon Law case involves the measure of a buyer's damages—specifically, whether a buyer's damages include money that the buyer has already received by reselling her defective vehicle. For the reasons explained in FCA's brief on the merits, the plain text of Civil Code Sections 1793.2(d) and 1794(b) makes clear that a buyer's damages do not include the portion of the purchase price that she has already recovered.

The legislative history of both statutes confirms that interpretation. In cases involving statutory interpretation, this Court regularly takes judicial notice of relevant legislative history. (See, e.g., *FilmOn.com Inc. v. DoubleVerify Inc.* (2019) 7 Cal. 5th 133, 150 n.6 [citing Cal. Evid. Code §§ 451–52]; *Heckart v. A-1 Self Storage, Inc.* (2018) 4 Cal.5th 749, 767 n.8.) Here, the Court should take judicial notice of the legislative history of the Lemon Law, and the history of Sections 1793.2(d) and 1794 in particular.

Niedermeier attached some of the legislative history of Sections 1793.2(d) and 1794 to her own motion for judicial notice. (See Niedermeier Mot. for Judicial Notice (June 1, 2021).) FCA submits this motion to provide the Court with additional history that Niedermeier omitted. This motion also provides the Court with the trial court's order granting Niedermeier \$163,442.92 in attorney's fees and costs.

I. Legislative History

The history of two key bills—Assembly Bill 3560 of 1982, and Assembly Bill 1367 of 1987—bear directly on this case:

- (1) **Assembly Bill 3560**, ch. 385, Statutes of 1982, incorporated Commercial Code Sections 2711 through 2715 into the measure of a buyer’s damages under Section 1794(b); and
- (2) **Assembly Bill 1367**, ch. 1280, Statutes of 1987, added “the rights of replacement or reimbursement” to the measure of a buyer’s damages under Section 1794(b).

This Court took judicial notice of the legislative history of these bills in *Gavaldon v. DaimlerChrysler Corp.* ((2004) 32 Cal.4th 1246, 1257–58, 1262–63 (*Gavaldon*)). (See also *Gavaldon v. DaimlerChrysler Corp.* (Mar. 1, 2004) Case No. S104477 [granting appellant’s request for judicial notice].) The Court should do the same thing here.¹

Assembly Bill 3560. In 1982, the Legislature passed and the Governor signed Assembly Bill 3560, which, among other things, amended Civil Code Section 1794 to incorporate Commercial Code Sections 2711 through 2715 into the “measure of the

¹ In the interest of simplicity, this motion addresses only additional relevant legislative materials that Niedermeier omitted from her own motion for judicial notice—specifically, the legislative history of Assembly Bill 3560 of 1982, and Assembly Bill 1367 of 1987. FCA requested the complete legislative history of both bills from Legislative Intent Services, and has attached a complete copy of all of the materials that it received in response as Exhibits A and B to this motion.

buyer's damages" in Song-Beverly actions. (See FCA MJN 6.) The Senate Judiciary Committee's report explained the purpose of this change: "[U]nder the existing language in Song-Beverly, there are no limits on the kind or extent of damages that may be awarded except those which an individual judge may impose. This bill would adopt the contract measure of damages, as provided in Commercial Code Sections 2711 through 2715, for awards under Song-Beverly." (*Id.* at p. 13.) The Department of Consumer Affairs, which sponsored the bill, explained that by incorporating these Sections into the measure of damages "the bill also brings into play the thousands of court decisions under the Commercial Code, and its predecessors, that have articulated principles of construction and application to the wide range of circumstances and situations that have been presented to the courts in the past." (*Id.* at p. 21.)

Assembly Bill 1367. As this Court explained in *Gavaldon*, "[t]he current version of section 1794, subdivision (b) came into being in 1987, when Assembly Bill No. 1367 . . . amended the section to include the current language providing that 'the measure of a buyer's damages under this section shall include the rights of replacement or reimbursement as set forth in subdivision (d) of section 1793.2.'" (*Gavaldon, supra*, 32 Cal.4th at p. 1262 [alteration omitted].)² As relevant here, the legislative history of Assembly

² The bill that ultimately adopted these changes was Assembly Bill 2057. (4 Niedermeier MJN 905, 914.) But the changes to Section 1794(b) originated in Assembly Bill 1367, which was added to Assembly Bill 2057 "so the bills will not have to be double-joined." (*Id.* at p. 960.)

Bill 1367 makes clear that the Legislature sought simply to include the remedies of replacement and restitution as part of the measure of the buyer's damages, not to prohibit courts from applying ordinary damages rules in determining the amount of a particular award. (FCA MJN 87–88, 89–90.)

Specifically, Assembly Bill 1367 was intended to respond to an attorney's argument that, under the version of Section 1794 in existence at the time, the buyer's remedies did not include restitution under Section 1793.2(d). (FCA MJN 87–88; *Gavaldon, supra*, 32 Cal.4th at p. 1263.) Assembly Bill 1367 foreclosed that argument by confirming that the remedies of replacement and reimbursement can be included in the measure of the buyer's damages under Section 1794(b). (*Gavaldon, supra*, 32 Cal.4th at p. 1263.) The Legislature sought only to clarify that restitution is an available remedy; it did not intend to make any "significant change[s] in the law." (*Id.*)

II. Trial Court's Order Granting Attorney's Fees And Costs

Attached as Exhibit C to this motion is the trial court's order in this case granting Niedermeier an award of attorney's fees and costs. The order was entered November 28, 2018, one week after FCA filed its notice of appeal. FCA MJN 307. "[A] court may take judicial notice of the records of any court of this state." (*Taus v. Loftus* (2007) 40 Cal.4th 683, 726.) Here, the trial court's order forcing FCA to pay \$163,442.92 in attorney's fees and costs is relevant to Niedermeier's argument that manufacturers lack any incentive to comply with the Song-Beverly Act unless plaintiffs may

receive a double recovery when they resell a used vehicle rather than return it to a manufacturer.

* * *

For the reasons explained in FCA's brief on the merits, the plain text of the Song-Beverly Act forecloses Niedermeier's attacks on the Court of Appeal's opinion. The legislative history of the relevant provisions of the statute, including the materials attached to this motion, confirm that when a buyer resells a defective vehicle the statute does not allow her a double recovery. The trial court's award of fees and costs refutes Niedermeier's argument that the Court of Appeal's holding will cause manufacturers to violate the statute.

The Court should grant FCA's motion for judicial notice.

Dated: August 2, 2021

Respectfully submitted,

/s/ Thomas H. Dupree Jr.

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Attorneys for Defendant and Appellant FCA US LLC

DECLARATION OF MATT GREGORY

I, Matt Gregory, declare as follows:

1. I am an attorney with Gibson, Dunn & Crutcher LLP, counsel of record for Defendant and Appellant FCA US LLC. I have been admitted *pro hac vice* to represent FCA in this case.

2. Exhibits A and B in the accompanying attachment to FCA's motion for judicial notice are true and correct copies of the legislative history provided to Gibson Dunn by Legislative Intent Services.

3. These exhibits include the complete files provided to Gibson Dunn by Legislative Intent Services for Assembly Bill 3560 of 1982 and Assembly Bill 1367 of 1987.

4. The sole alteration was to add consecutive page numbers in the format of "FCA MJN ___" for ease of reference.

5. Exhibit C in the accompanying attachment to FCA's motion for judicial notice is a true and correct copy of the trial court's November 18, 2018 order granting Plaintiff and Respondent Lisa Niedermeier \$163,442.92 in attorney's fees and costs.

6. In FCA's accompanying brief on the merits, FCA relies on only those portions of these materials that are proper subjects for judicial notice.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 2, 2021, in McLean, Virginia.

/s/ Matt Gregory
Matt Gregory

No. S266034

**IN THE SUPREME COURT
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LISA NIEDERMEIER,
Plaintiff and Respondent,

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Defendant and Appellant.

California Court of Appeal, Second District, Division One
No. B293960
Superior Court of Los Angeles County
Hon. Daniel S. Murphy, Judge
No. BC638010

[PROPOSED] ORDER

Defendant and Appellant FCA US LLC's motion for judicial notice is granted. The Court takes judicial notice of Exhibits A, B, and C to FCA's motion.

Date

Presiding Justice

PROOF OF SERVICE

I, Matt Gregory, declare as follows:

I am employed in Washington, D.C. I am over the age of eighteen years, and I am not a party to this action. I am personally familiar with the business practice of Gibson, Dunn & Crutcher LLP for collection and processing of correspondence for mailing with the United States Parcel Service. My business address is 1050 Connecticut Avenue, Washington, D.C. 20036. My email address is mgregory@gibsondunn.com. On August 2, 2021, I served Defendant and Appellant FCA US LLC's Motion for Judicial Notice, Memorandum of Points and Authorities, Declaration of Matt Gregory, and Proposed Order on the parties stated below, by the following means of service:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 2, 2021, in McLean, Virginia.

/s/ Matt Gregory
Matt Gregory

SERVICE LIST

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STATE OF CALIFORNIA
Supreme Court of California**PROOF OF SERVICE**STATE OF CALIFORNIA
Supreme Court of CaliforniaCase Name: **NIEDERMEIER v. FCA US**Case Number: **S266034**Lower Court Case Number: **B293960**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
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MOTION	No. S266034 Motion for Judicial Notice
ADDITIONAL DOCUMENTS	Exhibits to Motion for Judicial Notice

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

8/2/2021

Date

/s/Thomas Dupree, Jr.

Signature

Dupree, Jr., Thomas (467195)

Last Name, First Name (PNum)

Gibson Dunn & Crutcher LLP

Law Firm