

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 District, Division One
Civil No. B293960
Appeal from Los Angeles County Superior Court
Case No. BC638010
Honorable Daniel Murphy

**MOTION TO CONSTRUE SECOND MOTION FOR
JUDICIAL NOTICE AS MOTION TO SUPPLEMENT
FIRST MOTION FOR JUDICIAL NOTICE**

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On February 22, 2023, plaintiff and respondent Lisa Niedermeier filed a Second Motion for Judicial Notice, asking the Court to take notice of “Bitter Fruit: Final Report on How Consumers Unknowingly Buy Lemon Vehicles.” (Plaintiff’s Second Motion for Judicial Notice.)

Defendant and appellant FCA US, LLC subsequently sent an email to plaintiff indicating that she may want to withdraw her second motion for judicial notice. FCA explained that plaintiff had already sought judicial notice of the Report.

FCA is correct on the second point. The undersigned had overlooked that plaintiff had previously sought judicial notice of the Report, which can be found in Exhibit D to Petitioner’s First Motion for Judicial Notice at Volume 8, pages 2289-2302. (See also First Motion at pp. 5, 8-9.)

Plaintiff therefore asks the Court to construe her Second Motion for Judicial Notice (“Second Motion”) as a Motion to Supplement Plaintiff’s (First) Motion for Judicial Notice, as it provides a more fulsome showing as to why the Court should specifically take notice of the Report, particularly as to its relevance to this dispute. FCA seeks an offset for the credit plaintiff (formally) received when she traded-in the subject vehicle after FCA willfully refused to promptly buy the vehicle back and brand it as a lemon. As the Second Motion explains, the Report shows that “the Legislature enacted and strengthened the labelling requirements precisely to stop *manufacturers* from receiving what it seeks in the form of that trade-in offset: “the ‘higher’ prices that defective vehicles can yield on the open

market when not ‘stamped as lemons,’” the prospects of which had provided manufacturers with an incentive to circumvent their obligation to brand lemons before reselling them. (Second Motion at pp. 3-4, 7-9, quoting SMJN/16.) Reading an enumerated trade-in or resale offset into the Act would thus undermine the labelling requirements by giving manufacturers the very financial incentives for noncompliance that those requirements were intended to deprive them from having.

The Second Motion thus expands on the reasons why the Court should take judicial notice of the Report, as first set out in plaintiff’s first motion.

The Court should thus construe the Second Motion as a Motion to Supplement Plaintiff’s (First) Motion For Judicial Notice and take judicial notice of the Report for the reasons set forth in both.

February 28, 2023 KNIGHT LAW GROUP LLP
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By /s/ Joseph V. Bui
Attorneys for Petitioner
LISA NIEDERMEIER

No. S266034

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[PROPOSED] ORDER

IT IS HEREBY ORDERED that Plaintiff's Second Motion for Judicial Notice shall be construed as Plaintiff's Motion to Supplement Her First Motion for Judicial Notice.

DATED: _____

Presiding Justice

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 6420 Wilshire Boulevard, Suite 1100, Los Angeles, California 90048.

On February 28, 2023, I served the foregoing document described as: **MOTION TO CONSTRUE SECOND MOTION FOR JUDICIAL NOTICE AS MOTION TO SUPPLEMENT FIRST MOTION FOR JUDICIAL NOTICE** on the parties in this action by serving:

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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.

Executed on February 28, 2023, at Los Angeles, California.

/s/ Maureen Allen

Maureen Allen

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STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **NIEDERMEIER v. FCA US**

Case Number: **S266034**

Lower Court Case Number: **B293960**

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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.

2/28/2023

Date

/s/Maureen Allen

Signature

Bui, Joseph (293256)

Last Name, First Name (PNum)

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