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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

ANSWER TO AMICUS CURIAE BRIEF BY CONSUMERS FOR AUTO RELIABILITY AND SAFETY

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INTRODUCTION

A rule that encourages plaintiffs to resell unbranded lemons to unsuspecting buyers does not benefit consumers. Here, as the Court of Appeal correctly concluded, the Legislature could not have intended to allow Plaintiff and Respondent Lisa Niedermeier to trade in her defective, unbranded Jeep for $19,000 and then recover that money *again* as "restitution" under the Song-Beverly Act. Niedermeier's argument is foreclosed by the Act's plain language and structure, and it would harm consumers by rendering the Act's title-and-branding provisions largely inoperative. The arguments to the contrary in the amicus brief filed by Consumers for Auto Reliability and Safety ("Amicus") lack merit.

ARGUMENT

I. This Court Should Not Encourage Plaintiffs To Resell Unbranded Lemons.

Amicus argues that a buyer's resale of her defective lemon is "mitigation of damages which is beneficial and should be encouraged." (Amicus Br. 16.) This makes no sense. When a buyer resells what Amicus describes as "often a dangerously defective vehicle" (*id.*), she reintroduces the car into the stream of commerce—unbranded—when it otherwise would have been returned to the manufacturer and clearly and prominently labeled a "Lemon Law Buyback." (FCA Br. 34–37 [discussing Cal. Civ. Code §§ 1793.22, 1793.23].) An interpretation of the statute that undermines the title-and-branding provisions obviously harms the

unwitting consumers who will buy used cars that should have been branded as lemons.

Amicus, like Niedermeier herself, derides the statutory title-and-branding provisions. (Amicus Br. 16; Niedermeier Reply 30.) Of course, the Legislature thought otherwise, declaring "[t]hat these [lemon] notices serve the interests of consumers who have a right to information relevant to their buying decisions." (Cal. Civ. Code § 1793.23(a)(4).) The Legislature's determination is plainly correct: a consumer deciding whether to buy a used car has a strong interest in knowing whether that vehicle was previously determined to be a lemon. This Court should not adopt an interpretation of the Act that would deny consumers this critical information.

Nor is it correct to assert that "the Act extends virtually all of its protections to *used cars* also." (Niedermeier Reply 29 [citing Cal. Civ. Code § 1795.5].) Nothing in Section 1793.23 requires anyone other than a manufacturer who reacquires a lemon to brand the vehicle or its title, and Section 1793.22's notice provision similarly applies only to vehicles that were "transferred by a buyer or lessee to a manufacturer pursuant to [Section 1793.2(d)]." Nor are the remedies provided in Section 1793.2(d)—that is, the remedies Niedermeier herself took advantage of—generally available to used-car buyers. (See Cal. Civ. Code § 1793.2(d)(2) [describing manufacturer's obligations for "new motor vehicle[s]"]; see also *id.* at 1793.22(e)(2) [defining "new motor vehicle"].)

II. Amicus's Other Arguments Are Meritless.

The remainder of Amicus's brief either rehashes arguments the parties have already briefed at length or makes points that have no relevance to this dispute. (See, e.g., Amicus Br. 8–9.)

A. Much of Amicus's brief consists of ad hominem attacks on FCA. (See Amicus Br. 10–12.) These attacks are meritless in their own right and, in any event, irrelevant to the question in this case—whether Niedermeier's damages include money that she has already recovered. For example, Amicus includes (without citation to any source) a pie chart purporting to show that FCA had a higher share of Lemon Law cases than other manufacturers from 2015 to 2018. But the chart shows the opposite: even assuming its accuracy, it shows that FCA had *fewer* Lemon Law cases than similarly situated competitors GM and Ford. (Amicus Br. 12.) And the other manufacturers on the chart are obviously not relevant comparators—given differences in sales volume, it is no surprise that a large manufacturer like FCA would have more Lemon Law cases than, say, Tesla, Ferrari, or Aston Martin. (*Id.*)

B. Amicus argues that Section 1793.2(d)'s text requires that a plaintiff be allowed to recover a vehicle's entire purchase price even when she has already resold her car for thousands of dollars. (Amicus Br. 14–15.) Of course that is wrong: as FCA has explained, the statute expressly describes a buyer's remedy as "restitution" and incorporates ordinary damages rules under the Commercial Code into the "measure of the buyer's damages." (FCA Br. 22–33 [discussing Cal. Civ. Code §§ 1793.2(d), 1794(b)].) The Act's legislative history confirms that the Legislature intended

courts to apply ordinary damages rules where, as here, they are faced with one of the infinite applications of those rules that the Legislature did not specifically address in the statute. (FCA Br. 39–42.)

C. Next, Amicus argues that dealers sometimes inflate the trade-in value of used cars as "a way of tricking the buyer into a higher purchase price than they otherwise would have agreed to spend." (Amicus Br. 13.) But that has nothing to do with this case—the issue here is how to calculate Niedermeier's "restitution" award in light of her own undisputed testimony that she received $19,000 for her Jeep. (Court of Appeal Opn. 27.) It therefore makes no difference why the GMC dealer paid her that amount, or what the Jeep's value was in the abstract. (FCA Br. 52–55.) Niedermeier recovered $19,000 for the Jeep, so that amount is not "restitution" under Section 1793.2(d), included in the "measure of [her] damages" under Section 1794(b), or "actual damages" under Section 1794(c). Moreover, $19,000 is less than the amount Niedermeier *herself* estimated the Jeep was worth when she listed it for sale at $25,000. (FCA Br. 52 & n.4.)

D. Finally, Amicus argues that Niedermeier's interpretation is necessary to "tilt the incentives for manufacturers." (Amicus Br. 14.) But this reflects a basic misunderstanding of the decision below. Under the Court of Appeal's opinion, Niedermeier recovers more than $218,000 in restitution, civil penalties, and attorney's fees in this lawsuit alone, plus she keeps the $19,000 she already recovered when she resold her Jeep. Put differently, the Court of

Appeal's opinion obligates FCA to pay Niedermeier and her attorneys more than *five times* what she paid for her Jeep.

Considered in context, therefore, Niedermeier's interpretation does not change incentives for manufacturers such as FCA one way or the other—either way, noncompliance subjects them to civil penalties and attorney's fees that dwarf whatever amount a plaintiff might hypothetically recover if she resells her lemon (Cal Civ. Code § 1794(c)–(d))—plus it denies them the return of the vehicle. For Lemon Law plaintiffs, on the other hand, Niedermeier's interpretation will create an irresistible incentive to resell unbranded lemons to third parties, pocket the proceeds, and then seek to recover the same money again in a Song-Beverly action. The Act's text, history, and purpose all foreclose that result, which would harm the very consumers the Act is meant to protect.

CONCLUSION

For these reasons and those in FCA's principal brief, the judgment of the Court of Appeal should be affirmed.

Dated: January 31, 2022 Respectfully submitted,

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Pursuant to Rule 8.520(c) of the California Rules of Court, the undersigned hereby certifies that the foregoing brief is in 13-point New Century Schoolbook font and contains 1,133 words, including footnotes, according to the word count generated by the computer program used to produce the brief.

Dated: January 31, 2022

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I, Matt Gregory, declare as follows:

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