No. S274625

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

EVERARDO RODRIGUEZ and JUDITH V. ARELLANO,

Plaintiffs and Appellants,

v.

FCA US, LLC,

Defendant and Respondent.

California Court of Appeal, Fourth District, Division Two, Civil No. E073766
Appeal from Riverside County Superior Court
Case No. RIC1807727
Honorable Jackson Lucky, Judge Presiding

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INTRODUCTION

The Song-Beverly Act's refund-or-replace remedy during a car's express-warranty period applies to "a new motor vehicle"—a term defined to include "a dealer-owned vehicle and a 'demonstrator' *or other motor vehicle sold with a manufacturer's new car warranty*." (§ 1793.22, subd. (e)(2), italics added.)[1]

Decades ago, *Jensen v. BMW of North America, Inc.* (1995) 35 Cal.App.4th 112 correctly held that this definition encompasses all cars sold with a balance remaining on the manufacturer's new motor vehicle warranty. (*Id.* at p. 123.) That holding comports with the Legislature's intent "to make car manufacturers live up to their express warranties, whatever the duration of coverage." (*Id.* at p. 127.)

Petitioners' Opening Brief showed that the Opinion erred in deviating from *Jensen* and eliminating consumer-protection rights that have been recognized *for nearly three decades*. As we showed, the Opinion misread the Act's text, undermined the Act's remedial purposes, and relied on a premise that's obviously wrong—namely, that dealer-owned vehicles and demonstrators are sold with full, never-used warranties.

FCA's Answer doesn't refute our showing. While claiming "concern" for consumers, FCA relies on irrelevant statutory schemes and creates artificial distinctions between demonstrators/dealer-owned vehicles and other used cars sold

[1] Statutory citations are to the Civil Code unless indicated.

with a balance remaining on their new-car warranties. FCA's efforts fail.

This Court should adopt *Jensen*'s interpretation and reverse the Opinion.

LEGAL DISCUSSION

I. Section 1793.22's "New Motor Vehicle" Definition Unambiguously Includes *All* Vehicles Sold With A Remaining Balance Of The Manufacturer's New-Car Warranty.

Statutory interpretation begins with the statute's actual language, which "generally provide[s] the most reliable indicator of legislative intent." (*Lopez v. Sony Electronics, Inc.* (2018) 5 Cal.5th 627, 634.) Petitioner's Opening Brief showed that section 1793.22's "new motor vehicle" definition unambiguously includes all vehicles sold while covered by a manufacturer's new-car warranty. FCA's responses fail.

A. Vehicle Code definitions are irrelevant—section 1793.22 supplies its own definition of "new motor vehicle."

FCA invokes the *Vehicle Code*'s definitions of "new vehicle" and "used vehicle," which focus on whether the vehicle has previously been sold at retail or registered. (ABM/27, citing Veh. Code, §§ 430, 665.) FCA says the Civil Code commonly incorporates Vehicle Code definitions, and thus, that "new motor vehicle" for purposes of section 1793.22 must be limited to

vehicles not previously sold to and registered for use by a consumer. (*Ibid.*)

FCA is wrong. The relevant provisions of the Act *do not* rely on Vehicle Code definitions. Section 1793.22(e)(2) supplies *its own* definition of "new motor vehicle." (§ 1793.22, subd. (e)(2) ["For the purposes of subdivision (d) of Section 1793.2 and this section, the following terms have the following meanings"].)

That definition *departs* from the Vehicle Code definition: It expressly includes vehicles that the Vehicle Code would treat as *used*—including demonstrators. (Compare Civ. Code, § 1793.22, subd. (e)(2). with Veh. Code, § 665 ["demonstrators" are used vehicles].) Moreover, the specific part of section 1793.22's definition at issue references a "motor vehicle," not a "new vehicle"—"New motor vehicle" includes "a 'demonstrator' or *other motor vehicle* sold with a manufacturer's new car warranty." (§ 1793.22, subd. (e)(2), italics added.)

Thus, the Legislature clearly didn't intend to limit section 1793.22(e)(2)'s definition to the Vehicle Code definition. FCA's assertion that the Vehicle Code establishes that section 1793.2's "new motor vehicle" means "not preowned" is entirely ipse dixit. It has no persuasive value.

B. Section 1793.22 says the car must be "[s]old with a manufacturer's new car warranty," not that "a new warranty must arise as part of the sale."

FCA argues that (1) the Act defines an express warranty to include warranties that "aris[e] out of a sale to the consumer" (§ 1791.2), (2) a warranty only arises out of the first sale, and, thus, (3) a vehicle sold with a manufacturer's new-car warranty under section 1793.22 must also refer to cars sold to the first consumer. (ABM/29-30.) FCA is wrong.

This case isn't about how the Act *generally* defines express warranties as to a *standard* consumer good. It concerns what counts as a "new motor vehicle" under section 1793.22, one of the several later-enacted and more-specific provisions that ensured that the Act treated new motor vehicles differently from other consumer goods.[2] (OBM/35-36, 59-60; see *Cummins, Inc. v. Superior Court* (2005) 36 Cal.4th 478, 491 (*Cummins*).)

And section 1793.22 doesn't say that the warranty must arise out of the sale *to the plaintiff*. It says that the vehicle must be "sold with" a new-car warranty. Thus, even assuming that a new-car warranty only "aris[e] on the first sale," a consumer who purchases a car with a balance of the warranty remaining (like

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[2] Nor do the parties dispute that the subject vehicle is still covered by the manufacturer's express warranty (see Opn/2)—or that express warranties can and do apply to used cars that have been resold (see ABM/62).

the vehicle here, Opn/3) is still "sold with a manufacturer's new car warranty" within that statutory phrase's plain meaning.

Nor does it help FCA that an Act provision dealing with used goods (§ 1795.5) distinguishes between (1) used-good sellers who provide their own warranties at the point of sale, and (2) manufacturers who previously provided an express warranty when the goods were new. (ABM/30.) Section 1795.5 shows that the Legislature knew how to require that the warranty arise from the sale to the plaintiff when that's what the Legislature meant. (§ 1795.5 [referencing a sale "in which an express warranty is given"].) The Legislature chose *different* language for section 1793.22(e)(2). That choice must be given effect.

C. *Jensen* agreed that "new motor vehicle" encompasses used cars still under a new-car warranty.

Petitioners agree with *Jensen*'s interpretation of "new motor vehicles"—namely, "cars sold with a balance remaining on the manufacturer's new motor vehicle warranty are included within [section 1793.22's] definition of 'new motor vehicle.'" (35 Cal.App.4th at p. 123.)

FCA's attempt to portray *Jensen* as not applying to used cars lacks merit. FCA claims that the car in *Jensen* came with a "full manufacturer's new car warranty" and had never been previously sold or leased to another consumer. (ABM/31-32 & fn. 4.) But there's no evidence of that.

Here's how the *Jensen* parties pitched their arguments: BMW argued the vehicle wasn't protected because it was *used*—just as FCA does here. (35 Cal.App.4th at p. 126 [BMW challenged "the trial court's construction of the section 1793.22 definition of 'new motor vehicles' to include *used* cars" (notwithstanding that demonstrators and dealer-owned vehicles are also "used")].)[3] The plaintiff likewise teed the issue up as whether a car *with a balance left* is covered: "The only interpretation of the 1987 amendment which would protect consumers is that *used* vehicles purchased with the balance of the new car warranty are covered by the Act." (16MJN/1915, italics added; see also 16MJN/1899 [plaintiff framed issue as whether Act covers "the second lessee of an automobile leased with the balance of the manufacturer's new car warranty"].)

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[3] See e.g., Motion for Judicial Notice In Support Of Reply Brief ("Reply MJN")/19 [BMW challenging ruling that Act "provides remedies to lessees of *used* motor vehicles leased subject to the balance of an unexpired manufacturer's warranty, italics added"], 32-33 [BMW challenging ruling that would apply Act to "vehicles for the entire life of the manufacturer's limited warranty," continuing with ownership transfers]; 16MJN/1914-1915 [Plaintiff addressing BMW's argument that it should not have to face "second or third owners' Song-Beverly Act claims"]; ARB 12 [BMW arguing that Legislature did not mean to "include <u>every</u> used motor vehicle with a remaining manufacturer's limited warranty," underlining in original]; ARB 13-14 [BMW arguing that trial court's interpretation would improperly benefit "the purchaser of a *used* car," and expose manufacturers to liability "for the entire life of the manufacturer's express warranty," italics added].)

Jensen's analysis thus mirrored the parties' framing of the case. It didn't depend on the dealer's false representation that the car was a demonstrator, a salesperson's unsubstantiated representation that the car would come with a "full" new car warranty, or the lease's title of "New Motor Vehicle Lease Agreement." Those facts are nowhere in *Jensen*'s reasoning.[4] Instead, presumably because the vehicle was *not* a demonstrator, *Jensen* broadly considered whether used cars sold with a remainder on the new-car warranty fall within section 1793.22(e)(2)'s definition of "new motor vehicles."

Jensen considered and rejected the same arguments FCA makes here—(1) that "'or other motor vehicle sold with a manufacturer's new car warranty' modifies the word 'demonstrator' and is not intended as a separate category"; (2) that the absence of 1987 legislative history discussing the Act's coverage of used cars means there's no such coverage; (3) that interpreting "new motor vehicle" to cover used cars would conflict with the Vehicle Code's definitions of new and used vehicles and the Civil Code's definition of consumer goods, and (4) that an interpretation protecting used cars would lead manufacturers to shorten express warranties, to consumers'

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[4] Other facts undermine FCA's portrayal of the car as akin to a demonstrator being sold for the first time: "[T]he car had never been used as a demonstrator, but instead had been owned by BMW Leasing Corp and leased to a third party"; the dealer purchased it at an auto auction; and the transaction was reported to the DMV as the sale of a "used" vehicle with 7,565 miles on the odometer. (16MJN/1900-1901; Reply MJN/16, 34.)

detriment. Rejecting each argument, *Jensen* held that section 1793.22(e)(2) encompasses cars sold with a balance remaining on the warranty. (See also *Kiluk v. Mercedes-Benz USA, LLC* (2019) 43 Cal.App.5th 334, 340, fn. 4 [*Jensen* "concluded that every car sold with a new-vehicle warranty remaining is a new motor vehicle"].)

There's no indication anywhere in *Jensen* that the factual differences FCA attempts to tease out had any impact on *Jensen*'s rationale or holding.

D. FCA's interpretation renders "or other cars" similar to "dealer-owned cars" and "demonstrators" superfluous: All are sold with a remainder on the manufacturer's new-car warranty.

Section 1739.22(e)(2)'s "new motor vehicle" definition refers to three categories: "[1] a dealer-owned vehicle and [2] a 'demonstrator' or [3] other motor vehicle sold with a manufacturer's new car warranty."

FCA argues that the absence of a comma before the third category ("or other motor vehicle") means the third category is "a catchall" for things similar to the first two categories. (ABM/32-34.) FCA then *assumes* that what the first two categories have in common is that the car is being sold *for the*

first time, and that the third category must mean other cars being sold for the first time, too.[5] (*Ibid.*)

FCA cites nothing to establish that is what the Legislature had in mind. Section 1793.22 doesn't say "or other motor vehicle being sold for the first time." It says, "or other motor vehicle sold with a manufacturer's new car warranty." (§ 1793.22(e)(2).)

Given that the "new motor vehicle" definition is specifically for purposes of enforcing manufacturer's express warranties, the better view is that the salient common feature amongst dealer-owned cars, demonstrators, and "other motor vehicles sold with a manufacturer's new car warranty," is the one stated on the face of the statute: All remain covered by the new-car warranty after the sale, so the new owner must have access to remedies to enforce that warranty if breached. If a vehicle has an incurable defect that conflicts with the manufacturer's express warranty, then the Act's enhanced remedies should be available—period.

FCA's portrayal of used cars as materially different than dealer-owned vehicles/demonstrators when it comes to warranty status defies reality. Contrary to FCA's incorrect portrayal (ABM/35-37), dealer-owned vehicles and demonstrators *don't* come with a full new warranty by default. Rather, the warranty mileage and time start to run when a car *is first "put into use*," not when it's first sold to a consumer. (OBM/30-34; § I.E*, post*.)

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[5] Tellingly, FCA shies away from the characteristic that the Opinion mistakenly claims that these categories share: that they all "come with full express warranties." (Opn/11; OBM/28-35.)

FCA's own warranty manual makes this clear: The warranty "begins" on the earlier of "[t]he date you take delivery of the vehicle" or "[t]he date when the vehicle was first put into use, for example as a dealer 'demo' or as a FCA US LLC company vehicle."[6] FCA argues that, technically, the first consumer to purchase a demonstrator or dealer-owned vehicle receives a "new" warranty in that it "arises" on the date the car is purchased. (ABM-36.) But as shown, section 1793.22(e)(2) refers to a vehicle "sold with a manufacturer's new car warranty," not "the sale in which the warranty arises for the first time" (§ I.B, *ante*.)

Demonstrators and dealer-owned vehicles are sold with a *remainder* on the manufacturer's new-car warranty, just like other pre-owned vehicles. That's also true of used cars that are still under (and therefore "sold with") the original new-car warranty. Petitioners' (and *Jensen*'s) interpretation of "or other motor vehicle sold with a manufacturer's new car warranty," thus, gives that category a similar meaning to dealer-owned vehicles and demonstrators.

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[6] Wagoneer 2022 Warranty Information, https://manuals.plus/m/81a15604346b66919e840b92393cde04b98b559c869ef1de82b0ae265c87cbab.pdf#page=8

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Ram, *Warranty*, https://ram-jordan.com/en/advance-automotive-trading-co/warranty/

E. FCA's attempts to distinguish dealer-owned cars/demonstrators from cars previously owned by a consumer don't establish that the Legislature intended to limit the Act's enhanced remedies.

FCA says the Legislature could've reasonably decided to provide special remedies to buyers of dealer-owned cars and demonstrators, but not to buyers of cars previously owned by a consumer that remain under the manufacturer's new-car warranty, because such cars are inherently different than dealer-owned cars and demonstrators. (ABM/35-36, 63.) Wrong.

FCA says dealer-owned cars and demonstrators are maintained in "like new" condition, while consumers misuse their cars. (ABM/35-36, 63.) Says who? FCA cites no authority for these gross generalizations. In truth, "it is not unusual for a demo to be driven 'hard' and as a result have some wear and tear." (Dempsey, What is the real deal with buying a demo car? (Mar. 27, 2009) Consumer Reports, https://tinyurl.com/3hcasf3z.) Also, while at some point, extensive use could limit a vehicle's utility as a "demonstrator," no such limit exists for dealer-owned vehicles, which are used as service-loaners, employee vehicles, or for leases. A dealer-owned vehicle can be used extensively for years before being put on the market—no different than any car initially purchased by consumer.

Some consumers maintain their cars impeccably and drive them infrequently. Yet, under FCA's theory, the Legislature intended to *deny* enhanced remedies if a car is sold with only 500

miles on it, but to permit those remedies if a car is sold with 15,000 miles on it, solely because the high-mileage car functioned as a demonstrator or dealer-owned vehicle while the low-mileage care was previously owned by a consumer. That's nonsensical.

Under FCA's theory, the Act's enhanced remedies apply to vehicles with extensive use and mileage if still owned by the first consumer-purchaser (see *Jiagbogu v. Mercedes-Benz USA* (2004) 118 Cal.App.4th 1235, 1238-1239 [three-year-old vehicle with 40,000 miles at time of buy-back request]; *Martinez v. Kia Motors America, Inc.* (2011) 193 Cal.App.4th 187, 190-191 [three-and-a-half-year-old vehicle with 40,000 miles]) but wouldn't apply to a vehicle that a consumer sold after one year, with low mileage and most of the manufacturer's new car warranty remaining. Again, that's nonsensical.

FCA's argument that the Legislature could've excluded pre-owned cars because manufacturing defects "typically manifest early in a vehicle's life" (ABM/64) runs into a similar obstacle. Indeed, FCA's argument flouts common sense that defects "typically manifest" *as the vehicle ages*. Plus, if that had been the Legislature's thinking, then "new motor vehicle" would've been defined in terms of *mileage*. Instead, the Legislature expressly extended protections to *categories* that aren't inherently tied to mileage—as noted above, demonstrators can easily have more miles on them, or have been driven harder, than cars pre-owned by consumers.

FCA says demonstrators and dealer-owned vehicles are typically sold after a few months of use. (ABM/39-41.) But FCA's

own cited source notes that demonstrators "are kept on the lot *much longer than other vehicles*," and can be kept as a demonstrator for 1-1.5 years. (Billings, Floor Planning, Retail Financing & Leasing in the Automobile Industry (2004) § 1:52.) Dealer-owned vehicles are no different.

Regardless, whatever the time period, the point remains: Demonstrators and dealer-owned vehicles will be driven by many people, for many miles, before being sold to a consumer. When sold, they're no more "new" than a car previously owned by a consumer. In both situations, what renders the vehicle "new" is that it's still under the express warranty that sections 1793.22 and 1793.2, subdivision (d) are designed to enforce.

II. The Other Statutes FCA Cites Do Not Exclude Used Cars From Section 1793.22(e)(2).

A. The Act's remedies specific to used goods are irrelevant to the statutory interpretation question here.

FCA argues that because other provisions in the Act reference "used" products, section 1793.22(e)(2)'s failure to use that term means that it must not cover used cars. (ABM/42-47.) Wrong. Unlike the provisions FCA cites, section 1793.22(e) doesn't include all "used" products—it includes a *subset* of products, namely, vehicles *still covered* by the manufacturer's new-car warranty. The Legislature accomplished that by defining "new motor vehicle" to include some vehicles that would otherwise be thought of as "used." Indeed, "demonstrators" fall

into that category. (Veh. Code, § 665.) So, too, do used cars *if still under the new-car warranty*. For purposes of section 1793.22(e)(2), the fact that the manufacturer's new-car warranty remains in effect makes them "new." That definition makes sense, given that the definition applies to provisions governing enforcement of the express warranty.

FCA also misreads section 1795.5, which addresses "the obligation of a distributor or retail seller of used consumer goods in a sale in which an express warranty is given." Contrary to FCA's claim (ABM/43-44), section 1795.5 doesn't excuse the manufacturer from maintaining repair facilities or from the cost of repairing, replacing, or repurchasing defective used products. By its plain terms, section 1795.5 requires used-good sellers to maintain sufficient service and repair facilities to carry out *their own* express warranties accompanying a sale. It doesn't purport to excuse manufacturers from honoring their original warranties that, while running, provide consumers with no reason to secure a warranty from the retail seller or distributor. (OBM/47-51 [discussing illogical gap-in-coverage caused by FCA's reading]; § 1790.4 [Act's protections are "cumulative"].)

Kiluk, supra, 43 Cal.App.5th 334 isn't to the contrary. The issue there was Mercedes-Benz's obligations for a defect that emerged *after the new car warranty expired*, during a tacked-on certified-preowned warranty period. (*Id.* at pp. 337-340.) *Kiluk* held that Mercedes-Benz was liable under the Act regardless of whether the vehicle was a "new motor vehicle" or a "used good," because Mercedes-Benz was *both* the manufacturer *and* the

retailer for the re-sale. (*Id.* at p. 340.) *Kiluk*'s shorthand summary of section 1795.5 ("the manufacturer is generally off the hook," *id.* at p. 339) wasn't a statement that selling a vehicle that's still under the original warranty instantly terminates the manufacturer's Song-Beverly obligations.

B. Petitioner's Reading Of Section 1793.22 Is Consistent With The Act's Other Provisions.

FCA says the Act's other provisions "confirm" that Act-protections meant to induce manufacturers to comply with their warranties evaporate—even while the warranty is still running—as soon as the vehicle changes ownership. (ABM/44-47.)

FCA's arguments fail.

Non-conformity disclosure requirement. FCA says manufacturers only have to repurchase vehicles from the "original" purchaser because section 1793.22, subdivision (f)(1) requires manufacturers selling a repurchased lemon to disclose "the nature of the nonconformity experienced by the original buyer or lessee" to subsequent purchasers. (ABM/44.) But in context, "original buyer or lessee" is reasonably read as meaning the buyer or lessee who turned the vehicle in, as distinguished from a "prospective buyer, lessee, or transferee" or "new buyer, lessee, or transferee," who is also referenced in the same section.

Use offset formula. FCA says that the "use offset" formula for a repurchase—which is based on the miles traveled by a vehicle—only makes sense if the buyer was the original owner. (ABM/44.) But to the extent there's any disconnect, that

disconnect applies equally to demonstrator and dealer-owned vehicles—and thus provides no basis for restricting the "or other vehicle" category to those that have never been sold before.[7]

Express emissions warranties. FCA says Health & Safety Code section 43204 requires manufacturers to provide emissions warranties to the "ultimate purchaser and each subsequent purchaser," but that section 1739.22(e)(2) has no similar language. (ABM/46.) Section 43204 is inapposite. It requires manufacturers to provide certain *ongoing* warranties for vehicles manufactured before 1990. Section 1793.22(e)(2) doesn't purport to dictate how long a warranty lasts or to require manufacturers to make a warranty directly to subsequent purchasers or make warranties transferrable. It simply requires manufacturers to honor their obligations as long as their warranty is in force—hence its focus on demonstrators, dealer-owned vehicles, and other *vehicles* sold with a balance of a new car warranty (and not on "consumers").

Motor Vehicle Warranty Adjustment Program. FCA says this program defines "consumers" to include "any person to whom the motor vehicle is transferred during the duration of an express warranty," indicating that the Legislature knew how to include subsequent buyers when that was its intent. FCA compares apples to oranges. Again, section 1793.22(e)(2) doesn't define coverage in terms of "consumers." It defines coverage in

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[7] Further, in the 30 years since *Jensen* was decided, courts have had no problem calculating mileage offsets based on the miles the consumer drove the car.

terms of *vehicles*—and the definition's plain text encompasses all vehicles sold with a balance remaining on the new-car warranty. The Legislature, thus, had no need to explicitly state that transferred warranties are included. Had the Legislature intended to *exclude* transferred warranties, it could've said so, either at the outset—or at least after *Jensen*. Yet it didn't and instead "has *expressly* interpreted the Act the same way as *Jensen*." (OBM/63-65.)

C. Petitioners' statutory interpretation is easily harmonized with the Act's implied warranty and remedy provisions.

FCA says interpreting 1793.22(e)(2) to include used vehicles still under a new-car warranty conflicts with the Act's provisions regarding (1) *implied* warranties, and (2) enhanced remedies for breach of the refund-or-replace obligation. (ABM/47-49.) The conflict is illusory.

Implied warranties. The Act imposes an implied warranty of merchantability on sales of "consumer goods" sold at retail. (§ 1792.) Such warranties last no more than one year "following the sale of new consumer goods to a retail buyer." (§ 1791.1.) Starting with the premise that "new motor vehicle[s]" are "consumer goods," FCA argues that if pre-owned cars are "new motor vehicles," then manufacturers would be liable for serial implied warranties, which would conflict with the one-year maximum. (ABM/47-49.)

But FCA's premise is flawed. As this Court noted, "the Act treats motor vehicles differently from other types of consumer goods in several ways." (*Cummins, supra,* 36 Cal.4th at p. 491, cited at ABM/48.) Section 1793.22's "new motor vehicle" definition applies only to that section and section 1793.2, subd. (d). By so doing, section 1793.22 allows a "used" car buyer with a still-active new-car warranty to be treated like a "new motor vehicle" for the purpose of enforcing that warranty under section 1793.2. Section 1793.22 *does not* apply to the Act's *implied warranty provisions*, such as section 1792. (OBM/69-70.)[8]

Section 1794 remedies. FCA says plaintiffs argued that "their used truck (or a demonstrator or a dealer-owned vehicle) *is* a "new motor vehicle" and yet *is not* a "consumer good" and that plaintiffs' position would thus preclude them from recovering section 1794's remedies, which FCA claims are reserved for buyers of "consumer goods." (RB 49.) Wrong again.

Plaintiffs never argued that the implied-warranty provisions are inapplicable because "new motor vehicles" as defined by section 1793.22, do not constitute consumer goods. (Compare ABM/48 with OBM/69-73.) Plaintiffs argued that section 1793.22 makes "used" cars sold with a balance of the new-car warranty a "new motor vehicle"—and therefore a "consumer

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[8] Plus, *Kiluk* resolves any supposed serial-implied- warranty problem. (43 Cal.App.5th at p. 340, fn. 4 [explaining that a holding that if the manufacturer's warranties apply after the vehicle's transfer, "then the manufacturer's duties under the Song-Beverly Act continue posttransfer" solves any such problem].)

good"—*only when the plaintiff brings a claim under section 1793.2*. (See OBM/35 [Section 1793.22 sets forth "provisions *specifically for motor vehicles*, as opposed to *other* consumer products," italics added].)

Thus, section 1793.22 allows consumers of "used" vehicles sold with a balance on the new-car warranty to bring an express-warranty claim under section 1793.2(d) and to recover all remedies afforded on such a claim. This necessarily includes the remedies set forth under section 1794, which plainly contemplates that plaintiffs who have section 1793.2 claims will recover under its provisions. Section 1794(b) is explicit: "The measure of a buyer's damages in an action under this section shall include the rights of replacement and reimbursement as set forth in subdivision (d) of Section 1793.2," among other remedies. (See § 1793.2, subds. (d)(2)(A), (B) [incorporating section 1794's remedies].)

That the new motor vehicle definition might encompass vehicles not ordinarily considered a "consumer good" under the Section 1791, subd. (a) makes no difference. After all, section 1793.22 defines "new motor vehicle" to include at least some vehicles that wouldn't be considered "consumer goods" otherwise, including vehicles less than 10,000 pounds that are "bought or used primarily for business purposes." (§ 1793.22, subd. (e)(2).) And, when the consumers of those products sue under section 1793.2, they plainly have access to the remedies available on such a claim, including those set forth by section 1794. (See *Joyce v. Ford Motor Co.* (2011) 198 Cal.App.4th 1478, 1478-1478.)

III. The Legislative History Favors Petitioners' Interpretation, Not FCA's.

The Act's legislative history reflects a consistent effort to expand the "new motor vehicle" definition and to protect all buyers in retail sales. (OBM/59-63.) FCA attempts to paint a different picture. (ABM/50-59.) But FCA cites nothing establishing that the Legislature meant to exclude vehicles with still-active new-car warranties.

Pre-1982 history. Legislative history *predating* the 1982 introduction of protections relating to "new motor vehicle warranties" (ABM/50-51) is inapposite: The Legislature introduced special measures to help consumers enforce new-car express warranties beginning in 1982 because the existing regime had proved inadequate. But the language FCA quotes is relevant for a different reason: It highlights that when the Legislature intended to limit protections to warranties *newly issued in the relevant sale*, it knew how to do so. (See 1MJN/181, 263; 2MJN/425 [requirements for "those who *issue new* express warranties," "in any sale in which a written warranty *is given by the seller*," italics added].)

The Legislature didn't use that language in section 1793.22; instead, it referenced cars "sold with a manufacturer's new car warranty." That distinction should be given meaning.

1982 history. Even if the Legislature *initially* considered the then-undefined term "new motor vehicle" to incorporate the Vehicle Code's "new vehicle" definition (ABM/52), that isn't what

ultimately happened: The Legislature supplied a standalone definition of "new motor vehicle" for the Act—and the current "new motor vehicle" definition is unquestionably broader than the Vehicle Code's, which treats demonstrators as "used." (§ I.A, *ante*.)

Nor do FCA's citations indicate that the Legislature "rejected" definitions that would include subsequent buyers. (ABM/52.) FCA shows only that a single consultant to an Assembly committee requested and received a copy of Connecticut's 1981 law, and that there were summaries of Magnuson-Moss in a legislative file. (5MJN/1051; 9MJN/492-511; 13MJN/1261, 1239-1330.) That someone with some unspecified role in the legislative process had information about other regimes doesn't mean the Legislature looked at this specific aspect of those other regimes, much less that the Legislature decided to exclude consumers who purchase a used vehicle still under a new-car warranty.

Statements that the 1982 law applied to "new (not used) motor vehicles" are inapposite. (ABM/52-53.) FCA *assumes* that "new" in this context means first-retail-sale. But "new" could also mean "still covered by a manufacturer's new car warranty." Indeed, that's how the Department of Consumer Affairs understands the Act. (§ IV.E, *post*.)

1987 history. The Legislature added the language at issue (including "or other motor vehicle sold with a manufacturer's new car warranty") in 1987. Citing statements describing this as a "clean-up change" to address the problem of manufacturers

denying remedies because vehicles were demonstrators or dealer-owned cars, FCA argues that if the amendment had been intended to expand liability to used vehicles, there would've been explicit statements to that effect. (ABM/54-57.) But again, it's at least equally possible that the Legislature all along intended "new motor vehicle" to include all cars sold while under a new-car warranty (whether a demonstrator, a dealer-owned car, or another car sold with a remainder on the new-car warranty), and that the clean-up was to clarify that point.

2007 history. In 2007, the Legislature expanded the Act's "new motor vehicle" protections to vehicles purchased by certain members of the military. (§ 1795.8.) Contemporaneous Senate reports described the then-existing Act as providing protections for "new *and used* vehicles covered by a manufacturer's express warranty," and described *Jensen* as holding that a used vehicle sold with "a balance of the manufacturer's original warranty is a 'new motor vehicle' for purposes of California's Lemon Law." (6MJN/1366, 1369, 1370, 1376, 1379-1380, italics added, cited at OBM/63-65.) These statements reinforce that *Jensen*'s interpretation is correct. (OBM/63-65.)

FCA responds that general statements in a committee report don't show legislative intent, and that the Legislature's failure to modify section 1793.22's language to reject *Jensen*'s interpretation is "not authoritative." (ABM/58-59.) Authoritative or not, the statement and the failure to override *Jensen* strongly suggest legislative agreement with *Jensen*'s interpretation.

The two decisions FCA cites regarding legislative inaction being unilluminating (ABM/59) don't show otherwise. In those decisions, there was no subsequent amendment *related to* the provision at issue, nor any legislative-history reference to the prior judicial interpretation of the provision. (See *Grosset v. Wenaas* (2008) 42 Cal.4th 1100, 1117 [argument was based solely on "lack of a response" to a fact-specific opinion]; *Olson v. Automobile Club of Southern California* (2008) 42 Cal.4th 1142, 1156 [legislature amended portion of statute "unrelated to" the statutory definition at issue; no mention of legislative history referring to decision interpreting that definition].)

Here, by contrast, the 2007 amendment extended "new motor vehicle" remedies to out-of-state service members—and the Senate report makes clear that *Jensen*'s interpretation of "new motor vehicle" was on the Legislature's radar screen. If the Legislature thought *Jensen*'s definition was wrong, it would've been expected to clean up the statutory definition. Its failure to do so is telling.

IV. Public Policy Favors Petitioners' Interpretation.

We showed that the Act's purpose, and broader public policy considerations further compel adopting *Jensen*'s interpretation—i.e., holding that "new motor vehicle" includes a vehicle sold with a remaining balance on the manufacturer's new-car warranty. (OBM/44-58.) FCA's responses are unavailing.

A. *Jensen*'s interpretation furthers the Act's purpose of forcing manufacturers to live up to their express warranties; the Opinion's interpretation does not.

FCA brushes aside any examination of whether the Opinion's interpretation is consistent with the Act's remedial purpose, by asserting that if that were the standard, "every express limitation in the Act" should be disregarded. (ABM/60.)

But the Opening Brief didn't advocate ignoring express limitations; it argued that the statutory purpose is relevant to interpreting *ambiguous* provisions. (OBM/44.) Petitioners believe that the "new motor vehicle" definition unambiguously includes cars sold with a remainder on the manufacturer's new car warranty. But if any ambiguity exists, then the Act's purpose is a well-recognized aid to interpretation. (*Ibid.*)

Contrary to FCA's portrayal, petitioners' argument isn't just that the Act has a "general" remedial purpose. (ABM/60.) It's more specific: The Act was enacted to make manufacturers live up to their express warranties. (OBM/46; *Cummins, supra,* 36 Cal.4th at p. 484.) *Jensen*'s interpretation furthers that purpose by making the Act's remedies available for the life of the express warranty. The Opinion's interpretation does the opposite: It lets manufacturers breach their warranties as soon as a car is sold—even if that sale comes after just a few months, with multiple years and tens of thousands of miles still on the warranty, without any meaningful recourse by the consumer. But the Act was passed to provide consumers with better

remedies precisely because common law/UCC remedies had *failed* to induce compliance. (OBM/47-48.) FCA wants to go back to the 1970s. The Court should avoid an interpretation with that effect.

B. Recent appellate decisions demonstrate that manufacturers routinely attempt to avoid their buyback and labeling obligations—and belie FCA's effort to brush off the importance of those obligations.

We showed that by eliminating enhanced remedies for used cars with still-active new-car warranties, the Opinion (1) incentivizes manufacturers to delay honoring their refund-or-replace obligations for cars that are not pre-owned, in the hope that the owners will give up and sell the cars to third parties, thereby terminating the manufacturers' buy-back and labeling obligations; and (2) excuses manufacturers from buying back *and labeling* vehicles whose lemon status becomes apparent only after they are re-sold, leaving more unsafe lemons on the roads. (OBM/51-54.)

On the first point, FCA argues that manufacturers won't delay honoring their buy-back obligations as to "actually" new vehicles because they have an interest in customer satisfaction and avoiding litigation. (ABM/62.) That ignores reality. The Legislature would've had no reason to pass (and strengthen) the Act if manufacturers could be trusted to comply with their warranties. (*Cummins, supra,* 36 Cal.4th at p. 484.) Nor would FCA have reason to try to disqualify subsequent purchasers from

Act-remedies that are available *only if* the manufacturer has failed to comply with its own warranties in the first place.

The truth is that FCA refuses to comply with its warranties *even when it knows* it's committing an Act violation that will subject it to the Act's sanctions—including in cases that concern cars that qualify as new motor vehicles even under FCA's narrow reading of that term. As a recent appellate opinion concluded, FCA has a pattern of delay and "open defiance of the Song-Beverly Act" despite its professed interest in customer satisfaction. (*Figueroa v. FCA US, LLC* (2022) 85 Cal.App.5th 708, review granted and briefing deferred, S277547.) FCA "considers promptly repurchasing, repairing, labeling as a lemon and selling the vehicle at a deep discount with a one-year warranty, *a losing proposition*. It would *much rather force the owner of a defective vehicle to sell it on the open market, or trade it in without a label or warning*." (*Id.* at p. 714, italics added.)

And it's not just FCA—manufacturers routinely fail to honor their refund-or-replace obligations under the Act, requiring consumers to resort to litigation. (See, e.g., *Bowser v. Ford Motor Co.* (2022) 78 Cal.App.5th 587, 597-598 [Ford conceded liability under Act for failing to buy back defective truck]; *Anderson v. Ford Motor Co.* (2022) 74 Cal.App.5th 946, 967 [jury found Ford willfully breached warranty by failing to replace truck or pay restitution].) These cases belie FCA's argument that customer satisfaction and desire to avoid litigation costs are enough to get manufacturers to comply with their obligations under the Act.

On the second point, FCA says allowing cars to escape the Act's labeling requirements is fine because used-car dealers must provide information about prior repairs and either fix egregious issues or disclose that the sale is "as-is." (ABM/65.) That brush-off clashes with FCA's positions in other cases: FCA recently argued elsewhere that when an owner sells its car to a third party after the manufacturer breaches its buyback obligation, the profit from that sale should offset (i.e., reduce) the restitution that the manufacturer owes. (*Niedermeier v. FCA US LLC* (2020) 56 Cal.App.5th 1052, review granted, S266034; *Figueroa, supra*, 85 Cal.App.5th 708; *Williams v. FCA US LLC* (2023) 304 Cal.Rptr.3d 474, review granted, S279051.) In those cases, FCA extols the importance of owners returning their cars to the manufacturers *so that future buyers will be protected by the Act's repair and labeling requirements for lemons*. (*Figueroa,* 85 Cal.App.5th at pp. 713-714; *Williams, supra*, 304 Cal.Rptr.3d 474; 88 Cal.App.5th at pp. 783-784.) FCA's emphasis in those cases on the importance of the Act's repair-and-labeling requirements undercuts FCA's position *here* that there's no problem with an interpretation of the Act that would allow lemons to escape repair-and-labeling requirements.

C. History refutes FCA's assertion that Petitioners' position would lead manufacturers to make warranties non-"transferrable."

FCA says interpreting "new motor vehicle" to include cars sold with a remainder on the manufacturer's new-car warranty would encourage manufacturers to make warranties non-

transferrable. (ABM/62.) In other words, after claiming that it can be trusted to comply, FCA threatens to make its warranties non-transferrable rather than simply honoring its promise to maintain the utility and performance of its vehicles.

FCA's threat to make warranties non-transferrable rings hollow, regardless. It's been nearly 30 years since *Jensen* held that "new motor vehicle" includes used cars sold with a balance remaining on the new car warranty. (35 Cal.App.4th at p. 126.) Used-car owners have relied on *Jensen* to seek relief from manufacturers in the intervening years—with success. (OBM/74 [collecting depublication letter citations].) Yet, there's no evidence that manufacturers have responded by making warranties non-transferrable.

Manufacturers make express warranties transferable because doing so makes the vehicles more valuable and allows them to be sold at higher prices. The Song-Beverly Act's enhanced remedies only kick in when a vehicle suffers an *incurable* defect during the warranty period. If manufacturers truly believe in the quality of their vehicles, then they should have no problem abiding by the Act during the *entire* warranty period, no matter who owns the car. If a manufacturer chooses to shorten its warranty or make it non-transferrable merely because of enhanced remedies for *incurably* defective vehicles, it'll suffer the resulting price drop and competitive decrease. That would have the effect of furthering, not undermining, public policy.

D. Non-Act remedies are an inadequate substitute for the Act's enhanced remedies.

The Act provides enhanced remedies where manufacturers fail to honor express warranties because common-law and Commercial Code remedies had proved insufficient to protect consumers. (*Cummins, supra*, 36 Cal.4th at p. 484.)

FCA responds that the Commercial Code allows a buyer to revoke acceptance of a defective car and recover the car's purchase price, and that the federal Magnuson-Moss Warranty Act provides fee awards for breach of warranty claims under the Commercial Code. (ABM/67.) But those remedies pale in comparison to the Act's enhanced remedies.

The Commercial Code requires revocation "within a reasonable time" and "before any substantial change in condition of the goods"—limitations that don't exist in the Act, and that would be unlikely to protect a car owner if the defect doesn't manifest immediately. (See *Krotin v. Porsche Cars North America, Inc.* (1995) 38 Cal.App.4th 294, 301-302 [There's "no 'reasonable time' requirement by which the consumer must invoke the Act or lose rights granted by the statutory scheme"].)

Compounding the problem, the Commercial Code puts the onus on the car owner to realize there's a non-correctable defect, whereas the Act imposes an "affirmative duty" on manufacturers to offer replacement or restitution if they are unable to repair a defect in a reasonable number of attempts. (*Krotin, supra,* 38 Cal.App.4th at p. 302.)

Moreover, Magnuson-Moss provides only that the court "may" award attorney's fees, whereas the Act provides that the buyer "*shall* recover damages and reasonable attorney's fees and costs," plus a civil penalty of up to two times those damages. (15 U.S.C.A. § 2310; § 1794, subd. (e)(1), italics added.)

Simply put: By design, the Act's remedies are exponentially more robust than the Commercial Code and Magnuson-Moss's—as evidenced by how hard FCA is fighting to limit the universe of cars covered by the Act.

FCA notes there are arbitration programs for owners of used cars still under a new-car warranty. (ABM/67.) But the programs FCA's cites are those certified by the Department of Consumer Affairs. (*Ibid.*) The reason those programs cover used cars still under a new-car warranty is because *the Department interprets sections 1793.2(d) and 1793.22 as applying to such cars*. (See § IV.E, *post*.)[9] If this Court changed that understanding, then either those programs will cease or, at a minimum, they'll become less effective because the Act's enhanced remedies, including attorney's fees, would disappear.

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[9] See Department of Consumer Affairs, https://www.dca.ca.gov/acp/about.shtml ("The Department of Consumer Affairs' Arbitration Certification Program (ACP) certifies and monitors third-party arbitration programs of participating automobile manufacturers to ensure compliance with California laws and regulations governing resolution of warranty disputes involving **new/used vehicles purchased with the manufacturer's new-car warranty**," emphasis in original).

Removing used cars from the Act's protections would gut consumer protections and, correspondingly, manufacturers' incentives to honor their new-car warranties. It would directly undermine the Act's purpose.

E. FCA's position would upend consumer expectations—it's contrary to how things have worked for three decades, as well as guidance from the Department of Consumer Affairs and Attorney General's Office.

To the extent there's any ambiguity, "new motor vehicle" should be interpreted to include pre-owned cars with a balance on the new car warranty (as in *Jensen*), to avoid sending shockwaves through the market and upsetting the settled expectations of thousands of consumers who have already purchased such cars. (OBM/73-75.)

FCA doesn't refute the fulsome showing in the numerous depublication letters that countless owners of pre-owned cars have successfully settled or litigated claims under the Act in the years since *Jensen* was decided. Instead, FCA says that cases have explained that manufacturers don't owe used-car owners a refund-or-replace remedy. (ABM/14.) But that assertion is in the Introduction to FCA's brief, without any elaboration of exactly what cases FCA has in mind. (*Ibid.*) And the only cited decision that reaches the result that FCA advocates is the Opinion under review. The other Song-Beverly decisions that FCA cites for various components of its argument did not consider the issue

here and do not hold that the Act's enhanced remedies are off-limits for pre-owned vehicles still under warranty.[10]

Nor does FCA refute the Opening Brief (and *Jensen*'s) point that the Department of Consumer Affairs views the Act as governing used cars sold with a remainder on the warranty. (OBM/58.) It's undisputed that a Department of Consumer Affairs regulation relating to certified arbitration programs defines "consumers" to include "any individual to whom the vehicle is *transferred during the duration* of a written warranty." (Cal. Code Regs. tit. 16, § 3396.1, subd. (g), italics added.) FCA

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[10] See *Gavaldon v. DaimlerChrysler Corp.* (2004) 32 Cal.4th 1246, 1261-1262 (ABM/47) [*service contracts* do not trigger refund-or-replace remedy because they are not express warranties for purposes of the Act]; *Johnson v. Nissan North America, Inc.* (N.D.Cal. 2017) 272 F.Supp.3d 1168, 1178-1179 (ABM/49) [no discussion of refund-or-replace remedy based on express warranty; used-car purchaser couldn't assert *implied warranty* claim against manufacturer, in light of section 1795.5 (which doesn't import section 1793.22's "new motor vehicle" definition)]; *Dagher v. Ford Motor Co.* (2015) 238 CalApp.4th 905, 911-912, 920-921, 924 (ABM/49, fn. 8) [based on plaintiff's framing of case, analyzing whether Song-Beverly remedies were available under section 1791 (not under section 1793.22(e)(2)'s "new motor vehicle" definition); original owner's right to pursue Song-Beverly remedies was "assignable through a chose in action"]; *Pulliam v. HNL Automotive Inc.* (2022) 13 Cal.5th 127, 132-133 (ABM/64-65) [no mention of 1793.22 or "new motor vehicle" definition; issue was whether the Federal Trade Commission's "Holder Rule" barred plaintiff from recovering attorney's fees from dealership]; *Kiluk, supra*, 43 Cal.App.5th at pp. 337, 340 (ABM/65) [finding no need to decide whether *Jensen* was correct, because regardless whether manufacturer was liable based on a "new motor vehicle" theory, it was *also* liable under section 1795.5's used good provisions].)

says the definition references used-car purchasers because certified arbitration programs address consumer warranty claims under the Act *and* the Commercial Code, not just the Act. (ABM/68.) But the provisions FCA cites just require arbitrators to take the Commercial Code *into account*; they don't say that the arbitration programs are for claims by used car owners under the Commercial Code. (*Ibid.*)

Other definitions that FCA ignores make clear that the arbitration programs are those contemplated by the *Act*, for claims regarding breach of the refund-or-replace obligation for "new motor vehicles." (E.g., Cal. Code Regs. tit. 16, § 3396.1, subd. (c) ["'[a]rbitration program' means a 'dispute resolution process' as that term is used in Civil Code Sections 1793.22(c)-(d) and 1794(e), and Business and Professions Code Section 472, establish to resolve disputes involving written warranties on *new motor vehicles*," italics added], subd. (f) ["'[c]ertification' means a determination... that an arbitration program is in substantial compliance with Civil Code section 1793.22(d), Chapter 9 of Division 1 of the Business and Professions Code, and this subchapter"]; Bus. & Prof. Code, § 472.1, 472.4 [Division 1, Chapter 9; directing Department to adopt program for certifying dispute resolution processes pursuant to section 1793.22, and to adopt implementing regulations].)

The Department's website eliminates any doubt on this point: It describes the arbitration certification program as about "new vehicle warranties." (Department of Consumer Affairs, *Arbitration Certification Program*, https://www.dca.ca.gov/acp/.)

And the Department's website describes the "Lemon Law" as covering "a new *or used* vehicle that comes with the manufacturer's original warranty." (Department of Consumer Affairs, *Frequently Asked Questions (FAQs)*, https://www.dca.ca.gov/acp/faqs.shtml [italic added]; see also Department of Consumer Affairs, *Publications*, https://www.dca.ca.gov/acp/publications.shtml ["California's Lemon Law Q&A" pamphlet: Lemon Law covers "new *and used* vehicles that come with the manufacturer's new vehicle warranty," italics added].)

Plus, it's not just the Department that understands the Act's enhanced remedies to apply to *all* cars sold while under a new-car warranty. The California Attorney General's website expresses the same view:

> "The California Lemon Law (Civ. Code, § 1793.2 et seq.) protects you when your vehicle is defective and cannot be repaired after a 'reasonable' number of attempts. The Lemon Law applies to most new vehicles purchased or leased in California that are still under a manufacturer's new-vehicle warranty.... *The Lemon Law also applies to used vehicles when they are still under a manufacturer's new car warranty*. Any remaining time left on the warranty protects the car's new owner."

(Rob Bonta, *Buying and Maintaining a Car*, https://oag.ca.gov/consumers/general/cars [italics added].)

Thus: California consumers understand the Act as covering cars sold with a remainder on the new-car warranty, based on the Department and the Attorney General's messaging, and on actual practice. The Opinion's interpretation of section 1793.22(e)(2) would be a sea-change, harming thousands of

consumers who've already paid premiums for used vehicles in reliance on that understanding. If the Court has any doubts about the meaning of "new motor vehicle," it should err on the side of preserving the status quo under *Jensen*.

F. The non-California statutes FCA cites shed no light on the meaning of this *California* statute.

FCA's final pitch is to keep California "'on pace'" with other states' lemon laws. (ABM/69-71.) Every aspect of this argument fails.

First, FCA asserts that in other states, a vehicle isn't "new" simply because it's still under warranty when sold. (ABM/69-70.) For this proposition, FCA cites cases from just four states: New York, Wisconsin, Nevada, and Pennsylvania. (*Ibid.*) FCA makes no effort to show that those states' lemon laws contain the language at issue in this case (and indeed, the cited cases make clear that they don't). Without such a showing, how the car here would be treated in other states is irrelevant.

Second, FCA argues that consumers in most other states must report a defect within 1-2 years of purchase to be eligible for a refund-or-replace remedy. (ABM/70.) Song-Beverly has no such cutoff, belying FCA's premise that other states' lemon laws signal a ceiling on what protection California provides. Indeed, the Act is often more consumer-protective than other states' lemon laws. (See, e.g., *Martinez, supra,* 193 Cal.App.4th at p. 196 [rejecting manufacturer's reliance on case law from seven other states to argue it had no refund liability because the vehicle had

been repossessed because, unlike those states, "[s]tautorily, California has no such requirement"].)

The same treatise that FCA cites for the 1-2 year rule also observes that "[m]ost state lemon laws" cover "*subsequent owners still subject to the warranty*. Thus the *transfer of the vehicle* during the warranty period *does not eliminate the law's protection*." (Cuaresma, Consumer Protection and the Law (2022) § 15.8, italics added.) So, FCA's proposed rule would have California lagging *behind* other states, by cutting off car owners' rights once a car is transferred.

FCA further ignores that its interpretation would deprive consumers of a remedy *even within the 1-2 year window* existing in the states that FCA touts, if the car is transferred during that time. Not only does no authority indicate the Legislature intended California to be less protective than other states, the lack of a 1-2 year cutoff for the refund-or-replace remedy demonstrates the opposite is true. Even FCA cannot dispute that the refund-or-replace obligation applies for the entire life of the warranty if a car is *not* transferred. It's no great leap to conclude that the Act maintains that remedy for the same duration regardless of whether the car is transferred.

FCA says that when other states provide remedies for defective used cars, they put responsibility on dealers, not manufacturers. (ABM/70-71.) Again, FCA hasn't shown that any of those states' lemon laws have language similar to section 1793.22's, or that the used-car specific remedies *displace* enhanced remedies otherwise available against the

manufacturer. (Indeed, the only state statute FCA cites—New York's—specifies that the enhanced remedies do not "limit the rights or remedies which are otherwise available to a consumer under any other law," see N.Y. Gen. Bus. Law § 198-b (d)(2).) What enhanced remedies other states may offer specifically for used cars has no bearing on what the Legislature meant when it defined "new motor vehicles" for purposes of California's refund-or-replace remedy.

CONCLUSION

Section 1793.22(e)(2)'s "new motor vehicle" definition unambiguously includes used cars that are still covered by the manufacturer's new-car warranty. To the extent there's any ambiguity, public policy and other interpretive aids all compel that interpretation. The Opinion should be reversed, with directions for the trial court to vacate its order granting FCA's motion for summary judgment, and to instead deny the motion on the ground that plaintiffs are entitled to invoke the Act's "new motor vehicle" protections.

May 11, 2023May 12, 2023

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CERTIFICATION

Pursuant to California Rules of Court, rule 8.504 (d)(1), (d)(3), I certify that **PETITIONERS' REPLY BRIEF ON THE MERITS** contains 8,356 words, not including the tables of contents and authorities, the caption page, signature blocks, or this Certification page.

Date: May 12, 2023

/s/ Cynthia E. Tobisman
Cynthia E. Tobisman

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; my e-mails address is chsu@gmsr.com.

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Executed on May 12, 2023, at Los Angeles, California.

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

Maureen Allen

Maureen Allen

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California Court of Appeal
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Via U.S. Mail

Hon. Jackson Lucky
Attn: Appeals Department
RIVERSIDE SUPERIOR COURT
4050 Main Street
Riverside, California 92501
Case No. RIC1807727

STATE OF CALIFORNIA
Supreme Court of California

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STATE OF CALIFORNIA
Supreme Court of California

Case Name: **RODRIGUEZ v. FCA US**
Case Number: **S274625**
Lower Court Case Number: **E073766**

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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.

5/12/2023

Date

/s/Maureen Allen

Signature

Bui, Joseph (293256)

Last Name, First Name (PNum)

Greines, Martin, Stein & Richland LLP

Law Firm