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

REPLY IN SUPPORT OF PETITION FOR REVIEW

KNIGHT LAW GROUP LLP
Steve Mikhov, SBN 224676
stevem@knightlaw.com
*Amy Morse, SBN 290502
amym@knightlaw.com
10250 Constellation Blvd, Suite 2500
Los Angeles, California 90067
(310) 552-2250 / Fax (323) 552-7973

HACKLER DAGHIGHIAN MARTINO & NOVAK, P.C.
*Sepehr Daghighian, SBN 239349
sd@hdmnlaw.com
Erik K. Schmitt, SBN 314285
eks@hdmnlaw.com
433 North Camden Drive, 4th Floor
Beverly Hills, California 90210
(310) 887-1333 / Fax (310) 887-1334

GREINES, MARTIN, STEIN & RICHLAND LLP
*Cynthia E. Tobisman, SBN 197983
ctobisman@gmsr.com
Joseph V. Bui, SBN 293256
jbui@gmsr.com
5900 Wilshire Boulevard, 12th Floor
Los Angeles, California 90036
(310) 859-7811 / Fax (310) 276-5261

Attorneys for Petitioner LISA NIEDERMEIER

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

INTRODUCTION

FCA does not suggest the issues petitioner presents are anything less than huge issues of statewide importance. Instead, FCA portrays the Opinion as a no-brainer—that of course, a plaintiff's statutory restitution recovery must be reduced by the amount she receives from a third-party if she trades in her vehicle during the pendency of her lemon-law lawsuit.

But the issue is far from a no-brainer. Until the Opinion, caselaw uniformly held that any danger of a windfall for a consumer was outweighed by the Legislature's public-policy decision to permit no reductions of a consumer's recovery for anything that happens *after* a vehicle qualifies as a lemon—that is, *after* a manufacturer's statutory duties arise to buyback or replace a car. All prior caselaw reasons that allowing an offset based on matters arising after a car qualified as a lemon would encourage manufacturers to shirk their duty to proactively and promptly provide remedies—a manufacturer could just wait and hope for offsets against damages, rather than providing the prompt remedies the Song-Beverly Act (Act) guarantees.

The Opinion abandons this framework. In holding that a post-violation offset exists, the Opinion parts with prior caselaw. Whether a post-violation offset is permissible is an issue of widespread importance, meriting this Court's attention.

The same is true of the question of *when* a trade-in offset must be deducted from a consumer's recovery—i.e., before or after calculating the civil penalty cap. The Opinion is already causing confusion on the subject, because manufacturers are taking the position that the Opinion requires reducing a defendant's liability for civil penalties even though the Opinion purports not to reach that issue (Opn-28, fn. 8).

Specifically, because the Opinion states that a trade-in credit is not part of "restitution" damages and because "restitution" damages are a component of the "actual damages" amount upon which civil penalties can be calculated (*id.* at 2-3), manufacturers insist there must be a reduction to a defendant's liability for civil penalties. But this interpretation gives manufacturers a windfall by reducing civil penalties based—perversely—solely on a third-party trade-in transaction that occurred because the manufacturer willfully shirked its statutory duties. To avoid this inequity, the only reasonable answer is that even if a trade-in offset is permitted, it should be taken only after all damages, including civil penalties, are calculated.

The real-world consequences of the confusion created by the Opinion is that settlement of cases and overall evaluation of cases where there have already been trade-ins has been made impossible, since the Opinion creates a completely new framework for calculating statutory damages. The issue is

properly before the Court, and even FCA cannot bring itself to suggest that it is not of widespread importance.

The Court should reach the issue, too.

ARGUMENT

I. The Court Should Grant Review Of Whether The Song-Beverly Act Allows An Offset Against Statutory Restitution For A Vehicle's Trade-In.

A. The Opinion rewards manufacturers for failing to provide prompt remedies to consumers.

By permitting offsets to statutory restitution only for pre-presentation matters (i.e., a vehicle's mileage *prior* to the first presentation for a nonconformity) as opposed to any post-violation matters, the Act ensures that manufacturers promptly and proactively provide remedies to consumers. (Pet.-15-16.) The Opinion turns this incentive structure on its head: Even where a manufacturer willfully shirks its obligations, the Opinion rewards the manufacturer by letting it reduce its damages by the amount the consumer traded in her vehicle.

The Court of Appeal acknowledges the Opinion might undermine the Act's intent to incentivize manufacturers to promptly buy back inoperative cars and label them lemons. (Opn-24.) But the Opinion holds the offset is necessary to avoid

"incentivizing *buyers* to introduce lemon vehicles into the used-car market without the labeling and notifications required of manufacturers who reacquire vehicles." (*Ibid.*, italics added.) Under the Act, the *manufacturer* is supposed to promptly and proactively buy back the vehicle—and brand it as a lemon. (§ 1793.23.)[1] Thus, the *manufacturer* must label vehicles and notify consumers, and be disincentivized from letting un-labeled lemon vehicles remain on roads and placed into the used-car market. (See *Kirzhner v. Mercedes-Benz USA, LLC* (2020) 9 Cal.5th 966, 984.) The Court should weigh in before the Opinion's re-ordering of the Act's burdens and incentives becomes the law of the State.

The Opinion's assumption that a trade-in offset will encourage branding is wrong. The *manufacturer* has the sole power to brand. Permitting manufacturers to offset trade-ins simply means a manufacturer can look forward to not only a reduction of damages if it does *not* buy back the vehicle and does *not* brand it, but also a reduction to the civil penalties available for its willful violations (*infra* Section II).

The Opinion ignores that the Act is supposed to protect consumers from driving defective vehicles. Instead of putting the onus on manufacturers to provide prompt buyback remedies to consumers and label the vehicle as a lemon, the Opinion puts the

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

burden on consumers *to keep driving defective vehicles* until the end of litigation.[2]

FCA argues there's no need for a restitution award to incentivize manufacturers to promptly provide remedies, since the Act's civil-penalty and attorney's-fees provisions "already require manufacturers to pay far more than the purchase price of a defective vehicle." (Ans-23.) But, as discussed below, if the trade-in is taken as a reduction to the "actual damages" base for calculating civil penalties, then the trade-in offset massively *reduces* the available civil penalties—thus *reducing* the deterrent effect of the availability of civil penalties that FCA. (§ 1794.)

The Opinion thwarts the attorney's fee incentive, too. A low-ball offer served early in the case, particularly one served pursuant to Code of Civil Procedure section 998, that was initially rejected becomes mathematically impossible to beat for no reason except that the consumer had to sell her unsafe, defective car to a third-party, because the manufacturer refused to buy it back; meaning all attorney fees, costs and expenses incurred from the date of that offer are unrecoverable. (Code Civ. Proc. § 998.)

---

[2] Petitioner filed suit in 2016, and then had to wait almost two years for a verdict. (1AA/6, 68.) Thus, under the Opinion's rule, petitioner would have been forced to drive an unsafe vehicle for *an additional two years*, unbranded.

Regardless, whether and to what extent the Act is designed to incentivize prompt remedies and to disincentivize manufacturer delay is a decision for the *Legislature*—and it is one that the Legislature has resolved in favor of a restitution remedy with strictly-limited offsets. (Pet-10-13.) Because the Opinion reorders the legislatively-determined incentives, this Court should make sure the Opinion got that re-ordering right.

B. The plain language of the Act does not support the Opinion.

FCA argues the language of the Act supports the Opinion. (Ans-16-17.) But other than noting that the Act uses the word "restitution" and arguing that "restitution" in the common law means restoration of the status quo ante, FCA marshals no support for its argument. (*Ibid.*)

Nothing in the Act supports the Opinion's reading of an implied offset into the statutory definition of restitution. Restitution under the Act is not the same as common-law restitution. The Act was designed "to give broader protections to consumers than the common law or UCC provide," not to mirror them, and certainly not to constrain them. (*Jiagbogu v. Mercedes-Benz USA* (2004) 118 Cal.App.4th 1235, 1241.) Restitution under the Act is *statutory*—it is "as set forth in subdivision (d) of Section 1793.2." (§ 1794, subd. (b).) Restitution is the price "paid or payable" on the car. It is subject only to the

offsets described in the statutory scheme. (§§ 1793.2, subd. (d), 1794, subd. (b).) Thus, all cases prior to the Opinion hold there are no equitable offsets or unenumerated offsets allowed. (Pet-31-41.)[3] Because the Opinion parts company with that prior caselaw, the Court should grant review to clarify the situation.

C. The trade-in offset does not create an "unjustified windfall."

Nor is it true that disallowing a trade-in offset will give the buyer an "*unjustified* windfall." (Ans-16.) If there is a danger of a consumer windfall, caselaw prior to the Opinion has rejected that concern. In rejecting a manufacturer's claimed offset for the miles the plaintiff drove after making his buyback request, *Jiagbogu* rejected the manufacturer's concerns about giving consumers a windfall. (118 Cal.App.4th at pp. 1242-1244.) *Jiagbogu* reasoned that allowing an offset for mileage incurred after a consumer requested a buyback would reward the

---

[3] Commercial Code sections 2711-2715 (Ans-9-20, fn. 1) add nothing to the mix. Section 1794 gives buyers "the rights of replacement or reimbursement as set forth in subdivision (d) of Section 1793.2, and" certain UCC remedies. As the conjunctive "and" and the comma before it indicate, a buyer's damages include restitution only as "set forth in subdivision (d) of Section 1793.2"; the UCC then applies only with respect to whether a buyer is also entitled to any *additional* damages she may seek—such as consequential damages. (*Krotin v. Porsche Cars North America, Inc.* (1995) 38 Cal.App.4th 294, 302.)

manufacturer for refusing to comply with "an affirmative statutory duty to replace or refund promptly." (*Id.* at p. 1244.) Thus, the Act's omission of an offset for mileage after a buyback request "is in keeping with the Act's overall purpose," which is "to protect consumers." (*Ibid.*)

The same policy applies here. Permitting an offset that arises solely because a manufacturer's wrongful refusal to provide remedies forced a consumer to purchase a new car "would create a disincentive to prompt replacement or restitution by forcing the buyer to bear all or part of the cost of the manufacturer's delay." (*Ibid.*) A manufacturer could refuse to replace a vehicle and then—when the consumer had no other recourse to get out of an unsafe vehicle—finally traded in her lemon, the manufacturer could claim an offset.

As in *Jiagbogu*, any concerns about a windfall to consumers are outweighed by the perverse incentives that arise if the manufacturer can take an offset—*after it has already violated the law*—based on the consumer's efforts to make the best of the bad situation *the manufacturer* put him in.

FCA argues that where a consumer has sold the vehicle to a third party and therefore cannot return it, the restitution award must be reduced by the trade-in credit—or else the consumer would be in a better position than the status quo. (Ans-18.) But restitution under the Act is unconcerned with

restoring to the precise status quo ante; it is concerned with forcing manufacturers to provide prompt remedies without the consumer having to sue. (Pet-27-31.) Indeed, the Act does not even require the consumer to return a vehicle to obtain relief (*Martinez v. Kia Motors America, Inc.* (2011) 193 Cal.App.4th 187, 196), and the calculation of restitution does not require or reference any return of the vehicle, which is later sold by the manufacturer. (§ 1793.2, subd. (d)(2).)

By elevating concerns about restoring the status quo (a concept that has been repeatedly rejected) above the Legislature's concerns about incentivizing manufacturers to proactively and promptly provide remedies, the Opinion muddies California law and undermines the Act's manifest purposes. Before the Opinion has that impact, this Court should weigh in.

D. The Opinion creates a split in the published authorities.

FCA argues that prior caselaw supports the Opinion's reading of the Act as permitting a trade-in offset. (Ans-19, citing *Mitchell v. Blue Bird Body Co.* (2000) 80 Cal.App.4th 32.) FCA says *Mitchell*'s conclusion that buyers may recover finance charges as part of restitution supports a conclusion that manufacturers can subtract trade-ins. (*Ibid.*) But *Mitchell* inferred language into the Act to *broaden* the consumer's recovery, not to limit it. (Pet-39-40.) *Mitchell's* consumer-

friendly rationale intended to preserve and compensate a consumer's damages incurred at the time of purchase provides no support for the Opinion's importing of an unenumerated offset into the Act that results in an *elimination* of a portion of a consumer's damages.

Nor does any other caselaw support the Opinion. (See Pet-31-41.) FCA argues there is no split in authorities because there is no case addressing trade-in offsets. (Ans-25.) FCA is correct that this case presents an issue of first impression as to *this particular type of offset*. But FCA is wrong that there is no caselaw addressing the permissibility of unenumerated offsets against statutory restitution. There is a raft of caselaw holding that there can be no offsets against a consumer's restitution recovery except those expressly enumerated in the Act. (Pet-31-41.) That caselaw makes it clear that post-violation offsets are disallowed because they create an incentive for manufacturers to refuse to provide the prompt remedies the Act requires. (*Ibid*.)

FCA's attempt (Ans-25-26) to narrow the holdings of those prior caselaw fails. As FCA notes, "*Jiagbogu* held that a manufacturer was not entitled to an 'equitable offset' for the buyer's use of a defective car after he requested that the manufacturer buy it back." (Ans-26, citing *Jiagbogu, supra*, 118 Cal.App.4th at pp. 1242, 1244.) This holding is at odds with the

Opinion, which *permits* an offset for the buyer's sale of a vehicle that the manufacturer willfully failed to repurchase.

FCA argues that *Jiagbogu* is distinguishable because the Opinion does not address offsets; rather, it is based on how "restitution" is calculated under the Act. (Ans-26-27.) But as noted (Pet-25), an exception to how a statute ordinarily operates *is* an offset. (*Title Ins. Co. v. State Bd. of Equalization* (1992) 4 Cal.4th 715, 731-733.)

FCA argues that *Jiagbogu*'s holding "merely disallowed one particular type of offset." (Ans-27.) True, but FCA disregards *Jiagbogu's* broad reasoning: There can be no offsets premised on a manufacturer's failure to comply with their statutory duties: "An offset for the buyer's use of a car when a manufacturer, already obliged to replace or refund, refuses to do so, would create a disincentive to prompt replacement or restitution by forcing the buyer to bear all or part of the cost of the manufacturer's delay. Exclusion of such offsets furthers the Act's purpose." (118 Cal.App.4th at p. 1244.) This rationale should apply here, too, but the Opinion charts a contrary course.

The same is true of *Martinez*, which sounds a similar theme: To ensure the Act provides consumers with prompt remedies, it must be construed to avoid encouraging manufacturers to delay or refuse to provide those remedies. (Pet-32-33, citing 193 Cal.App.4th at pp. 194-195.) FCA insists the

Opinion's holding does not encourage delay (Ans-26), but as shown, it does—it rewards manufacturers for dragging their feet. By creating an offset for a trade-in, the Opinion induces the manufacturer to do nothing, rather than provide the prompt remedies that every other published case has held is far more important than any risk of a consumer windfall.

Lukather v. Gen. Motors, LLC (2010) 181 Cal.App.4th 1041 and *Robbins v. Hyundai Motor America* (C.D. Cal., Aug. 7, 2014, No. 8:14-cv-5-JLS) 2014 WL 4723505, too, stand in contrast with the Opinion. (Pet-36-38.) Both *rejected* post-notice offsets to a consumer's restitution award. FCA argues that neither "involved the measure of restitution damages in the wake of a trade-in." (Ans-28.) That's beside the point. Both decisions addressed whether a manufacturer could claim an offset based on matters that arose *after* a vehicle qualified as a lemon, and both held that the answer to that question was *no*. (Pet-36-38.)

Prior to the Opinion, caselaw precluded equitable offsets under the Act to a consumer's restitution remedy. The Court should grant review to resolve the confusion the Opinion creates.

II. The Court Should Grant Review Of *When* A Trade-In Offset Must Be Taken—Before Or After Calculation Of The Civil Penalty For Willful Violation Of The Act.

In addition to addressing *whether* a trade-in offset exists, the Court should grant review to address the important question of *when* that offset should be taken—that is, before or after the calculation of the civil-penalty cap. (Pet-41-46.) The issue is of widespread importance, affecting all lemon-law plaintiffs facing willful violations by manufacturers. (*Ibid*.) FCA does not argue otherwise. Instead, it argues that the issue is not properly before this Court or that the Opinion got the "when" issue right. (Ans-30-33.) FCA's arguments lack merit.

A. Petitioner properly raised the question of when a trade-in deduction should be taken.

FCA argues that the "when" issue is not properly before the Court because petitioner did not raise it below. (Ans-30-31.) But the issue *was* raised. Petitioner's position was that "there is no basis for reducing the civil penalty." (RB 77; see also *ibid*.) Petitioner argued that the sole reason that civil penalties should be reduced would be if the jury awarded more than the two-times "*actual* damages" permitted by statute. (RB 80.) "[A]ctual

damages" is not the same as "restitution;" rather, the latter is a component of the former.

At oral argument, petitioner expressly addressed *when* a trade-in deduction should be taken if one existed: if a trade-in credit exists at all, it would have to be taken *after* the calculation of civil penalties. (Oral Arg. Transcript, 57:54-58:14, quoted at Pet-21-22.)

The "stand-in for return of the vehicle" refers to the usual situation—when a case is settled or goes to judgment, then damages are paid and the vehicle is returned (which the manufacturer actually receives money from to offset the damages it pays in the case once it sells it). Neither a settlement nor a verdict considers the money that a manufacturer receives from the subsequent sale of that "lemon." Thus, instead of recouping that money from the sale of the lemon, a manufacturer gets by way of a deduction from the total settlement or judgment the dollar amount a consumer received from her trade-in as a "stand-in" for the vehicle (which is, of course, far more than the price of a lemon-branded vehicle). Thus, petitioner's position was that trade-ins *should have no effect* on the civil penalty. Rather, any deduction should be subtracted from the *total judgment*.

The issue was properly raised and, in any event, is a purely legal question that this Court can and should reach.

B. To the extent the Opinion suggests a trade-in offset must be taken prior to calculating the civil-penalty cap, it is wrongly decided and creates injustice.

FCA argues that if the Opinion decided the "when" issue, it got it right—that "actual damages" base for calculating civil penalties does not include a trade-in amount. (Ans-32-33.) FCA is wrong.

Under section 1794 a buyer that establishes that a manufacturer's failure to provide a buyback or replacement was "willful" is entitled to a civil penalty that does not exceed two times "the amount of actual damages." (§ 1794, subd. (c).)

The "actual damages" base for calculating civil penalties must be based on the *full purchase price* and must be set *at the time the manufacturer's obligations to the consumer begin* (and, therefore, at the time the manufacturer's violations begin). (See *Krotin, supra,* 38 Cal.App.4th at pp. 302-303 [buyer only needs to present the vehicle for repair to trigger manufacturer's duties].) A trade-in credit arising from a *third-party* transaction that occurs long afterwards should have no effect on the amount of civil penalty that could be awarded as punishment for the *manufacturer's* wrongful conduct. (See *Kwan v. Mercedes-Benz of North America, Inc.* (1994) 23 Cal.App.4th 174, 184 ["civil penalties [are] imposed as punishment or deterrence of the

defendant, rather than to compensate the plaintiff. In this, it is akin to punitive damages"].)

In analogous situations, courts hold that payment to a plaintiff from a third party has no impact on the calculation of penalties owed by a defendant. For example, *Newby v. Vroman* (1992) 11 Cal.App.4th 283, 288-289, addressed whether prejudgment interest should be calculated on the amount of the judgment (i.e., after deducting settlement amounts paid by joint tortfeasors). The court answered no. It analogized the situation to "where a plaintiff in an antitrust suit sues multiple defendants for treble damages, settles with one, and then prevails at trial against the remaining defendants. In such cases, the court must decide whether the amount paid in settlement should be credited before or after damages are trebled. Without exception, the courts have held that settlement payments should be deducted after trebling so that the plaintiffs can receive full satisfaction of their claim." (*Id.* at p. 289, citing cases.)

This reasoning should apply here. The *full* purchase price must be the "actual damages" base for calculating civil penalties, not some reduced amount that accounts for a third-party transaction that necessarily occurred long after the manufacturer's willful failure to buy back or replace the vehicle. The civil penalty punishes dilatory conduct in *the past*—namely, the manufacturer's willful failure to provide prompt remedies.

The civil penalty cap must therefore be based *in the past*—i.e., at the time the manufacturer's obligations arose and at the time of the manufacturer's willful violation of the law. Indeed, the manufacturer's willful failure to discharge its statutory obligations is no less willful because a consumer traded in her vehicle during the pendency of a lawsuit. Thus, the manufacturer's punishment should not be reduced based on that trade-in transaction.

This is consistent with the purpose of the civil penalty, which is to punish a manufacturer's willful violation of its statutory buyback/replacement obligation. (See *Kwan, supra,* 23 Cal.App.4th at p. 184) As the Opinion reasons, the plaintiff is made whole because she gets the full purchase price "through a *combination* of the trade-in and restitution." (Opn-21, italics added.) That full amount must therefore be the base for calculating the civil penalty cap. [4]

[4] Insofar as a consumer receives money from a third party for a trade-in, that money is "paid" towards the vehicle instead of into her pocket because that money goes to pay off the loan on the vehicle—e.g. the amount that was "payable", to extinguish any liens or encumbrances before the vehicle is transferred to the purchasing dealer. The amount received from trade-in is still part of the "paid or payable" that constitutes actual damages under the Act. If petitioner had sold her personal property, such as jewelry, and received money to pay off the loan instead of the

To the extent that the Opinion focuses on restoring the parties to the status quo, that closest possible status quo is achieved only if the manufacturer receives a *one-time* credit, which would be in lieu of or a substitute for the returned vehicle. (Pet-45-46.) Like FCA argues: a "stand-in" for the vehicle. Deducting the trade-in from the pre-fixed "actual damages" amount that the Act contemplates (i.e., price paid or payable minus permitted offsets) before the calculation of civil penalties does far more than eliminate any windfall to the consumer from the trade-in transaction. It creates a windfall for manufacturers and *undermines* any concerns about ensuring that a vehicle's title is branded to notify the public.

Deducting the trade-in credit prior to calculating civil penalties creates an incentive for manufacturers to refuse to provide remedies. When a consumer, like petitioner did here, calls FCA before the lawsuit to request a buyback, FCA would have an incentive to wait for the consumer to sell the vehicle, since that third-party sale would reduce FCA's exposure to civil penalties. Any reduction to the punishment *necessarily* reduces the incentive to comply. Thus, to the extent FCA argues that

---

car itself, that money would be considered the amount she "paid." It would not create a multiplied credit for the manufacturer.

trade-in offset does not reduce its incentive to comply because of civil penalties, that incentive is reduced, too.[5]

It would be unfair for the manufacturer to receive a significant discount on the penalty for its willful misconduct for no reason other than that the consumer found it intolerable to continue to drive a dangerous, defective vehicle that the manufacturer refused to repurchase and therefore sold to a third-party dealer in a trade-in transaction. The manufacturer cannot look forward to a windfall based on what *a third party* pays the consumer. Yet, the Opinion's interpretation of the Act does exactly that—and it rewards manufacturers for their most egregious violations of the Act because consumers are most likely to dispose of the worst, most defective cars.

When the trade-in deduction must be taken is of enormous importance because it affects the calculation of the civil penalty for willful violations of the Act. (Pet-41-46.) Invoking the Opinion, manufacturers are *already* taking the position that any reduction in a restitution award because of a trade-in, has the

---

[5] Where a consumer purchases a vehicle for $30,000, and then suffers problems, and as a result of the manufacturer's refusal to offer a buyback, trades it in for $20,000, her damages are reduced to $10,000. Even trebling that amount would only yield the same $30,000 which the manufacturer should have proactively paid years prior. The result: No incentive at all for the manufacturer to comply with its statutory duties.

effect of reducing the civil penalty cap. The Court should grant review to decide whether this is a correct application of the Act.

CONCLUSION

The Court should grant review.

January 8, 2021

KNIGHT LAW GROUP LLP
Steve Mikhov
Amy Morse

HACKLER DAGHIGHIAN MARTINO & NOVAK, P.C.
Sepehr Daghighian
Erik K. Schmitt

GREINES, MARTIN, STEIN & RICHLAND, LLP
Cynthia E. Tobisman
Joseph V. Bui

By s/ Cynthia Tobisman

Attorneys for Petitioner
LISA NIEDERMEIER

CERTIFICATION

Pursuant to California Rules of Court, rule 8.504(d)(1), (d)(3), I certify that this **REPLY IN SUPPORT OF PETITION FOR REVIEW** contains **4,177** words, not including the tables of contents and authorities, the caption page, signature blocks, or this Certification page.

Date: January 8, 2021 s/ 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 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036.

On January 8, 2021, I served the foregoing document described as: **REPLY IN SUPPORT OF PETITION FOR REVIEW** on the parties in this action by serving:

SEE ATTACHED SERVICE LIST

I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system. Participants in the case who are registered TrueFiling users will be served by the TrueFiling system. Participants in the case who are not registered TrueFiling users will be served by mail or by other means permitted by the court rules.

By Envelope: by placing a true copy thereof enclosed in sealed envelopes addressed as above and delivering such envelopes:

By Mail: I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

Executed on January 8, 2021, 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.

s/ Chris Hsu

SERVICE LIST

Via TrueFiling:

CLARK HILL LLP
David L. Brandon, Esq.
dbrandon@clarkhill.com
1055 West Seventh Street
Los Angeles, CA 90017

GIBSON, DUNN & CRUTCHER LLP
Thomas H. Dupree Jr. (pro hac vice)
tdupree@gibsondunn.com
Matt Gregory (pro hac vice)
mgregory@gibsondunn.com
Shaun Mathur, Esq.
1050 Connecticut Avenue NW
Washington, DC 20036

Attorneys for Defendant and Appellant FCA US LLC

WIRTZ LAW APC
Richard M. Wirtz
rwirtz@wirtzlaw.com
4370 La Jolla Village Drive, Suite 800
San Diego, CA 92112-2019

Attorneys for Depublication Requestor WIRTZ LAW APC and CONSUMERS FOR AUTO RELIABILITY AND SAFETY

Office of the Clerk
CALIFORNIA COURT OF APPEAL
[Electronic Service under Rule 8.212(c)(2)]

Via U.S. Mail:

Clerk of the Superior Court
Department 32, Honorable Daniel S. Murphy
111 North Hill Street
Los Angeles, CA 90012
Case Number: BC638010

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**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **ctobisman@gmsr.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
REPLY TO ANSWER TO PETITION FOR REVIEW	Reply in Support of Petition for Review

Service Recipients:

Person Served	Email Address	Type	Date / Time
Joseph Bui Greines, Martin, Stein & Richland LLP 293256	jbui@gmsr.com	e-Serve	1/8/2021 6:50:01 PM
Sepehr Daghighian Hackler Daghighian Martino & Novak P.C. 239349	sd@hdmnlaw.com	e-Serve	1/8/2021 6:50:01 PM
Cynthia Tobisman Greines, Martin, Stein & Richland, LLP 197983	ctobisman@gmsr.com	e-Serve	1/8/2021 6:50:01 PM
David Brandon Clark Hill 105505	dbrandon@clarkhill.com	e-Serve	1/8/2021 6:50:01 PM
Matt Gregory Gibson Dunn & Crutcher LLP	gregory@gibsondunn.com	e-Serve	1/8/2021 6:50:01 PM
Thomas Dupree Gibson Dunn & Crutcher LLP	tdupree@gibsondunn.com	e-Serve	1/8/2021 6:50:01 PM
Amy-Lyn Morse Knight Law Group, LLP 290502	amym@knightlaw.com	e-Serve	1/8/2021 6:50:01 PM
Rebecca Nieto Greines Martin Stein & Richland LLP	rnieto@gmsr.com	e-Serve	1/8/2021 6:50:01 PM
Shaun Mathur Gibson Dunn & Crutcher 311029	smathur@gibsondunn.com	e-Serve	1/8/2021 6:50:01 PM
Richard Wirtz Wirtz Law APC 137812	rwirtz@wirtzlaw.com	e-Serve	1/8/2021 6:50:01 PM
Chris Hsu Greines Martin Stein & Richland LLP	chsu@gmsr.com	e-Serve	1/8/2021 6:50:01 PM

Matt Gregory 1033813	mgregory@gibsondunn.com	e-Serve	1/8/2021 6:50:01 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

1/8/2021

Date

/s/Chris Hsu

Signature

Tobisman, Cynthia (197983)

Last Name, First Name (PNum)

Greines Martin Stein & Richland LLP

Law Firm