Case No. S274625

IN THE SUPREME COURT OF CALIFORNIA

EVERARDO RODRIGUEZ and JUDITH V. ARELLANO,

Plaintiffs and Appellants,

v.

FCA US, LLC

Defendant and Respondent.

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANT AND RESPONDENT; AMICUS CURIAE BRIEF OF THE ALLIANCE FOR AUTOMOTIVE INNOVATION

After a Decision of the Court of Appeal,
Fourth Appellate District, Division Two, Case No. E073766

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June 12, 2023

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

The Court of Appeal in this case correctly adhered to the Song-Beverly Act's distinction between sales of new and used cars. Plaintiffs bought used cars and should have pursued the remedies California law provides for used car buyers. However, they are seeking to extend the Song Beverly Act's repurchase remedy—which was clearly intended to be limited to only new car purchasers—to those who bought used cars.

The Alliance for Automotive Innovation is concerned that Plaintiffs' position, if adopted, would violate the text and intent of the Song Beverly Act, disturb the settled expectations of its automobile-manufacturer members, and unfairly foist a repurchase remedy on these members without a fair ability to defend themselves. The Alliance further maintains that numerous remedies are currently available, such that affirming the Court of Appeal's well-reasoned opinion in this case will not leave a "gap" in the law. The Alliance is also concerned that adopting Plaintiffs' position would further inundate the over-burdened trial courts of this state with numerous highly speculative lemon law cases against manufacturers. The Alliance, therefore, requests leave to file the accompanying brief in support of Defendant and Respondent's position in this matter.

The Alliance is the leading advocacy group for the auto industry, representing dozens of automobile manufacturers and value chain partners who together produce nearly 98 percent of all light-duty vehicles sold in the United States. The Alliance's efforts on behalf of its members aim to improve motor vehicle safety through the development of global standards and market-based solutions to meet challenges associated with manufacturing new automobiles. To that end, the Alliance takes a special interest in common-law rulings and product-liability laws that may adversely affect auto makers' ability to invest in and implement innovations in automobile manufacturing. The Alliance also takes an interest to ensure that commercial and consumer protection laws are applied in a fair and predictable manner.

No party or party's counsel authored the accompanying brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of this brief.[1] Other than the amicus curiae, their members, or their counsel, no person or entity made a monetary contribution intended to fund the preparation or submission of this brief.

[1] Defendant and Respondent FCA US, LLC, is a member of the Alliance, but neither FCA nor its counsel authored any part of the accompanying brief or made a monetary contribution to fund the preparation or submission of that brief.

June 12, 2022

Respectfully submitted,

SHOOK, HARDY & BACON L.L.P.

/s/ Patrick J. Gregory
Patrick J. Gregory

Counsel for Amicus Curiae Alliance for Automotive Innovation

BRIEF OF AMICUS CURIAE IN SUPPORT OF DEFENDANT AND RESPONDENT

INTRODUCTION

This Court should affirm the opinion of the Court of Appeal, *Rodriguez v. FCA US, LLC* (2022) 77 Cal.App.5th 209. The Court of Appeal, in a straight-forward manner, applied the text and intent of the Song Beverly Act, including its clear distinction between new and used vehicles. It correctly held that a two-year old truck the customers bought from a used car retailer was not a "new motor vehicle" under Civil Code § 1793.22. That result should not be controversial. Plaintiffs may try to portray this holding as a "sea change" in law, but the Court of Appeal's opinion here is consistent with both the plain language of the Song Beverly Act and the numerous opinions issued both before and after it.

The Alliance submits three main points in support of the positions of Defendant and Respondent.

First, Plaintiffs' suggestion that there has been a three-decade "status quo" in the law is demonstrably wrong. To the extent there has been any relevant sea change, it is that used car purchaser plaintiffs have been suing the original manufacturers in far greater numbers for the past eight years after this Court rendered its opinion in *Sanchez v. Valencia Holding Co. LLC* (2015) 61 Cal.4th 899, 921-924. In *Sanchez*, this Court held that used car purchasers could be compelled to arbitrate claims against used car retailers. That, in turn, prompted a heightened effort by

"lemon law" plaintiffs' counsel to sue the vehicles' manufacturers under a theory that used cars were "new motor vehicles" entitled to all the remedies of a new car purchaser.

Since 2015, there has been a consistent, still growing, line of cases—including the opinion below—finding that used car purchases are ***not*** entitled to the Song-Beverly Act's repurchase remedy for new car purchases. Even after the parties' briefing to this Court was completed, federal courts in California in three additional cases found the opinion below "persuasive" and rejected plaintiffs' argument that *Jensen v. BMW of North America, Inc.* (1995) 35 Cal.App.4th 112 required a different result. The Act is clear—a used car sold with an existing, unexpired warranty is not "new motor vehicle." *Jensen* ***never*** spawned a contrary rule.

Second, Plaintiffs' suggestion that the Court of Appeal's opinion creates a gap in remedies for used car purchasers is meritless. There simply is no gap. The Court of Appeal properly applied the statutory definition of "new motor vehicle" and found the enhanced repurchase remedy was not, and never has been, available to used car purchasers. As demonstrated below, it is Plaintiffs who are asking the courts to adopt a drastic new rule under the Song Beverly Act, but amending a statute is the province of the Legislature, not the courts. Moreover, Plaintiffs' argument for a new rule overlooks all of the remedies available to used car purchasers against those who sold them their used cars, including

under the Song Beverly Act, Uniform Commercial Code, Consumer and Legal Remedies Act, and Magnuson-Moss Warranty Act.

Third, requiring manufacturers to repurchase used cars that could not be repaired would further exploitation of the Song-Beverly Act in ways the Legislature clearly did not intend. The result would unfairly subject automobile manufacturers to difficult-to-defend litigation where plaintiffs will ask juries to find "manufacturing defects" in vehicles that may have been misused or abused by prior owners. It also would create confusion, as the Court of Appeal noted, as to the "reasonable number" of repair attempts made when different owners sought different repairs, and a new purchaser may have taken possession of the car when only a few miles remained on the manufacturer's warranty. (*Rodriguez*, *supra*, 77 Cal.App.4th at p. 221.)

In addition, manufacturers could be subject to multiple requests for repurchase from multiple different persons who may have owned the vehicle during its express warranty period. Such a situation would unfairly multiply remedies in ways not envisioned by the Legislature and result in inconsistent rulings from different courts as to the adequacy of the repair attempts conducted by a variety of repair shops authorized at different times by the manufacturer and the used car retailer to conduct repairs.

For these reason, as detailed below, the Alliance respectfully requests the Court to affirm the ruling below.

ARGUMENT

I. Courts continue to consistently reject Plaintiffs' post-*Sanchez* argument and find the Court of Appeals' opinion in this case persuasive.

Plaintiffs' principal argument here is that *Jensen* established a "status quo" that used cars can be treated as new motor vehicles under the Song Beverly Act that purportedly has been in effect for "three decades." (OBOM at 73-74.) And, if the Opinion below is affirmed, it "would rock the used-car market." [*Id.*] This contention is not remotely true.

As the Court of Appeal correctly recognized, the "*Jensen* court ***was not asked*** to decide whether a used car with an unexpired warranty sold by a third-party reseller qualifies as a 'new motor vehicle.'" (*Rodriguez*, 77 Cal.App.5th at p. 224 (emphasis supplied).) As the Court below noted, "*Jensen* involved a lease by a *manufacturer-affiliated dealer* who issued a full new car warranty along with the lease. The issue was whether the leased car qualified as a 'new motor vehicle' under the Act." (*Ibid.* (emphasis by the Court of Appeal).) Under the Act, a car can qualify as a "new motor vehicle," *inter alia*, only if it is sold to the owner with a full new car warranty. Used cars sold with existing, unexpired warranties on the secondary market are used cars.

Although Plaintiffs here tout "three decades" of "status quo" following *Jensen* in 1995 that all used cars with new or existing

new car warranties are new motor vehicles under the Song Beverly Act, they do not cite a single case from the past 28 years to support this theory. In fact, the case law uniformly came to the exact opposite conclusion: used cars sold with existing, unexpired warranties do not qualify as "new motor vehicles" under the Act.

A. From 1995 to 2015, the rule espoused by Plaintiff simply did not exist, as confirmed in *Dagher*.

It is particularly telling that Plaintiffs do not cite any cases between 1995 and 2015 in which a court, purportedly following *Jensen*, found that a used car with an unexpired warranty sold by a third-party qualified as a new motor vehicle. That Plaintiffs failed to do so is hardly surprising for two reasons: (1) *Jensen* did not issue such a ruling; and (2) if there were problems with used cars, the owners sued the used car retailers where they bought their cars,[2] not the vehicles' manufacturers. Two notable things happened in 2015 relevant to this litigation.

First, in *Dagher v. Ford Motor Company* (2015) 238 Cal.App.4th 905, the Court of Appeal ***did*** address the issue of whether a used car with an unexpired warranty from the original purchase qualified as a "new motor vehicle." The plaintiff had

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[2] (See, e.g., *Gonzales v. CarMax Auto Superstores, LLC* (C.D. Cal. Nov. 5, 2013 No. SACV 13–01391–CJC(RNBx)) 2013 WL 12207506 [used car purchaser sued under Consumer Legal Remedies Act, Song-Beverly, the Unfair Competition Law, and asserted common-law tort claims); *Munoz v. Express Auto Sales* (2004) 224 Cal.App.4th 1 Supp. [used car purchasers sued dealer under Automobile Sales Finance Act and CLRA])

"bought a used 2006 Ford vehicle in a private sale, then determined its engine needed subsequent repairs." (*Id.* at p. 910.) Using the unexpired warranty provided to the original purchaser, plaintiff obtained repairs from a Ford dealer. (*Ibid.*)

When those repairs were, in the plaintiff's view, unsuccessful, he sued Ford, the vehicle's manufacturer, claiming that "he is entitled to the statutory remedies in the [Song-Beverly] Act, ***the same as the original purchasers could have sought***, including restitution, damages, and civil penalties." (*Ibid.* (emphasis added).) The trial court rejected that contention. On appeal, the plaintiff relied heavily on *Jensen* for the proposition that his car qualified as a "new motor vehicle" and that he, as a "subsequent purchaser," had the same rights under the Act as a new car buyer. (*Id.* at pp. 913, 922-925.)

The Court of Appeal in *Dagher* rejected the plaintiff's argument, holding that Song-Beverly treats new motor vehicles differently than used cars. (*Id.* at p. 921.) In doing so, the court observed that *Jensen* involved a "subsequent purchaser" who leased a demonstrator car from a dealer and was provided the manufacturer's warranty *with* that lease. (*Id.* at p. 923.) Accordingly, the "statements in *Jensen* about the Act's coverage for subsequent purchasers of vehicles with a balance remaining on the express warranty, must be read in light of the facts then before the

court, and are limited in that respect." (*Ibid.*) The court concluded that the vehicle did not qualify as a new motor vehicle. (*Ibid.*)

Conspicuously absent from *Dagher* is any suggestion that *Jensen* had an established a contrary "status quo"—either in case law or in practice. Twenty years separated *Jensen* from *Dagher*, and there is no indication in *Dagher* that it was changing the law or upending a two-decade practice whereby used car purchasers had the same statutory remedies as new vehicle purchasers. In fact, the attorneys who represented the *Dagher* plaintiff chose to sue Ford, rather than the used car seller because the plaintiff in *Dagher* did not buy the vehicle from a used car retailer; the plaintiff bought the vehicle from a private seller. The Act, though, does not cover private sales (Civil Code § 1791(f).) Lacking an option to sue a retailer or dealer in court, plaintiff's attorneys tried to foist the Act upon the manufacturer in a used car case. But doing so only gave the Court of Appeal the occasion to emphasize the Act's clear distinction between new and used cars.

The second notable 2015 event was the Court's ruling in *Sanchez* that CLRA, UCL, Song-Beverly and other claims brought by lemon law attorneys as a class action against retailers ***arising from used car sales*** were subject to arbitration. (*Sanchez*, 61 Cal.4th at 921-924.) After *Sanchez*, in an effort to circumvent the Court's ruling and avoid arbitration, plaintiffs' attorneys have often made the strategic choice to sue new car manufacturers in

used car cases. They have done so repeatedly, both when the used car was sold by private sellers and used car retailers. Under *Sanchez*, these plaintiffs should be proceeding to arbitration against the used car retailers who sold them their cars, not invoking new motor vehicle provisions of the Song Beverly Act against the vehicles' manufactures as a means of staying in court.

B. Following *Sanchez* and the targeting of manufacturers by lemon law plaintiffs, courts have uniformly followed *Dagher*.

The post-*Sanchez* effort to target new car manufacturers has resulted in more case law bolstering the holding in *Dagher*. The Court of Appeal's opinion below cites *Dagher* and a *consistent line of post-2015 cases* finding that used car purchasers do not purchase "new motor vehicles" and, thus, are not entitled to the Song Beverly Act's repurchase remedy available to purchasers of new cars. (*Rodriguez*, 77 Cal.App.5th at pp. 218, 223-224, citing *Ruiz Nunez v. FCA US LLC* (2021) 61 Cal.App.5th 385, 398; *Kiluk v. Mercedes Benz USA, LLC* (2019) 43 Cal.App.5th 334, 339-40; *Dagher v. Ford Motor Co.* (2015) 238 Cal.App.4th 905, 923; *Johnson v. Nissan North America, Inc.* (N.D. Cal. 2017) 272 F.Supp.3d 1168, 1179.)

In *Johnson*, plaintiff asserted a Song-Beverly implied warranty claim against Nissan and argued that her used car purchase through CarMax qualified as a "new motor vehicle"

because the original Nissan warranty had not expired. (272 F.Supp.3d at 1179.). The federal district court rejected that argument, citing the *Dagher* holding that the Act treats new and used cars differently. (*Ibid.*) The court further reasoned that by its express terms Civil Code § 1795.5—the only section of the Act that applies to used goods—does not apply to the manufacturer. (*Ibid.*)

The court in *Johnson* also rejected as "inapposite" the two federal district court cases cited by plaintiffs, as neither reached the issue of whether the Act's statutory remedies may be asserted against a manufacturer where the car was purchased used from a third-party seller. (*Ibid.*) Again, if the "status quo" was what Plaintiffs now portray it to be here, the *Johnson* plaintiff presumably would have had on-point authorities to cite.

In *Kiluk* in 2019, the Court of Appeal considered the Song-Beverly liability of Mercedes-Benz for selling a certified pre-owned car directly to the public. (43 Cal. App. 5th at pp. 337, 340.) The Court of Appeal found that Mercedes-Benz was liable in that situation under the used car provisions of Section 1795.5, rather than provisions applicable to a "new motor vehicle." (*Id.* at pp. 339-40.) The Court questioned *Jensen's* applicability beyond its facts and flagged problems that would be created by a rule that used cars are "new motor vehicles." (*Id.* at p. 340, n.4 [noting that a car originally sold with a 20-year warranty could still be considered a "new motor vehicle" when sold used at year 18, and that the

statutory one-year implied warranty would reattach every time a car was sold as used and the original warranty had not expired].)

Kiluki, like *Dagher* and *Johnson*, also examined the distinction that the Act makes between used and new goods, concluding from the statutory provisions that "the manufacturer is generally off the hook" with respect to used goods. (*Ibid.*)

Finally, the court below relied on *Ruiz Nunez*, a 2021 opinion in which the Court of Appeal affirmed a nonsuit in favor of a manufacturer on an implied warranty claim based on the sale of a used car. The *Ruiz Nunez* court examined and applied the clear distinction between how the Song-Beverly Act treats new and used goods, including automobiles. (61 Cal.App.5th at p. 399.)

The Court in *Ruiz Nunez* noted that the plaintiff "tells us" that Song-Beverly "liability with respect to used goods is the same for manufacturers, distributors, and retail sellers. (*Id*. at p. 400.) "But ***no authority is cited***, and *Kiluk* tells us otherwise." (*Ibid*. (emphasis added).) Again, the legal "status quo" that Plaintiffs urge here simply does not exist. Otherwise, the *Ruiz Nunez* plaintiff and other plaintiffs in post-*Sanchez* cases against manufacturers would have had numerous supporting cases to cite.

C. In only a short time, several courts have reliably embraced the Opinion in this case.

The 2022 Opinion here by the Court of Appeal—which rejected the notion that the statutory repurchase remedy available

for sales of "new motor vehicles" could be asserted with respect to a used car—was based on a straight-forward reading of the Song Beverly Act and the uniform case law developed after "lemon law" plaintiffs started targeting manufacturers in used car cases.

Indeed, after the Court granted review here, courts have continued agreeing with the opinion below. (*Barboza v. Mercedes-Benz USA, L.L.C.* (E.D. Cal. 2022, No. 1:22-CV-0845 AWI CDB) 2022 WL 17978408 at p. *3 [nonpub. opn.] [collecting cases].) As *Barboza* recognized, "a number of district courts have examined *Rodriguez* as persuasive and adopted its reasoning." (*Ibid.* [citing *Edwards v. Mercedes-Benz USA, L.L.C.* (C.D. Cal. Oct. 5, 2022, No. CV 21-2671-RSWL-JCK) 2022 WL 5176869; *Pineda v. Nissan North Am.* (C.D. Cal. July 25, 2022, No. CV 22-239-DMG (*JCX*)) 2022 WL 2920416; and *Fish v. Tesla, Inc.*, (C.D. Cal. May 12, 2022, No. SACV 21-060 PSG (JDEx) 2022 WL 1552137].)

The *Fish* court, for example, agreed with the Opinion below that *Jensen* was "easily distinguishable" and that the statutory definition of "new motor vehicle" precluded a finding that a used car purchase could be subject to the "refund or replace remedy. (*Fish*, 2022 WL 1552137 at p. *10-11.) The *Fish* court further observed that it was not just the Opinion below that supported its conclusion, but so did *Dagher* and *Kiluk*. (*Id.* at p. *10.)

This unwavering adherence to the Court of Appeal's opinion has continued after the parties completed their merits briefing

here. (See *Coelho v. Hyundai Motor America* (N.D. Cal. May 31, 2023. No. 22-cv-07670-BLF) 2023 WL 3763812 at p. *3 [nonpub. opn.]; *Nilsen v. Tesla, Inc.* (N.D. Cal. May 31, 2023, No. 22-cv-07472-BLF) 2023 WL 3763811 at p.*3 [nonpub. opn.]; *Lemke-Vega v. Mercedes-Benz USA, L.L.C.* (N.D. Cal. May 23, 2023, No. 23-cv-01408-DMR) 2023 WL 3605318 at p. *4 [nonpub. opn.].)

As the federal district court concluded in *Nilsen*, "[t]he Court finds the California Court of Appeal's analysis in *Rodriguez* persuasive and adopts it here." (*Nilsen*, 2023 WL 3763811 at p. *3.) The court further observed that "[d]istrict courts reading *Rodriguez* and *Jensen* together have held that to state a claim for breach of express warranty under the SBA, a consumer who purchased a used car must allege that they were issued a full new car warranty by the manufacturer or its agent at the time of purchase." (*Ibid.*, citing *Pineda,* 2022 WL 2920416 at p. *3 and *Edwards*, 2022 WL 5176869 at p. *3.)

In sum, Plaintiffs' suggestion that they merely seek to enforce the legal "status quo" misses the mark by thousands of miles. *Jensen* did not decide the issue here, and there is not one case (let alone a body of cases) that support Plaintiffs. Not one. Conversely, at least 11 state and federal cases (including the Opinion below) reject the notion that a used car constitutes a "new motor vehicle" and that a used car purchaser may obtain statutory remedies available to purchases of "new motor vehicles."

II. This Court should decline Plaintiffs' invitation to create new remedies for used car purchasers.

Plaintiffs argue that the Court of Appeal's opinion "creates an illogical protection gap" for purchases of used cars, (OBOM at 47.), that "would rock the used-car market." (*Id.* at 73-74.] To the contrary, the Court of Appeal applied the plain text of the statute and the precedent interpreting it. So, rather than "create" a gap in the rights and responsibilities for used car sales, it adhered to the long-existing remedies for used car owners.

Under this ruling, the used car market would operate just as it has been operating since 1995. If anything, the used-car market is far more favorable to consumers today than it was 30 years ago. Used cars are more reliable, purchasers have far more information available to them about a particular model's reliability, certified pre-owned cars are sold with warranties, and additional places to buy used cars are available, e.g., internet sellers and retailers such as CarMax. Research on a retailer's reputation is far more available to the consuming public. Plaintiffs do not at all explain what parade of horribles may be inflicted on the used-car market should the Opinion below be affirmed.

The fact is that used car buyers are protected and have remedies available to them that are appropriate to their situations. The class action plaintiff in *Sanchez* sued a used car retailer for violations of the Consumer Legal Remedies Act, the Automobile

Sales Finance Act, the Unfair Competition Law, the Song-Beverly Act, and Public Resources Code Section 42885. (*Sanchez*, 61 Cal.4th at 907.) This Court did not preclude plaintiff from pursuing those claims. Rather, it held that plaintiff could be compelled to arbitrate those claims against used car retailers. (*Id.* at 921-924.)

Indeed, a used car purchaser has meaningful remedies against used car sellers under the Song-Beverly Act, the Uniform Commercial Code, the Consumer Legal Remedies Act, and the Magnuson-Moss Warranty Act. In addition, many used car purchasers often have a warranty offered by the used car retailer, they may have some time/mileage remaining on the original purchaser's warranty, or they may purchase an extended warranty.

In short, the Court of Appeals' opinion does not eliminate a long-held remedy, nor does it create a gap in the law. The opinion instead properly refrains from ***creating a brand new rule and remedy***, i.e., extending an enhanced statutory remedy for new car purchasers to used car purchasers. Used car purchasers already have numerous remedies they can pursue under the law and/or under various warranties. Providing used car purchasers an enhanced statutory remedy historically and exclusively available to new car purchasers is for the Legislature and not the courts.

III. Requiring manufacturers to repurchase used cars is unworkable and would further burden the courts.

A. The new rule proposed by Plaintiffs would result in confusion and unfairness.

The new rule Plaintiffs urge would create several problems, underscoring the reasons the Legislature plainly did not intend for used cars to be treated as "new motor vehicles." Civil Code § 1795.5 provides that it is "not the original manufacturer" who has the duty to maintain repair facilities for used products. In the new car situation, the manufacturer authorizes its dealerships to address repair presentations by new car purchasers. That way, the manufacturer may assess the validity of the repurchase claim.

With used cars, the owner may not take its car to a dealership for repairs, so the manufacturer would have little or no say in how a repair presentation is addressed, yet could be held liable (under Plaintiffs' view) for repurchase of a used car. And, as the Court of Appeal recognized, it would be confusing to determine what constitutes a reasonable number of repair attempts with respect to a used car that only had a few miles left on the manufacturer's original warranty. (*Rodriguez*, 77 Cal.App.5th at p. 221. If second purchasers could count their own repair attempts, then the law would be "toothless" (*ibid.*), but counting a prior owner's repair attempts may not be fair either, let alone legally correct. (*Ibid.*) Indeed, the Act envisions that "[t]he buyer," not

multiple buyers, present the vehicle for repairs to an authorized dealership. (Civil Code § 1793.2(c).)

Other potential problems with litigating under Plaintiffs' theory is that it would be difficult for manufacturers to prove the affirmative defense of product misuse where it could not be discerned how one or more prior owners may have treated the car. Manufacturers could also be subject to multiple requests for repurchase (and multiple lawsuits) from two or more persons who purchased the car within the warranty period. Inconsistent rulings from the courts on the right to repurchase might ensue.

As recognized in *Kiluk* and the Opinion below, if used cars with transferred warranties were "new motor vehicles," then there would be a potential serial implied warranty problem. In other words, a new one-year warranty would attach to the vehicle upon each retail sale, which would conflict with the Act's one-year maximum for an implied warranty. In addition, as the *Kiluk* court asked, "[w]ould a car accompanied by a 20-year warranty still be a "new motor vehicle" under the Song-Beverly Act on year 18?" (43 Cal.App.5th at p. 340 n.4.) In that time, the vehicle could be subject to significant wear and tear and multiple owners.

The Alliance is also concerned that Plaintiffs' new rule, if adopted by this Court, might have the adverse effect of encouraging manufacturers to make warranties non-transferable, so that subsequent buyers would be limited in their remedies.

(ABOM at 62.) These numerous potential problems greatly bolster the Court of Appeal's conclusion drawn from the Act's language that the Legislature simply did not intend to adopt the meaning of "new motor vehicle" now espoused by Plaintiffs.

B. The new rule proposed by Plaintiffs would further burden the court system.

Finally, the Alliance is concerned with the impact that Plaintiffs' new rule would have on the already massive amount of lemon law cases in the California courts. According to a study by Bowman and Brooke LLP, Song-Beverly Warranty Act cases in California went up from 4,318 in 2015—the year *Sanchez* held that claims against retailers could be compelled to arbitration—to 8,620 in 2019." (Vanderford & Bulkina, *Time to end systematic abuse of California's lemon law* (July 27, 2020) Daily J. <https://www.dailyjournal.com /articles/358777> [as of June 12, 2023].) A more recent Bowman and Brooke study shows that doubling of filings from 2015 to 2019 will have nearly doubled again by the end of 2022, with over 15,000 new lemon law cases projected to be filed as of the end of the year. The recent "disparate surge in lemon lawsuits is a cottage industry of plaintiffs[']attorneys who appear to be taking advantage of the fee-shifting provisions of the law to generate large windfalls for themselves" by "run[ning] up hefty legal fees." (Powell, *Calif. Auto Defect Law*

Incentivizes Overlitigation (Apr. 7, 2020) Law360 <https://bit.ly/3oO0sRg> [as of June 12, 2023].)

While plaintiffs certainly have the right to pursue claims within the boundaries established by law, expanding the meaning of "new motor vehicle" to cover used cars would be an unwarranted expansion of those boundaries and would unnecessarily increase the burdens on the court system and upon manufacturers.

CONCLUSION

The Court of Appeal's opinion should be affirmed.

June 12, 2023

Respectfully submitted,

SHOOK, HARDY & BACON L.L.P.

/s/ Patrick J. Gregory
Patrick J. Gregory

Counsel for Amicus Curiae
Alliance for Automotive Innovation

CERTIFICATE OF COMPLIANCE

I certify that, apart from those portions that may be excluded by rule, the text of this brief contains 5,271 words as counted by Microsoft Word, the program used to create it.

June 12, 2023 *<u>/s/ Patrick Gregory</u>*
Patrick Gregory

Case No. S274625

IN THE SUPREME COURT OF CALIFORNIA

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PROOF OF SERVICE

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PROOF OF SERVICE

I am over the age of 18 years and not a party to the within action. I am employed in the County of San Francisco, State of California. My business address is 555 Mission Street, Suite 2300, San Francisco, California 94105, my facsimile number is (415) 391-0281. On the date shown below, I served the following document(s):

- **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANT AND RESPONDENT; AMICUS CURIAE BRIEF OF THE ALLIANCE FOR AUTOMOTIVE INNOVATION**

on the interested parties named herein and in the manner indicated below:

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☒ **VIA TRUEFILING ELECTRONIC SERVICE:** I caused said document(s) to be served by means of electronic transmission to the parties and/or counsel who are registered.

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

Executed on June 12, 2023, at San Francisco, California.

Christopher J. Martinez

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

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

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

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6/12/2023

Date

/s/Patrick Gregory

Signature

Gregory, Patrick (206121)

Last Name, First Name (PNum)

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