S274625

IN THE
SUPREME COURT OF CALIFORNIA

EVERARDO RODRIGUEZ ET AL.,
Plaintiffs and Appellants,

v.

FCA US, LLC,
Defendant and Respondent.

After a Decision by the Court of Appeal, Fourth Appellate District, Division Two; Case No. E073766;
Appeal from Riverside County Superior Court
Case No. RIC1807727
Hon. Jackson Lucky

APPLICATION FOR LEAVE TO FILE BRIEF OF THE CHAMBER OF COMMERCE OF THE U.S. OF AMERICA AND CIVIL JUSTICE ASSOCIATION OF CALIFORNIA AS AMICI CURIAE IN SUPPORT OF DEFENDANT AND RESPONDENT AND BRIEF OF AMICI CURIAE

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CERTIFICATE OF INTERESTED PARTIES

There are no interested entities or persons that must be listed in this certificate under rule 8.208.

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APPLICATION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE*

Pursuant to California Rule of Court 8.520(f), the Chamber of Commerce of the United States of America ("the Chamber") and the Civil Justice Associate of California (CJAC) submit this application to file an amici brief.

The Chamber is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country.

The Chamber has a strong interest in the outcome of this case. Many of its members are car manufacturers that will be directly affected by the Court's disposition of the issue presented. The Chamber also has a broader interest in the proper interpretation and administration of California's consumer-protection laws, which affect much of its membership that does business in the State.

The Civil Justice Association of California (CJAC) is a statewide association dedicated to improving California's civil

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* No counsel for a party authored this brief in whole or in part and no person other than amici, their members, or their counsel has made any monetary contributions intended to fund the preparation or submission of this brief. (Cal. Rules of Court, rule 8.520(f)(4).)

liability system through its legislative, regulatory, and judicial advocacy. Founded in 1979, CJAC is a nonprofit, nonpartisan, member-supported coalition that represents the interests of businesses, professional associations and financial institutions. CJAC advocates for policies that allow California businesses and their employees to grow and thrive through a legal environment that is "fair, economical, and certain."

This brief will assist the Court in resolving the issue presented. The brief explores matters that were not fully addressed by either party, such as the application of two fundamental canons of statutory construction to the question presented. The brief also discusses key aspects of the legislative history that were not addressed by either party or by the decision below.

Dated: June 12, 2023

Respectfully submitted,

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BRIEF OF U.S. CHAMBER OF COMMERCE AND CIVIL JUSTICE ASSOCIATEION OF CALIFORNIA AS AMICI CURIAE IN SUPPORT OF DEFENDANT AND RESPONDENT

INTRODUCTION

Is a two-year-old used truck bought off a used car lot with 55,000 miles on it a "new motor vehicle"? Ask that question to anyone who has ever owned, sold, or bought a used car and you will get a slantwise look and a swift response: Of course not. No one would pay a new car price, bank on new car value, or expect that new car smell from a vehicle that someone else has already owned. Common sense and the plain and ordinary meaning of "new" are enough to know that a used car is a used car—not a new one.

Plaintiffs ask this Court to depart from this conclusion and adopt a curious rule: that, under the Song-Beverly Act's vehicle warranty provisions, any used car is actually a "new motor vehicle" so long as it is still covered by some unexpired portion of the manufacturer-issued warranty. As FCA's brief explains, this interpretation has no basis in the text of the Act, stretching the meaning of the word "new" beyond any recognized bounds. And plaintiffs' interpretation would do violence to the structure of the Act by rendering some provisions surplusage, while creating direct conflicts with others.

The Chamber and CJAC submit this brief to elaborate

on two key points that reinforce FCA's (and the Court of Appeal's) reading of the statute and undermine plaintiffs' contrary approach.

First, plaintiffs' reading of the statute cannot be squared with two interpretive canons that this Court routinely applies when construing statutes. Plaintiffs rely on a "catchall" phrase—"other motor vehicle sold with a manufacturer's new car warranty"—as support for their rule. But that phrase is appended to two narrower terms: "dealer-owned vehicle" and "demonstrator." Two related canons—*noscitur a sociis* and *ejusdem generis*—teach that where a statute lists specific items followed by a catchall, the catchall is confined according to the more specific terms. Plaintiffs defy the intuition underlying these long-standing rules, offering an expansive reading of the catchall phrase that would swallow numerous other terms in the Act's definition of "new motor vehicle," while contradicting provisions elsewhere in the Act.

Second, this Court should reject plaintiffs' invitation to look past these textual defects and adopt their proposed interpretation by relying instead on the Act's "remedial purpose." As this Court has repeatedly cautioned, "no legislation pursues its purposes at all costs." (*In re Friend* (2021) 11 Cal.5th 720, 740 (*In re Friend*), quoting *Rodriguez v. United States* (1987) 480 U.S. 522, 525 (*Rodriguez*).) And in any event, the legislative record does not support plaintiffs' simplistic view

of the Act's purpose. Rather, the Legislature sought to establish a carefully calibrated balance between the interests of consumers, regulators, and the companies charged with implementing the Act's mandates. Plaintiffs' proposed interpretation would unsettle that delicate balance.

In fact, the legislative record reveals that, at the time of the relevant amendments, no one understood the Act to encompass the extreme interpretation that plaintiffs now advance before this Court. If, as plaintiffs argue, the amendments expanded the definition of "new motor vehicle" to include a large swath of used cars, then surely such a change would have been highlighted in the many detailed bill analyses or listed among the reasons some industry groups opposed the amendments as initially drafted. Yet a close review of the legislative history reveals nothing of the sort. Instead, the legislative record reflects what is apparent from the text of the statute itself: that the amendments to the definition of "new motor vehicle" were meant to include cars that, while perhaps not technically new, were sufficiently "like new" that they should receive the same treatment as new cars.

ARGUMENT

I. The Song-Beverly Act's Buyback Remedy Does Not Extend To Used Vehicles.

The Song-Beverly Act's definition of the term "new motor vehicle" comprises a list of types of automobiles. The list begins with the canonical definition of a new car: "a new motor vehicle that is bought or used primarily for personal, family, or household purposes." (Civ. Code, § 1793.22, subd. (e)(2).) Over the years, the legislature has built upon that definition by adding carefully delineated categories, like "business purpose[]" vehicles below a certain weight, or the "chassis" of a "motor home." (*Ibid.*) Within this list lies the text plaintiffs seize upon to try to make a used car a new one:

> 'New motor vehicle' includes … a dealer-owned vehicle and a 'demonstrator' *or other motor vehicle sold with a manufacturer's new car warranty* .... A demonstrator is a vehicle assigned by a dealer for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model and type.

(*Ibid.*, italics added.) Plaintiffs argue that the text italicized above—found in the midst of a lengthy technical list, appended to a reference to a dealer-owned demonstrator—dramatically expands the scope of the definition to include *any* vehicle with *any* remaining coverage under the warranty that accompanied the car when it was first sold at retail.

That is wrong. Statutory interpretation "begin[s] with

the statutory language," (*Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1214 [internal quotation marks omitted]), construed not "in isolation" but "'with reference to the entire scheme of law of which it is part.'" (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1099–1100 (*Berkeley Hillside Preservation*).) As FCA explains (at 26–29), the words "new motor vehicle"—especially read in accordance with the same term in the Vehicle Code—naturally refers to vehicles that "ha[ve] never been the subject of a retail sale." (Veh. Code, § 430.) That is enough to reject plaintiffs' position.

But plaintiffs' capacious reading of the phrase "other motor vehicle sold with a manufacturer's new car warranty" should also be rejected for additional reasons. It defies two core interpretive canons that this Court routinely uses to evaluate the meaning of statutory text. *Infra* § A. And additional provisions of the Act confirm that the legislature cannot have intended to expand the buyback remedy to used cars. *Infra* § B.

A. Canons of statutory construction confirm that the buyback remedy for "new motor vehicles" does not apply to used vehicles.

This Court and others frequently employ long-recognized interpretive canons to confine, and select from among, proposed interpretations of statutory text. Two related canons—*noscitur a sociis* and *ejusdem generis*—explain why the clause "or other motor vehicle sold with a manufacturer's new

car warranty" must be interpreted restrictively to cover only vehicles similar to the "dealer-owned vehicles and demonstrators" that precede it.

1. *Noscitur a Sociis*

The canon *noscitur a sociis* (literally, "known by its associates") stands for the ordinary understanding that "a word takes meaning from the company it keeps." (*People v. Drennan* (2000) 84 Cal.App.4th 1349, 1355.) Under the doctrine, "the meaning of a word may be ascertained by reference to the meaning of other terms which the Legislature has associated with it in the statute, and … its scope may be enlarged or restricted to accord with those terms." (*Grafton Partners v. Super. Ct.* (2005) 36 Cal.4th 944, 960.) "In accordance with this principle of construction, a court will adopt a restrictive meaning of a listed item if acceptance of a more expansive meaning would make other items in the list unnecessary or redundant, or would otherwise make the item markedly dissimilar to the other items in the list." (*People ex rel. Lungren v. Super. Ct.* (1996) 14 Cal.4th 294, 307 (*Lungren*).)

This principle reflects a basic intuition about the "semantic relationship" between associated terms. (*People v. Prunty* (2015) 62 Cal.4th 59, 73 (*Prunty*).) It is why we would not expect a prohibition on keeping "lions, tigers, or other big cats" as pets to extend to an unusually large Maine Coon or Persian, or why we do not put our watches in the seat-back

pocket when the flight attendant issues the command to "stow laptops, tablets, and other small electronic devices." *Noscitur a sociis* thus aids courts in the primary constructive exercise of discerning the plain meaning of statutory language based, in part, on semantic context.

This Court has deployed the canon in just this way. *People v. Prunty* turned on the STEP Act's definition of "criminal street gang," defined as any "'ongoing organization, association, or group of three or more persons.'" (*Prunty*, *supra*, 62 Cal.4th at p. 67.) The parties disputed whether the term "group" broadly described any who share "a common name, common identifying symbols, and a common enemy," or instead required a tighter "associational or organizational connection." (*Id.* at p. 72.) The Court recognized that "the term 'group,' standing alone, could conceivably encompass broad[] collections of people" based, for example, on a mere "unifying relationship" or "similarities." (*Id.* at p. 73.) Based on *noscitur a sociis*, however, "the term 'group' is best interpreted in light of its semantic relationship to the terms 'association' and 'organization,'" which connote "the kind of shared venture that is the subject of the [STEP Act]." (*Ibid.*)

Likewise, in *Busker v. Wabtec Corp.*, this Court considered whether a particular publicly funded project (installing a railway communications network) was subject to the prevailing wage law, which applies only to "public works." ((2021)

492 P.3d 963, 970 (*Busker*).) The term "public works" is defined, in relevant part, to include a "'building, highway, road, excavation, or other structure, project, development or improvement.'" (*Id.* at p. 970, italics omitted.) The dispute was whether this definition is limited to "fixed works" on real property—buildings, highways, roads, and so forth—or whether the term "project" broadened the statute to include work on rolling train cars. (*Ibid.*) This Court determined that, because the term "project" was "part of a list of terms that would generally be understood to be limited to fixed works," the principle of *noscitur a sociis* "supports giving the term th[e] more restricted meaning." (*Id.* at p. 970 fn. 11.)

Noscitur a sociis similarly serves in this case as a useful "aid in ascertaining legislative intent." (*Busker*, 492 P.3d at p. 970 fn. 11.) Standing alone, the words "motor vehicle sold with a manufacturer's new car warranty" could conceivably embrace any car with any part of a "new car warranty" remaining—as plaintiffs suggest—or, just as naturally, a more limited category of cars sold with a "new or full express warranty," as the lower court determined. (*Rodriguez v. FCA US, LLC* (2022) 77 Cal.App.5th 209, 222 (*Rodriguez*).) But interpreted in light of its association with the terms "dealer-owned vehicle" and "demonstrator," the term is susceptible only of the latter, more restrictive construction. Those terms refer to cars that, while not literally brand new in the sense

that they may have some mileage on them, are new in the sense that they have not previously been sold at retail. In semantic context, then, a car "with a new car warranty" is not any used car still covered by the original warranty, but one sold—like a dealer-owned vehicle or demonstrator—at retail, for the first time, with the accompanying new warranty.

By so confining the meaning of "motor vehicle sold with a … new car warranty," moreover, *noscitur a sociis* avoids rendering "other items" in the definition of "new motor vehicle" "unnecessary or redundant, or … markedly dissimilar to the other items in the list." (*Lungren*, *supra*, 14 Cal.4th at p. 307.) If the phrase referred to any car with anything left on a warranty, there would be no need to specifically enumerate and define "dealer-owned vehicles" and "demonstrators." For that matter, there would be no need for the commonsense, primary definition of "new motor vehicle" as "a new motor vehicle that is bought or used primarily for personal, family, or household purposes." (Civ. Code, § 1793.22, subd. (e)(2).) This Court has consistently "avoided" constructions of terms that generate "surplusage" elsewhere in a statute. (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1397.)

2. *Ejusdem Generis*

A related interpretive canon, *ejusdem generis*, reinforces this conclusion. *Ejusdem generis* (literally, "of the same kind") teaches that "[w]here general words follow specific words in a

statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words." (*Barrett v. Super. Ct.* (1990) 222 Cal.App.3d 1176, 1190–1191.) Sometimes described as "illustrative of the more general legal maxim *noscitur a sociis*," (*Martin v. Holiday Inns, Inc.* (1988) 199 Cal.App.3d 1434, 1437), *ejusdem generis* prevents general catchall terms from swallowing more specific statutory provisions whole.

As with *noscitur a sociis*, the *ejusdem generis* canon is rooted in ordinary semantic intuition: "[I]f the Legislature intends a general word to be used in its unrestricted sense, it does not also offer as examples peculiar things or classes of things since those descriptions then would be surplusage." (*Kraus v. Trinity Management Services, Inc.* (2000) 23 Cal.4th 116, 141; see also *Orey v. Super. Ct.* (2013) 213 Cal.App.4th 1241, 1252 [interpreting "equivalent exigent circumstances" in a manner that does not render meaningless or unnecessary the Legislature's list of examples of a particular category of extraordinary circumstances.]; *Moore v. California State Bd. of Accountancy* (1992) 2 Cal.4th 999, 1011–12 ["[W]hen a statute contains a list or catalogue of items, a court should determine the meaning of each by reference to the others, giving preference to an interpretation that uniformly treats items similar in nature and scope."].)

In *International Federation of Professional & Technical Engineers, Local 21, ALF-CIO v. Superior Court*, a newspaper publisher petitioned to require the city to disclose city employee records indicating name, job title, and gross salaries under the California Public Records Act. ((2007) 42 Cal.4th 319.) The employees' union argued that a city employee's salary is exempt from disclosure because it is "[p]ersonal data," which the statute defined as including "marital status, family members, educational and employment history, home addresses, *or similar information*." (*Id.* at p. 341, italics added.) Using the doctrine of *ejusdem generis* as "guidance in discerning the Legislature's intent," this Court rejected the "broadest possible meaning" of the statute. (*Id.* at pp. 341–342.) It distilled from the specific items (marital status, family members, etc.) a common thread: "types of personal information that commonly are supplied *by an employee to his or her employer*." (*Id.* at p. 342 [internal quotation marks omitted].) The general term "or similar information" was thus limited accordingly, and did not embrace one's salary. (*Ibid.*)

Importantly, the insight supplied by *ejusdem generis* is not limited to any particular configuration of specific and general terms within a statute—it "applies whether specific words follow general words in a statute or vice versa." (*Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1160, fn. 7.) For example, *Peralta Community College Dist. v. Fair*

Employment & Housing Com. considered a statute authorizing the Fair Employment and Housing Commission to take "such action" that would effectuate the purposes of the Fair Employment and Housing Act, "including, but not limited to, hiring, reinstatement or upgrading of employees, with or without back pay, and restoration to membership in any respondent labor organization." ((1990) 52 Cal.3d 40, 46 (*Peralta*).) The question was whether "such action" included compensatory damages. (*Ibid.*) It did not. Damages are not "the kind of specific and limited action directed to elimination of discrimination and its effects in the workplace as the Commission is otherwise empowered to require the employer to take." (*Id.* at p. 50, italics omitted.)

Applying *ejusdem generis* here, the term "other motor vehicle sold with a manufacturer's new car warranty" must be confined by the "dealer-owned" vehicles and "demonstrators" the statute specifically names. As the court below appreciated, "demonstrators and dealer-owned vehicles comprise a narrow category of *basically* new vehicles—they have never been previously sold to a consumer and they come with full express warranties." (*Rodriguez*, *supra*, 77 Cal.App.5th at p. 220.) *Ejusdem generis* presumes that the Legislature's intent in including a general catchall after those terms was not to create a vast new category of "new motor vehicle," but to ensure that vehicles materially identical to those specifically

enumerated would also be embraced by the definition. Plaintiffs' expansive reading of the general "other motor vehicle" clause defies this long-standing principle. It should therefore be rejected.

B. Other statutory provisions reinforce that Song-Beverly's new motor vehicle definition does not extend to used vehicles.

Other provisions in the Act reinforce what the canons teach: If the Legislature actually intended to extend the definition of "new motor vehicle"—and thus the buyback remedy—to used cars, it never would have done so through the 10-word phrase plaintiffs rely upon.

1. When the Legislature wanted to address used products in the Act, it did so carefully and clearly.

For example, Civil Code section 1795.5, which applies to consumer goods, provides that "[n]otwithstanding the provisions of subdivision (a) of Section 1791 defining consumer goods to mean 'new' goods, the obligation of a distributor or retail seller of used consumer goods in a sale in which an express warranty is given shall be the same as that imposed on manufacturers under this chapter" (with some enumerated conditions). The provision thus explicitly distinguishes between new and used goods, but provides that where a seller of used goods provides a warranty, it owes the same obligations of a seller of new goods covered by a warranty.

Plaintiffs brush this aside, suggesting that section

1795.5's distinctive treatment of used products actually proves that "the Legislature knew how to require that the warranty arise from the sale [of the used product] to the plaintiff when that's what the Legislature meant." (Reply 12.) The argument seems to assume that the Act ought to be read, as a default matter, to treat new and used vehicles alike except when it specifically treats them otherwise.

But this question-begging argument too is refuted by still other statutory provisions in the Act that make clear that new and used products are treated identically when the Legislature so intended. Section 1793.02, subdivision (g) provides that "the buyer of a used assistive device shall have the same rights and remedies as the buyer of a new assistive device." Section 1794.4 subdivision (f) provides that "[s]ubdivisions (b) and (c) are applicable to service contracts on *new or used* home appliances and home electronic products …." (italics added). Section 1796.5 states that "[a]ny individual, partnership, corporation, association, or other legal relationship which engages in the business of providing service or repair to *new or used* consumer goods has a duty to the purchaser to perform those services in a good and workmanlike manner." (Italics added.)

By contrast, sections 1793.2 and 1793.22 do not mention used vehicles at all, leaving nothing but the commonsense notion that new means new. "Where statutes involving similar issues contain language demonstrating the Legislature knows

how to express its intent, 'the omission of such provision from a similar statute concerning a related subject is significant to show that a different legislative intent existed with reference to the different statutes.'" (*County of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798, 825.)

2. An additional context clue further undermines plaintiffs' position: the statutory scheme attending the Act's buyback remedy refers specifically to the vehicle's "original buyer," suggesting that the Legislature contemplated it would apply only to basically new cars.

First, the Act imposes specific requirements on manufacturers when attempting to resell a vehicle with a "nonconformity." Relevant here, the manufacturer must disclose "the nature of the nonconformity experienced *by the original buyer or lessee"* to subsequent purchasers. (Civ. Code, § 1793.22, subd. (f)(1), italics added.) If the buyback remedy extended to purchasers of used vehicles—who are not "original buyer[s]"—there would be a glaring and inexplicable gap in the disclosure requirement.

Second, the Act prescribes a specific formula to determine the "use offset" in the event of a repurchase. (Civ. Code, § 1793.2, subd. (d)(2)(C).) That offset is calculated by dividing the "number of *miles traveled [by the new motor vehicle]* prior to the time the buyer first delivered the vehicle to the manufacturer" by 120,000 miles (the average life expectancy of an automobile (see Plaintiffs' Motion for Judicial Notice

[hereafter PMJN] vol. 3, p. 701)), multiplied by the price of the car. But giving a "use offset" that accounts for all miles traveled prior to the first repair attempt makes sense only if the "buyer" who delivered the vehicle to the manufacturer was the *original* owner. Otherwise the use offset would encompass miles driven by the original buyer, offsetting the repurchase price to a second owner for use that second owner never made.

Statutory language must be interpreted "'with reference to the entire scheme of law of which it is part.'" (*Berkeley Hillside Preservation*, *supra*, 60 Cal.4th at pp. 1099–1100.) Doing so here, the definition of "new motor vehicle" cannot be read to extend to used cars with remaining coverage on the original warranty.

II. Plaintiffs' Interpretation Would Disrupt The Balance The Legislature Struck Between The Interests Of Consumers And Car Manufacturers.

Plaintiffs urge this Court to depart from the most natural and logical reading of the Act's text in pursuit of its "remedial purpose"—a phrase that punctuates the Opening Brief nearly 20 times. (E.g., OB 44-54.) In plaintiffs' telling, that purpose is simply to "make manufacturers live up to their express warranties." (Reply 31.) But the legislative record betrays the notion that the Act embodies some absolute "remedial purpose." Like most any law, it aims to strike a balance, in this instance between the interests of consumers and

those of the manufacturers subject to the Act's mandates. *Infra* § A. And indeed, as far as the legislative record discloses, no one ever understood the Act to reach as far as plaintiffs seek to extend it here. *Infra* § B.

A. The Act's "remedial purpose" provides no support for plaintiffs' unsound interpretation.

This Court has held, and all seemingly agree, that "consider[ation]" of a statute's "remedial purpose" is appropriate only when the principal tools of statutory construction are exhausted, and yet genuine ambiguity remains. (*People v. Gonzales* (2018) 6 Cal.5th 44, 53, fn. 6; Reply 31 ["statutory purpose is relevant to interpreting *ambiguous* provisions"].) As already explained, ordinary meaning, two long-standing interpretive canons, surrounding statutory context, and plain common sense unambiguously refute plaintiffs' reading of the Act. Arguments about "remedial purpose" need not be indulged.

But if this Court does consider plaintiffs' arguments related to the Act's remedial purpose, it should reject both the facile purpose plaintiffs attribute to the Legislature and the dubious suggestion that this Court must construe the Act to advance it. Indeed, this Court has rejected this precise approach to statutory interpretation. (See *Quarry v. Doe I* (2012) 53 Cal.4th 945, 988–89 [holding claims time-barred despite

"important remedial purpose" of statute that extended limitations period for claims of child sexual abuse]; *ZB, N.A. v. Super. Ct.* (2019) 8 Cal.5th 175, 196–197 [holding that PAGA does not permit the recovery of certain damages despite the Labor Code's "remedial purpose" designed to "'protect[] … employee[s]'"].)

It has instead repeatedly cautioned that "'no legislation pursues its purposes at all costs'"; in fact "'it frustrates rather than effectuates legislative intent simplistically to assume that whatever furthers the statute's primary objective must be the law.'" (*In re Friend, supra,* 11 Cal.5th at p. 740, quoting *Rodriguez v. United States* (1987) 480 U.S. 522, 525–526.) That is because "the bustle of legislation" requires carefully "balancing [the] competing considerations" of key stakeholders, not to mention the diverse views of the legislators themselves. (See *Scholes v. Lambirth Trucking Co.* (2020) 8 Cal.5th 1094, 1117 (*Scholes*); e.g., *Pasadena Police Officers Assn. v. City of Pasadena* (1990) 51 Cal.3d 564, 569 [the law "reflect[s] the Legislature's balancing of … competing interests"].)

The Song-Beverly Act is no exception. The legislative record couldn't be clearer on this point. From the very beginning, car manufacturers played an active role in shaping the language of the Act. As Senator Alfred Song—the Act's original sponsor—recalled, he met with members of the auto

industry in 1970 for "four formal sessions, each lasting several hours," in addition to "numerous informal meetings at which the bill was examined section by section, word by word." (PMJN vol. 1, p. 105.) "As a result of these meetings" Senator Song "accepted a series of amendments" to make the bill "a workable and beneficial piece of legislation." (PMJN vol. 1, pp. 91, 105.)

Ensuing amendments to the law were accompanied by similar attempts to balance the interests of all stakeholders. The significant revisions made to the Act in 1982 were possible only "after extensive compromise efforts between … consumer and industry groups." (PMJN vol. 5, p. 1124 [Department of Consumer Affairs, Enrolled Bill Report, July 7, 1982].) For example, the Act clarified precisely how many failed repair attempts trigger a presumption that a new car is defective, but only allowed a consumer to "assert[]" this definition if she first attempted to resolve the dispute informally through the manufacturer's qualified third-party resolution system (assuming the manufacturer maintained such a system). (*Id.* at pp. 1124–1125.) The amendments also clarified that the buyback remedy applies only to new motor vehicles. *(Id.* at p. 1126.) These updates accordingly provided clarity to all stakeholders, confined the buyback remedy to new cars, and gave manufacturers an incentive to voluntarily establish third-party resolution systems.

When the Act was amended again in 1987 to, among

other things, insert the language that is at issue in this case, the Legislature demonstrated the same solicitude for the interests of consumers and industry alike. As the Department of Consumer Affairs noted in its bill analysis, the 1987 bill "would not have passed without … amendments which were negotiated with the automobile manufacturers to remove their opposition." (PMJN vol. 3, pp. 704–05.) Ultimately, the bill passed with the support of a diverse constituency, including "Chrysler, the Attorney General, and several consumer groups." (PMJN vol. 3, p. 675.) "Ford, General Motors, Honda, and the Automobile Importers of America" were all "neutral" on the bill, and there was no "known opposition." (*Ibid.*)

Against this backdrop, plaintiffs' suggestion that this Court simply interpret the Act in whatever way furthers their own stylized conception of the law's "remedial purpose" falls flat. (E.g., Reply 31–32.) As the Act's history reveals, the Legislature sought, at every turn, to achieve a carefully calibrated balance between the interests of consumers, corporations, and regulators. Plaintiffs' interpretation would unsettle that balance.

B. The legislative record reveals that no one involved in crafting the Act understood it to reflect plaintiffs' extreme interpretation.

Plaintiffs' account of the purpose of the Act is also untenable for an additional reason that is highlighted by the legislative history of the 1987 amendments to the Act. The

1987 amendments are what expanded the definition of "new motor vehicle" to include "a dealer-owned vehicle," "a 'demonstrator' *or other motor vehicle sold with a manufacturer's new car warranty*." (PMJN vol. 3, p. 714 [Stat. 1987 ch. 1280 § 2], emphasis added.) But despite the existence of a detailed legislative history that documents the evolving positions of various stakeholders, there is nothing to suggest that anyone ever understood this definition to vastly expand the Act's buyback remedy—reserved for new cars—to apply to any *used car* with an unexpired manufacturer-issued warranty.

The Legislative Counsel's digest of the 1987 law, for example, only mentions that it "revise[s] the definition[] of … 'new motor vehicle'" but does not elaborate beyond that. (PMJN vol. 3, p. 719.) It reserved the bulk of its analysis for the changes to the third-party dispute resolution system, which it apparently deemed to be the most significant part of the bill. (*Ibid.*)

Other analyses of the 1987 amendments reflect this same perspective. The very thorough bill analysis authored by the Senate Judiciary Committee only devotes a sentence to the new language, noting that the bill would "[a]mend the definition of … 'new motor vehicle' … to include dealer-owned vehicles and demonstrator vehicles." (PMJN vol. 3, p. 622 [Sen. Jud. Comm. Bill Analysis July 14, 1987]; see also *id.* at p. 638 [Sen. Jud. Comm. Bill Analysis Aug. 18, 1987] [same].) It did not even see fit to mention that new motor vehicles now

included "other motor vehicle[s] sold with a manufacturer's new car warranty." (*Ibid.*) The Department of Consumer Affairs took a similar approach, devoting only a single sentence to the updated definition in an otherwise lengthy and thorough analysis. (*Id.* at p. 702.) And the Attorney General's bill analysis omits any mention whatsoever of the updated "new motor vehicle" definition. (*Id.* at pp. 612–616.)

The various letters submitted by industry groups—which are never addressed by either plaintiffs (OB 59-63; Reply 27–30) or *Jensen v. BMW of North America, Inc.* (1995) 35 Cal.App.4th 112, 123–25—provide another clear signal that no one understood the 1987 amendments to embrace the extreme interpretation that plaintiffs now advance before this Court. The Automobile Importers of America, for example, "undert[ook] a detailed legal analysis" of an earlier version of the 1987 bill. (PMJN vol. 3, pp. 602-08.) In explaining its opposition to the proposal, it highlighted seven features of the bill that it found objectionable. (*Ibid.*) Yet there is no mention whatsoever of the changes to the definition of "new motor vehicle." (*Ibid.*) Other letters of opposition from industry similarly omit any mention of the updated definition. (E.g., *id.* at p. 609 [General Motors letter, July 10, 1987]; *id.* at p. 610 [Ford letter, July 10, 1987].)

If the relevant actors had understood the updated definition of "new motor vehicle" to encompass plaintiffs'

expansive interpretation, then surely car manufacturers would have cited it among the litany of reasons they opposed the bill as initially drafted. Yet among the many documents memorializing industry's initial opposition, there is nothing to suggest that is the case. This confirms what is already apparent from the text of the statute itself: that the amendments to the definition of "new motor vehicle" were meant to include cars that while perhaps not technically new, were sufficiently like new that they should receive the same treatment as new cars. (AB 35–36.)

***

The Song-Beverly Act is the product of an intense and iterative legislative process, one that balances the interests of diverse stakeholders through a highly technical scheme. Plaintiffs may wish that balance tipped further towards their interests. But they may not turn to this Court for a fix. Their remedy lies in the "bustle of legislati[on]." (*Scholes*, *supra*, 8 Cal.5th at p. 1117.)

CONCLUSION

For the foregoing reasons, this Court should affirm the decision of the Court of Appeal.

Respectfully submitted,

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June 12, 2023

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The undersigned counsel for Amici Curiae, pursuant to Rule 8.204 of the California Rules of Court, certifies that the foregoing is proportionally spaced and contains 5113 words, as counted by the word count of the computer program used to prepare the brief.

Dated:
June 12, 2023

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