S274625

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

EVERARDO RODRIGUEZ et al.
Plaintiffs and Appellants,

v.

FCA US, LLC,
Defendant and Respondent.

ON REVIEW FROM THE COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION TWO, NO. E073766
ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE, JACKSON LUCKY, JUDGE
CASE NO. RIC1807727

APPLICATION TO FILE *AMICUS CURIAE* BRIEF; *AMICUS CURIAE* BRIEF IN SUPPORT OF EVERARDO RODRIGUEZ et al.

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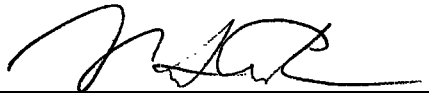
Certificate of Interested Entities or Persons

Initial Certificate

1. This form is submitted on behalf of *Amicus Curiae* Martin W. Anderson.

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

Dated: June 9, 2023



Martin W. Anderson

Table of Contents

Table of Authorities

Cases

Statutes

Application for Leave to File *Amicus Curiae* Brief

Pursuant to California Rules of Court, rule 8.520(f), *Amicus Curiae* Martin W. Anderson hereby applies for permission to file the attached *Amicus* Brief.

Statement of Interest

Amicus Curiae Martin W. Anderson is an attorney at law and has been admitted to practice law in California since 1995. He is also admitted to practice law in Oregon and Washington, and before the United States Court of Appeals for the Ninth Circuit, and the United States District Court in the Central District of California, the Southern District of California, the District of Oregon, and the Western District of Washington.

Since his admission to practice law in 1995, Anderson's practice has primarily involved handling automobile lemon law and consumer fraud cases in the Orange County Superior Court and the United States District Court.

Many of Anderson's lemon law claims over the years have involved consumers who purchased low-mileage used cars and who received the balance of some kind of factory warranty along with the vehicle.

Anderson has handled several appeals, resulting in both published and unpublished appellate decisions in this area. (*Mocek v. Alfa Leisure, Inc.* (2003) 114 Cal.App.4th 402; *Florez v. Linens 'N Things, Inc.* (2003) 108 Cal.App.4th 447; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224; *Austin v. Superior Court* (1999) 72 Cal.App.4th 1126; *Lundy v. Ford Motor Co.* (2001) 87 Cal.App.4th 472; *Consumer Advocates v. Echostar Satellite Corp.* (2003) 113 Cal.App.4th 1351; *Kolev v. Euromotors West/The Auto Gallery* (9th Cir. 2012) 676 F.3d 867;

Maronyan v. Toyota Motor Sales, U.S.A., Inc. (9th Cir. 2011) 658 F.3d 1038; *McKenzie v. Ford Motor Company* (2016) 238 Cal.App.4th 695.)

Anderson has also successfully sought review before this Court in two cases, both of which he argued, and which resulted in published Opinions on important issues of law relating to automobile lemon law claims. (*Gavaldon v. DaimlerChrysler Corp.* (2004) 32 Cal.4th 1246; *Allen Kirzhner v. Mercedes-Benz USA, LLC* (2020) 9 Cal.5th 966.)

Involvement of Other Parties and/or Persons

No party or counsel for any party in the pending appeal authored any portion of this *amicus brief* nor made any monetary contribution intended to fund the preparation or submission of the brief. No person or entity made any monetary contribution intended to fund the preparation or submission of the brief, other than *amicus curiae* and his law firm, Anderson Law, APC.

This Brief Will Assist the Court

This brief will assist the Court by providing arguments and authorities which were not adequately addressed in the briefings submitting by the parties.

Amicus Brief

Amicus Curiae Martin W. Anderson submits the following *amicus* brief in support of Plaintiff and Appellants Everardo and Judith Rodriguez.

Introduction

On April 7, 2022, the Court of Appeal issued a published Opinion on this appeal. In the Opinion, the Court of Appeal affirmed a Superior Court order concluding that a used vehicle that was covered by a new car

powertrain warranty at the time that it was sold did not qualify as an "other motor vehicle sold with a manufacturer's new car warranty" under subdivision (e)(2) of Civil Code section 1793.22, and thus was not protected by California's Song-Beverly Consumer Warranty Act ("CWA").

As we will explain, the Superior Court's Order and the Court of Appeal's decision were both incorrect. They conflict with both the plain language of the CWA and with established precedent. Accordingly, this Court should reverse.

Statement of Facts

The facts relevant to this appeal are set forth succinctly in the Court of Appeal's opinion:

> Plaintiffs Everardo Rodriguez and Judith Arellano purchased a two-year-old Dodge truck from a used car dealership. The truck had over 55,000 miles on it and, though the manufacturer's basic warranty had expired, the limited powertrain warranty had not. After experiencing electrical defects with the truck, plaintiffs sued the manufacturer, FCA US, LLC (Chrysler) for violation of the refund-or-replace provision. FCA moved for summary judgment, arguing the truck was not a "new motor vehicle," and the trial judge agreed.

(Op., p. 2.)

> [Rodriguez and Arrelano appealed.]
>
> The sole issue in this case is whether the phrase "other motor vehicle sold with a manufacturer's new car warranty" covers sales of previously owned vehicles with some balance remaining on the manufacturer's express warranty. We conclude it does not and that the phrase functions instead as a catchall for sales of essentially new vehicles where the applicable warranty was issued with the sale. We therefore affirm.

(Op., p. 3.)

Summary of Argument

The Court of Appeal's decision was wrong because it improperly rewrites the words "other motor vehicle sold with a manufacturer's new car warranty" in a narrow manner that favors the warrantor, which is contrary to this Court's direction that the CWA be broadly construed in favor of the consumer.

The opinion also conflicts with *Jensen v. BMW of North America, Inc.* (1995) 35 Cal.App.4th 112, which has guided the Courts and litigants for nearly thirty years and which has never before been the subject of challenge. Despite conflicting directly with the 1995 decision, the Court of Appeal's Opinion fails to even recognize the conflict that it creates with what everyone in the field has always assumed was settled law.

Discussion

I.
This Court Should Reverse the Superior Court's Order

The Superior Court's Order, and the Court of Appeal's Opinion affirming it, should be reversed because they misinterpret the relevant statutory language and conflict with settled precedent.

As we will explain, (1) the Song-Beverly Consumer Warranty Act ("CWA") applies to both new and used consumer goods and to new and used motor vehicles, (2) the Superior Court and the Court of Appeal both misinterpreted the meaning of the words "other motor vehicle sold with a manufacturer's new car warranty," and (3) the Court of Appeal failed to even recognize the conflict it creates with a decision that has been settled law since 1995.

A. The Consumer Warranty Act applies to new and used consumer goods and to a separately defined set of goods referred to as "new motor vehicles"

Broadly speaking, the CWA has provisions that cover two defined classes of products: "Consumer goods" and "new motors vehicles."

1. Most of the CWA concerns "consumer goods," which includes both new and used products

Most of the CWA concerns itself with a broad class of products that it refers to as "consumer goods." (Civ. Code, § 1792 ["[E]very sale of **consumer goods** that are sold at retail in this state shall be accompanied by the manufacturer's and the retail seller's implied warranty that the goods are merchantable]; Civ. Code, § 1792.1; Civ. Code, § 1792.2 ["Every sale of **consumer goods** . . . shall be accompanied by such retailer's or distributor's implied warranty that the goods are fit for that purpose." (emphasis added).]; Civ. Code, § 1792.3; Civ. Code, § 1793; Civ. Code, § 1793.2(a), (b), (c), (d)(1) [repurchase or replacement remedy for consumer goods], and (e); Civ. Code, § 1794, subd. (a) ["Any buyer of **consumer goods** who is damaged by a failure to comply with any obligation under this chapter or under an implied or express warranty or service contract may bring an action for the recovery of damages and other legal and equitable relief. (emphasis added)."].)

Although the CWA initially defines "consumer goods" to cover only a "**new** product or part thereof" (Civ. Code, § 1791, subd. (a) [emphasis added]), the statute later imposes obligations upon "a distributor or retail seller of **used** consumer goods in a sale in which an express warranty is given" that are "the same as that imposed on manufacturers under this chapter" with certain exceptions. (Civ. Code, § 1795.5 [emphasis added].)

Thus, by its plain language, the CWA applies to both new and used consumer goods.[1]

2. Parts of the CWA concern a class of goods which are separately defined as "new motor vehicles"

Several discrete parts of the CWA create rights with respect to a separately defined class of goods referred to as "new motor vehicles." (Civ. Code, § 1793.2, subd. (d)(2) [repurchase or replacement remedy for **new motor vehicles**]; Civ. Code, § 1793.22 [presumptions and definition for **new motor vehicles**].)

Unlike the case with "consumer goods," where the definition is split between section 1791(a) (for **new** consumer goods) and 1795.5 (for **used** consumer goods), the entirety of the definition of "new motor vehicles" is contained in Civil Code section 1793.22, subdivision (e)(2), which includes **six categories** of products:

> "New motor vehicle" means [1] a new motor vehicle that is bought or used primarily for personal, family, or household purposes. "New motor vehicle" also means [2] a new motor vehicle with a gross vehicle weight under 10,000 pounds that is bought or used primarily for business purposes by a person, including a partnership, limited liability company, corporation, association, or any other legal entity, to which not more than five motor vehicles are registered in this state. "New motor vehicle" [3] includes the chassis, chassis cab,

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[1] Although it doesn't appear that the Appellants in this case addressed this issue, it is important to note that Appellants' motor vehicle might have qualified as a "consumer good" regardless of whether it qualifies as a "new motor vehicle." Because that issue wasn't raised by the Appellants, *Amicus* requests that any opinion issue in this case make clear that the issue of whether Appellants' vehicle qualified as a "consumer good" was not raised and is thus not addressed by the Court's decision.

> and that portion of a motor home devoted to its propulsion, but does not include any portion designed, used, or maintained primarily for human habitation, [4] a dealer-owned vehicle and [5] a "demonstrator" or [6] other motor vehicle sold with a manufacturer's new car warranty but does not include a motorcycle or a motor vehicle which is not registered under the Vehicle Code because it is to be operated or used exclusively off the highways. 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.

(Civ. Code, § 1793.22, subd. (e)(2) [brackets added].)

It is evident from the definition in section 1793.22 that, notwithstanding the use of the words "new motor vehicle," the statute is intended to cover **used** motor vehicles in some cases, just as the CWA covers **used** "consumer goods" in some cases. (*See* Part I.A.1. of this brief, above; Civ. Code, § 1795.5.)

This intention is demonstrated by section 1793.22's use of the words "[5] a 'demonstrator' or [6] other motor vehicle sold with a manufacturer's new car warranty . . . ." (*Id.* ["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."].)

Both of these definitions necessarily and primarily involve motor vehicles that have been used by others before being sold to the current owner. If the Legislature had not intended the CWA to cover at least some used goods, it would not have used language covering demonstrators, which by their very nature are used in the course of demonstrating their qualities and characteristics, and it would not have included language covering an "other motor vehicle sold with a manufacturer's new car warranty," which necessarily includes used vehicles that are still under a new car warranty at the time that they are sold.

B. The Court of Appeal misinterpreted the meaning of the words "other motor vehicle sold with a manufacturer's new car warranty"

The question presented on this appeal is whether the words "other motor vehicle sold with a manufacturer's new car warranty" includes a used vehicle sold with the balance of a manufacturer's new car warranty. The answer, plainly, is yes.

Even the Court of Appeal acknowledged that this language "could arguably refer to any car sold with a manufacturer's warranty still in force," but it then went on to conclude that "context clearly requires a more **narrow** interpretation." (Typ. Op., 10 [emphasis added].) And here is where the Court of Appeal's analysis went awry.

As this Court has confirmed, the CWA "is a remedial measure whose terms properly should be interpreted **broadly** to effectuate its purposes." (*Cummins, Inc. v. Superior Court* (2005) 36 Cal.4th 478, 493 [emphasis added].) The Court of Appeal's decision to adopt a **narrow** construction that favors the warrantor is simply inconsistent this Court's direction that the CWA should be construed broadly in favor of the consumer.

The Court of Appeal began by citing the defined term ("new motor vehicle") as evidence that the Legislature intended to cover only *new* goods. But, as noted above, the definition of "consumer goods" is also initially limited to new goods in section 1791.1, but is later expanded in section 1795 to cover used goods, indicating that the Legislature's use of the word "new" in one place in the CWA is not necessarily the end of the inquiry. (*See* part I.A.1. of this brief, above.) Furthermore, as the Court of Appeal recognized, the definition of "new motor vehicle" specifically includes demonstrators, which, by their nature, "are used in the sense that

they will have been driven for various purposes before sale." (Typ. Op., p. 11.)

The Court of Appeal next cited as context its incorrect belief that demonstrators and dealer-owned vehicles are "basically new." (Typ. Op. 11.) The Court then decided that the demonstrator language should inform the phrase "other motor vehicle sold with a manufacturer's new car warranty" because those words appear right after the demonstrator language, and thus it should be interpreted only to cover "vehicles that have never been previously sold to a consumer and come with full express warranties." (Typ. Op., p. 11.) The Court of Appeal's decision was wrong for several reasons.

First, there is no factual basis for the Court of Appeal's conclusion that a demonstrator must, in all cases, "compromise a narrow category of *basically* new vehicles." (Typ. Op. 11.) To the contrary, under the CWA, "[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." (Civ. Code, § 1793.22, subd. (e)(2).) Nothing in that definition precludes a dealer from employing a used vehicle for that purpose. Indeed, a demonstrator could even be two years old and have 55,000 miles on the odometer, just like the car at issue here. (*Id*.) Given the global automobile chip shortage, there is no reason why manufacturers might not choose to employ used vehicles for this purpose.[2] Put simply, the Court of Appeal's decision to use **supposition** to inform the construction of the statute was wrong.

Second, the Court of Appeal fails to give full effect to the meaning of the word "or" between the clause covering demonstrators and the clause

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[2] Tesla is known to employ used cars with tens of thousands of miles on the odometer as demonstrators.

at issue here. Relevant to the Court of Appeal's contextual analysis, the definition of new motor vehicle covers "[1] a 'demonstrator' **or** [2] other motor vehicle sold with a manufacturer's new car warranty . . . ." (Civ. Code, § 1793.221793.22, subd. (e)(2) [emphasis added].) The word "or" plainly means one or the other, and not some combination of both.

If the Legislature wanted to limit the definition of "new motor vehicle" to include only "vehicles that have never been previously sold to a consumer and come with full express warranties," it could easily have used language to that effect. Indeed, the very first sentence in the definition of "new motor vehicle" already covers vehicles that have never been sold to a consumer. And the term "new motor vehicle" is only used in subdivision (d)(2) of section 1793.2 (which by its terms requires the presence of a warranty) and other provisions that relate to that right. Thus, the Court of Appeal's decision to re-write the statute in this manner essentially writes the words "other motor vehicle sold with a manufacturer's new car warranty" out of the statute entirely. (*People v. Valencia* (2017) 3 Cal.5th 347, 357 ["[a] construction making some words surplusage is to be avoided."].)

The Court of Appeal's decision goes on to raise several questions of interpretation that may eventually have to be addressed if used vehicles sold with the balance of a factory warranty are covered, but none of the issues the Court of Appeal raises are any different than those that would be raised if a used demonstrator were sold with the balance of a factory warranty or even if a new vehicle were sold with a very, very short warranty. (Typ. Op., pp. 12-15.)

Finally, the Court of Appeal incorrectly describes this issue as one of first impression. (Typ. Op. 16.) But, it isn't. The very same issue was raised and resolved back in 1995 in *Jensen v. BMW of North America, Inc.* (1995) 35 Cal.App.4th 112. *Jensen* involved the very same issues as raised

in this case and did so using the very same analysis that we set forth above, including the reference to the *six* elements of section 1793.22 and the importance of the word "or" between the demonstrator language and the language at issue here. On *this issue*, the *Jensen* Court wrote:

> BMW maintains section 1793.22, subdivision (e)(2) clearly describes five categories of "new motor vehicles" to include . . . a dealer-owned vehicle, and a demonstrator. It contends the phrase "or other motor vehicle sold with a manufacturer's new car warranty" clarifies the word "demonstrator" and is not intended as a separate category. BMW says the Legislature "could not have intended for the language to mean the equivalent of 'every motor vehicle sold with ... any remainder of the manufacturer's new car warranty,' as such an interpretation would be detrimental to the interests of consumers." (Italics in original.)
>
> Jensen argues the plain language of the statute sets forth six categories of "new motor vehicles." She says the Legislature intended the phrase "other motor vehicle sold with a manufacturer's new car warranty" as a "separate category of vehicle with no history of use by a manufacturer's employee, as a daily rental car or as a demonstrator."

(*Jensen v. BMW of North America, Inc.* (1995) 35 Cal.App.4th 112, 122.)

> We conclude the words of section 1793.22 are reasonably free from ambiguity and cars sold with a balance remaining on the manufacturer's new motor vehicle warranty are included within its definition of "new motor vehicle." The use of the word "or" in the statute indicates "demonstrator" and "other motor vehicle" are intended as alternative or separate categories of "new motor vehicle" if they are "sold with a manufacturer's new car warranty."

(*Id*. at 123.)

Jensen even went on to explain how the Legislative History supported its conclusion. (*Id*. at 123-125.)

In this case, the Court of Appeal claimed that *Jensen* was correctly decided, which is true, but incorrectly claims that *Jensen* is distinguishable

because *Jensen* supposedly involved a "a full new car warranty." (Typ. Op. 16, ¶ 3 ["Jensen involved a lease by a manufacturer-affiliated dealer who issued a full new car warranty along with the lease."].) But, that statement is demonstrably false: *Jensen* did not involve a full warranty. Rather, *Jensen* plainly involved "a used car" sold with "the unexpired portion of the manufacturer's original **limited warranty** . . . ." (*Jensen, supra*, 35 Cal.App.4th at p. 127 [emphasis added].)

The Court of Appeal's adoption of the term "full warranty" is particularly problematic because nothing in the Song-Beverly Consumer Warranty Act distinguishes between "full" and "limited" warranties. Rather, that is a concept that exists only in the federal Magnuson-Moss Warranty Act ("federal warranty law"[3]). (15 U.S.C. § 2303, subd. (a) ["(1) If the written warranty meets the Federal minimum standards for warranty set forth in section 2304 of this title, then it shall be conspicuously designated a 'full (statement of duration) warranty'. (2) If the written warranty does not meet the Federal minimum standards for warranty set forth in section 2304 of this title, then it shall be conspicuously designated a 'limited warranty'."].)

Under federal warranty law, a warrantor may choose to issue a "full warranty" or a "limited warranty." (15 U.S.C. § 2303, subd. (a).) The difference between the two is that a "full warranty" must include language - in the warranty - promising to repurchase or replace vehicles that are not repaired within a reasonable number of attempts. (15 U.S.C. § 2304, subd. (a)(4).) Because no warrantor wants to do that, nearly all warranties (and **all** auto warranties) issued in the United States are designated as "limited warranties."

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[3] Practitioners in this area refer to the Magnuson-Moss Warranty Act as the "federal lemon law."

The CWA was designed to remedy this problem by imposing, as a matter of state law, a requirement that warrantors repurchase or replace new motor vehicles that cannot be repaired after a reasonable number of attempts, regardless of whether the warranties are designated as "full" or "limited." (Civ. Code, § 1793.2(d)(2).)[4]

The Court of Appeal's attempt to distinguish between a "full" and a "limited" warranty in construing the CWA was improper because the CWA makes no such distinction. In doing so, the Court of Appeal undermined the entire purpose of the CWA, which was to provide *more* protection to consumers than are already afforded to limited warranties under federal warranty law.

It is possible that the Court of Appeal's reference to a "full" warranty was not intended to refer to the federal "full" versus "limited" distinction, but instead was intended to refer to the fact that this case involves a "powertrain" warranty while the *Jensen* involved a warranty that covered more than just the powertrain. If so, then that assertion fails for two additional reasons.

First, to the extent that the Court of Appeal asserted that *Jensen* involved a "full warranty," which presumably means a warranty that covers the entire car, the Court of Appeal was wrong. Nothing in *Jensen* indicated that the warranty covered every single component on the vehicle. Indeed, no automobile warranty in the U.S. does so. Every warranty has exclusions for certain parts, such as batteries, tires, and sometimes even engines, transmissions, emissions components and seatbelts, which are sometimes covered under separate warranties. Thus, the most correct assertion regarding the difference between the two warranties is that the warranty in

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[4] California has, in essence, decided that a limited warranty under federal law is not good enough for its consumers and small businesses.

Jensen probably covered more components than just the powertrain. The Court of Appeal's assertion that *Jensen* involved a "full warranty," whatever that means, was wrong.

Second, the Court of Appeal's conclusion that the definition of "new motor vehicle" turns on the percentage of the vehicle covered by the warranty involved lacks any support in the relevant statutory language. To the contrary, the words "other motor vehicle sold with a manufacturer's new car warranty" simply require that the vehicle (whether new or used) be sold with **a new car warranty**. While liability for a breach may turn on what the warranty covers, the initial determination of whether a particular vehicle even qualifies for protection as a "new motor vehicle" does not turn on the scope of the warranty coverage or whether the vehicle itself is new or used.

C. The Court of Appeal Failed to Even Recognize the Conflict It Has Created

The Opinion in this case plainly conflicts with the twenty-seven year old holding of *Jensen v. BMW of North America, Inc.* (1995) 35 Cal.App.4th 112. While the Court of Appeal here claimed that there is no conflict (and the automobile interests who support the Opinion are happy to repeat that claim while cherry picking language from both cases), the Court need only *read* both decisions in their entirety to see that the two decisions contains at least six holdings that simply cannot be reconciled with one another.[5]

For example, *Jensen* concludes that the word "or" between the words "a 'demonstrator' or other motor vehicle sold with a manufacturer's new car warranty" means that the two phrases are entirely separate.

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[5] Due to time and space constraints, we will cover only two of them here.

(*Jensen*, *supra*, 35 Cal.App.4th at 123 ["The use of the word 'or' in the statute indicates 'demonstrator' and 'other motor vehicle' are intended as alternative or separate categories of "new motor vehicle" if they are 'sold with a manufacturer's new car warranty.'"].) Yet, the Court of Appeal in this case concluded that the word "demonstrator" informs the words "other motor vehicle sold with a manufacturer's new car warranty." (Typ. Op. 10-11 ["But, more importantly, the phrase is preceded by 'a dealer-owned vehicle and demonstrator,' which comprise a specific and narrow class of vehicles. . . . In other words, 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. Given this context, we think the most natural interpretation of the phrase 'other motor vehicle sold with a manufacturer's new car warranty' is that it, too, refers to vehicles that have never been previously sold to a consumer and come with full express warranties."].)

Similarly, *Jensen* concluded that the words "other motor vehicle sold with a manufacturer's new car warranty" means precisely that, and nothing more. (*Jensen*, *supra*, 35 Cal.App.4th at 123 ["Having reviewed the amendments to former section 1793.2, documents relating to those legislative proceedings, and the statutory scheme as a whole, we conclude the plain meaning and the legislative intent are one and the same."].) Yet, the Court of Appeal here reached the opposite conclusion. (Typ. Op. 12 ["This organization reveals that, rather than create a new and different class of vehicles, the phrase was intended to function as a catchall provision to cover a narrow class vehicle—the previously driven, but basically new (i.e., not previously sold) car."]; Typ. Op. 15 ["we conclude the phrase 'other motor vehicle sold with a manufacturer's new car warranty' unambiguously refers to cars that come with a new or full express warranty. But even if this meaning weren't readily apparent from the statute, the Act's legislative

history would convince us the phrase refers to vehicles sold with full warranties."].)

The Court of Appeal's Opinion in this case claims that there is no conflict between its conclusion and *Jensen* because *Jensen* is supposedly distinguishable. In fact, however, none of the claimed distinctions hold up. For example:

1. The Court of Appeal claimed that *Jensen* involved a lease by a "manufacturer-affiliated dealer." (Typ. Op. 16.) However, nothing in the definition of "new motor vehicle" makes the affiliation of the dealer relevant to whether a vehicle is a "new motor vehicle." (Civ. Code, § 1793.22, subd. (e)(2).) Furthermore, nothing in *Jensen* establishes that the dealer in that case was "manufacturer-affiliated," whatever that means.

2. The Court of Appeal claimed, incorrectly, that the affiliated dealer in *Jensen* "issued a *full new car warranty* along with the lease." (Typ. Op. 16.) But, that claim is simply false. There is no indication in the *Jensen* decision that the warranty was issued by the dealer or that it was a full warranty. To the contrary, *Jensen* says exactly the opposite: The consumer in *Jensen* received the remaining balance on the manufacturer's **limited warranty**. (*Jensen, supra*, 35 Cal.App.4th at p. 127 [Jensen involved "a used car" sold with "the unexpired portion of the **manufacturer's original limited warranty** . . . ."] [emphasis added].)

3. The Court of Appeal claims that in *Jensen* "the issue was whether the leased car qualified as a 'new motor vehicle' under the Act." (Typ. Op. 16.) While that claim is true, it's hard to understand how that distinguishes this case, which involves the very same issue. (Typ. Op. 3 ["The sole issue in this case is whether the phrase 'other motor vehicle sold with a manufacturer's new car warranty' covers sales of previously owned vehicles with some balance remaining on the manufacturer's express warranty."].)

4. The Court of Appeal notes that the plaintiff in *Jensen* "learned of the car through a newspaper ad offering leases of 'BMW demonstrators'" and that the dealer falsely represented that the vehicle was a demonstrator when it was actually just an ordinary used vehicle with 7,565 miles on it. (Typ. Op. 16-17.) Again, these are correct statements about *Jensen*, but they don't distinguish *Jensen* from this case, which also did not involve a demonstrator but rather involved an ordinary used vehicle. Furthermore, again, none of these facts are relevant to whether the vehicle qualifies as a "new motor vehicle" using the clause "other motor vehicle sold with a manufacturer's new car warranty." (Civ. Code, § 1793.22, subd. (e)(2).)

5. Finally, the Court of Appeal stated that "we agree with *Jensen's* holding but not all of its reasoning." (Typ. Op. 18.) The problem with this argument is that the validity of *Jensen*'s holding depends upon its reasoning. If the Court of Appeal disagrees with *Jensen*'s reasoning, then in the absence of some alternative reasoning that could support *Jensen's* holding, the Court of Appeal's decision also conflicts with *Jensen*'s holding.

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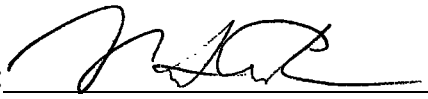
Conclusion

In sum, the Court of Appeal's Opinion is incorrect. It improperly rewrites the words "other motor vehicle sold with a manufacturer's new car warranty" in a narrow manner that favors *the warrantor*, which is contrary to this Court's direction that the CWA be broadly construed in favor of *the consumer*. It conflicts with a settled decision, issued in 1995, that has guided the Courts and litigants for nearly thirty years, and has never before been the subject of challenge, while failing to recognize the conflict that it creates. Most importantly, the Court's decision is incompatible with the plain language of the statute. Accordingly, this Court should reverse.

Dated: June 9, 2023

ANDERSON LAW, APC

By: 

Martin W. Anderson
Amicus Curiae

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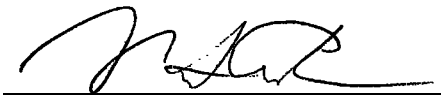
Dated: June 9, 2023



Martin W. Anderson

Proof of Service

I, Martin W. Anderson, am over the age of 18 and not a party to this action. My business address is 2070 N. Tustin Ave., Santa Ana, California 92705. My electronic service address is firm@andersonlaw.net.

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BY MAIL: For recipients listed below without an email address, on the date indicated below, I placed true copies of the document described below in a sealed envelope addressed as stated below and left the envelope in the area in our office designated for outgoing mail. I am readily familiar with my firm's practice of collection and processing correspondence for mailing. Under that practice and in the ordinary course of business, it would be deposited with the U.S. postal service on the same day with postage thereon fully prepaid in Santa Ana, California.

Document(s) Served:

APPLICATION TO FILE AMICUS CURIAE BRIEF; AMICUS CURIAE BRIEF IN SUPPORT OF EVERARDO RODRIGUEZ et al.

Person(s) served:

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Hon. Jackson Lucky
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County of Riverside
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Riverside, CA 92501

California Court of Appeal
Fourth Appellate District, Div. Two
3389 12th Street
Riverside, CA 92501

Email: Via TrueFiling

Date of Service: June 9, 2023
Date Proof of Service Signed: June 9, 2023

I declare under penalty of perjury under the laws of the State of California and of my own personal knowledge that the above is true and correct.

Signature: s/ Martin W. Anderson