

**S274625**

**IN THE  
SUPREME COURT OF CALIFORNIA**

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**EVERARDO RODRIGUEZ et al.,**  
*Plaintiffs and Appellants,*

*v.*

**FCA US, LLC,**  
*Defendant and Respondent.*

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AFTER A DECISION BY THE COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION TWO  
CASE NO. E073766

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**SUPPLEMENTAL MOTION FOR JUDICIAL NOTICE;  
MEMORANDUM OF POINTS AND AUTHORITIES;  
DECLARATION OF SHANE H. MCKENZIE**

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## **SUPPLEMENTAL MOTION FOR JUDICIAL NOTICE**

Pursuant to Evidence Code sections 452, 453, and 459, and rule 8.252(a) of the California Rules of Court, FCA US, LLC (FCA) requests that this Court take judicial notice of the 1985 and 1994 versions of the California Department of Consumer Affairs (DCA) publication entitled “Lemon-Aid for New Car Buyers,” copies of which are attached to this request as exhibits 1 and 2.

FCA cites these publications in its consolidated answer to the amicus curiae briefs. The publications are relevant to rebutting amici’s assertion that the State of California has understood for 30 years that the lemon law applies to used cars with some remaining balance of the original warranty. The DCA publications show that, to the contrary, in the years following the original enactment of the “lemon law” and its amendment in 1987, the DCA understood that law applied only to new cars. In addition, these historical documents shed light on the contemporaneous understanding of the drafters of the 1987 amendment to Civil Code section 1793.22, subdivision (e)(2).

These documents were not presented to or relied on by the trial court.

This request is being filed concurrently with FCA’s consolidated answer to the amicus curiae briefs, and is supported by the attached memorandum of points and authorities, the

declaration of Shane H. McKenzie, and the record on appeal.

August 23, 2023

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# MEMORANDUM OF POINTS AND AUTHORITIES

## INTRODUCTION

This appeal arises from a Song-Beverly warranty claim relating to plaintiffs’ purchase of a used Dodge Ram truck from Pacific Auto Center, a used car dealership. The central issue in this case is whether the Act’s provisions specific to “new motor vehicles” (commonly known as the “lemon law”) cover used cars with some balance of the original manufacturer warranty.

One amicus brief argues that the DCA has understood “for decades” that the lemon law protects new and used vehicles. (Brief of Amici Curiae UC Berkeley Center For Consumer Law & Economic Justice, et. al (CCL Brief) 25–26.) In response, FCA argues that this Court should consider that agency’s contemporaneous understanding of the 1987 amendment that added the relevant statutory language. In support of this argument, FCA relies on the 1985 and 1994 versions of an educational booklet published by the DCA, entitled “Lemon-Aid for New Car Buyers.” (Consol. Answer Brief to ACBs 37; Declaration of Shane H. McKenzie ¶¶ 2–4, exhs. 1, 2.) As we discuss below, the court should take judicial notice of these publications because they are proper subjects of judicial notice and are relevant to the issue presented in this appeal.

## LEGAL ARGUMENT

### **I. An official agency publication is a proper subject of judicial notice.**

Courts may take judicial notice of “[o]fficial acts of the legislative, executive, and judicial departments of the United

States and of any state of the United States.” (Evid. Code, § 452, subd. (c).) Also judicially noticeable are “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (*Id.*, § 452, subd. (h).)

Publications of California’s executive agencies are judicially noticeable under both of these provisions. (See *In re H.C.* (2017) 17 Cal.App.5th 1261, 1268, fn. 4 (*In re H.C.*) [taking judicial notice of agency manual “because its publication is an official act of an executive department”]; *Johnson v. United States Steel Corp.* (2015) 240 Cal.App.4th 22, 27, fn. 2 [taking judicial notice of agency report pursuant to Evid. Code, § 452, subd. (h)]; *Professional Engineers in California Government v. Brown* (2014) 229 Cal.App.4th 861, 867, fn. 3 (*Professional Engineers*) [taking judicial notice of excerpts of publications by California’s Department of Finance].) Appellate courts have the same right, power, and duty to take judicial notice as trial courts. (Evid. Code, § 459, subd. (b); see *Serrano v. Priest* (1971) 5 Cal.3d 584, 591 [Supreme Court taking notice of “publications of state officers or agencies”].)

Here, FCA seeks judicial notice of two official publications of the DCA. (McKenzie Decl. ¶¶ 2–4, exhs. 1, 2; see Bus. & Prof. Code, § 472.4, subd. (e) [the DCA’s official duties include the publication of educational materials, such as the “Lemon-Aid” booklet for consumers].) These agency publications fall within the scope of materials that are judicially noticeable under

Evidence Code section 452, subdivisions (c) and (h), as the foregoing cases make clear.

## **II. The DCA’s “Lemon-Aid” publications are relevant to the statutory interpretation issue in this case.**

The key issue in this case is whether the 1987 amendment to the Act’s definition of “new motor vehicle” was intended to expand the Act’s coverage to millions of used vehicles sold with a remaining balance of the original manufacturer warranty. (See ABOM 24–42.) As explained in greater detail in FCA’s merits brief and its consolidated answer to the amicus briefs, the DCA helped draft the 1982 lemon law and the 1987 amendment to the definition of “new motor vehicle.” (ABOM 54–56; Consol. Answer Brief to ACBs 37.)

This court should take judicial notice of the DCA’s “Lemon-Aid” publications because they show that, at least from 1985 to 1994, the agency understood that only new cars were covered by the lemon law. In 1985, the DCA’s “Lemon-Aid for New Car Buyers” stated, “The Lemon Law applies *only to new cars*.” (McKenzie Decl., exh. 1, p. 17, emphasis added; 11MJN 856.)<sup>1</sup> The 1994 version of that same publication stated that “[u]nder California’s Lemon Law, *a new car* . . . may be returned to the manufacturer for a refund or a replacement if it cannot be

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<sup>1</sup> The 1985 version of “Lemon-Aid for New Car Buyers” is also included in the “Author’s File” for Assembly Bill No. 3611 (Reg. Sess. 1985–1986) and thus is already subject to FCA’s prior request for judicial notice. (See 11MJN 852–870.) This request seeks notice of this particular document on the additional ground that it is an official agency publication.



repaired.” (McKenzie Decl., exh. 2, p. 35, emphasis added.) These statements show that the DCA’s contemporaneous understanding of the 1987 amendment was that the Act’s definition of “new motor vehicle” remained limited to new vehicles even after the Legislature added the phrase “or other motor vehicle sold with a manufacturer’s new car warranty.” (3MJN 714 [former § 1793.2, subd. (e)(4)(B)].)

Because the DCA helped draft the 1982 lemon law and the 1987 amendment to the definition of “new motor vehicle,” its understanding of the meaning of the Act’s definition of “new motor vehicle” in the late 1980’s and early 1990’s sheds light on the Legislature’s understanding of that definition. “Having been written closer in time to [the law’s] passage . . . , we may presume [this] analysis more fully comports with the legislative intent.” (*Mundy v. Superior Court* (1995) 31 Cal.App.4th 1396, 1404.) This Court therefore should take judicial notice of the 1985 and 1994 “Lemon-Aid” publications. (See *In re H.C.*, *supra*, 17 Cal.App.5th at p. 1268 [considering agency manual to determine meaning of term “nonminor dependent” under dependency statutes]; *Professional Engineers*, *supra*, 229 Cal.App.4th at p. 867–868 & fn. 3 [considering agency publications to help determine meaning of phrase “personal services” under Water Code and Health and Safety Code].)

## CONCLUSION

Because the DCA’s contemporaneous understanding of the scope of the 1987 amendment to the Act’s definition of “new motor vehicle” sheds light on the central issue in this case, this

Court should take judicial notice of the 1985 and 1994 versions of the DCA's "Lemon-Aid for New Car Buyers," attached hereto as exhibits 1 and 2.

August 23, 2023

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## DECLARATION OF SHANE H. McKENZIE

I, Shane H. McKenzie, declare as follows:

1. I am an attorney duly admitted to practice law in the State of California and an attorney with Horvitz & Levy LLP, counsel of record for defendant and respondent FCA US, LLC.

2. As FCA explained in its prior motion for judicial notice, my firm hired Legislative History & Intent to find legislative history materials relevant to the Act's definition of "new motor vehicle." Legislative History & Intent provided legislative history materials for Assembly Bill No. 3611 (Reg. Sess. 1985–1986) (AB 3611), an Assembly Bill introduced by Sally Tanner in 1986 that died in the California Senate and was reintroduced in 1987 as Assembly Bill No. 2057 (1987–1988 Reg. Sess.), the bill that enacted the key amendment at the heart of this appeal. (See ABOM 54–55.) The first document included in Assemblymember Tanner's "Author's File" for AB 3611 was the 1985 version of "Lemon-Aid for New Car Buyers," and thus is subject to FCA's prior request for judicial notice. (See 11MJN 852–870.)

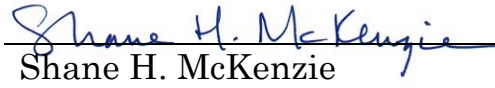
3. Exhibit 1 is a true and correct copy of the 1985 "Lemon-Aid for New Car Buyers" booklet that my firm received from Legislative History & Intent.

4. Exhibit 2 is a true and correct copy of the 1994 version of the DCA's "Lemon-Aid for New Car Buyers." Based on the arguments raised in the CCL Brief, I searched for additional versions of the DCA's "Lemon-Aid for New Car Buyers" that were published after the 1987 amendment to the Act's definition of

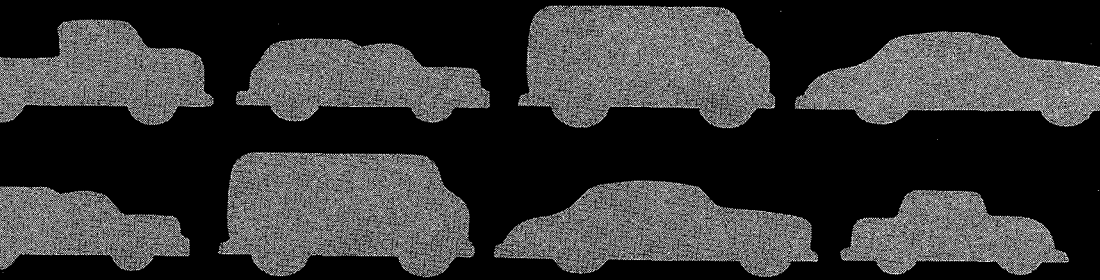
“new motor vehicle.” The oldest post-1987 version of the DCA’s “Lemon-Aid” publication that I could locate was the 1994 version, which I obtained from the Stanford University Library.

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

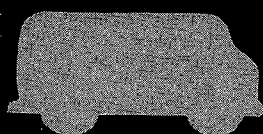
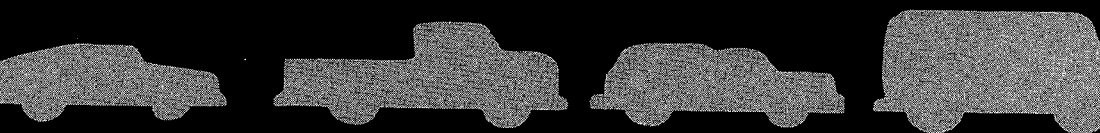
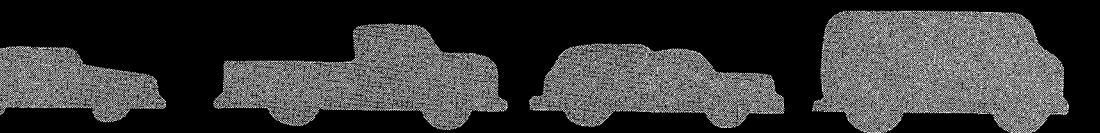
Executed August 23, 2023, at Burbank, California.

  
Shane H. McKenzie

## **EXHIBIT 1**



# Lemon-Aid for New Car Buyers



In California, a new car which is leased or sold with a written warranty may be returned for a refund or a replacement if it cannot be repaired. The purpose of *Lemon-Aid for New Car Buyers* is to explain how and under what circumstances California's New Car Lemon Law applies.

**Contents**

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If Repeated Repair Attempts Fail, Now What? .....	6
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Service and Repair Record .....	14
Contact Record Sheet .....	16
Check List for New Car Buyers and Lessees .....	17

This booklet is free by sending a self-addressed, stamped (\$.39), legal-size envelope to *Lemon-Aid for New Car Buyers*, Department of Consumer Affairs, P.O. Box 310, Sacramento, CA 95802.

A free list of other consumer educational materials prepared by the Department of Consumer Affairs is also available upon request.

# **Lemon-Aid for New Car Buyers**

**SHIRLEY R. CHILTON**  
Secretary, State and  
Consumer Services Agency

**MARIE SHIBUYA-SNELL**  
Director

**VIRGINIA HEROLD**  
Editor

The Department of Consumer Affairs wishes to thank the many individuals who provided their technical expertise to this booklet as contributors and reviewers. Special thanks are extended to Melissa Zermeño for her work on this booklet.



## WHAT IS THE LEMON LAW?

California has a warranty law, the Song-Beverly Consumer Warranty Act, which applies to all consumer products that either are leased or sold with written warranties. During the time a written warranty is in effect, the manufacturer is responsible for making any necessary repairs, and is required to *refund* the price or *replace* the product if it is fundamentally defective—that is if it cannot be repaired after “a reasonable number of attempts.”

In 1982, the California Legislature amended the Song-Beverly Warranty Act to clarify what is meant by a reasonable number of attempts to repair a new motor vehicle. This amendment is known as California's “New Car Lemon Law.”

The Lemon Law applies *only* to new cars, vans or trucks *sold* in California on or after January 1, 1983, and to new vehicles *leased* after January 1, 1985 for terms exceeding four months. A vehicle must be leased or purchased primarily for personal, family or household use. The law does *NOT* apply to commercial or fleet vehicles, motorcycles, motorhomes or off-road vehicles.

### What Is a Lemon?

Under the Lemon Law, you are generally entitled to a refund or replacement vehicle *if*, within the first year or 12,000 miles (whichever comes first):

- Four or more repair attempts are made on the same problem,
- or
- The car is out of service for a total of more than 30 days (not necessarily all at one time) while being repaired for any number of problems.

In addition, the Lemon Law requires that:

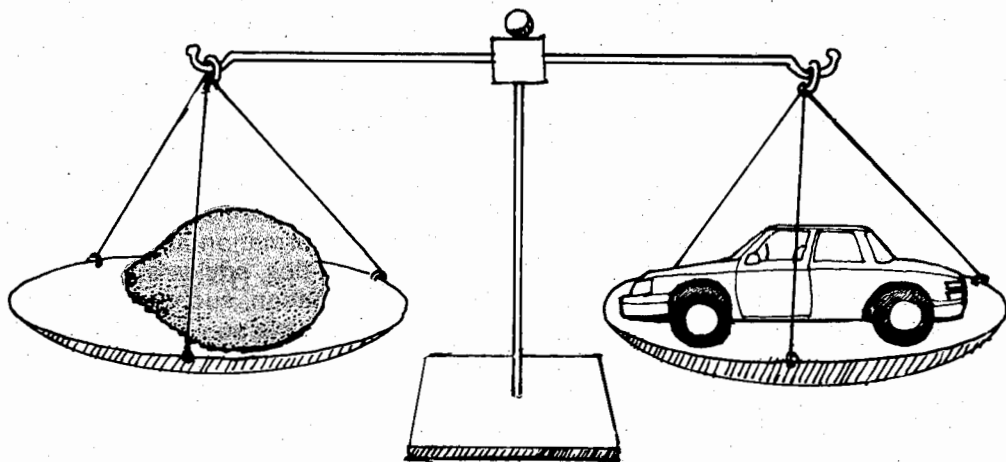
1. The problems you are having are covered by the warranty and substantially reduce the use, value or safety of the car.
2. You notify the *manufacturer* directly about the problems you are having with your car if you are required by the manufacturer to do so (see page 6).
3. A complaint about the problem you are having with your car is submitted to a “qualified” third party dispute resolution program if one exists (see page 6).

The law creates what is known in legal terminology as a presumption; the Lemon Law presumes that you are entitled to a refund or a replacement *if* the manufacturer or its dealer has made a certain number of unsuccessful attempts to repair your car (four or more repair attempts, or more than 30 days out of service).

However, there is an exception (or in legal terminology, the presumption is rebuttable). If the manufacturer can prove that it has not had a reasonable opportunity to repair your car, you may not be entitled to a refund or a replacement vehicle. For example, if the manufacturer can prove that the number of repair attempts was not unreasonable because you did not follow the terms of the warranty or some event (such as a labor strike) prevented timely repairs, the Lemon Law may not help you. In addition, if you abused the car or damaged it in an accident, the Lemon Law will not apply.

Dangerously defective cars may be returned even before the Lemon Law's standards are met. If the problem involves a violation of a vehicle equipment safety standard, a reasonable number of repair attempts may be as few as two, or even one. If you have a problem that involves the safety of your car (such as brake failure or a steering wheel that locks) that is not promptly corrected by the dealer or manufacturer, consider consulting a lawyer for advice.

If you question the safety of your car, contact the National Highway Traffic Safety Administration or the Center for Auto Safety for assistance (see page 9).



## **YOUR RESPONSIBILITIES**

Whether you have purchased or leased your new vehicle, the vehicle is protected by a warranty. To receive the benefits of this warranty, you should service and maintain the car by the terms of the warranty and owner's manual which come with the vehicle. Read your warranty and owner's manual carefully.

### **The Written Warranty**

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The written warranty describes the risks and responsibilities the manufacturer assumes if something goes wrong with the car. It tells you if, when and for how long the manufacturer will pay for repairs. It also lists the parts, components, characteristics and services that are covered, and those that are not.

The warranty also lists the responsibilities you assume as the car's owner or lessee. If you want to take advantage of the Lemon Law's protections, you should service your car according to the manufacturer's recommended maintenance schedule. Check your warranty and owner's manual to find out which repairs and service must be done by the dealer. Your warranty might be invalidated by do-it-yourself repairs and service. Having the dealer do this work and keeping copies of the repair records will help prove that you have maintained the car as required by the warranty.

All warranties have some limitations. The manufacturer may not be responsible for repairs caused by your failure to use, maintain or service your car properly. For example, if you do not add oil when it is needed and the engine is damaged, your warranty probably will not cover the repair costs.

If the manufacturer or dealer claims that a problem results from misuse or neglect, but you do not agree, it may be helpful to seek the unbiased opinion of an auto diagnostic center or a competent mechanic.

### **The Owner's Manual**

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Don't overlook your owner's manual. It suggests how some problems can be corrected and provides valuable information about the care of your car. Most manuals also give driving tips, advice about the car's special features and other important information, such as the recommended tire pressure and where to find the vehicle's identification number.

### **Getting Your Car Repaired**

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If you have a problem with your car, explain the problem to the dealer as completely as you can (see page 5).

If the first repair attempt is not successful, notify the dealer immediately and check the warranty. You may be required to notify the manufacturer directly of the need for further repairs. Information about how to contact the manufacturer's district or zone office can be found in your owner's manual, the warranty, or by asking the dealer.

## **RECORDS YOU SHOULD KEEP**

Keep records of *all* service and repairs from the day you buy or lease your car. You may realize only after a period of time and repeated repairs that your car is a "lemon." This is the wrong time to begin record keeping. Carefully kept records can help show that you have cared for your car as recommended by the warranty and owner's manual.

Two forms are provided in this booklet to help you to keep an accurate and complete repair history of your car—one is for repairs, the other is to record contacts.

### **1. RECORD ALL REPAIRS AND SERVICE**

Keep a record of the date and general nature of *all* repairs and adjustments made to your car, whether performed under warranty or not. Also record maintenance services.

When you bring your car in for repairs, a service writer or manager will give you a written estimate (repair order) before any work is begun. Make sure that all the car's problems are described on the repair order before you sign it.

Give symptoms—*don't diagnose*. For example, if your car is requiring more than the usual amount of oil and you suspect that the rings are worn out, make certain that the repair order says "determine cause of excessive oil consumption," not "do a ring job."

It is a good idea to make a list of your car's problems. Give a copy of this list to the service writer. (Remember to keep a copy for yourself.)

After the work is completed, you will receive an invoice. The invoice states which repairs or services were done, what parts were replaced, and the cost, if any. Make sure that the mileage and dates your car goes in and comes out are written on the invoice. If any of this information is missing, insist that it be added.

Remember, you are entitled to a copy of the repair order when you bring your car in for service, and an invoice when the work is completed. This is your right, regardless of whether or not you are charged for the work performed.

Keep a copy of both the repair order and the final invoice for your records.

### **2. RECORD ALL CONTACTS**

Use the contact record sheet on page 16 of this booklet to keep notes about telephone, letter or personal discussions you have had regarding your car's problems.

After an important conversation, take a minute to write a short letter confirming what was said. Send the letter by certified mail (return receipt requested). Keep a copy of the letter and the mail receipt. This letter may later help you prove what was said, and may also help avoid misunderstandings.

## IF REPEATED REPAIR ATTEMPTS FAIL, NOW WHAT?

If repeated attempts to repair your car have failed, read your warranty and owner's manual again. Make sure that you have followed the recommended repair and maintenance procedures. If you have financed the purchase of your car, keep the financing agency informed of the problems and your progress in resolving them. If you have leased your car, also keep the leasing agency informed of the problems and your progress in resolving them.

### Work with the Dealer and Manufacturer

If you haven't notified the manufacturer about the problems you are having with your car, do it now. Send letters describing the problems and requesting needed repairs to both the manufacturer and dealer. Include copies of all repair orders and invoices. (Before you are entitled to a refund or replacement under the Lemon Law, you may be required to notify the manufacturer directly at least once that further repairs are needed—check the warranty and any other papers you were given when you received the car.)

You may want to give the dealer and manufacturer another opportunity to honor the warranty and repair the car.

If at any point you have questions or desire additional help, contact the Department of Motor Vehicles, the New Motor Vehicle Board or another agency for assistance (see page 8). The Department of Motor Vehicles licenses dealers and manufacturers and will investigate written complaints, and the New Motor Vehicle Board mediates complaints about new cars.

### Third Party Dispute Resolution Programs

Third party dispute resolution programs are arbitration panels set up to resolve difficult car repair problems and avoid lawsuits. In fact, before you can use the Lemon Law in court, you are required to take your complaint to one of these arbitration programs if:

1. You are notified by the manufacturer *in writing* that such a program is available (this information comes in or with the warranty) , and
2. The program is "qualified." To be qualified the program must comply with Federal Trade Commission (FTC) guidelines and additional standards required by the Lemon Law. The FTC rules require that a qualified arbitration program be operated in a fair and impartial manner.

You will not have to pay a fee to use the arbitration program. Usually, you submit your complaint in writing to the program with copies of your records. If the information you give conflicts with that given by the manufacturer, the arbitrators must give you a chance to submit additional information and explain your side of the story.

Ask for a copy of the arbitration program's bylaws so that you will understand the process. Usually your case must be decided within 40 days after the time your complaint is received. You *may* accept or reject the program's decision. If you accept, the manufacturer must accept the decision and has 30 days to comply. There is no appeal process for the manufacturer.

If you do not agree with the arbitration program's decision, you can reject it and go to court to assert your right to a replacement, refund or other relief. You also can go to court if you accept the decision and the manufacturer does not promptly comply with its terms. The time limit on your right to file a lawsuit is extended while your case is involved in the arbitration procedure. If you sue, the judge may consider the program's decision in deciding your case.

You are *required* to use an arbitration program only if you want to use the Lemon Law's standard of what is "a reasonable number of repair attempts" (four or more repairs, or more than 30 days out of service) *and* the arbitration program complies with FTC and Lemon Law requirements. Not all programs offered by manufacturers comply with these requirements. To find out if an arbitration program is qualified, ask the manufacturer or the program.

If a qualified arbitration program is not available, you may choose to use a nonqualifying program. Such a program may be useful as an alternative to costly and lengthy court action. Be careful, these programs differ greatly and may not offer the same safeguards as a qualified arbitration program. For some you submit your case in writing, for others you present your case in person. Some programs may make decisions that are binding on you (this means you normally cannot appeal the decision, even in court); other programs may make decisions that are not binding on either party. Get a copy of the program's bylaws and be sure to evaluate all of your options before turning your problem over to one of these programs.



## WHERE TO FIND HELP

Always follow the repair procedures given in your warranty and owner's manual—these documents must contain the names, addresses and telephone numbers of persons to contact, and instructions to follow to obtain service.

If you have followed these procedures and still have a problem, contact the following organizations for information or assistance.

<b>Complaint Area or Service Needed</b>	<b>Organization to Contact</b>
Problem with the dealer, failure to honor the warranty, the quality of repairs performed under warranty, file a complaint, advice about asserting Lemon Law rights:	Department of Motor Vehicles (DMV) Division of Registration and Investigative Services P.O. Box 12689 Sacramento, CA 95852 (or call the DMV office nearest the dealer's location)  or  New Motor Vehicle Board 1507 21st Street, Suite 330 Sacramento, CA 95814 (916) 445-1888
Information and advice about filing a complaint:	Local district attorney  or  Local consumer agency or private consumer organization (check the yellow and white pages of your telephone directory under "consumer")  or  Department of Consumer Affairs Complaint Assistance Unit 1020 N Street, Room 592 Sacramento, CA 95814 (916) 445-0660 (10 a.m. to 3 p.m., weekdays)

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Repair order or invoice problems:

Bureau of Automotive Repair  
3116 Bradshaw Road  
Sacramento, CA 95827  
(800) 952-5210 (toll-free)  
(or check the telephone listing for  
the bureau's office in your area)

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Fraud or other questionable  
conduct:

Local district attorney

or

Office of the Attorney General  
Public Inquiry Unit  
1515 K Street  
Sacramento, CA 95814  
(916) 322-3360  
(800) 952-5225 (toll-free)

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Safety problems and recall  
information:

National Highway Traffic Safety  
Administration  
400 Seventh Street, S.W.  
Washington, D.C. 20590  
(800) 424-9393 (toll-free)

or

Center for Auto Safety  
2001 S Street, N.W., Suite 410  
Washington, D.C. 20009  
(202) 328-7700

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California lawyers who  
specialize in warranty law:

Center for Auto Safety (see above)

or

Local county bar association's  
lawyer referral service

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Information about pending class  
action lawsuits:

Center for Auto Safety (see above)



## THE LEMON LAW

### Questions and Answers

**Q Does the Lemon Law apply to new cars purchased in 1982 or earlier?**

**A** No. The Lemon Law's provisions do not apply to cars purchased in 1982 or earlier. However, other provisions of the Song-Beverly Act regarding refund or replacement do apply to all cars sold with written warranties. In addition, the courts may consider the *principles* of the Lemon Law in deciding whether or not you have a right to a refund or replacement.

**Q Does the Lemon Law apply to used cars?**

**A** No, but if a used car is sold or leased with a written warranty, other provisions of the Song-Beverly Act apply. If your warranty-covered used car isn't repaired after a reasonable number of attempts, you may have a right to a refund or replacement from the used car dealer or other warrantor. Even if there is no written warranty, a used car purchaser may be helped by the California Commercial Code and other laws. (See page 8 for organizations to contact for more information.)

**Q Does the Lemon Law apply to leased vehicles?**

**A** Yes, but only if the vehicle was leased after January 1, 1985, primarily for personal or family use, and for a term exceeding four months. The obligations of the manufacturer and dealer are substantially the same in both sales and leases.

**Q If the manufacturer has failed to fix a major defect after four repair attempts, am I guaranteed a refund or replacement?**

**A** No. The manufacturer has the right to show that four repair attempts were not unreasonable. In addition, if you have abused your car, failed to service your car as recommended, or did not give the manufacturer a reasonable opportunity to repair your car, you may lose your right to a refund or replacement under the provisions of the Lemon Law. However, it is the manufacturer that must prove its claims are valid. This is when accurate record keeping can be invaluable to you.

**Q If my car's only defects are ones that do not affect its use, value or safety substantially, am I still entitled to a replacement or refund?**

**A** No, but if a minor defect is covered by your warranty, you are entitled to have it repaired. If the manufacturer or its dealer cannot repair it, you can have your car repaired elsewhere and then file suit in small claims court to recover reasonable repair costs from the manufacturer. All new and used cars sold by a dealer in California are covered by an *implied (unwritten) warranty* created by state law that the vehicle conforms with all applicable equipment and safety standards.

**Q Do I have to notify the manufacturer when I take my car in for repairs?**

**A** The warranty and other papers you received when you bought or leased the car will tell you whom you must notify when your car needs repair. This may include the manufacturer. Any time a repair attempt is unsuccessful, be sure to notify the dealer immediately. You also should notify the manufacturer's nearest district office about any major or unresolved problem with your new car. You also may check with the National Highway Traffic Safety Administration or the Center for Auto Safety to see if your car has been recalled (see page 9).

**Q When I take my car in for repairs, will the warranty coverage be extended by the length of time my car is in the shop?**

**A** Yes, your warranty and the Lemon Law's protections are extended to include the period from the date when the car is delivered to the dealer through the date when the car is ready to be picked up.

**Q If a new problem is discovered after the first year or 12,000 miles, will the Lemon Law be of help?**

**A** No. However, your car's written warranty may specify coverage that is greater than one year or 12,000 miles. If so, while the warranty is in effect, the Song-Beverly Act will give you the right to a replacement or refund if repairs are not made after a reasonable number of attempts.

**Q What can I do if I believe I am entitled to a refund or replacement under the Lemon Law but the manufacturer refuses to provide either one?**

**A** A manufacturer will be reluctant to provide a replacement or price refund voluntarily until it is convinced of its legal obligation to do so. Instead, most manufacturers will want to continue trying to repair your car. However, if you legally are entitled to a refund or replacement under the Lemon Law and the manufacturer or its dealer refuses to honor your request, the manufacturer risks paying the penalty for a "willful" (or intentional) violation of the Song-Beverly Warranty Act. Consult a lawyer—warranty law is complicated. If the court determines that the manufacturer is guilty of a willful violation of the Song-Beverly Act, it can award you up to three times your actual losses, reasonable attorney's fees and court costs.

**Q** If my car can't be repaired after a "reasonable number of attempts," do I need to continue my payments?

**A** You *may* have a right to withhold payments—it depends on the specifics of your case. Unless your credit contract has specific terms that permit you to withhold payments, you risk having the car repossessed (which may also damage your credit rating). See a lawyer before you stop making payments.

**Q** If I'm entitled to a refund, will I receive the full purchase price?

**A** Probably not. A deduction may be made for the value of the use you got from your car before the defect was discovered. The date and mileage when the defect was first noticed and reported are used to determine the end of the useful life of your car. The amount deducted is usually the result of negotiations and compromise between you and the manufacturer. While there is no hard and fast rule for calculating the amount of this deduction, it is not appropriate for you to be charged commercial rental car rates. Again, carefully kept records that include mileage are a real help.

**Q** What do I need to know about filing a lawsuit for a replacement or refund of my new car?

**A** You need to consult a lawyer. Filing a lawsuit for a refund or replacement of a car you think is a lemon involves a number of complicated legal steps. Often the lawsuit must be filed within a specific period of time. So, if you think you may need to go to court, don't delay. Of course, this will cost you money—unless the lawyer is willing to represent you on the basis that the lawyer will be paid by the manufacturer or dealer if you win the lawsuit.

## GLOSSARY

**Calendar Day**—includes weekends and holidays. A car left with the dealer on Friday morning and ready to be picked up Monday afternoon has been out of service for four calendar days. A 30-minute wait for an adjustment probably won't count as one day. However, an actual loss of use of the car for more than half a day because it has been necessary to leave the car with the dealer for repairs probably will count as one day.

**Dealer**—an authorized sales and repair agent for an automobile manufacturer.

**District or Zone Office**—the manufacturer's regional office. For information on how to contact it, see your owner's manual or warranty, or ask a dealer.

**Invoice**—an itemized statement given to a customer when repair work is finished. An invoice lists all labor performed, parts replaced or repaired, and any charges.

**Leased Vehicles**—since January 1, 1985, new vehicles leased primarily for personal, family or household purposes for a term exceeding four months are protected by the Song-Beverly Consumer Warranty Act (including the New Car Lemon Law). *California Civil Code Section 1795.4.*

**Lemon**—a new car that has not been repaired after a reasonable number of repair attempts.

**Lemon Law**—defines when a manufacturer has had a reasonable opportunity to repair a new car that does not operate as it should, and entitles the buyer to a refund or replacement of the car. *California Civil Code Section 1793.2(d) and (e)*.

**Maintenance Schedule**—the regular service and adjustments which need to be made to new cars. Most warranties recommend that the dealer performs this maintenance during the warranty period.

**Manufacturer**—the company that built or produced the car.

**Owner's Manual**—a booklet that comes with a new car. It explains how to operate and maintain the vehicle.

**Presumption**—a legal term meaning that something is assumed to be true if something else is proven. For example, the Lemon Law presumes a car is a "lemon" if the manufacturer has made four or more attempts to repair it and the car is still not working properly. This is true unless the manufacturer can prove that four was really not an excessive number of repair attempts under the circumstances. *California Civil Code Section 1793.2(e)*.

**Reasonable Number of Attempts**—as defined by the Lemon Law, a reasonable number of attempts have been made when the dealer/manufacturer has tried four separate times to fix the same problem or when the car has been out of service for a total of 30 days to repair one or more problems, where the problems substantially reduce the car's use, value or safety (see page 2).

**Refund**—the money returned to the buyer of a car that has not been repaired after repeated attempts. Usually the refund is the purchase price minus a deduction for the use of the car before the problem was discovered.

**Service Writer**—the person in the dealer's repair and service department who writes up the repair order.

**Song-Beverly Consumer Warranty Act**—a California law that defines the rights and duties of consumers who purchase or lease products with warranties. This law requires a warrantor to begin repairs promptly and complete them within 30 days, and gives a buyer or lessee the right to a refund or replacement if a product covered by warranty cannot be repaired by a manufacturer after a reasonable number of attempts. *California Civil Code Sections 1790-1795.7*.

**Third Party Dispute Resolution Program**—an arbitration panel established by an auto manufacturer to resolve warranty disputes. Such a program sometimes is called an informal dispute settlement process or mechanism, and is designed to settle disputes without having to go to court (see page 6). *California Civil Code Section 1793.2(e)(3)*.

**Warranty**—a contract that establishes both a buyer's and manufacturer's responsibility for a product.

# Service and Repair Record

[illegible]

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\* Ask for and keep a copy of the work invoice for *all* repairs (including those made at no charge under warranty).

# Contact Record

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## **CHECK LIST FOR NEW CAR OWNERS AND LESSEES**

- ☐ Read your warranty and owner's manual. Pay close attention to the responsibilities you have.
- ☐ Service and maintain your car as required in the warranty and owner's manual.
- ☐ If you notice a problem with your car, contact the dealer immediately.
- ☐ Insist on itemized work orders and final invoices for all car repairs and service. Keep these for your records.
- ☐ Keep a list of all repairs made to your car. Also, write down all telephone and personal contacts with the dealer, manufacturer or other parties (use the record sheets, pages 14-15). Send a letter to confirm important agreements. Keep a copy for your records.
- ☐ If the dealer's repair attempts are not successful, write to the manufacturer's district or zone office. Keep a copy of your letter and the manufacturer's reply for your records.
- ☐ If the dealer and manufacturer are unable to repair the car after a "reasonable number of attempts" (see page 2), inform the dealer and manufacturer of your right to a refund or replacement.
- ☐ If you are required to use a third party dispute resolution program (see page 6), submit your complaint with copies of your records to the program designated by the manufacturer.
- ☐ If you are still dissatisfied, you may want to consider legal action. Contact a lawyer who specializes in warranty law (see page 9).



## **EXHIBIT 2**

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# Lemon-Aid for New Car Buyers



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State of California  
Pete Wilson, Governor

State and Consumer Services Agency  
Joanne Corday Kozberg, Secretary

Department of Consumer Affairs  
1994





## What is the "Lemon Law"?

Under California's Lemon Law, a new car which is leased or sold with a manufacturer's written warranty may be returned to the manufacturer for a refund or a replacement if it cannot be repaired. The purpose of *Lemon-Aid for New Car Buyers* is to explain how and under what circumstances California's Lemon Law applies.

## Contents

Steps to take if you think you have a lemon .....	1
What is "arbitration"? .....	1
When all else fails .....	1
California's Lemon Law .....	2
Your responsibilities .....	3
Where to find help if you have vehicle problems .....	4
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How to prepare for arbitration .....	6
Repair record .....	8

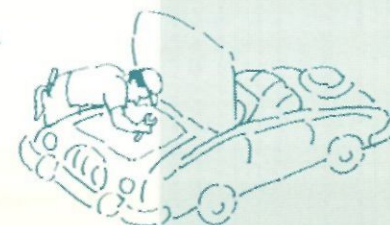
You can request this booklet free of charge by calling the Department of Consumer Affairs' toll-free telephone number, (800) 952-5210.

October 1994.

Printed on recycled paper.

## Steps to take if you think you have a lemon:

1. Consult your warranty booklet.
2. Attempt to resolve the problem with the dealer.
3. Contact the manufacturer or its representative.
4. You may pursue arbitration if you think you meet the following requirements:
  - The specific problem is covered by the manufacturer's warranty (disputes over extended warranties and service contracts are not arbitrated by manufacturers' programs);
  - You have notified the manufacturer directly about the problem;
  - The problem substantially reduces the use, value, or safety of your vehicle;
  - The problem has not been satisfactorily repaired; and
  - The manufacturer has an arbitration program.



## What is "arbitration"?

Arbitration is an independent dispute resolution process by which warranty disputes between manufacturers and consumers are resolved by a neutral (third) party. Some of the advantages of arbitration are:

- There is no charge to the consumer;
- Decisions are rendered within 40 days after the program receives your application;
- Most arbitration programs allow oral presentations;
- Decisions are binding on the manufacturer, but not the consumer. The consumer can accept or reject the decision; and
- If you reject the decision, you can still pursue your rights in court.



## When all else fails

- You may go to court, including small claims court. However, you should consider consulting an attorney before taking this step.



## California's Lemon Law

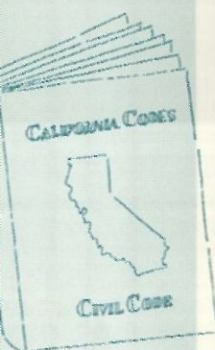
California's consumer warranty law requires the manufacturer of a new motor vehicle leased or sold with a manufacturer's written warranty to repair the vehicle during the warranty period so that it conforms to the warranty. The vehicle may be a new car, van or truck, but it must have been purchased or leased for nonbusiness use.

If the manufacturer or dealer cannot fix the vehicle to conform to the warranty within a "reasonable" number of repair attempts during the entire period that the warranty is in effect, then the manufacturer must replace the vehicle or reimburse the buyer or lessee for its purchase price, whichever the consumer prefers (less a mileage offset for the consumer's use of the vehicle).

**The Lemon Law uses a presumption as a guideline for determining whether a "reasonable" number of repair attempts have been made on a new vehicle. In order for the buyer or lessee to use the Lemon Law presumption, all of the following must be true:**

1. The manufacturer or its agents have made four or more attempts to repair the **same** problem, **or** the vehicle has been out of service for more than 30 days (not necessarily all at the same time) while being repaired for **any number of problems**.
2. The four repair attempts or 30 days out of service have occurred within 12 months of the vehicle's delivery to the consumer or 12,000 miles on the odometer, whichever occurs first.
3. The problems are covered by the warranty, substantially reduce the vehicle's use, value or safety to the consumer, and are not caused by abuse of the vehicle.
4. If required by the warranty materials or by the owner's manual, the consumer has directly notified the manufacturer about the problem(s).

If all of these criteria are met, the Lemon Law **presumes** that the buyer or lessee is entitled to a replacement vehicle or a refund. However, a replacement or refund may not be automatic; the manufacturer is entitled to prove that no



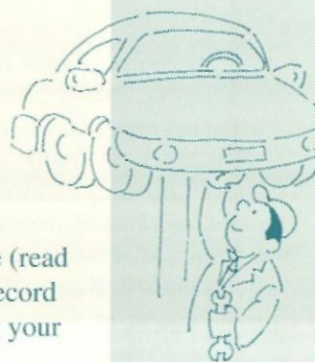
problem exists, that a reasonable number of repair attempts have not been made, or that the problem does not substantially impair the vehicle's use, value, or safety.

Note that if the manufacturer provides a certified arbitration program, the buyer or lessee must submit the dispute to the program before he or she can use the Lemon Law presumption in a lawsuit against the manufacturer. (See page 5 for a list of manufacturers' certified programs.)

The Lemon Law is found in California Civil Code Section 1793.22.

### Your responsibilities:

- Do not abuse the vehicle.
  - Service and maintain your vehicle according to the manufacturer's recommended maintenance schedule (read the warranty and owner's manual). Keep a service record and retain all receipts for maintenance performed on your vehicle.
  - Describe the problem when you take the vehicle in for service—don't diagnose it—making sure any repair order reflects the problem(s) you are experiencing with your vehicle, the mileage on the odometer at the time of repair, and the dates the vehicle was in the repair shop.
- Make sure that all warranty repairs are performed by an authorized dealer. Remember, you must give the manufacturer or its agents a "reasonable" opportunity to make needed repairs.
- Make sure a repair attempt is documented with a repair order, even if no repairs are made.
  - Keep copies of all service records and repair orders.
  - Record all contacts with the dealer or the manufacturer's representatives, noting the date and person contacted. Keep notes about telephone calls, letters, or personal discussions you have had regarding your vehicle's problems.
  - Notify the dealer immediately and check the warranty if repair attempts are not successful.
  - You may be required to directly notify the manufacturer of the need for further repairs. Send letters by certified mail, keeping a copy and the certified mail receipt.





# Where to find help if you have vehicle problems

Problem/service needed	Organization to contact
Information on arbitration	Department of Consumer Affairs, Arbitration Review Program, 400 R Street, Sacramento, CA 95814 (916) 323-3406
Manufacturer's or dealer's failure to honor the warranty, extended warranty, or service contract	<p>Manufacturer or dealer, by certified mail (check the owner's manual for manufacturer's address)</p> <p>Local Department of Motor Vehicles (DMV), Bureau of Investigations (check the white pages of your telephone book)</p> <p>New Motor Vehicle Board, 1507 21st Street, Suite 330, Sacramento, CA 95814 (916) 445-1888</p> <p>Local county consumer affairs office (check the white pages of your telephone book)</p>
Advice about asserting Lemon Law rights	<p>New Motor Vehicle Board (see above)</p> <p>Private attorney (see State Bar below)</p>
Dissatisfaction with nonwarranty repairs or dispute over repair invoice	Department of Consumer Affairs (800) 952-5210
Fraud or other questionable conduct	<p>New Motor Vehicle Board (see above)</p> <p>DMV Bureau of Investigations (see above)</p> <p>Local District Attorney's Office</p> <p>Office of the Attorney General, Public Inquiry Unit, 1515 K Street, Sacramento, CA 95814 (916) 322-3360 or (800) 952-5225</p>
Register a safety complaint or obtain recall information	National Highway Traffic Safety Administration, 400 Seventh Street, S W, Washington, D C 20590 Auto Safety Hotline (800) 424-9393
California lawyer who specializes in Lemon Law and warranty disputes	<p>State Bar of California lawyer referral service (415) 561-8200 or your local county Bar Association.</p> <p>Center for Auto Safety, 2001 S Street, N W, Suite 410, Washington, D C 20009 (202) 328-7700</p> <p>Motor Voters, 1500 W. El Camino Ave. Suite 419, Sacramento, CA 95833-1945 (916) 920-5464</p>
Service contracts	State Department of Insurance, 770 L Street, Sacramento, CA 95814 (800) 927-4357

## California's certified arbitration programs

In California, some manufacturers voluntarily seek certification of their arbitration programs from the Department of Consumers Affairs' Arbitration Review Program.

These state-certified arbitration programs hear and render decisions about consumers' warranty problems with their vehicles. The Arbitration Review Program monitors these programs for compliance with state and federal laws and investigates consumer complaints about their operations. The Arbitration Review Program does not review programs' decisions.

Certified Arbitration Program	Manufacturers Represented
Council of Better Business Bureaus, Inc. "Auto Line" 4200 Wilson Boulevard, Suite 800 Arlington, Virginia 22203 1-800-955-5100	Alfa Romeo, General Motors (includes Buick, Cadillac, Chevrolet, GMC, GEO, Pontiac, Oldsmobile), Hummer, Hyundai, Isuzu, Kia, Maserati, Nissan (includes Infiniti), Peugeot, Porsche, Sterling, Land Rover (Range Rover), Rolls Royce (includes Bentley), Saab, Saturn, Volkswagen (includes Audi)
Chrysler Customer Arbitration Board (Northern California) P.O. Box 280400 San Francisco CA 94128 (Southern California) P.O. Box 885 La Mirada CA 90637 1-800-279-5343	Chrysler (includes Dodge, Eagle, Jeep, Plymouth)
Dispute Settlement Board (formerly Ford Consumer Appeals Board) P.O. Box 5120 Southfield, Michigan 48086-5120 1-800-688-2429	Ford (includes Lincoln, Mercury, Merkur)

### NOTE:

Manufacturers that do not have arbitration programs include: BMW, Daihatsu, Ferrari, Honda (includes Acura), Jaguar, Lexus, Lotus, Mazda, Mercedes Benz, Mitsubishi, Subaru, Suzuki, Toyota, Volvo, Yugo.

Please verify in your owner's manual whether your vehicle's manufacturer participates in an arbitration program in California.

## How to prepare for arbitration:

### Gather information

- Contact the manufacturer and request any technical service bulletins that might relate to your vehicle problem.
- Contact the National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 Auto Safety Hotline at (800) 424-9393 for any safety recall information. Find out if there have been similar problems reported that indicate a pattern of problems with your model vehicle.

You may also contact Autofax at (800) 777-4481 for information on problems inherent to your vehicle. Autofax sells two types of reports (currently \$20 each): 1) summaries of recalls and manufacturer service bulletins; and 2) summaries of consumer complaints directed to the National Highway Traffic Safety Administration.

- To help validate the problem, especially if it is intermittent, submit signed statements or affidavits from certified mechanics and individuals who have ridden in your vehicle and experienced the problem (for example, family or carpool members).

### Organize paperwork

- Record and summarize warranty repairs in chronological order, using the form provided on pages 8-9. Focus on recurring problem(s) that affect the use, value, or safety of the vehicle. Do not list service orders which reflect only scheduled maintenance work.
- Make copies of the purchase order and finance/lease agreement, all repair and service orders, correspondence between you and the dealer or manufacturer, and any other documents such as signed statements that might help support your case. Do not use a highlighter pen on repair orders because it will blacken highlighted information when repair orders are copied.

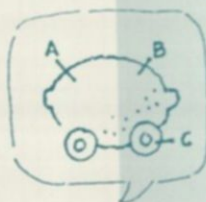


## Apply for arbitration

- Fill out and file an arbitration application, clearly stating what the problem is and what result you seek from arbitration. You may find an application in the materials inside your glove box or obtain one by calling the appropriate arbitration program (see page 5).

## Practice your presentation

- If you have an oral hearing, organize and write down the main points of your argument, emphasizing those problems which substantially reduce the use, value, or safety of the vehicle. Minor adjustments are necessary to most new vehicles and mentioning insignificant problems will divert attention from your main concerns. Rehearse your presentation.
- Remember that arbitrators, in reaching a decision, generally consider only those problems which have not been repaired. If the manufacturer has repaired some problems so that the vehicle conforms to the terms of the warranty, the arbitrators generally will not grant an award to the buyer for such concerns. Accordingly, focus on those problems which the dealer or manufacturer has not satisfactorily repaired and state clearly what relief you seek from the arbitrators.



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California Department of Consumer Affairs  
400 P Street  
Sacramento, CA 95814



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GAYLORD

**S274625**

**IN THE  
SUPREME COURT OF CALIFORNIA**

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**EVERARDO RODRIGUEZ et al.,**  
*Plaintiffs and Appellants,*  
*v.*  
**FCA US, LLC,**  
*Defendant and Respondent.*

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AFTER A DECISION BY THE COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIV. TWO  
CASE NO. E073766

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**[PROPOSED] ORDER**

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IT IS HEREBY ORDERED that, pursuant to the pertinent provisions of Evidence Code sections 452, 453, and 459, and rule 8.252(a) of the California Rules of Court, judicial notice is taken of the 1985 and 1994 versions of the California Department of Consumer Affairs’s “Lemon-Aid for New Car Buyers,” true and correct copies of which are attached to FCA’s supplemental motion for judicial notice as exhibits 1 and 2.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Presiding Justice



## PROOF OF SERVICE

*Rodriguez et al. v. FCA US, LLC*  
Case No. S274625

### STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 3601 West Olive Avenue, 8th Floor, Burbank, CA 91505-4681.

On August 23, 2023, I served true copies of the following document(s) described as **SUPPLEMENTAL MOTION FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF SHANE H. MCKENZIE** on the interested parties in this action as follows:

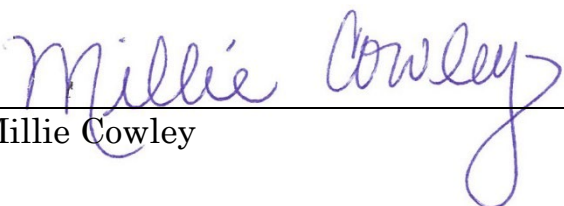
#### SEE ATTACHED SERVICE LIST

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling) as indicated on the attached service list.

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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

Executed on August 23, 2023, at Burbank, California.

  
\_\_\_\_\_  
Millie Cowley

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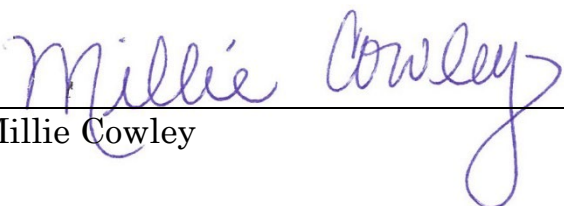
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 23, 2023, at Burbank, California.

  
\_\_\_\_\_  
Millie Cowley



**SERVICE LIST**  
***Rodriguez et al. v. FCA US, LLC***  
**Case No. S274625**

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**SERVICE LIST**  
***Rodriguez et al. v. FCA US, LLC***  
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**STATE OF CALIFORNIA**  
Supreme Court of California

Case Name: **RODRIGUEZ v. FCA  
US**

Case Number: **S274625**

Lower Court Case Number: **E073766**

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8/23/2023

Date

/s/Shane McKenzie

Signature

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