S274625

IN THE SUPREME COURT OF CALIFORNIA

EVERARDO RODRIGUEZ et al.,
Plaintiffs and Appellants,

v.

FCA US, LLC,
Defendant and Respondent.

AFTER A DECISION BY THE COURT OF APPEAL,
FOURTH APPELLATE DISTRICT, DIVISION TWO • CASE NO. E073766
RIVERSIDE COUNTY SUPERIOR COURT • JACKSON LUCKY, JUDGE • CASE NO. RIC1807727

FCA US LLC'S SUPPLEMENTAL BRIEF

HORVITZ & LEVY LLP
LISA PERROCHET (BAR NO. 132858)
JOHN A. TAYLOR, JR. (BAR NO. 129333)
*SHANE H. MCKENZIE (BAR NO. 228978)
3601 WEST OLIVE AVENUE, 8TH FLOOR
BURBANK, CALIFORNIA 91505-4681
(818) 995-0800 • FAX: (844) 497-6592
lperrochet@horvitzlevy.com
jtaylor@horvitzlevy.com
smckenzie@horvitzlevy.com

CLARK HILL LLP
DAVID L. BRANDON (BAR NO. 105505)
555 SOUTH FLOWER STREET, 24TH FLOOR
LOS ANGELES, CALIFORNIA 90071-2305
(213) 891-9100 • FAX: (213) 488-1178
dbrandon@clarkhill.com

CLARK HILL LLP
GEORGES A. HADDAD (BAR NO. 241785)
505 MONTGOMERY STREET, 13TH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-2551
(415) 984-8500 • FAX: (415) 984-8599
ghaddad@clarkhill.com

ATTORNEYS FOR DEFENDANT AND RESPONDENT
FCA US, LLC

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FCA US LLC'S SUPPLEMENTAL BRIEF

Under California Rules of Court, rule 8.520(d), defendant and respondent FCA US, LLC submits this brief on legal developments not available in time to be included in its brief on the merits:

A. *Stiles v. Kia* disagreed with *Rodriguez* on grounds contrary to basic rules of statutory construction, common sense, and public policy.

In a cursory discussion, *Stiles v. Kia Motors America, Inc.* (2024) 101 Cal.App.5th 913 (*Stiles*), review granted July 24, 2024, S285433, disagreed with the thorough analysis by the Court of Appeal in this case, *Rodriguez v. FCA US, LLC* (2022) 77 Cal.App.5th 209 (*Rodriguez*), review granted July 13, 2022, S274625. *Stiles* concluded that the Song-Beverly Act's definition of " 'new motor vehicle' " includes any "previously owned motor vehicle purchased with the manufacturer's new car warranty still in effect." (*Stiles*, at p. 915.) That holding, which would dramatically increase the number of vehicles covered by the Act's manufacturer repurchase remedy,[1] is contrary to the plain language, statutory context, and legislative history of the Act.

The Act defines a "new motor vehicle" as follows: "A 'New motor vehicle' means a new motor vehicle that is bought or used

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[1] See Experian, *Changes in US vehicles in operation* (March 31, 2024) <https://tinyurl.com/mvj9twhy> [as of Aug. 22, 2024][approximately three used cars are sold for every new car registered]; see also Plaintiffs' Motion to Expedite 5 ["Many, if not most [of used cars sold] are still covered by the manufacturer's new-car warranty"].

primarily for personal, family, or household purposes," which includes "a dealer-owned vehicle and a 'demonstrator' *or other motor vehicle sold with a manufacturer's new car warranty*." (Civ. Code, § 1793.22, subd. (e)(2) (emphasis added).)[2] *Stiles* reads the "or other" clause as though it contained words that are not there, construing the clause to include *any* motor vehicle sold with *the balance of* a new car warranty.

Surplusage. This interpretation defies not only common sense and the rule against rendering statutory language surplusage, it also *negates* other language in the definition, rendering it inoperative. *Stiles* does not explain how its interpretation can be reconciled with the definition's repetition of the phrase " 'New motor vehicle' means a new motor vehicle" in the definition's first two sentences. (See § 1793.22, subd. (e)(2); *Rodriguez*, *supra*, 77 Cal.App.5th at p. 220 ["To begin with, the phrase appears in a definition of new motor vehicles. That fact alone strongly suggests the Legislature did not intend the phrase to refer to used (i.e., previously sold) vehicles."].)[3] *Stiles* simply disregards the first eight words of the definition.

Ejusdem generis. Stiles fails to consider the "or other motor vehicle" phrase in the context of the list in which it

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[2] All further statutory citations are to the Civil Code.

[3] As Justice Raphael explained during oral argument in the Court of Appeal in this case, "new motor vehicle" "means a car that has not been sold once by the dealer. That's what the very first sentence [of the definition] says. It defines 'new motor vehicle' in the way that we all use it." (See FCA's Mtn. to Strike, Declaration of Shane H. McKenzie ¶ 2.)

appears. *Stiles* did not disagree with *Rodriguez*'s statement that the specific terms (" 'a dealer-owned vehicle and a "demonstrator" ' ") are limited to first-time sales; it simply found that limitation irrelevant because the "dealer-owned and demonstrator categories are followed by the disjunctive 'or.' " (*Stiles*, *supra*, 101 Cal.App.5th at p. 919.) But that failure to limit the phrase "or *other* motor vehicle" to *other* first-time sales, like the specific terms listed, conflicts with the doctrine of *ejusdem generis*, a fundamental principle of statutory construction. (See Hunter, *Reason Is Too Large: Analogy and Precedent in Law* (2001) 50 Emory L.J. 1197, 1208 [the "first step" of applying the *ejusdem generis* rule is to decide the scope of the specific words so as to determine what the expression " 'or other' " encompasses].) Had the Legislature intended to extend the repurchase remedy to all new and used cars covered by the manufacturer's warranty, there would be no reason to specifically identify dealer-owned or demonstrator vehicles.

Failure to harmonize a statutory scheme that distinguishes between new and used goods. *Stiles* failed to consider the "new motor vehicle" definition within the larger statutory scheme, which has always provided different remedies for new and used products. In particular, *Stiles* does not even mention the Act's used goods provision, section 1795.5. From its passage in 1971, that provision was intended to clarify that the Act's manufacturer repurchase remedy does *not* apply to used cars, and that buyers of used cars must seek the Act's remedies—

if they apply—against used car dealers. (See 1 MJN 166–167, 178, 194, 215–216.)

Stiles also failed to address the Act's provisions relating to used assistive devices (§ 1793.02) or the other provisions clarifying the Act's limited application to used cars. (See ABOM 42–50 [identifying other parts of the Act that make clear new and used products give rise to different rights and remedies and that the Legislature is clear when the Act's remedies apply to used products, like assistive devices]; *Dagher v. Ford Motor Co.* (2015) 238 Cal.App.4th 905, 917, fn. 6 (*Dagher*) ["if the Legislature had wanted to add used vehicles . . . (as it did for 'new and used assistive devices sold at retail'), it could have done so"].)

Failure to account for related statutes that specifically address purchasers of used goods with transferred warranties. *Stiles* further fails to consider how the Legislature expressly chose to address rights of warranty transferees: the Motor Vehicle Warranty Adjustment Programs (§§ 1795.90–1795.93) require manufacturers to notify all "consumers" of any warranty adjustments regarding certain recalls. The Act defines "consumer" as "any person *to whom the motor vehicle is transferred during the duration of an express warranty*" (§ 1795.90, subd. (a), emphasis added). These provisions indicate that the Legislature understands how to extend statutory protections to "consumers" of used vehicles with transferred warranties, but chose not to do so when defining "buyers" of "new motor vehicles." (See *Rodriguez*, *supra*, 77 Cal.App.5th at p. 222.)

Conflict with the Act's implied warranty provisions. *Stiles* refused to address the inherent conflict that its interpretation presents with respect to the Act's implied warranty provisions, stating that those provisions "make no reference to the definition of 'new motor vehicle.' " (*Stiles*, *supra*, 101 Cal.App.5th at p. 918.) But this superficial analysis does not wrestle with the fundamental problem identified in *Kiluk v. Mercedes-Benz USA, LLC* (2019) 43 Cal.App.5th 334, 339–340, footnote 4 (*Kiluk*): If used cars with transferred warranties were "new motor vehicles," as plaintiffs claim, they would also be "consumer goods" (defined by statute to mean "new products"—thus, *a new one-year implied warranty would attach to the vehicle upon each retail sale within the warranty period*, which would conflict with section 1791.1's one-year maximum.

Despite its failure to reconcile this conflict, *Stiles* reinstated plaintiffs' implied warranty claim, without any explanation as to how a previously owned motor vehicle could qualify as a "consumer good" subject to the Act's implied warranty protections. (See *Stiles*, *supra*, 101 Cal.App.5th at pp. 920–921.) This ruling is internally inconsistent with the opinion's earlier conclusion that the Act's implied warranty provisions for new products do *not* apply to the plaintiff's "new motor vehicle." (*Id.* at p. 918.) It also conflicts with authority establishing that the Act's implied warranty provisions do not apply to used cars. (E.g., *Nunez v. FCA US LLC* (2021) 61 Cal.App.5th 385, 399 [as a matter of law, manufacturers are *not* liable for breach of any

implied warranties as to used cars sold at unaffiliated used car dealers].)

Improper shifting of responsibility from used car dealers to manufacturers. If *Stiles* were correct that used car buyers can sue manufacturers for violation of the Act's implied warranty protections for new products, manufacturers would be required to *indemnify* unaffiliated used car dealers who sell unmerchantable used cars that are still covered by the manufacturer's warranty. (See § 1792 ["The retail seller shall have a right of indemnity against the manufacturer in the amount of any liability" for the retail seller's breach of the implied warranty of merchantability].) Such an interpretation of the Act would actually *undermine* consumer protection by letting used car dealers get off scot-free when they negligently inspect, repair, equip, or program used cars. And manufacturers would suddenly be liable for negligently rebuilt vehicles with defects that have nothing to do with the manufacturing process.

Reopens questions as to private-party, out-of-state, and business sales of *new and used* cars. *Stiles* also conflicts with *Dagher*, *supra*, 238 Cal.App.4th at page 927, which held that Song-Beverly's express warranty protections do not apply to used cars sold in private sales and that the Act's implied warranty protections for new products do not transfer to subsequent purchasers. As amici curiae point out, if this Court adopts *Stiles*'s isolated interpretation of the "other motor vehicles" phrase, *all* vehicles sold with any balance of the original warranty are subject to the Act's manufacturer repurchase

remedy, which would override the Legislature's intent to limit the Act's coverage to retail sales. (See UC Berkeley Center for Consumer Law Amicus Brief 14, fn. 2.) The expansion would not end there. The isolated interpretation advocated by plaintiffs here and the court in *Stiles* also nullifies the definition's business use limits and the in-state sale limit. (See *Cummins, Inc. v. Superior Court* (2005) 36 Cal.4th 478, 487–488 (*Cummins*) [considering the full statutory scheme and concluding that only vehicles sold in California are covered by the Act's express warranty provisions].) Thus, *Stiles*'s interpretation would call into question whether the Act's express warranty provision covers the *millions* of new and used vehicles sold in private sales, outside of California, and to business fleets.

Unworkable rule of law. As the *Rodriguez* court and others have explained, the interpretation accepted in *Stiles* "raises more questions than it answers":

> For example, how would the Act treat a car that was sold by private seller before eventually ending up at a used car dealership? It's clear the Act doesn't cover products purchased in private sales (§ 1791, subd. (*l*)), but if our hypothetical car were purchased from the used car dealership before its warranties expired, would it transform from a used vehicle back to new upon its third sale?
>
> Another question is whether a buyer who purchases a used car with only a few miles remaining on the original warranty would be entitled to the same protection as the original buyer. If so, what would

> constitute "a reasonable number of attempts" to repair the vehicle?

(*Rodriguez*, *supra*, 77 Cal.App.5th at p. 221.)

> Would a car accompanied by a 20-year warranty still be a "new motor vehicle" under the Song-Beverly Act on year 18?

(*Kiluk*, *supra*, 43 Cal.App.5th at p. 340, fn. 4.)

> Are used vehicles sold with transferred warranties covered by the Act's implied warranty, penalty, fee-shifting, warranty start date, and other provisions relating to "consumer goods"?

(See FCA's Consolidated Answer to Amicus Curiae Briefs 29–30.)

The approach in *Stiles* provides no principled way to answer any of these questions.

Moreover, such confusion hinders the prospect of settlements, which conflicts with the Act's overriding purpose to encourage prelitigation resolution of warranty disputes. (See ABOM 56–57.) Clarity will help consumers more than the expansion of the Act's remedies in ways that cause needless confusion. The Court should instead affirm the Legislature's harmonization of the Act's express and implied warranty protections and careful balancing of the interests of manufacturers, auto dealers, and consumers.

The analysis by the Court of Appeal in *Rodriguez* is correct. The interpretation adopted in *Rodriguez* is the elegant solution that gives meaning to the entire definition of "new motor vehicle," harmonizes the entire statutory scheme (and related statutes), conforms to legislative intent, and answers the

questions *Stiles* does not address. (See *Rodriguez*, *supra*, 77 Cal.App.5th at pp. 215, 222, 225 [a "new motor vehicle" is one sold with a new or full manufacturer warranty in a first-time, retail sale]; see also *Cummins*, *supra*, 36 Cal.4th at p. 490 [" 'new motor vehicle' is just one type of 'consumer goods' " under Song-Beverly].)

B. This Court's opinion in *Niedermeier v. FCA* illustrates additional reasons why *Rodriguez* was correctly decided.

In *Niedermeier v. FCA US LLC* (2024) 15 Cal.5th 792 (*Niedermeier*), this Court clarified that some new car buyers may not have an obligation to retain their vehicles in anticipation of an eventual repurchase, if they are "forced" to trade-in defective cars to buy reliable transportation. (*Id.* at pp. 814, 817–819.) But nothing in that holding indicates that the Legislature intended used car buyers to have the same money-back remedies against manufacturers as buyers of "new motor vehicles."

If *Neidermeier* has any bearing here, it is to rebut plaintiffs' claim that the Court of Appeal's opinion in this case somehow incentivizes manufacturers to breach their duty to promptly replace or repurchase defective *new* cars. (OBOM 51–54.) Any manufacturer that fails to comply with the Act's requirements is still liable *to the original buyer*, who can sue for violation of Song-Beverly even after they are forced to trade in the car. (*Niedermeier*, *supra*, 15 Cal.5th at p. 820.) Extending that remedy to buyers of used vehicles still covered by the original warranty would make manufacturers liable to repurchase *the*

same vehicle numerous times throughout the duration of the vehicle's express warranties. Nothing supports the conclusion that the Legislature intended manufacturers to "repurchase" the same vehicle multiple times, when the manufacturer sold the vehicle once.

Plaintiffs have argued that "FCA's hypothetical about repurchasing the same vehicle multiple times doesn't make much sense." (Opp. to Mtn. to Strike 13.) But the concern is not merely hypothetical. Successive buyers of used vehicles that were sold by the original purchaser during pending litigation are *already* suing the same manufacturer for repurchase of the same vehicle. For example, within a few months of the publication of *Niedermeier* and *Stiles*, a complaint was filed in *Andrea Marie Birkle v. Nissan North America, Inc.* (Super. Ct. Los Angeles County, No. 24STCV19047) (*Birkle*) seeking repurchase of the same vehicle already subject to another pending Song-Beverly suit filed a year earlier (alleging different defects), *Zambrano v. Nissan North America, Inc.* (Super. Ct. Los Angeles County, No. 23NWCV02196). (Second Supp. MJN 17–46, 73–80.) If plaintiffs are not required to return defective vehicles to the manufacturer *and* the Act's definition of "new motor vehicle" is expanded to include previously sold cars, we can expect the current explosion of lemon law litigation to include even more lawsuits demanding that manufacturers repurchase the same vehicle multiple times. (See Powell, *California's Lemon Law: A Sweet Deal for Lawyers, Sour for Consumers* (July 17, 2024) Los Angeles Daily News <https://tinyurl.com/bderd5up> [as of July

23, 2024] [in Los Angeles County, "lemon law cases spiked 1400 percent in its branch courts between 2021 and 2023"].)

Finally, the combination of the holding in *Niedermeier* and the result in *Stiles* would *disincentivize* independent used car dealers from properly inspecting and repairing defective used cars that are still covered by the manufacturer's warranty. As recent used-car cases like *Stiles* and *Birkle* illustrate, buyers of defective used cars are now suing *only* the vehicle's manufacturer *instead of* the used car dealer that sold the car. And under plaintiffs' interpretation of the Act, manufacturers must indemnify those dealers for breach of an implied warranty that is recreated upon each successive sale, even if problems arising in the used car have nothing to do with the manufacturer. The Legislature cannot have intended that the manufacturer is on the hook for a new implied warranty as to the merchantability of pre-owned cars, where nonmerchantability arises from misuse by a prior owner, negligent repair, or installation of defective nonmanufacturer parts. (See *ante*, p. 7.)

It was never the Legislature's intent to require manufacturers to "repurchase" the same cars multiple times without being able to brand their titles and repair them, while simultaneously shielding used car dealers from liability for their failure to properly inspect and repair used cars.

August 23, 2024

HORVITZ & LEVY LLP
LISA PERROCHET
JOHN A. TAYLOR, JR.
SHANE H. MCKENZIE
CLARK HILL LLP
DAVID L. BRANDON
CLARK HILL LLP
GEORGES A. HADDAD

By: Shane H. McKenzie
Shane H. McKenzie

Attorneys for Defendant and Respondent
FCA US, LLC

CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, rule 8.520(d)(2).)

The text of this petition consists of 2,667 words as counted by the program used to generate the petition.

Dated: August 23, 2024

Shane H. McKenzie

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Millie Cowley

Millie Cowley

SERVICE LIST
Rodriguez et al. v. FCA US, LLC
Case No. E073766

David L. Brandon Clark Hill LLP 555 S. Flower, 24th Floor Los Angeles, CA 90071 (213) 891-9100 Email: dbrandon@clarkhill.com	Co-Counsel for Defendant and Respondent **FCA US LLC**
Georges A. Haddad Clark Hill LLP One Embarcadero Center, Suite 400 San Francisco, CA 94111 (415) 984-8500 Email: ghaddad@clarkhill.com	Co-Counsel for Defendant and Respondent **FCA US LLC**
Hallen D. Rosner Arlyn L. Escalante Rosner, Barry & Babbitt LLP 10085 Carroll Canyon Road, Suite 100 San Diego, CA 92131 (858) 348-1005 Email: hal@rbblawgroup.com Email: arlyn@rbblawgroup.com	Attorneys for Plaintiffs and Appellants **EVERARDO RODRIGUEZ and JUDITH V. ARELLANO**
Steve Mikhov Roger R. Kirnos Knight Law Group, LLP 10250 Constellation Blvd., Suite 2500 Los Angeles, CA 90067 (310) 552-2250 Email: stevem@knightlaw.com Email: rkirnos@knightlaw.com	Attorneys for Plaintiffs and Appellants **EVERARDO RODRIGUEZ and JUDITH V. ARELLANO**

Cynthia E. Tobisman
Joseph V. Bui
Greines, Martin, Stein & Richland LLP
6420 Wilshire Blvd., Suite 1100
Los Angeles, CA 90048
(310) 859-7811
Email: ctobisman@gmsr.com
Email: jbui@gmsr.com

Attorneys for Plaintiffs and Appellants
EVERARDO RODRIGUEZ and JUDITH V. ARELLANO

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

Case No. E073766

Via TrueFiling

Hon. Jackson Lucky
Riverside County Superior Court
Historic Courthouse
4050 Main Street, Dept. 10
Riverside, CA 92501

Case No. RIC1807727

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

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Lower Court Case Number: **E073766**

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Georges Haddad Clark Hill LLP	ghaddad@clarkhill.com	e-Serve	8/23/2024 1:12:19 PM
Joseph Bui Greines, Martin, Stein & Richland LLP 293256	jbui@gmsr.com	e-Serve	8/23/2024 1:12:19 PM
Cynthia Tobisman Greines Martin Stein & Richland LLP 197983	ctobisman@gmsr.com	e-Serve	8/23/2024 1:12:19 PM
Alana Rotter Greines, Martin, Stein & Richland LLP 236666	arotter@gmsr.com	e-Serve	8/23/2024 1:12:19 PM
David Brandon Clark Hill 105505	dbrandon@clarkhill.com	e-Serve	8/23/2024 1:12:19 PM
Radomir Kirnos Knight Law Group, LLP 283163	rogerk@knightlaw.com	e-Serve	8/23/2024 1:12:19 PM
Maureen Allen Greines, Martin, Stein & Richland LLP	mallen@gmsr.com	e-Serve	8/23/2024 1:12:19 PM
Arlyn Escalante Rosner, Barry & Babbitt, LLP 272645	arlyn@rbblawgroup.com	e-Serve	8/23/2024 1:12:19 PM
Shane McKenzie Horvitz & Levy LLP 228978	smckenzie@horvitzlevy.com	e-Serve	8/23/2024 1:12:19 PM
Hallen Rosner Rosner, Barry & Babbittt, LLP	hal@rbblawgroup.com	e-Serve	8/23/2024 1:12:19 PM

109740			
Lisa Perrochet Horvitz & Levy 132858	lperrochet@horvitzlevy.com	e-Serve	8/23/2024 1:12:19 PM
Rebecca Nieto Greines Martin Stein & Richland LLP	rnieto@gmsr.com	e-Serve	8/23/2024 1:12:19 PM
Gwendolyn West Greines, Martin, Stein & Richland LLP	Gwest@gmsr.com	e-Serve	8/23/2024 1:12:19 PM
Chris Hsu Greines Martin Stein & Richland LLP	chsu@gmsr.com	e-Serve	8/23/2024 1:12:19 PM
John Taylor Horvitz & Levy LLP 129333	jtaylor@horvitzlevy.com	e-Serve	8/23/2024 1:12:19 PM

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Date

/s/Shane McKenzie

Signature

McKenzie, Shane (228978)

Last Name, First Name (PNum)

Horvitz & Levy LLP

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