No. S274625

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

EVERARDO RODRIGUEZ and JUDITH V. ARELLANO,

Plaintiffs and Appellants,

v.

FCA US, LLC,

Defendant and Respondent.

California Court of Appeal, Fourth District, Division Two, Civil No. E073766
Appeal from Riverside County Superior Court
Case No. RIC1807727
Honorable Jackson Lucky, Judge Presiding

EVERARDO RODRIGUEZ'S AND JUDITH V. ARELLANO'S SUPPLEMENTAL BRIEF

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Pursuant to California Rule of Court 8.520(b), plaintiffs and appellants Everardo Rodriguez and Judith Arellano submit this supplemental brief to discuss two newly decided cases:

I. *Niedermeier v. FCA US LLC* (2024) 15 Cal.5th 792.

In *Niedermeier v. FCA US LLC* (2024) 15 Cal.5th 792 (*Niedermeier*), the Court addressed whether the Song-Beverly Act (Act) allowed a manufacturer that failed to offer a statutory buy-back remedy to a consumer to deduct from that consumer's damage award the amount that she had received in a trade-in transaction. In answering that question "no," the Court provided valuable general guidance on how the Act should be interpreted given the Act's remedial purpose and a legislative history showing a consistent intent to protect consumers from efforts by the manufacturers to constrain consumers' remedies—including efforts to relegate consumers to the remedies under the California Commercial Code which the Legislature had found to be inadequate.

Specifically:

- The Court made clear that in construing the Act, "'our task is to select the construction that comports most closely with the Legislature's apparent intent, with a view to promoting rather than defeating the statutes' general purpose, and to avoid a construction that would lead to unreasonable, impractical, or arbitrary results.'" (*Niedermeier, supra*, at p. 804, quoting *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 388.)

- The Court explained that it is important to "keep in mind that the Act is 'manifestly a remedial measure, intended for the protection of the consumer; it should be given a construction calculated to bring its benefits into action.'" (*Niedermeier, supra*, at p. 804, citing *Murillo v. Fleetwood Enterprises, Inc.* (1998) 17 Cal.4th 985, 990 & *People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 313 ["civil statutes for the protection of the public are, generally, broadly construed in favor of that protective purpose"]; *Pineda v. Williams-Sonoma Stores, Inc.* (2011) 51 Cal.4th 524, 530 [liberally construing § 1747.08 of the Song-Beverly Credit Card Act].)

- The Court recognized that the remedies that are available under the California Commercial Code are significantly weaker than those provided to consumers by the Act: "[T]he Act provides more extensive consumer protections than the California Uniform Commercial Code." (*Niedermeier, supra*, at p. 812, citing *Krotin v. Porsche Cars North America, Inc.* (1995) 38 Cal.App.4th 294, 301; *Murillo, supra*, 17 Cal.4th at p. 989.)

- The Court correctly noted that the legislative history of the Act reflected the Legislature's continuing goal to "protect consumers," including by making it clear that manufacturers could not evade the Act's mandates. (*Niedermeier, supra*, at p. 815 [after amending the Act to delineate the available consumer remedies, "there were numerous complaints from new car buyers concerning its

implementation, including that manufacturers were not paying full restitution or replacement awards and were seeking excessive offsets for rental cars. As a result, the Legislature again amended the Act in order to protect consumers"].)

- The Court further noted: "The evolution of the Act also indicates a legislative intent to ensure buyers receive full compensation under the Act, to make it easier for buyers to access all the benefits to which they are entitled under applicable warranties, and to constrain manufacturers from evading their statutory obligations. To this end, since its enactment, the Act 'has been amended numerous times to broaden its consumer protection policy, expand the classes of vehicles to which the lemon law applies, lessen the types of defenses that can [be] asserted, and change the statutory text in response to appellate decisions.'" (*Niedermeier, supra*, at pp. 816-817, quoting Frank, Lemon Law (Nov. 2016) 39 L.A.Law. 27, 32.)

- The evolution of the Act and the Legislature's clear policy objectives both "[c]ounsel[] against reducing statutory restitution awards by trade-in credits or sales proceeds, when such reductions are not enumerated or authorized in section 1793.2, subdivision (d). Any such reduction would be inconsistent with the legislative history

and the Act's consumer protective purpose." (*Niedermeier, supra*, at p. 817.)[1]

In addition to this Court's broadly applicable reasoning regarding the purpose of the Act, the *Niedermeier* court also addressed the importance of the labeling regime—an issue that's squarely implicated by the instant appeal.

Specifically, FCA, the manufacturer in *Niedermeier*, argued that denying manufacturers a trade-in offset would encourage consumers to trade in their vehicles, rather than ensure that the vehicles were properly labeled as "lemons." (*Niedermeier, supra.* at pp. 817-818.) This Court rejected that argument, reasoning as follows: "As FCA concedes, [Civil Code] sections 1793.22 and 1793.23 require manufacturers, not consumers, to label defective vehicles as lemons once they are reacquired. (Citations.) Buyers have neither the obligation nor the ability to label their defective vehicles lemons. Had FCA promptly refunded Niedermeier when its obligation to do so arose, the defective vehicle could have been reacquired and labeled a lemon by the manufacturer. Buyers like Niedermeier are only confronted with the possibility of selling or trading in their defective vehicles after manufacturers have failed to comply with their obligation to promptly replace or repurchase the vehicle. When this occurs, buyers may have no choice but to engage in self-help to relieve themselves of the burden of owning or possessing a lemon. Contrary to the Court of Appeal's focus, it is manufacturers, not buyers who are forced to

[1] All unassigned statutory citations are to the Civil Code.

trade in or sell their vehicles, who undercut the Act's labeling and notification provisions by failing to timely comply with the Act's requirements. Allowing buyers to recover full restitution, as defined in the statute, incentivizes manufacturers to comply with their obligations under the Act." (*Niedermeier, supra*, at pp. 817-818, internal citations omitted.)[2]

The *Niedermeier* Court's entirely correct focus on the implications of the Act's structure, which requires manufacturers to shoulder the responsibility of labelling defective vehicles "lemons," is relevant to the instant appeal because—in effect—the instant appeal addresses what happens to the unlabeled lemon that a manufacturer's dilatory conduct allows to enter the stream of commerce. Indeed, when the Lisa Niedermeiers of the world try to bring their defective vehicles in for repair (in her case, sixteen times) and the manufacturer refuses to buy the vehicle back, consumers predictably end up trading in their vehicles. If that *now-used* vehicle isn't covered by the Act, then the manufacturer gets rewarded for the exact dilatory conduct that this Court declined to excuse in *Niedermeier*. (See *Niedermeier*, *supra*, at p. 821.)

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[2] See also Dutzick, The Auto Lemon Index (May 2022) [explaining that most complaints are "handled outside of the court system" because although "in some cases," the manufacturer provides some (inadequate) measure of relief, "many consumers give up and sell their vehicles back to dealerships at a substantial loss"], available at <https://pirg.org/california/edfund/resources/auto-lemon-index/> (accessed Aug. 20, 2024).

Put colloquially, if *Niedermeier* addresses the first chapter of the story of what happens when a manufacturer wrongfully fails to simply provide a buy-back remedy to a consumer, then *Rodriguez* addresses the second chapter of that story—i.e., what happens after a consumer purchases the unlabeled vehicle that someone like Ms. Niedermier traded in? Is that vehicle covered by the Act (so long as it has a still-remaining portion of the original new-car warranty on it)? Or does the manufacturer get the "independent[] benefit" from its own delays "that cause buyers to trade in or sell defective vehicles because manufacturers are relieved of the burden of complying with the Act's labeling and notification requirements?" (*Id*. at p. 821.)

This Court's reasoning in *Niedermeier* provides the roadmap for answering that question: No, manufacturers cannot escape their statutory labeling responsibilities on the basis that the Act doesn't apply to used cars that are still covered by the very warranties that a manufacturer itself has chosen to make transferable to a subsequent purchaser.

II. *Stiles v. Kia Motors America, Inc.* (2024) 101 Cal.App.5th 913.

In *Stiles v. Kia Motors America, Inc.* (2024) 101 Cal.App.5th 913 (*Stiles*), review granted July 24, 2024, S285433, the Court of Appeal (Second District, Division Six) addressed the same issue posed in the instant appeal—namely, whether a vehicle that was purchased used but has a balance remaining on a new-car warranty qualifies as a "new motor vehicle" under the Act. This Court granted review and stayed further proceedings

pending the Court's opinion in the instant case. However, the Court of Appeal's reasoning in *Stiles* is nonetheless relevant and persuasive, including:

- *Stiles* reasoned that section 1793.22, subdivision (e)(2)'s language had a "clear meaning" in providing protection to any vehicle "sold with a manufacturer's new car warranty." (*Stiles, supra*, at p. 917.)

- The *Stiles* court believed the manufacturer was "add[ing] words to a clear and unequivocal statute" and "assum[ing] a legislative role and tries to amend the statute" by insisting that "we must add 'new or full' prior to warranty" in the language of section 1793.22, subdivision (e)(2). (*Ibid*.)

- *Stiles* found unpersuasive the manufacturer's argument that various other provisions of the Act undermined the clear import of section 1793.22, subdivision (e)(2)—including section 1791.2, subdivision (a)(1) and section 1791.1, subdivision (c)—because on their face, none of those any provisions had anything to do with the "new motor vehicle" definition. (Id. at pp. 918-919.)

- *Stiles* expressly rejected the Court of Appeal's reasoning in on *Rodriguez v. FCA US, LLC* (2022) 77 Cal.App.5th 209, review granted July 13, 2022, on the grounds that in "interpret[ting] the phrase 'other motor vehicle sold with a manufacturer's new car warranty' to be

limited to vehicles that have 'never been previously sold to a consumer and come with full express warranties'" the *Rodriguez* court "adds words to the statute." (*Stiles, supra*, at p. 919.) "The statute contains no such limitation as vehicles that have never been previously sold to a consumer and come with full express warranties.2 Section 1793.22, subdivision (e)(2) was enacted in 1992. (Stats. 1992, ch. 1232, § 7.) In the more than 30 years since then, the Legislature has had ample opportunity to add such limiting language. It has not done so. It would be more than presumptuous for us to add what the Legislature has not." (*Ibid*.)

- "In section 1793.22, subdivision (e)(2), the dealer-owned and demonstrator categories are followed by the disjunctive 'or' which precedes 'other motor vehicle sold with a manufacturer's new car warranty.' The disjunctive is ordinarily used to distinguish that which precedes it from that which follows it. '[O]ther motor vehicles" is clearly a third separate category.'" (*Stiles, supra*, at p. 919.)

- The *Stiles* court held that *Jensen v. BMW of North America, Inc.* (1995) 35 Cal.App.4th 112, "was properly decided" and noted that *Jensen* involved the same question here—namely, whether the Act covered "a previously owned vehicle that was subject to the manufacturer's new car warranty." (*Stiles, supra*, at pp. 919-920.) The *Stiles* court held that the *Jensen* court got it

> right in reasoning that "the statute was reasonably free from ambiguity" and in relying on "the rule of statutory construction, that we must examine the language of the statute, giving the words their ordinary meaning, and if the words are reasonably free from ambiguity, the language controls." (*Ibid*., citing *Jensen, supra*, at pp. 122-123.) *Stiles* also approvingly cited *Jensen* for concluding that "the legislative history supported its interpretation." (*Ibid*., citing *Jensen, supra*, at p. 124.)

While this Court of course is not bound by *Stiles*, the Court of Appeal's analysis of the relevant statutory scheme is cogent. In addition, the very fact that *Stiles* agreed with *Jensen's* longstanding holding that section 1793.22, subdivision (e)(2) is entirely free from ambiguity is relevant to plaintiff's arguments in the instant case that for decades, everyone—from the legislature to litigants to the judicial system—has correctly read the statutory scheme to cover used vehicles that are still covered by a manufacturer's new car warranty. Simply put, there was no basis for *Rodriguez* to jeopardize the long-standing right that used car buyers have had to enforce their active new car warranties under a remedial statute enacted to hold manufacturers accountable for the warranties they disseminate and choose to make transferrable.

August 23, 2024

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CERTIFICATION

Pursuant to California Rules of Court, rule 8.520(d)(2), I certify that this **EVERARDO RODRIGUEZ'S AND JUDITH V. ARELLANO'S SUPPLEMENTAL BRIEF** contains 1,993 words, not including the tables of contents and authorities, the caption page, signature blocks, or this Certification page.

Date: August 23, 2024 /s/ *Cynthia E. Tobisman*

Cynthia E. Tobisman

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Chris Hsu

Chris Hsu

STATE OF CALIFORNIA
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