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

REPLY TO ANSWER TO PETITION FOR REVIEW

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INTRODUCTION

FCA casts the Opinion as the latest in a "uniform" line-of-cases holding that cars sold with a balance of the manufacturer's original warranty aren't entitled to the "repurchase" remedies that the Song-Beverly Act provides for "new motor vehicles."

In truth, the Opinion conflicts with decades-old precedent. It ignores the Act's remedial purposes. It misreads the Act and the caselaw interpreting the Act. Worse yet, the Opinion does so based on a premise that's demonstrably false: that demonstrators come with full, never-used warranties.

The Court should grant review to resolve the conflict and to ensure that thousands of California consumers aren't wrongly deprived of important statutory rights.

LEGAL ARGUMENT

I. The Opinion Directly Conflicts With *Jensen*'s Holding That The Act's New-Vehicle Protections Apply To Vehicles Sold With A Balance Of The Original Manufacturer Warranty.

FCA says the Opinion doesn't conflict with *Jensen v. BMW of North America, Inc.* (1995) 35 Cal.App.4th 112. (Ans.-12-14.)

But the conflict is manifest.

Jensen holds: "[C]ars sold with a *balance* remaining on the manufacturer's new motor vehicle warranty are included within its definition of 'new motor vehicle.'" (35 Cal.App.4th at p. 123, italics added.) The Opinion reaches the opposite conclusion—

that the Act's reference to "other motor vehicles sold with a manufacturer's new car warranty" *only* refers to vehicles sold with a "*new* or *full* express warranty." (Opn.-11, 15, italics added.) Thus, if *Jensen*'s statutory interpretation is right, the Opinion's must be wrong and vice-versa.

FCA tries to explain away *Jensen* by suggesting that *Jensen*'s holding hinges on the fact that the dealer-in-question had falsely told the plaintiff (1) that she was leasing a lightly-driven demonstrator; and (2) that she'd receive a full manufacturer's warranty on top of the miles driven. (Ans.-13.)

But nothing supports its attempt to distinguish *Jensen*. *Jensen* held that by defining "new motor vehicle" to include "other motor vehicle[s]" sold with a manufacturer's new car warranty beyond "demonstrator[s]" and "dealer-owned vehicles," the Act intended to reach all "cars sold with a balance remaining on the manufacturer's new motor vehicle warranty." (35 Cal.App.4th at p. 123.) *Jensen* added that this interpretation was consistent with the Act's legislative history, which shows a "systematically attempt[] to address warranty problems unique to motor vehicles, including transferability." (*Id.* at p. 124.)

Thus, both *Jensen* and the Opinion interpret the Act's text and the legislative history only to reach *contrary* conclusions.

The Opinion and FCA both dismiss *Jensen*'s reading is dicta because, unlike here, *Jensen* concerned a vehicle that was sold with a full, never-used warranty. (Opn.-16-17.;Ans.-13-14.) But that's false, as discussed below.

There's actually no indication that *Jensen* involved a vehicle with a full, never-used warranty. The vehicle in *Jensen* was a previously-owned car—and *not* a demonstrator—that the dealership purchased at auction before reselling it to Ms. Jensen under false pretenses.[1] (35 Cal.App.4th at pp. 119-120.)

Jensen held that so long as there was *any* portion of the new-car warranty still in place, the Act's new-car protections attached—irrespective of the number of miles left on the warranty. Indeed, BMW's unsuccessful argument in *Jensen* was identical to FCA's here—that *because* the vehicle was a previously-owned *non-demonstrator* that came with only a "remainder of the manufacturer's new car warranty," it was unprotected by the Act's "new motor vehicle" provisions. (*Id.* at p. 122.) *Jensen* rejected BMW's claimed exemption from the Act's new-car protections while ignoring BMW's attempt to distinguish the type of vehicle. *Jensen*'s holding thus depended entirely on its reasoning that a "new motor vehicle" includes "cars *sold with a balance* remaining on the manufacturer's new motor vehicle warranty." (*Id.* at pp. 121-123, italics added.) *Jensen*'s

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[1] *Jensen*'s facts section states only that the same salesperson who *falsely told* plaintiff that the car was a demonstrator (when it was, in fact, a previously-owned car) *also told* her that "she would get [the] 36,000 mile warranty on top of the miles already on the car." (*Jensen, supra*, at p. 119.) Nothing in *Jensen* indicates that the appellate court credited the dealer's statements regarding the warranty. And, it couldn't have true anyway. Manufacturer warranties start on the date the vehicle is first put into use, even if consumers can pay to extend them. (Vachon Depublication Letter at p. 3.)

interpretation of the Act was a stand-alone reason to affirm, not dicta. (*Gaskill v. Richmaid Ice Cream Co.* (1952) 111 Cal.App.2d 745, 746 [independent reasons "given for a decision" are not dicta].)

Whether *Jensen*'s interpretation is dicta is immaterial, regardless. That's because—unlike the unpublished cases of which the Court routinely takes review (*People v. Birkett* (1999) 21 Cal.4th 226, 239-240 [discussing such grants])—courts, consumers, and manufacturers have treated *Jensen*'s reasoning as established law. (Pet.-11-12; KLG Depub. Letter at pp. 2-5; CLE Depub. Letter at pp. 2-3.) As the depublication letters attest, consumers and their attorneys have been relying on *Jensen* for decades to bring, settle, and prevail in countless Song-Beverly cases seeking to enforce some *remaining amount* of a manufacturer's warranty. (KLG Depub. Letter at pp. 2-5; CLE Depub. Letter at pp. 2-3; HLG Depub. Letter at pp. 2-3.) Contingency firms don't take cases that facially lack merit (and thus have no chance of success), so it's instructive that multiple law firms have been successfully litigating—and settling—these cases for *years*.

Overnight, the Opinion puts the viability of many still-active cases at-risk—as shown from the countless dismissal motions manufacturers have since filed and the dozens of letters seeking depublication. (KLG Depub. Letter at pp. 2-5; CLE Depub. Letter at pp. 2-3; AFLC at pp. 2-3.) FCA cannot cover-up this sea change, which strongly militates in favor of review.

FCA says there's no evidence that "consumers have ever understood used vehicles [to be] subject to Song-Beverly's special repurchase and replacement remedies for 'new motor vehicles'" because "automobile sales contract[s] clearly state[] whether the vehicle is 'new' or 'used.'" (Ans.-20.) Wrong. The more-than-dozen depublication/request for review letters prove otherwise.

Consumers are represented by lawyers—who until now, could confidently advise *all consumes* who purchased cars with active-manufacturer warranties that they had viable Song-Beverly claims under *Jensen*'s explicit interpretation of the Act.[2] FCA admits as much in its second argument—that, in some of these cases, FCA or other manufacturers were only "renew[ing]" previous, *unsuccessful* challenges. (Ans.-21-22.) Thus, in rejecting protections for vehicles with remaining new-car warranties, the Opinion accepts FCA's hail-mary attempt to change the law.

While FCA argues it "is telling that in 27 years, no subsequent appellate decision extended *Jensen*" (Ans.-14), it's telling that no other published authority in three decades conflicts with *Jensen*'s patently clear holding. The Court should grant review.

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[2] Lawyers are now *turning away* clients due to the uncertainty the Opinion causes. (E.g., AFLC Depub. Letter at pp. 2-3.)

II. The Opinion Must Be Reviewed Because It Misreads The Act's Plain Text Based On The F*alse* Premise That Demonstrators Are Always Sold With Full, Never-Used Warranties.

Not only does the Opinion conflict with *Jensen*, it does so based upon reasoning that's demonstrably false. Specifically, the Opinion hinges on the premise that dealer-owned vehicles and demonstrators always "come with full express warranties." (Opn.-11.) From this, the Opinion reasons that the Act's reference to "other motor vehicles sold with a manufacturer's new car warranty" necessarily refers to other "basically new" vehicles—i.e., those sold with a "new or full express warranty," vehicles which the Opinion describes as "basically new." (*Id.* at pp. 11, 15.) But that's all wrong. Demonstrators do *not* come with a full new-car warranty.

Demonstrators are driven before sale—sometimes thousands of miles. (§ 1793.22, subd. (e)(2) ["demonstrator" is a vehicle that dealer uses to "demonstrat[e] qualities and characteristics common to [similar] vehicles"];[3] Dempsey, *What is the real deal with buying a demo car?* (Mar. 27, 2009) Consumer

[3] Statutory citations are to the Civil Code.

Reports News[4] [demonstrators can have "several thousand miles on them"].)[5]

Like the car here, demonstrators are thus *necessarily* sold with only a *balance* of the new-car warranty remaining; indeed, "[t]he time and mileage limits in manufacturers' warranties begin on the date that a vehicle is first 'put into use'—regardless of whether it is used by a consumer or as a dealer or a demonstrator vehicle." (Vachon Depub. Letter at p. 3.)

Consumers who want the same warranty protections that come with a brand-new, non-demonstrator, must pay to *add* to the balance of the original warranty that remains. (Dempsey, *supra* ["despite the mileage that is already on the vehicle, there is no free extension to the manufacturer's warranty"].)

Thus, the Opinion's core assumption—that demonstrators come with full new-car warranties—is not grounded-in-reality.

FCA *knows* this. FCA advises consumers who have purchased a warranted car that: "The Basic Limited Warranty begins on either of the following dates, whichever is earlier:… *The date when the vehicle was first put into use, for example, as a*

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[4] https://www.consumerreports.org/cro/news/2009/03/what-is-the-real-deal-with-buying-a-demo-car/index.htm.

[5] This is presumably why Vehicle Code section 665 treats "vehicles regularly used or operated as demonstrators" as "used vehicle[s]."

dealer 'demo' or as a FCA US LLC company vehicle."[6] (Emphasis added.)

Other manufacturers, including Acura,[7] Audi,[8] BMW,[9] Ford,[10] Mazda,[11] and Toyota,[12] tell consumers the same thing—that their manufacturer warranties start *either* "the day you take delivery of your new vehicle or the day it is first put into service (i.e., as a dealer demonstrator), whichever occurs first."[13] (Vachon Depub. Letter at pp. 3-4.)

Yet FCA and other manufacturers supporting the Opinion propagate the same fallacious assumption that the Opinion relies

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[6] https://manuals.plus/m/81a15604346b66919e840b92393cde04b98b559c869ef1de82b0ae265c87cbab_optim.pdf#page=8.

[7] https://owners.acura.com/Documentum/Warranty/Handbooks/2023_Acura_Warranty_Basebook.pdf#page=8.

[8] https://ownersliterature.vw.com/owners-literature-service/v1/document/4403ea69-fc00-4816-8ef8-400c8f0abe11#page=12.

[9] https://www.bmwusa.com/content/dam/bmwusa/warranty-books/2020/5A0C9B5_20MY_BMW_3_5_Series_Warranty_FINAL_Print_withCover_042920.pdf#page=6.

[10] https://www.ford.com/cmslibs/content/dam/brand_ford/en_us/brand/resources/general/pdf/warranty/2022-Ford-Car-Lt-Truck-Hybrid-Warranty-version-2_frdwa_EN-US_12_2020.pdf#page=7.

[11] https://www.mazdausa.com/siteassets/pdf/owners-optimized/optimized-warranty-booklet/2021-warranty-booklet.pdf#page=12.

[12] https://assets.sia.toyota.com/publications/en/omms-s/T-MMS-22Camry/pdf/T-MMS-22Camry.pdf#page=11.

[13] https://www.ford.com/cmslibs/content/dam/brand_ford/en_us/brand/resources/general/pdf/warranty/2022-Ford-Car-Lt-Truck-Hybrid-Warranty-version-2_frdwa_EN-US_12_2020.pdf#page=7.

upon—that demonstrators have full new-car warranties. These manufacturers know the reality and, thus, the implications of the Opinion: its reasoning *excludes even demonstrators*.

The truth is that because demonstrators are sold with only a balance of a new-car warranty, the Act's use of demonstrators as one example of a vehicle "sold with a new express warranty" *confirms* that *any other* vehicle sold with a balance of the original manufacturer warranty has been sold, for the Act's purposes, "with a new express warranty," too. (§ 1793.22, subd. (e)(2).)

FCA disagrees. FCA claims that "[t]he Legislature used the word 'new' repeatedly in the definition [of 'new motor vehicle' at § 1793.22]," which FCA reads as reflecting an intent to limit that term to some commonly-understood definition of a new vehicle that excludes vehicles with only a balance of a new-car warranty. (Ans.-24.) But the text shows otherwise, as it *isn't* limited to vehicles with never-used vehicles—again, since demonstrators wouldn't qualify either. Section 1793.22 describes a "new motor vehicle" as "a new motor vehicle that is bought or used primarily for personal, family, or household purposes," which is intended to limit the Act's protections to vehicles purchased *for these consumer purposes*. That sentence doesn't identify the *types of vehicles* (if bought for a consumer purpose) that count as "new motor vehicles." The following sentence does: A "[n]ew motor vehicle' includes… a dealer-owned vehicle and a 'demonstrator' or other motor vehicle sold with a manufacturer's new car warranty…" This definition *necessarily* includes *all*

vehicles that, *like demonstrators*, are sold with only a balance of the original manufacturer warranty. (§ II, *ante*.)

FCA newly asks the Court to ignore the overwhelming, *publicly available* authorities establishing that demonstrators are necessarily sold *with only a balance of a new car warranty remaining*, claiming that this wasn't put in issue in this case, which concerns a non-demonstrator. (Second FCA Opposition to Depub. at pp. 1-2.) Wrong. *FCA itself* put demonstrator-warranties at issue in this case. (Opn.-10-11 [agreeing with "FCA['s] argu[ment] [that] the phrase qualifies dealer-owned cars and demonstrators and thus refers to vehicles that, like those two types of vehicles,… are sold with new or full warranties."].)

The Court should grant review and/or depublish before consumers statewide are deprived of their statutory rights based on an interpretation of the Act that's demonstrably wrong.

III. The Opinion Misinterprets The Caselaw, Too.

A. Neither *Dagher* nor *Kiluk* conflict with *Jensen*; *Kiluk*, in fact, conflicts with the Opinion.

FCA argues that under *Dagher v. Ford Motor Co.* (2015) 238 Cal.App.4th 905, "new motor vehicles" do not include cars sold with a balance of the warranty remaining. (Ans.-14-15.)

But *Dagher* involves a different issue: whether an individual can be a "retail seller" under the Act. *Dagher* simply refused to read *Jensen* as resolving that *unrelated* question (238 Cal.App.4th at p. 922.)

FCA cites concerns expressed in *Kiluk v. Mercedes-Benz USA, LLC* (2019) 43 Cal.App.5th 334 that treating vehicles with balances remaining on original warranties as "new motor vehicles" might mean that a new implied warranty (which comes with every new consumer product) arises every time a car with a balance of a new-car warranty is resold. (Ans.-16; *Kiluk, supra,* at p. 340, fn. 4.)

But *Kiluk* acknowledged that any such concern is nullified by "hold[ing] that purchasers of used vehicles during the period of a transferable new motor vehicle warranty have standing under the Song-Beverly Act because the *original* sale was of a new motor vehicle.'" (43 Cal.App.5th at p. 340, fn. 4.) Thus, *Kiluk* also splits with the Opinion's holding that vehicles with a balance of a manufacturer's original warranty *are never* entitled to the Act's "new motor vehicle" protections—further reason to grant review.

Plus, *Kiluk*'s concerns are misguided. Section 1793.22 makes clear that its definition of "new motor vehicle" applies *only* to section 1793.2—the Act's replace-or-refund provision. (§ 1793.22, subd. (e) ["For purposes of subdivision (d) of Section 1793.2 and this section… (2) 'New motor vehicle' means…"].) Section 1793.22 therefore has no bearing on what constitutes a "new [consumer] product" under *the separate implied warranty provisions*. (§§ 1792 [providing an implied warranty with "every sale of consumer goods"], 1791 [defining "consumer goods" as "new [consumer] products"].) That the Opinion relies on *Kiluk*'s

misguided, rhetorical questions in a footnote is further reason for review, too.

Further, even if the Court were to conclude that the Opinion correctly interpreted the other caselaw, that's only proof of an *existing split* with *Jensen* that the Court should resolve.

B. Cases holding that manufacturers are not liable for *implied warranties* are irrelevant to the question here, which concerns a suit for violating the manufacturer's *express warranty*.

FCA cites cases holding that *manufacturers* are not liable for breaches of an *implied warranty* that the Act requires *retail sellers* to provide to used car buyers. (Ans.-17-18, citing cases.)

But these implied-warranty cases are irrelevant to the question here—whether manufacturers owe statutory remedies for an *express* warranty that the *manufacturer* voluntarily provides and voluntarily transfers to subsequent buyers. (Vincent, *Used Car Warranties: What You Need To Know* (March 2, 2022) U.S. News[14] [the "original warranty" dictates if "it's transferrable to… subsequent owner[s]"].)

Section 1792 requires manufacturers to provide implied warranties as a matter of law to "new" consumer goods—without providing a special, statutory definition for that term. (§§ 1792 [providing an implied warranty with "every sale of consumer goods"], 1791 [defining "[c]onsumer goods" as "new [consumer]

[14] https://cars.usnews.com/cars-trucks/used-car-warranty.

products"].) In contrast, the Act's refund-or-replace provisions set forth a *special* definition for "new motor vehicle" that *includes* vehicles sold with a balance of an original manufacturer's warranty, like a demonstrator. (§ II, *post.*) That specific definition *overrides* what FCA claims is a commonly-understood definition that would have applied had that "term [been] undefined in [the] statute." (*Upshaw v. Sup. Ct.* (2018) 22 Cal.App.5th 489, 504.)

FCA claims the implied-warranty cases stand for the broad proposition that the Act's "new" and "used car" remedies are mutually exclusive in *all* instances; and that, therefore, only people who own "new cars" under a layman definition of that term can sue manufacturers under the Act. (See Ans.-18.) But the courts deciding those cases certainly didn't think so. (E.g., *Victorino v. FCA US LLC* (S.D.Cal. 2018) 326 F.R.D. 282, 301 [*Jensen* consistent because it interprets "the definition of 'new motor vehicle' under section 1793.22(e) specifically states it applies only to section 1793.2(d)['s]" express-warranty provisions].)

The implied-warranty cases say nothing about the scope of the Act's express-warranty protections. That the Opinion mistakenly conflates the two is reason to grant review.

IV. Review Is Necessary To Ensure That The Act Fulfills Its Remedial Purpose.

FCA doesn't dispute that the Act is a remedial measure that's supposed to be construed in consumers' favor. Nor does

FCA dispute that the Opinion heavily favors the *manufacturer*. FCA instead argues in favor of the Opinion's manufacturer-friendly interpretation. FCA's arguments lack merit.

A. The Opinion discriminates against those who can only afford a previously-owned car with a running manufacturer-warranty.

Under the Opinion, only two types of consumers can claim section 1793.2's replace-or-refund remedy: (1) those who purchase cars with a never-used manufacturer warranty, and (2) those who purchase a warranty from a retail seller for their used car. Consumers who purchase a car with a remaining new-car warranty *cannot* seek the replace-or-refund remedy. Purchasers who inherit a new-car warranty—and who therefore have no reason to purchase an express-warranty from a retail seller—are left out the Act's protections.[15] This gap is inconsistent with the Act's remedial purpose. (Pet.-34-37.)

FCA insists that existing common-law and Commercial-Code remedies are good enough. (Ans.-22-23.) This is their age-old argument against the Act, in general. But the Legislature thought otherwise, providing consumers with the Act's "enhanced remedies"—including attorney's fees—*precisely because* (1) consumers lacked the means to retain counsel to represent them (*Murillo v. Fleetwood Enterprises, Inc.* (1998) 17 Cal.4th

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[15] Such buyers *might* purchase an extended service contract, but that is *not* an express warranty, as this Court has held. (*Gavaldon v. DaimlerChrysler Corp* (2004) 32 Cal.4th 1246, 1258-1259.)

985, 994), and (2) lesser remedies had failed to induce manufactures to comply with their own warranties (*Krieger v. Nick Alexander Imports, Inc.* (1991) 234 Cal.App.3d 205, 213). (See CAOC Depub. Letter at pp. 4-5; *Martinez v. Kia Motors America, Inc.* (2011) 193 Cal.App.4th 187, 198-199.) So, unless the Legislature thought some express-warranty breaches were less important than others, it makes no sense to treat different types of consumers differently based on how they came to own a vehicle with a still-pending original-manufacturer warranty.

FCA says consumers who don't fall within the Opinion's narrow categories for the Act's new-car protections can always pursue a Commercial-Code or common-law claim in a "no-cost" arbitration program that *some* manufacturers provide. (Ans.-23.) But the Legislature clearly thought that pursuing these lesser remedies in this forum wasn't sufficient. For good reason. Even if there's no participation fee, arbitrating non-Song-Beverly claims means resolving a dispute in a manufacturer-friendly forum and without any chance of recovering the costs of legal representation. The consumer is left trying to secure representation in a case in which he can only ever recover the lesser remedies under the common-law or Commercial-Code (and not, for instance, a civil penalty for up to twice his actual damages).

FCA speculates that the Legislature excluded cars that come with unexpired warranties from its protections *for administrative convenience*. (Ans.-29 [claiming an "unworkable and sow confusion" *for courts*].) But FCA's and the Opinion's

purported rationale raises as many questions as it supposedly resolves (Pet.-39-42), even assuming the Legislature would privilege the supposed inconveniences of courts over its well-established purpose to "systematically … address warranty problems unique to motor vehicles, including transferability." (*Jensen, supra,* 35 Cal.App.4th at p. 124).

FCA cites to the legislative history's focus on dealer-owned vehicles and demonstrators—and the absence of discussion otherwise—as proof that the Act must have intended to be effectively limited to those cars. (Ans.-27-28.) But the Act's *final-version* undisputedly defines "new motor vehicles" to include dealer-owned vehicles, demonstrators, *and* "other motor vehicle[s] sold with a new car warranty." (§ 1793.22, subd. (e)(2).) Thus, the Legislature necessarily sought to expand the scope of "new motor vehicles" *beyond* those dealer-owned vehicles and demonstrators to include any "other" vehicle that, like a demonstrator, comes with only a balance of a new car warranty—like the subject vehicle.

The Court should grant review and depublish to prevent the Opinion from undermining the Act's purposes.

B. The Opinion's interpretation incentivizes manufacturers to delay or avoid their affirmative duties to promptly buy back defective cars and to label them as lemons before resale.

The Court should also grant review because the Opinion incentivizes manufacturers to delay or avoid their affirmative duty to promptly buy back defective cars and—relatedly—to label those repurchased cars as lemons pursuant to section 1793.23, subdivision (f). (Pet.-37-39; CAOC Depub. Letter at pp. 3-4.)

FCA responds by arguing that under *Martinez*, "a manufacturer may [still] be liable to the original buyer even if the vehicle is sold, which can result in a civil penalty [for a willful violation] and fee award." (Ans.-30.)

But under the Opinion, FCA can circumvent the threat of any such suit by "persuad[ing] consumers to trade in their defective vehicle (while selling the consumer a newer, more expensive vehicle) early in the repair process"—conduct that manufacturers *already* engage in. (CAOC Depub. Letter at pp. 3-4, citing *Johnson v. Ford Motor Co.* (2005) 35 Cal.4th 1191, 1197.)

And a vehicle is far more likely to reveal itself as a lemon *as it gets older*. Thus, in many cases, only the *subsequent* buyer will even think to pursue the Act's enhanced remedies. Yet, under the Opinion, the buyer who may most need to enforce the

manufacturer warranty would be left with only lesser remedies the Legislature deemed inadequate.

FCA argues that it's not just the threat of suit from the first buyer that will induce voluntary compliance but also a potential suit from a subsequent buyer (for lesser remedies) and that "[n]o rational manufacturer" would willfully violate the Act given these risks. (Ans.-30-31.)

But as is, manufacturers *routinely* refuse to honor their warranty obligations. (*Krotin v. Porsche* (1995) 38 Cal.App.4th 294, 302-303; *Lukather v. General Motors, LLC* (2010) 181 Cal.App.4th 1041, 1050.) In one case, for instance, FCA willfully violated the Act after refusing to buy back or replace a defective car even after *fifteen*, unsuccessful repair attempts. (See *Covert v. FCA USA, LLC* (2022) 73 Cal.App.5th 821, 828 [FCA only appealing attorney's fees]; *Niedermeier v. FCA US LLC* (2020) 56 Cal.App.5th 1052, 1061, review granted Feb. 10, 2020 [willful failure to repurchase vehicle despite "numerous" problems and "multiple" repair attempts].)

The Opinion only gives manufacturers even more reason to shirk their statutory duties. The Court should grant review.

C. The Opinion's interpretation creates arbitrary, unsupported distinctions between car buyers.

Both the Opinion and FCA express discomfort because a two-year-old, 55,000-mile resold car is not what might be considered "new" as that term is commonly understood. (See Opn.-2-3; Ans.-9, 13.) But neither the Opinion nor FCA dispute

that a consumer would be entitled to the Act's enhanced remedies for a two-year-old demonstrator with 55,000-miles. The Opinion would call this car "essentially new" just because it's a demonstrator, but a previously-owned car with half-as-many miles and that is more "essentially new" would inexplicably not be covered.

There's no reason the sale of the vehicle should vitiate the statutory protections that flow from the still-operative new-car warranty. Yet, the Opinion treats cars of similar age and mileage and with identical balances to their new-car warranties, differently. (See Pet.-40-41 [discussing this and other discrepancies].)

In trying to defend the Opinion's arbitrary distinctions among consumers, FCA argues that "the Act treats leases the same as purchases (§§ 1793.2, subd. (d)(2)(D), 1795.4, subd. (b)), which means a car is no longer 'new' when it is sold after the initial lease, because it would not be 'sold with' a new car warranty." (Ans.-31.) But this is itself an alarming reading of the Act. As FCA reads the Opinion, if a person who's leased a vehicle buys *that vehicle* after the lease term ends, his vehicle is no longer covered by the Act's enhanced remedies—the mere act of buying the vehicle off lease vitiates the Act's protections. That cannot be right.

D. The Opinion's textual argument does not justify an interpretation that frustrates the Act's remedial purposes.

FCA says the Opinion didn't need to adopt a consumer-friendly interpretation because its reading of the Act's plain text is so obviously correct. (Ans.-25.) But as shown, the Opinion misreads the Act's plain text (and *Jensen* and other cases). Regardless, this Court has long-warned that it "need not follow the plain meaning of a statute when to do so would 'frustrate[] the manifest purposes of the legislation as a whole or [lead] to absurd results.'" (*California School Employees Assn. v. Governing Board* (1994) 8 Cal.4th 333, 340.) The Opinion does just that by allowing manufacturers to bypass the Act's remedies.

V. Other State Supreme Court Decisions Confirm The Importance Of The Issues Presented.

Other states' Supreme Courts have reviewed whether lemon-law protections apply to cars that are resold while still under new-car warranty. Petitioner cited these cases solely to show that this issue is important/worthy of review—acknowledging that these cases interpreted their state's *own* "particular lemon law[s]." (Pet.-43-44.)

FCA discusses the *merits* of these cases interpreting other lemon laws with "different statutory language." (Ans.-32-34.) The merits are irrelevant. Like its peers, this Court should grant review on this important question.

CONCLUSION

The Court should grant review to resolve the split in authority and to bring clarity to California law.

Dated: June 16, 2022

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CERTIFICATION

Pursuant to California Rules of Court, rule 8.504(d)(1), (d)(3), I certify that this **Reply to Answer to Petition for Review** contains 4,200 words, not including the tables of contents and authorities, the caption page, signature blocks, or this Certification page.

Date: June 16, 2022 */s/ Joseph V. Bui*

PROOF OF SERVICE

I am employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the within action. My business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036.

On June 16, 2022, I served the foregoing document(s) described as: **Reply to Answer to Petition for Review** on the interested party(ies) in this action, addressed as follows:

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I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system. Participants in the case who are registered TrueFiling users will be served by the TrueFiling system. Participants in the case who are not registered TrueFiling users will be served by mail or by other means permitted by the court rules.

By Mail: By placing a true copy thereof enclosed in sealed envelopes addressed as above and placing the envelopes for collection and mailing following our ordinary business practices. I am readily familiar with this business'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.

Executed June 16, 2022 at Los Angeles, California.

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

Rebecca E. Nieto

SERVICE LIST

VIA TRUEFILING

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California Court of Appeal
[Electronic Service under Rules 8.44(b)(1); 8.78(g)(2) and 8.500(f)(1)]

VIA U.S. MAIL

Office of the Clerk
for the Hon. Jackson Lucky
RIVERSIDE SUPERIOR COURT
4050 Main Street
Riverside, California 92501

CA Supreme Court Court Name	**PROOF OF SERVICE**	S274625 Case Number

1. At the time of service, I was at least 18 years of age.
2. My email address used to e-serve: **jbui@gmsr.com**
3. I served a copy of the following document(s) indicated below:

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REPLY TO ANSWER TO PETITION FOR REVIEW: S274625_Reply to Answer to Ptn For Review_Rodriguez

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Georges Haddad	ghaddad@clarkhill.com	e-Serve	06-16-2022 9:59:18 PM
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TrueFiling created, submitted and signed this proof of service on my behalf through my agreements with TrueFiling.
The contents of this proof of service are true to the best of my information, knowledge, and belief.

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

06-16-2022
Date

/s/Rebecca Nieto
Signature

Bui, Joseph (293256)
Last Name, First Name (Attorney Number)

Greines, Martin, Stein & Richland LLP
Firm Name