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4th Civ. No. E078783

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION TWO

SHAHID IVAR and SARAH IVAR,

Plaintiffs and Appellants,

v.

VOLKSWAGEN GROUP OF AMERICA, INC.,
and HOEHN OF TEMECULA, INC.,

Defendants and Respondents.

Appeal from the Riverside Superior Court
Case No. MCC2001653
Honorable Craig G. Riemer

APPELLANTS' REPLY BRIEF

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INTRODUCTION

Defendants Volkswagen Group of America, Inc. and Hoehn of Temecula, Inc. made a settlement offer to plaintiffs Shahid and Sarah Ivar under Code of Civil Procedure section 998. They promised to "pay Plaintiffs the total sum of **$69,500.00** in satisfaction of all claims for damages and interest (including pre-judgment and post-judgment interest)," some to pay off amounts "owed by Plaintiffs" on the lease, and the rest directly to plaintiffs. (AA-14-15, ¶ 1, original emphasis.)

This offer put plaintiffs to a choice: Accept defendants' 998 offer or face penalties if plaintiffs went to trial and failed to secure even a penny more than the offer's value—presumably, the **$69,500.00** that defendants had bolded in the offer's very first paragraph. Plaintiffs weighed their chances of recovery against that number, stated in bold, on the face of defendants' settlement offer. And they decided to accept the offer.

After plaintiffs had accepted the section 998 offer—and transformed it into a section 998 settlement ("Settlement")—defendants newly took the position that the Settlement wasn't worth $69,500 at all. Instead, defendants argued that *half* of the $69,500 was required to go to fund *defendants'* purchase of the vehicle before the lease's natural end.

This is absurd. As plaintiffs showed in their opening brief, none of (1) the Settlement's plain text, (2) the context in which the Settlement arose, (3) the parties' performance under it, or (4) any other tool of interpretation supports defendants' reading.

Defendants offer no viable response.

The Settlement's Plain Text. The Settlement's very first paragraph states in bold that defendants "*will pay Plaintiffs* the total sum of **$69,500.00**," some of which would be used cover amounts "*owed by Plaintiffs"* under the lease—that is, their "outstanding lease *obligation*" at the time the parties' settled. (AA-14-15, ¶¶ 1, 14 italics added, bold in original.)

It follows from the Settlement's focus on (1) the "total sum" that *plaintiffs* would receive and (2) what *plaintiffs* owed for "lease obligation[s]," that defendants were to provide *plaintiffs* with $69,500 in value. Nothing in the Settlement's plain text suggests that *plaintiffs'* settlement proceeds were supposed to fund *defendants'* subsequent decision to purchase the vehicle and to prematurely terminate the lease to do so immediately.

A decision by defendants to purchase the vehicle and to do so prior to the natural end of the lease can have no bearing on what *plaintiffs* can be said to have "owed" when the parties settled. After all, under the lease, plaintiffs didn't have any obligation to purchase the car *for themselves* or to terminate the lease early. They certainly didn't have to do so *for defendants*!

Defendants' interpretation would lead to other absurd results, too. On its face, the Settlement is supposed to provide plaintiffs with the same value whether they were still in possession of the vehicle or had already sold it. But this isn't true under defendants' interpretation. By defendants' own admission, their interpretation turns on provisions that are applicable only if plaintiffs still have the vehicle in their possession. Defendants' reading would thus require plaintiffs to purchase a vehicle *for*

defendants to resell only if plaintiffs maintained possession of the vehicle (rather than reselling it themselves). This is an absurd result that penalizes plaintiffs precisely for making it *easier* for defendants to comply with their buy-back obligations.

The Settlement's Context: An Accepted 998 Offer That Statutorily Had To Have A Readily Ascertainable Value. The context in which the Settlement was made also militates that plaintiffs' interpretation is the correct one. Section 998 offers are supposed to have a value that is *readily ascertainable* to the offeree (here, to the plaintiffs). Only plaintiffs' interpretation ensures that the 998 offer and the settlement that arose from that offer has such a value—namely, the **$69,500** printed in bold on the first page of the 998 offer. The value under defendants' interpretation, in contrast, would be $69,500 *minus* some unidentified amount that it would cost for *defendants* to purchase the vehicle before the lease's natural end.

Defendants say that the Settlement's value is still readily ascertainable under their view, even though the amount to purchase the car before the lease's natural end appears nowhere in the 998 offer. Defendants argue that plaintiffs could've called the lessor to determine that amount. Defendants even go so far as to argue that the "settlement agreement direct[ed] plaintiffs" to call Volkswagen Credit, the lessor—despite the fact that no such requirement appears anywhere on the face of the Settlement. (E.g., RB-28.)

But as a matter of law, an offer is *not* readily ascertainable if plaintiff has to call and blindly accept the word of a non-party

to determine that offer's value—especially here, where the non-party is an affiliate of *defendants* that has every reason to act in defendants' interest at plaintiffs' expense.

What's more, even calling the lessor would not have provided plaintiffs with any insight into the value of the offer under defendants' reading in any case. This isn't speculation. Plaintiffs *did call* the lessor who, in responding to plaintiffs' request for the amount required to pay off the lease as it stood when the parties settled (and before defendants purchased the vehicle and terminated the lease early to do so), provided plaintiffs *with the amount of plaintiffs' outstanding lease payments*. The lessor did not and could not provide plaintiffs with anything along the lines of defendants' interpretation of the settlement—i.e., $69,500 *minus* the cost for *defendants'* purchase of the vehicle before the lease's natural end—since, under the lease, that cost *changes* based on the choices that *defendants* would make when purchasing the vehicle, choices that appear nowhere in the Settlement's terms.

Thus: Defendants' interpretation runs afoul of section 998's requirement that the value of the offer be readily ascertainable.

The Settlement's Context: The Song-Beverly Act's Mandate That Manufacturers Repurchase Lemons. That plaintiffs' interpretation of the Settlement is correct is buttressed by the context in which it was made. Under the Song-Beverly Act, the *auto manufacturer* bears the obligation to repurchase a vehicle that it knows or reasonably should know to be a lemon—such as the vehicle here. Defendants do not dispute that under

the Song-Beverly Act, the assumption would therefore be that *Volkswagen* would be the one to come up with the funds to buy back the vehicle—not that the consumer (i.e., plaintiffs) would have to do so. Nor do defendants point to any authority contradicting plaintiffs' showing that in interpreting a contract, one looks to the context in which it is made. Nonetheless, defendants argue that the Song-Beverly Act backdrop is irrelevant to interpreting the Settlement here. Nonsense.

When parties sign a contract, they do so against the backdrop of the law. A contract only imposes an obligation that is contrary to otherwise governing law if the contract contains *express, specific terms* that make the parties' intent to do so abundantly clear. There are no such terms here.

The face of the Settlement indicates that the $69,500 can only cover debts *owed by plaintiffs* under a lease that didn't require plaintiffs to buy the car for themselves, let alone defendants. In other words, the default rule under the Song-Beverly Act remains in place—the funds to buy back the vehicle are supposed to come out of *Volkswagen's* pockets, not out of settlement funds that expressly are to be paid either "to or on behalf of plaintiffs." (AA-19.)

The Parties' Performance Of The Contract. The parties' performance of the Settlement also supports plaintiffs' interpretation. Defendants do not dispute that in performing the Settlement, plaintiffs repeatedly informed defendants that the "lease payoff owed by Plaintiffs" referred to plaintiffs' outstanding lease payments and the lease-end disposition fee

that would be owed at the lease's natural end. Defendants do not dispute that they never objected to plaintiffs' interpretation. Defendants pre-dispute acquiescence to plaintiffs' clear and unambiguous statement of what the "lease payoff owed by Plaintiffs" under the Lease refers to under the Settlement further confirms that plaintiffs' position is correct: Defendants weren't permitted to use *plaintiffs'* settlement proceeds to fund *defendants'* purchase of the vehicle.

Ambiguities Must Be Construed Against Defendants, The Settlement's Drafters. Defendants do not dispute that any and all ambiguities in the Settlement must be construed against them, as the drafters of the section 998 settlement. This, alone, also requires ruling in plaintiffs' favor. Indeed, it's at least reasonably conceivable, if not required by the Settlement's plain terms and other tools of contract interpretation, that defendants promised to pay plaintiffs "**69,500.00**" in value, not whatever's left after defendant uses plaintiffs' settlement funds to buy themselves a car and terminate the lease ahead of schedule to buy that car immediately.

Neither the trial court's one-paragraph ruling, nor defendants' briefing in this appeal have provided any tenable basis for adopting defendants' interpretation of the Settlement. Both the trial court and defendants take the position that the parties must've intended for the lease payoff "owed by Plaintiffs" to cover the cost for *defendants* to purchase the car prior to the lease's natural end because Matthew Birmingham, a non-party, supposedly said so. But this makes no sense.

Birmingham was only speaking to what the "payoff amount" refers to in response to defendants' post-settlement inquiry about what debt would be outstanding on the lease *now that defendants wanted to terminate the lease early and purchase the car for themselves*. As a non-party to the Settlement, he did not and could not speak to what the *parties* intended for the phrase "lease payoff *owed by Plaintiffs"* to mean when the parties executed the Settlement. Nor does his testimony shed light on that inquiry since, by defendants' own admission, *neither party even knew* what Birmingham thought the lease payoff referred to in executing the Settlement.

Moreover, even if relevant, Birmingham's declaration could only even be considered to shed light on an ambiguity in the settlement. It cannot contradict the Settlement's clear and unambiguous terms: that defendants promised to pay plaintiffs a total of $69,500.00 in value—some directly and some to pay off *plaintiffs'* debts under the lease. There's no reasonable way to read that to mean that plaintiffs had to use their settlement funds *to buy a car for defendants' benefit* when every tool of statutory interpretation indicates otherwise.

The Court should reverse with directions to grant plaintiffs' motion to enforce the Settlement.

ARGUMENT

Any ambiguities in the Settlement must be strictly construed against defendants, as its drafters. (AOB-46, citing *Victoria v. Superior Court* (1985) 40 Cal.3d 734, 747; Rest.2d Contracts § 206.) Defendants do not dispute this. So, if the Settlement is reasonably susceptible to plaintiffs' interpretation, that interpretation prevails as a matter of law, even if defendants' alternative construction were also reasonable (which it isn't). (See *Tahoe National Bank v. Phillips* (1971) 4 Cal.3d 11, 20 (*Tahoe National*).) Plaintiffs easily met that standard here. The Settlement's plain text and *every other tool* of contract interpretation compels only one conclusion: The Settlement was supposed to provide plaintiffs with $69,500 in value, not whatever was left after defendants use plaintiffs' settlement funds to purchase the subject vehicle. (See AOB-26-32.)

As we now show, defendants ignore or fail to meaningfully respond to plaintiffs' arguments.

I. The Settlement Is Clear And Unambiguous: Defendants Are To Pay Plaintiffs $69,500 In Value—Not To Use Plaintiffs' Settlement Funds To Buy The Subject Vehicle For Themselves.

Defendants' offer stated in bold that "Defendants . . . will pay Plaintiffs the total sum of **$69,500.00**," some of which would be used to cover "any lease payoff *owed by Plaintiffs*." (AA-14-15, ¶ 1, bold in original, italics added.) The accompanying Release of Claims is similarly clear: Defendants were to make a "payment of $69,500.00" either "to or *on behalf of Plaintiffs*." (AA-19.) Thus, defendants were offering to provide plaintiffs with $69,500

in value—some *on behalf of plaintiffs* to cover the amounts that *plaintiffs* were still *required* to pay at the time the parties settled, and some *to plaintiffs* in cash. (AOB-27-28.)

Despite this obvious meaning, defendants insist that their offer was *not* intended to provide plaintiffs with $69,500 in value. They say that the Settlement's fine print states that if "plaintiffs still had possession of the car," then plaintiffs were to "execute any documents legally necessary to 'transfer possession of *and title to* the Subject Vehicle to VWGoA"—and that the lease payoff amount therefore includes amounts for *defendants* to terminate the lease and take title of the car. (See RB-20-21, original italics.) This interpretation ignores the Settlement's text.

The Settlement's very first paragraph lists $69,500.00 as "the total sum" that defendants are to "pay Plaintiffs in satisfaction of all claims" (i.e., as consideration), even if some would be used to pay off the amount "owed by Plaintiffs" under the lease. (AA-14-15, ¶ 1.) Defendants could hardly be said to "pay Plaintiffs the total sum of **$69,500.00**" (*ibid.*) (either "to Plaintiffs or *on behalf of* Plaintiffs" (AA-19, italics added)), if those proceeds were actually going to be used to pay for *defendants* to purchase and take title of the vehicle. Nor could "amounts owed by Plaintiffs" *at the time of the settlement* include the cost that that *defendants* would only *later* incur to exercise the *option* to purchase the car *post-settlement, before the lease's natural end*. (See *ibid.*) If Defendants wanted the $69,500 to be used to fund *defendants' purchase of the car*, they would said

that. They did not, and instead limited the use of the $69,500 to amounts "owed by plaintiffs" under the Lease

Defendants next argue (1) that the "lease pay off owed by Plaintiffs" under the Settlement must mean whatever the lessor/VW-affiliate reports the total amount to pay off the Lease to mean, and (2) that the lessor/VW-affiliate told them that the payoff was $32,817.54, inclusive of "the amount necessary to pay off the total balance" and the amount "'to transfer title" to defendants. (See RB-22.)

But this makes no sense either. Unlike the Settlement (see Argument, § II), the "lease payoff" amount under the lease is not defined to be some static, readily ascertainable number. That amount instead changes based on what has occurred over the course of the lease's term. To list just a few of the possible permutations:

- A lessee who leased the car for a fixed term before returning it would pay the lease amount and the disposition fee due at the lease's natural end. (AA-130, ¶ 5.)
- A lessee who leased the car and terminated the lease ahead of schedule, meanwhile, would pay the lease amount and an early termination fee, as set forth in an opaque formula. (AA-130, ¶ 24 [setting forth cost for early termination fee "where the Vehicle is "return[ed] . . . us," which excludes "the Vehicle's Fair Market Wholesale Value"].)
- And a lessee who leased the car, terminated the lease ahead of schedule *and* exercised the *option* to purchase the vehicle would pay the early termination fee plus the car's purchase price, as set forth in other opaque formulas. (See AOB-36-39.)

Accordingly, *when plaintiffs called* the lessor for the amount to pay off the lease as it stood just after the parties settled, the lessor quoted them the $7,669.63 still outstanding—and not amounts that *defendants* would *later incur* when *defendants subsequently* purchased the vehicle ahead of the lease's natural end. (See AA-53-54.) And when defendants called months later, the lessor quoted them $32,817.54 as the payoff amount *that would permit defendants to purchase the car and terminate the lease early to do so.* (See AA-126, ¶ 3 [quoting this amount in light of *defendants'* request "to terminate Plaintiffs' lease" and to take "title" of the vehicle].)

The question in this case *is not* what *would* ultimately be eventually owed under the lease, which—unlike the Settlement—makes no distinction between amounts "owed by Plaintiffs" (the original lessee) or owed by *defendants* (who essentially assumed plaintiffs' position as the lessee post-settlement).

The question is what the "lease payoff *owed by Plaintiffs"* is as it stood at *the time the parties settled* pursuant to *a Settlement* in which defendant promised to pay $69,500.00 either "*to or on behalf of Plaintiffs*." (AA-19.) Does the "lease payoff *owed by Plaintiffs*" mean the amounts accrued by plaintiffs through the settlement—or amounts *accrued by defendants* when *defendants subsequently* purchased the vehicle for themselves and terminated the lease early to do so immediately? There's no question that it's the former.

Defendants acknowledge that plaintiffs' lease doesn't even require plaintiffs to purchase the vehicle *for themselves*, let alone

say that plaintiffs must purchase the vehicle *for defendants* and terminate the lease early to do so. (See RB-9-10 [describing "the option [under the lease] to purchase the car"].) Thus, the cost for *defendants* to purchase the vehicle and to terminate the lease early aren't amounts that *plaintiffs* could be said to have "owed" under the lease at the time the Settlement was executed—nor are they amounts paid "to Plaintiffs or on behalf of Plaintiffs." (AA-14-15, ¶ 1, 19.) Again, it's undisputed that plaintiffs had no obligation under their lease to purchase the car for themselves, let alone for defendants.

Defendants fail to reconcile their interpretation with the Settlement's promise to provide plaintiffs with a "total sum of **$69,500.00**," with some to cover amounts "owed by Plaintiffs." (AA-14-15, ¶ 1, original bolding.) In the opening brief, we argued: "Neither the price to purchase a leased car for defendants' benefit, nor an early termination fee imposed only for defendants' convenience are amounts that were 'owed by Plaintiffs'" under the section 998 settlement. (AOB-30, italics omitted.) Defendants offer no response. They never even try to explain how their interpretation of the Settlement makes sense in light of the amounts "owed by Plaintiffs" language. (See RB-20-25.)

Defendants' interpretation would also yield absurd results that the parties could not have intended. (See AOB-28-31, citing *Bill Signs Trucking, LLC v. Signs Family Limited Partnership* (2007) 157 Cal.App.4th 1515, 1521.) That is so because:

- The Settlement requires defendants "to pay Plaintiffs the *total sum* of **$69,500.00**"—that is, $69,500 in value—

whether plaintiffs had already sold the vehicle or not. (AA-14-15, ¶ 1.)

- By their own admission, defendants' interpretation turns on defendants' reading of provisions applicable only if "plaintiffs still had possession of the car." (RB-21.)
- Thus, defendant's interpretation would require *plaintiffs* to pay for *defendants* to purchase *and take title* of the vehicle *only if* plaintiffs had retained it.

This makes no sense. Even defendants don't dispute that there would be no logical reason to provide plaintiffs with *less* merely because they kept the vehicle rather than re-selling it for profit. (See AOB-29-30 [raising this point]; RB-20-25 [not refuting it].)

Defendants suggest that their interpretation places plaintiffs in the same position whether or not plaintiffs had resold the vehicle: Defendants say that "if plaintiffs had already terminated their lease and sold or otherwise disposed of the car," then plaintiffs would have already paid to purchase the car before the lease's natural end. (RB-23.)

That's true, but only helps prove plaintiffs' point. Defendants overlook that if plaintiffs had opted to purchase and resell the vehicle, then *plaintiffs would get to keep the vehicle's value* (in the form of any resale proceeds, for instance). Thus, while defendants' reading requires plaintiffs who *kept the vehicle* to then purchase it *for defendants*, it requires no such thing for plaintiffs who have *already* resold or otherwise disposed of the vehicle. Thus, defendants' reading would arbitrarily penalize

plaintiffs who retained the vehicle by forcing them to pay for *defendants'* purchase of the vehicle. That's an absurd result.

Defendants' Interpretation	
Plaintiffs Who Have Resold The Vehicle	**Plaintiffs Who Still Have Possession Of The Vehicle**
• Defendants pay $69,500 in total. • Plaintiffs pay outstanding balance. • Plaintiffs pay purchase price and early termination fee. • *Plaintiffs* receive the car's value (reflected in resale proceeds).	• Defendants pay $69,500 in total. • Plaintiffs pay outstanding balance. • Plaintiffs pay purchase price and early termination fee. • *Defendants* receive the car's value (reflected in title).

Plaintiffs' Interpretation	
Plaintiffs Who Have Resold The Vehicle	**Plaintiffs Who Still Have Possession Of The Vehicle**
• Defendants pay $69,500 in total. • Plaintiffs pay outstanding balance. • *Plaintiffs* pay purchase price and early termination fee. • *Plaintiffs* receive the car's value (reflected in resale proceeds).	• Defendants pay $69,500 in total. • Plaintiffs pay outstanding balance. • *Defendants* pay purchase price and early termination fee. • *Defendants* receive the car's value (reflected in title).

Incredibly, defendants attack plaintiffs' position as absurd and contrary to the Settlement's text. But they don't ever really explain why. As best as we can discern, defendants argue that the Settlement promises to pay plaintiffs $69,500 flat (without subtracting a lease payoff amount) if plaintiffs had resold the vehicle.[1] (See RB-22-24.) Defendants then suggests that this

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[1] Defendants' argument appears to be that:

(1) The Settlement provides that if plaintiffs had already sold the car, then defendants "would transfer to plaintiffs 'full payment of the amount set forth in paragraph 1;"

(2) Based on how it is used in other contexts (likely due to defendants' own scrivener errors), "the amount set forth in paragraph 1" must refer to $69,500 flat (even though paragraph 1 sets plaintiffs' recovery as $69,500 "inclusive of any lease payoff owed by Plaintiffs"); and

(3) The Settlement therefore directs defendants to pay plaintiffs $69,500 flat (without subtracting the lease payoff owed by plaintiffs) if they have not resold the vehicle. (See RB-22-24.)

For whatever it's worth, whether the defendant promised to pay plaintiffs who have already sold the vehicle $69,500 flat or $69,500 minus the amount owed by plaintiffs has no significance as to how the Settlement should be read. That's because the amount that a plaintiff who has already purchased and then resold the car owes on the lease is zero. (See AA-85, ¶ 24 [allowing plaintiff to buy the vehicle (to resell) if she has paid off the outstanding balance and paid to purchase it and terminate the lease early].)

somehow undermines a foundational premise of plaintiffs' argument.[2] (See RB-24-25.)

Not so. If anything, defendants' acknowledgment that defendants would *always* give a plaintiff who resold the vehicle $69,500 flat only provides further support for plaintiffs' position—namely, that plaintiffs here are *also* entitled to $69,500 in value from the section 998 settlement since there's no basis to provide plaintiffs with less merely for retaining the vehicle.

II. Only Plaintiffs' Interpretation Makes The Section 998 Settlement's Value Readily Ascertainable—As Required Of All Valid 998 Offers.

Defendants do not dispute that courts are supposed to construe contracts in light of the context in which they're made. Nor do defendants dispute that:

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[2] Defendants specifically concluded that they had "dismantle[d] plaintiffs' core argument that, under defendants' interpretation of the agreement, plaintiffs were required to use their settlement proceeds to 'buy the car for defendants.'" (RB-24-25.) This makes no sense. Defendants repeatedly state that their interpretation requires plaintiffs to buy the car for defendants out of the $69,500 that defendants are obligated to pay plaintiffs in settlement proceeds. (E.g., AA-91 [Defendant explaining that they ultimately paid plaintiffs just $36,682.46 after subtracting the amount to "pay off the lease *and take title to the vehicle*," which they describe as a "settlement term[]," italics added]; RB-21-22 [Interpreting the settlement to require using the $69,500 paid to plaintiffs to cover the "amount sufficient for the lienholder to legally permit VWGoA to take possession of and title to the car"].) The only question is whether that's what the Settlement calls for or not.

- The Settlement arose from an offer made pursuant to Code of Civil Procedure section 998. (Compare AOB-26, 32, citing *County of San Diego v. Ace Property & Casualty Ins. Co.* (2005) 37 Cal.4th 406, 415, with RB-25-27 [no response to this assertion].)

- From "'the perspective of the offeree'"—here, plaintiffs—"'the [section 998 settlement] must be sufficiently specific to permit the [offeree] to evaluate it and make a reasoned decision whether to accept.'" (See AOB-32-33, quoting *Taing v. Johnson Scaffolding Co.* (1992) 9 Cal.App.4th 579, 585 (*Taing*); RB-25 [agreeing that 998 offers "'must be sufficiently specific to allow the recipient to evaluate the worth of the offer'"].)

- Plaintiffs' interpretation would give the section 998 settlement a readily ascertainable value: **$69,500.00**, the bolded number in the first paragraph of the settlement. (Compare AOB-33-34, with RB-25-27 [no response to this argument].)

Defendants instead insist that under their interpretation, the Settlement's value to plaintiffs is still readily ascertainable. (RB-25.) They argue that plaintiffs could simply "contact their lender's customer service department" and "obtain the lease payoff amount, at any time." (See RB-26-27.)

This argument is facially ridiculous. A 998 offer that requires plaintiffs *to ask non-parties for help discerning its value* is not readily ascertainable. The case law makes clear that

offerees must be able to ascertain the value of the section 998 offer "based on information that is 'known or reasonably should have been known' to them at the time the offer is made.'" (AOB-40, quoting *Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 135.)

That's even more true here because the Settlement itself anticipates that *plaintiffs* would be able to readily know what the "lease payoff owed by Plaintiffs" would refer to; there is no indication from the Settlement that plaintiffs actually had to contact the lessor for this information. (AA-15, ¶ 14.) Plaintiffs thus were not expected to *call the lessor/VW-affiliate* just to decipher the value of a section 998 offer—let alone blindly accept a VW-affiliate's word on "the amount *that [that affiliate] is to be paid* for defendants to purchase the car from them."[3] (AOB-40, original italics.)

And in any case, plaintiffs *did call* the lessor for the amount to pay off what they owed under the lease when the parties settled; the lessor then quoted them the $7,669.62 in outstanding lease payments. (See pp. 14-15, *ante*, discussing AA-53.) What the lessor did not and could not provide was anything

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[3] This is especially true in light of the prospect for collusion between defendants and the VW-affiliate/lessor. (E.g., AOB-47-48 [noting that the lessor had said that it would violate privacy laws to share plaintiffs' financial information even with defendants, only to then prepare a publicly filed declaration supporting defendants that contains that very information].) Their affiliation is presumably why defendants even require that some of the $69,500 settlement proceeds cover amounts "owed by Plaintiffs" under the lease in the first place.

related to what the lease payoff would be *under defendants' reading* of the Settlement—even if plaintiffs would have had any reason to ask about an interpretation of the Settlement that defendants cooked up only after a dispute arose. (See AOB-18-20 [defendants instead acquiescing to plaintiffs' reading of the settlement].)

After all, defendants' interpretation is that the "lease payoff owed by Plaintiffs" includes the *future obligations* that *defendants* would incur so that *defendants* could purchase the car *before the lease's natural* end. And under the lease, the cost for defendants to purchase the car before the lease's natural end turns on complex formulas whose inputs depend on *the choices that defendants* would later make with the lessor when purchasing the car post-settlement. (See AOB-39-40.)

Defendants do not contend otherwise. To the contrary, defendants admit that the early-termination fee *changes*, for instance, based on when a defendant manufacturer decides to terminate the lease. (RB-10 [early termination fee is higher "'[t]he earlier you end the Lease,'" quoting AA-84, emphasis removed].) Defendants' reading of the section 998 settlement thus cannot be right, since it would render its value impossible to figure out at the time the parties settled, even assuming (without basis) that plaintiffs were required to reach out to third parties for help discerning the value of an offer that is supposed be readily apparent based on information *they already have*.

This is presumably why even on appeal, defendants have *still* "never even tried to explain how they reached the amount

they later claimed was necessary to purchase the leased car and terminate the lease early"—let alone how plaintiffs could have calculated that amount when the offer was made. (See AOB-35; RB-25-27 [no attempt to explain, even after AOB called them out for never doing so].) This is effectively an admission that defendants' interpretation would render the settlement's value impossible to calculate at the time when the settlement was made (and potentially afterwards as well).

For these reasons, too, plaintiffs' interpretation of the Settlement—which gives the settlement a clear value: $69,500—is the only reasonable one.

III. Plaintiffs' Interpretation Of The Settlement Is Bolstered By The Default Rule Under The Song-Beverly Act That Manufacturers Are Supposed To Repurchase Defective Vehicles.

In addition to the fact that the Settlement arose in the context of a settlement under section 998, there is other pertinent context for interpreting the Settlement's terms: Defendants made the offer against the backdrop of Song-Beverly Act claims that statutorily contemplated and required that *manufacturers* must bear the financial burden of repurchasing lemons from consumers. (See AOB-41-43.)

Nonetheless, defendants say the rules governing Song-Beverly cases have no import in this case. (RB-28-29.) Why? Defendants don't say other than to state that the parties' agreement "direct[ed] plaintiffs to contact their third-party lienholder to obtain an accurate payoff amount." (RB-28.) But that's not what the Settlement says and, indeed, defendants

do not quote any language imposing such an obligation. Nor is any such requirement relevant, regardless.

It is well established that parties draft and negotiate a contract against the backdrop of the law. (See *Bank of Stockton v. Diamond Walnut Growers, Inc.* (1988) 199 Cal.App.3d 144, 158 ["The context may shed light on the language of the contract, and the applicable laws are part of this backdrop," citing Civ. Code, §§ 1647, 1656, 1 Witkin, Summary of Cal.Law (8th ed. 1973) Contracts, § 530].)

Parties can only contract around the "general rule[s]" that are otherwise read into a contract through express, "specific terms" that make this intent abundantly clear. (See AOB-42-43, quoting *Goldman v. Ecco-Phoenix Elec. Corp.* (1964) 62 Cal.2d 40, 44 (*Goldman*).)

Here, the Song-Beverly Act "'impos[es] reacquisition, branding, and disclosure requirements solely on manufacturers,' not consumers." (AOB-35, quoting *Crayton v. FCA US LLC* (2021) 63 Cal.App.5th 194, 206-207.) There was thus no reason for plaintiffs to believe that they would have to use settlement amounts *paid to them* to cover costs *owed by them* to fulfill *defendants'* repurchase obligations—certainly in light of the absence of any express, specific language to that effect. (See *Goldman, supra,* 62 Cal.2d at pp. 44-45 ["[I]n the absence of a specific agreement to protect the indemnitee against affirmative acts of its negligence the contract could not be construed to do so," notwithstanding the general "indemnification from liability

resulting directly or indirectly from the performance of the construction company's work on the property"].)

The Settlement never states that contrary to the general, default rule, plaintiffs are going to be required to use settlement proceeds meant for plaintiffs benefit to purchase the car for *defendants'* benefit. (See AA-19 ["payment of $69,500.00 to or on behalf of Plaintiffs"]; AA-15, ¶ 4 [requiring that plaintiffs are only to provide defendant with "*information and documents* to facilitate payoff of any outstanding lease obligation on the Subject Vehicle, and transfer of title"—not that plaintiffs must fund defendants' purchase of the vehicle, italics added].)

Defendants respond by arguing (1) that the settlement directs plaintiffs to provide defendants with the payoff information, (2) that this includes some *implicit* requirement that plaintiffs "contact their [lessor] for this information," and (3) that the defendant handed the lessor complete discretion over what the lease payoff amount means. (See RB-27-28.)

But this hardly satisfies the requirement that parties specifically and expressly disclaim the general rule under the Song-Beverly Act that *manufacturers* are to pay to repurchase a vehicle. Nor could defendants' reading stand, even in the absence of a general rule. A requirement that plaintiffs inform defendants of the payoff amount says nothing about the way in which plaintiffs are to secure that information—let alone dictates how that term is defined. Ambiguities caused by *defendants' failure* to state this more clearly in their 998 offer are construed

against defendants, not the other way around. (See Argument, § V, *post*.)

The bottom line: The Settlement's failure to expressly state that plaintiffs will assume defendants' responsibility under the Song-Beverly Act by repurchasing the vehicle using plaintiffs' settlement proceeds precludes it from "be[ing] construed to do so." (*Goldman, supra,* 62 Cal.App. at p. 44.) For this reason, too, plaintiffs' interpretation of the Settlement is the only tenable one.

IV. The Parties' Performance Of The Settlement Supports Plaintiffs' Reading Of The Settlement, Too.

As anticipated (AOB-43), defendants argue that the $7,669 that plaintiffs provided to defendants could not possibly be the payoff amount under the Settlement. For this argument, defendants cite to the excerpt of the lease statement that plaintiffs provided to them (in performance of the Settlement) stating that the "'[c]urrent balance is not a payoff.'" (RB-30, emphasis omitted.)

But defendants have offered no response to plaintiffs' showing why that statement is irrelevant. (Compare AOB-43-45, with RB-27 [summarily denying that "the parties' performance supports [plaintiffs'] interpretation" before discussing only the settlement's text.) As plaintiffs explained in their opening brief, "the lease statement's description of what the 'payoff amount' is, matters only to the extent that the parties agreed and adopted that interpretation" in the Settlement. (AOB-44; *Smith v. Adventist Health System/West* (2010) 182 Cal.App.4th 729, 755, fn. 18 (*Smith*) ["[T]he documents are not relevant because they

are not expressions of intent communicated between the persons who adopted the Bylaws. Thus, the documents are not relevant to the *mutual* intent of the parties at the time the Bylaws were approved," original italics].)

And here, the parties' performance of the Settlement shows that they *did not* adopt the lease's (non-static) definition of "lease payoff,"[4] which, unlike the Settlement, doesn't account for *who* accrues the obligation under the lease or *when* that obligation is accrued. (See AA-14-15, ¶¶ 1, 4 [referring to lease payoff *owed by plaintiffs*" and the "*current* payoff amount," italics added]; pp. 14-16, *ante*.)

The Settlement directed plaintiffs to timely "provide to Defendants' counsel" certain information "to facilitate payoff of any outstanding lease obligation," including the payoff amount owed by plaintiffs. (AA-15, ¶ 4.) In execution of that term, plaintiffs emailed defendants with what plaintiffs saw as the payoff amount: the $7,669.62 owed on the lease, as reflected in a screenshot of plaintiffs' latest lease statement (after accounting

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[4] The lease notably does not define what the "lease payoff" amount is; indeed, the amount owed on the lease changes based on what has occurred. (See pp. 14-16, *ante*.) Here, for instance, the lease statement at issue warned that the current balance as it stood on July 25, 2021 might not be the payoff and advised plaintiffs to call the lessor for more information. (AA-120.) Plaintiffs then called the lessor, who informed them that the lease payoff just after the parties settled was $7669,62 in light of "the two most recent payments by the Ivars," made after July 25, 2021. (*Ibid.*)

for "the two most recent payments by [plaintiffs]"). (See AA-118, 120.) Defendants didn't object—even *knowing* about the screenshot they now make a centerpiece of their case. (See AA-118-120 [screenshot stating that stated balance (before accounting for two latest payments) is "not a payoff" under the lease *included with* plaintiffs' email informing defendants that they saw the lease payoff as $7,669.62].)

Instead, defendants allowed plaintiffs to transfer the subject vehicle (in further performance of the settlement) with the undisputed expectation that they would receive a check for $61,830.38 (the difference between the $69,500 minus the $7,669.62 lease balance). (See AOB-19.) It would be weeks later before defendants would unilaterally decide to cut a check for half of what plaintiffs expected—prompting plaintiffs to immediately object that defendants must have made a mistake given the incongruity with the parties' previous communications. (See AOB-19, citing AA-77.) Only then did defendants finally cook up the explanation they raise here (i.e., that the "lease payoff owed by Plaintiffs" somehow includes amounts for *defendants* to purchase the car before the lease's end). (See AOB-20.)

The parties' performance of the Settlement is further evidence that the "payoff amount owed by plaintiff" only to the $7,669.62 outstanding on lease as a result, *regardless of how a "payoff" is understood under the lease*. Courts have long presumed that "'each party is alert to his own interests" and will be "'insisten[t] on his rights'" in execution of the contract "'during the period while [the parties' relations are still] harmonious.'"

(See *Universal Sales Corp. v. California Press Mfg. Co.* (1942) 20 Cal.2d 751, 762 (*Universal Sales*).) Accordingly, if defendants truly intended for plaintiffs to use their settlement proceeds to pay off the amounts "owed by plaintiffs" on the lease *and* to purchase the subject vehicle for defendants' benefit, they would have said so. And as shown, defendants didn't raise that objection, even after plaintiffs provided defendants with the lease statement they now exploit as some sort of proof that plaintiffs had to pay for their purchase of the vehicle. (See *New West Fruit Corp. v. Coastal Berry Corp.* (1991) 1 Cal.App.4th 92, 100 ["[T]he growers' acquiescence in this course of performance indicates this exchange was mutually understood to be within the scope of the ongoing relationship between growers and Monc's"].)

Defendants' new position that the Settlement requires plaintiffs to buy defendants the vehicle is the product of gamesmanship and contrary to *all* parties' clear understanding of their agreement at the time the parties executed and performed the contract. (See *Universal Sales, supra,* 20 Cal.2d at p. 762 [explaining that the conduct during this period better reflects the parties' actual intentions than what they do after "'subsequent differences have impelled them to resort to law'"].)

V. At A Minimum, The Settlement Is Reasonably Susceptible To Plaintiffs' Interpretation, Which Thus Must Win Out. A Rule Otherwise Would Reward Defendants For Gamesmanship That Undermines Section 998 By Spawning Needless Litigation.

Defendants do not dispute that under governing interpretational tools, the Settlement must be construed against

defendants—both as the drafters and as the parties responsible for ensuring that their section 998 offer had a reasonably ascertainable value to the offeree plaintiffs. (Compare AOB-46 [raising this argument], with RB-27-30 [no response].) Defendants have no viable response. It is well established that the party who "'chooses the terms of a contract'" should have ambiguities decided against them "'to protect the party who did not choose the language from an unintended or unfair result'" (*Sandquist v. Lebo Automotive, Inc.* (2016) 1 Cal.5th 233, 247-248 (*Sandquist*); accord Rest.2d Contracts, § 206, com. a.)

This is even more true in section 998 settlements between global car manufacturers and individual consumers. After all, in those cases, the manufacturer/offering party has an independent obligation to make the offer's value clear "from the perspective of the offeree." (*Taing, supra*, 9 Cal.App.4th at p. 585; see *Burchell v. Faculty Physicians & Surgeons of Loma Linda University School of Medicine* (2020) 54 Cal.App.5th 515, 533 ["Burchell, as offeror, has the burden of demonstrating that his section 998 offer complied with the statutory content requirements, and we are required to construe the offer strictly in favor of the offeree"].)

Plus, such settlements are akin to adhesion contracts in that when the manufacturer makes a 998 offer, the consumer must either accept the offer *as is* or face sanctions if they reject it and fail to secure a more favorable judgment or award at trial. (See Code Civ. Proc., § 998, subds. (b)(1), (c)(1), (d)(1) [discussing what happens when a 998 offer is either accepted or rejected, without reference to negotiations]; *Sandquist, supra,* 1 Cal.5th at

p. 248 [The "rule requiring resolution of ambiguities against the drafting party" applies with "peculiar force" to adhesion contracts given the inability of the non-drafting party to negotiate terms].)

The rule mandating that ambiguities are construed against defendants therefore alone requires ruling in plaintiffs' favor.

As shown, all of (1) the Settlement's plain text, (2) the rules governing section 998 settlements (i.e., requiring that they be of readily ascertainable value), (3) the default rule under the Song-Beverly Act that manufacturers are to repurchase defective vehicles, and (4) the parties' performance of the agreement support only one reading: The settlement *does not* require that plaintiffs use settlement funds *designated for their benefit* to fund defendants' purchase of the vehicle ahead of the lease's natural end. Alternatively, these tools of contract interpretation at least show that Settlement is reasonably susceptible to plaintiffs' interpretation that a section 998 settlement in which defendants promise to pay them **$69,500.00**, in bold, is supposed to provide them with $69,500.00 in value, some in cash and some to pay off all amounts "owed by Plaintiffs" under the lease, not to fund *defendants'* purchase of the vehicle before the lease's natural end.

Defendants insist otherwise. They argue that (1) "plaintiffs had to terminate their lease early" under paragraph 4 of the Settlement, (2) the lease states that plaintiffs would have "to pay 'a substantial charge . . . up to several thousand dollars," and (3) the lease payoff necessarily included those fees. (See RB-29, citing AA-105, ¶ 4, emphasis omitted.) Not so.

As an initial matter, defendants' argument that the Settlement required plaintiffs to terminate the lease early would not explain why plaintiffs were stuck *also* paying for defendants to purchase the vehicle; any suggestion that the early termination fee *also* includes the amount to purchase the car (for defendants' benefit) is false. (See AA-130, ¶ 24 [setting forth fee for early termination "where the Vehicle is "return[ed]," which excludes "the Vehicle's Fair Market Wholesale Value"].)

And more importantly, defendants' foundational premise is also flat wrong. Neither paragraph 4 nor any other provision in the Settlement required plaintiffs to terminate the lease early (or to fund defendants' purchase of the vehicle for that matter).

Rather, Paragraph 4 only required that plaintiffs provide "information and documents to facilitate payoff of any outstanding lease obligations on the Subject Vehicle, and transfer of title." (AA-15, ¶ 4.) If defendants had wanted plaintiffs *to terminate the lease early and to pay for that early termination* (and to fund defendants' purchase of the vehicle), the law presumes that, as the drafters, they would have said so.

Plaintiffs must therefore prevail because it is at least reasonably conceivable—if not mandated by the Settlement's plain terms and all other tools of contract interpretation—that the "lease payoff owed by Plaintiffs" refers only to amounts plaintiffs incurred under the lease, not costs *defendants* later incurred so that *defendants* could purchase the subject vehicle and terminate the lease early.

Ruling otherwise would encourage defendants to "'leave meaning deliberately obscure'" so that they can "'decide at a later date what meaning to assert'" based on whether they want the offer to appear more or less valuable. (See *Sandquist, supra,* 1 Cal.5th at p. 247, quoting Rest.2d Contracts, § 206, com.a.) This, in turn, would spawn more litigation (including appeals) over the reading of these ambiguous terms, regardless of whether defendants' 998 offer was accepted or not.

This case is a perfect example. There can be no question that if plaintiffs had gone to trial and recovered an amount below $69,500, that defendants would have argued that plaintiffs had failure to secure a more favorable judgment or award on the premise that the Settlement was worth $69,500. (See AOB-47 [making this argument].) Defendants do not dispute this. (See RB-27-30 [no response to this argument].) Yet because plaintiffs *accepted* the offer, defendants now conveniently take the position that notwithstanding what's printed in bold on the face of their offer, it's really actually worth *far less* than $69,500. Defendants read the offer to now mean that they can take a $69,500 total that is supposed to be "paid to Plaintiffs" or used to cover debts "owed by Plaintiffs" to fund *defendants'* purchase of the vehicle before the lease's natural end. There's no way that defendants would have read the offer this way if plaintiffs had gone to trial and recovered even a penny less than $69,500.

Fortunately, the law doesn't allow for this type of gamesmanship. Plaintiffs' interpretation—that a settlement promising to pay them $69,500 should actually provide them with

$69,500 in value—must win out. It is a reasonable reading of the settlement and, in fact, defendants initially acquiesced to it.

VI. The Lease Payoff Amount Under The Section 998 Settlement Is A *Legal Question*. A Third Party's Interpretation Of A Different Contract Is Evidence Of Nothing.

As shown (AOB-49-54), a statement in a declaration by a manager at a Volkswagen affiliate cannot subvert the plain meaning of the Settlement's text. The interpretation of a contract provision is a "legal question solely for the *court* to decide." (AOB-50-51, citing *Legendary Investors Group No. 1, LLC v. Niemann* (2014) 224 Cal.App.4th 1407, 1413 (*Legendary Investors*), original italics.)

Defendants do not dispute this. Like the trial court's one-paragraph long decision (AA-141), defendants nevertheless treat the interpretation of the lease payoff under the section 998 settlement as a question of *fact*. (See RB-31-34.) They take the position that *the parties* must have intended for the "lease payoff owed by Plaintiffs" to include amounts that defendants would *later incur* to purchase the car and terminate the lease early because some third party supposedly said so. (See RB-32-34.)

For multiple reasons, Matthew Birmingham's declaration doesn't make this absurd argument any more tenable:

First, Birmingham did not purport to speak to what the lease payoff means in the Settlement. As a *non-party,* he couldn't have. Birmingham instead spoke to what the payoff amount is *pursuant to the Lease* in light *defendants'* decision "to terminate Plaintiffs' lease" early and to purchase the car. (See AA-126, ¶ 3

[explaining that his lease payoff amount was conducted "to terminate Plaintiffs' lease" (early) and includes the cost for "VCI to transfer *title to the new owner, VWGoA*," italics added].) That says nothing about whether the Settlement required that plaintiffs use their settlement funds to fund defendants' decision to purchase the car before the lease's end in the first place. That's because, while the Lease makes no distinction between amounts accrued by plaintiffs (as the original lessee) and defendants (as the parties assigned the right to purchase the vehicle via paragraph 4, the paperwork provision), the section 998 settlement does: it limits the use of the $69,500 paid to plaintiffs to cover amounts "owed by Plaintiffs" at the time the parties settled, not amounts *defendants owed* when *defendants subsequently* purchased the vehicle *for themselves* and terminated the lease early to do so. (See pp. 14-16, *ante*.)

Second, even if Birmingham had opined on the meaning of "the lease payoff owed by Plaintiffs" *under the Settlement,* that would still be evidence of nothing. The relevant inquiry is what *the parties* understood the "lease payoff owed by Plaintiffs" to mean at the time they executed their contract. And as defendants admit, neither side even knew what Birmingham thought at the time the Settlement was executed. (See RB-29 [explaining that defendants contacted Birmingham *after* the Settlement was executed and that "plaintiffs never did"].) Birmingham's opinions are thus "not relevant because they are not expressions of intent communicated between the persons who [executed the Settlement]." (*Smith, supra,* 182 Cal.App.4th at p.

755, fn. 18.) What a *non-party* thinks that the contract means is evidence of nothing. (*Legendary Investors, supra,* 224 Cal.App.4th at p. 1413 [deeming bank custodian's opinion "on the meaning of the phrase 'unpaid indebtedness'" in the contract at issue "irrelevant" on this basis]; *Morrow v. Los Angeles Unified School Dist.* (2007) 149 Cal.App.4th 1424, 1444 [holding that witness's assertions as to what a contract "proscribes" was inadmissible as "improper lay opinion as to the meaning and legal effect of a contract"].)

Third, the undisputed evidence of the parties' intent (as demonstrated in their performance of the Settlement terms) shows that plaintiffs expressly informed defendants that they understood the "lease payoff owed by Plaintiffs" under the Settlement to be the *same* as the $7,669.62 "balance"—and that defendants must have agreed given their failure to raise a single objection in response, at least before this dispute arose. (See Argument, § IV, *ante*; AOB-18-19, 43-45.)

Fourth, Birmingham's declaration could not be used to contradict the clear terms of the Settlement. Extrinsic evidence cannot be used to "flatly contradict" express terms of an agreement that are clear and unambiguous. (*Supervalu, Inc. v. Wexford Underwriting Managers, Inc.* (2009) 175 Cal.App.4th 64, 75, quoting *Winet v. Price* (1992) 4 Cal.App.4th 1159, 1167.) Treating Birmingham's declaration as evidence that the payoff owed by plaintiffs must include amounts for defendants' purchase of the car would do just that. Defendants promised to pay plaintiffs a total of $69,500, some to pay off amounts owed by

them and the rest in cash. This amount was supposed to either go "to or [be spent] on behalf of plaintiffs." (AA-19.) There's no reasonable reading of that language that requires plaintiffs to use funds designated *for them* to fund defendants' purchase of the vehicle before the lease's end, period. (See Argument, § I, *ante*.)

Fifth, even assuming that the Settlement were ambiguous and that Birmingham could and did speak to the Settlement's meaning (he didn't), Birmingham's declaration *at best* shows that the Settlement is *also* reasonably susceptible to defendants' interpretation—not that defendants' interpretation must win out. *Every other tool of contract interpretation would still show* that plaintiffs' interpretation is also reasonable, and therefore still must win out. (See Argument, § V, *ante*; *Tahoe National, supra,* 4 Cal.3d at p. 20 [rejecting drafter's interpretation, even though supported by extrinsic evidence, because "in determining whether an instrument is reasonably susceptible to an interpretation suggested by the extrinsic evidence, one factor for consideration by the court is whether that interpretation would do violence to the principles of construing documents against the party who drafts and selects them"].)

The drafters of an accepted section 998 settlement are simply not permitted to exploit ambiguities *they are responsible* for so that they can invoke whatever meaning they find expedient. This is particularly true in cases like this one, where defendants could strategically invoke an interpretation to make the value of the section 998 offer higher if plaintiffs had rejected the offer (which would require plaintiffs to beat that offer at trial

to avoid section 998's sanctions) or lower where, as here, plaintiffs accepted the offer. (See pp. 31-32, *ante*.) Defendants may not circumvent this rule merely by submitting a self-serving declaration from an affiliate as to how that affiliate interprets a different contract that, itself, doesn't define the lease "payoff amount." (See *Tahoe National, supra,* 4 Cal.3d at p. 20 ["[T]o permit a creditor to choose an allegedly ambiguous form of agreement, and then by extrinsic evidence seek to give it the effect of a different and unambiguous form, would be to disregard totally the rule respective interpretation of adhesion contracts, and to create an extreme danger of over-reaching on the part of creditors with superior bargaining positions"]; pp. 31-32, *ante* [explaining why section 988 settlements between manufacturers and consumers are akin to adhesion contracts].)

Defendants have no meaningful response to *any* of these arguments, which they largely skip past. At most, they argue that Birmingham's declaration must be relevant simply because they "submitted [it] in response to plaintiffs' claimed understanding of the agreement" and to support defendant's interpretation of the amount owed. (See RB-33-34.)

But the fact that defendants *sought* to use Birmingham's declaration to show the parties' understanding of the agreement doesn't make it probative of that understanding. It couldn't be. As shown, (1) Birmingham only spoke to his understanding *of the lease payoff* under the lease (which itself doesn't define a "lease payoff," see pp. 14-15, *ante*); (2) Birmingham's non-party *opinion* about what the *parties* understood is irrelevant when *neither*

party even knew what Birmingham's opinion was when executing the Settlement; (3) the parties' performance shows that they in fact *rejected* the idea that the payoff amount owed by plaintiffs under the Settlement was anything other than the outstanding balance plaintiffs had identified; and (4) Birmingham's declaration can't be used to contradict the Settlement's clear and unambiguous mandate: that defendants were to pay plaintiffs $69,500 in value, not use those funds to buy themselves a car that plaintiffs weren't even obligated to buy under the lease.

The trial court had no basis to even consider Birmingham's declaration in interpreting the Settlement, which is a *legal question* dictated by the text, the context in which the contract arose (as a section 998 settlement of a Song-Beverly case), the parties' performance, and the rule interpreting ambiguities against the drafter—not by a non-party's opinion on how to interpret a different contract.

CONCLUSION

The Settlement requires that defendants "pay Plaintiffs the total sum of **$69,500.00**," some to pay off debts that *plaintiffs would necessarily owe* and the rest in cash—not to use funds designated *for plaintiffs* to fund *defendants'* purchase of the vehicle before the lease's natural end. The Court should reverse

with directions to grant plaintiffs' motion to enforce the settlement agreement.

Date: April 13, 2023

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CERTIFICATION

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that this **Appellants' Reply Brief** contains **8,828 words**, not including the tables of contents and authorities, the caption page, signature blocks, or this Certification page.

Date: April 13, 2023

/s/ Joseph V. Bui
Joseph V. Bui

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 384 Forest Avenue, Suite 17, Laguna Beach, California 92651.

On **April 13, 2023**, I served the foregoing document described as **APPELLANTS' REPLY BRIEF** on the parties in this action by serving:

SEE ATTACHED SERVICE LIST

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Executed on **April 13, 2023**, at Los Angeles, California.

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

/s/ Maureen Allen
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