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Supreme Court of California
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No. S285433

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

BRANDI STILES FKA BRANDI ERICKSON AND
ABEL GORGITA,

Plaintiffs and Appellants,

vs.

KIA MOTORS AMERICA, INC., A CALIFORNIA
CORPORATION,

Defendant and Respondent.

After a Decision by the Court of Appeal,
Second Appellate District, Division Six, No. B325798
Appeal From Ventura County Superior Court
Honorable Mark Borrell, Judge
Case No. 56-2019-00527171-CU-BC-VTA

ANSWER TO PETITION FOR REVIEW

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SUPREME COURT OF CALIFORNIA

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Court of Appeal Case No: S285433

Case Name: *Stiles, et al. v. Kia Motors America*

Interested entities or parties are listed below:

Name of Interested Entity or Person	Nature of Interest
1. None	
2.	
3.	
4.	

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TABLE OF CONTENTS

PAGE

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS 2

INTRODUCTION 7

STATEMENT OF THE CASE 11

LEGAL ARGUMENT 11

I. The Court Should Enter A Grant-And-Hold On The "New Motor Vehicle" Definition Issue Because The Opinion Expressly Rejects *Rodriguez*'s Holding—And Not Because Of Any Of Kia's Improper, Baseless Merits Arguments. 11

A. Entering a grant-and-hold order on the definition of section 1793.22's "new motor vehicle" is appropriate, pending this Court's decision in *Rodriguez*. 11

B. Kia's merits arguments are improper, irrelevant, and wrong. They should have no bearing on the Court's basis for granting review. 13

II. The Court Should Deny Review On The Implied-Warranty Question. There Is No Court-Split To Resolve, Nor Any Occasion To Rule On That Question, Which The Opinion Did Not Even Address. 22

III. There Is No Basis To Depublish The Opinion, Rendering It Non-Citable, Pending This Court's Decision In *Rodriguez*. 24

A. The Court should deny Kia's request for depublication because it violates the Rules of Court, which expressly prohibit depublication requests made as part of a petition for review. 24

TABLE OF CONTENTS

PAGE

B. In any event, the Opinion should remain published, as it meets several criteria weighing in favor of publication. 25

C. Again, Kia's merits arguments are improper, wrong, and not reasons to depublish the Opinion. 26

D. The Court should not depublish an opinion that creates a case-split based on meritless quibbles over the Opinion's description of well-supported facts. 26

CONCLUSION 29

CERTIFICATE OF COMPLIANCE 31

PROOF OF SERVICE 32

TABLE OF AUTHORITIES

PAGE

Cases

Jensen v. BMW of North America, Inc.
(1995) 35 Cal.App.4th 112 7, 8, 10, 12, 14, 15, 16, 25, 28

Kiluk v. Mercedes-Benz USA, LLC
(2019) 43 Cal.App.5th 334 16

Rodriguez v. FCA US, LLC
(2022) 77 Cal.App.5th 209 7-14, 16, 18, 22, 24, 26, 28, 29

Victorino v. FCA US LLC
(S.D.Cal. 2018) 326 F.R.D. 282 16, 21

Statutes

Civ. Code, § 1790.4 19

Civ. Code, § 1791 23

Civ. Code, § 1792 23

Civ. Code, § 1793.2 9, 21, 27

Civ. Code, § 1793.22 7-12, 14-21, 23, 28, 29

Civ. Code, § 1795 27

Civ. Code, § 1795.5 19, 20

Veh. Code, § 665 20

Rules

Cal. Rules of Court, rule 8.500 13, 22, 23, 24

Cal. Rules of Court, rule 8.1105 25, 26

Cal. Rules of Court, rule 8.1125 24, 25

TABLE OF AUTHORITIES

PAGE

Other Authorities

Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2023) ¶ 13:73 ... 13

INTRODUCTION

Defendant Kia Motors America, Inc. ("Kia") asks the Court to grant review on the ground that the Court of Appeal's published opinion ("Opinion") addresses the same issue—and comes to the opposite conclusion—as *Rodriguez v. FCA US, LLC* (2022) 77 Cal.App.5th 209, review granted July 13, 2022, S274625 (*Rodriguez*), which is currently pending before this Court.

Plaintiffs agree that a grant-and-hold order is appropriate on the ground that the Opinion expressly disagreed with *Rodriguez*'s (flawed) conclusion, and (correctly) sided with nearly 30-year-old case law holding that Civil Code section 1793.22's[1] "new motor vehicle" definition includes used vehicles sold with a balance remaining on a new-car warranty. Accordingly, the Court should enter grant-and-hold on this limited ground.

However, the Court should decline to consider Kia's thinly veiled attempts to use its Petition for Review to persuade the Court that the Opinion was wrongly decided.

But to the extent they are relevant at all, Kia's merits arguments aren't just improper in what should have been a standard petition for a grant-and-hold; they're wrong.

First, Kia argues that the Court of Appeal improperly followed "dicta" in *Jensen v. BMW of North America, Inc.* (1995) 35 Cal.App.4th 112 (*Jensen*) instead of *Rodriguez* and other

[1] Statutory references are to the Civil Code unless indicated.

authority. But the Court of Appeal agreed with *Jensen*'s *holding*—a holding which has guided consumers and manufacturers for nearly three decades. Indeed, *Jensen* answered the same question at issue here in concluding that "the words of section 1793.22 are reasonably free from ambiguity and cars sold with a balance remaining on the manufacturer's new motor vehicle warranty are included within [the Song-Beverly Act's] definition of 'new motor vehicle.'" (35 Cal.App.4th at p. 123.) The Opinion properly followed *Jensen*'s holding.

Second, Kia says the Opinion fails to account for certain language already in section 1793.22's definition of "new motor vehicle"—particularly, the first two sentences—and improperly adds language to the definition by concluding that it includes cars sold with some balance remaining on a new car warranty.

But there's no tenable interpretation of the Song-Beverly Act ("Act") in which the definition's first two sentences exclude used vehicles sold with a balance remaining on a new car warranty. And because the third sentence expressly identifies dealer-owned vehicles and demonstrators as examples of "new motor vehicle[s]" even though such vehicles are "used" and sold with only a *portion* of a new-car warranty, this confirms that any other vehicle sold with a balance of the original manufacturer warranty has been sold, for the Act's purposes, "with a manufacturer's new car warranty" as well. (§ 1793.22, subd. (e)(2).) The Opinion therefore does not add anything to the "new motor vehicle" definition that wasn't already part of that definition. In contrast, *Rodriguez* created an entirely new

category of “basically new” or “essentially new” vehicles. (*Rodriguez*, *supra*, 77 Cal.App.5th at pp. 215, 220.)

Third, Kia’s remaining merits arguments focus on the fact that the Opinion does not discuss a grab bag of unrelated provisions of the Act that Kia raised in its appellate briefing. But unlike section 1793.22, subdivision (e), none of those other provisions purport to explain whether a warranty that is still running suddenly becomes unenforceable merely because the vehicle has changed hands. Nor does section 1793.22, subdivision (e) impact those provisions. Section 1793.22, subdivision (e) only defines what constitutes a “new motor vehicle” for purposes of bringing a claim under the Act for breach of express warranty under section 1793.2, subdivision (d). Section 1793.22, subdivision (e) has no bearing on any other provisions of the Act. (See § 1793.22, subd. (e) [“For the purposes of subdivision (d) of Section 1793.2 and this section, the following terms have the following meanings: . . . ‘New motor vehicle’ means . . .”].)

The Court should also deny Kia’s invitation to review a second question: Whether the Act’s implied-warranty protections for new products apply to used vehicles with transferred express warranties. There is no court-split to resolve because the Opinion did not even address this question.

Finally, the Court should reject Kia’s request to render the Opinion non-citable while *Rodriguez* is pending. The Opinion meets multiple criteria for publication—including by creating a split on a widely important issue. Kia’s quibbles about non-dispositive facts are no reason to depublish, either. The Opinion

should remain citable for its persuasive value while *Rodriguez* is pending.

In sum: The Court should grant review only on the question that this Court is reviewing in *Rodriguez*: Is a used vehicle that is still covered by the manufacturer's express warranty a "new motor vehicle" within the meaning of section 1793.22, subdivision (e)(2), which defines "new motor vehicle" as including a "motor vehicle sold with a manufacturer's new car warranty"? The Court should defer further briefing or other action until it decides *Rodriguez*. The Court should reject Kia's invitation that this Court needlessly weigh in on whether the Act's implied-warranty protections for new products apply to used vehicles with transferred express warranties—a question that the Opinion didn't even address. And the Court should reject Kia's request that the Court depublish the Opinion—which merely reaffirms the protections that California consumers have properly enjoyed without dispute in the decades since *Jensen* was decided.

STATEMENT OF THE CASE

The Opinion accurately states the factual background and procedural history relevant to the issues on appeal. (Typed Opn. 2-3.) The Petition for Review's argumentative statement of the case is therefore unnecessary. (Petition 7-11.)

Kia accuses the Court of Appeal of mischaracterizing the record. (Petition 7-8, fn. 1; 21-23.) But as explained below, the Court construed the facts properly in light of the legal standard applicable to demurrers. Moreover, Kia never contends that any of the "errors" that it quibbles over has any significance in the case whatsoever. (§ III.D, *post*.)

LEGAL ARGUMENT

I. The Court Should Enter A Grant-And-Hold On The "New Motor Vehicle" Definition Issue Because The Opinion Expressly Rejects *Rodriguez*'s Holding—And Not Because Of Any Of Kia's Improper, Baseless Merits Arguments.

A. Entering a grant-and-hold order on the definition of section 1793.22's "new motor vehicle" is appropriate, pending this Court's decision in *Rodriguez*.

In the instant case, the Court of Appeal expressly disagreed with *Rodriguez*'s conclusion that section 1793.22's "new motor vehicle" definition excludes used vehicles sold with a balance remaining on a new-car warranty—a ruling on which this Court is set to weigh in on soon, as *Rodriguez* is fully briefed and

awaiting argument. The Court of Appeal explained that it disagrees with *Rodriguez* because:

- The plain language of section 1973.22's "new motor vehicle" definition includes "other motor vehicle[s] sold with a manufacturer's new car warranty"—i.e., a clear third category of "new motor vehicle," in addition to dealer-owned and demonstrator vehicles;
- The *Rodriguez* court improperly added words to section 1793.22, subdivision (e)(2) by limiting the "new motor vehicle" definition to "vehicles that have never been previously sold to a consumer and come with full express warranties," even though the Legislature has not added any such limitation since enacting the statute over 30 years ago; and
- *Jensen*—which held that a used vehicle with a still-remaining manufacturer's new-car warranty qualifies as a "new motor vehicle" under section 1793.22, subdivision (e)(2)—was properly decided, based on the statute's unambiguous plain text.

(Typed Opn. 7-8.)

Plaintiffs thus take no issue with Kia's request for a grant-and-hold—specifically, that the Court should grant review and then defer ordering further action in this matter until after the Court decides *Rodriguez*.

The Court need not consider Kia's further arguments for review as a result, most of which are just poorly disguised

attempts to persuade the Court that the Opinion was wrongly decided. Those arguments are both premature and meritless.

B. Kia's merits arguments are improper, irrelevant, and wrong. They should have no bearing on the Court's basis for granting review.

Kia acknowledges that this Court has already deemed the issue presented in *Rodriguez* "to be review-worthy"—presumably for the reasons set forth in the *Rodriguez* petition for review—and that the virtually identical issue here is therefore review-worthy, too. (See Petition 13.)

Yet Kia also spends pages arguing the *merits* of the appeal—i.e., that the Court of Appeal was wrong for a laundry list of reasons. (E.g., Petition 20.) While Kia frames these merits arguments as reasons "reinforc[ing] the need for review" (Petition 14)—and later, as reasons why the Court should depublish the Opinion (*id*. at 20)—Kia's arguments are nothing more than improper attempts to persuade the Court that the Opinion was wrongly decided ahead of its ruling in *Rodriguez*. (See Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2023) ¶ 13:73 ["The petition should *not* attempt to persuade the justices that the court of appeal wrongly decided the case or committed some error and that your client 'should have won,'" original italics]; Cal. Rules of Court, rule 8.500(b) [listing grounds for review].)

The Court can and should ignore Kia's merits arguments, which have no real bearing on whether review is to be granted in this case. At any rate, Kia's merits arguments are wrong on all counts. Here's why:

First, Kia argues that the Court of Appeal wrongly disagreed with conflicting authority, including *Rodriguez*, and followed "dicta" in *Jensen* instead. (Petition 12-16, 20.) According to Kia, "*Jensen* held that a car described during the sales transaction as a demonstrator and *leased with a full new car warranty by a new car dealer* affiliated with the manufacturer fell within the Act's definition of 'new motor vehicle.'" (Petition 14, italics added.) Kia thus contends that *Jensen*'s conclusion—that "cars sold with a balance remaining on the manufacturer's new motor vehicle warranty are included within [section 1793.22's] definition of 'new motor vehicle'"—is merely "dicta" because the car at issue was leased with a full new car warranty—i.e., it wasn't a used car with an unexpired warranty. (Petition 14-15, quoting *Jensen*, *supra*, 35 Cal.App.4th at p. 123.) Kia also cites *Rodriguez*'s interpretation that *Jensen* "was not asked to decide whether a used car with an unexpired warranty sold by a third party reseller qualifies as a new motor vehicle." (Petition 15, quoting *Rodriguez*, *supra*, 77 Cal.App.5th at p. 224, internal quotation marks omitted.)

But *Rodriguez* and Kia misread *Jensen*. In *Jensen*, the salesperson misrepresented that the car was a demonstrator, when in fact the dealership had purchased it from an auction and then put it up for sale on its lot (i.e., a transaction similar to the

transaction in this case). The opinion merely referenced in the "factual background" that a salesman "told" plaintiff the car was a demonstrator and that she would get the 36,000-mile warranty on top of the prior miles—representations that apparently were false.[2] (See *Jensen*, *supra*, 35 Cal.App.4th at pp. 119-120.) Neither the *Jensen* court nor BMW ever assumed that a full, new warranty actually existed, and there was no evidence of such a warranty. Rather, BMW argued that the Legislature could not have intended for the new motor vehicle definition to include every vehicle sold with "'any *remainder* of the manufacturer's new car warranty,'" and the *Jensen* court rejected that argument by holding that "cars sold *with a balance* remaining on the manufacturer's new motor vehicle warranty are included within [section 1793.22's] definition of 'new motor vehicle.'" (*Id.* at pp. 122-123, italics added.)

The *Jensen* court's analysis therefore didn't depend on the dealer's false representation that the car was a demonstrator or the salesperson's unsubstantiated representation that the car would come with a "full" new car warranty. Instead, because the car was *not* a demonstrator, *Jensen* broadly considered whether used cars sold with a remainder on the new-car warranty fall within section 1793.22's definition of "new motor vehicle[s]."

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[2] In fact, *Jensen* was quite clear that the car was *not* a demonstrator. (35 Cal.App.4th at p. 120.) If it were a demonstrator, the parties would have had no need to argue over the definition of "new motor vehicle" under section 1793.22, subdivision (e)(2), because the statute on its face includes demonstrators in the definition.

In other words, *Jensen* answered the same question at issue here, and squarely held that section 1793.22 encompasses cars sold with a balance remaining on the warranty. (*Jensen*, *supra*, 35 Cal.App.4th at p. 123.) And, in fact, that's exactly how other appellate courts have read *Jensen*. (See *Kiluk v. Mercedes-Benz USA, LLC* (2019) 43 Cal.App.5th 334, 340, fn. 4 [*Jensen* "concluded that every car sold with any portion of a new-vehicle warranty remaining is a new motor vehicle"].)

The Legislature has read *Jensen* in the same way—as "hold[ing] that a used motor vehicle sold or leased with a balance of the manufacturer's original warranty is a 'new motor vehicle' for purposes of California's Lemon Law." (See 6MJN/1366.) Accordingly, the Court of Appeal properly chose to follow *Jensen*'s holding, rather than *Rodriguez*'s holding. (Typed Opn. 7-8.)

As for Kia's argument that the Opinion "disregard[s] numerous decisions finding no implied warranty is owed by manufacturers or other original warrantors to buyers or used products" (Petition 20; see also Petition 18-19), those decisions are facially irrelevant. They have no bearing on the question at issue: namely, what constitutes a new motor vehicle under section 1793.22—which sets forth definitions apply to the Act's *express warranty provisions*, not its implied warranty provisions. (See pp. 20, *post*, citing *Victorino v. FCA US LLC* (S.D.Cal. 2018) 326 F.R.D. 282, 301.)

Second**,** Kia contends that the Court of Appeal erroneously failed to account for certain language already in section 1793.22's definition of "new motor vehicle"—particularly, the first two

sentences—and added language by "injecting the concept of the 'balance of' a new car warranty into the definition." (Petition 10, 12-13, 20.) This argument fails, too.

Section 1793.22, subdivision (e)(2) starts by stating that a new motor vehicle refers to "a new motor vehicle that is bought or used primarily for personal, family, or household purposes"—or, if under 10,000 pounds, "for business purposes." (§ 1793.22, subd. (e)(2).) The first two sentences merely delineate that the Act's new motor vehicles protections apply to those that are "bought or used primarily" for the purposes specified therein. (See *ibid.*) Accordingly, there is no tenable interpretation of the Act that would mean that those two sentences exclude previously-driven vehicles sold with a balance remaining on a new car warranty.

Indeed, such a reading would impermissibly exclude dealer-owned vehicles and demonstrators from the Act's protections. The third sentence expressly states that a "new motor vehicle" includes dealer-owned vehicles, demonstrators and "other motor vehicle[s]" that are sold "with a manufacturer's new car warranty." (§ 1793.22, subd. (e)(2).)

Section 1793.22 thus identifies dealer-owned vehicles and demonstrators as *examples* of "new motor vehicle[s]" even though both are "used" vehicles sold with a portion remaining on their new car warranties. Because dealer-owned vehicles and demonstrators are both previously-driven and sold with a balance remaining on their new car warranty, other used vehicles sold

with a balance remaining on their new car warranties must count as "new motor vehicle[s]," too.

Rodriguez described this category of new motor vehicles as a "catchall provision to cover a narrow class vehicle—the previously driven, but basically new (i.e., not previously sold) car." (*Rodriguez*, *supra*, 77 Cal.App.5th at p. 220.) But this description is fundamentally flawed because it ignores the fact that the first two categories—dealer-owned and demonstrator vehicles—also do not come with full or new warranties.

For the same reason, Kia's argument that the Opinion "inject[s] the concept of the 'balance of' a new car warranty into the definition [of 'new motor vehicle']" fails, as well. (Petition 20). Dealer-owned vehicles and demonstrators necessarily are sold with only a balance of the manufacturer's new-car warranty remaining: The 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. (See AOB 33-39.)

Because dealer-owned vehicles and demonstrators are sold with only a *balance* of a new-car warranty remaining, the Act's use of dealer-owned vehicles and demonstrators as examples of a vehicle "sold with a manufacturer's new car 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 manufacturer's new car warranty," too. (§ 1793.22, subd. (e)(2).) The Opinion therefore does not add anything to the "new

motor vehicle" definition that does not already exist in that statute.

The same cannot be said about Kia's pitch that section 1793.22's reference to "other motor vehicle[s] sold with a manufacturer's new car warranty" actually means that section 1793.22 applies to "*new* motor vehicles" or "motor vehicles sold with *an unused or full* new car warranty." (Typed Opn. 4 ["Had the Legislature intended to qualify warranty with 'new or full' it would have said so"].)

***Third*,** Kia argues that the Court of Appeal failed to consider "the significance of the Act's used goods provision, section 1795.5, by creating remedies for used goods that go beyond those in section 1795.5." (Petition 10, 20.)

But the Act's remedies specific to used goods have no bearing on the question of whether used cars are "new motor vehicle[s]" under 1793.22, subdivision (e)(2).

The Act's remedies are supposed to be "cumulative." (§ 1790.4.) Kia has not cited anything in the Act to suggest that used-car buyers may nevertheless only pursue section 1795.5's remedies—and not any other Act-remedy. Nor would any such argument make sense. Section 1793.22, subdivision (e) makes manufacturers accountable for the warranties they provide and make transferrable for the entire duration of that warranty by defining "new motor vehicle" to include vehicles *still covered* by the manufacturer's new-car warranty. Indeed, the statute's definition of "new motor vehicle" includes vehicles that would

otherwise be thought of as "used," such as "demonstrators" (Veh. Code, § 665) and used cars if still under the new-car warranty. For purposes of section 1793.22, subdivision (e)(2), the fact that the manufacturer's new-car warranty remains in effect makes them "new." That definition makes sense, given that the definition applies to provisions governing enforcement of the express warranty. In other words, the Act's protections track the express warranty—so that if a vehicle still has an express warranty on it, then the Act's protections apply, as well.

In contrast, section 1795.5 merely makes used-car dealers accountable for the express warranties *that they make* with respect to used consumer goods. Section 1795.5 doesn't purport to excuse manufacturers from honoring their original warranties that, while running, provide consumers with no reason to secure a warranty from the retail seller or distributor.

Civil Code, § 1795.5

(a) It shall be the obligation of the distributor or retail seller making express warranties with respect to used consumer goods (and not the original manufacturer, distributor, or retail seller making express warranties with respect to such goods when new) to maintain sufficient service and repair facilities within this state to carry out the terms of such express warranties.

Finally, Kia contends that the Court of Appeal failed to account for "the numerous *other* provisions clarifying the Act's limited application to used products." (Petition 20, original italics.) Kia lists six provisions as examples of the "numerous" provisions—and indicates that there are additional unnamed provisions—but fails to explain each provision's significance and why the Court of Appeal should have taken it into account. (Petition 20-21.) While Kia vaguely argues that the Opinion "will thus engender uncertainty over whether the Act's warranty start

date provision, implied warranty remedies, and other provisions relating to 'consumer goods' (new products) extend to owners of 'a previously owned motor vehicle with remaining miles on the manufacturer's written warranty'" (Petition 21), Kia doesn't even try to explain why or how failing to account for these unnamed provisions would have that effect. It cannot viably do so.

Those provisions have no significance to this case. Section 1793.22 expressly defines "new motor vehicle" only "[f]or purposes of subdivision (d) of Section 1793.2 and [that] section." Section 1793.22 has no bearing on the host of unrelated Act provisions that Kia cites. (See *Victorino v. FCA US LLC*, *supra*, 326 F.R.D. at p. 301 ["the definition of 'new motor vehicle' under section 1793.22(e) specifically states it only applies to section 1793.2(d), which . . . only applies to express warranties, and section 1793.22, . . . which does not reference implied warranties," fns. omitted].)

<u>Section 1793.22(e)</u>

(e) For the purposes of subdivision (d) of Section 1793.2 and this section, the following terms have the following meanings:

(1) "Nonconformity" means a nonconformity which substantially impairs the use, value, or safety of the new motor vehicle to the buyer
lessee.

(2) "New motor vehicle" means a new motor vehicle that is bought or used primarily for personal, family, or household purposes. "New

The provisions that Kia cites have no bearing on section 1793.22, subdivision (e) either. None speak to section 1793.22's scope. Nor do they purport to explain whether a warranty that's still running suddenly becomes unenforceable merely because the vehicle changes hands. Sections 1793.2 and 1793.22 answer those questions. Section 1793.2's remedies apply to "new motor vehicle[s]," which section 1793.22, subdivision (e) defines to

include: “dealer-owned vehicle[s] and ‘demonstrator[s]’”—both of which are used vehicles sold with a balance remaining on their new-car warranties—and “other motor vehicle[s] sold with a manufacturer’s new car warranty.” There is no requirement written anywhere in the statute dictating that the vehicle be sold with a “full” or “unused” warranty, or that the vehicle itself be “new.” The grab bag of unrelated provisions that Kia cites to does not provide otherwise. (See ARB 30-35.)

In sum, the Court should grant review on the ground that the Opinion decides the same issue that this Court is currently reviewing in *Rodriguez*. The Court should decline Kia’s invitation to prematurely wade into the merits.

II. The Court Should Deny Review On The Implied-Warranty Question. There Is No Court-Split To Resolve, Nor Any Occasion To Rule On That Question, Which The Opinion Did Not Even Address.

Kia argues that the Court should also grant review to resolve a second question: “[W]hether Song-Beverly’s *implied* warranty protections for new products apply to used vehicles with transferred warranties.” (Petition 16, original italics.)

Under Rule of Court 8.500(b), the Court “may order review of a Court of Appeal decision” under four circumstances (Cal. Rules of Court, rule 8.500(b)(1)-(4)), none of which are present as to the implied-warranty question. Indeed, three criteria don’t apply on their face. (See Cal. Rules of Court, rule 8.500(b)(2)-(4) [review may be granted where the Court of Appeal lacked

jurisdiction, lacked the concurrence of sufficient qualified justices, or to transfer the matter to the Court of Appeal for such proceedings as the Supreme Court may order].) The fourth one—that review is "necessary to secure uniformity of decision or to settle an important question of law"—doesn't apply either, because the Court of Appeal did not even address the merits of this issue. (Cal. Rules of Court, rule 8.500(b)(1).)

As the Court of Appeal explained, plaintiffs alleged a claim for breach of the implied warranty of merchantability under section 1792. (Typed Opn. 8; see also AA 51-52 [First Amended Complaint].) Section 1792 applies to consumer goods, which are defined as "any new product or part thereof that is used, bought, or leased for use primarily for personal, family, or household purposes, except for clothing and consumables." (Typed Opn. 8; § 1791, subd. (a).) However, Kia "demurred solely on the ground that [plaintiffs'] car was not a 'new motor vehicle' within the meaning of section 1793.22." (Typed Opn. 8; see also AA 64-68 [Kia's demurrer].) The trial court sustained Kia's demurrer to all three claims—including the implied warranty claim—on that ground. (AA 113-114, 134 [minute orders sustaining demurrer].)

The Court of Appeal rejected Kia's argument that plaintiffs' car was not a "new motor vehicle" within the meaning of section 1793.22—i.e., the only ground on which the trial court sustained Kia's demurrer to plaintiffs' implied warranty claim—and reversed the judgment as to that claim. (Typed Opn. 3-4, 7-9.)

The Opinion therefore did not address—let alone analyze—the question of whether section 1792's implied warranty

protections for new products apply to used vehicles with transferred warranties. As a result, there is no "conflict among authorities" as Kia contends (Petition 16, 18-19).

There is no need for review, because there is no need "to secure uniformity of decision or to settle an important question of law." (Cal. Rules of Court, rule 8.500(b)(1).) The Court should therefore decline Kia's second, independent question for review.

III. There Is No Basis To Depublish The Opinion, Rendering It Non-Citable, Pending This Court's Decision In *Rodriguez*.

Kia asks the Court to order the Opinion to be depublished and therefore non-citable while *Rodriguez* is pending because (according to Kia), the Opinion "is internally inconsistent, factually inaccurate, and unduly derogatory and inflammatory." (Petition 19-24.) The Court should reject Kia's request. While *Rodriguez* is pending, it is entirely appropriate for the Opinion to remain published and citable. Indeed, bench and bar should have the benefit of the Opinion's analysis of why the appellate court got it wrong in *Rodriguez*.

A. The Court should deny Kia's request for depublication because it violates the Rules of Court, which expressly prohibit depublication requests made as part of a petition for review.

The Rules of Court are clear that requests for depublication "must not be made as part of a petition for review." (Cal. Rules of Court, rule 8.1125(a)(2).) Instead, they must be made "by a

separate letter to the Supreme Court not exceeding 10 pages" and "served on the rendering court and all parties." (*Id.* subds. (a)(2), (5).) Kia's request for depublication—improperly made as part of its Petition for Review (Petition 19-24) rather than by a separate letter to the Court—violates the Rules of Court and should be denied on that basis.

B. In any event, the Opinion should remain published, as it meets several criteria weighing in favor of publication.

The Opinion meets several of the independent reasons for publication set forth in the Rules of Court.

The Opinion "(3) . . . criticizes with reasons given, an existing rule of law[,]" "(4) [a]dvances a new interpretation, clarification, criticism, or construction of a provision of a . . . statute[,]" and "(5) [a]ddresses or creates an apparent conflict in the law." (See Cal. Rules of Court, rule 8.1105(c); § I.A, *ante*.)

The Opinion also "(8) [i]nvokes a previously overlooked rule of law, or reaffirms a principle of law not applied in a recently reported decision" (Cal. Rules of Court, rule 8.1105(c)(8)) in reaffirming *Jensen*'s holding "that a previously owned motor vehicle with an unexpired warranty qualifies as a 'new motor vehicle' under the Song-Beverly Act" (Typed Opn. 3, 7-8).

Finally, the Opinion "(6) [i]nvolves a legal issue of continuing public interest" (Cal. Rules of Court, rule 8.1105(c)(6))—i.e., consumers' rights and remedies when they find that a vehicle with a manufacturer's express warranty they

have purchased does not conform to the applicable express warranties despite a reasonable number of repair attempts.

For all of these reasons, the Opinion should remain published and citable while this Court decides *Rodriguez*.

C. Again, Kia's merits arguments are improper, wrong, and not reasons to depublish the Opinion.

Kia improperly attempts to persuade the Court that the Opinion was wrongly decided by reframing its merits arguments as reasons why the Court should depublish the Opinion. (§ I.B, *ante*; Petition 20.) Kia's merits arguments are improper and wrong. The Court should disregard them. (§ I.B, *ante*.)

D. The Court should not depublish an opinion that creates a case-split based on meritless quibbles over the Opinion's description of well-supported facts.

Kia insists that the Court should depublish the Opinion because it "contains numerous factual errors." (Petition 21.) But Kia doesn't argue that any of its claimed discrepancies would have made any material difference in the case's logic or outcome. (See Petition 21-24.) Nor are Kia's complaints even relevant to the reasons why courts publish opinions in any case: to provide guidance on a novel, important issue that will almost certainly reoccur. (See generally Cal. Rules of Court, rule 8.1105(c).)

For instance, Kia argues that the Opinion inaccurately describes Kia as "the manufacturer and distributor of the car."

(Petition 21, quoting Typed Opn. 2, boldface omitted.) While Kia indeed was the original distributor and warrantor, Kia Motors Corporation—a legally distinct entity and a nonparty—was the manufacturer. (*Ibid.*) But Kia doesn't contend that this alleged inaccuracy would have made any difference in the case's outcome, nor can it, especially where Kia was the original warrantor. (Petition 21; § 1795 ["If express warranties are made by persons other than the manufacturer of the goods, the obligation of the person making such warranties shall be the same as that imposed on the manufacturer under this chapter"].) In fact, the Opinion explains in the same paragraph: "At the time Stiles purchased the car, some of Kia's original warranties were still in effect, including the basic and drivetrain warranties." (Typed Opn. 2.)

Kia next argues that Opinion inaccurately states that "Kia agreed to preserve the utility and performance of the car or provide compensation on failure of utility or performance." (Petition 21-22, quoting Typed Opn. 2, boldface omitted.) But this is an accurate recitation of what plaintiffs alleged in their First Amended Complaint—i.e., the subject of the demurrer ruling on appeal. (AA 50, ¶¶ 8, 17.) And again, Kia fails to contend that a different description of Kia's express warranty would have been dispositive. (Petition 21-22.) Moreover, as relevant to this case, changing the Opinion's wording as Kia suggests would not have altered Kia's responsibilities to replace the car or make restitution under section 1793.2, subdivision (d)(2) of the Act.

Kia also takes issue with the Opinion's statement that *Rodriguez* "rejected *Jensen*," arguing that, instead, *Rodriguez* distinguished *Jensen* on its facts. (Petition 22, quoting Typed Opn. 3, boldface omitted.) But this statement in the Opinion is entirely accurate. While the *Rodriguez* court stated that it "agree[d] with *Jensen*'s holding," it rejected "[some] of its reasoning." (*Rodriguez*, *supra*, 77 Cal.App.5th at p. 224.) The "reasoning" *Rodriguez* rejected *was* Jensen*'s primary holding* because, as explained above, *Rodriguez* misread *Jensen*. (§ I.B, *ante*; compare *Jensen*, *supra*, 35 Cal.App.4th at p. 123 ["We conclude the words of section 1793.22 are reasonably free from ambiguity and cars sold with a balance remaining on the manufacturer's new motor vehicle warranty are included within its definition of 'new motor vehicle'"] with *Rodriguez*, *supra*, 77 Cal.App.5th at p. 222 ["we conclude the phrase 'other motor vehicle sold with a manufacturer's new car warranty' unambiguously refers to cars that come with a new or full express warranty"].)

Finally, Kia argues that the Opinion contains an inflammatory and erroneous description of Kia's actions and arguments by stating that "Kia, in its relentless attempt to avoid the clear meaning of [Civil Code] section 1793.22, subdivision (e)(2), assumes a legislative role and tries to amend the statute." (Petition 22-23, quoting Typed Opn. 4, boldface omitted, original brackets.) But there is nothing inflammatory or inaccurate about this statement. Kia has, in fact, repeatedly taken the position that the phrase "other motor vehicle sold with a manufacturer's

new car warranty" in section 1793.22's definition of "new motor vehicle" means a vehicle sold with a "new or full" warranty accompanying the first sale to a consumer—i.e., the "new motor vehicle" definition excludes used vehicles sold with a balance remaining on a new-car warranty. (E.g., Petition 10, 20; RB 32, 37-38, 40-41; AA 64-68 [Kia's demurrer].) Kia has also been relentless in its attempts to push that position. For example, *just weeks before oral argument*, Kia filed a baseless 24-page motion to strike reply, attached *five unpublished trial court orders* as "exhibits" to that motion, and then cited those orders as part of a proposed 50-page supplemental brief, which Kia then oddly served *on this Court*. (See Kia's Motion to Strike Reply Brief; Kia's Proposed Supplemental Brief; Plaintiff's Opposition To Motion To Strike; Plaintiff's Proposed Response To Kia's Proposed Supplemental Brief.)

Kia's (meritless) quibbles about facts that Kia itself doesn't even claim to be dispositive are no reason to depublish.

CONCLUSION

The Court should enter a grant-and-hold order on the proper interpretation of the "new motor vehicle" definition and defer any further action until after the Court decides *Rodriguez.* The Court should deny review on whether the Act's implied-warranty protections for new products apply to used vehicles

with transferred express warranties. And the Court should deny Kia's request that the Court depublish the Opinion.

July 1, 2024

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CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that this **ANSWER TO PETITION FOR REVIEW** contains 5,323 words, not including the tables of contents and authorities, the caption page, signature blocks, or this page.

Date: July 1, 2024

/s/ Laura G. Lim
Laura G. Lim

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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 6420 Wilshire Boulevard, Suite 1100, Los Angeles, California 90048; my electronic serve address is mallen@gmsr.com

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[Electronic Service under Rules 8.78(g)(2) and 8.500(f)(1)]

BY ELECTRONIC SERVICE: 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.

Clerk to Honorable Mark Borrell, Judge
[Case No. 56-2019-00527171-CU-BC-VTA]
SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA
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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.

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

Executed on July 1, 2024, at Los Angeles, California.

/s/ Maureen Allen
Maureen Allen