

No. S274625

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IN THE  
SUPREME COURT OF CALIFORNIA

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EVERARDO RODRIGUEZ and JUDITH V. ARELLANO  
*Plaintiffs / Petitioners,*

v.

FCA US LLC,  
*Defendant / Respondent.*

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Court of Appeal, Fourth Appellate District, Division 2  
Case No. E073766

Riverside County Superior Court  
Case No. RIC1807727, Hon. Jackson Lucky

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**APPLICATION TO FILE BRIEF AND BRIEF OF AMICI CURIAE  
UC BERKELEY CENTER FOR CONSUMER LAW & ECONOMIC  
JUSTICE, CONSUMERS FOR AUTO RELIABILITY AND SAFETY,  
CENTER FOR AUTO SAFETY, COMMUNITY LEGAL SERVICES  
IN EAST PALO ALTO, CONSUMER FEDERATION OF AMERICA,  
NATIONAL CONSUMER LAW CENTER, NATIONAL  
CONSUMERS LEAGUE, OPEN DOOR LEGAL, PUBLIC  
COUNSEL, AND PUBLIC LAW CENTER  
IN SUPPORT OF PETITIONERS**

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## **APPLICATION TO FILE BRIEF AS AMICI CURIAE**

Pursuant to California Rules of Court, rule 8.520(f), the organizations described below respectfully request permission to file the attached brief as amici curiae in support of Petitioners Everardo Rodriguez and Judith V. Arellano.

This application is timely made within 30 days of the filing of the reply brief on the merits. No party or counsel for any party in the pending appeal authored the proposed amicus brief in whole or in part, or made a monetary contribution intended to fund the preparation or submission of the brief, and no other person or entity made a monetary contribution intended to fund the preparation or submission of the brief, other than the amici curiae, their members, or their counsel in the pending appeal.

### **I. INTERESTS OF AMICI CURIAE**

Amici curiae are nonprofit organizations that represent and advocate on behalf of consumers in California and nationwide, especially low- and moderate-income consumers. California's Song-Beverly Consumer Warranty Act (Civ. Code, § 1790 et seq.), which includes the state's automobile lemon law, provides critical protections to the vulnerable consumers that amici represent. Interpreting the Song-Beverly Act to exclude used vehicles sold with the manufacturer's warranty would mean that the people amici represent would be unlikely to benefit from the law's coverage, that they would be barred from invoking the Act's remedies, and

that many of them would be compelled to drive defective and unsafe vehicles.

The **Center for Consumer Law and Economic Justice** is a research and advocacy center housed at the UC Berkeley School of Law. Through participation as amicus in this Court, in the United States Supreme Court, and in other major cases around the state and throughout the nation, the Center seeks to develop and enhance protections for consumers and to foster economic justice. The Center appears in this proceeding to emphasize the need to ensure the safety of all California consumers to be able to rely on the promises of quality and reliability that warranties, including those issued with used vehicles, provide—promises that are illusory if they are deemed unenforceable under the Song-Beverly Act.

**Consumers for Auto Reliability and Safety (CARS)** is a national, award-winning nonprofit auto safety and consumer advocacy organization dedicated to preventing motor vehicle-related fatalities, injuries, and economic losses. CARS is based in Sacramento and has spearheaded enactment of numerous landmark consumer protection laws to improve the safety and economic well-being of the car-buying public in California and nationwide, including expanding California’s auto lemon law to include protections for individual entrepreneurs, small businesses, and members of the United States Armed Forces stationed in or deployed from California. CARS’ founder and President was appointed to represent the public interest

in regulatory negotiations regarding federal and state warranty laws convened by the Federal Trade Commission and has regularly testified on behalf of the motoring public at the invitation of Congress and of the California Legislature.

The **Center for Auto Safety (CAS)** is a nonprofit membership organization founded in 1970 to provide citizens a voice for automobile safety and quality in Washington D.C. Throughout its 53 year history, CAS has advocated for better consumer protections for car buyers and played a key role in the passage of the federal lemon law, the Magnuson-Moss Act, and lemon laws in every U.S. state and D.C. CAS published *The Lemon Book* and forty annual additions of *The Car Book* to assist consumers with problem vehicles and educate consumers about their rights under state and federal lemon laws. CAS continues these efforts today via its website, podcast, newsletters, and social media. CAS also performs state-by-state rankings of vehicle lemon law provisions to encourage consumers and policymakers to support improvements to state warranty laws. Affirmance of the Court of Appeal's decision would negatively impact our members and all car buyers in California, removing critical protections that they have relied upon for decades.

**Community Legal Services in East Palo Alto (CLSEPA)** is a nonprofit organization that offers legal services that improve the lives of low-income families throughout the Bay Area region. CLSEPA is

committed to pursuing multiple innovative strategies, including community education, individual legal advice and representation, legal assistance to community groups, policy advocacy, and impact litigation.

**Consumer Federation of America (CFA)** is a national association of over 250 nonprofit organizations that advances the consumer interest through research, advocacy, education, and service. CFA investigates consumer issues and publishes research that assists policymakers and individuals, and it advances pro-consumer legislation at the national and state levels. CFA has worked with federal and state enforcement agencies to provide research and perspective about the need for additional consumer protections in the purchase and financing of motor vehicles.

The **National Consumer Law Center (NCLC)** is a national nonprofit research and advocacy organization that works for consumer justice and economic security for low-income and other disadvantaged people, including consumers who have purchased and financed motor vehicles. NCLC provides information, legal research, and policy analysis to Congress, state legislatures, administrative agencies, and courts, and has long been a leading advocate for consumers in the auto finance space, striving to protect them against unfair practices. NCLC has a particular interest in this case because it has important implications for low-income people buying cars. NCLC publishes a 21-volume Consumer Credit and Sales Legal Practice Series, including Consumer Warranty Law (6th ed.

2021) and National Consumer Law Center, *Automobile Fraud* (7th ed. 2022). NCLC frequently appears as amicus curiae in consumer law cases before trial and appellate courts throughout the country. NCLC seeks to bring transparency and fairness to the markets for cars and car finance. Through its Working Cars for Working Families project, NCLC seeks to ensure that the lack of a car does not stand in the way of families' ability to become economically successful and to promote solutions to help car-ownership efforts for struggling families to get and keep a car.

Founded in 1899, the **National Consumers League** (NCL) is America's pioneering consumer advocacy organization, representing consumers and workers on marketplace and workplace issues. NCL conducts legislative and regulatory advocacy, litigation, and consumer education on a variety of issues relating to fraud prevention, privacy, food and nutrition, and workplace safety. State lemon laws such as California's Song-Beverly Act provide critical protections against fraud for the consumers we represent—protections that would be undermined if used vehicles sold with the manufacturer's warranty are carved out of California's lemon law.

**Open Door Legal** is pioneering the country's first system of universal access to civil legal representation. Our goal is to show that when everyone has access to the law, poverty will be dramatically reduced. Open Door Legal has represented hundreds of low-income consumers in the San

Francisco Bay Area, many of whom own used vehicles sold under warranty and would be impacted by the Court's decision in this matter.

**Public Counsel** is the nation's largest provider of pro bono legal services to lower-income and communities of color. We operate eight legal projects, including Consumer Rights & Economic Justice which represents used car buyers in matters involving fraud, warranty violations, and unfair business practices.

The **Public Law Center** is a pro-bono law firm that provides access to justice for low-income residents of Orange County. The vast majority of low-income consumers that Public Law Center encounters are only able to purchase used cars because of the prohibitive cost of new cars and because of the failure of wages to keep up with inflation. These consumers must be able to assert warranty claims with respect to the cars they purchase, as a matter of fundamental fairness. As a society, we cannot continue to provide different levels of access to justice depending on one's financial position.

## **II. NEED FOR FURTHER BRIEFING**

The proposed amici curiae, organizations with a proven track record of working on behalf of California consumers, believe that further briefing will assist the Court by elucidating the legislative intent underlying the Song-Beverly Act and providing textual, economic and public policy analyses that support the conclusion that the Act covers used vehicles sold with a manufacturer's warranty.

The brief that the proposed amici offer the Court provides support for a broad reading of the Song-Beverly Act through analysis of the Act’s text, application of the canons of statutory construction, and review of three decades of practice and expert opinion. The proposed brief also contains an analysis of public policy concerns that are not fully addressed by the parties’ briefs and that will aid the Court in ascertaining the Legislature’s intent. Specifically, the brief emphasizes the fundamental economic principles at the heart of consumer warranty laws like the Song-Beverly Act that would be undermined if used cars under warranty are carved out of the law’s scope. The brief also shows how the narrow construction urged by Respondent Fiat Chrysler and adopted by the Court of Appeal would harm consumers, including by depriving them of the full value of the vehicles they purchased and by leading to decreased public safety. Such a result would be fundamentally at odds with the Legislature’s goal of protecting consumers and with this Court’s precedent that the Act must be read broadly to effect its remedial purposes.

### **III. CONCLUSION**

For the foregoing reasons, the proposed amici curiae respectfully request that the Court accept the accompanying brief for filing in this case.

Dated: June 12, 2023

Respectfully submitted,

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**BRIEF OF AMICI CURIAE UC BERKELEY CENTER FOR  
CONSUMER LAW & ECONOMIC JUSTICE, CONSUMERS FOR  
AUTO RELIABILITY AND SAFETY, CENTER FOR AUTO  
SAFETY, COMMUNITY LEGAL SERVICES IN EAST PALO  
ALTO, CONSUMER FEDERATION OF AMERICA, NATIONAL  
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OPEN DOOR LEGAL, PUBLIC COUNSEL, AND PUBLIC LAW  
CENTER IN SUPPORT OF PETITIONERS**

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## **INTERESTS OF AMICI**

Amici curiae are ten nonprofit organizations that represent and advocate on behalf of consumers in California and nationwide, especially low- and moderate-income consumers. California's Song-Beverly Consumer Warranty Act (Civ. Code, § 1790 et seq.)<sup>1</sup>, which includes the state's automobile lemon law, provides critical protections to the vulnerable consumers that amici represent. Interpreting the Song-Beverly Act to exclude used vehicles sold with the manufacturer's warranty would mean that the people amici represent would be unlikely to benefit from the law's coverage, that they would be barred from invoking the Act's remedies, and that many of them would be compelled to drive defective and unsafe vehicles.

Statements of interest of individual amici curiae are available in the accompanying application. (Cal. Rules of Court, rule 8.520(f).)

## **INTRODUCTION AND SUMMARY OF ARGUMENT**

For nearly three decades, California consumers have relied on a straightforward rule: that if they buy a used vehicle still under factory warranty, they can exercise their statutory rights to a refund or a replacement if their car turns out to be a lemon. The Court of Appeal's decision in this case upended that understanding, creating confusion for

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<sup>1</sup> All further statutory references are to the Civil Code unless otherwise indicated.

both consumers and businesses and increasing the number of unsafe vehicles on California's roads. That decision runs counter to the text of the Song-Beverly Act, violates fundamental rules of statutory interpretation, and undermines the Legislature's stated intent to protect—not endanger—consumers.

The Legislature enacted California's lemon law to ensure that the automobiles consumers purchase under the manufacturer's warranty are of the kind and quality that the manufacturer promises. That principle lies at the heart of warranty law. Yet under the Court of Appeal's reading of the statute, automobile manufacturers would enjoy the benefits of selling a used vehicle under their warranty—including the higher resale value and advertising advantages that a manufacturer's warranty confers—without the concomitant responsibility to refund or replace the vehicle should a substantial and irreparable defect arise. If the Court of Appeal's interpretation were correct, a manufacturer could wash its hands of a defective vehicle as soon as the vehicle is sold again. A dealer could sell a new lemon with a ten-year warranty to a buyer who sells it back a week later; the subsequent buyer of the now "used" vehicle would have extremely limited, largely ineffective remedies.

That reading of the law makes no sense. The Song-Beverly Act is not a crabbed remedy unavailable to all buyers of used cars. To the contrary, the Act embodies the Legislature's "strongly pro-consumer"

commitment (*Murillo v. Fleetwood Enterprises, Inc.* (1998) 17 Cal.4th 985, 990) and broadly encompasses vehicles sold under the manufacturer’s warranty, including used vehicles.

This more reasonable and inclusive interpretation conforms to both the text of the statute and the public policy objectives underlying this remedial law. The Song-Beverly Act states that its “new motor vehicle” provision includes a “motor vehicle sold with the manufacturer’s new car warranty.” (§ 1793.22, subd. (e)(2).) Reading the text to include used vehicles that are still under warranty properly gives significance to every word that the Legislature drafted without interposing new requirements. Standard tools of statutory interpretation confirm this construction. So do decades of practice in the field. For at least thirty years, consumers, manufacturers, and the State of California agreed on, relied on, and acted on the commonsense application of Song-Beverly to factory-warrantied used vehicles.

The legislative goals underlying the Song-Beverly Act bolster the conclusion that this remedial statute covers used vehicles. A hallmark of the “lemon” market is informational imbalance in the transaction: auto manufacturers know a great deal about the vehicles that they sell, but consumers do not. Warranties fulfill a fundamental economic role by helping reassure car buyers that the seller is committed to the quality and reliability of its product. The Legislature crafted the Song-Beverly Act to

buttress this fundamental role of warranties: without an enforcement mechanism like the lemon law, a warranty may be an empty promise. Reading used cars out of the Act’s purview would thus allow manufacturers to issue illusory warranties that do not in fact guarantee the quality of their products. A better approach—the approach that California has followed for the past three decades—upholds the enforceability of all manufacturers’ warranties, including those covering used cars, to ensure that warranties perform their vital market function.

Finally, reaffirming the Song-Beverly Act’s longstanding coverage of used car buyers helps keep unsafe and dangerous vehicles off the road and helps ensure that consumers receive the full benefit from the price they have paid for their warranted cars and trucks. These protections are particularly salient for moderate and lower-income consumers, who are more likely to own used vehicles and are particularly vulnerable to high transportation costs. Reaffirming that Song-Beverly protects everybody who purchases a factory-warranted vehicle from a dealer fulfills the Act’s consumer protection mission and makes the streets and highways of California safer for all.

### **ARGUMENT**

The Song-Beverly Act requires manufacturers to “live up to the terms of any express warranty.” (*Cummins, Inc. v. Super. Ct.* (2005) 36 Cal.4th 478, 484 (*Cummins*)). The Act contains no exception for express

warranties covering used cars, just as it contains no exception for warranties issued with leased vehicles or to small businesses. (See §§ 1793.2, subd. (d)(2)(D); 1793.22, subd. (e)(2).) Instead, the Act embodies a single overarching principle: Express warranties should be honored in full.

The lemon law’s definition of “new motor vehicle” reflects this principle. (See § 1793.22, subd. (e)(2).) The language broadly covers any vehicle “sold with a manufacturer’s new car warranty.” (*Ibid.*) That language, drafted without any limitations, evinces the Legislature’s intent to cover all vehicles that fall within that express definition, including used vehicles. (See *Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 826.)<sup>2</sup> Various tools of statutory construction elucidate that intent. Moreover, interpreting Song-Beverly to cover warranted used vehicles follows this Court’s command to construe the Act broadly to effectuate its remedial purposes. (See *Cummins, supra*, 36 Cal.4th at p. 494 [“[T]he Act is a remedial measure whose terms properly should be interpreted broadly”]); *Kirzhner v. Mercedes-Benz USA, LLC* (2020) 9 Cal.5th 966, 972 (*Kirzhner*) [“The Act is manifestly a remedial measure, intended for the protection of the

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<sup>2</sup> Although the issue is not raised by this case, the text of Song-Beverly also does not limit the Act’s protections for purchasers of used cars still covered by warranties to transactions involving car dealers rather than other sellers. (See § 1793.2, subd. (d) [imposing liability broadly on the “manufacturer or its representative”]; but see *Dagher v. Ford Motor Co.* (2004) 238 Cal.App.4th 905, 923 (*Dagher*).)

consumer; it should be given a construction calculated to bring its benefits into action”].) This plain language understanding has underpinned California’s automotive market at least since *Jensen v. BMW of North America, Inc.* (1995) 35 Cal.App.4th 112 (*Jensen*) explicitly decided the issue three decades ago.

That the Act covers used cars sold with a balance remaining on the manufacturer’s warranty also furthers the Act’s public policy goals. (*Kirzhner, supra*, 9 Cal.5th at p. 972 [“If the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as . . . public policy”].) Basic economics and safety principles illustrate the importance of a broad reading of Song-Beverly’s coverage. The Legislature intended for the law to compel manufacturers to “carry out the terms” of their express warranties. (§ 1793.2, subd. (a)(1)(A).)<sup>3</sup> Manufacturers, especially in the motor vehicle market, regularly offer express warranties to promote product sales because warranties help lower risks for buyers, who are almost always less knowledgeable about the condition of the vehicle than the sellers. (See *Kiluk v. Mercedes-Benz USA, LLC* (2019) 43 Cal.App.5th 334, 340 [noting that express warranties offered as “part of the sale package” of used cars are a “crucial incentive

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<sup>3</sup> See also Comment, *Toward an End to Consumer Frustration—Making the Song-Beverly Consumer Warranty Act Work* (1974) 14 Santa Clara Law. 575, 590, fn. 88 (explaining that “it was the main thrust of the Act to insure the effectiveness of express warranties”).

for buyers”].)<sup>4</sup> However, unless consumers can legally enforce them, warranties can amount to nothing more than illusory promises. (See *Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 754 [“[T]he Legislature’s intent [behind the Act] was to eliminate misleading ‘sales gimmicks’” that characterized many warranties at the time].)

If consumers who buy a previously owned vehicle still under the manufacturer’s warranty are precluded from vindicating their Song-Beverly rights, their warranty may effectively be rendered worthless. They will have paid the full price of a warranted used vehicle<sup>5</sup> without being able to take effective advantage of the guarantee of quality that the warranty promises. In addition, consumers will be forced to drive defective vehicles that their manufacturers refuse to repair, refund, or replace, which poses significant safety hazards to them and to all drivers on the road. Meanwhile, manufacturers will have less incentive to stand by the promises of quality, reliability, and safety that they pledged when they sold their vehicles with

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<sup>4</sup> See also Comment, *Consumer Warranty Law in California Under the Commercial Code and the Song-Beverly and Magnuson-Moss Warranty Acts* (1979) 26 UCLA L.Rev. 583, 630 (explaining that “The Act recognizes that the warranty is a merchandising device”); Udell & Anderson, *The Product Warranty as an Element of Competitive Strategy* (1968) 32 J. of Marketing 1, 1-2 (“The purpose of a promotional warranty is to encourage purchases by reducing risks for the consumer”); Fed. Trade Com., Staff Report on Automobile Warranties (1968) p. 30 (“It is evident from the manner in which the warranty developed in the 1960’s that the automobile manufacturers used it as a device to promote sales”).

<sup>5</sup> See footnote 41, *infra*.

their warranty. The drafters of Song-Beverly could not have intended such a result. (See *Dagher, supra*, 238 Cal.App.4th at p. 919 [“Interpretations that would significantly vitiate a manufacturer’s incentive to comply with the Act should be avoided”].) To the contrary, the Legislature intended automobile manufacturers to maintain their duty to consumers for the full duration of their warranties.

**I. The Text Of The Act Demonstrates The Legislature’s Intent To Protect All Consumers, Including Those Who Purchase Used Vehicles With Factory Warranties.**

As the *Jensen* court correctly held nearly thirty years ago, the definition of “new motor vehicle” in the Song-Beverly Act is “reasonably free from ambiguity.” (*Jensen, supra*, 35 Cal.App.4th at p. 123.) The plain text reading that “section 1793.22 includes cars sold with a balance remaining on the new motor vehicle warranty” (*id.* at p. 126) is the most natural and effective reading of the statute. (See *Kirzhner, supra*, 9 Cal.5th at p. 972 [“If the language is unambiguous, then the Legislature is presumed to have meant what it said”].) Traditional rules of statutory construction and decades of settled practice further militate for this broad construction of the statute. This simple definitional reading helps bring the Act’s “benefits into action” (*ibid.*) for all consumers whose factory-warrantied vehicles exhibit insoluble and potentially dangerous defects. (*Dagher, supra*, 238 Cal.App.4th at p. 916 [“The definitions in the Act

serve as a mechanism for identifying those parties entitled to its protections”].)

**A. The Plain Language of the Act Confirms That It Encompasses Defective Used Vehicles Under Warranty.**

The statutory language at issue is reasonably susceptible of only one interpretation: that vehicles sold with a manufacturer’s new car warranty are subject to Song-Beverly’s protections, whether the purchaser is the first owner, or a subsequent one. The relevant text appears in a subdivision of the lemon law defining “new motor vehicle” for the purposes of that section and the statutory buyback process set forth in Section 1793.2, subdivision (d):

‘New motor vehicle’ includes . . . a dealer-owned vehicle and a ‘demonstrator’ or other motor vehicle sold with a manufacturer’s new car warranty.

(§ 1793.22, subd. (e)(2).) As written, then, the Act expressly covers vehicles that are “sold with a manufacturers’ new car warranty.” (*Ibid.*)

Juxtaposing that phrase with the previous two items in the operative clause makes clear that the Act covers all cars sold with a manufacturer’s warranty. The statute explicitly includes three enumerated items within the clause’s scope. First, the statute lists “dealer-owned vehicle,” which the Act leaves undefined.<sup>6</sup> Next, the statute lists “demonstrator,” which the Act

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<sup>6</sup> Contrary to FCA’s contention (see Resp’t’s Br. at pp. 37-38), the Vehicle Code does not supply any definition of “dealer-owned vehicle” that is

does define in the same subdivision and is joined to the preceding item by the conjunction “and.” Last, the statute lists “other motor vehicle,” separated from its predecessors by the disjunctive “or,” which signifies that a “new motor vehicle” can be either a “dealer-owned vehicle,” a “demonstrator” or “other” type of car. (See *Houge v. Ford* (1955) 44 Cal.2d 706, 712 [explaining that “or” should be read to mean “either this or that”].) In other words, as *Jensen* explained, “The use of the word ‘or’ in the statute indicates ‘demonstrator’ and ‘other motor vehicle’ are intended as alternative or separate categories of ‘new motor vehicle’ if they are ‘sold with a manufacturer’s new car warranty.’” (*Jensen, supra*, 35 Cal.App.4th at p. 123.) By contemplating each item, including “other vehicles sold with a manufacturer’s new warranty,” as a separate category, every word and phrase defining “new motor vehicle” is given effect. (See *People v. Valencia* (2017) 3 Cal.5th 347, 357 (*Valencia*) [This Court “generally must accord significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose”].)

A construction of “new motor vehicle” that encompasses used vehicles sold with their factory warranties also ascribes meaning to the text without adding new language that the Legislature neither included nor intended to include. The Court of Appeal violated that fundamental rule

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relevant for interpreting the Song-Beverly Act. (See § 1793.22, subd. (e) [defining terms “[f]or the purposes of . . . this section”]; Reply at p. 10.]

when it improperly added words like “basically new,” “aren’t technically new,” and “full express warranties” to the statute to characterize “dealer-owned vehicles” and “demonstrators” as a “narrow category of basically new vehicles” that “aren’t technically new” but “treat[ed]” as such and sold with “full express warranties.” (*Rodriguez v. FCA US LLC* (2022) 77 Cal.App.5th 209, 220 (*Rodriguez*); see also *Kim v. Reins Intern. Cal., Inc.* (2020) 9 Cal.5th 73, 85 [“Where the words of the statute are clear, we may not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history”].) Song-Beverly makes no reference to any “basically new” good; goods are either “new” or “used.” (See §§ 1791, subd. (a); 1793.2; 1793.5.) The Act also does not distinguish between “full express warranties” and less-than-full warranties,<sup>7</sup> nor did the Act’s drafters draw such distinctions. (See Pet’rs’ Br. at pp. 59-69 [describing legislative history].) The Court of Appeal compounded its error by incorrectly subsuming “other motor vehicles sold with a manufacturer’s new car warranty” within its invented category of “previously driven, but basically new (i.e., not previously sold) car[s]” made up of “dealer-owned”

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<sup>7</sup> The federal Magnuson-Moss Warranty Act does differentiate between “full” and “limited” warranties (15 U.S.C. § 2303(a)), but that distinction is irrelevant to the Song-Beverly Act. (See *Orichian v. BMW of North America, LLC* (2014) 226 Cal.App.4th 1322, 1330 [explaining that “Magnuson-Moss does not substitute federal law for state law of consumer product warranties, but instead supplements state law”]; Martin W. Anderson, Request for Depublication of App. Opn., *Rodriguez v. FCA US LLC*, Dock. No. S274625, May 25, 2022, p. 8 (hereafter Anderson).)

and “demonstrator” vehicles. (*Rodriguez, supra*, at p. 220). That Procrustean operation renders each discrete item in the statute redundant and superfluous. (See *Valencia, supra*, 3 Cal.5th at p. 357 [“[This Court] ha[s] warned that [a] construction making some words surplusage is to be avoided”].)

**B. Canons of Statutory Construction Confirm That the Broader Reading of “New Motor Vehicle” Best Effectuates the Purpose of the Act.**

In addition to the text itself, rules of statutory interpretation support reading “new motor vehicle” to include used vehicles sold with the manufacturer’s warranty. Unlike the Court of Appeal’s cramped reading, this construction accomplishes the Song-Beverly Act’s broad consumer protection aims. (See *People v. Garcia* (2016) 62 Cal.4th 1116, 1124 [explaining that canons of construction are “tools that can help [this Court] do what we always aspire to do when construing a statute: . . . give effect to the Legislature’s purpose”].)

First, in accordance with the “the nearest reasonable referent” canon, the phrase “sold with the manufacturer’s new car warranty” applies to “other vehicle” and not to “dealer-owned vehicle and demonstrator.” (See *People v. Pennington* (2017) 3 Cal.5th 786, 796 [explaining that the “last antecedent” or “nearest reasonable referent” canon directs that “qualifying words, phrases and clauses are to be applied to the words or phrases immediately preceding and are not to be construed as extending to or

including others more remote”]; see also *Davis v. Fresno Unified Sch. Dist.* (2015) 237 Cal.App.4th 261, 288 [providing that “[w]hen the syntax involves something other than a parallel series of nouns or verbs, a prepositive or postpositive modifier normally applies only to the nearest reasonable referent”].) Here, “sold with the manufacturer’s new car warranty” differs in syntactical form from the preceding parallel series of three items, and most closely follows “other vehicle.” As a result, “other vehicle” is the nearest referent, meaning that the operative modifying phrase refers to that item alone. The lack of a comma separating the modifying phrase from “other motor vehicle” reinforces this interpretation. (See *White v. County of Sacramento* (1982) 31 Cal.3d 676, 680 [explaining that the last antecedent rule applies unless the “qualifying phrase . . . is separated from the antecedents by a comma”].) The Court of Appeal’s alternate reading—that the operative modifying phrase also qualifies “dealer-owned vehicle” and “demonstrator”—violates this canon of construction because those items are not the nearest reasonable referents to the phrase. (See *Rodriguez, supra*, 77 Cal.App.5th at p. 220.) The properly read statute provides, straightforwardly, that “‘new motor vehicle’ includes . . . a[n] . . . other motor vehicle sold with a manufacturer’s new car warranty.” (§ 1793.22, subd. (e)(2).) In other words, the statutory definition encompasses used vehicles sold under the manufacturer’s warranty.

Second, consistent with the *ejusdem generis* canon, “other vehicle sold with the manufacturer’s new car warranty” is a general phrase that must be construed in parallel with the preceding two specific items—“a dealer-owned vehicle” and “a demonstrator.” (See *Wishnev v. The Nw. Mut. Life Ins. Co.* (2019) 8 Cal.5th 199, 213 [*ejusdem generis* dictates that “when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class”].) Demonstrators and dealer-owned vehicles are regularly sold by dealerships with thousands of miles accrued and with a balance remaining on their warranties; they are not sold with a brand-new or “full” warranty. Those specific types of vehicles are therefore of the same class as other used cars that are sold with the manufacturer’s warranty after having accrued some mileage. (See citations at Pet’rs’ Br. at pp. 29-34; Reply at 15-20.)<sup>8</sup> The most natural way to define “new motor vehicle,” therefore, is to consider each of the three types of vehicle as one in a list of items sold with manufacturers’ warranties. (See *Jensen, supra*, 35 Cal.App.4th at p. 123 [referring to “alternative or separate categories of ‘new motor vehicle’”].)<sup>9</sup>

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<sup>8</sup> Notably, the Federal Trade Commission also considers demonstrators to be a type of “used vehicle” for the purposes of its Used Car Rule. (See Fed. Trade Com., Dealer’s Guide to the Used Car Rule (2016), Introduction <https://perma.cc/Q2ZM-GRDT> [as of June 9, 2023].)

<sup>9</sup> FCA misemploys *ejusdem generis* to support an overly narrow interpretation of the Act. (See Resp’t’s Br. at p. 33.) A proper construction of “other vehicle” in the same category as the other items requires acknowledging the material similarities across all three items: all have

That straightforward reading allows the term “other vehicle sold with a manufacturer’s warranty” to be considered a standalone item, which hews closely to the text and to the fundamental purpose of the Song-Beverly Act: protecting consumers by making manufacturers’ warranties enforceable.

**C. Longstanding Practice and Expert Opinion Confirm That the Plain Language Interpretation of the Act is Correct.**

Unsurprisingly, the principle that the Song-Beverly Act applies to purchasers of used vehicles sold with the manufacturer’s express warranty prevailed as the consensus approach since *Jensen v. BMW, supra*, 35 Cal.App.4th, elaborated it nearly thirty years ago. This understanding was reflected in the legal and popular media in the years immediately after the *Jensen* decision.<sup>10</sup> Further evidence stretching back decades confirms that

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miles on them and all are sold with the manufacturer’s new car warranty. (See *Lawrence v. Walzer & Gabrielson* (1989) 207 Cal.App.3d 1501, 1506 [“The words ‘other’ or ‘any other’ following an enumeration of particular classes should be read . . . to include only others of like kind or character”].) No additional qualification is warranted, especially when it would twist the statute to violate its overarching purpose. (See *Wishnev, supra*, 8 Cal.5th at p. 214 [“[E]jusdem generis . . . does not warrant confining the operations of a statute within narrower limits than were intended”].)

<sup>10</sup> Lazarus et al., *Recent Developments in Products, General Liability, and Consumer Law* (1997) 32 Tort & Ins. L.J. 499, 522-523 (describing the holding of *Jensen* that “a used vehicle purchased with a balance remaining on the manufacturer’s new car warranty is a ‘new motor vehicle’ within the meaning of California’s lemon law”); Brightbill, *Lemon Law Article Not Wholly Accurate*, L.A. Times (Aug. 3, 1997), <https://tinyurl.com/5n6z384f> (confirming that “the lemon law . . . covers the entire original manufacturer’s warranty period” and that “consumers may assert their rights . . . [during] the entire warranty period”); Burdine, *Consumer*

the automotive industry, public enforcement agencies, and consumers and their advocates repeatedly accepted this plain language interpretation largely without dispute. The Court of Appeal’s decision in this case, therefore, has disturbed years of continued practice and settled expectations.

Notably, manufacturers have long agreed to—and paid to—resolve disputes informally through arbitration mechanisms that have adopted the broader reading of the Act. For example, the Department of Consumer Affairs’ Arbitration Certification Program, which regulates the three independent lemon law dispute resolution programs in this state,<sup>11</sup> has provided for decades that “The California Lemon law protects consumers that buy or lease a new or used vehicle that comes with the manufacturer’s

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*Protection; “Lemon Law Buyback”—Requirements Regarding the Return and Resale of Vehicles* (1996) 27 Pacific L.J. 508, 509, fn. 5 (explaining that under *Jensen*, the statute “intends that cars sold with the balance of a manufacturer’s new car warranty are to be included within the definition of new motor vehicle”); see also Rao, “Lemon Law” of Indian Auto Users (2002) 37 Econ. & Pol. Wkly. 819, 820 (hereafter Rao) (comparing legal protections for vehicle purchasers in the United States and India and stating that “[t]he California Lemon Law covers new cars, demonstrators, leased cars, and used vehicles sold with the balance of the manufacturer’s new car warranty”).

<sup>11</sup> Dept. of Consumer Affairs, *State-Certified Arbitration Information* (2023) <https://perma.cc/6ANA-ADDA> (as of June 8, 2023); see § 1793.22, subds. (c)-(d) (setting forth requirements for qualified third-party dispute resolution processes under the lemon law and providing for certification by the Department).

original warranty.”<sup>12</sup> Publicly available documents demonstrate that the Department has expressed the same understanding for decades.<sup>13</sup> The leading third-party dispute resolution mechanism in the state, the Better Business Bureau’s Auto Line, provides dispute resolution services in California for over sixteen different automotive manufacturers.<sup>14</sup> BBB Auto Line’s website explains that the Song-Beverly Act “applies during the duration of the manufacturer’s written warranty, which varies by manufacturer or seller” and covers “[a]ny individual to whom the vehicle is transferred during the duration of a written warranty.”<sup>15</sup>

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<sup>12</sup> Dept. of Consumer Affairs, *Frequently Asked Questions (FAQs)* (2023) <https://perma.cc/BKR9-3SMT> (as of June 8, 2023). The website reiterates: “[Q:] Does the California Lemon Law cover used vehicles? [A:] If the used vehicle is covered by the manufacturer’s original warranty, yes.” (*Ibid.*)

<sup>13</sup> Dept. of Consumer Affairs, *Lemon-Aid for Consumers* (2002) p. 7, <https://perma.cc/3KWS-X9BD> (“[t]he Lemon Law covers . . . new and used vehicles that come with the manufacturer’s new vehicle warranty); accord, Dept. of Consumer Affairs, *California’s Lemon Law Q & A* (2019) p. 2, <https://perma.cc/7G3L-Q9UZ> (same); see Reply at 40-41.

<sup>14</sup> Better Business Bureau, *BBB Auto Line—Participating Manufacturers* (2023) <https://perma.cc/YT7B-V5WJ> (as of June 8, 2023). In California, the Auto Line is used by Aston Martin, Bentley, BMW, Ferrari, Ford, General Motors, Hyundai/Genesis, Jaguar/Land Rover, Kia, Lamborghini, Lotus Cars, Maserati, Mazda, Mercedes-Benz, Nissan/Infiniti, and Volkswagen/Audi. (Dept. of Consumer Affairs, *State-Certified Arbitration Information*, *supra* note 11.)

<sup>15</sup> Better Business Bureau, *The California Lemon Law* (2023) <https://perma.cc/L7UJ-ELHE> (as of June 8, 2023). Also, the California New Motor Vehicle Board, which offers an informal, no-cost dispute resolution service for consumers, mediates disputes with vehicle manufacturers involving “Used vehicles with remaining original warranties.” (New Motor Vehicle Bd., *Consumer Mediation Services* (2023) <https://perma.cc/S3RJ-US4J> [as of June 8, 2023].)

Other expert organizations ranging from industry to nonprofits to government all agree—and have for years—that Song-Beverly’s aegis extends to purchasers of used cars:

- **Third-party automobile analytics businesses.** Kelley Blue Book, J.D. Power, and Dealer 101, which is certified by the Department of Motor Vehicles to provide licensing and training to auto dealers, uniformly assert that used cars with warranties are covered.<sup>16</sup>
- **The leading national authority on consumer law.** The National Consumer Law Center has concluded that the statute covers used cars.<sup>17</sup>

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<sup>16</sup> Hawley, J.D. Power, *Used Car Lemon Laws* (May 24, 2023) <https://perma.cc/BZ2U-SXF8> (as of June 8, 2023) (noting that California is one of seven states with used car lemon laws, which provide protection “especially if the warranty hasn’t expired”); Wakefield, Kelley Blue Book, *Car Lemon Laws: What to Know by State* (Sept. 9, 2022) “California Lemon Law,” <https://perma.cc/9N8R-7H7B> (as of June 8, 2023) (“For used vehicles, the state’s lemon law applies when it’s still under a manufacturer’s new car warranty. Any remaining time left on the warranty protects the car’s new owner”); see also Dealer 101, *Lemon Law and Warranties* (undated) “Lemon’ Law—Federal & California,” <https://perma.cc/NW5C-LCUT> (as of June 8, 2023) (in continuing education course, stating that “California’s Lemon Law extends coverage to protect Consumers that buy or lease a new or used vehicle during the Manufacturer’s original warranty period”).

<sup>17</sup> Nat. Consumer Law Center, *Consumer Warranty Law* (6th ed. 2021) Demonstrators and Low-Mileage Used Cars, § 14.2.3.3, pp. 593-594 (“When a used car is sold with a balance remaining on the original new car warranty, California’s lemon law applies, based on the statute’s definition of ‘new motor vehicles’”).

- **California state and local consumer protection agencies.** The California Department of Justice and the Los Angeles County Department of Consumer & Business Affairs have both long maintained that Song-Beverly applies to used cars covered by manufacturers’ warranties.<sup>18</sup>

In sum, as one expert practicing in the field for more than three decades put it, the Court of Appeal’s opinion conflicts with settled law that “has guided the Courts and litigants for nearly thirty years and which has never before been the subject of challenge.” (Anderson, *supra*, at p. 3.) That such diverse players have so uniformly applied the Song-Beverly Act’s protections to used cars underscores the propriety of this reading of the law.

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<sup>18</sup> Dept. of Justice, *Buying and Maintaining a Car* (2023) “California Lemon Law,” <https://perma.cc/P5N7-NM3S> (as of June 8, 2023) (current website stating, “The Lemon Law also applies to used vehicles when they are still under a manufacturer’s new car warranty”); Dept. of Justice, *Buying and Maintaining a Car* (2015) “Coverage For Vehicles That Are Not ‘New’,” <https://tinyurl.com/2s2vsv46> (as of September 2, 2015) (2015 version of the same website stating that Song-Beverly “used vehicles sold with a dealer’s express written warranty”); L.A. County Consumer & Business Affairs, *The Lemon Law* (Apr. 14, 2011) “When Does the Lemon Law apply?” <https://perma.cc/PM4A-XFRS> (as of June 8, 2023) (stating “The California Lemon Law covers new cars. It covers used cars too if there is still time remaining on the manufacturer’s warranty”); see Pet’rs’ Br. at pp. 58-59; Reply at 41-42.

At least one local news source has also reported that the Song-Beverly Act “covers all new vehicles, as well as used and leased vehicles that are still covered by the manufacturer’s new vehicle warranty.” (Jackson, *When Can You Use California’s “Lemon Law” for a Car Problem*, NBC Bay Area (Nov. 25, 2019) <https://perma.cc/NR8Z-4E5F> [as of June 8, 2023].)

## II. Basic Economic Principles Support The Song-Beverly Act's Coverage Of Used Cars Under Warranty.

Interpreting the Song-Beverly Act to include warranted used cars accords with the foundational economic theory underlying the provision of warranties. Express warranties serve as promises by manufacturers about the quality of their goods. (See, e.g., *Miller v. Germain Seed & Plant Co.* (1924) 193 Cal. 62, 75 [“Any affirmation made at the time of the sale, as to the quality or condition of the thing sold, will be treated as a warranty, if it was so intended, and the purchaser bought on the faith of such affirmation”]; *Daugherty v. Am. Honda Motor Co.* (2006) 144 Cal.App.4th 824, 830 [“A warranty is a contractual promise from the seller that the goods conform to the promise”]; see also Prosser, *The Assault Upon the Citadel (Strict Liability to the Consumer)* (1960) 69 Yale L.J. 1099, 1128 [“[W]arranty requires that the plaintiff shall act in reliance upon some representation or assurance, or some promise or undertaking, given to him by the defendant”].)<sup>19</sup> Economists have long characterized express warranties as tools in consumer markets to mitigate asymmetrical information about the quality of goods—that is, to balance the scale where

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<sup>19</sup> The Act’s own definition of “express warranty” points to a manufacturer’s written promise to “preserve or maintain the utility or performance of the consumer good or provide compensation if there is a failure in utility or performance.” (§ 1791.2, subd. (a)(1); see also *Gavaldon v. DaimlerChrysler Corp.* (2004) 32 Cal.4th 1246, 1258 [defining the functional purpose of warranties in Song-Beverly as “to guarantee the repair or replacement of certain products or parts of products for a specified period of time”].)

sellers have greater knowledge about a product's conditions than buyers.<sup>20</sup>

The used car market provides an archetypal example of asymmetrical information between buyers and sellers leading to lower-quality goods flooding the market and harming consumers.<sup>21</sup> In this market, sellers of used cars have far better information about the quality of the vehicle than buyers, who generally will have little time or expertise to inspect the vehicle before purchasing it.<sup>22</sup> As Professor Akerlof's groundbreaking article on "lemons" observed, "it is impossible for a buyer to tell the

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<sup>20</sup> See, e.g., Merriam-Webster Dict. (2023) "asymmetric information," <https://perma.cc/DZ2X-4CRE> (as of June 8, 2023) ("Information relating to a transaction in which one party has relevant information that is not known by or available to the other party"); Spiedel, *Warranty Theory, Economic Loss, and the Privity Requirement: Once More Into The Void* (1987) 67 Boston Univ. L.Rev. 9, 14, fn. 17 (explaining that "[i]mperfect information may be asymmetrical if the seller has more information than the buyer about the probability of a defect and the magnitude of any resulting loss").

<sup>21</sup> In a watershed article, UC Berkeley professor George Akerlof first described how asymmetric information in the "lemons" market results in market failure, a theory for which he was later awarded the Nobel Prize. (See Akerlof, *The Market for "Lemons": Quality Uncertainty and the Market Mechanism* (1970) 84 Q.J. of Econ. 488 (hereafter Akerlof) [describing the mechanism of "adverse selection"].) "A market exhibits adverse selection when the inability of buyers to distinguish among products of different quality results in a bias toward the supply of low-quality products." (Wilson, *Adverse Selection* in *The New Palgrave Dict. of Economics* (Durlauf & Blume, eds., 2008) Abstract.)

<sup>22</sup> See Genesove, *Adverse Selection in the Wholesale Used Car Market* (1993) 101 J. of Pol. Econ. 644, 647 ("In th[e used car] market, the seller is clearly better informed than the buyer" because the seller will have had "ample time to examine the car").

difference between a good and a bad car; only the seller knows.”<sup>23</sup> That is, unscrupulous sellers can price poor-quality used cars (i.e., lemons) equal to high-quality used cars, even though the sellers purchased the lemons at a lower price. Purchasers will pay the same price for inferior goods and the sellers will enjoy a larger profit margin. As a result, as long as information asymmetry exists, sellers are likely to disguise the quality of their goods and sell their poor-quality ones,<sup>24</sup> meaning that “the ‘bad’ cars [will] tend to

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<sup>23</sup> Akerlof, *supra*, at pp. 489-490. Of course, a used vehicle will also not be priced the same as a new one of the same make and model; otherwise, a potential buyer would obviously opt for a new car, which has the greater likelihood of being of good quality. (*Ibid.*)

The Federal Trade Commission has also found that purchasers of used vehicles generally enter into the transaction with little mechanical knowledge and must rely on the seller to evaluate quality. (See Fed. Trade Com., Report of the Presiding Officer on Proposed Trade Regulation Rule for Sale of Used Motor Vehicles (May 22, 1978) p. 98 (hereafter FTC Report on Proposed Used Car Rule) [finding that “consumers, with few exceptions, come to the used motor vehicle market with virtually no mechanical knowledge or competence. . . . As a consequence, purchasers are forced to rely almost entirely on the seller or his salesman for information on the mechanical attributes or deficiencies of particular vehicles”].)

<sup>24</sup> Akerlof, *supra*, at p. 495 (“The presence of people in the market who are willing to offer inferior goods tends to drive the market out of existence—as in the case of our automobile ‘lemons.’ It is this possibility that represents the major costs of dishonesty—for dishonest dealings tend to drive honest dealings out of the market”); see also Grossman, *The Informational Role of Warranties and Private Disclosure About Product Quality* (1981) 24 J.L. & Econ. 461, 461 (hereafter Grossman) (“If there is no way sellers of good-quality items can distinguish themselves from sellers of low-quality items, then the low-quality sellers will find it in their interest to hide their quality”).

drive out the good” and result in a greater supply of lemons in the market.<sup>25</sup>

The upshot of this asymmetrical information problem is an “economically wasteful” market that favors production and proliferation of lemons to the detriment of consumers.<sup>26</sup>

Manufacturers’ warranties, especially in the used car market, can help reassure customers that they are not buying “lemons” but rather high-quality goods, or at least goods whose quality the manufacturer stands ready to guarantee.<sup>27</sup> Hence, ensuring that warranties function as they are intended is critical to convincing consumers that they can trust the manufacturer’s promise of quality. (See *Cummins, supra*, 36 Cal.4th at p. 484 [explaining that the Act was “enacted to address the difficulties faced

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<sup>25</sup> Akerlof, *supra*, at pp. 489-490; accord, Chau & Choy, *Let the Buyer or Seller Beware: Measuring Lemons in the Housing Market Under Different Doctrines of Law Governing Transactions and Information* (2011) 54 J.L. & Econ. S347, S349 (explaining that “buyers tend to pay less for a used car because they are unable to tell whether a used car is good or bad. As a consequence, sellers sell off only their lemons, and the market may collapse eventually because of this adverse-selection process”).

<sup>26</sup> Comment, *supra*, 26 UCLA L.Rev. at p. 589 & fn. 26 (explaining that “the allocation of the[] undisclosed product costs to the consumer results in a misallocation of the economic resources of the society as a whole,” resulting in a market where “the production of defective goods is promoted and the consumer’s desire to get his money’s worth is thwarted,” and citing Akerlof); see also Rao, *supra*, at p. 819 (“Asymmetric information in markets may bring about adverse effects for all consumers, such as lowering of the quality of products”).

<sup>27</sup> Akerlof, *supra*, at p. 499 (explaining that product guarantees can “counteract the effects of quality uncertainty” and “ensure the buyer of some normal expected quality”); Grossman, *supra*, at p. 479 (“Warranties seem like an incredibly useful device for getting around asymmetric information about product quality”).

by consumers in enforcing express warranties”].) Manufacturers regularly issue warranties to ameliorate informational uncertainty in a transaction.<sup>28</sup>

By pledging that the product is as good as advertised and that the manufacturer will repair or replace it if it is defective, a manufacturer’s express warranty essentially transmits information about the product’s quality and reliability to the consumer and reduces uncertainty.<sup>29</sup>

Warranties also shift some of the financial risk of purchasing a product from buyers to sellers, who will bear a financial cost if they must fulfill their warranty obligation.<sup>30</sup> Some economists have thus characterized

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<sup>28</sup> See, e.g., Kale et al., *Contracting with Nonfinancial Stakeholders and Corporate Capital Structure: The Case of Product Warranties* (2013) 48 J. of Fin. & Qualitative Analysis 699, 726 (examining warranties from over 3,000 nonfinancial firms and finding that “firms are more likely to use explicit product warranties when there is informational uncertainty about the product quality and when the firm’s product is highly differentiated”); Wiener, *Are Warranties Accurate Signals of Product Reliability?* (1985) 12 J. of Consumer Rsch. 245, 248-249 (hereafter Wiener) (evaluating a sample of motor vehicle warranties sold over two years that represented nearly all American motor vehicle sales and finding that “a warranty is an accurate signal of a motor vehicle’s reliability”).

<sup>29</sup> See, e.g., Beales et al., *The Efficient Regulation of Consumer Information* (1981) 24 J.L. & Econ. 491, 511 (stating that warranties “substitute for presale information” and help “indemnify the buyer against the possibility that his lack of information will have led him to make a wrong choice—and a seller’s willingness to offer such protection may itself serve as a signal of that seller’s product’s quality”); Grossman, *supra*, at p. 471 (“In situations in which a seller’s information cannot be conveyed to a buyer, the seller’s warranty can, in effect, transmit that information to the buyer”).

<sup>30</sup> See, e.g., Burnham, *Remedies Available to the Purchaser of a Defective Used Car* (1986) 47 Mont. L.Rev. 273, 332 (“The shift of risk to the purchaser is appropriate where it reflects the purchaser’s expectation of the level of performance of the car. That expectation is meaningful only when

warranties as performing an important signaling function.<sup>31</sup> In other words, a product with a comprehensive warranty signals the seller’s pledge to the buyer that the good is of high quality,<sup>32</sup> because the seller would have to incur greater costs to honor its warranty if the product turns out to be defective.<sup>33</sup> Accordingly, “[t]he more reliable the product, the lower the costs of warranty coverage for the manufacturer, and the more extensive the

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the purchaser has knowledge of the condition of the car. The shift of risk to the purchaser is not appropriate where the seller is in a position to know of defects but is under no obligation to affirmatively disclose that knowledge”).

<sup>31</sup> Wiener, *supra*, at p. 245 (defining an economic signal as “an observable feature of a product that consumers use to infer important hidden—i.e., not easily observable—features”); Priest, *A Theory of the Consumer Product Warranty* (1981) 90 Yale L.J. 1297, 1297 (hereafter Priest) (explaining the signaling of express warranties to confer “messages signaling the mechanical attributes of goods”).

Warranties have also been characterized as operating as an “insurance policy” for consumers and a “performance bond” or incentive for manufacturers requiring them to make investments in designing high-quality products. (See, e.g., Lutz, *Warranties as Signals under Consumer Moral Hazard* (1989) 20 RAND J. of Econ. 239, 252; Priest, *supra*, at pp. 1308-1309). This aspect of warranties is reflected in the Legislature’s goal of incentivizing manufacturers to live up to their warranties. (*Cummins, supra*, 36 Cal.4th at p. 484.)

<sup>32</sup> See, e.g., Wiener, *supra*, at p. 245 (“Consumers believe that a product with a superior warranty will be associated with greater quality and less risk,” internal citations omitted).

<sup>33</sup> Wiener, *supra*, at p. 249 (“[A] warranty is an accurate signal of product reliability because a manufacturer offering a better warranty has an economic incentive to reduce the extent of warranty claims, and claims are reduced by making a more reliable product”).

coverage for the consumer.”<sup>34</sup> This phenomenon has been well-documented in the used car market, where warranties can help mitigate consumers’ concern that they are buying a lemon rather than a functioning vehicle.<sup>35</sup>

Construing the Song-Beverly Act narrowly would essentially render these characteristics of warranties meaningless for those consumers who purchased goods with the implicit promise of quality offered by the manufacturers’ warranties. Consumer warranty laws like the Song-Beverly Act are intended to reinforce the salutary effects that warranties provide in addressing market uncertainty,<sup>36</sup> and many consumer protection laws, including the Act, recognize the asymmetrical dynamic between buyers and sellers. Legislative analysis of the original version of the Act explained that manufacturers offer express warranties “[p]rimarily to advertise their

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<sup>34</sup> Priest, *supra*, at p. 1303 (“Thus, although a consumer has neither experience with nor knowledge of a product, he may infer its mechanical reliability by inspecting the terms of the warranty alone”).

<sup>35</sup> See, e.g., Kim, *The Market for “Lemons” Reconsidered: A Model of the Used Car Market with Asymmetric Information* (1985) 75 Am. Econ. Rev. 836, 843; Wiener, *supra*, at p. 249; FTC Report on Proposed Used Car Rule, *supra*, at p. 99; Akerlof, *supra*, at pp. 498-499.

<sup>36</sup> Vollmar, *Lemon Laws: Putting the Squeeze on Automobile Manufacturers* (1984) 61 Wash. U. L.Q. 1125, 1156 (noting the “legislative goal [of lemon laws] of increasing lemon owners’ bargaining power in warranty disputes”); see also Rao, *supra*, at p. 819 (“[t]he concept of ‘lemon’—a bad deal due to lack of adequate information on the part of one party to the deal—is of great significance in consumer protection laws”); Schwarz & Wilde, *Intervening in Markets on the Basis of Imperfect Information: A Legal and Economic Analysis* (1979) 127 U. Pa. L.Rev. 630, 633-634 (suggesting that legislative intervention in consumer markets is most effective when that market is replete with imperfect information).

products and to give the purchaser a sense of security at the time of sale.”<sup>37</sup>

In addition, according to an analysis of the original lemon law bill by the California Department of Consumer Affairs recommending its enactment, “Warranty legislation was enacted to *improve the adequacy of information available to consumers*, prevent deception, promote choice, and improve competition and service in the marketing and repair or replacement of consumer products.”<sup>38</sup>

The Legislature enacted the Song-Beverly Act to help consumers enforce the warranties they paid for. If express warranties are to serve their informational function, the law must apply to purchasers of warranted used cars and new cars alike. Selling used vehicles with the remainder of the original warranty signals to buyers that they are not undertaking a risk in purchasing the product, and that the manufacturer vouches for the vehicle’s quality. Without a legally enforceable warranty, buyers will still bear the risks of purchasing a used car and the cost of buying a warranty—despite the fact that in the case of an unrepairable defect the warranty may

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<sup>37</sup> Legis. Analyst, analysis of Sen. Bill No. 272 (1970 Reg. Sess.) p. 1 (emphasis added) (available at Vol. 5, Exs. in Supp. of Pet’rs’ Mot. for Judicial Notice (“MJN”) at p. 107.). The same legislative analysis continues, “No manufacturer has to issue an express warranty. He does so because it is good advertising. It is his choice. SB 272 says that if he chooses this benefit he must also accept the related responsibility.” (*Id.* at p. 3) (available at 5 MJN 112).

<sup>38</sup> Dept. of Consumer Affairs, Enrolled Bill Report, Analysis of Assem. Bill No. 1787 (1981-1982 Reg. Sess.) July 2, 1982, p. 2 (emphasis added) (available at 5 MJN 1125.)

effectively be unenforceable. On the other side, manufacturers will still benefit from the promotional advantages that warranties offer to sell their product, but they will have no legal incentive to stand by their warranty if the vehicle turns out to be a lemon. (See *Dagher, supra*, 238 Cal.App.4th at p. 919 [rejecting interpretations that could “vitiating” manufacturer’s incentives to comply].) An unscrupulous manufacturer could even offload defective cars on consumers who would have no effective legal recourse—essentially reifying Akerlof’s “lemons” problem and nullifying the purpose of the Act.

The Song-Beverly Act, properly construed, does not countenance a transaction where buyers rely on an essentially inaccurate and unenforceable manufacturer’s warranty to assure them about the quality of the product. Otherwise, the warranty would effectively be rendered an empty “sales gimmick[.]”—precisely the opposite of what the Legislature intended to accomplish. (See *Atkinson v. Elk Corp., supra*, 109 Cal.App.4th at p. 754.)

**III. Excluding Warrantied Used Cars From Song-Beverly’s Protections Contravenes The Act’s Remedial Purpose And Would Lead To More Unsafe Cars On The Road.**

Constricting the Song-Beverly Act by carving out manufacturer-warrantied used vehicles would result in adverse public policy consequences that run directly counter to the statute’s consumer protection and safety goals. First, such a narrowing could undermine motor vehicle

safety by placing all Californians at an increased risk of driving or sharing the roads with defective cars without adequate remedy. (See *Klein v. United States* (2010) 50 Cal.4th 68, 83 [observing that “[t]he state has a strong interest in promoting the safe driving of motor vehicles and in preventing or minimizing personal injuries resulting from motor vehicle accidents”].) Song-Beverly’s remedies are intended to address auto defects that pose safety concerns. (See *Oregel v. Am. Isuzu Motors, Inc.* (2001) 90 Cal.App.4th 1094, 1101 [declaring that to prove a breach of express warranty claim under the Act, the plaintiff must establish that “the vehicle had a nonconformity covered by the express warranty that substantially impaired the use, value or *safety* of the vehicle,” emphasis added]; see also § 1793.22, subd. (e)(1) [same].) Defective vehicles, including lemons, often pose significant safety hazards to drivers, their passengers, and other drivers on the road.<sup>39</sup> In Song-Beverly cases over the decades, owners of used cars sold under warranty have testified to the dangerous conditions created by their vehicles’ defects. (See, e.g., *Johnson v. Ford Motor Co.* (2005) 35 Cal.4th 1191, 1197-1198 [describing how the transmission of a used Ford Taurus “delayed in shifting and ‘slammed’ into gear”]; *Jensen, supra*, 35 Cal.App.4th at p. 120 [recounting that when braking “the steering

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<sup>39</sup> Dutzick et al., *The Auto Lemon Index* (2022) pp. 2, 6 (hereafter *Lemon Index*) (explaining that defects leading to lemon law litigation “put not only a car owner’s safety at risk, but they also jeopardize the safety of their families, other passengers, and those around them”).

wheel began to shake” and it felt like “the tires were going to fall off the car”]; see also *Anderson v. Ford Motor Co.* (2022) 74 Cal.App.5th 946, 960 [expert testimony at trial that the defective “vehicle’s inability to maintain sufficient speed, such as going uphill, particularly where there is no place to pull off the road, put[] the vehicle occupants in an unsafe position,” and exposed the driver and passengers to “an unreasonable safety risk”].) Owing a defective vehicle also places financial burdens on consumers, who must invest significant time and money to undergo repairs and forgo access to their vehicle, which is “often a prerequisite for being able to keep afloat.”<sup>40</sup>

Interpreting the Song-Beverly Act to exclude purchasers of used vehicles still under warranty would also harm consumers by causing them to pay for warranty protections that they could not enforce. (See *Kwikset Corp. v. Super. Ct.* (2011) 51 Cal.4th 310, 329 [explaining that an “economic harm” results when “the consumer has purchased a product that he or she paid more for than he or she otherwise might have been willing to pay if the product had been” presented in a different way].) The drafters of the Song-Beverly Act understood that the value of the manufacturer’s warranty is included in the overall vehicle price. (See *Gavaldon v. DaimlerChrysler Corp.*, *supra*, 32 Cal.4th at p. 1258 [observing that in enacting Song-Beverly, “the Legislature apparently conceived of an express

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<sup>40</sup> Lemon Index, *supra*, at p. 8.

warranty as being part of the purchase of a consumer product”]; see also *Kirzhner, supra*, 9 Cal.5th at p. 974 [in the context of the Act, “the word ‘price’ means the cost at which a[n] item is obtained”].) Research corroborates that the manufacturer’s warranty is generally built into the overall purchase price of the product, and that buyers cannot negotiate it out of the total package.<sup>41</sup> Were a narrow interpretation of the Act to prevail, buyers would still pay the full price for a used vehicle with its original warranty, likely without knowing that their warranty is effectively unenforceable if the car is a lemon. Ultimately, if the manufacturer fails to honor the warranty, buyers will end up with an illusory warranty and would not obtain the full value of the price they paid.

A constrained reading of the Act would hit moderate and low-income consumers especially hard because they are the group most likely to buy used cars. One recent survey of low- and moderate-income Californians found that 61 percent of households were more likely to

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<sup>41</sup> Flammang, *Gotcha Covered: How Carmakers Stand Behind Their Vehicles—At Least For 36 Months / 36,000 Miles*, Chi. Trib. (June 22, 2000) <https://perma.cc/GC8M-D3NX> (as of June 9, 2023) (quoting a senior automotive industry representative as explaining that the “A warranty is part of the purchase price” and buyers “‘can’t negotiate that out’ of the total vehicle price”). Vehicle warranties are like manufacturer’s warranties for other products in this respect. (See, e.g., Geistfeld, *Imperfect Information, The Pricing Mechanism, and Products Liability* (1988) 88 Colum. L.Rev. 1057, 1063 [“[U]nder traditional warranty pricing the consumer is charged only one price for both the product and its warranty: information about the insurance costs of various product-related risks is merged with information regarding the costs of production and distribution”].)

purchase used vehicles than new vehicles; the lower the income level, the higher the probability that the consumer would buy a used car.<sup>42</sup> Low-income households are also more likely to purchase their cars from a used car dealer—precisely the kind of sale that is covered under Song-Beverly, properly construed.<sup>43</sup> Meanwhile, low-income consumers experience particular financial hardships when it comes to buying and maintaining their vehicles. Lower-income households spend a disproportionately higher amount of their income on transportation-related expenses than higher-income households.<sup>44</sup> In addition, the price of cars has skyrocketed in recent years.<sup>45</sup> These high prices and consistently high demand for used

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<sup>42</sup> Pierce & Connolly, *Disparities in the “Who” and “Where” of the Vehicle Purchase Decision-Making Process for Lower-Income Households* (2023) 31 *Travel Behav. & Soc’y* 363, 367; see also Klein et al., *In the Driver’s Seat: Pathways to Automobile Ownership for Lower-Income Households in the United States* (2023) 18 *Transp. Rsch. Interdisc. Persp.* 1, 3-4, 11 (hereafter Klein et al.) (reporting that a majority of survey respondents purchased used vehicles).

<sup>43</sup> Klein et al., *supra*, at p. 11 (finding that a plurality of survey respondents acquired cars through brick-and-mortar or online used car dealers).

<sup>44</sup> U.S. Dept. of Transp., Bur. of Transp. Statistics, *Transportation Economic Trends* (2023) <https://tinyurl.com/mvs8u7hy> (as of June 9, 2023) (finding that the lowest earning households spent 26.9 percent of their income on transportation in 2021).

<sup>45</sup> Wayland, *Used Vehicle Prices Rising at an Unseasonably Strong Rate*, CNBC (Mar. 7, 2023) <https://perma.cc/6Z3F-Y66B> (as of June 9, 2023) (noting that wholesale used vehicle prices increased by 4.3 percent from January to February 2023, the largest two-month increase since 2009); Frost & Sullivan, *North American Used Car Growth Opportunities* (2021) p. 15 (noting that the demand for used cars has increased in the past few years, and that economic uncertainty leads people to buy used cars instead of new ones); Cal. New Car Dealers Assn., *Tight Supplies Could Keep*

vehicles have squeezed purchasers' already stretched budgets.<sup>46</sup> Moderate and low-income consumers would therefore experience even greater financial strain should they be barred from accessing the remedial benefits of the Song-Beverly Act. After already paying abnormally elevated prices for used vehicles, they would incur further expenses related to repairs and having to make alternative arrangements to commute to work and conduct necessary household errands. If they cannot compel a repurchase or replacement of their unrepairable vehicle, they may be forced to drive defective and potentially dangerous cars that put themselves and others at risk.<sup>47</sup>

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*State New Vehicle Registrations Below 2 Million Units in 2022* (2021) 17 Cal. Auto Outlook 1, 8 <https://perma.cc/9BXA-2ZQJ> (finding that used vehicle registrations in California in 2021 increased 8.7 percent over the prior year); see also DePillis & Smialek, *Why Is Inflation So Stubborn? Cars Are Part of the Answer*, N.Y. Times (May 20, 2023) <https://perma.cc/3PDE-X3VW> (noting the recent volatility in the used car market).

<sup>46</sup> Krishner, *Why Experts Say Now Is a Good Time To Buy a Used Car Before Prices Surge*, A.P. (Mar. 30, 2023) <https://perma.cc/X3MS-ZZUS>; Tucker, *Are We Witnessing the Demise of the Affordable Car? Automobile Makers Have All But Abandoned the Budget Market*, MarketWatch (Feb. 28, 2023) <https://perma.cc/H6JD-3MBF> (as of June 9, 2023) (“The end of the low-priced car pushes low-income buyers out of the new-car market and into the used-car market”); Kamisher, *\$97,000 for a RAV4!? Sky-High Car Prices Squeeze Bay Area Buyers Out of the Market*, Bay Area News Group (Feb. 22, 2022) <https://perma.cc/FA4W-7UMX> (as of June 9, 2023).

<sup>47</sup> The circumstances for low-income consumers are difficult enough even if the manufacturer honors its warranty:

In addition to defects that threaten the safety of drivers and the people around them, lemons also often represent an unexpected financial and time burden for consumers and

The Legislature created California’s consumer warranty regime to protect consumers by compelling manufacturers to honor their warranties. Purchasers of used vehicles subject to the manufacturer’s warranty fall comfortably within the text and purpose of the Song-Beverly Act’s refund-or-replace provisions. For decades, consumers and manufacturers operated under this settled understanding. The Court of Appeal’s anomalous decision has injected confusion and disruption into a well-established and well-functioning regime, one that has long benefitted California’s consumers. Returning the law to its longstanding status quo will ensure that the Song-Beverly Act is interpreted in accordance with the Legislature’s objectives, that vehicle warranties in California remain enforceable guarantees of quality and safety, and that a law meant to protect consumers, not unscrupulous auto manufacturers, is given its full effect.

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small business owners. *Even though repairs are covered by the manufacturer’s warranty*, lemons are usually very unreliable, and may also be unsafe. This can create hardship when owners must have vehicles towed to the dealership for repairs, are left stranded by the side of the road, or lose their own means of transportation to work, school, medical care and other necessities of modern life for extended periods while their lemon is in the repair shop.

Lemon Index, *supra*, at pp. 3-4 (emphasis added). Those burdens would be even more consequential if the manufacturer is not required to honor its warranty under the lemon law.

**CONCLUSION**

For the foregoing reasons, the opinion of the Court of Appeal should be reversed.

Dated: June 12, 2023

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

I certify that this brief complies with the typeface and volume limitations set forth in California Rules of Court, rule 8.204(c)(1). The brief has been prepared in 13-point Times New Roman font. The word count is 9,206 words based on the word count of the program used to prepare the brief.

Dated: June 12, 2023

By: /s/ David S. Nahmias  
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**CERTIFICATE OF SERVICE**

I, the undersigned, declare that I am a citizen of the United States, over the age of 18 years, reside in Oakland, California, and not a party to the within action. My business address is the University of California, Berkeley, School of Law, 308 Law Building, Berkeley, CA 94720-7200.

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By: /s/ David S. Nahmias  
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