


# Appellate Review

## Lemon Law: a "new motor vehicle" means a vehicle sold by a new-car dealer for the first time, not just one sold with an unexpired manufacturer's warranty. Also, judicial-disqualification motions

By Jeffrey I. Ehrlich

### Song-Beverly Consumer Warranty Act; definition of "new" car subject to act

*Rodriguez v. FCA US, LLC* (2024) _ Cal.5th __ (Cal. Supreme)

The Song-Beverly Consumer Warranty Act provides buyers of new motor vehicles with specific remedies when a vehicle turns out to be defective. (Civ. Code, § 1791 et seq.) Section 1793.2, subdivision (d)(2) gives new car buyers what is known as a refund-or-replace remedy: It requires manufacturers to "promptly replace" a defective new motor vehicle or "promptly make restitution" to the buyer when the manufacturer is "unable to service or repair a new motor vehicle, as that term is defined in paragraph (2) of subdivision (e) of Section 1793.22, to conform to the applicable express warranties after a reasonable number of attempts." These enhanced remedies under the Act for breach of express warranty are "distinct from" and "in addition to" remedies otherwise available in contract under the California Uniform Commercial Code. (*Niedermeier v. FCA US LLC* (2024) 15 Cal.5th 792, 810, 811.)

Section 1793.22, subdivision (e)(2) defines "new motor vehicle" to include a new vehicle "bought or used primarily for personal" purposes as well as "a dealer-owned vehicle and a 'demonstrator' or other motor vehicle sold with a manufacturer's new car warranty."

Plaintiffs Everardo Rodriguez and Judith Arellano bought a two-year-old car with over 55,000 miles on it. The car had an unexpired manufacturer's new car warranty. The car repeatedly experienced engine problems despite numerous repair attempts by defendant FCA US, LLC (FCA). Plaintiffs sued FCA to enforce the refund-or-replace provision, claiming that their car was a "new motor vehicle" because it was a "motor vehicle sold with a manufacturer's new car warranty" FCA argued that the refund-or-replace remedy does not apply because plaintiffs' car was not a "new motor vehicle." The trial court and Court of Appeal agreed with FCA. The Supreme Court did, as well.

It concluded that a motor vehicle purchased with an unexpired manufacturer's new car warranty does not qualify as a "motor vehicle sold with a manufacturer's new car warranty" under section 1793.22, subdivision (e)(2)'s definition of "new motor vehicle" unless the new car warranty was issued with the sale.

The Act's definition of a "new motor vehicle" makes clear that certain used cars – "a dealer-owned vehicle and a 'demonstrator' or other motor vehicle sold with a manufacturer's new car warranty" – qualify as "new motor vehicles" for purposes of the statute. (§ 1793.22, subd. (e)(2).) The meaning of the disputed phrase is informed by the specific mention of dealer-owned vehicles and demonstrators as examples of a "motor vehicle sold with a manufacturer's new car warranty." (*Ibid.*) As the Court of Appeal explained, "What makes these vehicles unique is that even though they aren't technically new, manufacturers (or their dealer-representatives) treat them as such upon sale by providing the same type of manufacturer's warranty that accompany new cars." In other words, they are vehicles for which a new car warranty "was *issued with* the sale."

As the Supreme Court noted, dealer-owned and demonstrator vehicles are not warranted *before* the sale. Citing FCA's argument, the Court explained, "In *every* case, the *first* customer to purchase or lease a demonstrator or dealer-owned vehicle receives a *new* warranty arising in *that* transaction, directly from the manufacturer ...." In other words, a warranty in this context is a guarantee made by the manufacturer to a retail buyer. Before a sale transaction, there is no such warranty to speak of; the manufacturer or its dealer representative owns the car. The sale of a dealer-owned vehicle or demonstrator to a retail buyer is what gives rise to a new car warranty. "Thus, . . . whether the manufacturer 'reinstates' the original warranty period, 'extends' the warranty's mileage, or simply sells the vehicle with a warranty *arising* in that first retail transaction, demonstrators – *unlike preowned cars* – are always sold to the first retail buyer 'with a manufacturer's new car warranty.'"

"Like the Court of Appeal, we think that if the Legislature had intended to define "'new motor vehicle' to include a potentially vast category of used cars" with unexpired new car warranties, "it would have been done so more clearly and explicitly than tucking it into a reference to demonstrators and dealer-owned vehicles."

### Judicial-disqualification motions; timing; waiver or forfeiture of timing requirement

*North American Title Co. v. Superior Court of Fresno County (Cortina)*: (2024) __ Cal.5th __ (Cal. Supreme)

Copyright © 2024 by the author.
For reprint permission, contact the publisher: **www.plaintiffmagazine.com**




Section 170.3(c)(1) of the Code of Civil Procedure states that a party who seeks to disqualify a trial court judge by filing a verified statement of disqualification must do so "at the earliest practicable opportunity after discovery of the facts constituting the ground for disqualification." But section 170.3(b)(2) provides that, notwithstanding a party's general ability to waive a disqualification, "[t]here shall be no waiver of disqualification if the basis therefor" falls into one of two categories, one of which is that "[t]he judge has a personal bias or prejudice concerning a party" (§ 170.3, subd. (b)(2)(A)).

The Court granted review to decide whether the nonwaiver provision precludes application of the timeliness requirement when a party alleges that a judge is disqualified due to bias or prejudice concerning a party. In its opinion below, the Court of Appeal held that it does. According to the Court of Appeal, the nonwaiver provision must be read "to prohibit all forms of waiver, including implied waiver due to untimeliness." Under the court's reading of the statute, a party alleging bias or prejudice cannot "waive[ ]" its right to seek judicial disqualification, even when the claim is asserted long past the point of "discovery of the facts constituting the ground for disqualification" and, for that reason, is not required to assert its claim of judicial bias "at the earliest practicable opportunity." (§ 170.3(c)(1).)

The Supreme Court disagreed. In its view, the Court of Appeal's interpretation of the statute conflates the concepts of waiver and forfeiture, and extends the statute's prohibition on waiver to scenarios where forfeiture based on failure to comply with the timeliness requirement may properly be found. As the statutory text, structure, legislative history, and case law make clear, the nonwaiver provision of section 170.3(b)(2) applies only in circumstances in which "a judge [has] determine[d] himself or herself to be disqualified" and, absent an explicit waiver of disqualification by the parties, would recuse himself or herself from the proceedings. (§ 170.3, subds. (a)(1) & (b)(1).)

Hence, the nonwaiver provision is limited to the process of judicial self-disqualification, and it is inapplicable when *a party* seeks disqualification by filing a written verified statement of disqualification. When a party seeks disqualification, the statute's timeliness requirement contemplates that the litigant may forfeit the right to seek disqualification by failing to file a statement of disqualification "at the earliest practicable opportunity after discovery of the facts constituting the ground for disqualification." (§ 170.3(c)(1).) The statute's nonwaiver provision has no effect on the separate issue of forfeiture in this context.


Ehrlich

*Jeffrey I. Ehrlich is the editor-in-chief of Advocate Magazine. He is certified by the California Bar as an appellate specialist. He is a cum laude graduate of the Harvard Law School and was CAALA's Appellate Lawyer of the Year in 2004 and 2008; was a co-recipient of CAOC's Streetfighter of the Year award in 2019; and received the Orange County Trial Lawyer's Association Trial Lawyer of the Year award for "Distinguished Achievement" in 2023.*

Copyright © 2024 by the author.
For reprint permission, contact the publisher: **www.plaintiffmagazine.com**