Case No. _____

IN THE SUPREME COURT OF CALIFORNIA

ALLEN KIRZHNER,

Plaintiff and Appellant,

vs.

MERCEDES BENZ USA LLC,

Defendant and Respondent.

FROM A DECISION BY THE COURT OF APPEAL
FOURTH APPELLATE DISTRICT
DIVISION THREE
CASE NUMBER G052551

PETITION FOR REVIEW

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PETITION FOR REVIEW

TO THE SUPREME COURT OF CALIFORNIA, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

Plaintiff and Appellant Allen Kirzhner hereby Petitions this Court for review of the decision of the Fourth Appellate District, Division Three, Case Number G052551, which was filed on November 27, 2017, and which was ordered published on December 13, 2017. Because of the publication order, the decision of the Court of Appeal became final on January 12, 2018.

A copy of the decision (Exhibit 1) and the order granting publication (Exhibit 2) are attached to this Petition.

ISSUES PRESENTED FOR REVIEW

California's Consumer Warranty Act (also known as "the lemon law") provides that if a manufacturer of a motor vehicle is unable to repair a vehicle under warranty within a reasonable number of attempts, it must repurchase or replace that consumer's vehicle. (Civ. Code, § 1793.2, subd. (d)(2).)

When the consumer elects to have his lemon vehicle repurchased, the manufacturer must "make restitution in an amount equal to the actual price paid or payable by the buyer, including any charges for transportation and manufacturer-installed options, but excluding nonmanufacturer items installed by a dealer or the buyer, and including **any collateral charges such as** sales or use tax, license fees, **registration fees**, and other official fees, **plus any incidental damages to which the buyer is entitled under Section 1794**, including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer." (Civ. Code, § 1793.2, subd. (d)(2)(B) [emphasis added].)

Both this Court and the Courts of Appeal have consistently concluded that the Consumer Warranty Act is intended to put the consumer

in the same position as if he had never purchased the defective vehicle and should be broadly construed in favor of the consumer. (*Mitchell v. Blue Bird Body Co.* (2000) 80 Cal.App.4th 32, 36 [repurchase remedy is "intended to restore the *status quo ante* as far as is practicable."]; *Murillo v. Fleetwood Enterprises, Inc.* (1998) 17 Cal.4th 985, 990 [CWA "is manifestly a remedial measure, intended for the protection of the consumer; it should be given a construction calculated to bring its benefits into action.".].)

This case presents this Court with the opportunity to settle two extremely important questions that arise in virtually every single lemon law case.

First, when an automobile manufacturer repurchases a consumer's vehicle, is the manufacturer obligated to reimburse "any . . . registration fees" paid by the consumer, as stated in the plain language of subdivision (d)(2)(B) of Civil Code section 1793.2, or merely the first year's registration fees, as concluded by the Court of Appeal in its published decision? (Typ. Op., p. 2)

Second, when the manufacturer refuses to repurchase or replace the vehicle and a consumer must file a lawsuit, are the "incidental damages to which the buyer is entitled under Section 1794" limited to "cost[s] incurred as a result of a vehicle being defective" as the Court of Appeal concluded, or are incidental damages permitted for expenses incurred as a result of the manufacturer's violation of the statutory command, i.e. its refusal to repurchase or replace the vehicle as required by subdivision (d)(2) of section 1793.2? (Typ. Op., p. 10.)

STATEMENT OF FACTS

A. Plaintiff's Complaint and Defendant's Answer

Plaintiff Allen Kirzhner filed this action against Defendant Mercedes-Benz USA, LLC on September 11, 2014. (AA 1.) Among other things, Plaintiff alleged that Defendant had violated its obligation to voluntarily repurchase or replace Plaintiff's defective vehicle after a reasonable number of warranty attempts failed, as it was required to under Civil Code section 1793.2(d)(2). (AA 7, 30.) On October 8, 2014, Defendant filed an Answer which generally denied all of Plaintiff's claims. (AA 11-15.)

B. The Settlement

On March 2, 2015, Defendant offered to allow judgment to be entered in favor of Plaintiff. (AA 18-19.) In relevant part, Defendant's Offer of Judgment provided that Defendant would pay Plaintiff "any collateral charges such as . . . registration fees, and other official fees, plus any incidental damages to which the buyer is entitled under Section 1794 . . . all to be determined by court motion if the parties cannot agree." (AA 18:25-19:5.) Notably, these words are identical to the remedy afforded to consumers under Civil Code section 1793.2(d)(2)(B).

Plaintiff accepted the offer on April 2, 2015, filed the Notice of Acceptance on April 21, 2015, and the Superior Court entered Judgment pursuant to the offer on May 15, 2015. (AA 16-17; AA 23.)

The parties could not agree on the amounts due, and so on May 28, 2015, Plaintiff filed a motion asking the Court to determine the amount that was due to Plaintiff pursuant to Defendant's 998 Offer. (AA 28.) Among other things, Plaintiff requested that the Superior Court require Defendant to reimburse the registration fees that he paid in 2013 and 2014, and the

non-operational fees that Plaintiff would incur in June of 2015. (AA 32; AA 38, 7 ["In 2013, I paid $356 to renew the vehicle registration. In 2014, I paid $305 for registration on the vehicle. The next registration payment will be due in June of 2015, and I do not yet know the amount that will be due at that time. Because I am no longer driving the vehicle, I plan to obtain a Certificate of Planned Non-Operation instead of renewing the registration and the charge for the CPNO is $19."].)

On August 28, 2015, the Superior Court signed a formal order refusing to award Plaintiff his registration fees for 2013 and 2014, and the non-operational fee he paid for 2015. (AA 174-175; AA 163, ¶¶ 1-2.) Among other things, the Superior Court relied upon an unpublished decision of a United States District Court, which was issued in a class action challenging an automobile manufacturer's refusal to refund registration fees beyond the year of purchase. (AA 163, ¶¶ 1-2.)

C. The Appeal

On September 11, 2015, Plaintiff filed a Notice of Appeal. On appeal, Plaintiff explained that the registration fees and non-operational fees were recoverable on two theories.

First, under subdivision (d)(2)(B) of Civil Code section 1793.2, the manufacturer was required to "make restitution [… of …] any collateral charges such as . . . registration fees." Nothing in that section indicates that "registration fees" are limited to the registration fees paid for the very first year of ownership.

Plaintiff's Opening Brief also noted that in another provision of the Song-Beverly Consumer Warranty Act, the Legislature explained the remedy that is available to a consumer who elects to accept a replacement

vehicle instead of a repurchase.[1] In that case, "[t]he manufacturer also shall pay for, or to, the buyer the amount of any sales or use tax, license fees, registration fees, and other official fees which the buyer is obligated to pay in connection with the replacement . . . ." (Civ. Code, § 1793.2, subd. (d)(2)(A) [emphasis added].)

Plaintiff's brief explained that, had the Legislature intended to limit the recovery of use tax, license fees, registration fees, and other official fees to those which "the buyer is obligated to pay in connection with the purchase or lease," it presumably would have added that language to the restitution provisions of subdivision (d)(2)(B) of section 1793.2. The absence of that language, combined with the presence of similar language in the replacement remedy contained in subdivision (d)(2)(A), indicates that the Legislature did not intend to restrict the remedy available to a consumer who elects restitution to those items incurred at the time of the sale or lease.

As the Court of Appeal explained in another Song-Beverly Consumer Warranty Act case, "[t]his omission of other offsets from a set of provisions that thoroughly cover other relevant costs indicates legislative intent to exclude such offsets." (*Jiagbogu v. Mercedes-Benz USA* (2004) 118 Cal.App.4th 1235, 1243-44.)

Plaintiff's Opening Brief also explained that the Superior Court's narrow construction of the Song-Beverly Consumer Warranty Act was incompatible with this Court's command that the Act "is manifestly a remedial measure, intended for the protection of the consumer; it should be

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[1] A warrantor cannot force a consumer to accept a replacement, but a consumer can voluntarily choose to accept one if he wants. (Civ. Code, § 1793.2, subd. (d)(2) ["However, the buyer shall be free to elect restitution in lieu of replacement, and in no event shall the buyer be required by the manufacturer to accept a replacement vehicle."].)

given a construction calculated to bring its benefits into action." (*Murillo v. Fleetwood Enterprises, Inc.* (1998) 17 Cal.4th 985, 990.)

In *Jiagbogu v. Mercedes-Benz USA* (2004) 118 Cal.App.4th 1235, 1244, the Court of Appeal rejected a defense argument that the Song-Beverly Consumer Warranty Act should be construed to allow it an equitable offset for use beyond that permitted by the formula contained in subdivision (d)(2)(C). The Court of Appeal concluded that "[a]n offset for the buyer's use of a car when a manufacturer, already obliged to replace or refund, refuses to do so, would create a disincentive to prompt replacement or restitution by forcing the buyer to bear all or part of the cost of the manufacturer's delay. Exclusion of such offsets furthers the Act's purpose." (*Jiagbogu v. Mercedes-Benz USA* (2004) 118 Cal.App.4th 1235, 1244.)

The plain purpose of the Song-Beverly Consumer Warranty Act is to require manufacturers to "promptly" offer to repurchase or replace motor vehicles that cannot be repaired. (Civ. Code, § 1793.2, subd. (d)(2) [emphasis added].) Interpreting the statute to allow consumers to recover "registration fees" that are incurred as time passes will encourage warrantors to act "promptly." On the other hand, requiring consumers to bear the additional registration fees and non-operation fees that accrue as time passes "would create a disincentive to prompt replacement or restitution by forcing the buyer to bear all or part of the cost of the manufacturer's delay." (*Jiagbogu*, *supra*, 118 Cal.App.4th at 1244.)

Finally, even if the registration fees that Plaintiff incurred in 2013, 2014, and 2015 were not recoverable as "registration fees," Plaintiff's brief explained that he was still entitled to recover them pursuant to the 998 Offer and subdivision (d)(2)(B) of Civil Code section 1793.2 as "any incidental damages to which the buyer is entitled under Section 1794 . . . ." (AA 18-19, ¶ 1; Civ. Code, § 1793.2, subd. (d)(2)(B).)

Civil Code Section 1794, subdivision (b), provides, among other things, that a consumer may recover damages pursuant to Commercial Code section 2715, and subdivision (1) of that section permits the buyer to recover "[i]ncidental damages" including "expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach." (Comm. Code, § 2715(1).)

Plaintiff's brief explained that there was simply no question that the registration fees paid in 2013, 2014, and 2015 were "expenses reasonably incurred in . . . care and custody of goods rightfully rejected" and/or an "other reasonable expense incident to the delay or other breach" and thus should have been allowed as incidental damages.

D. The Unpublished Decision of the Court of Appeal

On November 27, 2017, the Court of Appeal affirmed the Superior Court's conclusions. Among other things, the Court of Appeal held that "section 1793.2(b)(2)(B) does not require payment of vehicle registration renewal fees and related costs incurred after the initial purchase or lease." (Typ. Op., p. 2, ¶ 3.) The Court of Appeal also concluded that the "incidental damages" authorized by subdivision (d)(2)(B) of section 1793.2 should be limited to "cost[s] incurred *as a result of* a vehicle being defective," even though nothing in the statute indicates such a limitation and even though the relevant statutes say just the opposite. (Typ. Op., p. 6, ¶ 1.)

E. Publication of the Decision

Although the decision was initially unpublished, the Court of Appeal received three letters from attorneys claiming to represent automobile

manufacturer interests requesting that the decision be published, presumably because of its importance to them and their clients. (Ex. 2.)

Bowman & Brooke LLP sent a three page letter explaining that the opinion "addresses a current apparent conflict of law in the trial courts." (Ct. of App. Dkt., Entry dated 12/11/2017, p. 1.) That letter also explained that the opinion addressed a "**very important issue** in these cases." (*Id*, p. 1, ¶ 2 [emphasis added].) The Bowman & Brooke letter also noted the issues presented in this case have "**broad implications** due to the volume of these cases in our courts." (*Id*, p. 3, ¶ 2 [emphasis added].)

The Association of Southern California Defense Council sent a three page letter, describing the case as "valuable precedent" and stating that the issues presented were "**crucial for practitioners** to correctly assess damages claims in lemon law cases." (Ct. of App. Dkt., Entry dated 12/11/2017, p. 2, p. 3 [emphasis added].)

Finally, the Civil Justice Association of California ("CJAC") sent a three page letter explaining that the issues discussed in the opinion were "**valuable** to courts and counsel . . . ." (Ct. of App. Dkt., Entry dated 12/12/2017, p. 1, ¶ 2 [emphasis added].) The CJAC letter explained that both courts and counsel "would most benefit from its publication . . . ." (*Id*, p., 3, ¶ 2.)

On December 13, 2017, the Court of Appeal issued an order directing that the decision be published. (Ex. 2.) As a result of the publication order, the Court of Appeal's decision became final on January 12, 2018. (Rules of Court, Rule 8.264(b)(3).)

The issues decided by the Court of Appeal present two extremely important questions of law to consumers and automobile manufacturers. In addition, the Court of Appeal's decision dramatically departs from the decisions of other Courts of Appeal and from decisions of this Court when interpreting California's Consumer Warranty Act. Accordingly, this Court

should grant review in order to settle the questions and ensure uniformity of decision.

DISCUSSION

I.
THIS COURT SHOULD GRANT REVIEW TO SECURE UNIFORMITY OF DECISION AND TO SETTLE AN IMPORTANT QUESTION OF LAW

"The Supreme Court may order review of a Court of Appeal decision . . . [w]hen necessary 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 review this matter because it presents at least two important questions of law. In addition, the Court of Appeal's decision conflicts with other appellate decisions on similar subjects and thus review is necessary to secure uniformity of decision.

A. The Court of Appeal's decision presents an important question of law

The Court of Appeal's decision presents at least two questions of law that are important to both consumers and automobile manufacturers alike.

1. Whether the Consumer Warranty Act permits a consumer to recover "any . . . registration fees" or only "initial registration fees" is a matter of extreme importance both to consumers and manufacturers alike

Whether the Song-Beverly Consumer Warranty Act only permits a consumer to recovery "any . . . registration fees" or only the "initial registration fees" is an important question of law that warrants review by this Court.

Virtually every consumer who owns a lemon in California ends up paying at least the second year's registration fees or a non-operational fee.

That happens because consumers generally must retain their vehicles as evidence pending litigation, and registration fees or non-operational fees are required by state law. Also, because of financial limitations, consumers are often forced to continue driving their lemon vehicles until the manufacturer finally agrees to comply with the law. (*Ibrahim v. Ford Motor Co.* (1989) 214 Cal.App.3d 878, 898 ["purchasers of unsatisfactory vehicles may be compelled to continue using them due to the financial burden to securing alternative means of transport for a substantial period of time."].) In this case, Plaintiff paid both.

The issue has apparently come up in a class-action lawsuit against *Hyundai*, as evidenced by the unpublished case cited by the Superior Court when denying Plaintiff's motion. (AA 163, ¶ 3.) And the filing of at least three letters requesting publication of the decision demonstrates that automobile manufacturers view the issue as very important to their interests as well. (*See* Ct. App. Dkt., Entries dated 12/11/2017 and 12/12/2017 .)

2. Whether incidental damages under the Consumer Warranty Act are limited to those resulting from the motor vehicle's defects is a matter of extreme important to consumers and manufacturers alike

The scope of incidental damages that are available under the Consumer Warranty Act is also an important question that warrants review by this Court for the very same reasons discussed above. The damages that are available to consumers is one that is important in virtually every lemon law case. And based upon the number of letters requesting publication, it is an issue that is very important to automobile manufacturers as well. (*See* Ct. App. Dkt., Entries dated 12/11/2017 and 12/12/2017.)

Indeed, the Court of Appeal's conclusion that "incidental damages" authorized by subdivision (d)(2)(B) of section 1793.2 should be limited to "cost[s] incurred *as a result of* a vehicle being defective" is also

incompatible with the plain language of the statute and with the purpose of the Act, which requires that manufacturers promptly repurchase or replace vehicles that cannot be fixed. (Typ. Op., p. 6, ¶ 1; Civ. Code, § 1793.2(d)(2).)

There is simply no reason for the Court of Appeal's judicial limitation on incidental damages. To the contrary, the plain language of the statute explicitly authorizes the recovery of incidental damages well beyond those that are incurred as a result of the vehicle being defective. (*See* Civ. Code, § 1793.2, subd. (d)(2)(B) [authorizing recovery of incidental damages described in section 1794]; Civ. Code, § 1794, subd. (b)(1) [authorizing damages from section 2715 of the Commercial Code]; Comm. Code, § 2715(1) [permitting the buyer to recover "[i]ncidental damages" including "expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach."].)

The Court of Appeal reasoned that this limitation was appropriate in order to prevent consumers from recovering the cost of car washes and the like. However, car washes are already not recoverable under the plain language of section 2715.

If any judicial limitation is appropriate, it should be much broader, and should include damages that the consumer incurs as a result of the failure to repurchase, and not merely those caused directly by the defects in the vehicle. (Civ. Code, § 1793.2, subd. (d)(2).)

B. Review is necessary to secure uniformity of decision

Review is also necessary in order to secure uniformity of decision. Although there is no case law directly contradicting the Court of Appeal's

conclusions here, the Court of Appeal's conclusions are directly contrary to this Court's conclusion that the Consumer Warranty Act should be broadly construed in favor of the consumer. (*Murillo v. Fleetwood Enterprises, Inc.* (1998) 17 Cal.4th 985, 990 [CWA "is manifestly a remedial measure, intended for the protection of the consumer; it should be given a construction calculated to bring its benefits into action.".].)

In addition, the Court of Appeal's conclusions conflict with another Court of Appeal's conclusion that the purpose of the restitution remedy is "intended to restore the *status quo ante* as far as is practicable. (*Mitchell v. Blue Bird Body Co.* (2000) 80 Cal.App.4th 32, 36.) Leaving a consumer with unreimbursed out-of-pocket registration fees and out-of-pocket non-operational fees is inconsistent with restoring the *status quo ante*.

Finally, the Court of Appeal's conclusion that registration fees incurred after the initial purchase are not recoverable is incompatible with the Court of Appeal's conclusion in *Jiagbogu v. Mercedes-Benz USA*, that Courts should construe the Consumer Warranty Act so that it creates a disincentive for the manufacturer to delay in repurchasing defective vehicles. (*Jiagbogu v. Mercedes-Benz USA* (2004) 118 Cal.App.4th 1235, 1244 ["[a]n offset for the buyer's use of a car when a manufacturer, already obliged to replace or refund, refuses to do so, would create a disincentive to prompt replacement or restitution by forcing the buyer to bear all or part of the cost of the manufacturer's delay. Exclusion of such offsets furthers the Act's purpose."].)

II.
THE COURT OF APPEAL'S DECISION WAS WRONG

Kirzhner anticipates that Respondent will oppose review by focusing on the merits of the Court of Appeal's decision instead of its importance and the existence of conflicting decisions. If Respondent chooses to argue

the merits, rather than the importance of the issues, and if the Court finds the merits important[2], Kirzhner requests either leave to reply on the merits or that the Court review Appellant's Opening and Reply Briefs.

CONCLUSION

For all of the foregoing reasons, the Court should grant the Petition and review the decision of the Court of Appeal.

DATED: January 12, 2018

ANDERSON LAW FIRM
MARTIN W. ANDERSON
JEFFREY KANE

By: s/ Martin W. Anderson
MARTIN W. ANDERSON
Attorneys for Plaintiff and Appellant
Allen Kirzhner

[2] Kirzhner has not briefed the merits of the appeal in this Petition because the merits do not appear relevant to whether to grant or deny review. (Rules of Court, rule 8.500(b)(1).)

CERTIFICATE OF WORD COUNT

I, Martin W. Anderson, hereby certify as follows:

I am appellate counsel for Plaintiff and Appellant Allen Kirzhner. According to the word processing program I used to prepare this brief, the brief (excluding tables, this certificate, and any attachments) is 3,410 words long.

DATED: January 12, 2018

s/ Martin W. Anderson

MARTIN W. ANDERSON

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ALLEN KIRZHNER, Plaintiff and Appellant, v. MERCEDES-BENZ USA, LLC, Defendant and Respondent.	G052551 (Super. Ct. No. 30-2014-00744604) O P I N I O N

Appeal from an order of the Superior Court of Orange County, James Di Cesare, Judge. Affirmed.

Anderson Law Firm and Martin W. Anderson; Law Office of Jeffrey Kane and Jeffrey Kane for Plaintiff and Appellant.

Universal & Shannon, Jon D. Universal, Marie L. Wrighten-Douglass, Jay C. Patterson and James P. Mayo, for Defendant and Respondent.

This case under the Song-Beverly Consumer Warranty Act (Civ. Code, § 1790 et seq., Act), concerned an allegedly defective car which could not be repaired after multiple attempts. Plaintiff Allen Kirzhner accepted an offer of compromise pursuant to Code of Civil Procedure section 998 (998 offer) from defendant Mercedes-Benz USA, LLC, including a restitution provision identical to Civil Code section 1793.2, subdivision (d)(2)(B) (section 1793.2(b)(2)(B); all further statutory references are to the Civil Code).

The court awarded plaintiff over $47,000 in accordance with the 998 offer.

Plaintiff appealed and asserts the court erred because it denied him recovery of approximately $680 in vehicle registration renewal and certificate of nonoperation fees which he incurred in the years after he first leased the car.

We conclude the court properly determined section 1793.2(b)(2)(B) does not require payment of vehicle registration *renewal* fees and related costs incurred after the initial purchase or lease. Accordingly, we affirm.

FACTS

In June 2012, plaintiff leased a Mercedes-Benz from defendant for personal use. The complaint alleged the car came with an express written warranty covering repairs for any defects. During the warranty period, the car allegedly exhibited a variety of defects which caused the navigation system and key fob to malfunction, the steering column adjustment mechanism and power seats to be inoperative, the coolant level warning light to illuminate, and smoke to emanate from the cigarette lighter.

After bringing the issues to defendant's attention, and frustrated with defendant's supposed failure to abide by its warranty obligations, plaintiff filed suit. Among the complaint's six causes of action was one alleging defendant, following unsuccessful attempts to repair the problems, refused to promptly replace the car or pay restitution pursuant to section 1793.2. The relief sought included damages in the amount of approximately $46,800, civil penalties, and attorney's fees and costs.

Defendant filed an answer and, thereafter, made the 998 offer, which specified, in relevant part: "Pursuant to California Civil Code § 1793.2(d)(2)(B), in exchange for the subject vehicle, [defendant] offers to make restitution in an amount equal to the actual price paid or payable by the Plaintiff, including any charges for transportation and manufacturer-installed options, but excluding non-manufacturer items installed by a dealer or the Plaintiff, and including any collateral charges such as sales or use tax, license fees, registration fees, and other official fees, plus any incidental damages to which the buyer is entitled under [Civil Code] Section 1794, including, but not limited to, reasonable repair, towing, and rental costs actually incurred by [plaintiff], less a reasonable mileage offset in accordance with Civil Code Section 1793.2(d)(2)(C), all to be determined by court motion if the parties cannot agree." Plaintiff accepted the 998 offer, and the court entered judgment accordingly.

The parties were unable to agree on an amount due under the above-listed provision of the 998 offer, so plaintiff filed a motion requesting the court to make the determination. Plaintiff claimed he was entitled to just under $55,000, including $680 in registration renewal fees he paid in the years 2013 and 2014, and an anticipated 2015 payment for a certificate of nonoperation. Defendant opposed the motion largely due to the amount plaintiff requested. It asked the court to award about $45,500.

Because the 998 offer referenced and included the language of section 1793.2(d)(2)(B) set out above, the trial court focused on amounts recoverable as restitution under that statute. Following a hearing, the court determined plaintiff was entitled to approximately $47,700, and entered an order accordingly. The amount awarded excluded the $680 associated with the 2013 and 2014 vehicle registration renewal fees and the 2015 certificate of nonoperation fee. The court explained the "registration fees" mentioned in the statute "do not include all registration fees that a buyer pays over the course of the lease[,]" but instead are limited to fees paid in conjunction with the original purchase or lease transaction.

DISCUSSION

Plaintiff's sole contention on appeal concerns the denied recovery of his $680 vehicle registration renewal and certificate of nonoperation fees. He claims the court erred in interpreting section 1793.2(d)(2)(B). We disagree.

As with any statutory interpretation issue, we begin with the words of the statute to ascertain the intent of the Legislature. (*Cummins, Inc. v. Superior Court* (2005) 36 Cal.4th 478, 487.) "[T]he Act 'regulates warranty terms, imposes service and repair obligations on manufacturers, distributors, and retailers who make express warranties, requires disclosure of specified information in express warranties, and broadens a buyer's remedies to include costs, attorney's fees, and civil penalties. [Citations.] . . . '[T]he Act is manifestly a remedial measure, intended for the protection of the consumer; it should be given a construction calculated to bring its benefits into action.' [Citation.]" (*Joyce v. Ford Motor Co.* (2011) 198 Cal.App.4th 1478, 1486.)

"Section 1793.2 is part of a statutory scheme similar to laws enacted in many other states, commonly called 'lemon laws.' [Citations.]" (*Mitchell v. Blue Bird Body Co.* (2000) 80 Cal.App.4th 32, 35 (*Mitchell*).) It requires a "manufacturer or its representative" who "is unable to service or repair a new motor vehicle . . . to conform to the applicable express warranties after a reasonable number of attempts, . . . [to] either promptly replace the new motor vehicle . . . or promptly make restitution to the buyer in accordance with subparagraph (B) . . . ." (§ 1793.2, subd. (d)(2).) In turn, subparagraph (B) states, "the manufacturer shall make restitution in an amount equal to the *actual price paid or payable by the buyer*, including any charges for transportation and manufacturer-installed options, but excluding nonmanufacturer items installed by a dealer or the buyer, and *including any collateral charges such as* sales tax, license fees, *registration fees*, and other official fees, plus any incidental damages to which the buyer is entitled under Section 1794, including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer." (§ 1793.2, subd. (d)(2)(B), italics added.)

Plaintiff argues the term "registration fees" means all vehicle registration fees whenever paid, including registration renewal fees. We are not persuaded. The wording and structure of the statute dictate otherwise. In defining the amount of restitution, subparagraph (B) specifies it shall be equal to "the actual price paid or payable by the buyer." (§ 1793.2, subd. (d)(2)(B).) All language thereafter simply clarifies the meaning of that phrase by listing items which must be accounted for, and excluded from, the calculation. Among the items to be included are "collateral charges[,]" which is the category within which registration fees fall. The only registration fee that could be considered a "collateral charge" associated with "the actual price paid or payable" is the one which is paid when the vehicle is purchased or leased (or accounted for in financing). (See *Mitchell, supra*, 80 Cal.App.4th at p. 37 ["[T]he Legislature intended to allow a buyer to recover the entire amount actually expended for a new motor vehicle, including paid finance charges, less any of the expenses expressly excluded by the statute"].) Registration fees for future years cannot be considered a "collateral charge" because they are incurred and paid after the initial purchase or lease.

Plus, the statute's use of the word "payable" does not mean the Legislature intended all registration renewal fees to be recoverable as part of restitution. It is simply a recognition that many buyers do not pay the full amount due at the actual time of the original transaction. Instead, and for various reasons, car buyers obtain financing which allows them to make installment payments. (*Mitchell, supra*, 80 Cal.App.4th at p. 38.) If the phrase "or payable" was not included in the statute, those types of buyers would only receive restitution for the amount already paid, leaving them liable for all future financing payments. Such a result would be contrary to the statute's remedial purpose.

Plaintiff next argues the fees at issue should be considered "'incidental damages.'" Not so. The statute provides examples of incidental damages specific to the defective vehicle context, which includes "reasonable repair, towing, and rental car costs actually incurred by the buyer." (§ 1793.2, subd. (d)(2)(B).)

Although the list is nonexhaustive, the examples give guidance as to what constitutes an "incidental damage." The common characteristic among them is each would be a cost incurred *as a result of* a vehicle being defective. Such is not the case with vehicle registration renewal fees, which are more accurately characterized as a standard cost of owning any vehicle. Were we to adopt plaintiff's interpretation, it would open up a "Pandora's box" of potential costs for which a defendant would need to pay restitution in these types of cases (e.g., costs for gas, car washes, oil changes). Plaintiff provides no authority for such an expansive interpretation.

In sum, the trial court properly concluded the restitution payable under section 1793.2 does not include vehicle registration *renewal* fees, as opposed to vehicle registration fees associated with the purchase of a vehicle.

DISPOSITION

The order is affirmed. Respondent is entitled to its costs on appeal.

THOMPSON, J.

WE CONCUR:

FYBEL, ACTING P. J.

IKOLA, J.

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ALLEN KIRZHNER, Plaintiff and Appellant, v. MERCEDES-BENZ USA, LLC, Defendant and Respondent.	G052551 (Super. Ct. No. 30-2014-00744604) ORDER CERTIFYING OPINION FOR PUBLICATION

Association of Southern California Defense Counsel, Bowman and Brooke, and Civil Justice Association of California requested that our opinion, filed on November 27, 2017, be certified for publication. It appears that our opinion meets the standards set forth in California Rules of Court, rule 8.1105(c).

The request for publication is GRANTED. The opinion is ordered published in the Official Reports.

THOMPSON, J.

WE CONCUR:

FYBEL, ACTING P. J.

IKOLA, J.

PROOF OF SERVICE (CCP § 1013A(3))

I, Martin W. Anderson, am employed in the county of Orange, State of California. I am over the age of 18, and not a party to this action. My business address is 2070 N. Tustin Ave., Santa Ana, CA 92705.

ELECTRONICALLY: On the date and time indicated below, I served the document electronically by sending it by electronic mail to the email address indicated below. The transmission was reported complete and without error by my e-mail provider. Pursuant to Rules of Court, rule 2.251(a)(2)(B), a party consents to electronic service when that party electronically files any documents with the Court.

Document(s) Served:

PETITION FOR REVIEW

Person(s) served, address(es), and fax number(s):

Mr. Jon D. Universal
Universal, Shannon & Wheeler LLP
2240 Douglas Blvd., Suite 290
Roseville, CA 95661

(electronically)
Email Address: juniversal@uswlaw.com

Clerk of the Court
Superior Court of the State of California
700 Civic Center Drive West
Santa Ana, CA 92701
(one copy by mail)

Clerk of the Court
Court of Appeal of the State of California
601 W. Santa Ana Blvd.
Santa Ana, California 92701
(electronically by TrueFiling System)

Date of Service: January 12, 2018
Date Proof of Service Signed: January 12, 2018

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

Signature: s/ Martin W. Anderson