

TENTATIVE RULING(S) FOR JANUARY 28, 2025
Department S37 – Judge Corey G. Lee

Tentative Rulings for Department S37, if posted, are on court’s website (<https://www.sb-court.org/divisions/civil/civil-tentative-rulings>) by 3:00 p.m. and 7:00 p.m. on the court day before the hearing (in some cases, on a non-court day before the hearing). If no tentative ruling is posted by 3:00 p.m., please check again after 7:00 p.m.

Unless you wish to submit on the tentative ruling, you must appear for the hearing either in person, CourtCall (888-882-6878 or www.courtcall.com), or by ZOOM. Failure to appear is deemed a waiver of oral argument. If you wish to submit to the tentative, please call the Judicial Assistant at (909) 708-8707 in advance of the hearing. If all parties submit on a tentative ruling, the tentative ruling will become final. The tentative ruling may seek input on particular issues and direct appearance. If so directed, attendance at the hearing is mandatory. The party prevailing on a motion or other hearing shall serve written notice of the court’s ruling unless all parties waive notice of the ruling.

ATTENTION: Since January 9, 2023, the court no longer provides an official Court Reporter to transcribe proceedings. Parties who wish to have a transcript must retain their own private reporter and must submit a “Stipulation and Order to Use Certified Shorthand Reporter.” Please contact the Department if you need this form. Prior to the hearing, you can email the completed Stipulation to Department S37 at AGear@sb-court.org. Parties who do not retain their own reporter have waived the right to one.

UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.

CIVSB2419796: *Garcia v. Fletcher Jones Motor Cars, Inc., et al.*

Motion: Demurrer
Movant: Defendant Mercedes-Benz USA, LLC (“Mercedes”)
Respondent: Plaintiff Alan Marcos Garcia

DISCUSSION

Plaintiff Garcia filed his Complaint on June 17, 2024, against Defendants Fletcher and Mercedes for: (1) Violation of Song-Beverly Act – Breach of Express Warranty (against Mercedes); (2) Violation of Song-Beverly Act – Breach of Implied Warranty (against Mercedes); (3) Negligent Repair (against Fletcher); and (4) Violation of Magnusson-Moss Warranty Act (against Mercedes). Motion for Judgment on the third cause of action against Fletcher was granted on December 11, 2024.

Defendant Mercedes filed the pending demurrer on the first, second, and fourth causes of action in July 2024 on grounds that the Complaint lacks sufficient facts. Opposition and reply were filed in August and September 2024, respectively. On September 10, 2024, the Court continued the Demurrer hearing to today January 28, 2025 to give the parties an opportunity to meet and confer after the expected dispositive decision by the California Supreme Court in *Rodriguez v. FCA US, LLC* (2022) 77 Cal.App.5th 209, in which review was granted on July 13, 2022, and oral argument occurred on September 4, 2024. The decision was issued on October 31, 2024.

During the September 10, 2024 hearing, the Court specifically ordered the parties to file – prior to today’s hearing – a declaration confirming the meet and confer, along with a joint statement advising the Court of the status of the Demurrer based on the decision in *Rodriguez v. FCA US LLC* (2024) 17 Cal.5th 189 (“*Rodriguez*”). ***The Court did not receive a declaration and a joint statement. If they were e-filed, the Court did not receive a courtesy copy.***

In *Rodriguez*, the California Supreme Court held “that the phrase ‘other motor vehicle sold with a manufacturer’s new car warranty’ – considered in the context of the surrounding text of section 1793.22, subdivision (e)(2) and in the broader context of the Song-Beverly Act’s provisions distinguishing between new and used goods – means a vehicle for which a manufacturer’s new car warranty is issued with the sale.” (*Rodriguez, supra*, 17 Cal.5th at p. 206.) Put simply, the Song-Beverly Act does not cover any used car sold with a pre-existing, unexpired manufacturer’s warranty. (*Ibid.*)

Plaintiff would thus need to allege that the used car was sold and issued with a new car warranty. If so, it would be analogous to the situation in *Jensen v. BMW of North America, Inc.*, (1995) 35 Cal.App.4th 112, 121, overruled in part by *Rodriguez, supra*, 17 Cal.5th at pp. 204-205 (“We agree with the Court of Appeal in this case that *Jensen* is distinguishable because ‘*Jensen* involved a lease by a manufacturer-affiliated dealer who issued a full new car warranty along with the lease.’”). Here, there is no allegation in the Complaint that mentions the manufacturer or manufacturer-affiliated dealer issued a full new car warranty along with the purchase of the subject 2020 vehicle in the year of purchase in 2023. The Court therefore *sustains* the demurrer *without leave to amend*.

RULING

Based on the foregoing, the Court *sustains* Defendant Mercedes’ demurrer to the first, second, and fourth causes of action *without leave to amend*.

Counsel for Defendant Mercedes is ordered to give notice of the Court’s findings, rulings and orders as set forth herein.