

Severson
& Werson
A Professional Corporation

Jan T. Chilton
Attorney
Direct Line: (415) 677-5621
jtc@severson.com

One Embarcadero Center, 26th Floor
San Francisco, CA 94111
Telephone: (415) 398-3344
Facsimile: (415) 956-0439

July 13, 2012

VIA FEDERAL EXPRESS

Presiding Justice Kathleen E. O'Leary
Associate Justice Richard M. Aronson
Associate Justice William W. Bedsworth
California Court of Appeal
Fourth Appellate District, Division Three
601 West Santa Ana Boulevard
Santa Ana, California 92701

Re: ***Caron v. Mercedes-Benz Financial Services USA LLC, et al.*, No. G044550**
Request for Publication of Opinion

Dear Presiding and Associate Justices:

Pursuant to California Rules of Court, rule 8.1120(a), Mercedes-Benz Financial Services USA LLC ("Mercedes Financial") respectfully requests that the Court publish its opinion filed on June 29, 2012.

As a defendant and appellant in this matter, Mercedes Financial has an obvious interest in publication of the Court's opinion. However, the opinion has very broad applications as well. Many other cases, similar to this one, have been and will continue to be filed against automobile finance companies regarding similar, if not identical, arbitration provisions contained in retail installment sales contracts. For example, an appeal regarding the enforceability of the same arbitration clause as in this case is currently pending in the Fourth Appellate District, Division One, in the matter *Mercedes-Benz Financial Services USA, LLC v. Okudan*, Case No. D061669. In a recent filing in the California Supreme Court, plaintiffs' law firm identified five such cases pending before that court, the Court of Appeal and the Superior Court, which, likewise, "involve[] the enforceability of the same arbitration clause at issue in this case."¹

¹ See Respondent's Application for 30-Day Extension to File Answer Brief on the Merits in *Sanchez v. Valencia Holding Co., Inc.*, Case No. S199119 (California Supreme Court), which in turn identifies *Vargas-Carcamo v. SAI Monrovia B, Inc., et al.*, Case No. B237257 (Second Appellate District, Division One); *Sherf v. Rusnak/Westlake et al.*, Case No. B237275 (Second Appellate District, Division Six); *Flores et al. v. Sonic-West Covina T, Inc.*, Case No. B238265 (footnote continued)

Presiding Justice Kathleen E. O’Leary
Associate Justice Richard M. Aronson
Associate Justice William W. Bedsworth
July 13, 2012
Page 2

Moreover, this Court’s opinion has far-reaching implications that extend beyond the purview of automobile finance. Since the United States Supreme Court decided *AT&T Mobility, LLC v. Concepcion* (2011) ___ U.S. __; 131 S.Ct. 1740, the law in California regarding the enforceability of arbitration provisions is in a state of flux. Publication of the Court’s opinion will assist current and future parties and trial courts in assessing and resolving cases involving similar issues—arbitration and otherwise.

The Court’s opinion meets several of the standards for publication under California Rules of Court, rule 8.1105(c).

Part IIB of the Opinion’s Discussion section, including footnote 6, meets the standards of Rule 8.1105(c)(3) (criticizes an existing rule of law), (4) (criticism of a statute), (5) (addresses an apparent conflict in the law), and (6) (legal issue of continuing public interest). First, the Court’s opinion holds for the first time that the FAA, as interpreted in *Concepcion*, preempts the Consumer Legal Remedies Act’s anti-waiver provision (Civ. Code §1751), thus requiring California courts to compel bilateral arbitration of CLRA claims. This issue arises frequently as many consumer contracts contain arbitration clauses with class action waivers and many consumer suits allege CLRA claims on behalf of putative classes. The Court’s opinion also declines to follow *Fisher v. DCH Temecula Imports LLC* (2010) 187 Cal.App.4th 601 (“*Fisher*”) pointing out that *Concepcion* thoroughly undermines its reasoning. The Court’s opinion would be the first published appellate decision recognizing that *Fisher* is no longer good law. Finally, the Court’s opinion follows *Iskanian v. CLS Transportation Los Angeles, LLC* (2012) 206 Cal.App.4th 949, 142 Cal.Rptr.3d 372, 384-386, which held that, post-*Concepcion*, the FAA preempts the California Supreme Court’s landmark ruling in *Broughton v. Cigna Healthplans* (1999) 21 Cal.4th 1066, that certain injunctive relief claims cannot be arbitrated.

Part IIA of the Opinion’s Discussion section, and footnote 2 of Part IIB, similarly meet the standards of Rule 8.1105(c)(2) (applies an existing rule of law differently) and (4) (clarifies a statute), in discussing the issue of authentication of a contract in connection with a motion to compel arbitration and in interpreting the choice-of-law provisions found in the Law Printing conditional sale contract used in millions of transactions in California. It is not uncommon for plaintiff’s counsel suing an auto finance company to attach only the front page of this double-sided form contract as an exhibit to a complaint. The Court’s opinion explains how Evidence Code section 1414 facilitates authentication of such a contract. Similarly, this standard form contract contains a general choice of law provision as well as a special choice of law provision in

(Second Appellate District, Division Eight); and *Williams v. Carson CJ LLC, et al.*, Los Angeles County Superior Court Case No. BC474350.

Presiding Justice Kathleen E. O'Leary
Associate Justice Richard M. Aronson
Associate Justice William W. Bedsworth
July 13, 2012
Page 3

its arbitration clause. How these two clauses interrelate is a common issue in virtually every case involving the enforceability of the arbitration clause, which the Court resolves. The Court's opinion, if published, will provide a useful guide to the trial courts on both of these recurring issues.

For all of these reasons, Mercedes Financial respectfully requests that the Court publish its opinion in this case.

Respectfully yours,

A handwritten signature in blue ink, appearing to read "Jan T. Chilton". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jan T. Chilton

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

Caron v. Mercedes-Benz Financial Services USA LLC, et al., No. G044550

I, the undersigned, declare that I am over the age of 18 and am not a party to this action. I am employed in the City of San Francisco, California; my business address is Severson & Werson, One Embarcadero Center, Suite 2600, San Francisco, CA 94111.

On the date below I served a copy, with all exhibits, of the following document(s):

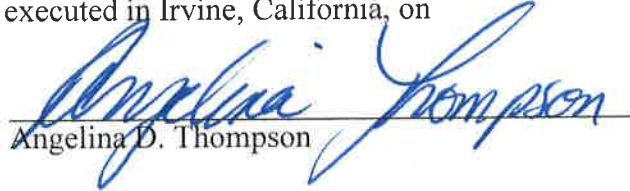
REQUEST FOR PUBLICATION OPINION

on all interested parties in said case addressed as follows:

SEE ATTACHED SERVICE LIST

(BY MAIL) By placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in Irvine, California in sealed envelopes with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration is executed in Irvine, California, on July 13, 2012.


Angelina D. Thompson

SERVICE LIST

Caron v. Mercedes-Benz Financial Services USA LLC, et al., No. G044550

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Hallen D. Rosner, Esq.
Christopher Barry, Esq.
Angela J. Smith, Esq.
ROSNER, BARRY & BABBITT, LLP
10085 Carroll Canyon Road, Ste. 100
San Diego, CA 92131
Tel: (858) 348-1005
Fax: (858) 348-1150
hawk@rbblawgroup.com
angela@rbblawgroup.com
marcy@rbblawgroup.com

Attorney for Plaintiff
Lee Anne Caron

Steve Mikhov, Esq.
ROMANO, STANCROFF &
MIKHOV, PC
640 S. San Vicente, Ste. 230
Los Angeles, CA 90048
Tel: (323) 936-2274
Fax: (323) 939-7973
smikhov@rsmlemonlaw.com

Co-Counsel for Plaintiff
Lee Anne Caron

Mark O'Connor, Esq.
O'CONNOR LAW GROUP, P.C.
384 Forest Ave., Ste. 17
Laguna Beach, CA 92651
Tel: (949) 494-9090
Fax: (949) 494-9913
mark@moconnorlaw.com

Co-Counsel for Plaintiff
Lee Anne Caron

Kellie Christianson, Esq.
CALLAHAN, THOMPSON, SHERMAN
& CAUDILL
2601 Main St Ste 800
Irvine, CA 92614
kchristianson@ctsclaw.com

Attorneys for Defendant Mission Imports

Robert Olson, Esq.
GREINES, MARTIN, STEIN &
RICHLAND
5900 Wilshire Blvd., 12th Floor
Los Angeles, CA 90036

From: (415) 398-3344
Jan T. Chilton, Esq.
Severson & Werson
One Embarcadero Center, Suite 2600
San Francisco, CA 94111

Origin ID: APCA



Ship Date: 13JUL12
ActWgt: 1.0 LB
CAD: 3655865/INET 3300

Delivery Address Bar Code



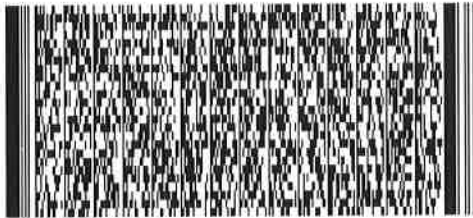
SHIP TO: (714) 571-2600
Presiding Justice Kathleen E. O'Lea
California Courts of Appeal
601 West Santa Ana Boulevard
4th District Division 3
SANTA ANA, CA 92701

BILL SENDER

Ref # 14000.0008
Invoice #
PO #
Dept #

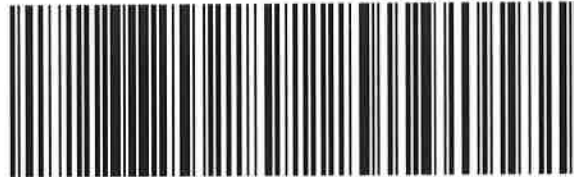
MON - 16 JUL A1
PRIORITY OVERNIGHT

TRK# 7937 8934 5644
0201



WZ APVA

92701
CA-US
SNA



515G1/E052/AA44

After printing this label:

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.
Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.