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January 21, 2015

Presiding Justice Tricia A. Bigelow and
Associate Justices Laurence D. Rubin and Madeleine Flier
California Court of Appeal
Second Appellate District, Division Eight
300 S. Spring Street, 2nd Floor North Tower
Los Angeles, CA 90013

Re: *Rand MacQuiddy v. Mercedes-Benz USA, LLC*, BC488675,
Date Opinion Filed: January 2, 2015
Request for Publication (Cal. Rules of Court, Rule 8.1120)

To the Honorable Justices:

I am writing on behalf of the Association of Southern California Defense Counsel ("ASCDC"). Pursuant to Rule 8.1120 of the California Rules of Court, we request that the Court publish its opinion in *Rand MacQuiddy v. Mercedes-Benz USA, LLC*, BC488675, Second Appellate District, Division 8; Date Opinion Filed: January 2, 2015. Many of ASCDC's members specialize in the defense of "Lemon Law" actions and, thus, ASCDC has an interest in having this Court's opinion published.

The Court's opinion meets the standards for publication for several reasons.

First, *MacQuiddy* holds that a trial court's decision refusing to compel further responses to written discovery and entering a protective order for CCP 2025.230 deposition notices should not be disturbed absent reasonable probability that such discovery would have made a difference at trial. There are few published opinions addressing trial court rulings on motions for protective order so publication of *MacQuiddy* would provide valuable guidance to trial courts and practitioners. The Court's opinion applies this rule in the context of a consumer warranty "Lemon Law" case, and there are no other published appellate cases with a set of facts similar to this case. Therefore, the Court's opinion satisfies the criteria for publication because it applies an "existing rule of law to a set of facts significantly different from those stated in published opinions." (Cal. R. Ct., rule 8.1105(c)(2).)

Second, if *MacQuiddy* is published, it will help any party, not just a motor vehicle manufacturer, where it has admitted liability, or otherwise admitted to relevant facts, to limit discovery to disputed issues. This would reduce the burdens of overbroad discovery not only on that party, but also on the courts. This issue has broad implications due to the volume of these cases in our courts. Looking at Lemon Law filings alone, the law firm of the undersigned has performed an unofficial tally of cases filed against automobile manufacturers in the Central District of Los Angeles County Superior Court. In calendar year 2014 alone, there were 1799 such filings. It is also worth noting that the type of discovery dispute raised in *MacQuiddy* is not unusual since consumer counsel are incentivized by the fee shifting nature of the statute. For this reason, the specific ruling in this case involves a legal issue of continuing public interest.

Third, the *MacQuiddy* court's discussion of what appeared to be acceptable in Mercedes Benz USA's Code of Civil Procedure section 998 offer (e.g. "everything besides the condition of the car was at least minimally determined by the Act itself"), and what was uncertain (i.e., surrender of the car "in an undamaged condition, save normal wear and tear... to be determined by court motion if the parties cannot agree"), would be helpful to any party serving a section 998 offer, not only in Lemon Law cases, but in any case where damages are identifiable pursuant to statute. Publication of the *MacQuiddy* decision will result in car manufacturers not insisting on a deduction for non-wear and tear vehicle damage in their section 998 offers which will therefore increase the likelihood of settlements. There are no California published appellate decisions addressing this precise issue, so *MacQuiddy's* publication will have an immediate practical effect in this state.

Fourth, the *MacQuiddy* court's discussion of what makes a consumer the *prevailing party* for attorneys' fees establishes a new rule of law and/or advances a new interpretation of Civil Code Section 1794(d). The court takes a common sense approach in recognizing that where there is no pre-litigation repurchase request and the manufacturer admits liability in its answer, the clear litigation objective of the consumer and plaintiff's counsel is not just net monetary recovery (i.e. diminution in value or repurchase), but a civil penalty. Again, this is a legal issue of continuing public interest, in light of the volume of Lemon Law cases in our courts.

In conclusion, publication of the *MacQuiddy* appellate decision will assist trial courts and counsel in Lemon Law cases in analyzing factual scenarios when there was no pre-litigation demand, the manufacturer admitted liability in its answer, the manufacturer made an offer to provide the statutory remedy, and the only reason for the consumer's pursuit of the lawsuit is attorneys' fees and civil penalty. This analysis would be further useful for non-automotive consumer warranty matters as well.

For all of the foregoing reasons, ASCDC respectfully requests the publication of the *MacQuiddy* opinion.

Sincerely,

Board of Director, on behalf of ASCDC

Lawrence R. Ramsey