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AMENDED IN SENATE AUGUST 20, 2024
AMENDED IN SENATE JUNE 20, 2023
AMENDED IN ASSEMBLY MAY 18, 2023
AMENDED IN ASSEMBLY MARCH 27, 2023
CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 1755

Introduced by Assembly Member Kalra and Senator Umberg

March 2, 2023

An act to add Chapter 12 (commencing with Section 871.20) to Title 10 of Part 2 of the Code of Civil Procedure, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1755, as amended, Kalra. Civil actions: restitution for or replacement of a new motor vehicle.

Existing law, the Song-Beverly Consumer Warranty Act, provides that if a manufacturer of a new motor vehicle, as defined, or the manufacturer's in-state representative, is unable to service or repair the vehicle to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer must either repurchase or replace the vehicle, as specified. Existing law, the Tanner Consumer Protection Act, creates the presumption that a reasonable number of attempts have been made to conform a new motor vehicle to the applicable express warranties if specified conditions are met. Under existing law, the buyer of a new motor vehicle may not assert this presumption until after the buyer has initially resorted to a qualified third-party dispute resolution

process, if that process exists and certain additional conditions are met. Existing law provides that if, among other things, a qualified third-party dispute resolution process does not exist, the buyer of a new motor vehicle may assert the above presumption in an action to enforce the buyer’s rights under the Song-Beverly Consumer Warranty Act. Existing law provides that the buyer of a new motor vehicle who is damaged by a manufacturer’s failure to comply with specified requirements of the Song-Beverly Consumer Warranty Act or the Tanner Consumer Protection Act may bring an action for the recovery of damages and other equitable and legal relief. Existing law provides that if the buyer establishes that the manufacturer’s failure to comply was willful, the judgment may also include a civil penalty which shall not exceed 2 times the amount of actual damages.

This bill would provide that an action seeking the restitution for or replacement of a new motor vehicle, or for civil penalties, pursuant to the provisions of the Song-Beverly Consumer Warranty Act or Tanner Consumer Protection Act described above must be commenced within one year after the expiration of the applicable express warranty, and in no event may be brought later than 6 years after the date of original delivery of the vehicle, subject to specified tolling provisions. Beginning April 1, 2025, the bill would require the consumer to, prior to seeking civil penalties, provide a written notice to the manufacturer that, among other things, demands the manufacturer’s restitution for or replacement of the consumer’s vehicle. The bill would require mediation in an action seeking the restitution for or replacement of a new motor vehicle, or for civil penalties, and would stay all discovery, except a limited set of disclosures and depositions, in such actions until mediation is concluded. The bill would, for such actions filed on or after January 1, 2025, authorize the court to impose specified sanctions on represented parties who fail to comply with its provisions. The bill would provide that the duties and obligations it imposes are cumulative with, and do not limit or expand, duties and obligations imposed under any other law.

Vote: majority. Appropriation: no. Fiscal committee: no.
 State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Chapter 12 (commencing with Section 871.20)
- 2 is added to Title 10 of Part 2 of the Code of Civil Procedure, to
- 3 read:

1 CHAPTER 12. ACTIONS FOR RESTITUTION FOR OR REPLACEMENT
2 OF CERTAIN MOTOR VEHICLES
3

4 871.20. (a) Notwithstanding any other law, this chapter applies
5 to an action seeking restitution or replacement of a motor vehicle
6 pursuant to subdivision (b) or (d) of Section 1793.2, Section
7 1793.22, or Section 1794 of the Civil Code, or for civil penalties
8 pursuant to subdivision (c) of Section 1794 of the Civil Code,
9 where the request for restitution or replacement is based on
10 noncompliance with the applicable express warranty.

11 (b) This chapter does not apply to service contract claims under
12 Section 1794 of the Civil Code or any action seeking remedies
13 that are not restitution or replacement of a motor vehicle.

14 871.21. (a) An action covered by Section 871.20 shall be
15 commenced within one year after the expiration of the applicable
16 express warranty.

17 (b) Notwithstanding subdivision (a), an action covered by
18 Section 871.20 shall not be brought later than six years after the
19 date of original delivery of the motor vehicle.

20 (c) The time periods prescribed in subdivisions (a) and (b) shall
21 be tolled as follows:

22 (1) As provided by tolling requirements prescribed in
23 subdivision (c) of Section 1793.22 of the Civil Code, as applicable.

24 (2) For the time the motor vehicle is out of service by reason
25 of repair for any nonconformity.

26 (3) For the time period after a pre-suit notice is provided to the
27 manufacturer in accordance with Section 871.24, which time period
28 shall not exceed 60 days.

29 871.22. For purposes of this chapter, the following definitions
30 apply:

31 (a) “Applicable express warranty” means the written warranty
32 provided by the manufacturer at the time of delivery of the subject
33 motor vehicle, which provides coverage for the specific
34 nonconformity at issue in the action, subject to the terms and
35 exclusions of that warranty.

36 (b) “Distributor” means any individual, partnership, corporation,
37 association, or other legal relationship that stands between the
38 manufacturer and the retail seller in purchases, consignments, or
39 contracts for sale of consumer goods or motor vehicles.

1 (c) “Manufacturer” means any individual, partnership,
 2 corporation, association, or other legal relationship that
 3 manufactures, assembles, or produces consumer goods or motor
 4 vehicles.

5 (d) “Motor vehicle” includes any of the following:

6 (1) A motor home, as defined in paragraph (3) of subdivision
 7 (e) of Section 1793.22 of the Civil Code.

8 (2) A new motor vehicle, as defined in paragraph (2) of
 9 subdivision (e) of Section 1793.22 of the Civil Code.

10 (3) A travel trailer.

11 (e) “Travel trailer” means a vehicular unit without motive power
 12 that is designed to be towed or carried by a motor vehicle. “Travel
 13 trailer” does not include a mobilehome.

14 (f) “Warrantor” means any entity or person who gives or offers
 15 to give a written warranty or who is or may be obligated under an
 16 implied warranty.

17 871.23. For purposes of this chapter, any reference to a
 18 manufacturer also applies to a distributor or warrantor.

19 871.24. (a) At least 30 days prior to the commencement of an
 20 action seeking civil penalties under subdivision (c) of Section 1794
 21 of the Civil Code, the consumer shall do all of the following:

22 (1) Notify the manufacturer of the consumer’s name, the
 23 accurate Vehicle Identification Number (“VIN”) of the motor
 24 vehicle, and a brief summary of the repair history and problems
 25 with the motor vehicle.

26 (2) Demand that the manufacturer repurchase or replace the
 27 motor vehicle.

28 (b) Minor deviations in the notice submitted pursuant to
 29 subdivision (a) shall not disqualify consumers from seeking civil
 30 penalties.

31 (c) At the time that notice submitted pursuant to subdivision (a)
 32 is sent, the consumer shall have possession of the motor vehicle.

33 (d) The notice required by subdivision (a) shall be in writing
 34 and shall be sent either by email to the email address prominently
 35 displayed on the manufacturer’s website for this purpose or by
 36 certified or registered mail, return receipt requested, to the address
 37 provided by the manufacturer in the owner’s manual or warranty
 38 booklet. The notice information on the manufacturer’s website,
 39 owner’s manual, and warranty booklet shall be provided in both
 40 English and Spanish.

1 (e) (1) A request for or action seeking civil penalties under
2 subdivision (c) of Section 1794 of the Civil Code shall not be
3 allowed or maintained if both of the following conditions are
4 present:

5 (A) Within 30 days after receipt of the notice, the manufacturer
6 makes an offer of restitution or replacement of the motor vehicle
7 for the amount provided by subdivision (d) of Section 1793.2 of
8 the Civil Code and Section 871.27, plus reasonable attorneys' fees
9 and costs, if the consumer is represented by an attorney.

10 (B) The motor vehicle replacement or restitution is completed
11 within 60 days from the date of receipt of the original notice.

12 (2) The consumer shall comply in good faith with reasonable
13 requests from the manufacturer for documentation required to
14 complete the requested restitution or replacement of the motor
15 vehicle.

16 (f) A ~~pre-litigation~~ *prelitigation* dispute as to attorney's fees
17 and costs shall be resolved by neutral, binding arbitration. A dispute
18 as to the amount of attorney's fees and costs shall not, by itself,
19 be a sufficient basis to show that the manufacturer's offer is out
20 of compliance with this section.

21 (g) The consumer shall maintain possession of the motor vehicle
22 for at least 30 days after the manufacturer's receipt of written
23 notice seeking restitution or replacement.

24 (1) If the manufacturer does not offer restitution or replacement
25 of the motor vehicle within 30 days of receiving the consumer's
26 notice, the consumer shall be permitted to sell their motor vehicle
27 and seek remedies, including, but not limited to, civil penalties
28 under subdivision (c) of Section 1794 of the Civil Code.

29 (2) If the manufacturer offers restitution or replacement of the
30 motor vehicle, the consumer shall maintain possession of the motor
31 vehicle for the full 60 days after *the* manufacturer's receipt of the
32 consumer's notice.

33 (h) An action seeking restitution or replacement under Section
34 871.20 may be commenced without compliance with subdivision
35 (a). In that event, the consumer shall have possession of the motor
36 vehicle at the time of the filing of the complaint, and shall not seek
37 civil penalties, whether by amendment of the complaint or
38 otherwise. ~~If~~ *If*, however, notice is provided pursuant to subdivision
39 (a) and the manufacturer fails to comply with their obligations
40 under subdivision (e), the consumer may commence an action for

1 restitution or replacement, including, but not limited to, civil
2 penalties under subdivision (c) of Section 1794 of the Civil Code.

3 (i) A consumer shall act in good faith in order to comply with
4 this section.

5 (j) This section shall become operative on April 1, 2025.

6 871.25. A remedy in compliance with this chapter shall not be
7 contingent on the execution of any release other than the following
8 Standardized SBA Release:

9

10

Standardized SBA Release

11

12

Release as it relates to settlements:

13

14

The parties have previously agreed to settle the case as follows and hereby

15

memorialize all terms of their settlement as follows:

16

17

1. Within 60 days from the date of receipt of the notice requesting restitution
18 or replacement of the Subject Vehicle [Vehicle Year/Make/Model and VIN]
19 (hereinafter “Subject Vehicle”), [Manufacturer] (hereinafter “Defendant”) will
20 make the following payments:

21

22

a. Defendant shall pay the remaining loan balance or lease balance and residual
23 value on the Subject Vehicle directly to the lienholder [Lender Name] in the
24 amount necessary to relieve Plaintiff of all obligations related to Plaintiff’s
25 purchase or lease of the Subject Vehicle, excluding any late fees or penalties
26 in the amount of [Loan Payoff Amount]. Said payment shall include interest
27 through the date of payoff. This payment shall be expedited to the lienholder
28 following completion of the return of the Subject Vehicle to the manufacturer
29 or its agents.

30

31

b. Defendant shall pay to [Plaintiff’s Full Name] (hereinafter “Plaintiff”) a
32 total amount of [Restitution Amount] in a check payable to Plaintiff. This
33 payment shall be provided to Plaintiff at the time of the return of the Subject
34 Vehicle to the manufacturer or its agents. In the event Plaintiff makes an
35 additional payment that is not included in the above amount, Defendant shall
36 reimburse Plaintiff for any payments made according to proof, with the
37 exception of any late fees, within 30 days from the date proof of payment is
38 provided to Defendant.

39

1 c. [If applicable] Defendant shall pay civil penalties in the amount of [Civil
2 Penalties Amount] in a check payable to [Plaintiff, if not represented by counsel,
3 or Name of Law Firm/Attorney, if Plaintiff is represented by counsel]. This
4 payment shall be expedited following completion of the return of the Subject
5 Vehicle to the manufacturer or its agents.

6
7 d. Defendant shall pay to Plaintiff's counsel, if Plaintiff was represented by
8 counsel (select one option below):
9

10 (i) In the event there is an agreement as to attorney's fees and costs, a check
11 in the amount of [Attorney's Fees and Costs] payable to [Name of Law
12 Firm/Attorney] shall be provided to Plaintiff's counsel. This agreed upon
13 payment shall be expedited to the attorney following completion of the return
14 of the Subject Vehicle to the manufacturer or its agents.

15
16 (ii) In the event the matter is resolved before the filing of a lawsuit and the
17 parties cannot agree as to the amount of attorney's fees, costs, and expenses,
18 then reasonable attorneys' fees, costs, and expenses shall be determined by
19 neutral, binding arbitration.

20
21 (iii) In the event the matter is resolved after the filing of a lawsuit and the
22 parties cannot agree as to the amount of attorney's fees, costs, and expenses,
23 then reasonable attorneys' fees, costs, and expenses pursuant to subdivision
24 (d) of Section 1794 of the Civil Code shall be determined by the court by way
25 of a noticed motion. Defendant agrees Plaintiff is the prevailing party for
26 purposes of said fee motion.

27
28 2. Before transfer of the settlement funds set forth in Paragraph 1 above,
29 Plaintiff shall execute all documents necessary for the transfer of ownership
30 of the Subject Vehicle to Defendant or its designee.

31
32 3. The payments described above are intended as a compromise resolution of
33 [Plaintiff's Full Name] and [Defendant] with respect to all claims relating to
34 the purchase, lease, condition, use, or repair of the Subject Vehicle during
35 Plaintiff's purchase or possession of the Subject Vehicle. In signing this
36 agreement, Plaintiff hereby releases [Defendant] from all claims relating to
37 the purchase, lease, condition, use, or repair of the Subject Vehicle that arose
38 during Plaintiff's purchase or possession of the Subject Vehicle, including,
39 but not limited to, all claims under Sections 1793.2, 1793.22, and 1794 of the

1 Civil Code. All releases are to take effect once Plaintiff returns the Subject
2 Vehicle to Defendant.

3
4 4. [If the case has gone to litigation insert this Paragraph 4] The Parties to this
5 release agree that the court shall retain jurisdiction pursuant to Section 664.6
6 of the Code of Civil Procedure to enforce its terms. In the event of a breach
7 of this agreement, the prevailing party shall be entitled to recover reasonable
8 attorney’s fees and costs incurred in the enforcement of this agreement. Within
9 five business days of all of the above payments clearing, Plaintiff will file a
10 Request for Dismissal with prejudice of [Plaintiff(s) v Defendant(s); Case
11 Number/County] with the court.

12
13
14 _____
15 (signature of Plaintiff) (date)

16
17 _____
18 (signature of Defendant) (date)

19
20
21
22 871.26. (a) This section only applies to a civil action seeking
23 restitution or replacement of a motor vehicle pursuant to Section
24 871.20.

25 (b) Within 60 days after the filing of the ~~answer~~, *answer or*
26 *other responsive pleading*, all parties shall, without awaiting a
27 discovery request, provide to all other parties an initial disclosure
28 and documents pursuant to subdivisions (f), (g), and (h).

29 (c) Within 120 days after the filing of the ~~answer~~, *answer or*
30 *other responsive pleading*, all parties have the right to conduct
31 initial depositions, each not to exceed two hours, of the following
32 deponents:

- 33 (1) The plaintiff.
- 34 (2) The defendant, and if the defendant is not a natural person,
35 the person who is most qualified to testify on the defendant’s
36 behalf. This deposition shall be limited to the topics listed in
37 subdivision (i).

38 (d) Within 90 days after filing of the ~~answer~~, *answer or other*
39 *responsive pleading*, all parties shall schedule a mediation to occur

1 within 150 days after filing of the answer *or other responsive*
2 *pleading* with a court-appointed or private mediator.

3 (1) Costs shall be distributed equally, but costs may be
4 recoverable by the plaintiff as part of a settlement or judgment.

5 (2) The plaintiff and a person with settlement authority for the
6 manufacturer shall attend the mediation in person or by remote
7 means.

8 (e) Except as provided in subdivisions (b) and (c), all other
9 discovery shall be stayed until mediation is concluded. If the case
10 is not resolved at the conclusion of mediation, standard discovery
11 procedures prescribed in Title 4 (commencing with Section
12 2016.010) of Part 4 of the Code of Civil Procedures shall apply,
13 including an additional deposition of the plaintiff and the defendant
14 and, if the defendant is not a natural person, the person who is
15 most qualified to testify on the defendant's behalf.

16 (f) The plaintiff shall provide the following documents to all
17 other parties pursuant to the timeline set forth in subdivision (b):

18 (1) Sales or lease agreement.

19 (2) Copy of current registration.

20 (3) Any finance information, account information, including
21 payment history and estimated payoff ~~amount~~ *amount*, and any
22 loan modification agreements.

23 (4) Any repair orders, including to third-party repair facilities
24 or the location of where information relating to repair orders may
25 be found.

26 (5) Documents detailing all underlying claimed incidental
27 damages.

28 (6) Information pertaining to the market value of the motor
29 vehicle that is currently in the consumer's possession.

30 (7) Any written, pre-suit communications with the manufacturer,
31 including, but not limited to, any restitution or replacement request.

32 (g) The plaintiff shall provide the following information to all
33 other parties pursuant to the timelines set forth in subdivision (b):

34 (1) Mileage of the motor vehicle as of the date of the disclosure
35 described in subdivision (b).

36 (2) Primary driver or drivers of the motor vehicle.

37 (3) If the motor vehicle is primarily used for a business purpose,
38 whether more than five vehicles are registered to the business.

39 (4) Whether the plaintiff is still in possession of the motor
40 vehicle.

- 1 (5) Address where the motor vehicle is located.
- 2 (6) Whether the plaintiff is an active or prior member of the
3 ~~armed forces.~~ *Armed Forces*.
- 4 (7) Whether the motor vehicle has been involved in a collision
5 or accidents reported to insurance prior to the nonconformity, and
6 if so, the approximate date of the collision, the name of the
7 insurance company, and any applicable claim number.
- 8 (8) Whether the motor vehicle has any aftermarket modifications
9 done after purchase of the motor vehicle, and if so, a list of each
10 modification.
- 11 (9) Dates and mileages for presentations that are not included
12 in the provided repair orders or the location of where the
13 information may be found.
- 14 (10) Whether the plaintiff has had any pre-suit communications
15 with the manufacturer, including, but not limited to, any restitution
16 or replacement request.
- 17 (11) Any need for an interpreter for purposes of a deposition.
- 18 (h) The defendant or manufacturer shall provide the following
19 documents to all other parties pursuant to the timelines prescribed
20 in subdivision (b):
 - 21 (1) Copy of or access to a version of the owner's manual for a
22 motor vehicle of the same make, ~~model~~ *model*, and year.
 - 23 (2) Any warranties issued in conjunction with the sale of the
24 motor vehicle.
 - 25 (3) Sample brochures published for the motor vehicle.
 - 26 (4) ~~Motor~~ *The motor* vehicle's original invoice, if any, to the
27 selling dealer.
 - 28 (5) Sales or lease agreement, if the manufacturer is in possession.
 - 29 (6) Motor vehicle information reports, including build
30 documentation, component information, and delivery details.
 - 31 (7) Entire warranty transaction history for the motor vehicle.
 - 32 (8) Listing of required field actions applicable to the motor
33 vehicle.
 - 34 (9) Published technical service bulletins ("TSBs") for the same
35 make, ~~model~~ *model*, and year reasonably related to the
36 nonconformities pertaining to the motor vehicle.
 - 37 (10) Published information service bulletins ("ISBs") for the
38 same make, ~~model~~ *model*, and year reasonably related to the
39 nonconformities pertaining to the motor vehicle.

1 (11) Records relating to communications between the
2 manufacturer or dealership and the owner or lessee of the motor
3 vehicle, including those related to repair orders or claims involving
4 the motor vehicle.

5 (12) Warranty policies and procedure manuals.

6 (13) Service manuals reasonably related to the nonconformities
7 pertaining to the motor vehicle.

8 (14) If a pre-suit restitution or replacement request is made, all
9 call recordings of pre-suit communications with the consumer
10 available at the time of service of the complaint.

11 (15) If a pre-suit restitution or replacement request is made, the
12 manufacturer's written statement of policies and procedures used
13 to evaluate customer requests for restitution or replacement
14 pursuant to "Lemon Law" claims.

15 (16) If a pre-suit restitution or replacement request is made, any
16 ~~non-privileged, pre-litigation~~ *nonprivileged, prelitigation*
17 evaluation.

18 (17) Any warranty extensions or modifications issued by the
19 manufacturer on the motor vehicle.

20 (i) If the defendant is not a natural person, the initial deposition
21 of the person who is most qualified to testify on the defendant's
22 behalf shall be limited to the following topics:

23 (1) All warranties that accompanied the plaintiff's motor vehicle
24 at the time of purchase or lease.

25 (2) Questions relating to the nature and extent of the entire
26 service history, warranty history, and repairs relating to the motor
27 vehicle.

28 (3) Questions relating to recalls applicable to the motor vehicle.

29 (4) Questions relating to a reasonable number of Technical
30 Service Bulletins or Information Service Bulletins reasonably
31 related to the nonconformities pertaining to the motor vehicle.

32 (5) Questions relating to relevant diagnostic procedures
33 consulted and followed while diagnosing the plaintiff's concerns
34 for the motor vehicle.

35 (6) Questions relating to relevant repair procedures consulted
36 and followed during the repairs for the motor vehicle.

37 (7) Questions relating to relevant communications between the
38 plaintiff and defendant regarding the motor vehicle.

1 (8) Questions relating to relevant communications between the
2 defendant and any dealership or other third parties regarding the
3 motor vehicle.

4 (9) If a pre-suit restitution or replacement request was made,
5 questions relating to why the defendant did not replace the motor
6 vehicle or provide restitution.

7 (10) If a pre-suit restitution or replacement request was made,
8 any ~~non-privileged~~ *nonprivileged* evaluation prepared by *the*
9 manufacturer.

10 (11) If a pre-suit restitution or replacement request was made,
11 the manufacturer's policies and procedures regarding the restitution
12 or replacement of vehicles in response to a consumer's request for
13 restitution or replacement under the Song-Beverly Consumer
14 Warranty Act, in effect from *the* date of the notice of the
15 consumer's request for restitution or replacement of the vehicle
16 to the present, and any changes thereto.

17 (j) Unless the party failing to comply with this section shows
18 good cause, notwithstanding any other law and in addition to any
19 other sanctions imposed pursuant to this chapter, a court shall
20 impose sanctions as follows:

21 (1) A one-thousand-five-hundred-dollar (\$1,500) sanction
22 against the plaintiff's attorney or two-thousand-five-hundred-dollar
23 (\$2,500) sanction against the defense attorney respectively, paid
24 within 15 business days for failure to comply with the document
25 production requirements as prescribed in subdivision (b).

26 (2) A one-thousand-five-hundred-dollar (\$1,500) sanction
27 against the plaintiff's attorney or two-thousand-five-hundred-dollar
28 (\$2,500) sanction against the defense attorney respectively, paid
29 within 15 business days for failure to comply with the provisions
30 relating to depositions as prescribed in subdivision (c).

31 (3) For a plaintiff's repeated noncompliance with ~~subdivisions~~
32 *subdivision* (b), (c), or (d), a court shall order the case dismissed
33 without prejudice and the plaintiff's attorney to be responsible for
34 costs awarded to *the* manufacturer.

35 (4) For a manufacturer's or defendant's repeated noncompliance
36 with ~~subdivisions~~ *subdivision* (b), (c), or (d), a court shall order
37 that evidentiary sanctions attach precluding the manufacturer or
38 defendant from introducing evidence at trial regarding whether
39 the motor vehicle had a nonconformity that substantially impaired
40 the use, ~~value~~ *value*, or safety of the motor vehicle, or whether the

1 motor vehicle was repaired to match the written warranty after a
2 reasonable number of opportunities to do so.

3 (5) Notwithstanding paragraph (3) of subdivision (o) of Section
4 6068 of the Business and Professions Code, the court may, in its
5 discretion, require an attorney who is sanctioned pursuant to this
6 subdivision to report the sanction, in writing, to the State Bar of
7 California within 30 days of the imposition of the sanction.

8 (k) This section does not apply to a party who is not represented
9 by counsel.

10 (l) In addition to the requirements prescribed by subdivision
11 (a), this section only applies to a civil action filed on or after
12 January 1, 2025.

13 871.27. (a) This section only applies to a civil action seeking
14 restitution or replacement of a motor vehicle pursuant to Section
15 871.20.

16 (b) The defendant is entitled to an offset in the calculation of
17 the actual price paid or payable for optional equipment, service
18 contracts, or GAP financing purchased by the plaintiff during the
19 motor vehicle purchase or lease transaction from third parties,
20 except for optional purchases for dealer-supplied equipment or
21 services.

22 (1) Optional equipment and accessories, theft-deterrent devices,
23 surface-protection products, service contracts, extended warranties,
24 debt-cancellation agreements, and guaranteed asset protection
25 ("GAP") financing supplied by a third party that is not the selling
26 or leasing dealership or an authorized retail facility for the original
27 equipment manufacturer are not recoverable as damages pursuant
28 to this section.

29 (2) Optional equipment and accessories, theft-deterrent devices,
30 surface-protection products, service contracts, extended warranties,
31 debt-cancellation agreements, and GAP financing, if any of the
32 foregoing constitute dealer additions supplied by the selling or
33 leasing dealership or an authorized retail facility for the
34 manufacturer, are recoverable as damages and do not qualify for
35 the offset prescribed by this section.

36 (c) The defendant is entitled to an offset for negative equity
37 incorporated in the transaction from prior vehicles.

38 (d) ~~Non-cash~~ *Noncash* credits provided by the manufacturer as
39 a form of down-payment assistance, typically referred to as a
40 manufacturer's rebate, shall not be included in the calculation of

1 the actual price paid or payable and shall not be used to reduce the
2 amount of any negative equity offset.

3 (e) For leases, damages and civil penalties shall be calculated
4 as follows:

5 (1) Amounts paid or payable by the consumer under an existing
6 agreement to extend a lease term shall be allowable as damages.

7 (2) Amounts paid by the consumer for the residual value shall
8 be allowable as damages. If the consumer has obtained financing
9 to pay the residual value, the defendant shall pay the remaining
10 residual value on the motor vehicle directly to the lienholder in
11 the amount necessary to obtain title.

12 (3) Amounts paid or payable by the consumer to extend a lease
13 term shall be included in civil penalty calculations if paid for or
14 the lease extension is activated by the consumer no later than 30
15 days after delivering pre-suit notice or filing a lawsuit, whichever
16 is earlier.

17 (4) Amounts paid by the consumer for the residual value shall
18 only be included in civil penalty calculations if paid for or financed
19 by the consumer no later than 30 days after delivering pre-suit
20 notice or filing a lawsuit, whichever is earlier.

21 (5) The residual value shall not be included in civil penalty
22 calculations if not paid or financed by the consumer.

23 (f) The defendant shall not be responsible for payment of unpaid
24 interest or unpaid financing costs associated with the retail
25 installment sales contract that will not be owed or paid by the
26 consumer when the lien is paid off.

27 (g) The restitution payment and vehicle return procedures shall
28 comply with all of the following conditions:

29 (1) A remedy in compliance with this section shall not be
30 contingent on the execution of any release other than the
31 Standardized SBA Release provided in Section 871.25.

32 (2) The defendant shall promptly process any agreed-upon motor
33 vehicle restitution or replacement pursuant to this section and
34 complete the restitution or replacement within 30 days from the
35 date of receipt of a signed release from the buyer or lessee's
36 counsel. The defendant's failure to do so shall result in a mandatory
37 penalty of fifty dollars (\$50) per day until the settlement is
38 completed, unless the parties stipulate otherwise. The consumer
39 shall comply in good faith with requests from the manufacturer
40 for reasonable documentation required to complete the requested

1 restitution or replacement of the motor vehicle. In the event the
2 consumer fails to comply in good faith and delays the restitution
3 or replacement, the manufacturer shall not be subject to the daily
4 fifty-dollar (\$50) penalty.

5 (3) The defendant shall provide the consumer with the funds
6 containing their restitution proceeds at the time of the vehicle
7 return. The defendant shall also expedite the funds for the payoff
8 of the vehicle within one business day of the vehicle return. The
9 defendant shall expedite the funds for attorney's fees, and if
10 applicable, civil penalties to counsel for the consumer within one
11 business day of the vehicle return.

12 871.28. The duties and obligations imposed by this chapter are
13 cumulative with duties or obligations imposed under any other
14 law and shall not be construed to relieve any party from any duties
15 or obligations imposed under any other law.