

PARTIES/ATTORNEYS

Plaintiff	Emilia Ramirez	Kevin Y. Jacobson
Defendant	Volkswagen Group of America Inc	Gohar Tahmizian

PROPOSED TENTATIVE

On July 30, 2024, Emilia Ramirez (plaintiff) filed a complaint against Volkswagen Group of America, Inc. (defendant), alleging three violations of the Song Beverly Consumer Warranty Act (Song Beverly Act), based on a June 13, 2021, sale of new 2021 Volkswagen Tiguan. The lawsuit arose out of warranty and repair obligations in connection with the vehicle. Defendant answered on September 3, 2024. On November 7, 2024, plaintiff filed a “Notice of Settlement of Entire Case[,]” indicating a “Conditional Settlement had been reached between the parties, and that a request for dismissal would be requested no later than February 4, 2025. No judgment has been entered, and no voluntary dismissal has been filed.

On December 4, 2025, plaintiff filed a “Memorandum of Costs” as the prevailing party, requesting costs of \$658.25 (\$450.75 for filing and motion fees, \$179 for service of process, and \$28.50 for electronic filing or service fees.) These requests were supported by explanations and invoices. The “Memorandum of Costs” was served on defendant on December 4, 2025, electronically.

On December 23, 2025, defendant filed a motion to strike these costs. Defendant claims that plaintiff is not entitled to statutory costs of \$658.25, pursuant to Code of Civil Procedure sections 1032 and 1033.5 or Civil Code section 1794, subdivision (d), because, while the prevailing party, pursuant to the settlement agreement, plaintiff contractually waived and/or forfeited the right to statutory costs. Pursuant to the settlement agreement, defendant agreed to settle for \$40,289,91. Additionally, the parties agreed that defendant “will pay Plaintiff’s attorney fees and litigation costs in this action as follows: a) No later than 90 days after Plaintiff accepts this Offer to Compromise, Plaintiff will file a noticed motion pursuant to [] Civil Code [section] 1794 (d) for payment of the aggregate amount of Plaintiff’s costs and expenses – including Plaintiff’s attorney fees based on actual time expended – determined by the Court to have been reasonably incurred in connection with the commencement and prosecution of this action; ***or at Plaintiff’s option*** b) If Plaintiff does not file a noticed motion pursuant to [] Civil Code, § 1794(d) within 90 days after Plaintiff accepts this Offer to Compromise, pay Plaintiff the amount of \$5,000 as payment in full for the aggregate amount of Plaintiff’s attorney fees and litigation costs incurred in connection with the commencement and prosecution of this action . . .” (Emphasis added.)

Plaintiff expressly accepted the offer to compromise in full pursuant to Code of Civil Procedures section 998 on November 5, 2024. Therefore, according to the settlement, plaintiff had 90 days to file a motion for expenses and costs pursuant to Civil Code section 1794, subdivision (d), under the Song Beverly Act. No motion was filed. According to defendant (and specifically the declaration of defense attorney Erin Tallent), defendant sent to plaintiff's counsel a \$5,000 payment for costs, expenses, and attorney's fees, per the November 5, 2024 settlement agreement. On February 13, 2025, plaintiff's counsel sent an email response to defense counsel indicating plaintiff would not "accept the wire transfer . . ." No reason was given. According to defense counsel, plaintiff's counsel has never returned the money, and still retains possession of the payment. Over nine (9) months later, plaintiff filed the "Memorandum of Costs" for \$658.25. Defendant contends that the "Memorandum of Costs" must be stricken because the "Offer to Compromise" was valid; it details the required performance of each party; plaintiff failed to file a statutory request for costs and expenses pursuant to Civil Code section 1794, subdivision (d); and thus waived/forfeited any right to do so, meaning plaintiff is contractually obligated to accept the \$5,000 as outlined in the settlement agreement.

Plaintiff in opposition disagrees. Plaintiff does not dispute the factual recitations outlined by defendant but claims she "timely" rejected the \$5,000 in a February 13, 2025, email. Distilled to its essence, plaintiff seems to claim that defendant's offer impermissibly "contains a provision that potentially restricts the timeframe in which Plaintiff may file a motion for [costs and expenses and] attorney's fees, contrary to Civil Code [section] 1794(d)" Plaintiff argues, so it appears, that the waiver is unenforceable as a matter of public policy, given the pro-consumer provisions of the Song-Beverly Act. "Because the fee provision [in the contract] directly conflicts with the mandatory nature of section 1794 (d), it is unlawful and unenforceable." Plaintiff goes further – claiming the \$5,000 "fee cap" is an "unconscionable penalty clause" contrary to the mandatory, pro-consumer provisions of the Song-Beverly Act; and the offer "does not contain an express waiver," it cannot override the default costs and expense provisions of Civil Code section 1794 (d). Defendant filed a reply on March 18, 2026. All briefing has been examined.

The court finds the motion to strike was timely filed, as the time to file the motion to strike was extended by two *court* days pursuant to Code of Civil Procedure section 1010.6, subdivision (b)(3).

It is unquestionably true that Civil Code section 1794, subdivision (d) (as part of the Song Beverly Act) provides that if a buyer prevails, "the buyer shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on the actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such

action.” And it is undisputed that the buyer here was the prevailing party, implicating the import of Civil Code section 1794, subdivision (d).

That being said, case law has discussed the interaction between a contractual waiver as part of a settlement and its impact on the mandatory nature of costs for the prevailing party pursuant to Code of Civil Procedure section 1033.5, a statute similar (but not identical) in scope to Civil Code section 1794, subdivision (d), which applies specifically in the context of the Song Beverly Act. As one appellate court has recently concluded, while “section 1032 (b) creates a general right for prevailing parties in civil cases to recover certain specified litigation costs,” nothing in the statute “prevents [] parties from waiving that right, either before or after commencement of litigation. . . .” (*Gogal v. Deng* (2025) 112 Cal.App.5th 1193, 1202.)¹ “In particular, consistent with the principles of Civil Code section 3513,^[2] there is no basis to infer that enforcing such a waiver will ‘seriously compromise any public purpose’ section 1032 (b) was meant to serve.” This seems to be the general view of the California Supreme Court. (*DeSaulles v. Community Hospital of Monterey Peninsula* (2016) 62 Cal.4th 1140, 1147 [Code Civ. Proc., § 1032 is only a default rule; when the parties settle a case, they are free to allocate costs in any manner they see fit, although they must do so in language specifically addressing such allocation].) There is no reason for the court to determine that a party cannot waive the right to costs and expenses under a settlement agreement, as would be true pursuant to Code of Civil Procedure section 1032 (b) and progeny.

This point is ultimately bolstered by case law interpreting the impact of Civil Code section 1790.1, known as the “antiwaiver” provision associated with the Song Beverly Act, following a settlement.³ Civil Code section 1790.1 provides that “[a]ny waiver by the buyer of consumer goods of the provisions of this chapter, except as expressly provided in this chapter, shall be deemed contrary to public policy and shall be unenforceable and void.” The court in *Rheinhardt v. Nissan North American Inc.* (2023) 92 Cal.App.5th 1016, explored the impact of this provision on a release executed as part of a “prelitigation settlement” between plaintiff and defendants over issues that had arisen with plaintiff’s leased Nissan vehicle. After plaintiff

¹ This same observation has import with regard to Civil Code section 1794, subdivision (d), as nothing in that provision precludes the parties from negotiating their own costs and expenses. What has been determined in the context of Code of Civil Procedure section 1032, subdivision (b) would seem to apply equally well in the context of Civil Code section 1794, subdivision (d), barring impact (as discussed further in the body of this order) of the “antiwaiver” provision outlined in Civil Code section 1790.1.

² This provision provides in relevant part as follows: “Any one may waive the advantage of a law intended solely for their benefit. But a law established for a public reason cannot be contravened by a private agreement.”

³ Plaintiff does not cite to Civil Code section 1790.1, factor into its analysis the import of this provision, or discuss any cases exploring its impact on Civil Code section 1794, subdivision (d). The court will nevertheless explore the impact of the provision, and cases interpreting it, as those cases appear relevant in resolving the merits of the motion to strike.

entered into the settlement agreement and release, he filed a lawsuit alleging violations of the Song-Beverly Act, seeking statutory remedies. Defendants filed a summary judgment motion on the grounds the settlement agreement and release extinguished his claims. The trial court granted the motion. The appellate court reversed, concluding the settlement and release violated the antiwaiver provision of Civil Code section 1790.1.

The *Rheinhart* court conditioned its conclusion as follows: “[W]e do not interpret the [Song-Beverly Act’s] antiwaiver provision to categorically prohibit all settlement agreements.” Quite the contrary, in fact. “We emphasize that our holding is not that [Civil Code] section 1790.1 precludes settlement and releases of claims under [the Song Beverly Act]. **To be sure, there are many instances where parties have settled disputes over a claimed breach of the Act.** (See *Madrigal v. Hyundai Motor America* (2023) 90 Cal.App.5th 385 [] [stipulated settlement on first day of trial].) In this respect, we do not disagree with the observations of *McLaren Automotive Inc. v. Shaoo* (C.D. Cal., June 1, 2021, No. 2:19-cv-06966-FLA (JCx)) 2021 WL 4707001, that a buyer is not precluded from agreeing to settle his claim for a lesser amount than the full purchase price of the vehicle (*id.* at p. *10) and *In re Volkswagen “Clean Diesel” Marketing, Sales Practices, and Product Liability Litigation* (N.D. Cal., Sept. 8, 2020, No. 2672 CRB (JSC)) 2020 WL 5371404, which generally declined to apply section 1790.1 to settlements or else “no settlement releasing any Song-Beverly Act . . . claim would be enforceable.” (*Id.* at p. *6.)” (*Rheinhart, supra*, 92 Cal.App.5th at p. 1036.) It nevertheless found that “under the circumstances of this case the settlement agreement and release contravenes Rheinart’s substantive rights under the [Song Beverly Act] and is void and unenforceable as against public policy,” reversing the summary judgment determination.

What were those circumstances? The *Rheinhart* court noted that Rheinart’s “right to remedies under the [Song-Beverly Act] are substantive rights that the Legislature declared as unwaivable. Given the nature of those rights, Nissan’s summary judgment burden was not just to establish the existence of the Release and its validity, but to show that enforcing the Release would ‘not diminish in any way [Rheinart’s] substantive rights afforded . . . under California law. [Citation omitted.] Applying this standard gives effect to the Act’s manifestly remedial and consumer protection purposes.” (*Rheinhart, supra*, at p. 1035.) “Under the principles discussed above, and the factual circumstances of this case, Nissan cannot meet this burden. [Fn. Omitted.]” It should be remembered that the release at issue was developed, presented, and signed prelitigation. Further, the court indicated it was undisputed that Rheinart presented the defect issues to Nissan on three occasions, and that thereafter “Nissan agreed to pay him \$3,548.40 in compromise.” The court went on to observe there was no evidence “that before Nissan presented Rheinart with the settlement agreement that it advised him of the [Song Beverly Act’s] replacement or restitution remedies, or the fact Nissan had an affirmative obligation to offer those remedies once it engaged in a reasonable number of repair efforts. There is no indication that Nissan’s \$3,548.40 settlement payment endeavored to approximate the vehicle’s purchase price, or some other sum owed under the Act for reimbursement. There is

no evidence otherwise that Rheinart, who was unrepresented by counsel, was aware of his rights under the Act or its antiwaiver provision. He did not expressly waive his rights under the Act. The circumstances suggest unequal bargaining strength between a consumer unaware of his rights and manufacturer seeking to circumvent its statutory obligations.” The release was therefore void. (*Id.* at p. 1036.)

As noted, the *Rheinart* court distinguished these facts from those present in two federal district court cases it cited favorably (i.e., where the waivers were found to survive the antiwaiver provision of Civil Code section 1790.1). In *McLaren Automotive, Inc.*, for example, the court observed that while Civil Code section 1790.1 “protects a buyer from waiving provisions of the Song-Beverly Act, **it does not preclude a buyer from agreeing to settle his claim for a lesser amount than the full purchase price of the vehicle. Having agreed to return the vehicle in a certain condition and dismiss his Song-Beverly Act claims in exchange for a sum certain as settlement payment, Defendant cannot now disclaim his obligations under the Settlement Agreement while retaining the settlement.**” (*McLaren Automotive Inc. v. Shaoo* (C.D. Cal., June 1, 2021, No. 219CV06966FLAJCX) 2021 WL 4707001, at *10. Emphasis added.)

Perhaps more telling are the observations made in *In re Volkswagen “Clean Diesel” Marketing, Sales Practices, and Product Liability Litigation* (N.D.Cal., Sept. 8, 2020, No. 2672 CRB (JSC)) 2020 WL 5371404. As relevant for our purposes, plaintiffs agreed in their settlement to give up or waive post-offer fees, to which they were otherwise entitled. According to the federal district court: “Plaintiffs try to escape the terms of their bargain by arguing that California law invalidates their agreement to give up post-offer fees . . . They rely on provisions of the Song-Beverly Act (and others) stating that ‘[a]ny waiver by a consumer of the provisions of this title is contrary to public policy and shall be unenforceable[.]’” citing to (inter alia) Civil Code section 1790.1. **“This argument proves too much.** The provisions Plaintiffs cite are not limited to waivers of the right to attorney’s fees – they apply to waivers of any right under the Song-Beverly Act . . . **If Plaintiffs are correct that these provisions apply to settlement, then no settlement releasing any Song Beverly Act . . . claim would be enforceable.** Presumably that is not the case, and these provisions apply only to waivers agreed to before a consumer’s case arises (such as when they buy the product) [citation], **not releases negotiated to end the litigation.** Indeed, that is the conclusion reached by every court to have addressed this argument [Citation.]” (*Id.* at p. 6. Emphasis added.)

Nothing here implicates the circumstances in and unfairness confronted by *Rheinart*. *Rheinart* involved a pretrial litigation release, presented by the manufacturer directly to the consumer, who was not represented by counsel, during which defendant did not inform plaintiff about his substantive rights under the Song Beverly Act. The facts at issue in this matter are far closer to *McLaren Automotive Inc. v. Shaoo* and *In re Volkswagen “Clean Diesel” Marketing, Sales Practices, and Product Liability Litigation*, as this case involves an end of litigation waiver negotiated through counsel. Plaintiff here (as the plaintiff did in *McLaren*) attempts to disclaim

his obligations under the settlement agreement to costs and expenses while retaining the full settlement amount. And as plaintiff tried in *In re Volkswagen “Clean Diesel” Marketing, Sales Practices, and Product Liability Litigation*, plaintiff here wants to escape the terms of the settlement agreement by arguing its terms are unenforceable under the same rationale as the antiwaiver provision, which (as noted by the federal district court) applies only to waivers “agreed to before a consumer’s case arises,” not releases negotiated to end the litigation. Plaintiff’s counsel here could have pursued a statutory motion for costs and expenses within 90 days of the settlement, but did not, meaning as a contractual matter they were relying on the default provision involving the \$5,000 payment as an alternative.⁴ The amount is not unconscionable on its face.

Plaintiff’s arguments cannot survive their own inconsistencies. Plaintiff is in reality cherry picking which provisions of the settlement provision he wishes to enforce, and those he does not. Yet the scope of the argument offered – albeit aligned unintentionally with the import of the antiwaiver provision – would go to all items reached in a settlement agreement in the Song Beverly Act context (including plaintiff’s ability to settle for a lesser amount). It follows that plaintiff cannot challenge his decision to accept \$5,000 for costs, expenses, and attorney fees, for the same reason he cannot challenge the overall settlement amount. The court finds *McLaren* and *In re Volkswagen*, as recognized and acknowledged by *Rheinhardt*, to be persuasive in the present context. Plaintiff, having signed the settlement agreement that ended the litigation, is “hoist[ed] with [plaintiff’s] own petard.”⁵

For all of these reasons, the court grants defendant’s motion to strike the “Memorandum of Costs[,]” as plaintiff contractually waived and/or forfeited the right to seek statutory costs and expenses under Civil Code section 1794, subdivision (d) via the settlement agreement. Under the circumstances, plaintiff is entitled to no more than \$5,000.

In one final exhalation, plaintiff asks the court to grant relief pursuant to Code of Civil Procedure section 473, subdivision (b), which provides in relevant part that a court may, upon any terms as may be just, relieve a party or his or her legal representative from a “judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake,

⁴ Plaintiff in opposition seems to challenge the 90 days contemplated by the settlement agreement for filing a motion pursuant to Civil Code section 1794, subdivision (d). The thrust of this argument appears to be that the settlement agreement overrides the timing provisions of California Rules of Court, rules 3.1700 [costs] and 3.1702 [attorney fees]. Plaintiff’s argument is unpersuasive. Plaintiff by settlement agreed plaintiff had a choice – to submit a statutory motion pursuant to Civil Code section 1794, subdivision (d) within 90 days of the date of the settlement, or not. Plaintiff chose not to file one within the time frame contemplated by the settlement, waiting instead until December 4, 2025, to file “Memorandum of Costs.” Plaintiff’s argument, focusing on California Rules of Court, rule 3.1700, et seq., in the end follows the same trajectory as the arguments considered and rejected in *McClaren* and *In re Volkswagen*.

⁵ William Shakespeare, *Hamlet*, Act 3, Scene 4.

inadvertence, surprise, or excusable neglect.” Even if the court could find that it had the authority to grant relief from “judgments, dismissals, *or stipulations voluntarily entered into pursuant to a voluntary agreement*” based on mistake, inadvertence, or the like (*Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 259, 255), the moving party has six months generally from the dismissal or (in this case), six months from the conditional settlement that was entered on November 7, 2024, to seek relief. This six-month time limitation is jurisdictional, and the court has no power to grant relief once the six-month time frame has lapsed. (*Austin v. Los Angeles Unified School District* (2016) 244 Cal.App.4th 918, 928.) The six months clearly has elapsed from the date the conditional settlement was filed. Further, and even assuming that is not true, plaintiff has failed to show diligence in seeking relief here, waiting more than year after the settlement to request relief. Plaintiff was patently dilatory in waiting to request relief here. (*Arega v. Bay Area Rapid Transit Dist.* (2022) 83 Cal.App.5th 308, 316 [moving party must establish motion was made in “reasonable time” within six-month limit, which “depends on the circumstances of each case ‘but definitively requires a showing of diligence in making the motion’].)

The motion for relief pursuant to Code of Civil Procedure section 473, subdivision (b) is also denied.

Summary:

The court grants defendant’s motion to strike the “Memorandum of Costs.” The court denies plaintiff’s request for relief pursuant to Code of Civil Procedure section 473, subdivision (b). Plaintiff has contractually agreed via settlement to costs, expenses, and fees of no more than \$5,000. Defendant is directed to provide a proposed order for signature. Plaintiff is directed to explain at the hearing why plaintiff has not filed a voluntary dismissed as required in the Conditional Settlement filed with the court, and thus why the court should not order plaintiff to file a voluntary dismissal. The court directs the parties to discuss whether the \$5,000 transfer made on February 7, 2025, remains valid, and if not, whether a new transfer or check need be issued.