



CIVIL JUSTICE
ASSOCIATION OF CALIFORNIA

April 17, 2020

Hon. Frances Rothschild, Presiding Justice
California Court of Appeal
Second Appellate District, Div. One
Ronald Reagan State Building
300 S. Spring Street
2nd Floor, North Tower
Los Angeles, CA 90013

Re: Request to Publish Opinion in *Lorik Mikhaeilpoor v. BMW of North America, LLC, et al.*, B293987 (filed April 1, 2020).

Dear Presiding Justice Rothschild and
Associate Justices:

The Civil Justice Association of California (CJAC) requests publication of the above-referenced opinion because it “advances . . . clarification of a . . . statute” involving a “legal issue of continuing public interest”¹—namely, the appropriate balancing of factors and consideration of circumstances for determining a reasonable award of attorney fees under the Song-Beverly Act (Civ. Code § 1790 et seq.).

CJAC is a 40-year old nonprofit organization that represents businesses, professional associations, and financial institutions. Our mission is to educate the public about ways to make the civil justice system more fair, efficient, economical, and certain. Toward this end, CJAC participates as *amicus curiae* in cases concerning who pays, how much and to whom when the conduct of some is claimed to occasion injury to others.² The opinion here comports with CJAC’s objectives and will assist courts and counsel if published.

¹ California Rules of Court 8.1105(c) and 8.1120.

² See, e.g., *Southern California Gas Leak Cases* (2019) 7 Cal.5th 391; *King v. CompPartners* (2018) 5 Cal.5th 1039.

A computer search shows 23 opinions issued over the past 27 years³ that discuss reasonable attorney fee awards pursuant to the Song-Beverly Act. Only 14 of these are published and citable, of which four are from the Second District Court of Appeal, one from the Third, and eight from the Fourth. The remaining one, *Murillo v. Fleetwood Enterprises, Inc.* (1998) 17 Cal.4th 985, was discussed in this opinion, but is largely confined to the right of *sellers* as well as buyers to recover costs, including expert witness fees under the Song-Beverly Act. Notably, none of these published opinions provide as comprehensive an analysis and discussion of factors to be properly considered by a trial court, as well as an appellate court, in making and reviewing a court-ordered attorney fee award as does your opinion.

Most importantly, the opinion cites to, applies and distinguishes numerous published opinions that discuss court-ordered attorney fees in contexts arguably analogous or comparable to the Song-Beverly Act, thus providing courts and counsel practical future guidance. It teaches that fee awards should be based on the “complexity” and “uniqueness” of the issues, the amount of necessary discovery and expert witnesses involved, and the “efficiency” of the attorneys in litigating the case.

Specifically, the opinion clarifies that a reduction in fees claimed is justified when they are based on “dual billing [by] attorneys when the work of only one (at times) [is] reasonably required and trial counsel spen[ds] time on tasks that should not have required anything more than a slight factual modification to an existing boilerplate.” Slip Opinion, p. 10-11. Moreover, the opinion explains that federal court opinions on attorney fee awards are distinguishable in requiring, unlike California, that trial courts state “each charge they find to be reasonable or unreasonable, necessary or unnecessary;” and that the trial court is “not required to issue a statement of decision with regard to the fee award.” *Id.* at 12. Further, your opinion emphasizes that “given the court’s clear expression in its final order of its reasons for the reductions [from the claimed award], we will not speculate, based on a stray remark the court made at the hearing, that it had other, prohibited reasons that would require reversal.” *Id.* at 16.

³ Westlaw search request: [“song-beverly” “song beverly” “lemon law” /25 “attorney fees” /15 reason!]. A search with the parameters of [“song-beverly” “song beverly” “lemon law”] shows 180 published opinions.

John Wooden stressed the importance of “repetition” to the process of “learning” when he converts the “four laws of learning” to “seven”: “explanation, demonstration, imitation and *repetition, repetition, repetition and repetition.*” Wooden, *WOODEN* (1997) p. 144; italics added. Unfortunately, an unpublished opinion cannot be cited, so neither can it be repeated nor learned by those who would most benefit from its publication: courts and counsel. Accordingly, for this reason and those aforementioned, CJAC asks the court to publish its most instructive opinion and promote the learning process.

Respectfully submitted,

/s/ Fred J. Hiestand
Fred J. Hiestand
CJAC General Counsel

Proof of service attached

