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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO

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JUDICIAL COUNCIL COORDINATION Department Number: 32  
PROCEEDING

Special Title (Rule 1550(b)) Case Number: JCCP NOS  
BRIDGESTONE/FIRESTONE TIRE 4266 & 4270  
CASES I & II

**RULING ON SUBMITTED MATTER:**

Included Actions:  
  
Katz v. Bridgestone/Firestone,  
Inc.  
Los Angeles County Superior  
Court No. BC279457

**FORD MOTOR COMPANY'S MOTION  
FOR A FINDING THAT PLAINTIFFS'  
CONSUMERS LEGAL REMEDIES ACT  
CLAIMS HAVE NO MERIT**

Tompkins v. Bridgestone/  
Firestone, Inc.  
Sacramento County Superior  
Court No. 03AS03901

Katz v. Motor Company  
Los Angeles County Superior  
Court No.  
BC279458

Gray v. Ford Motor Co.  
Sacramento Superior Court No.  
03AS04782

Montoya v. Ford Motor Company  
Sacramento Superior Court No.  
03AS05213

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On March 12, 2007, 9:00 a.m. in department 32, the above-entitled matter came on for hearing and after having considered the oral arguments of counsel, the moving, opposing and reply papers and the points and authorities and declarations filed by each party in support of their papers, the court took the matter under submission. The Court now rules as follows:

Defendant's motion is **denied**.

Defendant contends the CLRA claims are without merit because:

(1) Ford made no affirmative misrepresentation;

(2) The information that plaintiffs claim Ford should have disclosed would not be relied upon by a reasonable consumer and was not material:

(3) The CLRA claims asserted by class members who have not sold their vehicles have no merit because these class members have not suffered any actual damages.

(4) The CLRA claims for class members who purchased their vehicles used have no merit because these class members have suffered no actual damages.

Although a CLRA cause of action cannot be summarily disposed of by means of a motion for summary adjudication or summary judgment (Civ. Code, § 1781, subd. (c)), it can be dismissed before trial on a motion for a determination that it is without merit (i.e., a no-merit determination). (Civ.

1 Code, § 1781, subd. (c)(3); *Olsen v. Breeze, Inc.* (1996) 48  
2 Cal.App.4th 608, 624.) In practice, courts nevertheless  
3 have applied the standards applicable to motions for summary  
4 judgment and summary adjudication in deciding motions for  
5 no-merit determinations. (*Consumer Advocates v. Echostar*  
6 *Satellite Corp.* (2003) 113 Cal.App.4th 1351.)

7 (1) Defendant seeks a no-merit determination on the ground  
8 the CLRA requires an affirmative misrepresentation and  
9 plaintiff has no evidence that defendant made any such  
10 affirmative representation.

11 The party moving for summary judgment bears the initial  
12 burden of production to make a prima facie showing of the  
13 nonexistence of any triable issue of material fact. If this  
14 burden is met, the burden shifts, and the opposing party is  
15 then subjected to a burden of production of his own to make  
16 a prima facie showing of the existence of a triable issue of  
17 material fact. (*Smith v. Wells Fargo Bank, N.A.*, (2005) 135  
18 Cal. App. 4th 1463) This rule applies equally to a CLRA no-  
19 merit motion.  
20

21 Defendant produced selective evidence on this issue  
22 based on its characterization of plaintiffs' claims. In  
23 opposing the motion, plaintiffs assumed defendant had met  
24 its burden of showing the non-existence of a triable issue  
25 of material fact. The Court adopts the same assumption.

26 In opposition, plaintiffs have produced evidence in the  
27 form of sales brochures with statements such as "safety is a  
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1 major concern for you and it's a high priority for us" and  
2 the October 22-23, 2001 deposition testimony of Douglas  
3 Scott (at pages 66-70 and 92-96) that defendant created a  
4 brand image as a "go anywhere, do anything" vehicle that  
5 catered to customers' deep seated needs for safety and  
6 security. (See Opposition to Defendant's Separate Statement  
7 facts 4-6 and evidence in support.)

8 Plaintiffs have also produced evidence that Ford's  
9 brand imaging and advertisements were intended to cause, and  
10 allegedly did cause, California consumers to purchase and  
11 lease Ford explorers. (Plaintiffs' Disputed and Undisputed  
12 material facts, #33 (Scott deposition 36-39, 147-148.) Ford  
13 consistently emphasized a uniform "Go anywhere, Do anything"  
14 brand position theme. (Plaintiffs' Disputed and Undisputed  
15 Material Facts, #35 (Scott deposition 66-67, 92-96.) Ford's  
16 advertisements portrayed the Explorer as a vehicle for  
17 family use. (Plaintiffs' Disputed and Undisputed Material  
18 Facts, #36 (Holt opinion at pages 2, 4.) Ford's  
19 advertisements portrayed the Explorer as a vehicle that was  
20 safe and handled well. (Plaintiffs' Disputed and Undisputed  
21 Material Facts #s 37 and 38 (Holt opinion, Kamins opinion,  
22 Scott deposition 92-93 and print ads exhibits 107, 112, 115,  
23 116, 118, 120 and 121.) Ford's advertisements portrayed the  
24 Explorer as a vehicle that was rugged using the Ford Tough  
25 logo. (Plaintiffs' Disputed and Undisputed Material Facts  
26 #39 (Scott deposition 69-70, Holt opinion.) Ford's  
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1 advertising was intended to create a perception of safety.  
2 (Plaintiffs' Disputed and Undisputed Material Facts #40  
3 (Scott deposition 66-67, 92-96, Kamins opinion.) Ford  
4 failed to disclose material facts about the Explorer's  
5 rollover propensity. (Plaintiffs' Disputed and Undisputed  
6 Material Facts #42 (Hilsee deposition at 133-13.) Ford  
7 could have provided information to buyers and lessees  
8 regarding this propensity. (Plaintiffs' Disputed and  
9 Undisputed Material Facts #44 (Hilsee deposition).

10 The evidence is sufficient to permit an inference that  
11 actionable misrepresentations were made. The CLRA  
12 encompasses implied as well as express false  
13 representations. (See e.g. *Boeken v. Philip Morris* (2005)  
14 127 Cal.App.4th 1640, 1662) The evidence is sufficient to  
15 create triable issues of material fact.  
16

17 Defendant's contention that any statements made  
18 regarding the Explorer were mere "puffery" lacks merit.  
19 There is sufficient evidence of statements of fact regarding  
20 the characteristics of the vehicle and of its safety to  
21 require resolution of this matter by the trier of fact. The  
22 cases cited by defendant are inapposite or not persuasive.  
23 There is a triable issue of material fact as to whether the  
24 statements are fact or puffery under the reasoning of *Hauter*  
25 *v. Zogarts* (1975) 14 Cal.3d 104. (See *Furla v. Jon Douglas*  
26 *Co.* (1998) 65 Cal.App.4th 1069, 1081)  
27

28 Additionally, active concealments are actionable under

1 the CLRA. Plaintiffs have produced sufficient evidence to  
2 create triable issues of material fact regarding whether  
3 defendant actively concealed material facts that it had a  
4 duty to disclose.

5 (2) Defendant's contentions regarding materiality are  
6 equally unavailing. Defendant states that plaintiffs have  
7 identified massive amounts of detailed information about the  
8 design, design history, testing and performance of the Ford  
9 Bronco II, results of tests conducted on pre-production  
10 prototypes of Explorers; alternative designs considered,  
11 rejected and accepted for every component that might have  
12 some effect on rollover stability; discussions among company  
13 employees regarding arcane design questions, manufacturing  
14 questions, cost questions and company decision-making  
15 processes; predictions and estimates of probabilities of  
16 passing various tests not required by law or by defendant's  
17 own internal standards; and massive amounts of other data.  
18 Defendant contends these facts are not material. Defendant  
19 further contends plaintiffs have not identified any  
20 precedent requiring a manufacturer to publish such  
21 information. Defendant also contends no expert has  
22 testified that a consumer would want, need or use such  
23 information.  
24

25 A misrepresentation is judged to be "material" if "a  
26 reasonable man would attach importance to its existence or  
27 nonexistence in determining his choice of action in the  
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1 transaction in question. (*Engalla v. Permanente Medical*  
2 *Group, Inc.* (1997) 15 Cal. 4th 951, 977.) In a CLRA action  
3 the court examines the effect on the reasonable consumer. A  
4 reasonable consumer is the ordinary consumer acting  
5 reasonably under the circumstances who is not versed in the  
6 art of inspecting and judging a product, in the process of  
7 its preparation or manufacture. (See *Colgan v. Leatherman*  
8 *Tool Group, Inc.* (2006) 135 Cal. App. 4th 663, 682.)

9 Plaintiffs' disputed facts regarding representations  
10 made and information concealed regarding safety and rollover  
11 propensity are clearly material. Defendant's contentions  
12 that, as a matter of law, defendant had no duty to find a  
13 method of properly informing the consumer about the rollover  
14 propensity are not persuasive.

15 (3) and (4)

16  
17 The Court notes that in numbers 3 and 4 defendant seeks  
18 separate adjudication of claims that do not dispose of the  
19 entire CLRA cause of action under the reasoning of  
20 *Lilienthal & Fowler v. San Francisco* (1993) 12 Cal.App.4th  
21 1848, 1854. The Court does not agree that the claims of  
22 class members who purchased their vehicles used or who have  
23 not sold their vehicles are properly the subject of separate  
24 adjudication in the circumstances here. The request to  
25 separately adjudicate these claims is denied.  
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IT IS SO ORDERED.

Date:

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Honorable DAVID DE ALBA  
Judge of the Superior Court of  
California, County of Sacramento

\*\* Certificate of Service is Attached \*\*