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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

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: **FORD MOTOR COMPANY'S MOTION
FOR CLASS DECERTIFICATION**

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

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 to decertify the class is **denied**.

As the Supreme Court has recognized, the trial court retains the option of decertification if unanticipated or unmanageable individual issues arise in subsequent proceedings. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 335)

In determining whether the class should be decertified, the Court applies the general standards for class certification. (Code Civ. Proc., § 382, Civ. Code § 1781 and Fed. Rules Civ. Proc., rule 23.) The court determines whether, (1) it is impracticable to bring all members of the class before the Court; (2) the questions of law or fact common to the class are substantially similar and predominate over the questions affecting the individual members; (3) the claims or defenses of the representative plaintiffs are typical of the claims or defenses of the class; and (4) the representative plaintiffs will fairly and adequately protect the interests of the class.

Defendant moves to decertify the class on the grounds

1 discovery has revealed that actual injury, causation, and
2 the nature of the allegedly concealed "Rollover Defect"
3 cannot be proved on a class wide basis.

4 Defendant represents that there have been changes in
5 plaintiffs' position regarding injury and damages since the
6 class was certified. Defendant contends that there are
7 significant differences in individual claims for damages
8 based on the type and condition of Explorer; whether or not
9 the vehicle was sold; whether the vehicle was new or used at
10 the time of purchase; entitlement to punitive damages;
11 individual reliance on defendant's alleged
12 misrepresentations; and common proof of rollover propensity.
13 Defendant's contentions are not persuasive.

14
15 Contrary to defendant's contentions, plaintiffs'
16 fundamental claims have remained consistent throughout this
17 action. The alleged changes in plaintiffs' position
18 regarding methods of proving their claims or the type of
19 evidence they will produce have not resulted in any
20 fundamental modification of this action. The claims of
21 unfair, unlawful and fraudulent business practices, false
22 advertising and violations of the Consumer Legal Remedies
23 Act continue to be based on Ford's knowledge of the rollover
24 propensity of the Explorer, its conduct in concealing the
25 rollover propensity that ultimately came to light in 2000
26 and its failure to disclose these material facts to
27 California's consumers. This Court has already determined
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1 these issues are susceptible of class-wide proof, in its
2 February 8, 2005 order certifying the class. Defendant has
3 failed to persuade the Court that decertification of the
4 class is justified.

5 The class continues to be ascertainable and numerous.
6 Defendant does not contend otherwise. The issue raised by
7 defendant's contentions is whether the questions that may be
8 jointly tried, when compared with those requiring separate
9 adjudication, remain numerous and substantial.

10 Defendant's arguments continue to address the
11 likelihood of plaintiffs' success on the merits. The Court
12 reiterates that its function in reviewing defendant's motion
13 is not to weigh the evidence or consider whether or not
14 plaintiffs will succeed. The certification question is
15 essentially a procedural one that does not ask whether an
16 action is legally or factually meritorious. (*Sav-On Drug*
17 *Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.)

19 Common issues continue to predominate. As the Court
20 noted in its previous order certifying the class, Ford
21 itself treated all Explorer models and years the same for
22 many purposes. This similar treatment of all Explorers,
23 regardless of variations that defendant now claims
24 significant, provides common proof to plaintiffs with which
25 to argue their case. The facts identified by defendant are
26 not new. Defendant continues to mischaracterize plaintiffs'
27 claims. The Court is not inclined to modify its earlier
28

1 ruling.

2 The Court is not persuaded by defendant's argument that
3 certification of the class depends on plaintiffs' ability to
4 prove a uniform amount of damages that occurred on August 9
5 because of a drop in the value of all Ford Explorers. In
6 the circumstances here, plaintiffs need not prove with
7 scientific certainty the loss in value of each individual
8 class member's Explorer. The amount of plaintiffs' damages
9 is a matter subject to class-wide proof by way of expert
10 testimony, without regard to the particular circumstances of
11 each individual class member. (See *In re Cipro Cases I and*
12 *II* (2004) 121 Cal.App.4th 402, 411-412.) "The law requires
13 only that some reasonable basis of computation be used, and
14 the result reached can be a reasonable approximation."
15 (*Acree v. General Motors Acceptance Corp.* (2001) 92
16 Cal.App.4th 385, 398.)

17
18 Defendant's contention that named plaintiffs are no
19 longer typical lacks merit. As previously stated, the named
20 plaintiffs owned or leased allegedly defective vehicles at
21 allegedly inflated prices which lost value as a result of
22 the public revelation of the defect. Thus, the
23 representatives' claims are substantially similar to those
24 of the represented class. They satisfy the typicality
25 requirement.

26 The Court is also not persuaded by defendant's
27 arguments regarding reliance and causation under either the
28

1 UCL - FAL or the CLRA. The leading case on what a plaintiff
2 must establish in order to prevail on a statutory unfair
3 business practice claim is *Fletcher v. Security Pacific*
4 *National Bank* (1979) 23 Cal.3d 442.

5 In *Fletcher*, a class representative alleged he and
6 other customers of the defendant bank had been deceived by
7 the bank's practice of calculating per annum interest on the
8 basis of a 360-day year. The bank argued class treatment
9 was not appropriate because it believed its liability under
10 the false advertising could not be established without
11 individual proof as to the impact of its activities on each
12 customer. In rejecting the bank's argument, the court
13 concluded that under the statute the court retains the
14 authority to order restitution without an individualized
15 showing on the knowledge issue if the court determines that
16 such a remedy is necessary to prevent the use or employment
17 of the unfair practice. (*Id.*, at p. 43.)

18
19 The Court in *Mass Mutual v. Superior Court* (2002) 97
20 Cal.App.4th 1282, made clear that liability for restitution
21 under either the specific false advertising provisions of
22 Business and Professions Code section 17500 or the broader
23 provisions of the UCL may be found without any
24 individualized proof of deception and instead maybe found
25 solely on the basis of a defendant's conduct that was likely
26 to deceive consumers. (*Id.*, at 1289; see also *Prata v.*
27 *Superior Court* (2001) 91 Cal.App.4th 1128, 1144; *Colgan v.*
28

1 *Leatherman Tool Group, Inc.*, (2006) 135 Cal. App. 4th 663,
2 682.)¹

3 The *Mass Mutual* court applied similar reasoning in the
4 context of the CLRA. The court rejected *Mass Mutual's*
5 contention that the causation required by Civil Code section
6 1780 made plaintiffs' claims unsuitable for class treatment.
7 In finding the claims suitable, the court explained that
8 causation as to each class member is commonly proved more
9 likely than not by materiality. (*Id.*, at 1292) If material
10 misrepresentations were made to the class members, at least
11 an inference of reliance would arise as to the entire class.
12 (*Id.*, at 1292-1293)

13 The cases cited by plaintiff are controlling. Based on
14 the present state of the law, plaintiffs have the ability to
15 show concealment and false representation in Ford's
16 advertising sufficient to support their claims on a class-
17 wide basis. The cases cited by defendant do not compel a
18 different result. The issue of the uniformity of the
19 representations made to plaintiffs requires the Court to
20 weigh the evidence. It is improper for the Court to do so
21 at this stage of the proceedings.
22

23 Moreover, even if each plaintiff is required to prove
24 individual damages, this does not per se require
25 decertification. It is well-established that a class action
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28 ¹ The Court notes for the record that the Supreme Court has granted review in *In re Tobacco II* and *Pfizer Inc. v. Superior Court* to address the issue of whether the standing requirements of Proposition 64 require individual proof of actual deception.

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is not inappropriate simply because each member of the class may at some point be required to make an individual showing as to his or her eligibility for recovery or as to the amount of his or her damages. (*Sav-On Drug Stores, Inc. v. Superior Court, supra*, at 333.) The fact that some plaintiffs may have to prove entitlement to individual damages is only one element in the equation. It does not negate the propriety of this class action.

The matters at issue in this case remain exactly the kind of claims that ought to be litigated in one forum on behalf of all affected parties. It is extremely important to avoid inconsistent decisions where a course of conduct by one defendant affecting hundreds of thousands of plaintiffs is at issue. Determining all of the claims in one forum will result in a uniform decision applicable to hundreds of thousands of consumers with small damage claims. It is clear that substantial benefits will accrue to both the litigants and the courts.

The Court notes that it retains jurisdiction to change the definition of the class or to create sub classes should such action become necessary.

IT IS SO ORDERED.

Date:

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

** Certificate of Service is Attached **