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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

JUDICIAL COUNCIL COORDINATION Department Number: 30
PROCEEDING

Case Number: JCCP NOS.
4266 & 4270

Special Title (Rule 1550(b))
FORD EXPLORER CASES

Included Actions:

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

**RULING ON APPLICATION FOR
ATTORNEYS' FEES AND EXPENSES;
REQUEST FOR MULTIPLIER;
PLAINTIFFS' INCENTIVE AWARDS;
AND OBJECTIONS**

Katz v. Bridgestone/Firestone, Inc.
Los Angeles County Superior Court No.
BC279458

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

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

This matter was heard on April 15, 2008.

The issue before the Court is the proper amount of attorney fees for counsel
involved this action which after a lengthy court trial resulted in a multi-state settlement.

The parties have stipulated in the settlement agreement for payment of reasonable

1 attorneys' fees and expenses as approved by the Court not to exceed an aggregated total of
2 \$25 million. (Settlement Agreement ¶ 34(e)) The Court has given final approval to the
3 settlement. Additionally, the court ordered the payment of attorneys' fees and expense to
4 lead counsel at the conclusion of the hearing on April 15, 2008 and invited other class
5 counsel to submit further declarations in support of their application for fees and expenses.
6 Various declarations have been submitted by counsel.

7
8 The Court has read and considered the supplemental declarations filed since April
9 15, 2008 as well as the objectors' responses to the requests for fees and expenses and the
10 memoranda in support thereof.

11 Counsel are entitled to fees. The proper amount of fees is determined by the
12 lodestar method. The court must determine the reasonable hourly rate and the reasonable
13 number of hours and multiply them. The reasonable market value is the measure of the
14 reasonable hourly rate. (See *PLCM v. Drexler* (2000) 22 Cal.4th 1084, 1094) This rate
15 applies regardless of whether the attorneys claiming fees charge nothing or a contingency
16 or discounted rate or are in house counsel.
17

18 At the conclusion of the Fairness Hearing on April 15, this Court granted the
19 following applications for payment of attorney fees. In reaching its decision the Court
20 considered the hourly rates and the number of hours sought for the following skilled trial
21 counsel in this complex case to be reasonable. The Court also approved expenses for the
22 following counsel as reasonable. The Court affirms the following orders:

23
24 (1) Fees for Kevin P. Roddy for services performed as a member of Wilentz, Goldman &
25 Spitzer in the amount of \$2,294,825 and expenses in the amount of \$820,140.45 as set
26 forth in the declaration of Kevin P. Roddy in Support of the Joint Motion for Final
27 Approval.
28

1 (2) Fees for Elizabeth Cabraser of the law firm Lief, Cabraser, Heimann & Bernstein LLP
2 in the amount of \$2,150,905.50 and expenses in the amount of \$574,201.35 as set forth in
3 Elizabeth Cabraser's Declaration in Support of the Joint Motion for Final Approval.

4 (3) Fees for Tab Turner of Turner and Associates in the amount of \$1,750,000. (Mr.
5 Turner's request for approval of expenses is addressed below).

6 (4) Fees for Tracy Buck-Walsh in the amount of \$1,077,100.00 and expenses of
7 \$53,400.00

8
9 The Court sought further briefing on the requests for expenses of Tab Turner and
10 the applications for attorney fees and expenses of the Barrett Law Office, Green Welling,
11 LL.P., The Rossbacher Firm, The Kick Law Firm, Hagens Berman Sobol & Shapiro, LLP,
12 Kershaw Cutter & Ratinoff, Hurwitz Sagarin Slossberg & Knuff, LLC. The Court also
13 requested additional information on the global amounts requested for Illinois plaintiffs'
14 counsel and Texas plaintiffs' counsel. The Court took the matter under submission on
15 April 30, 2008.

16
17 The Court now rules as follows on the submitted matters as follows:

18
19 **Turner & Associates Application for Expenses**

20 Mr. Turner seeks expenses in the total amount of \$1,605,967.54. Of this amount
21 \$322,263.51 is an expense for private airplane costs (Exhibit B to Tab Turner's
22 Declaration of April 7, 2008)

23
24 The Court finds all of the expenses reasonable except the \$322,263.51 amount for
25 the private airplane. No authority has been presented to this Court justifying
26 reimbursement for the use of private aircraft as a reasonable expense. If Mr. Turner can
27 demonstrate that use of his private airplane was more economical than alternative
28

1 commercial travel arrangements, the Court will consider allowing the expense as
2 reasonable. Convenience to counsel or other clients is not sufficient justification.

3 Mr. Turner explains that he used the plane to transport six or seven people and
4 equipment on over 35 trips. However, the Court is not awarding travel expenses for 6 or 7
5 people, only for Mr. Turner. If Mr. Turner can ascertain the cost of travel he would have
6 incurred on commercial flights had he made timely reservations and used that form of
7 transportation, the Court will consider awarding such an amount as reasonable.

8
9 Mr. Turner shall submit the additional information no later than July 14, 2008 or
10 this amount will be stricken from his award to permit entry of judgment in this case at the
11 earliest opportunity.

12 The Court notes that the additional information should cure the defects noted by
13 the Webber objectors.

14
15
16 **Applications of the Barrett Law Office, Hurwitz Sagarin Slossberg & Knuff, LLC ,**
17 **Hagens Berman Sobol & Shapiro, LLP, the Rossbacher Firm, Green Welling, LL.P.,**
18 **Kershaw Cutter & Ratinoff, The Kick Law Firm and Texas and Illinois class counsel**

19 Using the lodestar method of calculation and based on total record and the
20 supplemental declarations filed on April 25, 2008, the Court now approves the requests for
21 attorney fees and expenses for remaining class counsel as follows:

22 5) The application of the Barrett Law Office, co-lead counsel in the Texas and
23 Illinois cases, is approved in the amount of \$606,022.50 for attorney fees and \$450,886.95
24 for expenses. The Court finds that the hourly rates and the number of hours expended are
25 reasonable. The expenses are properly reimbursable and they are reasonable in amount.

26
27 6) The application of Hurwitz Sagarin Slossberg & Knuff, LLC (Connecticut Class
28 Counsel) is approved in the amount of \$600,672.50 for attorney fees and \$43,431.10 for

1 expenses. The Court finds that the hourly rates of \$250-\$325 for associates, \$450-\$475
2 for partners and \$125 for paralegals and the total number of 2038.7 hours expended are
3 reasonable. The declarations and evidence submitted support such an award. The
4 expenses are properly reimbursable and they are reasonable in amount.

5 7) The application of Hagens Berman Sobol & Shapiro for fees in the amount of
6 \$304,345 and expenses in the amount of \$40,110.38 is approved. The Court finds the
7 historical hourly rates of \$425 for partner Roddy, \$600 for Berman, \$325 for associate
8 Byszewski, \$310 for associate Cohen, \$225 for associate Horn, \$130 for paralegals Scott
9 and Brammeier are reasonable in the prevailing markets in California, Illinois, Texas and
10 Connecticut. The number of 749 hours expended between June 2003 and December 2004
11 when Mr. Roddy left the firm are also reasonable. The expenses requested are all properly
12 reimbursable and reasonable in amount.

13
14 8) The application of the Rossbacher firm is approved in the amount of
15 \$1,485,363.25 for attorney fees \$183,099.44 for expenses. The hourly rate of \$490 and the
16 2469.5 hours expended are reasonable under community standards. The expenses
17 requested are all properly reimbursable and reasonable in amount.

18
19 9) The application of Green, Welling, LLP is approved in the amount of
20 \$1,445,733.60 for attorney's fees and \$207,149.56 for expenses.

21 The 4441.34 hours spent are reasonable. The hourly rates set forth in the time
22 report of Green, Welling LLP are reasonable except for the \$550 per hour charged for Mr.
23 Green. Based on the totality of the record and in its independent judgment the Court finds
24 the reasonable prevailing market hourly rate for an attorney of Mr. Green's skill and
25 experience is \$450. The value of his service was not comparable to other more
26 experienced lead counsel. The total lodestar amount for Mr. Green is \$589,972.50
27
28

1 (reduced from the requested amount of \$721,077.50). The expenses requested are all
2 properly reimbursable and reasonable in amount.

3 10) The application of Kershaw Cutter & Ratinoff is approved in the amount of
4 \$76,711.25 for attorney fees and \$34,689.82 for expenses. The hourly rates of \$550 and
5 \$650 for partners and \$175 for associate and paralegal support are reasonable. The total
6 number of 154.10 hours is reasonable. The expenses requested are all properly
7 reimbursable and reasonable in amount.

8 11) The application of the Kick Law Firm is approved in the amount of
9 \$1,160,649.75 for attorney fees and \$180,594.88 for expenses. The declaration of Taras
10 Kick dated April 7 2008 and the supplemental declaration filed on April 25 support this
11 award. The historical hourly rate of \$450 for class co-counsel is reasonable, The 2569.50
12 attorney hours and 57.50 paralegal hours are reasonable. The expenses requested are all
13 properly reimbursable and reasonable in amount.

14 12) The Court approves the agreement to compensate Texas and Illinois class
15 counsel based on the declaration of Don Barrett and the supporting declarations of Zona
16 Jones and Mark C. Goldenberg. The Court approves \$2 million to the law firm of
17 Goldenberg, Heller, Antognoli, Roland, Short & Gori P.C, Illinois class counsel (Rowan
18 Class action) and \$1 million to the firm of Provost-Umphrey LLP, Texas class counsel.

19 The Court notes the supplemental declarations address deficiencies identified by
20 objectors and cure the lack of substantiation that was presented initially to this court
21 declaring that co-lead counsel (Barrett, Roddy and Cabraser) had jointly decided these
22 respective sums were "appropriate, fair and proportionally reasonable" (Corrected
23 Supplemental Declaration of Kevin P. Roddy ¶ 6).

Request for Multiplier

1
2 Plaintiffs request for a multiplier is granted. The Court awards a multiplier of 1.21
3 per cent.

4 A number of factors used to determine a multiplier were set out in *Serrano v.*
5 *Priest (Serrano III)* (1977) 20 Cal. 3d, 25, 48

6 These include: "(1) the novelty and difficulty of the questions involved, and the
7 skill displayed in presenting them; (2) the extent to which the nature of the litigation
8 precluded other employment by the attorneys; (3) the contingent nature of the fee award,
9 both from the point of view of eventual victory on the merits and the point of view of
10 establishing eligibility for an award; (4) the fact that an award against the state would
11 ultimately fall upon the taxpayers; (5) the fact that the attorneys in question received
12 public and charitable funding for the purpose of bringing law suits of the character here
13 involved; [and] (6) the fact that the monies awarded would inure not to the benefit of the
14 attorneys involved but the organizations by which they are employed." (20 Cal.3d at p. 49)

15
16
17 Three of those factors are inapplicable to the present case. Unlike *Serrano III*, this
18 case was not brought against a public entity, the responsibility to pay a fee award would
19 not fall upon the taxpayers, the plaintiffs were not represented by a nonprofit public
20 interest law firm or a government funded legal services program, and monies awarded
21 would inure to the individual benefit of the plaintiffs' attorneys.

22
23 The Court has considered the remaining three traditional factors: (1) the novelty
24 and difficulty of the questions involved, and the skill displayed in presenting them; (2) the
25 extent to which the nature of the litigation precluded other employment by the attorneys;
26 and (3) the contingent nature of the fee award, both from the point of view of eventual
27 victory on the merits and the point of view of establishing eligibility for an award.
28

1 The Court believes a modest multiplier is warranted. The lodestar amounts
2 awarded by this Court are based in large part on historical hourly rates. Without question
3 the issues in this case were novel and difficult. According to Defendant Ford Motor
4 Company no other class claims of this nature have gone to trial anywhere else in the
5 nation. The case was complex, lengthy and difficult. A large number of consumers in
6 four states benefit from the result. Class counsel invested countless hours over six years in
7 this case. The Court witnessed exceptional skill on behalf of counsel during the trial.
8 Moreover, the procedural history of the class actions in four states reflects extraordinary
9 efforts to bring these cases to resolution. The record shows that counsel worked
10 collaboratively to avoid duplication in bringing this case to resolution.
11

12 The Court is also aware that there was continuing uncertainty throughout this
13 litigation that plaintiffs would prevail on the merits. This was especially true of the trial
14 proceedings. A favorable judgment was never a certainty in view of the challenging legal
15 and factual issues confronted by class counsel. The Court is also cognizant of the
16 contingent nature of the fee award and the fact that counsel has had to wait so long for any
17 payment of fees and out-of-pocket expenses.
18

19 The Court rejects objectors' invitation to adjust the lodestar awards through
20 application of a negative multiplier. Many of the cases relied upon by objectors are
21 inapposite and of little guidance. Unlike the procedural posture of the case at bar, the
22 parties reached a voluntary resolution of the dispute after a lengthy and expensive court
23 trial and uncertain findings by the trial court. The cases cited involve settlements before
24 class certification, shortly after class certification, or after discovery has been initiated.
25 Not after the battle has been fully waged and the outcome in extreme jeopardy.
26
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1 The enormous risk in obtaining an outcome favorable to plaintiffs justifies a
2 multiplier enhancement. A multiplier of 1.21 per cent shall be added to each of the fee
3 awards outlined above.
4

5 **Incentive Awards for Named Plaintiffs**

6 The Court reaffirms its order of April 15, 2008 awarding incentive awards to the
7 named plaintiffs in the amounts requested. The named plaintiffs in the Tompkins, Katz,
8 Gray and Montoya cases are awarded \$10,000 each. The class representatives in Illinois,
9 Texas and Connecticut are awarded \$5,000 each if they were deposed and \$2,500 each if
10 they were not deposed.
11

12
13 **Conclusion**

14 In awarding lead trial counsel their respective lodestar requests, the Court wishes
15 to note the exceptional skill and experience of Mr. Tab Turner, Mr. Kevin Roddy, and Ms.
16 Elizabeth Cabraser in presenting argument and evidence before this Court.
17

18 Class counsel is directed to prepare a formal order and judgment consistent with
19 this ruling for the Court's signature. The order shall include the final calculations on each
20 fee and expense award.

21 The objections and responses of objectors Webber and Kirstein are rejected to the
22 extent not otherwise expressly addressed herein.
23

24 IT IS SO ORDERED.

25 Date: 6-27-08



26 *David De Alba*

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

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CERTIFICATE OF SERVICE BY MAILING

(C.C.P. Sec. 1013a(3))

I, the Clerk of the Superior Court of California, County of Sacramento, certify that I am not a party to this cause, and on the date shown below I served the foregoing **RULING ON APPLICATION FOR ATTORNEYS' FEES AND EXPENSES; REQUEST FOR MULTIPLIER; PLAINTIFFS' INCENTIVE AWARDS; AND OBJECTIONS**, depositing true copies thereof, enclosed in separate, sealed envelopes with the postage fully prepaid, in the United States Mail at Sacramento, California, each of which envelopes was addressed respectively to the persons and addresses shown below:

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FORD EXPLORER CASES
JCCP Nos.: JC4266 & JC4270

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11
12
13 I, the undersigned deputy clerk, declare under penalty of perjury that the foregoing is true and
14 correct.

15
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17
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19 Dated: 7-1-08



Deputy Clerk