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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO

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JUDICIAL COUNCIL COORDINATION Department Number: 32  
PROCEEDING

Case Number: JCCP NOS  
4266 & 4270

Special Title (Rule 1550(b))  
BRIDGESTONE/FIRESTONE TIRE  
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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1 On March 12, 2007, 9:00 a.m. in department 32, the  
2 above-entitled matter came on for hearing and after having  
3 considered the oral arguments of counsel, the moving,  
4 opposing and reply papers and the points and authorities and  
5 declarations filed by each party in support of their papers,  
6 the court took the matter under submission. The Court now  
7 rules as follows:

8 Defendant's motion to decertify the class is **denied**.

9 As the Supreme Court has recognized, the trial court  
10 retains the option of decertification if unanticipated or  
11 unmanageable individual issues arise in subsequent  
12 proceedings. (*Sav-On Drug Stores, Inc. v. Superior Court*  
13 (2004) 34 Cal. 4th 319, 335)

14 In determining whether the class should be decertified,  
15 the Court applies the general standards for class  
16 certification. (Code Civ. Proc., § 382, Civ. Code § 1781  
17 and Fed. Rules Civ. Proc., rule 23.) The court determines  
18 whether, (1) it is impracticable to bring all members of the  
19 class before the Court; (2) the questions of law or fact  
20 common to the class are substantially similar and  
21 predominate over the questions affecting the individual  
22 members; (3) the claims or defenses of the representative  
23 plaintiffs are typical of the claims or defenses of the  
24 class; and (4) the representative plaintiffs will fairly and  
25 adequately protect the interests of the class.  
26

27 Defendant moves to decertify the class on the grounds  
28

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  
28

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.4<sup>th</sup> 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.)<sup>1</sup>

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 Moreover, even if each plaintiff is required to prove  
23 individual damages, this does not per se require  
24 decertification. It is well-established that a class action  
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28 <sup>1</sup> 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:

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

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