ENDORSED

FEB 8 2005

By N. Smith, Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

Coordination Proceeding Special Title (Rule 1550(b))	JCCP Nos. 4266 & 4270
BRIDGESTONE/FIRESTONE TIRE CASES I & II	DEPARTMENT 29
	MOTION FOR CLASS CERTIFICATION RULING ON SUBMITTED MATTER

Included Actions:

Tompkins v. Bridgestone/
Firestone, Inc.
Sacramento Superior Court
Case No. 02AS02919

Katz v. Bridgestone/Firestone,
Inc.
Los Angeles Superior Court
Case No. BC 279457

Tompkins v. Ford Motor Co.,
Sacramento Superior Court
Case No. 03AS00391

Katz v. Motor Co.,
Los Angeles Superior Court
Case No. BC 279458

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

Montoya and McLachlan v.
Ford Motor Co.
Sacramento Superior Court
Case No. 03AS05213

_____/

This motion, filed on July 16, 2004, was originally scheduled for hearing on October 22, 2004. Subsequently, it was continued and fully briefed for hearing on December 3, 2004. On November 22, 2004 defendant, Ford Motor Company, filed a surreply in which it argued that the passage of proposition 64 requires denial of the class action petition. Since proposition 64 became effective on November 3, the Court continued the matter to allow this issue to be fully briefed.

The matter was heard on December 20, in Department 29, Judge David De Alba presiding. Kevin Roddy, Elizabeth Cabraser, Henry Rossbacher and Lisa Lebove appeared for plaintiffs. Daniel Alexander, Stephen Harburg and Morgan Sullivan appeared for defendant. At the hearing the Court took judicial notice of proposition 64 and the official voter information guide materials submitted by plaintiffs on December 13, 2004. The Court also took judicial notice, without objection by the parties, of the trial court opinions submitted by defendant on December 16 and the decision of Judge Cecil in department 54 of this court submitted by plaintiffs.

At the end of oral argument the Court permitted the parties to file supplemental briefing limited to discussion of the recent Supreme Court decision in *Elsner v. Uveges* (2004) 34 Cal. 4th 915. The final briefs were filed and the matter was submitted on January 7, 2005.

Having considered all of the briefs and the argument of counsel the Court now rules as follows.

The issue presently before the Court is whether to certify the pending case against Ford Motor Company as a class action. Before making this determination, the Court must first decide whether proposition 64 affects the outcome.

Proposition 64

This action is brought pursuant to the Unfair Competition Law (UCL) set forth in Business and Professions Code section 17200 et seq., the False Advertising Law (FAL), Business and

Professions Code section 17500 et seq.[1] and the Consumer Legal Remedies Action (CLRA) Civil Code section 1750 et seq.. Before passage of proposition 64, this law permitted an action to be brought by any person acting for the interests of him/her or the general public without any showing of actual injury. (See e.g. Bus. & Prof. Code sections 17204 and 17535) Proposition 64 amends Business and Professions Code section 17203 to provide that any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirement of section 17204 and complies with section 382 of the Code of Civil Procedure. The limitations do not apply to the Attorney-General, or any district attorney, county counsel, city attorney, or city prosecutor. Proposition 64 also amends section 17204 to require any person prosecuting an action for relief under the UCL to have suffered injury in fact and to have lost money or property as a result of the unfair competition.

There is no dispute that proposition 64, passed by the voters on November 2, 2004, is effective immediately. The question is whether it applies retroactively to this case.

The Court is aware the issue of retroactive application of proposition 64 is being litigated around the state. However, no binding published appellate decision has issued on the issue of whether proposition 64 should be applied retroactively.[2] The decisions of other superior courts of which this Court has taken judicial notice are in no way binding. The matter is one of first impression for this Court.

The applicable general principles of law are well settled. It is well established a new statute or initiative is presumed to operate prospectively, absent an express declaration of retroactivity or a clear indication the electorate, or the Legislature, intended otherwise. (*Tapia v. Superior Court*, (1991) 53 Cal. 3d 282, 287; *Evangelatos v. Superior Court* (1988) 44 Cal. 3d 1188)

There is an equally well established exception the rule does not preclude the application of new *procedural* or *evidentiary* statutes (emphasis added) to trials occurring after enactment, even

[1] Since the changes have the same effect in both statutes, the Court will use the UCL provisions in its discussion.

[2] On February 1, 2005, the Court of Appeal, First Appellate District, found no retroactive application to proposition 64. (*California for Disability Rights v. Mervyns LLC, A106199*).

though such trials may involve the evaluation of civil or criminal conduct occurring before enactment. (*Id.* at 288-289) This is so because these uses typically affect only future conduct. The effect is actually prospective in nature since the changes relate to the procedure to be followed in the future.

It is also well settled that where the government's authority rests solely upon a statute, repeal of such statute without a saving clause will terminate all pending actions based thereon. (*Governing Board v. Mann* (1977) 18 Cal.3d 819, 822)

Defendant argues proposition 64 falls within the exception for procedural statutes and that it qualifies as repeal of a statutory authority without a saving clause. The Court is not persuaded by either argument.

Retroactive application cannot be supported by characterizing Proposition 64 as merely a "procedural" statute. In deciding whether the application of a law is prospective or retroactive the trial court is directed to look to function not form. (*Elsner v. Uveges* (2004) 34 Cal. 4th 915, 936) The court must consider the effect of a law on a party's rights and liabilities, not whether a procedural or substantive label best applies. The proper question is whether the law changes the legal consequences of past conduct by imposing new or different liabilities based upon such conduct i.e. whether it substantially affects existing rights and obligations. (*Id.* at 937) The distinction relates not so much to the form of the statute as to its effects. (*Evangelatos (supra)* at 1225) If substantial changes are made, even in a statute which might ordinarily be classified as procedural, the operation on existing rights would be retroactive because the legal effects of past events would be changed, and the statute will be construed to operate prospectively only absent clear legislative intent to the contrary. (*Ibid.*)

Defendant contends proposition 64 does nothing more than affect standing and class actions which defendant maintains are procedural.

It is certainly true that some authorities describe standing as a procedural concept.

However, the Court is instructed it must not rely on any such procedural label. (See *Tapia* and *Elsner* supra)

In this case, applying proposition 64 would terminate the right of any existing plaintiff who could not show actual injury to bring the action and adversely affect the substantive rights of those persons who are not parties but whose rights and interests are being pursued in this lawsuit. The fact that standing may be described as procedural is immaterial. Any changes in the requirements for standing go to the very heart of the cause of action. Retroactive application of Proposition 64 to preexisting causes of action would have a very definite substantive effect on plaintiffs and those they represent who, during the pending litigation, acted in reasonable reliance on the existing state of the law. (See *Evangelatos supra*)

Brenton v. Metabolife Int'l Inc. (116 Cal.App.4th 679, 689), relied on by defendant, does not compel a different result. In *Brenton* the court determined that applying Code of Civil Procedure section 425.17 to the anti-SLAPP statute did not eliminate the right to be free of meritless lawsuits, it simply removed one procedural mechanism for enforcing that right. (*Id.* at 691) The court concluded the changes to the law were purely procedural.

Defendant also contends proposition 64 effects a repeal of statute without a saving clause and thus it terminates pending actions. (*Governing Board v. Mann* (1977) 18 Cal.3d 819, 822) The Court is not so persuaded.

Governing Board v. Mann is one of a long line of cases setting forth the general rule that a cause of action or remedy dependent on a statute falls with a repeal of the statute, even after the action thereon is pending, in the absence of a saving clause in the repealing statute. (See e.g. *People v. Acosta*, (1996) 48 Cal. App. 4th 411, 418-419)

The court in *Physicians Com. for Responsible Medicine v. Tyson Foods, Inc.* (2004) 119 Cal. App. 4th 120 stated the rule as follows:

> Although the courts normally construe statutes to operate prospectively, the courts correlatively hold under the common law that when a pending action

rests solely on a statutory basis, and when no rights have vested under the statute, a repeal of such a statute without a saving clause will terminate all pending actions based thereon. (*Id.* at 127)

This rule only applies when the right in question is a statutory right and does not apply to an existing right of action which, has accrued to a person under the rules of the common law, or by virtue of a statute codifying the common law. In such a case, it is generally stated that the cause of action is a vested property right which, may not be impaired by legislation. (*Cross v. Bonded Adjustment Bureau* (1996) 48 Cal. App. 4th 266, 275-276.) In other words, the repeal of such a statute or of such a right should not be construed to affect existing causes of action. In short, the repeal of a statute affects a cause of action based solely upon the statute; it does not affect a claim that exists at common law. (*Ibid.*)

In *Younger v. Superior Court of Sacramento County*, (1978) 21 Cal. 3d 102, the Supreme Court explained the elements of the rule. (1) The procedure in question must be created by, and wholly dependent on, statute. There must be no equivalent common law right. (2) The new legislation must completely eliminate the earlier procedure. (3) There must be no express or implied saving clause. (Id at 109-110).

In *Younger* the repeal of the statute completely deprived the court of the jurisdiction the statute had conferred. There was no common law right to have the court order marijuana possession records destroyed and there was no saving clause. (Id at 110).

In contrast, proposition 64 does not repeal either a cause of action or a remedy. Individuals and members of the public continue to have a cause of action and a remedy under the UCL. Moreover, the cause of action against, and a remedy for, unfair competition existed at common law. Thus it is not a cause of action unknown at common law.

The Court is persuaded that this matter is governed by *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188 and *Elsner v. Uveges (supra)*. Revision to the law will substantially affect existing rights and obligations. Proposition 64 should have only prospective effect. It does not

apply to the instant case.

Assuming arguendo Proposition 64 is applicable to the instant case, the plaintiffs in the case at bar allege they have suffered actual injury and would be proper plaintiffs under the new law. Upon making the requisite showing under Code of Civil Procedure 382, they may proceed as representatives of the class.

Class Action

Plaintiffs in this coordinated action seek in their moving papers to certify as a class "all persons or entities in California who purchased, owned or leased new or used Ford Explorers at any time during the period from 1990 to the present and who either (a) currently own, lease or operate the vehicle(s) or (b) sold, traded or otherwise disposed of such vehicle(s) or whose lease for such vehicle expired or otherwise terminated between August 9, 2000 and the later date of Class certification or the dissemination of class notice." Plaintiffs also make proposals for subclasses should the Court find such subclasses necessary.

In their points and authorities plaintiffs describe the potential class as including all Californians who purchased or leased Ford Explorers in California during a ten year period from the fall of 1990 to August 2000. At another place in the points and authorities plaintiffs suggest 2001 as the proper date. At the hearing, there was still some confusion regarding the cut-off date for an Explorer purchaser or lessee to be a member of the class.

It appears to the Court that in light of the fact this action is largely premised on the fact that the vehicles lost significant value after the Rollover defect became public, and that defect became widely known in August 2000, purchasers after that date are not proper members of the class. Any order for certification will have a concluding date that reflects this fact.

Since the named plaintiffs in these coordinated cases seek monetary and injunctive relief under the UCL, the FAL and the Consumer Legal Remedies Act (CLRA) Code of Civil Procedure section 382 and Civil Code section 1781 set forth the standards for class actions.

Section 382 provides as follows:

If the consent of anyone who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of common or general interest, of many persons or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.

The California Supreme Court has urged trial courts to be procedurally innovative in determining whether to allow class suits as well as encouraging them to incorporate procedures from outside sources, in particular rule 23 of the Federal Rules of Civil Procedure. (See *Bell v. Farmers Ins. Exchange* (2004) 115 Cal. App. 4th 715, 740)

Rule 23 provides as follows:

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members

not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action. (Fed Rules Civ. Proc Rule 23)

California courts have long held that two requirements must be met in order to sustain any class action: (1) there must be an ascertainable class; and (2) there must be a well defined community of interest in the questions of law and fact involved affecting the parties to be represented. (*Ibid.*) While the requirement of an ascertainable class normally requires little elaboration, the community of interest requirement has been held to embody three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. (*Ibid.*)

Civil Code section 1781 governs class actions under the CLRA. It essentially adopts the federal rule. Section 1781(b) provides that the court shall permit the suit to be maintained on behalf of all members of the represented class if all of the following conditions exist:

(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.

(4) The representative plaintiffs will fairly and adequately protect the interests of the class.

The certification of a class is a discretionary decision demanding consideration of many relevant considerations. The ultimate question in every case of this type is whether, given an ascertainable class, the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.

Applying the rules set forth above the Court is persuaded that this is a proper case for class action.

1. Ascertainability

A class is ascertainable if it identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member to identify himself or herself as having a right to recover based on the description. (*Bartold v. Glendale Fed. Bank* (2000) 81 Cal.App.4th 816,828.) Here, the identified class of purchasers and lessees of Ford Explorers is readily ascertainable.

2. Numerosity

Plaintiffs, have identified the class as persons in California who bought or leased Ford Explorers between 1990 and 2000. They presented evidence that Ford sold 440,086 Explorers in California between 1991 and 2001. Plaintiffs have certainly satisfied the requirement of showing that the class is so numerous that it would be impracticable to bring all members before the court.

3. Commonality and Predominance

The question then becomes whether there are common questions of law and fact that

predominate.

The commonality requirement is ordinarily satisfied when there is a common nucleus of operative facts. Not all questions of law and fact need to be identical as long as there are common questions at the heart of the case. The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class.

Common questions predominate when they present a significant aspect of the case and they can be resolved for all the members of the class in a single adjudication. Plaintiffs have the burden of establishing that common questions of law and fact predominate with respect to their claims that defendant concealed a dangerous design defect and falsely advertised the safety of the Explorer thereby misleading consumers to purchase or lease Explorers far in excess of their values. The Court finds plaintiffs have met this burden.

Plaintiffs identify the common issues as follows. The claims of all members of the class stem from the same source, namely, that Ford knew of the rollover defect and concealed it from consumers. The deception was widely revealed in late 2000 resulting in significant decline in the value of all Explorers. Plaintiffs allege consumers found that they owned, but could not sell, Explorers they would not have purchased or lease had the truth been known. Plaintiffs contend they can demonstrate by common proof a decline in the market value of all Explorers after the public revelation of Ford's deception. Plaintiffs maintain that there are no significant design differences among Explorers to warrant separate treatment.

Defendant contends there is no common Explorer making it impossible for plaintiffs' to prove their proposed defect theory with class-wide evidence. Defendant also contends plaintiffs cannot show that Explorers performed differently than other SUVs. Defendant argues plaintiffs have not shown that they can prove that all of the members of the class were deceived by Ford's advertising into buying Explorers at inflated prices. Defendants also argue that there is no commonality because each plaintiff's damages are potentially different and there are different

classes of plaintiffs whose rights conflict.

Defendant's contentions are not persuasive.

The court is satisfied plaintiffs have shown that Ford treated all Explorer model years the same for many purposes. For example, Ford did not distinguish among Explorers when setting tire pressures. Ford's internal memoranda do not differentiate among model years or configurations when addressing the rollover problems. When serious problems began to appear in the Middle East and South America, Ford generally treated Explorers as a class, with little differentiation as to model year or as to whether the vehicle was a four-wheel drive or a two-wheel drive vehicle. This similar treatment of all Explorers, regardless of variations that defendant now claims significant, provides sufficient common proof to support plaintiffs' claims.

Additionally, many of defendant's arguments are premised on a misconception of plaintiff's claims. Plaintiffs' claims are based on defendant's conduct in concealing the rollover defect that ultimately came to light resulting in a diminution of value. They are not premised on the existence of a defect per se. The issues of whether defendant knew of and concealed the defect and resulting diminution of value are susceptible of class-wide proof.

Defendant's argument that plaintiffs can only prove their case by comparing the Explorer to other SUVs is not convincing. The performance of other SUVs has no relevance to the question of whether defendant engaged in deceptive and unfair business practices in concealing a defect in the Ford Explorer.

Defendant attacks the likelihood of plaintiffs' success on the merits. While the merits of the case may be considered in determining whether plaintiffs satisfy the requirements for class action, the Court does not weigh the evidence or consider whether or not plaintiffs will succeed. The certification question is "essentially a procedural one that does not ask whether an action is legally or factually meritorious. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326)

Finally, defendant's contentions regarding causation and damages are unavailing. Contrary

to defendant's contentions, plaintiffs do not have to show each member of the represented class saw a misleading advertisement. (See e.g. *Mass Mutual* (2002) 97 Cal.App.4th 1282, 1286) An inference of reliance arises if a material false representation was made to persons whose acts thereafter were consistent with reliance upon the representation. (*Occidental Land, Inc. v. Superior Court of Orange County*, (1976) 18 Cal. 3d 355, 363) Plaintiffs allege the ability to show concealment and false representation in advertising on a class-wide basis.

It is well-established a class action 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) Here, plaintiffs have met their burden of showing that the common interests of the members of the class predominate over any minor differences that may exist as to damages.

The Court is persuaded that plaintiffs satisfy the commonality requirement and that common questions of law and fact predominate.

3. Typicality

Little discussion of the typicality of the claims is required. The typicality requirement is satisfied where the claims are substantially similar. The named plaintiffs owned or leased allegedly defective vehicles at allegedly inflated prices which lost value as a result of the public revelation of the defect. Thus, the representatives' claims are substantially similar to those of the represented class. They satisfy the typicality requirement.

4. Adequacy of Representation

Defendant contends that plaintiffs are inadequate representatives of the class because irreconcilable differences exist between the named plaintiffs and the class they seek to represent. Defendant relies on *Global Minerals and Metals Corp. v. Superior Court* (2003) 113 Cal.App.4th 836.)

There, the court explained that in order to be deemed an adequate class representative, the class action proponent must show it has claims or defenses that are typical of the class, and it can adequately represent the class. This is part of the community of interest requirement. Where there

is a conflict that goes to the "very subject matter of the litigation," it will defeat a party's claim of class representative status. Thus, a finding of adequate representation will not be appropriate if the proposed class representative's interests are antagonistic to the remainder of the class. The adequacy inquiry serves to uncover conflicts of interest between named parties and the class they seek to represent. A class representative must be part of the class and "possess the same interest and suffer the same injury" as the class members. To assure adequate representation, the class representative's personal claim must not be inconsistent with the claims of other members of the class. (*Global Minerals & Metals Corp. v. Superior Court (supra)* at 851)

Applying this standard the court found clear conflicts among members of the class who had different interests as buyers and sellers in the complex business of copper product distribution making class certification inappropriate (Id.). The Court's reasoning was largely based on the unique peculiarities of the copper market and that there was competition among the various class members.

Global Minerals is factually distinguishable. Plaintiffs here are not in competition with each other. They have no conflict that goes to the very subject matter of the litigation. The conflicts identified by defendant between plaintiffs who sold their vehicles and plaintiffs to whom they were sold are largely illusory. Any such conflicts between class members would go to the issue of apportionment of damages. That there may ultimately be differences in the amount of damages does not preclude certification of the class.

The named plaintiffs have shown that they can adequately represent the class.

Defendant properly does not challenge the adequacy of counsel. Plaintiffs' counsel are extremely well qualified to represent the class.

5. Superiority

Under the federal rule, the matters pertinent to the finding of superiority include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced

by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action. (Fed Rules Civ. Proc., rule 23(b) (3))

In California, despite its general support of class actions, the Supreme Court has consistently admonished trial courts to carefully weigh respective benefits and burdens and to allow maintenance of the class action only where substantial benefits accrue both to litigants and the courts. (*City of San Jose v. Superior Court* (1974) 12 Cal. 3d 447, 459)

The main inquiry is whether the class action is a fair and efficient means of adjudicating the claims. Defendant asserts the large number of individualized issues render the class action unmanageable. The court finds a large number of individualized issues do not exist. Hence, this argument is not persuasive. Similarly, the Court is not persuaded NHTSA procedures provide a superior method of resolving the issues raised in this action. This argument is premised once more on defendant's erroneous characterization of plaintiffs' case. The California legislature has enacted the UCL, FAL, and CLRA in order to provide adequate protection to California consumers from the type of unfair practices alleged by plaintiffs.

The claims at issue in this case are 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 members of the class. It is clear that substantial benefits will accrue to both the litigants and the courts.

As for the federal rules, there is no evidence that members of the class have shown any strong interest in litigating their individual claims. This Court has already been designated as the proper forum for litigation of this coordinated action. This case is eminently manageable and class certification represents the most appropriate means of continuing this litigation in a manner most economical to the effected parties, counsel and the courts.

At this time the Court is prepared to certify one class. On the present record, there is no need to certify subclasses. The certification is conditional. As the case proceeds, it may well become apparent that subclasses will be beneficial. The Court is prepared to reconsider this determination should it become necessary.

The class shall be certified as follows:

"All persons or entities in California who purchased, owned or leased new or used Ford Explorers at any time during the period from 1990 to August 9, 2000 and who either (a) currently own, lease or operate the vehicle(s) or (b) sold, traded or otherwise disposed of such vehicle(s) or whose lease for such vehicle expired or otherwise terminated before August 9, 2000."

The Court directs all parties to meet and confer regarding scheduling a further case management conference. Court further directs plaintiffs' counsel to submit a proposed notice to potential class members for review at the case management conference.

IT IS SO ORDERED.

Dated: 2-8-05

David De Alba
Judge of the Superior Court of California
County of Sacramento

* * A Certificate of Mailing is Attached * *

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 submitted matter - Motion for Class Certification, 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:

KEVIN P. RODDY
HAGENS BERMAN LLP
700 South Flower St., Ste. 2940
Los Angeles, CA 90017-4101

ELIZABETH J. CABRASER
Embarcadero Center West
275 Battery Street, 30th Fl
San Francisco, CA 94111-3339

HENRY ROSSBACHER
THE ROSSBACHER FIRM
811 Wilshire Blvd., Ste. 1650
Los Angeles, CA 90017-2666

TRACY BUCK-WALSH
ATTORNEY AT LAW
6 Reyes Court
Sacramento, CA 95831

DANIEL ALEXANDER
O'MELVENY & MEYERS LLP
400 South Hope Street
Los Angeles, CA 90071-2899

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

Dated: FEB - 8 2005

N. SMITH
N.Smith, Deputy Clerk