

**FILED/ENDORSED**  
AUG 29 2005  
By NITA SMITH  
DEPUTY CLERK

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO

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

Department Number: 29  
JCCP Nos.: JC4266 & JC4270  
MOTION REGARDING CLASS ACTION  
NOTICE ISSUES - ORDER

FORD EXPLORER CASES  
JCCP Nos.: JC4266 & JC4270  
MOTION REGARDING CLASS ACTION NOTICE ISSUES - ORDER

1 This matter came on hearing on August 19, 2005. At the end of the  
2 telephonic conference the Court took the matter under submission.

3 The Court rules as follows.

4 There are two disputed matters before the Court.

- 5 1. Whether to include in the notice the additional language  
6 proposed by defendant Ford; and  
7 2. Whether defendant should bear all or some of the costs of  
8 disseminating the notice.

9 I.

10 Defendant requests the court to include in the notice at page 1  
11 the statement:

12 *Including, potentially, any rights to sue Ford for*  
13 *personal injuries or property damages should you*  
14 *ever experience a roll over incident after the*  
15 *conclusion of this lawsuit.*

16 Ford also wants to include the statement at page 4:

17 *Ford also says that if you take part in this*  
18 *lawsuit you may be unable to sue Ford for any*  
19 *personal injuries or property damages if you ever*  
20 *experience a roll over after the conclusion of this*  
21 *case.*

22 The request is DENIED. The Court is not persuaded that the  
23 language is necessary or proper.

24 *City of San Jose v. Superior Court, (1974) 12 Cal. 3d 447, cited*  
25 *by defendant, is distinguishable. In City of San Jose the facts*  
26 *presented a classic case of splitting a single cause of action. In*  
27 *this case, plaintiffs have made clear from the outset that this case*  
28 *is not about personal injuries or wrongful death. The class certified*  
29 *by the Court seeks only economic damages based on consumer rights.*  
30

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1 The individual personal injury and property damages claims potentially  
2 obtainable from a future roll-over accident are separate and distinct  
3 from the consumer claims asserted in this action.

4 As stated in *Hicks v. Kaufman and Broad Home Corp.* (2001) 89  
5 Cal.App.4th 908, rule 23(c) (4) of the Federal Rules of Civil  
6 Procedure permits a class action to be brought or maintained  
7 restricted to particular issues. The class here is so restricted.  
8 The reasoning in *Hicks (supra)* and the federal cases cited by  
9 plaintiffs persuade the Court that the notice is adequate. Ford's  
10 proposed additional language is speculative and unnecessary.

11 The Court hereby approves both the long and the short forms of  
12 the notice limited to the language agreed upon by the parties and  
13 excluding Ford's proposed language outlined above.

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16 II.

17 Plaintiffs' request to share the costs of distribution of the  
18 notice between the parties is DENIED.

19 The parties have agreed on a publication notice plan that will  
20 cost \$370,000 in media and notice production costs.

21 Ordinarily it is the plaintiff's responsibility to provide notice  
22 and bear the expense of doing so. (*Hypertouch v. Superior Court* (2005)  
23 128 Cal.App.4th 1527, 1551) It is only in special circumstances that  
24 the Court would exercise its discretion under Civil Code section  
25 1781(d) and California Rules of Court, rule 1856 to order defendant to  
26 pay all or part of the costs.

27 The *Hypertouch* case contains an extensive summary of cases in  
28 which the court has ordered defendant to pay some or all of the costs  
29 of providing notice to prospective class members. Those cases  
30 demonstrate that generally such an order is appropriate where

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1 defendant's conduct has somehow contributed to the difficulty of  
2 identifying the class members, because, for example, it failed to  
3 retain information or where the defendant's conduct has made the  
4 process of notice more expensive.

5 Here, plaintiffs contend defendant should share in the cost of  
6 notice because it has no means of identifying class members. They  
7 also argue the added costs of litigation incurred because of  
8 defendant's repetitive challenges to the class certification and the  
9 fact defendant has received the benefits of Mr. Hilsee's advice  
10 warrant an apportionment of costs. The Court is not persuaded by the  
11 reasons stated.

12 As the Court stated on the record, the fact that defendant  
13 strenuously litigated its case is not a ground for ordering it to pay  
14 costs. Nor is the simple fact that defendant does not have information  
15 regarding potential class members. There is nothing in the record to  
16 suggest defendant had an obligation to keep records of the names and  
17 addresses of potential class members nor that defendant has  
18 unnecessarily complicated the problems of identifying and notifying  
19 the class. There is no evidence before the court suggesting or  
20 demonstrating defendant has the ability to provide notice easily and  
21 at relatively little cost. (See *Hypertouch v. Superior Court (supra)*  
22 at P. 1553)

23 The Court notes it has taken into consideration the respective  
24 resources of the parties and the burden on the individual plaintiffs.  
25 It further notes plaintiffs' counsel's undertaking and ability to pay  
26 advance costs are not factors in the equation. The court acknowledges  
27 and recognizes the burden plaintiffs' must shoulder in financing the  
28 cost of the notification program. However, the burden is not  
29 intolerable given the economical method of notice chosen by the  
30 parties and approved by the Court.

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IT IS ORDERED that the Notice of Class Action is approved.

IT IS FURTHER ORDERED that the method of notification proposed by  
Todd B. Hilsee is approved. Plaintiffs shall bear the \$370,000 cost.

Date: 8-29-05



*David De Alba*

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

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

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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 MOTION REGARDING CLASS ACTION NOTICE ISSUES - ORDER, 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  
Co-Lead Counsel for Plaintiffs & the Class

ELIZABETH J. CABRASER  
Embarcadero Center West  
275 Battery Street, 30<sup>th</sup> Fl  
San Francisco, CA 94111-3339  
Co-Lead Counsel for Plaintiffs & the Class

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

TRACY BUCK-WALSH  
ATTORNEY AT LAW  
6 Reyes Court  
Sacramento, CA 95831  
Counsel for Plaintiff Tompkins

DANIEL ALEXANDER  
O'MELVENY & MEYERS LLP  
400 South Hope Street  
Los Angeles, CA 90071-2899  
Counsel for Defendant Ford Motor Co.

STEVEN HARBURG  
O'MELVENY & MEYERS LLP  
1625 Eye Street, N.W.  
Washington, DC 20006-4001  
Counsel for Defendant Ford Motor Co.

DON BARRETT  
BARRETT LAW OFFICE, P.A.  
P.O. Box 987  
404 Court Square North  
Lexington, MS 39095-0987  
Counsel for Plaintiffs Katz

ELIZABETH A. BERNEY  
MILBERG WEISS BERSHARD & SCHULMAN  
One Pennsylvania Plaza, 49<sup>th</sup> Floor  
New York, NY 10119-0165  
Counsel for Plaintiff Katz

DAVID BOIES  
BOIES SCHILLER & FLEXNER  
333 Main Street  
Armonk, NY 10504  
Counsel for Plaintiffs Katz

ROBERT GREEN  
GREEN WELLING LLP  
595 Market St., #2750  
San Francisco, CA 94105  
Counsel for Plaintiffs Gray

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1 MICHAEL P. LEHMAN  
2 THE FURTH FIRM, LLP  
3 225 BUSH STREET, STE. 1500  
4 SAN FRANCISCO, CA 94104

IRWIN LEVIN  
COHEN & MALAD, LLP  
136 NORTH DELAWARE ST., STE. 300  
INDIANAPOLIS, IN 90017

4 TARAS KICK  
5 THE KICK LAW FIRM, APC  
6 660 South Figueroa St., Ste. 1800  
7 Los Angeles, CA 90017

MARK TAMBLYN  
KERSHAW CUTTER RATINOFF & YORK LLP  
980 9<sup>th</sup> Street, Suite 1900  
Sacramento, CA 95814

8  
9 I, the undersigned deputy clerk, declare under penalty of perjury  
10 that the foregoing is true and correct.

11  
12 Dated: AUG 29 2005

13 N. SMITH  
14 N. Smith, Deputy Clerk

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