SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

JUDICIAL COUNCIL COORDINATION PROCEEDING Special Title (Rule 1550(b)) BRIDGESTONE/FIRESTONE TIRE CASES I & II Included Actions: 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	Department Number: 32 Case Number: JCCP NOS 4266 & 4270 **RULING ON SUBMITTED MATTER:** **FORD MOTOR COMPANY'S MOTION FOR A FINDING THAT PLAINTIFFS' CONSUMERS LEGAL REMEDIES ACT CLAIMS HAVE NO MERIT**

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 is **denied.**

Defendant contends the CLRA claims are without merit because:

(1) Ford made no affirmative misrepresentation;

(2) The information that plaintiffs claim Ford should have disclosed would not be relied upon by a reasonable consumer and was not material:

(3) The CLRA claims asserted by class members who have not sold their vehicles have no merit because these class members have not suffered any actual damages.

(4) The CLRA claims for class members who purchased their vehicles used have no merit because these class members have suffered no actual damages.

Although a CLRA cause of action cannot be summarily disposed of by means of a motion for summary adjudication or summary judgment (Civ. Code, § 1781, subd. (c)), it can be dismissed before trial on a motion for a determination that it is without merit (i.e., a no-merit determination). (Civ.

Code, § 1781, subd. (c)(3); *Olsen v. Breeze, Inc.* (1996) 48 Cal.App.4th 608, 624.) In practice, courts nevertheless have applied the standards applicable to motions for summary judgment and summary adjudication in deciding motions for no-merit determinations. (*Consumer Advocates v. Echostar Satellite Corp.* (2003) 113 Cal.App.4th 1351.)

(1) Defendant seeks a no-merit determination on the ground the CLRA requires an affirmative misrepresentation and plaintiff has no evidence that defendant made any such affirmative representation.

The party moving for summary judgment bears the initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact. If this burden is met, the burden shifts, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact. (*Smith v. Wells Fargo Bank, N.A.*, (2005) 135 Cal. App. 4th 1463) This rule applies equally to a CLRA no-merit motion.

Defendant produced selective evidence on this issue based on its characterization of plaintiffs' claims. In opposing the motion, plaintiffs assumed defendant had met its burden of showing the non-existence of a triable issue of material fact. The Court adopts the same assumption.

In opposition, plaintiffs have produced evidence in the form of sales brochures with statements such as "safety is a

major concern for you and it's a high priority for us" and the October 22-23, 2001 deposition testimony of Douglas Scott (at pages 66-70 and 92-96) that defendant created a brand image as a "go anywhere, do anything" vehicle that catered to customers' deep seated needs for safety and security. (See Opposition to Defendant's Separate Statement facts 4-6 and evidence in support.)

Plaintiffs have also produced evidence that Ford's brand imaging and advertisements were intended to cause, and allegedly did cause, California consumers to purchase and lease Ford explorers. (Plaintiffs' Disputed and Undisputed material facts, #33 (Scott deposition 36-39. 147-148.) Ford consistently emphasized a uniform "Go anywhere, Do anything" brand position theme. (Plaintiffs' Disputed and Undisputed Material Facts, #35 (Scott deposition 66-67, 92-96.) Ford's advertisements portrayed the Explorer as a vehicle for family use. (Plaintiffs' Disputed and Undisputed Material Facts, #36 (Holt opinion at pages 2, 4.) Ford's advertisements portrayed the Explorer as a vehicle that was safe and handled well. (Plaintiffs' Disputed and Undisputed Material Facts #s 37 and 38 (Holt opinion, Kamins opinion, Scott deposition 92-93 and print ads exhibits 107, 112, 115, 116, 118, 120 and 121.) Ford's advertisements portrayed the Explorer as a vehicle that was rugged using the Ford Tough logo. (Plaintiffs' Disputed and Undisputed Material Facts #39 (Scott deposition 69-70, Holt opinion.) Ford's

advertising was intended to create a perception of safety. (Plaintiffs' Disputed and Undisputed Material Facts #40 (Scott deposition 66-67, 92-96, Kamins opinion.) Ford failed to disclose material facts about the Explorer's rollover propensity. (Plaintiffs' Disputed and Undisputed Material Facts #42 (Hilsee deposition at 133-13.) Ford could have provided information to buyers and lessees regarding this propensity. (Plaintiffs' Disputed and Undisputed Material Facts #44 (Hilsee deposition).

The evidence is sufficient to permit an inference that actionable misrepresentations were made. The CLRA encompasses implied as well as express false representations. (See e.g. *Boeken v. Philip Morris* (2005) 127 Cal.App.4th 1640, 1662) The evidence is sufficient to create triable issues of material fact.

Defendant's contention that any statements made regarding the Explorer were mere "puffery" lacks merit. There is sufficient evidence of statements of fact regarding the characteristics of the vehicle and of its safety to require resolution of this matter by the trier of fact. The cases cited by defendant are inapposite or not persuasive. There is a triable issue of material fact as to whether the statements are fact or puffery under the reasoning of *Hauter v. Zogarts* (1975) 14 Cal.3d 104. (See *Furla v. Jon Douglas Co.* (1998) 65 Cal.App.4th 1069, 1081)

Additionally, active concealments are actionable under

1 the CLRA. Plaintiffs have produced sufficient evidence to
2 create triable issues of material fact regarding whether
3 defendant actively concealed material facts that it had a
4 duty to disclose.
5 (2) Defendant's contentions regarding materiality are
6 equally unavailing. Defendant states that plaintiffs have
7 identified massive amounts of detailed information about the
8 design, design history, testing and performance of the Ford
9 Bronco II, results of tests conducted on pre-production
10 prototypes of Explorers; alternative designs considered,
11 rejected and accepted for every component that might have
12 some effect on rollover stability; discussions among company
13 employees regarding arcane design questions, manufacturing
14 questions, cost questions and company decision-making
15 processes; predictions and estimates of probabilities of
16 passing various tests not required by law or by defendant's
17 own internal standards; and massive amounts of other data.
18 Defendant contends these facts are not material. Defendant
19 further contends plaintiffs have not identified any
20 precedent requiring a manufacturer to publish such
21 information. Defendant also contends no expert has
22 testified that a consumer would want, need or use such
23 information.
24
25 A misrepresentation is judged to be "material" if "a
26 reasonable man would attach importance to its existence or
27 nonexistence in determining his choice of action in the
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transaction in question. (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal. 4th 951, 977.) In a CLRA action the court examines the effect on the reasonable consumer. A reasonable consumer is the ordinary consumer acting reasonably under the circumstances who is not versed in the art of inspecting and judging a product, in the process of its preparation or manufacture. (See *Colgan v. Leatherman Tool Group, Inc.* (2006) 135 Cal. App. 4th 663, 682.)

Plaintiffs' disputed facts regarding representations made and information concealed regarding safety and rollover propensity are clearly material. Defendant's contentions that, as a matter of law, defendant had no duty to find a method of properly informing the consumer about the rollover propensity are not persuasive.

(3) and (4)

The Court notes that in numbers 3 and 4 defendant seeks separate adjudication of claims that do not dispose of the entire CLRA cause of action under the reasoning of *Lilienthal & Fowler v. San Francisco* (1993) 12 Cal.App.4th 1848, 1854. The Court does not agree that the claims of class members who purchased their vehicles used or who have not sold their vehicles are properly the subject of separate adjudication in the circumstances here. The request to separately adjudicate these claims is denied.

IT IS SO ORDERED.

Date:

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

** Certificate of Service is Attached **