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SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

OCT 22 2013

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

Arturo Martinez, Plaintiff, v. Santa Maria Ford, Inc., et al. Defendant.	Case No.: 1321120 Denial of Motion for Class Certification as to Santa Maria Ford (First and Second Causes of Action of Fourth Amended Complaint)

Plaintiff Arturo Martinez's Fourth Amended Complaint, filed April 12, 2013, advances class claims against Defendants Santa Maria Ford, Inc. (Santa Maria Ford) for violations of the Automobile Sales Finance Act (Civ. Code, § 2981, et seq.) and its modern incarnation as Rees Levering (hereafter, the ASFA) as well as Unfair Business Acts and Practices (Bus. & Prof. Code, § 17200, et seq.) (hereafter, UCL), as detailed in the first and second causes of action, respectively. The basis for each cause of action rests on Defendant's use of the abbreviation "N/A" in the retail installment contract; that is, in place of identifying separately the amounts paid to public officials for vehicle license, registration, and titling fees as mandated by the ASFA (Civ. Code, § 2982, subd. (2)(A) and (B)), Defendant Santa Maria Ford, and thus its assignee, Wells Fargo Bank, N.A., (Civ. Code, § 2983.5, subd. (a)), aggregated these amounts on one line for a single total, while utilizing the "N/A" designation for the other categories.

The ASFA violation would support a UCL cause of action. (See, e.g., *Lewis v. Robinson Ford Sales, Inc.* (2007) 156 Cal.App.4th 359, 264.)

On June 27, 2013, the court granted the request to take judicial notice of Assembly Bill 238, but denied all other requests. It overruled all evidentiary objections by both parties. On this date, the court also denied the motion to certify the class as to Wells Fargo Bank, N.A, predicated on the third and fourth causes of action (involving the same violations at issue here under the ASFA and UCL), directing Wells Fargo Bank to provide a proposed order for signature. (Accordingly, the denial of the class certification motion as to Wells Fargo is addressed under separate cover.) Also on this date, the court took under submission the motion to certify the class against Santa Maria Ford, with the effective date of submission commencing on August 7, 2013, after all briefing had been submitted. The motion to certify the class as to Santa Maria Ford is the subject of this order.

Plaintiff asks the court to certify the following class involving Santa Maria Ford (as to the first and second causes of action): "All persons who, between May 20, 2006, and July 1, 2006, (1) purchased a vehicle in California for personal use, (2) signed an [RISC] that included the disclosure 'N/A" on the RISC as the amount due for registration/transfer/titling fees, and (3) whose RISC was assigned to and/or is assigned by Wells Fargo." After a review of all briefs, and an examination of all relevant authority, the court denies the motion, for reasons discussed in greater depth below.

A. General Legal Principles Associated with Class Certification

Plaintiff, as the party advocating class treatment, must demonstrate the existence of (1) an ascertainable and sufficiently numerous class, (2) a well-defined community of interest, and (3) substantial benefits from certification that render proceeding as a class superior to the alternatives. (*Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069, 1089.) In turn, the "'community of interest requirements embodies three factors: (1) predominate common questions of law or fact; (2) class representatives with claims of defenses typical of the class; and (3) class representatives who can adequately represent the class.'" (*Ibid.*, quoting *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.) Courts are encouraged to use

the class action device, and if appropriate, should redefine the class where it can be ascertainable. (*Cho v. Seagate Technology Holdings, Inc.* (2009) 177 Cal.App.4th 734, 748.)

Commonality as a general rule depends on whether Defendant's liability can be determined by issues common to all class members (that is, questions of law and fact predominate over individualized questions). (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1022; see also *Soleto v. Medianews Group, Inc.* (2012) 207 Cal.App.4th 639, 652.) The trial court must examine the issues framed by the pleadings and the law applicable to the causes of action and consider plaintiff's theories of liability. The party seeking class certification must explain how the procedures will effectively manage the issues in question. (*Dunbar v. Albertson's Inc.* (2006) 141 Cal.App.4th 1422, 1432.) If the parties' evidence is conflicting on issues associated with commonality, the trial court is permitted to credit one party's evidence over other party's evidence. (*Dailey v. Sears, Roebuck & Co.* (2013) 214 Cal.App.4th 974, 991.) If diverse factual questions exist, even though there may be common questions of law, class actions are inappropriate. (*Basuro v. 21st Century Insurance Co.* (2003) 108 ACl.App.4th 110, 118.)

Further, even if questions of law or fact predominate, Plaintiff must also show the class action mode is a superior mechanism to address the claims. In deciding whether a class action would be superior to individual lawsuits, courts consider the interest of each member in controlling his or her own case personally; the difficulties, if any, that are likely to be encountered in managing a class action; the nature and extent of any litigation by individual class members already in progress involving the same controversy; and the desirability of consolidating all claims in a single action before single court. (*Basurco v. 21st Century Ins. Co, supra*, 108 Cal.App.4th at pp. 120-121.) The relevant comparison is whether the costs and benefits of adjudicating Plaintiffs' claims in a class action and the costs and benefits of proceeding by individual separate actions. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 339, fn. 10.) As one appellate court has explained: "'Manageability within this context is intertwined not only the question of ascertainability, but also the underlying admonishment the Supreme Court has given the trial courts to carefully weigh the respective

benefits and burdens of a class action and to permit its maintenance only where substantial benefits will be accrued by both litigants and the courts alike.'" (*Global Minerals & Metals Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 849, quoting *Reyes v. Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1275.)

B. Analysis

Applying these general principles, the proposed class as to Santa Maria Ford appears to be no more than 83 members, based on discovery to date. The evidence presented to the court indicates no real issues with ascertainability and numerosity, contrary to Santa Maria Ford's assertions.

Nevertheless, problems with commonality and/or predominance exist. Significantly, in his deposition, David Hurdle, Santa Maria Ford's Finance and Insurance Manager, testified that despite the "N/A" designation and the lumping of fees on the RISC, it was his practice in 2006 to read the RISC line-for-line with each and every customer, and that he explained this line "included the total DMV fees." That is, he explained to the customer that amount under licensing fees "included license, registration, and title . . . ." This evidence was uncontradicted.

Generally, in order to advance a UCL cause of action, Plaintiff must show an economic loss. (*Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 322-326.) In a class action setting, Plaintiff need only show the representative plaintiff has standing. (*In re Tobacco II Cases* (2009) 46 Cal.4th 298, 319.) Nothing in the case law, however, precludes *defendant* from proffering evidence, if it meaningfully exists and is readily available, that shows individual class members did not actually suffer an economic injury. Mr. Hurdle's testimony provides such an opportunity, and the specter of individual trials appears neither unrealistic nor speculative, as Plaintiff, at oral argument on June 27, 2013, indicated he was willing to stipulate to the admissibility of Mr. Hurdle's testimony for this purpose. (See, e.g., *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 459 [a class action cannot be maintained where each member's right to recover depends on facts peculiar to his case].) In the UCL context, the court may well be confronted with the very real possibility of 83 mini trials.

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This same evidence also undermines class treatment of the ASFA violation, although a slightly different analysis is required. While the ASFA violation may be akin to a strict liability violation for purposes of injury-in-fact assessment (*Lewis, supra*, 156 Cal.App.4th at p. 370), case law suggests that courts, in determining whether consumer protection laws such as the ASFA apply to a particular transaction, look to "the substance of the transaction and do not allow mere form to dictate the result" (*Thompson v. 10,000 RV Sales, Inc.* (2005) 130 Cal.App.4th 950, 966), a point underscored by uncertainty in published case law as to whether the "substantial compliance" doctrine[1] applies to determine the ASFA violations. (See, e.g., *Nelson v. Pearson Ford Co, supra*, 186 Cal.App.4th at p. 1003 [assuming without deciding that the concept of substantial compliance continues to apply to violations of the ASFA].)

Rojas v. Platinum Auto Groups, Inc. (2013) 212 Cal.App.4th 997 provides useful guidance in resolving this issue. *Rojas* observed that recent 2012 amendments to the ASFA scheme (removing rescission as a possible remedy for government fee lumping (Civ. Code, § 2982, subdivisions (a) and (b)) indicate the Legislature intended the "substantial compliance" doctrine to apply in the "narrowest of circumstances." One of these "narrow circumstances," according to *Rojas*, involved governmental lumping claims of title, registration and transfer fees – the very claims at issue here. (See *id.* at p. 1005 [the "substantial compliance" doctrine has been removed except for claims involving government lumping fee claims].) While there is no doubt that rescission remains available to government fee lumping violations that arose prior to the recent 2012 amendment, there appears no reason in law, logic, or statutory construction to suggest the Legislature intended courts to ignore the "substantial compliance" doctrine when analyzing actionable government lumping claim involving claims arising ***before*** 2012. For this purpose in particular a dealer's oral representations to the customer, while by no means dispositive, are relevant and admissible. Substantively, Mr. Hurdle's testimony creates

[1] Substantial compliance "means actual compliance in respect to the substance essential to every reasonable objective of the statute. But when there is such actual compliance as to all matters of substance then mere technical imperfections of form or variations in mode of expression by the seller, or such minima as obvious typographical errors, should not be given the stature of noncompliance and thereby transformed into a windfall for an unscrupulous and designing buyer." (*Nelson v. Pearson Ford Co., supra,* 186 Cal.App.4th at p. 1003.)

a genuine material issue about whether Santa Maria Ford substantially complied with the statute despite use of "N/A" on the sales contract, necessitating focused and particularized inquiry on an individual basis. (See, e.g., *Brinker v. Restaurant Corp. v. Superior Court*, supra, 53 Cal.4th at pp. 1024-1025 [whether common or individual questions predominate will often depend upon resolutions of issues closely related to the merits; while such inquiries are closely circumscribed, to the extent the propriety of certification depends upon disputed threshold legal or factual questions, a court may, and indeed must, resolve them].) Factored into this assessment is the uncontested declaration of Ms. Pamela Draeger, the person in charge of Department of Motor Vehicle Fees for Santa Maria Ford, who declared that "it is not possible to determine in advance the exact amount of DMV license fees that will be due and owing on any particular transaction . . . ." Defendant will be entitled to present this evidence at trial, creating, again, the real specter of mini-trials about what effect it had on each individual putative class member, undermining the efficacy of class action treatment. (See, e.g., *Brinker Restaurant Corp., supra*, 53 Cal.4th at p. 1025.)

Plaintiff responds baldly that a customer's state of mind is *never* at issue under the ASFA scheme, and thus, oral representations made by Defendant's representatives about possible disclosures outside the retail sales contract are irrelevant. According to Plaintiff, under the ASFA scheme, we look to the written contract and nothing more. He opines, therefore, that there is no need for an individual assessment, and thus, certification should be granted. The cases Plaintiff offers to support such a global proclamation do not support such a broad sweep.

Plaintiff, for example, relies on *Rojas v. Platinum Auto Group, Inc., supra*, 12 Cal.App.4th 997. Yet *Rojas*, if anything, suggests that government fee lumping cases, as here, are different than other ASFA violations, as reflected in the current legislative scheme. Perhaps more significantly, *Rojas* at no point addressed whether oral representations are irrelevant *per se* in determining whether an ASFA violation can be established, even though, unquestionably, the appellate court concluded Plaintiff could state an actionable claim under the ASFA based on a misstatement in the sale contract about the $2,000 deferred down

payment (erroneously labeled as Remaining Cash Down Payment rather than "Deferred Down Payment"), even though it could be labeled as "trivial." (*Id.* at p. 1005.) *Rojas* was not confronted with, and thus did not address, whether oral representations by the dealer could ever be relevant in determining whether a class action is the appropriate method of resolution. It is axiomatic that a case does not stand for a proposition not addressed. (*McWilliams v. City of Long Beach* (2013) 56 Cal.4th 613, 626.)

Nelson v. Pearson Ford Co, supra, 186 Cal.App.4th 983 is also inapposite. In *Nelson*, Plaintiff agreed to purchase a vehicle, submitted a credit application, and the dealer defendant prepared an original contract. On October 2, 2004, the original contract was signed. On October 8, 2004, the parties agreed to rescind the first contract and sign a second contract; the second contract, however, was backdated to October 2, 2004, with interest accruing on the second contract beginning on October 2, 2004, not October 8, 2004. That made the APR in the second contract inaccurate. *Nelson* determined that even if the substantial compliance doctrine applied, this was no mere technical violation of the ASFA, because the hidden fees were not disclosed, the dealer falsely dated the second contract, and did not state the correct APR. Further, "[w]hile it is true the parties agreed to backdate the second contract, it does not necessarily follow that Nelson knew the impact the contract date had in determining the APR, or that [the dealer] charged him interest for the six days that no contract existed." (*Id.* at p. 1004.) Indeed, unless "dealers disclose correct information the disclosure itself is meaningless and the informational purpose of the ASFA is not served."

Nothing in *Nelson* suggests oral representations are meaningless on a *per se* basis in the ASFA context. In *Nelson*, the customer's consent to the backdating hid the costs associated with the practice, and there was no evidence, recited in the opinion, that plaintiff was informed of the consequences of this consent. Consent to the backdating was not consent to the finance charge. The same problem in *Nelson* is not present here. If Mr. Hurdle is to be believed, the overall costs associated with the retail sales contract as they relate to licensing fees were disclosed, not hidden. And while customers here were not given the exact monetary breakdown, the evidence also suggests it did not have that information. That is, unlike in

Nelson, the customers were told what the lumping meant, the overall amounts at issue, and the amounts of any possible refund. *Nelson* does not support Plaintiff's claim that any oral explanation of such a simple issue should be deemed irrelevant, and it certainly does not support plaintiff's global proclamation that a consumer's knowledge is always irrelevant in determining whether there was a violation the ASFA scheme (or whether there was substantial compliance with it). Mr. Hurdle's oral explanations are relevant, necessitating an individualized inquiry about their import and impact.

Finally, *Lewis v. Robinson Ford Sales, Inc., supra*, 156 Cal.App.4th 156, provides only facial support to Plaintiff's position. In *Lewis*, the core violations involved elevated valuations of trade-in or leased vehicles without adequate written disclosures (i.e., the failure to disclose the negative equity on the sales contact by crediting the trade-in with value to cover the negative equity, making the true value, with the effect that the buyer would have to pay higher amounts of sales tax and registration fees). Defendant argued that class certification was inappropriate because individuals negotiated with the dealer. The appellate court rejected this argument. ". . . [T]he subject disclosures are mandatory, and an otherwise proper class certification should not be defeated through that *some customers were verbally told about the adjusted cash prices for the vehicle*.[Citation omitted.]" (Id. at p. 370. Emphasis added.) This was so, it would appear, because the deal negotiations were not significant to liability concerns, particularly as over-allowance is an inherently subjective concern; a consumer verbally told about the adjusted cash price would not know about the potential problems of increased fees and taxes or increased APR value. That is, a consumer's knowledge about the adjusted cash price would not include any knowledge about these hidden costs.

This case is factually distinguishable. In *Lewis*, the evidence showed that only some of the customers were told about the adjusted cash prices. Here, by contrast, ***all*** customers were told about the government fee lumping. Additionally, unlike in *Nelson*, there were no hidden taxes or fees associated with the use of "N/A." And as was true in *Nelson*, nothing in *Lewis* suggests a universal rule that oral disclosures are irrelevant in all the ASFA context. *Lewis* is a

slim reed upon which to support the contention that oral conversations are universally irrelevant.

In any event, even if the court concluded that there were sufficient tenets of commonality to support class treatment, Plaintiff has failed to show class action is superior to other means. (*Brinker Restaurant Corp., supra*, 53 Cal.4th at p. 1021 [the party advocating certification show, inter alia, substantial benefits from certification that render proceeding as a class superior to the alternatives].) The purpose of the superiority requirement is to assure that the class action is the most efficient and effective means of settling the controversy. (*Caro v. Procter & Gamble* (1993) 18 Cal.App.4th 644, 661.) No doubt class actions are appropriate when numerous parties suffer injury to insufficient size to warrant individual action and when denial of class relief would result in unjust advantage to the wrongdoer. Further, it is beyond cavil that defendants should not profit from their wrongdoing simply because their conduct harmed large numbers of people in small amounts instead of small numbers of people in large amounts. (*Linder v. Thrifty Oil* Co. (2000) 23 Cal.4th 429, 446.) Class certification, however, remains a discretionary decision by this court. In *City of San Jose v. Superior Court, supra*, 12 Cal.3d 447, the California Supreme Court stated that "despite this court's general support of class actions, it has not been unmindful of the accompanying dangers of injustice or of the limited scope within which these suits serve beneficial purposes. Instead, it 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. [Citations.]" (*Id.* at p. 459; accord, *Occidental Land, Inc. v. Superior Court* (1976) 18 Cal.3d 355, 360; see also *Caro v. Procter & Gamble Co., supra*, at p. 658.) Plaintiff has not met his burden to show the superiority of class treatment.

First, class members as a whole are unlikely to receive substantial benefits from the lawsuit because, as revealed by the evidence, any potential recovery would be small, if not nominal. (*Soderstedt v. CBIZ Southern California*, LLC (2011) 197 Cal.App.4th 133, 157.) The efforts needed to secure these nominal amounts stands in stark contrast to the judicial resources needed to secure their distribution, which will be substantial under the class action

paradigm. (*Blue Chip Stamps, supra*, 18 Cal.3d at p. 386 [when potential recovery to the individual is small and when substantial time and expense would be consumed in distribution, the proposed class member is unlikely to receive any appreciable benefit].) This concern is amplified by the resources that will be utilized to resolve any and all possible rescission remedies, which by their nature require a focused, ad hoc determination. (See, e.g., *Nelson, supra*, 186 Cal.App.4th at pp. 1010-1013.)[2]

Further, denial of class certification will not weigh heavily against individual class members. The putative class members to date have likely received the benefit of equitable tolling, which applies to toll the statute of limitations in the context of the class certification process where the defendant has been placed on notice of the substance and nature of Plaintiff's claims, as was done here. (See *California Restaurant Management Systems v. City of San Diego* (2011) 195 Cal.App.4th 1581, 1596.) Those individuals who wish to pursue the remedy, and who are not otherwise bared by the statute of limitations, can. The court cannot say absent a class action, individual class members will not seek recovery. (See, e.g., *Caro v. Procter & Gamble Co.* (1993) 18 Cal.App.4th at p. 659, fn. 8, citing *Daar v. Yellow Cab Co* (1967) 67 Cal.2d 695, 715.)

Finally, our high court has expressly indicated that termination of the defendant's alleged wrongdoing is a factor to be considered in weighing the benefits of class treatment. (*Blue Chip Stamps, supra*, 18 Cal.3d at p. 386.) The uncontested evidence reveals Santa Maria Ford no longer utilizes the procedures challenged here, which is the primary reason for the compressed time frame governing the proposed class. The targeted practices at issue stopped

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[2] As a side note, the court is aware that the legislative history for the new 2012 amendments to ASFA identifies rescission in ***this*** case as one of the reasons why it was removed as remedy for government lumping violations. According to the Assembly Floor Analysis, ". . . this bill would not modify the existing disclosure requirements regarding fees paid to public officials. As an example of potential violations of those requirements, a complaint filed in Santa Barbara County Superior Court contends that a car dealer in Santa Maria included the total fees paid under the line for 'license fees' and wrote 'N/A" under the line registration/transfer/titling fees. While this bill would remove the ability for a consumer to seek rescission for misstatements regarding those fees, the bill would not prohibit a consumer from seeking any other available remedy." (Assembly Floor Analysis of Bill No. 238 (2011-2012 Reg. Sess.), as amended Sept. 2, 2011, p. 3.) While these observations play no part in the court's decision to deny class certification, they underscore the court's conclusion that the class action model appears ineffective where rescission, with its individualized inquiry as indicated in this matter, will overshadow the entire lawsuit and consume inordinate judicial resources.

in July 2006. There are no contentions that defendant Santa Maria Ford received overpayments at any time. All putative class members in the end ultimately paid what they were supposed to pay and received exactly what they were supposed to receive; and there are no allegations of hidden fees or charges, either by the Santa Maria Ford or any other person or entity. Class action, either under the UCL or the ASFA, would not provide any more benefits than individual action, and would, in the end, simply clog the court. "[W]hen the individual's interests are no longer served by group action, the principal – if not the sole – beneficiary then becomes the class action attorney. To allow this is 'to sacrifice the goal for the going,'' burdening if not abusing our crowded courts with actions lacking proper purpose. [Citation.]" (*Blue Chip Stamps, supra*, 18 Cal.3d at p. 662.) In the end, based on the evidence before the court, individual case treatment, not collective action, appears the more efficacious means to resolve the issues.

C. Conclusion

For all of these reasons, the court denies class certification as to the first and second causes of action involving defendant Santa Maria Ford.

Dated: October 22, 2013

JED BEEBE
Judge of the Superior Court

PROOF OF SERVICE
1013A(1)(3), 1013(c) CCP

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA:

I am a citizen of the United States of America and a resident of the county aforesaid. I am employed by the Superior Court, in the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action. My business address is 312-H East Cook Street, Santa Maria, California.

On October 22, 2013, I served a copy of the attached **DENIAL OF MOTION FOR CLASS CERTIFICATION AS TO SANTA MARIA FORD (FIRST AND SECOND CAUSES OF ACTION OF FOURTH AMENDED COMPLAINT)** addressed as follows:

Christopher Barry, Esq.
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___ FAX
By faxing true copies thereof to the receiving fax numbers of:_____
Said transmission was reported complete and without error. Pursuant to California Rules of Court 2005(i), a transmission report was properly issued by the transmitting facsimile machine and is attached hereto.

_X_ MAIL
By placing true copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States Postal Service mailbox in the City of Santa Maria, County of Santa Barbara, addressed as above. That there is delivery service by the United States Postal Service at the place so addressed or that there is a regular communication by mail between the place of mailing and the place so addressed.

___ PERSONAL SERVICE
By leaving a true copy thereof at their office with their clerk therein or the person having charge thereof.

___ BY ELECTRONIC SERVICE: Based on a court order or agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at (time)_____ at the electronic service address listed above.

____ BY OVERNIGHT DELIVERY: I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons identified above. I placed the envelope or package for collection and overnight delivery at an office or regularly utilized drop box of the carrier.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 22nd day of OCTOBER, 2013, at Santa Maria, California.

CARRIE L. TAYLOR

CARRIE TAYLOR
Deputy Clerk