

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

IN RE: MOTOR FUEL TEMPERATURE)	
SALES PRACTICES LITIGATION)	
)	
This Document Relates To:)	MDL No. 1840
)	Case No. 07-1840-KHV
)	
<u>Rushing, et al. v. Alon USA, Inc., et al.,</u>)	
D. Kan. Case No. 07-2300-KHV,)	
N.D. Cal. Case No. 06-7621-PJH,)	
)	
<u>Lerner, et al. v. Costco Wholesale Corp., et al.,</u>)	
D. Kan. Case No. 07-2405-KHV,)	
C.D. Cal. Case No. 07-1216-GHK-FMO,)	
)	
and)	
)	
<u>Wyatt, et al. v. B.P. Am. Corp., et al.,</u>)	
D. Kan. Case No. 07-2507-KHV,)	
S.D. Cal. Case No. 07-1754-BTM-JMA.)	
)	

SUGGESTION OF REMAND

On June 18, 2007, the Judicial Panel on Multidistrict Litigation (“JPML” or “Panel”) designated this Court as the transferee court for federal cases challenging the retail motor fuel temperature sales practices of motor fuel retailers and refiners. The cases challenge defendants’ practice of selling motor fuel by the gallon without disclosing or adjusting for temperature and without disclosing the effect of temperature on motor fuel. The Court has completed consolidated discovery with respect to all pending cases. In Rushing, Lerner and Wyatt, the Court has certified classes under Rule 23(b)(2) and (3), Fed. R. Civ. P., and has granted summary judgment in favor of non-settling defendants on all of plaintiffs’ California-law claims.¹ Memorandum And Order

¹ In Rushing, plaintiffs brought claims under the consumer protection statutes of nine other states plus the District of Columbia, and a multi-state breach of contract claim. The class certification and summary judgment orders, and this suggestion of remand, relate to only plaintiffs’
(continued...)

(Doc. #4616) filed August 14, 2013; Memorandum And Order (Doc. #4600) filed July 19, 2013; Order (Doc. #4544) filed April 9, 2013; Memorandum And Order (Doc. #4539) filed April 5, 2013.

These claims will no longer benefit from consolidated proceedings.

Pursuant to Rule 10(b) of the Rules of Procedure of the JPML, the undersigned transferee judge submits this Suggestion of Remand to the Panel recommending that it remand plaintiffs' California-law claims against the non-settling defendants in Rushing, and that it remand all of plaintiffs' claims against the non-settling defendants in Lerner and Wyatt. See 28 U.S.C. § 1407(a) (Panel may separate claims and remand any of such claims before remainder of action is remanded).

The Court proposes to retain all claims against settling defendants to complete settlement approval and class notice, and to resolve issues regarding attorney fees. Specifically, the Court proposes as follows so that any appeals with regard to the summary judgment rulings in these cases, which involve only California law, may proceed in the Ninth Circuit Court of Appeals:

1. Rushing et al. v. Alon USA, Inc. et al., D. Kan. Case No. 07-2300-KHV, N.D. Cal. Case No. 06-7621-PJH: The Court suggests remanding plaintiffs' California-law claims against Chevron U.S.A. Inc., Circle K Stores, Inc., Flying J, Inc., Petro Stopping Centers, L.P., Pilot Travel Centers LLC and TravelCenters of America LLC.² On remand, the Court suggests that under Rule 54(b), Fed. R. Civ. P., the transferor court enter judgment on plaintiffs' California-law claims in favor of these non-settling defendants.

¹(...continued)

California claims. In Lerner and Wyatt, all of plaintiffs claims arise under California law.

² The California-law claims are for violation of the California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200 et seq. and violation of the California Consumer Legal Remedies Act ("CLRA"), Cal. Civil Code § 1750 et seq.

2. Lerner et al. v. Costco Wholesale Corp. et al., D. Kan. Case No. 07-2405-KHV, C.D. Cal. Case No. 07-1216-GHK-FMO: The Court suggests remanding plaintiffs' claims against Chevron U.S.A. Inc., G&M Oil Co., LLC, G&M Oil Company, Inc., United El Segundo, Inc. and World Oil Corp.³ On remand, the Court suggests that under Rule 54(b), Fed. R. Civ. P., the transferor court enter judgment on plaintiffs' claims in favor of these non-settling defendants.

3. Wyatt et al. v. B.P. Am. Corp. et al., D. Kan. Case No. 07-2507-KHV, S.D. Cal. Case No. 07-1754-BTM-JMA: The Court suggests remanding plaintiffs' remaining claims against Chevron U.S.A. Inc., Circle K Stores, Inc. and 7-Eleven, Inc.⁴ On remand, the Court suggests that under Rule 54(b), Fed. R. Civ. P., the transferor court enter judgment on plaintiffs' claims in favor of these non-settling defendants.

The Court certifies that although its summary judgment rulings in these cases dispose of fewer than all claims and parties in these cases, there is no just reason to delay entry of judgment on the California claims against the foregoing defendants. See Rule 54(b), Fed. R. Civ. P.

IT IS SO ORDERED.

Dated this 14th day of August, 2013 at Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Judge

³ Plaintiffs' claims are for violation of the UCL, Cal. Bus. & Prof. Code § 17200 et seq., breach of the implied covenant of good faith and fair dealing and unjust enrichment.

⁴ Plaintiffs' claims are for violation of the UCL, Cal. Bus. and Prof. Code § 17200 et seq. and unjust enrichment.