

**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.)	
_____)	

MEMORANDUM AND ORDER

Plaintiffs in these three California cases bring class action claims against motor fuel retailers alleging various claims based on defendants’ practice of selling motor fuel for a specified price per gallon without disclosing or adjusting for temperature, and without disclosing the effect of temperature on motor fuel. Under Rule 23(b)(2) and (3), the Court certified plaintiffs’ claims for violations of the California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200 et seq., violations of the California Consumers Legal Remedy Act (“CLRA”), Cal. Civ. Code § 1750 et seq., breach of the implied covenant of good faith and fair dealing and unjust enrichment. Order (Doc. #4544) filed April 9, 2013; Memorandum And Order (Doc. #4539) filed April 5, 2013. On July 19, 2013, as to Chevron, the Court sustained defendants’ motions for summary judgment on plaintiffs’ four certified claims. Memorandum And Order (Doc. #4600). On August 14, 2013, the

Court applied the summary judgement ruling to the remaining non-settling defendants, i.e. Circle K Stores, Inc., Flying J, Inc., Petro Stopping Centers, L.P., Pilot Travel Centers LLC, TravelCenters of America LLC, G&M Oil Company, Inc., G&M Oil Co., LLC, World Oil Corp., United El Segundo, Inc. and 7-Eleven, Inc. Memorandum And Order (Doc. #4616) at 10.¹

In light of the summary judgment rulings, the Court overrules as moot the following motions:

- Defendant Tesoro Refining And Marketing Company's Motion To Dismiss Based On Lack Of Standing (Doc. #2603) filed November 1, 2011 (relating to Wyatt).
- Defendant's Motion For Summary Judgment On The Grounds That Plaintiff Lacks Standing (Doc. #2683) filed November 1, 2011 (relating to Wyatt).
- Certain Defendant's Motion For Summary Judgment Based On Lack Of Subject Matter Jurisdiction, Preemption And Related Doctrines (Doc. #2820) filed November 1, 2011 (relating to Wyatt).
- Plaintiffs' Motion To Strike David Lazier's Declaration And To Exclude David Lazier As A Witness At Trial (Doc. #3478) filed February 1, 2012 (relating to Chevron's trial witness disclosures regarding Wyatt, Lerner and California claims in Rushing).
- Defendants 7-Eleven, Inc., Circle K Stores, Inc., Flying J, Inc. And Pilot Travel Centers, LLC's Response To Order Dated March 5, 2013 (Doc. #4518) filed March 8, 2013 (relating to status conferences regarding Wyatt, Lerner and California claims in Rushing).

IT IS SO ORDERED.

Dated this 6th day of September, 2013 at Kansas City, Kansas.

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

¹ The summary judgment rulings disposed of all claims against non-settling defendants in Wyatt and Lerner, and all California claims against non-settling defendants in Rushing.