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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

DT WOODARD, INC.,

Plaintiff and Appellant,

v.

MAIL BOXES ETC., INC., et al.,

Defendants and Respondents.

B194599

(Los Angeles County

Super. Ct. No. BC294647)

APPEAL from an order of the Superior Court of Los Angeles County,

Wendell H. Mortimer, Jr., Judge. Reversed.

Gordon & Rees, M.D. Scully, H. Scott Sirlin and Amy M. Darby for Plaintiff and Appellant.

Morrison & Foerster, Jane H. Barrett and Steven M. Kaufmann for Defendants and Respondents.

2

INTRODUCTION

This is an appeal from an order denying a motion to certify a class action in causes of action alleging defendants' violation of the California Franchise Investment Law (Corp. Code section 31000, et seq. (CFIL)) and common law intentional misrepresentation. We find that the trial court made erroneous assumptions of law in finding that individual issues predominated over common issues of law and fact with regard to reliance. Plaintiff has alleged facts which create at least an inference of plaintiff's reliance on defendants' representations, which induced plaintiff to agree to amend a franchise agreement. The trial court's finding that individualized proof would be required on the issues of causation and damages used inappropriate criteria. The need for individual proof of causation and damages does not defeat class certification. This analysis also applies to plaintiff's cause of action for intentional misrepresentation. We reverse the order denying the class certification motion.

FACTUAL AND PROCEDURAL HISTORY

A. The Complaint

This appeal arises from a denial of plaintiff's motion for class certification as to five causes of action in a 10th amended complaint filed on January 11, 2006. Plaintiff and appellant is DT Woodard, Inc., a California corporation and a franchisee of Mail Boxes Etc., Inc. (MBE). DT Woodard was one of many plaintiffs who were MBE franchisees who sued MBE, MBE's affiliates, and MBE's owner, United Parcel Service

(UPS) for damages. DT Woodard brought these causes of action on its own behalf and on behalf of all persons and entities similarly situated, a class composed of former MBE franchisees who joined the “Gold Shield Program,” signed the UPS Carrier Agreement, and thus converted their MBE franchise to a The UPS Store franchise.

The complaint alleged that MBE successfully operated businesses which packaged and shipped small parcels, sold shipping materials, and provided private mail box rentals

1 Unless otherwise specified, statutes in this appeal will refer to the Corporations Code.

3

and photocopy, fax, and voicemail services. In 1980 MBE began franchising this business to independent franchisees. MBE licensed to franchisees the right to use the MBE trademark, trade name and system for retail packaging and shipping goods. Individual franchisees, however, could offer services from multiple shipping companies, including UPS, Federal Express, DHL, Airborne Express, and the U. S. Postal Service, and set their own retail prices.

After evaluating a plan to create a network of 1700 to 2000 UPS-operated stores, UPS rejected that plan as requiring an initial investment and management costs that were too high. Instead on April 30, 2001, UPS acquired MBE and transferred MBE’s assets and liabilities to MBE Inc., a wholly owned subsidiary of UPS. UPS intended to acquire the MBE franchise system by converting MBE franchises into “The UPS Store.”

The complaint alleged that in 2002, UPS conducted test programs for “The UPS Store” in several cities, but did not disclose the true results of test programs to MBE franchisees. Instead, “road show” presentations of the UPS Gold Shield conversion program presented false or incomplete results of test programs to MBE franchisees. In late 2002 and early 2003, MBE and UPS representatives held meetings with MBE franchisees to present the Gold Shield Amendment, which purported to be an amendment to existing MBE franchise agreements. The complaint alleged that the Gold Shield Amendment did not lawfully amend existing MBE franchise agreements, but terminated them and changed the MBE Center business model in breach of MBE franchise agreements by eliminating the existing MBE Center franchise system. The Gold Shield Amendment required MBE franchisees to offer only UPS shipping services, and eliminated an MBE franchisee’s ability to set its own retail prices. MBE also required MBE franchisees to enter into a contract with UPS, the “UPS Program Amendment,” which required franchisees to offer UPS products and services only. The complaint alleged that defendants MBE, UPS, and Rocky Romanella, UPS Vice President of retail services, made false and misleading representations and statements of material fact.

A large group of plaintiffs, individually named in the complaint, did not convert their MBE franchises to The UPS Store. DT Woodard, Inc. represents MBE franchisees

4

who did join the Gold Shield Program and who signed the UPS Carrier Agreement, and by doing so converted their MBE franchises to The UPS Store based on allegedly false information and omissions of MBE and UPS. More than 3,000 former MBE Center franchisees, comprising 90 percent of the MBE distribution system, became “The UPS

Store” franchisees.

In this appeal, plaintiff DT Woodard, Inc. challenges the order denying class certification as to the 18th cause of action for violation of section 31101; the 20th cause of action for violation of section 31201; the 21st cause of action for violation of section 31202; the 19th cause of action for violation of section 31200; and the 4th cause of action for intentional misrepresentation.²

B. The Motion to Certify the Class

On July 14, 2006, plaintiff DT Woodard, Inc. moved for an order certifying seven causes of action (including the 4th, 18th, 19th, 20th, and 21st causes of action) for class action and determining DT Woodard, Inc. to be a suitable class representative. The motion sought to certify a national plaintiff class of former MBE franchisees who converted to The UPS Store through the Gold Shield Program offering in or around April 2003 and who signed the UPS Carrier Agreement, or in the alternative, certification of a sub-class defined as former MBE franchisees who are located or live in California and who converted to The UPS Store through the Gold Shield Program offering in or around April of 2003 and who signed the UPS Carrier Agreement.

DT Woodard, Inc.’s motion argued that a class action on behalf of 3,500 class members was superior to individual plaintiffs’ actions, and that it would be impracticable if not impossible to join 3,500 members of the proposed national class and the 600 members of the proposed California class. The motion argued that the proposed national ² Appellant’s opening brief also purports to seek review of the trial court’s order denying class certification as to the 22nd cause of action. As the opening brief makes no argument concerning the 22nd cause of action, the claim of error as to that cause of action is forfeited. (*Sporn v. Home Depot USA, Inc.* (2005) 126 Cal.App.4th 1294, 1303.)

5

class and the proposed California class were ascertainable and easily identifiable through defendants’ business records, insofar as the class plaintiffs were former MBE franchisees who executed Gold Shield Agreements.

The motion argued that questions of law and fact are common to the class, that California law would apply to all class claims, and that all class causes of action arose out of non-disclosures and written misrepresentations that induced plaintiffs to amend their franchise agreements to become The UPS Store.

The motion asserted that common questions of fact existed in the class claims, which centered on defendants’ wrongful conduct and written misrepresentations, omissions, and violations of the CFIL which were substantially the same or identical as to all class members. The motion stated that all class members’ claims arose from identical documents provided to induce them to sign the Gold Shield Amendment and Contract Carrier Agreement; that all potential class members and defendants signed standardized franchise agreements; and that defendants made uniform fraudulent written misrepresentations and omissions to the class.

On August 11, 2006, defendants filed opposition to plaintiff’s motion for class certification. Defendants argued that plaintiff’s motion for class certification ignored

substantial individual factual and legal inquiries necessary to resolve class claims. Defendants argued that individualized proof was required to assess what information MBE franchisees considered when deciding to rebrand as The UPS Store, to determine what factors induced franchisees to decide to convert their business, and to determine whether alleged unlawful actions, or other independent factors, caused injury to class members' businesses. Defendants also argued that a class action would not be a superior means of resolving this case, because class members are able to vindicate their rights against defendants and do not need to rely on a single, atypical store, DT Woodard, Inc., to represent their interests.

C. The Order Denying Plaintiff's Motion for Certification of the Class

On August 30, 2006, the trial court issued an order denying plaintiff's motion for certification of the class. The order stated: "The proposed class consists of former MBE

6 franchise owners who converted to UPS Store franchises. Some attended 'roadshows' and meetings. What they learned varied depending upon the questions asked and the differing power point presentations. Some undertook varying levels of their own investigation, including seeking advice from accountants and lawyers. Their reasons for converting[,] what information they received[,] and what they relied upon differ. The damages also involve individual proof. Whether or not they had a decline in business and the cause or causes of that decline differ. As to the 18th through the 21st causes of action which allege CFIL statutory violations, section 31300 requires the franchisee to prove damages caused by a violation. That, too, would require individualized proof of causation and damages. These issues necessarily involve case-by-case determinations. Individual factual issues predominate over common questions and this case is therefore not appropriate for class certification. Motion is denied."

The trial court's order is an appealable order. (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.) Plaintiff filed a timely notice of appeal.

ISSUES

Plaintiff claims that the trial court abused its discretion when it denied the class certification motion, because plaintiff met the legal standards for classification, in that:

1. Class treatment of plaintiff's claims is superior to individual actions;
2. The class is so numerous that joinder of all members is impractical;
3. The proposed class is ascertainable;
4. The proposed class meets the "community of interest" requirement;
5. The representative plaintiff's claims are typical of the claims of the class; and
6. The representative plaintiff and its counsel will fairly and adequately represent the class.

STANDARD OF REVIEW

"Code of Civil Procedure section 382 authorizes class actions 'when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court' The party seeking certification has the burden to establish the existence of both an ascertainable

class and a well-defined community of interest among class members. [Citations.] The ‘community of interest’ requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.” (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326 (*Sav-On Drug Stores, Inc.*).

“A trial court ruling on a certification motion determines ‘whether . . . the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.’ [Citations.]” (*Sav-On Drug Stores, Inc., supra*, 34 Cal.4th at p. 326.)

This court reviews a trial court’s ruling on a certification motion for abuse of discretion. (*Sav-On Drug Stores, Inc., supra*, 34 Cal.4th at p. 326.) “ ‘Because trial courts are ideally situated to evaluate the efficiencies and practicalities of permitting group action, they are afforded great discretion in granting or denying certification. . . . [Accordingly,] a trial court ruling supported by substantial evidence generally will not be disturbed “unless (1) improper criteria were used [citation]; or (2) erroneous legal assumptions were made [citation]” [citation]. . . . “Any valid pertinent reason stated will be sufficient to uphold the order.” ’ [Citations.]” (*Id.* at pp. 326-327.)

“The certification question is ‘essentially a procedural one that does not ask whether an action is legally or factually meritorious.’ ” (*Sav-On Drug Stores, Inc., supra*, 34 Cal.4th at p. 326.) In a certification dispute, the focus is not on the merits of the case but on what type of questions—common or individual—are likely to arise in the action. Therefore “in determining whether there is substantial evidence to support a trial court’s certification order, we consider whether the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment. [Citations.] ‘Reviewing courts consistently look to the allegations of the complaint and the declarations of attorneys representing the plaintiff class to resolve this question.’ [Citations.]” (*Id.* at p. 327.)

8

DISCUSSION

I. The Trial Court’s Order Erroneously Denied Class Certification for the CFIL Causes of Action

Sections 31300 and 31301 provide that “any person” who violates the CFIL statutes at issue in this appeal “shall be liable” to a franchisee who is damaged. We analyze the causes of action in this appeal in conjunction with these liability statutes. The 18th, 19th, and 21st causes of action rely on section 31300. The 20th cause of action relies on section 31301.

A. Section 31300: the Liability Statute

Section 31300 makes a person who offers or sells a franchise in violation of sections 31101, 31200, and 31202 “liable to the franchisee or subfranchisor, who may sue for damages caused thereby, and if the violation is willful, the franchisee may also sue for rescission[.]”³ The 18th, 19th, and 21st causes of action alleged violations of sections

31101, 31200, and 31202, which would create defendants' liability under section 31300.

1. *The 18th Cause of Action, an Alleged Violation of Section 31101*

This cause of action alleged that the Gold Shield Program was a material modification of the franchise system and a "sale" under the CFIL, and therefore triggered disclosure requirements of section 31101. This cause of action alleged that MBE, UPS, and Romanella fraudulently offered and sold the Gold Shield Program, an unlawful conversion of existing MBE franchises, to plaintiff without meeting disclosure requirements of section 31101, subdivision (c)(2). Section 31101 provides an exemption
3 Section 31300 states: "Any person who offers or sells a franchise in violation of Section 31101, 31110, 31119, 31200, or 31202, or in violation of any provision of this division that provides an exemption from the provisions of Chapter 2 (commencing with Section 31110) of Part 2 or any portions of Part 2, shall be liable to the franchisee or subfranchisor, who may sue for damages caused thereby, and if the violation is willful, the franchisee may also sue for rescission, unless, in the case of a violation of Section 31200 or 31202, the defendant proves that the plaintiff knew the facts concerning the untruth or omission, or that the defendant exercised reasonable care and did not know, or, if he or she had exercised reasonable care, would not have known, of the untruth or omission."

9

from provisions of Chapter 2 (commencing with Section 31110) for an offer and sale of a franchise if the franchisor complies with "minimum net worth, experience, disclosure, and notice filing requirements[.]" Section 31101, subdivision (c)(2) states, in relevant part, how a franchisor can qualify for the exemption: "In the case of a material modification of an existing franchise, the franchisor discloses in writing to each franchisee information concerning the specific sections of the franchise agreement proposed to be modified and such additional information as may be required by rule or order of the commissioner."

Specifically, this cause of action alleged that defendants failed to disclose information about specific sections of plaintiff's existing MBE franchise agreement which the Gold Shield Amendment proposed to modify. The complaint alleged that based upon misrepresentations, DT Woodard, Inc. signed the Gold Shield Amendment and the UPS Contract Carrier Agreement to convert to The UPS Store.

This cause of action alleged that MBE, UPS, and Romanella were liable under section 31300 for disclosure violations made in connection with the offer and sale of the Gold Shield Program, and unlawful conversion of the existing Mail Boxes Etc. franchise, to MBE franchisees.

The 18th cause of action alleged that the violation of section 31101, subdivision (c)(2) by MBE, UPS, and Romanella induced class plaintiff DT Woodard, Inc. to accept the Gold Shield Program, resulting in the destruction of its profits, their contractual relationships with carrier services other than UPS, the value of their franchises, and good will associated with the Mail Boxes Etc. trademarks.

2. *The 19th Cause of Action: an Alleged Violation of Section 31200*

The 19th cause of action alleged a violation of section 31200, which states: "It is

unlawful for any person willfully to make any untrue statement of a material fact in any application, notice or report filed with the commissioner under this law, or willfully to omit to state in any such application, notice, or report any material fact which is required to be stated therein, or fail to notify the commissioner of any material change as required by Section 31123.”

10

The 19th cause of action alleged that MBE and UPS made three untrue statements of material facts in an application, notice or report filed with the commissioner: (1) MBE and UPS represented to the Department of Corporations that MBE would comply with the section 31101, subdivision (c), disclosure requirement, but did not comply with section 31101, subdivision (c)(2); (2) MBE and UPS represented to the Department of Corporations that MBE satisfied the “experience” requirement of section 31101, subdivision (b),⁴ but in fact had not “conducted business which is the subject of the franchise,” because The UPS Store franchisees operated on an entirely different business model compared to the MBE USA franchisees; and (3) MBE and UPS falsely represented to the Department of Corporations that MBE retained the top management team from MBE USA. The 19th cause of action alleged that if MBE and UPS had not made these untrue statements and omissions to the commissioner, MBE would have been required to apply for registration of a material modification of an existing franchise, to provide to plaintiff DT Woodard, Inc. a disclosure identifying the proposed modification, or alternatively would have been required to disclose to DT Woodard, Inc. that the franchisee was permitted to rescind its agreement to the material modification by notice

⁴ Section 31101 states that a franchisor that complies with, inter alia, minimum experience requirements in subdivision (b) is exempted from disclosure requirements of Chapter 2 (§ 31110 et seq.). Subdivision (b) states: “Experience. The franchisor or a corporation owning at least 80 percent of the franchisor (parent) complies with one or more of the following conditions throughout the five-year period immediately preceding the offer and sale of the franchise, or complies with one of the following conditions during part of the period and one or more of the following conditions during the balance of the period:

“(1) The franchisor has had at least 25 franchisees conducting business which is the subject of the franchise.

“(2) The franchisor has conducted business which is the subject of the franchise.

“(3) The parent has had at least 25 franchisees conducting business which is the subject of the franchise.

“(4) The parent has conducted business which is the subject of the franchise.”

11

to the franchisors within five business days after execution of the agreement. This cause of action alleged that these violations of section 31200 made MBE and UPS liable to DT Woodard, Inc. for damages pursuant to section 31300.

3. The 21st Cause of Action: an Alleged Violation of Section 31202

The 21st cause of action alleged a violation of section 31202, which states: “It is unlawful for any person willfully to make any untrue statement of a material fact in any

statement required to be disclosed in writing pursuant to Section 31101, or willfully to omit to state in any such statement any material fact which is required to be stated therein.” This cause of action alleged that MBE, UPS, and Romanella violated section 31202 by willfully making untrue, misleading statements of material facts, and omissions of material facts.

This cause of action also alleged that defendants misrepresented that test results for “The UPS Store” were complete and accurate, without having tests independently audited, and failed to disclose which sections of each plaintiff’s MBE franchise agreement would be modified by the Gold Shield Amendment.

This cause of action alleged, *inter alia*, that defendants willfully omitted disclosure of the specific volume of UPS shipping each MBE franchisee would have to generate in order to compensate for lower profit margins resulting from maximum retail pricing imposed on MBE franchisees by the Gold Shield Program and the UPS Program Amendment, loss of revenue from Federal Express shipping services when signage changed to “The UPS Store,” and loss of good will associated with the Mail Boxes Etc. trademark and trade name. This cause of action further alleged that defendants willfully omitted disclosure of accurate financial information regarding Seattle and St. Louis test operations, even though they used those test results to represent that MBE franchisees could achieve certain profit margins and sales revenues. Finally, this cause of action alleged that defendants willfully omitted disclosure of projected increased labor costs necessary to accommodate the increased volume of UPS shipping services which UPS represented would be necessary to achieve profitability as a result of lower shipping rates.

12

The 21st cause of action alleged that defendants’ violations of section 31202 caused damage to DT Woodard, Inc. in the form of lost profits and a decline in business.

4. The Order Denying Class Certification Made Erroneous Legal Assumptions and Relied on Improper Criteria

Plaintiff contends that section 31300 does not require proof that the franchisee relied on defendants violations of the CFIL and that such violations caused damages. We disagree, but conclude that the circumstances of this case give rise to an inference of reliance by class members.

a. Section 31300 Requires Proof of Reliance and Causation

Section 31300 provides that a franchisee may rescind its franchise agreement when the franchisor “willfully” fails to make required disclosures under section 31101, subdivision (c)(2), violates section 31202 by making misrepresentations and omissions in disclosure documents, or violates section 31200 by making untrue statements of a material fact in an application, notice or report filed with the commissioner under the CFIL. Plaintiff argues that it sought rescission of class members’ contracts, and that *Dollar Systems, Inc. v. Avcar Leasing* (C.D. Cal. 1987) 673 F.Supp. 1493, 1503 (*Dollar Systems*) held that the franchisee does not need to prove reliance or causation to obtain rescission upon a finding that the franchisor willfully failed to make required disclosures. The tenth amended complaint does not seek rescission in the 18th, 19th, or 21st cause of action. Instead, it seeks damages and attorney’s fees.

This problem aside, the *Dollar Systems* decision does not hold that the franchisee does not need to prove reliance or causation to obtain rescission pursuant to section 31300. The *Dollar Systems* opinion does not address whether proof of reliance or causation is necessary to obtain rescission. Instead *Dollar Systems*, in its “conclusions of law,” addresses the definition of “willful” in section 31300. *Dollar Systems* defines “willful” in that statute as “an act that is committed knowingly and intentionally,” and states that “willful” in this statute contained “no requirement of a showing of an intent to violate the law, an evil motive, or a purpose to gain undue advantage.” (*Dollar Systems*, *supra*, 673 F.Supp. at p. 1503.)

13

Section 31300 contains express causation language. It states that any person who offers or sells a franchise in violation of five enumerated CFIL statutes “shall be liable to the franchisee or subfranchisor, who may sue *for damages caused thereby*, and if the violation is willful, the franchisee may *also* sue for rescission[.]” (Italics added.) This express causation language has two consequences.

First, reliance is an element of causation. Analogizing to an action for fraud, causation in such actions involves actual reliance and damage resulting from such reliance. (*Younan v. Equifax Inc.* (1980) 111 Cal.App.3d 498, 513.) “Justifiable reliance exists when the misrepresentation or nondisclosure was an immediate cause of the plaintiff’s conduct which alters his legal relations, and when without such misrepresentation or nondisclosure he would not, in all reasonable probability, have entered into the contract or other transaction.” (*Molko v. Holy Spirit Assn.* (1988) 46 Cal.3d 1092, 1108.) Thus even though section 31300 does not use the word “reliance” (unlike section 31301), it expresses the concept of reliance in its causation requirement. Second, a franchisee suing for the additional remedy of rescission must also prove that the statutory violation is “willful.” This additional element is necessary to obtain rescission, however, does not dispense with a showing of reliance and causation; to obtain the rescission remedy, the plaintiff must prove that the violation is “willful” in addition to showing that plaintiff relied on the statutory violation in entering the contract and that the violation caused damages. If this were not the case, a “willful” statutory violation would give the plaintiff the opportunity to rescind, even if the franchisee did not rely on the franchisor’s violation and even if the franchisor’s violation caused no harm to plaintiff franchisee. It is illogical to condition the more expansive remedy of rescission (which includes restitution of benefits conferred by the contract, and which is not inconsistent with a claim for damages, according to Civil Code section 1692) on a lesser quantum of proof. To obtain the greater remedy of rescission should require plaintiff to prove everything necessary to obtain the lesser remedy of damages, as well as the “willful” violation of the statute.

14

We therefore reject plaintiff’s argument that section 31300 did not require the franchisee to prove that plaintiff relied on CFIL violations and that such violations caused damages.

b. *The Circumstances Create an Inference of Justifiable Reliance by Class*

Members, and Therefore the Trial Court's Finding That Reliance Required Individual Proof Was an Erroneous Assumption of Law

The complaint alleged that class members signed the identical Gold Shield Amendment and the UPS Carrier Agreement on or around March 21, 2003, and cited evidence that defendants provided identical written documents to class members. Plaintiffs also cite the statement in defendants' opposition to the class certification motion that at meetings held by MBE and UPS representatives in February 2003, franchisees received: (1) a copy of some, but not all, of the Gold Shield Presentation; (2) a "Summary of New Gold Shield Program;" (3) frequently asked questions; (4) the Gold Shield Amendment; and (5) the Contract Carrier Agreement. Plaintiffs allege that these documents contain defendants' omissions and representations, and every member of the class converted to The UPS Store within three weeks after receiving these documents from defendants.

"The rule in this state and elsewhere is that it is not necessary to show reliance upon false representations by direct evidence. 'The fact of reliance upon alleged false representations may be inferred from the circumstances attending the transaction which oftentimes afford much stronger and more satisfactory evidence of the inducement which prompted the party defrauded to enter into the contract than his direct testimony to the same effect.' " (*Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 814.) "[I]f the trial court finds material misrepresentations were made to the class members, at least an inference of reliance would arise as to the entire class. Defendants may, of course, introduce evidence in rebuttal." (*Ibid.*, fn. omitted.) Similarly, "an inference of reliance arises if a material false representation was made to persons whose acts thereafter were consistent with reliance upon the representation." (*Occidental Land, Inc. v. Superior Court* (1976) 18 Cal.3d 355, 363.) In the present case, the receipt of documents and the

15
conversion of every class member to The UPS Store within three weeks after receiving those documents from defendants create the inference of reliance upon representations made by defendants in those documents.

By concluding that the decision to convert from the MBE franchise to The UPS Store franchise was dependent on individual proof, the trial court made an erroneous assumption of law.

c. The Need for Individual Proof of Causation and Damages Does Not Defeat Class Certification

The trial court found that causation and damages would require individual factual determinations, which predominated over common questions and made class certification inappropriate. We disagree.

"[T]he need for individualized proof of damages is not per se an obstacle to class treatment[.]" (*Sav-On Drug Stores, Inc.*, *supra*, 34 Cal.4th at pp. 334-335.) Where the trial court determines that some matters bearing on the right to recover require separate proof by each class member, "the maintenance of the suit as a class action is not precluded so long as the issues which may be jointly tried, when compared to those requiring separate adjudication, justify the maintenance of the suit as a class action.' "

(*Id.* at p. 335.) “[A] class action is not inappropriate simply because each member of the class may at some point be required to make an individual showing as to his or her eligibility for recovery or as to the amount of his or her damages.” (*Employment Development Dept. v. Superior Court* (1981) 30 Cal.3d 256, 266.)

Plaintiff alleges that in pursuing rescission and restitution, class members are entitled to restitution of royalty payments each franchisee made under a common formula and of the percentage of gross profits paid by each franchisee for advertising and marketing fees. “[I]n most circumstances a court can devise remedial procedures which channel the individual determinations that need to be made through existing administrative forums.” (*Employment Development Dept. v. Superior Court, supra*, 30 Cal.3d at p. 266.) The trial court may employ a bifurcated trial, subclasses, and other methods to simplify proceedings on damages. (*B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1354.)

“And if unanticipated or unmanageable individual issues do arise, the trial court retains the option of decertification.” (*Sav-On Drug Stores, Inc., supra*, 34 Cal.4th at p. 335.)

We conclude that the need for individual proof of causation and damages does not defeat class certification, and that by concluding that causation and damages required case-by-case determinations of individual factual issues, the trial court used improper criteria in denying the class certification motion.

B. Section 31301: the Liability Statute

The second CFIL liability statute, section 31301, states: “Any person who violates Section 31201 shall be liable to any person (not knowing or having cause to believe that such statement was false or misleading) who, while relying upon such statement shall have purchased a franchise, for damages, unless the defendant proves that the plaintiff knew the facts concerning the untruth or omission or that the defendant exercised reasonable care and did not know, (or if he had exercised reasonable care would not have known) of the untruth or omission.”

1. The 20th Cause of Action, an Alleged Violation of Section 31201

The 20th cause of action alleges that MBE, UPS, and Romanella violated section 31201. Section 31201 states: “It is unlawful for any person to offer or sell a franchise in this state by means of any written or oral communication not enumerated in Section 31200^s which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.”

The 20th cause of action alleged that the Gold Shield Program was a material modification of the existing MBE franchise system and thus was a “sale” within section 31308, subdivision (c). This cause of action alleged that MBE, UPS, and Romanella willfully made untrue, misleading statements of material facts in connection with the s Section 31200 refers to “any application, notice or report filed with the commissioner under this law[.]”

17

offer and sale of the Gold Shield Program to DT Woodard, Inc. in violation of section

31201, and in so doing willfully pressured and coerced DT Woodard, Inc. to accept the Gold Shield Program and convert its MBE franchises to The UPS Store, and that this unlawful material modification to the MBE franchise system damaged DT Woodard, Inc. The 20th cause of action alleged that defendants willfully made untrue statements of material fact to DT Woodard, Inc. regarding the onerous requirements and purported benefits of the Gold Shield Program and willfully omitted to state material facts needed to make the statements not misleading.

The 20th cause of action alleged that damage to DT Woodard, Inc. from defendants' violation of section 31201 occurred in the form of lost profits and an overall decline in business resulting from (1) the material modifications to the MBE franchise system resulting from defendants' materially untrue and misleading statements and omissions, which resulted in the loss of alternative carriers and damaged the general public, and (2) the anti-competitive and discriminatory pricing scheme that MBE and UPS forced on DT Woodard, Inc., which severely damaged its profits.

2. The Order Denying Class Certification Made Erroneous Legal Assumptions and Relied on Improper Criteria

In the 20th cause of action, plaintiff alleges that defendants intentionally made numerous material, uniform misrepresentations to class members in "roadshow" presentations and written materials distributed in connection with the Gold Shield program. Plaintiffs argue that common questions of law and fact predominate with respect to these allegations.

a. The Circumstances Create an Inference of Justifiable Reliance by Class Members, and Therefore the Trial Court's Finding That Reliance Required Individual Proof Was an Erroneous Assumption of Law

Section 31301 specifically requires reliance. In the case of fraudulent representations made to induce execution of a contract, where material misrepresentations were made to class members, at least an inference of reliance would arise as to the entire class. (*Vasquez v. Superior Court, supra*, 4 Cal.3d at p. 814.)

18

Plaintiffs cite evidence proffered by the defendants, which establishes that "road show" meetings were held, presenting a scripted PowerPoint and question and answer period using a "frequently asked questions" document. Defendants provided the same documents to franchisees at these meetings, including the "Summary of the New Gold Shield Program," frequently asked questions, the Gold Shield Amendment, and the Contract Carrier Amendment. Plaintiffs also cite defendants' evidence that 90 to 100 percent of franchisees attended the road show meetings, and a franchisee who could not attend was provided with the documents and PowerPoint presentation. Plaintiffs provided evidence that defendants intended plaintiffs to rely on representations made in these meetings and documents provided by defendants, and that all class members converted to The UPS Store within a three-week period.

Under the rule from *Vasquez, ante*, this evidence creates the inference of reliance upon defendants' representations and to describe a class as to which common questions of law and fact on the issue of reliance should be jointly tried. By concluding that the

decision to convert from the MBE franchise to The UPS Store franchise depended on individual proof, the trial court made an erroneous assumption of law.

b. *The Need for Individual Proof of Causation and Damages Does Not Defeat Class Certification*

The issue of damages under section 31301 (providing a remedy for the violation of section 31201) is subject to the same analysis as the issue of damages under section 31300, *ante*. As we have found in the causes of action seeking a remedy under section 31300, even if franchisees are entitled to different amounts of damages, that does not warrant denial of class certification.

Although the trial court found that causation and damages would require individual factual determinations which predominated over common questions and made class certification inappropriate, the rule is that “the need for individualized proof of damages is not per se an obstacle to class treatment.” (*Sav-On Drug Stores, Inc., supra*, 34 Cal.4th at pp. 334-335.) “[A] class action is not inappropriate simply because each member of the class may at some point be required to make an individual showing as to

19
his or her eligibility for recovery or as to the amount of his or her damages.”

(*Employment Development Dept. v. Superior Court, supra*, 30 Cal.3d at p. 266.) The trial court can devise remedial procedures, such as a bifurcated trial, subclasses, and other methods to simplify proceedings on damages. (*Ibid.*; *B.W.I. Custom Kitchen v. Owens-Illinois, Inc., supra*, 191 Cal.App.3d at p. 1354.) The trial court retains the option of decertification if unanticipated or unmanageable individual issues arise. (*Sav-On Drug Stores, Inc, supra*, at p. 335.)

We conclude that the need for individual proof of causation and damages does not defeat class certification, and that by concluding that causation and damages required case-by-case determinations of individual factual issues, the trial court used improper criteria in denying the class certification motion.

II. *The Trial Court Erroneously Denied Class Certification for the Fourth Cause of Action for Intentional Misrepresentation*

A. *The 4th Cause of Action for Intentional Misrepresentation*

DT Woodard, Inc. brought the fourth cause of action for intentional misrepresentation on its own behalf and on behalf of other similarly situated “The UPS Store” businesses in San Diego, Orange, and Los Angeles counties against defendants MBE, UPS, and Romanella.

This cause of action alleged that defendant made false representations of important facts regarding DT Woodard’s franchise in connection with the Gold Shield Program. The fourth cause of action alleged that defendants knew or should have known that these representations were false when they were made, or made them recklessly and without regard for whether they were true, and intended that DT Woodard, Inc. would rely on the false representations. This cause of action alleged that DT Woodard, Inc. did rely on the false representations to its detriment when it converted to The UPS Store, and that this reliance was justifiable since the information presented was in defendants’ sole possession, and DT Woodard, Inc. could not have discovered the falsity of defendants’

statements. This cause of action alleged that DT Woodard, Inc.'s justifiable reliance was
20

a substantial factor in causing its damages, which are alleged to be lost profits and a decline in franchisee business resulting from the Gold Shield Program.

B. The Denial of the Class Certification Motion Made Erroneous Legal Assumptions and Relied on Improper Criteria

“To establish a claim for deceit based on intentional misrepresentation, the plaintiff must prove seven essential elements: (1) the defendant represented to the plaintiff that an important fact was true; (2) that representation was false; (3) the defendant knew that the representation was false when the defendant made it, or the defendant made the representation recklessly and without regard for its truth; (4) the defendant intended that the plaintiff rely on the representation; (5) the plaintiff reasonably relied on the representation; (6) the plaintiff was harmed; and (7) the plaintiff's reliance on the defendant's representation was a substantial factor in causing that harm to the plaintiff.” (*Manderville v. PCG&S Group, Inc.* (2007) 146 Cal.App.4th 1486, 1498; footnote and italics omitted.)

The analysis applied to the fourth cause of action is the same as that applied to the 20th cause of action. We again find that under the rule from *Vasquez, ante*, the evidence creates the inference of plaintiff's reliance upon defendants' representations and that common questions of law and fact on the issue of reliance should be jointly tried. By concluding that the decision to convert from the MBE franchise to The UPS Store franchise depended on individual proof, the trial court made an erroneous assumption of law. We likewise again find that the need for individual proof of causation and damages does not defeat class certification, and that by concluding that causation and damages required case-by-case determinations of individual factual issues, the trial court used improper criteria in denying the class certification motion.

21

DISPOSITION

The order is reversed. Costs on appeal are awarded to plaintiff DT Woodard, Inc.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KITCHING, J.

We concur:

KLEIN, P. J.

ALDRICH, J.