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## New California Supreme Court Ruling Clarifies Backdating Contracts

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A recent California Supreme Court ruling known as the *Raceway Ford Cases*, clarified the rules on backdating contracts and how to handle errors made on contracts. In the *Raceway Ford Cases*, the dealer had backdated contracts of customers who had rescinded their original contracts and signed a second contract for the purchase of the same vehicle. The contracts also included erroneous smog fees on used diesel vehicles. The case was a class action involving 1,100 class members. The plaintiffs argued that because the contracts were not consummated until the date the second contract was signed, the plaintiffs were incorrectly charged interest for the period of time between the date of the first contract and the date of the second contract. The plaintiffs also argued that the collection of smog fees on used diesel vehicles violated the ASFA (Automobile Sales Finance Act).

### The trial court made two findings:

1. A new contract does not generate a new consummation date under federal or state law (which was overturned by the Supreme Court), and
2. Erroneously collected smog fees were promptly returned to customers with

interest upon discovery of the error, which is all that the dealer was required to do.

The Supreme Court disagreed with the trial court's first finding and ruled that the new contract **does** generate a new consummation date under Regulation Z. The Court also found that Regulation Z permits a dealer to include the interest earned under the first contract in the finance charge on the second contract. It ruled that under TILA (Truth in Lending Act), only the APR and not the finance charge needs to be disclosed based on the new effective date of the contract. The Court also made clear that the amount financed must be itemized, but that the finance charge did not need to be itemized, so there was no requirement to show what part of the finance charge was from the first contract.

The Supreme Court agreed with the lower court's ruling that erroneous collection of smog fees was remedied by promptly returning the fees erroneously collected with interest upon discovery of the error. The Court specifically stated that the exception in the AFSA to a violation for a "computation error" is broad enough to encompass the type of programming error that led to Raceway charging the smog fees incorrectly. The Court clarified that the intent of the AFSA is to deter dealer misconduct while avoiding windfalls for plaintiffs.

In summary, correcting errors promptly upon discovery is always a good idea; backdating contracts isn't. Instead, just include the finance charge for the time during which the first contract was in force in the finance charge on the new contract.

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