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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA

CL 99-7599 AG

JAIME MIRANDA, JR.,
MYKAH MIRANDA, STEVEN G. BAILEY,
NANCY A. BAILEY, ERIC KENNY, and
PETER TABORA on behalf of themselves
and all others similarly situated,
Plaintiffs,

v.

AUTONATION USA, CORPORATION,
Defendant.
_____/

**ORDER**

**THIS MATTER** came before the Court upon Plaintiffs' Motion for Class Certification. This Court after having heard the argument of counsel, having reviewed the memorandum of both parties, and the court file, and being otherwise fully advised in the premises, hereby **FINDS** as follows:

1. Plaintiffs instituted a cause of action against AutoNation based on violations of: (1) Florida Statutes Section 520.07; and (2) Florida Statutes Section 319.14. Plaintiffs seek to have this action certified as a class action.

2. A named plaintiff in a class action must establish the requisite case or controversy between himself and the defendants otherwise he "cannot seek relief for anyone–not for himself, and not for any other member of the class." Griffin v. Dugger, 823 F.2d 1476, 1483 (11th Cir. 1987) (citing O'SHEA v. Littleton, 414 U.S. 488, 494 (1974)).

3. Florida Statutes Section 520.07 requires that retail installment contracts be in writing and signed by the buyer and the seller. All of the essential provisions of the contract

are to be completed prior to the buyer signing the contract. Id.

4. A violation of Section 520.07 is not cured by late delivery of the signed contracts to the named Plaintiffs. Plaintiffs have standing and can seek relief for the absent members of proposed Class A.

5. Prior to its amendment, Florida Statutes Section 319.14 required sellers of motor vehicles to disclose in writing to a buyer that the subject vehicle had previously been used as a lease vehicle. Florida Statutes Section 319.14 was amended to require disclosure of only short-term lease vehicles in writing to the buyer prior to consummating the sale.

6. The Supreme Court of Florida wrote "we have never classified a statute that accomplishes a remedial purpose by creating substantive new rights or imposing new legal burdens as the type of 'remedial' legislation that should be presumptively applied in pending cases." Arrow Air, Inc. v. Walsh, 645 So. 2d 422, 424 (Fla. 1994) (citing City of Lakeland v. Catinella, 129 So. 2d 133, 136 (Fla. 1961) (only statutes that do not create new or take away vested rights are exempt from the general rule against retrospective application)).

7. The amendment is not to be applied retroactively. The named Plaintiffs have established the requisite case or controversy between themselves and AutoNation. Plaintiffs have standing and can seek relief for the absent members of proposed Class B.

8. Florida Rule of Civil Procedure 1.220(a) sets forth the prerequisites to class representation. The Court must conclude that:

any particular degree that individually they will pursue the legal claims of the class with vigor. Id. However, class certification may be denied where the class representatives have so little knowledge of and involvement in the class action that they are unable to protect the interests of the class against possible competing interests of the lawyers. Id.

16. A class representative should have some awareness of the basic facts underlying the suit. Byes, 173 F.R.D. at 425-26. Proposed class representatives have been found to be inadequate where their "participation is so minimal that they virtually have abdicated to their attorneys the conduct of the case." Id. (quoting Kirkpatrick, 827 F.2d at 728). Inadequacy has also been found where plaintiffs are unfamiliar with facts of the case and who they represent. Id. (quoting Dalton v. FMA Enter., Inc., 1996 WL 379105, at * 4-5 (M.D.Fla.1996)).

17. It is not necessary for a class representative to be the best representative of that class and they are not expected to understand every detail of the case. The Plaintiffs have demonstrated a basic understanding of the nature of this suit as well as sufficient participation in and awareness of the litigation. A lack of knowledge about the proceedings and or some facts, is not alone sufficient ground for finding that they are inadequate representatives. Id. The adequacy requirement of the proposed class representatives has been satisfied.

18. Adequacy requires that plaintiff's counsel are "qualified, experienced, and generally able to conduct the proposed litigation." Kirkpatrick, 827 F.2d at 726 (quoting Griffin v. Carlin, 755 F.2d 1516, 1532 (11th Cir. 1985)). In Exhibit A of Plaintiff's

Reply to Defendant's Memorandum in Opposition to Plaintiff's Motion for Class Certification, Plaintiff's counsel provided a firm biography depicting their experience. It is competence displayed by present performance that demonstrates the adequacy of counsel in a class action rather than a reputation built upon past practice. Ballan v. UpjohnCo., 159 F.R.D. 473, 487-90 (W.D. Mich. 1994).

19. In the present case, counsel for Plaintiffs was sanctioned for refusing to permit one of the plaintiffs to address a line of questions upon objection by that lawyer. Plaintiffs' counsel's misconduct was not so serious as to warrant denial of class action. Counsel for the named Plaintiffs can provide adequate representation. *See*, Wrighten v. metropolitan Hospitals, Inc., 726 F.2d 1346 (9th Cir.Or. 1984) and Halverson v. Convenient Food Mart, Inc., 458 F.2d 927, (7th Cir. 1972).

20. Plaintiffs must satisfy the requirements of one of the three subsections of Florida Rule of Civil Procedure 1.220(b). In the Third Amended Complaint Plaintiffs alleged that this action is maintainable as a class action pursuant to Rule 1.220(b)(1) or alternatively, pursuant to 1.220(b)(3).

21. AutoNation contends that a class action cannot be certified under Rule (b)(1)(A) because the prosecution of individual cases would not lead to the possibility of inconsistent adjudications or the establishment of incompatible standards of conduct for AutoNation. Plaintiffs do not offer any support for their allegation that a class action may be maintained pursuant to Florida Rule of Civil Procedure 1.220(b)(1)(A). Wherefore, a class action under Florida Rule of Civil Procedure 1220(b)(1)(A) does not appear to be appropriate.

22. AutoNation contends that a class action cannot be certified under Rule 1.220(b)(1)(B). AutoNation argues that individual claims are not too small to warrant individual action and certification of a class action is not necessary nor is it the superior method for bringing these claims. It is not the amount of potential damages that the Court should focus on but the financial ability of each Plaintiff to maintain an individual suit. Arvida, 733 So. 2d at 1030.

23. A class action is appropriate in this case under Florida Rule of Civil Procedure 1.220(b)(3). Questions of law and fact are common to the claims of the representative party. The claim of each member of the proposed class predominates over any question of law or fact affecting only individual members of the class and class representation is superior to other available methods for the fair and efficient adjudication of the controversy. Furthermore, it is questionable whether the individual class members would have the resources to pursue their common interests individually.

24. Contrary to AutoNation's argument, a classwide resolution will not devolve in mini-trials. AutoNation has admitted that it is their common practice to not deliver signed retail installment contracts to the buyers until the loan has been paid in full. The questions pertaining to the issues surrounding the finance rates can be answered by a review of each Plaintiffs' account and the measure of damages under Section 520.01 is set out in that statute. *See,* Florida Statutes Section 520.12(2).

25. If a question of law refers to standardized conduct by the defendants towards members of the proposed class, then a court will normally find commonality.

Amerifirst Securities Litigation, 139 F.R.D. 423, 428 (S.D.Fla. 1991). Individual differences regarding damages will not defeat a finding of commonality. Id.

Based upon the foregoing, it is

**ORDERED AND ADJUDGED** as follows:

Plaintiff's Motion for class certification is **GRANTED**.

**DONE AND ORDERED** at West Palm Beach, Palm Beach County, Florida this 31 day of October, 2000.

KATHLEEN J. KROLL
CIRCUIT JUDGE

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