**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2019-010141-CA-01
SECTION: CA31
JUDGE: Spencer Eig

**LEONEL ESPINAL**
Plaintiff(s)

vs.

**AMERICAN TOWING OF MIAMI LLC et al**
Defendant(s)
_____/

**ORDER GRANTING PLAINTIFF'S MOTION FOR CLASS CERTIFICATION**

THIS MATTER, having come on before the Court on March 6, 2020, on Plaintiffs' Motion for Class Certification, the Court having considered argument of counsel, the pleadings, and the record, and being otherwise fully advised in this matter, hereby makes the following findings of fact and conclusions of law pursuant to Fla. R. Civ. P. 1.220.

## I. Background and Procedural History

Plaintiff, Leonel Espinal ("Espinal") is a Florida resident whose car was non-consensually towed from the parking lot outside of the building where he resided, the Broadstone At Brickell, LLC[1], by Defendant, American Towing of Miami LLC ("American"). Plaintiff alleges that when he went to pick up his vehicle, American required him sign a release of liability (the "Release") before he was allowed to inspect his vehicle. American's agent told Espinal to call the next day so American could take care of his car issues. When Espinal called the next day, he was told that nothing could be done because he had signed the Release.

Espinal alleges that when American required him to sign the Release, American violated Fla. Stat., §715.07(2)(a)(9), which prohibits towing companies from requiring that car owners

sign such releases. Espinal filed his case on behalf of himself and others similarly situated, seeking certification of the "Release Class."

The Amended Complaint was filed on April 29, 2019. On December 5, 2019, Espinal filed his Motion for Class Certification ("MCC"), [2] which is the subject of this Order.

In the MCC, like in the Amended Complaint, Espinal contends that when American required vehicle owners to sign releases, American violated the Fla. Stat., §715.07, which requires strict compliance.

On March 6, 2020, counsel for the parties presented their arguments for and against class certification, relying on record evidence and case law cited in their memoranda. Accordingly, this Court now makes the following factual and legal findings as required by Fla. R. Civ. P. 1.220(d)(1). It is important to note, at the outset, that "[a] trial court should resolve doubts with regard to certification in favor of certification." *Sosa v. Safeway Premium Fin. Co.*, 73 So. 3d 91, 105 (Fla. 2011).

## II. Findings of Fact and Conclusions of Law

### A. Class Members and Nature of Claims

The proposed class, the Release Class, is defined in the MCC as:

> During the fullest period allowed by law, all persons whose vehicles were non-consensually towed by American from privately owned property located in the State of Florida, who, as a condition for the release of their vehicles, were issued towing receipts with a release or waiver releasing American from liability for damages.

Excluded from the class is American, any officers or directors thereof, together with its legal representatives, heirs, successors, or assigns, and any judicial officer assigned to this matter and

his or her immediate family.

Section 715.07, Fla. Stat. states that "[t]he towing or removal of any vehicle or vessel from private property without the consent of the registered owner . . . is subject to ***strict compliance*** with the following conditions and restrictions." §715.07(2)(a), Fla. Stat. (emphasis added). Among the conditions and restrictions is that:

> Any vehicle or vessel owner or agent shall have the right to inspect the vehicle or vessel before accepting its return, and ***no release or waiver of any kind which would release the person or firm towing the vehicle or vessel from liability for damages noted by the owner or other legally authorized person at the time of the redemption may be required from any vehicle or vessel owner, custodian, or agent as a condition of release of the vehicle or vessel to its owner***.

§715.07(2)(a)(9), Fla. Stat. (emphasis added).

The class issue is two-fold: (1) When American included a release of liability in its receipts, did it violate §715.07(2)(a)(9), Fla. Stat.?, and (2) Whether American is liable to Espinal and the class members for damages due to its violation of §715.07(2)(a)(9), Fla. Stat.

The question is not at this juncture, however, whether Espinal will prevail on these inquiries. The question the Court faces today is whether or not Espinal and the putative class members meet the elements of the Fla. R. Civ. P. 1.220 so they can pursue their case on a class-wide basis. The Court answer the questions it faces today in the affirmative.

### B. **Standing**

In a class action, a plaintiff must show that she has standing herself, independent of any other class member. In a class action, "[i]f none of the named plaintiff's purporting to represent a class establishes a requisite of a case or controversy with the defendant, none may seek relief

on behalf of himself or any other member of the class." *Stone v. CompuServe Interactive Services, Inc.*, 804 So. 2d 383 (Fla. 4th DCA 2001).

A party has standing when it has such a legitimate interest in the matter as to warrant asking a court to entertain it, or when the party has a sufficient interest at stake in the controversy which will be affected by the outcome of the litigation. *See Jamlynn Investments Corp. v. San Marco Residences of Marco Condo. Assn., Inc.*, 544 So. 2d 1080, 1082 (Fla. 2d DCA 1989). If the named plaintiff purporting to represent a class has no "case or controversy" with the defendant, that plaintiff has no standing to seek relief on behalf of himself or any other members of the class. *See Graham*, 813 So. 2d at 273. Further, the plaintiff must have suffered an "injury-in-fact," which must be fairly traceable to the challenged action, and likely redressable by a favorable decision. *See Disc. Sleep of Ocala, LLC v. City of Ocala*, 245 So. 3d 842, 849 (Fla. 5th DCA 2018).

The Court is satisfied that Espinal has standing in this case. The record shows that Espinal was required to sign a release prior to retrieving his vehicle, and that the release is the type forbidden by §715.07(2)(a)(9), Fla. Stat. Moreover, Espinal testified at this deposition that his car was damaged, and thus a favorable outcome in this case would address his claims.

### C. **The Proposed Class Satisfies the Criteria in Rule 1.220(a)**

#### 1. **Numerosity**

The numerosity requirement to class certification imposes a generally low hurdle and Espinal needs not show the precise number of members of the class. *See Herman v. SeaWorld Parks & Entm't, Inc.*, 320 F.R.D. 271 (M.D. Fla. 2017). Generally, a class should have no fewer than 21 members, and will generally satisfy the numerosity requirement if it has more than 40. *See*, *e.g.*, *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546 (11th Cir. 1986). But no specific

number and no precise count are needed to sustain the numerosity requirement. *See Toledo v. Hillsborough County Hosp. Auth.*, 747 So. 2d 958 (Fla. 2d DCA 1999); *Pottinger v. City of Miami*, 720 F. Supp. 955 (S.D. Fla. 1989); *Maner Properties, Inc. v. Siksay*, 489 So. 2d 842 (Fla. 4th DCA 1986).

This class action satisfies Rule 1.220(a)(1) in that the members of the class are so numerous that separate joinder of each member is impracticable. American's form for issuing towing receipts appears, on its face, to violate §715.07(2)(a)(9), Fla. Stat. During discovery, American produced copies of 611 towing receipts it issued between 2017 and 2018. Espinal alleges that this is an incomplete universe as American did not produce all the receipts requested. American argued that half of the 611 towing receipts were not signed. Nonetheless, even assuming American's counsel is correct, the putative class would consist of more than 300 members—more than enough to meet the numerosity requirement of Rule 1.220(a)(1) and justify class treatment.

2. **Commonality**

The primary concern in the consideration of commonality is whether the representative's claim arises from the same practice or course of conduct that gave rise to the remaining claims and whether the claims are based on the same legal theory. *See Morgan v. Coats*, 33 So. 3d 59 (Fla. 2d DCA 2010). Individuals need not be identically situated, so long as questions linking the class members are substantially related to the resolution of the litigation. *Id.*

The threshold of the commonality requirement is not high. *See Broin v. Philip Morris Companies, Inc.*, 641 So. 2d 888 (Fla. 3d DCA 1994). More specifically, the commonality prong only requires that resolution of a class action affect all or a substantial number of the class members, and that the subject of the class action presents a question of common or general interest. *See Freedom Life Ins. Co. of Am. v. Wallant*, 891 So. 2d 1109 (Fla. 4th DCA 2004).

A mere factual difference between class members does not necessarily preclude satisfaction of the commonality requirement. *See Morgan*, 33 So. 3d at 64. Individualized damage inquiries will also not preclude class certification. *Id.* at 65; *Ouellette v. Wal-Mart Stores, Inc.*, 888 So. 2d 90 (Fla. 1st DCA 2004); *Broin*, 641 So. 2d at 891 ("Entitlement to different amounts of damages is not fatal to a class action.").

Furthermore, the commonality requirement is satisfied if the common or general interest of the class members is in the object of the action, the result sought, or the general question implicated in the action. *See Imperial Towers Condo., Inc. v. Brown*, 338 So. 2d 1081 (Fla. 4th DCA 1976). The commonality requirement is satisfied if the questions linking the class members are substantially related to the resolution of the litigation, even if the individuals are not identically situated. *See Morgan*, 33 So. 3d at 64. Plaintiffs merely need to establish a common claim "arising from the same practice or course of conduct that gives rise to the remaining claims and . . . based on the same legal theory." *Powell v. River Ranch Property Owners Ass'n, Inc*., 522 So. 2d 69, 70 (Fla. 2d DCA 1988). Even claims that arise from different factual contexts may be pled as a class action if they present a question of common interest. *Love v. General Dev. Corp*., 555 So. 2d 397, 398 (Fla. 3d DCA 1989).

This action satisfies the commonality requirement of Rule 1.220(a)(2). There are common questions of law and fact that are common to the claims that Espinal and the class members make against American. Such questions include:

1. When American included a release in its receipts, did it violate §715.07(2)(a)(9), Fla. Stat.; and

2. Whether American is liable to Espinal and the class members for damages due to its violation of §715.07(2)(a)(9), Fla. Stat.

The record shows that American's issues a form towing receipt that contains a release which states the following: "I release American Towing Service of all responsibility to said vehicle and property." Ex. C of MCC. This release appears to violate the plain language of §715.07(2)(a)(9), Fla. Stat.

American, in its brief in opposition to the class certification, admits that at least half of these forms were signed. Response to MCC, ¶9.

In his deposition, Mr. Espinal testified to the following:

Q: Tell me what you recall about that date . . .

A: [I] went in there. And then I asked them for my vehicle. They told me, it's here. You have to pay, this and that. So, I gave them [my license]. Then they charged me. And then they make me sign a slip. And after that, they opened the door. I went looking for my car. He asked me, where is your car? . . . I signaled to it. We walked to the car. The guy gave me the slip. And right away, I noticed there, that the car had scratches in the back part. So, I told him, what is this? And he told me, well, I don't know. You have to call tomorrow, and they'll fix it for you.

Espinal Tr. 9:4-24.

Later in his deposition Mr. Espinal also testified:

A: They started processing what they were going to charge me for. Then they presented an invoice, and I had to pay for it.

Q: They presented a credit card slip?

A: I don't remember what it was. He gave me something to pay, a receipt. So, I gave him my credit card. He charged me for it. Once I was done, he gave me a yellow slip to sign, and I said, but you haven't given me the car. And he says, you have to sign it. So, I signed it. Ant then he came around, opened the door,

and led me into the yard where all cars are.

Espinal Tr. 16:3-14.

Espinal's testimony reveals, contrary to Defendant's argument, that American's practice is to have vehicle owners sign the release before they can inspect their vehicles. Such practice, if proven at trial, would amount to a violation of §715.07(2)(a)(9), Fla. Stat. The Court disagrees with American's arguments that class members should have to file individual cases and each prove whether their release was signed before or after. The broad language of §715.07(2)(a)(9), Fla. Stat. ("no release or waiver of any kind"), a strict compliance statute, the Release in this case, and the under oath testimony of Espinal, reveals a common practice or course of conduct that satisfies the commonality requirement of Rule 1.220(a)(2).

3. **Typicality**

The key inquiry for a trial court when it determines whether a proposed class satisfies the typicality requirement is whether the class representative possesses the same legal interest and has endured the same legal injury as the class members. *See Morgan*, 33 So. 3d at 65. The test for typicality is not demanding and focuses generally on the similarities between the class representative and the putative class members. *Id.* Mere factual differences between the class representative's claims and the claims of the class members will not defeat typicality. *See Smith v. Glen Cove Apartments Condominiums Master Ass'n, Inc.*, 847 So. 2d 1107 (Fla. 4th DCA 2003).

The typicality requirement is satisfied when there is a strong similarity in the legal theories upon which those claims are based and when the claims of the class representative and class members are not antagonistic to one another. *Morgan*, 33 So. 3d at 65 ("The typicality

requirement may be satisfied despite substantial factual differences . . . when there is a strong similarity of legal theories.").

This class action satisfies Rule 1.220(a)(3) in that the claims of the representative party are typical of the claim of each member of the class. Espinal's claims are the same as the other class members' claims and he has the same legal interests as the other class members. The factual basis of American's misconduct (the inclusion of the release in its receipts) is common to all class members and represents a common thread of misconduct resulting in damages to all class members.

Based on the evidence in the record, it is clear that there are at least 300 hundred of non-consensual class members who had to sign a release or waiver releasing American from liability. Moreover, even assuming that not all class members have damage to their vehicles—like in Espinal's case—Section 715.07(4), Fla. Stat. states that "[w]hen a person improperly causes a vehicle or vessel to be removed, such person shall be liable to the owner or lessee of the vehicle or vessel for the cost of removal, transportation, and storage; any damages resulting from the removal, transportation, or storage of the vehicle or vessel; attorney's fees; and court cost." In other words, should Plaintiffs prove his case at trial, American would be liable for "the cost of removal, transportation, and storage." Damage to one's vehicle is an element of damages, not an element of liability under §715.07(2)(a)(9), Fla. Stat.

4. **Adequacy**

A trial court's inquiry concerning whether the adequacy requirement is satisfied contains two prongs. *See City of Tampa v. Addison*, 979 So. 2d 246 (Fla. 2d DCA 2007). The first prong concerns the qualifications, experience, and ability of class counsel to conduct the litigation. *Id.* The second prong pertains to whether the class representative's interests are antagonistic to the interests of the class members. *Id.*

In this case, Espinal has retained competent counsel, experienced in litigation of this nature, to represent him. Class counsel has 9 years of complex commercial and civil litigation experience in Federal and State court. The Court is otherwise familiar with Espinal's counsel reputation and American does not challenge the adequacy requirement as to Mr. Maura.

Furthermore, Espinal has and will continue to vigorously pursue the claims alleged herein on behalf of himself individually, and on behalf of all other similarly situated persons. Espinal has no adverse interests to the class members because he asserts the same claims under the Florida Statutes, and seeks the same relief as the class members as if each were to bring a similar action individually.

### D. **Plaintiffs' Class Actions Claims are Maintainable Under Rule 1.220(b)**

In addition to the prerequisites of Rule 1.220(a), the proponent of class certification must satisfy one of the three subdivisions of Rule 1.220(b). Rule 1.220(b)(3) provides:

> A claim or defense may be maintained on behalf of a class if the court concludes that the prerequisites of subdivision (a) are satisfied, and that:
>
> . . .
>
> (3) the claim or defense is not maintainable under either subdivision (b)(1) or (b)(2), but the questions of law or fact common to the claim or defense of the representative party and the claim or defense of each member of the class predominate 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.

Fla. R. Civ. P. 1.220(b)(3).

#### a. Predominance

Espinal and the class members satisfy the predominance requirement of Rule 1.220(b)(3).

To meet the requirements of Rule 1.220(b)(3), the party moving for class certification must establish that the class members' common questions of law and fact predominate over individual class member claims. *See* Fla. R. Civ. P. 1.220(b)(3); *see also InPhyNet Contracting Services, Inc. v. Soria*, 33 So. 3d 766, 771 (Fla. 4th DCA 2010) (citing *Rollins, Inc. v. Butland*, 951 So. 2d 860, 868 (Fla. 2d DCA 2006)).

Florida courts have routinely held that common questions of fact predominate when the defendant acts toward the class members in a similar or common way. *See Stone v. CompuServe Interactive Services, Inc.*, 804 So. 2d 383, 388 (Fla. 4th DCA 2001). The predominance and commonality requirements parallel one another but are not identical. The predominance requirement is more stringent because, to satisfy this requirement, common questions must not only exist but also predominate and pervade. *See Soria*, 33 So. 3d at 771-72; *Wyeth, Inc. v. Gottlieb*, 930 So. 2d 635, 639 (Fla. 3d DCA 2006).

A class representative establishes predominance if he demonstrates a reasonable methodology for generalized proof of class-wide impact. *See Soria*, 33 So. 3d at 771. A class representative accomplishes this if he, by proving his own individual case, necessarily proves the cases of the other class members. *Id.*

Whether class claims predominate also requires the consideration of how the resolution of the class claims will affect each class member's underlying cause of action. *Id.* at 772. If a trial court finds that common issues of fact and law impact more substantially the efforts of every class member to prove liability than the individual issues that may arise, then class claims predominate. *Id.* However, it is not the burden of the class representative to illustrate that all questions of fact or law are common. *See Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Services, Inc.*, 601 F.3d 1159, 1178 (11th Cir. 2010). Rather, the class representative must only demonstrate that some questions are common, and that they predominate over individual questions. *Id.*

In this case, Espinal and the class members satisfy Rule 1.220(b)(3)'s predominance requirement because the common class questions for Espinal and the putative class members require generalized proof and not individual inquiries or mini-trials. To resolve whether American violated §715.07(2)(a)(9), Fla. Stat., the trial court need only determine whether American conditioned the release of vehicles to their owners on a release or waiver of any kind which released American from liability for damages. Such inquiry applies equally to Espinal and all putative class members, as each of these claims emanates from American's common course of conduct that resulted in the class members' damages.

b. Superiority

Rule 1.220(b)(3)'s superiority requirement is also satisfied when a class action is the most manageable and efficient way to resolve the individual claims of each class member. Three factors for courts to consider when deciding whether a class action is the superior method of adjudicating a controversy are (1) whether a class action would provide the class members with the only economically viable remedy; (2) whether there is a likelihood that the individual claims are large enough to justify the expense of separate litigation; and (3) whether a class action cause of action is manageable. *See Morgan v. Coats*, 33 So. 3d 59, 66 (Fla. 2d DCA 2010). The superiority factors weigh in favor of class certification. *Id.*

In this case, Espinal's cause of action is suitable for class certification because it is the superior form of adjudication for this controversy. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since it would be an inefficient use of judicial resources to require each class member affected by American's actions to bring its own claim. Allowing Espinal and the putative class members to proceed with this class action is the most economically feasible remedy given the potential individual damage recovery for each class member, i.e.: the towing fee. Damages for any individual class member are likely insufficient to justify the cost of individual litigation, so that in the absence of class treatment,

American's violations of law inflicting substantial damages in the aggregate would go unremedied without certification of the class.

Furthermore, because of the large number of potential class members who base their claims on the same common course of conduct by American, a class action would be a more manageable and more efficient use of judicial resources than individual claims. Therefore, the putative class members satisfy Rule 1.220(b)(3)'s superiority requirement.

## CONCLUSION

For all of the foregoing reasons, IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. Plaintiffs' Motion for Class Certification is hereby GRANTED.
2. Pursuant to Rule 1.220(b)(3), the Court certifies and defines as:

> All persons whose vehicles were non-consensually towed by American from privately owned property located in the State of Florida, who, as a condition for the release of their vehicles, were issued towing receipts with a release or waiver releasing American from liability for damages within the applicable 4 years statute of limitation.[3]

3. Plaintiffs, Leonel Espinal, shall act as class representative of the Release Class.

4. The law firm of Ayala Law, P.A. shall serve as class counsel for the Release Class.

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[1] Broadstone at Brickell LLC, a party originally to this action, was voluntarily dismissed from the case by Plaintiff.

[2] D.E. 49.

[3] § 95.11, Fla. Stat. Ann. (for actions founded on a statutory liability).

**DONE** and **ORDERED** in Chambers at Miami-Dade County, Florida on this 25th day of June, 2020.


2019-010141-CA-01 06-25-2020 9:59 AM

Hon. Spencer Eig

**CIRCUIT COURT JUDGE**

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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