

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

**JAY ALAN MORANE, Individually  
and On Behalf of Others Similarly  
Situated**

**PLAINTIFF**

**V.**

**4:09CV000277JMM**

**BMW OF NORTH AMERICA, LLC**

**DEFENDANT**

**ORDER GRANTING PLAINTIFF'S MOTION TO AMEND**

Plaintiff has filed a motion for leave to amend his Complaint to dismiss the class action allegations against the Defendant. Plaintiff explains that he has become unemployed and has relocated to Phoenix, Arizona since the filing of this case. He states that as a result of his unemployment his BMW was repossessed. Moreover, Plaintiff is a key witness in a criminal trial concerning the death of a family member which will consume much of his time. For these reasons, Plaintiff states that he cannot fulfill his obligations as a nationwide class representative. Plaintiff asks the Court to allow him to amend his Complaint to dismiss his class allegations.

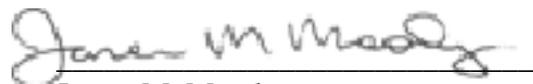
The Defendant objects to Plaintiff's motion. Defendant contends that the Court should grant Defendant's Motion to Strike Nationwide Class Allegations based upon Plaintiff's admission that he cannot fulfill his class representative duties, in addition to the numerous reasons set forth in the Defendant's motion. In the alternative, Defendant asks the Court to award attorneys' fees and costs to the Defendant for the time spent preparing the Motion to Strike Nationwide Class Allegations.

Although the Court is mindful that the Defendant has expended considerable resources in preparing the Motion to Strike, the Court finds that the Defendant would not be substantially prejudiced by Plaintiff's exclusion of the class allegations in his Second Amended Complaint.

Discovery has not begun in the case and the Plaintiff has not yet filed a motion to certify the class. Justice requires the Court to allow the amendment based upon the unexpected changes in Plaintiff's personal circumstances. Therefore, the Court finds that Plaintiff's motion to amend (Docket # 45) should be, and hereby is, GRANTED. The Court notes that Plaintiff's right to re-file the class action allegations against this Defendant may be subject to the provisions of Rule 41(d) of the Federal Rules of Civil Procedure. *See Wilson v. Crouse-Hinds Co.*, 556 F.2d 870, 873 (8<sup>th</sup> Cir. 1977). Under Rule 41(d), the Plaintiff may be ordered to pay any costs of this action which the Court deems appropriate if Plaintiff re-files the class action claims against the Defendant.

Plaintiff's motion to amend his Complaint (Docket # 45) is GRANTED. Defendant's Notice of Related Case (Docket # 44) and Motion to Strike Nationwide Class Allegations (Docket # 35) are MOOT. Plaintiff's Motion to Lift Stay of Discovery (Docket # 32) is DENIED pending the Court's ruling on Defendant's Motion to Dismiss Plaintiff's Individual Claims.

IT IS SO ORDERED this 27<sup>th</sup> day of January, 2010.



James M. Moody  
United States District Judge