

## [Award of Attorney Fees Under the Automobile Sale Finance Act Upheld by Court of Appeal](#)

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In [Nelson v. Pearson Ford Co.](#), D054369 (July 15, 2010), the [Fourth Appellate District](#) upheld the trial court's judgment awarding attorney fees to plaintiff class representative under the [Automobile Sale Finance Act](#) ("ASFA"), and denied costs to defendant in its claim under [California Code of Civil Procedure Section 998](#).

*Nelson* involved a class action against the Pearson Ford car dealership for alleged violations of the ASFA, [Consumers Legal Remedies Act](#) ("CLRA") and [California Unfair Competition Law](#) ("UCL") arising from a backdated car sale contract that resulted in a car buyer paying interest for a time period when no contract existed, and for erroneously adding insurance premium to the sales price of the car which resulted in additional sales tax and financing charges.

Two separate classes were certified by the trial court: the backdating class and the insurance class.

Following a bench trial, the trial court found Pearson Ford liable under the ASFA to only the insurance class, liable to both classes under the UCL, and not liable to either class under the CLRA. The trial court granted certain remedies under the ASFA and the UCL, and awarded Nelson his attorney fees and costs under the ASFA. Both parties appealed.

The appellate court reversed the trial court as to the portion of the judgment finding Pearson Ford not liable to the backdating class under the ASFA and the CLRA. The court also found that the trial court erred in the remedies it awarded under the ASFA and the UCL. The court upheld the trial court's ruling on the award of attorney fees and costs.

Attorney fees in this matter were not awarded under the UCL, which does not permit this type of remedy, but under the ASFA, a statute that specifically grants the recovery of attorney fees to the prevailing party.

The appellate court noted that Pearson Ford did not challenge the trial court's conclusion that Nelson was the prevailing party for both classes under the ASFA (Civ. Code section 2983.4), or dispute the awarded amount. Instead, Pearson Ford argued that the trial court should have taken into consideration the fact that it had made a Section 998 offer of \$500,000 before trial, and that Nelson failed to obtain a more favorable judgment at trial.

The appellate court, while noting that a valid settlement offer can be made under Section 998 in a certified class action, agreed with the trial court that the Section 998 offer at issue was invalid because it was a lump-sum offer to two classes. The court stated that it would be impossible to determine whether either class received a less favorable result at trial than it would have received under the offer.