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Order

Hon. John Shepard Wiley posted on: 03/10/16 01:25 PM

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES
 DEPARTMENT 311**

*Department of Fair Employment and Housing v. M&N Financing Corporation,
 et al.*

BC591206

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**MOTION TO PROCEED AS GOVERNMENT ENFORCEMENT ACTION
 FOR GROUP OR CLASS RELIEF**

The Department of Fair Employment and Housing sued Defendants M&N Financing Corporation and Mahmood Nasiry for violations of the Unruh Civil Rights Act. The court refers to Defendants collectively as M&N for convenience. The Department of Fair Employment and Housing contends M&N, which is an auto loan lender, charged additional fees to female borrowers and cosigners. The Department of Fair Employment and Housing seeks to represent several groups of victims. The Department of Fair Employment and Housing requests that the court determine it is entitled to maintain this action without meeting the requirements for class certification. The motion is granted.

The Department of Fair Employment and Housing “is a public prosecutor testing a public right.” (*State Personnel Bd. v. Fair Employment & Housing Com.* (1985) 39 Cal.3d 422, 443, internal quotations and citations omitted.) When a prosecutor maintains an action, the action “is fundamentally a law enforcement action designed to protect the public and not to benefit private parties.” (*People v. Pacific Land Research Co.* (1977) 20 Cal.3d 10, 17.) An action of this sort is not a class action. “The Attorney General or other governmental official who files the action is ordinarily not a member of the class, his role as a protector of the public may be inconsistent with the welfare of the class so that he could not adequately protect their interests . . . and the claims and defenses are not typical of the class[.]” (*People v. Pacific Land Research Co.* (1977) 20 Cal.3d 10, 18.) The Department

of Fair Employment and Housing cannot serve as a class representative.

Under the Fair Employment and Housing Act, the Department of Fair Employment and Housing has the authority to maintain a complaint “on behalf and as representative of . . . a group or class.” (Gov. Code, § 12961.) Government Code section 12948 incorporates the Unruh Civil Rights Act into the Fair Employment and Housing Act. (Gov. Code, § 12948.) The Department of Fair Employment and Housing thus has statutory authority to maintain a case on behalf of a group of others, but could not seek relief on behalf of others if it had to satisfy the requirements for class certification. It would be illogical for the Legislature to empower the Department of Fair Employment and Housing to maintain a case on behalf of a group of others when the class certification rules would preclude it from doing so if it had to obtain certification to proceed. Thus, the Department of Fair Employment and Housing may maintain this action without obtaining certification.

M&N argues that the class of persons for whose benefit the Department of Fair Employment and Housing seeks to maintain this action could meet certification requirements. This point is irrelevant. The Department of Fair Employment and Housing seeks a declaration that its action need not satisfy class certification requirements. M&N’s argument that private plaintiffs in another hypothetical action could meet certification requirements has no bearing on whether the Department of Fair Employment and Housing is entitled to the relief it seeks.

M&N also argues the Department of Fair Employment and Housing has not identified any aggrieved persons on whose behalf it maintains this action. The Department of Fair Employment and Housing need not do so. Under the Fair Employment and Housing Act, the Department of Fair Employment and Housing has the authority to maintain a complaint “on behalf and as representative of . . . a group or class.” (Gov. Code, § 12961.) The Department of Fair Employment and Housing thus has authority to maintain this action without identifying specific aggrieved persons on whose behalf it sues M&N.

M&N argues that the Department of Fair Employment and Housing would violate the due process rights of the persons it purports to represent if it does not provide them notice and an opportunity to opt out. When a public prosecutor maintains a suit against a defendant, res judicata principles do not bar later lawsuits by individuals asserting claims against that defendant based on the same misconduct, if the individuals did not receive the relief they seek in their private actions in the lawsuit the prosecutor maintained. (*Payne v. National Collection Systems, Inc.* (2001) 91 Cal.App.4th 1037, 1047.) Rulings in this action will not prejudice individual claims unless the people whom the Department of Fair Employment and Housing represents accept benefits from this action. The Department of Fair Employment and Housing therefore need not provide notice and an opportunity to opt out before maintaining claims on behalf of others.

M&N argues this case should proceed as a class action because “Defendants are entitled to avoid multiple litigations and the risk of incompatible standards by

litigating this matter in a unitary adjudication which will resolve the matter once and for all binding all members of the purported group or class.” (Defendants’ Opposition to Plaintiff’s Motion to Proceed as Government Enforcement Action, pp. 8-9.) M&N cites no authority for this purported right. If a defendant commits the same wrong against many people, each one has the right to sue the defendant individually. Even if one person represents a certified class of other persons seeking relief based on the defendant’s misconduct, the members of the class have the right to opt out of the class and seek relief on their own. In the event of many lawsuits based on the same facts, courts and parties can use related case notices, consolidation, coordination, and so forth to reduce the risk of conflicting rulings.

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