

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/25/17

DEPT. 311

HONORABLE JOHN SHEPARD WILEY JR.

JUDGE

M. MATA

DEPUTY CLERK

HONORABLE
#1

JUDGE PRO TEM

VIENNA NGUYEN, PRO TEM
CSR 13137

ELECTRONIC RECORDING MONITOR

D. CARROLL, CA

Deputy Sheriff

Reporter

2:00 pm

BC591206

DEPARTMENT OF FAIR EMPLOYMENT A
HOUSING

VS

M & N FINANCING CORPORATION ET

CASE HOME PAGE

Plaintiff

FRANCISCO BALERRAMA (X)

Counsel

JACOB BARAK (X)

ADAM CHAYES (X)

Defendant

Counsel

BYRON PURCELL (X)

MARIE MAURICE (X)

NATURE OF PROCEEDINGS:

MOTION BY PLAINTIFF, DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, FOR POST SUMMARY ADJUDICATION, INJUNCTIVE AND MONETARY RELIEF;

The Order Appointing Court Approved Reporter as Official Reporter Pro Tempore is signed and filed this date.

Matter is called for hearing.

Counsel have read a copy of the Court's tentative ruling.

Matter is argued. The Court's tentative ruling stands as follows:

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

Case Home Page

Motion for summary adjudication

The Department of Fair Employment and Housing moves for summary adjudication of injunctive and damages issues. The motion is granted.

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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Plaintiff	FRANCISCO BALERRAMA (X)
Counsel	JACOB BARAK (X) ADAM CHAYES (X)
Defendant	
Counsel	BYRON PURCELL (X) MARIE MAURICE (X)

NATURE OF PROCEEDINGS:

The Department sued M&N Financing and its owner for gender discrimination. When deciding how much to pay for car loans, M&N treated women less favorably than men. M&N discriminated in the following way. When used car buyers finance their purchases, they borrow to pay for their purchase. Buyers negotiate loan terms with the dealership. The dealership then offers this loan contract for sale to potential loan buyers like M&N. After a decade of experience with defaulting borrowers, M&N created a formula for calculating default risk. One of the 18 or 20 significant factors in M&N's formula was gender. If the borrower was female, M&N assigned her point. M&N assigned zero points for gender if the borrower was male. The more points, the greater risk M&N perceived and the less it would be willing to bid for the loan at auction.

The court previously ruled the Department need not meet the requirements for a class action to bring this group action on behalf of victims. The court then granted the Department's motion for summary adjudication of liability under the Unruh Act, because express use of gender in business decisionmaking is blatantly illegal. (E.g., Koire v. Metro Car Wash (1985) 40 Cal.3d 24, 28-39.)

The Department now seeks statutory damages for each loan victim. After withdrawing one claim, the Department identifies 1036 individual borrowers and 517 car dealer victims where the principal loan

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BC591206

Plaintiff FRANCISCO BALERRAMA (X)

Counsel JACOB BARAK (X)

ADAM CHAYES (X)

DEPARTMENT OF FAIR EMPLOYMENT A
HOUSING

Defendant

VS

Counsel BYRON PURCELL (X)

MARIE MAURICE (X)

M & N FINANCING CORPORATION ET

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NATURE OF PROCEEDINGS:

borrower was female. The total number of violations is 1553. The statutory damage sum is \$4000. (See Civil Code 52, subd. (a) ("Whoever . . . makes any [gender] discrimination . . . is liable for each and every offense for the actual damages . . . but in no case less than four thousand dollars . . .").) Multiplying 1553 by \$4000 yields \$6,212,000. The Department also seeks an injunction. This motion is granted.

II

M&N seeks to continue the hearing on this motion. There is no valid reason for delay. M&N asserts the person verifying some of the Department's discovery did not have personal knowledge of the discovery data. The verifier is Patrice Doehrn, who was a District Administrator with the Department and who conducted the initial investigation of the M&N matter. Doehrn's signature satisfied subdivision (a) of section 2030.250 of the Code of Civil Procedure, which requires signature by an agent of a governmental agency.

III

M&N claims the Department must prove victims personally suffered from M&N's discrimination. By this M&N presumably means the Department must quantify the dollar injury to women involved in this case. This court rejected this incorrect statement

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NATURE OF PROCEEDINGS:

of law in 2016. M&N's effort to reargue this past ruling is not pertinent to the present motion.

IV

M&N states the Department lacks standing to proceed because the victims in this case are not "aggrieved persons" as required by law. This invalid argument rephrases the previous invalid argument.

V

M&N submits there are triable issues of fact as to whether victims personally suffered the alleged discrimination and were harmed as a result. (Opposition 21.) This point restates the same erroneous argument M&N made in the two last points.

VI

M&N challenges the Department's requested injunction as overbroad and burdensome. M&N's specific complaints concern posting a notice in M&N's office and on its website, giving news of the injunction to dealerships and others, maintaining a database of pertinent information, reporting to the Department on an annual basis for five years, and certifying compliance annually for five years. These requirements are relevant and appropriate to the conduct in this case. M&N has made no factual showing of an undue or inappropriate burden.

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NATURE OF PROCEEDINGS:

VII

M&N claims the Department's motion is simultaneously unripe and moot. The motion is ripe, however, and it is not moot. The motion is ripe because the Department has developed and adduced facts needed to determine liability and remedy. The motion is not moot because M&N has adopted the stance that it has done nothing wrong and owes nothing to anyone. The Department's motion aims to dispel these views

Stay is lifted on the individual claims only.

Both sides demand jury.

Defendant is to file a motion for summary judgment by 4:00 p.m. on January 26, 2018.

Case Management Conference is set for February 9, 2018 at 10:00 a.m. in this department.

Counsel are to file a joint status report by 4:00 p.m. on February 2, 2018.

Motion to Seal is granted.

Notice is waived.

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