

1 **\*\* E-filed July 15, 2011 \*\***

2

3

4

5

6

7

8

9

10

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

11 MARTIN F. ROONEY, individuals and on  
behalf of all others similarly situated,

No. C10-00905 LHK (HRL)

12 Plaintiff,

**ORDER RE: DISCOVERY DISPUTE  
JOINT REPORT # 1**

13 v.

**[Re: Docket No. 62]**

14 SIERRA PACIFIC WINDOWS,

15 Defendant.

16 \_\_\_\_\_/

17 In his First Amended Complaint, plaintiff Martin Rooney (“Rooney”) alleges that he bought  
18 windows from defendant Sierra Pacific Windows (“Sierra Pacific”) in 1998. Docket No. 31  
19 (“FAC”) ¶ 15. He alleges that Sierra Pacific did not provide him with a copy of its written warranty  
20 either before or after the sale, as it is required by law to do. Id. ¶ 16. The written Sierra Pacific  
21 warranty Rooney claims he did not receive, which he calls the “SPW Warranty,” provided twenty  
22 years of coverage, with Sierra Pacific paying the full cost of repair or replacement for certain  
23 failures during the first ten years and paying 40% during the second ten years. Id. ¶ 12.

24 Rooney also alleges that, although he did not receive the SPW Warranty at the time of sale,  
25 he did receive an order form containing a section entitled “TERMS AND CONDITIONS OF  
26 SALE,” which included the following language:

27 7. LIMITED WARRANTY

28

1 a. Any non-tested window or door has warranty on the insulated glass and wood parts  
2 integrity only. There is not warranty relating to the structural performance, air  
infiltration or water penetration of the window or door unit.<sup>1</sup>

3 See id. ¶ 9 & Ex. A. Rooney calls this provision the “Terms and Conditions Warranty,” and he  
4 alleges that it created a full warranty for all time on the windows he purchased. Id. ¶ 10.

5 Rooney alleges that he noticed problems with some of his windows in 2007, that he  
6 contacted Sierra Pacific about the problems in 2009, and that Sierra Pacific refused to honor the so-  
7 called “Terms and Conditions Warranty” by replacing his windows free of charge. Id. ¶ 17. Instead,  
8 Sierra Pacific followed the terms of the SPW Warranty, and paid 40% of the cost of replacement  
9 windows. Id. ¶¶ 17, 19. Rooney paid the remaining 60%, or \$312.24. Id.

10 Rooney filed his initial complaint in this Court on March 4, 2010, which he later amended.  
11 The gravamen of his complaint is that Sierra Pacific applied the terms of the SPW Warranty, which  
12 he allegedly never received, instead of applying the “Terms and Conditions Warranty,” which he  
13 contends promised complete coverage with no time limitation. He alleges breach of express  
14 warranty, violation of the Magnuson Moss Act, violation of the California Unfair Competition Law  
15 (“UCL”), and violation of the California Consumer Legal Remedies Act (“CLRA”). He seeks to  
16 certify a class of Sierra Pacific customers who allegedly did not receive the SPW Warranty when  
17 they bought windows, for whom he seeks restitution and injunctive relief. Id. ¶¶ 22, 66.

18 Now, the parties have filed Discovery Dispute Joint Report # 1. Docket No. 62 (“Joint  
19 Report”). In his words, Rooney wants “a list of putative class members including contact  
20 information as well as [Sierra Pacific’s] customer service database information concerning the class  
21 members and the purchase contracts (called ‘Windbid’) that [Sierra Pacific] relies upon in defense  
22 of this action.” Id. at 1. Sierra Pacific objects to his request.

23 Upon consideration of the Joint Report, the Court DENIES Rooney’s requested relief at this  
24 time. First, Rooney has indicated that he intends to file an amended complaint that amends the  
25 definition of the putative class. See Joint Report at 9. Assuming this is true, the Court will not  
26  
27

28 

---

<sup>1</sup> Rooney did not include the second sentence of this paragraph in his First Amended Complaint.

1 require Sierra Pacific to provide Rooney with “a list of the putative class members” when the  
2 putative class is not certain.<sup>2</sup>

3 Second, the Court believes that Rooney’s need for such a list is low at this point in the  
4 litigation. Per Judge Koh’s instruction, Sierra Pacific has already provided Rooney with documents  
5 containing the names and contact information of its customers who made warranty-related  
6 complaints. While the number of such documents may be large, the fact is that Rooney already has  
7 much of what he is asking for.

8 Based on the foregoing, Rooney’s requested relief is DENIED.

9

10 **IT IS SO ORDERED.**

11 Dated: July 14, 2011

  
\_\_\_\_\_  
HOWARD R. LLOYD  
UNITED STATES MAGISTRATE JUDGE

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

<sup>2</sup> Nor is the viability of Rooney’s claim certain. See Docket No. 64 (Sierra Pacific’s motion for judgment on the pleadings under Rule 12(c)).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**C10-00905 LHK (HRL) Notice will be electronically mailed to:**

Andrew A. August	aaugust@pinnaclelawgroup.com, mterry@pinnaclelawgroup.com
David E. Martinek	dem@dunmartinek.com, raj@dunmartinek.com
John Laurence Fitzgerald	jfitzgerald@pinnaclelawgroup.com
Kevin Francis Rooney	krooney@pinnaclelawgroup.com
Meghan Marie Baker	mbaker@downeybrand.com, bwarne@downeybrand.com, courtfilings@downeybrand.com, mlane@downeybrand.com, tchacon@downeybrand.com, tgravel@downeybrand.com
Randall H. Davis	rhd@dunmartinek.com, raj@dunmartinek.com
William Ross Warne	bwarne@downeybrand.com, courtfilings@downeybrand.com, mlane@downeybrand.com, tchacon@downeybrand.com

**Counsel are responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the court’s CM/ECF program.**