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CENTRAL DISTRICT OF CALIFORNIA
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOHN GARAMENDI,

Plaintiff,

v.

ALTUS FINANCE S.A., et al.,

Defendants.

AND RELATED COUNTERCLAIMS

CASE NO. CV 99-2829 AHM (CWx) ✓
[Consolidated with Case No.
CV 01-1339 AHM(CWx)]

ORDER RE PUNITIVE DAMAGES

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The bifurcated trial in this matter began on February 15, 2005. The liability phase went to the jury on April 18, 2005, and the jury issued its verdicts on May 10, 2005. The damages phase began on July 12, 2005, went to the jury on July 20, 2005, and the jury issued its verdicts on July 21, 2005. In Damages Verdict Form A, the jury found that the ELIC Estate suffered no dollar damages with respect to both of the Commissioner's damages theories. Nevertheless, in Damages Verdict Form B, the jury awarded the Commissioner \$700,000,000 in punitive damages.

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1 The Artemis Parties (“Artemis”) now seek entry of a judgment in their
2 favor on all claims. This Order addresses only the question of whether plaintiff
3 John Garamendi (“the Commissioner”) is entitled to the judgment he seeks, which
4 would include the \$700,000,000 punitive damages award. He is not. Under the
5 constitutional due process requirements discussed in such cases as *BMW of North*
6 *America v. Gore*, 517 U.S. 559 (1996) and *State Farm Mut. Auto Ins. Co. v.*
7 *Campbell*, 538 U.S. 408, 123 S. Ct. 1513 (2003), that award of punitive damages
8 against Artemis would be invalid.

9 This Order does not address, much less resolve, any other remaining claims,
10 such as the Commissioner’s claims for restitution and other equitable relief.

11 A. California Law Precludes the Award of Any Punitive Damages.

12 The parties agree that California law determines their respective rights and
13 obligations, except to the extent that federal constitutional requirements apply.
14 Although the Court, for the reasons explained below, chooses to base this order on
15 federal constitutional requirements, it is at least appropriate to acknowledge the
16 other key contention that Artemis advances: that under California law no punitive
17 damages award in *any* amount would be lawful. Artemis’s contention has
18 considerable merit. But because the jury’s verdicts can be construed as
19 ambiguous and because there is no decisional precedent that addresses this precise
20 situation, the question is not conclusively settled.

21 It is well-established that under California law an “award of actual
22 [compensatory] damages, even if nominal, is required to recover punitive
23 damages.” *Sole Energy Co. v. Petrominerals Corp.*, 128 Cal. App. 4th 212, 238
24 (2005) (citing Cal. Civ. Code § 3294); *Kizer v. County of San Mateo*, 53 Cal. 3d
25 139, 147 (1991) (“In California, as at common law, actual damages are an
26 absolute predicate for an award of exemplary or punitive damages”); *Mother*
27 *Cobb’s Chicken T., Inc. v. Fox*, 10 Cal. 2d 203, 205 (1937). “Compensatory
28 damages are those damages as will compensate the injured party for the injury

1 sustained; to make good or replace the loss caused by the injury.” *Berg v. First*
2 *State Ins. Co.*, 915 F.2d 460, 465 (9th Cir. 1990). In applying California law, the
3 Ninth Circuit, too, has stated “[W]ithout actual injury, punitive damages are not
4 recoverable under California law.” *Id.* at 467. SCANNED

5 The Commissioner argues that he has satisfied these prerequisites. The
6 Court construes the Commissioner’s argument to rest heavily on the proposition
7 that in the liability phase, after having been instructed how the Commissioner
8 claimed to have been harmed by selecting the Altus/MAAF bid, the jury found in
9 Verdict Form 5 that the scheme that Artemis joined *did* cause him harm.

10 Although the jury did not specify what the harm was, presumably it was that the
11 Commissioner selected the Altus/MAAF bid, thereby causing the ELIC Estate to
12 incur losses, costs or expenses that it would not otherwise have incurred if the
13 Commissioner had picked a “bonds in” bid. (See Instruction 25). Yet Artemis
14 was not even in existence when the Commissioner selected the Altus/MAAF bid,
15 and in the subsequent damages phase the jury awarded the Commissioner no
16 compensatory damages. Nor did it award even nominal damages to him, despite
17 being instructed to do so if it found for the Commissioner but also found he
18 “failed to prove damages as defined in these instructions . . .” (Damages
19 Instruction 8.)¹

20 In short, the jury may have deliberately concluded in Phase 2 that whatever
21 “harm” the other conspirators may have caused, the conduct of *Artemis* in later
22 joining that scheme did not damage the Commissioner. That construction of its
23 verdicts in the two phases is lent credence by the fact that in closing argument
24 Artemis’s counsel emphatically and explicitly urged the jurors to write “zero” or
25 “0” in response to Questions 1(a) and 2(a) . . . and they did.

26
27 ¹ The Commissioner initially requested the Court to poll the jurors as to
28 whether they realized that their failure to award even one dollar in damages would
invite the argument Artemis now makes, but he withdrew that request.

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1 Despite the absence of a compensatory damages award, the Commissioner
2 cites various cases to support the punitive damages award. Those cases are
3 distinguishable. Without addressing all of them, in many of those cases
4 compensatory damages were awarded. *See, e.g., Johnson v. Ford Motor Co.*, 35
5 Cal. 4th 1191 (2005); *Wyatt v. Union Mortgage Co.*, 24 Cal. 3d 773 (1979);
6 *Cummings Med. Corp. v. Occupational Med. Corp. of Amer., Inc.*, 10 Cal. App.
7 4th 1291 (1992). In other cases, nominal damages were awarded or were
8 conclusively presumed. *See, e.g., Contento v. Mitchell*, 28 Cal. App. 3d 356, 358
9 (1972). Some of the appellate decisions the Commissioner cites were issued
10 before trial was held or before the case was remanded for retrial. *See, e.g.,*
11 *McLaughlin v. National Union Fire Ins. Co. of Pittsburgh, PA*, 23 Cal. App. 4th
12 1132, 1165 (1994). Others involved plaintiffs who were prohibited by law from
13 seeking compensatory damages, *see, e.g., Gagnon v. Cont'l Cas. Co.*, 211 Cal.
14 App. 3d 1598, 1603 (1989), or defendants against whom default was entered.
15 *Weiss v. Blumencranc*, 61 Cal. App. 3d 536, 544 (1976).

16 Here, in contrast to the above cases, the Commissioner was not prohibited
17 by law from seeking compensatory damages, damages were not presumed, the
18 jury did not award compensatory damages or nominal damages, and default was
19 not entered against Artemis.

20 The Commissioner does cite one California Supreme Court decision
21 upholding an award of punitive damages in the absence of an award of
22 compensatory damages: *Ward v. Taggart*, 51 Cal. 2d 736 (1959). In that case, a
23 court (not a jury) did award as compensatory damages the profits the defendant
24 secretly and wrongfully derived and the Court also awarded punitive damages.
25 On appeal the Supreme Court upheld the compensatory damages award, but under
26 a different theory - - the equitable doctrine of unjust enrichment. *Id.* at 741-42.
27 The Supreme Court then went on to uphold the punitive damages award, noting it
28 arose out of the defendant's fraud and that such damages are "appropriate in cases

1 . . . where restitution would have little or no deterrent effect, for wrongdoers
2 would run no risk of liability to their victims beyond that of returning what they
3 wrongfully obtained.” *Id.* at 743.

4 *Ward v. Taggart*, too, is easily distinguishable. First, in *Ward* the punitive
5 damages arose out of the defendant’s proven fraud; here, in Phase One the
6 Commissioner asserted fraud claims against Artemis and did not prove liability.
7 Second, here the Commissioner was allowed to and did seek compensatory
8 damages for fraud in the jury trial, *in addition to the restitution* decree he still
9 seeks. Thus, the Commissioner has “had a shot” at obtaining multiple recoveries
10 on different theories, so in principle he could have achieved a deterrent effect had
11 he been able to prove his case.

12 The Court concludes that under California law the Commissioner is not
13 entitled to recover punitive damages.

14 The Court declines to address the parties’ contentions as to whether any
15 restitutionary award the Court may later issue would permit the jury’s punitive
16 damages verdict to stand, because (as the following analysis demonstrates) that
17 verdict cannot survive constitutional scrutiny.

18 B. Constitutional Requirements of Due Process Require this Punitive Damages
19 Award to Be Invalidated.

20 The analysis can be brief. In *State Farm, supra*, the Supreme Court
21 reviewed many of the decisions it has rendered in the past two decades
22 recognizing procedural and substantive constitutional limitations on punitive
23 damages awards. The recurrent theme in those cases is that “Exacting . . .
24 [judicial] review ensures that an award of punitive damages is based upon ‘an
25 application of law, rather than a decisionmaker’s caprice.’” *Id.* at 123 S. Ct. 1520-
26 21 (citation deleted). Elsewhere the Court noted that “punitive damages should
27 only be awarded if the defendant’s culpability, *after having paid compensatory*

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1 damages, is so reprehensible as to warrant the imposition of further sanctions to
2 achieve punishment or deterrence.” *Id.* at 1521 (emphasis added).

3 In *State Farm*, the Supreme Court reiterated the various features of punitive
4 damages that had previously led it to hold that “the Due Process clause of the
5 Fourteenth Amendment prohibits the imposition of grossly excessive or arbitrary
6 punishments on a tortfeasor.” *Id.* at 1599. These features include the risk that “To
7 the extent an award is grossly excessive, it furthers no legitimate purpose and
8 constitutes an arbitrary deprivation of property.” *Id.* at 1520. Another risk is that
9 ‘the presentation of evidence of a defendant’s net worth creates the potential that
10 jurors will use their verdicts to express biases against big businesses, particularly
11 those without strong local presences.” *Id.* (citation deleted). Yet another
12 concern that *State Farm* expressed was that a “State cannot punish a defendant for
13 conduct that may have been lawful where it occurred.” *Id.* at 1522.

14 These factors (all of which were present in this case) prompted the Court in
15 *Gore* to impose three “guideposts” that courts are to consider in reviewing
16 punitive damage awards: (1) the degree of reprehensibility of the defendant’s
17 misconduct; (2) the disparity between the actual or potential harm suffered by the
18 plaintiff and the punitive damages award; and (3) the difference between the
19 punitive damages awarded by the jury and the civil penalties authorized or
20 imposed in comparable cases.” *State Farm* at 1520. Here, the first and second
21 factors preclude the Court from enforcing the jury’s award.²

22 As to degree of reprehensibility, in addition to the fact that only economic
23 injury was at stake, even before the partial settlements and voluntary defaults that
24 resulted in Artemis and its founder, Francois Pinault, being the only defendants
25 who went to trial, it was undisputable that the Commissioner’s essential case
26 focused on the conduct of other parties. Artemis and Pinault “were not around” at
27

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² It is unnecessary to discuss the third factor.

1 the time of the fundamental frauds (the *contrats de portages*), they did not enter
2 into those agreements, and (unlike several other parties who did) they were not
3 prosecuted criminally for them. The jury exonerated Pinault outright and its
4 Phase One verdict left the Commissioner with only a greatly reduced remnant of
5 his previously-staked out damages theories against Artemis. (And he failed to
6 prove even those contentions.)

7 As to the second *Gore* guidepost, the constitutional limits on the ratio
8 between harm or potential harm, “courts must ensure the measure of punishment
9 is both reasonable and proportionate to the amount of harm to the plaintiff and to
10 the general damages recovered.” *Id.* at 1524. What this means, “in practice, [is
11 that] few awards exceeding a single-digit ration between punitive and
12 compensatory damages, to a significant degree, will satisfy due process.”³

13 Even if the jury had awarded the requisite compensatory damages verdict in
14 the form of a nominal \$1.00 award, the jury’s \$700,000,000 punitive damages
15 award would resoundingly violate these principles. There simply is no rational
16 explanation, devoid of speculation, for that figure. The jury found that Artemis’s
17 misrepresentation[s] and omission[s] caused no harm to the Commissioner. It
18 found that of the harm that the *scheme* caused to the Commissioner, the amount
19 attributable to Artemis was zero dollars. Evidently, something about the case
20 nevertheless prompted the jurors to “sock it” to Artemis anyway, in the form of a
21 gigantic punitive damages recovery reflecting a “breathtaking” multiplier. *BMW*,
22 517 U.S. at 583. The Commissioner wants judgment to be entered, in that very
23 amount. Given the facts, under *State Farm* and *Gore* he is not entitled to such
24 judgment.

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26
27 ³ The California Supreme Court has construed this language to establish a
28 presumption that ratios significantly greater than nine or 10 cannot survive
constitutional scrutiny. *Simons v. San Paolo U.S. Holding, Co.*, 29 Cal.Rptr. 3d 379,
395 (2005).

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CONCLUSION

For the foregoing reasons, the Court will not include any punitive damages award in the ultimate judgment.

IT IS SO ORDERED.

This decision is not intended for publication.

DATE: October 3, 2005


A. Howard Matz
United States District Judge

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