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Class Action Status Sought In Bias Case

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LOS ANGELES—A Superior Court judge is considering whether to certify a class action on behalf of gays and lesbians who claim the popular dating Web site eHarmony.com discriminates against them by refusing to handle same-sex matches.

The company provides heterosexual matches only, a decision it says is based on years of research observing successful male/female couples.

During a hearing Thursday, plaintiffs' lawyers sought to persuade Judge Victoria Chaney to certify three groups seeking



Chaney

d a m a g e s and a new inclusionary policy at the Pasadena business.

The first class would include around 300 men and women who unsuccessfully tried to sign up with eHarmony and filed complaints with the company. The second category would include people who went on the Web site, but didn't sign up because they saw no same-sex matches. The third category would be those who knew of the no-gay matches policy and avoided the matching service altogether.

Chaney took the matter under submission and set a status conference for Nov. 20, but she all but dismissed the possibility of certifying the last proposed group.

"That's far out there," she said. "It's way too amorphous to ever be determined."

The newest lead plaintiff in the case is Nate Cardin, a graduate student at Stanford University. A previous named plaintiff and public face of the suit, Linda Carlson, dropped out of the suit for personal reasons, her attorneys said.

Cardin claims he tried to access the site in November 2006, but when he couldn't sign up as a male seeking a male partner, he sent a letter of complaint to the company.

"They gave him a standard e-mail reply — we don't provide same-sex matches," said plaintiffs' lawyer Joshua Konecky of Schneider Wallace Cottrell Brayton Konecky, the San Francisco firm attempting to bring the class action.

"It's as basic as hanging a sign that says 'women need not apply,' or putting a 'blacks need not apply' sign on the door," he said.

It's a claim eHarmony strongly denies.

"The idea that this case is about discrimination is completely false," said Robert E. Freitas, an attorney with Orrick, Herrington & Sutcliffe based in Washington, D.C. Freitas also denied the allegation that founder Neil Clark Warren's strong support of Christian causes and beliefs resulted in an exclusionary policy banning gays.

"Go on the Web site and look at the success stories of diverse couples and you'll see it's not limited to a narrow demographic group at all," Freitas said.

Freitas said eHarmony's decision had nothing to do with discrimination, and everything to do with a business model based on research. He pointed to several gay-only dating services, including mypartner.com, which advertise an expertise in providing matches for gay men.

The case will revolve around the Unruh Civil Rights Act, which says all businesses operating in California must provide "full and equal accommodations, advantages ... and services" to members of all racial, gender and sexual orientation groups.

While Konecky argues eHarmony is in clear violation, Freitas said the plaintiffs' lawyer is misinterpreting the act.

"All that does is forbid arbitrary discrimination," he said.

"Intent is important, reasons are important and you can't oversimplify it," he said. "It isn't that simple."

But David B. Cruz, a professor of constitutional law at USC, said the company could have a hard time with that argument. "It sounds like they are trying to make it sound like, 'You want us to offer another product,'" he said. "But the statute speaks broadly."

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